



# SparkeWatch

Update on Australian class actions,  
regulatory and D&O emerging risk trends

August 2024

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# CLASS ACTIONS

Class actions remain prevalent in Australia given low thresholds to bring claims and a well-established third-party funding market.

However, the Australian class action landscape is changing. This follows a series of shareholder class action losses for plaintiffs, increased regulatory enforcement activity and the introduction of contingency fees in the State of Victoria (and now possibly the Federal Court), which the plaintiff-bar has pivoted towards.

Claims relating to ESG, nuisance, employment underpayment and privacy/data breaches are on the rise, consumer class action filings remain consistent and shareholder class action filings are declining.



There were  
**45 new class action filings**  
between January 2023 and June 2024



Of those,  
**33 were filed in the Federal Court**



**11 were filed in Victoria**



**No shareholder class actions have been filed in the first half of 2024**



**Shareholder Class Action Losses** — The historical hesitation to litigate shareholder claims in Australia has diminished. While there is yet to be a substantial body of case law, a total of five (5) shareholder class actions have proceeded to judgment (at first instance) to date in Australia. **They have all been successful for listed entities and their insurers defending these claims.**

- Four (4) involved **future representation claims** about earnings guidance published by companies.
- One (1) involved allegations of an Australian bank **failing to inform** the market about contraventions of anti-money laundering/counter-terrorism financing (**AML/CTF**) laws, and **misleading or deceptive conduct** regarding the bank's **policies to meet regulatory and continuous disclosure** requirements being effective.<sup>1</sup>

In each case, **the plaintiffs failed to establish liability or causation and loss, and lacked sufficient expert evidence** to establish the alleged contraventions had inflated the share price during the relevant period.

Subject to any appeal outcomes, the decisions demonstrate that a fall in a company's share price does not guarantee a successful shareholder's claim for plaintiffs.

These recent losses have most likely contributed to a **drop in shareholder class action filings, with no filings in the first half of 2024.**

It remains to be seen whether this downward trend in shareholder filings will continue, or whether this is just a temporary pause, as plaintiff law firms and litigation funders seek to improve their prospects by gathering stronger evidence and refining their claims.



<sup>1</sup> *TPT Patrol Pty Ltd atf for Amies Superannuation Fund v Myer Holdings Limited* [2019] FCA 1747; *Bonham atf for Aucham Super Fund v Iluka Resources Limited* [2022] FCA 71; *McFarlane atf S McFarlane Superannuation Fund v Insignia Financial Ltd* [2023] FCA 1628; *Crowley v Worley Limited* (No 2) [2023] FCA 1613; *Zonia Holdings Pty Ltd v Commonwealth Bank of Australia Limited* (No 5) [2024] FCA 477.





**Litigation Funding and Contingency Fees** — Australia’s well-established litigation funding market has traditionally been the primary source of funding for class actions. **Today, litigation funders face competition for claims from plaintiff law firms,** which are now permitted to charge ‘contingency fees’ (or no win/no fees) in some Australian jurisdictions.

- Since 2020, the State of **Victoria** has allowed contingency fees to be charged by law firms in the form of a “Group Cost Order” (**GCO**). Plaintiff law firms have increasingly filed class actions in the Supreme Court of Victoria since the introduction of GCOs.
- A GCO is a type of contingency fee which is shared between the plaintiff and all class action group members. Plaintiffs must satisfy the Court that a GCO is appropriate. The Court can set **any percentage it deems appropriate**, which it can amend at any time. Fees are calculated as a percentage of the amount won in Court or settled and are only charged if the litigation is successful.
- The Supreme Court of Victoria has approved GCO rates of between 14% and 40%. As at January 2024, the **median rate is 24.5% in all cases or 25% in shareholder class actions**.<sup>2</sup> The first ‘contingency fee’ class action was listed for final court approval of the proposed settlement on 26 July 2024.<sup>3</sup>
- In July 2024, the **Federal Court of Australia** delivered a judgment, which for the first time gave the green light for plaintiff law firms to charge **contingency fees in class actions in the Federal Court**.<sup>4</sup> This decision is expected to be appealed to the High Court.

The Federal Court found it had the power to make a “solicitors’ common fund order” (**SCFO**), being an order that gives lawyers a percentage of the proceeds of a class action **at the point of settlement or judgment**. This differs from the Victorian **GCO, which can be ordered ahead of settlement or judgment but remains subject to review at resolution stage**.

- We predict that the **Federal Court strikes back** to seek to restore it to the **dominant jurisdiction** for class action filings in Australia, in the aim of diminishing Victoria’s relevance. However, as SCFO’s can only be awarded at the time of settlement or judgment, this may deter some firms from filing in the Federal Court due to a lack of certainty.
- It also remains to be seen whether there will be capacity constraints in law firms to fund class actions, or if contingency fees will become the preferred model for class actions over traditional third-party funded matters.



<sup>2</sup> *Raeken Pty Ltd v James Hardie Industries PLC* [2024] VSC 173 at [60], citing the Group Costs Orders and Funding Commission Report (January 2024) by Professor Morabito.

<sup>3</sup> *Paul Allen v G8 Education Limited* (S ECI 2020 04339).

<sup>4</sup> *R+B Investments Pty Ltd (Trustee) v Blue Sky (Reserved Question)* [2024] FCAFC 89.



**Rise in Non-Shareholder Class Actions** — Filings of other types of class actions are on the rise including claims of **Environmental, Social and Governance (ESG), greenwashing, nuisance, employment (unpaid wages claims) and privacy/data breaches**. **Consumer class action** filings (including product liability claims) remain steady.



**Emergence of Data Breach Class Actions** — In 2023-24 four (4) data breach class actions were commenced. These all arose from two (2) significant and highly publicised data breach incidents impacting an Australian private health insurer and a telecommunications company.

- Three of the class actions are consumer claims brought by customers whose **personal information was disclosed**.
- The other is a shareholder claim based on allegations that the affected company **failed to disclose material information to the market** i.e. that its **systems and controls were inadequate** and there was a **serious risk of a cyber breach**.<sup>5</sup>

The Courts will consider novel legal issues in determining these class actions, including the adequacy of the entities' cybersecurity controls, and whether the plaintiffs have established causation and loss.

The risk of data breach incidents remains a key risk for Australian businesses. The Office of the Australian Information Commissioner (**OAIC**) is the privacy regulator. Its regulatory activity and enforcement powers are increasing and we **expect the number of data breach/privacy class actions to increase**. This risk will be further increased if proposed legislation amending the Privacy Act is passed, making it easier for applicants to bring privacy claims and to seek to protect their digital personal information.

<sup>5</sup> *Zonia Holdings Pty Ltd v Commonwealth Bank of Australia Ltd (No 5)* [2024] FCA 477.

<sup>6</sup> *Matheson Property Group Pty Ltd v Virgin Australia Holdings Ltd* (NSD346/2002), order made 28 June 2022.

<sup>7</sup> *R&B Investments Pty Ltd as trustee for the R&B Pension Fund v Blue Sky Alternative Investments Ltd & Ors* (NSD 665/2022); *David Furniss v Blue Sky Alternative Investments Ltd & Ors* (NSD 948/2022).

<sup>8</sup> *Rushleigh Services Pty Ltd v Forge Group Ltd (in liq)* [2018] FCA 26.

<sup>9</sup> *BHP Group Limited v Impiombato & Anor* [2022] HCA 33.



**Class Action filings linked to Regulatory Enforcement Actions** — There is a continuing trend of **Australian class actions being filed following regulatory investigations or enforcement actions**. In 2023-24 many Australian regulators gained expanded enforcement powers (with more on the horizon). This is expected to **increase regulatory investigation and enforcement activity, with class action filings likely to follow**.

Current active class actions that have "piggybacked" on enforcement action taken by various Australian regulators are varied, including ASIC (corporate and financial services regulator), AUSTRAC (anti-money laundering and counter-terrorism financing regulator), OAIC (privacy/data breach regulator), ACCC (consumer regulator) and the Fair Work Ombudsman (employment ombudsman).



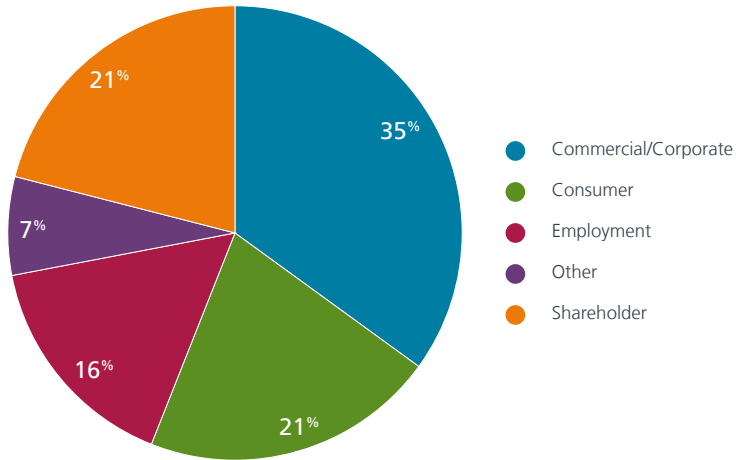
**Joining of Insurers to Class Actions** — Recent Federal Court decisions have seen more **insurers being joined as parties to class actions** and parties seeking **production of insurance policies** to ascertain whether respondents are indemnified.

In 2023, the Federal Court ordered twelve (12) insurers be joined as respondents to a class action,<sup>6</sup> and four (4) insurers were joined to a separate matter.<sup>7</sup> Prior to joining the insurers, orders were made requiring production of relevant insurance policies and confirmation of 1) whether a claim had been made under an insurance policy and 2) whether a coverage decision had been made. This follows insurers being joined in substitution of a collapsed listed engineering and construction company in a substantive shareholder claim in 2018.<sup>8</sup>

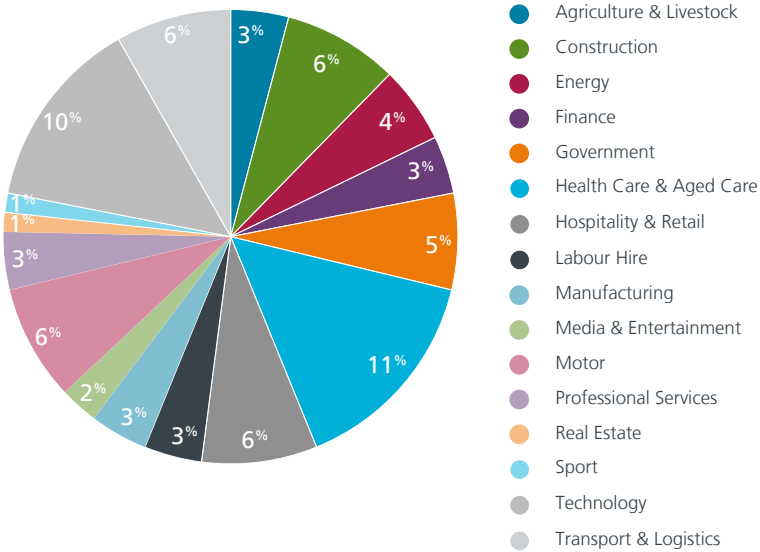


**Overseas Group Members** — The Australian Courts have confirmed that **non-residents of Australia can be group members in class actions** filed in the Federal Court and Victorian Supreme Court.<sup>9</sup> This is likely to affect ASX companies that are also listed on overseas exchanges.

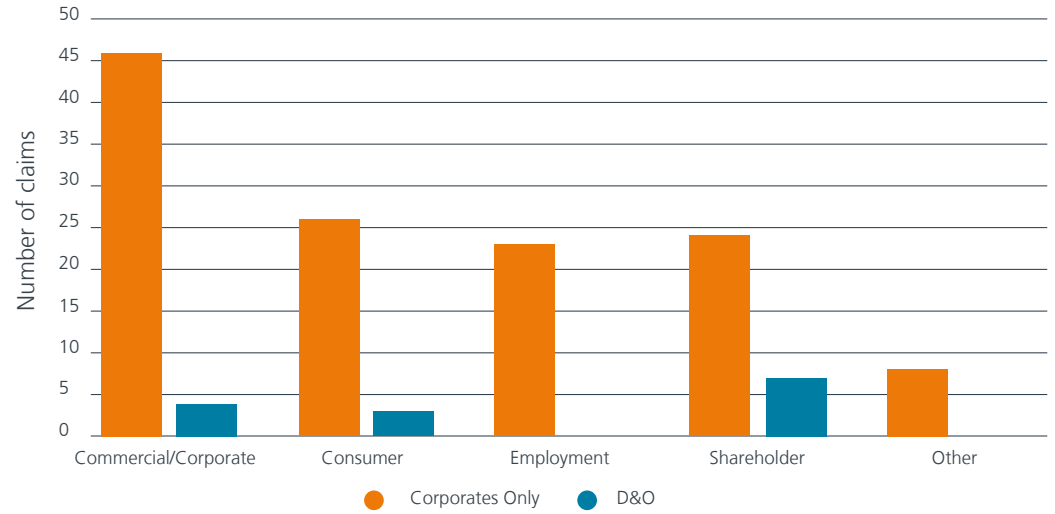
**Types of claims: active class actions as at 1 June 2024**



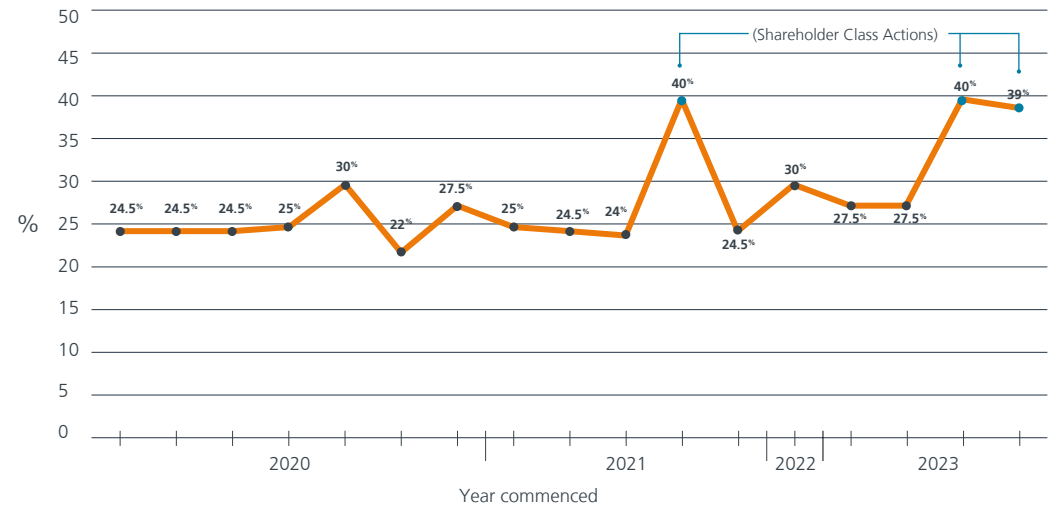
**Types of industries: active class actions as at 1 June 2024**



**Active class actions involving companies and individual D&Os as parties at 1 June 2024**



**Group Costs Orders (GCOs): approved contingency fees as at 1 June 2024  
Supreme Court of Victoria**



# REGULATORY RISKS

The Australian regulatory landscape is becoming increasingly complex, with significant legislative reforms affecting Australian businesses, including the financial services industry, having recently commenced.

## Regulatory Risks – ASIC

### The Australian Securities & Investments Commission (ASIC)

ASIC is Australia's corporate and financial services regulator. ASIC regulates Australian corporates, markets, financial services, and consumer credit businesses. Its purpose is to maintain market integrity and protect consumers and investors by investigating and taking enforcement action against corporates and directors and officers (**D&Os**).

ASIC has recently come under criticism due to the excessive breadth of its remit. A recent Senate Committee Report recommended that ASIC be divided into a companies regulator and financial conduct authority to address reported enforcement failures.<sup>10</sup> Whether any change stems from the Senate Report remains to be seen. In the short-term, ASIC is likely to pursue tougher action and seek higher penalties against companies and individual D&Os, in an effort to diminish recent criticism.



### ASIC's focus and enforcement priorities for 2024

-  Poor distribution of financial products
-  Governance and directors' duties failures
-  High cost credit and predatory lending practices to consumers and small business
-  Misleading conduct in relation to sustainable finance including greenwashing
-  Enforcement action targeting gatekeepers (intermediary parties) facilitating misconduct, including auditors, liquidators, financial services and credit licensees
-  Insurance claims handling
-  Superannuation — member services failures and misconduct resulting in systematic erosion of superannuation balances
-  Technical and operational resilience to risks faced by market operators and market participants (specifically, the potential technological harms stemming from scams, artificial intelligence and cybersecurity)
-  Compliance with new breach reporting regime for the financial services industry

<sup>10</sup> Australian Securities and Investments Commission investigation and enforcements; Economic References Committee, the Senate, July 2024 [Australian Securities and Investments Commission investigation and enforcement \(aph.gov.au\)](https://www.asic.gov.au/asic/psc/20240701).

## 2023-2024: ASIC's enforcement actions, outcomes and priorities

ASIC has said it is committed to taking a proactive, strategic and bold enforcement approach and will not be deterred from taking on cases even where the outcome is not guaranteed.<sup>11</sup> Whilst ASIC continues to use litigation enforcement tools following the "Why not litigate?" mantra of the Financial Services Royal Commission, it has returned to using other enforcement tools such as infringement notices, in lieu of court proceedings.

Between 1 January 2023 and 30 June 2024 ASIC<sup>12</sup>:

**Filed 33 civil penalty proceedings**

in the Federal Court



Commenced  
**215 new investigations**

**Issued 32 infringement notices**

with approx.

**AU\$7.87M in penalties paid.**

Infringement notices are issued by ASIC as an alternative to court, e.g. where the alleged misconduct is less serious and does not indicate a broader pattern of misconduct by the entity. If an entity does not comply with an infringement notice, ASIC will generally pursue court action.



## Notable ASIC enforcement actions and outcomes between January 2023 and June 2024



- **First greenwashing proceedings** commenced by ASIC against a superannuation company alleging misleading or deceptive conduct. ASIC has since brought **three (3) civil penalty proceedings for greenwashing**.



- **First greenwashing court victory.** An investment management company was found to have misled investors about its AU\$1 billion ethical bond fund. ASIC says the case demonstrates its commitment to taking on **misleading marketing and greenwashing claims** made by companies in the **financial services industry**.<sup>13</sup>



- **First civil penalty proceeding** filed for alleged failures to comply with ASIC's new **internal dispute resolution regime** (RG 271), which came into effect on 5 October 2021. ASIC alleges that the company's responses to complaints did not comply with dispute resolution procedures including applicable timeframes, and the company did not have adequate resources to comply with internal dispute resolution procedures.



- **First proceeding** filed against a company and its directors for alleged breaches of **whistleblower provisions**. ASIC has said that combatting **governance failures** remains a key priority for ASIC.<sup>14</sup>



- **First proceeding** commenced alleging **unfair contract terms in insurance contracts**.

<sup>11</sup> [ASIC Annual Forum 2023: Enforcement session opening remarks | ASIC](#).

<sup>12</sup> These statistics were reported by the AFR in <https://www.afr.com/politics/federal/we-suspect-anz-broke-the-law-in-14b-bond-sale-asic-20240723-p5jvw4>.

<sup>13</sup> [24-061MR ASIC wins first greenwashing civil penalty action against Vanguard | ASIC](#).

<sup>14</sup> [23-045MR ASIC sues TerraCom Limited, its managing director, chief commercial officer, former Chair and a former director | ASIC](#).





## Significant penalties

Federal Court penalty of

### **AU\$10M for misleading insurance pricing**

imposed against an Australian insurer for misleading representations and insurance pricing discount failures.

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Federal Court penalty of

### **AU\$12M for fees for no service**

imposed against an Australian financial advisory company for fee disclosure failures and charging when no service was provided to the customer.

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Federal Court penalty of

### **AU\$15M for continuous disclosure breaches**

imposed against a listed entity, with penalties of AU\$2M and AU\$1M against two (2) individual directors. These are some of the highest penalties imposed against individuals for corporate misconduct, and the highest ever penalty imposed against a corporation for continuous disclosure contraventions.

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Federal Court penalty of

### **AU\$40M for insurance misselling**

imposed against an Australian general insurer under financial services consumer protection laws for failing to honour discount promises (loyalty and no claims bonus discounts) made to customers when they renewed their insurance policies.

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Markets Disciplinary Panel penalty of

### **AU\$4.5M for market integrity breaches**

imposed against one (1) of Australia's largest retail trading brokers based on a history of trading compliance failures.

## **ASIC's 2023/2024 enforcement trends**



**Duty of utmost good faith** — ASIC lost its case against an Australian insurer in the Federal Court in the **first action taken by ASIC** for **alleged breach of duty of good faith** under s13 of the *Insurance Contracts Act 1984* (Cth). ASIC claimed the insurer failed to take proper steps to decline cover for fraudulent non-disclosure. The Court found the insurer had reasonably concluded the insured's non-disclosure was fraudulent and was not required to have made further enquiries.



**Crypto-Assets** — In June 2024, the Federal Court found a FinTech company had contravened the Corporations Act by engaging in unlicensed financial services conduct by offering **crypto-backed products without an Australian Financial Services Licence**. Although the Court found the contraventions were serious, **no penalty was awarded** because the Court found the company had **acted honestly and not carelessly**, including relying on **external legal advice**.



**Market integrity and insider trading: protecting market integrity is a priority focus for ASIC for 2024** — In 2023-2024 ASIC conducted targeted enforcement actions including commencing investigations, issuing infringement notices, banning directors and filing civil actions against companies and individual D&Os. It also continues to refer criminal matters to the Commonwealth Director of Public Prosecutions (CDPP).

Examples of this enforcement activity include:

- regulatory interventions targeting **pump and dump activity**, intervening on chat rooms, reviewing **'finfluencer' activity** and undertaking targeted reviews of **leaks ahead of market announcements**
- launching a significant high profile ongoing investigation against one (1) of Australia's largest banks amid serious allegations of potential **market manipulation** (including the bank's role in a AU\$14 billion sale of government bonds which is the subject of the probe)

## ASIC's 2023/2024 enforcement trends (continued)



- investigations into **wheat futures markets** resulting in a significant fine against a global financial services company and commencing **civil penalty proceedings** in July 2024 against Chinese-owned trading companies alleging **manipulation of Eastern Australia Wheat futures contracts**.
- establishing a dedicated **insider trading team** to take criminal cases from investigation to prosecution. In the 2024 financial year, ASIC almost **doubled the number of new insider trading investigations** commenced compared to the previous financial year. ASIC currently has **six (6) active matters before the courts for insider trading**, with other ongoing investigations. In July 2024, following an ASIC investigation, **four (4) individuals were criminally charged** for their alleged involvement in a coordinated scheme to pump up share values before dumping them at inflating prices.



**Greenwashing and Greenhushing** — These are **investigation and enforcement priorities** for ASIC and Australia's consumer regulator the Australian Competition and Consumer Commission (**ACCC**) and is where companies make false representations about their sustainability practises in order to present an environmentally acceptable image, consistent with current community and business expectations as Australia transitions to a low carbon economy. A key focus for ASIC is on the financial services sector. The ACCC is focused on the consumer goods, manufacturing and energy sectors.

- Since 2023, **ASIC has brought 3 civil penalty proceedings** and issued 17 infringement notices for alleged ESG misconduct.
- The ACCC has carried out internet sweeps to identify misleading environmental and sustainability marketing claims and business reviews.

In November 2024, a **Senate inquiry report into greenwashing** is due to be delivered, which is expected to make recommendations for **Australian regulatory/legislative reform to address greenwashing**.



**Transparency in private credit** — ASIC has established a taskforce to **investigate conflicts of interest and asset valuations in the private credit sector** and the need for regulation in this sector. ASIC is concerned about a lack of transparency and lack of adequate protections for investors in private credit funds.

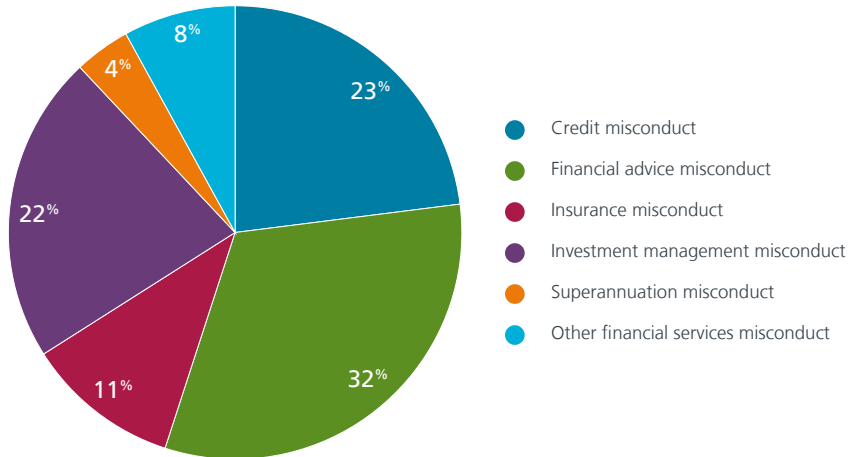


**Financial Accountability Regime (FAR)** — The FAR commenced in March 2024 for the banking industry. From March 2025 the FAR will apply to the insurance and superannuation sectors. The FAR is jointly administered by two (2) regulators, ASIC and APRA.

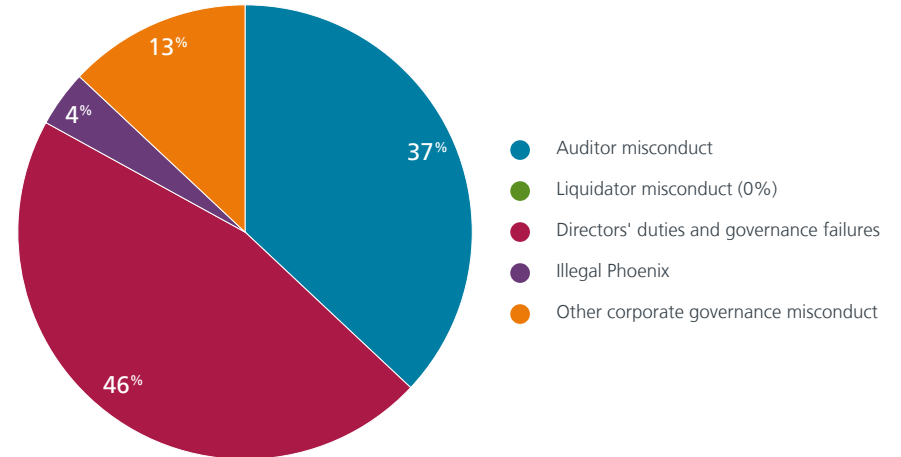
The FAR imposes a **responsibility, transparency and accountability framework** for entities in the **banking, insurance and superannuation sectors**, and their directors and senior executives. The FAR is designed to improve the risk and governance cultures of Australia's financial institutions. Organisations can face **penalties of up to AU\$782.5M** for failures to comply with the FAR. Individuals can also face penalties (as discussed in our D&O Risks section below).

## ASIC - Summary of ASIC enforcement outcomes: July to December 2023

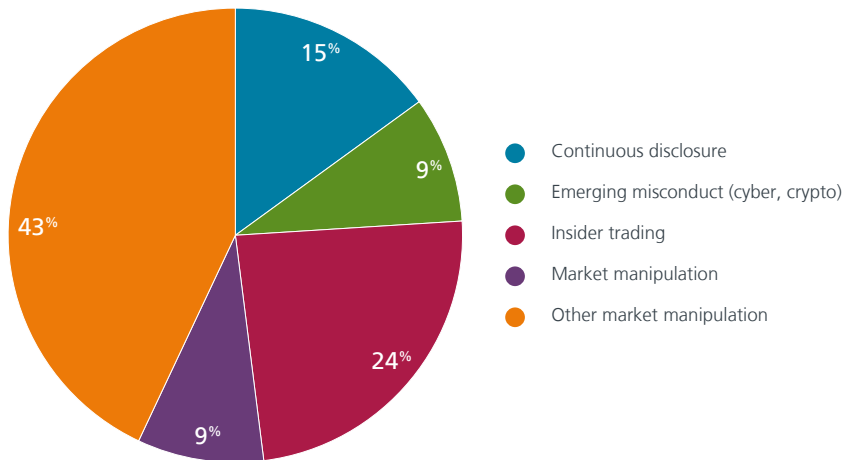
**Financial services** enforcement outcomes and litigation in progress



**Corporate governance** enforcement outcomes and litigation in progress



**Market enforcement** outcomes and litigation in progress



**Source:** ASIC website - Summary of enforcement outcomes: July to December 2023  
<https://asic.gov.au/about-asic/asic-investigations-and-enforcement/asic-enforcement-outcomes/summary-of-enforcement-outcomes-july-to-december-2023/>.

## Regulatory Risks – Other

### Operational risk management - Australian Prudential Regulation Authority (APRA)

APRA is Australia's prudential regulator which supervises institutions across the banking, insurance and superannuation sectors.

In **July 2025 APRA's risk management regime will commence**, with staged commencement dates for different entities. Regulated industries will be responsible for having a **risk management framework** that is appropriate to the size, business mix and complexity of the business and must be consistent with the business' strategic objectives and business plan.

### Privacy/Cyber - Office of the Australian Information Commissioner (OAIC)

The OAIC is Australia's regulator for privacy and freedom of information. It manages Australia's notifiable data breach scheme. Organisations or agencies are required to notify the OAIC when a data breach involving personal information is likely to result in "serious harm".

In November 2022 changes to the Privacy Act granted the OAIC greater powers to resolve breaches and **significantly increased penalties** for serious and or repeated privacy breaches.

Maximum penalties for serious or repeated privacy breaches have increased to:



For **companies** –  
**the greater of AU\$50M**  
**or 3 times the value of a benefit** directly or indirectly obtained from a company by a contravention **or 30% of adjusted turnover of the company** during the breach turnover period (minimum 12 months). Previously, the maximum penalty amount was AU\$2.2M.



For **individuals** –  
**AU\$2.5M.**

For 2023/24 the OAIC's regulatory focus areas are:



Online platforms, social media and high privacy impact technologies



Security of personal information



Ensuring privacy safeguards in permitted shared consumer data



The timely and proactive release of government-held information

Following recent significant data breaches in Australia, the Australian Government is considering proposed privacy law reforms. These reforms would represent the **biggest overhaul of privacy laws in decades**. They are likely to significantly increase the risk of liability for companies and individuals, including class action risk. Among the proposed amendments:

- Individuals would be able to exercise **new privacy rights** (including a statutory tort for serious invasions of privacy) and take **direct action** in courts if their privacy is breached, with **no limits on remedies**.
- OAIC would have **greater investigative and enforcement powers**.



## Regulatory Risks – Other (continued)

### AML/CTF - Australian Transaction Reports and Analysis Centre (AUSTRAC)

AUSTRAC is Australia's anti-money laundering/counter-terrorism financing (AML/CTF) regulator. It aims to ensure regulated businesses comply with their obligations to have systems and controls in place to manage risks and to protect them and the community from criminal abuse.

AUSTRAC regulates more than 17,000 Australian businesses that **provide financial, gambling, bullion, remittance and digital currency exchange services**. The Australian Government is considering proposed reforms to extend the AML/CTF regime to include **regulation of lawyers, accountants, trust and company services providers, real estate agents and dealers in precious metals and stones**. This would align Australia's AML/CTF laws with most other countries around the world.

AUSTRAC's enforcement powers include issuing infringement notices, accepting enforceable undertakings, issuing remedial directions and bringing civil penalty proceedings. AUSTRAC's investigations and enforcement actions to date have **led to shareholder class-action filings**.

Among its priorities for 2024, AUSTRAC is focussed on holding individual Board members and executives accountable for maintaining a culture of AML/CTF compliance and risk management. This will include **joining individuals to proceedings** where the individual is in any way concerned in, or party to, a contravention of a civil penalty provision of the AML/CTF Act.

AUSTRAC has brought a limited number of **civil penalty proceedings** to date (and has one (1) claim on foot) it has obtained **enormous penalty outcomes**. These include:



a proposed **AU\$1.3B penalty** against an **Australian Bank** (subject to court approval);



an **AU\$700M penalty** against an **Australian bank**;



an **AU\$450M penalty** against a **Melbourne casino**;



an **AU\$67M penalty** against an **Adelaide casino**; and



an **AU\$45M penalty** against an **Australian gambling company**.

## Regulatory Risks – Other (continued)

### Competition and consumer claims - Australian Competition & Consumer Commission (ACCC)

The ACCC is Australia's competition and consumer regulator. In November 2022, **the maximum penalties** for breaches of Australia's competition and consumer laws were **significantly increased** and the unfair contract terms regime was strengthened.

Penalties for competition and consumer breaches have increased to:



For **companies** -  
**the greater of AU\$50M**  
or **three (3) times the value** of a benefit obtained by a contravention  
or **30% of adjusted turnover** of the company during the breach  
turnover period (minimum 12 months).



For individuals –  
**AU\$2.5M.**

The ACCC's enforcement and compliance priorities for 2024-25 include:



Consumer, product safety, fair trading and competition concerns in relation to environmental claims and sustainability.



Consumer and fair trading issues in the digital economy, with a focus on misleading or deceptive advertising within influencer marketing, online reviews, in-app purchases and price comparison websites.

### Strengthening of Australia's foreign bribery laws

In February 2024 Australia introduced a **new "failure to prevent foreign bribery"** offence under s 70.5A of the *Criminal Code Act 1995* (modelled on s 7 of the *UK Bribery Act 2010*).

From September 2024 **companies will be criminally liable for foreign bribery activities** committed by employees, contractors, agents and subsidiaries for the profit or gain of the company. The offence applies to Australian corporates across a wide range of sectors including **ASX listed and private companies, government entities and not-for-profits**. Australian companies operating overseas may be subject to increased scrutiny by Australian authorities on their foreign activities.

This is a **strict liability** offence i.e., there is no need to prove fault on the part of the organisation. A defence will only be available if the company can show it had adequate procedures in place to prevent the bribery. The maximum penalty for failing to prevent bribery is the **greater of AU\$31.3M, three (3) times the value of the benefit obtained** by the company or **10% of the company's annual turnover**.

# D&O RISKS

Australia's directors and officers (D&Os) face a heightened risk of liability, confronted with new risks of cyber threats, ESG, artificial intelligence (AI) and sustainable finance, in an increasingly complex regulatory environment.

Individual directors are increasingly being sued by regulators and in private actions for being **knowingly involved** in a company's contraventions. In addition to being disqualified from managing corporations, the risk of exposure to D&Os for accessorial liability can include significant civil and even criminal penalties, as well as joint liability for the loss or damage claimed against the company itself.

D&Os may be covered for their legal costs and liability arising from these claims under D&O insurance policies, subject to the policy wording and nature of the claim. Insurers may be prohibited under certain Australian laws from indemnifying D&Os for liability (including for fines and penalties), depending on any findings ultimately made.



## ASIC's 2024 enforcement priorities

ASIC has included "governance and directors' duties" among its enduring priorities and as a focus for 2024. Directors' duties, governance failures and illegal phoenixing (i.e. conduct designed to sidestep creditors) comprised 50% of ASIC's corporate governance enforcement outcomes and litigated matters in the period July-December 2023.

### Examples of enforcement action taken against individual D&Os by ASIC in 2023/24



**Disqualified 11 directors** in the period 1 January – 30 June 2024 for failures relating to **mismanagement of companies**, including their roles in the collapse of companies leaving creditors unpaid (including the ATO, employees and other small businesses). Directors were also found to have engaged in **illegal phoenix activity** and using company funds to make payments to related parties for no commercial reason.



Filing **criminal charges** against four (4) alleged ring leaders of a penny-stock pump-and-dump scheme. Each director faces fines of more than AU\$1M and up to 15 years' imprisonment if found guilty of conspiracy to commit market rigging and false trading in a coordinated **market manipulation scheme**.



**Successful criminal action** against an individual promotor of an **online crypto platform** for providing **unlicensed and unauthorised financial advice** in seminars and on social media. The promotor was also disqualified from managing corporations and providing financial services, and freezing orders were obtained over his digital assets for the first time.



### Continuous disclosure law reforms

Australian D&Os can face exposure for allowing a company to make misleading or deceptive market announcements listed and failing to qualify, withdraw or correct misleading announcements.

In 2021 Australia's corporation laws were amended to **raise the standard of proof for continuous disclosure claims** (including misleading or deceptive conduct claims based on continuous disclosure) brought by ASIC or private litigants to **include a fault element**. This requires proof the company **knew, or was reckless or negligent** with respect to whether information would, if it were generally available, have a material effect on the price or value of the company's shares. Such a change was expected to uncover more coverage issues with respect to such claims, given conduct exclusions in insurance policies otherwise responding to such claims.

In 2024, Treasury issued a Report of an independent review of changes to continuous disclosure laws, which is now being considered by the Australian Government<sup>15</sup>.

The Report included:

- the fault element be **removed** for civil penalty proceedings brought by ASIC only. This will lower the bar for ASIC actions, and
- the fault element be **retained**, at least for the time being, for private litigants bringing civil compensation proceedings. This recommendation was based on a finding that the 2021 amendments had little (if any) impact on the number and type of continuous disclosure class actions.



### Financial Accountability Regime (FAR)

The FAR commenced in March 2024, initially applying to the bank industry. From March 2025, FAR will apply to the insurance and superannuation sectors. The FAR imposes responsibilities on entities in the banking, insurance and superannuation industries and is governed by ASIC and APRA.

**All directors and senior executives are identified as "accountable persons" (APs) under the FAR.** Organisations and APs owe **heightened obligations** with respect to everything the organisation does including to act with honesty and integrity and with due skill, care and diligence; and to take reasonable steps to ensure the organisation complies with financial services laws.

Individuals can be held **liable as accessories to pay a financial penalty up to AU\$1.565M** if they are directly or indirectly, knowingly concerned in, or a party to a contravention of FAR by the organisation. Individuals may also face **disqualification from being an AP** if they fail to comply with their obligations.

<sup>15</sup> [Report of the independent review of the changes to the continuous disclosure laws, Treasury, February 2024.](#)



## Climate change mandatory reporting

From 1 January 2025 legislation is expected to commence requiring Australian large businesses and financial institutions to include mandatory climate-related financial disclosure reporting in their annual reports. ASIC will govern the new reporting regime.

Companies will be required to lodge a **"sustainability report"** with their annual financial reports disclosing information about the company's climate-related risks and opportunities. These include climate-related governance, strategy, risk management, metrics, targets (including greenhouse gas emissions) and emissions occurring up or down the supply chain and associated with their financing or investment activities.

Directors will be required to sign a **Directors' declaration, declaring that, in their opinion, the company has taken reasonable steps to ensure compliance with the Corporations Act.** This qualified declaration will only last for three (3) years. After the first three (3) years, directors will be required to **attest unqualified that company reporting complies with the Corporations Act.**

The regime is expected to be implemented in a staged approach as follows.



Larger companies (**AU\$500M or more consolidated revenue**) to commence disclosing from **1 January 2025**



Companies with **consolidated revenue of AU\$200M or more plus asset managers** (with AU\$5 billion or more assets under management) to commence disclosing from **1 July 2026**



Companies with **consolidated revenue of AU\$50M or more** to commence disclosing from **1 July 2027**

ASIC has warned companies to **begin putting systems, processes and governance practices in place now** to meet the proposed new climate reporting requirements.

The regime creates **significant potential exposure for companies and their D&Os.** Civil or regulatory proceedings, including class actions, may be brought based on a company's failed reporting disclosures, including claims of misleading or deceptive conduct, representations as to future matters without a reasonable basis, continuous disclosure breaches, breaches of directors' duties, negligent misstatement, breaches of statutory duties and breaches of fiduciary duties.

The risk of these claims being pursued has been recognised by the Government. The proposed legislation will provide **temporary protection** by placing a **three (3) year ban on private litigation** relating to certain protected statements. During this period, only ASIC will be able to take action for misleading or deceptive conduct in relation to these disclosures, or criminal proceedings may be brought by the CDPP.



## Employment and Work Health & Safety claims

D&Os can face significant personal exposure (including criminal liability in serious cases) for employment law breaches. These include for their involvement in breaches of the **Fair Work Act 2009** or for failing to take reasonable steps to ensure the business provides a safe workplace and complies with work health and safety (WHS) laws.

**Insurers** should be aware of the **risk of policy exclusions for workplace claims potentially being circumvented** where D&Os are sued for joint liability for loss or damage.

- *Employment/Fair Work* - Individual D&Os are increasingly being sued in civil claims, including class actions (e.g. for underpayments) and in civil penalty proceedings brought by the Fair Work Ombudsman (**FWO**) or being forced to respond to other enforcement actions taken by FWO. Between July 2023-March 2024 the FWO reported 62 litigation outcomes. In **more than half** of these cases (at least **54%**), **individual directors or officers were sued**, either with or without the employing entity.

D&Os (and external advisors) can have **accessorial liability** where they are found to have been personally involved in a company's breach of the Fair Work Act by aiding, abetting, counselling or procuring or in any way being directly or indirectly knowingly concerned in the company's contravention. This can give rise to **significant personal exposure for D&Os**.

Large corporate **underpayments of wages and other employee entitlements** (including superannuation) is a **current enforcement priority** for the FWO. In 2022-23, the FWO recovered around **AU\$220M in underpayments** from the large corporates' sector including through litigation. We are also seeing a rise in class actions based on these claims.

From **1 January 2025, intentional underpayment of wages** will become a **criminal offence** (for underpayments after 1 January 2025). D&Os may face imprisonment of up to **10 years** and significant penalties, being **the greater of 3 times the amount of the underpayment and AU\$1.565M**.

- *WHS* – Under WHS laws in all Australian states and territories (except Victoria which operates under different legislation), individual D&Os can face significant penalties for breaches of WHS laws. Those include penalties of up to **AU\$3.327M for gross negligence or recklessness as to the risk of death or serious injury or illness**; and up to **20 years' imprisonment for causing a workplace death** through negligent conduct or recklessness. **Insurers are prohibited under Australian laws** from indemnifying penalties imposed by the WHS Act.





### Increase in Australian company insolvencies

Since the end of the COVID-19 pandemic, Australia has reported a steady increase in the number of company insolvencies. ASIC's insolvency data demonstrates that between 1 July 2023-31 March 2024, there was a **36.2% increase in the number of companies entering external administration** compared to the previous corresponding period, a **294.6%** increase in restructurings and a **218.8%** increase in court liquidation appointments. ASIC predicts that the number of companies entering external administration **by 30 June 2024 will exceed 10,000** for the financial year, a level not seen since the 2012-13 financial year.

The increase in insolvency activity creates heightened risk for D&Os who may face personal liability for unpaid company debts, class actions, claims of breaches of directors' duties or other breaches, regulatory actions or liquidators' claims. **D&O policies may respond** to such claims **even where policies contain insolvency exclusions or carve-outs for taxes** (e.g. where there is a write-back for company taxes), depending on the wording of the policy and the nature of the claim.



### Director Penalty Notices (DPNs) issued by the Australian Taxation Office (ATO)

Individual **current and former directors** can be personally liable for a **company's unpaid tax, superannuation and GST liabilities** if these are not paid by the company on time. The **ATO can issue DPNs on directors requiring payment of the company's outstanding debts**. If this is not paid, the ATO may issue garnishee notices or pursue bankruptcy against individuals to recover amounts unpaid. The current rise in Australian company insolvencies **increases the risk of D&Os being issued with DPNs** for unpaid company debts.

The ATO has been **ramping up enforcement activity**, including pursuing recoveries by **filing company winding up applications and issuing DPNs**. The number of **DPNs issued to directors in the 2023/24 period is reported to be well above previous years**.<sup>16</sup>

<sup>16</sup> [As tax and superannuation debts grow, ATO issues tens of thousands of director penalty notices that could send more people bankrupt - ABC News.](#)





# APPENDICES





# APPENDICES

## CLASS ACTIONS IN AUSTRALIA

Shareholder Class Actions								
Matter	D&O or adviser respondents sued, in addition to entity	Plaintiff Law Firm	Funder	Industry	Year Commenced	Allegations	Jurisdiction	Group Cost Order (GCO) in place, and if so, the % ordered
<b>Active Shareholder Class Actions as at 1 June 2024</b>								
Quintis	Director	Gadens Lawyers	Ironbark	Agriculture & Livestock	2017	Market disclosure - misleading or deceptive conduct	Federal Court of Australia	No
Quintis	Auditor Director(s)	Piper Alderman	LCM	Agriculture & Livestock	2018	Market disclosure - misleading or deceptive conduct; false or misleading statements	Federal Court of Australia	No
BHP Group	No	Phi Finney McDonald / Maurice Blackburn	G&E FTMC Funding LLC / Maurice Blackburn (No Win No Fee)	Metals & Mining	2018	Market disclosure - misleading or deceptive conduct; breach of disclosure obligations	Federal Court of Australia	No
Brambles	No	Maurice Blackburn / Slater & Gordon	Omni Bridgeway / Harbour Litigation Funding	Logistics	2018	Market disclosure - misleading or deceptive conduct; breach of disclosure obligations	Federal Court of Australia	Yes (% not set)
Westpac	No	Phi Finney McDonald	Woodsford Litigation Funding	Banking & Finance	2019	Market disclosure - misleading or deceptive conduct; breach of disclosure obligations	Federal Court of Australia	No
Whitehaven (Milestone Shareholders)	No	Watson Mangioni Lawyers Pty Ltd	Noorinya Holdings Trust	Mining	2019	Breach of contract; discriminatory treatment of shareholders	Supreme Court of NSW	No

Shareholder Class Actions								
Matter	D&O or adviser respondents sued, in addition to entity	Plaintiff Law Firm	Funder	Industry	Year Commenced	Allegations	Jurisdiction	Group Cost Order (GCO) in place, and if so, the % ordered
<b>Active Shareholder Class Actions as at 1 June 2024 (cont)</b>								
Axess Today	Auditor	Hicksons Lawyers	Therium Litigation Finance	Equipment funding	2020	Market disclosure - misleading or deceptive conduct; breach of disclosure obligations	Federal Court of Australia	No
Boral	No	Maurice Blackburn	No Win No Fee	Building materials	2020	Market disclosure - misleading or deceptive conduct; breach of disclosure obligations	Federal Court of Australia	No
Boral	No	Phi Finney McDonald	Therium Litigation Finance	Building materials	2020	Market disclosure - misleading or deceptive conduct; breach of disclosure obligations	Federal Court of Australia	No
CIMIC Group Limited	No	Phi Finney McDonald	Omni Bridgeway	Construction	2020	Market disclosure - misleading or deceptive conduct; breach of disclosure obligations	Federal Court of Australia	No
Treasury Wines Estates	No	Maurice Blackburn / Slater & Gordon	No Win No Fee	Food Manufacturing	2020	Market disclosure - misleading or deceptive conduct; breach of disclosure obligations	Supreme Court of Victoria	Expected
Crown Resorts II	No	Slater & Gordon	GCO	Media & Entertainment	2020	Market disclosure - misleading or deceptive conduct; breach of disclosure obligations	Supreme Court of Victoria	Yes (not to exceed 27.5% incl GST)
Freedom Foods and Deloitte (Noumi)* (consolidated)	Auditor	Slater & Gordon / Phi Finney McDonald	GCO	Food Manufacturing	2020	Market disclosure - misleading or deceptive conduct; breach of disclosure obligations	Supreme Court of Victoria	Yes (22% incl GST)

Shareholder Class Actions								
Matter	D&O or adviser respondents sued, in addition to entity	Plaintiff Law Firm	Funder	Industry	Year Commenced	Allegations	Jurisdiction	Group Cost Order (GCO) in place, and if so, the % ordered
<b>Active Shareholder Class Actions as at 1 June 2024 (cont)</b>								
Arrium and KPMG	Auditor Director(s)	Banton Group	GCO	Metals & Mining	2021	Market disclosure - misleading or deceptive conduct; breach of disclosure obligations	Supreme Court of Victoria	Yes (40%)
Mayne Pharma	No	Phi Finney McDonald	Vannin Capital	Pharmaceuticals	2021	Market disclosure - misleading or deceptive conduct; breach of disclosure obligations	Supreme Court of Victoria	No
a2 Milk Company* (consolidated)	No	Slater & Gordon / Shine Lawyers	GCO	Food Manufacturing	2021	Market disclosure - misleading or deceptive conduct; breach of disclosure obligations	Supreme Court of Victoria	Yes (24% incl GST)
Nuix Group Proceedings* (consolidated)	No	Shine Lawyers / Phi Finney McDonald	Woodsford Litigation Funding / LLS Australia Funding Pty Ltd	Software	2021	Market disclosure - misleading or deceptive conduct; breach of disclosure obligations	Supreme Court of Victoria	No
EML Payments	No	Shine Lawyers	GCO	Fintech	2021	Market disclosure - misleading or deceptive conduct; breach of disclosure obligations	Supreme Court of Victoria	Yes (24.5% incl GST)
Beach Energy	No	Slater & Gordon	GCO	Oil & Gas	2021	Market disclosure - misleading or deceptive conduct; breach of disclosure obligations	Supreme Court of Victoria	Yes (24.5% incl GST)
Insurance Australia Group (IAG)	No	Quinn Emanuel Urquhart & Sullivan	GCO	Insurance	2022	Market disclosure - misleading or deceptive conduct; breach of disclosure obligations	Supreme Court of Victoria	Yes (30% incl GST)

Shareholder Class Actions								
Matter	D&O or adviser respondents sued, in addition to entity	Plaintiff Law Firm	Funder	Industry	Year Commenced	Allegations	Jurisdiction	Group Cost Order (GCO) in place, and if so, the % ordered
<b>Active Shareholder Class Actions as at 1 June 2024 (cont)</b>								
Star Entertainment Group	No	Slater & Gordon	GCO	Media & Entertainment	2022	Market disclosure - misleading or deceptive conduct; breach of disclosure obligations	Supreme Court of Victoria	Yes (14%)
Fletcher Building	No	Mayweathers	CASL	Construction	2022	Market disclosure - misleading or deceptive conduct	Supreme Court of Victoria	No
Downer EDI* (consolidated)	No	Maurice Blackburn	No Win No Fee	Engineering	2023	Market disclosure - misleading or deceptive conduct; breach of disclosure obligations	Supreme Court of Victoria	No
FleetPartners Group (formerly Eclipx Group Ltd)	No	Phi Finney McDonald	GCO	Vehicle leasing	2023	Market disclosure - misleading or deceptive conduct; breach of disclosure obligations	Supreme Court of Victoria	Yes (39%)
James Hardie Shareholders	No	Echo Law	GCO	Building materials	2023	Market disclosure - misleading or deceptive conduct; breach of disclosure obligations	Supreme Court of Victoria	Yes (27.5% incl GST)
Medibank Private* (consolidated)	No	Phi Finney McDonald / Quinn Emanuel Urquhart & Sullivan	GCO	Insurance	2023	Market disclosure - misleading or deceptive conduct; breach of disclosure obligations	Supreme Court of Victoria	Yes (27.5% incl GST)
Ansell	No	Slater & Gordon	GCO sought	Medical manufacturing	2023	Market disclosure - breach of disclosure obligations	Supreme Court of Victoria	GCO sought



Shareholder Class Actions										
Matter	Year Commenced	Year Settled	Settlement Amount (AUD)	Demand / Estimated Loss (AUD)	Plaintiff Law Firm	Litigation Funder	Legal Fees (AUD)	Funder Fees (AUD)	Jurisdiction	Group Cost Order (GCO) in place, and if so, the % ordered
<b>Key Shareholder Class Action Settlements (1 January 2023 to 1 July 2024)</b>										
GetSwift	2018	2023	\$1M	\$50M	Phi Finney McDonald	Therium	\$7.9m (approx.) incurred, \$100,000 partial recovery	\$394,000	Federal Court of Australia	No
AMP Fees for No Service	2018	2023	\$110M	Unknown	Maurice Blackburn / Quinn Emanuel Urquhart & Sullivan	Unknown	\$26.2 million	Unknown	Supreme Court of NSW	No
Ardent Leisure/ Dreamworld	2020	2023	\$26M	Unknown	Piper Alderman	Woodsford Litigation Funding	\$5.1 million	\$7.8 million	Federal Court of Australia	No
Gunns	2020	2023	Unknown	Unknown	Piper Alderman	Omni Bridgeway	Unknown	Unknown	NSW Supreme Court	No
Wellard	2020	2024	\$23M	Unknown	Quinn Emanuel Urquhart & Sullivan	ICP Funding	\$8.5 million	\$4.9 million	Federal Court of Australia	No
G8 Education*	2021	2023	\$46.5M	Unknown	Slater & Gordon	Law firm - contingency fee	\$13 million	GCO subject to final approval	Victorian Supreme Court	Yes (27.5%) subject to final approval

\*Subject to court approval

Shareholder Class Actions			
Matter	Plaintiff Law Firm	Industry	Allegations
<b>Threatened Shareholder Class Actions as at 1 July 2024</b>			
Yowie Group Limited	Gadens	Retail	Market disclosure - continuous disclosure contraventions
Magnis Energy and Hall Chadwick	Gordon Legal	Energy technology	Market disclosure - continuous disclosure contraventions; misleading or deceptive conduct
Dominos	Echo Law	Hospitality & Retail	Market disclosure - continuous disclosure contraventions; misleading or deceptive conduct
Eclipx	Bannister Law	Financial services	Market disclosure - continuous disclosure contraventions
Blue Sky	Gadens	Community care	Market disclosure - misleading or deceptive conduct; false misrepresentations

Other Consumer and Commercial/Corporate Class Actions								
Matter	D&O or other respondents	Plaintiff Law Firm	Funder	Industry	Year Commenced	Allegations	Jurisdiction	Group Cost Order (GCO) in place, and if so, the % ordered
<b>Active Consumer and Commercial/Corporate Class Actions as at 1 June 2024</b>								
Colonial First State Interest Rates Investments	No	Slater & Gordon	Unknown	Superannuation	2018	Breach of trust	Federal Court of Australia	No
Telechoice	No	Marshalls / Dent / Wilmoth Lawyers	Unknown	Telecommunications	2018	Consumer protection - misleading or deceptive conduct; false or misleading representations; breach of franchising agreements	Federal Court of Australia	No
Combustible Cladding	No	William Roberts Lawyers	Omni Bridgeway	Manufacturer	2019	Consumer protection - product liability	Federal Court of Australia	No
UBS	No	Maurice Blackburn	No Win No Fee	Banking	2019	Anti-competitive behaviour	Federal Court of Australia	No
AMP super fees* (consolidated)	No	Slater & Gordon / Maurice Blackburn	Harbour Fund IV L.P / Therium	Superannuation	2019	Superannuation fees	Federal Court of Australia	No
Fairview Architectural	Insurer	William Roberts Lawyers	Omni Bridgeway	Construction	2019	Consumer protection - misleading or deceptive conduct; false or misleading representations; product liability	Federal Court of Australia	No
Walton Construction	No	William Roberts Lawyers /Bounty Law / Redmond + Redmond	IMF Bentham	Banking	2019	Consumer protection - misleading or deceptive conduct; unconscionable conduct	Federal Court of Australia	No
MLC	No	William Roberts Lawyers	Omni Bridgeway	Superannuation	2019	Superannuation fees	Federal Court of Australia	No
Monsanto Australia Pty Ltd	No	LHD Lawyers	No Win No Fee	Commercial & Corporations	2019	Misleading or deceptive conduct	Federal Court of Australia	No
Murray Darling Basin Authority	No	Banton Group	International Litigation Partners	Public and government administration	2019	Breach of duties	Supreme Court of NSW	No
Essure	No	Slater & Gordon	No Win No Fee	Pharmaceuticals	2019	Consumer protection - product liability	Supreme Court of Victoria	No

Other Consumer and Commercial/Corporate Class Actions								
Matter	D&O or other respondents	Plaintiff Law Firm	Funder	Industry	Year Commenced	Allegations	Jurisdiction	Group Cost Order (GCO) in place, and if so, the % ordered
<b>Active Consumer and Commercial/Corporate Class Actions as at 1 June 2024</b>								
Colonial First State Super Insurance Investments	No	Shine Lawyers	Woodsford Litigation Funding	Investment services	2020	Consumer protection - breach of duties; wrongful charging	Federal Court of Australia	No
S&P Ratings	No	Banton Group	Litigation Capital Partners LLP PTE Ltd	Capital markets	2020	False or misleading representations	Federal Court of Australia	No
AMP Financial Planning Pty Ltd	No	Piper Alderman / Shine Lawyers	Woodsford Litigation Funding	Financial advice	2020	Financial services - breach of obligations; wrongful charging	Federal Court of Australia	No
CBA Commlnsure	No	Shine Lawyers	Unknown	Financial planning	2020	Failure to act in clients' best interests; wrongful charging	Federal Court of Australia	No
Count Financial Limited	No	Piper Alderman	Woodsford Litigation Funding	Financial services	2020	Failure to act in clients' best interests; wrongful charging	Federal Court of Australia	No
OnePath and ANZ	No	Slater & Gordon	Unknown	Financial services	2020	Breach of duties	Federal Court of Australia	No
Camden Land Subsidence (Spring Farm)	No	Mayweathers	Omni Bridgeway	Public and government administration	2020	Misleading or deceptive conduct; negligence	Supreme Court of NSW	No
Holden Dealership (settled with lead plaintiff)	No	HWL Ebsworth Lawyers	Plaintiff and group members sharing costs equally	Car dealer	2020	Breach of contract	Supreme Court of Victoria	No
Epping Gardens Aged Care	No	Carbone Lawyers	No Win No Fee / Equal Access Funding	Healthcare and aged care	2020	Breach of duties	Supreme Court of Victoria	No
Allianz car dealer add-on insurance	No	Maurice Blackburn / Johnson Winter & Slattery	GCO	Insurance	2020	Misleading or deceptive conduct; unconscionable conduct	Supreme Court of Victoria	Yes (25% incl GST)
MLC MySuper and Universal Super Scheme	No	Maurice Blackburn	No Win No Fee	Superannuation	2020	Misleading or deceptive conduct; false or misleading representations; breach of duties	Supreme Court of Victoria	No
Macquarie Flex Commissions	No	Maurice Blackburn	GCO	Car finance	2020	Misleading or deceptive conduct	Supreme Court of Victoria	Yes (24.5% incl GST)

Other Consumer and Commercial/Corporate Class Actions								
Matter	D&O or other respondents	Plaintiff Law Firm	Funder	Industry	Year Commenced	Allegations	Jurisdiction	Group Cost Order (GCO) in place, and if so, the % ordered
<b>Active Consumer and Commercial/Corporate Class Actions as at 1 June 2024</b>								
ANZ Flex Commissions	No	Maurice Blackburn	GCO	Banking	2020	Misleading or deceptive conduct	Supreme Court of Victoria	Yes (24.5% incl GST)
Westpac Flex Commissions	No	Maurice Blackburn	GCO	Banking	2020	Misleading or deceptive conduct	Supreme Court of Victoria	Yes (24.5% incl GST)
St Basil's Aged Care	No	Carbone Lawyers	Carbone Lawyers / Equal Access Funding Pty Ltd	Healthcare and aged care	2020	Breach of duties	Supreme Court of Victoria	No
QLD Energy	No	Piper Alderman	LCM	Electricity and energy	2021	Competition - misuse of market power	Federal Court of Australia	No
Lloyd's	No	Gordon Legal	Omni Bridgeway	Insurance	2021	COVID-19 business interruption insurance cover	Federal Court of Australia	No
QBE	No	Gordon Legal	Omni Bridgeway	Insurance	2021	COVID-19 business interruption insurance cover	Federal Court of Australia	No
Insurance Australia Limited	No	Slater & Gordon	ICP Funding	Insurance	2021	COVID-19 business interruption insurance cover	Federal Court of Australia	No
Philips Healthcare	No	Gerard Malouf & Partners	No Win No Fee	Electronics	2021	Consumer protection - product liability	Federal Court of Australia	No
Hollard Insurance	No	Slater & Gordon	ICP Funding	Insurance	2021	COVID-19 business interruption insurance cover	Federal Court of Australia	No
Qoin	No	Banton Group	Unknown	Financial services	2021	Financial services - misleading or deceptive conduct; unconscionable conduct	Federal Court of Australia	No
QSUPER Board	No	Shine Lawyers	Woodsford Litigation Funding	Insurance	2021	Wrongful charging	Federal Court of Australia	No
Mitsubishi Motors	No	Bannister Law	Woodsford Litigation Funding	Car manufacturer	2021	Consumer protection - false or misleading representations	Federal Court of Australia	No
ANZ Bank	No	Phi Finney McDonald	Woodsford Litigation Funding	Banking	2021	Unfair contract terms	Federal Court of Australia	No
Armidale Investment Default	No	APJ Law	Unknown	Professional Services	2021	Fraud	Supreme Court of NSW	No



Other Consumer and Commercial/Corporate Class Actions								
Matter	D&O or other respondents	Plaintiff Law Firm	Funder	Industry	Year Commenced	Allegations	Jurisdiction	Group Cost Order (GCO) in place, and if so, the % ordered
<b>Active Consumer and Commercial/Corporate Class Actions as at 1 June 2024</b>								
Laith & Fadi	No	Levitt Robinson	No Win No Fee	Hospitality & Retail	2021	Misleading or deceptive conduct; breach of duties; unconscionable conduct	Supreme Court of NSW	No
AAI & MTA	No	Maurice Blackburn	GCO	Insurance	2021	Misleading or deceptive conduct; false or misleading representations	Supreme Court of Victoria	Yes (25% incl GST)
CMC Markets	No	Johnson Winter & Slattery	Harbour Fund V, L.P.	Financial institution	2022	Financial services - misleading or deceptive conduct; unconscionable conduct	Federal Court of Australia	No
Apple	No	Maurice Blackburn / Phi Finney McDonald	Partially funded by CF FLA Australia Investments 2 Pty Ltd	Technology	2022	Competition - misuse of market power; restrictive trade practices; anti-competitive conduct	Federal Court of Australia	No
Google	No	Maurice Blackburn / Phi Finney McDonald	Partially funded by CF FLA Australia Investments 2 Pty Ltd	Technology	2022	Competition - misuse of market power; restrictive trade practices; anti-competitive conduct	Federal Court of Australia	No
Jaguar Land Rover*	No	Gilbert + Tobin / Maurice Blackburn (orders for consolidation, appeal ongoing)	Fortress (Maurice Blackburn / Jennings action)	Car manufacturer	2022	Consumer protection - product liability	Federal Court of Australia (Appeal)	No
P&O Cruises	No	Shine Lawyers	Unknown	Travel and accommodation	2022	Consumer protection - breach of consumer guarantees	Federal Court of Australia	No
Chief Executive Officer (Housing)	No	Phi Finney McDonald	CASL	Housing	2022	Consumer protection - unconscionable conduct	Federal Court of Australia	No
Thirdi William Street	No	Bradbury Legal	Unknown	Real Estate	2022	Breach of statutory warranties	Supreme Court of NSW	No

Other Consumer and Commercial/Corporate Class Actions								
Matter	D&O or other respondents	Plaintiff Law Firm	Funder	Industry	Year Commenced	Allegations	Jurisdiction	Group Cost Order (GCO) in place, and if so, the % ordered
<b>Active Consumer and Commercial/Corporate Class Actions as at 1 June 2024</b>								
FC Mariners	No	Bradbury Legal	Unknown	Construction	2022	Misleading or deceptive conduct; breach of duties; breach of contract	Supreme Court of NSW	No
European River Cruise (Insufficient water)	No	Somerville Legal	Unknown	Travel and accommodation	2022	Consumer protection - breach of consumer guarantees	Supreme Court of NSW	No
Dermatology & Cosmetic Surgery Services	5 doctors	Maddens Lawyers	No Win No Fee	Healthcare and aged care	2022	Misleading or deceptive conduct; breach of duties	Supreme Court of Victoria	No
United Petroleum	Potentially United Petroleum commission agents	Levitt Robinson	No Win No Fee	Fuel	2022	Misleading or deceptive conduct; unconscionable conduct	Supreme Court of Victoria	No
Medibank	No	Baker & McKenzie	Omni Bridgeway / Balance Capital Legal	Insurance	2023	Consumer protection - misleading or deceptive conduct; breach of contract	Federal Court of Australia	No
Hyundai	No	Johnson Winter & Slattery	Woodsford Litigation Funding	Car manufacturer	2023	Consumer protection - product liability	Federal Court of Australia	No
KIA	No	Johnson Winter & Slattery	Woodsford Litigation Funding	Car manufacturer	2023	Consumer protection - product liability	Federal Court of Australia	No
Australian Public Custodian Limited	2 managers of schemes	Piper Alderman	Unknown	Custodial and investment	2023	Misuse of investor funds	Federal Court of Australia	No
Optus	No	Slater & Gordon	Unknown	Telecommunications	2023	Consumer protection - breach of contract; breach of duties	Federal Court of Australia	No
Carnival PLC	No	Carter Capner Law	Unknown	Travel and accommodation	2023	Frustration, discomfort and distress	Federal Court of Australia	No
IG Markets Limited	No	Piper Alderman	Omni Bridgeway	Fintech	2023	Financial services - misleading or deceptive conduct; unconscionable conduct	Federal Court of Australia	No

Other Consumer and Commercial/Corporate Class Actions								
Matter	D&O or other respondents	Plaintiff Law Firm	Funder	Industry	Year Commenced	Allegations	Jurisdiction	Group Cost Order (GCO) in place, and if so, the % ordered
<b>Active Consumer and Commercial/Corporate Class Actions as at 1 June 2024</b>								
Qantas	No	Echo Law Pty Ltd	CASL and Omni Bridgeway	Airline	2023	Consumer protection - misleading or deceptive conduct; unconscionable conduct	Federal Court of Australia	No
Best Leader Markets	No	Hiways Lawyers	Unknown	Financial services	2023	Financial services - misleading or deceptive conduct; breach of contract	Federal Court of Australia	No
SMSF	Auditors	Mackay Chapman	Unknown	Auditor	2023	Misleading or deceptive conduct; breach of duties; breach of contract; negligence	Federal Court of Australia	No
Plus500	No	Johnson Winter & Slattery	Harbour Fund V, L.P.	Fintech	2023	Financial services - misleading or deceptive conduct; unconscionable conduct	Federal Court of Australia	No
Green Capital	No	Mayweathers	Omni Bridgeway	Construction	2023	Misleading or deceptive conduct; breach of duties	Federal Court of Australia	No
Asgard and BT Funds Management	No	Shine Lawyers	Unknown	Insurance	2023	Wrongful charging	Federal Court of Australia	No
Taylor's Business	No	Consumer Action Law Centre	Consumer Action Law Centre	Pawnbroker	2023	Consumer protection - unconscionable conduct	Federal Court of Australia	No
Qantas	No	Piper Alderman	Omni Bridgeway	Airline	2023	Consumer protection - misleading or deceptive conduct; breach of contract	Federal Court of Australia	No
Plus500	No	Mayweathers	CASL	Fintech	2023	Financial services - misleading or deceptive conduct; unconscionable conduct	Federal Court of Australia	No

Other Consumer and Commercial/Corporate Class Actions								
Matter	D&O or other respondents	Plaintiff Law Firm	Funder	Industry	Year Commenced	Allegations	Jurisdiction	Group Cost Order (GCO) in place, and if so, the % ordered
<b>Active Consumer and Commercial/Corporate Class Actions as at 1 June 2024</b>								
Sony	No	Phi Finney McDonald	Woodsford Litigation Funding	Electronics	2023	Anti-competitive behaviour	Federal Court of Australia	No
Aristocrat Leisure Limited	No	William Roberts Lawyers	LCM	Gambling	2023	Consumer protection - unconscionable conduct	Federal Court of Australia	No
REST Superannuation	No	Shine Lawyers	Woodsford Litigation Funding	Superannuation	2023	Breach of duties	Federal Court of Australia	No
IC Markets	Founder	Echo Law	CASL	Capital markets	2023	Misleading or deceptive conduct; unconscionable conduct	Federal Court of Australia	No
Hino diesel	No	Maurice Blackburn	GCO sought	Car manufacturer	2023	False or misleading representations	Supreme Court of Victoria	GCO sought
JB Hi-Fi	No	Maurice Blackburn	Unknown	Electronics	2023	Consumer protection - misleading or deceptive conduct	Supreme Court of Victoria	No
AFL	No	Margalit Injury Lawyers	No Win No Fee	Sport	2023	Breach of duties	Supreme Court of Victoria	No
IC Markets	No	Piper Alderman	Woodsford Litigation Funding	Capital markets	2024	Misleading or deceptive conduct; unconscionable conduct	Federal Court of Australia	No
ALI Group	No	Shine Lawyers	Woodsford Litigation Funding	Insurance	2024	Consumer protection - misleading or deceptive conduct	Federal Court of Australia	No
Aussie Home Loans Insurance	No	Shine Lawyers	Woodsford Litigation Funding	Financial services	2024	Financial services - misleading or deceptive conduct; breach of duties	Federal Court of Australia	No
RAMs	No	Morris Mennilli	Court House Capital	Mortgage lender	2024	Breach of duties	Federal Court of Australia	No
IAG Home Insurance	No	Slater & Gordon	Unknown	Insurance	2024	Misleading or deceptive conduct; unconscionable conduct	Supreme Court of Victoria	No



Other Consumer and Commercial/Corporate Class Actions								
Matter	D&O or other respondents	Plaintiff Law Firm	Funder	Industry	Year Commenced	Allegations	Jurisdiction	Group Cost Order (GCO) in place, and if so, the % ordered
<b>Active Consumer and Commercial/Corporate Class Actions as at 1 June 2024</b>								
Fitch Ratings	No	Banton Group	Unknown	Credit ratings	2024	TBC	Federal Court of Australia	No

Other Consumer and Commercial/Corporate Class Actions										
Matter	Year Commenced	Year Settled	Settlement Amount (AUD)	Demand / Estimated Loss (AUD)	Plaintiff Law Firm	Litigation Funder	Legal Fees (AUD)	Funder Fees (AUD)	Jurisdiction	Group Cost Order (GCO) in place, and if so, the % ordered
<b>Key Consumer and Commercial/Corporate Class Action Settlements (1 January 2023 to 1 July 2024)</b>										
Johnson & Johnson pelvic mesh (x2)	2012 / 2021	16-Mar-23	\$300M	Unknown	Shine Lawyers	Shine Lawyers	\$100 million (pending approval)	Unknown	Federal Court of Australia	No
European River Cruise (Flooding)	2014	2023	\$11M	Unknown	Sommerville Legal	Legal Justice	\$4.6 million	Unknown	Supreme Court of NSW	No
Australian Retirement Group	2016	2023	\$2.4M to the defendant	Unknown	Shine Lawyers (to 1 October 2020); Hall Partners (from 20 May 2021)	JustKapital	Unknown	N/A	Supreme Court of NSW	No
Aveo	2017	2023	\$11M	160-500 million	Levitt Robinson	Galactic	\$8.5 million	Unknown	Federal Court of Australia	No
Deloitte Hastie Audits	2017	2023	\$18.5M	Unknown	Phi Finney McDonald	Omni Bridgeway	\$7.5 million	\$5.1 million	Federal Court of Australia	No
Zoetis	2018	2023	\$2.1M to defendant	Unknown	LHD Lawyers	Unknown	Unknown	Unknown	Federal Court of Australia	No
7-Eleven	2018	2023	\$98M	Unknown	Levitt Robinson	Galactic	\$16.6 million	\$12 million	Federal Court of Australia	No
Westpac Superannuation	2019	2023	\$29.95M	Unknown	Slater & Gordon	Therium	\$2.6 million	\$6.5 million	Federal Court of Australia	No
CBA Consumer Credit	2020	2023	\$50M	Unknown	Slater & Gordon	No	\$8.15 million	N/A	Federal Court of Australia	No
Westpac Consumer Credit Insurance	2020	2023	\$29M	Unknown	Slater & Gordon	No	\$9.4 million	N/A	Federal Court of Australia	No

Other Consumer and Commercial/Corporate Class Actions										
Matter	Year Commenced	Year Settled	Settlement Amount (AUD)	Demand / Estimated Loss (AUD)	Plaintiff Law Firm	Litigation Funder	Legal Fees (AUD)	Funder Fees (AUD)	Jurisdiction	Group Cost Order (GCO) in place, and if so, the % ordered
<b>Key Consumer and Commercial/Corporate Class Action Settlements (1 January 2023 to 1 July 2024)</b>										
Linchpin	2020	2023	\$6.3M	Unknown	Corrs Chambers Westgarth	LCM	Unknown	Unknown	Federal Court of Australia	No
Aksesstoday Investor	2020	2024 (pending court approval on 2 August 2024)	\$9.5M	Unknown	Hicksons Lawyers (Compumod) / Wotton + Kearney (Aksesstoday)	Therium Litigation Finance Atlas AFP IC	\$1.62 million	\$1.96 million	Federal Court of Australia	No
ANZ Consumer Credit Insurance	2020	2023	\$47M	Unknown	Slater & Gordon	No	\$10.34 million	N/A	Federal Court of Australia	No
AMP Buyer of Last Resort (BOLR) Policy	2020	2023	\$100M	Unknown	Corrs Chambers Westgarth	Augusta	Unknown	Under negotiation (potentially 43 million)	Federal Court of Australia	No
CIMIC underpayment	2021	13-Jun-23	\$438,000	Unknown	Eureka Lawyers	Unknown	Unknown	Unknown	Federal Court of Australia	No
Tyro	2021	30-May-23	\$5M	Unknown	Bannister Law	Court House Capital	Subject to contradictor	Subject to contradictor	Federal Court of Australia	No
Opal Towers	2022	8-Dec-23	Confidential	Unknown	Corrs Chambers Westgarth	Augusta	Unknown	Unknown	Supreme Court of NSW	No

Other Consumer and Commercial/Corporate Class Actions			
Matter	Plaintiff Law Firm	Industry	Allegations
<b>Threatened Consumer and Commercial/Corporate Class Actions as at 1 July 2024</b>			
Allergan	Shine Lawyers	Pharmaceutical	Product liability
Johnson & Johnson	Shine Lawyers	Pharmaceutical	Product liability
Isuzu, Mazda	Chamberlains	Car manufacturer	Product liability
GEMI Capital	MC Lawyers & Advisers	Investment firm	Misleading or deceptive conduct
3M	Shine Lawyers	Conglomerate	Product liability
Toyota	William Roberts Lawyers	Car manufacturer	Product liability

Other Consumer and Commercial/Corporate Class Actions			
Matter	Plaintiff Law Firm	Industry	Allegations
<b>Threatened Consumer and Commercial/Corporate Class Actions as at 1 July 2024</b>			
Phoslock fraud, auditor (KPMG)	Levitt Robinson	Aquatic technology	Market disclosure - Misleading announcements and financial statements
Herbalife	Piper Alderman	Food manufacturing	Misleading or deceptive conduct; false or misleading representations
Trivago	Piper Alderman	Technology	Misleading or deceptive conduct; false or misleading representations
Direct Life Insurance	Bannister Law	Insurance	Breach of statutory obligations
Apple iPhone	Bannister Law	Technology	Product liability
Accounting firms and AMMA Private Equity Pty Ltd	Bannister Law	Private equity	Breach of obligations
Promoters of Boomers v Team USA - TEG Live Pty Limited	Bannister Law	Media and Entertainment	Misleading or deceptive conduct; false or misleading representations
Guardian Security	Adero Law	Security services	Investment schemes
DOMA	Adero Law	Construction	Breach of contract
Salt Lake Potash and auditor	Banton Group	Agriculture and Livestock	Market disclosure - Misleading or deceptive conduct
CFD	Banton Group / Mayweathers	Fintech	Breach of obligations
Zip Co, directors and officers, and audit	Banton Group	Fintech	Market disclosure - misleading or deceptive conduct
Financial Products	Banton Group	Unknown	Unknown
HighLow Markets Pty Ltd	Banton Group	Broker	Unknown
Tyro Payments Ltd Investigation	Banton Group	Fintech	Product liability
CMC Markets	Mayweathers	Financial services	Misleading or deceptive conduct

EMPLOYMENT							
Matter	Plaintiff Law Firm	Funder	Industry	Year Commenced	Allegations	Jurisdiction	Group Cost Order (GCO) in place, and if so, the % ordered
<b>Active Employment Class Actions as at 1 June 2024</b>							
Hays (Casual miners)	Adero Law	Augusta	Labour hire & Recruitment	2018	Fair Work - underpayment	Federal Court of Australia	No
Stellar (Casual miners)	Adero Law	No Win No Fee	Labour hire & Recruitment	2018	Fair Work - underpayment	Federal Court of Australia	No
Woolworths	Adero Law	Unknown	Hospitality & Retail	2019	Fair Work - underpayment	Federal Court of Australia	No
Coles Group	Adero Law	Unknown	Hospitality & Retail	2020	Fair Work - underpayment	Federal Court of Australia	No
Monash Health	Gordon Legal	The Australian Salaried Medical Officers' Federation & Anor	Healthcare and aged care	2021	Fair Work - underpayment	Federal Court of Australia	No
Western Health	Gordon Legal	The Australian Salaried Medical Officers' Federation & Anor	Healthcare and aged care	2021	Fair Work - underpayment	Federal Court of Australia	No
Eastern Health	Gordon Legal	The Australian Salaried Medical Officers' Federation & Anor	Healthcare and aged care	2021	Fair Work - underpayment	Federal Court of Australia	No
Alfred Health & Anor	Gordon Legal	The Australian Salaried Medical Officers' Federation & Anor	Healthcare and aged care	2021	Fair Work - underpayment	Federal Court of Australia	No
Northern Health	Gordon Legal	The Australian Salaried Medical Officers' Federation & Anor	Healthcare and aged care	2021	Fair Work - underpayment	Federal Court of Australia	No
McDonalds	Shine Lawyers	Retail and Fast Food Workers Union (RAFFWU)	Hospitality & Retail	2021	Fair Work - underpayment	Federal Court of Australia	No
Bendigo Health	Gordon Legal	The Australian Salaried Medical Officers' Federation & Anor	Healthcare and aged care	2021	Fair Work - underpayment	Federal Court of Australia	No
Wilson Security	Adero Law	Unknown	Security services	2022	Fair Work - underpayment	Federal Court of Australia	No
ACT	Gordon Legal	Unknown	Public and government administration	2021	Fair Work - underpayment	Federal Court of Australia	No
Melbourne Health	Gordon Legal	Unknown	Healthcare and aged care	2021	Fair Work - underpayment	Federal Court of Australia	No



EMPLOYMENT							
Matter	Plaintiff Law Firm	Funder	Industry	Year Commenced	Allegations	Jurisdiction	Group Cost Order (GCO) in place, and if so, the % ordered
<b>Active Employment Class Actions as at 1 June 2024</b>							
Wilson Security	Adero Law	Unknown	Security services	2022	Fair Work - underpayment	Federal Court of Australia	No
ACT	Gordon Legal	Unknown	Public and government administration	2022	Fair Work - underpayment	Federal Court of Australia	No
Melbourne Health	Gordon Legal	Unknown	Healthcare and aged care	2022	Fair Work - underpayment	Federal Court of Australia	No
Reject Shop	Adero Law	Unknown	Hospitality & Retail	2023	Fair Work - underpayment	Federal Court of Australia	No
Sydney Trains	Adero Law	Unknown	Transport	2023	Fair Work - underpayment	Federal Court of Australia	No
Goulburn Valley Health	Gordon Legal	The Australian Salaried Medical Officers' Federation	Healthcare and aged care	2023	Fair Work - underpayment	Federal Court of Australia	No
Aldi	A J Macken & Co	Shop, Distributive and Allied Employees Association (SDA)	Hospitality & Retail	2023	Fair Work - underpayment	Federal Court of Australia	No
Aldi	A J Macken & Co	Shop, Distributive and Allied Employees Association (SDA)	Hospitality & Retail	2023	Fair Work - underpayment	Federal Court of Australia	No
KFC	Shine Lawyers	Unknown	Hospitality & Retail	2023	Fair Work - underpayment	Federal Court of Australia	No
McDonalds	Lieschke & Weatherill	Shop, Distributive and Allied Employees Association (SDA)	Hospitality & Retail	2023	Fair Work - underpayment	Federal Court of Australia	No
Embassy of Saudi Arabia	Snedden Hall & Gallop	Unknown	Public and government administration	2024	Fair Work - underpayment	Federal Court of Australia	No
Emergency Services Unpaid Super	Gordon Legal	Unknown	Superannuation	2024	Unpaid superannuation	Supreme Court of Victoria	No

EMPLOYMENT										
Matter	Year Commenced	Year Settled	Settlement Amount (AUD)	Demand / Estimated Loss (AUD)	Plaintiff Law Firm	Litigation Funder	Legal Fees (% of settlement) (AU\$)	Funder Fees (% of settlement) (AU\$)	Jurisdiction	Group Cost Order (GCO) in place, and if so, the % ordered
<b>Employment Class Action Settlements (1 January 2023 to 1 July 2024)</b>										
Thiess FIFO	2016	2023	\$860,000	Unknown	Nicholas Legal	No	7%	N/A	Federal Court of Australia	No
Navy Training	2016	2023	\$735,000	Unknown	Levitt Robinson	Unknown	8%	Unknown	Supreme Court of New South Wales	No
On the Run	2020	2023	\$5.8M	Unknown	Adero Law	No	26%	N/A	Federal Court of Australia	No
RMS Engineering	2021	2023	\$130,000	Unknown	Queensland Workplace and Injury Law	No	52%	N/A	Federal Court of Australia	No
Peninsula Health	2021	2023	Unknown	Unknown	Gordon Legal / Hayden Stephens & Associates	Unknown	Unknown	Unknown	Federal Court of Australia	No

EMPLOYMENT			
Matter	Plaintiff Law Firm	Industry	Allegations
<b>Threatened Employment Class Actions as at 1 July 2024</b>			
OTR Group - Smokemart & Giftbox stores	Adero Law	Retail	Fair Work - underpayment; denying breaks
Rio Tinto	Shine Lawyers	Mining	Sexual discrimination or sexual harassment
Reject Shop	Adero Law	Retail	Fair Work – underpayment; denying breaks
Wesfarmers	Adero Law	Conglomerate	Fair Work - underpayment
Cotton On	Adero Law	Retail	Fair Work - underpayment
Quicksilver Connections Limited	Queensland Workplace & Workplace Injury Law	Retail	Fair Work - underpayment

## KEY ASIC ENFORCEMENT CASES 1 JANUARY 2023 – 30 JUNE 2024

Key ASIC enforcement actions and outcomes from 1 January 2023 to 30 June 2024 relating to (1) emerging risks; (2) securities; and (3) insurance are set out in the below tables.

Source: ASIC website <https://asic.gov.au/>

EMERGING RISKS					
Company / Individual	Directors & Officers involved	Date of enforcement action (Court proceedings commenced / Infringement notice)	Industry / sector	Relevant breaches or contraventions	Enforcement outcome
<b>Greenwashing</b>					
<b>Court Proceedings</b>					
Superannuation fund	No	Ongoing as at 30 June 2024	Superannuation	False or misleading statements	Ongoing as of 30 June 2024*
Investment Management company	No	28-Mar-24	Investment services	False or misleading statements	Ongoing (awaiting penalty hearing)
Superannuation fund	No	5-Jun-24	Superannuation	False or misleading statements	Ongoing (awaiting declaratory relief)
<b>Infringement notice (Payment of an infringement notice is not an admission of guilt or liability)</b>					
Energy provider	No	5-Jan-23	Commodities	False or misleading statements	Infringement notice of AU\$39,960
Superannuation fund	No	27-Apr-23	Superannuation	False or misleading statements	Infringement notice of AU\$13,320
Managed fund	No	30-Nov-23	Fund	False or misleading statements	2 infringement notices of AU\$29,820
Asset management organisation	No	19-Dec-23	Investment Management	False or misleading statements	2 infringement notices of AU\$29,820
Trustee services company	No	28-Feb-24	Financial services	False or misleading statements	Infringement notice of AU\$13,320
Land management company	No	25-Jun-24	Agriculture	False or misleading statements	2 infringement notices of AU\$37,560
<b>Illegal Phoenix activity</b>					
<b>Director disqualification</b>					
Director of four (4) companies	Director	31-Jan-23	Tyre and retail	Illegal phoenix activity	Disqualified from managing corporations
Director of three (3) companies	Director	21-Mar-23	Construction	Illegal phoenix activity	Disqualified from managing corporations
Director of five (5) companies	Director	6-Jul-23	Construction	Illegal phoenix activity	Disqualified from managing corporations
Director of six (6) companies	Director	15-Aug-23	Food / hospitality	Illegal phoenix activity	Disqualified from managing corporations
Director of five (5) companies	Director	25-Sep-23	Business advisory	Illegal phoenix activity	Disqualified from managing corporations

\* On 2 August 2024, the Federal Court ordered the company to pay a AU\$11.3 million penalty.

EMERGING RISKS					
Company / Individual	Directors & Officers involved	Date of enforcement action (Court proceedings commenced / Infringement notice)	Industry / sector	Relevant breaches or contraventions	Enforcement outcome
<b>Crypto</b>					
<b>Court proceedings</b>					
Blockchain powered FinTech	No	23-Nov-22	Financial services (crypto)	Unlicensed financial services conduct	Ongoing (ASIC appeal)
Digital currency exchange provider	No	15-Dec-22	Financial services (crypto)	Product disclosure obligations; unlicensed financial services conduct	Ongoing (ASIC appeal)
Digital currency payments provider	No	25-Oct-22	Financial services (crypto)	Unlicensed financial services conduct; misleading conduct	On appeal (ASIC appeal)
<b>Infringement notice</b>					
FinTech company	No	27-Sep-23	Financial services (crypto)	Misleading conduct	4 infringement notices of AU\$53,280
<b>Whistleblower provisions</b>					
<b>Court Proceedings</b>					
Mining resources company	4 Directors and Officers	1-Mar-23	Commodities	Conduct harmed a whistleblower	Ongoing
<b>Internal dispute resolution regime</b>					
<b>Court Proceedings</b>					
Superannuation fund	No	Ongoing	Superannuation	Alleged breach of internal dispute resolution regime	Ongoing (ASIC seeking declarations, pecuniary penalties, other orders)
SECURITIES					
Company / Individual	Directors & Officers involved	Date of enforcement action (Court proceedings commenced / Infringement notice)	Industry / sector	Relevant breaches or contraventions	Enforcement outcome
<b>Disclosure obligations</b>					
<b>Court proceedings</b>					
Mining company	Director	10-May-22	Commodities	Continuous disclosure obligations	AU\$450,000 penalty Director: AU\$70,000 penalty and disqualified
Software delivery management company	3 former Directors	Feb-19	Technology	Continuous disclosure obligations; misleading conduct; breach of director duties	AU\$15m penalty; ASIC's costs. Director: AU\$2m penalty and disqualified. Director: AU\$1m penalty and disqualified Director: AU\$75,000 penalty and disqualified

SECURITIES					
Company / Individual	Directors & Officers involved	Date of enforcement action (Court proceedings commenced / Infringement notice)	Industry / sector	Relevant breaches or contraventions	Enforcement outcome
Company distributing plant-based and dairy beverages	2 Directors	27-Feb-23	Food manufacturing	Continuous disclosure obligations; misleading conduct; breach of director duties	AU\$5,000,000 penalty (two (2) contraventions)
Shopping experience platform	2 Directors	20-Dec-23	E-commerce	Disclosure obligations	TBC
Bank	[Directors - criminal proceedings of ACCC dropped]	14-Sep-18	Bank	Continuous disclosure obligations	AU\$9,000,000 penalty
Biotech company	CEO	4-Aug-21	Natural products	Continuous disclosure obligations; misleading conduct	AU\$1,800,000 penalty Director: AU\$150,000 penalty and disqualified
Lithium battery manufacturer	Chairman	30-Apr-24	Technology and materials	Disclosure obligations	TBC (ASIC seeking declarations and pecuniary penalties)
Business-focused payments service	CEO / director	7-Dec-20	Financial services	Disclosure obligations; misleading conduct	TBC (ASIC to seek penalties and orders)
<b>Infringement notice</b>					
Woodfibre processing company	No	N/A	Commodities	Continuous disclosure obligations	Infringement notice of AU\$33,000
<b>Market integrity</b>					
<b>Infringement notice of Markets Disciplinary Panel (MDP)</b>					
Private wealth management company	No	Mar-22	Financial services	Breach of market integrity rules	Infringement notice of AU\$548,328
Wealth Management and financial advice organisation	No	N/A	Financial services	Breach of market integrity rules	Infringement notice of AU\$888,000
Stock broking execution solutions company	No	N/A	Financial services	Breach of market integrity rules	Infringement notice of AU\$333,000
Retail broker	No (Head of Trading only)	24-Mar-21	Financial services	Breach of market integrity rules	Infringement notice of AU\$4,500,000; enforceable undertaking Director: banned from providing financial services
Global trading ecosystem provider	No	6-Dec-23	Financial services	Breach of market integrity rules; governance and compliance	Infringement notice of AU\$670,500
Global financial services provider	No	9-May-24	Financial services	Breach of market integrity rules	Infringement notice of AU\$775,000
Brokerage solutions provider	No	20-Jun-24	Financial services	Breach of market integrity rules	Infringement notice of AU\$3,100,000; enforceable undertaking

SECURITIES					
Company / Individual	Directors & Officers involved	Date of enforcement action (Court proceedings commenced / Infringement notice)	Industry / sector	Relevant breaches or contraventions	Enforcement outcome
<b>Misrepresentations</b>					
<b>Court Proceedings</b>					
Multi-stage investment firm	Director	15-Feb-24	Various	Misrepresentations; unlicensed financial services conduct	TBC (ASIC seeking declarations and injunctions and director disqualification)

INSURANCE					
Relevant Company / Individual	Directors involved?	Date of enforcement action (Court proceedings commenced / Infringement notice)	Relevant breaches or contraventions	Enforcement outcome	
<b>Unfair Contract terms</b>					
<b>Court Proceedings</b>					
Life insurance company	No	12-May-23	Unfair contract term	Ongoing	
Insurance organisation	Head of trading	4-Apr-23	Unfair contract term	Ongoing (ASIC appear)	
<b>Utmost good faith</b>					
<b>Court Proceedings</b>					
Insurance organisation	No	19-Nov-21	Not acting in utmost good faith; Consumer protections	AU\$10,000,000 penalty; AU\$11,800,000 remediation to 1,000 customers; adverse publicity notice	
Insurance organisation	No	7-Dec-22	Not acting in utmost good faith	Federal Court found against ASIC on all counts (no enforcement taken)	
<b>Other conduct</b>					
<b>Court Proceedings</b>					
Financial services organisation	No	26-May-21	Unconscionable conduct	AU\$24,000,000 penalty; breaches that did not include a civil penalty	
Insurance organisation	No	15-Oct-21	Misleading conduct	AU\$40,000,000 penalty; repayments of AU\$815,000,000 to 5.6 million customers	
Insurance product provider	Director	9-Sep-19	Consumer protections; Unconscionable conduct	AU\$13,500,000 penalty Director: AU\$100,000 penalty and disqualified from managing corporations	
Insurance organisation	No	25-Aug-23	Consumer protections	Ongoing (ASIC seeking declarations, pecuniary penalties, adverse publicity orders)	



<b>INSURANCE</b>				
<b>Relevant Company / Individual</b>	<b>Directors involved?</b>	<b>Date of enforcement action (Court proceedings commenced / Infringement notice)</b>	<b>Relevant breaches or contraventions</b>	<b>Enforcement outcome</b>
Funeral service provider	5 directors and officers of parent	1/10/2020 (Company) 31/08/2023 (Directors)	Consumer protections; misrepresentations	AU\$1,200,000 penalty
Insurance organisation	No	24-Feb-23	Consumer protections; misleading conduct	AU\$10,000,000 penalty

## ASIC ENFORCEMENT STATISTICS\*

\* Data sourced from ASIC

ENFORCEMENT OUTCOMES				
	Summary of enforcement outcomes: January to June 2022   ASIC	Summary of enforcement outcomes: July to December 2022   ASIC	Summary of enforcement outcomes: January to June 2023   ASIC	Summary of enforcement outcomes: July to December 2023   ASIC
	January - June 2022	July - December 2022	January - June 2023	July - December 2023
<b>Prosecutions</b>				
<b>Commonwealth Director of Public Prosecutions (CDPP) criminal prosecutions</b>				
Individuals charged by CDPP	27	15	18	19
Criminal charges against individuals prosecuted	139	173	125	144
Custodian sentences	7	7	14	2
Non-custodial sentences	11	8	6	7
<b>Internal Summary prosecutions</b>				
Individuals charged with strict liability offences in summary prosecutions	81	86	124	98
Criminal charges laid against individuals prosecuted for strict liability offences	171	205	333	205
<b>Civil penalties</b>				
Civil penalties imposed by courts	AU\$145.8m	AU\$76.3m	AU\$109.1m	AU\$59.8m
Civil penalty cases commenced	7	11	7	15
<b>Bannings</b>				
Individuals removed / restricted from providing financial services or credit	31	53	46	34
Individuals disqualified or removed from directing companies	27	13	7	14
<b>Infringement notices and court enforceable undertakings</b>				
Infringement notices issued	2	12	7	13
Infringement notice penalties paid	AU\$26,640	AU\$368,520	AU\$5.8m	AU\$1.7m
Court enforceable undertaking accepted	0	1	2	3
<b>Infringement notices and court enforceable undertakings</b>				
Investigations commenced	60	62	70	83
Investigations ongoing	148	103	144	126

# KEY CONTACTS/AUTHORS\*



**Janette McLennan**  
**D&O/Financial Lines/Professional  
Indemnity/Reinsurance**

Partner, Sydney  
t: +61 2 9260 2803  
e: [Janette.McLennan@sparke.com.au](mailto:Janette.McLennan@sparke.com.au)



**Eleanor Pike**  
**D&O/Financial Lines/Professional  
Indemnity**

Senior Associate, Sydney  
t: +61 2 9260 2631  
e: [Eleanor.Pike@sparke.com.au](mailto:Eleanor.Pike@sparke.com.au)

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# OTHER SUBJECT MATTER KEY CONTACTS



**Malcolm Cameron**  
**Financial Lines/Professional Indemnity**  
National Practice Group Leader, Sydney  
t: +61 2 9373 1485  
e: Malcolm.Cameron@sparke.com.au



**John Coorey**  
**D&O/Financial Lines/Professional Indemnity**  
Partner, Sydney  
t: +61 2 9260 2461  
e: John.Coorey@sparke.com.au



**Matt Ellis**  
**Insurance & Reinsurance/Corporate Transactions/W&I**  
Partner, Melbourne  
t: +61 3 9291 2286  
e: Matt.Ellis@sparke.com.au



**David Kerwin**  
**D&O/Financial Lines/Professional Indemnity**  
Partner, Brisbane  
t: +61 7 3016 5128  
e: David.Kerwin@sparke.com.au



**Dino Liistro**  
**D&O/Financial Lines/Professional Indemnity**  
Partner, Sydney  
t: +61 2 9373 3541  
e: Dino.Liistro@sparke.com.au



**Jon Tyne**  
**Cyber/D&O/Financial Lines/W&I**  
Partner, Sydney  
t: +61 2 9260 2683  
e: Jonathan.Tyne@sparke.com.au



**Deborah Morris**  
**D&O/Financial Lines/Professional Indemnity**  
Special Counsel, Sydney  
t: +61 2 9260 2433  
e: Deborah.Morris@sparke.com.au



**Victoria Huntington**  
**Financial Lines/Professional Indemnity**  
Special Counsel, Sydney  
t: +61 2 9260 2496  
e: Victoria.Huntington@sparke.com.au



**Stephanie Barclay**  
**D&O/Financial Lines/Professional Indemnity**  
Special Counsel, Sydney  
t: +61 2 9373 3530  
e: Stephanie.Barclay@sparke.com.au



**Sarah Richards**  
**D&O/Professional Indemnity**  
Special Counsel, Perth  
t: +61 8 9288 8057  
e: Sarah.Richards@sparke.com.au



