WOTTON KEARNEY

Class Actions in Focus

Defining Decisions in 2025 and Trends to Watch

A milestone year

Looking back, 2025 was a milestone year

The total number of class actions filed nationally surpassed the 1,000 mark. Reflecting the growing popularity of class actions, the first 500 proceedings were filed over 25 years, while the second 500 were filed in only the last eight years.

More than $1.5 billion in settlements including a record settlement against the Commonwealth in the Robodebt class action.

Key High Court decisions in relation to class action procedure (more on that later).

What to watch in 2026

A busy year lies ahead, with numerous hearings and key judgments expected to be delivered in 2026:

Judgments expected:

- The long-awaited decision in the *Brambles* securities class action is due to be handed down in early April, following the 2022 trial.
- The Full Federal Court decision in the *Worley* shareholder class action appeal, which was heard in February 2025.
- We may see the judgment in the *Quintis* shareholder class action appeal, following the Full Court hearing in late March 2026.

Hearings:

- *A2 Milk* shareholder class action commencing 2 June 2026;
- *James Hardie* shareholder class action commencing 6 July 2026;
- *Nuix* shareholder class action commencing 27 July 2026 for an estimated 8 weeks;
- *Arrium* shareholder class action commencing 3 August 2026 for an estimated 6 weeks, if the matter does not settle at a mediation scheduled for 31 March 2026; and
- the initial trial in *JB Hi-Fi*, concerning alleged misleading, deceptive or unconscionable conduct related to the sale of extended warranties, commencing 5 October 2026 for an estimated 6 weeks.

Claim trends

Filings in 2025 were steady, although there were a large number of similar cases filed at the same time by doctors alleging underpayments which increased the number significantly (more on that later). The range of claims filed included the usual mix of consumer claims, a continuation of the trend in employment claims and some interesting human rights claims.

Consumer claims

Consumer class actions remained the most active category in 2025, spanning product liability, pricing and promotions, financial products, platform-based business models and emerging ESG theories. Affected industries included healthcare, retail, automotive and financial services, with claims targeting warranties, pricing structures, disclosures and large scale consumer impacts.

Settlements underscored the scale of exposure. Uber's $271 million settlement highlighted platform risks in regulated markets. Financial services settlements remained significant, including Allianz ($170 million), AAI ($34 million), ANZ ($57.5 million) and Westpac/St George ($130 million), reflecting continued scrutiny of add on insurance, credit products and distribution models following the Financial Services Royal Commission. In health and life sciences, Monash IVF's $56 million settlement showed the sensitivity and scale of consumer claims involving medical services.

Large consumer settlements also arose in superannuation and financial markets, including a $140 million settlement from Colonial First State and AIA, and a $59 million FX cartel settlement. Overall, consumer matters contributed materially to the record $1.9 billion in class action settlements approved in 2024/25.

Consumer facing organisations should expect continued Federal Court filings and closely monitor Victoria's Group Costs Order regime, which continues to influence forum choice, funding and settlement dynamics.

Turning to updates in 2026 so far:

- a consumer class action against Harvey Norman and Latitude Credit has been filed, alleging breaches of the ACL for misleading and deceptive conduct due to hidden cost linked to the Latitude GO Mastercard following an interest free ad promotion by Harvey Norman; and
- a $105 million settlement (subject to Court approval) was reached in the Qantas COVID flight credits class action, one of the largest consumer class action settlements to arise from the COVID pandemic.

Shareholder claims

Securities class actions staged a measured recovery in 2025, after a subdued 2024 off the back of wins for respondents in, Worley, Zonia and Quintis. While filing numbers have stabilised, settlement activity at the back end of the financial year underscored that shareholder claims remain a major driver of aggregate class action value in Australia. Several high-profile settlements (BHP – $110M, and Crown Resorts – $73M) reaffirmed the scale of exposure for listed entities, even in a market where new filings are more selective and strategically targeted.

So far in 2026, we have seen another loss for plaintiffs in shareholder class actions with the NSW Supreme Court dismissing the plaintiff's claim in the Whitehaven class action. As at February 2026, no new shareholder class actions have been filed.

Employment claims

Employment-related cases continued to increase, including a wave of junior doctor overtime proceedings, which collectively accounted for 19 employment actions and inflated 2025's annual total filings.

Looking forward, a major decision was handed down in the Federal Court on 5 September 2025, which involved two regulatory proceedings brought by the Fair Work Ombudsman, and two class actions against Woolworths and Coles. The claims arose from alleged underpayments to store-based management employees by reference to the *General Retail Industry Award 2010*. The decision sets out the proper characterisation of annualised salary arrangements and related set-off clauses:

(a) despite paying those employees above award rates, Woolworths and Coles nonetheless had to make award related payments to those employees calculated within the single pay period; and

(b) critically, set-off could not be effected *between* pay periods.

This decision will have far-reaching implications for retail based and other employers who rely on annualised salary arrangements.

We anticipate employment related class actions will continue to be popular due to:

- the potential for large group memberships (McDonalds rest breaks 300-350K potential group members);
- union backing; and
- for claims involving franchisees, there are two potential sources of funds for settlement (the franchisor and franchisee).

The published information by plaintiff firms suggests there are a large number of employment related class actions under investigation.

Government liability

The Commonwealth, state governments, and their agencies are and will remain popular defendants in class actions, with claims spanning employment, stolen wages, infrastructure, property damage, private nuisance, civil liberties and climate duties. Last year saw a record settlement against the Commonwealth government in the Robodebt class action in the amount of $475 million. The settlement approval hearing is listed for June 2026.

Already this year we have seen the Victorian hotel quarantine class action settle for $125 million.

Pabai Pabai v Commonwealth of Australia [2025] FCA 796 (Torres Strait Climate Duty Class Action)

In 2025, Justice Wigney handed down a long-awaited decision attempting to ascribe the Commonwealth with a duty of care to Torres Strait Islanders to set emissions targets in line with "*best available science*" on climate change and provide predictable and sufficient funding for adaption measures. The case attempted to distinguish itself from the first failed climate change duty of care case of *Sharma*, by having a better-defined group by which the duty would apply.

The Court was not persuaded that the Commonwealth owed a duty of care to the applicants on the basis that imposing a duty would require courts to consider matters of core or high government policy, which requires weighing competing interests and values. Consistent with a long line of judicial authority, the Court held that such issues are unsuited to judicial determination. Further, the Court found that the Commonwealth's ability to set emission reduction targets does not give it any materially relevant control in respect of the risk of harm.

Notably, the Court did agree that the Commonwealth "*failed to engage or give genuine consideration to*" climate science or to the risks of climate change to Torres Strait Islanders.

An appeal has been filed on behalf of the Applicants.

Meredith v State of New South Wales (No 5) [2025] NSWSC 1133 (*Strip Search Class Action*)

The applicants were successful in the strip search class action brought against New South Wales Police Force, with the State conceding that the searches were unlawful. The Court confirmed that there was a disregard of the lead applicant's rights resulting in a significant harm to her privacy, liberty and bodily integrity. No doubt plaintiff firms are now considering similar claims in other states.

Education

Class actions were commenced against the University of Newcastle and Western Sydney University alleging misleading and deceptive conduct for offering unaccredited degrees. The applicants allege they were unable to gain employment, incurred additional costs in order to complete an accredited course and other losses caused by the prolonged study.

High Court 2025

The High Court delivered a number of key class actions decisions in 2025, clarifying contentious issues including in relation to funding and class closure.

Group Costs Orders: Bogan v Smedley[1]

On 12 March 2025, the High Court in Bogan held that a Group Costs Order (**GCO**) made in a class action commenced in the Supreme Court of Victoria would not remain in force if the proceeding were transferred to the Supreme Court of New South Wales. Accordingly, the High Court held that the proceeding could not be transferred.

In light of *Bogan*, GCO's will continue to anchor class actions proceedings to Victoria, which will remain an attractive forum for plaintiffs funded on a "No Win, No Fee" basis. Businesses facing a class action in the Supreme Court of Victoria should give early consideration, prior to any GCO being made, to whether it is appropriate to make an application to transfer the proceeding to another jurisdiction.

Common Fund Orders: Blue Sky[2]

In August 2025, the High Court in *Blue Sky* unanimously accepted the Federal Court's power to make a Common Fund Order (**CFO**). CFO's are similar to GCO's, but instead of the solicitors charging their fee as a percentage of settlement or judgment, it is the litigation funder that is entitled to charge a commission as a percentage of the proceeds.

However, the Court held that this power does not permit the Federal Court to grant a "Solicitors' CFO" in NSW (which is the same as a GCO in Victoria) as it would contravene the prohibition on contingency arrangements in NSW and therefore not be "just" to do so.

It remains to be determined whether a Victorian solicitor involved in a Federal Court class action could still argue for a GCO (or a Solicitors' CFO), given contingency fees are permitted in that jurisdiction. For now, Victoria remains the only jurisdiction in Australia where contingency fees are available for plaintiff law firms, pursuant to the GCO regime.

Soft class closure: Lendlease[3]

Over the last few years, the issue of soft-class closure had been a source of contention between the NSW Supreme Court and the Federal Court. The NSW Court of Appeal had previously held in *Wigmans* that it had no power to order soft closure notices. However, in a decision in the Boral class action, the Full Federal Court did not mince words in finding that the decision in *Wigmans* was "*plainly wrong*". Going tit-for-tat, the NSW Court of Appeal in *Lendlease* then doubled down on its position in *Wigmans*, which then went on appeal to the High Court.

In May 2025, the High Court handed down its decision in *Lendlease*, which settled the divide in favour of the Federal Court's position. It held that the NSW Supreme Court has the power to order that notice be given to group members of a defendant's intention to seek "class closure" orders, otherwise known as "soft closure notices".

Sydney Light Rail[4]

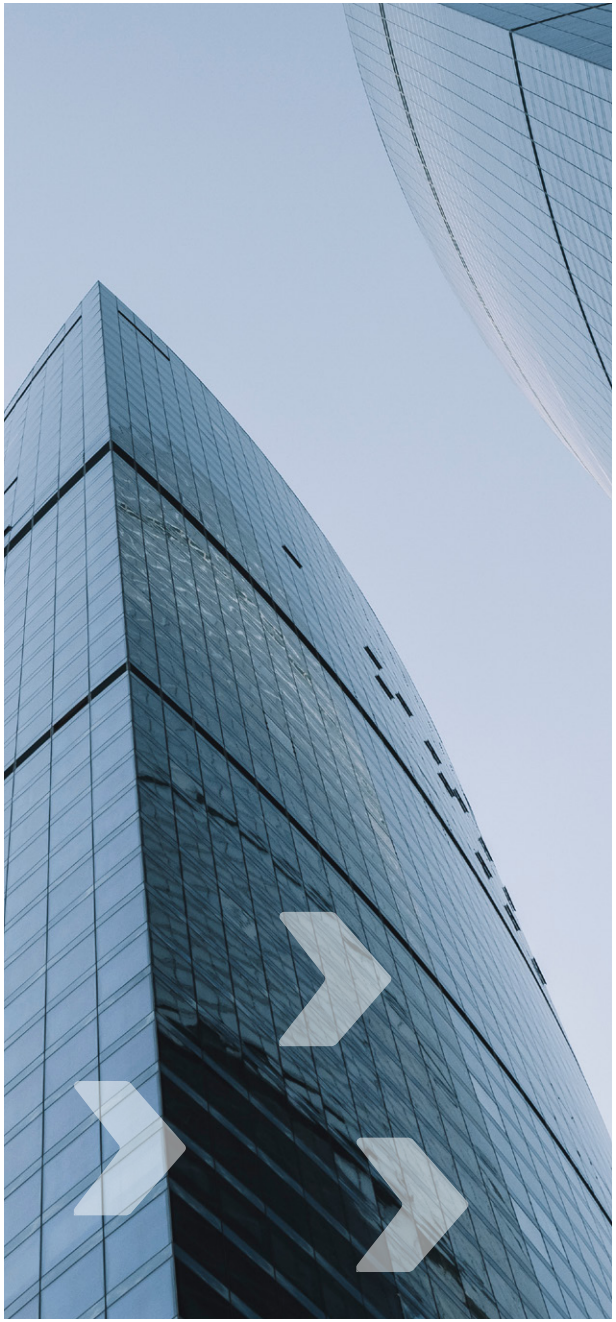
In December 2025, the High Court delivered its judgment in the *Sydney Light Rail* class action, unanimously allowing two appeals from judgments of the Court of Appeal of the Supreme Court of NSW.

Ultimately, the Court held that there had been a substantial interference with the ordinary enjoyment of land by the plaintiffs, and that Transport for NSW had not discharged its onus of establishing that it planned and procured the construction of the Sydney light rail in a manner that reasonably minimised the extent of that interference.

The High Court also unanimously held that the damages awarded should not include the reasonable costs they incurred in obtaining litigation fundings.

---

1. *Bogan v The Estate of Peter John Smedley (Deceased)* [2025] HCA 7.
2. Kain v R&B Investments Pty Ltd; Ernst & Young (a firm) v R&B Investments Pty Ltd; Shand v R&B Investments Pty Ltd [2025] HCA 28 (Blue Sky).
3. *Lendlease Corporation Limited v Pallas* [2025] HCA 19.
4. *Hunt Leather Pty Ltd v Transport for NSW* [2025] HCA 53.



Other notable judgments in 2025

***Zonia appeal*[5]**

In May 2025, the Full Federal Court heard an appeal from the decision of Justice Yates, who had dismissed a class action brought against the CBA by its shareholders for alleged breaches of its continuous disclosure obligations.

The Full Court upheld his Honour's decision in relation to the key issue of when the CBA became aware that it had failed to submit a large percentage of threshold transaction reports on time. It held that CBA was not aware of the relevant percentages at an earlier point in time simply because it could have calculated those figures from information in its data warehouse. The Full Court confirmed that continuous disclosure obligations apply to information held by a company officer from facts that should have come into the officer's possession in the course of their duties as an officer.

This one is not done yet, with special leave granted on 13 February 2026. The High Court's decision will likely provide guidance on establishing causation in shareholder class actions.

***Settlement Administration – Stolen Wages class action*[6]**

The class action is brought on behalf of Aboriginal workers in the Northern Territory whose wages were historically withheld, controlled or unpaid under government policies, causing long term economic loss. The matter settled in 2024, with the Federal Court approving the settlement in 2025.

This decision concerned an interlocutory application by the settlement administrator, Deloitte, seeking approval to increase administration costs from an estimated $1.8 million to $3.2 million due to greater complexity and higher levels of claimant engagement than anticipated.

Chief Justice Mortimer expressed concern that both the administrator and the parties had failed to adequately anticipate the practical challenges of administering a complex settlement involving vulnerable group members. The Court emphasised its supervisory role, the need for transparency in tendering and administration, and the importance of cultural awareness in settlement planning. Notwithstanding that, the Court approved the cost uplift, noting that the settlement scheme was largely complete and that refusal would likely prejudice group members. The central theme of the judgment is that the settlement approval stage requires more exacting scrutiny of the settlement distribution process.

The decision suggests that where administrators can demonstrate, at the tender stage, that there has been rigorous and practical scrutiny of how a settlement distribution scheme will operate in practice, the Court may be more inclined to approve an application for an uplift when the need arises.

5. *Zonia Holdings Pty Ltd v Commonwealth Bank of Australia Limited* [2025] FCAFC 63.
6. *McDonald v Commonwealth of Australia* (No 4) [2025] FCA 1450.

Trends to watch for in 2026 and beyond

Beyond the established categories of consumer, employment and securities actions, several other trends stood out in 2025, which are yet to take full hold in the class actions space, but we expect to see that in coming years.

Data breach/privacy

Data breach and privacy-related class actions have long been expected to accelerate, driven by the sustained frequency of large-scale cyber incidents, although we have only seen a small number to date and they are moving slowly. The commencement of the statutory tort for serious invasions of privacy in 2025 also has the potential to expand the scope of exposure for organisations that collect and hold personal information at scale.

The statutory tort creates a direct cause of action for serious invasions of privacy, including misuse of personal information, and removes the need for claimants to prove economic loss. The availability of damages for non-economic loss, including distress, significantly lowers the barriers that have previously constrained privacy-adjacent class actions framed through consumer law, negligence or misleading conduct, and increases the viability of large, aggregated claims. There is a question about the applicability of the tort in a class action environment although it is likely only a matter of time before plaintiff class action solicitors file a test case.

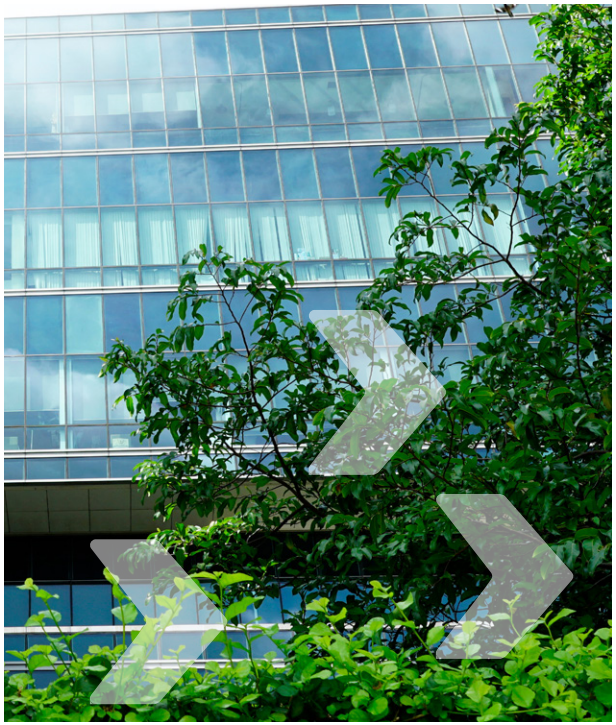
Regulatory activity will continue to play an important signalling role, with OAIC and ASIC investigations likely to inform claimant strategies and pleadings, in a manner increasingly familiar from consumer and shareholder class actions.

Environmental, Social, and Governance (ESG)

ESG class actions have been on the "to watch" lists for the past few years without many actual filings. The Pabai action (see above) was one notable exception and, despite the loss at first instance, it could still lead to future mass claims and activist-led cases. The Pabai decision is also pending appeal, which has the potential to accelerate filings in this area.

Over the past few years, ASIC has been forthright about its intentions to crack down on "greenwashing". It has commenced four enforcement proceedings against super and investment funds relating to misleading statements about ESG credentials and sustainable investment options, with penalties ordered in three cases (Active Super, Vanguard, Mercer). ASIC's fourth greenwashing civil penalty case, brought against Fiducian Investment Management Services Limited, remains ongoing. There is a common path for successful regulatory enforcements progressing to civil claims including class actions and we expect it is only a matter of time before a class action is brought in relation to greenwashing activities.

PFAS has been placed back on the agenda with the first Australian PFAS class action claim brought against manufacturer 3M. There is also a claim being considered on behalf of residents in the Blue Mountains for increased level of PFAS in local drinking water. An assessment was undertaken



by WaterNSW, which considered that the PFAS could have come from firefighting foam from two vehicle fires in the area which occurred on land not owned or managed by WaterNSW. Other potential sources are also being investigated.

Australia's mandatory climate reporting regime took effect from 1 January 2025 and requires companies to prepare annual sustainability reports and other related disclosures. These reports are likely to be closely watched by plaintiff firms as potential sources for claims; however, with the regime including a three-year immunity period for civil actions, we don't expect to see any claims filed before 2028.

Artificial Intelligence (AI)

Claims in relation to AI have yet to hit in any significant way in Australia and certainly not in the class actions space. There have, however, been developments in AI-related class actions in the US, which are worth watching as a potential guide to how claims could materialise in Australia. In particular:

- securities class actions in the US have started to be filed against AI developers;
- claims alleging the unauthorised use of copyrighted works to train AI models;
- AI washing - allegations that companies exaggerate AI capabilities to attract investment or customers. This is something that ASIC has flagged as being on its radar; and
- potential claims arising from misleading or inaccurate AI outputs. Notably, in October 2025, the Government released its Review of AI and the Australian Consumer Law which concluded that the ACL is generally fit-for-purpose and capable of addressing AI-enabled goods and services.

Anti-Money Laundering (AML)

In November 2024, the Government passed legislation amending the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act). The Amendment Act of 2024 has a staged introduction with certain amendments already in force and the balance of amendments, which are the significant amendments, taking effect from 31 March 2026 and 30 June 2026.

Broadly, the Amendment Act seeks to:

1. simplify the AML/CTF Act by shifting the focus from a compliance-based approach to a risk based, outcomes-oriented approach; and
2. capture a suite of services long known to be "high risk" services, colloquially referred to as Tranche 2 entities.

Tranche 2 entities include, among others, real estate professionals, lawyers, conveyancers, accountants and trust and company service providers and will capture approximately 90,000 additional entities.

In the past, there have been class actions arising from AUSTRAC investigations following the imposition of large civil penalties, including against Crown ($450m), CBA ($700m) and Westpac ($1.3bn). AUSTRAC's civil penalty proceedings against The Star casino were heard last year, and the subsequent class action relies on the allegations contained in AUSTRAC's pleadings. The AML reforms could, in time, result in more activity in the class actions space.

Class action risk remains

The class actions environment in Australia remains busy and increasingly sophisticated. While consumer, employment and shareholder claims continue to drive volume and value, emerging risks, particularly with respect to privacy, ESG, AI, climate reporting and AML, are broadening the field of potential exposure.

Recent High Court decisions have brought welcome clarity on issues of funding and class closure, but in doing so have enshrined the Supreme Court of Victoria as plaintiff's preferred jurisdiction for class action litigation for the foreseeable future. With regulatory action continuing to feed private litigation and new statutory regimes lowering barriers to claims, class actions will remain a defining feature of the litigation landscape in 2026 and beyond.

Authors

Amanda Beattie
Head of Class Actions
+61 2 9064 1897
Amanda.Beattie@wottonkearney.com

Madeleine Wright
Senior Associate
+61 2 8273 9888
Madeleine.Wright@wottonkearney.com

Contacts

Thank you to our Class Actions team for their contributions to this article. For any questions, please don't hesitate to reach out to our authors or team below.

Gavin Davies

Samantha Saad

Zoe Jones

Jonathon Ferraro

Nick Salagaras

Michelle Rich

Isabella Conquest

Melissa Dib

Australia

Adelaide
Level 1, 25 Grenfell Street
Adelaide, SA 5000
+61 8 8473 8000

Brisbane
Level 21, 71 Eagle Street
Brisbane, QLD 4000
+61 7 3236 8700

Canberra
Level 6, 121 Marcus Clarke
StreetCanberra, ACT 2601
+61 2 5114 2300

Hobart
Level 6, Reserve Bank
111 Macquarie Street
Hobart, TAS 7000
+61 3 6108 9000

Melbourne
Level 30, 500 Bourke Street
Melbourne, VIC 3000
+61 3 9604 7900

Perth
Level 49, 108 St Georges Terrace
Perth, WA 6000
+61 8 9222 6900

Sydney
Level 9, Grosvenor Place
225 George Street
Sydney, NSW 2000
+61 2 8273 9900

New Zealand

Auckland
Levle 8, 21 Queen Street
Auckland 1010
+64 9 377 1854

Christchurch
203/237 High Street
Christchurch 8011
+64 3 667 4003

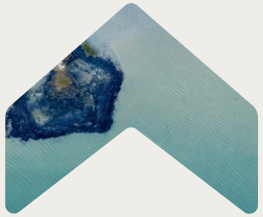
Wellington
Level 12, 342 Lambton Quay
Wellington 6011
+64 4 499 5589

Asia

Singapore
138 Market Street
#07-03, CapitaGreen
Singapore, 048946
+65 6967 6460

Thailand
990 Abdulrahim Place
Unit 1710, 17th Floor, Rama 4 Road
Silom Sub-district, Bang Rak District
Bangkok 10500
+66 2460 7301

WOTTON KEARNEY



wottonkearney.com