16 June 2023

Attorney-General's Department
email: economiccrime@ag.gov.au

**RE: Modernising Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime**

Super Consumers Australia is the people's advocate in the superannuation sector, advancing and protecting the interests of people on low and middle incomes in Australia's superannuation system. Our submission will address *Question 9. Do you have suggestions on other amendments to customer due diligence obligations?*

Under the AML/CTF regime, there is a customer identification loophole that has created a system-wide fraud vulnerability for trustees of superannuation funds. This loophole makes it too easy for a fraudster to establish a member account with a super fund for the purpose of rolling other members' benefits into that account, and then cashing the balance under financial hardship or another mechanism.

## Current obligations for super funds under the regime

Unlike in banking, super funds are not required to identify their members at the point of account creation. Funds are also not required to identify members upon direct receipt of contributions or rollovers. Under the AML/CTF regime, they are only required to identify their members upon balance consolidation using SuperMatch, and the payment of benefits in most cases.

Part 2 Division 4(32)(1) of the AML/CTF Act 2006 prohibits reporting entities from providing a designated service to a customer unless the entity has carried out the applicable customer identification procedure. **However, commencing membership with a super fund is not listed as a designated service.** This is a legacy carveout due to the universal nature of super and the fact that in many instances, employers create memberships on behalf of employees. In a largely digitised world where scams and ID fraud are on the rise and the majority of Australians are required to access services online, this loophole now needs to be closed. Financial service providers, like super funds, impose digital customer management systems on members for convenience and cost savings, and therefore have a responsibility to ensure those systems are secure.

## Consequences of the AML/CTF carveout

AFCA Determination 826592 involves a case where a member's $14,000 super balance was allegedly rolled into an account established at a different fund by a fraudster, and then

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withdrawn.[1]

AFCA found that:

'*The trustee [was] unable to ascertain if [the] contact details belong[ed] to the complainant or not when it receive[d] an online [withdrawal] application … Superannuation accounts do not require identification documents such as a driver's licence or passport when being established, rather a trustee generally will satisfy itself of a member's identity when processing a withdrawal*.'

AFCA upheld the trustee's decision not to compensate the fraud victim.

The discretionary risk-based approach to customer identification put forward in AUSTRAC's super industry guidance is intended to give trustees the flexibility to scale their fraud mitigation responses to their membership.[2] However, as of February 2023, only 2 out of the 15 biggest super funds require customers to verify their identity at the point of online member account creation. Rather than allowing for scaling, current arrangements mean there is no baseline for member identity verification at the point of account creation. Instead, funds inconsistently apply identity verification measures throughout the member lifecycle, leaving gaps and vulnerabilities that fraudsters can, and do, exploit. The super system is only as strong as its weakest link from a fraud prevention perspective and consequently there is a need for a strong minimum standard of protection.

## Recommended changes to the regime

We urge the Attorney General's Department to amend the AML/CTF Act to include commencement of a member account with a superannuation fund as designed service. This will remove the account creation identification carveout. Closing this loophole will ensure funds have access to a set of credentials which is essential for subsequent member ID verification, and will go some of the way to make it harder for fraudsters to move money throughout the super system.

Expanding Know Your Customer (**KYC**) rules to super fund member account creation will lead to complexities in the administration of default employer-created accounts. We encourage the Federal Government to co-design implementation solutions with the industry, employers and employee groups, and consumer groups to address these complexities.

KYC at the point of member account creation is important for fraud prevention, but we stress the need for funds to adopt flexibility as outlined in AUSTRAC's guidance on assisting customers who don't have standard forms of ID. We hear anecdotally from First Nations advocates and community workers that funds still refuse to accept non-traditional forms of ID from members. This suggests that the super industry and AUSTRAC have a lot more work to do to provide both

[1] AFCA, https://service02.afca.org.au/CaseFiles/FOSSIC/826592.pdf

[2] https://www.austrac.gov.au/sites/default/files/2019-06/superannuation-sector-guidance.pdf

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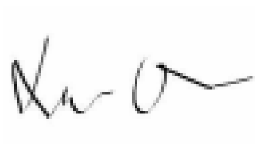
flexibility and protections to super fund members.

Yours sincerely,



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