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# THE REVIEW

CLASS ACTIONS IN AUSTRALIA  
2024/2025

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# CONSUMER STAPLES: THE BREAD-AND-BUTTER APPROACH TO CLASS ACTIONS

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Consumer actions surged to record numbers in this review period, with 28 filings (2023/2024: 25).

The majority of filings were under the ACL and consumer protection provisions of the ASIC Act; however, consumers also brought actions under the competition provisions of the *Competition and Consumer Act 2010* (Cth) (**CCA**).

## OBSERVATIONS ON CURRENT CONSUMER ACTIONS

### (a) Plaintiffs go with the (regulator) flow

Consumer guarantees were both an ACCC enforcement priority and an increasing focus for class actions in the review period, accounting for 11 filings (about 39% of consumer actions) (2023/2024: 2, or 8%). Actions were filed against *Bupa*, *Iplex Pipelines*, *Harvey Norman*, *3M* and more alleging either direct breaches of ACL consumer guarantees, or misleading representations in relation to the availability of consumer guarantees under the ACL.

In parallel, the Federal Government is considering whether to introduce new prohibitions in relation to consumer guarantees, including for businesses that do not provide a consumer guarantee remedy when required, as well as new powers for the ACCC (and potentially state and territory regulators) to issue infringement notices and seek civil penalties for contraventions. If these reforms proceed, increased activity by the ACCC in relation to consumer guarantees may form a basis for more potential class action claims.

Plaintiff firms are also keeping an eye on regulators like the OAIC (see [Privacy](#) section of The Review) and ACMA, which had previously investigated (but not pursued) gambling services offering in-play or 'live' bets made on sporting events. Consumer class actions commenced against 2 corporate groups alleging breaches of the *Interactive Gambling Act 2001* (Cth) and misleading or deceptive conduct under the ACL cited ACMA's findings as to whether the services were prohibited interactive gambling services.

### (b) 'Checking out' trends in supermarkets and online markets

In a similar vein, cost of living pressures and the role of digital platforms have dominated Australian political cycles, with both regulatory enforcement and consumer class actions in these areas following similar trends:

- Class actions were filed in relation to the pricing of consumer grocery staples, following on from similar ACCC litigation and the ACCC's year-long Supermarkets Inquiry, with a number of proposals for further regulation of supermarket pricing practices under consideration by the Federal Government.<sup>54</sup>
- Competing adtech class actions were filed by digital publishers, alleging that Google engaged in anti-competitive conduct in the provision of services to Australian publishers in the digital display advertising market. These actions were preceded by overseas investigations and litigation, and cite findings from an ACCC inquiry.

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<sup>54</sup> See KWM Insight [Second term's a charm: Labor's ambitions for competition and consumer law reform](#) 21 July 2025.

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(c) Why do these trends emerge?

So why do class actions follow regulatory investigations or overseas actions? Contributing factors include:

- **Use of prior admissions and findings as evidence:** Admissions or findings of contravention in a regulatory action can make a class action attractive. Although admissions or findings in one proceeding will not generally bind the party in separate proceedings, they nevertheless provide a factual substratum upon which to advance a class action claim. Further, some statutory provisions make it easier for claimants by providing that findings of fact made against a respondent in a regulatory proceeding will be prima facie evidence in certain types of subsequent proceedings on the same facts.<sup>55</sup> Businesses should also be mindful that admissions or facts established overseas may also attract attention in Australia.
- **Use of regulatory material as evidence:** Plaintiff firms often seek access to investigation material or evidence obtained in regulatory proceedings. Courts have generally allowed such material to be used in subsequent class actions, recognising the efficiency in large scale litigation.
- **Publicity and consumer awareness:** Regulatory action often generates significant media coverage and thereby deters similar conduct, which plaintiff firms are quick to capitalise on, launching registration drives and commencing proceedings soon after regulatory action or outcomes are announced. This trend is not restricted to ACCC and ASIC actions, — we often see class actions threatened against manufacturers and suppliers of therapeutic goods on the heels of regulatory action by the Therapeutic Goods Administration. Similarly, high-profile overseas actions often generate significant media coverage in Australia, with the *Tesla* and adtech class actions being filed on the back of actions in the United States and other jurisdictions.

## ELECTRICITY LITIGATION FIZZLES OUT, BUT COMPETITION ACTIONS MAINTAIN SPARK

In the review period, we have also seen a first instance decision in a consumer class action relying on the misuse of market power provisions in s46 of the CCA.<sup>56</sup>

This class action was brought by electricity consumers against state-owned corporations Stanwell and CS Energy, the largest electricity generators in the Queensland Region of the National Electricity Market (**QRNEM**). Stanwell and CS Energy sell electricity to customers through the centrally-coordinated National Energy Market (**NEM**) dispatch process.

While the Court upheld the plaintiff's definition of the relevant market (the market for the wholesale supply of electricity to the QRNEM), SC Derrington J concluded that it did not establish the other critical elements of the cause of action.<sup>57</sup>

- **Market power:** Stanwell and CS Energy did not have substantial market power (despite having market share), and each of the alleged instances of re-bidding conduct (described below) were 'transient in nature' and incapable of supporting an inference of substantial market power.
- **Conduct taking advantage:** Stanwell and CS Energy were alleged to have taken advantage of their market power by adopting a strategy to significantly increase electricity spot prices during the Queensland summer months (when demand is high) to maximise their profits by bidding, cancelling and then re-bidding for capacity. While Stanwell and CS Energy did adopt a trading strategy to maximise profits and cover costs in the summer months, which may have involved making delayed bids, the Court held that this was not a strategy to ensure competing generators would have insufficient time to respond, and therefore there was no conduct of the nature alleged.

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<sup>55</sup> CCA s83.

<sup>56</sup> *Stillwater Pastoral Company Pty Ltd v Stanwell Corporation Ltd* [2024] FCA 1382 (**Stanwell**).

<sup>57</sup> *Ibid* at [198].



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- **Anti-competitive purpose:** Even if Stanwell and CS Energy did have market power and had engaged in the alleged rebidding strategy, the purpose was not to deter other competitors from engaging in competitive conduct as alleged. Even though they ‘hoped’ that their trading strategies would result in a price spike, that did not translate to a proscribed purpose, and her Honour observed that price spikes are an ‘intended and ubiquitous feature’ of the NEM.<sup>58</sup> Her Honour commented on the lack of direct evidence, documentary or otherwise, about the alleged trading strategy, demonstrating the importance of documentary or testimonial evidence to support an inference about anti-competitive purpose.

Despite finding for Stanwell and CS Energy on liability, SC Derrington J refused an application to order costs on an indemnity basis. Given the highly technical nature of electricity generation and the energy market, the Court found that it was not a ‘hopeless case’ and the plaintiff did not act unreasonably in rejecting offers that would have been unlikely to receive Court approval – see [Settlement scrutiny](#) section of The Review for further discussion on indemnity costs.

The liability decision in *Stanwell*, now on appeal, demonstrates the difficulties of proving a case under s46 of the CCA. However, recent events suggest that s46 is not an insurmountable hurdle for plaintiffs. Since the end of the review period, the Federal Court has handed down class action decisions against Apple and Google, finding that they contravened the misuse of market power provisions in relation to their app stores. These are significant decisions because they represent the first contested cases reliant on the amended misuse of market power provisions introduced in 2017. With other class actions brought under CCA s46 in recent years, including the adtech class action against Google discussed above and a class action against Sony,<sup>59</sup> these decisions may signal a resurgence in consumer class actions brought under competition laws.

## LOOKING AHEAD

The interplay between regulatory enforcement and class actions is expected to intensify, particularly as new legislative regimes come into effect, such as the Scams Prevention Framework and the proposed unfair trading prohibition, which are expected to be vigorously enforced. Plaintiff firms remain quick to act on regulatory findings, whether domestically or overseas. Businesses should anticipate continued ‘piggybacking’ on regulatory action and heightened class action risk, especially in sectors under active regulatory scrutiny, and keep an eye on regulators’ compliance and enforcement priorities.

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<sup>58</sup> Ibid at [761].

<sup>59</sup> Discussed in [The Review 2023/2024](#) (Consumer class actions).



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