



Minister for Revenue and Financial Services

The Hon Kelly O'Dwyer MP

14 DEC 2016

Ref: MC16-020924

Senator Helen Polley
Chair
Senate Scrutiny of Bills Committee
Suite 1.111
Parliament House
CANBERRA ACT 2600

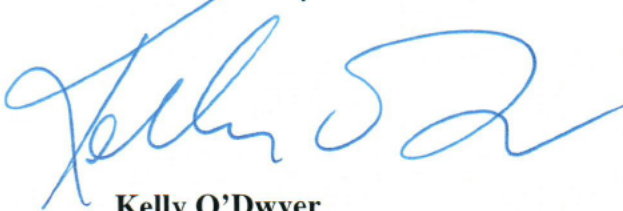
Dear  Senator Polley

Thank you for your letter of 1 December 2016 on behalf of the Senate Standing Committee for the Scrutiny of Bills (the Committee) concerning the Corporations Amendment (Professional Standards of Financial Advisers) Bill 2016 (the Bill). The Committee commented in its Alert Digest No 10 of 2016 on the availability of judicial review, **s.22(1)(a)(ii)**
s.22(1)(a)(ii)

Please find my responses to your questions and concerns in the attached information.

I appreciate the Committee's consideration of the Bill and I trust this information will be of assistance to you.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Kelly O'Dwyer'.

Kelly O'Dwyer

ATTACHMENT

Section 921X: Right to judicial review

Committee's Question:


Noting the significance of decisions to be made by the standards body (discussed below), the committee seeks the Minister's advice as to whether, and under what jurisdiction, the standards body's decisions, including legislative instruments, will be subject to judicial review.

Response:

The Government considers, based on legal advice received by the Treasury, that the directors of the standards body are 'officers of the Commonwealth'. Therefore judicial review of the body's legislative instruments and administrative decisions is available under section 39B of the *Judiciary Act 1903* and section 75(v) of the Australian Constitution.

In addition, the standard body's administrative decisions are reviewable under the *Administrative Decisions (Judicial Review) Act 1977*.

s.22(1)(a)(ii)



Subsections 921U(3)-(4): Standards body's power to modify the continuing professional development (CPD) requirements

Committee's Question:

The committee seeks the Minister's advice as to the rationale for allowing legislative instruments to modify the operation of the Corporations Act, including examples of the circumstances in which it is envisaged that this power may be used.

Response:

Subsections 921U(3)-(4) allow the body to modify the operation of the Bill only when it is determining the CPD requirements under subparagraph 921U(2)(a)(iv). In practice, this means that the scope of the standard body's modification power is limited to varying the requirement to report breaches of the CPD requirement within 30 business days of the end of the CPD year.

The power in subsections 921U(3)-(4) is designed to address situations where a financial adviser's CPD year changes. A financial adviser's CPD year may change when:

- the licensee changes CPD years; or
- a financial adviser changes licensees and the new licensee has a different CPD year to the former licensee.

In situations where the financial adviser's CPD year changes, the CPD reporting requirement may operate harshly. For example, if the CPD year changed from 1 April to 1 July, the licensee would need to report twice within a 3 month period. The power in subsections 921U(3)-(4) gives the body the discretion to exempt the licensee in situations where the strict operation of the law results in an excessive administrative burden.

The standard body's use of its discretion is subject to a number of safeguards to prevent abuse, including that its modified requirements will be in legislative instruments that are disallowable by Parliament.

s.22(1)(a)(ii)

