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## Class action numbers stable since 1992: study

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Class actions are back in the spotlight following a number of large claims launched recently. **Photo: Jim Rice**

### Hannah Low

Public and corporate fear of mammoth class actions is largely a result of scaremongering, according to a report released by Monash Business School, which found the number of cases over the past two decades was stable.

The report, released on Friday by Vince Morabito, an expert in group proceedings, showed the number of claims launched federally in Australia has been largely static since 1992, when the data was first recorded.

Professor Morabito said the public debate raging was not backed up by the data. "The reality is frequently quite different from the way class actions are perceived," he said.

The idea is the so-called floodgates have opened and the problem is getting worse and worse but this was simply not reflected in the figures, he said, with the increase in actions up only 0.2 a year on average over the past five years.

Professor Morabito raised concerns around the accessibility of the class action regime to small claimants who need it most and said many solicitors who took on large claims were not equipped to deal with mega-litigation.

His remarks come at a time when class actions are again in the spotlight publicly following a number of large claims launched in recent months. A huge claim heard in Victoria following the Kilmore East bushfires ran for more than 200 days before settling for a record \$500 million in July, and listed funder Bentham IMF launched two class actions against a number of large banks alleging bank fees were penalties. One of those, against ANZ, is now on appeal and this week it was reported that NAB was in settlement discussions to settle its portion of the second.

The productivity commission's access to justice report has also been handed to the government but not yet tabled and released publicly. The report is expected to recommend allowing contingency fees in Australian jurisdictions, whereby solicitors can take an uplift if successful in a claim.

The moving landscape has provoked heated debate on both sides, with plaintiff lawyers saying claims are not skyrocketing while defendant lawyers and companies fear the worst. Maurice Blackburn principal Andrew Watson said the Monash report showed that despite 12 months of fearmongering from various vested interests the reality is "there has been no dramatic increase in the overall number of class actions over the past five years and we are only talking on average three shareholder actions a year".

"I think it is now beyond argument that no one can credibly claim that there is an explosion of class actions," he said, "or credibly claim that these things have some dramatic impact on economic activity."

In the Monash Business School report, figures show the number of claims launched in the past 22 years is 329, averaging 14.9 per year, in the Federal Court's regime.

The study does not take into account claims filed in state jurisdictions, but the number of claims filed in the Federal Court have actually decreased in the past 11 years, down to 149 from 180 in the first 11 years of the study.

Product liability class actions were the most prevalent followed by employee claims and then investor and shareholder suits, commonly referred to as securities class actions.

Almost half of the claims filed have been settled, the study shows, adding weight to the suggestion that companies would rather throw money to see these things go away.

The Australian Financial Review



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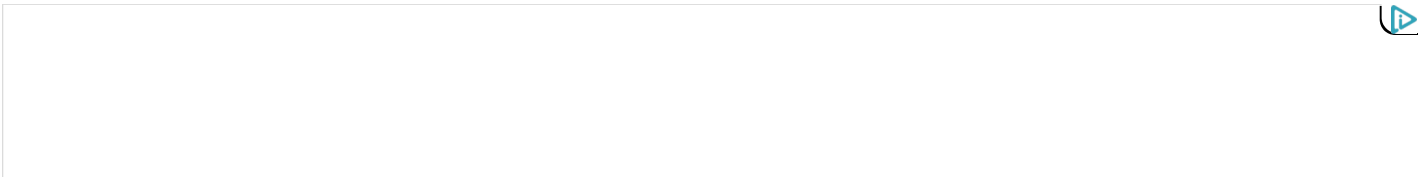
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