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# THE REVIEW

CLASS ACTIONS IN AUSTRALIA  
2024/2025

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# PULSE CHECK: CLASS ACTIONS IN HEALTH SECTOR ALIVE AND WELL

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Over the past 18 months, Australia’s health sector has been a focal point for some of the most high-profile and complex class actions. This has included multi-million-dollar settlements of claims relating to genetic testing, claims of defective joint implants, and landmark trials. In the *Essure contraceptive* class action, the Victorian Supreme Court found that the plaintiff had failed to prove that the Essure contraceptive device had caused the injuries pleaded. Similarly, in the Roundup class action, the plaintiffs failed to prove the causal link between the product (herbicide) and the alleged health issues.

Health sector class actions are complex because they sit at the intersection of law, science, medicine, and public policy. They require courts to resolve difficult questions of causation, manage diverse and often vulnerable group members, understand evolving scientific evidence, and weigh up competing expert opinions.

## ROUNDUP AND THE ISSUE OF CAUSATION

It is often difficult to establish causation in health-related class actions. Justice Lee’s judgment following the initial trial in *Roundup*<sup>60</sup> provides a useful illustration. This action had been filed against Monsanto and Australian company Huntsman Chemical Company (that had been a subsidiary of Monsanto at the relevant time) on behalf of over 800 individuals in Australia who had been diagnosed with non-Hodgkin lymphoma (NHL). The plaintiffs claimed that Monsanto’s herbicide product ‘Roundup’ had caused their NHL.

Despite the ‘dense, complex, and voluminous’ expert evidence relied on by the plaintiffs, Lee J found that the plaintiffs had not proven, on the balance of probabilities, that the use of and/or exposure to Roundup products increased the risk of developing NHL, or caused an individual to develop NHL.

Here, Lee J’s judgment underscored the high evidentiary burden of proving causation in Australia.

## CASE STUDY ROUNDUP

**Allegation:** Glyphosate-based herbicides caused plaintiffs’ NHL.

**Evidence:** Expert testimony in 3 streams — epidemiology, animal studies, mechanistic biology.

**Outcome:** Federal Court found causal link not established; action settled without any payment being made to group members.

**Key takeaway:** The plaintiffs’ expert evidence was not sufficient to establish causation on the balance of probabilities.

Australian Courts have developed procedures designed specifically to enable the proper weighing up of complex scientific evidence. Expert conclaves and joint reports narrow the issues in dispute. ‘Hot-tubbing’ enables the Court to hear expert evidence concurrently and provides experts with an opportunity to respond to each other in real time. This can clarify the key points of agreement and contention for the judge. In rare cases, Court appointed experts or referees assist the Court to interrogate highly technical expert evidence.

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60 *McNickle v Huntsman Chemical Company Australia Pty Ltd (Initial Trial)* [2024] FCA 807.



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## GLOBALISATION OF PRODUCT RISK: THE US V AUSTRALIAN CLASS ACTION EXPERIENCE

Class actions in the health sector in the United States often precipitate similar actions in Australia. However, fundamental differences in the way class actions are run in Australia have a significant impact on the likelihood of Australian actions following US proceedings.

For example, US class actions often involve juries and the prospect of punitive damages, neither of which are available in Australia. Importantly, in the US each party typically bears its own costs, while in Australia the ‘loser pays’ rule provides a significant disincentive for the filing of speculative class actions. The litigation process, risk and reward profile differ markedly and fundamentally affect strategy.

### MONASH IVF

Settlement of the class action against Monash IVF involved the company agreeing to pay \$56m to more than 700 patients.<sup>61</sup> The case centred on the use of a non-invasive genetic test that allegedly produced a high rate of false positives, leading to the wrongful destruction of potentially viable embryos.

While Monash settled without admitting liability, the outcome provided partial closure for affected families and set a strong financial precedent that highlights both the emotional stakes of reproductive medicine and the potential exposure of healthcare providers.



**CASE STUDY**  
**MONASH IVF**

**Allegation:** Genetic testing service alleged to have identified healthy embryos as non-viable, leading to their wrongful destruction.

**Claims:** Negligence, breach of contract, misleading conduct, breach of ACL.

**Outcome:** \$56m settlement approved in 2024; \$40m to group members, \$16m in legal costs. State and federal health departments are conducting reviews of the sector’s regulation and accreditation requirements.

**Key takeaway:** Disputes in health care, even when settled, can result in ongoing reputational and regulatory risk.

In 2025, additional procedural errors were said to have been identified, including an embryo mix-up in Brisbane that is alleged to have resulted in a woman giving birth to a child that was the biological child of another patient. Monash IVF’s share price fell sharply, patients transferred embryos to competitors, and renewed calls were made for an independent national regulator to replace the patchwork of self-regulation currently in place. The contemporaneous share price decline highlights that the risk is not only for class actions brought on behalf of patients – it also exposes reproductive healthcare providers to the risk of shareholder class actions.

### EXPECTATIONS FOR THE YEAR AHEAD

Looking forward, the health sector is expected to remain a focal point for class action activity in Australia. Key trends to watch include the impact of regulatory reforms, the increasing complexity of scientific and medical evidence, and the emergence of new risk areas such as digital health and data privacy.

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61. *Bopping & Anor v Monash IVF Pty Ltd & Ors* [2024] VSC 785.



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