

IMPORTANT: IF YOU ARE A CLIENT OF SHINE LAWYERS YOU SHOULD NOT READ THIS NOTICE AND INSTEAD CONTACT SHINE LAWYERS WITH ANY QUESTIONS YOU HAVE ABOUT THE CLASS ACTION

FAQs

BSA'S statement of position on frequently asked questions about the class action

The views in this document are those of BSA. Other people may have different views about the BSA class action. Workers are encouraged to obtain independent legal advice about how the class action may affect them individually. It is not the purpose of these FAQs to seek to persuade you opt-out of the class action or take any other step – that is a decision you must make, and you are encouraged to seek independent legal advice.

Q. What is the BSA class action?

On 23 July 2020, a class action was commenced in the Federal Court of Australia against BSA Limited (**BSA**). If you are a sub-contract technician who worked for BSA between 2003 and 23 July 2020 (**Workers**), then you are included in the class action whether you knew that or not, and unless you opt-out. The Workers in the class action are represented by two lead applicants, Paul Bradshaw and Scott Uren, both former Workers for BSA.

Q. What is being claimed in the BSA class action?

The class action alleges that Workers were employees of BSA and not working under independent contracting arrangements, and that BSA should pay compensation for employee entitlements, and penalties. The litigation funder's commission and Shine's legal costs would be deducted first from any compensation awarded.

Q. What is BSA's own view about the claims being made in the class action?

BSA strongly denies that Workers are employees, and is defending the class action. BSA believes that it is not in the interests of Workers under the current independent contractor model to be treated as employees, and believes that the independent contractor model confers a range of benefits on Workers.

Q. Why does BSA believe that the current model confers benefits on Workers?

BSA believes that three of the main benefits conferred under the current independent contractor model are: (a) flexibility of work hours, (b) ability to perform work for more than one company, Delivery Partner or supplier and (c) total take-home pay.

Q. How does the current model help with flexibility of work hours and flexibility to work for more than one company/customer?

Under the current model, independent contractors are able to tell us when and where they are available to work. BSA believes this flexibility is important in an industry like telecommunications. Workers can provide services to companies and customers other than BSA. Workers can run their own business and enjoy that flexibility. If Workers are categorised as employees of BSA they would likely need to work set hours for BSA and would likely not be able to also work for other companies and customers.

Q. How can the current model help with take-home pay?

BSA believes that contractors can take-home more pay than employees, depending on their particular circumstances. BSA pays Workers by reference to the Work Orders they perform. Employees are usually paid by reference to the hours worked.

BSA believes that the current model is better geared to reward Workers for their skills and efficiencies. The more skillful and efficient you are, the more Work Orders you can do and the more

income you receive. Workers may also benefit from the tax advantages of running a business (to the extent available).

Q. Has there been any comparison between pay under the current model vs. as an employee?

BSA believes that most Workers are paid more as contractors under the current model, than if they were paid as employees of BSA.

BSA used an independent forensic accountancy firm, McGrath Nicol, to analyse the amount that would have been paid to the lead applicants, namely Mr Bradshaw and Mr Uren, had they been paid as employees of BSA. BSA believes that Mr Bradshaw's independent contracting company and Mr Uren's independent contracting company were paid **more** than if Mr Bradshaw and Mr Uren had been paid as employees of BSA, for the hours which they worked.

Q. Does the class action involve possibly any risk for me as a Worker?

BSA has filed a cross-claim against Mr Bradshaw, Mr Uren and their respective companies, seeking repayment of the money paid to their companies **if** Mr Bradshaw and Mr Uren successfully claim they were employees. BSA has also filed cross-claims against the other Workers, on a similar basis.

Q. If it is successful, what impact will the class action have on BSA?

BSA remains confident in the strength of the independent contractor workforce model in Australia and BSA views its responsibilities in relation to the fair treatment of workers employed and contractors engaged extremely seriously. The claim made in the class action is relevant to BSA's contracting arrangements, specifically, in relation to independent contractors. It is not possible to determine the ultimate impact, if any, of the class action on BSA.

Q. What did you mean by "opt-out" in the answer to the first question?

If you are included in the class action (see first answer above), you don't have to stay in – you can "opt-out" by signing and returning a form called an "opt-out notice" which you should shortly receive from Shine Lawyers (if you have not received it recently). . You should read the "opt out" notice carefully as it will explain the consequences of "opting out" or remaining part of the class action, including the impact which the class action may or may not have on you depending on the decision you make.



ANNEXURE A

BSA LIMITED CLASS ACTION Bradshaw & Anor v BSA Limited

IMPORTANT NOTICE TO GROUP MEMBERS (Issued by Order of the Federal Court of Australia)

If you were identified as a person who might be a group member of the BSA Class Action, you should have received an Opt Out Notice by email and/or post from Shine Lawyers.

Prior to and following the distribution of the Opt Out Notice, some group members may have attended meetings conducted by BSA (called Toolbox Meetings) where comments were made and opinions expressed about this class action. During and after these meetings some group members were provided access to a FAQ document by BSA, and that FAQ document has also been available for downloading on BSA's website.

The statements made in the meetings conducted by BSA (the Toolbox Meetings) and included in the FAQ document refer to the possible exposure of group members to cross claims made by BSA and about the potential liability of group members to pay monies to BSA. Information about these matters that the Court has reviewed and approved as being accurate is set out in the Opt Out Notice, and in particular paragraphs 6 to 13. In particular you should note:

- There will be an initial trial in the matter. The initial trial will decide the claims made by and against Mr Bradshaw and 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. The initial trial will not determine BSA's cross claims against individual group members and their related companies. (See paragraph 11 of the Opt Out Notice).
- BSA's cross claims against group members and their related companies are currently stayed (that means that those claims are not active and will not become active until the Court decides they should be activated). (See paragraph 9 of the Opt Out Notice).
- After the initial trial has been held and the Court has published its decision, group members will be given the opportunity to decide whether or not they wish to pursue their own individual claims, including whether to take up any offer of funding made at that time to pursue their own individual claims. BSA has indicated that it will only pursue its cross claim against a group member and any related corporation if the group member decides to pursue his or her individual claim. (See paragraphs 12 and 13 of the Opt Out Notice).

If you were motivated to opt out of the class action because of any information received from BSA, its servants or agents about those aspects of this class action referred to above, but wish to reconsider your position and withdraw the Opt Out Notice you sent to the Court, you may apply to the Court **before 4.00pm on 1 October 2021** to withdraw the Opt Out Notice so that you can be reinstated as a group member in the class action.

You should only make this application if you were motivated to opt out because the information provided by BSA.

If you wish to pursue such an application, please complete the attached form and send it so that it is received by the Court **before 4.00pm on 1 October 2021**.

If there is anything in the Opt Out Notice or in this Notice that you do not understand, you should speak to Shine Lawyers on 1800 325 172 or seek your own independent legal advice. Enquiries should not be directed to the Court.



Application for leave to withdraw Opt Out Notice

No. VID488 of 2020

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

Paul Bradshaw and another

Applicant

BSA Limited (CAN 088 412 748)

Respondent

To: The Registrar

Federal Court of Australia Victoria District Registry 305 William Street
Melbourne VIC 3000

By this application, the person named below (**Group Member**) seeks:

- (a) leave of the Court pursuant to section 33ZF of the *Federal Court of Australia Act 1976* (Cth) (the Act) to withdraw their notice of opt-out of the proceeding previously given to the Court; and
- (b) an order that they be reinstated as a group member within the meaning of s 33A of the Act.

The Court may determine any application that is filed with the Registrar before **4.00pm on 1 October 2021** on the basis of the documents filed with the Court and without hearing further from the Group Member or the parties to 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 Group Member:

Person completing form	
Authority of person completing form	
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