



Minister for Revenue and Financial Services

The Hon Kelly O'Dwyer MP

Ref: MC17-008972

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

Dear Senator

A handwritten signature in blue ink that reads 'Helen'.

Thank you for the letter on behalf of the Senate Standing Committee for the Scrutiny of Bills (the Committee) dated 16 November 2017, drawing my attention to the Committee's *Scrutiny Digest No. 13 of 2017* (the Report) and seeking further information about the Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Bill 2017 (the Bill).

At paragraph 2.238 of the Report, the Committee requested the following:

2.238 The committee seeks the Minister's further advice as to whether it is intended that errors related to a denial of a fair hearing (that is, errors which give rise to a procedural fairness ground of review) would give rise to a question of law (and so be subject to appeal).

Questions of law can include breaches of procedural fairness

The Bill ensures that the Australian Financial Complaints Authority (AFCA) and its determinations will be subject to the appropriate judicial oversight and scrutiny. Parties to a superannuation complaint will have the ability to appeal a determination of AFCA to the Federal Court on a question of law. This is consistent with the current treatment of determinations made by the Superannuation Complaints Tribunal.

Although what constitutes a question of law will depend on the circumstances of each case and is a matter for the Federal Court, in general, it is possible that questions of law can include jurisdictional errors, such as a breach of procedural fairness. A party to a superannuation complaint could bring an appeal to the Federal Court on a question of law if they believe AFCA has not afforded them procedural fairness.

Additionally, in considering whether to authorise AFCA as an external dispute resolution scheme, the Minister must take into account general considerations such as the independence, fairness and accountability of the scheme. AFCA will also have a legal obligation to resolve disputes in a way that is fair, efficient, timely and independent, and must comply with these mandatory requirements. These elements will also ensure the integrity and fairness of the AFCA scheme.

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

Kelly O'Dwyer 