

25 January 2021

Treasury  
Langton Crescent  
Parkes ACT 2600

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

Dear Manager,

### Regulation of Claimant Intermediaries

The Financial Services Council<sup>1</sup> (**FSC**) welcomes the opportunity to comment on Treasury's exposure draft regulations which prescribe circumstances in which a person is not a claimant intermediary.

We have one concern to raise in relation to the proposed exclusion for financial advisers from the definition of claimant intermediary. The relevant regulation is copied below:

*7.1.04CAA Meaning of claimant intermediary—persons excluded from being claimant intermediaries*

*(1) For the purposes of subsection 761CAA(2) of the Act, a person is not a claimant intermediary in the circumstances set out in subregulation (2), (4), (5), (6), (7), (8), (9), (10) or (11).*

*Financial advisers*

*(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.*

Sub-paragraph (8)(a) of draft regulation 7.1.04CAA suggests that a person is not a claimant intermediary if the person (the financial adviser) holds an AFSL that authorises the financial adviser to provide financial advice.

---

<sup>1</sup>The FSC is a leading peak body which sets mandatory Standards and develops policy for more than 100 member companies in one of Australia's largest industry sectors, financial services. Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing \$3 trillion on behalf of more than 15.6 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange, and is the fourth largest pool of managed funds in the world.

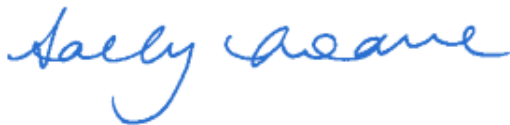
Most advisers are not AFS licensees themselves – they are either a representative of a licensee (employed adviser) or an authorised representative of an AFS licensee. This definition appears not to apply to financial advisers who are authorised representatives and employed advisers. This would be the majority of financial advisers.

While we do not think that the intention of the proposed regulation is to exclude Authorised Representatives (i.e. that the exclusion only applies to self-licenced advisers) we do appreciate there is potential ambiguity if a literal interpretation of the proposed regulation is taken.

We suggest the wording be amended to make it clear that the financial adviser either holds an AFSL or is a representative of an AFSL holder.

We would be happy to discuss this submission further. Zach Castles, Policy Manager (Advice) can be contacted at [zcastles@fsc.org.au](mailto:zcastles@fsc.org.au).

Yours sincerely,



Sally Loane,  
**Chief Executive Officer**