

Submission to ACCC Unsolicited selling and lead generation review

Jul 31, 2023

Super Consumers Australia is the people's advocate in the superannuation sector. Super Consumers Australia advances and protects the interests of people on low and middle incomes in Australia's superannuation system. It was founded in 2013 and received funding for the first time in 2018.

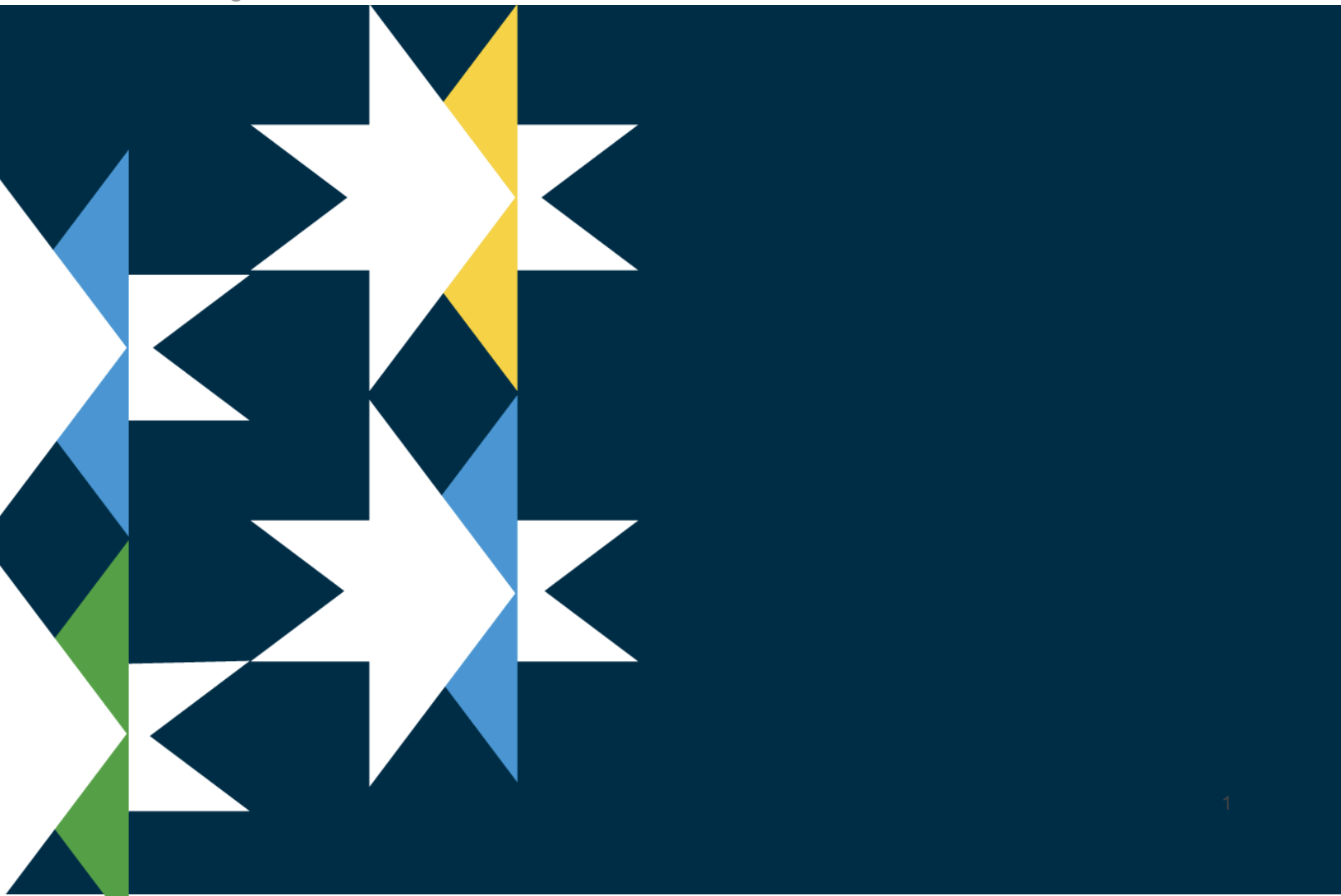


Table of Contents

Submission to ACCC Unsolicited selling and lead generation review	1
Table of Contents	2
Introduction	3
Summary of Recommendations	4
Cold calling and social media ‘super switching’ schemes	5
Lead generation and sales process	5
(1) Lead generator reaches the consumer	5
(2) Lead generator calls the person to discuss their super	5
(3) Person is advised (and pressured) to move their super	6
(4) Person switches their super and pays high fees	6
Commercial arrangements	6
Consumer harms	7
Risk of significant financial losses	7
Poor distribution of advice	7
Exorbitant fees	8
ASIC’s work	9
Legislative gaps	10
Hawking prohibition does not apply to financial services	10
Recommendations	10
Cooling off rights are largely useless for superannuation	10
Lead generators may not require a licence	11
Recommendations	12
Too many incentives to give conflicted financial advice	12
Appendix A: Sample Clickbait Ad	13

Introduction

Super Consumers Australia appreciates the opportunity to contribute to the ACCC's review into unsolicited selling and lead generation in response to the Consumer Action Law Centre's (Consumer Action's) designated complaint. In relation to lead generation, Consumer Action's designated complaint points to evidence that:

- lead generation is used to avoid legal requirements for unsolicited selling, and
- the ensuing sales have caused people significant financial and personal stress.

Unsolicited selling occurs when a salesperson approaches a consumer uninvited, often by phone, to negotiate a sale. Unsolicited selling can often involve the use of pressure selling practices by salespeople to convince a consumer to agree to a sale. Lead generation refers to the process of identifying consumers as potential sales targets (or 'leads') for future selling. Lead generation is used to obtain leads for unsolicited selling. Lead generation is often undertaken by specialised businesses who are paid to generate leads on behalf of a third party ('lead generators').

This submission outlines the widespread and inherently harmful lead generation and pressure selling practices in superannuation that we have observed, that consumers have shared with us, and that have been reported by the Australian Securities and Investments Commission (ASIC) and in [recent research](#) undertaken by consumer advocate Carolyn Bond AO. We have also included a summary of the work that has been done by ASIC to address these harmful practices.

Where superannuation products are involved, lead generators:

- exploits people experiencing vulnerability;
- undermines informed consent;
- drives the sale of unsuitable and/or poorly performing products;
- facilitates misleading conduct;
- exploits regulatory gaps and circumvents consumer protections;
- adds no value to consumers;
- erodes superannuation balances due to exorbitant fees;
- jeopardises people's life savings, and their hopes of a comfortable retirement;
- undermines the security of the superannuation system;
- increases reliance on taxpayer-funded social security (e.g. Age Pension); and
- erodes confidence in the integrity of the financial system.

We note that ASIC is the consumer protection regulator for superannuation products. We would strongly encourage the ACCC to engage with ASIC about their work in relation to the unsolicited selling and lead generation practices in the superannuation industry.

Insights from the superannuation industry are highly relevant to this consultation because lead generators typically work across multiple industries and may not be directly engaged in providing a financial service. They are within the ACCC's remit and a coordinated approach is necessary to shut down harmful practices.

Summary of Recommendations

Recommendation 1: The Government should amend the Corporations Act to prohibit the unsolicited sale of financial advice.

Recommendation 2: Lead generators should not be permitted to generate leads in relation to financial services or products.

Cold calling and social media ‘super switching’ schemes

Lead generation and sales process

Over the past few years, there have been many reports - to us and in the media - of super switching schemes. Many of these schemes appear to be similar. We have described the typical process of ‘super switching’ below. This summary is based on our observations, those reported to us by victims of these schemes, [ASIC’s insights article](#) (7 May 2024) and [research by Carolyn Bond AO](#) (14 July 2025).

(1) Lead generator reaches the consumer

Super switching schemes start when a person clicks on a social media clickbait ad or receives an unsolicited phone call from a lead generator.

The **social media click bait ad**, ‘warns’ people that they may be in a poorly performing super product (often identifying several large super funds) and will not be able to retire securely, and offers to compare the person’s super to other super products for free.

If a person clicks on the ad, they will be directed to complete a form which collects the person’s information, such as their super fund and balance, age and contact details. It is unlikely to be clear to the person filling in their details which company/companies this information will go to, and how their information will be used. See Appendix A for an example ad and contact form.

The **unsolicited phone call** will involve similar messages and the collection of information in addition to the messages in (2) below.

(2) Lead generator calls the person to discuss their super

Having received the person’s phone number through the clickbait ad form (or another source), the lead generator will contact the person to offer a ‘review’ or super comparison. The lead generator will express doubt about the performance of the person’s current super fund and make statements about how they could be getting better returns by switching to another product.

As part of this call, the lead generator may obtain information from the person which they pass on to a financial adviser who prepares a statement of advice (SOA) which the lead generator relays back to the person. This can include an ‘appointment’ where (purportedly) advice is provided about superannuation.

Alternatively, the lead generator may simply pass on the person's information to a financial adviser who contacts the person to discuss their super. In many of the calls that Carolyn Bond received, she reported it was not clear whether she was speaking to a lead generator or a financial adviser. Lead generators may or may not hold an Australian Financial Services (AFS) licence.

(3) Person is advised (and pressured) to move their super

A financial adviser will then prepare an SOA which recommends that the person move their super to another product (either a super platform or a self managed superannuation fund (SMSF)) and invest in a high risk managed investment scheme (often property). The adviser may recommend that the consumer invest their entire super account in one investment and claim that the expected returns will be high.

The advice may be scoped or limited to avoid matters where the advice would not align with the person's best interests (e.g. should the person move to an SMSF as opposed to what should the person invest their SMSF in). The SOA may contain misleading statements about the performance of the recommended investments (as was the case for several of the Shield advisers who ASIC has since banned).

While the person will generally be given the SOA, the lead generator or adviser will use high-pressure sales tactics to convince the person to make the switch quickly before doubt or inaction takes hold.

(4) Person switches their super and pays high fees

The person will be charged for the advice, administration fees, transaction fees and any fees associated with setting up and administering an SMSF (if applicable). These fees will be paid from the person's super and can amount to over \$20,000 upfront. They will also pay ongoing fees, which can include administration, audit, accounting, and financial advice fees amounting to over \$10,000 annually (depending on whether they have an SMSF).

Commercial arrangements

We understand that typically financial advisers will have contractual relationships with the lead generator as well as the super fund promoter or SMSF establishment business. Lead generators are often paid a commission by the financial adviser for every consumer who agrees to switch. In some cases, the financial advice licensee may be paid a marketing fee in relation to the underlying investment that is recommended (as was the case in First Guardian).

Consumer harms

Risk of significant financial losses

Lead generators ruin lives. In relation to superannuation, lead generators are particularly dangerous because:

- they exploit people's fears, vulnerabilities and lack of financial knowledge to sell them high risk investments and SMSFs which are unlikely to be suitable for most people;
- they facilitate sales which involve large sums of money saved over long periods of time that cannot easily be recouped;
- the people who are most attractive to lead generators are those who are about to retire (have higher balances) and have limited working years to recover from losses.

Some of the high risk investments that consumers have been moved into as result of switching schemes have become insolvent with the result that people have lost their entire super savings (e.g. [First Guardian Master Fund](#), [Shield Master Fund](#) and [Australian Fiduciaries Ltd](#)).

We recently [published a news article](#) about Peter (not his real name) who was convinced to move his super into a platform and invest over \$440,000 in First Guardian. Liquidators for First Guardian recently confirmed that it is unlikely that investors will get much of their money back and that it will take years before they know for sure how much. At 64 years old, Peter can no longer afford to retire and is worried he will have to work until he dies.

Poor distribution of advice

There are no benefits to the use of lead generation in the sale of financial advice. It is easy for a consumer who wishes to obtain financial advice to find it, either directly through their existing super fund, or by searching for a licenced adviser using ASIC's [financial adviser register](#). In both cases, the person has the opportunity to (a) make a choice about who they are dealing with and (b) check whether they are licenced and qualified to provide the advice sought.

Advice provided as part of a lead generation model has a history of being poor and invariably similar: to invest in platforms or SMSFs with higher risk and higher fees (see e.g. First Guardian and Shield Master Funds).

However, many of the victims of super switching schemes never needed financial advice in the first place - many were invested in large, highly regulated super funds subject to annual performance testing by the Australian Prudential Regulation Authority. To the extent those people were interested in shopping around, there is a free independent and personalisable comparison tool for MySuper products on the [Australian Taxation Office website](#), which could have assisted them to choose a fund with better performance and/or lower fees - without the risk of losing their life savings.

Exorbitant fees

The primary goal of super switching schemes is to generate income for lead generators, financial advisers and (where relevant) SMSF promoters. Revenue models incentivise the sale of products that are totally inappropriate for consumers. Even where recommended investments do not collapse, high fees unjustifiably erode a person's super balance. In exchange, the consumer gets no benefit and puts their comfortable retirement in jeopardy.

Peter's financial adviser Mark (not his real name) worked for a company that was related to the promoter of the super fund (AusPrac) he was recommended to join. Mark's company was an authorised representative of a business owned by a man who was apparently paid \$19 million to market First Guardian. It is no surprise that Mark recommended both the super fund his employer was related to and the investment the licensee's owner got paid to market.

Peter paid thousands of dollars to Mark for the conflicted advice he provided to invest in First Guardian. He also paid administration and transaction fees to his super fund. Now Peter can't close his account with his super fund because his investment in First Guardian is frozen. That means his super fund is still charging him high administration fees to access a platform with one frozen investment on it. The fund may continue to charge him until the liquidator figures out whether investors are going to get anything back and adjusts the unit price to reflect the actual value of his investment (which may be zero).

ASIC's work

As set out in ASIC's [insights article of 7 May 2024](#), starting in 2023, ASIC conducted a review of cold calling for superannuation switching business models, amid evidence of poor consumer outcomes arising from conflicted financial advice as well as large numbers of people switching to platforms and high risk investments that may have been unsuitable for them. ASIC had various concerns in relation to the behaviour of financial advisers and superannuation trustees, but also in relation to lead generators. ASIC also [published a report](#) about the obligations of superannuation trustees to oversight financial advisers who charge their members fees.

More recently, ASIC has been engaged with the insolvencies of three major investment schemes which have impacted super consumers ([Shield Master Fund](#), [First Guardian Master Fund](#) and [Australian Fiduciaries Ltd](#)). We understand that ASIC is investigating the management of the investment schemes, financial advisers who moved people into these schemes as well as the super funds who made the investments available to consumers through their super funds. It is unclear whether ASIC has the jurisdiction to investigate the lead generators involved, but ASIC has already banned or cancelled the licences of several advisers and advice licensees who were involved with Shield or First Guardian. Based on current estimates, the collapses of these three schemes have impacted over 12,000 people to the tune of \$1.2 billion.

ASIC has also issued [consumer alerts](#) and undertaken a number of [consumer campaigns](#) and to alert people to the risks of super switching schemes, urging them to just hang up on cold callers.

Legislative gaps

It is clear that the current regulatory regime is not effective in preventing financial and personal harm to a significant number of Australians, many of whom may be experiencing vulnerability. While ASIC is working to address the misconduct that has occurred in these and other cases, it is hampered by gaps in the law which allow unscrupulous super switching schemes to persist. In this section, we have identified the gaps in consumer protections related to superannuation and financial advice, but note that some of these gaps also exist under the equivalent laws for non-financial products.

Hawking prohibition does not apply to financial services

It is currently legal to sell a person unsolicited financial advice. The ‘hawking prohibition’ in section 992A of the Corporations Act 2001 (Corporations Act) prohibits the issue, sale or offer to apply for or purchase a *financial product* in the course or because of an unsolicited contact with a retail consumer. However, it does not prohibit the unsolicited sale of a *financial service*, including financial advice (whether personal or general advice). Further, the hawking prohibition does not apply where the offer of the financial product takes place in the course of the financial adviser providing personal financial advice (see s991(2)(a) of the Corporations Act).

The result is that it is currently legal under financial services law for a cold caller to convince a consumer to obtain financial advice, then for a licenced financial adviser to sell them a high-risk superannuation product in the course of providing personal financial advice. This is a major gap in the hawking laws that the Government needs to close as soon as possible.

Recommendations

Recommendation 1: The Government should amend the Corporations Act to prohibit the unsolicited sale of financial advice.

Cooling off rights are largely useless for superannuation

As noted in Consumer Action’s work on unsolicited selling, the efficacy of the ‘cooling-off’ protection is highly questionable, and overall it appears to be a largely ineffective consumer protection (Designated Complaint, p 19).

Section 1019B of the Corporations Act gives a purchaser of a financial product a time-limited right to “return” the product and obtain a refund of the money they paid to acquire it. In the context of super switching schemes, cooling off gives a consumer the right to obtain from the superannuation trustee any money paid to a superannuation fund, including any fees charged by the trustee.

Cooling off does not give the person a right to get money back that was paid to a financial adviser for advice or to an SMSF establishment business to set up or administer an SMSF (including accounting, auditing or legal fees). As previously stated, these fees could be in excess of \$20,000, which is a lot of money for someone with a smaller super balance. In the case of an SMSF, the cooling off right is a right against the person themselves as trustee of the SMSF - useless for getting back fees paid to third parties that were made in the person's capacity as trustee.

If a consumer exercises a cooling off right with a super fund, the fund is still limited to paying that money to another super fund (unless the person has reached preservation age). Cooling off does not create an obligation on the part of any other fund to accept the money. While most public offer funds will accept new customers, the person may not be able to get back into the same fund they left or obtain the same product, insurance or fee levels they previously had, with the result that the person may still be worse off, even if they do manage to get a refund.

If the person attempts to exercise their cooling off right, but they have invested in a product for which redemptions have been halted (such as the case for Shield and First Guardian), the money in that product cannot be returned.

The right of return and refund under section 992AA of the Corporations Act (which builds on the cooling off period in section 1019B) only applies where section 992A has been breached, but as discussed above, it is not illegal to hawk financial advice.

The ineffectiveness of cooling off rights is particularly concerning in the context of the super switching business model, given consumers' retirements are at risk.

Lead generators may not require a licence

Carrying on a financial services business without an AFS licence issued by ASIC is an offence under the Corporations Act. Depending on the activities undertaken by lead generators (the types of statements they make, their level of involvement in the sale of financial products, the nature of remuneration etc), some may be required to hold an AFS licence. ASIC has published an infosheet ([INFO 282: Unsolicited contact leading to financial advice](#)) which explains when lead generators require an AFS licence and what their obligations are and includes a super switching example.

Where a lead generator structures their business so as to avoid needing an AFS licence, there is little ASIC can do to deter harmful conduct. This means the super switching business model requires the efforts of both the ACCC and ASIC to shut down.

As noted above, lead generation is particularly harmful when used in relation to financial services because many of the sales that result involve significant financial decisions that may not be in the person's best interests and which may threaten their retirement security.

Given the significant sums of money that were involved in the recent First Guardian, Shield and Australian Fiduciaries collapses - over \$1 billion - it is clear that lead generation is both a very successful and very dangerous practice.

In our view, lead generators should not be permitted to generate leads in relation to or for the purposes of selling financial services or products, whether or not the lead generator is itself engaging in a financial service. Because of the significant harm that lead generation can cause, lead generators should face strong penalties for harmful lead generation practices, with additional penalties for practices that target or impact people experiencing vulnerability.

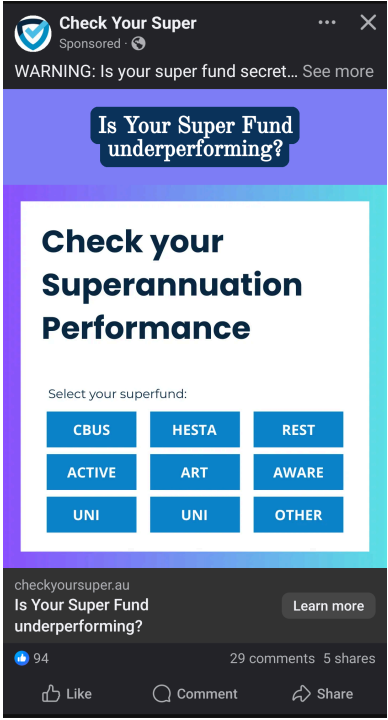
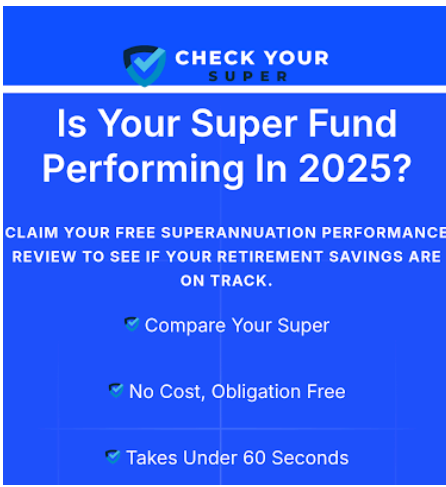
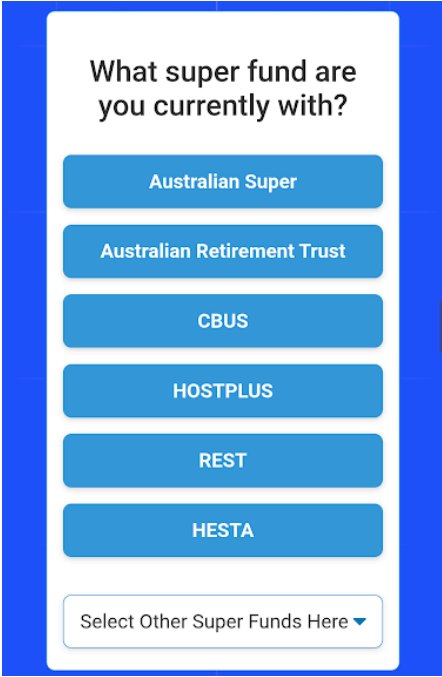
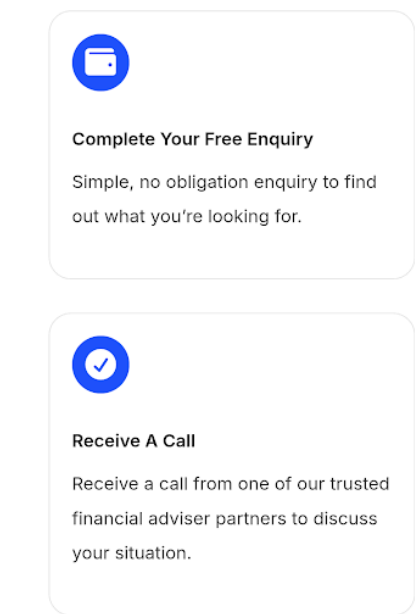
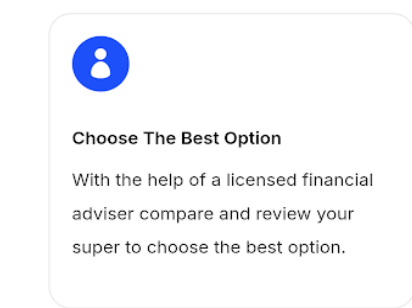

Recommendations

Recommendation 2: Lead generators should not be permitted to generate leads in relation to superannuation and financial advice.

Too many incentives to give conflicted financial advice

The financial advisers who are providing the ultimate financial advice in these schemes may not be meeting their legal obligations, despite their attempts to scale and scope their advice to avoid them. It is clear that there are still too many incentives for financial advisers to engage in misconduct. These incentives fuel contracts with lead generators. In addition to the reforms identified in this submission, it may be necessary to strengthen the obligations on financial advisers if ASIC is unable to deter such misconduct through its enforcement action.

Appendix A: Sample Clickbait Ad

<p>Facebook ad</p>  <p>checkyoursuper.au Is Your Super Fund underperforming? Learn more</p> <p>94 29 comments 5 shares</p> <p>Like Comment Share</p>	<p>Ad link - page 1</p>  <p>CLAIM YOUR FREE SUPERANNUATION PERFORMANCE REVIEW TO SEE IF YOUR RETIREMENT SAVINGS ARE ON TRACK.</p> <ul style="list-style-type: none"> Compare Your Super No Cost, Obligation Free Takes Under 60 Seconds 	<p>Ad link - page 2</p>  <p>What super fund are you currently with?</p> <ul style="list-style-type: none"> Australian Super Australian Retirement Trust CBUS HOSTPLUS REST HESTA Select Other Super Funds Here ▼
<p>Ad link - page 3</p>  <p>Complete Your Free Enquiry</p> <p>Simple, no obligation enquiry to find out what you're looking for.</p> <p>Receive A Call</p> <p>Receive a call from one of our trusted financial adviser partners to discuss your situation.</p>	<p>Ad link - page 4</p>  <p>Choose The Best Option</p> <p>With the help of a licensed financial adviser compare and review your super to choose the best option.</p>	<p>Ad link - page 5</p>  <p>WHAT PEOPLE ARE SAYING ABOUT OUR PARTNERS...</p> <p>Testimonials</p> <p>See what these satisfied Aussies are saying. Their experiences speak to our commitment to helping every Australian with their Superannuation.</p>

Testimonials carousel 1

GET STARTED

"Had the pleasure to speak to Jonny about my super I thought it was all OK. Turns out I was wrong. So him and his Team re-educate me and helped me get it on track to where it should be. Thanks for you Professionalism and Expertise. Cheers guys....."

– Tim Turner., Google Review



Testimonials carousel 2

GET STARTED

"Brilliant organisation! I appreciate how easy it was to get some great assistance in realising how much better my super could be doing.

Cheers!"

– David Marsh., Google Review



Testimonials carousel 3

GET STARTED

Would highly recommend! I was very surprised by the service Jonny provided, he was very helpful and knowledgeable about the industry. I finally feel my super's growing the way it should and it's all thanks to these guys

– Rachelle Randles., Google Review



Testimonials carousel 4

GET STARTED

Was an absolute pleasure speaking with Jimmi - he was able to consolidate my super accounts and map out a contributions plan moving forward. The whole process was seamless and I would highly recommend anyone to utilise this service!

Peter Flitcroft., Google Review

Terms and conditions - page 6

Check Your Super is not a super fund or financial advisory firm. Check Your Super is a referral service that connects inquiries made on this website with partners licensed to provide their respective products and/or services and quotes. We receive referral fees and commissions from third-party companies for these introductions. While we cover a wide range of products and services, we may not cover every option available in the market. In some cases, our selection of partners may be limited, which could be due to your unique circumstances or because we have agreements with only certain providers.

By clicking on the "SUBMIT" button, you agree to proceed with a specific product or service offering through a referral from Check Your Super. You will be dealing directly with the third-party companies and/or their representatives, and not with Check Your Super. By submitting your information, you acknowledge and agree to receive notices, phone calls, and any other communications at the email or telephone number(s) you provided from these third-party companies and/or their representatives. Check Your Super does not provide comparisons between super funds or performance reviews of your super fund, nor does it provide financial or product advice.

Check Your Super does not guarantee the accuracy of the information on this website or in any subsequent communications, including information from contributors or third parties. You are solely responsible for using the material on this website, and the information provided is not a substitute for financial advice. You should not rely on this information to make financial or investment decisions. Before making any decisions, seek professional advice that takes into account your personal objectives, financial situation, and needs.

By submitting your details on this site, you agree to:

[Check Your Super – Privacy Policy](#)

Contact form - page 1

What super fund are you currently with?

Australian Super

Australian Retirement Trust

CBUS

HOSTPLUS

REST

HESTA

Select Other Super Funds Here ▼

Contact form page 2

Roughly, what is your super balance?

This helps us accurately determine if you're retirement savings are on track (Min.40K)

\$

Contact form - page 3

How old are you?

Note: Can not exceed 59 years of age

Contact form - page 4

What concern's you most about your super?

Contact form - page 5

What state are you located in?

Contact form - page 6

What is your current employment status?

Contact form - page 7

What's your name?

Contact form - page 6

What's your mobile number?

We don't spam you! We're just here to keep you updated with your results!

 0412 345 678

Contact form - page 7

Please enter your Unique 6-digits Super Review Code

You will receive this via SMS from the mobile number provided

SUBMIT

Retry in 56 seconds...

Back