

# COALITION FOR CLASS ACTIONS

group seeks to have alrc recommendations implemented in nsw

A coalition of community legal centres, welfare groups and consumer organisations is asking the New South Wales Government to reform the procedures for representative actions brought in the NSW courts and tribunals. The Coalition for Class Actions wants the Government to adopt the representative procedure available under Pt IVA of the *Federal Court of Australia Act 1976* (Cth).

This procedure is based on the ALRC's recommendations in its 1988 report *Grouped Proceedings in the Federal Court*.

The Coalition formed in response to the High Court's decision in *Carnie v Esanda Finance Corp* (1995) 127 ALR 76. The Court was asked to consider whether a number of borrowers who had similar contracts with Esanda could use the representative procedure available under the NSW Supreme Court Rules. It held that the procedure could be used notwithstanding that members of the class have separate contracts with the defendant and that damages are sought. The Court's liberal interpretation of the procedure has highlighted the need for legislative directions to guide the conduct of representative actions.

Pt IVA of the Federal Court Act provides a comprehensive regime for representative actions in the Federal Court. A person (the representative party) may bring an action on behalf of seven or more persons where all have claims against the same person. The claims must give rise to at least one

substantial common issue of law or fact and must be in respect of, or arise out of, the same, similar or related circumstances. It does not matter that the relief sought for each person represented is not the same. The consent of a person to be a member of the group is generally not required, but a group member may 'opt out' of the proceedings. The Court has comprehensive powers to determine issues and to make orders as appropriate.

The Coalition believes that the Pt IVA model should be enhanced by providing for the establishment of a representative proceedings fund to meet the costs of conducting such actions and for the court to have power to make *cy pres* orders directing that any money not claimed by successful class members be placed in a specific fund and not kept by the defendant.

In 1994 the Access to Justice Advisory Committee recommended that Pt IVA be used as a model for representative procedures in the States and Territories. The federal Government has supported this proposal and will be pursuing it with State and Territory governments.

*For more information about the Coalition or a copy of its paper Representative Proceedings in New South Wales contact Amanda Cornwall at the Public Interest Advocacy Centre on 02 299 7833.*

Philip Kellow

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## EVIDENCE — the final phase

On 18 April 1995 the conduct of litigation in Australia was fundamentally reformed by means of the *Evidence Act 1995*. This Act reflects substantially the recommendations made by the Australian Law Reform Commission (ALRC) in its 1987 report *Evidence* (ALRC 38). The Act was developed in co-operation with the NSW Government who passed an almost identical piece of legislation in June 1995. Now, the final phase of the ALRC's work on evidence has commenced. All evidentiary provisions in federal legislation, apart from the new Evidence Act, will be examined for consistency with that Act.

Many statutes contain provisions relating to evidentiary issues — for example that a particular certificate is conclusive evidence of a certain state of affairs. Inconsistent provisions will be assessed to determine whether a recommendation should be made to have them repealed, amended to be consistent with the Evidence Act or retained in their current form. Currently, evidentiary provisions in statutes under which the Federal Court of Australia may exercise jurisdiction are being identified.