

ISG Management Class Action

MUTCH V ISG MANAGEMENT PTY LTD

OPT OUT NOTICE

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

WHY IS THIS IMPORTANT?

This notice is about the ISG Management Class Action which is a proceeding brought in the Federal Court of Australia in which the claims and cross-claims outlined below have been made. This notice has been approved by the Federal Court of Australia. The Court has ordered that this notice be provided for the information of individuals who might be members of the class on whose behalf the action is brought and may be affected by the action.

It has been sent to you because it is likely you are a Class Member. Who is a Class Member is 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 7 May 2021 (4pm AEST). (If you do this you will preserve your right to commence your own claim for compensation against ISG Management but you will not be able to claim compensation in the current 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 Class 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 it that you do not understand, you should speak to Shine Lawyers on 1800 325 172 or 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 **Class Members**) are brought in a single proceeding.
2. A class action is commenced by one or more persons (the Applicant/s) on behalf of the Class Members. Unless a Class Member opts out (as explained below), they are automatically bound by decisions made by the Court in the class action even if they did not take any active steps to join it.

B. SOME THINGS YOU SHOULD KNOW ABOUT THE CLASS ACTION

What is the ISG Management class action?

3. A class action has been commenced in the Federal Court of Australia by Applicant Robert Mutch (**Mr Mutch**) on his own behalf and on behalf of all individuals who are Class Members (or "workers") as defined in the proceeding. The respondent to the class action is ISG Management Pty Ltd (**ISGM**).
4. Mr Mutch alleges that he and other individuals who are Class Members provided telecommunications services as employees of ISGM, or if not as employees then as independent contractors engaged personally (ie not through a company) by ISGM. ISGM denies those allegations and alleges that the telecommunications services were provided to it by companies that it engaged as subcontractors. The class action seeks compensation (that is, money) for individuals who provided telecommunications services to ISGM since, at least, 2011 (see paragraph [18] below). The compensation claimed is an amount to put Class Members in the position they would be in, had they been treated as employees. ISGM denies that it owes Mr Mutch or the Class Members any money.

Cross-claims by ISGM

5. ISGM has made its own claim (a cross-claim) against Mr Mutch and the company through which he provided services to ISGM, Mutch Better Communications Pty Ltd (**MBC**). ISGM's cross-claim against Mr Mutch and MBC arises if, and only if, Mr Mutch's claim against ISGM succeeds (that is, the Court decides that Mr Mutch was an employee or personally engaged independent contractor of ISGM). If the Court decides that Mr Mutch was an employee or independent contractor engaged personally by ISGM, ISGM's cross-claim seeks repayment of amounts previously paid to MBC and compensation from Mr Mutch and his company. Mr Mutch and his company are defending the cross-claim against them.
6. In addition to the cross-claim against Mr Mutch and his company, ISGM has issued similar cross-claims against Class Members, and the companies through which they provided services to ISGM. If in due course the Court decides that the Class Member was an employee or independent contractor engaged personally by ISGM, ISGM is claiming repayment of amounts it previously paid to the companies and compensation.
7. By order of the Federal Court of Australia, all of the cross-claims other than the cross-claim against Mr Mutch and MBC have been stayed. That means that Class Members are not required to take any steps or do anything to respond to the cross-claims at this stage. Further, ISGM cannot take any further steps against Class Members to prosecute the cross-claims until further order of the Court.
8. Copies of the cross-claims, including lists of the Class Members and companies against whom the cross-claims are made, are available at <https://www.shine.com.au/service/class-actions/isg-management-class-action>. If you are a respondent party to one of those cross-claims you should download and consider that document. The purpose of alerting you to the link is to give you notice of the cross-claim that ISGM has made.

How and when the various claims will be dealt with

9. The Court will decide Mr Mutch's individual claim against ISGM and ISGM's cross-claim against Mr Mutch and MBC and a number of issues which are common to the claims of Class Members and the cross-claims made against them. This will be done in the first stage of the class action at what is called an initial trial.
10. After the initial trial, as part of a second stage in the class action, the Court will determine the claim of any Class Member who decides to proceed with his or her individual claim. At this stage, the Court may be asked to decide an individual Class Member's claim that the Class Member was employed by or directly engaged by ISGM, as well as any cross-claim ISGM has brought against that individual and any associated company.
11. Class Members will not be required to pursue their individual claims. After the initial trial, Class Members will have the opportunity to consider their position knowing the outcome of the initial trial and on the basis that ISGM has indicated that it will only pursue its cross-claim against a Class Member and any associated company if the Class Member decides to pursue his or her individual claim.

What are the next steps in the class action?

12. The class action is expected to go to settlement talks (called mediation) in the near future.
13. If the settlement talks do not result in an outcome, the class action will then proceed to the initial trial. The initial trial is scheduled to take place in October 2021.
14. After the initial trial is determined, individual claims and any corresponding cross-claims that are then being pursued will be determined by further trials.

Who is representing the Class Members, and what are the funding arrangements?

15. The solicitors running the class action for Mr Mutch (as the representative of all Class 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 ISGM's costs if Mr Mutch is unsuccessful at the initial trial. At the present time LLS has only agreed to fund the initial trial.

Is a Class Member liable for any costs and charges?

16. Class Members are not, and will not be, liable for any "out of pocket" legal costs by remaining in this class action up to and including the initial trial. The costs of the class action are being covered by LLS and Shine, up to and including the initial trial. This means that you will only have to pay legal costs if, in the second stage of the class action, you decide to pursue your individual claim and LLS has not by that time agreed to fund the legal costs arising from individual claims of Class Members and the associated cross-claims made by ISGM.
17. If as a result of a settlement or Court order the Class Members receive compensation (money) from the class action, the Court will be asked to distribute the legal and funding costs fairly among all persons who have benefited from the class action. The effect of any such order, if made, would be that all Class Members who benefit will contribute to the legal and funding costs out of the compensation moneys, whether or not those Class Members signed up to a funding agreement.

Am I a Class Member?

18. You are a Class Member if the following criteria are met:

- a. between 2011 to 18 June 2020 you:
 - i. provided services to ISGM as a telecommunications technician;
 - ii. received Tickets of Work under one or more of the following agreements:
 - 1. 2013 Tickets of Work Standing Offer Agreement;
 - 2. 2015 Tickets of Work Standing Offer Agreement; and/or
 - 3. 2016 Tickets of Work Standing Offer Agreement.

OR

- b. since 18 June 2014 you:
 - i. provided services to ISGM as a telecommunications technician; and
 - ii. received Tickets of Work issued by ISGM;

AND

- c. you did not receive payments or benefits from ISGM which would have been required to be made or provided had you been engaged by ISGM as an employee.

If you are unsure whether or not you are a Class Member, you should contact Shine Lawyers on isgmlegal@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 Class Member.

C. YOUR THREE OPTIONS IN RELATION TO THE CLASS ACTION

Option 1 – Opt out and cease to be a Class Member

- 19. Class Members who opt out will not be bound by the outcome of the court’s determination of the common issues at the initial trial and will not receive any money from the class action if it settles.
- 20. Class Members who opt out will preserve their right to commence their own legal proceeding claiming compensation from ISGM.
- 21. Class Members should seek legal advice before making a decision whether or not to opt out.
- 22. 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 7 May 2021.

Option 2 – Sign up to the class action

- 23. Class 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 their claims to be specifically considered in the settlement discussions. However, you do not need to sign up to remain a Class Member.
- 24. Although you do not have to sign up to remain a Class 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.

25. If you wish to sign up, it would assist the lawyers to prepare for any settlement discussion if you were to register by 30 March 2021. If you have already signed up, you do not need to sign up again.
26. 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 becoming a **Funded Class Member**); or
 - b. alternatively, not entering into a funding agreement but submitting your claim details to Shine (resulting in you being a **Registered Unfunded Class Member**).
27. Becoming a Funded Class Member will mean you agree to pay LLS an amount for litigation funding costs and for commission out of any money you get, which Registered Unfunded Class Members are not contractually obliged to pay. That commission is likely to be between 25% and 30% or an amount the Court thinks is reasonable. However, if you are a Registered Unfunded Class Member, this may still involve you making some contribution out of any money you receive.
28. If you want to sign up as a Funded Class Member, what you need to do is:
 - Go to Shine's website <https://www.shine.com.au/service/class-actions/isg-management-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: isgmlegal@shine.com.au or telephone on 1800 325 172.
29. If you are considering becoming a Funded Class Member, you should read carefully the funding agreement, and, if you then do not understand everything, you should speak with Shine Lawyers and/or get independent legal advice from your own solicitor.
30. Becoming a Registered Unfunded Class 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 Class Member this may still involve you making some contribution out of any money you receive.
31. If you sign up in 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)

32. Class members who do not opt out by 7 May 2021 (Option 1 above) or sign up (Option 2 above) will remain Class Members. If you take this option you will be an Unregistered Class Member but, as noted above, at some point Unregistered Class 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.

33. 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.
34. 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.

C. IMPORTANT THINGS TO NOTE

35. Firstly, this is not a scam. You can check (and get copies of the relevant documents about the class action including the Statement of Claim, Defence and cross-claims) online at <https://www.shine.com.au/service/class-actions/isg-management-class-action>.
36. Secondly, if there is anything of which you are unsure or you do not want to speak with Shine (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. VID1492 of 2018

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

ROBERT MUTCH

Applicant

ISG MANAGEMENT PTY LTD

Respondent

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

The person named below, as a Class 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 Class Member	
Name of company of Class Member	
Postal address of Class 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)

Class Member / Lawyer for Class Member / Class Member representative