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Collective Redress & Class Actions 2025

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New Zealand: Trends and Developments

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Trends and Developments

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Tompkins Wake is a full-service commercial law firm with more than 120 specialist lawyers working from offices in Auckland, Hamilton, Rotorua and Tauranga. Its dispute resolution and litigation team of 28 lawyers, including five partners, advises on complex commercial disputes across sectors such as energy, construction, financial services, agribusiness and technology. The team has acted in representative proceedings in contractual and securities disputes and in some of New Zealand's significant class actions. It regularly represents clients in company, commercial, consumer and competition law litigation. The team works closely with colleagues in corporate, regulatory, employment, property and environmental law to manage multi-faceted proceedings.

Authors

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A Sophisticated and Increasingly Active Jurisdiction for Collective Redress

Overview

The landscape in New Zealand has continued to evolve and mature, with class actions now covering a broader range of subject matter and the litigation funding market also maturing. Although some class actions have been substantially similar to cases brought in Australia, the United States or Europe, New Zealand has also seen homegrown class actions concerning banking, discrimination and environmental claims.

Traditionally, damages awards in New Zealand have been modest. Class actions allow claimants with relatively low individual losses to aggregate their claims and create sufficient economic scale to pursue complex or high-cost litigation. They provide a procedural mechanism for addressing widespread harm that would otherwise go unremedied, particularly where losses are diffused or defendants are large institutional actors. For defendants, they create incentives to improve compliance systems and manage reputational and financial exposure proactively. The representative proceeding framework therefore plays an increasingly important role in maintaining market integrity and consumer confidence, which is particularly important in a comparatively small market with fewer competition-related constraints.

There have been no notable government initiatives in the years following the Law Commission's 2022 report on class actions and litigation funding, leaving the policy landscape largely unchanged. Development of this area has therefore been in the hands of the courts, but the Law Commission's recommendations continue to influence judicial reasoning and case management practice. Courts have effectively stepped into the legislative vacuum, refining procedural safeguards to maintain fairness and transparency.

The decisions made by the courts so far suggest a flexible, innovative approach to this developing area of law and procedure, illustrated by the Supreme Court's 2020 decision permitting "opt-out" class actions and the Court of Appeal's 2024 decision, confirming the High Court's jurisdiction to make common fund orders (CFOs) (addressed further below). The combination of these two significant appellate authorities lowers financing risk and is expected to pave the way for larger classes. The Court of Appeal's confirmation that CFOs should be made at an early stage of the proceeding provides greater clarity for class members and funders about the expected costs and returns of the litigation.

In addition to these specific class-action developments, the ongoing aim of the courts to enhance access to justice will receive a boost on 1 January 2026, when significant amendments to the High Court procedural rules will take effect. The amendments are designed to speed up litigation, focus on the key documents, and enhance co-operation. While the key rule allowing a representative action will remain unaffected, it is likely that these changes will assist representative actions to move more quickly through to a settlement or trial.

Common fund orders – a game-changing procedural development

The Court of Appeal's decision in relation to CFOs was made in the context of one of New Zealand's largest class actions to date, brought on behalf of 150,000 consumers against two major Australian-owned banks operating in the New Zealand retail market. The claim alleges breaches of disclosure obligations under the Credit Contracts and Consumer Finance Act 2003 (CCCFA), the principal statute regulating consumer credit contracts in New Zealand.

The plaintiffs sought more than NZD300 million in damages to be repaid on the basis that the banks should repay all fees and charges incurred while the banks were not compliant with their obligations. The bank defendants argued that they had already compensated customers appropriately when the breach was identified and that the plaintiffs' argument was totally out of proportion with the technical legal breach.

In 2022, the plaintiffs applied to the High Court for various procedural orders, including CFOs. CFOs provide for the litigation funder's remuneration to be fixed as a proportion of the litigation proceeds, for all class members to bear a proportionate share of that liability, and for the liability for the litigation funder's remuneration to be paid first from any amounts received. The High Court considered that the Court had jurisdiction

to make CFOs but left determination of any specific order to a later stage in proceedings.

The Court of Appeal confirmed the High Court's jurisdiction to make CFOs and found that as a matter of general principle, CFOs should be made at an early stage of proceedings. The Court of Appeal observed:

- the courts in New Zealand continue to "test, evaluate and modify the way they supervise representative proceedings in response to emerging innovations in this area of law";
- representative proceedings "require flexibility";
- establishing the commercial viability of a litigation funding-arrangement enhances access to justice by providing certainty in the way a representative proceeding is funded; and
- the overall interests of justice and, in particular, access to justice are best achieved through a CFO being made as early as possible in a proceeding.

The defendant banks sought to appeal this aspect of the High Court decision, but the Supreme Court declined to grant leave for a second appeal, broadly endorsing the Court of Appeal's reasoning on this point and noting that the jurisdiction to make a CFO arises naturally from the making of an opt-out order. This means that the Court of Appeal's decision stands as binding precedent, subject to any subsequent Supreme Court decision or legislative initiative.

Other notable recent claims

Ongoing proceedings illustrate the range of potential claims being brought as class actions, reflecting the deepening understanding of the regime and the flexibility in New Zealand's procedural rules.

- In February 2025, a representative action was filed against Johnson & Johnson (J&J) relating to its marketing of widely used cold and flu medications Benadryl, Codral, and Sudafed as providing relief for cold and flu sinus symptoms. These products contain Phenylephrine (PE) as an active ingredient, which the FDA recently found to be no more effective than a placebo when used orally. The claim alleges that J&J breached provisions of the Consumer Guarantees Act and that its conduct was misleading and deceptive under the Fair Trading Act. This is one of the first large-scale pharmaceutical consumer class actions in New Zealand. It is intended that the class action will be run on an "opt-out" basis.
- In October 2025, the High Court considered whether an existing claim against Hawke's Bay Regional Council, one of New Zealand's local government authorities, could proceed as an opt-out class action. The plaintiff claims that failures of the Council's infrastructure planning and management led to widespread flooding in Wairoa, affecting more than 400 homes and businesses. The Court's decision has not yet been issued.
- A representative action against the government filed by the New Zealand College of Midwives, a professional body for midwives in New Zealand, was heard in the High Court in August–September 2025. The claim, brought on behalf of over 1,000 self-employed midwives, seeks damages for breaches of an agreement to increase midwives' pay and for breach of the plaintiffs' right to be free from discrimination on the basis of gender under the New Zealand Bill of Rights Act 1990.
- An ongoing representative action against Dilworth School, a long-established Auckland boarding school for boys, is continuing before the Human Rights Review Tribunal. Filed in 2021, the claim concerns the school's failure to protect students from sexual abuse by its staff and others in positions of authority that occurred between 1970 and 2006.

Significant recent settlements

Settlements of class actions will often require approval of the Court, which considers whether the proposed settlement is fair and reasonable in the interests of the group members considered as a whole. In other cases, the Court may be invited to approve the methodology for the distribution of settlement proceeds between class members.

Media attention given to recent settlements keeps class actions front-of-mind for the public and the profession and may encourage more potential plaintiffs to consider whether their cases lend themselves to collective redress.

- In 2024, a confidential settlement was reached in the "Intueri" litigation, in which 282 investors brought claims alleging that documents supporting a company's initial public offering were misleading and that the company had breached its continuous disclosure requirements. The regulator had decided not to take action. While the terms of the settlement are confidential, it has been described in the media as "astonishingly good" and "a good result for class action claims generally." In February 2025, the High Court approved the proposed methodology for distributing settlement funds to the claimants.
- In October 2025, one of the defendants in the banking class action, ASB Bank, agreed to pay NZD135.6 million to resolve the claim without any admission of liability. The settlement has been described as New Zealand's largest settlement involving a bank. This settlement is subject to approval of the High Court.

Observations and emerging themes

The authors expect to see an ongoing increase in the number and range of class actions in the future. Areas in which the authors expect to see increased activity include the following.

- Privacy and cyber-security – cyber-security remains an area of concern for New Zealand businesses, and the authors have seen a rise in data breach class actions overseas, including the substantial Optus and Medibank claims in Australia. The international rise in class actions involving cyber breaches is likely to be seen in New Zealand in the not-too-distant future. Class actions may also follow on from the Privacy Commissioner's investigations or organisations' compliance with mandatory reporting obligations.
- Climate-related claims – like other countries, New Zealand is experiencing an increase in climate-change-related litigation generally. In 2024, the Supreme Court accepted the possibility that carbon emitters could face civil liability for their emissions. That decision was at the strike-out stage, but if liability is confirmed following trial (anticipated to be in April 2027) the door may be opened to claims against other emitters by other claimants. Climate-related claims may take many forms, and many may lend themselves to collective redress, including consumer claims (eg, "greenwashing") and investor claims as well as tort claims. For example, a potential class action against Hino Motors is currently being investigated, including allegations that Hino misreported fuel efficiency and emissions engine performance data. With the increasing frequency of climate-related weather events, there may also be a rise in claims against the Crown and local authorities, particularly where infrastructure failures have contributed to community-wide harm.
- Action on behalf of Māori claimants – despite expectations that class actions could serve as an effective vehicle for Māori claimants, New Zealand has not yet seen a rise in *iwi*-led representative proceedings. The ability of an *iwi* or *hapū* to act as one plaintiff on behalf of its members, or a leader to represent a group, may mean there is less need for a separate representative action process. However, general litigation trends in New Zealand suggest that there is still room for development in this area. There is a great deal of potential for climate-related claims by Māori communities affected by environmental degradation and infrastructure failures, and class actions provide an additional tool for communities to consider in framing their political and legal strategies.
- Labour claims, including discrimination – the authors expect to see more labour-related representative actions following overseas trends. These may include claims relating to employment conditions, discrimination and harassment, as has occurred in Australia. Labour claims are dealt with in the specialist Employment Court, which has its own procedural rules to regulate group actions, but which may not have the flexibility of the High Court jurisdiction to manage the procedural and legal issues that arise in a representative claim.
- Social justice – alongside commercially focused claims, class actions are emerging as an important tool for advancing social justice and accountability. Representative proceedings can give collective voice to groups affected by systemic wrongs and the authors expect to see this area continuing to develop, particularly where redress schemes put in place by the government or institutional defendants are perceived as insufficient by class members.

- Follow-on class actions – while New Zealand has seen some examples of follow-on (or "piggyback") class actions (including the banking class action, discussed above), this type of claim has not (yet) become commonplace, as they have in several overseas jurisdictions. The authors expect this to increase, and organisations facing potential regulatory action or considering their self-reporting obligations should be mindful of the potential for a direct claim by customers, investors or others. For example, the Commerce Commission has indicated that its focus for the 2025/2026 year includes cartels, online sales conduct and motor vehicle sales and finance, all of which may give rise to follow-on class action litigation.

Conclusion

Overall, the New Zealand class action regime remains in a phase of relatively rapid evolution. Judicial willingness to innovate procedurally, combined with a maturing funding market, means that class actions are now a realistic strategic tool for plaintiffs and a material litigation risk for corporates. Even without a dedicated statute, the system has developed to the point where New Zealand can now be considered a sophisticated and increasingly active jurisdiction for collective redress.

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