

CLASS ACTION REFORM BILL INTRODUCED TO WA PARLIAMENT

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Legal Briefings - By **Ante Golem and Ben Davis**

On 26 June 2019, the *Civil Procedure (Representative Proceedings) Bill 2019 (WA)* was introduced into the Western Australian Parliament marking an important step forward for representative proceedings reform in Western Australia.

If passed, the *Civil Procedure (Representative Proceedings) Act 2019* will provide a legislative representative proceedings regime in the Supreme Court of Western Australia that is substantially modelled on Part IVA of the *Federal Court of Australia Act 1976 (Cth)*.

NEED FOR REFORM

The need to reform Western Australia's representative proceedings statutory regime was identified in the Law Reform Commission of Western Australia's [Final Report on Representative Proceedings](#) released in October 2015. The Commission's report found the existing class action scheme contained in Order 18 Rule 12 of the *Rules of the Supreme Court 1971 (WA)* to be inadequate in:

- facilitating the litigation of large representative actions in Western Australia; and
- providing certainty for plaintiffs in terms of the proceedings themselves, their entitlement to relief and the effect of limitation periods.

The Commission made seven recommendations for reform, primarily that Western Australia enact legislation to create a scheme for 'representative actions' based on Part IVA of the *Federal Court of Australia Act 1976* (Cth), whilst maintaining the existing representative proceedings provisions in Order 18 Rule 12.

THE BILL

The key factor presently restricting the incidence of class actions in Western Australia is a requirement that the members of the plaintiff class share the 'same interest' in the proceeding. This phrase has generated significant uncertainty and legal challenges. This constraint will be alleviated under the regime proposed by the Bill, which would allow representative proceedings to be commenced where seven or more persons have claims against the same person that arise out of the same, similar or related circumstances and involve a substantial common issue of law or fact.

Consistent with the Commission's recommendations, the Bill provides:

- a. that representative proceedings may be brought against more than one defendant irrespective of whether or not all group members have a claim against every defendant in the proceeding; and
- b. for the limitation period of an action to be suspended once a member of the group begins a representative action.

If passed, the new regime will apply to all representative proceedings initiated after the commencement of the Act, including proceedings concerning a cause of action that arose *prior to* the introduction of the reforms (subject to applicable limitation periods).

IMPLICATIONS

The introduction of the Bill marks an important step toward uniformity within Australian jurisdictions by aligning Western Australia's representative proceeding regime with similar regimes in New South Wales, Victoria, Queensland and the Federal Court.

If introduced, the reforms are likely to have a significant effect on the litigation landscape in Western Australia.

In announcing the introduction of the Bill, Attorney General John Quigley MLA commented that the reforms are of "increasing importance in an economy in which civil wrongs are often committed on a mass scale..."

With the WA Liberal opposition having previously given 'in principle' support to the Law Reform Commission's recommendations, it is expected that the reforms will become law in the second half of this year.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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