

CLASS ACTIONS SET TO GET BIGGER, BECOME A GREATER RISK FOR BUSINESS AND COVER NEW GROUND IN 2017, HERBERT SMITH FREEHILLS PREDICTS

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News

Australian class actions in 2017 are set to increase in both size and frequency and explore new territory, including climate change, Herbert Smith Freehills predicts.

According to the firm's predictions of what's in store for the Australian class actions environment in 2017, these factors and other significant developments are expected to create heightened risk for business, with companies increasingly under pressure to have plans in place to prevent and respond to the risk of class action claims.

Herbert Smith Freehills partner and class actions specialist Jason Betts said on the back of the Full Federal Court's decision in October to allow "common funds" in class actions, there was likely to be significant growth in domestic and foreign funders launching claims.

"Class actions will become more economically attractive to funders. This is because they can now extract a commercial return across the entire 'open' class, rather than being limited to recovery from the small subset of group members who sign-up with the funder. As a result, we expect to see more funders in our market and larger claims over the next 12 months," Jason said.

More funders will also mean that new types of cases will be explored, including shareholder class actions against small to mid-cap listed companies, previously overlooked by funders and plaintiff firms. The emergence of pollution and environmental toxic torts claims are also expected, along with more claims in the education, consumer and mining sectors.

“There is also a growing risk of class actions relating to climate change and we may see a spike in IPO claims given the unpredictable investment market,” Jason said.

Herbert Smith Freehills is also predicting plaintiffs will renew calls for contingency fees to be introduced, allowing lawyers to charge a percentage of the recovery obtained by their clients.

“With the increasing political and judicial momentum behind improving access to justice, we may see one or two Australian States break rank and amend their legal professional rules to allow contingency fees. This would almost certainly deepen the class action market, with more lawyers incentivised to pursue collective redress in the hope of larger returns,” Jason said.

Overall, 2017 will see Australian businesses increasingly facing the risk of class actions, with litigation not limited to particular sectors or jurisdictions as the market deepens and diversifies.

“Boards should proactively conduct a class action ‘vulnerability assessment’ across their organisation. We also advise companies to adopt strategies such as refreshing and updating continuous disclosure protocols so they can be prepared if faced with a claim,” Jason said.

The full list of predictions is available [here](#).