



COMMENTARY  
JANUARY 2019

## Australian Workplace Class Actions on the Rise

### IN SHORT

**The Situation:** It is relatively uncommon in Australia for workers or employees to bring class actions against their employers in which they allege sham contracting arrangements.

**The Development:** Four class actions, which allege sham contracting arrangements and underpayment of employee entitlements, are underway against marketing and sales companies in the Federal Court of Australia ("Federal Court").

**Looking Ahead:** Wage-and-hour class actions may become more prevalent in the Australian courts, with unions likely to play a key role.

Four employment-related class actions alleging employers of sham contracting and the underpayment of wages are underway in the Federal Court of Australia.

Sham contracting occurs when an employer deliberately misrepresents an employment relationship as an independent contracting arrangement. This may be done to avoid providing employment-related entitlements, such as minimum rates of pay and annual leave.

The cases explored in this *Commentary* are the first reported workplace class actions to allege sham contracting arrangements in Australia.

Former employees of marketing agency Appco Group Australia Pty. Ltd. and the government-owned Airservices Australia accuse both companies of underpayment of employee entitlements, among other claims. The National Union of Workers ("NUW") has made similar claims against Aida Sales and Marketing Pty. Ltd. and Credico Australia Pty. Ltd. In its class action, the NUW alleges that the two companies wrongly classified group members engaged in sales and charity fundraising as independent contractors, rather than employees, and underpaid these workers by as much as \$150 million.

If the proliferation of wage-and-hour class actions in the United States is any indication, workplace class actions alleging underpayment of employee entitlements may become more prevalent in Australia.

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### THREE KEY TAKEAWAYS

1. Workplace class actions are on the rise in Australia.
2. Four class actions are underway in the Federal Court on behalf of current and former workers of sales and



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marketing companies, alleging sham contracting arrangements and wage theft.

3. To avoid the procedural challenges faced by group members under the Federal Court Act, future class actions may be filed under the Fair Work Act.



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