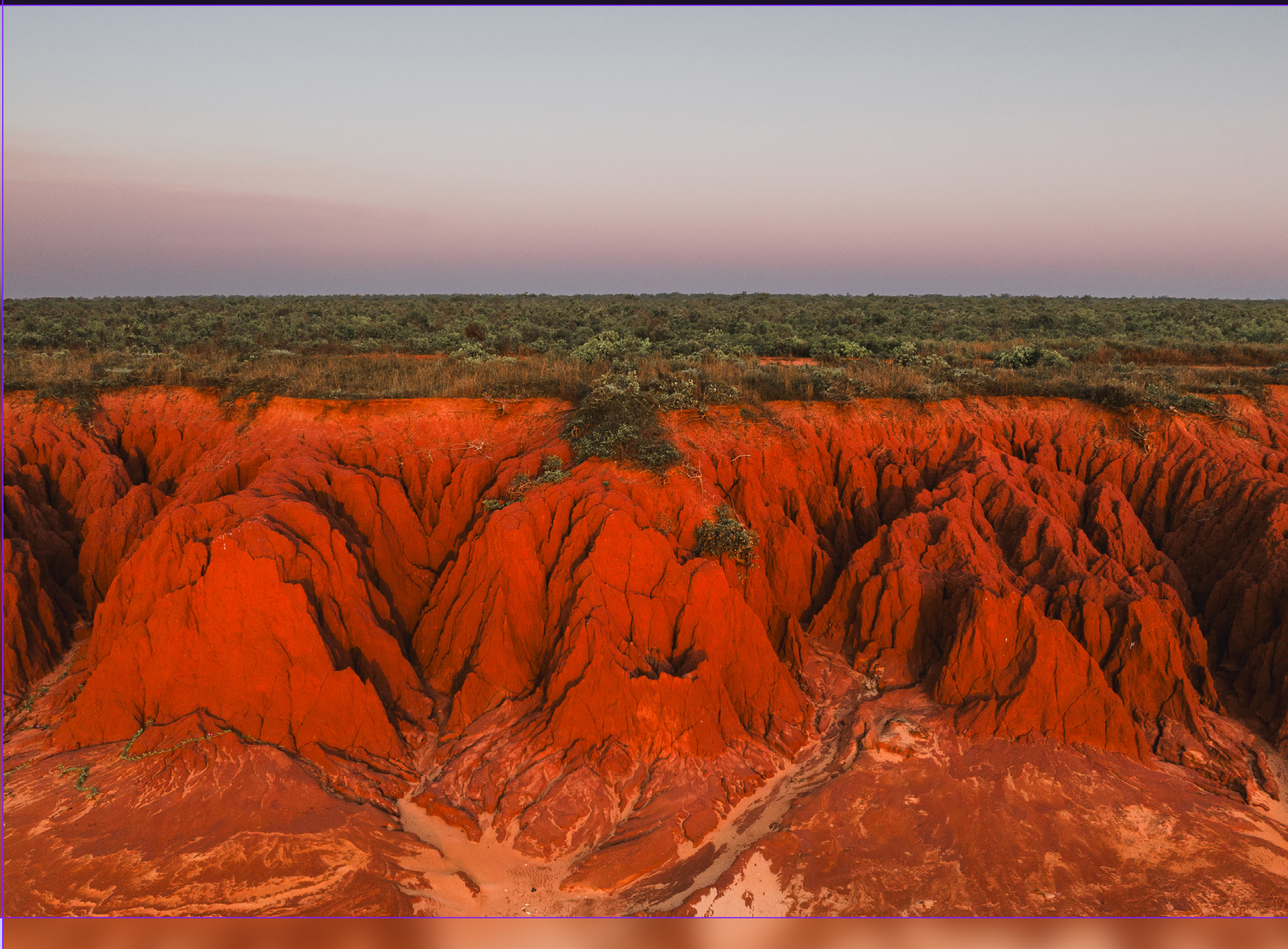
MALLESONS

The Review

Class Actions in Australia 2025/2026



In the consumer space, the regulator isn't the only sheriff in town

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OBSERVATIONS ON CURRENT CONSUMER ACTIONS

Consumer class action filings fell sharply in this review period, from a peak of 29 in 2024/2025, to only 16 in 2025/2026. Consumer claims nonetheless remained the highest category as a proportion of the total number of class actions filed, at over a third of all filings.

Overall, the themes for new consumer actions in 2025/2026 were product liability/defects, gaming, privacy/data breach, and construction/property development. Compared with 2024/2025, the mix narrowed: in 2024/2025, consumer filings covered a broader spectrum including aged care, extended warranties, talcum powder, breast implants, pipes, travel credits, supermarket pricing and insurance products.

A NOVEL APPROACH: CLASS ACTIONS PIGGYBACKING ON PRIVATE LITIGATION

In the Parallel Pressure chapter of The Review, we examine the trend of class actions following on from *regulatory enforcement proceedings*. Another notable development in 2025/2026 was the liability decision in the consumer class actions commenced after Epic Games brought proceedings against Apple and Google, which is a rare example of a consumer class action following on from proceedings brought by *private litigants*. These proceedings illustrate how private litigation can establish the factual groundwork, and a roadmap for later representative claims.

***Epic Games*: A case study**

The class actions arising from the Epic Games litigation are illustrative of this broader evolution. Two class actions were commenced: the first brought by David Anthony and Dark Ice Interactive Pty Limited (**Dark Ice**) against Apple entities, and the second brought by Brett McDonald and Dark Ice against Google entities. The class actions were brought on behalf of both app developers and app end users who purchased iOS apps or in-app digital content through the Australian App Store, or Android apps or in-app digital content through the Australian Play Store, between 6 November 2017 and 20 June 2022.

The class actions were derivative of the private actions brought by Epic Games against Apple and Google on questions of liability, and were heard concurrently in a joint trial with those proceedings. In the 2 private actions, Epic alleged that Apple and Google misused their market power in contravention of s46 of the Competition and Consumer Act by requiring developers to distribute apps exclusively through the App Store and Play Store respectively and to process in-app payments through Apple's and Google's own payment systems (charging commissions of up to 30%). The Court found that both Apple and Google held substantial market power in their respective app distribution and in-app payment solutions markets. These liability findings then underpinned the related class actions, which found developers were forced to pay materially higher commissions than in a competitive counterfactual. This form of case management, where the Court tries related but factually distinct conduct jointly, highlights a movement towards coordinated multi-forum proceedings based on the same underlying facts.

In this case, a comprehensive resolution of the anti-competitive app store conduct required both:

- the private action brought by Epic Games to establish contravention and secure forward-looking relief including declarations and injunctions, and
- the representative proceedings to allow developers and consumers to seek damages for their quantifiable loss arising from the overcharge.

The case demonstrates how class actions can be 1 component of broader litigation risk, rather than self-contained vehicles. Where the conduct complained of raises both ongoing systemic impacts and historic damage, private companies facing litigation risk may need to manage exposure across multiple forums, including regulatory enforcement, remediation processes and representative proceedings.

While the ACCC did not bring separate proceedings, it did intervene in the Epic proceedings at key points – when the platforms argued the cases should be stayed in favour of US litigation, and to make submissions on appropriate relief (in which it largely backed the broad remedies sought by developers). These targeted interventions demonstrate a model where regulators could seek to rely on liability established in private proceedings to achieve (or influence) efficient enforcement outcomes.

CAN CONSUMER CLASS ACTIONS PROMPT REGULATORY ACTION?

While we have seen the rise of 'follow-on' actions from regulatory proceedings and the rare instance of an action piggybacking on existing private proceedings, the question remains: could regulatory investigation and enforcement follow on from consumer class actions?

In the United States, we have seen instances of this inverse influencing, with consumer class actions prompting regulatory investigation or enforcement action. Two interesting recent examples are:

- **Swifties take on Live Nation:** In 2022, a group of aggrieved Taylor Swift fans who could not buy tickets to the Eras Tour commenced a class action against Ticketmaster and its parent company Live Nation alleging anticompetitive behaviour. After the class action, the Department of Justice (**DOJ**) (alongside 40 state attorneys general) commenced enforcement action, resulting in a jury finding for the States on 15 April 2026 that Live Nation had contravened US competition law.
- **Collusion by code:** In 2023, more than 30 consumer class actions representing frustrated renters were consolidated into a single proceeding against property management software company, RealPage. The class applicants alleged the unlawful coordination of rental prices between rival landlords through RealPage's algorithmic pricing software. Following these filings, the DOJ launched an investigation leading to enforcement action being commenced in 2024. On 19 May 2026, the Court approved RealPage's settlement with the DOJ which fundamentally changes how its proprietary rental software can function.

To date, we have not identified any instances where an Australian consumer class action has prompted public regulatory investigation or enforcement action. As illustrated by the Epic Games litigation, Australian regulators, in particular the ACCC, appear content for consumer class actions (and private proceedings more generally[25]) to continue without any related enforcement action unless it impacts regulatory priorities or is a matter of public importance.

Regulatory action, private proceedings and class actions (or a combination of all 3) remain a significant risk where there is non-compliance with laws that directly impact consumers.

25 For example, *Mayfield Development Corp Pty Ltd v NSW Port Operations Hold Co Pty Ltd* [2026] HCA 12.

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