

6 October 2021

Manager
Market Conduct Division
Treasury
Langton Cres
Parkes ACT 2600

By email: MCDLitigationFunding@treasury.gov.au

Dear Sir/Madam

Treasury Laws Amendment (Measures for Consultation) Bill 2021: Litigation funders

Thank you for the opportunity to comment on the exposure drafts of the Treasury Laws Amendment (Measures for Consultation) Bill 2021 and the Corporations Amendment (Litigation Funding) Regulations 2021 released on 30 September 2021.

The Legal Services Council (**Council**), along with the Commissioner for Uniform Legal Services Regulation, oversees the Legal Profession Uniform Law (**Uniform Law**). The regulatory framework applies to all lawyers in New South Wales and Victoria. The Council sets the rules and policy to underpin the Uniform Law, ensuring it is applied consistently across participating jurisdictions. Its work is overseen by a Standing Committee, which comprises the Attorneys General of jurisdictions participating in the scheme.

Among other things the Uniform Law regulates lawyers' involvement in registered and unregistered managed investment schemes. This includes mortgage schemes and investment schemes, and (from August 2020) litigation funding schemes. Section 258 of the Uniform Law prohibits a law practice or its related entities from promoting or operating a managed investment scheme, or providing legal services in relation to a managed investment scheme, if any associate of the law practice has an interest in the scheme or the responsible entity for the scheme.

When the laws regulating litigation funding at the Commonwealth level were changed in 2020, the Council recognised that the operation of s 258 of the Uniform Law could be an impediment to lawyers acting in matters that involve litigation funding. Accordingly, by legislative instrument (contained in Rule 91BA of the Legal Profession Uniform General Rules 2015) the relevant restrictions in s 258 of the Uniform Law were turned off for litigation funding schemes.

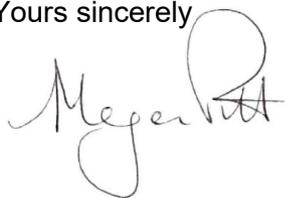
The legislative instrument defines a litigation funding scheme in Rule 91BA(3) as 'a litigation funding scheme mentioned in regulation 7.1.04N(3) of the *Corporations Regulations 2001* of the Commonwealth'.

We note the new definition that is to be introduced as s 9AAA of the *Corporations Act 2001* (Cth). It is important that, if this new definition is adopted, it does not replace or alter the definition in reg 7.1.04N(3) of the Corporations Regulations, as this will have an unintended flow-on effect on the state legislative instruments.

Accordingly, we would be grateful if you would confirm that there will be no change to reg 7.1.04N(3) as the result of the proposed round of amendments to the Commonwealth laws.

If you have any questions about this matter, please contact Chelly Milliken, Senior Principal Policy Officer, on 02 9692 1303 or chelly.milliken@legalservicescouncil.org.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Megan Pitt', with a large, stylized flourish at the end.

Megan Pitt
Chief Executive Officer | Legal Services Council
Commissioner for Uniform Legal Services Regulation