

**Maurice
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Since 1919

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Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

By email: corporations.joint@aph.gov.au

Dear Sir/Madam,

We welcome the opportunity to provide feedback to the the Parliamentary Joint Committee on Corporations and Financial Services (the **Committee**) in response to the inquiry into the *Corporations Amendment (Improving Outcomes for Litigation Funding Participants) Bill 2021* (the **Bill**).

Maurice Blackburn Pty Ltd is a plaintiff law firm with 33 permanent offices and 30 visiting offices throughout all mainland States and Territories. The firm specialises in consumer and commercial class actions.

You will note that due to the exceedingly short notice and consultation period provided, we have not had an adequate opportunity to further amend the attached document (**Attachment 1 – Submission to Treasury 6 October 2021**) from that which was provided on October 6th this year to Treasury on the same reform matters.

We would point out, however, that there are still considerable areas of concern and confusion remaining in the legislation proposed and currently before the Federal Parliament. Some aspects of the current form of the Bill actually make things worse, and we urge in the strongest possible terms for there to be a more thorough consideration and working through of the significant problems posed by the enacting the legislation in its current form, **via a full Senate Legislation Committee process**, as is standard practice.

Without providing an exhaustive list, just some of those areas of concern include:

- The proposed reforms will reduce access to justice by limiting the practical availability of litigation funding for meritorious cases;
- The rebuttable presumption remains deeply problematic for the reasons outlined in the October submission;
- s.601LG still provides an exhaustive rather than inclusive list of factors for a court to consider in relation to the reasonableness of a distribution of proceeds, which still

fails to consider the most important factor in determining whether a settlement is reasonable, being the proportion the settlement represents to the group members likely recovery;

- Ambiguity on the availability of CFOs;
- Lack of policy or evidence-based rationale for cost-capping funded actions;
- Confusion regarding finality of matters and the encouragement of increased litigation via copycat actions;
- Unresolved constitutional concerns regarding limitations on the jurisdiction of State Supreme Courts; and
- The scope and potential unintended consequences arising from the proposed s.9AAA(2).

The fact that the exposure draft of the Bill was so problematic has resulted in the rectification of some of the obvious and serious defects of drafting. This only goes to demonstrate that a far more detailed level of scrutiny and consideration of the current form of the Bill is necessary in order to ensure it is workable and to avoid unintended consequences.

The very real and current risk in not enabling proper consideration of the legislation, is that it will create unnecessary and unworkable complications within the legal system, across multiple jurisdictions – problems that currently do not exist and which will have a deleterious effect on the proper administration of justice in this country.

In its current form, the proposed legislation, despite its name, actually creates a multitude of additional policy and practical complications, complexities and uncertainty, none of which improves outcomes for participants.

It is for these reasons that we urge in the strongest possible terms that this proposed legislative reform undergo the normal processes of the Senate Legislative Committee, so that these important issues can be given proper consideration.

Please do not hesitate to contact me and my colleagues at AWatson@mauriceblackburn.com.au if we can further assist with the Committee's important work.

Yours faithfully,

Andrew Watson
Principal
Maurice Blackburn Lawyers

Attachments: Attachment 1 – Submission to Treasury 6 October 2021