



29 November 2017

Class actions

The Australian Shareholders' Association (ASA) represents its members to promote and safeguard their interests in the Australian equity capital markets. The ASA is an independent not-for-profit organisation funded by and operating in the interests of its members, primarily individual and retail investors, self-managed superannuation fund (SMSF) trustees and investors generally seeking ASA's representation and support. ASA also represents those investors and shareholders who are not members, but follow the ASA through various means, as our relevance extends to the broader investor community.

ASA position on class actions

The ASA supports the class action regime on the basis that it:

- improves the accountability of directors, executives and professional advisers to shareholders
- provides access to justice for shareholders who would not otherwise be able to access legal assistance to secure redress for their losses as a result of corporate misconduct (ensuring that access to justice is not contingent on personal wealth)
- can assist in creating a more 'level playing field' between plaintiffs and very large, well-resourced corporate defendants, and
- is a complementary private enforcement activity to the regulatory role of the Australian Securities and Investments Commission (ASIC).

The ASA has no automatic opinion on individual class actions, as the merits of each need to be reviewed on a case-by-case basis to assess if they may be of interest to ASA members.

The ASA has received distributions in five settled class actions, which were ordered by the court and not sought by the ASA. The distributions have been applied to the education of investors, to assist them to make more informed financial decisions. The ASA has not been directly involved in class action proceedings.

Differing shareholder views on class actions

The ASA notes that there can be differing views on class actions.

1. Some shareholders are concerned that shareholders are suing their own company, and that one cohort of shareholders benefits at cost to another, and frequently it is more recent shareholders who benefit at cost to long-term shareholders.
2. Other shareholders are of the view that class actions provide access to justice for shareholders who would not otherwise be able to afford legal assistance and as such they are a tool of restitution for corporate misconduct. They also argue that all companies pay insurance to

address risk, and it is the insurance company that pays the costs in any court settlement arising from a class action.

While appreciating both points of view, the ASA nonetheless supports the class action regime given its role in holding boards, executives and advisers accountable where companies have failed in their corporate governance and shareholders have not received redress for the losses they have suffered.