



Law Council
OF AUSTRALIA

Office of the President

25 January 2022

Senator Paul Scarr
Chair
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Dear Chair

Corporations Amendment (Improving Outcomes for Litigation Funding Participants) Bill 2021 – Questions on Notice

The Law Council of Australia thanks the Senate Economics Legislation Committee (**the Committee**) for the opportunity to respond to its inquiry into the Corporations Amendment (Improving Outcomes for Litigation Funding Participants) Bill 2021, including in its recent appearance before the Committee on Monday, 17 January 2022.

Subsequent to this appearance, the Law Council received the following questions on notice regarding the amendments proposed in Chapter 3 of the submission by the National Farmers' Federation (**NFF**):

1. What is the appropriate body or forum to consider procedural issues in the nature of those proposed by the NFF?
2. What is the appropriate process to consider such procedural issues?

The Law Council deals with these questions collectively.

The NFF's submission outlines its view that strategies are employed by respondents to 'artificially drag out proceedings in order to increase legal fees, with the ultimate goal of exhausting a claimant's funding and forcing them to abandon the claim'.

With respect, the Law Council disagrees with this assertion and notes that there are already a number of measures in effect to ensure that disputes are resolved as quickly, inexpensively and efficiently as possible:¹

- Section 37N of the *Federal Court of Australia Act 1976* (Cth) requires parties (including the lawyers) to act consistently with the overarching purpose of the civil practice and procedure provisions. The overarching purpose, set out in section 37M, is to facilitate the just resolution of disputes: (a) according to law; and (b) as quickly, inexpensively and efficiently as possible.

¹ It should be noted that the disputes dealt with through class actions are often among the most intensive and complex disputes arising before the courts.

- The courts possess an inherent power to control their own processes and, in particular, to prevent abuse of those processes.
- Frameworks for the regulation of legal practitioners, including the Australian Solicitors Conduct Rules, set out the obligations that legal practitioners owe the courts, their clients and others. This includes rules in relation to conduct that unnecessarily results in increased legal cost. Breach of these obligations can bring significant consequences.

However, the Law Council is generally supportive of measures that can improve efficiency and reduce cost in relation to class action proceedings. Several of the NFF's proposals are worth considering in this context.

In the Law Council's view, and subject to the views of the courts, the appropriate forum for the consideration of procedural issues in the nature of those proposed by the NFF is through dialogue with the courts and further engagement with the legal profession and other stakeholders. In the context of the Federal Court, the most appropriate process to contemplate such procedural issues is likely to be through a review of its Class Actions Practice Note (GPN-CA).²

The Law Council hopes that the above responses are useful to the Committee. Should you wish to discuss further, please contact Mr John Farrell, Senior Policy lawyer, on 02 6246 3714 or john.farrell@lawcouncil.asn.au in the first instance.

Yours sincerely



Mr Tass Liveris
President

² Federal Court of Australia, Class Actions Practice Note (GPN-CA), 20 December 2019.