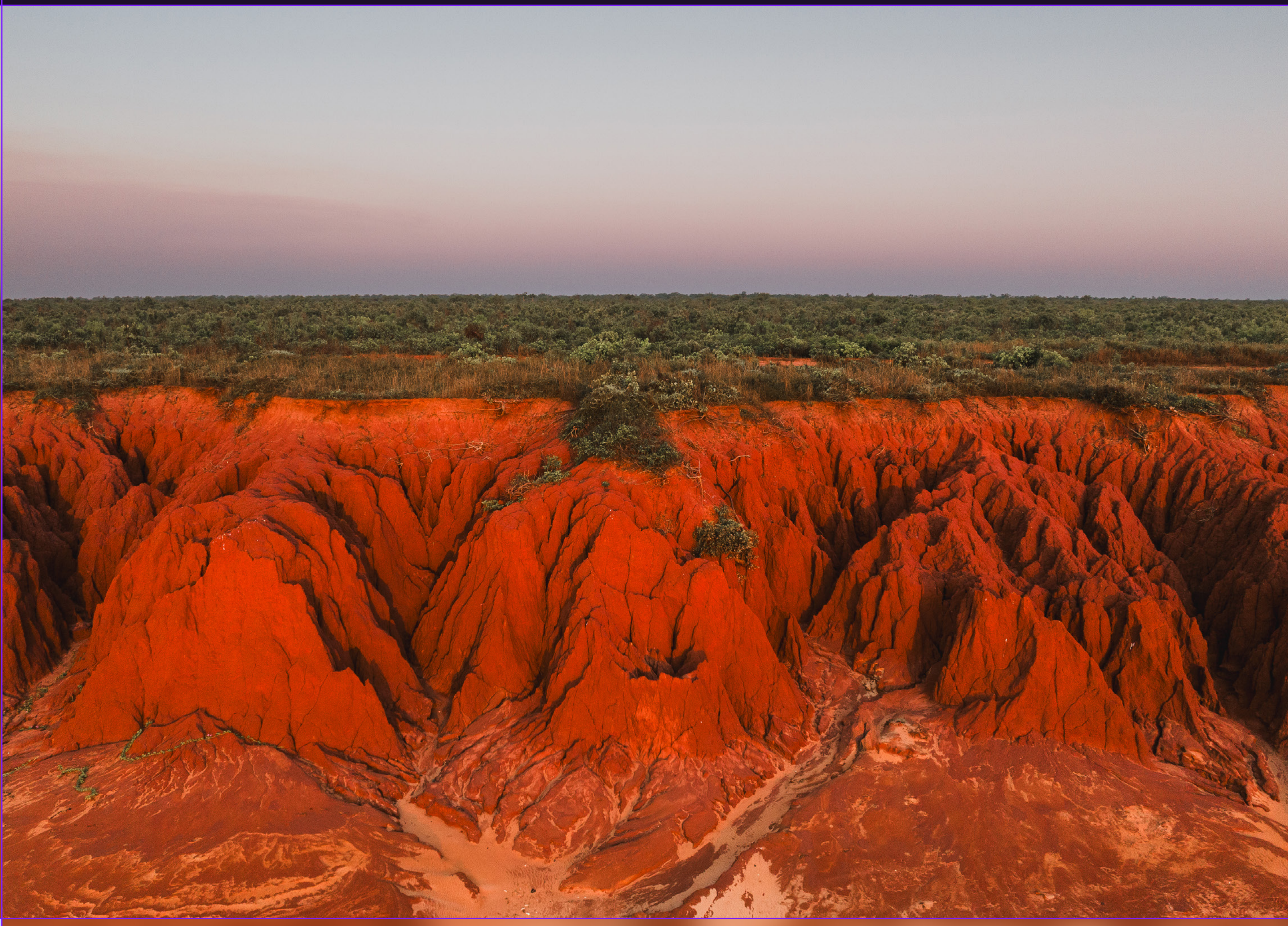
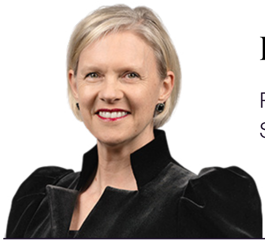
MALLESONS

The Review

Class Actions in Australia 2025/2026



The next frontier: New and novel claims on the horizon



Peta Stevenson

Partner
Sydney

Jonathon Mifsud

Senior Associate
Sydney

Chris Coates

Senior Associate
Brisbane

Historically, new categories of class action litigation in Australia have tended to emerge from domestic triggers such as the introduction of new statutory regimes, shifts in regulatory enforcement priorities, and the findings of royal commissions and public inquiries. These catalysts remain important, but they no longer fully explain the origin of claims litigated in representative proceedings or provide a definitive indication of when, or from where, the next wave of proceedings is likely to emerge.

The class action risks facing companies in Australia today extend beyond historically typical securities class actions against listed companies, and product liability and financial services claims. The class action arena is increasingly seeing the filings of new claims in other areas of social concern.

That is for 2 primary reasons:

- First, companies are operating in increasingly complex global markets in which social, geopolitical and economic forces are moving faster than Parliament or regulators can adapt. In that environment, plaintiff class action firms and litigation funders are increasingly prepared to test the boundaries of existing causes of action in emerging areas of societal concern (such as claims based in negligence asserting a novel duty of care in relation to climate change — see the discussion below).
- Second, Australian plaintiff firms and litigation funders are regularly looking offshore for inspiration, watching new and novel causes of action incubate overseas before they are applied in class action litigation in Australia.

The lesson for companies operating in Australia is clear: claims that once appeared speculative are increasingly being litigated in Australian courts. The question is not whether new and novel claims will be launched in areas of current social concern, but what steps companies should take to avoid becoming the 'test case' respondent when they do.

This chapter of The Review focuses on 3 types of claims which we expect to see tested in class actions in the coming years, and identifies other areas for further monitoring. The best way for companies to manage class action risk in these areas is to be aware of these emerging claim types; be proactive in complying with the incoming regulatory regimes; and conduct business operations with both customers and environmental, social and governance (**ESG**) considerations front of mind.

CONSUMER CLAIMS: UNFAIR TRADING PRACTICES

The passage of the *Competition and Consumer Amendment (Unfair Trading Practices) Act 2026* (Cth) during the review period marks one of the most significant expansions of Australia's consumer protection framework since the introduction of the unfair contract terms regime in 2011. The Act introduces into the Australian Consumer Law, from 1 July 2027, a broad prohibition on conduct that manipulates a consumer or unreasonably distorts the environment in which they make a decision, and which causes, or is likely to cause, detriment (whether financial or otherwise).[27]

27 See Mallesons Insight New ACL obligations: Unfair Trading Practices provisions in effect from 1 July 2027 6 July 2026.

The new prohibition is deliberately framed to capture conduct that has historically been difficult to establish as a breach of the existing misleading or deceptive conduct, unfair contract terms or unconscionable conduct provisions, potentially lowering the threshold for plaintiffs to establish liability. The changes are particularly intended to target so-called 'dark patterns' in websites and apps, such as pre-ticked boxes that favour the business, artificial urgency created by countdown timers or stock warnings, and 'confirm shaming' messaging, where a customer is unfairly made to feel bad about a choice. The prohibition captures *'wrongful interference with a consumer that results in a change in the consumer's behaviour, decision making or action that is against the consumer's interests'* and *'is not intended to require dishonesty'*.[28]

There are also new prohibitions from 1 July 2027 on drip pricing (where mandatory fees are revealed only late in the purchase process — particularly on online carts and checkout pages) and subscription traps (where consumers face onerous barriers to cancelling a service or are not properly notified before being charged).

All of these new prohibitions will sit within the existing enforcement framework of the Australian Consumer Law: the ACCC and state and territory consumer protection regulators will have the power to pursue contraventions through civil penalty proceedings or the issuing of infringement notices.

The reforms are also likely to provide a new avenue for consumer class action claims. The Explanatory Memorandum expressly states that the regime is intended to extend to *'conduct in relation to an individual consumer, class of consumers, or consumers generally'*,[29] meaning a single dark pattern or other unfair trading practice deployed across a customer base may create a common issue on which to base a representative proceeding.

Businesses who deal with consumers or small businesses should begin assessing their compliance with these new provisions well in advance of 1 July 2027. This should include, in particular, reviewing customer platforms and interfaces, customer onboarding processes and selling and marketing practices more generally.

CLIMATE AND ENVIRONMENTAL CLAIMS: THE SEARCH FOR A NOVEL DUTY OF CARE

Globally, litigation continues to be used as a strategic tool for addressing climate-related harms. While the situation is no different in Australia, which had the third-highest number of climate cases filed globally in 2025,[30] there has been a divergence in the jurisprudence to date.

Some overseas courts have been willing to recognise duties of care or human rights obligations to prevent climate-related harms, with some cases turning on an express right to a healthy environment incorporated into those jurisdictions' human rights frameworks, following declaration of the right by the United Nations in 2022.[31] Australian courts, by contrast, have taken a more cautious approach, and only the ACT has adopted a standalone human right to a clean, healthy and sustainable environment.

Notably, Australian courts have so far refused to recognise the existence of a novel duty of care to prevent climate-related harm in 2 significant class action decisions,[32] being:

- *Sharma*, which alleged a duty owed to children,[33] and
- *Pabai*, which alleged a duty owed to people of the Torres Strait Islands.[34] An appeal in Pabai was heard on 28 to 31 July 2026 and judgment is reserved.

While no new claims of this nature have been made since the judgment in *Pabai*, we expect to see more climate-related claims commenced against Australian companies and the Government as climate-related regulation becomes more onerous and societal pressure for corporate accountability increases.

This is particularly because:

- **Class actions remain an accessible procedural mechanism for bringing climate-related claims:** There are limited prerequisites to bringing a class action in Australia, which can include both residents and non-residents as group members.[35]

28 Explanatory Memorandum, *Competition and Consumer Amendment (Unfair Trading Practices) Bill 2026* (Cth) [1.25].

29 Ibid [1.20].

30 Joana Setzer and Catherine Higham, 'Global Trends in Climate Change Litigation: 2026 Snapshot' (Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science, 2026) at p. 7.

31 This includes, for example, International Court of Justice, *Advisory Opinion on the Obligations of States in Respect of Climate Change*, Inter-American Court of Human Rights Advisory Opinion on the Climate Emergency and Human Rights and European Court of Human Rights *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*.

32 See Mallesons Insight *Climate obligations in Australia and abroad are oceans apart – what does it mean?* 30 July 2025.

33 *Minister for the Environment v Sharma* (2022) 291 FCR 311; [2022] FCAFC 35.

34 *Pabai v Commonwealth (No 2)* [2025] FCA 796 (**Pabai**).

35 *BHP Group Ltd v Impiombato* (2022) 276 CLR 611; [2022] HCA 33.

- **Australian courts have accepted (largely unchallenged) expert evidence on climate change:** In both *Pabai* and *Sharma*, the Court accepted scientific evidence of the impact of climate change. While the Federal Court in *Pabai* considered it was not possible to measure the precise extent to which an alleged breach contributed to the impacts of climate change on individual claimants, international jurisprudence has concluded that it is possible to determine and quantify each country's contribution to global emissions. The Australian position is likely to be tested further in future litigation.
- **Climate-related reporting schemes will increase scrutiny:** As regulatory obligations in this area continue to grow, applicants will increasingly look beyond negligence claims against both government and corporate respondents toward statutory causes of action that do not require the recognition of a novel duty of care. This has already been seen in the way misleading conduct prohibitions have been used in 'greenwashing' cases. The review period saw the continued trend of 'greenwashing' claims globally, with the first case brought in Australia against a company for false 'carbon neutral' advertising settling just prior to the review period in May 2025. [36]
- **Applicants in other jurisdictions continue to push the boundaries with novel arguments:** For example, during the review period, a class action was brought in the United States against major oil companies, alleging those companies have concealed the effects of their activities on climate change, resulting in increases to home insurance premiums.[37]

A DIGITAL DUTY OF CARE?

The review period also saw the first successful consolidated action in the United States resulting in a jury verdict against social media companies for harm caused by their platform design choices based on a finding that the relevant platforms were defective products under Californian law.[38] While this decision is under appeal, it has been reported that Australian plaintiff class action firms have been 'assessing the viability' of whether a class action could be run in Australia on similar grounds, with one such firm publicly stating it is investigating *'whether the evidence supports a sustainable cause of action'*.[39]

Reform is also afoot, with the Federal Labor Government committing in May 2026 to legislating a 'digital duty of care' on online services — including social media platforms — to prevent serious online harms to Australians. It is proposed that the duty:

> *'will focus on ensuring that services have effective systems and processes in place that are reasonable, risk-based and proportionate, and which mitigate the risk of reasonably foreseeable serious harm to their users'*.[40]

This was a key recommendation of the Statutory Review of the *Online Safety Act 2021*, which recommended the adoption of *'a singular and overarching duty of care that encompasses due diligence, and is underpinned by safety by design principles, risk assessment, mitigation and measurement'* and which *'shifts… the burden for remaining safe online away from individual users and onto those most capable of identifying and addressing harms – the service providers themselves'*.[41] This proposal is subject to an ongoing consultation process and there is no date scheduled yet for any draft Bill to be tabled in Parliament. While it is not proposed to be enforceable as a private right (including as a class action), it is contemplated that the eSafety Commissioner will be able to seek civil penalties for non-compliance.

Further, on 19 July 2026, the Victorian Labor Government announced an intention to legislate *'nation-leading laws to keep AI and tech companies accountable and protect our kids'*.[42] The reforms would remove the need for an applicant to prove a permanent impairment of 10% or more in claims for negligence causing psychiatric harm in the specific context of claims brought on behalf of minors against social media and AI providers.

We do not, however, expect class action litigation to await the enactment of a specific statutory framework, and anticipate claims concerning alleged harms from online services will be among the next to be tested in the Australian class action environment.

---

36 *Parents for Climate Ltd v EnergyAustralia Pty Ltd* (NSD833/2023).
37 *Kennedy v. Exxon et al* (U.S. District Court for the District of Western Washington, case number 2:25-cv-02378).
38 *Social Media Cases*, No. JCCP 5255, Lead Case No. 22STCV21355, 2023 WL 922262 (California Superior Court, 25 March 2026).
39 Cat Woods, *'Tide of social media cases could follow US court rulings over child safety'*, Law Society Journal, 2 April 2026.
40 Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts, *A Digital Duty of Care for Australia—Developing duty of care framework for online services used by Australians* (Report, May 2026).
41 Delia Rickard PSM, *Report of the Statutory Review of the Online Safety Act 2021* (Report, October 2024) at p. 12.
42 The Hon Jacinta Allan MP, *Big Tech Must Prevent Hate and Keep Kids Safe* (Media Release, 19 July 2026).

‘BATTLEGROUND’ CLAIMS: OTHER EMERGING FRONTIERS

Beyond the claim types discussed above, other claims that could emerge as novel causes of action in representative proceedings in Australia include:

BLUEWASHING: THE ‘S’ OF ESG

As mentioned above, greenwashing claims are already the subject of heightened regulatory scrutiny and private actions – and governance claims have long been the subject of securities and superannuation class actions. Beyond the ‘E’ and ‘G’ in ESG, the representations or disclosures a company makes about modern slavery, Diversity, Equity & Inclusion, and human rights may also become a feature of the class action environment.[43]

RACIAL DISCRIMINATION AND VILIFICATION

Racial discrimination and vilification claims have already featured in representative proceedings in recent years,[44] whilst others are being investigated with possible filings on the horizon.

The Royal Commission on Antisemitism and Social Cohesion may also act as a catalyst for future vilification class actions.

ARTIFICIAL INTELLIGENCE

Use of AI is likely to become an area of class action risk as companies use it in customer-facing, workplace and creative settings. Claims may focus on ‘AI washing’,[45] discriminatory outcomes from recruitment or workplace monitoring tools, or consumer-facing uses of AI.

CYBERSECURITY AND DATA BREACHES

Data breach and cybersecurity claims may be framed differently in the future now that the new statutory tort for serious invasions of privacy allows claims for non-economic harm. Likely areas of focus include third-party vendor breaches, basic security failures and allegations that companies did not adequately disclose known cyber risks.

---

43 For instance, the review period saw the first modern slavery-related disclosures proceeding filed in the Federal Court of Australia: *Australian Uyghur Tangritagh Women’s Association Inc v Kmart Australia Limited* (VID1007/2025).

44 See for instance, *Kaylyn Caulton v North West Hospital and Health Service* (QUD624/2025), *Adrian Burragubba & Ors v Adani Mining Pty Ltd t/a Bravus Mining and Resources* (QUD541/2025) and *Coedie McAvoy v Adani Mining Pty Ltd t/a Bravus Mining and Resources* (QUD542/2025).

45 See by way of comparison *City of St. Clair Shores Police and Fire Retirement System v. Microsoft Corporation*, case number 2:26-cv-02071 (W.D. Wash.) (a securities claim filed in the US on 12 June 2026 regarding alleged false and misleading statements about Microsoft’s AI products) and *In re Evolv Technologies Holdings Inc. Securities Litigation*, No 1:24-cv-10761 (D. Mass.) (a securities claim filed in the US regarding alleged false and misleading statements about an AI-driven weapons detection system, which reached a settlement agreement in April 2026).

About Mallesons

We are Mallesons. The top-tier independent firm from Australia, a full-service firm trusted on the most complex and consequential matters across our region and around the world.

Our independence gives us the flexibility to combine our top tier full-service capability with the best advisers in every market.

We have 200 partners and over 1,100 lawyers who are locally qualified and globally experienced.

We're here to be the firm clients and communities trust most with their future in a world that never stands still. To have an outsized impact. To lead the market. To make a difference to be proud of. To create careers that can go everywhere.

mallesons.com

Join the conversation