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CLASS ACTION REGIME APPROVED IN QUEENSLAND

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Legal Briefings – By **Jason Betts**, **Murray Edstein** and **Claira Jamieson**

In a much anticipated move, the Queensland Parliament this week passed legislation introducing a state based class action regime in Queensland which, in large part, mirrors the regimes in the Federal Court and in the Supreme Courts of New South Wales and Victoria.[1]

Queensland—for the first time—has a dedicated vehicle for the prosecution of class action litigation within its own Supreme Court. Australian corporations—especially those with operations in Queensland—should assess their vulnerability to increased class action risk as a result of this new regime.

THE REGIME

The regime largely adopts those in Federal, New South Wales and Victorian jurisdictions and has the following key features:[2]

1. the class action is brought by a single 'representative' on behalf of all similarly situated 'group members' (whether those group members have opted-in or not);

2. it may only be commenced where 7 or more persons share a claim that arises out of similar circumstances and raises a substantial common issue of law or fact; and

3. all group members must be notified of the action, their right to 'opt-out' and the method for doing so. Unless they 'opt-out' before a date fixed by the court, all group members will be automatically bound by the result of the proceeding (whether through final judgment or court approved settlement).

MORE CLASS ACTIONS FOR QUEENSLAND?

Queensland's Attorney General, the Hon Yvette D'Ath, is enthusiastic about the introduction of the regime in Queensland, saying it will increase access to justice, reduce additional costs, allow for the expertise of the Queensland judiciary and lawyers to be better utilised and bring Queensland in line with New South Wales and Victoria.[3]

Queensland is a jurisdiction familiar with large scale natural or environmental disasters, including damage associated with flooding and land contamination. Class action promoters, including third party funders, are increasingly targeting such claims and significant opportunities will arise for class action litigation in Queensland under the new regime.

The likely impacts will be:

1. Class actions with Queensland-related subject matter or which involve Queensland law can now be brought locally, rather than being forced into another State's jurisdiction or into the Federal Court. This will also mean that class actions raising no Federal cause of action—like the negligence-based Queensland floods litigation—could in the future be brought in the Queensland Supreme Court rather than being litigated in New South Wales or Victoria.

2. Queensland-based law firms will be more confident in developing their class action practices in the knowledge that when opportunities are identified for class action proceedings, they can be litigated locally, with a possible reduction in complexity and cost of commencement.

3. We may see a greater use in Queensland of litigation steps designed to explore the possibility of subsequent class action litigation—such as applications for preliminary discovery to permit class action promoters to test with documents the viability of a class action claim on particular issues; or alternatively 'test cases' which, if successful, could be the forerunners to broader class action litigation on similar issues.

4. While the new regime does not confer any additional substantive right or cause of action, Australia continues to see growth in threatened or commenced class actions based in negligence and breach of contract (e.g. claims by dissatisfied customers who are parties to contracts of adhesion; negligent financial advice; information and data breaches; and breach of obligations to avoid environmental damage). These kinds of claims will all be amenable to the Queensland regime.

5. Lastly, if the experience in New South Wales is any indication, there is a 'build it and they will come' aspect to class action regimes. The mere fact of the introduction of a class

action procedure in Queensland will see an initial period of rapid growth in these claims. Notably, coincident with the introduction of the regime in New South Wales, there has been a doubling of Supreme Court class actions in the last 6 years compared to a more steady growth in Federal Court class actions.

We recommend all clients with activities in Queensland assess their exposure to class action risk and perform a 'health check' on the aspects of their business and operations that are vulnerable to this growing species of litigation. The new Queensland regime comes at a time when the Full Federal Court has approved a common fund doctrine (in *Money Max Int Pty Ltd (Trustee) v QBE Insurance Group Limited*[4]) which makes class actions far more economically attractive to those that promote them, such as funders. Growth in class actions both in Queensland and nationally is almost inevitable, and business will be served well to take advice on how to mitigate and manage potential class action risks at an early stage.

ENDNOTES

1. Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016
2. Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016, cl 10
3. Media statement, Friday 5 August 2016
4. Money Max Int Pty Ltd (Trustee) v QBE Insurance Group Limited [2016] FCAFC 148

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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