

Class Actions in New Zealand – an update

Representative or class actions continue to grow and develop in New Zealand and around the globe.



NZ Law Commission Review

The Law Commission is currently reviewing submissions on its Issues Paper on Class Actions and Litigation Funding. Its review is wide-ranging and will likely establish the ground rules for class actions and litigation funding for the foreseeable future. The Law Commission intends to release its final report in the first half of 2022 and may seek further input on its review in the later part of this year.

See more information on the review [here](#).



Recent developments within our borders



The Crown settles kiwifruit action

The Crown settled, on the cusp of a Supreme Court hearing, with 200 kiwifruit growers seeking \$450m following the PSA3 bacteria outbreak.

See our update [here](#).



Opt-in or opt-out?

The Supreme Court has allowed class actions to be brought on an "opt-out" basis (that is on behalf of all persons within the defined class unless they formally elect not to be included).

See our update [here](#).



James Hardie v White Trial begins

On 17 May 2021, a 15 week-long class action trial began in the Auckland High Court. 1000 owners of leak prone homes are seeking \$220m in damages resulting from allegedly defective cladding made by James Hardie.



Common Fund Orders

How will NZ courts deal with opt-out proceedings when not all class members have a contract with the litigation funder? NZ may take inspiration from Australia, where common fund orders and funding equalisation orders have been used to avoid "free-riders" and ensure the cost of the litigation funding are spread across the group. The Court in *Southern Response Earthquake Services v Ross* will be considering this issue soon.



Feltex Class Action comes to an end

The proceeding began in 2008 but was finally dismissed in 2021 following the plaintiff's non-compliance with Court orders. Russell McVeagh acted in the proceeding throughout.



Recent developments beyond our borders



COVID-19 and Class Actions

COVID-19 class actions around the world so far include:

- proceedings seeking ticket refunds for cancelled events;
- insurance claims raising difficult questions about how policies react to epidemic/pandemic events;
- claims for misrepresentation of COVID-19 risks to shareholders; and
- employee claims for failure to provide sufficient protective gear.



Technology class actions

Modern technology and social media provide new ways for a large number of people to be affected by wrongful acts at once. For example, TikTok recently settled a class action dispute for \$92m over a claim it illegally collected private and personally identifiable data of Americans using the app.



Climate change and class actions

Recently a group of Australian teenagers brought a case against the Environment Minister for approving a coal mining extension project they argued would endanger their future. The Australian Federal Court identified a new legal obligation for climate change related harm to young people.

See our update [here](#).



Developments across the ditch may predict our future

Australian class actions and litigation funding is under scrutiny through ongoing inquiries, reports, and regulatory changes. Their role in Australia is hotly contested. Might NZ's Law Commission process avoid some of that debate?



Russell McVeagh's role

Russell McVeagh has, and continues to be, actively involved in a number of class action proceedings, including:

- acting in the landmark class action proceeding *Houghton v Saunders* (Feltex);
- acting for Kiwibank in a class action relating to credit card and deposit account banking fees;
- acting for a defendant in one of New Zealand's largest residential construction disputes; and
- leading the NZ class action investigation into claims against certain manufacturers of combustible cladding products which potentially affects hundreds of buildings across the country.



Contact the team

Russell McVeagh has a number of leading class action lawyers available to assist in New Zealand and international class actions. We can act for either plaintiffs or defendants. Get in touch with our expert team:



Polly Pope PARTNER

Polly is Chair of the Partnership and was recognised by Benchmark Litigation Asia-Pacific as a 'Litigation Star' in 2021. She is ranked by Chambers and Partners Asia-Pacific 2021 and The Legal 500 2021.

Polly is the lead partner in the Omni Bridgeway funded combustible cladding class action, which was filed in 2020.



Chris Curran PARTNER

Chris was recognised as a 'Future Star' by Benchmark Litigation Asia-Pacific in 2021, by The Legal 500 2021 Guide in Dispute Resolution, and noted in the Best Lawyers® 2022 guide for Litigation.

Chris was the lead partner in the high-profile Feltex class action that saw his clients successfully resist claims worth \$200m brought on behalf of approximately 3,600 claimants. He also co-presented the 2020 NZLS CLE seminar on class actions.



Kirsten Massey PARTNER

Kirsten was recognised by The Legal 500 2021 Guide and the Best Lawyers® 2022 Guide in Restructuring & Insolvency (Insolvency and Reorganisation law), and Dispute Resolution.

Kirsten has recently returned from England, where she advised Chevron in a £1 billion class action and Royal Bank of Scotland in its £4 billion shareholder class action, following the bank's near collapse and government bailout. She also co-presented the 2020 NZLS CLE seminar on class actions.

For more information see:

russellmcveagh.com

**Russell
McVeagh**