

Senate Economics Legislation Committee

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

Attorney-General's Department

Hearing date: 17 January 2022

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Question type: Spoken

Senator Paul Scarr asked the following question:

CHAIR: Dr Smrdel, you might not be able to answer this, given the issues around constitutionality that have been well and truly canvassed. Thank you for your patience during that discussion; it's greatly appreciated. Paragraph 55 of the Law Council of Australia submission says:

Furthermore, insofar as there is an inconsistency between the proposed provisions and provisions of the FCA Act, there may also be an implied repeal of those FCA Act provisions. These are matters of particular significance.

I don't want to take you into areas where you can't go, and you might need to take this on notice, but in my mind that raises the question as to whether or not that's the intention of the legislation in any event. Is the intention to actually repeal any part of the FCA Act by implication?

Dr Smrdel: It certainly is the intention to modify the application of how the Federal Court goes about things, but, as to whether there's an intention to repeal, I think it's better if I take that one on notice.

CHAIR: Yes, I'm quite happy for you to do that. It does beg the question. The reason I ask is that, if that's the intention, maybe that should be clear. But is that really the intention? If you could take that on notice, that would be very useful.

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

The Corporations Amendment (Improving Outcomes for Litigation Funding Participants) Bill 2021 (the Bill) amends Chapter 5C of the *Corporations Act 2001* to establish a new kind of managed investment scheme, a class action litigation funding scheme, and introduces additional requirements for the constitutions of managed investment schemes that are class action litigation funding schemes. It introduces a test the Federal Court must consider in certain circumstances. However, it is not intended to repeal parts of the *Federal Court of Australia Act 1976* by implication.