1. INTRODUCTION

Australia in context

- Size
- Population
- More lawyers/head of population than US
- High level litigation

Australian legal system

Similar to US and UK

But

Some significant differences with US

- No jury trials in civil matters in Federal Court (rare in state courts)
- No depositions
- Punitive damages often not available (or comparatively insignificant when available)
- Fact pleading as distinct to issue or notice pleading in US

2. DEVELOPMENT OF CLASS ACTIONS IN AUSTRALIA

- Unknown prior to 1992
- Why introduced – desire on part of government for more litigation!
- Federal Court 1992
- State court system (Victoria) 1999
- Both survived early constitutional challenges
3. OUTLINE PROCEDURE

- Opt out system
- Need 7 or more class members
- Only need to identify one plaintiff
- Claims must:
  - arise out of “same, similar or related circumstances”
  - and
  - give rise to “substantial common issues of fact or law”

4. MORE PLAINTIFF FRIENDLY THAN US RULES

- No requirement that common issues predominate over individual issues
- No certification process or procedure
- Rules envisage courts considering and resolving individual issues in context of class action

5. THE COURTS’ RESPONSE

- Threshold tests neutered - in truth no substantial common issues required
- Requirement that case be properly pleaded enforced
  
  Thus tobacco class action struck out

6. DISCUSSION

- Procedure inappropriate for actions involving complex individual issues - e.g. causation in drug and device claims
- Interpretation of threshold tests has resulted in situation where virtually any circumstances involving 7 or more people can result in the commencement of a class action
- As yet very few cases have proceeded to trial - remains to be seen how the courts will deal with the problems that have been created
• Haste on the part of plaintiff’s lawyers to commence actions as soon as events giving rise to cause of action occurs coupled with need to plead properly has resulted in a significant level of interlocutory disputes.

• Procedure has been successfully used as a settlement vehicle to resolve and finalise a number of multi claimant disputes where questions of liability have been agreed between the parties.

• The introduction of a class action procedure has undoubtedly increased the level of litigation.

• However, it remains to be seen whether the net result is a benefit to consumers and the public at large (as it’s proponents promised) or just another impost on business which ultimately increases costs to the consumer and stifles innovation.