

# Class action reforms miss the mark

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## Class action reforms miss the mark

In “Another win for the class action industry” (December 2), Jennifer Hewett repeats some of the debunked claims peddled by big business in its campaign in favour of the federal government’s class action reforms.

Among the claims is that “shareholder class actions have become increasingly popular”. The truth is that the number of shareholder class actions has been falling as a percentage of overall class actions for several years. Using the same independent source cited by Ms Hewett, just eight shareholder class actions were filed in 2020-21, representing 13 per cent of total class actions. This means fewer than one-half of 1 per cent of the 2000+ companies listed on the ASX were the subject of class actions by their own shareholders.

Ms Hewett also repeats the truism that returns to members in class actions without a funder are higher than in those in which a funder is involved. This comparison is utterly invalid. In most instances of funded class actions, the case would not have proceeded at all without funding, meaning class members would have received absolutely nothing. That is the real comparison – justice and fair and reasonable compensation for victims and the parties who funded the case, or



At risk: victims like those of the 2019 Yorketown bushfires in South Australia.

nothing and the parties causing damage get away with it.

Despite warnings of significant unintended consequences from hardly radical bodies such as the Law Council of Australia, the federal government appears determined to drive through the legislation that will enact its latest round of class action reform.

Yet expert analysis shows the introduction of a 70 per cent minimum return to class action members – the centrepiece of the legislation – will not achieve the government’s desired outcome of greater returns to class action members. In fact, it will render the majority of all future class actions

uneconomic or borderline at best. The analysis shows those cases most at risk of not proceeding are those with total claims of less than \$25 million – cases like the recent settlement for victims of the 2019 Yorketown bushfires in South Australia.

We are pleased that many of our federal parliamentarians have recognised the risks to future victims of institutional wrongdoing inherent in this legislation and look forward to a better informed debate if and when the legislation returns to the Senate.

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