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15 January 2020

The Manager  
Financial System Division  
The Treasury  
Langton Crescent  
Parkes ACT 2600

By email: [claimshandling@treasury.gov.au](mailto:claimshandling@treasury.gov.au)

Dear Treasury,

### **AFA Submission: Making Insurance Claims Handling a Financial Service**

The Association of Financial Advisers Limited (**AFA**) has served the financial advice industry for over 70 years. Our objective is to achieve *Great Advice for More Australians* and we do this through:

- advocating for appropriate policy settings for financial advice
- enforcing a Code of Ethical Conduct
- investing in consumer-based research
- developing professional development pathways for financial advisers
- connecting key stakeholders within the financial advice community
- educating consumers around the importance of financial advice

The Board of the AFA is elected by the Membership and all Directors are currently practicing financial advisers. This ensures that the policy positions taken by the AFA are framed with practical, workable outcomes in mind, but are also aligned to achieving our vision of having the quality of relationships shared between advisers and their clients understood and valued throughout society. This will play a vital role in helping Australians reach their potential through building, managing and protecting wealth.

### **Response**

The AFA is very aware of the concerns identified by the Royal Commission with respect to insurance claims handling and is supportive of measures to improve consumer outcomes with insurance claims.

The AFA broadly supports the draft legislation to achieve these changes to make insurance claims handling a financial service, and the approach taken to provide focus in the application of this legislation, however, we do have concerns with respect to some of the detail and what is proposed to be excluded from this regime.

One key historical point of concern with the inclusion of claims handling as a financial service is the potential implications for claims managers being caught under the financial advice regime and therefore being subject to the education and advice documentation standards that apply to financial

advisers. This has been addressed by the inclusion of Section 766B(7A). This is an important element that should address this concern.

We do note that a recommendation by a party representing a retail client with respect to a claim or a potential claim or a person assisting another person to make a claim are both classified as a claims handling and settling service under Section 766G(1), however, broadly speaking, if the party is representing the client and not the insurer, then they are not required to have an Australian Financial Services License as per section 911A(2)(ek). This necessarily limits the application of this legislation to people who are working on behalf of insurers, rather than on behalf of clients.

We also note the existence of extensive exemptions for lawyers through Section 766G(2). We question the need for the scope of this legislation to be limited to people working on behalf of insurers as there are other parties who play an important role in claims handling on behalf of clients, who are not subject to reasonable controls to ensure that they provide services that are in the best interests of their clients. We particularly note the continuing practices of large success fees paid to some parties assisting clients in the pursuit of claims outcomes, when often these services do not reflect the fees that are charged.

This legislation introduces a Statement of Claims Settlement Options, however the application of this is limited, as it only applies to offers to settle a general insurance claim using a cash payment. Therefore, this will not directly impact financial advisers or their life insurance clients.

Paragraph 1.8 in the Explanatory Memorandum suggests that the regulation of handling and settling an insurance claim by a registrable superannuation entity licensee will be addressed separately. It is our view that this legislation should have addressed claims activity performed by superannuation funds and that undertaking this as part of recommendations related to the superannuation regulators is the wrong approach. In terms of insurance claims paid by superannuation funds, the role of the superannuation fund is critical, and this should have been addressed as part of the same piece of legislation.

### **Concluding Remarks**

The AFA is supportive of changes being made to ensure that insurance claims handling is treated as a financial service and subject to licensing requirements and oversight by ASIC. We believe that this should apply to both insurers and other parties who offer services and advice to support clients making insurance claims.

The AFA welcomes further consultation with Treasury, should it require clarification of anything in this submission. If required, please contact us on (02) 9267 4003.

Yours faithfully,



**Philip Kewin**  
Chief Executive Officer  
Association of Financial Advisers Ltd