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The Review

Class Actions in Australia 2025/2026

Employment class actions: No signs of slowing down

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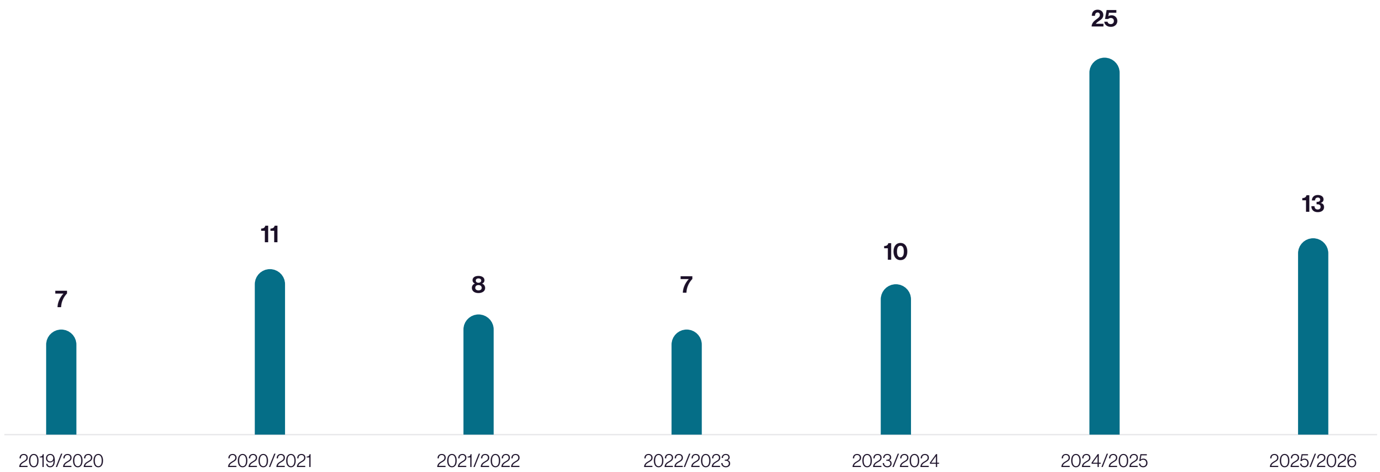
Employment class actions filed



Employment-related class actions remained strong in FY26, with 13 new proceedings filed, representing the second most prevalent category of new class actions in the review period (behind consumer claims). Several themes stood out this year:

- underpayment and entitlement claims continue to dominate in the wake of the *Coles* and *Woolworths* litigation, and are expected to spread beyond the retail sector
- junior doctors' underpayment claims remain the largest cohort, although these claims are mature and are proceeding to settlement, and
- workplace sexual harassment claims have emerged as a key growth area, with several proceedings on foot in the public and private sectors.

Last year's headline figure of 25 filings was inflated by 21 related junior doctors' underpayment claims filed by the same firm on the same day against various Victorian public health services providers.

By comparison, the number of new proceedings commenced in FY26 confirms that employment claims are increasingly prevalent and are extending beyond the health care sector into retail, resources and hospitality.

EXPANSION OF EMPLOYMENT CLASS ACTIONS

Underpayments and entitlements claims

Underpayment class actions increased again in FY26, continuing the upward trajectory observed over recent years. The landmark decision handed down last year in the Supermarkets decision[26] provided a springboard for wage underpayment litigation arising from the use of annualised salary arrangements, as well as a host of technicalities relating to workplace law compliance. In that case, which has attracted significant publicity, the Federal Court held that payments above award entitlements in a pay period cannot be set off against entitlements arising in other pay periods, affecting widespread remuneration practices in the retail sector and beyond. The decision is almost certain to be appealed, although final orders have not yet been made, so any appeal is unlikely to be heard until 2027 at the earliest.

Following the Supermarkets decision, a series of proceedings have been filed, with further proceedings foreshadowed, targeting annualised salary arrangements for retail managers. Proceedings against Rebel Sport, Alinta Apparel and Kmart were commenced in FY26 and further investigations by the same plaintiff law firm into other retailers have been publicised.

FY26 also saw a number of class actions commenced relating to work on public holidays. Proceedings have been commenced against McDonald's, Hungry Jack's, Woolworths and Coles, alleging failure to provide public holiday entitlements for Sunday shifts (under South Australian legislation Sundays were legislated as public holidays from 1910 to 31 December 2023).

Junior doctors' class actions remained the largest category of Australian employment underpayment litigation, with several follow-on proceedings commenced in FY26. First-wave claims are largely in settlement administration, with follow-on proceedings addressing employers or instruments not captured by earlier settlements.

Sexual harassment and discrimination claims

Sexual harassment claims have emerged as a potential growth area in employment class actions. Proceedings have been commenced against the Australian Defence Force (**ADF**) alleging vicarious liability for a systemic failure to protect female ADF members from sexual harassment. The Royal Commission into Defence and Veteran Suicide provides important background to this claim, with findings that close to 800 sexual assaults were reported in the ADF over 5 years, and estimated under-reporting at 60%.

Class action proceedings have also been brought against 3 separate private sector employers in the energy and resources industry, being BHP, Rio Tinto and Fortescue Metals. These claims follow a West Australian Parliamentary Inquiry into sexual harassment against women in the FIFO mining industry in 2022. These 3 proceedings, run by the same plaintiff law firm, allege that the relevant corporate groups, related subsidiaries and contractors are vicariously liable for failing to protect current and former female employees from sex discrimination, sexual assault and/or sexual harassment.

LOOKING AHEAD

We expect that conduct-related class actions — including in relation to sexual harassment — will continue to rise, particularly in industries where sexual harassment is a significant and known risk factor, including traditionally male-dominated and hierarchical organisations.

Discrimination claims may also be an area of increased activity in the employment class action space. In particular, the Royal Commission on Antisemitism and Social Cohesion may heighten focus on workplace discrimination risks. If findings implicate institutional conduct, plaintiff law firms may explore whether common policies or systemic failures can support race or religion-based group claims (which must initiate as a representative complaint to the Australian Human Rights Commission).

Payday superannuation legislation commenced on 1 July 2026, requiring employers to pay superannuation guarantee contributions each payday rather than quarterly. This change, coupled with amendments from 1 January 2024 to include superannuation contributions as a national employment standard (for the first time, giving employees and unions a legal right to pursue unpaid superannuation directly), may expose previously hidden shortfalls and we may see a new trend of group claims emerge in relation to failures to make minimum superannuation contributions.

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26 *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) 343 IR 340; [2025] FCA 1092.

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