

CLAUSE NOTES

Supreme Court Civil Procedure Amendment Bill 2018

Clause 1: Short title

This clause provides that, once passed, the Bill will be cited as the *Supreme Court Civil Procedure Amendment Act 2018*.

Clause 2: Commencement

This clause provides for the amendments to commence on the day on which the Bill receives the Royal Assent.

Clause 3: Principal Act

This clause provides that the Principal Act to which the amendments apply is the *Supreme Court Civil Procedure Act 1932* (the Act).

Clause 4: Section 4 substituted

This clause repeals section 4 of the Act and substitutes a new section, removing an outdated reference to the repealed *Colonial Courts of Admiralty Act 1890* (UK).

The *Admiralty Act 1988* (Cth) is the contemporary Commonwealth legislation that confers jurisdiction in relation to admiralty causes and matters upon the Supreme Courts of states and territories. The substituted section affirms that conferral of jurisdiction.

Clause 5: Section 9 amended (Application of Act)

This clause amends subsection 9(5) of the Act to remove outdated references to the repealed *Colonial Courts of Admiralty Act 1890* (UK), Imperial Acts in general and the slave trade, and insert a reference to the current *Admiralty Act 1988* (Cth).

This section confirms that the Act and the *Supreme Court Rules* apply to and govern the procedure and practice of the Court in Admiralty causes and matters.

Clause 6: Section 18 repealed

This clause repeals section 18 of the Act. Section 18 is unnecessary as Section 9 (as amended under clause 5 of the Bill) confirms that the Act and the *Supreme Court Rules* apply to and govern the procedure and practice of the Court in Admiralty causes and matters.

Clause 7: Section 35A inserted

This clause inserts a new section into the Act to provide judges of the Supreme Court of Tasmania with the power to award pre-judgement interest when making a judgement that requires the payment of an amount of money.

Pre-judgment interest is interest on a sum of money that a court may order a defendant in legal proceedings to pay to the plaintiff in respect of a period prior to judgment.

Comparable powers are currently available to Tasmanian magistrates under the *Magistrates Court (Civil Division) Act 1992* and to Tasmanian arbitrators under the *Commercial Arbitration Act 2011*.

Clause 8: Section 38 repealed

This clause repeals section 38 of the Act. Section 38 is unnecessary as Section 9 (as amended under clause 5 of the Bill) confirms that the Act and the *Supreme Court Rules* apply to and govern the procedure and practice of the Court in Admiralty causes and matters.

Clause 9: Section 52 repealed

This clause repeals section 52 of the Act. Section 52 is unnecessary as Section 9 (as amended under clause 5 of the Bill) confirms that the Act and the *Supreme Court Rules* apply to and govern the procedure and practice of the Court in Admiralty causes and matters.

Clause 10: Part VII inserted

This clause inserts a new Part into the Act to provide for representative proceedings (class actions). The purpose of the amendments is to clarify the procedural requirements for litigants.

The following new sections are inserted into the Act:

- Section 64 provides definitions of specific terms that are referred to in the new Part VII.
- Section 65 states that the new provisions will apply to proceedings commenced after the amendments in the Bill come into force, regardless of when the cause of action arose.
- Section 66 set out the conditions that apply to the commencement of representative proceedings.

- Section 67 clarifies who has standing to commence, continue or bring an appeal from judgement in representative proceedings.
- Section 68 clarifies who may be a group member (a member of a group of persons on whose behalf representative proceedings have been commenced).
- Section 69 clarifies how a person under legal incapacity may participate in representative proceedings.
- Section 70 sets out the requirements for the originating process in representative proceedings.
- Section 71 contains provisions relating to a group member opting out of representative proceedings.
- Section 72 provides for the description of the group in the originating process to be altered, upon application of the representative party, to include an additional person.
- Section 73 allows the Court, at any stage in proceedings where it appears likely that there are fewer than 7 group members, to order that proceedings may continue or may not continue under the new Part VII.
- Section 74 allows the Court to stay or discontinue proceedings so far as they relate to the payment of money to the group members for relief (but not costs) if the Court concludes that, should judgement be in favour of the representative party, the total payment to the group members would be excessive.
- Section 75 sets out the circumstances in which it may order representative proceedings to be discontinued under the new Part VII.
- Section 76 sets out the effect of the Court ordering that proceedings be discontinued under the new Part VII.
- Section 77 provides for the determination of questions that are common to only some members of a group in representative proceedings.
- Section 78 provides for the determination of questions that relate to only one member of a group in representative proceedings.
- Section 79 allows the Court to direct that other proceedings will commence to determine questions that cannot be properly or conveniently be dealt with under the new sections 77 or 78.
- Section 80 contains provisions enabling the Court to ensure that the interests of a group or sub-group are

adequately represented by the representative party or sub-group representative party respectively.

- Section 81 enables the Court to order a stay of execution of relief to a group member until any proceedings that the defendant has commenced against that group member are determined.
- Section 82 clarifies that the Court's approval is required for representative proceedings to be settled or discontinued.
- Section 83 contains provisions governing the settling of the individual claim of a representative party.
- Section 84 sets out the matters for which notice must be given to group members.
- Section 85 contains provisions governing the form and content of notices given to group members.
- Section 86 sets out the powers of the Court in determining a matter in representative proceedings, including provisions relating to an award of damages.
- Section 87 includes provisions for the constitution and administration of a fund of money to be distributed to group members, and sets out the conditions for group members to make claims from the fund and for the fund to be wound up.
- Section 88 states that a judgment given in representative proceedings binds all group members affected by it, other than any person who has opted out.
- Section 89 contains provisions relating to appeals from a judgement in representative proceedings including the parties to an appeal, applicable time periods and notices.
- Section 89A prohibits the awarding of costs against a person on whose behalf the proceedings have been commenced (other than a representative party) except as authorised by the new sections 77 or 78.
- Section 89B sets out the effect of representative proceedings upon limitation periods that may apply to the claim of a group member.
- Section 89C provides a general power for Court to make orders it thinks appropriate or necessary to ensure that justice is done in the proceedings.
- Section 89D provides for the reimbursement of costs reasonably incurred by a representative party or sub-group representative party.

Clause 11: Section 195 amended (Rules of Court)

This clause amends section 195(3) of the Act to confirm that the procedure and practice of the Supreme Court in admiralty causes and matters are regulated by the Supreme Court Rules subject to the *Admiralty Act 1988* (Cth) and the rules that are made under that Act.

This clause also removes section 195(4). This subsection no longer serves any purpose, as the approval by His Majesty in Council that it relates to is no longer required under the *Admiralty Act 1988* (Cth).

Clause 12: Section 197 amended (Power of judges to make Rules of Court)

This clause amends section 197(1)(f) of the Act to remove the current broad prohibition on the Associate Judge dealing with proceedings in the court's appellate jurisdiction.

Section 197(1)(f) enables the judges of the Supreme Court to make rules that empower the Associate Judge to exercise certain powers of the Court. The amendment will enable the judges of the Supreme Court to extend the Associate Judge's powers to include hearing applications in relation to pending appeals. This may include applications for extensions of time, applications for pre-hearing directions and applications for appeals to be struck out for want of prosecution.

The Associate Judge will continue to be precluded from hearing and determining appeals or sitting on the Full Court.

Clause 13: Repeal of Act

This is a standard provision to provide for the automatic repeal of the Amendment Act (the Bill) after the amendments have been incorporated into the Principal Act.