

Parliamentary Joint Committee on Corporations and Financial Services
CORPORATIONS AMENDMENT (IMPROVING OUTCOMES FOR LITIGATION
FUNDING PARTICIPANTS) BILL 2021

Attorney-General's Department

Hearing date: 12 November 2021

Hansard page: 66

Question type: Spoken

Mr Julian Hill MP asked the following question:

Mr HILL: That's great, and I'm sure you got lots of legal advice. The topic here is constitutionality, firstly. You've given a very general, bland assurance: 'Don't worry. Trust us. We're bureaucrats. It's constitutional.' Yet we've got an opinion from the former Solicitor-General of the Commonwealth raising four or five specific reasons why the bill may be unconstitutional. I'm not asking for a copy of your legal advice, but can you at least give us an assurance that the advice you've received covers off on each and every one of the specific areas which the former Solicitor-General has raised?

Dr Smrdel: I think we need to take that on notice. Certainly, in terms of the constitutional issues that we think are most applicable to this bill, as I said earlier, we have confidence in terms of the legal advice we've received. In terms of having the discussion, I think that would be jeopardising any claim for legal professional privilege. I know that doesn't necessarily hold up in the context of a committee appearance. Nonetheless, I'm loath to have discussion in relation to the contents of the legal advice, but I can provide the assurance that we are confident that the constitutionality of the bill—

Mr HILL: We're going around in circles. I get that: that's your assertion. This is what I'm asking you to take on notice. As of today, you said you'd received advice on the constitutionality of the bill. I'd like a written assurance that the advice you've received which backs up your confidence or your claim that the bill is constitutional and doesn't have constitutional problems, addresses each and every one of the points that the former Solicitor-General had made. Is that understood?

Dr Smrdel: We'll take that on notice. But if, in answering that, it potentially gives some of the content—”

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

The Government is confident in the constitutionality of the Bill.

It is a standard practice in the legislative process for the Government to seek advice on the constitutionality of a Bill.

The Attorney-General's Department sought legal advice from the Solicitor-General on 21 September 2021. This advice was received on 26 October 2021.

In accordance with the long-standing practice of successive Australian governments, it is

against the public interest to disclose confidential legal advice. It is in the public interest that Government can engage fully and frankly with its legal advisers and access such advice confidentially, which as a practical matter is critical to the development of sound Commonwealth policy and robust law-making.