

# SUBMISSION

## Submission to the Attorney General's Department — Online Privacy Bill

---

December 2021

**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](http://www.superannuation.asn.au)

ABN 29 002 786 290 CAN 002 786 290

File: 2021/22

Attorney Generals Department  
Via email: [onlineprivacybill@ag.gov.au](mailto:onlineprivacybill@ag.gov.au)

6 December 2021

Dear Sir/Madam

**Online Privacy Bill– December 2021**

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the Privacy Legislation Amendment (Enhancing Online Privacy and Other Measures) Bill 2021 (the Online Privacy Bill) – December 2021.

**About ASFA**

ASFA is a non-profit, non-political 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 \$3.4 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.

If you have any queries or comments in relation to the content of our submission, please contact Helena Gibson, Senior Policy Advisor, on 0423 175 385 or by email [hgibson@superannuation.asn.au](mailto:hgibson@superannuation.asn.au).

Yours sincerely

Julian Cabarrus  
Director - Policy Operations, Member Engagement & External Relations

## General comments

ASFA understands the intent of the Bill is to enable the creation of a binding Online Privacy code for social media services, data brokers and other large online platforms operating in Australia. To achieve this the Bill captures large organisations who collect a high volume of personal information, for example technology companies, to ensure Australians' privacy is treated more carefully and transparently by online platforms. We are however concerned that superannuation funds have inadvertently been caught within the category of large online platforms.

We are also concerned that in the absence of a carve-out being provided to superannuation funds, that there is the potential for unintended consequences. These could include superannuation funds not being able to fulfil their reporting obligations to Government Bodies, including APRA, ASIC and the ATO. Further it could prevent superannuation funds from providing necessary information to third party service providers on a confidential basis. Superannuation funds engage these parties on a commercial basis to deliver products and services to their members. For example, administration providers or product providers that administer specialised products.

## Specific comments

### Carve-out for superannuation funds

Superannuation funds are already required to comply with the Privacy Act 1988 (the Act), this governs how superannuation funds collect, use, disclose and provide access to member's personal information. These requirements are overlaid by significant regulatory requirements to ensure funds are acting in the members' best financial interests.

The provision of a carve-out for superannuation funds is our preferred position and one that would negate the need for the following amendments, however in the absence of this we would propose the following changes be considered to ensure superannuation funds can continue to meet their regulatory and fiduciary obligations.

### Increase number of end users

As an alternative to providing a complete exclusion for superannuation funds, we propose increasing the number of end users from 2,500,000 end users in Australia in the past year to 5,000,000 end users in the past year. Whilst this proposal could alleviate the problem in the short to medium term, it may still present an issue over the longer term as more funds merge and the number of members in a fund surpass 5,000,000.

### Recognition of competing regulatory disclosure requirements

In the absence of a carve-out for superannuation funds, we propose exempting superannuation funds from the requirements under the online Privacy Bill where there is a legislative or regulatory requirement for superannuation funds to provide personal information to a Regulator. It should be acknowledged that superannuation funds are required to report data in an identified form when reporting to certain Government bodies, for example the Australian Taxation Office (ATO).

### Recognition of disclosed commercial relationships

Finally, it is also important that there is an exemption in circumstances where commercial relationships exist between superannuation funds and third-party service providers, and there is a need for identified personal information to be shared on a confidential basis with these parties to enable the provision of services to members. The types of service providers could include (however are not limited to) administrators and specialised product providers, for example annuity providers as part of a retirement income solution.