

## Australia's class action future: Three critical questions every decision maker should ask

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**Our Regulatory and Class Action Risk Symposium reflected the changing landscape of risk, regulation, and corporate accountability in Australia. In his opening address, Jason Betts, HSF Kramer's Global Co-Head of Class Actions said:**

"Class actions can have significant financial, operational, and reputational impacts, and they increasingly follow regulatory investigations or enforcement actions. For boards and executives, this is not a theoretical risk. Preparation remains critical. Class action risk is a whole-of-business issue, not just a legal problem."

Here are three critical questions for leaders, boards, and legal practitioners navigating these challenges.

### 1. Are we ready for the next generation of cyber and AI risk?

The cyber security landscape has never been so complex or fraught: AI is supercharging the scale and sophistication of cybercrime; novel cyber-incident and ransomware-payment reporting obligations are now in place; and a spate of high-profile data breaches have given way to class action exposure.

However, despite the rising cyber threat, respondents to our recent cyber risk survey suggested that only 45% of boards were 'cyber mature' and a mere 35% of boards had conducted a cyber incident simulation in the past year. Cybersecurity can no longer be a box-checking exercise. Boards need to ask themselves whether their companies are prepared for a cyber incident and able to pre-emptively identify threats.

"Cyber risk management must be embedded in daily operations across the business. Your people, not just your systems, are your strongest line of defence." - Melissa Gladstone, Partner, Sydney

#### **Boardroom essentials:**

- How will your organisation ensure that cyber and AI risk is a core competency across all levels of your organisation?
- What investments in legal technology could help you anticipate and mitigate litigation risk?

## **2. How can boards satisfy mounting compliance burden and regulatory scrutiny?**

It's not just you: compliance is more work than ever. The volume of legislation passed in Australia has tripled in the past 15 years. Boards are consumed with signoffs, oversight and reporting. At the symposium, we heard that boards are increasingly grappling with balancing the need for innovative strategies with the burden of routine compliance.

With increased compliance expectations comes increased regulatory focus. ASIC, for instance, has signalled a focus on investigating companies (having doubled the number of commenced investigations in the last year), instigating court action and seeking penalties. Directors and executives should be particularly aware of their accountability and the increasing regulatory scrutiny of senior leadership in systemic issues (particularly, for example, where the company's conduct ultimately impacts consumers).

#### **Considerations for leaders:**

- Is regulatory complexity and increasing scrutiny affecting your company's ability to move quickly in competitive markets? How can complying with, and keeping on top of, regulatory requirements be streamlined while ensuring proper compliance?
- How will your governance frameworks adapt to regulators' scrutiny of directors and company officers' roles in overseeing and managing your company's systems? Is your board confident that its management compliance frameworks are agile enough to respond to regulator assertiveness?

## **3. How can you stay up-to-date with Australia's fast-changing class action landscape?**

We are seeing novel class actions filed every week. Cybersecurity, consumer product and ESG claims, in particular, appear to be a significant focus for plaintiff law firms. Funding mechanisms are reshaping the litigation landscape and reducing barriers to

commencing a claim. There is an acute need for companies to maintain (and continuously update) their plan for responding to a class action and to remain agile.

Discussions at our symposium also highlighted the tension that many perceive between the class action regime's core objectives and the commercial realities of many claims.

"Organisations need to continue to invest in compliance, robust governance, and early detection of potential issues—particularly in areas like data protection, employment practices, and ESG disclosures. Monitoring regulatory developments and enforcement trends is vital, as today's regulatory investigation is often tomorrow's class action." - Damian Grave, Partner, Melbourne

#### **Ask yourself:**

- How can your company enhance its class action readiness? What do the first 24 hours after a claim is filed look like?

#### **Looking ahead**

Regulatory and class action risk remains protean and unpredictable. Australian companies cannot afford to be merely reactive to regulators and private litigators. As we move forward, the challenge is not just to keep up with change, but to shape it - responsibly, creatively, and with a clear sense of purpose.

"We're already seeing a wave of experimental, cyber and AI-focused litigation in the United States and elsewhere. Regulators and potential claimants in Australia will soon follow suit." - Aoife Xuereb, Partner, Melbourne

#### ***What's your next move?***

Questions

1

**Cyber & AI Risk**

- Are we treating cyber and AI as core boardroom issues, not just technical problems?
- Do we have clear ownership and regular scenario testing for catastrophic events?

2

**Regulatory Boldness & Accountability**

- Are our governance frameworks ready for heightened regulatory scrutiny and personal accountability?
- Do we regularly review how enforcement trends could impact our leadership and culture?

3

**Compliance vs. Strategic Growth**

- Is our board agenda appropriately balanced between compliance and value creation?
- Are we challenging whether compliance processes are enabling or hindering innovation?

4

**Class Action Readiness**

- Are we tracking new types of class actions and adapting our risk management accordingly?
- Do we have a plan for rapid, coordinated response if a class action or regulatory investigation arises?

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