

# SUBMISSION

## Submission to the Attorney-General's Department – Government's response to the Privacy Act Review Report

---

31 March 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](http://www.superannuation.asn.au)

ABN 29 002 786 290 CAN 002 786 290

File: 2023/09

Attorney-General's Department  
Robert Garran Offices  
3-5 National Circuit  
BARTON ACT 2600

Submitted via website: <https://consultations.ag.gov.au/integrity/privacy-act-review-report/consultation/subpage.2023-02-15.2835125957/>

31 March 2023

Dear Sir / Madam

### **Consultation: Government's response to the Privacy Act Review Report**

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this feedback in response to your consultation on *Government's response to the Privacy Act Review Report*.

#### **ABOUT ASFA**

ASFA is a nonprofit, 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 over 90 per cent of the 17 million Australians with superannuation.

#### **GENERAL COMMENTS**

ASFA member organisations generally support the intent of the recommended changes to the *Privacy Act 1988 (Privacy Act)*.

Having said that though, ASFA members have raised the following issues:

##### **1. Fraud**

Registrable Superannuation Entities (**RSEs**) – trustees/providers of superannuation products – are under a fiduciary duty to safeguard the superannuation entitlements of their members.

Frequently members benefits can be in the hundreds of thousands of dollars, and sometimes in the millions. Given this, RSE face considerable challenges re preventing and detecting fraud and managing the risk that a benefit entitlement may be paid, not to the benefit of the member, but to a fraudster who is impersonating them.

Measures to prevent and detect fraud often tend to be in conflict with the privacy principles, and RSEs must adopt a risk-based approach to manage and balance these competing concerns.

##### **2. Right to erasure and requirement for consent to be current**

Members have observed that RSEs will need to reconcile and align this right/requirement with their other regulatory obligations to retain access to an individual's personal information.

By way of example, RSEs are subject to obligations under various legislative and regulatory provisions, such as those contained in the *Corporations Act 2001*, the *Superannuation Industry (Supervision) Act 1993* and the *Income Tax Assessment Act 1997* and their respective regulations. These requirements include obligations to keep and retain records in order to administer individuals' superannuation entitlements, including information

- with respect to insured death and disability benefits
- that may be necessary for future remediations; and
- that must be reported to the Australian Taxation Office and the Department of Social Services.

### 3. Proposal 13.4

Proposal 13.4 is to include an additional requirement in APP 3.6 to the effect that where an entity does not collect information directly from an individual, it must take reasonable steps to satisfy itself that the information originally was collected from the individual in accordance with APP 3.

When a new member joins a superannuation fund, frequently the RSE receive information with respect to the member directly from the new member's employer. Given the volume of employers involved in registering new members, and that often there is not pre-existing relationship with the employer, it would be near impossible for RSEs to undertake a level of due diligence with respect to each employer.

Under the Anti-Money Laundering/Counter-Terror Financing (AML/CTF) regime, the requirement for superannuation funds to identify their customers arises when the member makes a claim with respect to some or all of their benefit entitlement. Generally at this stage the RSE will deal directly with the member themselves or with the member's financial adviser, which will be more manageable.

### 4. Timing

Member organisations have indicated that they would appreciate an indication of the likely timetable with respect to consultation on draft regulatory materials and the timing of the commencement / implementation of the new standards.

+++++

Should you have any queries with respect to this, please contact me on (03) 9225 4021 or via [fgalbraith@superannuation.asn.au](mailto:fgalbraith@superannuation.asn.au).

Yours sincerely

Fiona Galbraith  
Director, Policy