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## Regulation of Claimant Intermediaries

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 their wealth.

### Introduction

The AFA appreciates the opportunity to provide input in the consultation exercise to review the proposed regulation (7.1.04CAA) to prescribe circumstances in which a person is not a claimant intermediary.

The AFA welcomes the intent of this regulation, particularly with respect to an exemption for financial advisers, however we believe that there are a number of issues with this draft, that need to be addressed. We believe that it is appropriate to provide an exemption for financial advisers who are already bound by a range of obligations, including the Best Interests Duty, when advising their clients. If financial advisers were required to vary their licences to include claims handling services, this would involve as many as 2,200 licence variations, and amount to a substantial expenditure by these licensees. Many smaller licensees would need to obtain legal or compliance advice in order to assist with the submission of an application to vary their licence. We do not think that this should be required, particularly when financial advisers are focussed upon supporting clients through the COVID 19 crisis and addressing other obligations such as passing the FASEA exam.

A large number of Financial advisers provide life insurance advice to their clients, and as part of this service, a key element of their value proposition is the provision of support and advice at the time of claim. Financial advisers are typically paid a servicing commission by the life insurers and therefore most often provide claims

handling services at no additional fee. In some cases, where the claim is an especially complex ongoing matter, there may be a small additional fee. Financial advisers can add a lot of value to the process for claimants, given their detailed knowledge of policy terms and conditions and contacts within the life insurance companies. Life insurance claims can cover products such as death cover, TPD, Trauma, Income Protection and business expenses. Financial advisers play a key role in helping clients to understand their insurance and in many cases helping them to identify eligibility to claim a benefit, such as a terminal illness benefit to assist in those final months, or to claim a trauma benefit for someone recovering from cancer, a stroke or a heart attack. Timely life insurance claims advice can have significant financial and emotional benefits for clients. Claims for some products, like indemnity income protection cover for a self-employed person, can be very complex, with multiple different types of information/documentation required, and a necessity to deal with third parties, such as accountants and medical professionals. Having access to an adviser at this time is critical for people who are already dealing with the stress caused by the illness or accident. Many of our members talk about their very high success rates in pursuing claims for their clients. Often, this can be due the fact that the issues can be complex, and in many cases the knowledge of the adviser may significantly exceed that of the life insurer's staff, enabling them to strongly advocate for the legitimacy of a claim. In this way, and leveraging their financial advice provided in recommending the product to the client, an adviser can hold the insurer accountable. Ultimately, they deliver significant benefits to their clients in this process.

Importantly, these services that are provided to claimants throughout the claims process, might be provided by people in the practice other than financial advisers, including claims managers working within the advice practice or by customer service staff. Often the administrative services, involved in a claim, will be provided by staff members who are not financial advisers. These resources are critical, particularly in the case of complex matters and ongoing income protection claims, where recurring administrative actions are required.

Occasionally, a financial adviser may be asked to assist a person with a claim who is not a current client. This could be based upon a request from an existing client to assist a friend or family member or as a referral from another professional, based upon an awareness of their knowledge and skills. This could relate to a situation where the potential client is a member of a superannuation fund and they are having issues with the trustee or the insurer in the claims process and they are seeking advice on how to progress. In many cases, some of these services could be done as a pro-bono activity or for very minimal return. If the regulation came in as proposed, financial advisers would most likely be forced to decline to provide claims support in these circumstances.

Financial advisers can also play an important role in supporting clients in making a complaint to AFCA about the treatment of a life insurance claim by either a super fund trustee or a life insurer.

We therefore believe that the proposed regulation does not address many of the different situations where an exemption for financial advisers, or their practice, is appropriate.

### **Definition of Claims Handling Service**

Section 766G of the Corporations Act sets out the Meaning of 'claims handling and settling service', and includes the following:

- (1) A person provides a claims handling and settling service if:*
- (a) the person makes a recommendation, or states an opinion, in the following circumstances:*
    - (i) the recommendation, or statement of opinion, is made in response to an inquiry by or on behalf of another person about an existing or a potential claim by the other person under an insurance product;*
    - (ii) the recommendation, or statement of opinion, could reasonably be expected to influence a decision whether to continue with the existing claim or to make the potential claim; or*
  - (b) the person assists another person to make a claim under an insurance product; or*

*(c) the person represents a person insured under an insurance product in pursuing a claim under the product; or*

It would be very common for an administrative staff member to assist with the completion of claims forms or to discuss the progress of a claim with a life insurer. We therefore recommend that the exemption for financial advisers be extended to other appropriate staff working in a financial advice practice.

### **Definition of Claimant Intermediary**

Section 761CAA provides a definition for a claimant intermediary:

*(1) A person is a claimant intermediary if the person:*

*(a) carries on a business of representing persons insured under insurance products in pursuing claims under those products; and*

*(b) represents those persons insured for a benefit given as consideration for that service, whether a monetary benefit or otherwise and whether given to the person providing the services or another person nominated by that person.*

We believe that a financial adviser and their staff will be caught under this definition, except in the circumstances where the services are provided free of any charge. The complication with this is that even when an adviser may start the claims process on a pro-bono basis, they may not appreciate the prospect for the claim to become complex and involve a very significant amount of work. It may therefore become necessary to re-structure the arrangement with the client.

An adviser may also subsequently be asked to assist in advising on the investment of the proceeds of an insurance claim, and would expect to be paid for this advice. This might trigger the application of this provision and cause further complications.

### **AFA Response to the Recommendation**

In our response to this draft regulation, we have focussed upon the proposed exemption for financial advisers, which is as follows:

*(8) The circumstances are:*

*(a) the person (the financial adviser) holds an Australian financial services licence that authorises the financial adviser to provide financial product advice; and*

*(b) the financial adviser provides personal advice to a person as a retail client; and*

*(c) the financial adviser represents the person in pursuing a claim under an insurance product.*

We have addressed each of our issues in the section below:

### **Who Does This Apply To?**

In terms of 8(a), this only seems to apply to those financial advisers who are self-licensed. It does not appear to capture Authorised Representatives or even representatives (directors and employees of an AFSL). The wording clearly refers to persons who hold an AFSL. The vast majority of financial advisers do not hold an AFSL, but are instead authorised by someone who does hold an AFSL. This appears to be a major issue.

This exemption would only potentially apply to financial advisers, and not to other staff within a financial advice practice, who often play an important role in assisting with the administrative elements of making a claim and working through the claims process. The exemption needs to also apply to other staff employed within the business who are assisting with the claim.

## What are the Implications of the Personal Advice Requirement?

It is not always the case that the financial adviser who is assisting with the claims process has previously provided personal advice to that client, even where the client has previously received personal advice in the past. It may be the case that it was another adviser in the same practice who previously provided personal advice to the client. The advice might also have been provided in the name of a Corporate Authorised Representative, rather than an individual adviser. It might also be the case that the current adviser has recently purchased the business or the book of clients and has not previously provided personal advice to this client.

In the case of a death claim, the adviser is supporting the family members, and not the original client. The personal advice was most likely provided to the deceased, and this might present a problem with the way that this has been designed.

We also refer to the situation above where it was possible that the client was a new client who was introduced to the adviser to assist them in the claims process, particularly where they are unsure what to do, are having trouble with the claim, lack the necessary level of financial literacy or are experiencing financial hardship or emotional difficulties. We see no reason why this type of activity would be prevented.

There is another important group of financial advisers who would be excluded from this exemption as a result of their business model. Corporate Super advisers typically provide financial advice to the employer, and not directly the individual members of the fund. They might provide personal advice to some members over time on an occasional basis, however they are more likely to provide general advice to the members of the fund. In the event that an insurance event occurs to one of their staff members, the employer would normally call on the corporate super financial adviser to provide assistance in the submission and management of a claim. As currently drafted, and in the absence of a claims handling licence variation, these advisers would be prevented from continuing to provide this important service to the employer and the members of the fund.

## AFA Recommendation

We recommend that the exemption be extended to any financial adviser or employee of a financial advice practice which is authorised to provide financial advice on life insurance products. It is our view that this would provide sufficient protection for clients, and not unreasonably restrict access to advice and support in the claims process.

We are aware that lawyers are fully exempt from this legislation. This exemption applies to all lawyers, no matter whether they are an insurance specialist or not. Financial advisers, and particularly risk specialists, have a high level of knowledge on life insurance products, terms and conditions, and the claims process, and should have access to a similar broad exemption.

In order to ensure that financial advisers can continue to provide claims handling services without the need to incur significant expenses to vary their licence, we think that the exemption needs to cover the following:

- All financial advisers, including those who are self-licensed, Authorised Representatives or representatives of a licensee. It also needs to take into account the issues with respect to Corporate Authorised Representatives.
- The staff of an advice practice, where there is an authorisation to provide life insurance advice.
- All clients who are registered under the adviser's practice.
- New clients who have not yet received personal advice, where they have approached or been introduced to the adviser for support and guidance in the claims process.

## Concluding Comments

The AFA appreciates the efforts of the Government and Treasury to seek to provide an exemption for financial advisers, however, we believe that there is a need to make material changes to the draft, to ensure that it operates as intended and does not work to the disadvantage of consumers who might seek support and advice from a financial adviser in the claims process. Financial advisers provide a much more cost effective claims service, as compared to lawyers, who as mentioned above, appear to be fully exempt from this legislation.

Financial advisers play a very critical role in supporting claimants during what is often a very difficult and emotional time, where expertise is likely to be crucial. The benefits to the client in knowing that they have an expert looking after them is substantial. We would not like to see this legislation, and the regulation, impact the ability of financial advisers to support people at claims time.

We would be happy to discuss this matter further, or to provide additional information if required. Please contact us on (02) 9267 4003.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'P. Kewin', written in a cursive style.

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