January 2022

Super Consumers Australia - 2022-23 Pre-Budget Submission

ABOUT US

Super Consumers Australia (Super Consumers), formerly known as the Superannuation Consumers' Centre, is an independent, not-for-profit consumer organisation formed in 2013. Super Consumers was first funded in 2018. We work to advance and protect the interests of low and middle income people in the Australian superannuation system.

During its start up phase Super Consumers has partnered with CHOICE to deliver support services. Set up by consumers for consumers, CHOICE is the leading consumer advocate that provides Australians with information and advice, free from commercial bias.

Table of contents

Recommendations **3**

Long term funding of a Super Consumer Advocate **4**

Inquiry into insurance in super **7**

An independent retirement guidance service **9**

A quality filter that measures retirement products **12**

Pay super at the same time as wages **13**

Expanding superannuation information sharing for deceased estates and First Nations People **14**

Recommendations

Recommendation 1

That the Federal Government assign long term funding of the Superannuation Consumer Advocate in the upcoming Budget.

Recommendation 2

That the Federal Government establish an independent inquiry into insurance in superannuation to ensure people are efficiently and equitably protected if they can no longer work due to death or disability.

Recommendation 3:

That the Federal Government consult on options for an alternative model for the delivery of conflict free, retirement guidance including but not limited to the UK Money and Pensions Service. This could either be done via the Quality of Advice Review or a standalone consultation.

Recommendation 4

That the Federal Government provide funding to extend the Your Future, Your Super performance test and YourSuper portal to retirement phase products.

Recommendation 5

That the Federal Government introduce legislation to require the real time payment of superannuation.

Recommendation 6

That the Federal Government fix an information sharing issue in Division 355 of the Taxation Act which restricts First Nations people in particular, but other groups in vulnerable situations the ability to easily and freely determine if their deceased relatives have superannuation and its location.

Long term funding of a Super Consumer Advocate

Superannuation belongs to consumers. Yet, the interests of superannuation lobby groups and funds dominate superannuation policy debates. Every year tens of millions of dollars of the retirement savings of Australians are diverted to fund industry lobby groups. By contrast Super Consumers Australia has no permanent funding source and is the only body that represents consumers. Without a long term funding solution flowing from this budget Super Consumers Australia will cease to exist beyond the 2023/24 financial year.

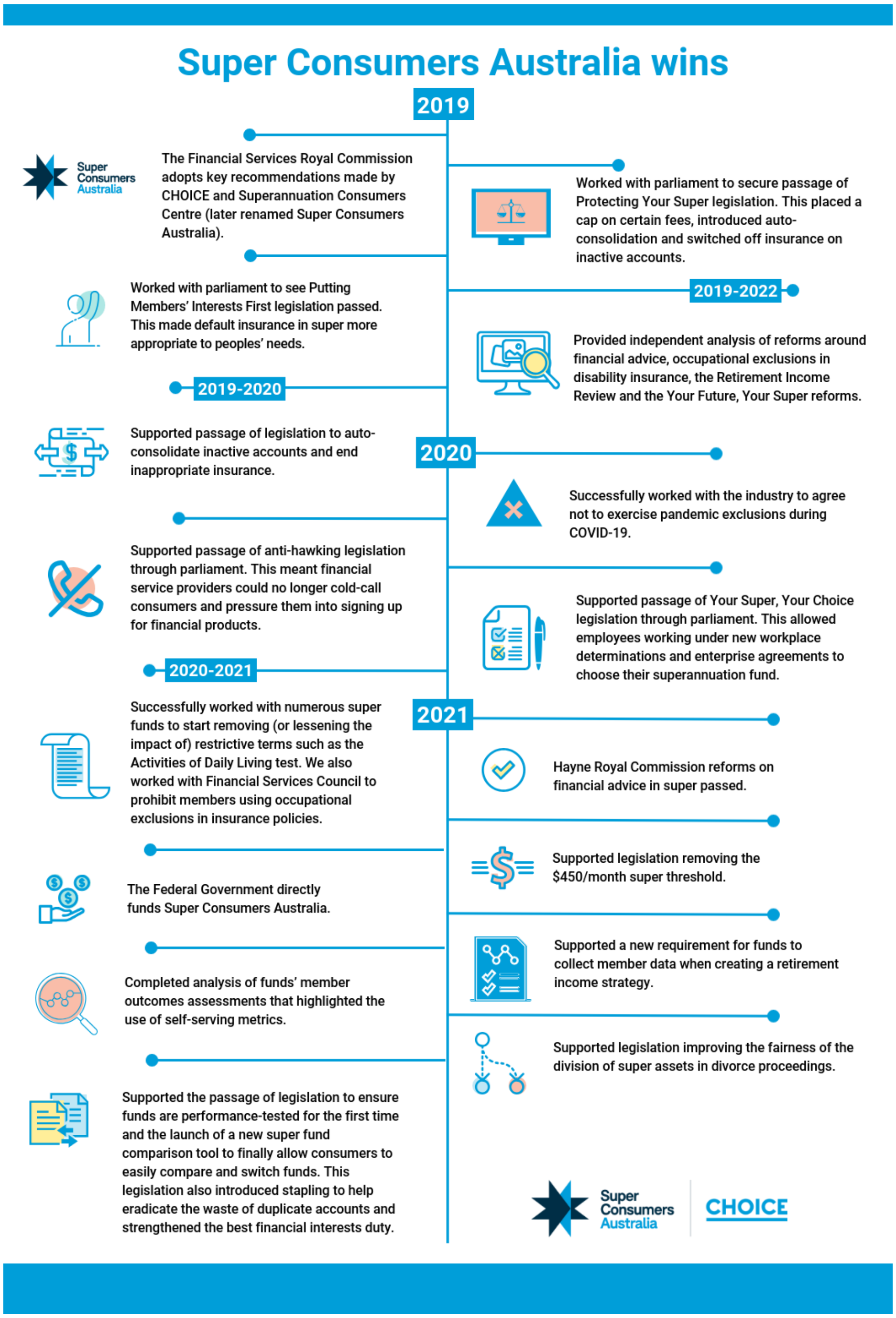
Policy and research advice independent of industry advocacy groups is vital to the proper functioning of markets. As the Productivity Commission stated, the imbalance between industry and consumer voices in superannuation is "at the heart of many of the problems with the system".[1] The Australian Small Business and Family Enterprise Ombudsman has played a similar role in providing quality independent policy advice and advocacy for small businesses across the economy. Individual consumers face many of the same barriers as small businesses in engaging with markets and policy debates. They are a heterogeneous group, often time poor and resource constrained. However, they continue to make a significant contribution to the economy via their $3.4 trillion in retirement savings which is providing capital to businesses and funding the retirement of Australians. Without a dedicated policy and advocacy group to conduct research on their behalf, they tend to be underrepresented and misunderstood policy debates. It was for these reasons the Small Business Ombudsman was established and why we see a need for this model to be extended to consumers in the superannuation sector.

With limited resources Super Consumers Australia has worked hard to keep the superannuation industry fair and accountable to consumers. Last year this culminated in advocating for passage of some of the most significant reforms to superannuation since its inception. We were one of the few stakeholders to be able to provide truly independent analysis of the Your Future, Your Super reforms to policy decision makers. Our efforts helped end the scourge of duplicate accounts, performance benchmarked funds and introduced a fund comparison tool. These reforms are already leading to underperforming funds either exiting the market or dramatically reducing fees. Outside of the legislative space we continued to hold industry to account over the outcomes they deliver to their members. Our reviews of insurance offerings and fund member outcomes assessments continue to drive direct improvements at super funds and help align their product offerings to the needs of all Australians.

The importance of a superannuation consumer advocate in bringing a consumer voice to the $3.4 trillion superannuation system is well understood by the Federal Government. In the 2021/22 Budget the Federal government directly funded Super Consumers Australia for the first time. This funding was designed to be short term to give the government time to develop a long

[1] Productivity Commission, 'Inquiry Report: Superannuation: Assessing Efficiency and Competitiveness' 2018

term funding model. In the more than three years since Super Consumers Australia was first funded, we have shown clear proof of concept and the value we add to the quality of policy debate over the Australian retirement system. It is time to ensure Australian consumers have a permanent place in decision making over the shape of their retirement savings system by establishing a long term funding solution.



We've seen what the superannuation landscape looked like prior to having a consumer advocate. The system was awash with self-interested policies that denied people a choice of super fund, saw people defaulted into inappropriate insurance and funds that performed poorly, all while Australians amassed 10 million costly duplicate accounts. Without this certainty Super Consumers Australia will have difficulty in maintaining staffing and expertise, and will struggle to be an effective advocate beyond 2022. To ensure continuity of a consumer voice in superannuation we recommend:

Recommendation 1

That the Federal Government assign long term funding of the Superannuation Consumer Advocate in the upcoming Budget.

Inquiry into insurance in super

People rely on life and disability insurance. Overwhelmingly, they rely on their superannuation fund to provide a basic safety-net. Unfortunately the insurance in the super industry continues to fail the value test, with many consumers finding they are without cover due to fine print exclusions.

Insurance also continues to be a barrier to positive reform in superannuation. Most recently occupational exclusions were used by some in the industry as a reason why stapling, an unequivocally good consumer reform, should not proceed.

The inclusion of default insurance in super remains poorly adapted to the needs of consumers. The Productivity Commission and Financial Services Royal Commission both highlighted its shortfalls. The Productivity Commission found that insurance in super can have a significant impact on the retirement balances of people. The effects are worse for members on low incomes and those with intermittent labour force attachment, who continue to have premiums deducted from their accounts while not contributing to their super. Super Consumers Australia research has found that these impacts are often worse for people who are unemployed, working part time or older, who often face more onerous criteria for an insurance claim to be accepted.[2] According to the Productivity Commission the retirement balance erosion for these members could reach 14 per cent ($85,000).[3] To address this the Productivity Commission recommended

[2] Super Consumers Australia, 2020, 'Restrictive definitions in default TPD insurance policies', available at: https://superblog.netlify.app/2020/07/08/tpd/
[3] Productivity Commission, 'Inquiry Report: Superannuation: Assessing Efficiency and Competitiveness' 2018 p.19

an independent inquiry into insurance in super to assess, among other things, whether opt-out insurance is the most efficient and equitable way to assist people in the event of illness or injury.

Consumers deserve a holistic response to the range of issues identified with insurance in super. The following debates have highlighted the issues with insurance in superannuation: :

- The fairness issues highlighted by the passage of the Your Future, Your Super legislation, where people may be stapled to super options that don't offer them insurance due to their occupation. This led to a Treasury review which considered options to solve this problem.
    - The Financial Services Council has proposed a standard with the intent of banning occupational exclusions for existing members, but it remains to be seen if the industry will adapt to these changes by not offering default cover to prospective members in high-risk occupations. This means some people may be left without access to default insurance depending on the job they work.
- Restrictive Total and Permanent Disability (TPD) definitions have been highlighted as being extremely low value by ASIC and Super Consumers Australia.[4]
- The industry decision to dump the Insurance in Superannuation Voluntary Code of Practice to avoid the Royal Commission recommendation that the Code become enforceable. If the code was left in place industry would have been required to keep the promises it made to consumers via the code.
- Industry failure to curb people being defaulted into inappropriate insurance led to the need for the *Putting Members Interests First* legislation.
- The *Protecting Your Super Package* legislation was required to put an end to the industry practice of changing for insurance on inactive accounts.
- ASIC continues to have to release guidance to help trustees understand their obligations, including:
    - 20-309MR Trustees to improve occupational classification practises
    - REP 675 - Default insurance in super: Member value for money
    - REP 673 - Consumer engagement in insurance in super
    - REP 646 Insurance in superannuation 2019–20: Industry implementation of the Voluntary Code of Practice
    - 21-343MR Super trustees offering default income protection insurance urged to check on member outcomes
- APRA has consulted and amended insurance standards for funds to clarify their trustee duties under the member outcomes assessments.

[4] ASIC, 2019, 'REP 633 Holes in the safety net: a review of TPD insurance claims', available at: https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-633-holes-in-the-safety-net-a-review-of-tpd-insurance-claims/ ; Super Consumers Australia, 2020, 'Restrictive definitions in default TPD insurance policies', available at: https://superblog.netlify.app/2020/07/08/tpd/

- Super Consumers Australia research in 2021 found that funds rarely take into account the insurance needs of different cohorts of members in their public member outcomes assessments.

Good policy in this area should be based on market-wide independent analysis. Too often it has relied on fund interpretation of their trustee duties. This approach does not work for consumers. Take for example how funds approached insurance design on inactive accounts. The industry had known for a long time the erossive impact of insurance on duplicate accounts. The Productivity Commission estimated duplicate accounts were reducing the retirement balance of an average Australian by $50,000 and higher for those in riskier 'blue collar' jobs.[5] Funds acting in the best interests of members could have introduced inactivity periods to curb these costs, but none did. Legislation was eventually required to create inactivity periods to save Australians from a significantly poorer retirement.

Reliance on superannuation to protect people from financial risk due to death and disability has created gaps for those with no or limited access to super (e.g. those with limited employment or the self-employed). It also overlaps with existing schemes, such as workers compensation and disability support schemes. An inquiry is needed to sort out these gaps and inefficiencies, so that everyone has an appropriate base level of protection.

The Productivity Commission's recommendation to have an inquiry into insurance into superannuation by the end of 2022 is one of the few major remaining recommendations yet to be actioned. As 2022 begins, it is now timely to implement this recommendation.

Recommendation 2

That the Federal Government establish an independent inquiry into insurance in superannuation to ensure people are efficiently and equitably protected if they can no longer work due to death or disability.

An independent retirement guidance service

For financially engaged members of the community, advice and guidance is crucial to making good financial decisions. The financial advice industry will remain an important resource for some consumers to navigate the complexity of retirement planning, but due to cost, trust and issues with independence, it is not the solution for all. There is a significant portion of the population that is poorly served by existing advice models and this is costing them in retirement.

[5] Productivity Commission, 'Inquiry Report: Superannuation: Assessing Efficiency and Competitiveness' 2018

Super Consumers Australia

Our research found that only 25% of people planning for retirement look to financial experts, such as advisers, to make decisions for them.[6] For those that do seek advice, their advice has been hampered by issues of conflicts and affordability in financial advice. Currently drafted, the Quality of Advice terms of reference address the affordability of advice, which will only assist the 25% of people that look to advisers for help. However, the affordability of advice will always be relative. Just as there is an affordability barrier to accessing other kinds of professional services (e.g. lawyers), the likely reality is that the business model of paying for individual personal financial advice in a private market will always be out of reach for a significant proportion of people.

A much larger portion of the population, around 37% of retirement planners, prefer to manage their own money.[7] However at the moment, it is very difficult to get independent strategic and product advice outside of paying for individual financial advice. With the average Australian willing to pay hundreds of dollars for this advice and the typical personal comprehensive advice costing in the thousands, there is a chasm that cannot be bridged with small cost savings to existing business models. MoneySmart and other government resources provide some good independent strategic guidance, but not product level recommendations. This leaves a significant gap for middle Australians looking for quality independent information to help them self-manage their retirement planning.

The Retirement Income Covenant is likely to lead to a large expansion of the range of retirement products available to people. The Retirement Income Review found that people battle significant complexity in retirement planning. This expansion of offerings is likely to increase complexity and without improved guidance this complexity will limit the number of consumers confident enough to find and take up more appropriate offers.

The UK Financial Conduct Authority found: "the majority of consumers (60%) do not switch providers when they buy an annuity, despite the fact that 80% of these consumers could get a better deal on the open market, many significantly so”.[8] Australia is likely to be similar. On a system wide scale, this may mean Australians stick with a poor fund and end up increasingly relying on the pension as people run out of money earlier than they should have.

A new financial guidance model to help people planning for retirement has the potential to provide individual and system wide savings that no other model can solve. The UK Money and Pensions Service is a good example Australia could learn from in helping Australians through the complexity of retirement planning. The UK model integrated a range of services into a

---

[6] Retirement Planning Survey, February 2021, Super Consumers Australia and Fiftyfive5, N=1,541, https://superblog.netlify.app/2021/07/28/nationally-representative-retirement-survey-results/
[7] Retirement Planning Survey, February 2021, Super Consumers Australia and Fiftyfive5, N=1,541, https://superblog.netlify.app/2021/07/28/nationally-representative-retirement-survey-results/
[8] Financial Conduct Authority, February 2014. At http://www.fca.org.uk/static/documents/thematic-reviews/tr14-02.pdf

one-stop-shop. Their Pension Wise service gives people access to free, impartial, specialised guidance - delivered face to face or over the phone - about their pension options. It also provides a free, online tool to help people choose how to access their pension money, including a product comparison tool.

This model was a result of an industry wide consultation process following the introduction of new ‘pension freedoms’, which provided people with more flexibility in accessing their pension pots. After evidence that consumers were not taking advantage of these new freedoms and in some cases were making catastrophic decisions with their pension money, the government looked at ways it could assist people in making one of the biggest and most complex financial decisions in their lives. It did this by establishing some basic principles on which guidance should be based, including that it be impartial, good quality and covered the options in the market. The UK government consulted on different approaches and found the majority of respondents saw it as essential that the guidance be trusted by consumers. The vast majority, including most of the financial services industry, agreed that consumers would not trust guidance given by a person or organisation with a vested interest in selling a financial product.[9] The government decided that this guidance should be provided by organsations that are independent and have no actual or potential conflict of interest.

The pensions guidance part of the service had a budget of £36.9m (AUD$72m) in 2019/20.[10] Feedback from users on the Pension Wise guidance service has been very positive, with a 94% satisfaction rate.[11] In the words of a recent departmental review of the service: “Debt advice charities, banks, investment companies and pension providers are all unequivocally supportive of the role MaPS plays in the UK; as one interviewee for this review put it ‘if MaPS didn’t exist, we’d have to invent it’.”[12]

In Australia, responsibility for these types of services fall between different government bodies and private service providers. ASIC MoneySmart is responsible for providing web based tools and information. The Financial Information Service and Centrelink provide some direct financial advice and Age Pension related information. However, unlike the UK, these services are not connected up or available to consumers through a single portal. Our consumer research on engagement with financial decision making has highlighted the need for consumers to have

[9]Freedom and choice in pensions: government response to the consultation https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/332714/pensions_response_online.pdf, p21

[10] https://www.ftadviser.com/pensions/2019/04/10/industry-to-pay-36-9m-for-pension-guidance/

[11] Pension Wise service evaluation, https://moneyandpensionsservice.org.uk/wp-content/uploads/2020/10/Pension-Wise-Service-Evaluation-report-2019-2020.pdf

[12] Department of Work and Pensions, 2021, ‘Departmental Review of the Money and Pensions Service (MaPS)’ available at: https://www.gov.uk/government/publications/departmental-review-of-the-money-and-pensions-service-maps/departmental-review-of-the-money-and-pensions-service-maps

access to a 'one stop shop'.[13] Currently these services are spread out over multiple locations meaning some consumers aren't aware of the different service offerings that may assist them. In the words of one respondent to our survey on retirement planning:

> *"I am a reasonably well educated, reasonably intelligent person who is overwhelmed by the process of retirement. I have not dared to go to Centrelink to find out about options going forward as I hear so many horror stories. I had no idea of several of the options in your survey of places to find out about retirement and I wish I had made a screen shot of that page of the survey!" - Michele (65-74, retired)*

Given we are about to start a new market of retirement income products via the Retirement Income Covenant, Australians are going to be in the same position as UK consumers. This is a solution to the difficulty currently faced by middle income Australians who otherwise don't have affordable access to quality independent guidance on retirement.

Recommendation 3:

That the Federal Government consult on options for an alternative model for the delivery of conflict free, retirement guidance including but not limited to the UK Money and Pensions Service. This could either be done via the Quality of Advice Review or a standalone consultation.

A quality filter that measures retirement products

One of the major findings of the Retirement Income Review was that the majority of Australians could reach an adequate standard of living in retirement, so long as they efficiently drew down on their retirement savings. It also identified that due to a range of reasons, such as complexity, many Australians were not making the most of their savings and risked lower living standards in retirement.

People who find themselves in poor products due to a lack of guidance and complexity can face dire consequences for their retirement savings. For example, lifecycle products give us a glimpse into the performance of retirement options. One large fund which failed the performance test has stages aimed at people in retirement that are dark red indicating a high degree of underperformance across a range of investment metrics on the APRA heatmap. The system currently offers a higher level of protection to people in the accumulation phase, where they would be notified of the underperformance, and blocked from entering if the fund had failed the

[13] CHOICE, 2016, 'Project Superpower' available at: https://www.choice.com.au/-/media/39a3a46234d64be398df0ebaba25c65d.ashx?la=en

performance test over two consecutive years. This protection does not currently exist for retirees. In this example, we can see the underperformance because the option falls within a mysuper product. But for most retirement options, we have no oversight. Without change there are nearly 500,000 fund members in this particular default option who may be exposed to this underperformance in retirement. This shows the importance of extending the benchmark, without doing so people will be more likely to stay in underperforming funds throughout retirement.

As part of the Your Future, Your Super debate, the Government committed to a review on extending the performance test to cover more funds. This should focus on retirement products, particularly account based pensions, which typically invest in the same asset classes as accumulation products. Similarly we endorse APRA's intention to further refine and expand its Choice Heatmap, which currently only covers 40% of products. These two steps should be progressed as a priority.

Given the potentially wide variation in the quality of products, people planning for retirement could also be assisted by the availability of product comparison tools. The Your Future, Your Super legislation led to the creation of a comparison tool for accumulation phase products. This tool has already gathered one million visits in the first six months of its existence.[14] The lack of a comparison tool is a missing piece of the retirement planning puzzle that needs to be quickly addressed.

Recommendation 4

That the Federal Government provide funding to extend the Your Future, Your Super performance test and YourSuper portal to retirement phase products.

Pay super at the same time as wages

The ATO estimates that the amount of unpaid super is approximately $2.5 billion.[15] While the overwhelming majority of employers comply with their obligation to pay superannuation to their employees, non-compliance by some leads to an unacceptably high amount of denied retirement income for people.

[14] Senator Hume, 2022, 'Media Release: One million visits to the YourSuper comparison tool'. 6 January, 2022

[15] https://www.ato.gov.au/about-ato/research-and-statistics/in-detail/tax-gap/superannuation-guarantee-gap/

Delayed super payments make it very complicated for consumers to discover if they have been paid the appropriate amount of superannuation. The current compliance framework partly relies on people being able to detect and report if their super has not been paid. A recent survey found 47% people think that because super appears on their payslip that their employer has paid superannuation into their fund.[16] In reality employers only have to pay super once every three months. This can mean people can go for months without realising there is a problem and by the time they act a business may have gone insolvent. It would be much easier for consumers if they could rely on the information provided on payslips, so that they can better manage their own money.

Unpaid super goes beyond people retiring with less. It also can affect the provision of insurance in superannuation. For example non-payment of insurance premiums due to insufficient funds being available could see a person's insurance become inactive and lead to a claim being denied. This would have a disastrous financial impact on someone who has just become permanently disabled, or the family of a person who passes away.

Recommendation 5

That the Federal Government introduce legislation to require the real time payment of superannuation.

Expanding superannuation information sharing for deceased estates and First Nations People

We encourage the Government to fix an information sharing issue in Division 355 of the Taxation Act. First Nations people, like many Australians, often lose track of their superannuation. When they die, their relatives often do not know whether the deceased person had a superannuation account or, if they did, with which superannuation fund(s). They, like many Australians, often don't nominate beneficiaries for their fund.

The ATO holds information about all Australians' superannuation accounts. Currently, the law, in Division 355 of the Tax Administration Act 1953 only permits a taxation officer to disclose protected information to a legal personal representative of the deceased (defined as an executor under a will or administrator under letters of administration). There is a significant financial cost, requiring the courts in order to be declared the administrator of an estate. It is often not worth the cost in situations where the estate is of little value or where there is a legitimate question about whether there are funds in any superannuation accounts. Similar to

[16] Industry Super Australia Unpaid Super Report 2021, p11

the problem recently dealt with in divorce proceedings, without knowledge of the size and location of superannuation balances, parties can not make an assessment of their materiality. Some legal capacity to request information is all the more important in the superannuation context, which is governed by trust law and would otherwise rely on the trustee having some knowledge of the deceased and potential beneficiaries.

As a result, many families will abandon their search. Some may unknowingly forfeit significant estates held in super funds and the associated insurances or, in cases where families do go through the effort and expense of becoming a legal personal representative, may incur significant expense only to discover the deceased's estate was minimal.

This time, effort and heartache could be avoided if relatives could more easily access information about the existence of a superannuation account.

The ATO recognises the difficulties with the current situation, but say their hands are tied because of the operation of Division 355 of the Tax Administration Act 1953 (Act). To address the gap in the legislation, we propose that section 355-25(2) is amended to include another category of covered entity for the purposes of a deceased taxpayer.

The solution should ensure that First Nations people in particular, but other groups in vulnerable situations, have the ability to easily and freely determine if their deceased relatives have superannuation and its location. These proposals should be confined to relate only to the information about superannuation funds associated with the deceased taxpayer. To do this they should deem a person who is an immediate family member or next of kin to the deceased taxpayer as appropriate to access this information.

Recommendation 6

That the Federal Government fix an information sharing issue in Division 355 of the Taxation Act which restricts First Nations people in particular, but other groups in vulnerable situations the ability to easily and freely determine if their deceased relatives have superannuation and its location.