

BSA Limited Class Action
BRADSHAW & ANOR V BSA LIMITED

Opt Out Notice

**THIS IS AN IMPORTANT NOTICE ISSUED TO YOU BY ORDER OF THE FEDERAL
COURT OF AUSTRALIA**

WHY IS THIS IMPORTANT?

This is an important notice approved by the Federal Court of Australia. The Court has ordered that this notice be provided for the information of persons who might be members of the class on whose behalf the action is brought and may be affected by the action.

It is sent to you because it is likely you are a group member in the BSA Limited Class Action. Group members are described below.

As explained below, you may do one of three things in response to this notice:

1. **Opt out** of the class action by 24 September 2021 (4pm AEST) and lose a right to getting any money compensation out of the class action in the event that the class action is successful (but keep your right to seek money compensation in an action you start yourself against BSA Limited, and also not be bound by any unfavourable decision in the class action);
2. **Sign up** to the class action – which you can do in two ways; or
3. **Do nothing** which means you remain in the class action if you are a Group Member.

You should read this notice carefully, including the information contained in section **C. YOUR THREE OPTIONS**. Any questions you have about the matters in this notice should not be directed to the Court. If there is anything in this notice that you do not understand, you should speak to Shine Lawyers on 1800 325 172 or email them at BSAClassAction@shine.com.au. Alternatively, you may seek your own independent legal advice.

A. WHAT IS A CLASS ACTION?

1. A class action is a type of legal proceeding in which the claims of a group of persons (referred to as **group members**) are brought in a single proceeding.
2. A class action is commenced by one or more persons, who are called the lead applicants, on behalf of the group members. Unless a group member opts out, which is explained below, they are automatically bound by decisions made by the Court in the class action even if they did not take any active step to join it, and whether or not the decisions are

favourable or unfavourable to them. The criteria to be a group member is described below.

B. SOME THINGS YOU SHOULD KNOW ABOUT THE CLASS ACTION

What is the BSA Limited Class Action?

3. A class action has been commenced in the Federal Court of Australia by the lead applicants, Paul Bradshaw (**Mr Bradshaw**) and Scott Uren (**Mr Uren**), on their own behalf and on behalf of all individuals who are group members as defined in the proceeding. The respondent to the class action is BSA Limited (**BSA**).
4. Mr Bradshaw and Mr Uren allege that they and other group members provided telecommunications services as employees of BSA, or if not as employees then as independent contractors engaged personally (ie not through a company) by BSA. The class action claims compensation (that is, money) for group members who provided telecommunications services to BSA since, at least, 2003 (see paragraph [21] below). The compensation claimed is an amount to put group members in the position they would be in, had they been treated as employees.
5. BSA is defending the class action and denies that it owes Mr Bradshaw or Mr Uren or group members any money. BSA alleges that the telecommunications services were provided to it by companies that it engaged as subcontractors.

Cross-claims by BSA

6. BSA has made its own claims (cross-claims) against Mr Bradshaw and Mr Uren and their companies through which they provided services to BSA. BSA's cross-claims against the lead applicants and their companies arise if, and only if, Mr Bradshaw's and Mr Uren's claims succeed (that is, the Court decides that Mr Bradshaw and/or Mr Uren were employees or personally engaged independent contractors of BSA). If the Court decides that Mr Bradshaw and/or Mr Uren were employees or independent contractors engaged personally by BSA, BSA's cross-claims seek repayment of amounts previously paid to the lead applicants' companies and compensation from Mr Bradshaw and Mr Uren and the Court will need to determine whether those amounts should be repaid to BSA.
7. Mr Bradshaw, Mr Uren and their companies are defending the cross-claims against them.
8. In addition to the cross-claims against Mr Bradshaw, Mr Uren and their companies, BSA has issued similar cross-claims seeking similar repayments and compensation against group members, and the companies through which they provided services to BSA.
9. By order of the Federal Court of Australia, all of the cross-claims other than the cross-claims against Mr Bradshaw, Mr Uren and their companies have been stayed. That means that group members are not required to take any steps or do anything to respond to the cross-claims at this stage. Further, BSA cannot take any further steps against group members to pursue the cross-claims until further order of the Court.

10. Copies of the cross-claims are available at <https://www.shine.com.au/service/class-actions/bsa-limited-class-action>. If you are a respondent party to one of those cross-claims you should consider that document. The purpose of alerting you to the link is to give you notice of the cross-claim that BSA has made.

How and when the claims will be dealt with

11. The Court will decide Mr Bradshaw's and Mr Uren's individual claims against BSA, BSA's cross-claims against Mr Bradshaw, Mr Uren and their companies and a number of issues which are common to the claims of group members and the cross-claims made against them. This will be done in the first stage of the class action at what is called the "initial trial". The initial trial does not include determination of the individual claims of group members and the cross-claims made against them.
12. After the initial trial, as part of the second stage of the class action, the Court will determine the claim of any group member who decides to proceed with his or her individual claim. At this stage, the Court may be asked to decide an individual group member's claim that the group member was employed by or directly engaged by BSA, as well as any cross-claim BSA has brought against that individual and any associated company.
13. After the initial trial, group members will have the opportunity to consider their position and whether they wish to pursue their individual claim knowing the outcome of the initial trial. BSA has indicated that it will only seek the Court's permission to pursue its cross-claims against a group member and any associated company, if the group member decides to pursue their individual claim. Group members who decide not to pursue their individual claims will not be liable for costs up to that point (see below paragraphs [18] to [20]).

What are the next steps in the proceeding?

14. The class action is expected to go to settlement talks (called mediation) at some stage this year.
15. If the settlement talks do not result in a resolution of the class action, the class action will then proceed to the initial trial.
16. After the initial trial is determined, individual claims that are then being pursued by group members and any corresponding cross-claims will be determined by further trials.

Who is representing the group members, and what are the funding arrangements?

17. The solicitors running the class action for Mr Bradshaw and Mr Uren (as the representatives of all group members) are Shine Lawyers (**Shine**). A company named Litigation Lending Services (**LLS**) is currently funding the class action by paying the lawyers and covering any exposure to pay BSA's costs if Mr Bradshaw and/or Mr Uren are unsuccessful at the initial trial.

Is a group member liable for any costs and charges?

18. Group members are not, and will not be, liable for any “out of pocket” legal costs by remaining in this class action. The costs of the class action are being covered by LLS and Shine. This means that any costs of the class action will only be deducted from any compensation you may receive.
19. If the class action is successful (that is, if money compensation is received as a result of a settlement or Court order), the Court will be asked to deduct from the compensation received amounts representing Shine’s legal costs and a funding commission payable to LLS, and to distribute those legal and funding costs fairly among all persons who have benefited from the class action. That is, lawyers’ costs and LLS’s commission payment will come out of any compensation. The effect of this kind of order, if made, would be that all group members who benefit will contribute to the legal and funding costs out of the compensation moneys, whether or not those group members signed up to a funding agreement with LLS.
20. If the class action is unsuccessful, group members will have no liability for costs. These costs will be covered by LLS and Shine Lawyers.

Am I a Group Member?

21. You are a group member if the following criteria are met:
- a. between 2003 to 24 July 2020 provided services as a telecommunications technician to BSA;
 - b. did not receive payments or benefits from BSA which would have been required to be made or provided had you been engaged by BSA as an employee; and
 - c. are an **Ordinary Group Member** or a **Subprime Group Member** as defined below.
22. You are an Ordinary Group Member if you meet the following criteria:
- a. you received one or more directions by BSA to perform work for the benefit of BSA (**Work Order**);
 - b. you performed work for the benefit of BSA in respect of one or more Work Orders;
 - c. you signed one or more written agreements with BSA; and
 - d. you are not a Subprime group member.
23. You are a Subprime Group Member if you meet the following criteria:
- a. you received one or more Work Orders from BSA;
 - b. you performed work for the benefit of BSA in respect of one or more Work Order; and
 - c. you are not an Ordinary Group Member.

If you are unsure whether or not you are a group member, you should contact Shine on BSAClassAction@shine.com.au or telephone on 1800 325 172 or seek your own legal advice without delay. You can still sign up to the class action. There is no cost or liability incurred by you even if it turns out that you are not a group member.

C. YOUR THREE OPTIONS IN RELATION TO THE CLASS ACTION

Option 1 – Opt Out and cease to be a group member

24. Group members who opt out will no longer be part of the class action and will not be bound by the court's determination of the common issues at the initial trial. This means that you will not receive any money from the class action if it settles. However, it also means that, if the class action is unsuccessful, you will not be bound by the court's determination and you would preserve your right to commence your own legal proceeding claiming compensation from BSA.
25. To opt out of the class action you need to complete the below "Opt out notice" and then return it to the Victorian District Registry of the Federal Court of Australia at the address on the form by no later than 4:00pm (AEST time) on 24 September 2021.

Option 2 – Sign up to the class action

26. Group members can sign up to the class action by providing their details to the lawyers, Shine Lawyers, and information about their claims. This means it is possible for your claim to be more specifically considered in the settlement discussions, even though it will still be considered if you do not sign up. You do not need to sign up to remain a group member.
27. Although you do not have to sign up to remain a group member (see Option 3 below), it is likely that at some point you will need to register your interest to participate – either to receive money in any settlement, or to take further steps to bring an individual claim in the second stage of the class action, having regard to the Court's decision on the common issues at the initial trial.
28. If you have already signed up, you do not need to sign up again.
29. If you want to sign up, you can do it in one of two ways, by either:
 - a. entering into a funding agreement with LLS and retainer with Shine Lawyers (and become a **Funded Group Member**); or
 - b. alternatively, not entering into a funding agreement and retainer but submitting your claim details to Shine (resulting in you being a **Registered Unfunded Group Member**).
30. Becoming a Funded Group Member will mean in addition to becoming the clients of Shine Lawyers you agree to pay, out of any money compensation you are awarded:
 - a. an amount to LLS for costs it has paid to fund the litigation and a commission (likely to be between 25% and 30% or an amount the Court thinks is reasonable); and

b. an amount to Shine Lawyers for any component of costs not funded by LLS.

31. If you want to sign up as a Funded Group Member, what you need to do is:

- Go to Shine's website <https://www.shine.com.au/service/class-actions/bsa-limited-class-action> and complete the information form online, after which you will be sent via email the funding pack;
- Alternatively, if you require hard copy documents to complete and return, you may:
 - Email: BSAClassAction@shine.com.au or
 - Telephone: 1800 325 172

32. If you are considering becoming a Funded Group Member, you should read carefully the funding agreement and retainer, and, if you then do not understand everything, you should speak with Shine Lawyers and/or get independent legal advice from your own solicitor.

33. Becoming a Registered Unfunded Group Member will mean you will not enter into any contract with LLS or Shine. It will be possible for your claim to be specifically considered to some extent if there are settlement discussions. Even though you do not have a contract with LLS or Shine, as a Registered Unfunded Group Member this may still involve you making some contribution out of any money you receive.

34. If you sign up using either of the above ways, you will be bound by the outcome in the class action.

Option 3 – Do Nothing (ie do not opt out, do not sign up)

35. Group members who do not opt out by 24 September 2021 (Option 1 above) or sign up (Option 2 above) will remain group members in the class action. If you take this option you will be an **Unregistered Group Member** but, as noted above, at some point Unregistered Group Members will need to register to get any money out of any settlement (if that happens) or to proceed with their individual claim following the initial trial.

36. If as a result of a settlement or Court order you receive compensation (money) from the class action, this may involve you making some contribution to costs and funding expenses out of any money you receive.

37. If you do nothing (ie do not opt out, and do not sign up), you will be bound by the Court's determination of the common issues at the initial trial and any settlement of the class action.

D. IMPORTANT THINGS TO NOTE

38. Firstly, this is not a scam. You can check and get copies of the relevant court documents about the class action, including the Statement of Claim, Defence and cross-claims online at <https://www.shine.com.au/service/class-actions/bsa-limited-class-action>. If you believe you may be a group member, you should consider those documents.

39. Secondly, if there is anything about the class action or this notice of which you are unsure or you do not wish to speak with Shine Lawyers (or you want to understand their involvement or the funding agreement better), you should get legal advice from your own solicitor.

ANNEXURE 1

Form 21
Rule 9.34

Opt out notice

No. VID488 of 2020

Federal Court of Australia
District Registry: Victoria
Division: Fair Work

PAUL BRADSHAW and another
Applicant

BSA LIMITED
Respondent

To: The Registrar
Federal Court of Australia
Victoria District Registry
305 William Street
Melbourne VIC 3000

The person named below, as a group member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976* (Cth), that the person is opting out of the proceeding.

Name of group member	
Name of company of group member	
Postal address of group member	
Telephone contact	
Email address	

If signing as the solicitor or representative of the class member:

Person completing form	
Authority of person completing	
Postal address of person completing this form	
Telephone contact	
Email address	

Date:

Signed by _____ (print name)

Group member / Lawyer for group member / Group member representative

(Cross out the above titles which do not apply to you)