

Class Actions Bill 2008

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Class Actions Act 2008.

2 Commencement

This Act comes into force on [*to come*].

**Part 1
Preliminary provisions**

3 Purpose

The purpose of this Act is to enhance the procedures of the High Court to secure the just, speedy and inexpensive determination of class actions.

4 Interpretation

In this Act, unless the context otherwise requires,—

Associate Judge means an Associate Judge of the High Court

class means a group of persons whose claims are in respect of, or arise out of the same, similar or related circumstances

class action means a proceeding which is brought as a class action under this Act

class action order means an order made in accordance with rules of court in respect of a proposed class action

class member means a member for the time being of a class on whose behalf a class action has been commenced

conditional fee agreement has the same meaning as in section 333 of the Lawyers and Conveyancers Act 2006

court means the High Court

incapacitated person means a person who by reason of physical, intellectual, or mental impairment, whether temporary or permanent, is—

- (a) not capable of understanding the issues on which his or her decision would be required as a litigant conducting proceedings; or
- (b) unable to give sufficient instructions to issue, defend, or compromise proceedings

Judge means a Judge of the High Court

lawyer means a person who holds a current practising certificate as a barrister or as a barrister and solicitor

lead plaintiff means a person who is described as lead plaintiff in the heading of a class action, and who has been authorised so to act by a class action order

litigation funder means a person whose business consists wholly or mainly of financing civil proceedings for profit, but does not include—

- (a) an organisation which finances, or assists in financing, a member of that organisation in relation to a civil proceeding; or
- (b) a lawyer who provides services under a conditional fee agreement

litigation guardian

- (a) means—
 - (i) a person who is authorised by or under an enactment to conduct proceedings in the name of, or on behalf of, an incapacitated person or a minor (but only in a proceeding to which the authority extends); or
 - (ii) a person who is appointed by the court under the High Court Rules to conduct a proceeding

opt-in class action means a class action which has been directed by the court to be conducted as an opt-in class action (a class action in which a qualified person must take a formal step in accordance with rules of court in order to become a class member)

opt-out class action means a class action which has been directed by the court to be conducted as an opt-out class action

(a class action in which each qualified person is a class member unless that person takes a formal step in accordance with rules of court to avoid becoming a class member)

person includes a company registered under the Companies Act 1993 or other body corporate

qualified person means a person who falls within the description of the relevant class as defined in a class action order.

5 Act binds the Crown

This Act binds the Crown.

Part 2

Principal features of class actions

6 Scope of class actions

- (1) Subject to this Act, a class action may be commenced if—
 - (a) 7 or more persons have claims against the same proposed defendant or defendants; and
 - (b) the claims are in respect of, or arise out of, the same, similar or related circumstances; and
 - (c) all the claims give rise to at least one substantial common issue of law or fact.
- (2) One or more of those persons may be approved by the court to be a lead plaintiff or lead plaintiffs in a class action.
- (3) A class action may be commenced—
 - (a) whether or not the relief sought:
 - (i) is, or includes, equitable relief; or
 - (ii) consists of, or includes, damages; or
 - (iii) includes claims for damages that would require individual assessment; or
 - (iv) is the same for each class member; and
 - (b) whether or not the proceeding—
 - (i) concerns separate contracts or transactions between the defendant or defendants in the proceeding and individual class members; or
 - (ii) involves separate acts or omissions of the defendant or defendants done or omitted in relation to individual class members.

- (c) whether or not the claims, or any of them, arise after this Act comes into force.
- (4) If there is more than 1 proposed defendant, it is sufficient for the purpose of subsection (1)(a) if 2 or more persons have claims against a particular proposed defendant.
- (5) A class action must be conducted as either—
 - (a) an opt-in class action; or
 - (b) an opt-out class action.

7 Consent

- (1) The consent of a person to be a class member is not required unless a class action is directed to be conducted as an opt-in class action under a class action order.
- (2) Subsection (1) is subject to subsection (3).
- (3) None of the following is a class member unless a written consent to being a class member in a particular class action is filed in the court:
 - (a) the Crown;
 - (b) a Minister of the Crown;
 - (c) a Crown entity as defined by the Crown Entities Act 2004;
 - (d) a local authority as defined by the Local Government Act 2002:
- (4) Subsection (5) applies if a class action is directed by a class action order to be conducted as an opt-out class action.
- (5) If this subsection applies, a qualified person may opt out of a class action by written notice in accordance with rules of court not later than the date for doing so fixed by the class action order.

8 Incapacitated persons

- (1) An incapacitated person may be a class member without having a litigation guardian.
- (2) Despite subsection (1), an incapacitated person who is a class member may take a step in the proceeding in that person's own name only through a litigation guardian in accordance with rules of court.

9 Procedure for class actions

Section 51C of the Judicature Act 1908 is amended by inserting, after subsection (2) the following subsection:

- “(3) Rules made pursuant to subsection (1) of this section may regulate—
- “(a) the procedure to be followed by a person desiring to become a lead plaintiff before that person commences a class action under the Class Actions Act 2008:
 - “(b) the powers of the court when making a class action order before commencement of a class action:
 - “(c) opt-in and opt-out procedures:
 - “(d) the conduct of a class action after it has commenced:
 - “(e) the costs of a class action:
 - “(f) the regulation and supervision of agreements or arrangements, and the fixing of legal fees, relating to a class action or proposed class action—
 - “(i) between the lead plaintiff or lead plaintiffs and a lawyer; or
 - “(ii) between the lead plaintiff or lead plaintiffs and a litigation funder; or
 - “(iii) between a class member or class members and a litigation funder.
 - “(g) any other matter which is required to be prescribed or is necessary for carrying this Act into effect.”

10 Standing

- (1) A lead plaintiff (P) who has a sufficient interest to commence a proceeding against another person (D) on P’s own behalf has standing in a class action against D.
- (2) The class action continues and P retains standing to continue it, and to be a party to any appeal, even although P ceases to have a claim against D.
- (3) This section is subject to Part 3.

11 Fewer than 7 class members

If at any stage of a class action it appears that there are fewer than 7 class members, the court may on application by the lead plaintiff or a defendant—

- (a) order that the class action continue, despite section 6; or

- (b) order that the class action continue as an ordinary proceeding; and
- (c) impose any conditions it thinks just.

12 Judgments in class actions

A judgment or order in a class action—

- (a) must describe or otherwise identify the class members who will be affected by it;
- (b) binds the parties and class members (whether or not they are parties) at the time when the judgment is given.

13 Appeals in class actions

- (1) Subject to subsection (5), an appeal from any interlocutory or other judgment or order in a class action, or from the making of, or the refusal to make, a class action order, may be brought by a lead plaintiff on behalf of class members or by a defendant.
- (2) Despite subsection (1), the parties to an appeal in respect of a judgment or order relating only to the claim of an individual class member are that class member and any affected defendant.
- (3) The court may direct that notice of the appeal be given to such persons as it thinks just.
- (4) A class member has no right to opt out of an appeal.
- (5) An appeal from the making of, or the refusal to make, a class action order may be brought only with the leave of the court or the special leave of the Court of Appeal.

14 Suspension of limitation periods

- (1) The running of the limitation period that applies to the claim of a class member is suspended when a class action is commenced.
- (2) This section applies despite anything in the Limitation Act 1950 to the contrary.
- (3) In the case of an opt-out class action, the limitation period begins to run again, in respect of an individual class member's claim, only if—

- (a) the class member opts out of the proceeding under section 7(5); or
 - (b) the class action (including any appeal) terminates without finally disposing of the class member's claim.
- (4) In the case of an opt-in class action, the limitation period begins to run again in respect of an individual class member's claim, only if—
- (a) the class member ceases to be a class member; or
 - (b) the class action (including any appeal) terminates without finally disposing of the class member's claim.

15 General power of court to make orders

- (1) When a class action has commenced the court may, on application by a party, or on its own initiative, make any order it thinks just relating to the conduct of the proceeding which is consistent with—
- (a) the purposes of this Act; and
 - (b) the High Court Rules, including rules made under section 51C(3) of the Judicature Act 1908 (added by section 9 of this Act).
- (2) Without limiting subsection (1), an order may be made prohibiting the making of specified kinds of interlocutory applications by a defendant if they would unnecessarily delay the conduct of the class action, or constitute an abuse of the procedure of the court.

16 Conversion of existing proceedings

A proceeding which has been commenced before this Act comes into force may, if a Judge so orders on application by a party to that proceeding, be consolidated or heard together with another proceeding or other proceedings, and conducted subsequently as a class action.

Part 3 Commerce Commission

17 The Commerce Act 1986

The Commerce Act 1986 is amended by adding the following section after section 84A:

“84B Additional powers of the Commerce Commission

- “(1) This section applies if it is claimed that a person is liable—
- “(a) to pay damages under section 82 (which relates to loss or damage caused in contravention of Part 2); or
 - “(b) to pay exemplary damages under section 82A; or
 - “(c) to pay damages under section 84A (which relates to contraventions of section 47); or
 - “(d) to be restrained by injunction from engaging in conduct of one or more of the kinds listed in section 84.
- “(2) When this section applies, the Commission may apply to the court to be a lead plaintiff in a class action, even though it has not suffered loss or damage but is acting on behalf of persons who have suffered, or apprehend that they will suffer loss or damage.
- “(3) If the court grants the Commission’s application under subsection (2), the class action must proceed under the Class Actions Act 2008 and the rules of court regulating class actions, but modified to the extent necessary to reflect the fact that the Commission is not claiming on its own behalf.
- “(4) This section does not affect the other powers and functions of the Commission under this Act.
- “(5) In this section **class action** has the same meaning as it has in the Class Actions Act 2008.”

18 The Fair Trading Act 1986

The Fair Trading Act 1986 is amended by adding the following section after section 43:

“43A Additional powers of the Commerce Commission

- “(1) This section applies if it is claimed that a person has—
- “(a) engaged in conduct of 1 or more of the kinds referred to in section 41; or
 - “(b) is liable to an order under section 43.
- “(2) When this section applies, the Commission may apply to the court to be a lead plaintiff in a class action, even though it has not suffered loss or damage but is acting on behalf of persons who have suffered, or apprehend that they will suffer, loss or damage.

- “(3) If the court grants the Commission’s application under subsection (2), the class action must proceed under the Class Actions Act 2008 and the rules of court regulating class actions, but modified to the extent necessary to reflect the fact that the Commission is not claiming on its own behalf.
- “(4) This section does not affect the other powers and functions of the Commission under this Act.
- “(5) In this section **class action** has the same meaning as it has in the Class Actions Act 2008.”

19 The Credit Contracts and Consumer Finance Act 2003

The Credit Contracts and Consumer Finance Act 2003 is amended by adding the following section after section 98:

“98A Additional powers of the Commerce Commission

- “(1) This section applies if it is claimed that a person has—
- “(a) become liable for statutory damages under section 88, and the Commission is applying to enforce that liability under section 90; or
 - “(b) engaged in conduct referred to in section 93, and the Commission is applying for an order against the person under section 95; or
 - “(c) engaged in conduct of the kind referred to in section 96 and the Commission is applying for the grant of an injunction against that person under section 96 or an interim injunction under section 98.
- “(2) When this section applies, the Commission may apply to the court to be a lead plaintiff in a class action, even though it has not suffered loss or damage but is acting on behalf of a class of persons who have suffered, or apprehend that they will suffer, loss or damage.
- “(3) If the court grants the Commission’s application under subsection (2) the class action must proceed under the Class Actions Act 2008 and the rules of court regulating class actions, but modified to the extent necessary to reflect the fact that the Commission is not claiming on its own behalf.
- “(4) This section does not affect the other powers and functions of the Commission under this Act.

“(5) In this section **class action** has the same meaning as it has in the Class Actions Act 2008.”