November 2024

INITIAL STEPS FOR RESPONDING TO A CLASS ACTION

Quickguides

ASHURST PERKINS COIE





Quickguide overview

It's important to have a proactive strategy when facing a threatened class action.

This checklist is a guide to some of the steps you may wish to take.

1. Move diligently but there's no need for haste

Class actions generally don't move particularly quickly. The first case management hearing is usually a month or two after the claim is filed. While it is important to move quickly, there is no need to panic.

2. Establish internal responsibility

It helps to be clear about the key people with overall responsibility. Depending on your organisation, that could be a steering committee or other core group.

Their responsibilities include obtaining legal advice, coordinating fact gathering and making decisions in connection with potential claims. The committee will also be responsible for internal reporting including updates to the Board.

3. Put in place a privilege protocol

The documents you create – including communications – may need to be produced in court.

A privilege protocol provides guidance on how to claim and maintain legal professional privilege over communications, including to the Board. It also helps promote care in deciding whether and how to create documents and other communications, and ensure that it is clear when documents are legally privileged.

You may need to consider protocols for communications with other interested parties, including any parties with whom you may have a common interest (such as insurers) and related parties (such as co-defendants).

Our **Guide to Legal Professional Privilege for the In-house Lawyer** can help – please get in touch and we'd be happy to send you a copy.

4. Retain an external legal team

Class actions are more than just large, complex litigation. There are particular procedural steps and practices, technical issues and commercial motivations that are unique to class actions and impact what you can and should do from the outset.

It is important to pick the right team - which may be a cross-practice team including subject-matter and class actions expertise.

5. Start thinking about the merits of the claim

These are usually very complex matters that can't be quickly or easily considered, but start to think about the nature of the claim and the overall appropriate response.

But keep in mind the privilege protocol.

6. Get a sense of the size of the claim

The opt out structure of class actions can make it hard to know how many people will actually seek compensation, and therefore how big the exposure is.

To start getting a sense of the size of the claim, you can consider:

a) How is the class defined and who falls within it – how many people is it likely to be?

b) What is the size of the claim that each person might be able to bring?

The extent to which this can be done will depend on the nature of the claim. We can discuss this further with you.

7. Consider redress schemes

You may wish to consider whether potential claims can be, or are already being (even in part), addressed by a redress scheme.

This will depend on what has happened and the overall organisational response, but can be a constructive way to prepare for class actions – as well as to try to circumvent them. Early remediation programs can limit the merits and attractiveness of any claim being pursued as well as the potential for multiple, competing class actions.

Our publication on redress schemes discusses this further.

8. Notify the company's insurer

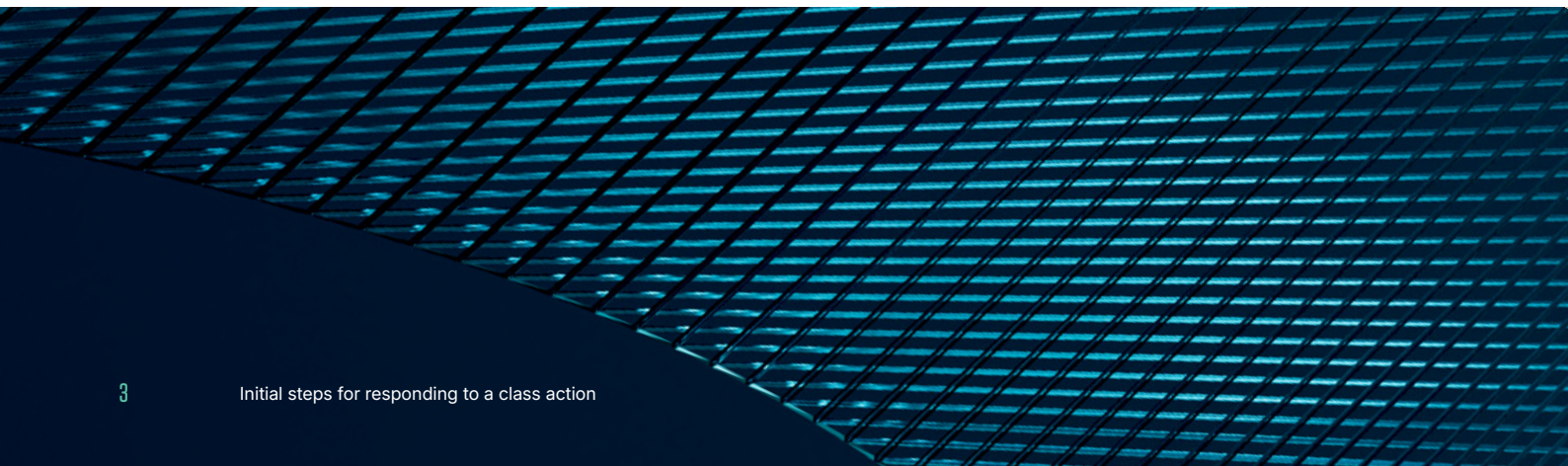
Check the company's insurance policies and notify insurers. This may include notifications on behalf of any directors and officers. It is important to do this promptly, and before renewal.

Ensure that you are familiar with the terms of policies that may respond to claims including to avoid inadvertently breaching any policies. For example, you should not make any admissions or take any other steps (including redress schemes) that may prejudice insurers without their consent or without careful consideration of the implications.

9. Consider whether any regulators should be notified

Depending on the industry and nature of the claim, regulators may need to be notified. Seek legal advice on regulatory engagement. Proactive engagement with regulators can minimise issues down the track.

Regulators may investigate or commence action in relation to the same or similar conduct as alleged in a class action. It will be necessary to carefully consider, and develop a strategy to manage, the interplay between regulatory action and a class action.



10. Coordinate overarching global strategy

If your organisation has experienced similar issues around the world, you may face class action risk across more than one jurisdiction.

Ensure that any response is coordinated globally and that knowledge is shared appropriately to avoid duplication of work.

11. Consider brand exposure and media & communications strategy

Class actions generally attract significant public interest. Plaintiff firms and funders often use the media to drum up publicity, assist with book building and put pressure on defendants.

You should develop a communications strategy that is aligned with your legal strategy and so that you are prepared to respond to questions from investors, employees, other stakeholders, potential group members and journalists. This may involve only very limited comment.

Publicly listed companies should also consider continuous disclosure obligations.

There are restrictions on communicating with group members, which is particularly important if the class includes your employees, customers, franchisees or other stakeholders. Your lawyers can help ensure this is factored in.

Once proceedings are commenced you can also consider agreeing a protocol with the lawyers acting for the group members to facilitate communications about the class action.

12. Identify relevant documents

Take steps to ensure that all potentially relevant documents are collated and retained, including by implementing a litigation hold to prevent inadvertent destruction of documents.

Depending on the volume of documents, consider the most efficient approach to document identification and review, including through the use of data analytics and AI.

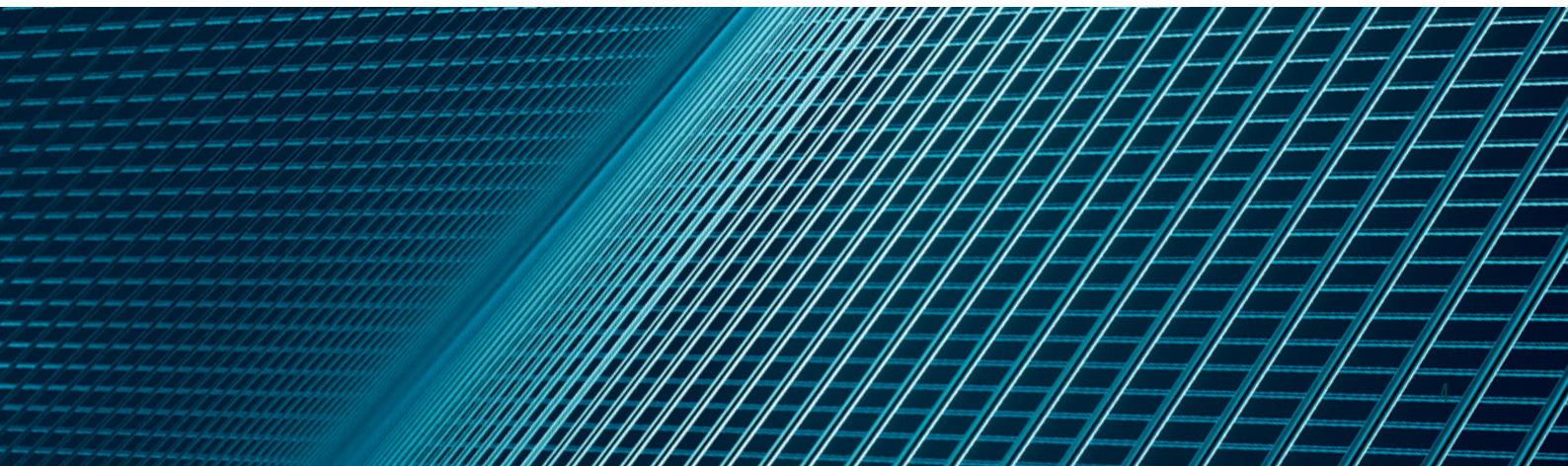
Consider whether relevant documents are held by third parties.

13. Identify and retain external experts

It may be appropriate to engage an expert at an early stage (i.e. before a claim is filed) to investigate any technical issues and to assist you in properly evaluating the merits. A forensic expert will be able to assist with assessing quantum.

Leading experts generally will be in high demand, so the sooner they can be engaged the better.

However, experts should be engaged through the lawyers acting for you.



14. Identify potential lay witnesses

There are often advantages in engaging with potential witnesses sooner rather than later.

Identify people within the business (both current and former employees) who may be potential witnesses (i.e. individuals who were involved with the issues that are now the subject of the potential class action).

These individuals should collate all their notes and other records that relate to the issues of the potential class action. They should also be advised not speak to other potential witnesses about the events and issues relating to the potential claim.

In the case of former employees, consider whether any cooperation arrangements are necessary or desirable.

15. Work out next steps with your lawyers and get a better sense of the broader picture

Various other key early steps can then be considered, such as:

- Liaising with other defendants if there are any.
- Considering whether there are any other potential / alleged wrongdoers who should also be joined to the action.
- Getting information about how the class action is funded.
- Considering whether there is any basis to try to stop the class action proceeding either at all, in its current form or until other necessary steps have been taken.
- Seeking security for costs from the plaintiffs.
- Preparing for the initial case management hearing.

Many of these topics – and the broader class actions environment – are discussed in our Class Actions guide.

Key contacts



Ian Bolster
Head of class actions
T +61 2 9258 6697
M +61 421 555 841
ian.bolster@ashurstperkins.com



Nick Mavrakis
Partner
T +61 2 9258 6501
M +61 412 746 245
nicholas.mavrakis@ashurstperkins.com



Meredith Bennett
Partner
T +61 7 3259 7080
M +61 429 678 265
meredith.bennett@ashurstperkins.com



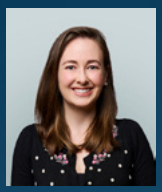
Thomas Storer
Partner
T +61 2 9258 5844
M +61 403 680 244
thomas.storer@ashurstperkins.com



Adrian Chai
Partner
T +61 8 9366 8104
M +61 409 661 368
adrian.chai@ashurstperkins.com



John Pavlakis
Senior Consultant
T +61 2 9258 6062
M +61 408 117 344
john.pavlakis@ashurstperkins.com



Sally-Anne Stewart
Counsel
T +61 2 9258 5813
sally-anne.stewart@ashurstperkins.com



Angela Pearsall
Partner
T +61 3 9679 3737
M +61 413 482 477
angela.pearsall@ashurstperkins.com



Mark Bradley
Partner
T +61 3 9679 3363
M +61 400 338 104
mark.bradley@ashurstperkins.com



Fred Prickett
Partner
T +61 3 9679 3356
M +61 404 318 400
fred.prickett@ashurstperkins.com



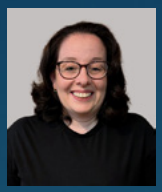
Felicity Healy
Partner
T +61 2 9258 6150
M +61 416 545 914
felicity.healy@ashurstperkins.com



Srishti Natesh
Partner
T +61 2 9258 6913
M +61 429 233 515
srishti.natesh@ashurstperkins.com



Andrew Carter
Senior Consultant
T +61 2 9258 6581
M +61 412 398 830
andrew.carter@ashurstperkins.com



Andrea Sneddon
Counsel
T +61 2 9258 6071
M +61 411 687 062
andrea.sneddon@ashurstperkins.com

ASHURST
PERKINS
COIE

Editorial Disclaimer

Originally published before the Ashurst Perkins Coie combination. See disclaimer.

Ashurst Perkins Coie UK LLP is a limited liability partnership registered in England and Wales under number OC330252 and is part of the Ashurst Perkins Coie Group. It is a law firm authorised and regulated by the Solicitors Regulation Authority of England and Wales under number 468653. A list of members of Ashurst Perkins Coie UK LLP and their professional qualifications is open to inspection at its registered office London Fruit & Wool Exchange, 1 Duval Square, London E1 6PW. The term "partner" in relation to Ashurst Perkins Coie UK LLP is used to refer to a member of Ashurst Perkins Coie UK LLP or to an employee or consultant with equivalent standing and qualifications. Ashurst Perkins Coie is a global group of separate legal entities, some providing legal services and some non-legal services. Different legal entities in the group may operate in the same jurisdictions www.ashurstperkinscoie.com.

© Ashurst Perkins Coie 2026