

DEVELOPMENTS IN THE AUSTRALIAN CLASS ACTION LANDSCAPE

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Legal Briefings

There have been significant developments in the class action landscape in Australia, including an increase in the volume of claims, and growth in class action funding.

Herbert Smith Freehills hosted a class action event in Melbourne last week, with a panel of experts, including the Honourable Justice Bernard Murphy of the Federal Court of Australia, Stephen O'Dowd of Harbour Litigation Funding, and John Walker of Investor Claim Partner. Harbour Litigation Funding is a UK-based funder, which funds cases globally including a number of cases in Australia. Investor Claim Partner has an Australian focus, though its founder and CEO John Walker has funded cases in the USA, UK, Germany, Netherlands, Australia, Singapore, New Zealand and South Africa.

Three of our leading class actions specialists, partners Ken Adams, Ruth Overington and Damian Grave, participated in the lively discussion, sharing their insights on a range of current class action issues.

Australia has now had a class action procedure for 25 years, with the introduction by the Commonwealth of an opt-out class action procedure as part of the Federal Court Act. In the past 15 years substantially similar class action procedures have been introduced in Victoria, New South Wales and Queensland.

His Honour Justice Murphy expressed the view that the system is operating well and in a sustainable fashion.

The litigation funders described a maturing market for their services, with John Walker suggesting that 20 years ago, when litigation funding was all but unknown, it was important to have the accountability and transparency of a publicly listed entity. However these days the market is highly developed and well understood.

The panellists discussed the Court's introduction of a "common fund" order in *Money Max Int Pty Ltd (Trustee) v QBE Insurance Group Limited* [2016] FCAFC 148. In that case, the Full Court of the Federal Court ordered that the litigation funder could receive a commission from all class members, even those class members who hadn't entered a funding agreement. However critically, the Court reserved the right to set the rate of commission at a level considered reasonable in all the circumstances. The Court is expected to quickly develop the factors it considers are relevant to determining a rate of commission.

Since *Money Max*, Australia is seeing more proceedings commenced on an open class basis. And while the full implications of the common fund are still evolving, for litigation funders there is arguably more uncertainty about their ultimate return on investment.

Some concern was evident among the audience of in-house lawyers that class action claims are being brought in the knowledge that it is more cost-effective for companies to settle early, rather than defend the matter at trial, despite the merits of the case.

[The Globalisation of Class Actions hub](#)

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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