

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: 67

Question type: Spoken

Mr Julian Hill MP asked the following question:

Mr HILL: Did the current Solicitor-General's opinion raise any concerns or questions or was it just 'Nope, no worries, no questions, nothing to see here; charge on'?

Dr Smrdel: I think we're getting into the content now, so—

Mr HILL: So you're not able to even assure the parliament that the current Solicitor-General gave an unequivocal sign-off that what you're putting forward is even constitutional?

Dr Smrdel: Well, I said previously that the advice that we have received says that the bill is constitutional.

Mr HILL: You can't hide behind legal professional privilege unless you're claiming public interest immunity. Senator O'Neill is far more familiar with this, but that's my understanding.

Dr Smrdel: As I flagged earlier, we can't make a claim of public interest immunity ourselves, but, in terms of disclosing legal advice, we're taking the question on notice, but it might be flagging a claim for public interest immunity.

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.