

25 May 2023

Ms Michelle Kumarich  
Executive General Manager Jurisdiction  
Australian Financial Complaints Authority  
GPO Box 3  
Melbourne VIC 3001

Via email: [consultation@afca.org.au](mailto:consultation@afca.org.au)

Dear Ms Kumarich,

**Re: AFCA CONSULTATION PAPER ON RULES AND OPERATIONAL GUIDELINES – PROPOSED AMENDMENTS**

The Council of Australian Life Insurers (CALI) was recently formed to support the Australian life insurance industry and its members, through dedicated representation, engagement and advocacy, to drive positive outcomes for customers, insurers and their partners.

CALI and the life insurance industry support the Australian Financial Complaints Authorities (AFCA) plan to amend AFCA's rules and operational guidelines following the Treasury independent review of the AFCA Scheme. We believe there are a number of areas where the current proposals can be strengthened to ensure fairness of the external dispute resolution framework for both consumers, financial service providers (FSPs) and AFCA.

A fair, equitable and sustainable EDR system ensures there is trust and support of AFCA from both sides of a complaint made about a financial service. In the attached submission we put forward the case for additional amendments to the proposed rules and operational guidelines to assist AFCA in building this trust and the fairness of the system further.

Thank you for the opportunity to contribute to this consultation. I look forward to continued engagement as AFCA progresses this important reform. I can be contacted at [REDACTED] and [REDACTED].

Yours sincerely,



Christine Cupitt  
Chief Executive Officer

## COUNCIL OF AUSTRALIAN LIFE INSURERS

### SUBMISSION IN RESPONSE TO AFCA CONSULTATION PAPER ON RULES AND OPERATIONAL GUIDELINES – PROPOSED AMENDMENTS

#### INTRODUCTION

External dispute resolution plays an integral role in supporting Australians in their engagement with financial service providers. Providing consumers with a free and independent system outside the expensive and complicated judicial system allows complaints to be quickly and efficiently dealt with and continues to build trust in the financial services system more broadly.

CALI is committed to ensuring the life insurance industry operates in the best interests of the Australian community and economy and as such, the life insurance industry will contribute to the united effort to create a world class external dispute resolution system at AFCA.

CALI and the life insurance industry support the findings of the Treasury independent review into AFCA and welcome AFCA's commitment to implementing the recommendations in an efficient manner. CALI and the life insurance industry also commend AFCA on improvements being made through the proposed rules and operational guidance updates, and broadly support the proposed updates.

We also believe the current proposal can be strengthened to ensure it recognises the role that FSPs play in the AFCA EDR process in the following two areas of AFCA's proposed amendments.

#### **Proposal 3: Appropriate settlement offers**

CALI understands that 'Proposal 3: Appropriate settlement offers' is intended to address Recommendation 1 of the Treasury review, which is that AFCA should provide clearer guidance on the circumstances under which a further issue identified during the complaint process will be reverted to the financial firms for further consideration through IDR or if it will be combined with the existing the complaint, that parties will be provided with procedural fairness by having the opportunity to comment on changes to the scope of the complaint.

CALI is concerned that Proposal 3 in its current form only addresses the circumstance of when complainants seek to add new issues which have already been appropriately settled by financial firms, or for which there has been an appropriate offer to compensate.

CALI is therefore concerned that there is no current proposal to address how AFCA will provide clearer guidance on the entire spectrum of circumstances where Recommendation 1 was intended to apply, and as to how further issues other than these will be addressed as part of the AFCA process. CALI members have also expressed concern that there are times when it isn't clear why additional issues have been added to a complaint.

Should AFCA not intend to fully implement Recommendation 1 by way of Proposal 3, CALI requests that AFCA makes this intention clear and whether this will be addressed in subsequent proposed changes to the AFCA rules. CALI also recommends that AFCA clearly provide reasoning for adding additional issues to a complaint.

### **Unreasonable Conduct by a Complainant to an FSP**

CALI notes and supports the amendments to AFCA's rules and operational guidance in relation to circumstances where concerns arise in relation to circumstances where unreasonable conduct is directed at AFCA staff by a complaint or their paid representative leading to the exclusion of a complaint, a complainant, or a paid representative. CALI is concerned that the changes, as drafted, protect AFCA staff but not financial firms' staff from inappropriate behaviour by complainants and paid representatives.

In relation to internal dispute resolution, financial firms are expected (and may well have) in place measures dealing with unreasonable complainant conduct. CALI believes it is preferable to adopt a consistent approach towards responding to unreasonable complainant conduct when these complainants subsequently lodge their complaints with AFCA. It is recommended that AFCA take note of and consider the Australian Standard AS/NZS 10002:2014 Guidelines for complaint management in organisations. In so far as AFCA's revised rules may mean that the complaint is excluded by reason of the complainant's unreasonable conduct towards AFCA staff, it should also be taken into consideration that unreasonable conduct towards the staff of an FSP can also lead to similar outcomes. Given the mandatory nature of AFCA membership as well as AFCA's engagement charter covering financial firms as well, AFCA should equally be of mind to protecting FSP staff in their process and ensuring FSP staff are not subjected to an unsafe workplace.

CALI therefore recommends that financial firms are provided with the opportunity to put their case forward to AFCA in relation to unreasonable conduct, as well as AFCA having regard to the guidance provided by the AS/NZS 1002:2014 to ensure consistency of IDR and EDR approaches to complainant behaviour.

CALI requests that a meeting be organised to allow CALI members to share examples with AFCA of where this kind of conduct from consumers and consumer representatives has occurred during past cases.