

CLASS ACTIONS – A LAWYER’S PICNIC OR ACCESS TO JUSTICE?

By Ben Slade*

Observers of class actions are, unsurprisingly, confused by conflicting signals. When some class actions are announced commentators hail the initiative as the little guys fighting back against injustice. When settlements are announced many years later, class members are often shocked, not by how long it has taken to resolve, but by the paltry sum that they expect to receive after lawyers and funders take enormous chunks of money from the settlement fund. This paper looks at settlements of class actions in Australia and considers whether, on balance, the outcomes suggest that class actions are good thing for justice or a very good thing for law firms and litigation funders.

I. INTRODUCTION

Maurice Blackburn, my then law firm, attracted a great deal of publicity in 2006 when we kicked off a class action for hundreds of businesses against cardboard box manufacturers, Amcor and Visy, for losses caused by their price fixing cartel. The regulator’s exposure of their corporate skulduggery had made the companies and their bosses nefarious. A class action was what they deserved. The media published various claims that the case was worth anything from as high as AUS \$1 billion to as low as \$300 million.¹ 5,000 businesses around Australia, from Coke to small wineries, were looking forward to a big payout.

7 years later, in mid-2011, settlement was approved by Justice Jacobson of the Federal Court. Of the total payment of \$120 million, \$95 million was to be distributed to, as it turned out, fewer than 2,000 businesses. The court approved costs of \$25 million.²³

The media was not as excited about the settlement as they were at the launch of the class action. One outlet was critical of the low settlement given previous expectations while others were sceptical that one law firm could expect to be paid such a lot of money for one case.

Shine Lawyers also attracted positive reporting when, in 2012, it took on the Goliath that is Johnson & Johnson and launched a class action for women whose bodies had suffered a range of awful injuries from gynaecological mesh. Almost 10 years later, after winning a long and exhausting trial, Shine’s persistent lawyers announced that the class action, which by now included a follow-on action, had settled for a total of \$300 million, inclusive of costs. Shine’s announcement that costs of \$99.5 million would be deducted from the settlement sum caused great consternation.⁴

The media blasted the firm with exclamations and shock at the fees being claimed.⁵

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¹ References are to Australian dollars

² *Jarra Creek Central Packing Shed Pty Ltd v Amcor Limited* [2011] FCA 671

³ Maurice Blackburn had conducted the case on a “no win, no fee” (or “conditional costs”) basis

⁴ Shine conducted the claim on a “no win, no fee” basis. Before the settlement announcement of \$300m, Shine had been paid \$38 million by the respondent because the court had made a special costs order in light of the lead applicants’ success at trial. Shine predicted that settlement administration would cost a further \$35m

⁵ *Pelvic mesh victims left unsure of futures as legal fees threaten to slash class action payout*

<https://www.abc.net.au/news/2022-12-04/mesh-implant-class-action-shine-lawyers-payout-dispute/101728850>
“Anger as lawyers claim nearly a third of class action payout”: <https://www.abc.net.au/news/2022-12-04/anger-as-lawyers-claim-nearly-a-third-of-class/101732240> “Australian women reeling over proposed legal settlement

The Federal Court has determined that while the settlement should be approved it is yet to decide whether the fees claimed by Shine are reasonable.⁶

II. THE AUSTRALIAN REGIME

Facilitated opt out class action regimes are in place in the Federal Court of Australia⁷ and in the states of Victoria, NSW, Queensland, Tasmania⁸ and, most recently, Western Australia.⁹

It is particularly fortunate, for class members, law firms, third-party litigation funders and the community as a whole, that proposed settlements of class actions in Australia must be approved by the court.¹⁰ In doing so, the proposed settlement must be found by the court to be fair and reasonable and in the interests of the group members bound by the settlement, considered as a whole.¹¹

The two examples of settlements of significant class actions in the introduction suggest that lawyers may be making a meal of class actions and that the community has good reason to be suspicious of their conduct.

There are, of course, examples where the costs claimed, and awarded, have been a substantial proportion of the gross settlement sum, but they are few and each requires careful consideration of the circumstances of the individual settlement proposal.

There are other examples in which a third-party litigation funder has sought a commission of over 40% of the gross settlement sum,¹² which may, on its face, appear high but, at Beach J said, when approving a 25% commission on the gross settlement for a funder in a shareholder class action:¹³

I do not subscribe to any “race to the bottom” philosophy in setting commission rates. As a corollary, I do not accept that rates should be set that do not properly provide a reward for the risk undertaken. In this context I would note that lower rates in some cases may simply be a reflection of the lower risks. Moreover, in the context of competing class actions for the same matter, the fact that price competition has produced lower rates in that matter may simply be a manifestation of why the competition has arisen in the first place. The claims and the competition to run them may be attractive to fund for the very reason that such claims are strong and therefore have lower risk. So, the lower risk may explain the competition in the first place which competition may be able to tolerate the lower price in that context for that matter.

The analysis below shows, in my opinion, that the outcomes for class members over the past 20 years, have, in Australia, been, on the whole, good.

payout” <https://9now.nine.com.au/a-current-affair/mesh-injured-australian-women-reeling-over-proposed-legal-settlement-payout/af031214-c2ad-42b9-aa14-02a5a358f3e1>

⁶ *Gill v Ethicon Sarl (No 10)* [2023] FCA 228; *Gill v Ethicon Sarl (No 11)* [2023] FCA 229

⁷ Part IVA of the *Federal Court of Australia Act 1976* (Cth)

⁸ *Supreme Court Act 1986* (Vic); Pt 4A; *Civil Procedure Act 2005* (NSW); Pt 10; *Civil Proceedings Act 2011* (Qld); Pt 13A; Pt VIII, *Supreme Court Civil Procedure Act 1932* (Tas).

⁹ While its preliminary provisions have commenced, the majority of the *Civil Procedure (Representative Proceedings) Act 2022* is yet to be proclaimed

¹⁰ Section 33V of the *Federal Court of Australia Act 1976* (Cth) and its equivalents in Victoria, NSW, Queensland, Tasmania and, recently, WA.

¹¹ *Blairgowrie Trading Ltd v Allco Finance Group Ltd (in liq) (No 3)* [2017] FCA 330; (2017) 343 ALR 476 at [82] to [84] per Beach J. Also, *Williams v FAI Home Security Pty Ltd (No 4)* (2000) 180 ALR 459 at [19] per Goldberg J, and *Foley v Gay* [2016] FCA 273 at [7].

¹² For example, 43% commission was granted in *Liverpool City Council v McGraw-Hill Financial Inc (now known as S&P Global Inc)* [2018] FCA 1289

¹³ *Kuterba v Sirtex Medical Limited (No 3)* [2019] FCA 1374 at [12]

III. SETTLEMENT AND JUDGMENT

The attached table “Settlement distribution in Australian class actions 2001 – 2022” is compiled from work done by Michael Legg and Ross McInnes,¹⁴ the Law Council of Australia’s Class Actions Committee,¹⁵ Professor Vince Morabito¹⁶ and the author.¹⁷ The class actions considered in the table do not include a significant number of class actions promoted by unions, regulators, legal aid commissions, community legal centres and pro-bono schemes. The settlements listed are only those that have been conducted and/or funded by profit making entities.

Over the calendar years from 2001 – 2022 inclusive there were 116 settlement approvals of class actions in which settlement approval decisions have given sufficient information for various conclusions to be, relatively, reliably drawn. The author’s personal knowledge of some matters has enabled this information to be supplemented.

The conclusions are not scientific, and some results are based on informed estimates.¹⁸ Given these limitations, the conclusions are:

1. The total recoveries in all funded and non-funded class action settlements from 2001 – 2022 calendar years is in the range of \$6.44 billion inclusive of costs and, where applicable, a funder’s commission.
2. The total costs awarded in those settled cases is about \$1.04 billion, or about 16% of the total settlement value.¹⁹
3. The total recoveries in class actions that were not funded by a third party, being, in the main, by a law firm on a speculative basis, was about \$2.57 billion.
4. The total costs awarded to the law firms in settlements of class actions without third party funding was \$395 million, or 15.4% of the gross settlement sum.
5. As such class members recovered, after costs were deducted, in class actions that were not funded by a third party, about 84.6% of the settlement funds.
6. The total value of settlements in class actions that were funded by third party litigation funders, rather than those conducted by a law firm on a speculative basis, over the same period is about \$3.87 billion inclusive of costs and the funder’s commission.²⁰
7. The total costs awarded in those funded matters over the period were just over \$645 million, being close to 17% of the total value of the settlement approvals.

¹⁴ Michael Legg and Ross McInnes, *Australian Annotated Class Actions Legislation* (LexisNexis Butterworths, 2nd ed, 2017)

¹⁵ Settlement distribution for class actions 2001 – 2020 appeared at Attachment A to the Law Council’s submission to a Parliamentary Joint Committee on Corporations and Financial Services dated 16 June 2020 into “*Litigation funding and the regulation of the class action industry*”.

¹⁶ Monash University: <https://research.monash.edu/en/persons/vince-morabito>

¹⁷ Professor Vince Morabito of Monash University kindly commented on part of the document and provided references that we unavailable to the author. The table lists only those representative proceedings conducted for profit under Part IVA of the *Federal Court of Australia Act 1976* (Cth) or the equivalent provisions in the States of Australia. The table does not include representative actions taken by regulators or unions.

¹⁸ Some information that is relied on for the statistical results was given to the author in confidence and does not appear in the table.

¹⁹ These figures do not include *Kelly v Willmott Forests Ltd (in liq) (No 5)* [2017] FCA 689 as the costs were significant but the outcome for class members was a reduction in debt.

²⁰ These sums include estimates for the costs and commission paid in the Queensland Floods case of *Rodriguez & Sons Pty Ltd v Queensland Bulk Water Supply Authority trading as Seqwater (No 28)* [2021] NSWSC 467

8. The total of the commissions earned by third party litigation funders in those funded matters over the period were just under \$980 million, or about 25% of the gross total claim value.
9. Class members recovered, after costs and commissions in funded class actions about 58% of the settlement monies.²¹

IV. CONCLUSION

While some class action settlements might suggest that lawyers are having a picnic at the expense of the class, the impression is not borne out when one analyses the outcomes of many years.

It appears that the class actions regime is largely doing what it set out to do, that is, with a dual purpose to achieve access to justice in this way:

*The first is to provide a real remedy where, although many people are affected and the total amount at issue is significant, each person's loss is small and not economically viable to recover in individual actions. It will thus give access to the Courts to those in the community who have been effectively denied justice because of the high cost of taking action. The second purpose of the bill is to deal efficiently with the situation where the damages sought by each claim are large enough to justify individual actions and a large number of persons wish to sue the respondent. The new procedure will mean that groups of persons, whether they be shareholders or investors, or people pursuing consumer claims, will be able to obtain redress and do so more cheaply and efficiently than would be the case with individual actions.*²²

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March 2023

²¹ This percentage is the same percentage recovery for class members in funded class actions in Australia found in a comprehensive survey done in 2017 concerning "all Part IVA proceedings settled before the end of 2016" by Professors Morabito and Waye: See *Seeing past the US Bogey – lessons from Australia on the funding of class actions* C.J.Q.2017, 36(2), 213 – 243 at page 242

²² Second Reading Speech for the *Federal Court of Australia Amendment Act 1991* (Cth), House of Representatives, Parliamentary Debates, *Hansard*, 14 November 1991 at 3174 (and noted by the High Court in *Wong v Silkfield Pty Ltd* (1999) 199 CLR 255 when interpreting Part IVA of the *Federal Court of Australia Act 1976* (Cth))

Settlement distribution in Australian class actions 2001-2022

1. The information provided below for the period 2001 – June 2020 was based on that compiled by members of the Class Actions Committee of the Law Council's Federal Litigation Section, Ben Slade²³ and Professor Vince Morabito of Monash University.²⁴ The information from July 2020 to the end of the 2022 calendar year was compiled by Ben Slade.
2. The table below is intended to provide a broad overview of class actions settlements in the 2001-2022 period. The author does not suggest that the table is completely accurate as some of the data is a result of estimates based on the best available information.
3. Class actions conducted by unions, regulators (e.g. ASIC or ACCC) legal aid commissions, community legal centres and pro-bono schemes are not included as the purpose of the analysis for the consideration of outcomes in privately funded, for profit, class actions and except where otherwise indicated, this table does not include payments made to lead applicants for their time and expenses in addition to any damages or compensation paid to them.²⁵

Case	Type of class action	Settlement amount	Legal Fees (% of settlement) ²⁶	Litigation Funding Fees (% of settlement) ²⁷
2001-14²⁸				
<i>Johnson Tiles Pty Ltd v Esso</i>	Gas explosion	\$32.5m	\$6m (18.5%)	No funder

²³ Barrister, William Forster Chambers, Northern Territory, Australia

²⁴ <https://research.monash.edu/en/persons/vince-morabito>. Some of the information is based on a review of published judgments and other sources, including in particular, Michael Legg and Ross McInnes, *Australian Annotated Class Actions Legislation* (LexisNexis Butterworths, 2nd ed, 2017) and on information on a number of class actions settlements since the publication of a similar table by the Australian Law Reform Commission: *Integrity, Fairness and Efficiency – An Inquiry into Class Action Proceedings and Third-Party Litigation Funders* (Report No 134, December 2018) Appendix E

²⁵ Unless otherwise stated, the settlement amounts include costs and amounts, if any, payable as a commission to a litigation funder

²⁶ The details provided are the best information available that the author can identify. Some settlement decisions, for example, reveal approved costs of administration while others do not.

²⁷ Calculated on the gross settlement sum, that is, compensation plus approved costs. In some instances, additional amounts may have been paid to a litigation funder by way of management expenses or fees.

²⁸ Discontinued actions are not included, such as *RK Doudney Pty Ltd, as Trustee for the RK Doudney Superannuation Fund v IOOF Holdings Ltd; Adams v Navra Group Pty Ltd* [2019] FCA 1157; *AUB19 v Commonwealth of Australia* [2019] FCA 1722; *Tate v Westpac Banking Corporation (No 2)* [2020] FCA 1374; *DBE17 v Commonwealth of Australia (No 3)* [2021] FCA 1584 or those for which information is not available such as *Rod Investments v Abeyratne* [2010] VSC 457; *Muswellbrook Shire Council v The Royal Bank of Scotland NV* [2017] FCA 414 or those with confidentiality orders that render the information too incomplete to be of value such as *Lifepan Australia Friendly Society Ltd v S&P Global Inc* [2018] FCA 379 and *Gibson v Malaysian Airline System Berhad* [2019] FCA 1007; *Mid-Coast Council v Fitch Ratings Inc* [2019] FCA 1261 and *Hawker v Powercor Australia Ltd* [2019] VSC 521; *Calinoiu v Qld Law Group – A New Direction Pty Ltd* [2019] FCA 2019 and those that settle for no costs such as *Sister Marie Brigid Arthur (Litigation Representative) v Northern Territory of Australia (No 2)* [2020] FCA 215 (the latter resolving on the basis of NT promise of various initiatives and policy revisions concerning the treatment of children in detention, with no order as to costs).

Case	Type of class action	Settlement amount	Legal Fees (% of settlement)²⁶	Litigation Funding Fees (% of settlement)²⁷
<i>Australia Ltd</i> [2001] FCA 458				
<i>King v AG Australia Holdings Ltd (formerly GIO Australia Holdings Ltd)</i> [2003] FCA 980	Shareholder	\$112m	\$15.8m (14%)	No funder
<i>Ryan v Great Lakes Council & Till v Great Lakes Council</i> November 2003 ²⁹	Product liability: Oysters	\$9.045m	\$6.263m (69%)	No funder
<i>Petrusevski v Bulldogs Rugby League Club Ltd</i> [2004] FCA 1712	Misleading conduct in sporting competition	\$200,000	\$52,434.20 ³⁰ (26%)	No funder
<i>Reiffel v ACN 075 839 226 Pty Ltd (No 2)</i> [2004] FCA 1128 ³¹	Investor	\$7.46m	\$1,863,550 (25%)	No funder
<i>Lukey v Corporate Investments Australia Funds Management Pty Ltd</i> [2005] FCA 298	Investor	\$4.3m	\$2.6m (60%)	No funder
<i>Milfull v Terranora Lakes Country Club Ltd</i> [2006] FCA 801	Minority shareholder rights	\$1.8m ³²	\$400,000 (22%)	No funder
<i>Darwalla Milling Co Pty Ltd v F Hoffman-La Roche Ltd</i> [2006] FCA 915	Price fixing cartel	\$41.1m	\$11.1m (27%)	No funder
<i>Guglielmin v Trescowthick (No 5)</i> [2006] FCA 1385	Shareholder	\$3m	\$1.55m (52%)	No funder

²⁹ Data retrieved from court documents by Vince Morabito.

³⁰ Data retrieved from court documents by Vince Morabito.

³¹ Data retrieved from court documents by Vince Morabito.

³² Settlement proceeds received by group members would allow them to recoup some of their contributions to legal costs as the five class actions in question were funded by group members

Case	Type of class action	Settlement amount	Legal Fees (% of settlement)²⁶	Litigation Funding Fees (% of settlement)²⁷
<i>Taylor v Telstra Corporation Ltd</i> [2007] FCA 2008	Shareholder	\$5m	\$1.25m (25%)	No funder
<i>Dorajay Pty Ltd v Aristocrat Leisure Ltd</i> [2009] FCA 19	Shareholder	\$144.5m	\$8.5m (6%)	\$35m (24%)
<i>Watson v AWB Limited (No 3)</i> [2009] FCA 1174 ³³	Shareholder	\$39.5m	\$11m (28%)	\$9.875 (25%)
<i>P Dawson Nominees Pty Ltd v Brookfield Multiplex Ltd (No 4)</i> [2010] FCA 1029	Shareholder	\$110m	\$11m (10%)	38.5m (35%)
<i>Hobbs Anderson Investments Pty Ltd v Oz Minerals Ltd</i> [2011] FCA 801	Shareholder	\$60m	\$4.9m (8%)	\$15m (25%)
<i>Jarra Creek Central Packing Shed Pty Ltd v Amcor Ltd</i> [2011] FCA 671	Price fixing cartel	\$120m	\$25m (21%)	No funder
<i>Kirby v Centro Properties Ltd (No 6)</i> [2012] FCA 650	Shareholder	\$200m	\$31.1m (16%)	\$60m (40%)
<i>Casey v DePuy International Ltd (No 2)</i> [2012] FCA 1370	Product liability – hip implants	\$20m	\$1.12m (5.6%)	No funder
<i>Pathway Investments Pty Ltd v National Australia Bank Ltd (No 3)</i> [2012] VSC 625	Shareholder	\$115m	\$11.8m (10%)	34.5 (30%)

³³ The settlement approval decision was not published.

Case	Type of class action	Settlement amount	Legal Fees (% of settlement)²⁶	Litigation Funding Fees (% of settlement)²⁷
<i>Hadchiti v Nufarm Ltd</i> [2012] FCA 1524	Shareholder	\$46.6m	\$4.5m (10%)	\$2.2m (5%)
<i>Earglow Pty Ltd v Sigma Pharmaceuticals Ltd</i> [2012] FCA 1496	Shareholder	\$57.5m	Unknown	Unknown
<i>Konneh v State of NSW (No.3)</i> [2013] NSWSC 1424	Human Rights	\$4m	\$2m (50%)	No funder
<i>Wheelahlan v City of Casey & Ors (No 3)</i> [2013] VSC 316	Gas migration	\$23.5m	\$6.25m (27%)	No funder
<i>Robbins v Grunenthal & Rowe v Grunenthal</i> ³⁴ [December 2013]	Product liability (morning sickness pills - Thalidomide)	\$95.5m	\$6.5m (7%)	No funder
<i>Modtech Engineering Pty Ltd v GPT Management Holdings Ltd (No. 3)</i> [2014] FCA 680.	Shareholder	\$75m	\$8.5m (11%)	18.75m (25%)
<i>Wepar Nominees Pty Ltd v Schofield (No 2)</i> [2014] FCA 225	Disclosure to market and in a prospectus	\$3.25m	\$1.04m (32%)	\$1.08m (33%)
<i>Inabu Pty Ltd v Leighton Holdings Ltd</i> [2014] FCA 622	Shareholder	\$69.45m	\$3.9m (6%)	\$19.5m (28%)
<i>Matthews v AusNet Electricity Services Pty Ltd</i> [2014] VSC 663	Personal injury and property damage - bushfire	\$494m	\$60m (12%)	No funder

³⁴ See Julian Schimmel, Nina Abbey and Vince Morabito, 'Empirical and Practical Perspectives on Twenty-Seven Years of Product Liability Class Actions in Australia' in Brian T Fitzpatrick and Randall S Tomas (eds), *The Cambridge Handbook of Class Actions: An International Survey* (Cambridge University Press, 2021) 391, 398.

Case	Type of class action	Settlement amount	Legal Fees (% of settlement)²⁶	Litigation Funding Fees (% of settlement)²⁷
<i>A v Dr Mark Schulberg (No 2)</i> [2014] VSC 258	Personal injury	\$13.75m	\$3.2m (23%)	No funder
<i>Giles v Commonwealth of Australia</i> [2014] NSWSC 83	Human Rights	\$24m	\$4.1m (17.3%)	No funder
2015-16				
<i>Downie v Spiral Foods Pty Ltd</i> [2015] VSC 190	Product liability	\$69.45m	\$3.9m (5.6%)	No funder
<i>Camilleri v The Trust Co (Nominees) Ltd</i> [2015] FCA 1468	Shareholder	\$25m	\$4.9m (19.6%)	No funder
<i>Rowe v AusNet Electricity Services Pty Ltd</i> [2015] VSC 232	Personal injury and property damage - bushfire	\$300m	20m (7%)	No funder
<i>Newstart 123 Pty Ltd v Billabong International Ltd</i> [2016] FCA 1194	Shareholder	\$45m	\$6.2m (14%)	Not disclosed
<i>Hopkins v AECOM Australia Pty Ltd (No 8)</i> [2016] FCA 1096	Investors in tunnel	\$121m	\$19m (16%)	\$31.8m (26%)
<i>Earglow Pty Ltd v Newcrest Mining Ltd</i> [2016] FCA 1433	Shareholder	\$36m	\$10.3m (29%)	\$6.78m (19%)
<i>Clasul Pty Ltd v Commonwealth</i> [2016] FCA 1119	Equine influenza outbreak	No compensation	Each party bore its own costs	Funded at commencement but funder withdrew

Case	Type of class action	Settlement amount	Legal Fees (% of settlement)²⁶	Litigation Funding Fees (% of settlement)²⁷
<i>Stanford v DePuy International Ltd (No 6)</i> [2016] FCA 1452	Product liability - hip implants	\$250m	\$36m (14%)	No funder
<i>Duval-Comrie v Commonwealth of Australia</i> [2016] FCA 1523	Disability discrimination	\$100m	\$390,000 (.39%)	No funder
<i>Camping Warehouse v Downer EDI</i> [2016] VSC 784	Shareholder	\$11.1m ³⁵	\$2.85m (26%)	\$825,000 (7%)
2017				
<i>Blairgowrie Trading Ltd v Allco Finance Group Ltd (recs & mgrs apptd) (in liq) (No 3)</i> [2017] FCA 330	Shareholder	\$40m	\$10.5m (26%)	\$8.85m (22%)
<i>Kelly v Willmott Forests Ltd (in liq) (No 5)</i> [2017] FCA 689	Financial product	No compensation but reduction in outstanding loans repayment obligation	\$8.6 m	No funder
<i>McAlister v New South Wales (No 2)</i> [2017] FCA 93; <i>McAlister v New South Wales (No 3)</i> [2018] FCA 636	Human rights	\$11m	\$6.95m ³⁶ (63%)	No funder
<i>Mitic v OZ Minerals Ltd (No 2)</i> [2017] FCA 409	Shareholder	\$32.5m	\$12.6m (39%)	\$8.9m (27%)
<i>HFPS Pty Ltd (Trustee) v Tamaya</i>	Shareholder	\$6.75m	\$3.42m (51%)	\$1.2m (17%)

³⁵ Order was \$8.25m plus costs of \$2.85m

³⁶ Costs agreed to be paid by State separate to compensation and after \$4.05m compensation distributed to 50 class members.

Case	Type of class action	Settlement amount	Legal Fees (% of settlement)²⁶	Litigation Funding Fees (% of settlement)²⁷
<i>Resources Ltd (in Liq) (No 3) [2017] FCA 650</i>				
<i>Hardy v Reckitt Benckiser (Australia) Pty Ltd (No 3) [2017] FCA 1165</i>	Consumer	\$5.5m	\$1.5m ³⁷ (27%)	No funder
<i>Lee v Westpac Banking Corporation [2017] FCA 1553</i>	Financial product	\$7.5m	\$2.5m (33%)	No funder
<i>Jones v Treasury Wine Estates Ltd (No 2) [2017] FCA 296</i>	Shareholder	\$49m	\$11.5m (24%)	\$11.7m (24%)
<i>Kamasae v Commonwealth [2017] VSC 537; Kamasae v Commonwealth [2018] VSC 138</i>	Human rights – asylum seekers	\$90m	\$20m (22%)	No funder
2018				
<i>Dillon v RBS Group (Australia) Pty Ltd (No 2) [2018] FCA 395</i>	Financial product	\$12.58m	\$4.5m (36%)	No funder
<i>Clarke v Sandhurst Trustees Ltd (No 2) [2018] FCA 511</i>	Financial product	\$16.85m	\$5m (30%)	\$5.055m (30%)
<i>Caason Investments Pty Ltd v Cao (No 2) [2018] FCA 527</i>	Shareholder	\$19.25m	\$7.5m (39%)	5.75m (30%)

³⁷ Costs agreed to be paid separate to compensation.

Case	Type of class action	Settlement amount	Legal Fees (% of settlement)²⁶	Litigation Funding Fees (% of settlement)²⁷
<i>Wotton v State of Queensland (No 10)</i> [2018] FCA 915	Human rights	\$30m	\$7.1m (23%)	No funder
<i>Money Max Int Pty Ltd (Trustee) v QBE Insurance Group Ltd</i> [2018] FCA 1030	Shareholder	\$132.5m	\$21.8m (16.5%)	\$30.75m (23.2%)
<i>Hodges v Sandhurst Trustees Ltd</i> [2018] FCA 1346	Financial product	\$78.16m	\$11.23m (14%)	\$22.4m (29%)
<i>Liverpool City Council v McGraw-Hill Financial Inc (now known as S&P Global Inc)</i> [2018] FCA 1289	Financial product	\$215m	\$20m (9%)	\$92m (43%)
<i>Santa Trade Concerns Pty Ltd v Robinson (No 2)</i> [2018] FCA 1491	Shareholder	\$3m	\$1.5m (50%)	\$500,000 (16%)
<i>Petersen Superannuation Fund Pty Ltd v Bank of Queensland Ltd (No 3)</i> [2018] FCA 1842	Financial product	\$12m	\$1.75m (14.5%)	\$5.98m (50%)
<i>Hopkins as Trustee of the David Hopkins Super Fund v Macmahon Holdings Ltd</i> [2018] FCA 2061	Shareholder	\$6.7m	\$3m (45%)	\$1.295m (19%)
<i>Hall v Slater & Gordon Ltd</i> [2018] FCA 2071	Shareholder	\$36.5m	\$5.4m (15%)	\$8m (22%)
<i>Smith v Australian Executor Trustees Ltd; Creighton v</i>	Financial product	\$28.5m	\$12.8m (45%)	\$4.3m (15%)

<i>Case</i>	<i>Type of class action</i>	<i>Settlement amount</i>	<i>Legal Fees (% of settlement)²⁶</i>	<i>Litigation Funding Fees (% of settlement)²⁷</i>
<i>Australian Executor Trustees Ltd (No 4)</i> [2018] NSWSC 1584				
2019				
<i>McKenzie v Cash Converters International Ltd (No 4)</i> [2019] FCA 166	Consumer claims arising out of 'pay-day' loan agreements	\$16.5m	\$5.8m (35%)	No funder
<i>Bradgate (Trustee) v Ashley Services Group Ltd (No 2)</i> [2019] FCA 1210	Shareholder	\$14.6m	\$3.57m (24%)	\$4.84m (33%)
<i>Kuterba v Sirtex Medical Ltd (No 3)</i> [2019] FCA 1374	Shareholder	\$40m	\$9.3m (23%)	\$10.2m (25%)
<i>Bolitho v Banksia Securities Ltd (No 6)</i> [2019] VSC 653	Investor class action	\$64m	\$5m (8%)	\$13.3m (21%) ³⁸
<i>Murillo v SKM Services Pty Ltd</i> [2019] VSC 663	Fire at a re-cycling plant	\$1.2m	\$725,000 (60%)	No funder
<i>Perazzoli v Bank SA, a division of Westpac Banking Corporation Ltd</i> [2019] FCA 1707	Ponzi scheme	\$13.25m	\$4m (30%)	\$4m (30%)
<i>Endeavour River Pty Ltd v MG Responsible Entity Ltd</i> [2019] FCA 1719	Investors in Unit Trusts	\$42m	\$2.66m (6%)	\$13.47m (32%)
<i>Andrews v Australia & New</i>	Exception fees	\$4.464m ³⁹	\$3.7m	\$500,000

³⁸ \$22m is being held in pending resolution of ongoing dispute as to costs and commission.

³⁹ \$763,901 in compensation with \$3.7m in costs on top of compensation

Case	Type of class action	Settlement amount	Legal Fees (% of settlement) ²⁶	Litigation Funding Fees (% of settlement) ²⁷
<i>Zealand Banking Group Ltd</i> [2019] FCA 2216			(82%)	(11%) ⁴⁰
<i>Rushleigh Services Pty Ltd v Forge Group Ltd (in liq)</i> [2019] FCA 2113	Shareholder	\$16.5m	\$4.2 million (25%)	\$3.95m (24%)
<i>Simpson v Thorn Australia Pty Ltd trading as Radio Rentals (No 5)</i> [2019] FCA 2196	Consumer – credit contracts	\$29m	\$9.16m (32%)	No funder
2020				
<i>Pearson v State of Queensland (No 2)</i> [2020] FCA 619	Stolen wages for Aboriginal and Torres Strait islanders	\$190m	\$13.6 (7%)	\$38m (20%)
<i>Clime Capital Ltd v UGL Pty Ltd</i> [2020] FCA 66	Shareholder	\$18m	\$5.95m (33%)	\$4.05m (23%)
<i>Lenehan v Powercor Australia Ltd</i> [2020] VSC 82 ⁴¹	Bushfire	\$17.5 m	\$3.68 (21%)	No funder
<i>McKay Super Solutions Pty Ltd (Trustee) v Bellamy's Australia Ltd (No 3)</i> [2020] FCA 461	Shareholder	\$49.7m	\$7.5m (15%)	\$14.4m (29%)
<i>Lynch v Cash Converters Personal Finance Pty Ltd (No 5)</i> [2020] FCA 389	Consumer claims arising out of 'pay-day' loan agreements	\$67.4m	\$12.44m (19%)	No funder

⁴⁰ On one view the commission could be seen as 66% of the \$763,901 in compensation

⁴¹ Costs confirmed in *Lenehan v Powercor Australia Ltd (No 2)* [2020] VSC 159

Case	Type of class action	Settlement amount	Legal Fees (% of settlement) ²⁶	Litigation Funding Fees (% of settlement) ²⁷
<i>Cantor v Audi Australia Pty Ltd (No 5)</i> [2020] FCA 637	Consumer <i>diesel-gate</i> claims	\$171m	\$51m ⁴² (30%)	No funder ⁴³
<i>Inabu Pty Ltd as trustee for the Alidas Superannuation Fund v CIMIC Group Ltd</i> [2020] FCA 510	Shareholder	\$32.4m	\$10.8m (33.3%)	\$8.4 (25.8%)
<i>Fisher (trustee for the Tramik Super Fund Trust) v Vocus Group Ltd (No 2)</i> [2020] FCA 579	Shareholder	\$35m	\$2.4m (6.8%)	\$3.9 (11.1%)
<i>Clark v National Australia Bank Ltd (No 2)</i> [2020] FCA 652	Consumer credit insurance	\$49.5 million	\$3.8m (7.6%)	No funder
<i>Uren v RMBL Investments Ltd (No 2)</i> [2020] FCA 647	Investor MIS	\$3m	\$950,000 (32%)	\$750,000 (25%)
<i>Schmid v Skimming & Ors</i> [2020] VSC 493	Negligence Bushfire	\$10.5m	\$3m (28.6%)	No funder
<i>Kenquist Nominees Pty Limited v Campbell (No 6)</i> [2020] FCA 1388	Shareholder	\$7m	\$3.77m ⁴⁴ (54%)	\$834,000 ⁴⁵
<i>Court v Spotless Group Holdings</i>	Shareholder	\$95m	\$8m ⁴⁶	\$19.84m ⁴⁷

⁴² Costs determined after agreement on compensation amount

⁴³ Application for a common fund order by funder of 2 small claims rejected; funder only entitled to recover from the relatively small number of class members who signed funding agreements. The remaining 3 claims on a no win no fee basis without a funder

⁴⁴ Includes administration costs

⁴⁵ Only ATE premium, no commission

⁴⁶ Includes administration costs

⁴⁷ Includes \$340,000 "project costs"

Case	Type of class action	Settlement amount	Legal Fees (% of settlement) ²⁶	Litigation Funding Fees (% of settlement) ²⁷
<i>Limited</i> [2020] FCA 1730			(8.5%)	(20%)
<i>Asirifi-Otchere v Swann Insurance (Aust) Pty Ltd (No 3)</i> [2020] FCA 1885	Junk insurance	\$138m	\$13.8m ⁴⁸ (10%)	\$34.5m (25%)
<i>Burke v Ash Sounds Pty Ltd (No 5)</i> [2020] VSC 772	Personal injuries at music festival	\$6.975m	\$3.37m (48%)	No funder
<i>Bywater v Appco Group Australia Pty Ltd</i> [2020] FCA 1877	Employment	\$2.05m	\$75,000 (4%)	\$512,500 (25%)
<i>Bartlett v Commonwealth</i> (NSD1388/2018);	Toxic foam property damage	\$92.5m	\$12.4m (13%)	\$23.13m (25%)
<i>Hudson v Commonwealth</i> (NSD1155/2017);		\$34m	\$7.93m (23%)	\$8.45m (24%)
<i>Smith v Commonwealth (Department of Defence)</i> (NSD1908/2016)		\$86m	\$9.04m (11%)	\$21.5m (25%)
2021⁴⁹				
<i>Evans v Davantage Group Pty Ltd (No 3)</i> [2021] FCA 70	Consumer – motor vehicle warranties	\$9.5m	\$2.6m (27%)	\$3.33m ⁵⁰ (28.8%)
<i>TW McConnell Pty Ltd v SurfStitch Group Ltd (No 4)</i> [2021] NSWSC 121	Shareholder	\$20.31m	\$5.23m (26%)	\$1.21m (6%)

⁴⁸ The costs sum payable from the settlement was not disclosed and this is an estimate only

⁴⁹ A \$2m grant to an Aboriginal Community was paid by the respondent to settle *Dawson v Commonwealth of Australia* [2021] FCA 1354 in 2021. It is not known what costs were paid on top of this amount

⁵⁰ Commission of \$2.73m plus \$608,000 in costs incurred by the funder (including ATE premium)

Case	Type of class action	Settlement amount	Legal Fees (% of settlement)²⁶	Litigation Funding Fees (% of settlement)²⁷
<i>Findlay v DSHE Holdings Lid; Mastoris v DSHE Holding Ltd; Mastoris v Allianz Australia Insurance Ltd</i> [2021] NSWSC 249 (17 March)	Investor (Dick Smith)	\$25m	\$19.91m (80%)	\$0 ⁵¹
<i>Rodriguez & Sons Pty Ltd v Queensland Bulk Water Supply Authority trading as Seqwater</i> (No 28) [2021] NSWSC 467	Common law negligence in dam management	\$440m	Not available	Not available
<i>Wetdal Pty Ltd v Estia Health Limited</i> [2001] FCA 475	Shareholder	\$38.4m	\$5.787m ⁵² (15%)	\$10m ⁵³ (26%)
<i>Prygodicz v Commonwealth of Australia</i> (No 2) [2021] FCA 634	Social security (Robodebt)	\$112m ⁵⁴	\$9.677m (8.6%) ⁵⁵	No funder
<i>Whittenbury v Vocation Limited</i> (in liquidation) [2021] FCA 829	Tuition fees	\$50m	\$12.9m ⁵⁶ (26%)	\$10.9m ⁵⁷ (22%)
<i>Lenthall v Westpac Banking</i>	Consumer – life insurance	\$30m ⁵⁸	\$9m (30%)	\$0 ⁵⁹

⁵¹ The funders recovered the costs paid by it but did not earn commission

⁵² Includes \$287,000 for settlement administration

⁵³ The funders received between \$8.75m and \$9m commission plus \$1.1m for project costs, the bulk of which was for an ATE insurance premium.

⁵⁴ The Commonwealth had already refunded \$707.9m to class members

⁵⁵ The original settlement approved \$8.4m in costs and on 23 March 2022, a sum of \$1,277,000 was approved for settlement administration

⁵⁶ Slater and Gordon's costs \$5,349,439; Maurice Blackburn: \$7,567,385.66

⁵⁷ Omni Bridgeway: \$6,505,760; LLF: \$4,413,588

⁵⁸ Westpac agreed to pay 50 cents in the dollar for eligible claims capped to \$21m

⁵⁹ \$3.05m was paid by Westpac to the funder for ATE insurance premium. No commission was paid from the settlement

Case	Type of class action	Settlement amount	Legal Fees (% of settlement) ²⁶	Litigation Funding Fees (% of settlement) ²⁷
<i>Corporation (No 3)</i> [2021] FCA 1004				
<i>Jenkins v Northern Territory of Australia (No 5)</i> [2021] FCA 1585	Human Rights	\$35m	\$9.4m (27%)	No funder
2022⁶⁰				
<i>Hall v Arnold Bloch Leibler (a firm) (No 2)</i> [2022] FCA 163	Shareholder	\$28m	\$4.76m (17%)	\$7.84m (28%)
<i>Creese v Life for All Creatures Limited</i> [2022] VSC 153	Personal injury	\$600,000	\$400,000 (67%)	No funder
<i>Davaria v 7 Eleven Stores Pty Ltd (No 11)</i> [2022] FCA 331 ⁶¹	Franchise	\$98m	\$17.3m (18%)	\$12.005m (25%)
<i>Francis (Trustee) v Oculus Accounting Pty Ltd (no 3)</i> [2022] FCA 363	Investor	\$155,000	\$0	No funder
<i>Haselhurst v Toyota Australia Ltd</i> [2022] NSWSC 1076	Product liability (airbags)	\$52m	\$16.1m + \$2.5m admin = \$18.6m (36%)	\$13m (25%)
<i>Zantran Pty Ltd v Crown Resorts Limited (No 4)</i> [2022] FCA 500	Shareholder	\$125m	\$12m ⁶² (9.6%)	\$30.2m (24%)

⁶⁰ Some matters are left off the list due to there being unresolved issues, such as in *Davis v Quintis* [2022] FCA 806 in which a \$4.7m settlement was approved on 1 July 2022 but costs and funding commissions are yet to be resolved. Another settlement of two investor class actions was approved but without any details: *Pan v Royal National Capital Alliance Ltd* [2020] FCA 1834. In other matters the author has estimated the amounts for costs and commission when there is sufficient information available to do so.

⁶¹ Final approval decision was handed down on 14 February 2023: *Davaria v 7 Eleven Stores Pty Ltd (No 13)* [2023] FCA 84. An appeal is likely.

⁶² \$11,521,954.55 for costs plus \$440,606 for administration = \$11,962,560

Case	Type of class action	Settlement amount	Legal Fees (% of settlement)²⁶	Litigation Funding Fees (% of settlement)²⁷
<i>Jack v CoreStaff NT Pty Ltd</i> [2022] FCA 1005	Employment	\$6.4m	\$1.5m (23%)	\$2.24m (35%)
<i>Thomas v Romeo Lockleys Asset Partnership</i> [2022] FCA 1106 ⁶³	Employment	\$1.55m	\$560,000 (36%)	No funder
<i>Coatman v Colonial First State Investments Limited</i> VID1139/2019	Superannuation	\$56.3m	\$14.5 (25.8%)	No funder
<i>Wills v Woolworths Group Ltd</i> [2022] FCA 1545	Shareholder	\$44.5m	\$15.33m ⁶⁴ (35%)	\$4.73m (10.6%)
<i>Schoneweiss v The Fourth Force Pty Ltd</i> [2022] FCA 1236 and [2022] FCA 1489	Employment	\$2.045m	\$461,000 ⁶⁵ (22.5%)	No funder
<i>Batey-Smith v Vasco Trustees Limited</i> [2022] FCA 1203	Investor	\$5.6m	\$1,676m ⁶⁶ (30%)	No funder
<i>Hall v Pitcher Partners (a firm)</i> [2022] FCA 1524	Shareholder	\$41m	\$12.2m (29.8%)	\$11.48m (28%)
<i>Quirk v Suncorp Portfolio Services Ltd</i> [2022] NSWSC 1457	Breach of trust	\$33m	\$9.1m ⁶⁷ (27.6%)	⁶⁸ \$9.55m (29%)

⁶³ Settlement of two employment class actions, including also, *Shina v Romeo*

⁶⁴ Including \$750,000 for administration costs

⁶⁵ Includes administration costs

⁶⁶ Includes administration costs

⁶⁷ Includes costs, disbursements, deferred fees and administration costs

⁶⁸ \$8.25m + \$1.3m (ATE)

Case	Type of class action	Settlement amount	Legal Fees (% of settlement)²⁶	Litigation Funding Fees (% of settlement)²⁷
<i>Williamson v Sydney Olympic Park Authority & Ors</i> [2022] NSWSC 1618	Opal Tower defective building	\$52.8 ⁶⁹ m	\$6.471m (12.26%)	\$13.2m (25%)
<i>Somers & Ors v Box Hill institute</i> [2022] VSC 730	Tuition fees	\$33m	\$7.87m ⁷⁰ (23.8%)	No funder
<i>Bradshaw v BSA Limited (No 2)</i> [2022] FCA 1440	Employment	\$20m	\$2.6m (13%)	\$3.7m (18.5%)
<i>Amory v RMS Engineering & Construction Pty Ltd</i> [2022] FCA 1505	Employment	\$130,000	\$66,700 (51%)	No funder
<i>Eckhardt v Sims Metal Management Ltd</i> NSD220/2019	Shareholder	\$29.5m	\$8.5m (28.9%)	\$6.24m ⁷¹ (21%)

⁶⁹ Estimate as sum is not disclosed

⁷⁰ \$4.62m + \$3.25m for administration

⁷¹ Including ATE premium of \$800,000