

Statutory Review of the *Data Availability and Transparency Act 2022* – Draft Findings and Recommendations

Submission by The Conexus Institute

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About The Conexus Institute

The Conexus Institute is an independent, not-for-profit research institution focused on improving retirement outcomes for Australian consumers. Philanthropically funded, the Institute is supported by the insights of a high-quality advisory board, who work on a pro-bono basis. The Institute adopts a research-for-impact model and frequently collaborates with researchers from academia, associations, and industry. Where possible research is made open source to assist industry and create transparency and accountability. Further information [here](#).

About David Bell

Dr David Bell is Executive Director of The Conexus Institute. Bell's career has been dedicated to the investment and retirement sector. He has worked with both commercial and profit-for-member firms, and ran his own consulting firm. Bell taught for 12 years at Macquarie University and in 2020 completed his PhD at UNSW which focused on retirement investment problems. Full bio [here](#).

About Geoff Warren

Dr Geoff Warren is Research Fellow at The Conexus Institute and an Honorary Associate Professor with the Australian National University. Warren's career has contained distinct industry and academic phases, with investment and superannuation being two particular areas of focus. He has worked with commercial investment firms and government centres, while his academic career has predominantly been at Australian National University. Warren is a member of various advisory boards, including the ASIC Consultative Panel. Full bio [here](#).

***** The authors are willing and able to participate in further consultation. Please treat this as a public submission. *****

1. Overview

This submission comments on the potential future implications of the Data Availability and Transparency Act 2022 ('DAT Act') for superannuation (super) funds. We acknowledge that the recommendations (specifically Recommendation 10) do not envisage expanding accreditation to request and use data under the DAT Act to super funds. Nevertheless, we recommend that consideration be given to the possibility of facilitating accreditation to super funds in future in framing any revisions to the DAT Act. (In this regard, we wonder whether Recommendation 11 that the Minister be given the power to expand accreditation may suffice.) We also recommend that an examination be undertaken of including super funds within the accredited user universe.

2. Super fund provision of expanded retirement services to members

The direction for the super industry is clear: super funds need to improve their member services, in particular with respect to the retirement phase. This direction is reflected in a stream of recent government policy developments, notably including the Retirement Income Covenant (RIC) which requires super funds to assist members with their retirement needs and the Delivering Better Financial Outcomes (DBFO) reforms which (among other things) facilitates provision of services such as personal financial advice by super funds to their members. The policy objectives include getting the super industry to 'lift its game' in assisting members particularly with regard to retirement, and expand the provision of financial advice and guidance at large scale and low cost in order to address the 'advice gap'.

To support the retirement needs of their members, super funds will need to become more services-oriented firms enabled by an understanding of the personal circumstances of their members. Collection of member personal information is central to performing this role. Below we discuss two important use cases, with the common theme that each requires the collection of member personal information for super funds to effectively provide the services being discussed.

2.1. Trustee provision of personal financial advice

Super funds are on a pathway to providing a greater level of personal financial advice services to their members in their role as fiduciaries, especially around retirement. This is an important and major undertaking given the large demographic wave approaching retirement. The transition is being implicitly directed by Government through the following legislative frameworks:

1. **The RIC**, which took effect on 1 July 2022¹, places an obligation on super fund trustees to assist members with three objectives:

"The retirement income covenant requires trustees to have a strategy to assist beneficiaries to achieve and balance the following three objectives:

- 1. maximising their expected retirement income;*
- 2. managing expected risks to the sustainability and stability of their expected retirement income; and*
- 3. having flexible access to expected funds during retirement."*

In addition to offering retirement solutions, guidance and financial advice are key service offerings that are required to assist members to pursue and balance these objectives.

¹ We explore the RIC in the first edition of our Retirement Explainer series, [here](#). We conclude that "A way to square the circle is to give meaning to the three objectives by first determining the needs and wants of members".

2. **Tranche 2 of the DBFO reforms**, which is currently under draft legislation, provides two important safe harbours to super funds²:
 - (a) [Advice through superannuation](#) sets out a framework under which super funds may collect personal information and provide personal advice to members with respect to their interest in their super fund on a ‘collectively-charged’ basis. Our Retirement Explainer titled [“Pathways to retirement solutions”](#) analyses how this positively alters the opportunity for super funds to support their members into an appropriate retirement solution.
 - (b) *Targeted superannuation prompts* involves a framework under which super funds can send targeted prompts to consider financial actions.
3. **Best practice principles** were announced by Government in November 2024³. We anticipate this initiative to cement the expectation that trustees will guide and assist their members into suitable retirement solutions.

Further initiatives have been indicated by Government such as additional tranches of DBFO that could further enhance the capacity of super funds to provide financial advice services.

Each of these initiatives has been a sizable undertaking for Treasury and the Government of the day. Our view is that multiple governments would not have gone to these efforts to create optionality for funds to provide quality guidance and personal advice services without an attendant expectation that super funds will use these capabilities to provide these services. This expectation may remain strongly implicit, or may ultimately become explicit.

The key point is that super funds cannot provide effective advice and guidance services without understanding the circumstances and needs of members, noting in particular that retired members can differ significantly in how their personal circumstances interact with their retirement needs. Trustees need to ‘know their members’ to best assist them. The public benefit from potentially accrediting super funds to request and use Government data under the DAT Act might be viewed from this perspective.

2.2. Assistance with Age Pension eligibility and access

The Age Pension is a crucial component of retirement income for many Australians. It is forecast that 80% of future retirees will access at least a part Age Pension at some point during their retirement. Further, the RIC directs super fund trustees to consider the role of the Age Pension in determining an appropriate strategy for their members, and explicitly states that the Age Pension must be included in the definition of retirement income (underlining added):

“The trustee must determine the meaning of retirement income for the purposes of the strategy, which:

- (a) *must include income, net of tax, received during the period of retirement of the following kinds:*
 - (i) *income paid from, or supported by, a superannuation interest in the entity;*
 - (ii) income from an Age Pension under the Social Security Act 1991;
- (b) *may include income from any other source if the trustee determines that it is appropriate to include income from that source.”*

Section 52AA(5) of the Superannuation Industry (Supervision) Act 1993 (underline added)

In addition, many retirees are slow to apply for the Age Pension. A [Link Advice⁴ survey conducted by Retirement Essentials](#) in 2022 found that 79% of people wanted help with the Age Pension and

² See [Improving access to affordable and quality financial advice](#) by The Treasury. Refer link for our [submission on DBFO Tranche 2](#).

³ Refer [Improving the retirement phase of superannuation](#) by The Treasury.

⁴ Link Australia now operates as MUFG, and their advice offering is now called Retire360.

72% wanted that help from their super fund. The same survey found that only 44% apply on time, with 24% applied within a year and 32% over a year. Late appliers miss out on payments that cannot be recovered.

There are two broad activities that super funds could undertake related to the Age Pension that could significantly improve the retirement outcomes of their members:

1. *Assess Age Pension eligibility of members* so that it can be incorporated into guidance or personal advice provided by the trustee to the member, and the retirement solution that is offered
2. *Assist members with Age Pension application*, which is a lengthy process involving a significant amount of personal data.

All of the above activities require knowledge of the factors that determine the Age Pension eligibility, which include assets outside of super, the existence and financial circumstance of any partner and homeownership status in addition to the member's interest in the fund. The public benefit from potentially accrediting super funds to request and use Government data under the DAT Act might be viewed through an additional lens of facilitating super funds to assist members with the Age Pension.

3. Recommendation: Allow for and examine the possibility of accrediting super fund trustees under the DAT Act

Section 2 above highlights how collection of personal information is a foundational element of super funds effectively supporting the retirement needs of their members⁵, and thus deliver on the expectations embedded in recent policy developments. There are a number of ways that super funds may source the required personal information, including asking members themselves and collection through available private sector sources⁶. However, collecting personal information on members from these sources can be difficult and costly with high risk of the data being inaccurate or incomplete. In particular, super fund members differ greatly in engagement and financial literacy and thus may be either unwilling or unable to provide accurate personal data. Further, any member-supplied data should ideally be substantiated against other sources to establish reliability.

The government offers the potential to act as an authoritative and reliable source of personal data for super funds. For instance, the majority of the key datapoints that trustees ideally need to know about members are collected by Service Australia as part of the Age Pension application process, or through other agencies such as the ATO. The efficiency and effectiveness through which super funds assist their members would be significantly enhanced through access to government data. Such access would result in uplift in accuracy, reduction in error counts, lower cost, and improved ability to assist those members who are disengaged or suffer from low financial literacy.

Nevertheless, any access to government data should be conditional on super funds having in place high quality data governance and management processes. It is far from clear that the super industry at large is currently in such a state, although some super funds may be well-positioned. Accreditation of super funds to request and use Government data under the DAT Act would also be a major policy step. Research and deliberation should thus be undertaken before such a step is taken.

Nevertheless, there could be considerable public benefit in allowing super funds to use government data in support of functions such as providing personal financial advice around retirement and addressing Age Pension eligibility and application. While the DAT Act may not permit super funds to access personal information in the near term, the super funds use case should be kept in mind in developing the legal, operational and technical pathways and examined for possible future adoption.

⁵ Personal information is an important part of many additional aspects of the services that super funds provide to their members. We have focused on retirement in this submission as we view it as the most pressing issue.

⁶ This should of course be subject to respecting privacy requirements.