# FOREWORD

THE HON CHIEF JUSTICE ROBERT FRENCH*

Practitioners and judges alike will welcome this *University of New South Wales Law Journal Forum on Class Actions*. Class actions have been a feature of the Australian legal landscape for nearly 18 years. The Australian Law Reform Commission in its 1988 Report *Grouped Proceedings in the Federal Court* found that the representative procedure as it then existed under the Rules of Court was too limited. An effective grouping procedure was needed as a way of reducing the cost of enforcing legal remedies in cases of multiple wrongdoing. As a result of that Report, a new Part IVA, providing for class actions, was introduced into the *Federal Court of Australia Act 1976* (Cth) by the *Federal Court of Australia Amendment Act 1991* (Cth).

The Second Reading Speech for the 1991 Amending Act explained that the new provisions would enable groups of people, largely shareholders or investors or people pursuing consumer claims, to obtain relief and do so more cheaply and efficiently than would be the case with individual actions. The foundation for a grouped proceeding was expressed to be:

> … a proceeding on behalf of a group of persons where the claims of those persons arise out of the same, similar or related circumstances and a common question of law or fact arises with respect to all their claims.

Before Pt IVA was enacted, the class of cases in which representative proceedings could be instituted was defined by Rules of Court descended from O 16 r 9 of the Rules of the Supreme Court (Eng). That Rule was made following the enactment of the *Supreme Court of Judicature Act 1873* (UK) and was intended to apply Chancery practice to all the divisions of the High Court of Judicature. An important limitation imposed by that Rule was that the persons represented, whether as applicants or respondents, should have 'the same interest' in the proceeding. There was some controversy as to whether a 'common question of law or fact', which would support a joinder of an action, was sufficient to meet the requirements of the English Rule.

Since the class action became available under the *Federal Court of Australia Act*, it has been invoked on many occasions. As Justice Moore points out in his article 'Ten Years Since *King v GIO*' there have been at least 200 representative proceedings in the Federal Court since the Act was amended. The link between class actions and commercial litigation funding, a relatively recent development,

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is of increasing importance. It raises its own special issues which are discussed in the article, written from a funder's perspective, by John Walker, Susanna Khouri and Wayne Attrill. The second and so far the only other jurisdiction in Australia to introduce class actions was Victoria, following the enactment of Part 4A of the *Supreme Court Act 1986* (Vic). Professor Morabito in his article discusses the Victorian Law Reform Commission's 2008 review of the operation of that State's class action regime.

The articles in this edition of the *University of New South Wales Law Journal Forum* raise a range of important legal issues arising out of the class action procedure. Inescapably, they also raise public policy questions of some moment. The phenomenon of multiple class actions and the associated possibility of conflicts of interest is considered by Michael Legg, who mentions by way of opening example the three competing class actions which were commenced in the Federal Court of Australia following the explosion at the Longford gas plant in Victoria. Closed class actions in which group membership is defined by accession to agreements with litigation funders have the potential to increase the possibility of multiple class actions in relation to the same subject matter. Difficult questions of causation are considered in three of the articles in connection with securities class actions.

Class actions in relation to cartels are discussed by Brooke Dellavedova and Rebecca Gilsenan. Product liability and other torts are covered by S Stuart Clark and Christina Harris. And no consideration of litigious procedures would be complete without reference to mediation, which is discussed by Michael Lee and Dale Bampton.

The range of the papers published in this edition offers a feast of material relating to an important and growing area of litigation in Australia. I commend it to its readers.