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29 May 2026

Joint Consumer Submission: Curbing lead generation activity

Thank you for the opportunity to comment on proposals to curb lead generation activity, as part of the package of proposed consumer protections in superannuation (published by Treasury on 7 April 2026).

This is a joint submission from:

- Consumer Action Law Centre
- Super Consumers Australia
- Financial Rights Legal Centre
- Mob Strong Debt Help
- Financial Counselling Australia
- Consumer Credit Legal Service WA

- Consumer Policy Research Centre.

The scourge of lead generation is now in sharp focus, with 11,000 people experiencing the devastating loss of over \$1 billion in superannuation savings through the collapses of the Shield and First Guardian Master Funds.

However, the systemic problems with lead generation have played out across multiple sectors over decades. These manipulative business models have circumvented hawking laws and caused significant harm to many people across Australia, particularly people who are already experiencing disadvantage or vulnerability.

The only effective solution to this entrenched problem is to ban lead generation in superannuation, by banning unlicensed commercial communication and advertising in relation to superannuation, and extending the hawking ban to all financial products and services. It is unviable to add new regulatory obligations, such as licensing and consumer disclosures, to a highly exploitative business model. It is also inadequate to leave ASIC to repair the damage after it is done. We also recommend a ban on lead generation for debt management and life insurance, given the similar significant harms.

An outright ban on lead generation in high-risk sectors and scenarios could be bolstered by the effective interventions proposed by Treasury, such as stronger responsibilities for businesses that deal with lead generators.

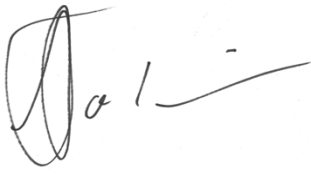
To genuinely curb the harms caused by lead generation – and prevent the next outbreak by shapeshifting lead generators – the proposed targeted reforms must be combined with broader protections. This includes extending the forthcoming ban on unfair trading practices to financial products and services, and significantly improve consumer data protections and rights.

We share the Government's commitment to stamping out manipulative business models that have cost people their financial safety net in retirement.

Please contact **Jean Skeat**, Director of Policy and Campaigns at Consumer Action Law Centre at jean@consumeraction.org.au or on 03 9670 5088 if you have any questions about this submission.

Yours Sincerely,

CONSUMER ACTION LAW CENTRE



Stephanie Tonkin | Chief Executive Officer

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Joint consumer submission: Curbing lead generation activity

Summary of recommendations

Ban lead generation	Reinforce protections	Enhance ASIC's powers
Ban unlicensed commercial communication about superannuation, life insurance and debt management (~Option 1b).	Extend the Unfair Trading Practices prohibition to financial products and services and add lead generation to the 'grey list'.	Empower ASIC to ban lead generation for products and services where it is high-risk to consumers.
Ban advertising without an AFSL for all financial products and services (~Option 4a)	Strengthen privacy laws to protect people from harmful lead generation practices.	Expand ASIC's takedown powers (Option 4a).
Prohibit hawking of all financial products and services (~Option 2b).	Strengthen obligations on advertisement hosts to review, verify and (when needed) remove advertisements.	Increase ASIC penalties in line with the Australian Consumer Law.
Protect SMSFs under the hawking prohibition.	Define lead generators as 'regulated persons' subject to the design and distribution obligations (Option 1d).	
	Clarify that AFS licensees are responsible for lead generator conduct (Option 1c).	
	Bring lead generators that are AFSL ARs under expanded conflicted remuneration laws (Options 3a and 3b).	

~ = similar to option in the Consultation Paper, with broader application.

Recommendations

Significant change is needed to curb lead generation

In relation to superannuation:

1. Develop the definition of 'lead generation activity' with people with lived experience, consumer advocates and ASIC, to minimise the potential for arbitrage.
2. Do not implement Option 1a: Do not licence lead generators.
3. Implement Option 1b: Ban unlicensed persons from providing information to consumers about superannuation for a commercial benefit. This should avoid capturing genuine consumer information which is not for commercial benefit and not linked to the consumer buying a product or service.
4. Implement Option 1c: Clarify that AFS licensees are responsible for ensuring that their leads or referrals are sourced in compliance with regulatory and legal requirements.

In relation to other financial products and services:

5. Ban the unlicensed provision of information for a commercial benefit in relation to life insurance products and debt management services.
6. For all financial products and services where lead generation is not banned, extend the design and distribution obligations to lead generators as 'regulated persons' (as in Option 1d).
7. Ensure that ASIC can ban lead generation in relation to other financial products and services where the risks and harms to consumers are too high.
8. Capture lead generators under the conflicted remuneration ban as representatives of AFS licensees (as in Option 3a).
9. Clarify and expand the scope of 'benefits' captured under the conflicted remuneration ban (as in Option 3b).

Hawking of financial services should be banned

10. Amend the law to clarify that Self-Managed Superannuation Funds – like other superannuation products – are treated as being held by retail clients, and protected by the hawking prohibition.
11. Extend the hawking prohibition to all financial products and financial services, with very limited exemptions only where there is credible evidence of consumer benefit.

Target advertisements as early intervention

12. Ban advertising of all financial products and services without an AFSL (as in Option 4a).
13. Implement Option 4b: Expand ASIC' s takedown powers.
14. Introduce obligations for digital platforms to reduce non-compliant advertisements. This should include verification, review and removal of advertisements, and a public register of lead generation advertisements.
15. Impose meaningful penalties for advertisers and digital platforms that breach any obligations in relation to advertising and/or ASIC take down orders.

Broaden protections to curb lead generation

16. Extend the unfair trading practices prohibition to financial products and services.
17. Specify manipulative lead generation practices in the 'grey list' of unfair trading practices in the ACL.
18. Enhance privacy and data protection laws with stronger consent laws, consequences for breach, a dispute resolution mechanism and increased capacity of the OAIC.

1. Lead generation manipulates and exploits people

1.1 Lead generation is a distinct business model

Lead generation is a manipulative business model that exploits information and power asymmetries to profit from people who hand over their details online, unaware of what is to come.

Lead generation businesses usually extract information from people by prompting them to respond to advertisements, competitions and other online offers, without being upfront about what the personal information will be used for. The information is then used in opaque data sharing arrangements, and in aggressive and sophisticated, calls and pressure selling to push people to buy products or services.

'Lead generation' should be defined clearly and broadly

Accurately defining lead generation is critical to be able to demonstrate its impact, identify its use, and develop appropriate policy and regulatory responses to curb it.

Lead generation needs to be distinguished from other marketing and advertising, as it is a business practice with higher risks and potential harms.

In short, in traditional marketing, there is a clear link for the consumer between an advertisement and the business selling the product or service. Where it is a financial product or service being advertised, there is an AFS licensee directly connected with the advertisement.

Lead generation is also different to some comparison websites, which list and compare the features of products (often with commercial links to the products listed), but do not collect people's details.

Lead generation targets and activates people with the goal of capturing their information for subsequent commercial use. Lead generation effectively makes a consumer's information a 'product' that is traded between businesses. However, this fact is usually obscured from the consumer. This obfuscation is a core problem with the business model, because from the consumer's point of view, it blurs the line with a business marketing its product or service.

A lead generator is also an intermediary facilitating a sale. They typically engage directly in sales conduct, then trade 'warm leads' – that is, the information of consumers who are more likely to buy – to product and service providers for profit. Some lead generators generate 'warm leads' after purchasing consumer information from data brokers or other lead generators, others directly capture data from consumers themselves.

Lead generation operates within a complex ecosystem of marketers, data brokers, digital platforms, software providers and, in the case of investments, sometimes licensed financial advisers. It is hard to point to one problematic model, as there are many types of risky and conflicted arrangements which are often invisible to the people who are targeted.

Given the varied business models and activities, it is a challenge to comprehensively capture all the models and activities that are causing harm. Consumer advocates have very limited visibility inside the process. However, Figure 2 below shows the type of typical lead generation sales process which has led to significant consumer harm. This conduct is ostensibly ‘unlicensed’ under the AFSL regime in the Corporations Act, but other legal obligations and protections apply.

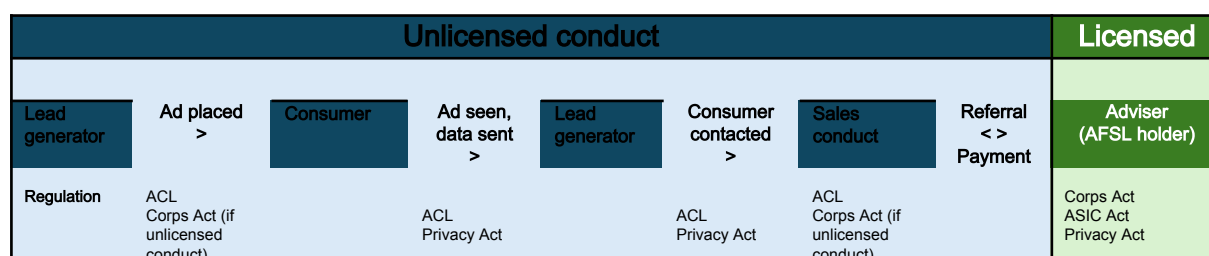


Figure 1: Example of unlicensed lead generation process

However, people’s experiences with manipulative lead generation show some common red flags. We know this from the experiences of many people affected by the Shield and First Guardian collapses, who have generously shared their stories, and the submission to this consultation from consumer advocate Carolyn Bond AO. Carolyn Bond has anonymously responded to and engaged with multiple superannuation lead generators and observed consistent problems in the way lead generators operate.

Given the Government proposes to regulate lead generation, the identification of lead generation activities and harms in Box 1 of the Consultation Paper is a good starting point. The key activities include:

- **Lead qualification:** Collecting and using consumer information to assess consumers.
- **Direct engagement and lead warming:** Engaging directly with consumers individually to generate interest or expectations about products or services or products.
- **Referrals and warm transfers:** Arranging for a consumer to connect with a specific financial adviser, licensee, trustee, or product issuer for the product or service.

- **Priming communication:** Making comparative statements about superannuation funds and their features to prime consumers and influence future decision-making.
- **Use of authority-like representations:** Positioning or framing themselves as a superannuation specialists, switching experts or similar authorities, without being qualified to do so.¹

The definition of ‘lead generation activity’ should be developed with:

- people with lived experience as targets of lead generators, for example, people affected by the Shield/First Guardian collapses,
- consumer advocates who have assisted people harmed by lead generation, and
- ASIC, which has closer insight into the business models and practices.

This would help to ensure that the definition captures current practices and is future-proofed, to minimise the potential for arbitrage.

Recommendation

1. Develop the definition of ‘lead generation activity’ with people with lived experience, consumer advocates and ASIC, to minimise the potential for arbitrage.

1.2 Lead generation does not benefit consumers

Our organisations have seen many examples of lead generation practices that have manipulated consumers and led to significant financial and personal harm in people’s lives.

We cannot identify a legitimate benefit of lead generation which outweighs the significant consumer risks inherent in the business model. This is true both within and beyond financial services. In addition to the obvious problems in superannuation, we have identified lead generation activity in life insurance and other investments that is also high-risk.

Without lead generation in superannuation, many people would remain in their default super fund. Keeping people within the regulated super system, where default options are subject to a performance test and funds have strong regulatory obligations, is a good outcome.

¹ Consultation Paper, page 8.

The Government should give serious consideration to addressing the risks to consumers of lead generation across many sectors. These risks were detailed in Consumer Action's Designated Complaint to the ACCC in 2025.²

1.3 Lead generators' advertising practices are manipulative

Lead generators commonly use types of sales and advertising practices that our organisations see as high-risk and exploitative across a range of unreputable industries. We see these tactics frequently lead to adverse outcomes for consumers, including buying expensive or low-value products which they do not want or need, and may not understand³. These include:

- **Pressure tactics:** Advertisements use misleading claims about superannuation fund underperformance, limited-time offers, and other tactics to generate fear, urgency and imply scarcity.
- **Manufactured 'consent':** Advertisements use misleading information to induce people to provide their personal details, often inaccurately describing the purpose of collecting this information and what it will be used for. For example, offering a free written 'health check' of their super. In reality, people are more likely to get multiple phone calls, messages and requests for online meetings from a lead generation business. This process effectively manufactures consumer consent, from people who have not genuinely agreed to their information being handed on and/or used to contact them.
- **Opaque businesses:** It can be hard to identify the business that is advertising, because advertisements are branded under names that are not registered business names, and advertiser names appear and disappear frequently. This makes it difficult for people to know what business holds their personal information, and how they can get off lead 'lists' and stop the contact.

² Consumer Action, [Designated Complaint: Unsolicited Selling](#), March 2025.

³ See Consumer Action, [Designated Complaint: Unsolicited Selling](#), March 2025.

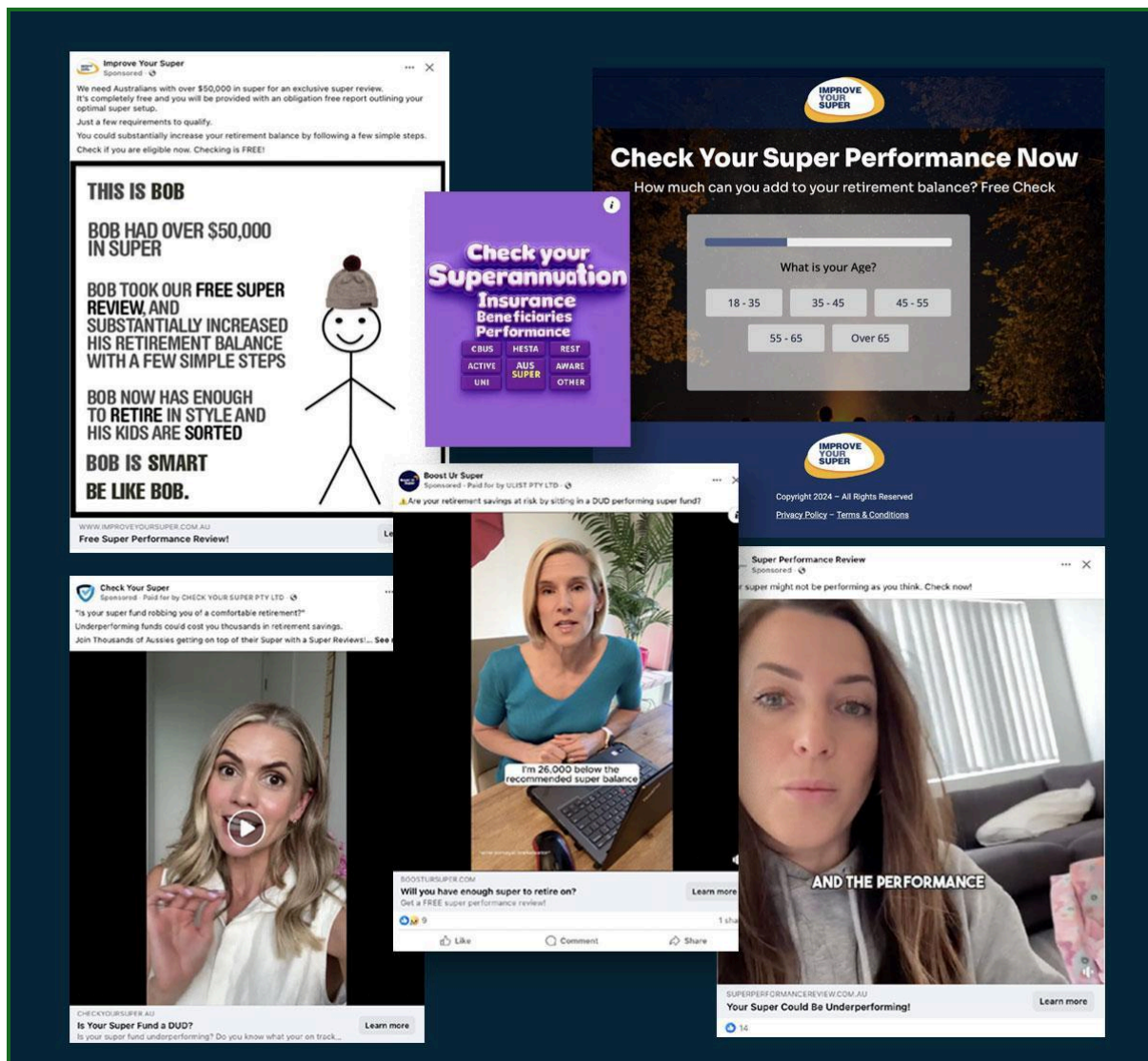


Figure 2 Advertisements for 'super switching'. Source: <https://takeyoursuperback.com/what-happened/>

1.4 Lead generators use exploitative sales practices

Lead generators' engagement with people after obtaining their contact details also demonstrates high-risk and exploitative business practices.

- **Incessant contact:** After responding to advertisements, people can start to receive a high volume of communication within a very short time. This tactic builds on the pressure and urgency that the ads originally invoked. Carolyn Bond's submission details her experience within just six hours of responding to a social media advertisement from a lead generation business:
 - two text messages,
 - two phone calls,
 - requests for an online meeting and to refer to a financial adviser,

- o two emails with a 'projected' super balance increase, then a detailed 'Super Health Check' document, and
- o the next day, a message offering a 'chat to clarify options' (Figure 2 below).
- **Pressure sales tactics:** Lead generators use high-pressure sales tactics and their information and power asymmetry to draw people in emotionally. Lead generators have done things such as compliment people for taking an active interest in their super, talk about how making the most of their money protects their loved ones if they pass away, and pointing out that their super fund has never called them, despite managing their savings for years. It is common for lead generators to undermine people's trust in their current super fund, as was the case with some Shield and First Guardian investors.
- **'False flags' of legitimacy:** On the other hand, some lead generators specifically do not use high-pressure or urgent calls to action as a way to legitimise their sales pitch. In some cases, they have spent months building trust with the people they target.
- **Cold calling based on old 'consent':** Some people have been called long after they provided their details to a lead generator, which may in substance be cold calling. For example, Carolyn Bond reports she was contacted by an Australian lead generation business that used a list from another lead generation company that she had contacted over two years ago. This is another misuse of consumer information in lead generation practices.
- **Opaque relationships:** As the Consultation Paper notes, there are multiple types of relationships and arrangements between lead generators and AFS licensees. Even after responding to advertisements, people may be unclear on what business they are dealing with. Sometimes the name and AFSL number of a financial adviser is not provided, or lead generators are cagey about the link between their business and the financial adviser. Leading into the Shield and First Guardian collapses, advisers paid significant sums to lead generators, while people who were drawn into the funds were unaware of the relationships behind closed doors.



Figure 3: Timeline after response to Facebook advertisement

1.5 Lead generators operate in a 'grey zone'

While many lead generators are not AFS licensees or authorised representatives of an AFS licensee, from the perspective of the people they target, they operate in a 'grey zone'.

Lead generators often collect detailed personal and financial information, such as a person's age, super fund, account balance, and retirement income goals. This type of information is typically part of a licensed financial adviser's 'fact find'. This process builds a picture of the client and what they want, but also builds a relationship of trust and professional reliance. When lead generators do this, particularly when they are not clear about what their business and licence status is, there is a high risk that the people they deal with could interpret information lead generators give as personal financial advice.

Some lead generators go deep into providing what can 'look and feel' like financial advice. Carolyn Bond received a 'Super Health Check' document within six hours of responding to a Facebook advertisement, which included:

- **Personal details:** Age, incomes, employer superannuation contributions.
- **Existing super fund details:** Fund, balance, investment option and risk category.
- **Goals:** Desired retirement age, super balance and income.
- **Health Check:** Projections for the consumer's existing product and an unnamed 'Comparison' product:
 - '5 Year Average Return After Fees'
 - 'Retirement Funding Projections'
 - 'Retirement Income Provided'
 - 'Potential Improvement Summary'
 - 'Total Projected Extra benefit' calculated as \$199,961 for the 'Comparison' product over client's existing product.

The 'Health Check' document provided by the unlicensed lead generator also claims:

You Have Nothing To Lose & Everything To Gain!

No additional risk.

No out of pocket cost.

Increased wealth.

The document is clearly based on the information the consumer gave the lead generator, and aims to influence the consumer to decide that the 'Comparison' product – which is only revealed after they meet with an adviser – is a better option than their current super fund. It appears to take into account the person's financial

situation needs and objectives and it may constitute unlicensed financial advice. However, the document has clearly been designed to avoid being 'financial advice' under the law, for example, by not explicitly naming the 'Comparison' product.

Lead generators operating in this grey area are high-risk for consumers who do not know who or what they are dealing with. A 'Health Check'-type document is in substance an elaborate way to convert a person into a 'warm' or 'qualified' lead to refer on to a financial adviser who can then seal the deal.

2. Lead generation has caused significant harm in super

As the collapses of the Shield and First Guardian Master Funds have shown, lead generation in the superannuation sector is a significant and life-changing danger to consumers. Together, the First Guardian and Shield collapses have affected approximately 1,000 people and put over \$1 billion in retirement savings at risk.

While these disasters are the most significant issue today, they are not the beginning or end of the problem.

ASIC has repeatedly warned that lead generation models in superannuation are exposing people to a significant financial risk and undermine core consumer protections.⁴

As the Consultation Paper notes, ASIC is concerned enough about the risks generated by these business models that it is currently conducting reviews of super trustee practices to disrupt the high-risk super switching model, and AFS licensees that use lead generation services.⁵

Despite ASIC's focus and warnings, we know high-risk lead generation activity is continuing. This is in part because lead generators are typically not AFSL holders, therefore are not regulated by ASIC and cannot be investigated in the way that licensed financial advisers can be.

The lead generation model has shifted high-risk businesses targeting people's retirement savings outside of the regulator's reach and into the 'wild west'. Often these are small operators, sometimes based offshore, which do not have the resources or sophistication of larger businesses, or reputations to protect. The experience in superannuation shows us the devastating impact that lead generation can lead to, and should be a warning of the potential impact of lead generation in other sectors.

⁴ See for example ASIC, [Exposing high-pressure cold calling tactics and social media click-bait leading to superannuation switching](#), 7 May 2024.

⁵ ASIC, [26-029MR: ASIC commences new review of advice licensees that use lead generation services](#), 18 February 2026.

3. Significant change is needed to curb lead generation

Clear and unambiguous reforms are needed to stop the harm that is still being caused by lead generation.

The 'Reform 1' options in the Consultation Paper to enhance accountability in lead generation in super would see:

- Lead generators clearly brought under the AFSL regime, as they are 'dealing' in a financial product (Option 1a)
- A ban on unlicensed persons providing information to consumers about superannuation for a commercial benefit (Option 1b).
- As an alternative, AFS licensees required to take reasonable steps to ensure that leads or referrals are sourced in compliance with regulatory and legal requirements (Option 1c).
- As a separate alternative, the design and distribution obligations extended to lead generators as 'regulated persons' who must take reasonable steps to ensure that product distribution is consistent with the product target market determination (Option 1d).

These are complemented by the 'Reform 3' options which target remuneration structures that can incentivise poor conduct:

- Capturing lead generators under the conflicted remuneration ban as representatives of AFS licensees (Option 3a).
- Clarifying or expanding the scope of 'benefits' captured under the conflicted remuneration ban (Option 3b).

3.1 A ban on lead generation in super is proportionate to the risks

In high-risk sectors such as superannuation, the consequences for consumers are too significant to justify any continuation of the current lead generation business models.

Banning lead generation in superannuation, via a prohibition on unlicensed communication about superannuation under Option 1b, is the only viable option to protect people.

Licensing lead generators (Option 1a) would require intensive regulatory oversight, particularly as the lead generation industry currently shows signs of very poor business practices. Implementing a 'whack a mole' strategy – where the regulator

must identify and target small, unsophisticated, potentially offshore, bad-faith operators – will likely be inefficient and ineffective in the longer term.

Allowing lead generators to continue to deal in superannuation advice and products, whether licensed or unlicensed, would lend unjustified legitimacy to a business model that has caused major and life changing financial harm to many people.

A clear prohibition on lead generation in super would draw a clear line for the industry, minimise loopholes, and prevent significant financial harm before it occurs. It is a proportionate response to the scale of the risks and harms.

However, the ban would need to allow for genuine, useful consumer information which is not linked to the consumer buying a product or service website assisting victims of the First Guardian and Shield collapses, which has been funded under a commercial contract with ASIC. The ban could be formulated similarly to financial counsellors' exemption from holding an AFSL, with conditions.⁶ For example, it could require the information provider to: One example is Super Consumers Australia's [Take Your Super Back](#) website assisting victims of the First Guardian and Shield collapses, which has been funded under a commercial contract with ASIC. The ban could be formulated similarly to financial counsellors' exemption from holding an AFSL, with conditions.⁷ For example, it could require the information provider to:

- be a not-for-profit organisation,
- not charge any fees or receive remuneration arising from the information,
- not run, and are not associated with, financial services businesses,
- have appropriate skills and knowledge.

It could exclude legal service providers, whether for profit or not.

More broadly beyond super, clarifying that AFS licensees are responsible for ensuring that their leads or referrals are sourced in compliance with regulatory and legal requirements (Option 1c) could make it clear that the financial advisers who ultimately benefit most from harmful third-party activity cannot distance themselves from the conduct to avoid legal liability. Strong due diligence requirements for financial advisers to know where their leads come from, and how, is an important part of accountability of the advice sector. This is a reasonable expectation of credible businesses that is operating in its clients' best interests.

Ultimately, this type of due diligence should be part of complying with existing AFS licensee obligations. Advisers who engage lead generators already have responsibilities under the Corporations Act, including:

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⁷ *Corporations Regulations 2001* (Cth) reg 7.6.01(1)(zb).

- general obligations of AFS licensees, including doing all things necessary to provide financial services 'efficiently, honestly and fairly',⁸ and
- liability for involvement in contraventions, including where the AFS licensee 'has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention'.⁹

In our view, AFS licensees engaging lead generators should already be held to have a high level of responsibility for the poor conduct of the lead generators that they do business with. Option 1c would merely reinforce this. It is especially important for responsibility to be sheeted home to AFS licensees because it is impossible for consumers to see what is happening behind the scenes. It remains invisible to consumers unless regulators identify, investigate and take action for systemic harm.

3.2 Lead generation should be banned for other high-risk sectors

Significant harm is being caused by lead generation activity in relation to other financial products, including life insurance and debt management. While the extent and damage of this conduct is not as well-publicised as the Shield/First Guardian Master Funds, there are clear parallels and concerns with lead generation activity beyond superannuation.

Given the high risk of significant detriment to consumers, which we have seen play out in superannuation, we recommend that lead generation also be banned for debt management services and life insurance products.

Debt management

Debt Management Firms are a financial services sector that use lead generation in a way that creates and exacerbates consumer harm. They are a poorly regulated part of the sector, who typically charge high up-front fees for services that ultimately leave people with debts in a far worse financial position. ASIC is currently undertaking a market study into these businesses,¹⁰ which may cover the role of lead generators.

There are multiple ways that lead generation works to target people in financial stress. Most commonly it is via websites that entice people to provide personal information to obtain purported free personalised information (for example a credit rating, or advice on debt options). When people in debt seek assistance with their situation but unknowingly land on a lead generation site, it simply funnels them to expensive, poor-quality services and pushes them further from the independent, free advice they actually need – from the National Debt Helpline or Way Forward – to ensure that all parties get a fair outcome (including creditors).

⁸ *Corporations Act 2001* (Cth) s 912A.

⁹ *Corporations Act 2001* (Cth) s 79.

¹⁰ ASIC, [25-144MR: ASIC probes debt management and credit repair services](#), 22 July 2025.

There is a huge market in exploitative debt management lead generation. The marketing pitch of one lead generator business in the market in 2025 claimed to have generated 120,000 leads with a 10% conversion resulting in \$400m of debt under management. This is a staggering number of people potentially funnelled to fee-paying services and away from free services like the National Debt Helpline.

People who call the National Debt Helpline or seek legal advice are often unclear about how the debt firm got their contact details – which speaks to the opaque nature of lead generation business models.

It is difficult enough for people trying to navigate highly stressful indebtedness without also being contacted by businesses seeking to profit off their indebtedness with high-cost, poor-quality advice that directs them away from free, independent advice that could improve their personal circumstances.

There is no place for lead generation targeting people in highly vulnerable financial situations into poor services.

Life insurance

Carolyn Bond has explored lead generation in relation to life insurance, exposing much of the same harmful conduct as in superannuation. Lead generation advertisements are typically much more aggressive and potentially misleading than mainstream life insurance advertisements. For example:

- **Misleading and/or 'aggressive' advertising:** There are multiple examples of potentially misleading and deceptive lead generation advertisements in relation to life insurance, such as:
 - an advertisement using the example of a 63-year-old who had three months off from paid work due to illness, when income protection cover typically has waiting periods that mean income protection insurance is not available as soon as someone is out of work, and
 - an advertisement claiming that there is a “massive life insurance loophole” that “AIA, Noble Oak, TAL hope you never find”. The lead generator appears to be advertising on behalf of a comparison business which sells insurance for major insurers including AIA, TAL, Noble Oak.
- **Advertising of non-mainstream products:** One lead generator publishes advertisements for life insurance for people who have pre-existing conditions and older people (the highest age group is 79-85). This may also be misleading. If these products are real, they are likely to be expensive or include restricted conditions, because they are not risk profiles that many insurers typically insure.

Consumers being mis-sold poor-value, unsuitable life insurance is a major risk. People who buy life insurance after being targeted by lead generators can be paying for insurance that they are unlikely to get the expected benefits from. This fundamentally undermines the purpose of life insurance, which is for people to be able to financially protect themselves and their families in the case of illness, accident or death.

Complementary measures will minimise further harms

A ban on lead generation in super, life insurance and debt management, with complementary measures to minimise circumvention risks, would mean that it would be unnecessary in those sectors to extend the design and distribution obligations to lead generators as 'regulated persons' (Option 1d). The design and distribution obligations do not apply to SMSFs, so Option 1d would have limited effectiveness with the product offers and sales that lead generation is often used in. If lead generation is banned in an effective way, it may be unnecessary to also ban expanded types of conflicted remuneration for lead generators (Options 3a and 3b).

However, the harms caused by lead generation in these sectors are likely to persist in other sectors.

To address persistent and emerging harms, ASIC should be able to ban lead generation for identified financial products and services where the risks and harms to consumers are too high to warrant a continuation of lead generation activity.

Examples of the types of risks and harms that could be considered by ASIC when deciding whether to make a ban include business models and scenarios where:

- business structures, relationships and practices are opaque and confusing to consumers,
- power and information asymmetries can cause significant disadvantage and harm to consumers, and/or
- the risks and consequences of financial harm are significant, in relation to the personal impacts on the consumers who are targeted.

One approach could be to ensure that the design and distribution obligation regime empowers ASIC to make stop orders to ban distribution of specified financial products and services (or classes) via lead generation where there is significant detriment to consumers.

This could bolster the proposal in the Consultation Paper to extend the design and distribution obligations to lead generators as regulated persons who must take reasonable steps to ensure that product distribution is consistent with the product target market determination (Option 1d).

The design and distribution obligations regime has room for improvement, particularly given we have seen significant delays where fast intervention is needed (for example, due to court proceedings). However, a banning power can provide one way to respond to changing business models, products and practices in a targeted way. This could again 'future proof' the lead generation ban in superannuation (and other clearly high-risk sectors), and more address persistent systemic harms caused by unscrupulous lead generation.

Given the key proposals target business models, and not the harmful conduct itself, consumers will remain vulnerable to businesses that change their structures or strategies to exploit loopholes in the law. This is the major weakness in the proposed approach in the Consultation Paper.

The Government should consider complementary reforms to effectively address harmful conduct by lead generators. This includes extending the unfair trading prohibition to financial products and services, and strengthening privacy laws. These proposals are discussed further in Section 6 of this submission.

Recommendations

In relation to superannuation:

2. Do not implement Option 1a: Do not licence lead generators.
3. Implement Option 1b: Ban unlicensed persons from providing information to consumers about superannuation for a commercial benefit. This should avoid capturing genuine consumer information which is not for commercial benefit and not linked to the consumer buying a product or service.
4. Implement Option 1c: Clarify that AFS licensees are responsible for ensuring that their leads or referrals are sourced in compliance with regulatory and legal requirements.

In relation to other financial products and services:

5. Ban the unlicensed provision of information for a commercial benefit in relation to life insurance products and debt management services.
6. For all financial products and services where lead generation is not banned, extend the design and distribution obligations to lead generators as 'regulated persons' (as in Option 1d).
7. Ensure that ASIC can ban lead generation in relation to other financial products and services where the risks and harms to consumers are too high.
8. Capture lead generators under the conflicted remuneration ban as representatives of AFS licensees (as in Option 3a).

9. Clarify and expand the scope of 'benefits' captured under the conflicted remuneration ban (as in Option 3b).

4. Hawking of financial services should be banned

4.1 Lead generation circumvents the hawking prohibition

The hawking prohibition applies to unsolicited contact by AFS licensees and their agents and representatives where they make offers, requests or invitations in relation to financial products.¹¹ It bans hawking of superannuation products, irrespective of whether the consumer is considered a less sophisticated 'retail client' (as is required for the ban to apply to other financial products).¹²

Lead generators collect people's information under very broad terms and conditions, and aim to capture their 'consent' to be contacted by many different third parties. This means lead generation ostensibly sits within a loophole in the hawking laws.

This business model is clearly operating as the result of, and contrary to, the intention of the hawking prohibition.

The hawking prohibition intends to give people control over how they are contacted and the kinds of products they are offered. This is to protect people from unsolicited offers of financial products, which often contribute to people purchasing products that do not meet their needs.¹³

The Hayne Royal Commission recommended in 2019 that:

*Hawking of superannuation products should be prohibited. That is, the unsolicited offer or sale of superannuation should be prohibited except to those who are not retail clients and except for offers made under an eligible employee share scheme.*¹⁴

When the Parliament amended the hawking prohibition post-Royal Commission to strengthen it, the Explanatory Memorandum specified that:

*Extending the prohibition beyond offers to also include requests and invitations means that a person cannot avoid the hawking prohibition by approaching a consumer and asking them to request a financial product or by asking a consumer to fill in an application to be sold or issued a financial product.*¹⁵

The Explanatory Memorandum also states that super funds:

¹¹ Corporations Act 2011 section 992A.

¹² *Corporations Act 2001* (Cth) s 761G(6).

¹³ Explanatory Memorandum: Financial Sector Reform (Hayne Royal Commission Response) Bill 2020, paragraphs 5.4 and 5.16.

¹⁴ [*Final Report: The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*](#), 4 February 2019, Recommendation 3.4

¹⁵ Explanatory Memorandum: Financial Sector Reform (Hayne Royal Commission Response) Bill 2020, paragraph 5.28.

[W]ill not be permitted to make unsolicited contact with their members to offer, request or invite them to apply for the issue of a new superannuation product (as it is defined for the purposes of this prohibition).¹⁶

Lead generation in relation to financial products and services skirts around the spirit of the law in two ways:

1. Inducing people to fill in an application to have a ‘super health check’ or similar, which is not a financial product (manufacturing consent to the contact), and
2. Offering the service of financial advice rather than a particular financial product.

There are also broader issues with the scope of the hawking prohibition.

There is an exemption where the product is offered on an unsolicited basis by a financial adviser who has provided personal financial advice. While it makes sense for financial advisers to be permitted to contact clients who are paying them to provide ongoing advice, it is unnecessary to exempt all advisers from the hawking prohibition simply because they provided advice to someone in the past.

Uncertainty about hawking protections for SMSFs

There is also uncertainty about whether some SMSF trustees (for example, those with balances over \$500,000) may be ‘wholesale clients’ and therefore not protected by the hawking prohibition. ASIC and AFCA have inconsistent positions on this¹⁷.^[OBJ] This ongoing uncertainty could impede any improved consumer protections under the Corporations Act.

To avoid this uncertainty, section 761G of the Corporations Act should be amended to ensure that SMSFs – like other superannuation products – are treated as being held by retail clients.^[OBJ] This is especially important in light of the other proposals that are part of the broader package for superannuation, including:

- exclusion of SMSFs from the Compensation Scheme of Last Resort (CSLR), or to allow them to opt in or out of the CSLR¹⁸ (see further our joint submission on the CSLR), and

¹⁶ Explanatory Memorandum: Financial Sector Reform (Hayne Royal Commission Response) Bill 2020, paragraph 5.36.

¹⁷ See ASIC, [14-191MR: Statement on wholesale and retail investors and SMSFs](#), 8 August 2014 and AFCA, [When can SMSFs be treated as wholesale? What financial advisers need to know](#), 19 June 2025.

¹⁸ The Treasury, [Compensation Scheme of Last Resort \(CSLR\): Reform options to support ongoing sustainability: Options paper](#), April 2026.

- tighter regulation of superannuation platforms, while SMSFs are left to operate with very minimal regulation and oversight by the Australian Taxation Office.

To stamp out any more harm of the likes of Shield and First Guardian, all SMSFs must come under the hawking ban and the CSLR. The Government should also consider additional measures to protect people' retirement savings invested in SMSFs. Super Consumers Australia has made a submission in relation to this. If not, a growing number of people will be left vulnerable to misconduct in the course of being sold a high-risk SMSF and will have no chance of compensation if they later lose their investment. This would seriously undermine the positive reform proposals to protect people from predatory conduct and financial harm.

Recommendation

10. Amend the law to clarify that Self-Managed Superannuation Funds (SMSFs) – like other superannuation products – are treated as being held by retail clients, and protected by the hawking prohibition.

4.2 A clear ban on all hawking will reduce systemic circumvention

The lead generation model is designed around the hawking prohibition. This may or may not be the true legal position, but lead generators have flourished on this assumption.

Even if a ban on lead generation were implemented for super, it is clear that lead generators will find and exploit any grey areas or gaps in the hawking laws.

The Reform 2 options to extend anti-hawking requirements could have some positive effects, depending on how they were implemented.

Limits of a broad-based ban on real-time contact

A broad-based ban (Option 2a) that requires consumers to positive initiate contact could – if implemented effectively – slow the lead generation business model. It would still mean lead generators can contact people or on-sell their details, but would limit opportunities to use high-pressure sales tactics through personal contact.

Mandating a time delay between the lead generation 'interaction' and contact with a financial adviser (alternative Option 2a) is unlikely to have much effect. This could operate similarly to a cooling off period, which research has shown is not effective in prompting people to change their minds.¹⁹ As outlined above, the timing and

¹⁹ See for example [Cooling-off periods for consumers don't work: study](#), 6 December 2016.

sequencing of lead generator and financial adviser contacts can vary. A person may be contacted years after their first contact with a lead generator. In some cases, this could be a more risky sales environment.

Mandating disclosures by the business initiating contact such as the purpose of the call, third-party access to data, and fees or benefits (alternative Option 2a) is highly unlikely to have a positive impact on consumer outcomes. There is ample evidence that disclosure-based consumer protections are ineffective and sometimes counter-productive.²⁰ This option is also akin to the unsolicited consumer agreement provisions of the Australian Consumer Law,²¹ where we have seen widespread non-compliance.²² It would also be highly intensive for the regulator to identify and take action for non-compliance with this type of disclosure requirement.

These options, while they may have some effect, will ultimately not stop harmful lead generation.

If our recommendation of an outright ban on lead generation in super and other high-risk sectors is implemented, Option 2a could provide complementary measures to close loopholes in the hawking prohibition. If our recommendation of a ban is not actioned, these measures will be tinkering at the edges of a significant problem that warrants a more proportionate response.

Remove the exemption for financial advice

Removing the personal advice exemption from the hawking prohibition (Option 2b) could be a positive move if implemented effectively.

However, in our view, the hawking prohibition should clearly apply to *all* financial products and services, with very limited exemptions only where there is *credible evidence* of positive consumer outcomes.

This draws a clear line, creates certainty for business, regulators and consumers, and minimises the risks of exploitative new business models navigating around the current hawking prohibition, and/or any new laws that apply to superannuation products or advice only. This clear and unambiguous scope would align the hawking prohibition with what the Parliament intended it to do.

As the Consultation Paper notes, ‘financial services’ are defined more broadly in the ASIC Act than the Corporations Act, meaning the narrower definition currently applies to the hawking prohibition. Treasury should consult on the formulation of an extended hawking prohibition, to ensure that the prohibition covers all lead

²⁰ See for example ASIC and Dutch Authority for Financial Markets, [REP 632: Disclosure: Why it shouldn't be the default](#), 14 October 2019.

²¹ Australian Consumer Law, Pt 3-2 Div 2.

²² Consumer Action, [Designated Complaint: Unsolicited Selling](#), March 2025.

generation conduct that has caused consumer harm, and doesn't leave open a new loophole.

Recommendation

11. Extend the hawking prohibition to all financial products and financial services, with very limited exemptions only where there is credible evidence of consumer benefit.

5. Target advertisements as early intervention

Digital platforms, online searches and other online advertisements are how the vast majority of people first come into contact with lead generators. This is where people are unknowingly enticed and primed for what is to come.

Taking a 'prevention rather than cure' approach could be a positive step, if implemented effectively.

As the Consultation Paper notes, some advertisements may already be in breach of the prohibition against misleading or deceptive conduct. However, clearer lines around advertisements – and strong consequences for breach of these – could be a more effective regulatory response than turning to the regulators to find and stamp out unlawful advertising.

5.1 Disclosure and regulator intervention

The proposals to effectively prohibit advertising of superannuation without an AFSL (Option 4a) would intervene in the currently opaque business models, where it can be unclear who is responsible for what conduct.

We support this proposal for *all* financial products and services. Lead generation advertising is the starting point for very significant harm to consumers, beyond superannuation.

This intervention could remove lead generators without an AFSL from the equation. However, there will be a real risk of unscrupulous lead generation businesses continuing to advertise in contravention of the ban (knowingly or unknowingly).

The proposed prohibition could be more effective if platforms that host advertisements are required to directly verify with an AFS licensee that they have placed an advertisement. This would at least place AFS licensees on notice of any fake ads in their names.

Mandating AFSL numbers on advertisements (Option 4a) is another disclosure-based protection that may backfire, for example, by lending credibility or an official 'stamp of approval' to the product, service or advertiser.

In line with our recommendation that both unlicensed commercial provision of information and hawking should be banned for all financial products and services, the proposals on licensed advertising and AFSL disclosure should also extend to all financial products and services.

If licensed advertising and AFSL disclosure provisions are introduced, there should also be strong penalties for breach. However, it is unlikely that these proposals will achieve the goal of eradicating unlicensed advertisements. The proposal to expand ASIC's takedown powers (Option 4b) could strengthen the mechanism for targeting high-risk sectors and activity.

If lead generation is banned for super, the most effective reforms would be to:

- expand the triggers for a stop order, and
- change the evidentiary threshold to include ASIC's reasonable belief of consumer harm.

These changes would need to be accompanied by:

- meaningful penalties for digital platforms for breach of take down orders, and
- adequate resources and funding for ASIC to undertake surveillance and enforcement.

5.2 Responsibility of digital platforms hosting advertisements

While not within the scope of the Consultation Paper, it is clear that digital platforms themselves have a significant role to play in curbing lead generation advertisements. As noted above, targeting advertising would be an effective preventative measure to limit the number of people left vulnerable to manipulative lead generation and its potentially dire impacts.

If there is a genuine commitment to stamping out the types of problems that led to the harms caused by the Shield/First Guardian collapses, the Government should introduce obligations for digital platforms that are proportionate to their role and powers to ensure that advertisements are legally compliant. Such an obligation on digital platforms will likely be required by the Scams Prevention Framework, or would at least involve very similar processes. These obligations should have meaningful penalties attached and include, as a starting point:

- verifying the identity of advertisers of financial products and services, including their AFSL,

- maintaining a public register of any lead generator advertisements (such as the Meta ad library),
- reviewing advertisements for compliance,
- promptly removing advertisements that breach legal requirements and any standards, and
- ensuring these controls apply to all digital platforms containing advertising, including organic and non-organic search results.

Given the size and nature of digital platforms' businesses, penalties must be a genuine deterrent to breaches of the ASIC Act. Penalties should be brought into line with recent increases to those under the Australian Consumer Law, which are currently:

- \$100 million (increased from \$50 million),
- if the court can determine the value of the benefit obtained as a result of the breach – three times the value of the benefit, or
- if the court cannot determine the value of the benefit – 30% of the body corporate's adjusted turnover during the breach turnover period for the act or omission.

This is one example of where meaningful penalties are necessary to ensure the effectiveness of reforms to protect Australians' retirement savings.

Recommendations

12. Ban advertising of all financial products and services without an AFSL (as in Option 4a).
13. Implement Option 4b: Expand ASIC's takedown powers.
14. Introduce obligations for digital platforms to reduce non-compliant advertisements. This should include verification, review and removal of advertisements, and a public register of lead generation advertisements.
15. Impose meaningful penalties for advertisers and digital platforms that breach any obligations in relation to advertising and/or ASIC take down orders.

6. Broaden protections to curb lead generation

While the Consultation Paper focused on interventions targeted at harmful superannuation lead generation, there are additional measures which would create much clearer lines around what is and is not lawful lead generation, marketing and advertising conduct. This goes to the business practices of lead generators in both their public advertising, and behind-closed-doors administration.

6.1 An unfair trading practices prohibition for financial products and services and lead generation

The forthcoming prohibition on Unfair Trading Practices (UTP)²³ represents a significant expansion of Australian consumer law, introducing a general prohibition on unfair practices alongside specific prohibitions on certain conduct (currently subscription traps and drip pricing).

Under the general test in the current UTP Bill, trading practices would be unfair if they unreasonably manipulate the consumer and/or unreasonably distort the decision-making environment, and cause (or are likely to cause) detriment to the consumer.²⁴ Many lead generation practices meet these criteria, for example, unreasonably distorting information or using high-pressure sales using time-limited offers to push people into a quick purchase. These appear to be clearly designed to manipulate consumers into choosing something they otherwise would not have.

However, the UTP could be deployed more specifically to address harmful lead generation practices, by specifying in the ‘grey list’ in the UTP laws²⁵ that the following practices may be prohibited unfair trading practices:

- Failing to clearly disclose the dominant purpose for collecting a consumer’s personal information.
- Failing to disclose the specific businesses that will receive a consumer’s details once provided, and the purposes for which those details will be used.
- Relying on purported “consent” to sales approaches that were generated through obscure, complex or misleading mechanisms that a reasonable consumer would not understand.

The major failing of the UTP prohibition in its current form is the carve out for financial products and services. This means the type of manipulative lead generation practices which led to people losing their life savings in the Shield and First Guardian

²³ Competition and Consumer Amendment (Unfair Trading Practices) Bill 2026, introduced to the House of Representatives on 1 April 2026.

²⁴ Competition and Consumer Amendment (Unfair Trading Practices) Bill 2026, new Part 2-4, Section 28B.

²⁵ ACL new Part 2.4, s 28B(6).

collapses may not be considered ‘unfair’ under the new laws. This regulatory loophole clearly needs to be closed, so the UTP regime can protect people from substantial harms.

Clear inclusion of financial products and services under the prohibition would protect people from predatory practices being used across the board, reducing the loopholes that businesses can move into.

Recommendations

16. Extend the Unfair Trading Practices prohibition to financial products and services.
17. Specify manipulative lead generation practices in the ‘grey list’ of unfair trading practices in the ACL.

6.2 Stronger data protections and obligations

One of the key vulnerabilities in the current regulation of lead generation is the weakness of Australia’s privacy and data protection laws.²⁶

Unlike other jurisdictions, Australia has no comprehensive data protection rights to prevent people being exploited by manipulative lead generation practices. The European Union’s General Data Protection Regulation (GDPR) is one example of laws that place much higher standards on lead generators and others who collect people’s information. Under the GDPR, consent must be a freely given, specific, informed, unambiguous indication of wishes by clear affirmative action.²⁷ A person must be able to withdraw consent at any time and it must be “as easy to withdraw as to give consent”.²⁸

Our current laws also do not embody the global principles of First Nations Data Sovereignty, such as integrating Free, Prior and Informed Consent in data governance, to strengthen First Nations people’s rights and self-determination in relation to their data. Consumer advocates have seen examples where First Nations people’s information that is not sensitive is cross-referenced with other sources, such as ABS data, to identify groups of consumers to target. This can increase First Nations people’s vulnerability to manipulative and harmful lead generation tactics. Consumer advocates have seen this risk extend to many financial products,

²⁶ Chiefly the *Privacy Act 1988* and Australian Privacy Principles.

²⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (GDPR), Article 4(11).

²⁸ GDPR Article 7(3).

including debt management services, buy now pay later products and short-term loans.

While we recommend a complete ban on lead generation in super and other high-risk financial sectors, the gaps in privacy laws will be a significant barrier to stamping out further harmful lead generation practices that persist.

Additional data protections are needed to curb lead generation activities that are completely misaligned with good commercial practices and, more importantly, wider community expectations.

Data protections should focus on strengthening consent requirements, and draw on current best regulatory practice. For example, Australia could strengthen data protections by more broadly applying requirements of the Consumer Data Right, and recommendations of the 2022 Privacy Act Review.²⁹ This means an easier-to-understand process where consumers are more in control of their own consent, and the information they share, who they share it, and for how long. Strengthened laws would require:

- consumer consent must be voluntary, informed, current/time-bound, specific as to purpose, unambiguous/explicit and withdrawable at any time,
- consents must be standardised with clear templates,
- businesses clearly disclose how and why they have shared or used consumer information, and
- records must be maintained and kept by businesses and made available to consumers.

If these requirements are breached, penalties should apply and the consumer's consent should be considered invalid. The sales conduct of a business such as a lead generator may then breach the hawking prohibition or other laws.

Consumers should have access to a free, fair and independent avenue for individual disputes where their privacy or data rights have been breached.

These reforms must be coupled with increased capacity and funding of the Office of the Australian Information Commissioner (OAIC), given it regulates the capture and sharing of information.

Recommendations

18. Enhance privacy and data protection laws with stronger consent laws, consequences for breach, a dispute resolution mechanism and increased capacity of the OAIC.

²⁹ See Office of the Australian Information Commissioner, [Consumer Data Right privacy safeguards](#); Attorney-General's Department, [Privacy Act Review Report 2022](#).

