



Untju Alkata 2 by Tommy Watson

---

# THE REVIEW

CLASS ACTIONS IN AUSTRALIA  
2024/2025

---

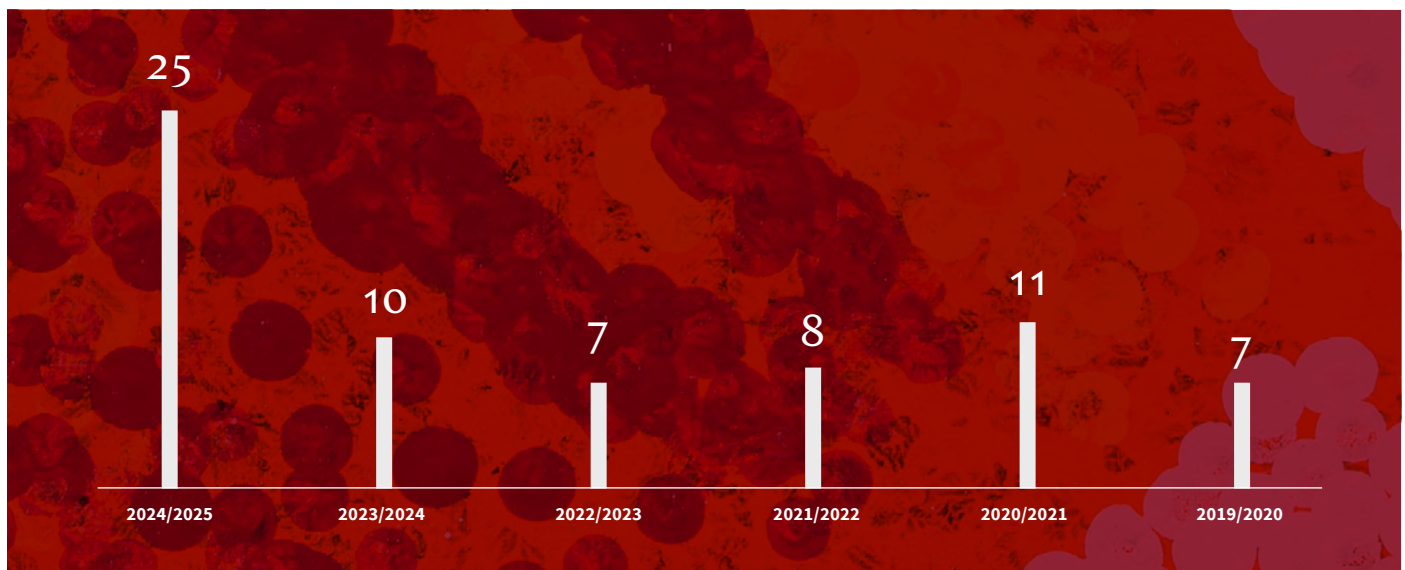
KING&WOOD  
MALLESONS  
金杜律师事务所

# EMPLOYMENT CLASS ACTIONS WORKING OVERTIME

## KEY TAKEAWAYS

While at first blush there appears to have been a significant rise in the number of employee-related class actions in 2025, 84% of those class actions filed in the review period relate to the working hours of junior doctors in Victoria, and most were filed by the same law firm on the same day. Further, while a number of employee-related class actions settled during the review period with large headline figures, there has not been a relative increase in the entitlements being awarded to individual group members.

## Employment class actions filed



However, 21 of those class actions are related claims filed by the Australian Salaried Medical Officers Federation against various public health service providers in Victoria. These claims are separate but connected, and relate to alleged unpaid, un-rostered overtime worked by junior doctors. Similar claims were also commenced on behalf of junior doctors employed in NSW and the ACT, which have both been settled.

Outside of those claims there are 4 other employee-related class actions during the review period, relating to unpaid overtime in the health and retail sectors, underpayments in the public sector, and 2 claims concerning sexual discrimination in the mining sector.

Having said that, a recent decision handed down by the Federal Court on 5 September 2025 against Woolworths and Coles may dramatically alter the trajectory of employment-related class actions.

## FALSE POSITIVE HIDDEN BEHIND SURGE IN FILINGS

At first glance, there appears to have been a surge in employment class action filings in the review period:

## MANY GROUP MEMBERS GIVE RISE TO HIGH SETTLEMENTS

In the review period, 4 settlements have been reached, ranging in total amounts between \$545,000 and \$229.8m. The parties in the Victorian junior doctors class actions referred to above have also reached an in-principle settlement of \$175m.

Most of these total settlement sums are significantly greater than settlements reached in previous employment class actions. However, the substantial sums appear to be more attributable to the large numbers of group members, rather than increasing levels of individual entitlements.

## EMPLOYMENT SETTLEMENTS FROM THE REVIEW PERIOD

CLASS ACTION	SETTLEMENT SUM	GROUP MEMBERS (APPROX)	AVERAGE ENTITLEMENT PER PERSON (APPROX)
<b>Junior doctors - NSW<sup>40</sup></b>	\$229.8m, inclusive of legal and administrative costs	16,000	\$13,600  The Court noted that approximately 95% of the sum would go to group members, a proportion which is much higher than usual in class actions.
<b>Merivale<sup>41</sup> - a claim for wage underpayments under the <i>Hospitality Industry (General) Award 2010</i></b>	\$19.25m, inclusive of legal and administrative costs	2,900	\$3,931
<b>Junior doctors - ACT<sup>42</sup></b>	\$25.34m, plus \$6.16m in legal and administrative costs (totalling \$31.5m)	1,600	\$15,800
<b>Stellar Personnel<sup>43</sup> - a claim by black coal miners engaged as casuals for annual leave entitlements</b>	\$545,000, inclusive of legal and administrative costs	50	\$6,200

<sup>40</sup> *Fakhouri v The Secretary for the NSW Ministry of Health (No.2)* [2024] NSWSC 1171.

<sup>41</sup> *Boulos v M.R.V.L. Investments Pty Ltd (Settlement Approval)* [2024] FCA 1377.

<sup>42</sup> *Tham v Australian Capital Territory* [2024] FCA 1508.

<sup>43</sup> *Kelehear v Stellar Personnel Brisbane Pty Ltd* [2025] FCA 295.



---

## EXPECTATIONS FOR THE YEAR AHEAD

On 5 September 2025 a major decision was handed down in the Federal Court involving 2 regulatory proceedings brought by the Fair Work Ombudsman (**FWO**), and 2 class actions commenced by nearly 30,000 employees, against Woolworths and Coles.<sup>44</sup> All of those claims arose from alleged underpayments to store-based management employees by reference to the *General Retail Industry Award 2010*.

In 2021, the FWO commenced legal action in the Federal Court against Coles and Woolworths in relation to the alleged underpayment of their salaried employees. Class actions were also commenced on behalf of salaried employees – the *Baker* proceeding against Woolworths and the *Pabalan* proceeding against Coles.

All 4 proceedings required determination of a common issue, being the proper characterisation of annualised salary arrangements and related set-off clauses in the relevant employment contracts. The salary arrangements sought to set-off against the annual salary any payments which those employees would otherwise be entitled to receive under the award (such as for overtime, weekend and public holiday rates and allowances) across different pay periods. These types of annual salary arrangements are very common and have been routinely adopted by employers in many industries.

The Court found that those salary arrangements did not operate as Woolworths and Coles had intended. As a result, and 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. 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 which, up until now, had been standard practice. While the decision may yet be appealed, we expect to see a rise in the number of class actions seeking to recover alleged underpayments for employees and for those class actions to seek recovery for a broader range of employees, including management based and professional level employees who traditionally receive an overall salary in lieu of award specified amounts.

---

<sup>44</sup> *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. See KWM Insight [Federal Court rules out contractual set-off of award entitlements between pay periods](#) 5 September 2025.



# ABOUT KING & WOOD MALLESONS

A firm born in Asia, underpinned by world class capability. With over 3,700 lawyers in 26 global locations, we draw from our Eastern and Western perspectives to deliver incisive counsel.

We help our clients manage their risk and enable their growth. Our full-service offering combines un-matched top tier local capability complemented with an international platform. We work with our clients to cut through the cultural, regulatory and technical barriers and get deals done in new markets.



JOIN THE CONVERSATION



SUBSCRIBE TO OUR WECHAT COMMUNITY.  
SEARCH: KWM\_CHINA

#### Disclaimer

This publication provides information on and material containing matters of interest produced by King & Wood Mallesons. The material in this publication is provided only for your information and does not constitute legal or other advice on any specific matter. Readers should seek specific legal advice from KWM legal professionals before acting on the information contained in this publication.

#### Asia Pacific | North America

King & Wood Mallesons refers to the network of firms which are members of the King & Wood Mallesons network. See [kwm.com](http://kwm.com) for more information.

[www.kwm.com](http://www.kwm.com)

© 2025 King & Wood Mallesons