To the Hon Rod Welford MLA
Attorney-General and Minister for Justice

Class actions

Background

- Rule 75 *Uniform Civil Procedure Rules 1999* (UCPR) provides for representative proceedings in Queensland:

  > A proceeding may be started and continued by or against one or more persons who have the same interest in the subject matter of the proceeding as representing all of the persons who have the same interest and could have been parties in the proceedings.

- In *Carnie v Esanda Finance Corporation* (1994-1995) 182 CLR 398, the High Court gave a wide interpretation to a similar NSW rule. The High Court held that "same interest" means "a community of interest in the determination of some substantial issue of law or fact" which effectively permits use of Rule 75 as a vehicle for class actions.
- However, rule 75 of the UCPR does not establish a manageable and effective framework for handling class actions like the regime contained in the Federal Court jurisdiction.
- Part IVA of the *Federal Court of Australia Act 1976* provides for a structured regime (ss33A – 33ZJ) which permits court management of issues such as number of parties, right of members to opt out, costs, individual issues, settlement and discontinuance etc.
- In particular, s33C provides that a class action may be commenced by one or more persons as representing some or all of a class of at least seven persons that have a claim against the same person that arises out of similar or related circumstances and gives rise to a substantial common issue of law or fact.
- In *Wong and Ors v Silkfield Pty Ltd* (1999) 73 ALJR 1427, the High Court interpreted "substantial common issue of law or fact" to mean a serious rather than trivial issue.
- There are obvious advantages of a structured, court-managed class action regime as contained in Part IVA Federal Court Act over the Queensland scheme in Chapter 3 Division 4 UCPR, namely:
  - Cheaper for all parties
  - Fairer for defendant who has to defend one action rather than many
  - Fairer for the plaintiffs who can resolve common issues
  - Fairer for the community in that it benefits a broad range of people
  - Clear rules for all potential litigants to follow.

Issues

- One of the key functions of QPILCH is to maximise community benefit by focussing on public interest cases – cases that benefit a class or all citizens.
- Some public interest cases involve multiple plaintiffs.
- While it appears that the Queensland rules can be used for class actions, the rules do not facilitate management of the class action by the court or

make class action requirements or procedures clear for potential litigants and the public at large.

- There has been some criticism of the Federal Court scheme. However, this criticism has largely derived from abuse in USA of class action systems there, rather than the Federal Court process itself, although there is significant complexity in the Federal Court system (see *Bright v Femcare Limited* [2001] FCA 1477 (19 October 2001)).
- There is room, nonetheless, to improve the Federal Court system and if new rules where adopted for Queensland, a scheme that more clearly spells out the requirements for all parties, such as the terms of notification of represented persons and resolution of problems associated with intermingling of issues, would be likely to reduce some problems experienced federally.

Proposal

We propose that the UCPR be amended to introduce an active class action regime in Queensland, similar to the approach of the Federal Court of Australia, which gives greater scope to the court to administer and manage a class action. Such a regime gives greater certainty to potential litigants in a class action as to the requirements for instituting, continuing and defending such proceedings.

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