

Senate Economics Legislation Committee

CORPORATIONS AMENDMENT (IMPROVING OUTCOMES FOR LITIGATION FUNDING PARTICIPANTS) BILL 2021

Attorney-General's Department

Hearing date: 17 January 2022

Hansard page: 22

Question type: Spoken

Senator Deborah O'Neill asked the following question:

Senator O'NEILL: Thank you very much. Given your responses to date, could you on notice please identify the constitutional head of power that supports each and every provision of the bill? I literally want you to go through the bill and tell the committee, for example, 'Section 601LF is supported by the following heads of power,' and list the heads or the head of power that you're relying on for that provision. I request that you do that—I hope I have the support of the committee to do this—for every section of the bill. I am not asking you, to be clear, to disclose legal advice. You don't have to provide an argument, although if you were so inclined I would be happy to receive it. You do not have to tell us why you're relying on a particular head of power to support that particular section. But I think we're absolutely entitled, as senators called on to legislate, to be confident that every section of the bill has a head of power on which it can rely.

Dr Smrdel: Thank you. Yes, I'll take that on notice. As discussed previously, it's also tied into the question of what the Attorney will do in relation to the public interest immunity claim, but I'll certainly take that question on notice.

The response to the Senator's question is as follows:

The heads of power on which the Corporations Amendment (Improving Outcomes for Litigation Funding Participants) Bill 2021 (the Bill) relies are unable to be disclosed as all legal advices in relation to the Bill are subject to a public interest immunity claim made by the Attorney-General on 24 November 2021.

Committee edit: the committee notes the Parliamentary Joint Committee on Corporations and Financial Services did not accept the Attorney-General's claim of public interest immunity, as disclosed to the committee by the Attorney-General's Department (Dr Albin Smrdel, Assistant Secretary, Legal System Branch, Attorney General's Department, Committee Hansard, 17 January 2022, p. 19).