



*First Nations*  
FOUNDATION

# First Nations Foundation Discussion Paper

*Legal and policy opportunities  
and risks of superannuation funds  
identifying First Nations members*



Terri Janke and Company  
Commissioned by  
First Nations Foundation

# Table of contents

---

Foreword	4
Terminology	5
<b>1 Introduction</b>	<b>5</b>
<b>2 Key Issues</b>	<b>6</b>
<b>2.1 Overview</b>	<b>6</b>
<b>2.2 Empowering Economic Self-Determination</b>	<b>7</b>
2.2.1 Risks	8
2.2.2 Opportunities	8
2.2.3 Recommendation	9
<b>2.3 Encouraging and Facilitating Identification</b>	<b>9</b>
2.3.1 Mechanisms for Identifying Indigeneity	9
2.3.2 Key Risks	10
2.3.3 Opportunities	11
2.3.4 Recommendation	12
<b>2.4 Managing Personal Information</b>	<b>12</b>
2.4.1 Collection of Information	13
2.4.2 Use and Disclosure of Information	15
2.4.3 Other Privacy Considerations	15
2.4.4 Risks	16
2.4.5 Opportunities	17
2.4.6 Recommendation	18
<b>2.5 Recognising and Upholding Indigenous Data Sovereignty</b>	<b>18</b>
2.5.1 Recommendation	21
<b>2.6 Promoting Equity and Inclusion</b>	<b>22</b>
2.6.1 Risks	23
2.6.2 Opportunities	23
2.6.3 Recommendation	24
<b>2.7 Cultural Considerations</b>	<b>25</b>
<b>3 Key Takeaways for Superannuation Funds</b>	<b>27</b>
<b>4 Desktop Review: Case Studies</b>	<b>29</b>
<b>5 Bibliography</b>	<b>32</b>

## Acknowledgement of Country

First Nations Foundation acknowledges the Aboriginal and Torres Strait Islander peoples of the lands on which we live and work, and all Aboriginal and Torres Strait Islander people in Australia. We extend our respect to Aboriginal and Torres Strait Islander Elders – past, present and emerging. We acknowledge that First Nations knowledges are all-knowing, existing since time immemorial.

## Written and Researched by

Dr Terri Janke, Solicitor Director, Emma Fitch, Solicitor, Adam Broughton, Solicitor, Laura Curtis, Solicitor, and Emily Wooding, Paralegal.



**Terri Janke  
and Company**  
Lawyers and Consultants

## Terri Janke and Company Pty Ltd

Lawyers and Consultants

Phone: 02 9693 2577

Email: [tjc@terrijanke.com.au](mailto:tjc@terrijanke.com.au) | Website: [www.terrijanke.com.au](http://www.terrijanke.com.au)

Commissioned by First Nations Foundation (FNF)

Copyright Notice

© Terri Janke and Company Pty Ltd, 2024. All rights reserved.

## ICIP Notice

This publication may contain Indigenous Cultural and Intellectual Property (ICIP) of Aboriginal and Torres Strait Islander people. All rights reserved. Dealing with any part of this knowledge for any purpose that has not been authorised by the custodians may breach the Copyright Act 1968 (Cth) and customary law.

## Important Legal Notice

The laws, policies and guidelines referred to in this publication are current as at July 2024. Any reference to laws, policies and guidelines are for general use only. You should not rely on this document for legal advice for a specific matter. We recommend you obtain professional legal advice from a suitable, qualified practitioner.

# Foreword

In Australia's retirement income system, improving service delivery standards for members is a continuous journey.

The foundational step in enhancing members' experience is to understand who they are and what their needs look like.

In the context of First Nations individuals, superannuation funds often encounter the barrier of not accessing or knowing the cultural identity of their members and, as a result, not being able to provide the desired level of support and sophistication through effective service delivery.

As a First Nations person with a depth of experience working within the sector, I know all too well about the complexities of this issue and how and where funds may struggle to grasp their role in ensuring that financial products and services are accessible, and culturally informed.

I applaud the dedicated contributors within the Indigenous Super Working Group (ISWG) who have tackled this issue head on in pursuit of positive outcomes for First Nations communities and a best practice guide for responsible institutions.

The purpose of First Nations Foundation (and the ISWG) commissioning this paper is to develop a holistic understanding of all the risks, ethics, and legalities within the process of identifying members.

It is also to table this suite of information for the consideration of funds, and to empower them to uplift their own standards, practices and behaviours and aspire to better service for the hundreds of thousands of First Nations workers making regular contributions to superannuation accounts.

I acknowledge Terri Janke and Company for graciously accepting the brief and thank them for their diligence and cultural awareness in mindfully undertaking the task.

There isn't a single day that passes by without me having a yarn about Mob and super.

While I am honoured to be trusted as an informed and authentic voice on these issues, I look forward to the day where First Nations communities can freely receive the same levels of service that we should all expect to enjoy.



**Leah Bennett MAICD**

Wiradjuri woman  
Managing Director  
First Nations Foundation





## Terminology

It should be noted that there is varying terminology used within Australia to refer to First Nations peoples. This includes 'Indigenous', 'Aboriginal' and 'Torres Strait Islander', with the wider use of the term 'First Nations' in recent years. For the purposes of this paper, the term 'First Nations' is used with respect to the above.

# 1 Introduction

---

There has been an increasing recognition of the unique opportunities and challenges faced by First Nations peoples in Australia, particularly in relation to economic security, health and wellbeing determinants, and retirement outcomes. Superannuation is a cornerstone of Australia's retirement income and support system. By analysing trends and offering unique opportunities to address these challenges, superannuation holds significant potential to enhance the financial well-being of First Nations members in Australia.

However, superannuation funds must navigate relatively complex legal and policy spaces when identifying First Nations members. This discussion paper explores these challenges and assesses the opportunities and risks associated with identifying First Nations members. First Nations Foundation (**FNF**) is uniquely positioned to guide and spearhead best practice in this space by supporting superannuation funds and providers to understand and uphold their obligations and realise existing and new avenues.

The landscape of employment, superannuation, discrimination, and privacy legislation form the backdrop against which these issues must be considered. Principles of **Indigenous Data Sovereignty (ID-Sov)** and economic and cultural self-determination must also be respected. Information such as whether a person identifies as First Nations is not only personal information, it is also **Indigenous Data**. Understanding these interactions is crucial in determining the key considerations for developing a best practice framework for superannuation funds. This paper calls on superannuation funds committing to uphold the *United Nations Declaration on the Rights of Indigenous People* and respecting ID-Sov, going beyond the typical western law privacy requirements.

This paper analyses these legal and policy domains to unravel the complexities involved and to propose a framework that respects the rights and interests of First Nations members while promoting equity and inclusiveness in superannuation. By addressing these legal and policy considerations, the FNF aims to support and enhance the capacity of superannuation funds to serve all Australians effectively.

# 2 Key Issues

## 2.1 Overview

First Nations peoples within Australia have a rich history and resilience, contributing significantly to the nation's cultural and social fabric. Empowering First Nations members through superannuation presents a unique opportunity to enhance financial security and well-being. Superannuation funds have the potential to support First Nations peoples in overcoming historical and contemporary barriers to economic equity. This includes the assumptions made by western economic systems about life expectancy that do not by default include consideration of First Nations people and their lived experiences.

By acknowledging and addressing specific needs and opportunities, superannuation funds can play a pivotal role in promoting financial independence, improving health and wellbeing, and ensuring equitable retirement outcomes for First Nations peoples. Through targeted initiatives and inclusive policies, superannuation funds can help bridge gaps in contributions, savings, and retirement outcomes, fostering a more inclusive and prosperous future for all.

It is important to recognise the disparities produced by western-led economic systems – including that First Nations people may not reach retirement at the same rate as non-Indigenous people, may retire with less superannuation, and may have different needs and aspirations than non-Indigenous people regarding their superannuation. However, in recognising disparity, it is important to ensure that the foundational goal remains in reduce this disparity. The underlying goal of adjusting the approaches for superannuation should be on promoting the economic prosperity of First Nations people, which has flow on effects to all aspects of life.

To address these challenges and their impacts, superannuation funds should consider and implement creative measures and initiatives.

It is the responsibility of superannuation funds to address these challenges and promote economic self-determination, financial inclusion and equity for First Nations peoples. This creates flow on benefits and outcomes for First Nations peoples and communities. Such initiatives and actions require targeted action from superannuation funds, the basis of which lies with the identification of their First Nations members so that those initiatives can be tailored and delivered to First Nations people.

The identification of First Nations members within superannuation funds presents both significant opportunities, and risks – particularly in relation to employment, discrimination and privacy legislation within Australia.

First Nations cultures and ways of thinking, being and doing are strengths – applying this lens to the way super funds are managed can create opportunities for First Nations people. We apply a lens of ID-Sov to the identification of First Nations members of superannuation funds to ensure that this approach is for the benefit of First Nations people.

By understanding and carefully navigating these opportunities and risks, superannuation funds can develop initiatives and strengthen processes to engage with (and respect and uphold the rights of) First Nations communities and individuals, and approach issues, in a culturally sensitive, legally compliant and ethically sound manner.

## 2.2 Empowering Economic Self-Determination

First Nations peoples have the right to freely determine their political status and economic, social and cultural development.<sup>1</sup> This right to self-determination is embodied in Articles 3 and 4 of the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*.

Self-determination generally refers to the ongoing processes in place to ensure that First Nations peoples are empowered to make decisions about matters affecting their lives – centred on choice, participation and control. Superannuation providers must lead this space, and encourage stakeholder commitment, to embed these three pillars.

This works towards addressing the challenges and barriers faced by First Nations peoples and achieving positive outcomes for members, allowing superannuation funds to meaningfully support and invest in programs and initiatives that are in the best interests of members. By identifying First Nations members, and positioning them to determine and interpret their interests, challenges and issues, superannuation funds can embed economic self-determination as a core tenet of their engagements and services.

First Nations peoples (whether organisations, communities or representative bodies) must be positioned to determine Indigeneity – this is not the role of superannuation funds, and is the first step to recognising self-determination in this space.

Providers should seek to engage with First Nations members, communities and leaders to understand their perspectives and needs, and incorporate their input into policy and decision-making processes. By empowering First Nations members, communities and partners in decision-making processes, superannuation funds can position Indigenous peoples to guide and identify their priorities, challenges and outcomes.

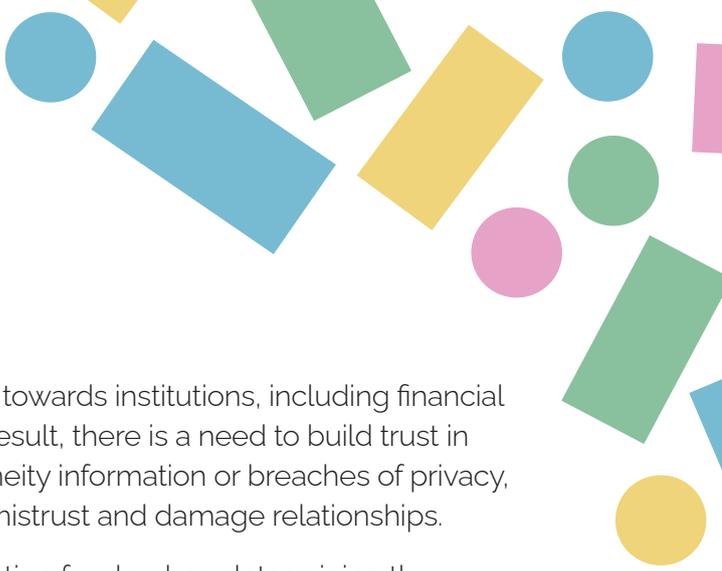
Another key means to encourage economic self-determination of Indigenous members is the creation of working groups to collaborate and co-design projects, programs and initiatives based on the above.

Transparency is key to recognising and realising economic self-determination. Superannuation providers must be transparent and clearly define the purpose of collecting Indigeneity status and evidence, and how it will be used to benefit First Nations members, including promoting equity and inclusion, addressing historical barriers and challenges to access and financial security, and improving retirement outcomes for First Nations peoples. This may require more flexible approaches. This transparency should be maintained throughout all collection, storage, use and disclosure activities of the organisation, explaining all potential benefits and protections in place.

The identity of First Nations peoples is also entirely personal, and is to be decided and determined by First Nations peoples. This means that individual members can decide whether they wish to go through the Indigeneity identification and confirmation process with the superannuation fund. Where members do identify as First Nations, they have a right to be the leader or initiator of their superfund directly.

Meaningful engagement and empowerment of Indigenous peoples and communities are the foundation of self-determination. The responsibility rests with the superannuation fund to create a safe space for these conversations and to empower self-determination.

<sup>1</sup> 'Australian Human Rights Commission', Self-Determination and Indigenous Peoples (Web Page) <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/self-determination-and-indigenous>.



### **2.2.1 Risks**

There can often be mistrust among Indigenous peoples towards institutions, including financial institutions, due to past injustices and exploitation. As a result, there is a need to build trust in relationships. Any misuse or perceived misuse of Indigeneity information or breaches of privacy, discrimination or cultural insensitivity could exacerbate mistrust and damage relationships.

Another key risk that must be considered by superannuation funds when determining the Indigenous status of their members for the purposes of embedding economic self-determination is the varying needs of First Nations peoples.

First Nations peoples are not homogenous. Different individuals, communities, and groups may have varying interests, issues, needs and priorities. These differences can be a result of location, access to infrastructure and living costs – particularly regarding metropolitan and remote communities.

The best way to navigate this is to ensure self-determination of all First Nations members. This means allowing all Indigenous members and stakeholders to identify their own priorities, targets and issues. From this, First Nations members can be engaged to co-design mechanisms to address these priorities, targets and issues.

### **2.2.2 Opportunities**

By identifying the Indigenous status of their members and respecting and upholding Indigenous peoples' rights to economic self-determination, superannuation funds can best provide positive outcomes and address the identified needs, interests and priorities of their members.

Through this, superannuation providers can seek to co-design financial programs and opportunities with First Nations people. As the goals and aspirations could vary greatly amongst different communities, providers should consider working with communities and driving outcomes based on those particular local needs and offer culturally relevant financial products and services aimed at building and accessing super.

Co-designed financial products and services tailored to the unique needs and circumstances of First Nations members ultimately promotes greater financial inclusion and empowerment, ensuring that First Nations members receive appropriate advice and support to address current and historically barriers and change the narrative around retirement outcomes for First Nations peoples.

This extends to strengthening First Nations enterprises and communities, particularly through investing in communities and businesses and their supporting economic development.

Recognising and upholding First Nations peoples rights to self-determination with regards to the use, interpretation and outcomes relating to First Nations economic and financial data also aligns with ID-Sov. Superannuation funds committing to respect ID-Sov rights would be best practice. This provides an opportunity to streamline the provider's processes and expand best-practice in this area.

Superannuation funds can also spearhead programs to improve the financial literacy of Indigenous peoples in remote communities – whether through targeted financial education, advice, or support programs to enhance the financial literacy and economic wellbeing of Indigenous members. For instance, superannuation funds can work with First Nations communities to develop resources for younger people to assist with financial literacy around superannuation and retirement.

With tailored financial education and support, First Nations members could achieve better superannuation outcomes, leading to improved retirement readiness.

### **2.2.3 Recommendation**

Superannuation funds have a critical role in supporting the self-determination of First Nations peoples, as outlined in UNDRIP. This involves empowering First Nations members to make decisions about matters affecting their lives, ensuring their voices are central in determining their interests, challenges, and priorities. First Nations members must be positioned to lead the identification and interpretation of these interests, challenges and priorities. Focussing on economic prosperity is a crucial part of upholding the rights of First Nations people under international law.

By fostering meaningful engagement and transparency, superannuation funds can create positive outcomes and build trust with First Nations members. Initiatives created to address and achieve these outcomes must be co-designed with First Nations members, including through working groups and regular communication.

## **2.3 Encouraging and Facilitating Identification**

The Australian Government defines an Indigenous person as a person who is of Indigenous descent, who identifies as Indigenous, and is accepted as an Indigenous person in their community.<sup>2</sup> This three-pronged definition has been adopted by many organisations, including government authorities, private corporations and Indigenous organisations (such as community-controlled organisations, representative bodies and companies).

There are many complexities in this space that must be navigated to appropriately identify Indigeneity. This includes considerations and obligations regarding privacy, ID-Sov, discrimination, employment and other cultural and practical considerations discussed throughout this paper.

### **2.3.1 Mechanisms for Identifying Indigeneity**

There are various views among First Nations communities, and within First Nations communities, regarding the Western mechanisms for identifying and confirming Indigeneity. For example, some people feel these requirements are offensive, on the basis that should not have to prove Indigeneity to a western colonial system. Some people feel that formal processes to confirm Indigeneity are important to ensure that opportunities in practice are utilised by First Nations people.

These perspectives are from lived experience, and it is important in legal and policy approaches not to assume that any strain of thought is more valid than the other. It is important to provide options for people to identify if they wish to.

<sup>2</sup> Australian Law Reform Commission, *Essentially Yours: The Protection of Human Genetic Information in Australia* (Report No 96, July 2010) 36.14 - 36.27.



Superannuation law is under federal legislation.<sup>3</sup> However, processes for identifying and confirming Indigeneity are primarily state led. States and territory governments may also adopt and utilise different variations of the three-prong definition of 'Indigenous'. There are various proof requirements and processes – including completing a 'Confirmation of Aboriginality' (or Indigeneity) form, statutory declarations supported by referees, or letters of acknowledgement from recognised Indigenous organisations such as local Aboriginal land councils and corporations.<sup>4</sup>

Existing formal processes require documentation to prove and confirm the Indigenous status of individuals. However, these avenues are not accessible to all First Nations peoples in Australia. Recognising that First Nations people do not always have access to western forms of recognition or identification, due to removal through the Stolen Generation and the impacts of marginalisation, there is a need for more flexible approaches to confirm the Indigenous status of individuals. For instance, Australian Super have considered and implemented alternative pathways for identification and confirmation, including:

- Indigenous community identity card;
- A reference from a community Elder;
- A reference from a board member of a LALC; and
- Government letters showing the customer's name.<sup>5</sup>

These pathways align with the Australian government Australian Transaction Reports and Analysis Centre (AUSTRAC) recommendations for a flexible approach that is mindful of historical, social and cultural circumstances and ensures that individuals and communities are not denied access to financial services.<sup>6</sup>

### **2.3.2 Key Risks**

There are multiple risks associated with the use of western avenues for identifying and confirming Indigenous status of individuals.

These risks often stem from the difficulty that particular First Nations communities or individuals face when going through rigid processes, like Confirmations of Aboriginality, particularly concerning those who have been displaced from their community as a result of marginalisation, historical policies and removal.

---

<sup>3</sup> For instance, the *Superannuation Industry (Supervision) Act 1993* (Cth).

<sup>4</sup> 'Australian Institute of Aboriginal and Torres Strait Islander Studies', *Proof of Aboriginality* (Web page, 25 May 2022) <https://aiatsis.gov.au/proof-aboriginality>.

<sup>5</sup> AustralianSuper, 'Australian Super Made Easy Series Two', *Transcript Episode Six: Engaging with your super fund* (Transcript, 14 September 2022) [https://search.australiansuper.com/s/redirect?collection-australiansuper-search&url=https%3A%2F%2Fwww.australiansuper.com%2F-%2Fmedia%2Fhome%2Fcampaigns%2Fcaama-radio%2Fep6-transcript-australian-super-made-easy-series-2.pdf&auth=QEuQvTiLJq3lTgGqDb1OJA&profile=\\_default&rank=15&query=aboriginal](https://search.australiansuper.com/s/redirect?collection-australiansuper-search&url=https%3A%2F%2Fwww.australiansuper.com%2F-%2Fmedia%2Fhome%2Fcampaigns%2Fcaama-radio%2Fep6-transcript-australian-super-made-easy-series-2.pdf&auth=QEuQvTiLJq3lTgGqDb1OJA&profile=_default&rank=15&query=aboriginal).

<sup>6</sup> 'AUSTRAC', *Assisting customers who don't have standard forms of identification* (Web Page, 17 January 2024) <https://www.austrac.gov.au/business/core-guidance/customer-identificationandverification/assisting-customers-who-dont-have-standard-forms-identification#Applying%20this%20flexible%20approach%20to%20Aboriginal%20and%20Torres%20Strait%20Islander%20customers>.

There is growing recognition of peoples who have been denied their Indigeneity and identity, such as those who are members or descendants of direct or indirect government policies, including the Stolen Generation.<sup>7</sup> The flow on effect of this also impacts First Nations peoples who may not know their Mob, or who are not recognised by their relevant land councils or recognised bodies because of displacement. As a result, some community organisations opt against utilising rigid confirmation processes, instead considering each application on a case-by-case basis. In addition, First Nations peoples may not have access to birth certificates and other identifying documentation often used.

The current processes, centred on the three-pronged self-identification method, also have the potential to cause conflicts and disputes within community. In particular, there is a risk that individuals falsely self-identify as First Nations to gain access to certain opportunities. This causes significant harm to community and places organisations in a difficult position. It is important that superannuation funds do not question Indigeneity as this can be incredibly harmful, but instead rely on sound policies for how they will accept this information.

Another key consideration is the infrastructure and accessibility available to different communities. First Nations peoples are not homogenous – with different communities, language groups or areas having distinct methods and practices for identifying or confirming relationships based on kinship, community or connections to Country. First Nations communities, particularly those in more remote locations, also have varying levels of infrastructure available and accessible to them, including access to internet, which impacts the way in which they can communicate and provide evidence.

Among the more pressing matters for superannuation funds to consider is their role within this discussion and process. Superannuation funds cannot make assumptions about the Indigeneity of individuals, and must ensure that this is verified to avoid conflicts and errors. However, it remains that non-First Nations superannuation funds must not substantially assess Indigeneity themselves<sup>8</sup> – this is a matter to be determined by First Nations peoples, communities and/or representative bodies.

The outstanding risks associated with superannuation funds identifying the Indigeneity of its members relate to the existing legislation and frameworks in place to protect individuals – including in relation to privacy and discrimination law. The requirements and considerations for these areas are discussed further in this paper.

### **2.3.3 Opportunities**

Superannuation funds are uniquely positioned to highlight and address the challenges and issues faced by Indigenous peoples arising from longstanding systematic discrimination, socio-economic disadvantages, adverse health and wellbeing determinants and barriers to financial security.

Superannuation funds have the opportunity to lead this space to effect real change and provide positive outcomes for their Indigenous members. By developing culturally sensitive, legally compliant and best-practice framework for identifying and confirming the Indigenous status of their members, superannuation funds can develop programs, initiatives and processes to address longstanding issues and ensure economic self-determination.

<sup>7</sup> NSW AECG, *Aboriginality and Identity: Perspectives, Practices and Policies* (Report) <sup>12</sup> [https://www.aecg.nsw.edu.au/wpcontent/uploads/2016/01/Aboriginality\\_and\\_Identity\\_Report\\_November\\_2011\\_Edited\\_1.pdf](https://www.aecg.nsw.edu.au/wpcontent/uploads/2016/01/Aboriginality_and_Identity_Report_November_2011_Edited_1.pdf)

<sup>8</sup> Ibid.

### 2.3.4 Recommendation

Superannuation funds seeking to encourage and facilitate members in identifying as First Nations must find an appropriate balance between the more rigid western systems and the varying needs and interests of First Nations peoples.

Superannuation funds should employ existing methods, such as Confirmation of Aboriginality forms, statutory declarations or letters of acknowledgement, to the extent possible. However, it must be acknowledged that this 'one size fits all' is inadequate by itself. There must be greater flexibility in this process to address barriers to identification under these Western mechanisms. This aligns with AUSTRAC's recommendation identifying and verifying First Nations members who don't have standard identification,<sup>9</sup> and may include adopting a case-by-case basis consideration where required.

As a foundation, Indigeneity must be confirmed by First Nations peoples. To adopt any other approach presents significant risk for superannuation funds, including the risk of causing harm to First Nations communities.

Whilst identification of First Nations status should generally occur at the point of registration with a superannuation fund, there must also be a process for existing members to identify through the fund's processes. This enables members who have been previous apprehensive, or have not had access to existing mechanisms for, identifying as Indigenous.

## 2.4 Managing Personal Information

The *Privacy Act 1988* (Cth) (**Privacy Act**), the accompanying Australian Privacy Principles (**APPs**) and relevant state and territory legislation establish a robust framework for the protection of personal information. This framework mandates that organisations, including superannuation funds, handle personal information with the utmost care, ensuring transparency, security, and respect for individual privacy.

When superannuation funds seek to identify the First Nations status of their members, they must navigate these privacy obligations and principles with sensitivity. Collecting the First Nations status of individuals is sensitive personal information, subject to strict consent requirements and protections under privacy law.

**Note:** In addition to upholding an individual's privacy, an individual's right not to provide information to a superannuation fund around how they identify must also be respected.

There are stringent restrictions on how organisations, including superannuation funds, employers and representative bodies, can collect, use and disclose personal information generally, as well as specifically around an individual's Indigeneity. These restrictions under the Privacy Act and APPs must be complied with.

**Note:** Sensitive information under the Privacy Act encompasses personal information encompassing racial or ethnic origin and religious and/or philosophical beliefs. As a result, information about an individual's Indigeneity would be considered sensitive information under the Privacy Act, which imposes stricter requirements for its collection, use, and disclosure.

**As a general rule, organisations must manage personal information in an open and transparent manner in accordance with APP 1.**

<sup>9</sup> 'AUSTRAC', *Assisting customers who don't have standard forms of identification* (Web Page, 17 January 2024).

### 2.4.1 Collection of Information

**Organisations generally must obtain explicit and informed consent to collect sensitive information about an individual, such as Indigeneity status.** This often requires organisations to develop and implement standalone processes for collecting this information, to ensure that individuals are fully aware of the purpose of the data collection and voluntarily agree to it.

**Organisations must only collect personal information for a lawful and specific purpose that is directly related to their functions and activities, and must inform individuals about why the information is being collected and how it will be used.** This must be considered when superannuation funds seek to collect information regarding Indigenous status from individuals directly.

Additionally, superannuation funds that request other entities (such as employers, stakeholders or other organisations) provide sensitive information, must ensure collection is reasonably necessary for the organisation's functions and activities, and that the individual concerned consents to the collection. This relates to superannuation funds who are seeking information regarding a member's Indigenous status from a third party, rather than from the individual themselves. This would include from an employer. This is important to consider when determining the superannuation fund's approach to identifying Indigeneity.

The privacy law in Australia also requires that individuals are notified or made aware of the collection of information. With regards to identifying and confirming Indigenous status, this should be dealt with when initially collecting this information – in order to **ensure Free, Prior and Informed Consent (FPIC)** for the collection of this information.

FPIC is a standard provided under **UNDRIP**, and required particularly when dealing with Indigenous Data Sovereignty and Indigenous Cultural and Intellectual Property. Such consent for the collection of information is imperative given its sensitive nature.

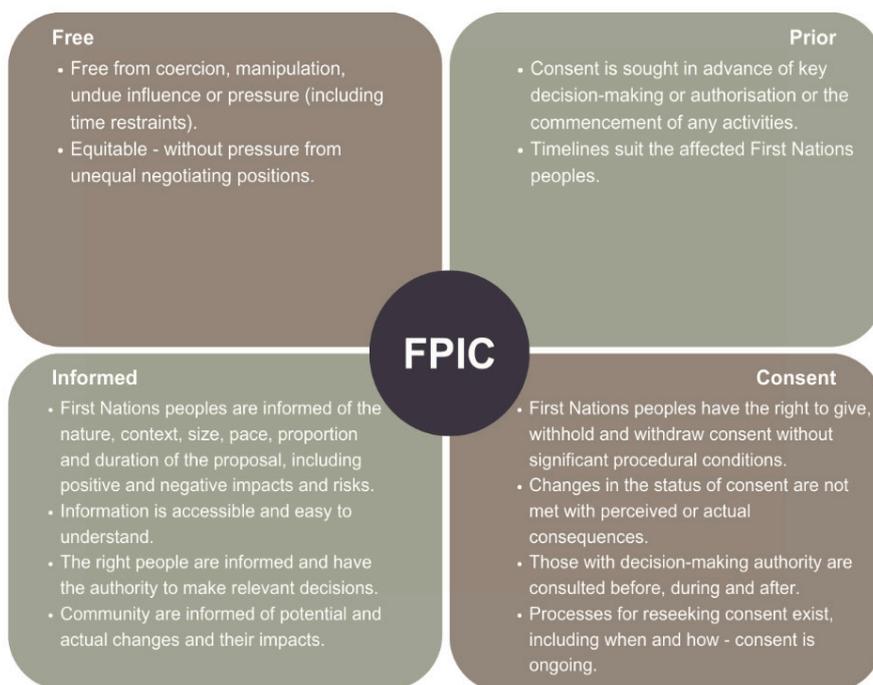
Superannuation funds are already required to follow privacy law. The key elements of consent under the APPs are that:

- the individual is adequately informed before giving consent;
- the individual gives consent voluntarily;
- the consent is current and specific; and
- the individual has the capacity to understand and communicate their consent.<sup>10</sup>

<sup>10</sup> 'The Office of the Victorian Information Commissioner', *Key Concepts* (Web Page, 21 December 2022) <https://www.oaic.gov.au/privacy/australian-privacy-principles/australian-privacy-principles-guidelines/chapter-b-key-concepts>. B.38

This closely aligns with the standard required under UNDRIP. However, following FPIC means going further:

- **Free:** no coercion, intimidation or manipulation.
- **Prior:** consent is to be sought sufficiently in advance of any commencement of activities, and respect is shown to time requirements of Indigenous consultation/consensus processes.
- **Informed:** covers a range of aspects, including the nature, size, pace, reversibility and scope of any proposed project or activity; the purpose of the project as well as its duration; locality and areas affected; a preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks; personnel likely to be involved in the project; and procedures the project may entail. This process may include the option of withholding consent. Consultation and participation are crucial components of a consent process.<sup>11</sup>



© Copyright Terri Janke and Company 2024.

Superannuation funds committing to the standard of FPIC under UNDRIP means they are going beyond what is generally required under privacy law, and ensuring their standards of consent are following best practice under international law.

<sup>11</sup> 'United Nations Human Rights', *Free, Prior and Informed Consent of Indigenous Peoples* (Fact Sheet, September 2013) <https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf>

### **2.4.2 Use and Disclosure of Information**

**Organisations must only use or disclose personal information, such as the Indigenous status of members of a superannuation fund, for the primary purpose for which this information was collected.**

This requires that the organisation has informed (and sought the consent of) the individual regarding this purpose at the time of collection.

This is a key restriction on the use of this information under the privacy framework, requiring that organisations must have a clear and cemented understanding of this purpose, and relay this to the individual, prior to collection of the information.

The use or disclosure of this information and data must only be for this primary purpose, unless:

- the individual has consented to a secondary use or disclosure;
- a secondary purpose is required or authorised by law; or
- the secondary purpose is reasonably expected and directly related to the primary purpose (this is less likely to apply to sensitive information like Indigeneity status).

This process requires transparency about the purposes and intended use or disclosure at the time of collecting, including the fact that there may be disclosure required by law that the superannuation fund cannot avoid. The principles of Indigenous Data Sovereignty, as discussed below, must also be considered.

**It is important that organisations do not use information and data inconsistent with the primary purpose that it was collected.**

In using or disclosing any personal information, particularly any sensitive information, **organisations must also take reasonable steps to protect personal information from misuse, interference, loss, unauthorised access, modification, or disclosure.**

### **2.4.3 Other Privacy Considerations**

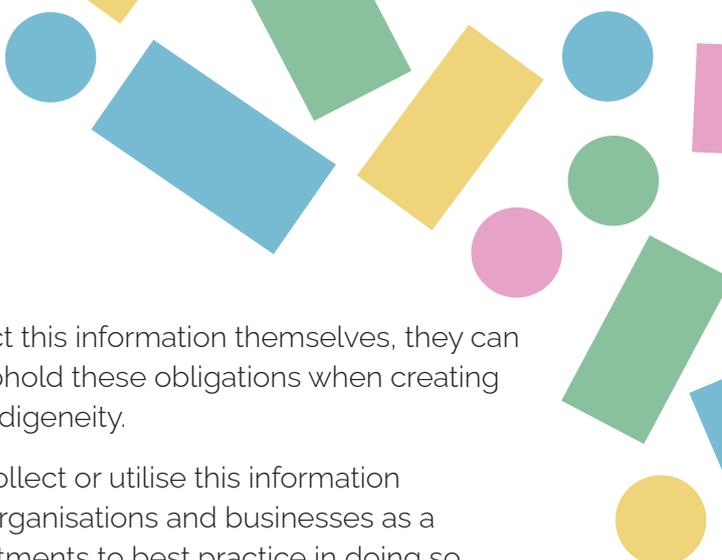
#### **Third parties**

There are a number of other privacy and data considerations that arise in the collection, access and use of personal information and individual data.

When considering the collection of identifying information, including the Indigenous status of members of superannuation funds, it is important to consider who is collecting this information – that is, whether the superannuation fund itself is collecting the information, or whether it is passed on or sourced from third parties, including the employers of Indigenous members.

When employers pass on Indigeneity information to a superannuation provider, this collection and disclosure would not fall within the exemption for employee records that ordinarily exists for employers. This means that employers must comply with all relevant privacy principles.

As a result, employers must obtain explicit consent from employees to pass on information about their Indigeneity to a superannuation provider. This consent must be informed, meaning employees understand why the information is being shared and how it will be used by the superannuation provide.



Alternatively, where the superannuation seeks to collect this information themselves, they can ensure self-compliance with privacy obligations and uphold these obligations when creating more flexible avenues and approaches to identifying Indigeneity.

Superannuation providers may not always be able to collect or utilise this information themselves, and will need to work in partnership with organisations and businesses as a result. To provide clarity around obligations and commitments to best practice in doing so, superannuation funds may begin to engage and develop standard agreements and forms (including data sharing agreements and Memorandums of Understanding) to assist in providing and using this information.

### **Right to amend**

Superannuation providers must also embed a mechanism to enable members to access and, where relevant, correct personal information that the provider holds attaching to that member. This is provided for under the APPs, and should be extended to create specific alteration mechanisms for Indigenous identification and confirmation evidence, data and information held by the organisation.

### **Digital marketing**

Additionally, if a superannuation fund seeks to provide opportunities, information or expressions for programs or initiatives directly to Indigenous members via emails, targeted blogs or letters, it must be mindful of its obligations and restrictions relating to digital marketing under APP 7.

#### **2.4.4 Risks**

There is significant risk associated with the collection, access and use and disclosure of sensitive information, which must be handled with a higher level of care and subject to increased scrutiny in its collection and any subsequent use. This is because the mishandling of sensitive information can have a more detrimental impact on an individual.

Superannuation funds must comply with the requirements of the Privacy Act and the APPs when collecting, using and sharing information regarding the Indigenous status of members. Failure to do so can result in significant consequence, including financial penalties, and loss of trust in the organisation.

There may be concerns among First Nations members regarding the collection, use and disclosure of their data. Many organisations often collect sensitive information (including identification of Indigenous status) to provide targeted services, programs or recruitment opportunities. However, it is important to note that Indigenous peoples may be reluctant to provide this type of sensitive information for reasons such as historical and contemporary experiences of racism and discrimination, fear of negative consequences, uncertainty and mistrust about why the information is being collected and how it will be used, and cultural stereotyping.<sup>12</sup>

---

<sup>12</sup> The Office of the Victorian Information Commissioner, *Understanding Culturally Diverse Privacy* (Research Report, February 2021) <sup>13</sup> <https://ovic.vic.gov.au/privacy/resources-for-organisations/understanding-culturally-diverse-privacy-aboriginal-and-torres-strait-islander-peoples-perspectives/>.



This is evidenced by the Australian Bureau of Statistics' Review of the Indigenous Status Standard back in 2014. This review found that a lack of understanding around why this information is collected, and what the data is used for, can result in an unwillingness for individuals to provide this information. The review ultimately highlighted that 'understanding why the data is collected strongly correlates with higher levels of compliance and improved data quality'.<sup>13</sup>

To overcome this reluctance, there must be significant groundwork undertaken by organisations to alleviate concerns and ensure transparency. Staff training and updated public-facing policies are another means to overcome and mitigate this risk.

Of note also is the increased risk that the collection and storage of sensitive identification data has for data breaches. This results from the value of this information and the detrimental impact and breach can have on the members of the fund, requiring strong mechanisms and review procedures to identify and mitigate these risks.

#### **2.4.5 Opportunities**

Despite the numerous risks relating to the privacy considerations above, the current framework and mitigation strategies identified provide considerable opportunities for superannuation funds to establish best practice when identifying the Indigenous status of their members.

It is important to note that privacy legislation provides a westernised framework for the secure handling of identification data – including personal, health and sensitive information about individuals. By complying with this legislative framework and strengthening privacy practices, organisations can work to ensure that First Nations members' information is protected.

The key mechanism to navigate this landscape and ensure protection are privacy policies created and implemented by organisations. By understanding and committing to data protection and risk management when dealing with sensitive information, superannuation funds can create and update their privacy policies to reflect best practice. This ensures compliance with the APPs, requiring management in an open and transparent manner and the implementation of practices and procedures by way of an up-to-date privacy policy. By leveraging the existing requirements, privacy policies also provide the opportunity to strengthen processes for consent and general engagements with Indigenous peoples.

Following from the above, consistent and demonstrated compliance with privacy obligations and practices can work to build trust among First Nations members, encouraging them to engage more fully with superannuation services.

---

<sup>13</sup> Australian Bureau of Statistics, 'Key findings', *Information Paper: Review of the Indigenous Status Standard* (Web Page, 8 October 2014) <https://www.abs.gov.au/statistics/standards/indigenous-status-standard/latest-release>.

#### 2.4.6 Recommendation

Superannuation providers must comply with the Privacy Act and APPs. They must ensure that the information is handled securely and used only for the purpose for which it was provided.

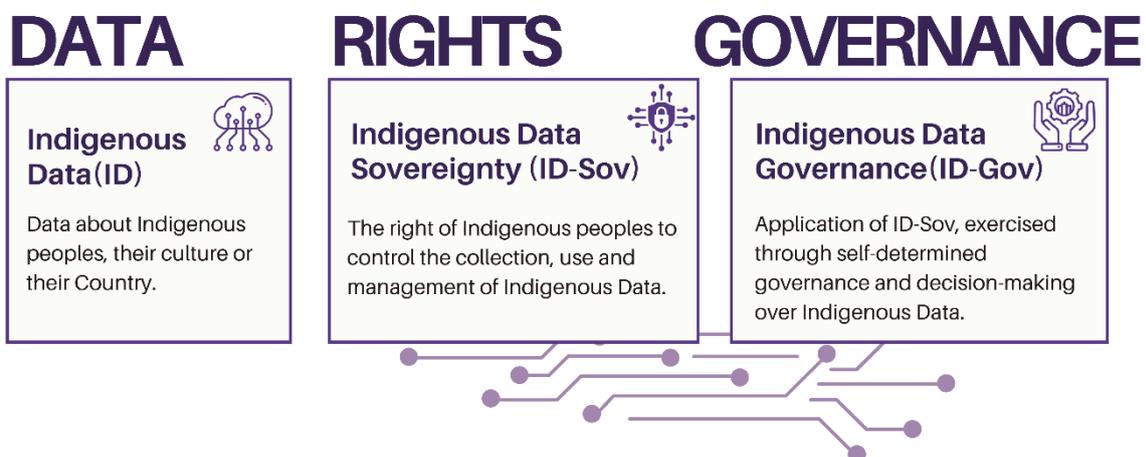
Additionally, superannuation providers must commit to upholding the standards of Free, Prior and Informed Consent embodied in UNDRIP, which go beyond the western privacy framework requirements. This ensures transparency in engagements with First Nations peoples and their information, which is further discussed in relation to **Indigenous Data Sovereignty**.

Superannuation providers should also avoid collecting personal information of members from third parties, such as the member's employers. This allows for better privacy protections, and fulsome consent of the person. This enables the provider to undertake and implement their own practices and ensure self-compliance with established standards. In line with this, providers should also avoid passing on member information to any third parties without the Free, Prior and Informed Consent of the member, and should enter into data sharing agreements where necessary to set and clarify best-practice obligations.

## 2.5 Recognising and Upholding Indigenous Data Sovereignty

Indigenous Data Sovereignty (**ID-Sov**) refers to the right of Indigenous peoples to own and control the collection and use of **Indigenous Data**, including any data, facts, or statistics about Indigenous peoples, from Indigenous people, and about Country. **When collecting any information about Indigeneity of its members, superannuation funds are collecting Indigenous Data.**

Superannuation funds should look to build trust and uphold best practice by committing to respecting ID-Sov, and applying the principles of ID-Sov by implementing Indigenous autonomous governance and decision-making around the collection, use, access and control of Indigenous Data (referred to as Indigenous Data Governance or **ID-Gov**).





**Ensuring effective and transparent management of personal information and compliance with obligations under the privacy law framework is the minimum standard expected under western law. However, superannuation funds can commit to best practice by respecting ID-Sov rights in practice.**

In this context, Indigenous Data includes identifying information relation to individuals, groups or communities generally. This includes personal or sensitive information, Indigenous status and evidence of identification and confirmation, information concerning community or clan groups, names, information regarding determinants, financial status and historical information, maps and statistics.

Historically, data collection activities and the sharing and use of Indigenous data have been largely transactional and from a colonial lens. This presents an opportunity for superannuation funds to lead in best practice by committing to ID-Sov and pioneering clear, respectful and transparent practices, policies and frameworks, about why this information is collected and how this is of benefit to First Nations people.

To respect ID-Sov in practice, superannuation funds must first consider their data collection and use practices. Funds must obtain the Free, Prior and Informed Consent of Indigenous peoples in order to use their data for a specified and agreed purpose. This aligns with the APPs, but extends to information and data that would not ordinarily fall within the more western definitions of personal, sensitive or health information, because Indigenous data is broader than these types of information.

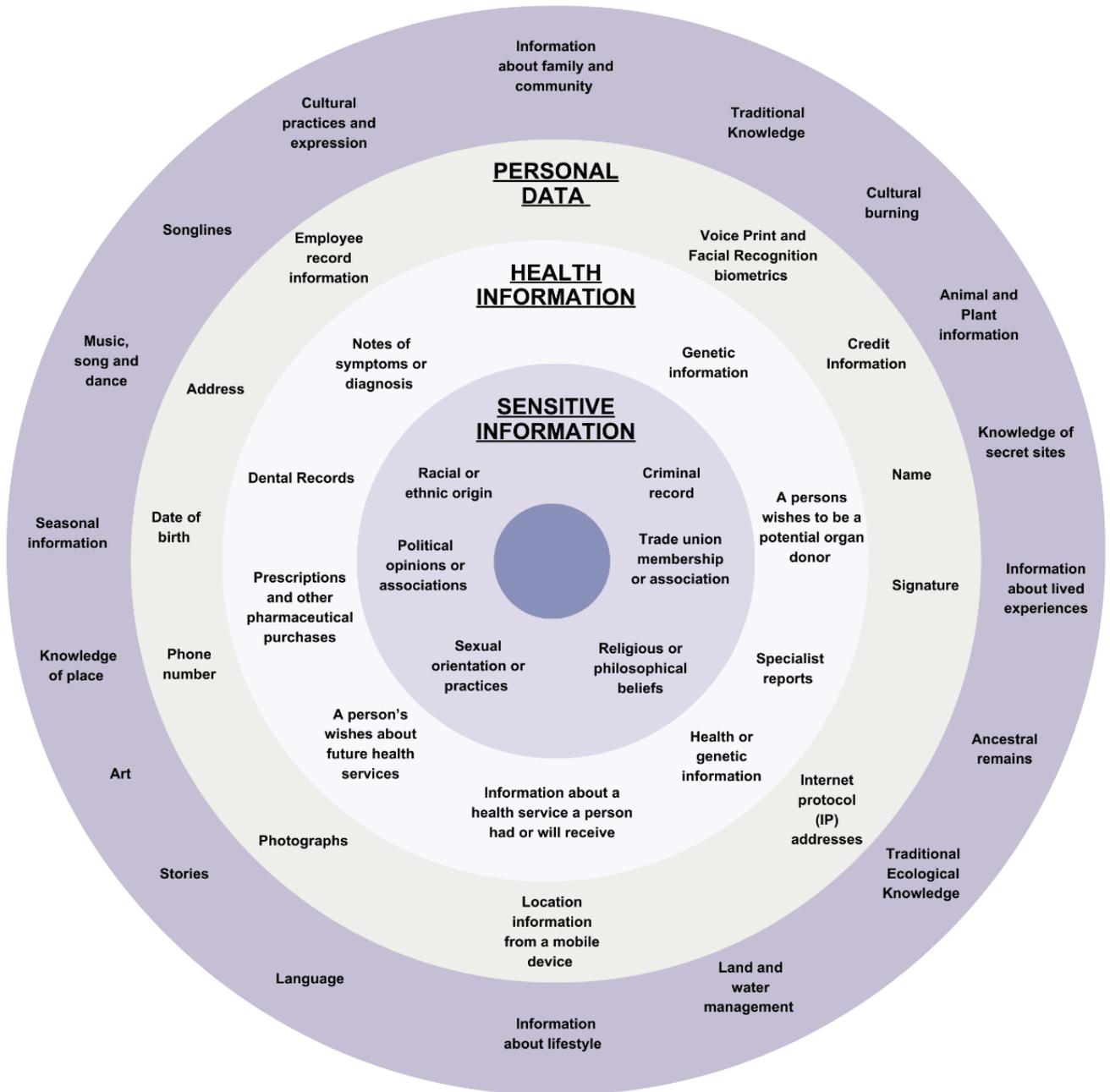
Superannuation funds must also position Indigenous peoples to govern the conditions of collection, sharing, use and storage of their data, ensuring that self-determination is enacted with opportunities for communities to access their data, amend or remove their data, and use their data for their own benefit.

When gathering and analysing data on their First Nations members, superannuation funds must also look at their data governance processes and ensure strong First Nations guidance. This is because First Nations governance processes that incorporate appropriate subject matter expertise will provide insight from the data that otherwise would probably be missed or read inaccurately. As such, superannuation funds must also consider the integrity of the data they collect, hold and use.

See the graphic on the next page which demonstrates the differences between Indigenous Data, Personal Data, Health Information and Sensitive Information.

## Indigenous Data

Indigenous Data (ID) includes personal data, health information and sensitive information as well as other sets of information relating to First Nations peoples, communities and histories.



© Copyright Terri Janke and Company 2024.

### 2.5.1 Recommendation

Superannuation funds and their data collection, management and use practices will benefit by committing to and implementing ID-Sov and ID-Gov frameworks. In effect, these frameworks act as extensions of the existing privacy and data management obligations faced by superannuation funds, providing First Nations members with transparency and respectful engagements centred on Free, Prior and Informed Consent and self-determination.

In practice, this requires that superannuation funds commit to UNDRIP and its principles relating to Free, Prior and Informed Consent and self-determination, particularly in relation to how data is collected, used, governed, controlled and accessed. This extends to recognising and embedding the Australian ID-Sov principles developed by [Maiam nayri Wingara Indigenous Data Sovereignty Collective](#) and the [Australian Indigenous Governance Institute](#).

Within Australia, these principles assert that Indigenous peoples have the right to:

1. Exercise **control** of the data ecosystem, including creation, development, stewardship, analysis, dissemination and infrastructure;
2. Data that is **contextual and disaggregated** (available and accessible at individual, community and First Nations levels);
3. Data that is relevant and **empowers** sustainable self-determination and effective self-governance;
4. Data structures that are **accountable** to First Nations peoples; and
5. Data that is **protective** and **respects** First Nations' individual and collective interests.<sup>14</sup>

Effective implementation of the above principles and respect for the ID-Sov rights of First Nations peoples can include empowering First Nations peoples in decision-making and co-designing data collection, storage, access, use and control systems. This also includes capacity building and ensuring appropriate access and infrastructure for broader communities. These practice examples, and respect for these rights generally, should also be embedded in all data management practices of superannuation funds.

When working with third parties, ID-Sov rights should also be actioned and upheld in data collection and sharing agreements. This includes where superannuation funds seek to report on or provide others (such as First Nations organisations or peak bodies) with de-identified data.

<sup>14</sup> Maiam nayri Wingara, 'Indigenous Data Sovereignty Communique Indigenous Data Sovereignty Summit' (Communique, Indigenous Data Sovereignty Summit Canberra, 20th June 2018) <https://www.maiamnayriwingara.org/mnw-principles>

## 2.6 Promoting Equity and Inclusion

When superannuation funds consider asking about and using information regarding the Indigeneity of their members, they must be careful to ensure that this is not done in a discriminatory way, or perceived to be.

Australia's federal anti-discrimination law is the *Racial Discrimination Act 1975* (Cth). This Act makes discrimination on the basis of race, colour, descent or national or ethnic origin unlawful. Each state and territory also has anti-discrimination legislation.

As a foundation, superannuation funds must not use a person's identification as Indigenous, or any evidence of identification or confirmation of Indigeneity, to the detriment of, or to discriminate against that person.

It is important to recognise that people may not want to identify as Indigenous to superannuation funds out of concern for potential discrimination. As such, funds must make clear why they are asking for this information, how they will store it and use it, and why this is beneficial. This needs to be a deliberate journey to build trust. To do this, super funds will need to build authentic genuine relationships and 'walk the walk' – demonstrate their understandings of how current western economic systems can produce inequitable outcomes for First Nations people unless proactive measures are taken.

Aboriginal and Torres Strait Islander people are more likely to identify as such if they are in a safe environment where they will not experience discrimination.<sup>15</sup>

Generally, funds must ensure that the use of Indigeneity information or status aims to promote equity and inclusion. This includes providing targeted benefits or programs for Indigenous members to address these challenges.

Funds must also avoid enacting any practices that could lead to the unfair treatment of members based on their Indigenous status. This includes limiting access to resources, spaces or accounts.

It is crucial that funds remain transparent and accountable as to how their practices are developed and are not discriminatory. This comes back to the building of trust and strengthening relationships with Indigenous members and communities. This also extends to maintaining and communicating the superannuation fund's commitment to promoting equity. Any affirmative practices and/or actions of superannuation funds must be considered with this in mind, and should comply with the federal and relevant state or territory laws.

In line with the discussions around privacy obligations, funds must also implement robust measures to protect the confidentiality and security of the collected information. This works to safeguard members from potential discrimination from third parties as a result of their Indigenous status.

<sup>15</sup> Australian Commission on Safety and Quality in Health Care, 'NSQHS Standards', *Action 5.8: Identifying people of Aboriginal and/or Torres Strait Islander origin* (Web Page).

### 2.6.1 Risks

Superannuation funds must navigate anti-discrimination laws, ensuring that identification practices do not inadvertently lead to discriminatory outcomes. Improper handling of identification data – such as data or privacy breaches, misidentification of members, or use of identification data in a manner that contravenes discrimination protections – could result in legal challenges, harming the reputation and financial stability of superannuation funds. This also aligns with privacy risks: ensuring that personal information is collected for a proper purpose, and only used in line with the primary purpose that it was collected.

While it is unlikely that superannuation funds are proactively or expressly discriminating against First Nations people in their policies and practices, there is still an overarching risk for superannuation funds that must be managed, by ensuring co-design with First Nations communities on programs they can make sure that policies are not covertly discriminatory.

A key risk in this space regards claims of discrimination made under the relevant legislation. This includes:

- **Direct Discrimination:** Using Indigeneity information in a way that directly discriminates against members (e.g., differential treatment or denial of benefits).
- **Indirect Discrimination:** Policies or practices that appear neutral but disproportionately affect Indigenous members.

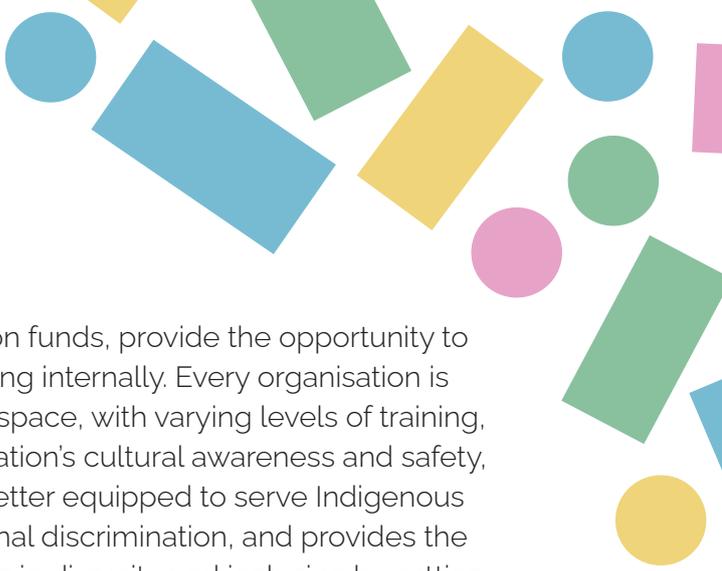
It is also important to be mindful that any misuse or perceived misuse of Indigeneity information can damage the superannuation fund's reputation and erode trust among members.

Superannuation funds must also assess and monitor their internal organisational culture. There remains the risk that internal claims of discrimination regarding Indigenous employees or stakeholders can harm the reputation of the fund and any programs, practices and outcomes that it develops or seeks to achieve.

### 2.6.2 Opportunities

Compliance with existing legal frameworks can guide the ethical use of identification data, ensuring that data is used solely to support rather than disadvantage First Nations members. Proper identification and support initiatives align with discrimination legislation aiming to promote equality and protect against racial discrimination, and should be prioritised.

By recognising the historical challenges and distrust relating to this space, funds can aim to build trust and strengthen relationships with its members through transparent, clear and accountable processes. From this, funds can use Indigeneity information to develop and offer targeted programs, services and benefits developed through co-design and Indigenous input to address the specific needs and challenges faced by Indigenous members. This also provides the opportunity to foster positive engagement and trust with Indigenous communities by showing sensitivity and respect in handling their information and committing to positive outcomes for community. As a result, funds can demonstrate their commitment to social responsibility and equity by using this information to address systematic inequalities and improve outcomes for Indigenous members.



This paper, and the desired outcomes of superannuation funds, provide the opportunity to enact and continue cultural awareness and safety training internally. Every organisation is on its own journey in capacity building their staff in this space, with varying levels of training, awareness and competency. By enhancing the organisation's cultural awareness and safety, the services and support systems of the fund can be better equipped to serve Indigenous members. This also reduces the risk of internal or external discrimination, and provides the opportunity to position superannuation funds as leaders in diversity and inclusion by setting and adhering to best practices for handling sensitive information and program development.

### **2.6.3 Recommendation**

Superannuation funds must carefully balance the potential benefits of collecting and using Indigeneity information with the legal and ethical considerations identified above. This is necessary to avoid discrimination or perceptions of unfair treatment. Compliance with the federal and other relevant state and territory anti-discrimination laws is crucial. Superannuation funds must also ensure that identification does not result in discrimination and strive to create an environment where members feel safe to identify as First Nations.

To build trust, funds should clearly communicate the purpose and benefits of collecting Indigeneity information, demonstrating their commitment to equity and inclusion. This must be built on authentic relationships with First Nations communities and transparency in practices. Superannuation funds should also obtain the Free, Prior and Informed Consent of members to use their information aim to promote equity and harness opportunities to better serve their First Nations members.

As a foundation, superannuation funds must use Indigeneity information solely to promote equity and inclusion, and avoid any form of direct or indirect discrimination. Protection of Indigeneity information must also be prioritised.

Ongoing cultural awareness and safety training for staff should be implemented to improve service delivery to First Nations members, and internal practices and culture should be evaluated regularly to ensure that they align with anti-discrimination commitments and promote an inclusive environment

## 2.7 Cultural Considerations

### Kinship

Superannuation funds should account for cultural considerations arising from kinship and communal recognition. First Nations peoples have kinship systems comprised of complex social structures – defining relationships, responsibilities and connections within communities and groups. These systems are deeply rooted in cultural practice and connection, and often extend beyond the immediate family.

In the context of superannuation, these kinship systems and obligations may impact access to funds, as individuals may have certain responsibilities in the event of passing, or daily life. This can create challenges when superannuation regulations, which are typically designed around western notions of individual financial independence and spousal arrangements, which can clash with the communal and interdependent nature of First Nations kinship obligations. Understanding and accommodating these kinship systems is essential for superannuation funds to effectively serve its First Nations members and support their unique social and economic responsibilities.

For example, there is the opportunity for superannuation funds to advocate for and implement mechanisms for dealing with First Nations intestacies that currently exist within Australia (where a person dies without a will). Multiple states and territories have different legal avenues for recognising kinship ties and relationships outside the parameters of Western succession law, allowing individuals who may not ordinarily have a connection under such law, but who have a recognised kinship tie to a deceased person, to oversee and access that deceased person's estate.<sup>16</sup> Superannuation funds should explore whether similar recognition and flexibility can be afforded in relation to superannuation funds for First Nations members upon their request.

### Cultural authorities

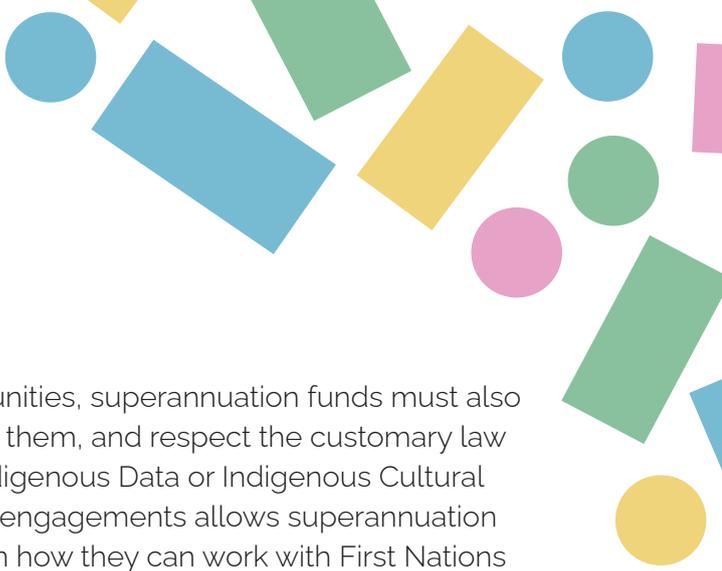
Another key consideration is determining and engaging with the relevant cultural authorities for particular communities, areas or groups. This is important when considering and co-designing programs, initiatives or activities that affect a number of First Nations members or a particular area. Funds should engage with their local community to identify and build relationships with identified stakeholders, and should consult as widely as possible to ensure appropriate engagement. Superannuation funds must also be mindful of the varying needs of its First Nations members. This includes providing assistance and support as required to First Nations members who are young or old, live in remote or metropolitan areas, or who may have a disability.

### Secret, sacred and private

Superannuation funds must consider and address the history of distrust and cultural insensitivity discussed throughout this paper. By building meaningful relationships with partners and members, and ensuring transparency in all practices and engagements, funds can change the narrative and ensure respect and empowerment of First Nations members and their interests. This also extends to recognising and respecting the right of First Nations members to maintain private or confidential information about their personal and cultural affairs.

All engagements with First Nations peoples must be fair, respectful, mindful of cultural practices and in good faith, with a view to equity and inclusion.

<sup>16</sup> See, for instance, *The Estate of Mark Edward Tighe* [2018] NSWSC 163.



## Cultural protocols

When working with First Nations members and communities, superannuation funds must also comply with any specific cultural protocols identified to them, and respect the customary law of Traditional Owners particularly when dealing with Indigenous Data or Indigenous Cultural and Intellectual Property. Clear focus on culturally safe engagements allows superannuation funds to ask about cultural protocols which can assist in how they can work with First Nations communities on a local level.

Funds may also seek to develop and enact their own protocols for engagements with First Nations members, partners and communities, including discussions and guidance around engaging and handling Indigenous Data in line with ID-Sov.

Superannuation funds can co-design and deliver self-determined projects that support First Nations interests beyond the financial sphere. This includes supporting and targeting projects around Caring for Country and ethical investments that align with First Nations-identified interests and strengthen knowledge and practice – including First Nations languages, stories, art and design.

Lastly, superannuation funds should support its members and broader community in respectful truth-telling activities, acknowledging the truth of the history of First Nations peoples in Australia and supporting and working towards reconciliation.

# 3 Key Takeaways for Superannuation Funds

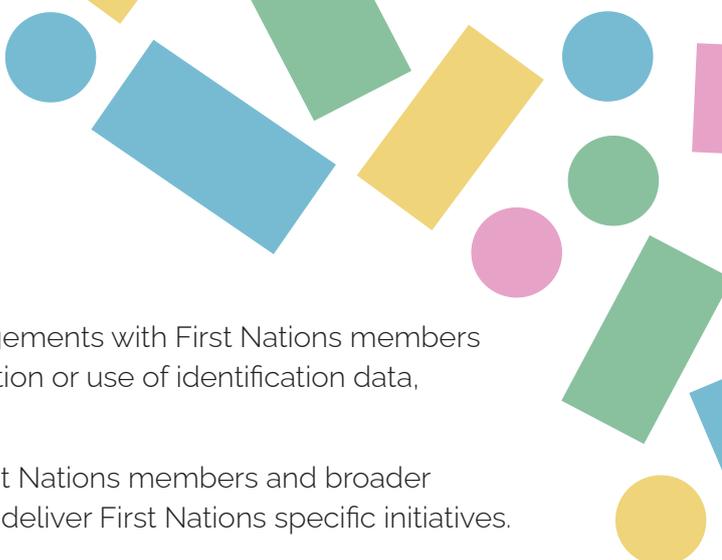
This discussion paper has canvassed a range of issues to be considered by superannuation funds and their stakeholders when seeking to create and implement processes for identifying and confirming the Indigeneity of its members – for the purposes of engagements with, and developing targeted initiatives and monitoring outcomes for, First Nations members. Attached to these key issues are risks and opportunities that must be navigated, to ensure legal, policy and ethical compliance with best practice.

Despite Australia formally endorsing the UNDRIP in 2009, little has been done by the Commonwealth and State Governments to formally implement or recognise the UNDRIP into Australian domestic law. In 2017, the UN Special Rapporteur on the Rights of Indigenous Peoples reported that whilst Australia's economy has grown over the past 20 years, the overall social and economic disadvantage of First Nations people has not improved.

Superannuation providers should uphold best practice by advocating for the implementation of the UNDRIP into Australian domestic law. In practice, this focusses on First Nations self-determination over economic livelihoods, and Free, Prior and Informed Consent around data and information. Superannuation providers can take steps toward this aim by implementing the recommendations in this paper. This should include case-by-case identification processes, transparency around data collection, recognition of kinship systems in relation to access of super funds and providing First Nations people with the right to control and access their data.

We provide below a high-level list of the key findings and takeaways for superannuation funds beginning to develop or refining their understandings and processes in this space:

- **Recognise** historical disparities and existing barriers that First Nations peoples have faced when accessing and building their superannuation.
- **Recognise and commit** to upholding First Nations people's rights to self-determination and Free, Prior and Informed Consent in line with UNDRIP.
- **Ensure** that First Nations peoples make all substantive determinations regarding Indigeneity.
- **Employ** a combination of existing western mechanisms and more novel and flexible or case-by-case methods to identify and confirm Indigeneity (including at the time of registration with a fund and at a later stage).
- **Position** First Nations members to lead the identification and interpretation of their interests, challenges and priorities.

- 
- **Ensure** transparency and good faith in all engagements with First Nations members and communities – including around any collection or use of identification data, proposed activities or reporting obligations.
  - **Respectfully engage and collaborate** with First Nations members and broader communities and partners to co-design and co-deliver First Nations specific initiatives.
  - **Comply** with the privacy framework in all collection, access, use and disclosure of personal information, and uphold consent and transparency obligations.
  - **Recognise** First Nations peoples ID-Sov rights, and commit to upholding the standard of Free, Prior and Informed Consent which go beyond the western privacy framework requirements.
  - **Implement systems** to activate ID-Gov.
  - Use Indigeneity information only with a view to **promote equity and inclusion**, and avoid any form of direct or indirect discrimination.
  - **Respect and comply** with communal cultural protocols (or create fund-specific protocols) around engagements with First Nations peoples and the handling and use of Indigenous Data, knowledge and cultural expressions (i.e. language, art and design, stories).

# 4 Desktop Review: Case Studies

Super Fund	Areas of focus about First Nations people for Super	Addressing disadvantages
<b>Australian Super</b>	<ul style="list-style-type: none"> <li>• First Nations people have <b>lower super balances</b> when they retire than the general population<sup>17</sup></li> <li>• Recognition that First Nations people <b>don't always have traditional forms of recognition</b></li> <li>• Kinship systems</li> </ul>	<ul style="list-style-type: none"> <li>• Australian Super has an Aboriginal and Torres Strait Islander <b>specialist service</b> in the Contact Centre. The service is made up of <b>culturally trained employees</b></li> <li>• The Fund also has introduced an Aboriginal and Torres Strait Islander <b>interpreter service</b></li> <li>• Australian Super provides <b>alternative pathways for identification</b><sup>18</sup> <ul style="list-style-type: none"> <li>• Other types of documentation that they are offering               <ul style="list-style-type: none"> <li>• Indigenous community identity card</li> <li>• A reference from a community Elder</li> <li>• A reference from a board member of a LLC</li> <li>• Government letter that shows the customer's name</li> </ul> </li> </ul> </li> <li>• Australian Super partnered with the Central Australia Aboriginal Media Association in 2022 to produce a 6-part <b>radio series called Australian Super Made Easy</b><sup>19</sup></li> <li>• The series explores the essentials of superannuation and insurance as they relate to Aboriginal and Torres Strait Islander peoples</li> <li>• In collaboration with Traditional Owners review appropriate communications to <b>translate into Aboriginal &amp; Torres Strait Islander languages</b></li> <li>• <b>Lobby</b> the government and regulators to make the <b>superannuation system fit for purpose for Aboriginal and Torres Strait Islander peoples</b></li> <li>• Advocate for <b>legislative reform</b> that <b><u>recognises lower life expectancy of First Nations peoples by enabling an adjustment of the preservation age for First Nations members to reflect their life expectancy</u></b></li> <li>• Engage with the Chair of the Aboriginal Social Emotional Well-being Reference Group and the Balit Murrup: Aboriginal Social and Emotional Wellbeing Framework to understand how better superannuation and insurance outcomes for Aboriginal members can assist with <b>better mental health outcomes</b></li> </ul>

<sup>17</sup> 'AustralianSuper', A focus on Reconciliation (Web Page, 29 May 2023) <https://www.australiansuper.com/superannuation/superannuation-articles/2022/05/reconciliation-action-plan#:~:text=The%20number%20of%20Aboriginal%20and,Australian%20population%20as%20a%20whole.>

<sup>18</sup> AustralianSuper, 'Australian Super Made Easy Series Two', *Transcript Episode Six: Engaging with your super fund* (Transcript, 14 September 2022) [https://search.australiansuper.com/s/redirect?collection=australiansuper-search&url=https%3A%2F%2Fwww.australiansuper.com%2F-%2Fmedia%2Fhome%2Fcampaigns%2Fcaama-radio%2Fep6-transcript-australian-super-made-easy-series-2.pdf&auth=QEuQvTiL-Jq3lTgGqDb1OJA&profile=\\_default&rank=15&query=aboriginal](https://search.australiansuper.com/s/redirect?collection=australiansuper-search&url=https%3A%2F%2Fwww.australiansuper.com%2F-%2Fmedia%2Fhome%2Fcampaigns%2Fcaama-radio%2Fep6-transcript-australian-super-made-easy-series-2.pdf&auth=QEuQvTiL-Jq3lTgGqDb1OJA&profile=_default&rank=15&query=aboriginal)

<sup>19</sup> 'AustralianSuper', CAAMA Radio Series - Australian Super made easy (Web Page, 20 January 2023) <https://www.australiansuper.com/superannuation/superannuation-articles/2019/04/australian-super-made-easy>



First Nations Super Summit, 2025

Super Fund	Areas of focus about First Nations people for Super	Addressing disadvantages
<b>Aware Super</b>	<ul style="list-style-type: none"> <li>Life expectancy gap<sup>20</sup></li> <li>Kinship structures</li> <li>Generational unemployment</li> <li>Low levels of financial literacy</li> </ul>	<ul style="list-style-type: none"> <li>Engage Aboriginal and Torres Strait Islander stakeholders to understand <b>specific learning needs</b> of Aboriginal and Torres Strait Islander members and <b>appropriate channels for delivery of financial education</b><sup>21</sup></li> <li>Seek input and guidance from Aboriginal and Torres Strait Islander stakeholders on how best to <b>co-design a financial education program</b>.</li> </ul>
<b>UniSuper</b>	<ul style="list-style-type: none"> <li>Gaps in education</li> <li>Wage disparities</li> <li>Increased health challenges</li> </ul>	<ul style="list-style-type: none"> <li>Engaged a <b>First Nations Consultant</b> to provide guidance and cultural insights to our Steering Committee and UniSuper more broadly<sup>22</sup></li> <li>Cultural awareness training</li> <li>Held consultations with First Nations members, which led to:               <ul style="list-style-type: none"> <li>Webcast series teaching financial services education in a culturally sensitive environment</li> <li>Established relationships with all First Nations units at Universities</li> <li>Delivered presentations specifically designed for First nations members</li> </ul> </li> <li>Co-funded Curtin Universities research into First Nations peoples and super</li> </ul>

<sup>20</sup> 'Aware Super', *Voice to Parliament needed to guide meaningful super reforms for First Australians* (Web Page, 19 June 2022) <https://aware.com.au/member/about-us/newsroom/june-2023/voice-to-parliament-needed-to-guide-meaningful-super-reforms-for-first-australians>

<sup>21</sup> Aware Super, *Innovate Reconciliation Action Plan* (RAP, January 2023) [https://aware.com.au/content/dam/ftc/digital/pdfs/about/Aware-Super\\_Innovate-RAP.pdf](https://aware.com.au/content/dam/ftc/digital/pdfs/about/Aware-Super_Innovate-RAP.pdf)

<sup>22</sup> UniSuper, *Innovate Reconciliation Action Plan* (RAP, March 2022) <https://www.unisuper.com.au/-/media/files/about-us/governance/unisuper-reconciliation-action-plan.pdf?rev=706cb4229ffa4dfd97eafd625fa5022d&hash=D59143557775301C9198AB7788877C23>.

Report	Summary of Findings	Summary of Recommendations
<p><b>Bankwest Curtin Economics Centre and UniSuper</b></p> <p><b>'Aboriginal and Torres Strait Islander Australians and the Superannuation System'<sup>23</sup></b></p>	<ul style="list-style-type: none"> <li>The existing superannuation balances of non-Indigenous Australians upon retirement are, on average, more than double that of Indigenous Australians.</li> <li><b>Challenges</b> facing Indigenous peoples when engaging with super funds <ul style="list-style-type: none"> <li>Proof of identity</li> <li>Financial literacy</li> <li>Conditions for early access</li> <li>Consolidating multiple accounts <ul style="list-style-type: none"> <li>Access to services</li> <li>Settling accounts of family members who have passed, and the cultural appropriateness of these services</li> </ul> </li> </ul> </li> <li>Under the current system <b>most benefits of superannuation accrue to those with stronger engagement with the labour force and with higher earnings.</b> This is seen to be unfair to women, who still shoulder more of the burden of childcare and unpaid work. On similar grounds, <b>it can be argued the system fails to adequately accommodate Indigenous cultural aspirations, roles and obligations to the extent that these work to reduce opportunity for paid employment.</b></li> </ul>	<ul style="list-style-type: none"> <li>Whether an <b>account holder identifies</b> as a person of Aboriginal and/or Torres Strait Islander descent be <b>included as part of the standard information collected</b> by all superannuation funds when new accounts are established.</li> <li>The Australian superannuation industry as a whole, develop and <b>implement a strategy for retrospectively collecting and validating the Aboriginal and Torres Strait Islander status of existing account holders.</b></li> <li>Superannuation funds to comply with and train staff in the <b>identification procedures</b> developed by AUSTRAC</li> <li>Funds work with suitably qualified Indigenous people and Indigenous representative organisations to produce a set of <b>informational resources on superannuation and retirement</b> targeted specifically to meet the needs of Indigenous Australians in terms of their content and communication styles.</li> <li>A <b>cross-industry Indigenous support and advocacy unit</b> be established to assist Indigenous people with issues and inquiries relating to superannuation.</li> <li>A <b>differential preservation</b> age be introduced such that Aboriginal and Torres Strait Islander Australians can access their superannuation from <b>age 50 years</b> on the same conditions that other Australians can do so at age 65.</li> <li><b><u>For improving services for Indigenous clients, and for ongoing evaluation of the performance of the superannuation system in meeting the needs of Indigenous Australians, it is critical that all that superannuation funds include an identifier for Indigenous status in administrative data.</u></b></li> </ul>
<p><b>National Aboriginal and Torres Strait Islander Women's Alliance (NATSIWA)</b></p> <p><b>Aboriginal and Torres Strait Islander Women and Superannuation<sup>24</sup></b></p>		<ul style="list-style-type: none"> <li>The NATSIWA Board established that: <b>The burden of a system that is already complex has made it difficult for employed Aboriginal and Torres Strait Islander women to enjoy the benefits of a financially secure retirement.</b> This is also related to the <b>special socio-cultural and political circumstances of Aboriginal and Torres Strait Islander women within the Australian community.</b></li> </ul>

<sup>23</sup> Mike Dockery et al, *Aboriginal and Torres Strait Islander Australians and the Superannuation System* (Research Report, May 2020) <https://bcec.edu.au/assets/2020/06/BCEC-ATSIA-and-the-Superannuation-System-Report-FINAL-1.pdf>

<sup>24</sup> National Aboriginal and Torres Strait Islander Women's Alliance, Submission No 65 to Economic security for women in retirement, Aboriginal and Torres Strait Islander Women and Superannuation (October, 2015) <https://www.aph.gov.au/DocumentStore.ashx?id=c388b300-af05-4040-92c2-bb408d1d8457&subId=405530>

# 5 Bibliography

## A Articles/Books/Reports

Australian Law Reform Commission, *Essentially Yours: The Protection of Human Genetic Information in Australia* (Report No 96, July 2010) 36.14 - 36.27

Aware Super, *Innovate Reconciliation Action Plan* (RAP, January 2023) [https://aware.com.au/content/dam/ftc/digital/pdfs/about/Aware-Super\\_Innovate-RAP.pdf](https://aware.com.au/content/dam/ftc/digital/pdfs/about/Aware-Super_Innovate-RAP.pdf)

Dockery, Mike et al, *Aboriginal and Torres Strait Islander Australians and the Superannuation System* (Research Report, May 2020) <https://bcec.edu.au/assets/2020/06/BCEC-ATSIA-and-the-Superannuation-System-Report-FINAL-1.pdf>.

Maiam nayri Wingara, 'Indigenous Data Sovereignty Communique Indigenous Data Sovereignty Summit' (Communique, Indigenous Data Sovereignty Summit Canberra, 20th June 2018) <https://www.maiamnayriwingara.org/mnw-principles>

National Aboriginal and Torres Strait Islander Women's Alliance, Submission No 65 to Economic security for women in retirement, Aboriginal and Torres Strait Islander Women and Superannuation (October, 2015) <https://www.aph.gov.au/DocumentStore.ashx?id=c388b300-af05-4040-92c2-bb408d1d8457&subId=405530>

NSW AECG, *Aboriginality and Identity: Perspectives, Practices and Policies* (Report) 12 <https://www.aecg.nsw.edu.au/wp-content/uploads/2016/01/AboriginalityandIdentityReportNovember2011Edited1>

UniSuper, *Innovate Reconciliation Action Plan* (RAP, March 2022) <https://www.unisuper.com.au/-/media/files/about-us/governance/unisuper-reconciliation-action-plan.pdf?rev=706cb4229ffa4dfd97eafd625fa5022d&hash=D59143557775301C9198AB7788877C23>

## B Cases

*The Estate of Mark Edward Tighe* [2018] NSWSC 163

## C Legislation

*Privacy Act 1988* (Cth)

*Superannuation Industry (Supervision) Act 1993* (Cth)

## D Websites

'AUSTRAC', *Assisting customers who don't have standard forms of identification* (Web Page, 17 January 2024) <https://www.austrac.gov.au/business/core-guidance/customer-identificationandverification/assisting-customers-who-dont-have-standard-forms-identification#Applying%20this%20flexible%20approach%20to%20Aboriginal%20and%20Torres%20Strait%20Islander%20customers>

'Australian Human Rights Commission', *Self-Determination and Indigenous Peoples* (Web Page) <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/self-determination-and-indigenous>

'Australian Institute of Aboriginal and Torres Strait Islander Studies', *Proof of Aboriginality* (Web page, 25

May 2022) <https://aiatsis.gov.au/proof-aboriginality>

'AustralianSuper', CAAMA Radio Series - Australian Super made easy (Web Page, 20 January 2023) <https://www.australiansuper.com/superannuation/superannuation-articles/2019/04/australian-super-made-easy>

'Australian Super', 'Australian Super Made Easy Series Two', *Transcript Episode Six: Engaging with your super fund* (Transcript, 14 September 2022) [https://search.australiansuper.com/s/redirect?collection=australiansuper-search&url=https%3A%2F%2Fwww.australiansuper.com%2F-%2Fmedia%2Fhome%2Fcampaigns%2Fcaama-radio%2Fep6-transcript-australian-super-made-easy-series-2.pdf&auth=QEuQvTiLJq3LTgGqDb1OJA&profile=\\_default&rank=15&query=aboriginal](https://search.australiansuper.com/s/redirect?collection=australiansuper-search&url=https%3A%2F%2Fwww.australiansuper.com%2F-%2Fmedia%2Fhome%2Fcampaigns%2Fcaama-radio%2Fep6-transcript-australian-super-made-easy-series-2.pdf&auth=QEuQvTiLJq3LTgGqDb1OJA&profile=_default&rank=15&query=aboriginal)

'Aware Super', *Voice to Parliament needed to guide meaningful super reforms for First Australians* (Web Page, 19 June 2022) <https://aware.com.au/member/about-us/newsroom/june-2023/voice-to-parliament-needed-to-guide-meaningful-super-reforms-for-first-australians>

'The Office of the Victorian Information Commissioner', *Key Concepts* (Web Page, 21 December 2022) <https://www.oaic.gov.au/privacy/australian-privacy-principles/australian-privacy-principles-guidelines/chapter-b-key-concepts>. B.38

Australian Bureau of Statistics, 'Key findings', *Information Paper: Review of the Indigenous Status Standard* (Web Page, 8 October 2014) <https://www.abs.gov.au/statistics/standards/indigenous-status-standard/latest-release>.

Australian Commission on Safety and Quality in Health Care, 'NSQHS Standards', *Action 5.8: Identifying people of Aboriginal and/or Torres Strait Islander origin* (Web Page) <https://www.safetyandquality.gov.au/topic/user-guide-aboriginal-and-torres-strait-islander-health/action-58-identifying-people-aboriginal-and-or-torres-strait-islander-origin>

AustralianSuper, 'Australian Super Made Easy Series Two', *Transcript Episode Six: Engaging with your super fund* (Transcript, 14 September 2022) [https://search.australiansuper.com/s/redirect?collection=australiansuper-search&url=https%3A%2F%2Fwww.australiansuper.com%2F-%2Fmedia%2Fhome%2Fcampaigns%2Fcaama-radio%2Fep6-transcript-australian-super-made-easy-series-2.pdf&auth=QEuQvTiLJq3LTgGqDb1OJA&profile=\\_default&rank=15&query=aboriginal](https://search.australiansuper.com/s/redirect?collection=australiansuper-search&url=https%3A%2F%2Fwww.australiansuper.com%2F-%2Fmedia%2Fhome%2Fcampaigns%2Fcaama-radio%2Fep6-transcript-australian-super-made-easy-series-2.pdf&auth=QEuQvTiLJq3LTgGqDb1OJA&profile=_default&rank=15&query=aboriginal)

AustralianSuper, *A focus on Reconciliation* (Web Page, 29 May 2023) <https://www.australiansuper.com/superannuation/superannuation-articles/2022/05/reconciliation-action-plan#:~:text=The%20number%20of%20Aboriginal%20and,Australian%20population%20as%20a%20whole>

The Office of the Victorian Information Commissioner, *Understanding Culturally Diverse Privacy* (Research Report, February 2021) 13 <https://ovic.vic.gov.au/privacy/resources-for-organisations/understanding-culturally-diverse-privacy-aboriginal-and-torres-strait-islander-peoples-perspectives/>

United Nations Human Rights, *Free, Prior and Informed Consent of Indigenous Peoples* (Fact Sheet, September 2013) <<https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf>>