

Senate Standing Committee on Economics
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio

**Inquiry into the Corporations Amendment
(Improving Outcomes for Litigation Funding Participants) Bill 2021**

2021 - 2022

Division: Market Conduct Division
Topic: Law Council Submissions
Reference: Spoken (17 January 2022)
Senator: Paul Scarr

Question:

CHAIR: Yes, take that on notice. Given the evidence that was given earlier today, it would be useful for something to be on the record from the perspective of the Attorney-General's Department. I'm alive to the fact that we've been going for some time. There was one question that was raised in the Law Council of Australia's submission that I'm interested to get your view on. I'll quote from paragraph 42 of the Law Council of Australia submission. It says:

42. Proposed paragraph 601GA(2)(b) states that a court may only approve or vary a claim proceeds distribution method if 'the proceedings are sufficiently progressed to enable the court to determine whether that claim proceeds distribution method, or any variation of that method, is fair and reasonable'.

43. The practical effect of this paragraph may be that a court is unable to approve a settlement in the early stages of a dispute despite this being in the interests of the group members and defendants alike.

From a policy perspective, I guess there are two competing interests here. One is the interest in having litigation disputes resolved as early as possible prior to additional costs being incurred or time being taken so all of the stakeholders have the benefit of a resolution as quickly as possible, particularly, I would have thought, in circumstances where the parties have come to an agreement through mediation. What's the policy intention of that drafting in terms of how it would work in practice? What's the concern—the mischief, if you like—that arises out of the proceedings not being 'sufficiently progressed'? What would that mean, particularly in practice?

It appears you might be looking for an additional document, Dr Smrdel. From my perspective, the concern raised by the Law Council of Australia conjures up circumstances where the plaintiff and the defendant have come to an agreement and they go to court. The concern is that the court says, 'Well, proceedings aren't sufficiently progressed to enable us to determine that the claims proceeds distribution method, or any variation, is fair and reasonable, so we can't sign off on the settlement, so the action has to proceed,' notwithstanding that the parties want to come to a mediated settlement. I suspect that is not the intention.

Dr Smrdel: Can I check with my colleague from Treasury about whether that's one for Treasury to take?

Mr Dickson: We might take that one on notice. Obviously the intent is to make sure that there's good decision-making through this process. A question arises as to the likelihood of whether somebody would find themselves, having gone through mediation and reached agreement through that process, then having that denied by the court. I'd like to take that on notice, if I could.

Answer:

Please refer to the Treasury and Attorney-General's Department's response to question on notice IQ22-000023.