

SUBMISSION

Submission to AFCA —
Consultation on AFCA’s
approach to claims for
non-financial loss

1 May 2023

**The Association of Superannuation
Funds of Australia Limited**
Level 11, 77 Castlereagh Street
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T +61 2 9264 9300
1800 812 798 (outside Sydney)

F 1300 926 484

W www.superannuation.asn.au

ABN 29 002 786 290 CAN 002 786 290

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Senior Consultant – Approach Frameworks
Australian Financial Complaints Authority

Via email: approaches@afca.org.au

1 May 2023

Dear Sir/Madam

Consultation on AFCA’s approach to claims for non-financial loss

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the consultation on updates to AFCA’s approach to claims for non-financial loss.

About ASFA

ASFA is a non-profit, non-partisan national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$3.3 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing almost 90 per cent of the 17 million Australians with superannuation.

ASFA supports the proposed amended Approach

ASFA welcomes the amendments proposed to be made to AFCA’s Approach to non-financial loss claims.

Section D.1 of AFCA’s rules sets out very clearly the types of remedies that can be awarded by an AFCA decision maker in a superannuation complaint. Rule D.1.4 states that the “remedies in rules D.2 to D.5 do not apply to a Superannuation Complaint”. As the ability to award compensation for non-financial loss is provided for in Rules D.3.3 and D.3.4, it is one of the remedies that is not available in relation to superannuation complaints.

Despite this, the current version of the Approach (last updated October 2022):

- indicates that there are limits on AFCA’s ability to compensate non-financial loss in superannuation complaints (page 2)
- contains wording (on page 6) suggesting there could potentially be situations in which AFCA could, in determining a superannuation complaint, include compensation for non-financial loss.

Given AFCA's Rules prohibit it from awarding compensation for non-financial loss in superannuation complaints, ASFA is of the view the wording in the current version of the Approach may cause confusion and create (or contribute to) unrealistic expectations for a complainant in terms of the potential outcome of their complaint.

On this basis, we strongly support the revised wording contained in the proposed amended Approach, which includes the very clear statement that: "AFCA cannot award compensation for non-financial loss in superannuation complaints. AFCA Rule D.1.4 prohibits it."

If you have any queries or comments in relation to the content of our submission, please contact Julia Stannard, Senior Policy Advisor, on (03) 9225 4027 or JStannard@superannuation.asn.au.

Yours sincerely

Julian Cabarrus

Director – Policy Operations, Member Engagement & External Relations