

# Class action risk 2025

## Old risks remain. New ones loom.

Class action filings dipped slightly in 2024, although the total number of claims filed was broadly in line with recent years. Consumer claims—which have dominated for several years—were once again the most common form of class action, with filings spread across a wide range of sectors. Overall, class action risk remains a reality for those doing business in Australia, and there are a number of developments on the horizon in 2025 with the potential to affect that risk.



# Key trends

The Australian class action market is one of the most developed in the world. While the headline number of filings has declined, class action risk is far from subsiding.

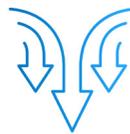
Across 2024 there were several developments that bear upon the economics of class actions and class action risk more broadly, including a number of significant judgments that are the subject of appeals likely to be determined in 2025. Over the year ahead, there is also the potential for a change in federal government and an associated shift in the legislative reform agenda. While there is uncertainty with these developments and how the market will react, it is clear that class action risk will not remain static across 2025.

In this report we provide an overview of class action filings throughout 2024 and take stock of several factors that are poised to shape the class action landscape moving forward.



## Late-year rally

Continuing a trend seen over several years now, class action filings gained momentum as the year progressed. At the half-year mark, only 14 class actions had been filed, however, following a late-year surge, 2024 closed with 51 filings (with 19 claims filed across November – December).



## Competing claims dip

In 2023, competing class actions accounted for almost 25% of filings. However, in 2024, less than 10% of filings were competing claims – with 47 of the 51 class actions that were filed concerning unique subject matter claims.



## Novel funding structures

In 2024, a Full Court of the Federal Court gave the green light to a new funding structure that has come to be known as a solicitors' common fund order or 'SCFO'. These orders function in a similar fashion to the group costs order regime in Victoria, which permits plaintiff lawyers to obtain contingency fees for their legal services in class action proceedings. The power of the court to make SCFOs is the subject of a pending High Court appeal.



## Consumer claims more popular than ever

Class action promoters remain attracted to consumer claims, which accounted for more than 40% of filings in 2024. These claims span many sectors and concern a range of subject matter, including medical and pharmaceutical products, motor vehicles and financial products.



## Recalibration of shareholder claims

Following an almost 12-month hiatus, shareholder class actions returned in the second half of 2024 with four filings over the final months of the year. Despite a run of losses for plaintiffs pursuing these claims (a number of which are under appeal), the handful of filings late in the year indicates that, for listed entities, this unique form of risk still has a firm pulse.



## Growth in plaintiff firms

There continues to be growth in the number of law firms pursuing plaintiff claims, including breakaway firms from established local class action practices and the emergence of foreign-based firms.



## Litigation funding market remains active

Despite the introduction of the group costs order regime in Victoria and the advent of SCFOs in the Federal Court, litigation funders maintain an active presence financing class actions and have adapted to the changing market conditions. In excess of 40% of the class actions filed in 2024 involved a third-party funder, which is broadly in line with numbers seen in recent years.



## Regulatory activity and offshore litigation

There continues to be a trend of class action filings following regulatory activity—particularly ASIC, AUSTRAC and ACCC investigations and enforcement proceedings. Class action promoters have also maintained a practice of launching proceedings in the wake of litigation in the United States, particularly in relation to claims involving medical and pharmaceutical products.

# 2024 year in review

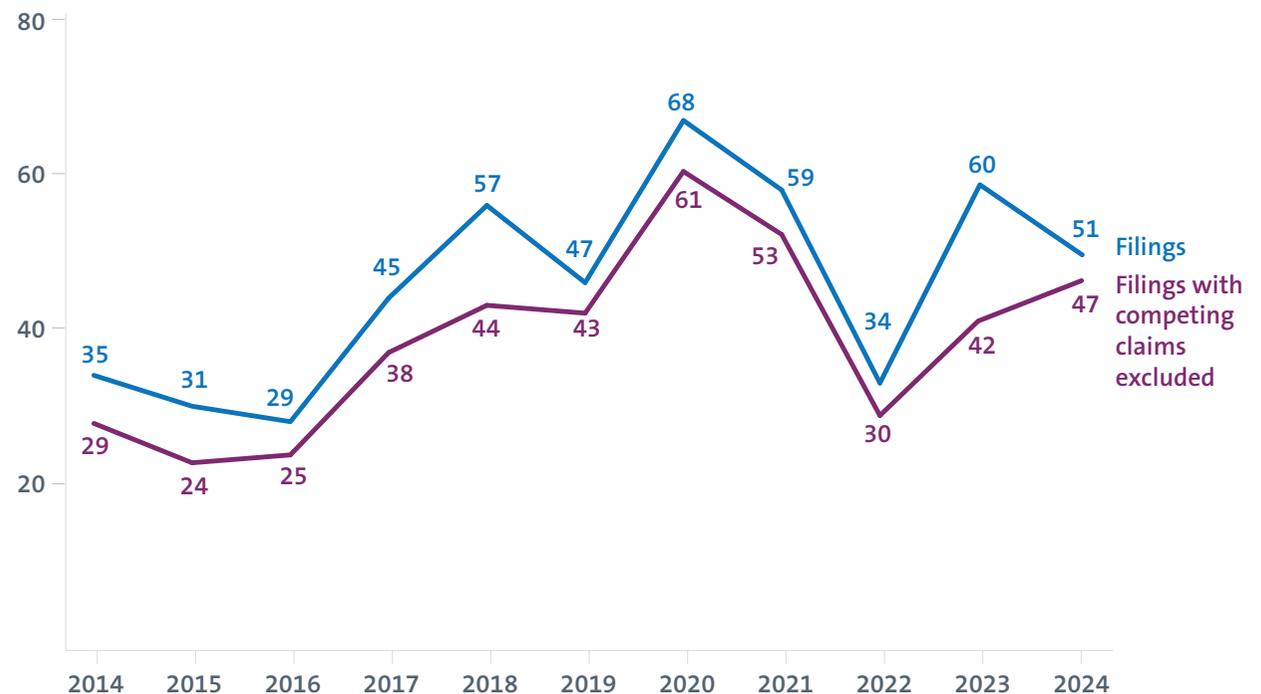
## Perhaps a point of equilibrium?

Coming off the second biggest year of class action filings of all time, there was a modest decline in filings in 2024. However, on close analysis of the data, class action risk is broadly in-line with recent years.

The principal reason for the reduction in filings was a sharp fall in competing class actions (ie multiple claims brought against the same defendant concerning the same or similar issues), which accounted for less than 10% of filings in 2024 (having accounted for approximately one-quarter of claims filed in 2023). In fact, when competing class actions are excluded from the data, the total number of unique class action filings in 2024 was the third highest on record (and higher than 2023).

Bearing in mind that 2020 was an outlier year, and the filings across 2021 and 2022 may be viewed in aggregate,<sup>1</sup> in applying a long-term assessment of the data it appears we might have reached (at least temporarily) a point of equilibrium where the annual volume of unique subject-matter filings may be expected to sit at approximately 45-50 claims.

Number of class action filings



<sup>1</sup> In late 2021, the former federal government proposed legislation introducing a rebuttable presumption that returns to class action promoters must not exceed 30% of the proceeds of a claim. The proposed legislation led to a surge in filings in late 2021, with 16 claims filed over the final five weeks of the year, including several claims that were likely slated for 2022 but were commenced on an accelerated basis before the proposed legislation came into effect.

# 2024 year in review

## Consumer claims continue to dominate

Continuing a trend that we have observed for several years now, consumer claims continue to dominate the class action landscape, accounting for approximately 43% of filings in 2024. Shareholder claims have declined, while public interest filings have doubled year-on-year.

Unlike recent years, where class actions against automakers accounted for a substantial proportion of consumer claims, in 2024 a very broad base of claims brought on behalf of consumers were filed, including:

- several product liability class actions relating to medical and pharmaceutical products (which primarily followed in the slipstream of equivalent claims in the United States);
- claims against retailers relating to discounting practices and consumer warranties; and
- further claims against automakers concerning alleged manufacturing defects.

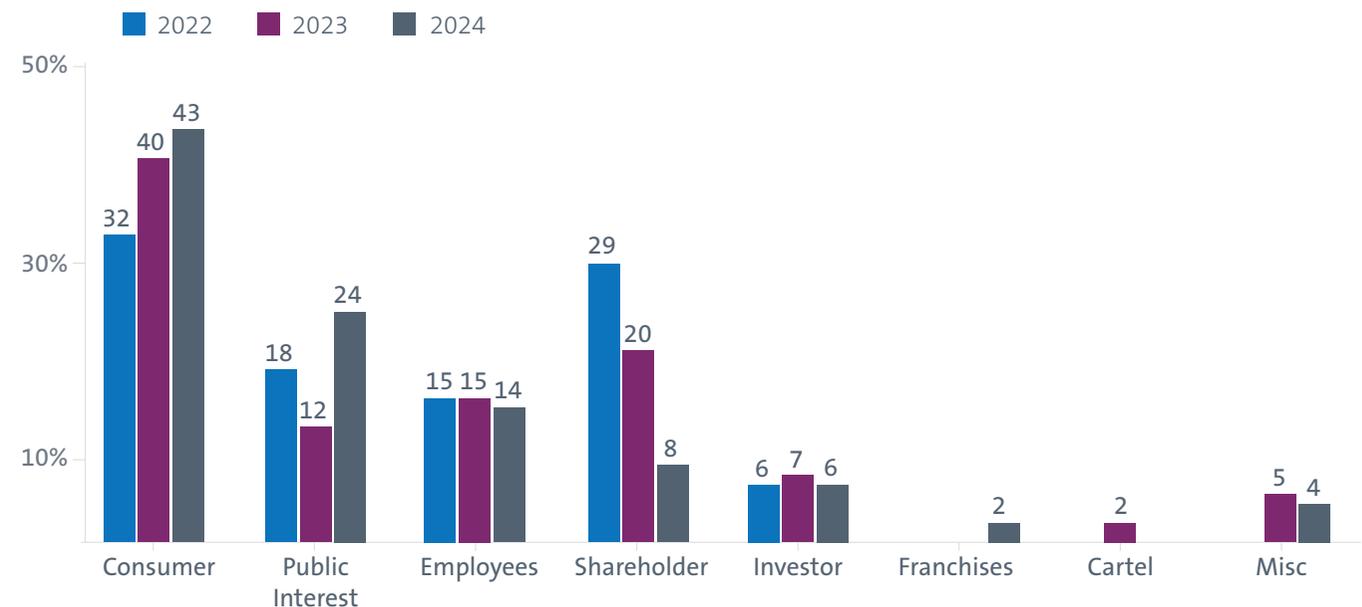
The subject matter of the other consumer claims included flight credits, building products, insurance premiums and superannuation fees.

Shareholder claims, which have long been a popular form of class action, did not account for any filings until the second half of the year, with four claims filed over the final months of 2024. We discuss recent trends with shareholder class actions later in this report.

The other takeaways from the 2024 filings include:

- a material increase in public interest claims, including class actions relating to indigenous housing conditions, the detention of refugees, indigenous fisheries, the removal of First Nations children from their families, policing in the Northern Territory and surcharge payments charged by the state of Victoria to foreign land purchasers; and
- a steady rate of employee class actions, brought in connection with alleged underpayments and sexual harassment issues.

### Share of class action filings by type (%)



# 2024 year in review

## Government leads pack in a broad field

In a continuation of a trend observed over recent years, in 2024 class action filings were spread across a range of sectors.

In 2024, the sector subject to the highest number of claims was government, which accounted for approximately 22% of filings. The resurgence of claims against the Government signals a return to the position in 2021 and 2022 when the Government was the primary target of class action proceedings. In large part, the influx of government claims was attributable to the spike in public interest class actions (including those mentioned in the previous section of the report).

The healthcare, banks & financial services and industrials sectors each accounted for approximately 14-16% of filings.

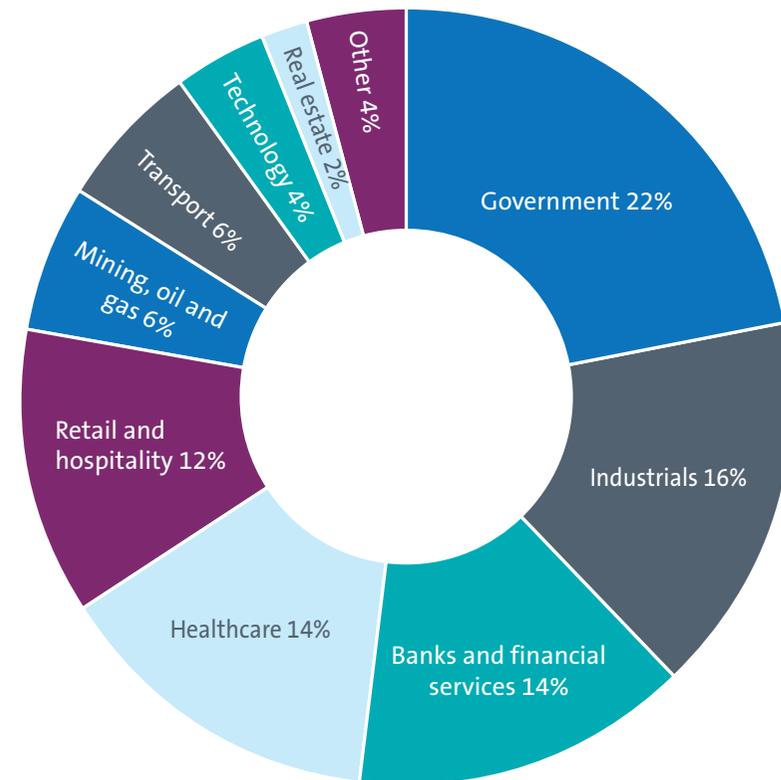
The healthcare claims were comprised of four product liability proceedings and three claims brought in connection with the alleged underpayment of junior doctors. For several years now, class action promoters have maintained a keen appetite to pursue underpayment claims on behalf of junior doctors and, following a number of settlements in 2024, there may be more of these claims to come (across the healthcare and other sectors).

After a number of years of intense class action activity, 2024 marked the third year running that the major banks did not face any class action filings (although there was one proceeding filed against a subsidiary on behalf of former franchisees). The subject matter of the claims in the banks & financial services sector included superannuation fees, insurance premiums, the sale of complex financial products and credit ratings.

Class action claims in the industrials sector included three filings against automakers and claims brought against a building company, a manufacturer of building supplies, a water treatment company and a global manufacturing company.

In 2023, the retail & hospitality sector was the target of the most class action claims, principally in connection with the alleged underpayment of employees and failure to provide rest breaks. In 2024, the proportion of claims filed in the retail & hospitality sector more than halved year-on-year, with no employment claims commenced in this sector. The claims brought against retailers across 2024 related to discounting practices, product warranties and a shareholder class action.

Share of class action filings by sector in 2024



NB percentages may not add to 100 due to rounding

# 2024 year in review

## Federal Court remains jurisdiction of choice

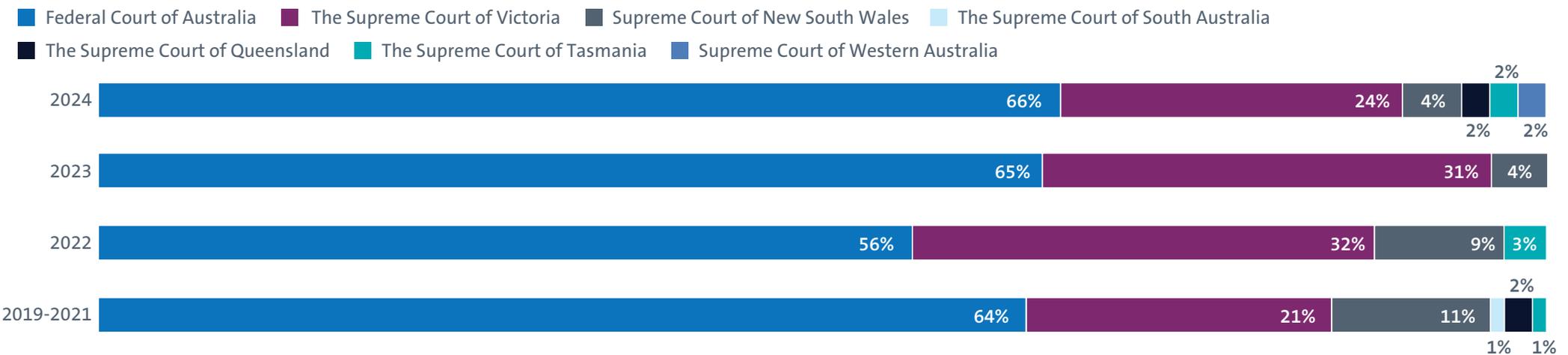
Consistent with a long-running trend, in 2024 the Federal Court remained the jurisdiction of choice for class action promoters, accounting for approximately two-thirds of all class action filings (with the overwhelming majority of claims filed across the NSW and Victorian registries of the court).

Similar to recent years, following the introduction of the 'group costs order' regime (which permits plaintiff lawyers to obtain contingency fees in class action proceedings), the Supreme Court of Victoria remained in clear second place, attracting almost one in four of the claims filed over the year.

There were a handful of class actions filed across other jurisdictions, including two 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 and the first ever class action filed in the Supreme Court of Western Australia (following the introduction of the WA class action regime in 2023).

There are no signs that the concentration of filings across the Federal Court and the Supreme Court of Victoria is poised to shift over the foreseeable future.

### Share of class action filings by jurisdiction



# Key areas of focus

## Consumer claims

### A surge amid economic pressures

**In line with recent years, 2024 again saw consumer claims dominate the class action landscape—comprising over 40% of new filings. While perhaps unsurprising given the numbers, consumer claims spanned sectors and industries, suggesting this form of class action risk should be a clear focal point for companies operating in Australia.**

#### Pricing / discounts claims

A major theme emerging from the 2024 data is activity against retailers and financial services providers, typically relating to pricing promises, discounting practices and warranties sold on consumer goods, centred on allegations of misleading or deceptive conduct and unconscionability.

These claims align with ongoing regulatory enforcement priorities, with the cost of living crisis putting a spotlight on everyday items and consumer value. We expect this regulatory focus will continue to generate opportunities for entrepreneurial class action promoters in the year ahead.

#### Product liability claims

While a constant presence in previous years, another noticeable trend in 2024 was the resurgence of ‘conventional’ product liability claims. Many of these claims involved allegations of the sale of unsafe or defective medical or pharmaceutical products, such as those concerning talcum powder, cold and flu medications, earplugs and breast implants. These claims typically followed in the wake of similar activity in the United States.

**This form of class action risk should be a clear focal point for companies operating in Australia.**

#### Automotive claims

Unlike in previous years, where claims against automotive manufacturers and suppliers were a standout in the filings data, automotive activity in 2024 was far more subdued. We foreshadowed this possibility in last year’s Class Action Risk Report, where we flagged the potential for class action promoters to adopt a ‘wait and see’ approach pending the High Court’s determination of two key appeals in class actions against Toyota and Ford.

These appeals were finally resolved in November 2024. In its reasons for judgment, the High Court gave important guidance on the availability of ‘reduction in value’ damages for breach of the acceptable quality guarantee under the ACL. This form of damages has been central to the significant damages awards obtained by plaintiffs in previous claims, and we consider this an important driver of new filings.

As reported previously, the High Court decision was a ‘middle of the road’ outcome in which the Court held that:

- this form of damages is a ‘performance-based remedy’ and reflects the monetary difference between the value of what the consumer bargained for and what they ultimately received;
- the assessment of damages is to be undertaken having regard to all that is known at the time of trial about the ‘state and condition of the goods’ at the time of supply; and
- in doing so, the court is to have regard to the nature of the defect and the likely availability, timing, effectiveness and cost of any repairs.

The High Court’s judgment gave welcome relief to automakers that ‘field actions’ (such as repairs / replacements) should be taken into account in assessing damages. However, it also means such steps are unlikely to provide a complete answer to a claim for damages. Further, where the defect is serious and/or takes a long time to repair, the potential exposure to damages may be considerable.

It will be interesting to see how plaintiff law firms respond to this development, but there may be some reason to think automotive class action filings will rebound. Likewise other class actions affecting manufacturers of popular and high-value goods. This may be why, in keeping with this trend, just prior to the end of 2024 we saw the commencement of a new class action against an automaker. This remains an area to watch.

# Key areas of focus

## Shareholder class actions

### Late-year filings and future risks

Shareholder class actions represented a significantly smaller proportion of class action filings in 2024 than in previous years, with no filings over the first eight months of the year. The reluctance to pursue these claims was likely due, at least in part, to the dismissal of three proceedings in late 2023 and early 2024. However, signs of life returned with several late-year filings.

Due to the small sample size, it is difficult to discern any trends in shareholder class action activity across 2024, other than to observe that class action promoters are perhaps becoming more selective with their choice of shareholder claims. We anticipate the following matters will impact shareholder class action risk over the year ahead and otherwise warrant monitoring:

- Several key judgments that are expected (at both first instance and appellate level) which are set to provide further clarity on what is required to establish causation and loss in shareholder claims and will likely impact the way in which these claims are advanced moving forward.
- Given the difficulties in proving loss, plaintiffs have expressed a preference to seek separate trials on liability and loss—with the trial on the question of loss informed by the liability findings. However, given the intersection between the evidence concerning the assessment of liability and loss, there will be challenges in bifurcating shareholder class actions in this fashion.
- The heightened standard of proof for continuous disclosure breaches, established through reforms in 2021, has been considered for the first time in an ASIC proceeding.<sup>2</sup> This increased standard has not yet been tested in the class action context, but the impact of the reforms will be clarified as more claims make their way through the courts.

<sup>2</sup> *Australian Securities and Investments Commission v Holista Colltech Ltd* [2024] FCA 244.

## Employee claims

### Sector-specific targets and diversification of claim types

In 2024, employee claims remained the third-most common type of class action faced by Australian corporates. The proportion of employment class action filings has remained fairly steady for the six years since 2019, at about 15% of class action filings each year.

Notable trends in employment class action risk in 2024 include:

- The healthcare, government, mining, and oil & gas sectors have been the key targets of employment class actions. Although there were no new filings in 2024 in the retail & hospitality sector, this sector has been a target in previous years, and we have already seen one filing in that sector this year.
- Consistent with recent years, the new claims mostly involved allegations of underpayment and/or breach of employment terms. The healthcare sector has been a particular target for this type of claim, with three new underpayment cases filed in relation to the healthcare sector in 2024. These cases follow a 2023 decision which held that authorisation to work overtime is capable of being given impliedly, such as where the overtime work is necessary to do what is specifically required by the employer. A clear pattern in these cases is where employees are required to complete preparatory work before, or handover work after, their rostered shifts, even if this requirement is not express.
- Class action promoters are diversifying in the types of employment class action claims they pursue. In December 2024, we saw two new claims filed based on vicarious liability allegations for alleged sexual assault and harassment and sex-based discrimination.<sup>3</sup> These claims follow the introduction of a positive duty on employers to eliminate workplace sexual harassment in December 2022.

Employment class actions are now a consistent and core part of class action risk in Australia. As new positive duties are introduced on employers in areas such as sexual harassment, discrimination and psychological safety, we expect to see continued diversification from class action promoters into new types of employment class action claims.

<sup>3</sup> <https://portal.omnibridgeway.com/cases/register/rtiodiscrim-class-action-overview>.

# Key areas of focus

## Privacy and data breach claims

### Cyber incidents, legislative reform and regulatory focus heighten class action risk

**While there haven't been any new data breach or privacy class actions over the last twelve months, class action risk in this space remains high due to the continued prevalence and severity of cyber incidents, combined with the proliferation of cyber incident notification regimes and regulatory enforcement action—all of which are increasing visibility into cybersecurity and data-handling practices in Australia.**

A number of recent and potential regulatory developments may affect data breach and privacy class action risk over the year ahead, particularly in connection with the ongoing reforms of the Privacy Act.

**Class action promoters are also closely watching the myriad high-profile regulatory enforcement action being undertaken**

The most significant recent development was the introduction of a statutory tort for serious invasions of privacy. This new cause of action (which will take effect later this year) formed part of the first tranche of Privacy Act reforms announced in late 2024. Subsequent tranches of Privacy Act reforms are expected to follow the upcoming federal election.

While the introduction of the new tort is a key development, we do not expect it to increase class action risk as the tort only applies to serious invasions of privacy that are intentional or reckless (not merely negligent), creating a very high threshold that we do not expect to be established in most (if not all) data breach scenarios.

The most significant development remains on the horizon, with the Government agreeing in principle to a recommendation that would afford individuals a direct right of action for contraventions of the Privacy Act. The introduction of a direct right of action has been seen as a significant precursor to the potential expansion of privacy-related class actions in Australia. It would provide greater certainty to class action promoters about the availability of consumer redress for data breach claims, and may expressly allow damages for emotional distress (which is presently uncertain). Importantly, if combined with the anticipated (though as yet unconfirmed) removal of the employee records exemption in the Privacy Act, a direct right of action would significantly increase the privacy risk profile of many organisations—particularly non-consumer facing organisations with large, highly unionised workforces.

Class action promoters are also closely watching the myriad high-profile regulatory enforcement action being undertaken by the OAIC, ACMA and ASIC in relation to various cyber incidents that have occurred over recent years. Depending on their outcomes, these enforcement proceedings could provide guidance on several important aspects of Australian privacy law and fuel further class action activity in this space.

# Key areas of focus

## Funding landscape

### High Court decisions likely to shape future models

**The class action funding landscape has continued to evolve over the past twelve months as a number of proceedings head to the High Court to resolve questions about the availability and form of class action funding models. The funding developments to watch for broadly follow three key themes.**

#### **Common Fund Orders (including Solicitors' Common Fund Orders)**

In *Kain v R&B Investments Pty Ltd*, the High Court has been asked to resolve two important questions concerning CFOs; can the Federal Court make a CFO upon settlement or judgment of a class action, and if so, can it make a CFO in favour of solicitors (ie, a SFCO)?

While the High Court previously held in *BMW v Brewster* that CFOs could not be made at an early stage of a class action, there has been a steady trend of Federal Court decisions endorsing the making of CFOs on settlement of class action proceedings. In *Kain*, the High Court has granted special leave to determine the Federal Court's power to make CFOs upon settlement or judgment in a class action proceeding. The Court has also been invited to reopen and overturn *Brewster*. Accordingly, *Kain* presents the High Court with the opportunity to decide whether CFOs are ever available in class action proceedings, at least in the Federal Court.

The High Court in *Kain* is also considering whether the Federal Court has power to make SCFOs. Last year, the Full Federal Court held that an SCFO did not contravene the prohibition on contingency fee arrangements, because a payment to a solicitor under an SCFO would not be made pursuant to the terms of the solicitor's client retainer, but rather pursuant to the court's order.

If the High Court finds that the Federal Court does have the power to make CFOs and SFCOs, we can expect the Federal Court to remain the jurisdiction of choice for class action promoters in the future, although it will be interesting to see if the High Court provides any guidance for the circumstances in which SCFOs can be made and how they will operate.

#### **'Travelling' Group Cost Orders**

In *Bogan v Smedley*, the High Court has been asked to determine whether the existence of a Group Costs Order (**GCO**) made in the Supreme Court of Victoria is relevant to an application to transfer a class action proceeding to another jurisdiction and, if so, whether the GCO will 'travel' with the proceeding, such that the transferee court must proceed as if it had made the GCO.

The appeal is from a late 2023 decision of the Victorian Court of Appeal, which declined to transfer a class action proceeding to NSW because of the existence of a GCO, notwithstanding that NSW was otherwise the more appropriate forum. The High Court appeal was heard in November 2024, and we await a judgment.

An aerial photograph of a beach and ocean. The ocean is a deep blue, and the beach is a light brown color. There are some rocks and debris scattered along the shoreline. The text 'What to watch in 2025' is overlaid on the left side of the image.

# What to watch in 2025

All indications are that 2025 will be a significant year for class actions in Australia. We await not only the outcome of a number of judgments (including on appeal) that should clarify important aspects of the law, but also potential legislative reforms. We are watching the following matters particularly closely – the outcome of which has the potential to affect the economics and attractiveness of commencing class action proceedings and the risk for those doing business in Australia posed by class actions:

- The *Kain* appeal, in which the High Court is set to address whether SCFOs are available and the circumstances in which it is appropriate to make a SCFO, as well as potentially revisiting the issue of the availability of CFOs more broadly.
- The *Bogan* appeal, in which the High Court will address the transfer of proceedings from Victoria to another (otherwise more appropriate) jurisdiction in circumstances where a GCO has been made, and the question of whether a GCO can ‘travel’ to that new jurisdiction.
- The outcome of an appeal in which the High Court will determine whether the courts have power to make ‘class closure’ orders (noting there is an express statutory power to make class closure orders in Victoria).<sup>4</sup>
- Judgments in a number of shareholder class actions, including at least two appeals likely to provide guidance on how causation and loss are to be established.
- The courts’ approach to contested applications for security for costs in relation to self-funding plaintiff law firms.
- The 2025 federal election and parties’ policies in relation to class actions and, in particular, proposals that may place caps on returns for class action promoters.

<sup>4</sup> *Supreme Court Act 1986 (Vic)*, section 33ZG.

# 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.



**Belinda Thompson**  
Partner  
T +61 3 9613 8667  
Belinda.Thompson@allens.com.au



**Alex Tolliday**  
Partner  
T +61 2 9230 4122  
Alex.Tolliday@allens.com.au



**Andrew Maher**  
Partner  
T +61 3 9613 8022  
Andrew.Maher@allens.com.au



**Ross Drinnan**  
Partner  
T +61 2 9230 4931  
Ross.Drinnan@allens.com.au



**Matthew McCarthy**  
Partner  
T +61 3 9613 8195  
Matthew.McCarthy@allens.com.au



**Jaime McKenzie**  
Partner  
T +61 3 9613 8186  
Jaime.McKenzie@allens.com.au



**Richard Lilly**  
Partner  
T +61 8 9488 3805  
Richard.Lilly@allens.com.au



**Kate Austin**  
Partner  
T +61 3 9613 8103  
Kate.Austin@allens.com.au



**Malcolm Stephens**  
Partner  
+61 2 9230 4828  
Malcolm.Stephens@allens.com.au



**Paul Nicols**  
Partner  
+61 2 9230 4414  
Paul.Nicols@allens.com.au



**Corin Morcom**  
Managing Associate  
T +61 7 3334 3347  
Corin.Morcom@allens.com.au



**Joshua Anderson**  
Managing Associate  
T +61 3 9613 8920  
Joshua.Anderson@allens.com.au

