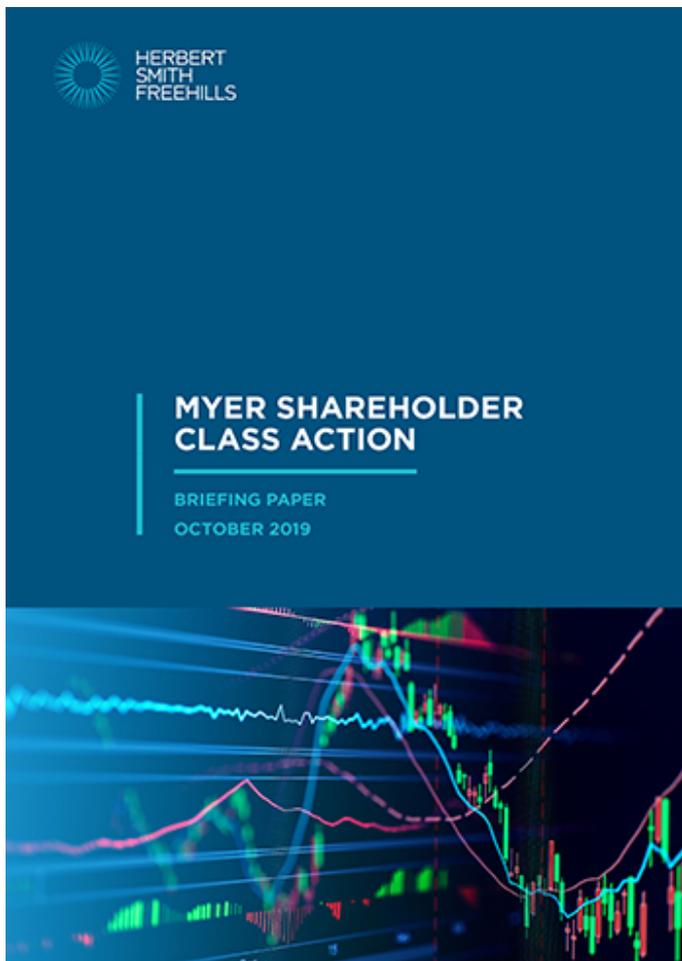


# MYER: THE FIRST SHAREHOLDER CLASS ACTION JUDGMENT IN AUSTRALIA

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Legal Briefings

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The first superior court judgment in a shareholder class action in Australia has been handed down by Justice Beach of the Federal Court of Australia in *TPT Patrol Pty Ltd as trustee for Amies Superannuation Fund v Myer Holdings Ltd*.



The claim centred on statements made by Myer's CEO during earnings calls with equity analysts and financial journalists on 11 September 2014. These calls took place at the time of Myer's FY14 results announcement.

The Court found that from 21 November 2014 until March 2015, Myer breached its continuous disclosure obligations and engaged in misleading or deceptive conduct by failing to correct the 11 September 2014 representation at various intervals. However, the Court found that, because the market had already factored in a lower outlook, the company's contraventions may not have caused any loss to shareholders.

This significant decision will have ramifications for listed companies in Australia.

A briefing paper setting out our observations and insights is now available, please click on the cover or download link above. A link to the decision is available [here](#) and some key points are below.



 Key points	 Disclosure obligations	 The test for causation	 Proving and measuring loss
<ul style="list-style-type: none"><li>• Myer's CEO made a representation regarding earnings.</li><li>• From a certain point in time Myer no longer expected those earnings to be achievable.</li><li>• By not issuing a corrective statement, Myer breached continuous disclosure obligations and misled the market.</li><li>• These breaches may not have caused shareholders any loss.</li></ul>	<ul style="list-style-type: none"><li>• Continuous disclosure obligations were engaged when Myer became aware that its earnings would be materially different to the de facto earnings guidance given by the CEO.</li><li>• Disclosures made outside ASX announcements, such as in analyst/media briefings and at AGMs, can still be actionable.</li></ul>	<ul style="list-style-type: none"><li>• Shareholders claimed they suffered loss because they purchased shares on the market at an inflated price.</li><li>• Market based causation is available in securities class actions.</li><li>• Shareholders are not required to prove individual reliance on company statements.</li></ul>	<ul style="list-style-type: none"><li>• An event study is a useful tool for assessing loss.</li><li>• Expert evidence did not establish that Myer's share price was inflated.</li><li>• Because the market had already factored in a lower outlook, the company's misconduct may not have caused any loss to shareholders.</li></ul>

Our Class Action team is hosting a panel of Herbert Smith Freehills experts in Sydney on 6 November 2019 to explore the judgment and how it might impact Australian corporations, their Boards, the insurance industry and the broader community. Any inquiries in relation to the event please contact [michelle.browning@hsf.com](mailto:michelle.browning@hsf.com). See below for three short videos that explore the main implications and takeaways.

<a href="#">Corporate Australia to be impacted by the Myer decision</a>	Partner Jason Betts explores the three key takeaways of the Myer decision.
<a href="#">Shareholder class actions: will the Myer decision open the floodgates?</a>	Senior Associate Christine Tran provides her perspective on the Myer decision, and discusses the standards corporations in Australia will have to apply in order to comply with their continuous disclosure obligations.
<a href="#">How the Myer decision provides guidance on quantifying loss</a>	Partner Ruth Overington considers the potential market impact of more class actions being commenced in the future. She also explores the Court's guidance on how loss is proved and measured.

## 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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