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National Council of Women (NCWA) submission to the Parliamentary Joint Committee on Corporations and Financial Services inquiry into the Corporations Amendment (Improving Outcomes for Litigation Funding Participants) Bill 2021.

National Council of Women (NCWA) welcomes the opportunity to place on record support for the Corporations Amendment (Improving Outcomes for Litigation Funding Participants) Bill 2021. NCWA is a non-government umbrella organisation working for the advancement of women and their families. It has Constituent Councils in all Australian States and the ACT with an extensive membership of Affiliate organisations (all with significant membership numbers) and Associate members (women who join as an individual). NCWA also has a national membership of national organisations. The organisations are very diverse representing all section of the community.

For a considerable time a number of NCWA members have raised concerns about the lack of regulation governing the litigation funding industry which has been leading to poor justice outcomes for those men and women who join class actions expecting to get fair compensation for an inquiry, loss or action causing significant damages.

NCWA is pleased the Australian Government has introduced legislation into the Parliament to improve outcomes for litigation funding participants by a fairer and more reasonable distribution of class action proceeds. This Bill amends Chapter 5C of the Corporations Act to implement the government response to recommendations 7,11,12,13,16,18 and 20 of the Parliamentary Joint Standing Committee on Corporations and Financial Services.

The Bill includes a new class of managed investment scheme called a class action litigation funding scheme. The amendments also introduce additional requirements within Chapter 5C of the Corporations Act for such managed investment schemes.

NCWA is pleased to see in the Bill that a Court must approve as fair and reasonable the proposed distribution of the claim proceeds achieved in a class action funded by a class action litigation funding scheme. The Court will be able to approve this distribution between the members of the scheme and entities that are not members of the scheme such as a litigation funder. The amendments which provide that a Court may vary a proposed distribution to ensure it is fair and reasonable is an important component of the Bill.

The Bill will also require plaintiffs to consent to become members of a class action litigation funding scheme before funders can impose their fees or commission on them. This will encourage 'book building' and ensure that litigation funders actions commence with genuine support of plaintiffs.

With the role of independent experts being enhanced in the new legislation it will protect class members against the kind of misconduct like the Banksia case where a group of lawyers claimed \$19 million in fees and commissions from elderly investors in a civil action against a collapsed financial lender.

These reforms and other recent changes to require litigation funders to hold an Australian Financial Services Licence and comply with the managed investment scheme will ensure litigation funders have greater barriers to charging unfair and disproportionate fees and commissions. As such NCWA supports the Corporations Amendment (Improving Outcomes for Litigation Funding Participants) Bill 2021.

NCWA in its submission to the Parliamentary Joint Committee on Corporations and Financial Services Litigation funding and the regulation of the class action industry made a number of recommendations and is pleased to see that a number of those recommendations have been included in the Bill.

In conclusion as stated previously NCWA support the Bill and is pleased to see the Australian Government has introduced legislation into Parliament to improve outcomes for litigation funding participants and ensure that the distribution of claim proceeds is fair and reasonable.

Yours sincerely

Robyn Nolan
President NCWA