

class actions bill introduced

Corporation, n. An ingenious device for obtaining individual profit without individual responsibility.

Ambrose Bierce *The Devil's Dictionary*, 1911

senator haines introduces bill. On 11 December 1989 Senator Haines (SA – Leader of the Democrats) introduced the Federal Court (Grouped Proceedings) Bill 1989 in federal Parliament. The Bill reflects the recommendations made by the ALRC in its report Grouped Proceedings in the Federal Court tabled in federal Parliament in December 1988.

second reading speech. In her second reading speech Senator Haines said that

The Grouped Proceedings Bill . . . will enhance enormously Australian consumers' right to redress.

. . . [I]n an age of mass production and distribution of goods and services, the potential for loss or damage to be caused on a mass scale is high. While the overall damage may be great, the amount of damage incurred by an individual may be relatively small in proportion to the cost of legal services and court proceedings. Quite clearly, if cost factors preclude individual enforcement of rights, justice is being denied to any individual so affected.

Cost and other barriers inhibiting people's access to the courts must be lowered so that people can receive the compensation to which the law says they are entitled. The costs of litigation in this country are prohibitive except for the very rich and those who qualify for legal aid.

Senator Haines pointed out that what is missing in the present legal system was a procedure enabling private action to be taken in cases of alleged multiple wrong doing to secure a binding decision in respect of all those affected. The Bill would provide a procedure whereby common issues could be dealt with at the same time thereby reducing costs and promoting efficiency in the administration of justice. Senator Haines also pointed out that

the Grouped Proceedings Bill avoided the problems associated with class actions in the United States.

The proposed grouping procedure differs in a number of significant ways from the US-style class actions and does not contain the scope for abuse or potential for high costs which exist there.

bill opposed by opposition. The Opposition spokesman, Senator Jim Short, issued a media release saying, among other things, that

Class actions impose massive costs on business with little benefit to the community.

Senator Short also argued that 'it has yet to be demonstrated that significant numbers of Australians are being denied access to the courts'. He added that 'if the Democrat-ALRC class actions proposal is successful, it will inflict a radical change onto the Australian community'. He argued that

Before any decision is made on whether the Bill should be introduced into Australia, a thorough study on the cost impact on business and the community should be undertaken.

cost benefit. In its report Grouped Proceedings in the Federal Court (ALRC 46) the ALRC concluded that the benefits of a grouping procedure outweighed its costs.

The proposed procedure enhances respect for the law by enabling access to a remedy and thus enforcing the law; it enables the comprehensive and consistent determination of common issues arising out of similar or related facts and thereby promotes efficient use of judicial and legal resources. Sufficient safeguards are recommended to ensure that costs to respondents are not unreasonable. The result is a scheme which has the potential to allow individuals to obtain legal redress where this can be done in a cost effective manner and which promotes efficient use of court resources. (para 357)

Senator Haines did not call for any further examination of the cost impact but said that the Bill deserved scrutiny and comment. She urged Senators and members of the pub-

lic to give the Bill proper attention before it is debated.

Support for the objectives of this Bill is a real opportunity for the Parliament to show that it cares about justice in Australia, the cost of that justice and the effectiveness of the avenue that leads to it.

* * *

costs of justice

Justice is feeding while the widow weeps.

Shakespeare, *The Rape of Lucrece*

bishop challenges legal profession. In days past it used to be that people went to church specially to hear the minister preach. Judicial and other legal eyebrows were raised recently when, in his homily at the Red Mass in St Mary's Cathedral, Sydney on 29 January 1990, Catholic Bishop Geoffrey Robinson challenged the legal profession to face some hard questions about their priorities, their work practices and their costs. The Archdiocese office reported later an 'unusual number of requests' for transcripts of the sermon.

something is being done. The Bishop is not the only one concerned with the costs of justice. It was, until the election, being looked at by the Senate Standing Committee on Legal and Constitutional Affairs. The VLRC has a major project on it and an issues paper is expected shortly. A number of the submissions to the Senate Committee have been released for publication but the ALRC submission, which suggested a fundamental rethinking of our approach to costs, is still subject to Parliamentary privilege. In an article in the Age on 1 February 1990, Mark Bruer reports

There are myriad suggestions in the submissions to the Committee about what should be done to make justice more accessible. Many of them involve improved funding from the State and federal governments to make more judges and more courts available, thereby reducing waiting times and hence costs.

costs to government. Court running costs include court administration, judges' salaries and maintenance of buildings. Bishop Robinson said:

It is obviously the responsibility of government to set up sufficient courts to overcome the delays that deny justice . . .

The submission by the Law Council of Australia to the Senate Committee points out that

The courts rely upon the government for funding. The amount of money spent by government on courts is relatively small.

Increasing the money governments spend on courts and court administration may be one approach to easing delays and reducing the costs of justice, but the problem is far more deep rooted.

costs to parties. Litigation costs also include the costs to the parties. Bishop Robinson posed this question:

Because of the praiseworthy system of legal aid, some of the very poor have access to the courts, and so of course do the very rich who can write a blank cheque for the costs, but is the legal profession in danger of pricing justice out of the reach of all those who are neither very poor nor very rich?

According to a submission to the Senate Committee by the federal Attorney-General's Department, counsel's fees alone for a day's litigation in New South Wales, Victoria or Western Australia are likely to be in the range of \$850 to \$2500. Average solicitors' costs would be in the range of \$800 to \$3000. Although these costs are regulated by rules of court, in the vast majority of cases clients either agree to pay higher than the scale fees or do not question the fees charged by their lawyers. Disbursements including filing fees, transcripts, witnesses' fees and jury fees must be added. The losing party will also generally be ordered to pay the party/party costs of the winning side but the winning party will not be totally compensated.