

1 Springdale Road
Killara 2071
NSW

18 August 2020

Dr Patrick Hodder
Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Parliament House
Canberra
ACT

By email:

Dear Dr Hodder,

Inquiry into litigation funding and the regulation of the class action industry
Questions on notice from Senator Deborah O'Neill

I refer to the questions on notice asked of me when I appeared before the Committee on 13 July, and in your subsequent letter of 28 July 2020.

I appeared before the Committee on 13 July 2020 in my private capacity. I appeared in answer to a request from the Committee in response to what I assume was the submission I made dated 11 June 2020. That submission addressed proposals for the regulation of the Australian litigation funding industry.

When I appeared before the Committee, I was subjected to an *ad hominem* attack by Senator O'Neill.

In a series of 'questions' directed to me on 13 July, Senator O'Neill, *inter alia*:

1. Asserted that I would, "... *like to make it easier for manufacturers to contaminate with asbestos products like baby powder in Australia*";
2. Suggested I was in favour of "*watering down*" Australia's gun laws;
3. Asserted that I am "*a cheer squad*" for the ILR;
4. Asserted that I was operating from a, "*playbook*" that included the destruction of documents that would be helpful to people who had allegedly "*... been harmed by my client*" (sic);
5. Asserted that Clayton Utz, a firm in which I was a former senior partner, had advised a client to destroy documents and thus prevent a plaintiff suing one of the firms' clients and that I was guilty of the same alleged misconduct by association. In doing so, Senator O'Neill ignored the fact that the first instance judgement to which she was referring had been overturned on appeal;
6. Asserted that I had used a strategy involving the destruction of documents to prevent a claimant proceeding with a claim against a client of Clayton Utz;

7. Asserted that I was involved in a campaign to prevent personal injury plaintiffs vindicating their rights through the use of class actions.

On the afternoon of 29 July 2020, Senator O'Neill, in questions directed to other witnesses and in my absence, implied that I had misled the Committee on 13 July. In doing so, Senator O'Neill misstated the evidence I had given to the Committee on 13 July.

I have been in practice as a lawyer for 40 years. During that time, I have been involved in hotly contested class action litigation, both Australia and other parts of the world.

I have published and spoken extensively, both in Australia and overseas, on the subject of class actions and litigation funding. I have participated in conferences and seminars on the subject of class actions and litigation funding in Australia and overseas.

I have participated in other parliamentary committees and inquiries in both the Federal and New South Wales Parliaments. I have contributed to law reform commission inquiries in relation to class actions, litigation funding and other issues

Many of these conferences and meetings have included plaintiffs' lawyers and litigation funders who have, on some occasions, taken a very a different position to that which I and others have sought to advance. While debate has been vigorous, as one would expect, it has always been respectful of the views expressed by others and the issues discussed on their merits.

In all of that work, I have never before been subjected to an *ad hominem* attack that was intended to embarrass and humiliate me for the purposes of questioning my credibility and integrity.

During my appearance before the Committee Senator O'Neill did not ask me a single question of substance in relation to the issue of class actions or litigation funding or anything else touching on the Committee's Terms of Reference. Rather, it appears that her objective was, as she acknowledged at page 25 of the transcript of 13 July, to simply attack my credibility.

Similarly, the questions on notice which have been asked of me by Senator O'Neill do not relate to, or even touch upon, the Terms of Reference establishing the Committee's Inquiry.

Some of the questions are incapable of being sensibly answered - for example, the request that I provide a list of every person " ... with whom [I've had a conversation [about class actions and litigation funding] since the election of this current Liberal-National Party government".

Rather, those questions appear to have been asked in order to continue the attack.

In these circumstances, and with respect to the Committee, I am unwilling to continue to participate in the Inquiry.

Yours faithfully,

S Stuart Clark AM FAICD