

Class action risk 2026

Consumer claims dip, while employee claims gain pace

Class action filings increased slightly in 2025, although the overall risk environment remains largely unchanged to recent years. Consumer claims, which have accounted for the largest proportion of filings for a number of years, have softened while employee class actions have surged to account for the majority of new claims. In this report, we take stock of the current state of the market, including a number of developments that are poised to shape how class action risk may evolve over the year ahead.



Key trends



Early flurry, slower finish: the year began at a record pace, with 36 class actions filed prior to 30 June 2025. However, the late-year filing rally we have become accustomed to over recent years did not materialise, with only seven class actions commenced across November and December 2025 (well down on the 19 claims filed over the final two months in 2024).



Rise in employment claims: 28 employment class actions were filed in 2025, representing 51% of total filings for the year (having accounted for approximately 15% of filings dating back to 2019). While the surge in filings is notable, employment class action risk has not necessarily altered given that 24 of these 28 class actions were accounted for by two distinct 'clusters' of very similar filings: the first involving 19 junior doctor underpayment claims filed on the same day, and the second being five claims filed in short succession against major retailers alleging underpayments and the failure to provide mandatory breaks.



Muted consumer landscape: 11 consumer class actions were commenced in 2025, representing 20% of filings across the year. This is a noticeable drop-off from the elevated rate of consumer class actions over recent years, with consumer claims accounting for over 40% of annual filings in 2023 and 2024. While the dip in consumer claims is a noteworthy development, it is too early to suggest it is indicative of a shift in the risk environment. Given the ongoing regulatory scrutiny on cost-of-living pressures and trend of Australian class action filings in the wake of consumer claims offshore (particularly in the US), there are plenty of indications that consumer class actions may rebound over the year ahead.



Shareholder claims plateau: there were five shareholder class actions filed in 2025, in line with the handful of filings in 2024. These numbers suggest class action promoters are continuing to adopt a careful and circumspect approach to shareholder claims in light of the challenges associated with running them to trial. There are, however, a number of judgments set to be handed down over the year ahead that will likely have a bearing on the future state of risk in this space.



Competing class actions dry up: 2025 was another year of very few competing class actions, with the issue of multiplicity arising in only three claims, or 6% of filings across this year. This builds on the recent trend of plaintiff firms pursuing claims concerning a unique and broad base of subject matter with a view to avoiding the time, cost and risks associated with launching proceedings that may ultimately be stayed following the commencement of competing claims.



The High Court continues to weigh in: in recent years, the High Court has granted special leave in a number of class action proceedings. During 2025, the High Court delivered judgments concerning:

- *Common fund orders:* following a number of years of uncertainty, the High Court confirmed the Federal Court has the power to make common fund orders, allowing litigation funders to extract a commission from funds paid to group members without the need to execute litigation funding agreements. While this decision was welcomed by funders, the High Court dealt a concurrent blow to plaintiff lawyers by unanimously determining that equivalent 'contingency fee' orders were not permitted to be paid to solicitors outside Victoria.¹
- *Class closure orders:* the High Court clarified that courts have the power to issue notices to group members establishing a class closure (or registration) process, ending the previous divide that existed between the Supreme Court of New South Wales and the Federal Court. This is a pleasing development that will allow the parties to class actions to mediate claims with certainty as to the size and composition of the class of group members on whose behalf a claim is advanced.

With special leave having already been granted in another class action early this year (relating to the assessment of damages in shareholder class actions), all signs point towards the High Court continuing to play a major role in shaping the class action landscape over the year ahead.

2025 year in review

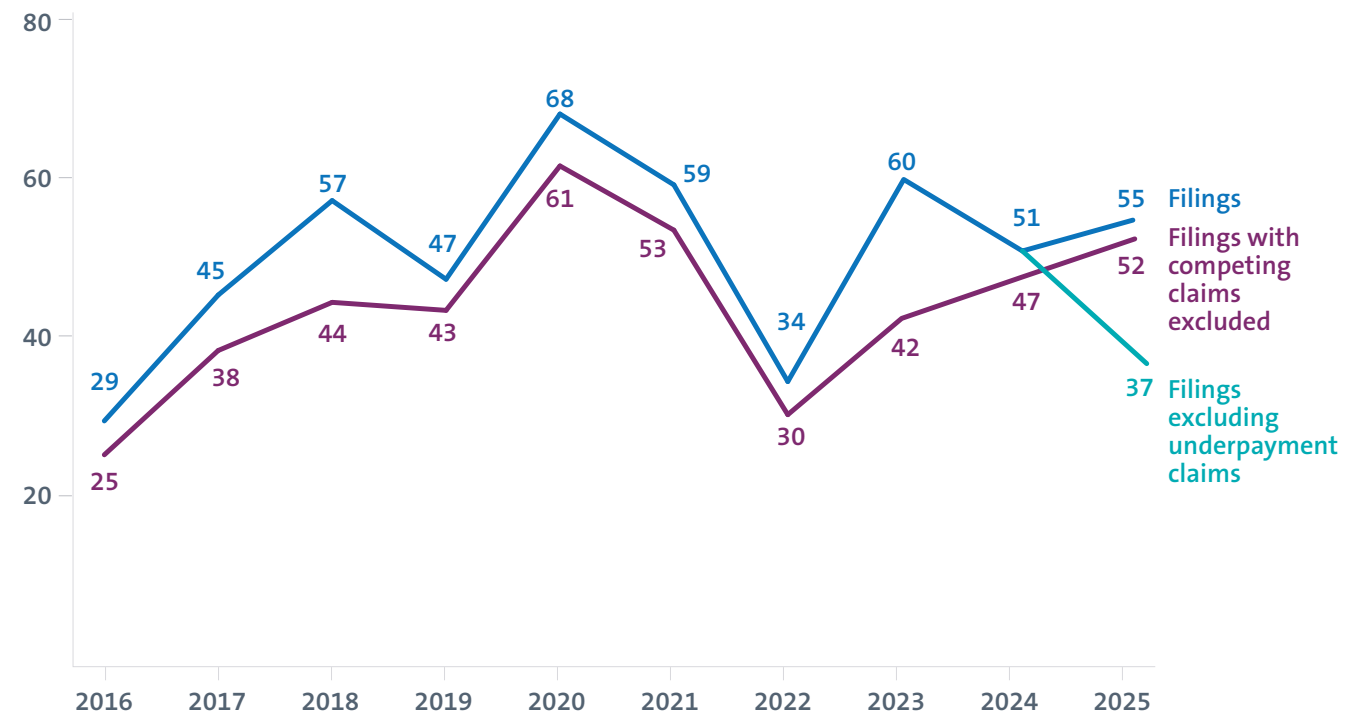
The new norm?

In last year's report, we suggested we may have reached a point where the annual number of class action filings could be expected to sit between approximately 45–50 claims. The 55 total filings across 2025 are supportive of that ballpark prediction. However, when the filings are assessed in detail the picture that emerges is quite different to what may be inferred from the headline filing rates. At the half-year mark, a total of 36 class actions had been commenced, but filings slowed considerably over the back half of the year with only 19 class actions commenced across the final six months of 2025 (the same number of filings as the final two months of 2024).

The filings in the first half of the year were dominated by 19 junior doctor underpayment claims that were initiated on the same day by the same plaintiff law firm. If these claims are viewed in the aggregate as a single set of proceedings (as illustrated by the teal line on the chart), the total filings in 2025 materially declines to a near decade low of 37 new claims. When viewed through this lens, 2025 may be considered a muted year of class action activity, although there are a number of reasons why it would be premature to jump to any conclusions suggesting that class action risk is on the decline, including that:

- There are a number of important judgments set to be handed down in 2026, including in relation to the assessment of damages under the Australian Consumer Law and in the context of shareholder claims that will have a bearing on future claims.

Number of class action filings by year



- As a consequence of the elevated filing rates over recent years, there are still a large number of cases working their way through the courts (including on appeal). While there continues to be growth in the number of firms pursuing class actions, there are resourcing challenges and risks for plaintiff firms in running a large number of claims at the same time, including the exposure to adverse costs orders with claims filed in the Supreme Court of Victoria (in circumstances where a group costs order has been made).

As these proceedings resolve we expect that filings will gain momentum as class action promoters look to replenish their portfolio of claims.

- There are emerging areas of risk where new filings may accelerate over the years ahead, including in relation to competition class actions and cyber-related claims (particularly if the direct right of action reform to the Privacy Act is enacted).

2025 year in review

A big year for employment claims

In 2025, employment claims shot to the top of the pack as the most common form of filing, marking a move away from consumer-related claims that have dominated the class action landscape over the last five years. However, the significant rise in employment claims should be viewed with caution as the total filing numbers are distorted by two clusters of very similar filings, accounting for 24 of the 28 claims filed across the year (as discussed in further detail in the employee claims section of this report).

The employment claims filed in 2025 involved a range of subject matters, including the alleged underpayment of junior doctors at public hospitals, state-affiliated healthcare centres and major retailers, in addition to claims alleging sexual harassment and discrimination in the workplace.

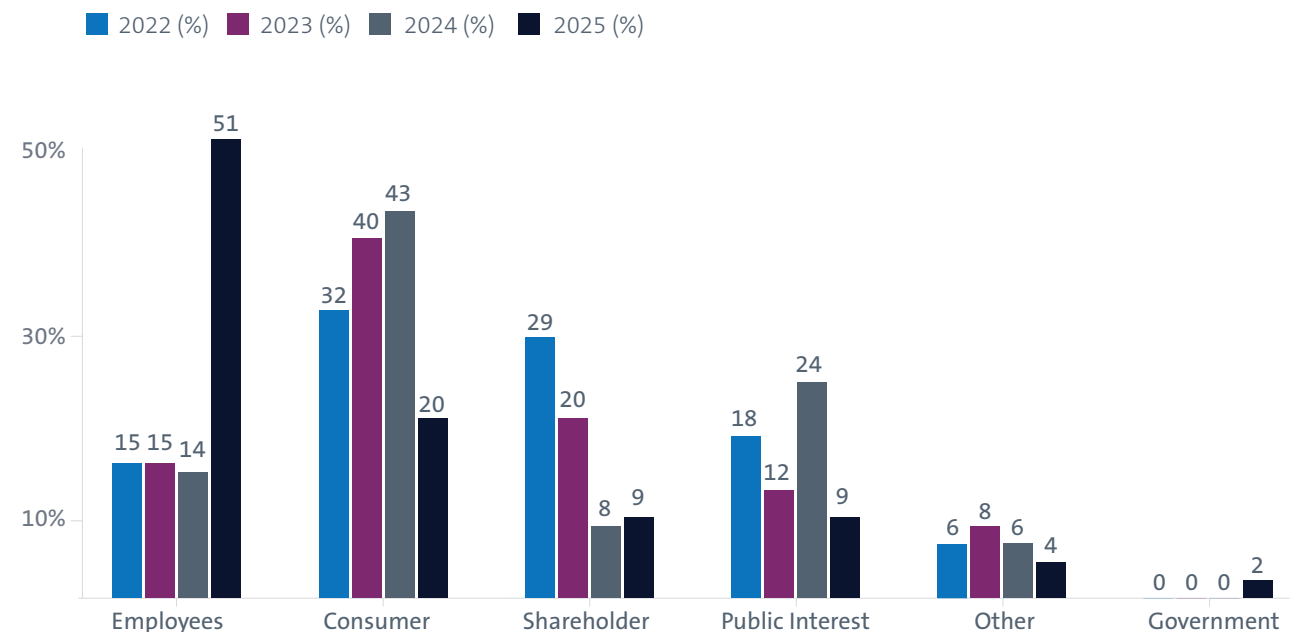
While there was a material decline in consumer class actions, the subject matter of the consumer claims remained relatively broad, including claims brought against automakers associated with alleged manufacturing defects, claims relating to alleged excessive insurance premiums, card surcharges and the quality of care provided to residents at aged care facilities.

There were five shareholder class actions commenced in 2025, broadly in line with the number of filings in 2024. The subject matter of these claims concerned earnings guidance disclosures, alleged accounting errors, production and cost projections provided by a mining business and broader corporate governance issues, including the scope and nature of transactions with related parties.

In a continuation of a trend that has emerged over recent years, public interest class actions remain a serious area of risk, particularly for government and state-affiliated enterprises. In 2025, public interest claims accounted for just under 10% of class action filings, including claims alleging discriminatory practices associated with 'Work for the Dole' initiatives in indigenous communities and the inadequate provision of healthcare and medical treatment to Aboriginal and Torres Strait Islander people.

Whether the move away from consumer claims was a temporary blip that will readjust in 2026 remains to be seen. Interestingly, when the abnormal concentration of junior doctor underpayment claims is considered in aggregate, the proportion of consumer filings in 2025 sits at 30%, broadly in line with recent years. In light of the ongoing broad base of subject matters raised in consumer claims and the regulatory focus on cost-of-living issues, we wouldn't be surprised if consumer class actions bounce back in 2026 and account for a more substantial proportion of filings.

Share of class action filings by type (%)



2025 year in review

Healthcare dominates

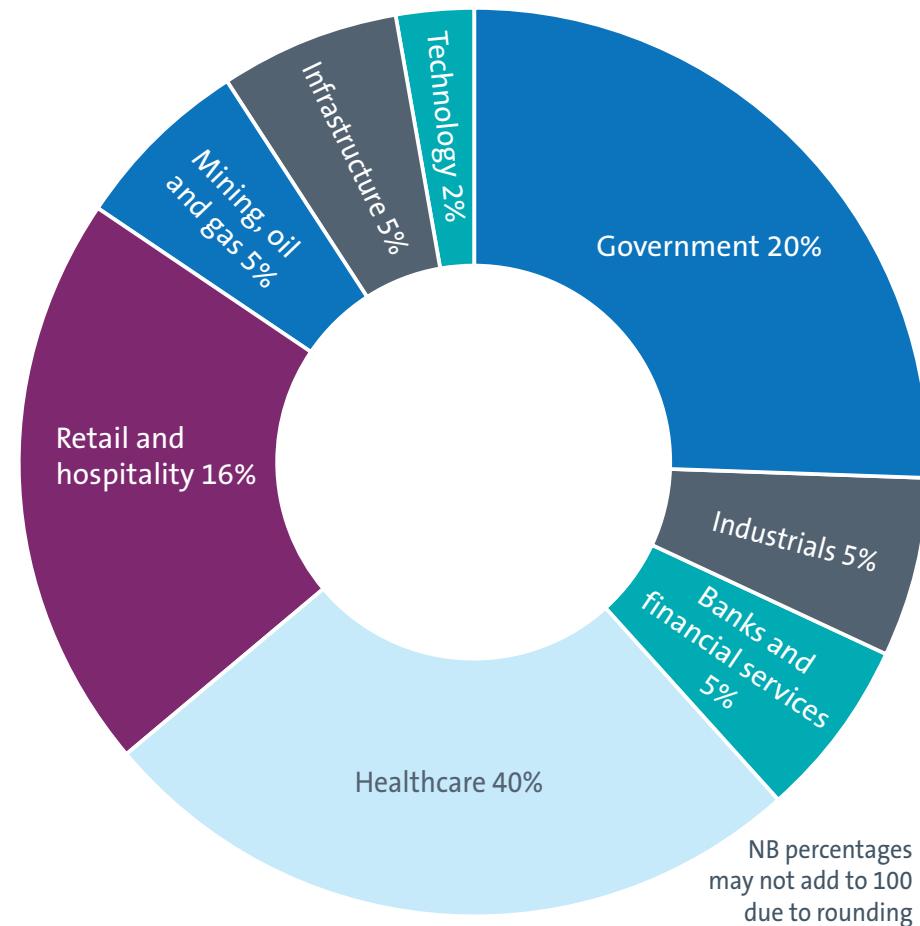
In 2025, the healthcare sector was the target of the highest number of class action filings, accounting for 40% of claims filed. However, the high proportion of healthcare filings was principally attributable to the irregular volume of junior doctor underpayment class actions (discussed further in the employee claims section of this report).

In a continuation of a trend that has emerged over recent years, claims against the Government once again represented a significant proportion of class action filings in 2025, accounting for 20% of total claims. Like recent years, many of the claims against the Government were public interest class actions brought on behalf of indigenous communities.

Looking elsewhere:

- Retail and hospitality claims made up 16% of class actions filed in 2025. These claims were in large part made up by the cluster of class actions filed late in the year against five retailers for alleged underpayments and the failure to provide mandated breaks.
- Once again, the major banks did not face a class action (now for the fourth year in a row). The flurry of activity involving the banks in connection with the Financial Services Royal Commission is now well and truly in the rear-view mirror. The three claims brought against financial institutions in 2025 related to alleged excessive insurance premiums, 'flex commissions' charged by an auto financier and a shareholder class action brought against a fintech company.
- Only three class actions were filed in the industrials sector in 2025, all involving automakers relating to diesel emissions, paint peeling and other alleged manufacturing defects.

Filings by sector (2025)



2025 year in review

Federal Court remains the go-to jurisdiction

Once again, in 2025 the Federal Court remained the jurisdiction of choice for class action filings, accounting for 80% of new claims filed for the year. This represents a significant uptick on recent years where the Federal Court has seen approximately two-thirds of annual filings.

The Supreme Court of Victoria remained the second most popular jurisdiction, having firmly cemented itself as the most-favoured alternative to the Federal Court following the introduction of the 'group costs order' regime in 2020 (which permits plaintiff lawyers to obtain contingency fees in class action proceedings). However,

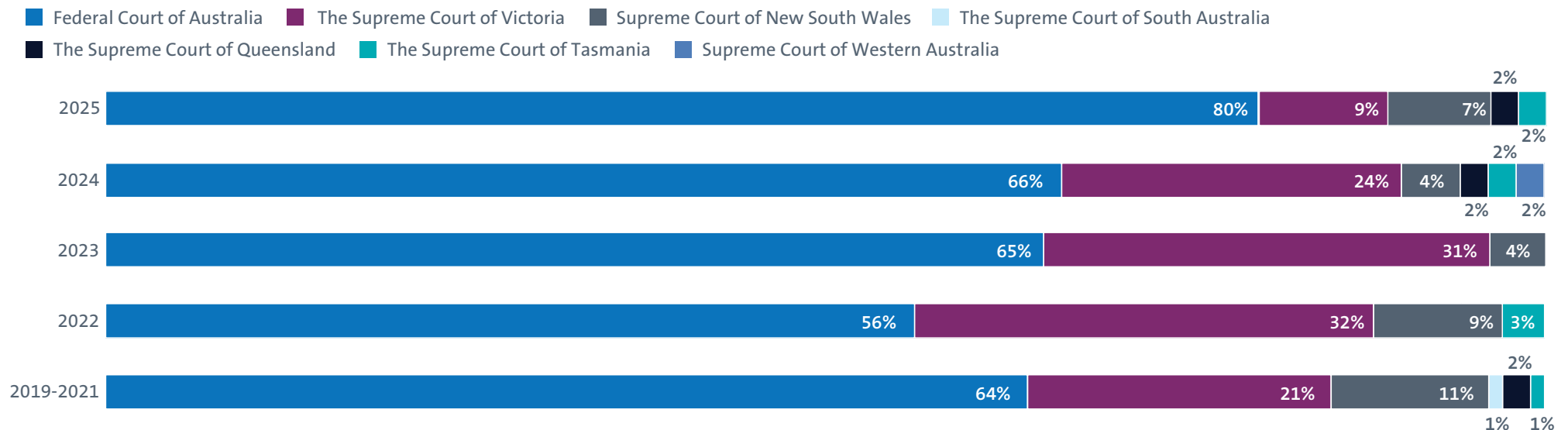
in an interesting development, the proportion of filings in the Supreme Court of Victoria has tailed off, dropping from more than 30% of claims in 2022 and 2023 to account for less than 10% of new claims filed in 2025.

There was a smattering of filings across other state jurisdictions, typically involving claims giving rise to discrete localised issues, including:

- four claims in the Supreme Court of New South Wales
- one claim in the Supreme Court of Queensland
- one claim in the Supreme Court of Tasmania.

In 2026, we expect the Federal Court will remain the go-to jurisdiction, particularly following the High Court's ruling giving common fund orders the green light (discussed further in the funded claims section of this report). While its proportion of filings may have dipped in 2025, it is also likely the Supreme Court of Victoria will remain the second option given the High Court's confirmation that contingency fees are not permitted outside Victoria (also discussed in the funded claims section of this report).

Filings by jurisdiction



Key areas of focus

Consumer claims

A softer year

Overall, 2025 was a distinctly softer year for consumer class actions, which have fallen off their pedestal as the predominant type of class action filing across recent years.

Consumer claims made up around 20% of total class action filings last year (or around 30% if the 19 mirroring ‘junior doctor’ class actions in Victoria are consolidated in the data set). This compares to about 43% of total claims in 2024 and is a decline in raw terms from 22 to 11 filings (a 50% drop year-on-year).

The subject matter of consumer claims remains relatively diverse and wide-ranging in nature, indicating a flexible approach by class action promoters in taking advantage of what opportunities present themselves. By way of a few observations on the filings, and potential consumer class action risks over the year ahead:

- There continues to be a steady flow of new automotive class actions, with three filed against automakers last year for alleged breaches of the Australian Consumer Law and—in particular—the frequently-invoked ‘acceptable quality’ guarantee. This is generally consistent with the filing levels seen in 2024 and perhaps comes as something of a surprise to those

predicting a flurry of additional car-related claims in the wake of the High Court’s decisions in the *Ford v Capic* and *Toyota v Williams* appeals.

- Throughout 2026, we expect various nuances in relation to the assessment of damages under the Australian Consumer Law to continue to be worked through before the courts. 2025 saw a surprising absence of conventional product liability class actions (eg those concerning defective pharmaceutical products or medical devices), which have been a mainstay in previous years. It is possible this downturn is just a temporary blip, with the prevalence of these claims in the US an indicator that numbers may return in the coming year.
- As in 2024, a large proportion of the consumer claims in 2025 were brought against retailers and financial services providers in relation to allegedly deceptive pricing practices, illusory discounts, misleading conduct, ‘junk’ or unsuitable insurance products, or similar. We expect this focus to continue, in line with regulatory priorities on cost-of-living pressures and a return to rising interest rates.

A final notable trend is the prevalence of class actions seeking to ‘piggy back’ on either previous class actions (eg the previous Toyota DPF class action), regulatory proceedings (eg the ACCC supermarket pricing proceedings) or commissions of inquiry (eg the Aged Care Royal Commission), indicating that entrepreneurial plaintiff firms and litigation funders remain keen to capitalise on previous proceedings or inquiries as a ‘road map’ for new filings.

Key areas of focus

Shareholder claims

Have we reached an equilibrium?

Consistent with 2024, shareholder class actions once again accounted for a relatively modest proportion of filings in 2025. In the midst of a growing body of case law highlighting the significant challenges for plaintiffs in establishing the allegations the subject of these claims (particularly in relation to causation and loss), class action promoters are adjusting their risk tolerance. This is reflected by:

- the declining rate of new filings;
- the broad base of issues covered by these claims over recent years, including novel claims relating to cybersecurity disclosures and the accounting treatment of entitlements payable to employees. The broadening base of issues that serve as the catalyst for shareholder class actions indicates that class action promoters are looking for new and innovative ways to advance these proceedings, pivoting away from some of the more traditional issues that have triggered these claims;

- a decline in the number of competing class actions. In years gone by, it was extremely common for hotly contested carriage disputes to arise between plaintiff law firms vying to pursue shareholder claims (including cases where there were up to four and five competing filings). It is now far less common for these carriage disputes to arise, with class action promoters moving away from competing claims and demonstrating a preference to join forces and consolidate proceedings when the issue of multiplicity does arise; and
- a number of prominent plaintiff firms and litigation funders withdrawing from the arena entirely, no longer looking to commence or finance shareholder claims.

In saying this, we would caution against writing off shareholder class action risk. While the environment for bringing these claims has cooled in recent years, there are still a large number of cases working their way through the courts, including on appeal (with one proceeding set for an important decision from the High Court relating to the assessment of loss and damage). As further decisions are handed down, plaintiff firms and funders will continue to adjust their strategies and approach to these claims in light of the further judgments provided by the courts.

Key areas of focus

Employee claims

The most common form of claim

As noted in our analysis of the class action filing statistics, the filing in Victoria of 19 employment class actions on a single day skewed the data for employment class actions last year. With those included, employment class actions were by far the most common form of class action in 2025. If removed, employee claims maintained their trend in recent years of being the second most common type of class action.

Notable trends in employment class action risk in 2025 include:

- Filings concentrated on the Retail, Hospitality and Leisure sector, particularly around underpayments and historic employee entitlement structures, with five claims targeting major national hospitality and retail employers.

- The 19 Victorian junior doctor class action filings brought the total to 30 of such class actions filed in the state over recent years, the first of which was commenced in 2021. A landmark settlement, including all 30 claims, was approved in late 2025. The settlement was also the first occasion on which a reimbursement payment was awarded to an industrial association for its time and costs incurred in pursuing a class action. We expect that marked the end of junior doctor underpayment claims in Victoria, but the risk remains in other jurisdictions with a similar claim filed in late 2025 in the Supreme Court of Tasmania, and another filed in 2026 in the Federal Court on behalf of doctors in New South Wales.
- Two new employment claims were brought in the government sector; one based on alleged underpayments and the other raising allegations of sexual harassment and discrimination.

Looking ahead:

- The Federal Court's decision in September 2025 that the use of contractual set-off clauses to discharge obligations under a modern award may only operate on a pay-period basis is a key development that may shape class action risk for employers in the years ahead.² By limiting the ability to offset over-award payments across multiple pay periods, the decision increases the prospect that individual pay-period discrepancies may combine into cohort-wide underpayments. We expect this will increase the attractiveness of class actions as a mechanism for pursuing payroll and industrial instrument compliance issues, particularly within large, shift-based workforces.
- More generally, employment class action risk is set to remain a staple of the class action landscape, as promoters continue to find new ways to bring claims against employers, as demonstrated by the diverse range of class actions in 2025.

Key areas of focus

Competition claims

Momentum in digital platform claims

Private enforcement of competition law through class actions has historically been limited in Australia. Recent developments, however, suggest an inflection point in relation to misuse of market power claims. The first cohort of such class actions, spanning both digital platform and regulated energy markets, has produced a mixed bag of results. Success in digital platform proceedings in 2025 stands in contrast to the failure of energy market class actions in late 2024,³ highlighting both the complexity of these claims and the conditions under which they may succeed.

The digital platform proceedings include the claims commenced by Epic Games (the developer of *Fortnite*) against Apple and Google alleging the misuse of market power in connection with commissions charged for digital purchases through the Apple App Store and Google Play Store. Epic alleged that contractual and technical restrictions, preventing alternative app distribution and mandating the use of proprietary in-app payment systems, substantially lessened competition. In two 'follow on' class actions against Apple and Google, it was alleged that this anti-competitive conduct resulted in the overcharging of commissions.

The four proceedings were heard by Justice Beach in a significant joint trial in 2024. Given the derivative nature of the liability claim in the class actions, the parties to the class actions agreed to be bound by the liability findings in the Epic proceedings and take a limited role at trial (except on the question of overcharge).

In judgments handed down in 2025, Epic and the class action applicants were successful on liability, with the court finding that Apple and Google contravened the misuse of market power obligations in s46 of the *Competition and Consumer Act*. Further hearings will determine appropriate relief and the extent of any overcharge and resulting loss.

The outcome demonstrates that misuse of market power class actions can succeed where market power is structural and durable, the impugned conduct is uniform across a large cohort of persons and loss is capable of being modelled on a group-wide basis.

Further misuse of market power proceedings have been brought against Sony, alleging anti-competitive conduct in relation to sales through the PlayStation ecosystem, and Google on behalf of publishers alleging anti-competitive conduct in the digital advertising technology supply chain.

In light of the recent outcomes and the ongoing global and Australian regulatory scrutiny in this area, we expect to see continued focus on digital platform class actions in 2026.

Key areas of focus

Funded claims

Federal Court primary forum

The Federal Court remained the primary forum for funded class actions in 2025, with more than a third of new filings involving a litigation funder. In the Supreme Court of Victoria, two of the five new class actions were funded, with the remainder subject to Group Costs Orders (**GCOs**).

Clarity on Common Fund Orders

In August 2025, the High Court delivered its decision in *Kain v R&B Investments*,⁴ providing important clarity on common fund orders (**CFOs**). The Court confirmed that CFOs—which permit litigation funders to recover a commission from the recoveries of all group members—may be made at the time of settlement or judgment, while reaffirming its earlier decision in *BMW v Brewster*⁵ that CFOs cannot be made at the commencement of proceedings. The court also held that ‘Solicitors’ CFOs’, which would permit lawyers to be paid a commission from group members’ recoveries, cannot be made at any stage because they are contrary to the prohibition on contingency fees.

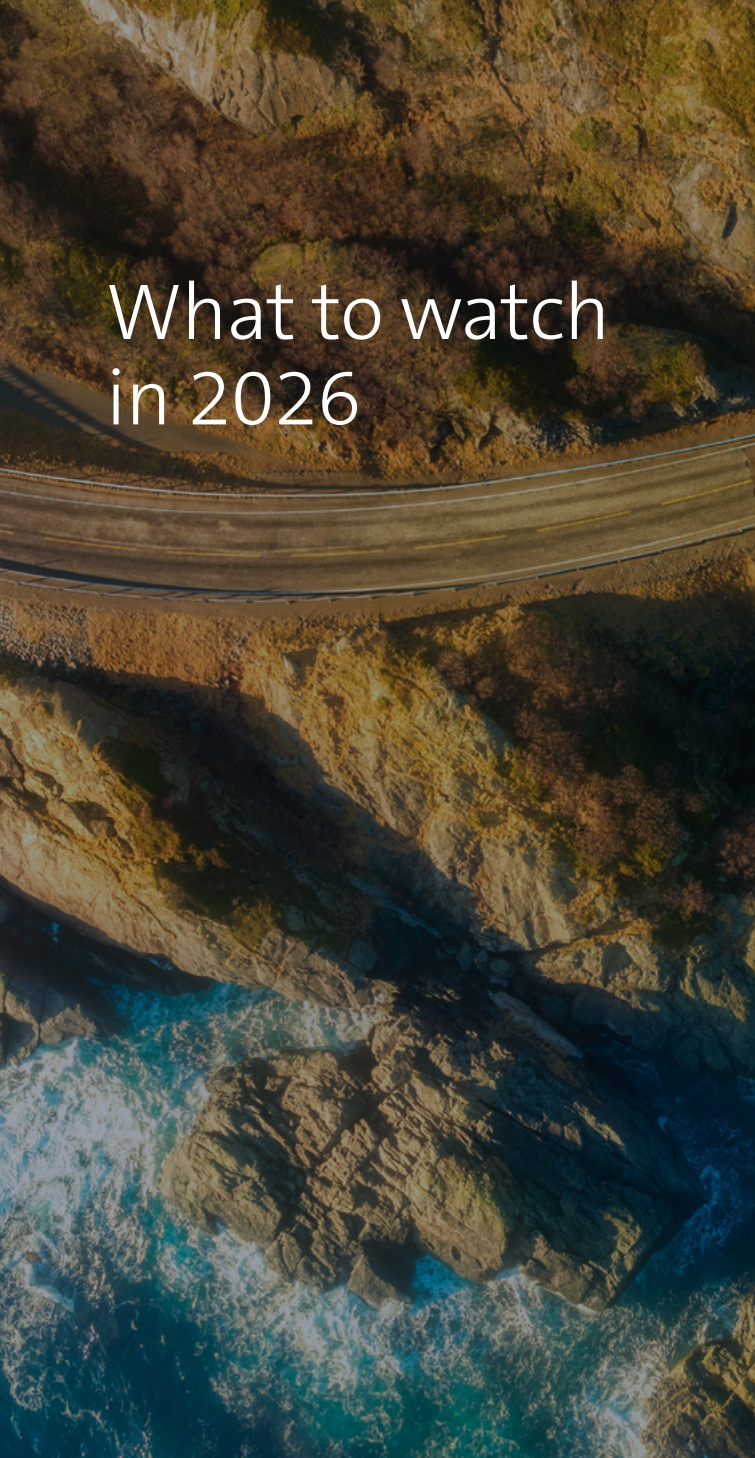
The decision brings greater certainty as to available funding mechanisms, enabling class action promoters to structure proceedings with greater confidence.

Uncertainty nevertheless remains as to whether a CFO will ultimately be granted, and at what rate. The decision also entrenches Victoria’s distinct position in the funding landscape, being the only jurisdiction in which a funding order may be made in favour of solicitors through the GCO regime. A separate High Court judgment⁶ confirmed that a Victorian GCO is not enforceable in NSW and suggested that legislative intervention would be required for similar mechanisms to operate elsewhere. More than five years after the introduction of GCOs, no other jurisdiction has followed suit, leaving Victoria the preferred forum for proceedings that depend on solicitor-based funding models.

GCO rates: ratcheting and variation

Questions concerning the structure and adjustment of GCO rates have continued to occupy the Supreme Court of Victoria. Since ‘ratcheted’ GCOs—which involve a sliding scale GCO rate—were first proposed in 2022, judges have taken differing approaches. In late 2025, the court declined to make a ratcheted GCO, instead fixing a flat rate of 30%, emphasising the court’s ongoing supervisory role and the power to vary a GCO rate (if appropriate) on settlement.

That reasoning aligns closely with the court’s developing approach to the variation of GCO rates. To date, GCO rates have only been varied downwards on settlement, to improve returns to group members. For example, in September 2025 the court reduced a previously approved GCO rate from 24.66% to 17.39% to reflect an early resolution and comparative returns that would have been available under other funding models. Whether the power to vary GCOs can operate in both directions remains unresolved, with plaintiffs in another class action seeking an uplift of the GCO rate on the basis that the previously approved rate renders the proceeding financially unviable.

An aerial photograph showing a winding asphalt road along a rugged coastline. The road curves from the top left towards the center. Below the road, there are steep, rocky cliffs that drop down to a turbulent blue sea with white foam from waves crashing against the rocks. The overall scene is dramatic and scenic.

What to watch in 2026

2026 is set to be another significant year for class actions in Australia. Important judgments will clarify key aspects of the law (particularly in relation to shareholder class actions), while new regulatory enforcement priorities and recent and upcoming legislative reforms may materially affect the class action risk environment. We are keeping an especially close eye on the following matters.

- The appeal to the High Court of the decisions in the *Zonia* and *Baron* shareholder class action proceedings.⁷ The appeals raise important questions for the High Court, including the approach to causation, the proper measure of loss in shareholder class actions and the threshold for establishing disclosure breaches.
- Whether cyber and data breach class actions prove viable. The *Optus*⁸ and *Medibank*⁹ class actions are still on foot, with OAIC civil penalty proceedings and representative complaints progressing in parallel. Judicial guidance remains limited on the nature and extent of recoverable loss, particularly the compensability of noneconomic harm. Greater clarity is expected as these matters progress. This includes whether cyber class actions can succeed in the absence of demonstratable direct financial loss, and the implications for exposure and settlement dynamics.
- Whether US product liability class action trends continue to flow through to Australia. In recent years, we have observed an increase in Australian defective product class actions following the outcomes of US proceedings. If this trend continues we expect it to generate additional filings in 2026, particularly in the healthcare sector.
- Whether heightened regulatory focus on consumer issues, driven by cost-of-living pressures, increases consumer class action filings. Continued ACCC investigations and regulatory reforms may also drive greater competition class action risk, including follow-on claims arising from regulatory scrutiny, even where no liability findings are made.
- Consultation on draft laws banning unfair trading practices signals a tightening regulatory environment. High-risk areas include subscription traps. If passed, these laws may increase class action exposure for corporates whose consumer practices are scrutinised under the new regime.
- The High Court's decisions in *Kain*¹⁰ and *Bogan*¹¹ may renew calls for reform. In those cases, the Court held respectively that the Federal Court does not have power to make solicitors' common funds orders, and that Victorian GCOs cannot travel with a case transferred to another jurisdiction. These outcomes may prompt the Government to revisit the Australian Law Reform Commission's 2019 recommendation to permit contingency fee arrangements in class actions, consistent with the Victorian GCO regime, and other states to consider adopting a Victorian GCO approach.

Connect with us

The breadth and depth of our experience across all sectors give our team the practical knowledge and insights to deal with the unique legal, strategic and reputational issues that arise when a class action is threatened or commenced. Our team is scanning the horizon for tomorrow's challenges, and we're at the forefront of discussion around reform, and defending the cutting-edge claims that continue to shape the modern class action practice.



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Endnotes

- 1 In Victoria, plaintiff lawyers are entitled to extract their fees on the basis of 'group costs order'. A group costs order operates as a form of contingency fee arrangement, with the lawyer's fees extracted as a proportion of any damages obtained by group members.
- 2 *Fair Work Ombudsman v Woolworths Group Limited; Fair Work Ombudsman v Coles Supermarkets Australia Pty Ltd; Baker v Woolworths Group Limited; Pabalan v Coles Supermarkets Australia Pty Ltd* [2025] FCA 1092.
- 3 *Stillwater Pastoral Co Pty Ltd v Stanwell Corporation Ltd* [2024] FCA 1382; Order of Justice Lee in *SA Country Pubs Pty Ltd v AGL Energy Ltd* (Federal Court of Australia, NSD500/2023, 25 February 2024).
- 4 [2025] HCA 28.
- 5 *BMW Australia Ltd v Brewster*, (2019) 269 CLR 574.
- 6 *Bogan v Smedley*, [2025] HCA 7.
- 7 *Zonia Holdings Pty Ltd v Commonwealth Bank of Australia* [2025] FCAFC 123; *Baron & Anor v Commonwealth Bank of Australia* [2025] FCAFC 63.
- 8 *Peter Julian Robertson & Anor v Singtel Optus Pty Limited* (Federal Court of Australia, VID256/2023, ongoing).
- 9 *Zoe Lee McClure v Medibank Private Limited* (Federal Court of Australia, VID64/2023, ongoing)
- 10 *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.
- 11 *Bogan v The Estate of Peter John Smedley (Deceased)* [2025] HCA 7.

