

BUILDING FUTURES NOT BARRIERS: SUPERANNUATION THAT WORKS

JULY 2025



IMPACT
ECONOMICS
AND POLICY



**Super
Consumers
Australia**

ABOUT THIS REPORT

Super Consumers Australia commissioned Impact Economics and Policy to gather case studies and evidence on issues First Nations Australians are facing with superannuation, and to develop practical solutions and recommendations for improvement.

This project was also supported by Mob Strong Debt Help, which assisted with the development of this report, collected observations on issues faced by First Nations consumers and organised interviews with financial counsellors and case workers who help First Nations peoples with their superannuation. Mob Strong provided First Nations expertise throughout the project, facilitating culturally safe engagement and identifying systemic issues impacting clients.

Thank you to all the financial counsellors and case workers who volunteered their time, expertise and wisdom to help us document the issues First Nations peoples are facing with superannuation and for sharing their ideas for solutions. Quotes and case studies used in this report have been edited to remove any identifying information.

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We also acknowledge the support provided by the First Nations Foundation and the Arnhem Land Progress Aboriginal Corporation (ALPA) for Mob Strong's participation at the Financial Wellness Week event, where the observational survey with First Nations consumers was conducted.

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Image taken in Wangkathaa Country
by Rachel Claire

IMPACT ECONOMICS AND POLICY

Impact Economics and Policy

Impact Economics and Policy brings together a group of expert economists and policy specialists with experience working for government, non-for-profits and big four consulting. Established at the start of 2022, our mission is to partner with clients for impact through providing robust evidence, fresh analysis, and strategic communication to tackle Australia's biggest public policy challenges.



MOB STRONG
DEBT HELP

Mob Strong Debt Help

Mob Strong Debt Help is a free nationwide legal advice and financial counselling service for Aboriginal and Torres Strait Islander people. The service specialises in consumer finance (such as credit cards, pay day loans and car loans), banking, debt recovery and insurance (including car, home, life and funeral insurance). We're here to help – since 2016 Mob Strong Debt Help has been led by Aboriginal and Torres Strait Islander staff and supported by all our colleagues at Financial Rights Legal Centre.



**Super
Consumers
Australia**

Super Consumers Australia

Super Consumers Australia is the advocate for people on low and middle incomes in Australia's superannuation system. We were founded to fight for an accountable and fair super system that delivers great service and great financial outcomes in retirement. Based on deep research, we influence policymakers, hold super funds accountable, and help consumers maximise and manage their super. Formed in 2013, we are an independent, not-for-profit organisation and a leading voice for consumers of superannuation products and services.



Acknowledgement of Country

We acknowledge Aboriginal and Torres Strait Islander peoples as the Traditional Owners of Australia and their continuing connection to both their lands and seas. We also pay our respects to Elders – past and present – and generations of Aboriginal and Torres Strait Islander peoples now and into the future.



Image taken in Ngadjuri Country
by Charles G

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Image taken in Arrernte Country
by Seven Roadtrips



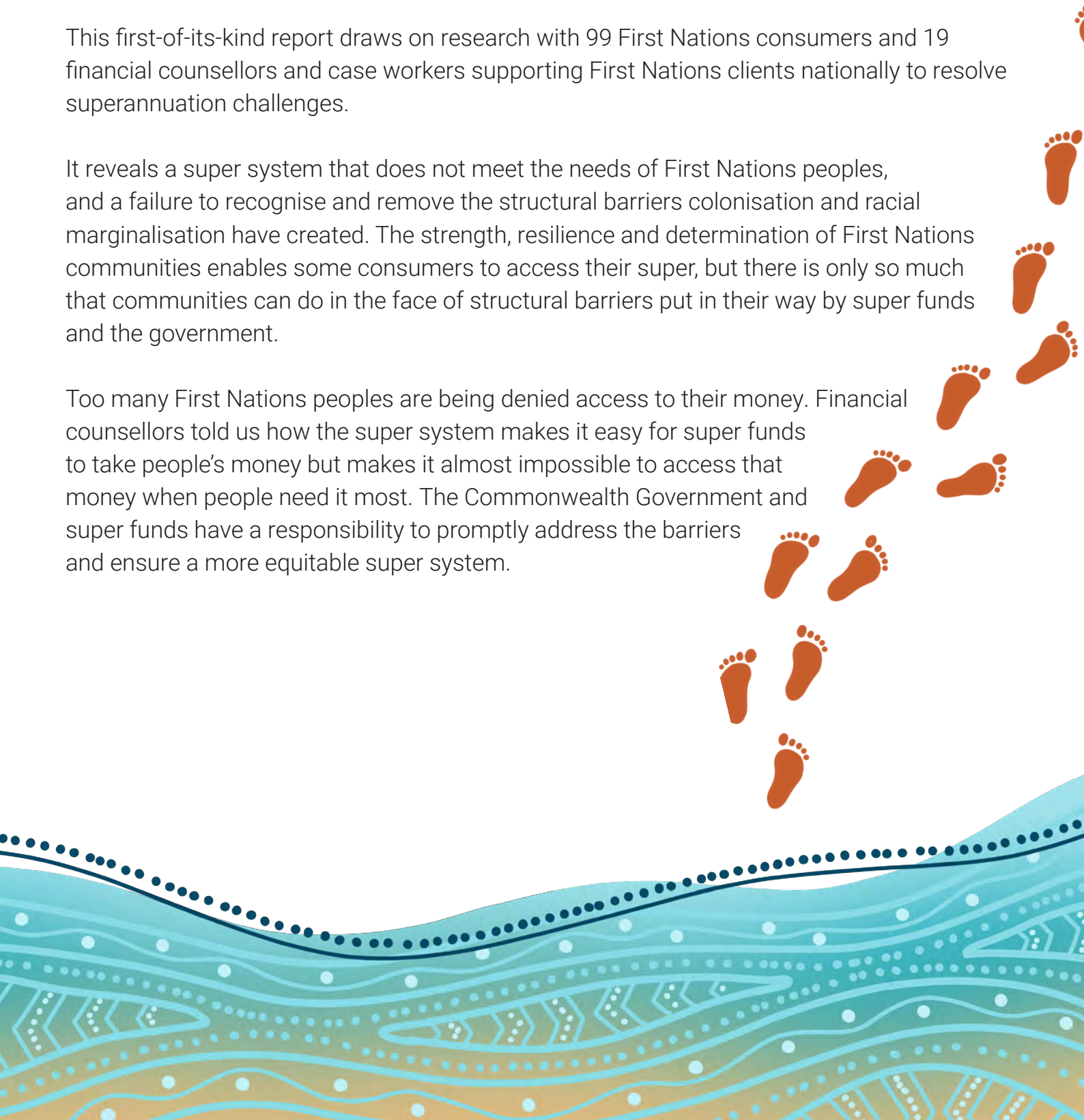
OVERVIEW

The superannuation system is failing too many First Nations Australians. Superannuation exists to provide income in retirement. However, this report shows that inappropriate regulatory design, discriminatory policies and practices, and inadequate customer service result in too many First Nations peoples being shut out from the system and denied access to money that is rightfully theirs. Exclusion from their super compounds other structural disadvantages First Nations peoples experience and makes it harder for Australia to 'close the gap' in economic, social and health outcomes.

This first-of-its-kind report draws on research with 99 First Nations consumers and 19 financial counsellors and case workers supporting First Nations clients nationally to resolve superannuation challenges.

It reveals a super system that does not meet the needs of First Nations peoples, and a failure to recognise and remove the structural barriers colonisation and racial marginalisation have created. The strength, resilience and determination of First Nations communities enables some consumers to access their super, but there is only so much that communities can do in the face of structural barriers put in their way by super funds and the government.

Too many First Nations peoples are being denied access to their money. Financial counsellors told us how the super system makes it easy for super funds to take people's money but makes it almost impossible to access that money when people need it most. The Commonwealth Government and super funds have a responsibility to promptly address the barriers and ensure a more equitable super system.



Rigid identification practices exclude many First Nations consumers from the outset

This report identifies unnecessarily rigid requirements for identity verification which many First Nations consumers cannot meet. There were many cases where people did not have standard identification documents, they had mismatches in the spelling of their name or date of birth across documents, or a past employer had got their details wrong when opening a super account for them. Many of these cases reflected paternalistic or exclusionary practices, some historic, some current.

"I have been supporting a client to access his super, and it has taken 9 months already. He was born on a cattle station and his birth was never registered, so he has had to estimate his date of birth. He has five lots of ID, with a different date of birth on all five. The super account has a different date of birth to every ID he has... The fund is not accepting his documents and keeps sending back a standard-form request for his birth certificate... We eventually found out what the date of birth was on his account, but now the super fund is demanding a birth certificate again."

The result is that First Nations consumers are barred from managing their super, including when they need to withdraw money at retirement or when experiencing severe financial hardship. This is unacceptable in what is meant to be a world-class superannuation system.



Inadequate and insensitive customer service drives people to abandon their rights

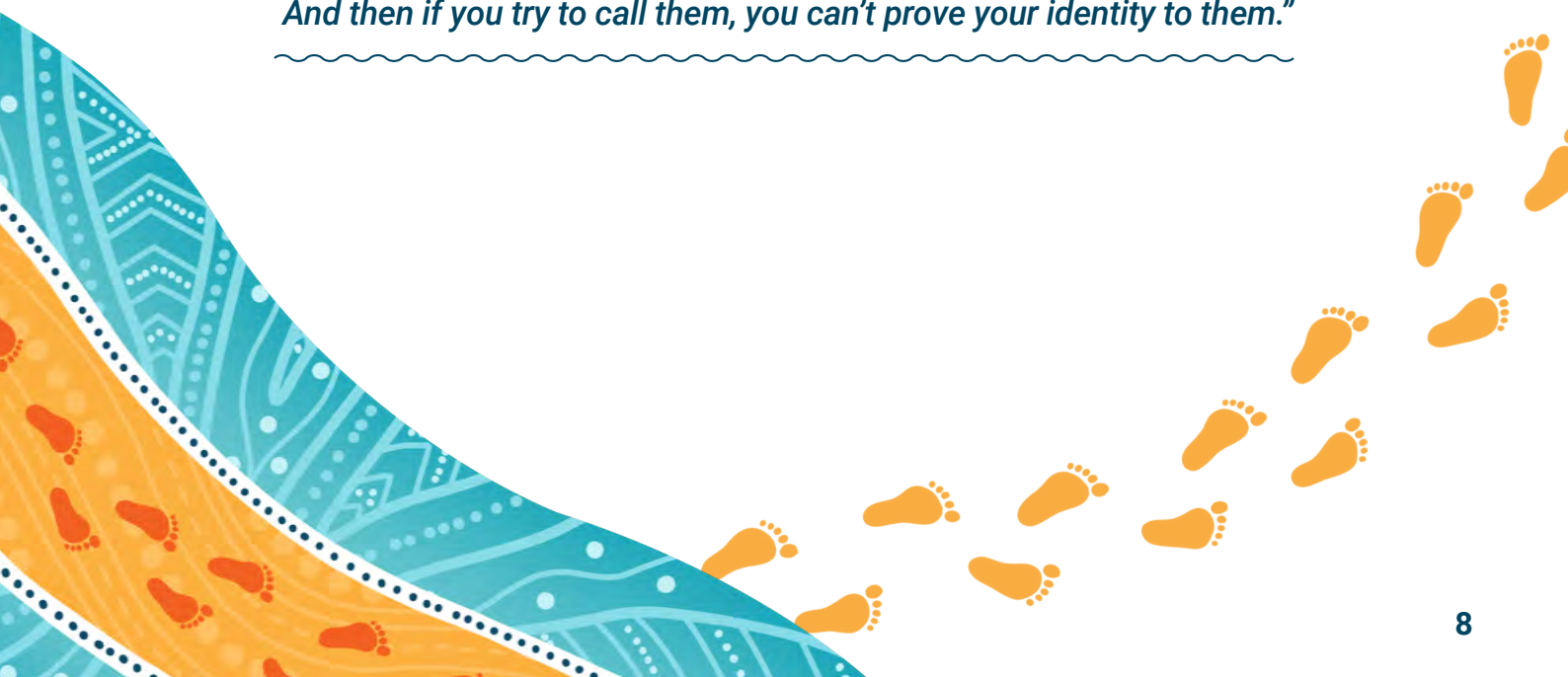
This report uncovers widespread examples of poor customer service, including super funds giving people information they could not understand, speaking to people in an offensive or culturally inappropriate way, a lack of access to interpreters, long waiting times when trying to contact a fund, onerous requirements for documents to be certified and sent by post, excessively long processing times for applications, and funds losing documents.

"It seems to be incredibly rare to come across a superannuation service who has someone who speaks an Aboriginal language, and it's not often you encounter someone who understands some of the challenges of a member who is living in a remote Aboriginal community, having limited to no English or technology literacy, and limited access to services."

Engaging with the super system is often disempowering for First Nations consumers with limited support available. These experiences discourage First Nations peoples from effectively engaging with their super and lead to some giving up because they cannot meet unnecessarily onerous and incomprehensible requirements. This further widens the financial outcomes between First Nations and non-First Nations consumers

Even when support is available, inadequate customer service meant that financial counsellors and case workers faced significant barriers to helping their First Nations clients.

"With one client, it just seemed like nothing we went through was ever enough for the super fund. This was really difficult when I was away from the client. If you miss two calls from the super company, they do not call you back. And then if you try to call them, you can't prove your identity to them."



First Nations claimants often face enormous barriers to accessing death benefits

Many First Nations claimants had difficulty proving their entitlement to be paid superannuation death benefits after a loved one had died. Many were unable to even find out from the Australian Taxation Office (ATO) which super fund the money was in. Some were pushed by the ATO to go through the costly and often inaccessible process of applying to a court to obtain letters of administration just to access this information.

In addition, rigid identity verification requirements, deficiencies in customer service and poor accommodation of the realities of remote living resulted in super funds taking much longer to pay death benefits to First Nations claimants than for other Australians. Financial counsellors observed that identity verification and customer service practices were often worse when it came to dealing with the ATO.

*“One of my clients actually went and got letters of administration
It would have cost them about \$1200 with the cost of the lawyers.*

*After this, they found out the super account only had \$60 in it! The ATO doesn't tell
people how much money is there, and whether it's even worth pursuing. The ATO is
now asking for the death certificate again. We still don't know where the super is.”*

When death benefit processes are not sufficiently tailored to meet the needs of First Nations families, they are denied or delayed in accessing their loved one's super. This often takes place during a period of grieving when the money could be used to pay funeral expenses. These experiences cause significant distress, especially given the cultural significance of funerals in First Nations communities. Long delays also erode super balances through ongoing fees.

Things must change—starting now

Superannuation is compulsory for most employees and reflects contributions from a person's wages to provide financial support during retirement. Super can also provide financial relief at times of financial hardship or for families after someone dies. However, First Nations peoples are more likely than other Australians to miss out on the benefits of super.

The failings of the super system also exacerbate other forms of structural disadvantage that First Nations Australians face. This includes lower life expectancies, reduced access to economic opportunities and critical services (especially in remote locations), and higher rates of ill-health compared to the rest of the population. These barriers stem from centuries of inequalities created through colonisation, racial marginalisation and intergenerational trauma.



Despite many of the barriers faced by First Nations consumers in the super system being well known for years, very little has been done to fix them by either the government or the super industry. Some super funds have tried to improve their practices, but others have done practically nothing. Reforms have occasionally been contemplated by the government, but end up not being prioritised and left to gather dust. The financial counselling sector is providing vital help but is limited in what it can achieve in the face of limited resources, inflexible regulations and policies, and a lack of accountability across the system.

The Commonwealth Government and the super industry have the unique opportunity to demonstrate leadership by ensuring reforms to improve outcomes for First Nations peoples are prioritised and implemented as quickly as possible, working in partnership with First Nations communities and advocates. Implementing reforms would also help to deliver on the Government's commitments for Closing the Gap (see **Box 1**). As part of these reforms, super funds and the ATO need to implement culturally safe and responsive practices that meet the needs of First Nations peoples. Without this, First Nations peoples will continue to be held back from participating in informed decision making about their lives and from enjoying high levels of social and emotional wellbeing.

Box 1: Relevant outcomes and reforms under the National Agreement on Closing the Gap

Outcome 17

Aboriginal and Torres Strait Islander people have access to information and services enabling participation in informed decision-making regarding their own lives.

Outcome 14

Aboriginal and Torres Strait Islander people enjoy high levels of social and emotional wellbeing.

Priority Reform 3

Government organisations and institutions are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people, including through the services they fund (see [Priority Reform Three - Transforming Government Organisations](#)).

Table 1 identifies the specific changes to laws and regulations, government policies and super fund practices that are needed. The final section of this report sets out a practical roadmap that can and must be implemented by the end of 2026, including who should be responsible for specific reforms and how they can be implemented. It also identifies what super funds can do now to start delivering better outcomes for First Nations consumers.

Table 1: Key reforms

REFORM	RATIONALE	HOW TO IMPLEMENT
Require super funds to proactively assist customers with verifying their identity, such as by applying AUSTRAC's guidance	To require funds to help consumers who cannot meet standard identification requirements (and demonstrate how they are helping them), in order to create strong commercial and legal incentives to provide assistance while not undermining existing protections for fraud, scams and privacy breaches	New legal obligation (as part of mandatory customer service standards), backed by regulatory guidance that explains how funds can comply and promotes the use of standardised approaches
Legislate mandatory and enforceable customer service standards for super funds	To compel all super funds to provide high quality and culturally safe customer service through detailed standards that will be consistent across the industry and enforced by regulators	Standards to be backed by legislation and administered by ASIC, with ASIC empowered to rigorously enforce the standards
Improve ATO processes to help First Nations peoples, including improved customer service and more flexible approaches to identity verification	To address rigid, inflexible and culturally insensitive practices by requiring the ATO to meet similar standards to super funds, including by applying the approaches in AUSTRAC's guidance	ATO to identify changes through its current vulnerability review, supported by clear expectations and timelines from Government through a Statement of Expectations
Conduct a comprehensive review of the superannuation death benefit system	To address complex and longstanding issues, including who is entitled to death benefits in First Nations kinship contexts	Commonwealth, State and Territory Governments to agree on terms of reference, with the review ideally conducted by the Australian Law Reform Commission
Reduce barriers to the ATO telling the next of kin where a deceased's super is	To allow the ATO to tell the next of kin which super fund a deceased person had their super in without requiring them to obtain probate or letters of administration	Amend tax secrecy laws that govern how the ATO can disclose information
Require transparent reporting on consumer outcomes and service delivery, including consumer-focused metrics	To ensure accountability for delivering good outcomes by providing greater transparency of the performance of each super fund and the ATO in delivering better customer service and improving outcomes for First Nations customers	Amend legislation to mandate performance reporting, including specific indicators and reporting frequency
Increase funding for the financial counselling sector and pilot a new community legal service for superannuation	To ensure consumers experiencing vulnerability, including those who are First Nations, can access free and independent help when they need to access their super, navigate the death benefits system or make an insurance claim	The super industry and Commonwealth Government should provide greater funding for the financial counselling sector, and back a pilot of a new community legal service for superannuation



Image taken in Nyangumarta Country
by René Riegal



INTRODUCTION

Superannuation is compulsory for most employees. Employers sign people up to super accounts and contribute money, which effectively comes out of their wages. The money is meant to accumulate and provide income in retirement.

Yet First Nations peoples are much more likely than other Australians to miss out on the benefits of superannuation. They face a range of structural disadvantages. **For instance:**

- **First Nations peoples have lower workforce participation and incomes, on average.** Just over half of working-age First Nations peoples were employed in 2021, compared to three-quarters of non-First Nations peoples (52 per cent versus 75 per cent).^[1] The median income for First Nations households was \$830 a week, almost a quarter less than the median income of other households (\$1080 a week).^[2] Less work and lower incomes mean less super is accumulated.
- **First Nations peoples have less super, on average.** In 2022, only 69 per cent of non-retired First Nations peoples had super, compared to almost 87 per cent of non-First Nations peoples.^[3] The median balance for First Nations consumers was just \$22,000, almost one-third the level of non-First Nations peoples (\$60,000).^[4]
- **First Nations peoples are more likely to have lost and unclaimed super.** Research shows that people living in the 20 postcodes with the highest First Nations populations are more than twice as likely to have lost and unclaimed super compared to the national average.^[5] When a super fund is unable to make contact with a customer, or the customer has died and the money was not paid out to anyone, the money usually ends up being transferred to the ATO.
- **First Nations peoples are more likely to live in poverty.** Income poverty rates among First Nations Australians are about twice that of the general population (36 per cent versus 18 per cent in any given year) and more First Nations peoples experience persistent poverty (26 per cent versus 13 per cent).^[6]
- **First Nations peoples have much lower life expectancies,** with life expectancy at birth currently 71.9 years for a First Nations male (8.8 years less than for a non-First Nations male) and 75.6 for a First Nations female (8.1 years less than for a non-First Nations female). There is an additional gap—of more than four years—for First Nations peoples living in remote areas.^[7] About 20 per cent of First Nations men and 13 per cent of First Nations women will not live to age 60, compared to just 8 per cent of men and 5 per cent of women for the population as a whole.^[8] Age 60 is the preservation age, when super can be accessed without restriction when someone has retired.

Underlying these disadvantages are ongoing and systematically inequitable practices, including government practices which have denied some First Nations peoples standard identity documents (such as historic refusals to register births in remote areas) and poor recognition of First Nations cultural practices (such as laws and systems that do not accommodate people changing their names consistent with cultural obligations and out of respect when a relative with the same name has died).

First Nations peoples living in regional and remote areas also face high levels of digital and financial exclusion, inadequate government services and a very high cost of living relative to average incomes.^[9] Access to infrastructure and services can be especially poor in remote areas with a high proportion of First Nations peoples in the population.

In our research with First Nations consumers living in remote communities in East Arnhem Land, only one in five people who were seeking help with their super had access to email or MyGov, and just over half had access to the Internet (with rates varying significantly across communities).

Financial counsellors and case workers provide vital assistance to many First Nations consumers who need help to navigate the super system. Many financial counsellors interviewed for this research revealed that superannuation is one of the most common issues their clients seek help with, and these financial counsellors spend a lot of their time on the phone trying to deal with super funds. Yet financial counsellors faced barriers when engaging with the super system on behalf of First Nations clients, such as super funds not recognising their authority to act on clients' behalf or preventing them from being able to help their client answer questions about their identification details.

As explained throughout this report, the super industry and government agencies have done too little to address the systemic barriers First Nations Australians face in the super system—even though many of these barriers have been documented previously.^[10]

For the past 12 years, the super industry has convened the Indigenous Superannuation Working Group to tackle barriers to First Nations consumers engaging with the super system. This working group and related initiatives have helped to raise awareness of issues across the industry and delivered some positive momentum. But there has been too little progress in rectifying issues—even things that are well within the control of super funds.





WHAT WE DID


To collect evidence on the issues First Nations consumers face with the super system, an observational survey was co-designed with, and administered by, Mob Strong Debt Help representatives. The survey was conducted with 99 First Nations consumers at the Financial Wellness Week event, held in five remote towns across the Eastern Arnhem region from 12-16 August 2024. This event was organised by the First Nations Foundation as a 'roadshow' of several super funds, banks, government agencies and community organisations.

In addition, one-hour interviews were conducted by Impact Economics and Policy with financial counsellors, lawyers and case workers across Australia. Interviews were held with 19 participants in August and September 2024, mostly on a one-on-one basis. Participants were given a gift voucher as a thank-you for participating (or a donation in lieu where they were unable to accept a gift voucher).

Collectively, these interview participants have worked hard to support thousands of First Nations clients overcome financial and legal barriers relating to superannuation. Just under half disclosed that they are First Nations peoples themselves. Their stories, examples and practical ideas for change have been drawn on in this report to highlight key issues faced by First Nations consumers and identify recommendations for reform.

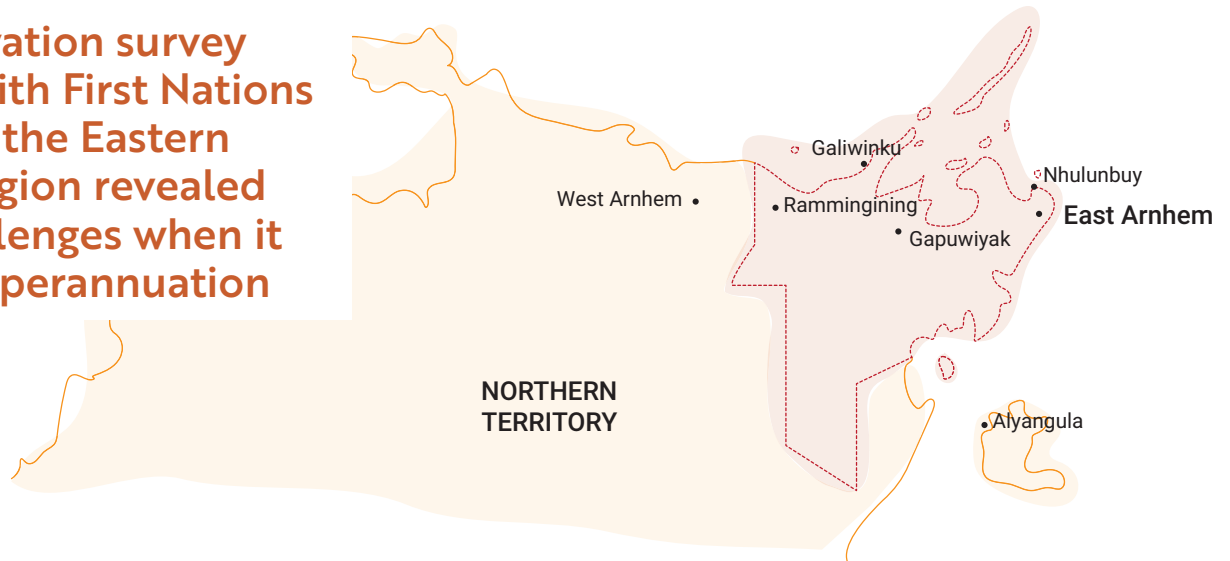
The next phase of this project involved developing policy recommendations and preparing this report. We consulted with a range of organisations including government agencies, First Nations groups and financial counselling organisations. Observational survey findings

The observational survey provided insights on the issues and challenges that First Nations peoples living in the East Arnhem region faced with superannuation and dealing with super funds. **Infographic on page 16** provides a summary of key findings, and **Table 2** provides additional detail on the issues people faced.



KEY FINDINGS FROM THE OBSERVATIONAL SURVEY

The observation survey research with First Nations peoples in the Eastern Arnhem region revealed major challenges when it came to superannuation



1

DENIED ACCESS TO SUPER AND OTHER ENTITLEMENTS

Many reported issues with basic service:

53% Unable to get through to their super fund

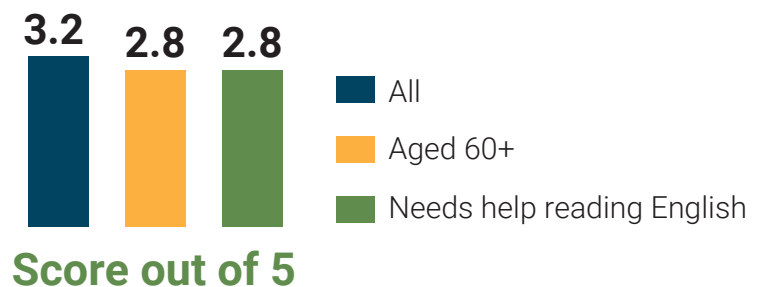
42% Not understanding the information they were given

38% Struggling to find where their super is, including lost super

2

POOR COMMUNICATION PRACTICES BY FUNDS

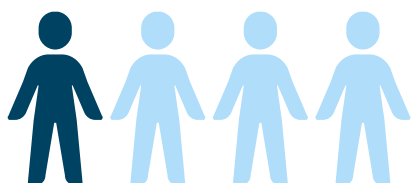
Did they understand what the fund told them at the Financial Wellness Week event?



3

SIGNIFICANT BARRIERS TO ENGAGING WITH FUNDS

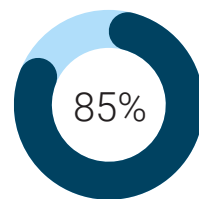
Many were told to use online services when:



Had email or MyGov access (23%)



Had internet access (59%)



Had access to a phone (85%)

Table 2: Percentage of First Nations consumers seeking help with super, by issue, at Financial Wellness Week East Arnhem Land, August 2024

ISSUE	%
Finding super	
Finding out which fund(s) you have super in	35
Trying to locate lost super held by the ATO	10
<i>Any of the above</i>	38
Dealing with super funds	
Contacting your super fund and not being able to get through or understand what they tell you	53
Not understanding information your super fund tells or sends to you	42
Being unable to prove your identity to your super fund	19
Being unable to take money out of your super fund when you have tried to	12
Contacting your super fund and being treated in an insensitive or offensive way	2
<i>Any of the above</i>	80
Dealing with super after the death of a loved one	
Finding which super funds they had money in	7
Dealing with the Tax Office	8
Proving you or someone you know were a dependent (who is entitled to some of the money)	8
Finding out if they had life insurance in their super fund and/or claiming the insurance	5
<i>Any of the above</i>	12





Image taken in Eora Country
by Turner_imagery

IDENTITY VERIFICATION

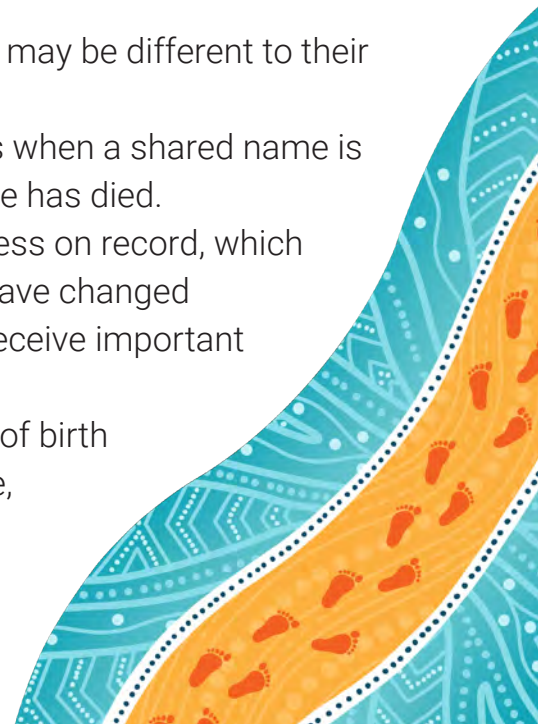
What's the issue?

Many superannuation funds and the ATO rigidly insist on consumers meeting requirements to verify their identity before they interact with them. To make simple enquiries, this means disclosing details such as a name, address and date of birth which must match the fund's or ATO's records. For more complex issues like accessing money or setting up a MyGov account with the ATO, consumers generally need to have a standard identification (ID) document such as a current driver's licence or passport, or a certified copy of such a document.

Many First Nations peoples cannot meet these rigid requirements.

Reasons include:

- **Not having standard ID documents.** These documents can be expensive to obtain and involve significant and costly travel to apply for and collect documents, especially for people living in remote areas without reliable or timely postal services. For example, it has been reported that less than half of eligible First Nations peoples hold a driver's licence (compared to 70 per cent of the non-First Nations population).^[11] Some people lose documents if they move around a lot or do not have safe place to store them. Sometimes documents with personal information on them will be destroyed by relatives after a person has died, in line with cultural practices.
- **Never having had a birth certificate.** Many older First Nations peoples did not have their birth recognised or recorded by government officials when they were born, including (but not exclusively) those born in remote areas.
- **Incorrect or out-of-date information** in the super fund's or ATO's records, or on versions of identity documents, including:
 - People who do not have birth certificates having been assigned various arbitrary birthdays (such as 1 January or 1 July) on official documents.
 - People having two or more given names, with only one being listed on a document or record, which may be different to their preferred name.
 - People changing their names for cultural reasons, such as when a shared name is not used for a period of time out of respect when someone has died.
 - Super funds having someone's old phone number or address on record, which can be difficult for the person to recall (especially if they have changed number or address many times) and means they do not receive important communications from the fund.
 - Super funds having been given an incorrect name or date of birth when an employer set up someone's account, for example, because the employer had made a mistake or had not confirmed the details with the person.



Financial institutions should have processes to help consumers who cannot meet standard ID requirements. Since 2016, AUSTRAC (the regulator that oversees rules to prevent money laundering and other crimes) has had regulatory guidance on how financial firms can use alternative and flexible approaches to identifying customers.^[12] This guidance explicitly addresses some of the issues First Nations consumers face, for example, it explains how firms can identify people using referee statements, Indigenous organisation membership cards or correspondence from government authorities.

However, AUSTRAC's guidance is not legally binding. Our interviews with financial counsellors and case workers revealed that many large super funds do not follow it, or only recognise alternative forms of ID in very narrow circumstances. The Australian Securities and Investments Commission (ASIC) has also observed (in the context of death benefits) that some super funds are taking significant time to offer alternative identification options to First Nations customers and are using the examples in the guidance as a finite list of options rather than a starting point for a flexible approach.^[13]

The ATO appears to never recognise alternative forms of ID.

To get around these barriers, some clients had to go to the expense of obtaining new identity documents or legally changing their name so they could access their superannuation. Other clients, unable to meet onerous ID rules, simply gave up.



Image taken in Wangkathaa Country
by Rachel Claire

WHAT FINANCIAL COUNSELLORS AND CASE WORKERS TOLD US

I have been supporting a client to access his super, and it has taken 9 months already. He was born on a cattle station and his birth was never registered, so he has had to estimate his date of birth. He has five lots of ID, with a different date of birth on all five. The super account has a different date of birth to every ID he has. He is almost 80 years old and has less than \$30,000 in his super—he just wants the money out so he can go on a holiday with his wife. He doesn't have an email account or mobile phone so communication is difficult. The super fund just says log on with your email and register for an online account, but this is pretty pointless. The last form we put in was a change of date of birth form, because the super fund was asking for an electricity or telco bill with his name and address on it but he didn't have this because he doesn't have a lease in his name. The fund is not accepting his documents and keeps sending back a standard-form request for his birth certificate. I have had to send the fund about 20 authorities [to act on his behalf as a financial counsellor] and they keep getting rejected. We eventually found out what the date of birth was on his account, but now the super fund is demanding a birth certificate again. We have lodged a complaint with the Australian Financial Complaints Authority.

*One of my clients was an elderly man with only about \$5,000 in his super. The super fund won't continue the application to release his money because of issues with his date of birth and name. English is his second or third language. The call centre person asks to speak to him to get his consent to proceed, but he can't understand them. Even I was struggling to understand them. The call centre person told me I can't say anything to this client, even though I was just trying to explain what the call centre person was asking him.**

I had one client who spoke very little English. She just wanted to know how much super was in her account. We called the super company together, and the date of birth was wrong. It turned out she was employed by a company who gave the super company her details and got a digit wrong in her date of birth. This is absurd! The company didn't have to prove anything to the super fund, which they should have to do at the beginning. Now the client is going to have to fill in a form and get a certified photocopy of her birth certificate, which means driving 5 hours into the nearest town.

A client didn't have enough ID to verify themselves to the super fund. The fund didn't have an Indigenous identity form. I told them that one of the major funds has one. The person on the phone then asked me: why can't the client transfer the funds to that other super fund and try to access them [for financial hardship] that way? I complained about this, but the person on the phone still had a take-it-or-leave-it attitude.

*There's a form some of the banks have that a financial counsellor can use to attest to a customer's identity—it's called 'statement by referee'. It's helpful when a financial counsellor is satisfied with the client's identity, even though they may have a Medicare card and Driver's License with slightly differently spelt names, or have had changes in names, bush marriages, etc. The big four banks allow these statements but it seems the super funds don't. Super funds seem more conservative and old school.**

Note: asterisks (*) indicate quotes from financial counsellors and case workers who identified as First Nations.



Image taken in Wangkathaa Country
by Rachel Claire

What are the drivers?

There are several reasons why super funds may not be willing to adopt flexible approaches for consumers who cannot meet standard identification requirements.

One reason is a perception that reviewing and verifying alternative ID documents—and developing internal procedures and training staff to apply them—can be more costly for funds, especially for customers who live in remote areas and/or who are unable to engage digitally.

However, this perception ignores the reality that repeatedly engaging with customers (or their financial counsellors) over identification issues without resolution is likely to be more costly for the fund. ASIC has observed that most funds have policies and procedures for considering alternative ID documents, but some took significant time to offer these options to First Nations peoples trying to claim death benefits.^[14]

A second reason is perceived legal risk. Releasing money or information to the wrong person can attract strong civil and/or criminal penalties under the **Privacy Act 1988** and the **Anti-Money Laundering Counter-Terrorism Financing Act 2006** and associated regulations (AML/CTF laws), which cover fraud. Even though AUSTRAC's guidance helps funds to navigate these legal requirements when accepting alternative forms of ID, the guidance does not relieve funds of their underlying obligation to prevent fraud. Funds may also fear having to compensate a customer if their money or information is released to the wrong person.

A third reason is the lack of commercial or regulatory consequences for funds.



In the absence of strong legal penalties, funds who have failed to help First Nations consumers to verify their identity have suffered little if any consequences.

A fourth reason is the employer defaults system, which has let employers set up super accounts for new employees without verifying their personal details or whether these match their official identity documents. The risk of this occurring has been reduced by several recent reforms, including greater digitisation of employer-ATO information flows and the ‘stapling’ reforms, which require employers to ask the ATO whether a new employee already has a super account if they have not filled out a choice-of-fund form (a process which allows the employee’s identity details to be cross-checked against the ATO’s records). However, these reforms only affect new employees (and concerns have been raised about how they are being applied in practice^[15]). They also do nothing to address incorrectly recorded names, dates or birth or other details on existing super accounts.

There are other drivers for the ATO. The ATO is subject to its own tax secrecy laws^[16] and the Privacy Act, but not the AML/CTF laws. It has rigid processes in place to prevent information being given to the wrong person and to prevent fraud. As a government bureaucracy, the ATO’s highly risk averse approach is not offset by a commercial imperative or clear government direction to deliver good customer service.

Absent meaningful reforms, First Nations peoples will continue to face barriers to verifying their identity and accessing superannuation money they are legally entitled to.

There are clear trends towards ever-greater reliance on digital services and multi-factor authentication by super funds and the ATO—even though these services generally only accommodate consumers who can meet standard ID requirements and have phone and internet access. In the absence of reforms, the hurdles that First Nations consumers must clear will only continue to grow in a world with growing scam and fraud attempts involving super funds^[17] and new risks emerging from artificial intelligence (such as ‘deepfakes’ to perpetrate identity fraud).

Action to date

There has been some positive action to improve outcomes for consumers who cannot meet standard ID requirements, including regular updates to AUSTRAC's guidance to provide clarity to the industry on how alternative and flexible approaches can be used. AUSTRAC consulted on changes to its guidance in late 2024 and released updated guidance in April 2025. This updated guidance provides further clarity on how firms can take a flexible approach, including by adding new examples and guidance relating to First Nations peoples and superannuation, clarifying when expired ID documents and government-issued correspondence can be used, outlining various ways in which alternative identification can be submitted, and providing more detailed guidance on referee statements (including an example referee form).

Broader legislative reforms to the AML/CTF laws passed Parliament in late 2024 which seek to simplify the rules for identity verification for low-risk customers. These changes come into effect in March 2026 and mainly relate to customers with standard forms of ID. AUSTRAC recently consulted on updates to the supporting regulations, and is expected to consult on updates to its broader body of regulatory guidance later in 2025. At this stage, it is unclear whether these reforms will have much impact on First Nations consumers dealing with super funds.

However, there are limits to what can be achieved through further changes to AUSTRAC's guidance. The AML/CTF legislative framework rests on an obligation for financial firms (and other entities) to prevent crimes from occurring. While AUSTRAC's guidance can help super funds that wish to take a more flexible approach to assist their First Nations customers, it does not—and cannot—compel them to do so. The AML/CTF framework also does not address other barriers to funds adopting a more flexible approach, such a fear of breaching privacy law or limited commercial incentive to help people.

As noted earlier, the ATO operates under different rules to super funds. The ATO is currently reviewing its approach to dealing with people experiencing vulnerability, as discussed further in the customer service section of this report. This vulnerability review should explore ways to better assist First Nations consumers with identity verification.





Image taken in Larrakia Nation
by Damien Tait

Recommendations

All First Nations consumers should be assisted by their super fund and the ATO to verify their identity, especially if they lack standard forms of ID. However, consumers must also be protected against identity fraud, scams and privacy breaches.

Require super funds to proactively assist people to verify their identity


There needs to be a better balance between financial inclusion and preventing crime. But the solution is not to allow super funds to bypass important consumer protections in the AML/CTF and privacy laws that could leave First Nations peoples more vulnerable to fraud and scams.

Instead, financial inclusion needs to be strengthened by legislating a new obligation on super funds to proactively assist existing members to verify their identity to the fund.^[18] The new obligation should cover everyone—although First Nations peoples stand to benefit the most.

There are many things super funds could do to meet this obligation, without breaching any of their other obligations. For example, funds could:

- accept alternative forms of identification, such as referee statements or community ID cards, in line with the approaches set out in AUSTRAC's guidance;
- offer accessible ways for people to verify their identity, such as by sending a photo of themselves holding their ID documents, if they are unable to use digital services or live in remote areas where postal services are unreliable or insecure;
- help people to obtain certified copies of their ID documents (where these are required), for example by providing assistance with making copies or arranging for an authorised certifier to visit the person;
- tell people which identity document on record is being used when asking them to confirm their identity;
- ask people if they are known by other names or dates of birth, and keep this information on record for use in future;
- provide ways for customers to easily amend inaccurate information such as a misspelt name or incorrect date of birth (for example, by allowing financial counsellors and case workers to assist with verifying information);
- help people to obtain new ID documents if they have lost a document or it has expired;
- help people to find a financial counsellor who can assist them and allow the counsellor to help with identifying the customer; and/or
- have clear delegations and training for customer service staff so they are empowered to find solutions to the identification challenges.





The obligation should be a legal requirement enforced by ASIC, the consumer protection and conduct regulator in superannuation. Ideally it would form part of mandatory customer service standards (discussed later in the report) and be imposed through the *Superannuation Industry (Supervision) Act 1993* (SIS Act) or *Corporations Act 2001*, rather than by creating any exemptions or carve-outs to funds' existing AML/CTF obligations.

Super funds should be given flexibility in how they assist people under the new obligation, while still being held to their existing AML/CTF and privacy obligations.

The Explanatory Memorandum for the reforms could set out in general terms how funds could comply, with ASIC then providing more specific guidance and examples through regulatory guidance (which could include promoting the use of standardised approaches across the industry). Regulatory guidance should be developed with input from the Australian Prudential Regulation Authority (APRA), AUSTRAC and the privacy regulator.

Super funds should also have a parallel obligation to be able to demonstrate how they assist people with identity verification. For example, a fund could publish information about its alternative identification policy on its website, which outlines the assistance available and the types of alternative ID the fund is willing to accept. The supporting obligation will give funds an opportunity to demonstrate how they will assist customers when there is a higher risk of fraud or privacy breaches, while making it harder for funds to simply do nothing.

Clear penalties should apply to super funds that do not comply with the new obligations. The risk of legal penalties would give funds a strong commercial incentive to invest in accessible and flexible approaches for identifying people. The approach to enforcement should be similar to that for mandatory customer service standards discussed later in this report.

Consumers should be able to complain to the Australian Financial Complaints Authority (AFCA) if their fund has breached its obligations by failing to assist them with identity verification. AFCA should be given powers to require funds to compensate consumers who suffer a monetary loss or a significant level of distress or inconvenience from a fund failing to assist them with identity verification.

There must be transparent public reporting on funds' performance in identity verification. This would help to hold funds to account and provide greater visibility of practices across the industry, as discussed later in the transparency section.

Some parts of the super industry may argue that funds already have obligations to assist their members, such as through the overarching duty to act efficiently, honestly and fairly.^[19] While this may be true, such broad duties are difficult to enforce in specific circumstances (discussed further below), and so a more specific obligation relating to identity verification is needed.

Parts of the industry might also try to argue that the new obligation could conflict with other laws. But this would not be the case, because the new obligation would not prescribe any particular action which could run counter to other laws. A similar obligation to assist First Nations peoples with identification already exists in the banking and insurance industries (as part of enforceable industry codes).^[20]



Image taken in Wurundjeri Woi-wurrung Nation
by Pat Whelen

Enable the ATO to better assist people to verify their identity

The ATO should be required to proactively assist First Nations peoples to verify their identity, including those who cannot meet standard ID requirements, lack access to digital services, or live in remote areas.

The ATO should also apply the flexible practices set out in AUSTRAC's guidance for the industry—including by recognising alternative forms of ID.

The ATO should use its ongoing vulnerability review to implement better identity verification practices. The Commonwealth Government should support the ATO by setting clear expectations and timelines to uplift its practices, promptly addressing any legislative or regulatory constraints that are identified, and ensuring the ATO is adequately funded to deliver on the Government's expectations. This should form part of a broader push to enhance the customer service the ATO provides to First Nations Australians, as discussed below in the customer service section.

Many First Nations peoples, especially those who live in remote areas, already engage with Centrelink. The Government should work with the ATO and Centrelink to explore ways these agencies can work together better to help First Nations peoples verify their identity to the ATO. This could include:

- aligning identification requirements for Centrelink and the ATO (so a person who can meet Centrelink's requirements can also meet the ATO's) and explicitly allowing Centrelink concession cards and payment confirmation letters to be used as part of identity verification with the ATO;
- tasking Centrelink officers with setting up a MyGov account for new Centrelink clients (if they do not already have one), and assisting the client to link this account to the ATO; and
- enabling any Commonwealth, State or Territory Government official (including Centrelink officers) in remote areas to verify individuals' identities on behalf of the ATO.

We understand that some of these practices may already be in use occasionally, but not systematically.



Supporting reforms

To further improve outcomes for First Nations peoples who struggle to meet identity verification requirements:

- **AUSTRAC should commit to periodically reviewing and updating its guidance**, in consultation with First Nations representatives, financial counselling organisations and super funds. Future iterations of the guidance could clarify the situations and circumstances when certified copies of documents are needed and when alternatives can be considered, such as written or verbal communication by a financial counsellor. The guidance could also encourage super funds to adopt third-party authorities from registered financial counsellors by clarifying any implications in terms of AML/CTF laws.
- **The Commonwealth, State and Territory Governments should make it easier for people to obtain and update standard identity documents**, including birth certificates, drivers' licences, passports and proof of age cards. More outreach visits by government agencies to remote locations to issue documents on the spot would help, as would charging lower fees (or no fees) to people with limited means or who receive income support from Centrelink. In addition, fees should be waived where a First Nations person needs to obtain or amend a document because their birth was not registered, their name was misspelled by a government officer, or other inequitable practices. Further, State and Territory Governments could automatically issue identity documents to people leaving incarceration who do not have standard forms of ID.
- **The Commonwealth Government should add proof of age cards and other identity documents to the government-run Digital Verification Service**, which many super funds use to verify their consumers' identity details. This would make it easier for First Nations peoples to verify their identity if their main identity document is a proof of age card.
- **Super funds should work directly with banks to verify the owner of a bank account when processing withdrawal requests from a super account**, rather than putting the onus on the consumer to prove the bank account number they have nominated belongs to them. This would also reduce the risk of incorrect payments. If super funds and banks cannot make this work, the Commonwealth Government should explore reforms to facilitate the process and ensure it is used.



CUSTOMER SERVICE



What's the issue?

First Nations peoples often receive inadequate customer service when they engage with superannuation funds, or when they contact the ATO to locate lost super or enquire about a deceased loved one's super. Some of the many customer service failures identified in our interviews with financial counsellors and case workers include:

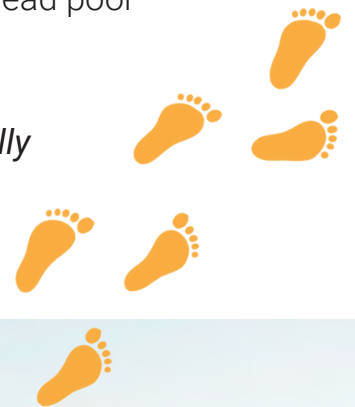
- **Long wait times on the phone**, with some financial counsellors saying they spend most of their time in client sessions waiting on the phone with a super fund.
- **Rigid, jargon-filled communications consumers can't understand**, including call centre operators who are not responsive and stick rigidly to a script, operators who make little attempt to explain information in different ways so people can understand it, and written communications that are confusing, overwhelming and often impossible for consumers to understand.
- **Failing to offer access to interpreters in First Nations languages**, even for consumers who clearly struggle with communicating in English with a super fund or the ATO.
- **Unhelpful and culturally insensitive staff** who lack even basic levels of First Nations cultural sensitivity (such as an awareness that consumers may not understand the operator or feel comfortable challenging or questioning them, or that some people may be uncontactable or change their name following a relative's death) or lacked awareness of the issues faced by people living in remote areas (such as poor internet and phone connectivity, slow or insecure postal deliveries, and a lack of most mainstream services within several hours' travel distance).
- **Dedicated First Nations hotlines staffed by people with little or no cultural sensitivity**, including heavy reliance on non-First Nations operators and operators who follow the same protocols and procedures as the general customer service team, and who have had little or no authority to find flexible ways to help people.
- **Passing consumers off to online services**, such as fund websites and the MyGov portal, even though they may lack internet access or cannot meet the ID requirements for setting up an account.
- **Slow, onerous and haphazard handling of forms** for people who are entitled to access their super (such as when they have retired or are experiencing severe financial hardship), including:
 - providing confusing and cumbersome instructions;
 - imposing unnecessary evidentiary burdens that people cannot meet, such as asking for utility bills and rental statements for people applying for financial hardship release (which may be impossible to provide if a consumer uses prepaid energy cards and is not named on a lease agreement);

- insisting on forms being physically posted, along with certified copies of documents, even for people in remote areas where this is difficult and costly (or takes so long that forms and documents expire in the meantime);
 - losing documents that have been sent to the fund;
 - failing to confirm when a form or documents have been received;
 - taking a very long time (sometimes months) to process forms and providing no explanation for the delay;
 - not assigning case managers to support consumers experiencing vulnerability applying for financial hardship release; and
 - rejecting forms and making clients re-start the application process because a single piece of information was missing.
- **Impeding financial counsellors from helping their clients**, such as by refusing to accept standard third-party authority forms (for the financial counsellor to act on a client's behalf), preventing financial counsellors from helping clients to verify their identity over the phone when the client couldn't understand the questions they were being asked, and asking for personal information about the financial counsellor in front of their client (for example, when the ATO tries to verify a financial counsellor's identity).
 - **Unhelpful approaches to identity verification and death benefits**, as discussed elsewhere in this report.

Many of these failures also feature on the long and growing list of poor practices identified by ASIC and AFCA, including ASIC's recent report which revealed widespread poor practices in how super funds handle death benefit claims.^[21]

These failures disproportionately harm First Nations consumers, especially those who are in clear financial need and have a right to access superannuation, but are prevented from doing so by bad service.

Image taken in Kaurna Country
by Marcus Wallis



WHAT FINANCIAL COUNSELLORS AND CASE WORKERS TOLD US

It seems to be incredibly rare to come across a superannuation service who has someone who speaks an Aboriginal language, and it's not often you encounter someone who understands some of the challenges of a member who is living in a remote Aboriginal community, having limited to no English or technology literacy, and limited access to services. At times, staff of superannuation companies refer the member to translation services when the member is finding it challenging to communicate with the superannuation company over the phone. At this point, it seems people give up. Perhaps if it was as easy to access a translator, then some of their members who live out bush might not need as much support as they do.

*With one client, it just seemed like nothing we went through was ever enough for the super fund. This was really difficult when I was away from the client. If you miss two calls from the super company, they do not call you back. And then if you try to call them, you can't prove your identity to them.**

*One fund was rejecting the Financial Counselling Australia standard authority form—they would not accept it at all. They insisted on emailing their form to my client. The client then had to seek the document through their email, then I had to help them download it and print it and fill it out for them. This client couldn't access anything directly online. And this was just to get the authority form! The fund would only send the form to members, and it had to go to the member's email address.**

Some funds are better at stalling than others. Files get dropped off the system and they lose documents. They are asking for paperwork again and again, so people have to go out in the heat and do it all again. Sometimes this can drag on for months. The client isn't allocated case manager so they have to deal with different people each time.

A certain major fund is notorious for requiring you to dot every i and cross every t to get anything approved. They want the Justice of the Peace's phone number and address, which are not strictly required. I dealt with them in a previous role quite a bit. You would upload a document and they don't look at it for three to five days, then email and say you need to respond and so the waiting time gets restarted. One client was trying to withdraw his super. The fund didn't say at the start that they wanted a bank statement and a selfie of him holding his ID. Instead they asked for this piecemeal. It took three months to just get the application started. The client tried to do it himself, and then ended up with these online financial advisers who wanted to move his money somewhere else.

One client was trying to access insurance death benefits from their deceased spouse's super. It took about two years. I made a successful complaint on the client's behalf part way through, but it still took another year. The fund will say 'we don't have this document' and 'oh now we need the death certificate recertified because it's now two years old so we will need another one'. Someone had to drive out from our office to the community, which is several hours away, and find the client and help them with a certified copy to provide to the super fund. The client is elderly and illiterate. If the

super fund had been clearer from the start on what was needed and the steps, and corresponded quickly, the process would have been much easier. This was such a painful process for me! Even the complaint response we got said the fund received the information in August and then didn't send it to the insurer until the following May. It then took another year after that.

I feel like an employee of one of the large super funds sometimes. They are just expecting everyone to go online—the clients out here simply can't do that. I am the only financial counsellor for over 1000 kilometres. All the super funds know that I'm here, but none of them have referred clients to me.

Note: asterisks (*) indicate quotes from financial counsellors and case workers who identified as First Nations.

What are the drivers?

For super funds, the primary drivers of inadequate customer service are an unwillingness to invest in quality services and a lack of penalties for providing bad service—at least until several recent court cases where ASIC has pursued funds for customer service so bad it may have breached basic legal obligations.^[22]

Many large funds are heavily reliant on outsourced administration companies which have limited incentive (or even ability) to improve service quality. Some super funds have tried to blame failures on their outsourced providers,^[23] despite the super fund being ultimately responsible at law and also being able to set service standard expectations through service level agreements with those providers. Some funds may also be excessively focused on reducing administration fees to help them pass the annual investment performance tests, or may take an unbalanced interpretation of their best financial interests duty when making expenditure decisions.

Super funds are not alone in having a reputation for inadequate customer service. But at least in the banking and insurance sectors, public pressure, scandals uncovered in the Financial Services Royal Commission and the threat of regulation have helped to push the large players to uplift their service quality—including by committing to industry codes of conduct. The super industry has attracted less public scrutiny, perhaps because people tend to interact with their super fund less often than their bank or insurer.

For the ATO, the drivers of inadequate customer service are the lack of commercial and Government pressure to provide good service, especially when good service comes at the expense of other priorities that need to be funded out of a limited budget. Some stakeholders have also suggested that the ATO is quick to blame inadequate service on legislative and technology constraints, and can be resistant to change unless the Commonwealth Government provides law reform and/or additional funding.

Action to date

Government action

The Commonwealth Government recently announced that it will consult on mandatory and enforceable customer service standards for super funds.^[24] This is long overdue and presents a significant opportunity to secure better customer service for First Nations (and other) consumers.

Super industry (in)action

Despite ample opportunities, the super industry has demonstrated a failure to self-regulate. It has proved incapable of developing any sector-wide code along the lines of the banking and insurance sectors. The industry came close in 2017 when it launched the insurance



in superannuation voluntary code. However, this code was voluntary, lacked enforcement mechanisms, allowed funds to pick and choose which provisions they would adopt, and was abandoned by the industry bodies (which owned the code) almost three years later, right before it was scheduled to formally come into effect.^[25] A relatively large number of players and historic animosities between industry and retail super funds have not helped.

Since then, there have been pockets of progress. The Financial Services Council (FSC) (which mainly represents retail funds) has developed an insurance claims handling standard for super funds, which is binding on its members (although lacks any clear enforcement mechanisms). Both the FSC and Association of Superannuation Funds of Australia (ASFA), another industry body, have released guidance notes on people experiencing vulnerability. ASFA also has guidance notes on death benefit claims and insurance claims handling. It is unclear if these documents are being maintained or updated, or how many super funds are attempting to follow them.

More recently, ASFA released a new guidance note for severe financial hardship applications.^[26] This was released over a year after the Indigenous Super Working Group committed to investigate the standardisation of forms.^[27] It appears that, to date, only a single application form has been progressed. However, the standard form is confusing, does not appear to have undergone any consumer testing, and lacks clear guidance for how long funds should take to process applications.

It also appears that, as with ASFA's other guidance notes, the new guidance note will not be binding on ASFA's members, meaning some may choose not to adopt it in full or at all.

ATO action

The ATO has recently shown some indications of seeking to improve its customer service. In 2024, it launched the Advocate Help Desk phone service, which offers financial counsellors a dedicated phone line to the ATO to seek assistance with client issues, without having to go through the general call centre and wait for an operator.

Also in 2024, the ATO commenced a review of its approach to dealing with people experiencing vulnerability. We understand that this process intended to explore ways to improve service delivery, boost the First Nations cultural competence of frontline staff, improve the operation of the Indigenous Helpline, help people connect with digital services, and improve identity verification processes for people who lack standard ID documents. In June 2025, the ATO commenced public consultation on a draft vulnerability framework.^[28] However, the draft lacks detailed commitments and does not specifically explain how the framework will improve service quality for First Nations peoples.

Recommendations

All consumers, including First Nations consumers, should receive high-quality, supportive and culturally appropriate customer service from superannuation funds and the ATO. There should be minimal frictions to consumers engaging with the super system and consumers should not be prevented from accessing their entitlements. As superannuation is a compulsory product, the Government needs to take the lead in making this happen.

Embed mandatory and enforceable standards for super funds

The Commonwealth Government must deliver on its commitment to introduce mandatory and enforceable customer service standards for super funds.

Super funds already have general obligations to act efficiently, honestly and fairly^[29] and to act in the best financial interests of fund members and beneficiaries.^[30] However, broad general obligations such as these can be hard for regulators to enforce and, on their own, have not prevented misconduct in the financial services industry—as highlighted by the Financial Services Royal Commission.^[31] In practice, regulators usually bring court proceedings alleging breaches of more specific rules in addition to breaches of general obligations (which reduces the risk of pursuing litigation).

Clear customer service standards for super funds are necessary, so that all consumers can access their entitlements and to help the regulators hold super funds to the standard consumers deserve. Given the industry's poor track record and inability to self-regulate, these standards should be imposed through legislation and backed by sufficiently strong penalties that will motivate all super funds to comply. Doing so will also provide funds with certainty that they can invest in better customer service without being undermined by their competitors, including on the annual performance tests.

What the standards should cover

The Government should develop a specific set of standards in close consultation with consumer groups and First Nations stakeholders, prioritising the voices of First Nations peoples and financial counsellors over the interests of the super industry.

As a starting point, these standards could be developed by drawing on:

- the codes of practice used in the banking, general insurance and life insurance industries, which contain a range of standards relating to communication, processing times, and the treatment of people experiencing vulnerability, as well as provisions that specifically reference First Nations peoples;
- the UK Consumer Duty, which is a general obligation backed by detailed rules relating to customer service practices at financial services firms (see **Box 2**); and
- the actions for industry in ASIC's recent report on super funds' handling of death benefits.^[32]

Box 2: The UK Consumer Duty

Financial services firms in the United Kingdom are subject to a consumer duty, which requires them to 'act to deliver good outcomes for retail customers'.

This duty is supported by detailed rules, which include obligations to:

- avoid causing foreseeable harm to customers;
- communicate in ways that equip customers to make effective decisions;
- consumer test communications and monitor their impacts;
- design and deliver support that meets customers' needs;
- ensure customers do not face unreasonable barriers when making enquiries, accessing benefits or submitting a claim.^[33]

These rules are supported by detailed guidance on what good practices look like and how firms can meet their obligations.

Financial firms are also required to regularly monitor customer outcomes.

The customer service failures discussed earlier could be addressed by a range of customer service standards, comprising:

- prescriptive minimum standards, including time limits for providing responses, processing forms and paying entitlements;
- principles-based obligations to assist people experiencing vulnerability (where flexibility is required);
- specific standards relating to First Nations peoples; and
- transparent public reporting of funds' customer service performance and outcomes.

General standards—covering all consumers—could include requirements for super funds to:

- offer free access to interpreters (where a consumer or their financial counsellor asks for an interpreter, or the fund identifies that one is needed);
- communicate in clear and plain language;
- undertake consumer testing of communications materials and monitor their impacts once delivered to consumers;
- meet minimum operating hours for call centres and prescribed limits on waiting times to speak to an operator;
- call a consumer back if the phone call cuts out;
- explain at the outset the likely timelines involved in processing an application form, as well as any information consumers may be asked to provide throughout the process and how they can get help;
- use standardised application forms for certain transactions, with standardised documentation requirements and prescribed processing time limits—for example, applications for early access to superannuation on grounds of severe financial hardship;^[34]

- acknowledge as soon as an enquiry or application has been received (even if it cannot be processed immediately), and acknowledge when an action has been completed;
- explain in plain language why any application or request has been declined, and how a complaint can be made;
- meet minimum training standards for all consumer-facing staff, including awareness of issues faced by people living in remote areas and a trauma-informed approach to interacting with people who may be in vulnerable situations;
- support people experiencing vulnerability by:
 - reviewing how products and services can be changed to reduce risks of harm;
 - assigning case managers to assist people to interact with the fund;
 - helping people to access individual assistance, including from a financial counsellor; and
 - developing, implementing and publishing a vulnerability policy;
- support financial counsellors and case workers to help their clients, including by:
 - accepting third-party authorities from registered financial counsellors using a standard form (such as Financial Counselling Australia's authority form);
 - allowing financial counsellors to assist their clients when seeking to verify their identity with the fund;
 - offering a dedicated phone number for financial counsellors to contact the fund when assisting a client; and
- proactively assist existing members to verify their identity to the fund, including those who are unable to meet standard ID requirements (as discussed earlier in this report).

More specific standards tailored to the needs of First Nations peoples should include requirements to:

- proactively ask all members whether they wish to disclose that they identify as First Nations and use this information to develop deliver tailored supports (see **Box 3**);
- ensure all consumer-facing staff demonstrate a level of First Nations cultural awareness;
- offer access to interpreters in First Nations languages;
- develop, implement and publish a First Nations customer service policy which sets out how the fund will support First Nations customers to receive the best possible outcomes from superannuation; and
- monitor and report on outcomes received by First Nations consumers.



Larger funds may need to do more than smaller funds to meet these standards. For example, a smaller fund with few members identifying as First Nations may be able to comply with requirements to deliver tailored supports for First Nations peoples by ensuring all consumer-facing staff have undertaken cultural awareness training. By contrast, a larger fund may need to establish a dedicated phone number for First Nations peoples and employ First Nations staff. Funds can also undertake outreach to First Nations peoples, such as by visiting remote communities through the First Nations Foundation's Financial Wellness Week events.

Regulatory guidance could set out how funds of different sizes could meet the standards and identify best practices. Such guidance should be developed in close consultation with First Nations stakeholders to ensure that it is fit for purpose.

Box 3: Asking consumers if they identify as First Nations

The first step to delivering good customer service is knowing who your customers are. Mandatory customer service standards should require all super funds to proactively ask their customers whether they would like to disclose if they identify as First Nations. Funds could do this, for example, as part of call centre interactions or when a customer needs to fill out a form.

The obligation should be on the super fund to ask—not on the customer to answer. Many First Nations peoples will be uncomfortable disclosing the information to a financial institution if they cannot see a clear benefit or are concerned the information might be used against them (for example, to offer a lower level of service or deny an insurance claim).

In seeking this information, super funds must respect principles of Indigenous Data Sovereignty, which is the right of First Nations peoples and communities to control how data about them is collected, used and accessed.

Indigenous Data Sovereignty includes collecting data with free, prior and informed consent; using data to advance self-determination and development for First Nations communities; and interpreting data using First Nations experts to ensure it reflects First Nations lived experiences and perspectives.^[35]

Super funds will need to clearly explain why they are asking for information about First Nations status and how they will use it. They need to demonstrate to their members how sharing information about their First Nations status may benefit them. This could include using the information to improve the customer service they provide, for example, by automatically transferring calls from First Nations consumers to a dedicated call centre team, which is staffed by First Nations operators who are empowered to use flexible approaches to accommodate disadvantages consumers may face due to language, remoteness or racial marginalisation.

With consent, super funds could also analyse data on their First Nations members to plan outreach visits, assess the quality of services provided to First Nations consumers, improve product design, and inform the fund's approach to meeting existing obligations (such as its annual outcomes assessments and the retirement income covenant).

Consumers should be given an explicit opportunity to self-identify as First Nations for the purpose of receiving more tailored service. Funds should clearly explain why they are collecting the data and how it will be used. No consumer should be asked to provide evidence or proof that they are First Nations, and funds should keep a record of any disclosure so First Nations consumers do not have to provide this information every time they contact the fund.

Super funds must ensure the information is handled in line with obligations in the *Privacy Act 1998* and *Racial Discrimination Act 1975*. Best practices include:

- obtaining free, prior and informed consent to collect the information;
- clearly explaining to consumers why the fund is asking about their First Nations status, how the information will be used, and when it will be disclosed to another party (such as an external administrator or insurer);
- clearly explaining to consumers that they do not have to provide the information;
- using the information only for the purpose for which it is collected, which should be to improve customer service delivery and outcomes;
- giving consumers the ability to easily amend the information at any time (including to withdraw their consent to disclosure) and explain how they can do this; and
- storing the information securely and ensuring it cannot be used in an unauthorised manner.

Super funds should engage with First Nations experts to design how they will collect, analyse and use the data. Super industry bodies could take a lead in identifying good practices and developing guidance for the super sector, in close consultation with First Nations stakeholders.

Privacy and other obligations mean that funds must collect and use information carefully—but these obligations do not prevent funds from asking their customers if they identify as First Nations. We understand some funds already do it, as does AFCA when consumers lodge a complaint. AUSTRAC and ASIC have explicitly encouraged the practice.^[36] The recent review of the General Insurance Code of Practice recommended that insurers ask their customers if they identify as First Nations,^[37] and the general insurance industry body has committed to consider providing guidance on this through the Code.^[38]

By mandating that funds take appropriate steps to collect, keep and use information about First Nations consumers, they would no longer be able to justify inaction on improving customer service by asserting that they have few or no First Nations members.

Implementing the standards

While customer service standards could be implemented in several ways (see **Table 3** below), they must be mandatory and enforced with stiff penalties.

Service standards should be backed by legislation and administered by ASIC. As the consumer protection and conduct regulator in superannuation, ASIC is well placed to administer the standards. The alternative would be for APRA to administer the standards, but APRA has less experience and expertise than ASIC in dealing with customer service matters and historically has shown much less willingness to enforce legal obligations through the courts. In any case, both regulators could give regulatory guidance to super funds on how they can comply with the standards in the context of their other obligations.

The standards should extend to customer service delivered through an outsourced administrator or insurer. This is already the case for most existing obligations on super funds. The super fund should remain legally responsible for ensuring the customer service standards are met.

There should be flexibility to update and improve the standards over time. This could be achieved by placing the detail of the standards in a legislative instrument made by ASIC. Alternatively, if the detailed standards are hard-coded in legislation, there should be clear requirements for the Government to commission an independent review of the standards at least every three years. Appropriately resourced consultation with First Nations consumer advocates should be enshrined in this review process.

Strong penalties are needed for funds that breach the standards. The customer service standards should be made civil penalty provisions, with maximum penalties similar to those applying to breaches of licensing obligations.^[39] This would enable ASIC to pursue super funds through the courts for major breaches that result in significant consumer harm. ASIC should also be able to use the full range of its other regulatory tools and powers, similar to other provisions the Corporations Act relating to financial services conduct. This should include the ability to issue infringement notices (fines), which may be appropriate for less significant breaches where a breach is a fairly automatic matter of law based on straightforward facts (such as exceeding a maximum timeframe for processing an application form).

ASIC should proactively monitor compliance across the industry and penalise funds which do not comply. To assist ASIC's monitoring, the standards should be covered by mandatory breach reporting rules, which require funds to report breaches of their legal obligations to ASIC and/or APRA.^[40] ASIC could also consider using its new powers to take action against super funds and/or their executives who breach obligations to act with honesty and integrity, and to act with due skill, care and diligence, under the *Financial Accountability Regime Act 2023*.

Consumers should be able to complain to AFCA if their fund has breached the standards. This would further increase the consequences for funds who do not provide an adequate level of customer service, as currently AFCA can only consider complaints about inadequate customer service if they relate to breaches of the law or contractual obligations. By making customer service standards mandatory, they would become part of the law. In addition, AFCA should be given powers to require funds to compensate consumers who suffer a monetary loss or a significant level of distress or inconvenience from a fund failing to comply with the standards.

There must be transparent public reporting on funds' customer service performance against the standards. This will help regulators to identify where funds are failing to comply, while also strengthening funds' incentives to comply so they can avoid public shaming. It would also provide greater visibility of practices across the industry, as discussed later in the transparency section.

There are several options that could be explored to embed mandatory customer service standards in the law (see **Table 3**). While each of these has advantages and disadvantages, the preferred approach is to add a new provision to the Corporations Act or SIS Act which specifically enables detailed customer service standards to be made through an ASIC legislative instrument. This would ensure that service standards can evolve over time in line with community expectations.



Image taken in Woiworung Country
by Pat Whelen

Table 3: Potential ways that mandatory customer service standards could be implemented

OPTION	ADVANTAGES	DISADVANTAGES
<p>Insert a new provision into the Corporations Act, or into the SIS Act, that requires super funds to deliver good outcomes for consumers by meeting a prescribed set of standards set in regulations and/or by ASIC^[41]</p>	<ul style="list-style-type: none"> • Enforceable by ASIC (and also by APRA, if under the SIS Act). • Scope for enforcement mechanisms to be developed that are specific to the standards, including civil penalties and infringement notices. • Standards made by ASIC in a legislative instrument can be more quickly updated and adapted, compared to regulations or legislation. 	<ul style="list-style-type: none"> • Requires an Act of Parliament to implement, which can be time consuming.
<p>Impose a mandatory code of conduct on the superannuation industry using the powers in section 1101AE of the Corporations Act^[42]</p>	<ul style="list-style-type: none"> • Could be enacted by Government using existing regulation-making powers in the Corporations Act, which were intended for use when an industry is unable or unwilling to develop a voluntary code. 	<ul style="list-style-type: none"> • Civil penalties for breaches of a mandatory code are relatively low. • The standards would need to be made via regulations, which are generally more difficult to update over time compared to legislative instruments.
<p>Add customer service standards to the existing operating standards (made in regulations under section 31 of the SIS Act)</p>	<ul style="list-style-type: none"> • Does not require an Act of Parliament to implement, meaning customer service standards could be implemented faster. 	<ul style="list-style-type: none"> • Lacks the clear authority that explicit parliamentary consent would give. • Generally not enforceable by ASIC (except for operating standards which relate to disclosure or record keeping). • Breaches would not be subject to civil penalties (unless specific reforms are made to allow this).

Uplift the ATO's customer service

The ATO should be held to similar customer service standards to super funds.



The ATO's ongoing vulnerability review, described earlier, offers an opportunity for the ATO to uplift its practices. At a minimum, the ATO should identify the steps it will take to address the issues faced by First Nations peoples discussed throughout this report. Among other things, it should consider:

- whether the ATO should ask consumers if they identify as First Nations and record this in its systems so that a more tailored or culturally sensitive approach can be provided to these consumers;
- how ATO frontline staff can be empowered to solve problems for First Nations consumers;
- the accessibility and availability of alternatives for people who are unable to use MyGov to find out which super funds they have accounts with; and
- how to deliver better outcomes for First Nations peoples from super while maintaining safeguards against identity fraud, financial abuse and other harms.

To find the right solutions, the ATO must take an open and collaborative approach to working with First Nations organisations, financial counselling agencies and consumer groups to identify, design and test solutions.



Image taken in Ngarabal Country
Image taken by Rob Munro

The consultation and engagement process should be modelled on the recent Centrelink reform consultation conducted by Services Australia, which involved working closely with advocates and service delivery organisations to deliver better outcomes for consumers experiencing vulnerability.^[43]

The Commonwealth Government should support the ATO by addressing any legal constraints or barriers that are identified through the vulnerability review. To ensure that changes are implemented in a timely manner, the Government should update its Statement of Expectations for the ATO to set out clear expectations and timelines for the ATO to implement new customer service practices. The Government should also ensure the ATO is adequately resourced to deliver better service.

In addition, the Government should develop mechanisms to monitor and report on the ATO's progress in transforming its practices to become culturally safe and responsive to the needs of First Nations peoples. This is required by the Government's existing commitment under Priority Reform 3 of the National Agreement on Closing the Gap. These mechanisms should involve public reporting on the ATO's progress (discussed further in the transparency section of this report) and frequent engagement with First Nations peoples to listen to and respond to concerns about the ATO's practices. There should also be a thorough review of the ATO's transformation within one year of implementing changes.

Supporting reforms

To further assist consumers experiencing heightened levels of vulnerability, including First Nations consumers experiencing vulnerability, the super industry and Government should provide greater funding for the financial counselling and consumer advocacy sectors. A new community legal centre for superannuation should also be piloted. These reforms are discussed later in this report.



DEATH BENEFITS

What's the issue?

A range of barriers mean that many First Nations peoples are unable to access the superannuation death benefits they are entitled to after a loved one has died, including the account balance and any life insurance payout (if there was insurance on the account).

Our interviews with financial counsellors and case workers revealed that a significant number of First Nations clients were unable to find out which super fund their loved one had money in or whether they had ATO-held unclaimed super. While the ATO holds this information, it has very strict rules for releasing the information. The ATO generally requires the next of kin to obtain a court-issued document (a grant of probate if the person had a will, or letters of administration if there was no will) that proves their authority to act on behalf of the deceased estate. Without this document, the ATO will not disclose which super fund the deceased person had money in, the account balance, or even whether they had super at all.

Most clients' loved ones had died without a will, meaning that letters of administration would be needed to obtain information from the ATO. But obtaining these is not easy.

Obtaining letters of administration can cost up to \$2000^[44] and require the assistance of a lawyer to navigate a complex court process. This process takes time and, for consumers living in remote areas, involves additional costs such as travelling to have documents certified.

Some financial counsellors said, if they were lucky, an ATO officer might hint whether the account balance was large enough to be worth pursuing—but most of the time they would not disclose anything until the client had obtained letters of administration.

A range of other barriers arise when it comes to having a super fund pay out the death benefit. As most clients' loved ones did not have a binding nomination with their super fund (specifying who should receive the money after they die), the super fund must decide who to pay the money to. While funds are permitted to pay the money directly to a dependant or other beneficiary without needing them to obtain probate or letters of administration, it appears that some funds insist on claimants obtaining these court-issued documents before they will pay the money.

Further hurdles are thrown up by the ATO and super funds through their inadequate customer service and rigid identity verification processes (including for claimants to prove their relationship with the deceased), as discussed earlier in this report. ASIC has recently revealed widespread deficiencies in how super funds handle death benefit claims, including subjecting claimants to excessive delays, confusing or incorrect information,

onerous and unnecessary requests for documents and evidence, and a lack of empathy and cultural sensitivity. ^[45] Many funds did not provide clear information to claimants about their processes and procedures. ASIC also found that delays were even worse in remote postcodes with a high First Nations population, with more than half of death benefit claims in these postcodes taking longer than 6 months (compared to about 40 per cent of claims in other postcodes).

All these barriers and hurdles mean that many First Nations peoples miss out on the death benefits they legally are entitled to when a loved one passes away. Demands for documents and unnecessarily protracted processing times mean money is not available when people have funeral expenses to pay—which can cause significant distress at a time of grieving, especially given the cultural importance of funerals in First Nations communities.

The delays can also lead to account balances being eaten away by fees, especially where the claimant does not even know which super fund to inform of the death. Some First Nations peoples have spent more money on obtaining letters of administration than was in their loved one's superannuation account—meaning they not only had to endure a rigid and time-consuming process at a time of grief, they also ended up out of pocket.

WHAT FINANCIAL COUNSELLORS AND CASE WORKERS TOLD US

*I was trying to help a client. We had to struggle with long waiting times to talk to the ATO and then prove identities. The ATO said there was \$500 in the super account. But then when we applied to have the money released, the ATO called my client and said there was no money there.**

*One of my clients actually went and got letters of administration. It would have cost them about \$1200 with the cost of the lawyers. After this, they found out the super account only had \$60 in it! The ATO doesn't tell people how much money is there, and whether it's even worth pursuing. The ATO is now asking for the death certificate again. We still don't know where the super is.**

*Dealing with the ATO on death benefits is like getting blood out of a stone, but even worse.**

When I first apply to the ATO, we have to prove the client is next of kin—and then usually wait 60 days and after that lodge a formal complaint with the ATO to get any action. But they can't tell you how much money there is, or where it is. In one case it took us about 12 months and it turned out there was only about \$500 in the account.

Note: asterisks (*) indicate quotes from financial counsellors and case workers who identified as First Nations.



What are the drivers?

The issues First Nations peoples face in accessing superannuation death benefits stem from a complex legal framework combined with rigid and excessively risk-averse processes at the ATO and super funds.

Tax secrecy laws

The tax secrecy laws are a major impediment to the next of kin accessing information about their loved one's super. Information the ATO holds about individuals' superannuation is deemed to be tax information and subject to the tax secrecy laws. These laws prohibit the ATO from disclosing information about a taxpayer (even if they are deceased) to another entity. A limited range of exemptions apply, including disclosure to the taxpayer's legal personal representative (or their lawyer) after their death.^[46] The laws also permit information to be disclosed by a taxation officer in performing their duties.^[47] In this context, the term 'legal personal representative' means the executor or administrator of the taxpayer's estate.^[48]

The ATO will only share information about a deceased taxpayer to the next of kin if they can prove they are the deceased's legal personal representative. If there is no will, this requires the next of kin to obtain letters of administration.

In addition, the ATO does not disclose information to a next of kin even if the laws in the relevant State or Territory say they do not need to apply for a grant of probate or letters of administration in order to distribute the estate's assets (for example, if the estate is relatively small). Moreover, the ATO does not appear to consider disclosure of information to the next of kin to fall under the exemption for taxation officers performing their duties.

Ironically, more lenient rules seem to apply when superannuation money is held directly by the ATO. The laws governing unclaimed superannuation allow the ATO to pay the money to someone who would have been eligible to claim the death benefit if it was held by a super fund.^[49] The Inspector General of Taxation has confirmed the ATO has policies that allow it to pay small amounts of unclaimed superannuation to the next of kin without requiring them to obtain grants of probate or letters of administration.^[50] It is unclear how often or consistently these policies are applied.

Super funds' rules, policies and procedures

Different rules apply to super funds.^[51] Superannuation is excluded from State and Territory laws that govern wills and deceased estates. Instead, most super funds have their own rules (set out in their trust deeds and internal processes) for how they will distribute money after a member dies, subject to Commonwealth legislation which limits what funds can do.

Most super funds accept binding nominations from members and will pay the money in accordance with this nomination if the nomination is valid when the member dies. If there is no valid binding nomination, many funds have discretion about who to pay the money to and will undertake a process of identifying all people who are eligible to be paid the benefit and considering their claims. As part of making a decision, many funds will also consider any non-binding or expired nomination that was made.

The law requires super funds to pay a death benefit as soon as practicable after a member dies,^[52] and requires funds to pay death benefits to the person's legal personal representative or 'dependants'—which is defined to include a spouse, child, or someone in an interdependency relationship with the deceased.^[53] Only these types of people can be nominated in a binding death nomination. Funds can only pay a death benefit to someone else (such as a parent, sibling, niece or nephew who is not a dependant) if they are unable to find a legal personal representative or someone who meets the definition of dependant.

If a fund has made reasonable efforts to locate eligible beneficiaries over a reasonable period of time and has not been able to pay the benefit to the person entitled to it, the fund is required to pay the money to the ATO as unclaimed superannuation.

Although the law permits super funds to pay the death benefit to one or more next of kin if they meet the definition of dependant, financial counsellors told us that some funds still asked for grant of probate or letters of administration. We are concerned that some

funds may be insisting that claimants obtain these documents where this is simply more convenient for the fund than to properly consider the entitlements of each claimant.

Funds may legitimately require letters of administration or a grant of probate where there is a valid binding nomination naming the legal personal representative as the beneficiary, or if there is no nomination and the fund's trust deed requires the money to be paid to the legal personal representative. Even where the death benefit is being paid to the legal personal representative, these documents should only be requested where the amount of money (and therefore the legal risk) is sufficiently large as to justify the cost to the fund.

By requiring claimants obtain these documents when they should not be needed, super funds are making the process more onerous and stressful at a time when people are grieving, and risk creating long delays to money being paid. There is also a considerable risk that the money ends up sitting with the ATO as unclaimed superannuation.

Many super funds also have other onerous and rigid processes that can cause unnecessary delays to money being released. ASIC found that some funds in its review “had procedures that were so risk averse, they may not be in the best financial interests of members”.^[54]

Many of these issues could have been avoided if the deceased person had a binding nomination in place specifying that their super should go to their dependants. However, very few First Nations members have made binding nominations. Only about 12 per cent of Australians with superannuation accounts have a valid binding nomination in place,^[55] although surveys show that twice as many people think they have one.^[56] Not all super funds offer the ability to make nominations, and some of those who do have stringent rules such as requiring paper forms to be signed in the presence of two witnesses and allowing the nomination to lapse if it is not renewed every three years (in line with regulations^[57]). While some funds allow customers to make ‘non-binding’ nominations (often online without needing witnesses), funds are not obliged to respect these types of nomination when deciding who to pay the death benefit to.

Definition of ‘dependant’

A broader issue is that the definition of ‘dependant’ in superannuation law does not reflect the cultural and family realities of First Nations peoples—or of many others in the community. In First Nations kinship systems, people often have strong, lifelong relationships that involve emotional, cultural and practical support. However, these important relationships may not fit the legal definition of ‘dependant’ (which includes a sub-category of ‘interdependency relationship’). Some relationships may meet the legal criteria, but others may not—such as someone who was raised by the deceased but is no longer financially dependent on them.

The legal definition can make it hard to pass on superannuation in a way that respects cultural obligations and people's wishes, because to nominate someone in a binding nomination they must meet the definition of 'dependant'. The definition also creates uncertainty about when a First Nations person's super can be distributed in accordance with kinship practices. Proving kinship ties under current legal rules can be very difficult, and often does not reflect how care, responsibility, and connection work in First Nations communities.^[58] When someone dies, the super fund can be left to choose between competing claims without the cultural competence required—or may insist that a claimant obtains letters of administration to prove their entitlement to the money.

While these issue with the definition of dependant did not come up in interviews for this project, they have been raised many times by First Nations financial counsellors and advocates and remain unresolved. In effect, the current legal framework continues the long history of systems failing to respect First Nations voices, self-determination, relationships and rights.

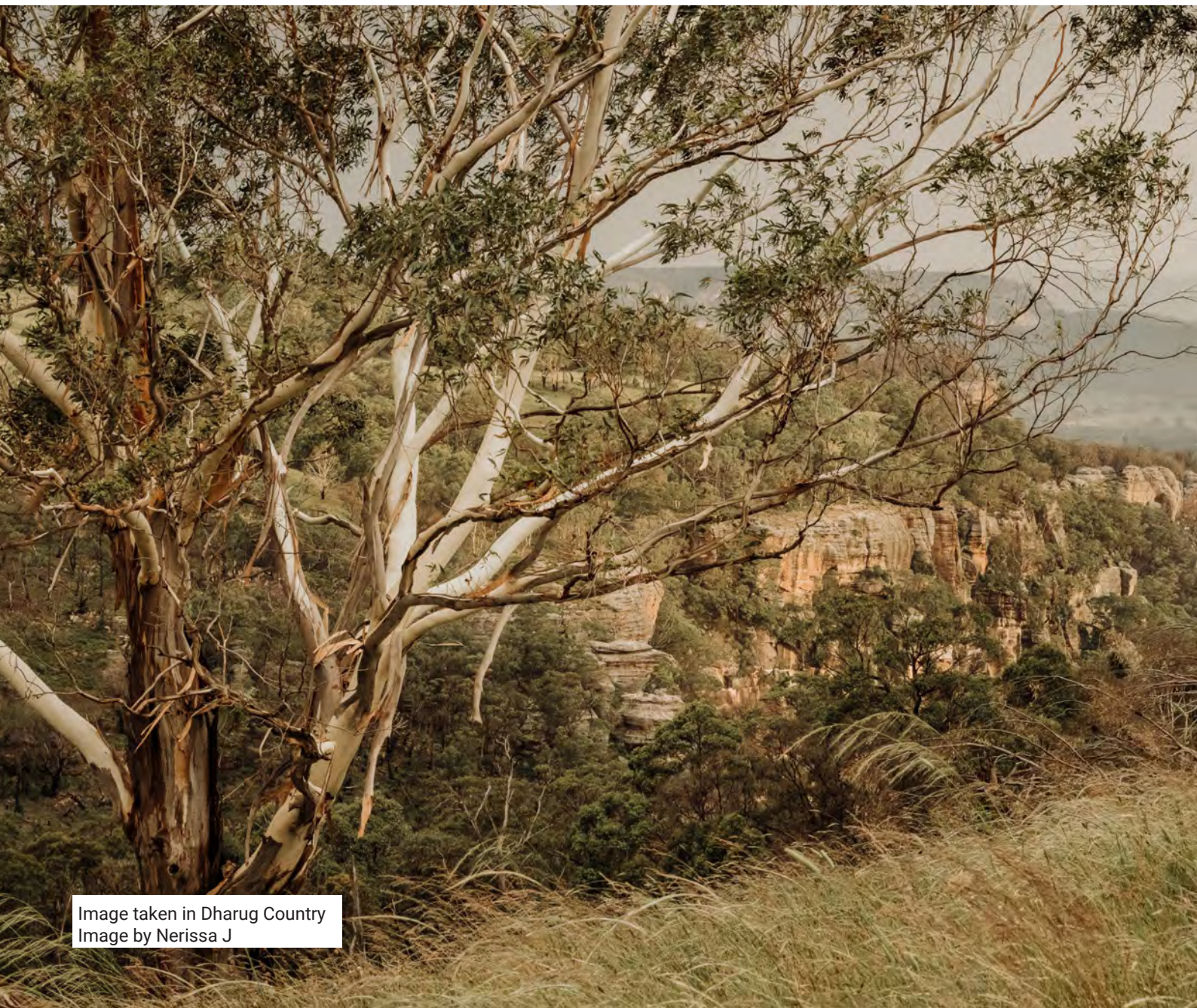


Image taken in Dharug Country
Image by Nerissa J

Action to date

The difficulties First Nations peoples face in accessing superannuation death benefits have been long acknowledged. Despite significant advocacy work by First Nations consumer advocates and representatives, action has been piecemeal and key problems remain unaddressed.

In 2019, the Treasury consulted on changing the law to accommodate First Nations kinship relationships for binding nominations, following a suggestion from the Financial Services Royal Commission that the Government consult on this.^[59] However, Treasury appears to have done nothing more than consultation. No policy response was announced and submissions were never published.

In 2020, the Inspector General of Taxation reviewed the ATO's approach to handling deceased estates, following complaints by tax agents about difficulties accessing information and finalising tax matters for clients who have died.^[60] The review recommended that the ATO clarify its position as to when 'representatives' of the deceased can represent them when probate or letters of administration are not required under state and territory laws.^[61] In an implementation update in August 2022 the ATO said it was looking into whether it could change its practices,^[62] but it appears no changes or updates have occurred since then.

We understand that the ATO may be helping people to get around these constraints by suggesting they submit a lost super search form on behalf of their deceased loved one. When the ATO receives this form, it is able to contact the relevant super fund(s) and share the contact details on the request form. This enables the fund to contact the next of kin directly. This approach is cumbersome but gets around the restriction on the ATO sharing any information with the next of kin without probate or letters of administration. However, it is unclear how many funds are following up with beneficiaries after being notified by the ATO.

In late 2024 and early 2025, Treasury sought feedback on a range of proposals to broaden the exemptions in the tax secrecy laws for when the ATO can disclose taxpayer information. The consultation paper made no reference to superannuation death benefits or the experiences of First Nations peoples.^[63]

In 2024, the superannuation industry association ASFA published a 'service standard' for super funds on processing death benefit payments. This standard provides guidance that encourages funds to support First Nations members and beneficiaries to understand death benefits and to access translators and financial counsellors. It also encourages funds to apply the AUSTRAC guidance when identifying members and beneficiaries without conventional identity documents.^[64] But ASFA's new service standard is not binding on its member funds, and it is unclear how many funds are following it.

In late 2024, ASIC commenced court action against two large super funds (Cbus and AustralianSuper) for failing to process death benefit claims efficiently, honestly and fairly. The allegations are yet to be tested in court. ASIC has also recently provided guidance to superannuation funds on death benefits, including a list of 34 actions relating to improving internal governance, staff training, communications, complaints handling, and support for First Nations members and claimants and those experiencing vulnerability.^[65]

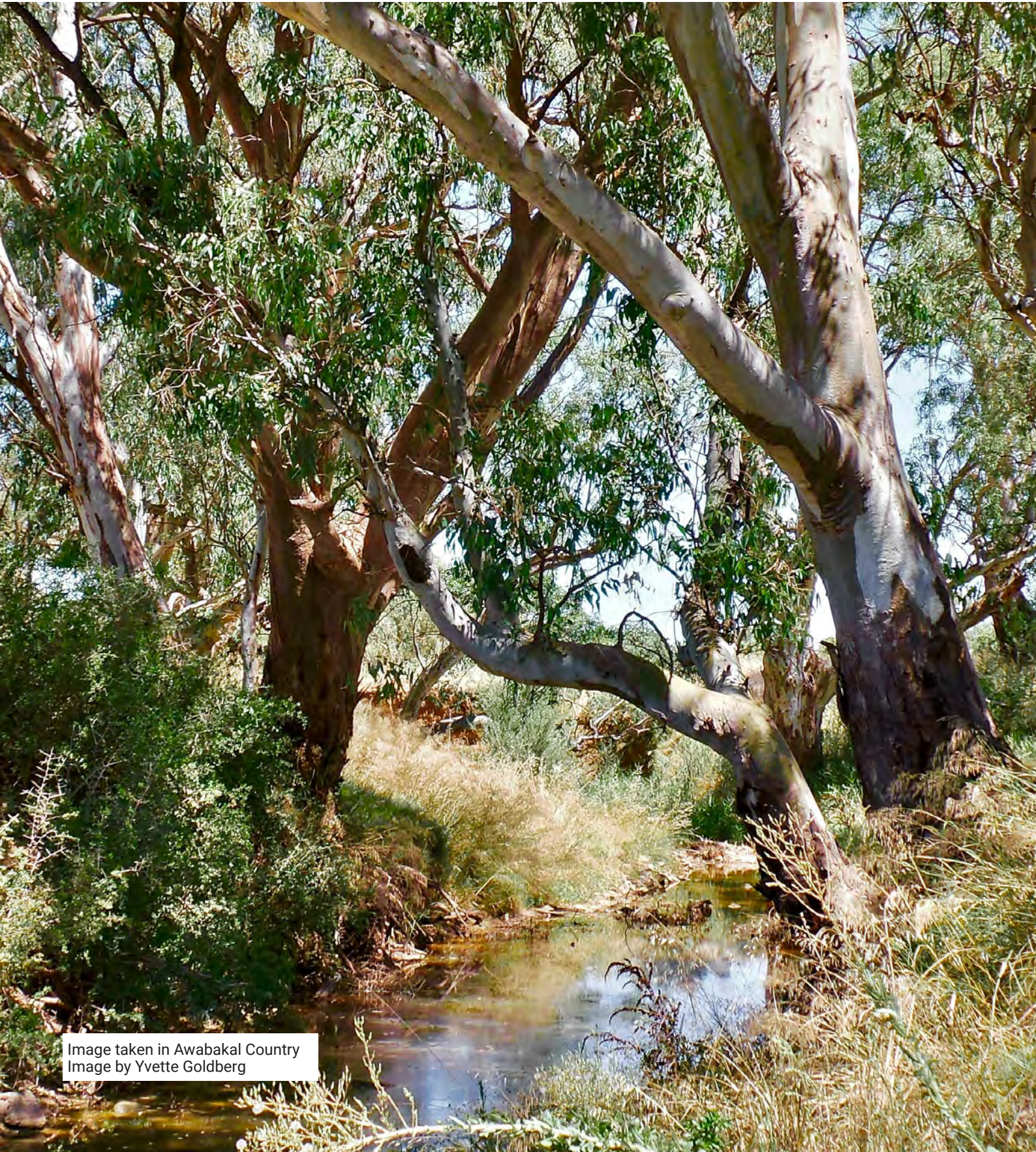


Image taken in Awabakal Country
Image by Yvette Goldberg



Recommendations

First Nations peoples would receive much fairer outcomes from the superannuation death benefit system—and would be much more likely to receive money they are entitled to after a loved one dies—if:

- *they could access information about a deceased loved one's superannuation without undue hurdles and without needing to go through the costly and difficult process of obtaining a grant of probate or letters of administration;*
- *probate or letters of administration were not required for the money to be released when there is a relatively modest amount of super; and*
- *there was greater consistency and certainty in when money can be paid to someone in a kinship relationship with the deceased.*

Some of these outcomes may be achievable through modest changes to existing rules and practices, in addition to the broader improvements in identity verification practices and customer service that is required (as discussed earlier in this report). However, more substantive changes may need to be considered through a comprehensive review of the superannuation death benefit system.

Make it easier to find out where a loved one's super is

Law reform is needed so the ATO can inform the next of kin which super fund(s) their loved one had money in without requiring them to obtain probate or letters of administration. Specifically, the Commonwealth Government should amend division 355 of Schedule 1 of the *Taxation Administration Act 1953* to allow the ATO to disclose this information to the next of kin if they would be eligible to claim the money from the super fund as a beneficiary.^[66] To minimise risks of fraud, information about account balances would not need to be disclosed.

Financial Counselling Australia has been consistently calling for this reform,^[67] and has joined with other consumer groups, super funds and super industry bodies to advocate to Government for it. It is unclear why the Government has not yet progressed the reform, which would make a significant difference to many disadvantaged members of the community.



This process would allow the next of kin to lodge a claim for the death benefit directly with the super fund. To facilitate this, the ATO should also be required to inform the super fund of the next of kin's contact details, and the super fund should be obliged to proactively contact the next of kin with information about how to apply for the death benefit.

To further support this process, super funds should be obliged to provide clear information to potential claimants (for example, on their websites) about how the death benefit claims process works, the likely timeframes, and the documents that are required. This should include clearly explaining the situations when a grant of probate or letters of administration would be required.

Comprehensively review the superannuation death benefit system

Many of the other issues faced by First Nations peoples with superannuation death benefits are complex, and it is difficult to offer definitive solutions for without risking unintended consequences.

A comprehensive review of the superannuation death benefit system is needed to systematically investigate the range of issues faced by First Nations peoples, as well as other long-standing problems with the system.

This review should consider:

- how greater consistency can be achieved in when probate or letters of administration are required for a deceased person's loved ones to claim death benefits (discussed below);
- ways to allow assets to be distributed in line with First Nations kinship relationships and customary laws (discussed below);
- how frictions and delays can be reduced for consumers making a nomination for their own super and claiming death benefits after a loved one has died—for example, by repealing regulations that cause binding nominations to expire after 3 years and reviewing the content and witnessing requirements to facilitate binding nominations to be made digitally.^[68]
- whether and how super funds' discretion over who death benefits should be distributed to should be reduced or removed^[69]—for example, similar to approaches used for pension funds in some North American jurisdictions which set out a hierarchy of entitlements in legislation; and
- how to minimise the risks of fraud and financial abuse.

Some of these issues are discussed further below.

This review should be initiated by the Commonwealth Government in consultation with State and Territory Governments. Ideally it would be conducted by the Australian Law Reform Commission, with the policy objectives and terms of reference set by National Cabinet or the Council of Attorneys-General. The review should consult closely with First Nations representatives, consumer groups and the financial counselling sector to co-design reforms that will reduce barriers to First Nations peoples accessing death benefits.

When probate or letters of administration are required

The review should explore ways to achieve greater consistency for when probate or letters of administration are required for the death benefit to be paid.

This could involve considering practices in the banking industry. Some financial counsellors we interviewed talked favourably of banks' processes. Some said that some banks will release small balances to relatives who have the death certificate and can show they were next of kin, or will accept directions from the public trustee without requiring letters of administration. Some said that banks will always tell relatives if the deceased person had an account with the bank and how much money was in it. These processes are covered by specific provisions in the Banking Code (see **Box 4**). Some super funds already take a similar approach, although practices vary across the industry.^[70]



Image taken in Woiworung Country
by Veronica Todaro

Box 4: Deceased estate provisions in the Banking Code

The Banking Code clarifies that that:

- banks will recognise someone as a representative of a deceased customer if they are the executor (if there is a will) or the next of kin listed on the death certificate (if there is no will), as long as verified copies of these documents and proof of identity can be required (paragraph 137);
- this representative can request information about the account, and ask for funeral expenses and court filing fees to be reimbursed from the account, without needing to obtain a grant of probate or letters of administration (paragraph 138); and
- probate or letters of administration may not be required in some instances, and when this is the case the customer will be told how they can finalise the estate (paragraph 140);

The Banking Code also obliges banks to adopt flexible identity verification practices for First Nations customers (paragraph 48(c)).

Consideration could also be given to law reforms to reduce the need for claimants to obtain probate or letters of administration. This might involve, for example, prohibiting super funds from requiring that claimants obtain these documents in circumstances where the claimant:

- meets the definition of ‘dependant’ in the law; and/or
- the laws of the relevant State or Territory (where the deceased lived) do not require a grant of probate or letters of administration to be obtained in order for the estate’s assets to be distributed—for example, when the estate is small.

The explanatory memorandum for any such legislation would need to make it clear that funds would retain the discretion to waive grant of probate or letters of administration in other circumstances where the benefit of such a requirement is low relative to the risk presented by the claim.

Recognition of First Nations kinship structures

The review should also consider how to provide greater clarity as to when a superannuation death benefit can be given to someone in a First Nations kinship relationship with the deceased (or, more generally, an extended family relationship).

One option is to explore revisions to the definitions of ‘dependant’ and ‘interdependency relationship’ in the SIS Act to provide greater clarity about what dependence looks like—for example, informally adopted children could be included in the definition of ‘child’. This process could embed established case law interpretations of the existing definitions (where appropriate) and the accompanying Explanatory Memorandum could provide guidance on how the revised definitions can apply in a First Nations context.

An alternative option, and more fundamental change, is to replace the definition of dependant with a new definition that a dependant is someone entitled to receive assets from the deceased estate under the laws in the relevant State or Territory.

Some jurisdictions already have provisions that could accommodate First Nations kinship relationships. For example, in New South Wales, a person can apply to a court for a share of a deceased person's assets if they are entitled to a share "under the laws, customs, traditions and practices of the Indigenous community".^[71] In Victoria, a person can challenge a will if they believe they have not been left a fair share of the assets and the deceased had a 'moral duty' to provide for them.^[72]

Any changes to the definition of dependant would affect binding death benefit nominations (by clarifying who can be nominated) as well as the payment rules (which require funds to pay the death benefit to a legal personal representative or dependant(s), unless none can be found after making reasonable enquiries^[73]). There are also similar definitions in the tax laws that may need to be reconsidered.^[74]

Another possibility is to leave the definition of dependant unchanged but broaden the scope of who can be nominated in a binding death benefit nomination—for example, by allowing anyone to be nominated.^[75] While this reform offers a path towards recognising First Nations kinship relationships, issues would need to be addressed before it can be implemented. It would require changes to the payment rules so that the fund is able to pay the money to the person nominated if they are not the legal personal representative or a dependant, but one or more of these exist. This could mean that people who were financially dependent on the deceased may lose the right to challenge the distribution of money, which would be at odds with established practices for both superannuation and ordinary estates. Such a reform would also need to be implemented with appropriate controls to reduce the risk of scams, fraud and financial abuse, and to ensure that super funds adopt effective cultural policies.

Supporting reforms

To further improve outcomes for First Nations peoples from the superannuation death benefit system, State and Territory Governments should make it easier for the next of kin to obtain letters of administration after a loved one dies intestate.

For example, court fees could be waived or reduced for people on low incomes (or who receive income support payments), where the estate is relatively small and there are no conflicting claims. State and Territory Governments could also provide free legal assistance to applicants (subject to a means test) or resource public trustees to help a wider range of people. Even government bodies admit that the process for obtaining letters of administration is 'tedious and tricky' and requires legal assistance,^[76] and yet legal aid is not always available for First Nations peoples experiencing vulnerability.



Image taken in Gadigal Nation
by Richard Pan

RESOURCING FOR THE COMMUNITY SECTOR

To complement the reforms identified throughout this report, there needs to be a boost in resourcing for financial counsellors and case workers to be able to provide a greater level of assistance to First Nations peoples to engage with the super system, especially those who are experiencing vulnerability.

Recommendations

Require the super industry to fund financial counselling and consumer advocacy

Financial counselling agencies rely on a patchwork of funding arrangements across Commonwealth, State and Territory Governments. In 2024, the Financial Counselling Industry Fund (FCIF) was established to support the sector, following an independent review of funding arrangements in 2019.^[77] The review found that many industries contribute significantly to the demand for financial counselling and should therefore contribute to is funding.^[78]

Currently, the banking, insurance, energy, telecommunications and gambling sectors contribute to the FCIF. The super industry does not, even though a survey undertaken after the independent review found that superannuation issues took up about 2.4 per cent of the time financial counsellors spent helping clients (on average), about the same as general insurance (2.7 per cent) and well above gambling (0.3 per cent).^[79]

The super industry needs to step up by contributing funding to the FCIF. The evidence in this report highlights the significant workload being placed on financial counsellors by super funds, especially for financial counsellors assisting First Nations consumers. Financial counsellors are filling the gaps that funds leave by failing to invest in their own customer service.

Other data reveals strong growth in the number of people accessing their superannuation early, with applications for compassionate release increasing by almost 70 per cent since 2019,^[80] and successful applications for severe financial hardship increasing by 20 per cent over the same period.^[81] By assisting people to access their super, financial counsellors assist funds to comply with their obligations to those consumers. It is therefore entirely appropriate for funds to contribute financially to the FCIF.



If the super industry does not voluntarily contribute to funding financial counselling in Australia, the Commonwealth Government should step in by compelling super funds to contribute.

This could be done as part of the existing regulatory levies funds pay. Alternatively, or in addition, the Commonwealth Government could provide greater support to the financial counselling and broader consumer advocate sector by allocating a portion of any revenue collected through infringement notices or civil penalties on super funds. This should include revenue from penalties imposed for breaches of the new mandatory customer service standards.

Similarly, whenever ASIC or APRA negotiates a Court Enforceable Undertaking with a super fund, it should consider making the fund pay a community benefit payment to the financial counselling and broader consumer advocate sector. This would help address the harm caused to individual consumers by poor super fund practices while helping to resource advocacy work aimed at addressing the systemic issues underlying the harm.

Image taken in Taunurong Country
by Eclipse Chasers



Pilot a free legal service for superannuation

The Commonwealth Government should also fund a pilot of a new community legal service focused on helping consumers experiencing vulnerability (including First Nations consumers) to access their superannuation entitlements, particularly where there are complex legal issues involved.

This service would provide free legal assistance for matters such as complex disability insurance claims and dealing with delayed death benefits—including where super funds impose unnecessarily onerous demands, or where letters of administration are required.

The existing community legal sector has limited resourcing and is not funded to provide advice on complex superannuation matters. As a result, many consumers experiencing vulnerability fall through the cracks. Some disability insurance claims through superannuation can be so complex—and beyond the expertise of many financial counsellors—that some are unable to help clients with these claims. Some consumers turn to specialist law firms for help, but this often means that a significant portion of any insurance payout is eaten up in legal fees.

A community legal service for super could be resourced to provide culturally competent and trauma-informed assistance and advocacy for consumers experiencing vulnerability, as well as outreach and education activities. The service could also work closely with the super industry, the regulators, AFCA and consumer advocates to identify systemic areas for improvement in the industry and ways to better deliver on community expectations. By collecting data and case studies on issues consumers are facing, the service could also contribute to policy development over time.

The Commonwealth Government should specify the intended outcomes from a pilot, provide funding (for example, sourced through industry levies on super funds) and establish a review process.



TRANSPARENCY AND MEASURING SUCCESS

Clear reporting on what super funds and the ATO are doing to deliver better outcomes for First Nations consumers is essential, regardless of which other reforms in this report are progressed. Even without legislative change, greater transparency would allow laggards in the industry to be named and shamed, and help to lift performance.

Reporting at the entity level can help regulators, and the community more broadly, to identify outliers and push them to lift their performance. And at a system level, performance reporting is needed to assess whether the reforms identified in this report are achieving their intended objectives and to pinpoint where further reforms are needed.



Transparent reporting can also help individual consumers (and financial advisers) assess whether they are in a super fund with an adequate level of service and, if they are not, to switch. This can put a degree of competitive pressure on super funds to further lift their performance. Even though financial counsellors do not recommend specific super funds to their clients, reliable performance metrics would help financial counsellors to support their clients and would assist the broader sector in its advocacy efforts towards identifying solutions to systemic industry problems.

The Commonwealth Government should require public reporting on the performance of super funds across a range of indicators reflecting their service delivery and outcomes for First Nations peoples. This should start with the indicators set out in **Table 4** and be refined and expanded over time. These indicators should be reported on at least annually, with those related to processing/handling times and breaches reported on at least quarterly.

Comparable indicators should be reported on by the ATO in terms of its engagement with First Nations peoples. The Government should update its Statement of Expectations with the ATO to require it to report against the performance indicators at least annually.

The Commonwealth Government should amend legislation to require (and enable) APRA to make reporting standards for the collection of this data, and for timely release of the data in an accessible format by APRA. This approach can achieve consistency across the industry and allow regulators, consumer advocates, the media and others to easily compare the performance of individual funds. To ensure the data is reliable, APRA should be given powers to penalise super funds that repeatedly fail to meet their reporting obligations (for example, by reporting poor-quality data or missing deadlines).

To facilitate comparisons, ASIC or APRA should present the data in a plain language way that is easy for consumers to understand—for example, using summary performance measures such as ‘traffic light’ indicators. Key measures for each super fund could be published regularly on ASIC’s Moneysmart website, similar to the existing publication of claims handling measures for individually named life insurers based on data collected by APRA.^[82]

Separately, super funds should be required to publish their performance data in a prominent place on their website. This would assist consumers to make an informed decision about whether to join the fund or switch to a different fund. The requirement could be imposed by adding performance data to the list of information that funds must publish on their websites under section 1017DA of the Corporations Act.

Super funds should also be required to disclose key policies and procedures on their websites, as recommended earlier in this report. This includes policies on assisting customers with identity verification, a vulnerability policy, and a First Nations customer service policy.

Table 4: Performance reporting indicators for super funds

TOPIC AREA	INDICATORS
Identity verification	<ul style="list-style-type: none"> ● Number of fund members who have attempted to verify their identity but are unable to meet standard ID requirements, of which: <ul style="list-style-type: none"> ● were offered alternative or flexible identification arrangements (number of customers and number of attempts); ● were successful in doing so (number of customers and number of attempts); ● changed personal information (such as name or date of birth) because the super fund held incorrect information. ● The number of First Nations members in each of the above categories.
Customer service	<ul style="list-style-type: none"> ● Number of members who have disclosed they are First Nations or not First Nations, or have declined to disclose this information. ● Number of breaches of each customer service standard. ● Number of applications processed within a specific time period, for: <ul style="list-style-type: none"> ● Applications for withdrawing money in retirement ● Applications for releasing money for financial hardship ● Insurance claims. ● Number of applications for each of the above and outcomes (application granted, declined, in process or withdrawn). ● Average call centre waiting times and call volumes for: <ul style="list-style-type: none"> ● General call centre ● First Nations call centre team (where relevant). ● Number of members requesting or using an interpreter to communicate with the fund, and number of requests granted by the fund. ● Number of financial counsellor authority requests received by the fund, and number granted. <p>All indicators should be separately reported for the subset of members who identify as First Nations.</p>
Death benefits	<ul style="list-style-type: none"> ● Number of members with a binding beneficiary nomination, of which the number who are recorded as identifying as First Nations ● Number of deaths of members, of which: <ul style="list-style-type: none"> ● A valid nomination was in place ● A legal personal representative or dependant could not be found ● A grant of probate or letters of administration were required ● The fund death benefit distribution decision was contested ● Money was unable to be paid to a valid claimant and/or was transferred to the ATO as unclaimed super. ● Number of death benefit claims processed within 90 days and claim outcomes (similar to the customer service indicators). ● The metrics and measures identified in ASIC's death benefits report.^[83]

A ROADMAP FOR REFORM

While some of the reforms identified in this report will require legislation to go through Parliament, all are achievable by the end of 2026. Treasury should draft a legislative package of law reforms and consult publicly on this package by the end of December 2025. The legislation can then be put to Parliament in the first half of 2026, with changes taking effect on 1 July 2026 (see **Table 5**).

The super industry and ATO do not need to wait for reforms to pass Parliament. Many things can be progressed and implemented now, including changing customer service practices and embedding more proactive and inclusive approaches to helping First Nations customers with identity verification (see **Box 5**).

Along with the changes that super funds and the ATO can start implementing now, there are other easy wins which the Commonwealth Government could progress in the event of delays to a legislative package. These include:

- Amending regulations to require transparent performance reporting by super funds on the issues raised in this report;
- Encouraging super funds to start collecting data on their members' First Nations status, by clarifying that there are no impediments do funds doing this providing they obtain free and informed consent and communicate clearly about the purpose and use of this data, and by exploring whether an obligation can be imposed through regulation;
- Supporting the ATO's vulnerability review and updating the Statement of Expectations with the ATO to set clear expectations and timelines for implementing changes; and
- Working with the States and Territories to initiate a comprehensive review of the superannuation death benefits system.



Table 5: Roadmap for reform

Due date	Reform Actions
Legislative and regulatory reform package	
End December 2025	<ul style="list-style-type: none"> • Treasury to publicly consult on draft legislation (including explanatory memorandums) for: <ul style="list-style-type: none"> • mandatory customer service standards for super funds, including an obligation for funds to proactively assist customers with identity verification (where legislative amendment is needed); • amending tax secrecy laws so the ATO can more easily disclose information about super accounts to next of kin; • simplifying the rules for making binding death benefit nominations; and • requiring APRA to make reporting standards for consumer outcomes and service delivery. • Treasury to work with First Nations representatives and consumer groups to develop draft customer service standards.
End June 2026	<ul style="list-style-type: none"> • Government to introduce legislative package into Parliament and seek its prompt passage. • Treasury to publicly consult on supporting regulations.
1 July 2026	<ul style="list-style-type: none"> • New legislation and requirements come into effect.
Additional reforms on identity verification	
End December 2025	<ul style="list-style-type: none"> • ATO to complete its vulnerability review and commence implementation.
End June 2026	<ul style="list-style-type: none"> • Outcomes of ATO vulnerability review to be fully implemented. • Embed new processes for Centrelink and the ATO to work together to help First Nations peoples verify their identity to the ATO.
Additional reforms on customer service	
End December 2025	<ul style="list-style-type: none"> • Commonwealth Government to update Statement of Expectations for the ATO. • ATO to complete its vulnerability review and commence implementation. • Commonwealth Government to introduce legislation to Parliament, if necessary, to: <ul style="list-style-type: none"> • support implementation of the ATO's vulnerability review; and • require banks and super funds to work together to verify account holder information. • Commonwealth, State and Territory Governments to make it easier for people to obtain or update standard ID documents. • Commonwealth Government to add proof of age cards to the Digital Verification Service.
End June 2026	<ul style="list-style-type: none"> • Any necessary law reforms to come into effect. • Outcomes of ATO vulnerability review to be fully implemented.

Table 5: Roadmap for reform - cont

Additional reforms on death benefits	
End December 2025	<ul style="list-style-type: none"> Commonwealth Government, with inputs from State and Territory Governments, to finalise terms of reference for a comprehensive review of the superannuation death benefit system, to report back in 12 months.
End December 2025	<ul style="list-style-type: none"> State and Territory Governments to implement reforms to make it easier for the next of kin to obtain letters of administration after a loved one dies intestate.
End December 2026	<ul style="list-style-type: none"> Comprehensive review to report to Governments, and a law reform process to commence to implement recommendations (if appropriate).
Resourcing for the community sector	
End December 2025	<ul style="list-style-type: none"> Commonwealth Government to fund a pilot community legal service for super.
1 July 2026	<ul style="list-style-type: none"> Super industry to start contributing to the Financial Counselling Industry Fund.
Reporting and transparency	
End December 2025	<ul style="list-style-type: none"> Commonwealth Government and APRA to publicly consult on performance reporting indicators and requirements for super funds and on new disclosure requirements for super funds, including a First Nations customer service policy.
1 January 2026	<ul style="list-style-type: none"> Performance reporting and disclosure requirements come into effect.

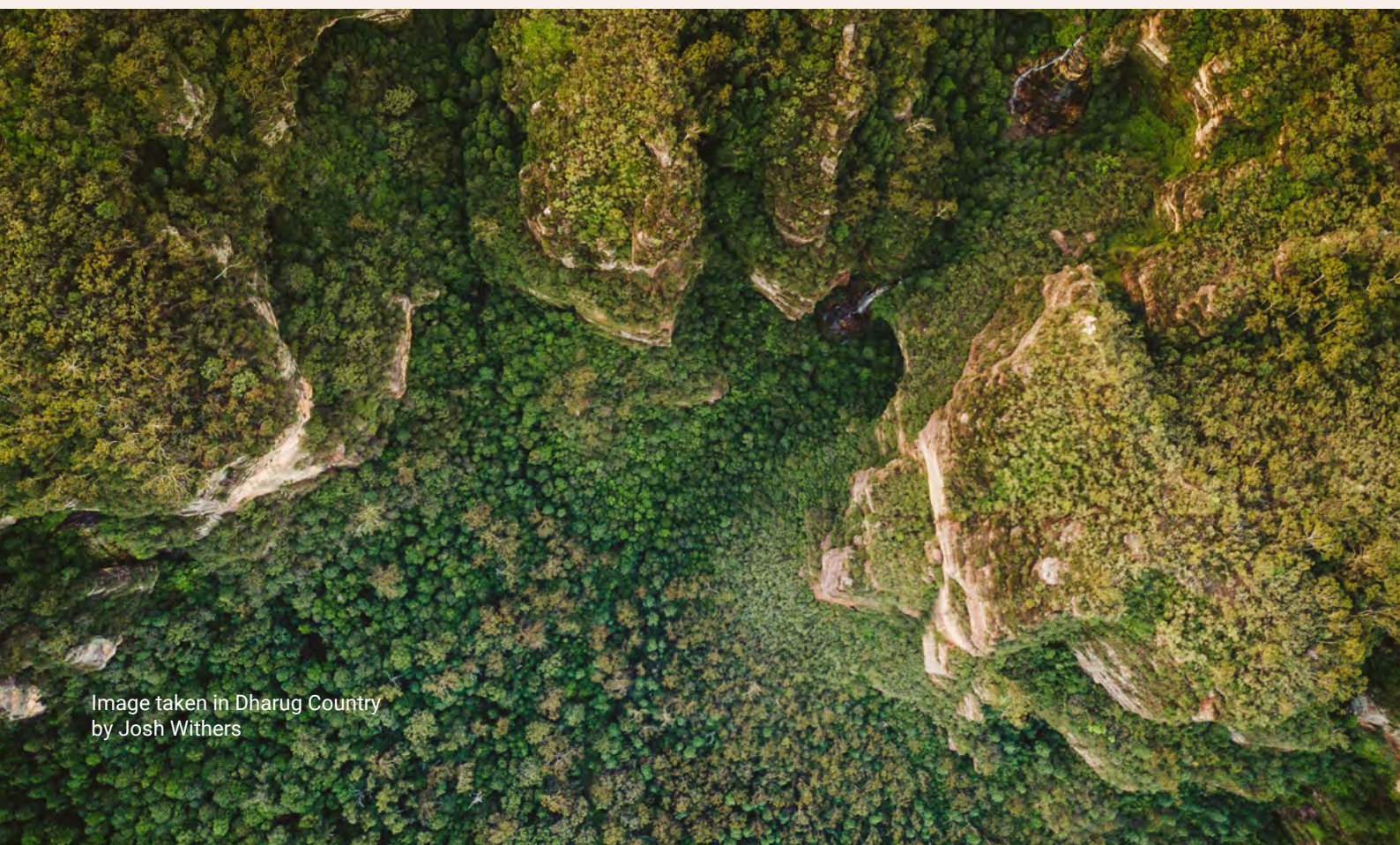


Image taken in Dharug Country
by Josh Withers

Box 5: What super funds can do

The super industry does not need to wait for government reforms to start making super work better for First Nations peoples. There are many things funds can do now, such as:

- Uplifting customer service so that all consumers receive clear and straightforward communications, applications and claims are handled in a fair and timely manner, and complaints are acted on quickly
- Developing and embedding policies for supporting consumers experiencing vulnerability, including empathetic and flexible approaches to customer service
- Embedding proactive approaches to help First Nations peoples with identity verification, including by adopting AUSTRAC's guidance
- Publishing the fund's approach to recognising alternative forms of identification and its processes for death benefit claims, so that consumers, financial counsellors and case workers know what to expect
- Providing customer service staff with cultural competency training (from a registered First Nations organisation), clear procedures and adequate resources to flexibly assist First Nations consumers
- Providing free access to interpreters in First Nations languages
- Proactively asking consumers if they would like to disclose their First Nations status for the purpose of the fund delivering tailored and culturally appropriate customer service to First Nations members (while respecting their privacy and principles of Indigenous Data Sovereignty)
- Offering tailored customer service to consumers who live in remote or very remote postcodes with a high proportion of First Nations peoples^[84]
- Proactively following up with people when a lost super search form is received from the ATO
- Implementing all the recommendations in ASIC's recent report on death benefits^[85]
- Partnering with First Nations stakeholders to better understand the issues faced by First Nations consumers and to co-design solutions
- Participating in outreach activities and events, such as the First Nations Foundation's Super Wellness Week
- Learning from other sectors such as banking and insurance, including the good practices and recommendations in the Banking Code body's report on inclusivity, accessibility and vulnerability.^[86]

The super industry should work together to uplift practices. Industry bodies can play a central role in documenting and sharing good practices and implementation lessons. Super funds should not treat innovation to improve services for consumers experiencing vulnerability as a source of competitive advantage or justification for failing to collaborate with other funds.

Each super fund and industry body should publicly explain what it will do improve outcomes for First Nations consumers and commit to clear timeframes. They should ideally set this out publicly in a Reconciliation Action Plan.



Image taken in Tharawal Country
by Annette Ogilvie

ENDNOTES

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- 13 ASIC (2025), Taking ownership of death benefits: How trustees can deliver outcomes Australians deserve, Report 806.
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- 18 The obligation should cover all beneficiaries, including the people who have a claim to the death benefit after someone has died.
- 19 See section 912A of the Corporations Act and section 52 of the SIS Act, respectively.
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- 30 Section 52 of the SIS Act.
- 31 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (2019), Final Report.
- 32 ASIC (2025), Taking ownership of death benefits: How trustees can deliver outcomes Australians deserve, Report 806.
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- 52 Subregulation 6.21(1) of the Superannuation Industry (Supervision) Regulations 1994.
- 53 See Sections 10, 10A, 59 and 61(1)(b) of the SIS Act and Regulation 6.22 of the SIS Regulations. There is a similar definition of dependant in sections 302-195 and 302-200 of the Income Tax Assessment Act 1997 (used elsewhere in that Act to exempt the benefit being taxed for a dependant), which differs to the SIS Act definition by only including a child if they are aged under 18.
- 54 ASIC (2025), Taking ownership of death benefits, p. 5.
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- 56 Super Consumers Australia (2024) Pulse Survey
- 57 Regulation 6.17A of the SIS Regulations.
- 58 See Financial Counselling Australia (2019), Submission in response to Treasury Discussion Paper: Superannuation binding death benefit nominations and kinship structures. For example, adopted children appear to be a grey area, with superannuation law appearing to recognise registered adoptions but not informal adoptions which may be common in some First Nations communities. Under the definition of dependant used in the SIS Act, an adopted child means a child adopted under the law of a State or Territory (or another place that would be recognised under the law of a State or Territory). The definition of child also references the Family Law Act 1975, which has a similar definition of 'adopted'.
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COVER ART & ILLUSTRATIONS

Gene Ross (Wuri Wuri) is a proud Dharawal saltwater man, 4th generation born on Gadigal land, his family's sitting place. His strong connections to the local Indigenous community and life as a saltwater man bring a unique perspective to the art and photography he creates. Gene's vision is to share his love of Country and the story of the land on which we live through his paintings.

The superannuation journey of First Nations people is the focus of this artwork. The warrior and mother figure are a symbol of dignity and strength; they, along with the shield and the hands, convey a message of help and protection for those who need it. The message sticks highlight the way Super Consumers and Mob Strong fearlessly advocate for, and convey important financial advice to, First Nations consumers. The footprints and tracks that flow towards the shield represent the journey people make to their sitting and resting places, which signify the end of work life and the time of rest that is retirement.

