

7 March 2025



By email: [taxsecrecyreview@treasury.gov.au](mailto:taxsecrecyreview@treasury.gov.au)

## RE: Review of Tax Regulator Secrecy Exceptions

Tax secrecy laws are important for protecting people's private financial information and keeping Australia's tax system secure. However, the current rules under the Tax Administration Act 1953 (TAA 1953) are making life harder for grieving families trying to access a loved one's superannuation.

### The problem

The Australian Taxation Office (ATO) keeps records of everyone's superannuation accounts, which helps people find lost super. But when someone passes away, the ATO won't tell potential beneficiaries where their loved one's super is if it's still held by a fund, unless they are a **legal personal representative (LPR)**. This is typically an executor named in a will, an administrator appointed through letters of administration, or a nominated legal practitioner.

Many First Nations people and other Australians do not leave wills or appoint an LPR. Applying for letters of administration can cost over **\$2,000**, and families are often left not knowing whether it's even worth applying. This creates unnecessary stress and financial burden, forcing people to spend money just to find out if their loved one had super.

### The impact

This issue is growing. **\$11.8 billion** in super sits unclaimed with super funds as of 2024.<sup>1</sup> Super Consumers and CHOICE analysis in 2023 found that lost and unclaimed super is disproportionately held in areas with high First Nations populations.<sup>2</sup> Financial counsellors regularly see families struggling to access money that rightfully belongs to them

### The solution

Amend **Division 355 of the TAA 1953** to allow the ATO to inform potential beneficiaries of the existence of super accounts without requiring them to be an LPR. This reform would:

- Reduce financial hardship for grieving families
- Make government processes fairer and more efficient
- Ensure people can access money that belongs to them

We have attached:

- A **briefing paper** commissioned by FCA with further details.

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<sup>1</sup> <https://www.ato.gov.au/about-ato/research-and-statistics/in-detail/super-statistics/super-accounts-data/super-data-lost-unclaimed-multiple-accounts-and-consolidations/total-lost-fund-held-and-ato-held-super>  
<https://www.choice.com.au/money/financial-planning-and-investing/superannuation/articles/first-nations-lost-super>

- A **letter to the Assistant Treasurer and Minister for Indigenous Australians** supporting this proposal, endorsed by key stakeholders including major super funds, industry representative bodies, and community organisations.

### **Addressing fraud concerns**

There are concerns that allowing the ATO to disclose super information to potential beneficiaries creates a fraud risk. This is **not the case**. While super fraud is a valid concern in many scenarios, our proposal is not a free pass to access deceased people's super. Under our proposal the ATO would be able to request the potential beneficiary provides evidence of the relationship as a fraud mitigation strategy, for example a death certificate.

Super funds already have rigorous and legislated processes in place to ensure that only legitimate claimants can access funds. These include detailed checks such as providing proof of identity and extensive proof of relationship to the deceased. By removing the ATO's LPR requirement through changes to the TAA 1953, we are not eliminating safeguards; we are simply ensuring that grieving families are not burdened with unnecessary and duplicative bureaucratic obstacles. The proposed reform allows for a faster, more efficient process - one that still maintains robust protections against fraud while ensuring that people can access funds they are rightfully entitled to.

### **Other barriers to accessing taxpayer information**

Financial counsellors provide critical support to Australians facing financial hardship. They assist clients in navigating complex and often extremely vulnerable circumstances, including tax debts, financial abuse, disputes with the ATO, and superannuation issues. We support the recommendations outlined in EARG's submission focusing on improving tax secrecy rules to prevent the weaponisation of the tax system by perpetrators of intimate partner financial abuse.

Timely access to taxpayer information is critical. The recent introduction of the ATO's Advocate Help Desk has made it significantly easier for financial counsellors to resolve client's ATO issues. However, barriers to accessing to taxpayer information remain:

- **The ATO's Proof of Record Ownership (PORO) process** requires financial counsellors to provide their personal Tax File Number when calling the ATO without a client present. This is not always possible and is an inappropriate impost.
- To support an ongoing client ongoing, financial counsellors must submit form NAT 2817 to gain ongoing authority. **However, this form is inaccessible to people without digital access** or those experiencing domestic and family violence (DFV).
- **Many people, including those experiencing vulnerability and DFV, cannot meet the ATO's ID requirements**, leaving them locked out of their own accounts and increasing their risk of hardship and financial abuse.

While this review may not fully address these issues, we urge Treasury and the ATO to ensure tax and super systems are accessible to all Australians, particularly those in vulnerable circumstances. Ongoing work on the ATO's approach to vulnerability must include these concerns.

Yours sincerely,

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