

IMMINENT REFORM OF REPRESENTATIVE PROCEEDINGS IN WESTERN AUSTRALIA

21 March 2016 | Australia, Brisbane, Melbourne, Perth, Sydney
Legal Briefings – By **Ante Golem** and **Natalie Hepburn**

Uncertainty surrounding the class actions or ‘representative proceedings’ regime in Western Australia make such claims a rarity but a new report by the state’s Law Reform Commission could see this change.

The key factor 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. Due to this, plaintiffs often seek to find a basis for bringing the proposed claim within the jurisdiction of the Federal Court, which has a dedicated class action scheme.

LAW REFORM COMMISSION REPORT

Last October’s release of the Law Reform Commission of Western Australia’s *Final Report on Representative Proceedings* indicates that serious attention is being paid towards reform and that the development of a statutory scheme is imminent. Crucially, the Report concluded that the current Western Australian position is inadequate to facilitate large representative action in the state.

In line with the recommendations in the report, it is expected that any new Western Australian legislative scheme will be based on Part IVA of the *Federal Court of Australia Act 1976* (Cth) , while maintaining the existing representative proceedings provisions in Order 18 Rule 12 of the *Rules of the Supreme Court 1971* (WA).

On the basis of recommendations in the Law Reform Commission’s report, it is likely that legislative drafters will look to the regime in the Federal Court to inform the implementation of a new statutory approach, with elements of the regimes in Victoria and New South Wales also considered.

WHAT'S ON THE CARDS:

In particular, the report recommends the inclusion of provisions:

- expressly permitting a plaintiff to commence representative proceedings against more than one defendant, irrespective of whether or not the plaintiff has a claim against every defendant, as per the regime in New South Wales,
- broadening the ability of the Court to remove or substitute a representative party in the interests of justice, and
- allowing for the limitation period of an action to be suspended once a member of the group begins a representative action.

IMPLICATIONS:

Ultimately, the report's recommendation that Western Australia should seek to introduce class action legislation based on the federal regime is likely to result in a measure of uniformity within Australian jurisdictions. This will have a significant effect on the litigation landscape for defendants who are faced by a large class of plaintiffs in Western Australia.

The Western Australian Government has given in principle agreement to the report's recommendation and Attorney General Michael Mischin has said a proposal for legislative change will be developed.

The government's response is encouraging however, it remains unclear when legislation will be implemented.

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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