

Big 6 dominate class action defence, but plenty of work to go around

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Many commercial dispute resolution groups in Australia are getting a boost from class action defence work, as more parties get dragged into increasingly complex representative proceedings. But the Big Six firms are still the ones companies turn to the most when staring down a class action.

Boasting deep benches, global expertise and major litigation chops, the Big Six firms scored the top spots on Lawyerly's ranking of the firms involved in the most class actions before the courts, with Herbert Smith Freehills by far the favourite for companies seeking a top-notch class action defence, with 26 class actions on its plate.

Together Herbert Smith Freehills, King Wood & Mallesons, Clayton Utz, Allens, MinterEllison and Ashurst have cornered around 44 per cent of the market, but many other firms have managed to get a piece of the pie. In addition to the Big Six, seven firms made it onto Lawyerly's inaugural ranking of the top class action defence firms, working on at least four class actions apiece. In total, 52 firms are representing respondents in one or more active class actions across Australia.

<i>Ranking</i>	<i>Law Firm</i>	<i>No of Class Actions, Defence</i>
1	Herbert Smith Freehills	26
2	King & Wood Mallesons	18
3	Clayton Utz	16
4	Allens	11
5	MinterEllison	10
6	Ashurst	6
6	Colin Biggers & Paisley	6
6	Corrs Chambers Westgarth	6
6	Norton Rose Fulbright	6
10	Arnold Bloch Leibler	5
10	Wotton & Kearney	5
12	Johnson Winter & Slattery	4
12	K & L Gates	4

Herbert Smith Freehills partner Damian Grave told Lawyerly the firm has an unparalleled depth of experience in class actions.

"We are widely regarded as Australia's pre-eminent class action defence firm, having defended some of the largest and most complex class actions in Australia over the last 25 years and often assisting clients in navigating multi-jurisdictional issues, competing claims, as well as issues involving multiple defendants," Grave said.

The firm is the go-to for many companies facing competing class actions, including AMP, Commonwealth Bank, BHP and Bellamy's.

Herbert Smith Freehills Class Action Group



Jason Betts



Damian Grave



Ruth Overington

Class Action
Group Size **50**

Class Action
Partners **10**

Class
Actions **26**

Notable Matters:

- ⊗ AMP royal commission-related class actions
- ⊗ BHP shareholder class action over Brazil dam collapse

"There has been a continued increase during the year in the number of competing class actions in relation to the same subject matter," Herbert Smith Freehills partner Jason Betts said.

"No defendant firm has been involved in the management of more competing claims than HSF. We have a deep knowledge of the approach of plaintiff law firms and litigation funders in this market, as well as experience in dealing with competing class actions," Betts said.

Grave, who said understanding a client's priorities is key to running a successful class action defence, said issues with litigation funding are especially pressing in the class action market.

"Litigation funders are increasingly building global capacity and diversifying the range of jurisdictions in which they invest, as a growth strategy and in order to mitigate risk," Grave said.

"Competition for new investment opportunities within the global litigation funding market is intensifying. Funders are supporting a broader range of disputes than previously," Betts added.

Clayton Utz, which is representing company defendants in 16 class actions, said "longevity, breadth of experience and bench strength" are what set the firm apart from other class action firms on the defence side.

"Clayton Utz has been involved in the development of the class action landscape over the past two decades," said Andrew Morrison, national head of Clayton Utz's commercial litigation practice.

The firm's class action group is national, and that bench strength, Morrison said, is a testament to its staying power.

Clayton Utz Class Action Group



Colin Loveday



Andrew Morrison



Greg Williams



Alexandra Rose



Nicholas Mavrakis



Ross McInnes

Class Action
Group Size **30**

Class Action
Partners **10**

Class
Actions **16**

Notable Matters:

- ⊗ Myer shareholder class action
- ⊗ VW 'dieselgate' class actions

"We are called in often by our international clients to represent them in their bet-the-company class actions," he said.

Morrison, who has been with the firm since 1992, the birth year of the class action regime in Australia, said Clayton Utz had the broadest spread of experience in class action work. The firm is perhaps best known for its representation of respondents in mass tort and product liability proceedings, but is also involved in other class actions, including financial services cases.

Current notable matters for Clayton Utz include defending the Volkswagen Group in five class actions over alleged diesel emissions cheating, representing Johnson and Johnson unit Ethicon in the vaginal mesh class action that is awaiting judgment, and defending Myer in a shareholder class action, which has also wrapped up and is awaiting judgment.

The secret to Clayton Utz's class action success is the team's collaborative approach, Morrison said.

"Clayton Utz is a highly collaborative team. This is not a place for solo practitioners," he said.

The firm also prides itself on developing and maintaining external relationships, playing a strategic role with clients from the outset, having access to specialist subject-matter experts, and having the forensic and technical chops to run large and complex proceedings.

"Clients know that if push comes to shove and they have to go to trial, we're the firm that can do that," Morrison said.

Andrew Maher, leader of **Allens'** disputes and investigations practice group, credits his firm's success with giving clients more than just technical class action expertise.

"The defence of a class action involves collaboration with your client, great teamwork and preparation, together with expertise in the area. Defending a class action involves thinking

strategically, forming an assessment of risk and responding having regard to that risk and your client's strategic objectives," Maher said.

With 11 active class actions, Allens is leading a number of high-profile class action defences. It represents Montara in an environmental class action, Ford in the PowerShift transmission class action, Nissan in a Takata airbags class action and Westpac in a life insurance class action that's challenging the power of the courts to make common fund orders. The High Court will hear an appeal in that challenge on Tuesday.

Maher said the firm expects the high volume of class action work to continue.

"A company is more likely to face a major class action in Australia than in any other country apart from the United States. This is due to an entrenched and growing litigation funding market, a plaintiff-friendly class action regime and an increasingly entrepreneurial legal market," Maher said.

"The entrepreneurial nature of our class action environment requires practitioners to be able to respond quickly and effectively to changes in the legal landscape and new challenges."

A class of their own

Two firms that feature on Lawyerly's inaugural Class Action Powerhouses list -- Corrs Chambers Westgarth and Johnson Winter & Slattery -- deserve special mention, working on both sides of the table in class actions.

Corrs Chambers Westgarth is named as the law firm on record for 12 active class actions, six of which are for the defence. The firm, which boasts 46 lawyers in its class actions practice, has a robust and well-rounded team that prosecutes and defends major class actions, including the recently filed proceedings on behalf of hundreds of Opal Tower apartment owners and the defence of a class action against Quintis.

"What sets our class action practice apart is the breadth of our experience, the depth of our team and the way we work with clients," Corrs' head of class action Chris Pagent said.

Corrs Chambers Westgarth Class Action Group



Chris Pagent



Mark Wilks



Brad Woodhouse

Class Action
Group Size **46**

Class Action
Partners **14**

Class
Actions **12**

Notable Matters:

- ✔ Opal Tower class action
- ✔ Ford PowerShift transmission class action

Johnson Winter & Slattery is taking the lead on some of the most complex class actions before the court -- on both the plaintiffs and defence side. The firm represents the applicants in six action class action and the respondents in four class action proceedings.

"Our significant class actions work is a key factor in our reputation and success. Our team has been involved in many of the major class action matters in Australia over the last 20 years," partner Robert Johnston said.

Johnson Winter & Slattery Class Action Group



Paul Reidy



Robert Johnston



Toni Vozzo



Paul Buitendag



Joseph Scarcella

Class Action
Group Size **50**

Class Action
Partners **23**

Class
Actions **10**

Notable Matters:

- ⊗ Quintis shareholder class actions
- ⊗ Class action against IAG units over add-on insurance

"We are one of the few firms in Australia acting in both defence and prosecution of class action claims. This provides us with invaluable insights into the judgment calls made for both plaintiffs and defendants."

The firm, along with Corrs, represents the applicants in a consolidated class action against Dick Smith. The firm is also prosecuting one of two shareholder class actions against online retailer SurfStitch.

On the defence side, Johnson Winter & Slattery represents a director or failed engineering firm RCR Tomlinson in a consolidated shareholder class action and sandalwood producer Quintis in the defence of two class actions.

Methodology: With assistance from Professor Vince Morabito, we compiled a ranking of the firms involved in the most class actions using court databases, Lawyerly's database of 2,500+ articles and information provided by the firms themselves. Lawyerly was not able to identify defence counsel in seven of the 140 class actions before the courts.