Level 6, 179 Queen Street
Melbourne, VIC 3000

info@consumeraction.org.au
consumeraction.org.au
T 03 9670 5088
F 03 9629 6898

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By email: Guidance_Consultation@austrac.gov.au

Submission to AUSTRAC: Consultation on draft updated guidance to assist customers who don't have standard identification

Our organisations welcome the opportunity to provide feedback on the proposed changes to the AUSTRAC guidance on assisting customers who don't have identification. This is a joint submission made on behalf of:

- Consumer Action Law Centre
- Financial Counselling Australia
- Financial Rights Legal Centre
- Indigenous Consumer Assistance Network
- Mob Strong Debt Help
- Super Consumers Australia

As a collective our organisations have considered this response as either First Nations organisations, First Nations individuals and/or as specialists working with and supporting First Nations consumers across Australia. We acknowledge AUSTRAC's continued engagement and consultation in line with Closing the Gap priority reform 3 and therefore urge AUSTRAC to consider the recommendations included in this submission as designed to support Financial Service Providers (FSPs) in improving engagement and outcomes for First Nations peoples.

Our submission opens with general comments on the proposed changes, as well as our experience of how banks, superannuation funds and financial institutions have (or have not) applied the Current Guide since we last provided input on its review in 2022. We also provide feedback and recommendations on specific sections of the draft changes, as well as a response to the guiding questions proposed as part of the consultation process. Finally, we provide case studies to illustrate the ongoing challenges that consumers and their advocates continue to face attempting to have their identities verified using non-standard forms of identification, particularly when it comes to identifying people experiencing vulnerable circumstances.

Summary of recommendations

RECOMMENDATION 1. Government should mandate adoption of the AUSTRAC Guide across FSPs, particularly for superannuation funds. Government should consider mandating that the ATO adopts the Guide in its consumer-facing work.

RECOMMENDATION 2. Clarify in the Guide that in the vast majority of cases, vulnerable and diverse customers seeking to make routine, comparatively low-value transactions pose no ML/TF risk and should therefore almost always have their alternative forms of identification accepted under the Guide.

RECOMMENDATION 3. Wording should be updated to permit all expired identification being utilised, where at least one other identifying detail matches i.e. date of birth and/or the person can be visually identified from their photo on the expired identification, and that the word 'recently' be removed from the guide in reference to expired identification.

RECOMMENDATION 4. AUSTRAC should reference the ongoing barriers First Nations consumers face in holding a current drivers licence as part of their recommenations for FSPs to consider alternatives to drivers licences as broadly and flexibly as possible.

RECOMMENDATION 5. Delete the new verification of alternative identification additions to the Guide and instead direct readers back to the risk-based decision-making approach (see recommenation 2).

RECOMMENDATION 6. We again urge banks and financial institutions to review their online platforms and ensure a broad range of alternative forms of identification can be uploaded.

RECOMMENDATION 7. AUSTRAC make a clear statement that banks and other FSPs should provide internal guidance as to how they will implement the Guide.

RECOMMENDATION 8. Where the Guide recommends giving customers the option to identify as First Nations, this should be expanded to include guidance that banks and FSPs give consumers the choice to have this information recorded against the customer's account.

General comments

Banks and the products and services they provide remain at the heart of people's ability to transact and participate in day-to-day economic life, particularly in today's fast-changing digital environment. If banking and financial services are to be inclusive and allow for full participation by all in the community, people who don't have standard forms of identification documents must still have access to banking and financial services.

There are many reasons why people may not have access to standard forms of identification and face difficulties in accessing financial services as a result. We regularly witness the significant stress and financial exclusion that occurs when people without standard forms of identification cannot access banking services because their alternative forms of identification are rejected. The AUSTRAC guidance on assisting customers who don't have standard identification is therefore an important guide (the Guide) that banks and other FSPs need to apply broadly and flexibly, with a focus on genuinely knowing the customer in front of them and their situation, rather than relying simply on internal 'know-your-customer' (KYC) policies.

Overall, we commend AUSTRAC for the generalised updating of language and tone of the Guide, utilising plain language and ensuring clarity of messaging, and we welcome the changes AUSTRAC has proposed. We strongly urge banks and all financial institutions to voluntarily adopt the principles of the Guide and to develop and implement consistent internal policies, decision guides and employee training programs in order to ensure the Guide and related AML / CTF rules are broadly understood, and staff feel confident to implement the Guide and exercise discretion as needed.

Extent of people impacted by lack of identification documents

The exact number of people who experience financial exclusion and/or lack sufficient identification to support access to the financial system is, by the nature of the issue, largely unknown. In order to try to understand the number of people in custody who were unbanked and also lacked traditional photo identification to support access, the Indigenous Consumer Assistance Network (ICAN) recently led a voluntary survey of 500 people entering a Queensland prison. The results highlighted the following:

- Nineteen per cent (19%) of respondents did not have an account or were unsure if they still had access.
- Nine per cent (9%) of the unbanked were young people (18- 25 years) who had never held an account.
- Seventy per cent (70%) stated that they required photo identification.
- Eighty-three per cent (83%) of all respondents identified as First Nations with many originating from regional, remote and very remote communities where access to traditional identification such as birth certificates, driver's licences and adult photo identification can be difficult.

Whilst data was captured at the point of entry into prison, it highlights a community-based issue which is invariably compounded by imprisonment as licenses expire, documents are lost, bank accounts are closed due to inactivity

and resources to support the reissuing and reopening of these are significantly reduced. The impacts are much further reaching than an inability to receive money into an account.

Ongoing exclusion from FSP products and services

While we acknowledge the work of AUSTRAC in providing and updating the Guide for banks and FSPs, we have unfortunately continued to observe customer-facing representatives of these corporations either applying the Guide with a very narrow lens, or lacking knowledge of and confidence in decision-making under the Guide and therefore declining to assist customers to open accounts with the identification they possess.

We continue to see Government services such as the Australian Tax Office (ATO) continuing to refuse to use AUSTRAC's flexible identification guidance, particularly in relation to superannuation, which unfairly denies people access to life-changing amounts of superannuation benefits that they're legally entitled to and through which the rest of the population acquires wealth and at times insurance coverage. Superannuation funds' limited adoption of flexible identification practices, particularly for First Nations consumers trying to access superannuation products and benefits, has been an enduring problem that continues to exclude consumers from diverse backgrounds or those experiencing vulnerability from the superannuation system, presenting further barriers to people obtaining financial security into their retirement years.

The voluntary nature of the guide also presents challenges, as businesses are not required to follow this guidance. As a result, consumers experiencing vulnerability continue to face barriers in accessing critical financial services and products.

Given these ongoing challenges, and the financial exclusion and compounded hardship that results from it, we urge government to mandate the Guide's adoption across FSPs, particularly for superannuation funds.

RECOMMENDATION 1. Government should mandate adoption of the AUSTRAC Guide across FSPs, particularly for superannuation funds. Government should consider mandating that the ATO adopts the Guide in its consumer-facing work.

Feedback on specific sections of the draft changes

Applying a risk-based approach to alternative identification – page 3

The updated Guide says that the flexible identification procedures businesses use 'must be based on the level of money laundering and terrorism financing (ML/TF) risk level that different customer types pose' - as opposed to the scam/fraud risk the transaction poses. Superannuation funds and the ATO typically refuse to use AUSTRAC's flexible identification guidance because the fraud risk of customer transactions is apparently too high. However, we have not seen evidence that use of AUSTRAC's flexible identification guidance facilitates

superannuation fraud. Rather locking vulnerable members out of their super or death benefit entitlements is not an acceptable fraud mitigation strategy.

RECOMMENDATION 2. Clarify in the Guide that in the vast majority of cases, vulnerable and diverse customers seeking to make routine, comparatively low-value transactions pose **no** ML/TF risk and should therefore **almost always** have their alternative forms of identification accepted under the guidance.

Consideration of risk over flexibility - page 5

The draft changes to the Guide provide greater emphasis on security over flexibility as evidenced in the passage at page 5 of the proposed tracked change consultation document *"If a customer's ML/TF risk has increased to high, you must apply ECDD. AUSTRAC recommends you seek to manage and reduce the risk through appropriate controls before considering alternative options such as declining or withdrawing services. If you remain satisfied that the customer is who they say they are you can continue relying on existing alternative identification processes while taking reasonable steps to manage and reduce the ML/TF risks."*

Case Study - Sarah

Sarah lives in remote Australia and is a First Nations woman with two superannuation funds A and B. Sarah has only her expired drivers' licence (she is currently suspended), 18+ photo ID card and Medicare card.

Sarah contacted both Funds seeking to confirm details of her balance and insurance with each, so she could make a decision which fund to consolidate into. Superannuation Fund A has a small amount of superannuation in her account, but they accepted her identification as this was enough to confirm her identity. Superannuation Fund B has a much greater sum in her account, but they could not accept her ID. Superannuation Fund B wanted two of the following ID documents: current drivers' licence, Medicare card, Australian passport or foreign passport.

Superannuation Fund B refused to allow for any leeway on this issue and Sarah is not able to access this information in order to make an informed decision, let alone access the funds held there. In addition, superannuation Fund B wanted Sarah to complete an attached PDF application form to verify her identity even though she only has a phone to use internet. Sarah cannot access superannuation Fund B.

The AUSTRAC Guide helps FSPs to troubleshoot different ways to accommodate identification issues under part 4.15 of the AML CTF rules. However, this provision is voluntary for FSPs to comply with as compared with their mandatory need to ensure diligence in their monitoring and reporting under 4.15.3. Consequently, different FSPs have their own guides with varying degrees of flexibility, if they have that at all. This creates a problem for consumers and their caseworkers when there are multiple FSPs involved, which is explored in the above case study.

Sarah's experience is a common one reported to us by our clients. The barriers outlined in Sarah's case, highlight the need for the Guide to commit FSPs to a standard risk model which delineates between individuals experiencing vulnerability wishing to make routine transactions, and individuals with a genuine history of high-risk financial transactions.

Amend AUSTRAC guidance to include expired driver's licence - page 10

We are pleased to see the inclusion in the Guide that in cases where a person cannot provide standard forms of identification, use of expired identification is acceptable. However, we are concerned that the wording of 'recently expired' and FSP's discretion for 'determining a reasonable timeframe for expired identification to be considered reliable' lessens the potential benefits to consumers of this addition. Based on our casework experience, our concern is that FSPs will likely apply a narrow interpretation of this reasonable timeframe.

RECOMMENDATION 3. Wording should be updated to permit **all expired identification** being utilised, where at least one other identifying detail matches i.e. date of birth and/or the person can be visually identified from their photo on the expired identification; and that the word 'recently' be removed from the guide in reference to expired identification.

We broadly support the definition of a driver's licence as a primary photographic identification document, and this should include an expired driver's licence. However, it should be noted that there is a systemic disadvantage for First Nations peoples in accessing a driver's licence. In 2013, fewer than half of all eligible Aboriginal and Torres Strait Islander people held a driver licence compared with 70% of the non-Indigenous population[1]. The NSW Bureau of Crime Statistics and Research data shows that First Nation people constituted 31% of all people imprisoned for driving while suspended or disqualified[2]. This is similar in other states and territories and is particularly high in the NT[3].

It was recommended in the 2018 Pathways to Justice enquiry (ALRC report) that State and Territory governments should work with relevant Aboriginal and Torres Strait Islander organisations and community organisations to identify areas without services related to driver licensing and to provide those services, particularly in regional and remote communities.

RECOMMENDATION 4. AUSTRAC should reference the ongoing barriers First Nations consumers face in holding a current driver's license as part of their recommendation for FSPs to consider alternatives to drivers licences as broadly and flexibly as possible.

Verifying alternative identification documents – pages 11 and 12

The intention of the newly added passage in the Guide makes sense considering the increased prevalence and sophistication of scam activity and therefore the greater need to verify document/s provided to access accounts. However, there is a danger that inserting additional steps creates new barriers for people experiencing vulnerability, and also perpetuates harm to consumers. Verifying referee statements for example raises concerns of whether FSP staff will have the cultural competency required to reach out to community referees in an

[1] NSW Auditor-General's Report to Parliament Improving legal and safe driving among Aboriginal people 19 December 2013 page 2. 21
[2] NSW Bureau of Crime Statistics and Research, New South Wales Criminal Courts Statistics 2016 (2017) tables 5, 14
[3] Thalia Anthony and Harry Blagg, 'Addressing the "Crime Problem" of the Northern Territory Intervention: Alternate Paths to Regulating Minor Driving Offences in Remote Indigenous Communities' (Report, Criminology Research Advisory Council, June 2012)

appropriate way, or the resources available in order to make contact with referees without further delaying and complicating the process for the consumer.

The framing of the passage, and its suggestion that people can use technology to expedite verification, is also blind to the impact of the digital divide on the consumers the Guide purports to assist. The request for the customer to contact their agency to issue an email from their official email address and cc the client can place an unfair burden on the client to complete this, particularly if they do not know how to contact or communicate with the official entity or have ready access to technology and ability to undertake this step. It would be better to expand the flexibility on this to instead require the FSP to ascertain and record the client's vulnerability and troubleshoot options to complete the verification process that are tailored to that person's circumstances, such as calling the official entity with the consumer.

In addition to the barriers faced by consumers, this verification process also places a burden on official entities who may not be able to meet these verification requests for capacity or security reasons. If an official entity is not able to respond to requests and the FSP cannot verify the individual, then the client is stuck without access to their account.

The community representative verification process will also fall down where the representative may be unavailable for different reasons which do not appear to be considered by the Guide. These reasons could include:

- Sorry business
- Traditional activities and being 'out bush', and
- Change of phone/email.

The community representative may also not fully understand the purpose of the call from an outside commercial organisation trying to ask questions about one of their community members and could choose not to engage. This leaves the client with reduced ability to have their verification completed. Greater flexibility to troubleshoot this issue is needed than what is currently provided in the Guide.

Given the above concerns, we strongly recommend this new section **not** be included in the Guide and instead direct banks and other FSPs back to the risk-based decision-making approach which should clearly state that in the vast majority of cases, vulnerable and diverse customers seeking to make routine, comparatively low-value transactions pose **no** ML/TF risk and should therefore **almost always** have their alternative forms of identification accepted under the guidance (see question 3).

RECOMMENDATION 5. Delete the new verification of alternative identification additions to the Guide and instead direct banks and other FSPs back to the risk-based decision-making approach (see recommendation 2).

Responses to the questions posed by AUSTRAC

1. **Does this guidance achieve its intended purpose to support reporting entities to use flexible and compassionate approaches to customer identification processes while still maintaining appropriate systems and control to mitigate and manage risks? Why or why not?**

We continue to see challenges for customers and consumer advocates when seeking to rely on the Guide, due to the lack of transparency in how and when different financial institutions apply it. Policies and procedures relating to the application of the guide are still not clear to either customers, advocates or the representatives within the FSP tasked with interpreting and applying the guide. This creates significant confusion, inconsistent responses, time delays, miscommunication about what is required and stress for all involved. Perhaps most importantly it further disadvantages the very people it is meant to benefit. As noted earlier in this submission, we strongly urge banks and financial institutions to develop and implement internal policies, decision guides and employee training programs in order to ensure the guide and related AML / CTF rules are broadly understood, and staff feel confident to implement the guide and exercise discretion as needed.

In addition to the above, the online platforms to which identification forms are uploaded as part of application and online processes have still not been updated to accept all alternative forms of identification, an issue that we raised in 2022. This means that even if the customer has found a representative that will accept an alternative form of identification, that person cannot take advantage of online application processes to identify themselves and obtain the service. This poses particular challenges for people in regional and remote areas who then have to go to the nearest bank branch which can be hundreds of kilometres away.

RECOMMENDATION 6. We again urge banks and financial institutions to review their online platforms and ensure a broad range of alternative forms of identification can be uploaded.

2. **How does your business use this guidance and apply a flexible approach to customer identification processes?**

Not applicable to our organisations.

3. **What barriers or challenges do reporting entities face applying a flexible approach to identify customers who don't have standard identity documents?**

<u>Staff awareness of the Guide and authority to apply it</u>

We have found one of the key issues to be the application of the Guide at the ground level. While we continue to support the purpose and content of the Guide and are pleased to note many instances where banks have taken more flexible approaches to identification, there is a disconnect between AUSTRAC's recommendations and actual practice in the branches due to staff's lack of confidence in their authority to make these decisions.

We therefore recommend AUSTRAC make a clear statement that banks and other FSPs should provide internal guidance as to how they will implement the Guide, branch-level decision making processes and training for staff on the guide, where appropriate. This will ensure that representatives at branch level can feel confident to implement the Guide and exercise discretion where necessary and not refer the person to another section of the bank when the person is in branch.

RECOMMENDATION 7. AUSTRAC make a clear statement that banks and other FSPs should provide internal guidance as to how they will implement the Guide.

Non-flexible application of the Guide

Similarly, where an FSP may have greater awareness and acceptance of flexible identification practices, an additional barrier that customers and their representative alike regularly encounter is when the alternative forms of identification do not exactly match the customer's profile details that already exist in the institution's system (whether through administrative error or otherwise).

Bank representatives should be supported to adopt a flexible approach when verifying identification rather than required to insist that identification exactly match existing bank profiles.

Case Study – when identification documents do not precisely match the consumers profile

A Financial counsellor supporting a First Nations man to reopen a bank account with Corrections-issued identification was advised that that they were unable to do so as the bank profile spelt his first name with a "y" and Corrections-issued identification spelt it with an "I". All other details including middle names, surname, date of birth, signature etc were a match.

Other bank customers regularly encounter similar issues when Referee Forms, or Community issued identification does not for example include all middle names as per the existing bank profile. At times, customers are unaware of what information does not match accurately and therefore are unsure how to remedy the situation. This results in the customer needing to once again seek out authorising Third Parties such as community elders to reissue the identification without confidence it will lead to access.

One particular issue that we continue to see causing harm is the issue of de-banking which can come about because of barriers people face with identification. For example, where a bank has blocked or cancelled a person's accounts due to negative customer behavior in branch. We have seen examples where the customer has become frustrated with the various barriers put in place for them in accessing essential financial services (language, cultural, distance required to travel to the branch and identification requirements). In these examples that client's behavior may have escalated due to their frustrations and bank staff have taken punitive action and de-banked the individual. We believe that if FSP were applying a principles-based approach to accepting alternative forms of identification, this self-perpetuating and damaging cycle could have been avoided.

4. **Do you have feedback on the impact of the guidance and/or improvements that could support greater financial inclusion for customers facing challenging circumstances or from diverse backgrounds?**

Broader application of processes across all cohorts of customers

One area we have seen improvements in since the previous changes in 2022 is The Commonwealth Bank Indigenous Banking Team, and their acceptance of alternate identification. Here we are specifically referring to the Aboriginal & Torres Strait Islander Referee Form and the establishment of a pathway, in partnership with financial counsellors, to enable account opening for First Nations customers in Lotus Glen prison. This is an excellent example of staff being able to find the balance between KYC compliance, knowing and understanding their customers' needs, and working in partnership to design processes which meet the needs of consumers experiencing vulnerability. However, although this is a positive example, we stress that there is an ongoing need for banks more broadly to work on their approaches to identifying customers to enable all customers to benefit from more flexible approaches. For example, the Lotus initiative only applies to prisoners who identify as First Nations people. While positive, this process for verification of identification should ideally be extended to all people in prison and by using the now accepted Corrections issued identification.

Broader application of processes within FSPs

Customers rarely interact with their financial institutions as a "one off" and consequently may need to identify themselves on a number of occasions. This could include, but is not limited to, opening an account, removing self-imposed or bank-initiated blocks placed on accounts, requesting keycards, and withdrawing lump sums over the counter.

In our experience, even where flexible approaches have been adopted for some types of interactions with the business, consumers may experience lesser flexibility in other areas, as the case study below illustrates.

We consider that the acceptance of flexible forms of identification should be reflected across all of a bank's processes to enable consistency in the customer experience and therefore confidence in accessing banking products and services.

Case Study – Inconsistent application

A man who was recently released from custody, presented in branch to order a new keycard. In preparation, his re-entry support worker assisted him to access Corrections issued identification, a paper based interim Medicare card and a bank statement from his bank with his name and account details.

He was advised that the identification was insufficient for the purposes of reissuing a keycard. His options were to re-present once he had "formal ID" or alternatively, set up online banking via the banking App (once he had a phone) and request this via the App.

Ironically, the identification documents would have been sufficient for the purposes of opening an account.

5. **In line with AUSTRAC's commitment to support reconciliation, do you have feedback on the impact of this guidance and/or improvements that could support greater financial inclusion for Aboriginal and Torres Strait Islander peoples?**

We continue to support the section in the Guide regarding identifying and supporting First Nations customers. Where the Guide recommends giving the clients the option to identify as a First Nations customer, this should be expanded to include guidance that banks and FSPs give consumers the choice to have this information recorded against the customer's account. This will assist the customer by ensuring they will not need to identify as Aboriginal or Torres Strait Islander many times over with their bank into the future, and will allow for bank and other FSP representatives to offer assistance from internal Indigenous banking team members who can provide culturally appropriate banking services to the customer.

RECOMMENDATION 8. Where the Guide recommends giving customers the option to identify as First Nations, this should be expanded to include guidance that banks and FSPs give customers the choice to have this information recorded against the customer's account.

Please contact First Nations Policy Officer Shelley Hartle at **Consumer Action Law Centre** on 03 9670 5088 or at shelley@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,

Stephanie Tonkin | CEO
Consumer Action Law Centre

Jillian Williams | Operations Manager
Indigenous Consumer Assistance Network

Mark Holden | Senior Solicitor and Policy Advocate
Mob Strong Debt Help

Drew McRae | Senior Policy and Advocacy Officer
Financial Rights Legal Centre

Xavier O'Halloran | CEO
Super Consumers Australia

Lynda Edwards | Coordinator Financial Capability
Financial Counselling Australia

About our Organisations

Consumer Action Law Centre

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

Financial Counselling Australia

Financial Counselling Australia (FCA) is the national voice for the financial counselling profession in Australia. We are a not-for-profit organisation which provides resources and support for financial counsellors and wish to raise awareness about the availability and value of financial counselling. FCA advocates for a fairer marketplace for consumers and aims to improve hardship processes for people in financial difficulty. We coordinate the National Debt Helpline and manage the Small Business Debt Helpline. Our vision is for an Australia with fewer people in financial hardship.

Indigenous Consumer Assistance Network (ICAN)

ICAN provides consumer education, advocacy, and financial counselling services to Aboriginal and Torres Strait Islander peoples across North and Far North Queensland, with a vision of "Empowering Indigenous Consumers". We also provide our services to non-Indigenous peoples across the region.

The people our services work with are strong, resilient, and knowledgeable about their lives and communities. However, structural barriers and an uncompetitive marketplace in remote and regional communities create conditions in which exploitation occurs. The cost of living is unacceptably high, with basic food and necessities costing significantly more than in cities and large regional centres. Employment is limited, and regional centres are susceptible to significant events such as pandemics, industry downturns and extreme weather. Housing is limited and costly, and the consequent rate of homelessness and overcrowding is unacceptably high. Cars are essential items in the family home as they are the only form of transport and pose a significant upfront and ongoing expense.

Against this backdrop, we people regularly support people who experience barriers to accessing and engaging with financial services because they do not have traditional forms of identification.

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 guided, developed and operated by Aboriginal and Torres Strait Islander staff, supported by all our colleagues at Financial Rights.

Our team is small but dedicated, and includes solicitors, policy advocates, financial counsellors and a student financial counsellor. This team brings years of experience to lead the work of Mob Strong. They are backed up by the larger team of solicitors and financial counsellors in Financial Rights, who share the caseload.

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. Our primary funding comes through a small levy on super funds.