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Online Privacy Bill Consultation  
Attorney General's Department  
Barton ACT 2600

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### Privacy Legislation Amendment (Enhancing Online Privacy and Other Measures) Bill 2021

Thank you for the opportunity to participate in consultation on the *Privacy Legislation Amendment (Enhancing Online Privacy and Other Measures) Bill 2021* (Online Privacy Bill).

AustralianSuper is Australia's largest superannuation fund and is run only to benefit members. Almost 2.5 million Australians are members of AustralianSuper and we invest over \$250bn of their retirement savings on their behalf. Our purpose is to help members achieve their best financial position in retirement.

AustralianSuper complies with the Australian Information Privacy Principles and takes our privacy responsibilities seriously.

AustralianSuper members regularly access information regarding their superannuation through the Fund's web-based member portal and phone-based app. The AustralianSuper mobile app has been downloaded 1.1 million times since release and is accessed approximately 2.5 million times per month. The purpose of the app is to provide members with a channel to view details of their superannuation, including their balance, to manage insurance and make investment choices. Our member portal is accessed in over a million sessions per month by members. Self-service transactions are approximately 800,000 a month.

The Fund requires members provide personal information to use our online services. This information is limited to that information required to appropriately verify a member's identification, and in turn to ensure appropriate security of their personal information and financial assets. This is important to protect them against fraud as well as meeting Anti-Money Laundering obligations.

AustralianSuper does not share the personal information of members, except with a limited number of organisations for the provision of services to members as set out in our Privacy Policy. Importantly, we do not sell or trade in personal information or member data.

#### Online Privacy Code

The Online Privacy Bill includes a proposed Online Privacy Code. According to the Explanatory Paper, three types of private sector organisations are proposed to be captured by that Code and would be required to comply with both the Privacy Principles and the Code:

1. Organisations providing social media services;
2. Organisations providing data brokerage services; or
3. Large online platforms.

'Large online platforms' are defined in the Online Privacy Bill (section 6W(4)(a)-(c)) as organisations:

- with at least 2,500,000 end-users in Australia in the past year; and

- which collect personal information about an individual in the course of or in connection with providing access to information, goods or services (other than a data brokerage service) by the use of an electronic service; and
- are not specified in a legislative instrument made under the Bill.

#### *Purpose of the Online Privacy Bill*

We note that the stated purpose of the Online Privacy Bill is to address “pressing privacy challenges posed by social media and online platforms” and to address specific issues identified by Government:

*In response to the Facebook/Cambridge Analytica data harvesting incident in March 2018, the Government committed to strengthening privacy protections by **introducing a binding code of practice for social media and other online platforms that trade in personal information, and by enhancing enforcement mechanisms and penalties provisions under the Privacy Act.***<sup>1</sup>

This approach is reiterated in the definition of ‘large online platform’:

*“is intended to capture organisations who collect a high volume of personal information online. **Examples of large online platforms include major global technology companies (such as Apple, Google and Amazon) and media sharing platforms (such as Spotify)**”<sup>2</sup>.*

#### *Potential unintended consequences and recommended approach*

##### *1. Organisations captured by definition*

AustralianSuper supports efforts to ensure Australians’ personal information is protected online. However, the proposed definition of ‘large online platform’ in the bill is broader than the intent expressed in the Explanatory Paper.

The definition, as currently drafted, has the potential to capture large member based organisations, such as AustralianSuper, which have a large membership but which only seek to capture personal data to ensure relevant information and services are provided to members and to verify the identity of members seeking to access our online portals, and which does not extend to social media activity or the sale or trade in that personal information and data.

##### *2. Definition of ‘end users’*

It is also unclear from the Explanatory Paper how 2.5 million ‘end users’ would be calculated. For example, the Explanatory Paper does not clarify whether ‘end users’ are one or all of:

- All individual members of an organisation, whether or not they use online tools captured by the Code;
- Only those individual members who use online tools captured by the Code;
- All users of online tools (eg. an open website) where personal information is not captured in each interaction.

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<sup>1</sup> Online Privacy Bill, *Explanatory Paper*, Attorney General Department, October 2021, pp 4.

<sup>2</sup> Online Privacy Bill, *Explanatory Paper*, Attorney General Department, October 2021, pp 8.

### 3. Disclosure of personal information

The proposed section 26KC(2)(h) would require the proposed Code to include measures requiring organisations covered by the code to:

*“take such steps (if any) as are reasonable in the circumstances to not **use** or disclose, or to **not further use** or disclose, **the personal information of an individual if so requested by the individual**”*

As set out above, AustralianSuper uses personal information through our online tools for the purposes of verifying a members' identity to protect their account information and details. We are concerned the requirement in proposed section 26KC(2)(h) may lead to unintended consequences contrary to members' interests. For example:

- A service provider may not be able to authenticate a member's identity where that individual has requested the fund to cease use of their personal data;
- An administrator or agent (for example financial adviser) may be prevented from providing a member with services, for example to follow up an insurance claim or verify that insurance coverage matches a member's personal needs or circumstances;
- A complaints handling team may be hindered from providing support to a member who contacts a call centre; or
- The Fund may be prevented from proactively contacting members, for example to provide them with required regulatory information or to remind them to take important actions such as signing a death nomination.

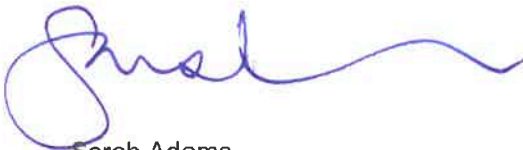
#### *Recommendation*

For the reasons set out above, we recommend the definition of 'large online platform' be qualified to ensure it captures the types of organisations specified in the Explanatory Paper. This may include linking the definition to a social media purpose and/or to organisations which collect information for commercial purposes.

This outcome would ensure members of organisations like AustralianSuper continue to be protected through the current Privacy Principles but restrictions on AustralianSuper providing members with important services would not be inadvertently restricted.

If you have any questions regarding our submission, please do not hesitate to contact Nick Coates, Senior Manager External Affairs at [ncoates@australiansuper.com](mailto:ncoates@australiansuper.com).

Yours sincerely



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