

NEW FEDERAL COURT APPROACH TO CLASS ACTIONS

21 March 2016 | Australia, Brisbane, Melbourne, Perth, Sydney
Legal Briefings - By **David Taylor, Eunice Park**

The Federal Court is implementing a National Court Framework to further modernise and simplify the Court's approach to case management.

With the continued [growth in the number of class actions](#) commenced in the Federal Court, the National Court Framework is addressing the management of class actions through the introduction of an updated class actions practice note.

Released earlier this year, the draft practice note seeks to address the unique complexities that arise in class actions and ensure that parties are supported by the Court to work towards achieving an earlier and efficient resolution of the class action.

KEY CHANGES

The key changes proposed by the practice note include:

- Mediation: Early implementation of alternative [dispute resolution](#) procedures in [class action](#) proceedings to assist the parties to reach a settlement as soon as possible. This acknowledges the obstacles to settlement that are unique to class actions and attempts to tackle this by requiring the parties to gather and exchange relevant information which would assist the parties to undertake informed settlement discussions, without compromising the utility of the class action procedure.
- Two-judge system: Introducing a two-judge system for class actions. Firstly, a 'case management judge' who is a member of the judiciary with experience in the conduct of class actions will oversee the efficient case management of the proceeding. Interlocutory disputes that commonly arise in class actions will be heard by the case management judge with a view to ensure consistent and efficient resolution of interlocutory issues

which are often protracted in class actions. Secondly, a 'trial judge' will preside over the trial of the proceeding and oversee pre-trial issues. Importantly, both judges will be appointed at the commencement of the class action and work collaboratively to ensure the proceeding is dealt with expeditiously and efficiently.

- **Class Actions Registrar:** A dedicated 'Class Actions Registrar' will be appointed to assist the case management judge, trial judge and the parties and act as a central contact point. The Class Actions Registrar may assist the parties in addressing any impediments to settlement.
- **Costs and funding disclosure:** The proposed practice note changes the requirements relating to the disclosure of legal costs agreements and litigation funding agreements. Subject to any genuine objections, the Applicant must disclose to the other parties and the Court any costs agreement or litigation funding agreement. This practice is often (but not always) implemented in class actions. The practice note also requires the disclosure of potential conflicts of interest between lawyers, funders and class members.

IMPACT OF THE NEW PRACTICE NOTE

As class actions have now become a mainstream part of the Australian litigation landscape, the Federal Court's proposals within the new practice note concerning streamlining procedure is to be welcomed.

Importantly, the practice note addresses issues that are particular to class actions, such as the time and expense spent during the interlocutory process, with a view to facilitate a resolution of the proceeding as efficiently as possible. With the highest number of class actions currently on foot in the Federal Court, the proposed practice note is a timely and appropriate change to improve class action practice and procedure in Australia.

The practice note does not, however, address all the issues. The fact the Federal Court saw the need to make changes only gives further impetus for a review of the class action legislative framework by the Federal Government.

This article was written by David Taylor, Senior Associate and Eunice Park, Solicitor, Sydney.

KEY CONTACTS

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



ANTE GOLEM
PARTNER, PERTH

+61 8 9211 7542
Ante.Golem@hsf.com



RUTH OVERINGTON
PARTNER,
MELBOURNE

+61 3 9288 1946
ruth.overington@hsf.com



DAMIAN GRAVE
PARTNER,
MELBOURNE

+61 3 9288 1725
Damian.Grave@hsf.com



JASON BETTS
PARTNER, GLOBAL
CO-HEAD OF CLASS
ACTIONS, SYDNEY

+61 2 9225 5323
Jason.Betts@hsf.com



CAMERON HANSON
PARTNER, SYDNEY

+61 2 9225 5224
cameron.hanson@hsf.com

LEGAL NOTICE

The contents of this publication are for reference purposes only and may not be current as at the date of accessing this publication. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

© Herbert Smith Freehills 2022

SUBSCRIBE TO STAY UP-TO-DATE WITH INSIGHTS, LEGAL UPDATES, EVENTS, AND MORE

Close

© HERBERT SMITH FREEHILLS LLP 2023