

## Article Information

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## Summary of key submissions in Westpac Banking Corporation & Anor v Lenthall & Ors (S154/2019)

**Martin del Gallego and Matthew Harris summarise the key submissions and how they will impact the 'common fund order'.**

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For those with a keen interest in the future of the so called 'common fund order' in the Australian class action landscape (lawyers, funders and corporates alike), the recent filing of reply submissions sees the strategies set and battle lines drawn for next week's much anticipated hearing of the appeals to the High Court of Australia in *Lenthall* and *Brewster*. Before we get to the much anticipated hearing (on 13 August 2019), familiarise yourself with the key aspects of the parties' respective positions, as summarised below.

### Introduction

The primary issue for determination by the High Court of Australia is whether s 33ZF of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), on its proper construction, empowers the Federal Court to make a common fund order (**CFO**) in representative proceedings, requiring that part of the fruits of any success otherwise payable to each group member instead be paid to a funder?

Martin del Gallego, Partner and Matthew Harris, Law Clerk summarise the key submissions.

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