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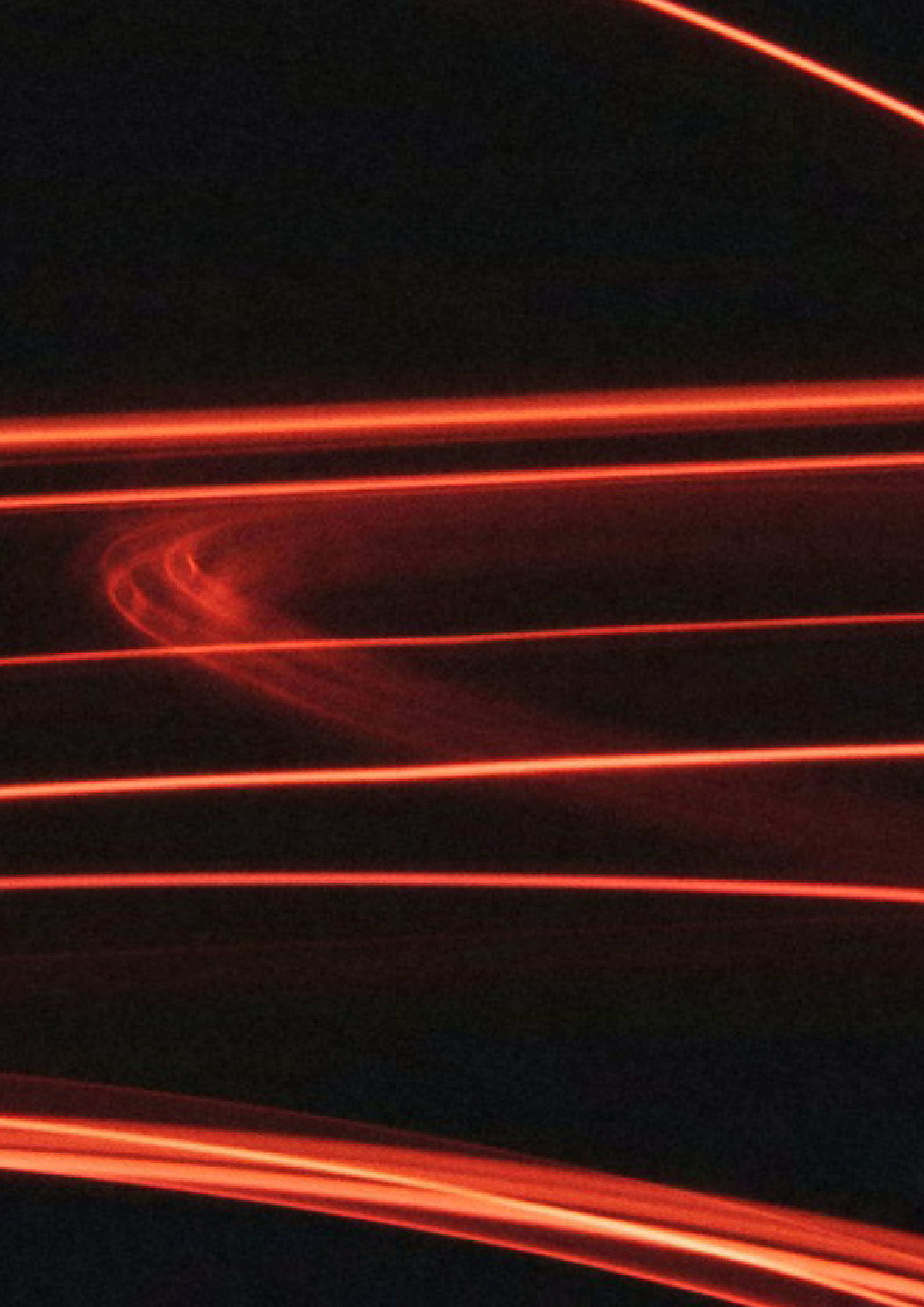
Settling Class Actions: A Practical Guide

April 2026

Outpacing change



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We set out an overview of how class actions work, and key issues to be alive to, in our separate paper “Class Actions in Australia – Ashurst quick guide”.

Settlement of class actions – key statistics

This paper deals with settling a class action, which is an important topic given that most class actions settle. Data suggests that 67% of funded class actions settle and 53% of all class actions settle.

Class actions are also often high stakes, both in terms of potential financial exposure and potential reputational damage Class action settlements often involve large sums to buy out that risk. Nearly $8 billion has been paid by defendants in class action settlements in Australia and over 40 class actions have settled for $50 million or more, with the largest sum being $494 million in the "Black Saturday" bushfires class action settlement.

Why are class action settlements different?

Settling class actions is different to conventional litigation, in particular because of:

a) the number of stakeholders who need to be satisfied for a deal to get over the line (see further page 5);

b) the need for court approval, which means that the settlement must be fair and reasonable and in the interests of group members as a whole (see further page 6);

c) the difficulties in ascertaining the size of the claim and achieving finality (see further page 10); and

d) the publicity involved - particularly as group members often include large cross-sections of society and approval is generally conducted in open court, meaning that details of the claim and the settlement often become public.

Stakeholders

Negotiating a settlement can be complex as there are usually many stakeholders at play, including:

a) representative applicants;

b) group members (both registered and unregistered) - whose interests are fundamental in securing court approval;

c) legal representative of the applicants;

d) litigation funders;

e) defendants and their insurers (if any); and

f) the court.

The interests of these stakeholders will impact the commercial realities of a class action settlement. For example, plaintiff law firms and funders may be looking to cover their costs and get a return.

Key context: the need for court approval

The court needs to approve a class action settlement. The test is whether the proposed settlement is fair and reasonable, and in the interests of group members as a whole (not just the lead applicant and defendant).

This is key context to consider when putting together a class action settlement: the court will need to be satisfied. But the court's involvement also provides opportunities for overcoming some of the challenges associated with settlements. We therefore discuss court approval at the outset.

If the court approves the settlement, it may make such orders as are just with respect to the distribution of any money paid under a settlement. There is also a "gap filler" provision giving the court broad general powers to make sure that justice is done in the proceeding. We discuss the distribution of a settlement sum further on page 18.

What does the court consider?

In deciding whether to approve a settlement, the court will consider a number of factors. Settlement approval is not simply a "rubber stamp" by the court. Courts are increasingly scrutinising settlements as part of the court's protective jurisdiction over group members (in particular, litigation funding commission, legal costs and settlement distribution).

The court will typically consider:

a) the complexity of the case and risks of establishing liability and damage and of maintaining the class action (essentially prospects);

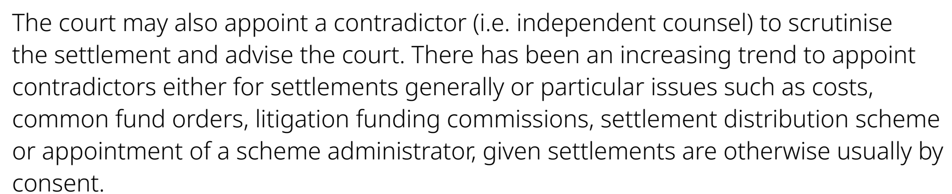
b) the likely duration and costs of the proceedings and the stage they are at;

c) how the class has reacted to the settlement - for example, whether they have positively consented or made a large number of objections (although silence by the class does not equate to assent, nor are settlements typically rejected on the basis of objections);

d) the defendant's ability to pay or "withstand a greater judgment";

e) the range of reasonable settlements in light of the best recovery and the risks and costs of litigation; and

f) the terms of any advice received from counsel and/or from any independent expert in relation to the issues which arise in the proceeding.



The court may also appoint a contradictor (i.e. independent counsel) to scrutinise the settlement and advise the court. There has been an increasing trend to appoint contradictors either for settlements generally or particular issues such as costs, common fund orders, litigation funding commissions, settlement distribution scheme or appointment of a scheme administrator, given settlements are otherwise usually by consent.

There have been a small number of cases where settlements were either not approved or not initially approved (without the parties taking further steps to address concerns raised by the Court). As touched on above, as part of the settlement approval process, the Court may require the parties to make adjustments (for example, to the proposed disbursements from the settlement sum to cover legal fees or funding commission) or provide undertakings (for example, in relation to the scope of releases) before approving the settlement. We discuss these issues later in this guide.

The application for approval

The court approval application usually involves:

a) the interlocutory application itself, typically filed by the applicant, including the orders sought;

b) the settlement deed, which would deal with the terms of the settlement including any conditions precedent and what happens if the court does not approve the settlement (or particular aspects of it);

c) a confidential opinion from the applicant's senior counsel to explain why the settlement is reasonable, as well as an "open" or public affidavit and submissions. These affidavits are directed to establishing that the settlement is fair and reasonable (and the factors listed on page 6). The Federal Court practice note emphasises that lengthy and unnecessary affidavit evidence is discouraged; and

d) a notice to group members, addressed on page 8.

Notice to group members

Notice of the proposed settlement is given to group members before a public hearing. The purpose of the notice is to inform the group members about the settlement in order for them to make a decision as to whether they support (or object to) the settlement. The attitude of group members towards a settlement is one of the factors that the court will consider as part of the approval process.

The notice usually gives group members an opportunity to opt out of the proceedings if they do not want to be bound by the settlement.

What does a notice to group members include?

It usually includes:

a) a statement that the class members have legal rights that may be affected by the proposed settlement, and that the class member may be affected by a decision whether or not to remain in the class (in the event that the opt-out date has not already passed or where there is a further opportunity to opt out);

b) a brief description of the litigation, including the factual circumstances, who forms part of the class, and the claims;

c) a summary of the terms of the proposed settlement and how to obtain a copy of the settlement deed (usually via the plaintiff's solicitors);

d) information as to any order sought relating to the conduct and/or funding of the class action which would impose any obligation on group members;

e) an explanation of the court settlement approval process, including details of the time and location of the approval hearing and an outline of how class members may object or support the settlement;

f) an outline of the steps (if any) required to be taken by group members who wish to participate in the settlement (for example, the notice may provide a mechanism for unregistered group members to advise that they wish to participate); and

g) information on how to obtain legal advice and assistance.

The form of notice – what does it look like?

Whilst notices to group members often follow a standard template (examples of which are available on Court websites and elsewhere on the Internet), in practice, there is variation, including to length, tone and format. This variation reflects differences in the type of complexity of class actions and the composition of the class. Also in the context of opt out notices, courts have required alternative forms of notice (usually in addition to a written notice), such as a short video, particularly where a traditional notice may cause confusion or where group members are likely to have basic levels of literacy.

How is the notice distributed?

Years ago, notices of proposed settlements were often given by advertisement in newspapers. However, personal distribution (e.g. email, letter and/or text message) is now the norm, often coupled with publication on other places group members may access (e.g. websites, intranet, social media).

The court's aim in ordering distribution is to use the manner that is most likely to reach as many group members as possible in the most cost-effective way. The Federal Court *Class Actions Practice Note* sets an expectation that the notice will be distributed using the respondent's records of group member contact details. However, there is a balancing exercise and that may not be practical having regard to the time, cost, resources, privacy issues, and other practical issues. If personal distribution is ordered, often, the contact details are provided to a third party mail service provider (on a confidential basis) to distribute the notice.

Which party bears the costs?

As a general rule, the party who brought the proceedings is required to bear the costs of distributing the opt-out notice. That is because the party bringing the proceeding is seeking to have information conveyed to group members for its own benefit. However, the costs usually become costs of the proceedings (and so are typically recovered out of the settlement sum).

Ascertaining realistic quantum and achieving finality

One of the challenges to settling class actions is understanding the value of the claims being pursued. The commercial reality is that most businesses need to understand the extent of their potential liability in order to make offers of settlement. But the opt out regime can make it hard to know the size of the claim actually being pursued.

Related to that is that most businesses will have little appetite to settle a claim unless there is finality.

The court has the power, at the time of settlement, to make extinguishment orders – i.e. orders dismissing the claims of all group members. This means that group members who have neither opted out nor registered to participate in the proceeding lose their claims but do not receive anything from the settlement. This gives the defendant finality by removing the risk of subsequent proceedings (with the exception of those group members who have opted-out).

The issue is whether the parties can take steps to work out that cohort of group members before mediation.

The difficulties with open classes in an opt out regime

Most class actions are commenced as open classes. This means that everyone who fits the group member definition in the claim automatically becomes part of the class (whether they are aware of it or not). They do not need to take any step to remain a group member.

Two challenges arise for settlement:

a) First, working out the size of the class.

   In some cases, a defendant will be able to work this out from its records (e.g. share register or employee database). In other cases, it is very difficult (e.g. product liability claims where the number and identity of consumers – or at least those with claims – is unknown).

b) Secondly, even if the theoretical size of the class can be ascertained, it can be hard to work out how many people will actually make a claim.

   The High Court has rejected the notion that, as a matter of principle under the class action regime, a group member need not take any step to benefit from settlement or judgment. Often, group members are required – at some stage – to take some positive step to register their interest to participate in the settlement. The rate of group member participation is often a fraction (and sometimes a very small one) of the asserted class.

   Uncertainty around the number of group members and the value of their claims can make it difficult to work out the appropriate amount for a settlement.

   Notwithstanding the above, there are some examples of cases where the settlement included an entire class without the need for group members to register their claims.

Registration and class closure

One way to help get an understanding the size of the class (or at least the high water mark for claims that might be brought) is a court-ordered registration process. This requires class members who want to participate in the class action (and most particularly, share in any settlement sum) to take the positive step to register with the plaintiff's lawyers. This process typically happens before mediation, so that information obtained from the registration process can inform settlement discussions.

Once that group is identified for the mediation, there is a question whether any other group members can seek to register and participate later on, if an in-principle settlement is actually reached at mediation.

Historically, if a settlement was reached at mediation then there would be a further notification and registration process, which could see extra group members come forward with claims. If there were enough extra group members to materially increase the total claim size, the amount that had been agreed might no longer be reasonable. This is explained further on page 17.

To address this, there was a period where courts could make a "soft class closure order". In essence, these were orders made before mediation to the effect that anybody who did not register before mediation would not get another chance to register after mediation if the matter settled (and their claims would be extinguished as part of the settlement approval process). Those orders were called "soft" class closure orders, because if the matter did not settle at mediation, then those group members who didn't register would not have their claims extinguished and could seek to bring claims later on.

In the Supreme Court of Victoria, soft closure orders are allowed under an express statutory power (section 33ZG, *Supreme Court Act 1986* (Vic)). Until recently, there was controversy about whether, and how, that could still be done in other jurisdictions. There was also a divergence in jurisdictions – see our article here. That debate is now settled (see our update here).

The High Court has confirmed that the court has power to issue notices before mediation *foreshadowing* that if the matter settles, orders will be *sought* to approve the settlement and dismiss claims of all group members without giving group members a further opportunity to register after the mediation.

This is not quite the same as the "soft class closure" orders discussed above. While the notice foreshadowing the application may be sent, there has not yet been a case under this process where the court has actually approved a settlement dismissing claims of all group members without allowing any further registrations.

> "Without class closure orders, settlement negotiations in such instances would likely be exceedingly difficult, if not impossible. The defendant would not be in a position to make a meaningful offer based on an informed estimate of the quantum of the claim, and similarly, the plaintiff and their legal team would have no reliable basis for a view as to whether any settlement offers are reasonable"
>
> *Andrianakis v Uber Technologies Inc* (2024) 108 MVR 55

Whether the court will start the notice process is a matter of discretion

While the courts have the power to issue such notices, whether the court will order such notices to be issued before mediation remains a matter of discretion in the circumstances of the case. There is no "one size fits all" approach.

Various factors a court may consider include:

a) whether it is in the interest of group members as a whole to require registration before any prospective settlement is on the table;

b) the point at which the proceeding has reached;

c) the attitude of the parties;

d) the complexity and likely duration of the case;

e) whether group members have adequate notice and a reasonable time to decide whether to register;

f) whether an estimate of the size and number of claims can be made; and

g) the extent to which a registration process is likely to improve the prospects of achieving a reasonable settlement.

Notwithstanding the power to make such orders, the Federal Court has declined to do so in circumstances including where:

a) there were likely to be low levels of registration;

b) the class did not need to register (at any point) to be paid their share of any settlement or judgment;

c) the respondent's records were sufficient to allow them to understand the claims (or, at least, the upper band of the claims) to be able to participate in the mediation; and

d) the cost and complexity of the particular notice was unwarranted (having regard to an assessment of whether the process was likely to aid settlement of the proceeding).

Importantly, the Federal Court has acknowledged that uncertainty regarding a respondent's liability is a "common feature" in class actions and does not, of itself, support an order for soft class closure. It is also unclear whether, going forward, the courts will order class closure orders over opposition by one of the parties.

Further, while the courts have allowed a notice foreshadowing an intention to apply for such orders as part of a settlement approval, it may decline to actually make an order extinguishing claims without a further registration process. We discuss this further on page 17.

The difference with closed classes

A closed class is where the group is defined in the pleadings to only include those who have taken a step (e.g. registered with the applicant's lawyers and/or litigation funder). In this situation, it is usually possible to get a sense of the total value of the claims as the applicant's lawyers will have information about each group member and their claim.

While historically popular, closed classes are less common now. This is, in part, due to the availability of common fund orders (see further page 19), which means that litigation funders do not need to "book build" to ensure a return on investment.

Negotiating the settlement itself

The approach to settlement will depend on the claim at hand. Some common key issues:

Settlement structures

A settlement can be structured in different ways. Two of the most well established forms of settlement structure are below. There are many potential variations within each structure, including hybrids of the two.

Lump sum / global settlements

A "**lump sum**" or "**global**" settlement generally involves a payment by the respondent of a set amount, to be distributed in accordance with a settlement distribution scheme (which can be done mathematically via a formula or by assessment).

The key benefit of this option is that it gives certainty to the respondent (and litigation funder), and ordinarily ends the respondent's involvement in the litigation.

The main challenge is that if the deal is being struck before the registration process, or if assessing claim values is complicated and requires individual assessment that isn't practical until administering the settlement, coming up with the appropriate amount can be challenging.

In particular, there is a risk of a respondent feeling they have paid too much if not as many people register (or if their individual claims are smaller than anticipated). One way to seek to address this is with a reversion clause in the settlement deed – to the effect that amounts be returned to the respondent depending on registrations and claim values. However, defendants often find it difficult to proceed on this basis.

There is also a risk of the amount being not enough if more group members than anticipated register (diluting the lump sum) – potentially risking settlement approval or resulting in lower recovery for group members. Conditional lump sum settlements can be used to account for different possibilities, addressed further on page 17. Again, though, the lack of certainty can pose difficulties for defendants.

The registration and "soft class closure" process discussed above is directed towards seeking to manage the potential challenges with a lump sum settlement structure.

Process settlements

A process based settlement generally involves an agreed alternative dispute resolution process for group members to bring claims forward and have them assessed and paid according to agreed parameters.

This type of settlement may be more attractive where claim values are unclear or more individualised, and where non-economic loss is an issue. They often involve an option for group members who do not want to undergo an individual assessment process to opt for a "fast track" payment of a fixed amount.

This option gives less certainty to a respondent, and exposes them to how the settlement administrator assesses and values claims. One way to limit these risks is to agree a process up to a cap (with individual payments to be reduced pro-rata once the cap is reached).

Confidentiality

Confidentiality is often important to settlements in conventional litigation. With class actions, the court approval process means that at least the fact of the settlement and some discussion of the merits of the claim are likely to become public.

As a starting point, the court's approach is that the class is entitled to know as much as practicable and there is no confidentiality beyond what is strictly necessary for the administration of justice.

Settlement approval judgments generally contain information about the amount of the settlement – the entire settlement amount is usually disclosed.

There is a realistic possibility of keeping each individual defendant's contribution confidential (where there are multiple defendants to a claim). That said, a defendant's own continuous disclosure obligations may require them to disclose the settlement sum if the amount is material.

The extent of what information can be kept confidential depends on the nature of the matter. For example, there have been cases where the overall settlement amount was kept confidential where each group member had already been notified of their approximate individual settlement (and confidentiality was a precondition to settlement and the court considered the most likely outcome if there was no settlement was that the litigation would fail) and where there was the unanimous consent to the settlement. These examples are certainly exceptions and not a reflection of the norm. The recent trend is has been a stricter approach to confidentiality applications.

> “There is a public interest in not making overly broad confidentiality orders in approving settlements in class actions, particularly the interests of class members in having a proper understanding of a settlement which affects their interests”
>
> Caason Investments Pty Ltd v Cao (No2) [2018] FCA 527

Scope of releases

Historically, defendants would negotiate as broad a release as commercially possible as a way of buying as much finality as possible. For example, a release might be sought for things that are related to (but not directly concerning) the issues the subject of the class action.

That practice has attracted judicial criticism.

While releases in respect of the common claims of group members are orthodox, clauses which seek to broaden the scope of the release will no longer be as readily accepted.

For example, a release that purports to release group members' claims based in their individual circumstances (beyond the common issues) would be impermissible. The applicants do not have representative authority under Part IVA of the Federal Court of Australia Act beyond the scope of the common claims under s 33C. That is, the applicants only represent group members (and therefore can only enter a settlement) with respect to the claim the subject of that proceeding, but not with respect to other individual claims.

Less clear is how far a release can extend beyond the pleaded case but still be within the lead applicant's authority to settle. Authority suggests that the lead applicant has authority to release common claims that are not pleaded but which *could have been* pleaded in the proceeding (e.g. those claims arising out of the same substratum of facts). Along the same lines, the applicant has authority to give releases that deal with non-pleaded claims which, if brought within separate later proceedings, could be the subject of an issue estoppel or *Anshun* estoppel if the first proceeding had been litigated to judgment.

Changing circumstances between the deal and approval

A settlement may fall over if there are too many changing variables between the settlement being negotiated and the time of approval. There are many ways a settlement can be structured to account for various risks and likelihoods, which will be bespoke depending on the claim. A couple of examples are below.

Large number of opt outs

If too many people opt out, it may affect the defendant's certainty about finality and desire to settle the class action. In theory, if enough people opt out they might have a commercially viable claim to separately bring.

In practice, though, large opt outs have not occurred.

One way to address this is to put conditions in the settlement deed concerning opt outs. That is, that the settlement be conditional on opt outs being below a certain number or the value of the claims of those who have opted out being below a certain amount. If there are important conditions of the settlement, they should be appropriately included in the notice to group members.

Large number of extra (or late) registrations

As touched on above, if a fixed settlement amount has been agreed, and additional group members seek to register to participate in the settlement (and are allowed to do so), this means the same amount will be shared across more people. In other words, less money per person. If the net return to group members becomes too low, then the settlement may no longer be fair and reasonable, and therefore will not be approved.

This was the challenge that the soft class closure process was intended to address (see page 11 above).

The risk of extra registrants may be somewhat diminished by pre-mediation notices encouraging registration, particularly if there is a pre-mediation notice process foreshadowing an application to seek settlement approval without giving group members another change to register (or, in Victoria, if soft class closure orders are made) (see page 11 above).

Where a soft closure process has been followed, recent cases suggest that, at least under the regime in the Supreme Court of Victoria, courts will not allow late registrants to participate in a settlement absent good reason. The question is whether the inevitable prejudice to those individuals is unfair or unjust. Part of that consideration may involve an assessment of whether the process to distribute the notice to group members informing them of their right to opt out or register was effective. Where the process does not maximise the number of registrants it may be a material threat to the approval of the settlement.

But as touched on above, a soft closure process or notices foreshadowing an application for settlement approval without further registration will not be followed in every case - as recent cases make clear.

For those settlements where extra registrants are, for whatever reason, contemplated, the simplest course is often to simply move forward and revisit things if the extra registrations lead to concerns about reasonableness.

However, options that *can* be considered as part of the settlement deed include (a) conditions that the settlement not proceed or be renegotiated if registrations exceed a certain amount; (b) that a further sum be provisioned to account for late registrants; (c) settling on the basis of a formula to compensate claimants, for example, a percentage recovery of their claim. However, that is often not attractive to defendants if it exposes a defendant to an indeterminate sum.

Smaller than anticipated number of registrations

As touched on above, where a lump sum settlement is negotiated based on an anticipated registration rate, low registration rates may mean very high per person payments. This will not make the settlement unreasonable – but it may leave a defendant feeling it has paid more than it needed to.

As discussed above, the settlement deed can potentially be structured such that if a sufficient number of group members do not come forward, there will be a reversion of part of the settlement sum to the defendant. Another alternative is a per person settlement – but as touched on above, that involves the risk of higher total payment if there are a large number of registrations. A further option can be a per person amount up to a cap.

Components of a settlement sum

Settlements often involve a lump sum which is then divided among a number of stakeholders. As part of the settlement approval process, the Court will ensure the division of that sum (and the particular components of it) is fair and reasonable.

In particular, courts have become increasingly interested in the amount going to any litigation funder, the amount of legal costs (and their reasonableness), the return to group members and how the settlement will be administered and what that will cost.

The settlement sum will ordinarily comprise the following components.

Payment to group members

That is the damages or compensation sought in the class action for the claims of group members. As a general rule of thumb, group members should receive at least 50 percent of the settlement sum (but that will vary from case to case). The median return to group members in funded litigation is around 50% of the settlement sum, and around 85% where no funder is involved.

This is ultimately the key focus of the approval hearing. If the court does not consider the return to group members to be sufficient, it may require a reduction in legal fees or the funding commission before approving a settlement (see below)– or it may not approve the settlement. As part of that consideration, the court will also evaluate whether the proposed settlement distribution is fair *among* group members (or different categories of group members).

We discuss how this component may be divided among group members in the below section dealing with settlement administration costs.

Legal fees

In a lump sum settlement, legal fees to prosecute the claim are often deducted from the settlement sum (although sometimes settlements are structured to provide for a specific and separate payment in respect of legal fees – there is an increasing trend in this direction). Legal fees cover the costs of the solicitors, counsel, experts and other disbursements. A law firm may have an uplift on their fees based on a successful outcome.

General practice (at least where costs are coming out of the settlement sum) is to have an expert report from a cost consultant engaged by the applicant's solicitors going to the reasonableness of the costs incurred. In some cases, a referee may be appointed to propose deductions if costs are not reasonable. A more extensive examination of legal costs is likely where those costs are a significant proportion of the settlement sum.

In Victoria there is a regime that enables a law firm to receive a percentage of the settlement sum (similar to a contingency fee) called a "Group Costs Order". That is in lieu of legal fees. There have been a handful of group costs orders approved. They range from 14% to 40%, with a median of 24.5%".

The Federal Court had said it could order common fund orders in favour of solicitors. These are technically different to contingency fees but they have the same commercial effect (see our article). The High Court has since said that solicitor common fund orders are *not* permissible (see our article). This means that the only Australian jurisdiction where solicitors can receive a cut of the litigation proceeds is Victoria.

Funding commission

Funding commissions apply to those case that are supported by third party litigation funding. Commissions are usually a percentage of the settlement sum, but may be a multiple of costs.

Courts typically make an order at settlement that enables part of the settlement amount to be paid directly to the funder. Those orders also typically require the cost of that to be spread among all group members receiving settlement proceeds, not just those who have entered into funding agreements.

There are two main types of orders:

a. Common fund orders

A common fund order calculates the funding commission as a percentage of the gross settlement sum, regardless of whether group members have entered into funding agreements.

This essentially requires members of the class who have *not* signed funding agreements to pay a funding commission out of their resolution sum to the funder in the same percentage as group members who *have* entered into a funding agreement.

Common fund orders are controversial as they are seen as potentially giving a windfall to the funder. The High Court has held that while common fund orders can't be approved or confirmed early in proceedings, they can be made at the end of proceedings under the court's powers to approve settlements and make orders that are just with respect to the distribution of settlement funds (see further article).

b. Funding equalisation orders

These orders calculate the funding commission as a percentage of the settlement sum payable only to group members who have entered into funding agreements.

That amount is then split across all group members – and so requires the unfunded group members to contribute funds, but instead of their contribution being paid to the funder, it is split across the group members (and so in effect subsidises what the funded group members had to pay). A funder's return is often lower under an equalisation order in comparison to a common fund order.

With the position on common fund orders now settled, common fund orders are the norm and funding equalisation orders are rare.

Historically, funding commissions have ranged from 20% to 40% of the settlement proceeds (in addition to reimbursement of costs), but there has been a downward trend in recent years and some judges now refer to a starting benchmark of about 25%. Recent figures have been in the low 20s.

The courts have become increasingly interventionalist when approving settlements, and adjust the funding commission (based on various factors such as the size of the claim, how long it took and the risk of the case), for example, by only approving a settlement where the funder takes a smaller percentage than that set out in the funding agreement.

Settlement administration costs

These are the costs to distribute the settlement sum to group members. A settlement scheme, outlining how claims will be assessed and how funds will be distributed, forms part of the settlement approval process.

Ordinarily, administration costs are deducted from the settlement sum (and the interest that is accrued on that sum while the settlement is being administered). Although, some settlements will have a separate sum allocated for scheme administration.

Settlement administration is often done by the applicant's lawyers. That said, there is no automatic entitlement for the lawyers to be appointed as settlement administrators. The court is increasingly supporting that settlement administration be put out to tender to ensure that settlement administration is efficient and cost effective. The court has also required, as part of the approval process, removal of conditions in settlement deeds that the applicant's lawyers be appointed settlement administrators.

Administration of a settlement varies in complexity and cost, depending on the nature of the claim and the structure of the settlement (as discussed earlier). For example, claims where the compensation comprises a refund of fees will be relatively straightforward in comparison to mass tort claims that may involve highly individualised claims for personal injury (or some combination with a "fast track" option without any individualised assessment).

A costs referee is often appointed to assess the reasonableness of costs incurred to administer the settlement (and to report to the Court about that).

Payment to the applicant

It is relatively common for there to be a payment to the lead applicant, typically characterised as reimbursement of the applicant's time and expenses in providing instructions to prosecute the case (including, for example, the time spent in providing discovery and evidence in order, to allow the applicant's case to be the vehicle for the common questions).

The payment to the lead applicant needs to be "just" in the circumstances (and is viewed holistically and is not solely related to the time expended by the applicant). The amounts that have been approved by the Court vary but are typically in the range of $10,000 – $25,000.

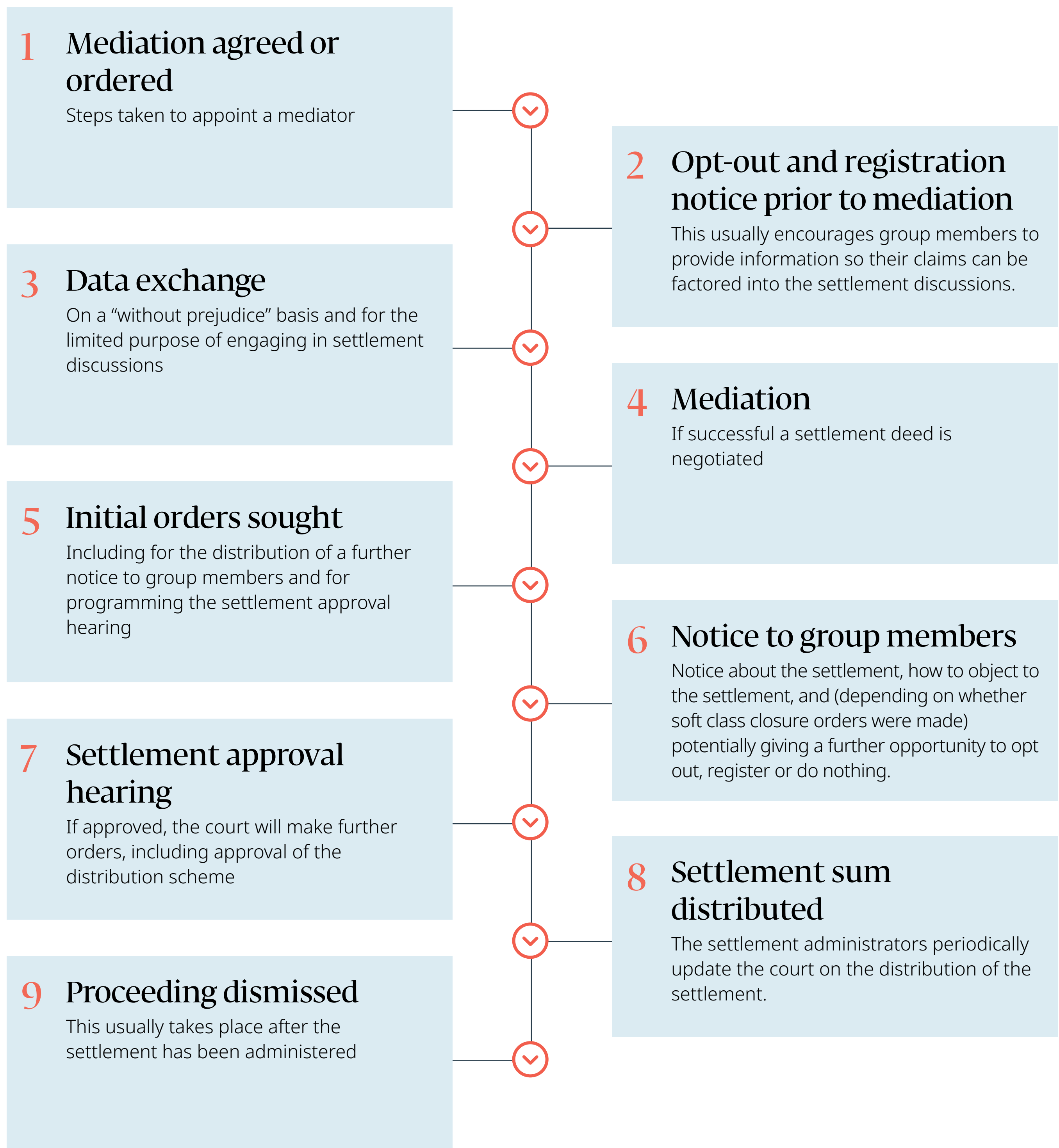
"

> "It is, at best, a "bad look" for a representative applicant to give instructions that a settlement (presumably struck because it is perceived to benefit group members) is only to go ahead and provide benefits to group members, if the applicant's solicitors obtain a contract for the provision of future services (presumably at a profit paid out of monies that would otherwise go to group members)"
>
> *McKenzie v Cash Converters* (2019) 134 ASCR 327 per Lee J at [15]

Timeline

Below is a typical timeline of the steps involved in the settlement of a class action (although the steps may vary from case to case). Relevantly, these steps can occur at any time of the proceeding and, in particular, multiple mediations may occur over the life of a matter.

Many matters settle after discovery and evidence. While settlement at an early stage is of course possible and does sometimes happen, it can be more challenging until the merits of the claim and defence are better understood.



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