Super Consumers Australia

Redfern Legal Centre

SAFE+ EQUAL

Australian Multicultural Women's Alliance

Submission: Preventing perpetrators from accessing victim-survivor's super death benefits

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1. Introduction

We welcome the opportunity to comment on the Government's policy options to prevent perpetrators of domestic and family violence (DFV) from receiving the superannuation death benefits of victim-survivors (VSs) (the reform). We also welcome the broader definition for DFV used in the Consultation Paper (page 2) to encompass a range of behaviours, experiences and relationships, including coercive control and abuse. This submission is a joint response from:

- Super Consumers Australia;
- the Economic Abuse Reference Group (EARG);
- Redfern Legal Centre;
- Domestic Violence NSW;
- Each;
- Safe and Equal; and
- the Australian Multicultural Women's Alliance (AMWA).

The reform is an opportunity to address some of the critical gaps in the current superannuation system that result in poor and inconsistent outcomes for people impacted by DFV and/or abuse and superannuation being misused by perpetrators.

- Superannuation does not automatically become part of someone's estate when they pass away and the current death benefit legislation does not consider DFV.
- The superannuation industry also lags behind other financial services industries in preventing, identifying and supporting people experiencing DFV.

In the absence of industry minimum standards and legislation that takes DFV into account, there is currently significant variation across superannuation trustees regarding DFV capacity and their ability to support impacted members and their families in a trauma-informed way.

We recommend the Government address this gap by requiring superannuation trustees to consider DFV when determining how to distribute a death benefit, whether or not there is a valid binding death nomination in place. The Government should also give trustees the power to set aside a binding death benefit nomination (or priority set out in the trustee's governing rules), if there is persuasive evidence that the beneficiary has perpetrated DFV against the deceased member. Trustees should have discretion to determine the subsequent redistribution of death benefits, including deeming an otherwise eligible beneficiary ineligible if a trustee decides that it would not be fair or reasonable in the circumstances to pay any benefits to the alleged perpetrator given the evidence available. Discretion will allow a case-by-case assessment of the facts and a recognition that domestic and family relationships are inherently complex.

There should be no obligation on a trustee to proactively investigate every claim where there is no credible indication of DFV, to ensure timely processing of death benefit claims and distributions. The Government and Australian Financial Complaints Authority (AFCA) should provide guidance to trustees on the types of evidence that are relevant to death benefit distribution decisions. We have recommended a list of sufficient evidence of DFV that reflects what a deceased VS's next of kin can reasonably obtain - for example, reports or signed letters from practitioners or support professionals, evidence of VSs accessing or attempting to access DFV support payments or services, and victim or witness statements or accounts (including self-disclosures). Guidance will provide clarity to

trustees about their obligations without being overly prescriptive or failing to evolve over time. Mandatory superannuation service standards are also required to achieve the reform's objectives and ensure consistency in DFV capacity across the industry. The reforms should apply to all death benefit claims that have not yet been paid as of the proposed legislation's commencement date.

Our recommendation is consistent with option 1 proposed in the Consultation Paper and leverages the strengths of the current death benefit system. It is the most effective option in terms of overall cost, access to procedural fairness, simplicity and consistency to achieve the reform's objectives. Superannuation trustees are more experienced and better placed than courts to assess DFV and abuse in death benefit claims. DFV and abuse occurs within broader domestic and family relationships and trustees are well practised in undertaking a fact-finding process within this context, when assessing a death benefit claim. This includes considering complex, personal information about the deceased member, beneficiaries and competing claims.

AFCA is also better placed to resolve death benefit disputes more quickly, cost-effectively and in a more trauma-informed manner than the courts. Of the trustees reviewed in ASIC's death benefit review (REP 806, page 34), less than 1% of trustees' decisions were objected to and of the 19 AFCA death benefit determinations involving DFV (between 2019 and 2025), the trustee's decision was affirmed in two-thirds of cases. Routinely referring death benefit claims to the courts would be in conflict with the reform's key principles by increasing the cost and administrative burden on all parties and would risk re-traumatising the families of VSs. It would also exclude some VSs from the scope of the reform and reduce the reform's impact as economic abuse and coercive control are not legally recognised at a national level or criminalised consistently across states.

The majority of DFV and abuse cases do not involve the justice system - 69% of people who experienced physical assault by a male did not report the most recent incident to police (ABS Personal Safety Australia, 2017) and the majority of DFV charges do not result in convictions (NSW Bureau of Crime Statistics and Research, 2025). The justice system is also frequently misused by perpetrators of DFV in their favour (National Domestic and Family Violence Bench Book, 2025). Estate administration and court proceedings also incur significant costs for all parties (The Australian, 26 August 2025; Herekind, 2026). Solutions that are not developed within the context of DFV in Australia risk not achieving the reform's objectives and causing further harm through re-traumatisation or reinforcing existing systemic barriers that VSs and their families face. Case study 1 below highlights the lived experience of VSs and their families, including the significant mental capacity and financial and legal resources required to engage with multiple systems, particularly with estate law and the Supreme Court in each state or territory.

Case Study 1: Family of deceased VS navigating the super and court systems

Sarah* is currently trying to prevent her deceased daughter Mary's* abusive former partner from accessing Mary's superannuation death benefits. Mary passed away in 2025 in an accident and in the months prior to her death, she had attempted to separate from her partner who had been physically, sexually, emotionally and financially abusive towards her for several years. Mary had been successful in leaving the apartment they shared, where Mary's name was on the lease and she was paying the rent, and finding accommodation in another city. However, Mary was still in contact with her former partner. After Mary's death, the police opened a DFV investigation into her former partner for assault and coercive control, with several witnesses coming forward to provide statutory declarations to support the case.

Mary had two superannuation accounts - one where the trustee had discretion and considered DFV and abuse in its governing rules and one that did not. Sarah has been in contact with both super funds and has

also engaged a solicitor to help with the process and forms for super and to settle Mary's estate. Sarah has spent over $8,000 already on solicitor fees, with advice to direct Mary's super to her estate. She would then need to spend a further $17,000 to $22,000 on court applications to become Mary's Legal Personal Representative (LPR) and a barrister's advice on challenging Mary's former partner's status as de-facto partner under estate law. Engaging the barrister to contest the issue in the Supreme Court would incur additional fees.

In addition to the costs, the process has been deeply traumatising for Sarah, as a victim-survivor herself of DFV by her former partner, who had physically and sexually abused both Sarah and Mary. The perpetrator was charged but never convicted. While Sarah does not want to see Mary's former partner benefit from his abuse, she is unsure whether she has the resources and mental capacity to continue fighting for justice.

** not their real names*

We also recommend that this reform allow a VS to be considered an eligible beneficiary in cases where the deceased is the alleged perpetrator and the relationship ended due to DFV, within a reasonable timeframe and with persuasive supporting evidence of the DFV and/or abuse.

Reversionary pensions and self-managed super funds (SMSF) should also be included in the reform. As Australians retire and take up income stream products (in accordance with the Government's explicit retirement income strategy), issues regarding reversionary pensions will become more common. SMSFs now represent almost a quarter of the Australian super sector (over $1 trillion in assets) with over 1.2 million members (as at June 2025, ATO). Excluding SMSFs would create two separate death benefit approaches within the super system and increase legal and administrative complexity. It would also enhance opportunities for economic abuse to be perpetrated through SMSFs, an issue which has separately been raised by advocates (including several co-authors of this submission) in submissions to Treasury's consultation on Combatting financial abuse perpetrated through coerced directorships.

1.1 Summary of recommendations

Recommendation 1: The Government should create an obligation for trustees to consider DFV and abuse when determining how to distribute a death benefit.

Recommendation 2: Allow trustees to set aside a binding death nomination or depart from an allocation otherwise required under the trustee's governing rules, if there is persuasive evidence the beneficiary has perpetrated DFV against the deceased member.

Recommendation 3: Provide trustees discretion to determine the subsequent redistribution of death benefits, including deeming an otherwise eligible beneficiary ineligible if a trustee decides that it would not be fair or reasonable to pay any benefits to the alleged perpetrator given the evidence available.

Recommendation 4: Require trustees to consider the risk of misidentification when assessing evidence presented by different parties. This should include consideration of the contexts of how misidentification occurs and the contributing factors to misidentification.

Recommendation 5: Court-based outcomes should not be required to alter the payment of a death benefit to an alleged perpetrator of DFV.

Recommendation 6: The Explanatory Memorandum to the legislation should provide guidance to

trustees about the types of evidence that are considered sufficient evidence of DFV.

Recommendation 7: The mandatory Superannuation Service Standards should include a requirement for trustees to have capacity to identify and support members experiencing DFV in a trauma-informed manner to ensure consistency across the industry.

Recommendation 8: The Government should create a centralised government mechanism that notifies trustees about individuals who have reported experiencing DFV in other government systems, as part of the government's 'tell me once' approach. The ATO should be given the power to disclose fund details to the relevant agency in order to facilitate this process.

Recommendation 9: The reform should also allow a VS to be considered an eligible beneficiary in cases where the deceased is the alleged perpetrator and the relationship ended due to DFV or abuse, within a reasonable timeframe and with persuasive supporting evidence of the DFV or abuse.

Recommendation 10: Include reversionary pensions in this reform to ensure fairness and protection across all products.

Recommendation 11: Include SMSFs in this reform to avoid creating two separate death benefit approaches within the super system, increasing complexity and the risk of SMSFs being further misused for abuse.

Recommendation 12: Treasury should consult more broadly before creating a forfeiture-like rule for superannuation as it goes beyond what is required to address DFV and abuse in death benefit claims.

2. The current context of death benefits and DFV in Australia

2.1 Most DFV/abuse is never recognised by a court

The majority of DFV and abuse cases do not involve the justice system - 69% of people who experienced physical assault by a male did not report the most recent incident to police (ABS Personal Safety Australia, 2017) and the majority of DFV charges do not result in convictions (NSW Bureau of Crime Statistics and Research, 2025). Further, coercive control is only criminalised in some Australian jurisdictions (NSW, QLD and SA) with limited national legal recognition of economic and financial abuse (UNSW, Redfern Legal Centre and Commonwealth Bank report on Legal response to economic and finance abuse, 2023).

Even when DFV is reported to the police, cases rarely progress through the judicial system to the point where a court makes a finding that DFV was carried out, which is the threshold required in option 2 of the Consultation Paper. DFV offences experience high attrition rates as they move through the criminal justice system. In New South Wales, only 39% of reported domestic assaults result in an offender being convicted in court, which is lower than the conviction rate for other types of offences. "A key factor is the high rate at which all domestic violence charges are withdrawn—our analysis shows that in 19% of domestic violence court appearances, all charges are dropped by the prosecution. This is more than double the general withdrawal rate" (NSW Bureau of Crime Statistics and Research, 2025).

The attrition rate is even higher for non-physical forms of DFV such as coercive control, economic and financial abuse. In the first 18 months of coercive control being a criminal offence in NSW, 473 incidents of coercive control were reported to police. Only 22 charges were laid and so far only one has resulted in a conviction (NSW Coercive Control Monitoring Report, December 2025).

This is also true for elder abuse. The National Plan to End the Abuse and Mistreatment of Older People states that only about 1 in 3 older people report their experience of abuse (National Plan to End the Abuse and Mistreatment of Older People 2026 – 2036). Elder abuse is not a vulnerability issue, it is a form of family violence driven by relationship-based coercion, entitlement and dependency dynamics, commonly perpetrated by adult children, relatives or carers.

2.2 Courts are often weaponised by perpetrators

There is also established evidence that government and justice systems are frequently weaponised by perpetrators of DFV and abuse, including using litigation tactics and exploiting tax and business systems to harass, intimidate, discredit or otherwise control the other party (Australian Institute of Family Studies, 2023; EARG, Monash University & RLC report, 2025; Tax Ombudsman, 2025). Marginalised groups also face greater barriers in accessing justice (Productivity Commission, 2014). This results in a lack of reporting of DFV and abuse, fewer charges laid and limited court rulings.

2.3 Trustees are experienced at making death benefit decisions

Superannuation trustees have a positive obligation to pay death benefits to the person or people who are entitled to receive them. There is no legal obligation on a claimant to make a claim - it is the trustee's job to collect relevant information, satisfy itself of the validity of that information and determine who it is required to make payment to. Most trustees have discretion about who to pay and in what amounts where there is no binding nomination directing the trustee otherwise. Like all powers, trustees must exercise this discretion in accordance with their fiduciary obligations and the covenants under section 52 of the Superannuation Industry Supervision (SIS) Act.

Death benefit decisions can be complex discretionary decisions that require expertise. Trustees already undertake a fact-finding process when assessing a death benefit claim, which includes consideration of the personal circumstances of the member and beneficiaries, the nature and quantum of each beneficiary's needs and entitlements, the relationships between the member and beneficiaries, assessing competing claims and consideration of the forfeiture rule.

The first superannuation fund in Australia was created in 1842 for employees of the Bank of Australasia (now ANZ). For 184 years, superannuation trustees have routinely had to make decisions about the payment of death benefits. For context, super funds have been dealing with death benefits claims longer than:

- Australia has had a constitution (1901)
- Australia has had a High Court (1903)
- No-fault divorce has been legal (1976).

Super trustees are well practised at making fair and reasonable death benefit decisions - ASIC's death benefits report (REP 806, 2024) found that fewer than 1% of all death benefit distribution decisions were objected to by claimants (page 34). Where a dispute goes to AFCA determination, AFCA agrees with the trustee most of the time: between 1 July 2025 and 28 February 2026, AFCA

resolved a death benefit distribution complaint in favour of the trustee 76% of the time (AFCA death benefit determinations). This suggests that not only do claimants have confidence in trustee decisions being made in accordance with the law, but also that AFCA does.

Many trustees are already experienced at exercising discretion in cases involving DFV. Further, some trustees have already amended their trust deeds to prevent payment of a death benefit to the perpetrator of DFV (for discretionary decisions) and therefore are already undertaking investigations of DFV - see AFCA case 701195 where the trustee amended their distribution decision based on persuasive evidence of DFV provided by the deceased member's children.

2.4 Gaps in the current death benefits distribution framework

This reform should leverage the current strengths of the death benefits system and focus on addressing the gaps and limitations of the current legislative framework as it relates to DFV and abuse. The reform should avoid changes to areas beyond this scope. Solutions should also be developed based on the reality of how DFV and abuse occurs in Australia and the lived experiences of VSs and their families. Solutions that do not adequately consider these factors risk not achieving the reform's objectives, reducing the scope of impact and causing further harm through re-traumatisation or reinforcing or amplifying existing systemic barriers that VSs and their families face.

There are three key gaps in the death benefits legislation, in relation to DFV, under review:

- Lack of clarity and consistency of trustee's obligations to **consider DFV** in death benefit claims.
- Current legislation does not allow a trustee to **set aside a binding death nomination** or depart from an allocation otherwise required under the trustee's governing rules, where there is persuasive evidence of DFV.
- Lack of clarity on a trustee's obligations to determine the **redistribution** of death benefits once persuasive evidence of DFV is established - how trustees should determine the fair and reasonable redistribution of the deceased member's death benefits.

The following recommendations seek to close those gaps without unduly interfering with the way that trustees currently operate, thereby reducing the impact on the overall super system and implementation costs of the reform.

3. The Government should give trustees discretion

The Government should introduce legislation (consistent with option 1 in the Consultation Paper) that:

1. Requires trustees to **consider DFV** as part of making a death benefit distribution decision, whether or not there is a binding nomination.
2. Gives trustees the **power to set aside** a binding death benefit nomination (or priority set out in the trustee's governing rules), if there is persuasive evidence that the beneficiary has perpetrated DFV against the deceased member.
3. Provides trustees **discretion to determine the subsequent redistribution** of death benefits, including deeming an otherwise eligible beneficiary ineligible if a trustee decides that it would not be fair or reasonable in the circumstances to pay any benefits to the alleged perpetrator given the evidence available.

3.1 Trustees should be required to consider DFV in death benefit claims

Some trustees currently consider DFV as part of discretionary decisions; however, some refuse to consider DFV unless the forfeiture rule applies. It is critical that trustees consider DFV as part of all death benefit distribution decisions, where trustees have evidence or have been given credible evidence that DFV has occurred against the deceased member, to ensure there is industry consistency in preventing perpetrators of DFV from accessing VSs' super, regardless of which fund the VS joined.

There should be no obligation on a trustee to proactively investigate every claim where there has been no evidence or indication of DFV provided. To do so would be both unreasonably confronting for most beneficiaries (i.e. having to provide evidence they were not a perpetrator of DFV), but also cause significant claims handling delays.

Legislation should define DFV and abuse to provide clarity to trustees. We support the broader definition used in the Consultation Paper to encompass a range of behaviours, experiences and relationships involving DFV and abuse - "patterns of coercive, controlling, abusive, or neglectful behaviour occurring within intimate, family, or household relationships. It encompasses a broad range of behaviours, including physical, sexual, emotional, psychological, and economic abuse" (page 2).

Recommendations

Recommendation 1: The Government should create an obligation for trustees to consider DFV and abuse when determining how to distribute a death benefit.

3.2 Trustees should have discretion to set aside eligible beneficiaries

We support the proposal for trustees to have the power to set aside a binding nomination, or an order of priority set out in governing rules, where it would result in payment to a beneficiary who has perpetrated DFV against the deceased member. Such a power would be subject to the trustee's existing fiduciary obligations and the SIS Act covenants, which are some of the highest obligations known in law.

Providing the trustee with a clear power of this type would create a positive obligation for trustees to consider DFV in death benefit claims and to collect information and evidence about the DFV, where trustees have evidence or have been given credible evidence that DFV has occurred against the deceased member. It would also not require the trustee to conduct an investigation where they receive an allegation but do not consider it to be credible (e.g. it lacks details).

The trustee's investigation should only require evidence of DFV by the alleged perpetrator against the deceased member and should not include a requirement to also establish the nature of the relationship between the two parties (e.g. that they were intimate partners).

Once the trustee has satisfied itself that there is persuasive evidence of DFV, trustees should have the power to set aside a binding death nomination or depart from an allocation otherwise required under the trustee's governing rules. If the perpetrator is the member's LPR, the trustee should also have the power not to pay the benefit to the perpetrator in their capacity as LPR, regardless of what is contained in the trustee's governing rules.

Recommendations

Recommendation 2: Allow trustees to set aside a binding death nomination or depart from an allocation otherwise required under the trustee's governing rules, if there is persuasive evidence the beneficiary has perpetrated DFV against the deceased member.

3.3 Trustees should have discretion to determine the subsequent redistribution of death benefits

Where the binding nomination has been set aside with persuasive evidence of DFV (or there is no nomination), trustees should have discretion to determine the subsequent redistribution of death benefits. This power should override any provision in a trust deed purporting to limit trustee discretion. As with setting aside a nomination, trustees should have the power to exclude or reduce benefits to the alleged perpetrator who would otherwise be eligible if trustees assess that it would not be fair or reasonable to pay the benefits to the alleged perpetrator given the evidence available. This discretion to consider the alleged perpetrator in redistribution decisions reflects the complexity of domestic and family relationships. Where there is no eligible beneficiary except for the alleged perpetrator (in any capacity), trustees should have the power to pay the benefit to another person as they are currently required to do where there is no dependant or LPR.

Trustees could consider any nomination that has been set aside as evidence of the VS's wishes where appropriate in the circumstances, similar to a non-binding nomination.

Recommendations

Recommendation 3: Provide trustees discretion to determine the subsequent redistribution of death benefits, including deeming an otherwise eligible beneficiary ineligible if a trustee decides that it would not be fair or reasonable to pay any benefits to the alleged perpetrator given the evidence available.

3.4 Trustees are better placed than courts to assess DFV in death benefit claims

Trustees are best placed to make decisions about death benefits, including where there is DFV against a deceased member. Routinely referring death benefit claims to the courts would be in conflict with the reform's key principles by increasing the cost and administrative burden on all parties, including trustees. AFCA is also better placed to resolve disputes more quickly, cost-effectively and in a more trauma-informed manner than the Supreme Court.

Procedural fairness is afforded by trustees and AFCA

There is no evidence to suggest that courts are better placed than trustees and AFCA to assess death benefit claims and make fair and reasonable distribution decisions in the context of DFV. With regards to abuse, courts are not well placed to make this decision as there is no national legal recognition of financial abuse other than the recent inclusion of economically and financially abusive behaviours within the definition of family violence in the Family Law Act 1975 (Cth), and no consistent criminalisation of economic abuse or coercive control across states and territories.

In the event the trustee makes a decision that a claimant believes is unfair, the claimant can make a complaint to AFCA. AFCA has more experience in death benefit cases than courts given the number of cases that it currently handles, but it also has more experience with cases involving DFV and abuse in respect of death benefit claims than courts.

Courts are also not well placed to support families affected by DFV and abuse. Unlike AFCA, their processes are not accessible nor trauma-informed. On the contrary, there is strong evidence of the significant barriers diverse groups face in accessing justice. For example, migrants and culturally diverse communities experience disproportionately high levels of unmet legal need due to cost, complexity, language barriers, and low legal capability (Productivity Commission, 2014).

Trustees are better placed to deal with the power imbalance that can exist between perpetrators and the families of VSs because they can offer more flexibility in their processes than courts, which tend to be quite rigid and difficult to navigate and are frequently misused by perpetrators of DFV and abuse. AFCA is an independent, free, external tribunal that specialises in supporting people who are unrepresented and has policies to counter that power imbalance.

Estate administration and court cases are extremely expensive and time consuming

Requiring all death benefit claims that involve DFV to be directed to the deceased estate or a court unnecessarily and unfairly burdens families of VSs and delays payment. Trustee processes and AFCA complaints do not require a person to hire a lawyer should a claimant disagree with the trustee's decision. However, estate administration and court processes often require substantial resources to engage with, including legal fees. For example, it can cost up to $40,000 to make an estate law claim and up to $200,000 for each party if the matter goes to trial (The Australian, 26 August 2025). Research from Herekind (2026) found that up to 75% of survey participants who administered the deceased estate of a family member reported moderate to severe emotional and financial stress, with the process taking an average of 14.8 months, even when using a lawyer. The research also found that 68% of people administering estates were women. Directing death benefit claims involving DFV to the estate or courts would further compound the gender inequality on this

issue. Court processes also take significantly longer to resolve than trustee decisions, even where a complaint is made to AFCA.

This delay is not justified or in the interests of anyone involved. According to ASIC's death benefits report (REP 806), only 17% of death benefits were worth more than $500,000. It simply does not make sense to expect the families of VSs to spend hundreds of thousands of dollars fighting for a death benefit when the alternative is free to them (trustee and AFCA if necessary). Under current legislation, trustees already have the ability to seek direction from a court, yet they often report they find this option expensive and time-consuming. Case Study 1 clearly demonstrates how waiting for a court ruling as evidence of DFV or directing the issue to the estate or courts create significant barriers for families of VSs.

ASIC has made it clear that death benefit claims need to be handled faster not slower. In the context of the proposed customer service standards for superannuation, it also makes no sense for families or trustees to slow the process down deliberately.

Finally, it is worth noting that because option 3 still requires trustees to exercise discretion, it is not in fact simpler for trustees. Trustees would still have to assess evidence of DFV against the deceased member and determine if there is persuasive evidence that the beneficiary or LPR was the perpetrator.

3.5 Trustee discretion reduces risk of misidentification

Giving trustees discretion (as opposed to a strict prescriptive obligation) about the payment of benefits where there is evidence of DFV will also allow trustees to weigh *all* the evidence they have about the circumstances of the claim. This will allow a trustee to consider and address the risk of misidentification when making a decision, rather than being constrained by strict and binding rules which cannot take into account the nuances of interpersonal relationships.

Misidentification occurs when police and other justice systems incorrectly identify a VS of DFV as the perpetrator. This can happen when police who respond to DFV incidents either arrest or apply for an intervention order against the 'wrong' party. Women's Legal Service Victoria and Monash University (2018) reviewed 600 client intake forms and found that one in ten women who were respondents in police applications for family violence intervention orders had been misidentified. Women from First Nations, culturally and racially marginalised and/or LGBTIQA+ communities are at higher risk of misidentification compared to the general population (Australian Institute of Family Studies, 2023; inTouch 2022).

Case study 2: Misidentification of perpetrator

Erin*, an Aboriginal woman, was in a relationship characterised by coercive control for about 3 years. She ended the relationship when her niece disclosed that Erin's partner had harassed her for sexually explicit photographs. When Erin confronted him about it, he reacted violently and hit her with an open fist. She reported the assault to the police, who told her that even though she had a photograph of the red mark that had been left, it was her word against his, and they declined to charge him with any offence.

Financially insecure, she returned to stay in her caravan on his property as she felt like she had no other option. On one occasion, she returned to find that the lock had been removed from her caravan door and items had been removed from her caravan. She confronted him and, in her frustration, kicked over a garden ornament. He called the police and she was charged and served with an ADVO.

After the court ordered an interim ADVO, Erin returned to recover her property, as she understood she was permitted to do so. A confrontation ensued in which Erin's ex-partner alleged she had attempted to take his property, and contacted the police. Erin was charged with breaching the ADVO and was not permitted to recover her property, leaving her in continuing serious financial instability and without a safe location to live.

** not her real name.*

From the EARG submission to the NSW exposure draft Crimes Legislation Amendment (Coercive Control) Bill 2022 p10

Misidentification poses a specific risk to death benefits as it may result in perpetrators receiving the super of a deceased VS, due to the VS being misidentified as the perpetrator. If trustees are constrained by prescriptive obligations, they may have to pay a benefit to a perpetrator of DFV even where there is other persuasive evidence to indicate that misidentification may have occurred against the deceased member. Where trustees have the discretion to consider all the evidence available, they are better able to make a fair and reasonable decision.

Trustees are already experienced in assessing competing evidence from different parties within death benefit claims - for example, AFCA case 909611 involving a dispute between parties on the de-facto status of the complainant, where AFCA upheld the trustee's decision. The issue of misidentification is an example of a factual dispute in death benefit claims that arises within the context of DFV. Factual disputes should not be considered a deterrent for trustees having the obligation to assess DFV and abuse in death benefit claims and to determine a fair and reasonable distribution of benefits, because factual disputes are very common in death benefit claims.

We recommend including guidance in the Explanatory Memorandum to the proposed legislation for trustees to consider the risk of misidentification when assessing evidence presented by different parties as part of their death benefit assessment or claims staking process. Guidance for trustees should include consideration of: a) the context of how misidentification occurs; and b) the contributing factors to misidentification. See **Appendix A** for a summary of this information.

Where language barriers are identified, interpreters should be made available to avoid the risk of further misidentification and re-traumatising VSs or their families.

Recommendations

Recommendation 4: Require trustees to consider the risk of misidentification when assessing evidence presented by different parties. This should include consideration of the contexts of how misidentification occurs and the factors contributing to misidentification.

4. The Government and AFCA should provide guidance on trustees’ obligations instead of restrictions

The Government should not implement option 2, which is too prescriptive and sets the bar too high given that most DFV and abuse is never reported or, even if reported, rarely progresses through the judicial system to the point where a court makes a finding that DFV was carried out. The existing standard of evidence is appropriate. Instead, the Government and AFCA should provide guidance to trustees on the types of evidence that are relevant to death benefit distribution decisions. Guidance will provide clarity to trustees about their obligations without being over prescriptive or failing to evolve over time.

4.1 The current standard of evidence for death benefits is an appropriate standard

The level of evidence required to demonstrate DFV or abuse in a death benefits claim should be consistent with the level of evidence currently required to establish any other fact the trustee relies on in making a decision about entitlement (e.g. evidence of financial dependency). AFCA’s existing guidance (AFCA Approach to superannuation death benefit complaints, 2025) outlines that trustees should take into account “persuasive evidence about the behaviour of a person who is claiming a death benefit, including evidence about violence or abuse within a relationship or towards the deceased member” (page 11). We support this approach.

The types of evidence trustees request need to reflect what a deceased VS’s next of kin can reasonably obtain without incurring unnecessary costs, legal or professional advice, legal proceedings, or forced interactions with the police or government departments. This will differ significantly across cases and jurisdictions and is very likely to change over time as authorities change the way DFV is considered.

Marginalised community members, including older people, people with a disability, First Nations peoples, LGBTIQA+ and multicultural, migrant and refugee communities may face additional challenges in obtaining evidence, particularly if there are language or cultural barriers. Elder specific complexity includes the fact that older VSs rarely report DFV and abuse, and evidence is often informal or relational and, in many cases, the perpetrator controls the documentation. Cognitive decline and/or disability further compounds these barriers. Flexibility and empathy from the trustee is required to address these barriers.

Given the aforementioned context of DFV in Australia, setting the evidence standard at court findings (as in option 2) is too high a bar and would require trustees to delay the death benefit distribution until court proceedings are completed. This would be inconsistent with the reform’s key principles and the government’s commitment to improve superannuation customer service quality. The other risks highlighted in the consultation paper - increased risk of misuse by perpetrator, reduced procedural fairness and increased administrative burden (page 22) - are also significant enough to outweigh any potential benefits of option 2.

Recommendations

Recommendation 5: Court-based outcomes should not be required to alter the payment of a death benefit to an alleged perpetrator of DFV.

4.2 Explanatory Memorandum should provide guidance

To the extent that these reforms create any uncertainty about a trustee's obligations, guidance in the Explanatory Memorandum to the legislation and from AFCA will support trustees to continue to make the right decisions. The Explanatory Memorandum should identify the types of evidence that should be accepted by trustees as sufficient, noting the additional complexities regarding forms of evidence that a VS's next of kin or family members a) can be expected to be aware of, and b) can access due to privacy, confidentiality or legal restrictions. This will assist trustees to understand their obligations and support efficient decision-making.

However, it is very important that trustees retain the discretion to consider other types of evidence that may be available in particular cases. Perpetrators always find new ways to commit DFV or abuse. Every new technology is a new opportunity for abuse. It is critical that the Government not introduce a restrictive list that cannot adapt to the changing nature of DFV and the 'creativity' of perpetrators in misusing government systems, court processes, and financial products and services.

We recommend at least one of the following items would be sufficient evidence (not exhaustive):

- Police reports;
- Apprehended Domestic Violence Orders, family violence orders, intervention or restraining orders (as known in each state or territory) or evidence of breaches of these orders;
- Court documents, including affidavits, sentencing remarks and judgments, as permissible by law (noting the Government will need to consider interactions with existing legal obligations and disclosure restrictions, such as the Harman undertaking in Federal Circuit and Family Court of Australia proceedings);
- Coroner reports or findings;
- Reports or signed letters from psychologists, psychiatrists, general practitioners, registered counsellors or hospitals;
- Letters from support professionals such as financial counsellors, community legal centres or Legal Aid lawyers, social workers, banking staff or community organisations, including but not limited to family violence frontline workers, housing and homelessness frontline workers, aged care workers and faith-based or community leaders;
- Notification from government agencies about individuals who have reported experiencing DFV in a government system, whether state or federal;
- Documentation demonstrating receipt of a payment or vouchers from Government supported programs for victim-survivors, such as the Leaving Violence Program, Services Australia Crisis Payment or a statutory victims' compensation scheme, including victims' services counselling (noting that receipt of such a payment indicates the relevant government scheme has already obtained and assessed evidence of DFV or financial abuse, though not all VSs will be eligible for such payments due to means testing and other eligibility criteria);
- Evidence of VSs attempting to access the above services and payments (even if they were ineligible, as some services are means-tested);
- Documentation of VSs attempting to terminate a lease due to DFV;

- Victim or witness statements or accounts (including self-disclosure of DFV by the deceased member to their fund); or
- Any other evidence by which, on its own or in combination with other evidence, the trustee deems to be credible and persuasive evidence that the beneficiary perpetrated DFV against the deceased member.

Recommendations

Recommendation 6: The Explanatory Memorandum to the legislation should provide guidance to trustees about the types of evidence that are considered sufficient evidence of DFV.

5. Further changes are required to achieve the objectives of the reforms

5.1 Mandatory superannuation service standards are required to achieve the policy objectives of this reform

In the absence of industry minimum standards, there is currently significant variation regarding DFV capacity across trustees. Poor service should not be used as an excuse for not giving trustees discretion in death benefit claims, rather it should be seen as a major gap that the Government and superannuation industry needs to address.

The 2021/22 ABS Personal Safety Survey found that an estimated 20% of the Australian population aged 18 and over (3.8 million) reported experiencing physical and/or sexual DFV since the age of 15. This is a significant segment of the Australian population that trustees have a moral responsibility to support and protect. The fact that super funds have fewer interactions with their members compared to banks or utility companies does not absolve their responsibility to prevent, identify and respond to DFV in a safe and trauma-informed way when circumstances arise. The issue of economic and financial abuse in super is particularly critical for older Australians, who require more support as they reach retirement and where funds are expected to have higher levels of engagement and communications with their older members.

Without clear standards for the super industry, they are likely to fall short of community expectations in meeting the proposed death benefit and DFV obligations. All trustees should be required to meet a minimum standard regarding their capacity to prevent, identify and support members experiencing DFV in a trauma-informed manner. This should be mandated within the Superannuation Service Standards under development by Treasury. Without mandatory standards, the super industry will be unable to consistently and appropriately consider DFV and abuse in death benefit claims, nor provide safe customer service for a material segment of their members.

For older members, financial abuse commonly intersects with substituted decision-making arrangements, misuse of powers of attorney and coercive control by adult children or other relatives. Trustees must be equipped to recognise the indicators of financial and elder-specific family violence abuse patterns.

The 2024 Parliamentary Joint Committee (PJC) on Corporations and Financial Services (PJC) Inquiry into Financial Abuse: Financial abuse: an insidious form of domestic violence, recommended

that “the finance sector develop a financial Safety by Design framework and assessment tools…in consultation with the financial services industry, victim-survivors, family and domestic violence academics, community service providers and regulatory design experts” (Recommendation 39). This framework is currently being developed by Australian banks (CWES Designed to Disrupt report for banking, 2022) and led to the establishment of the Financial Safety Alliance. The Alliance aims to provide lenders with the tools to integrate financial safety by design principles into their products and services to minimise the weaponisation of financial products and provide VSs the support they need.

The PJC Inquiry into Financial Abuse also recommended that “the Australian Government consider the implementation of minimum operating standards, with a view to moving to best practice standards through continuous improvement over time, to mitigate the risk of elder abuse in relation to superannuation” (Recommendation 36). The super industry should follow a similar approach to the banking sector and focus on a specific product/service or develop a Safety by Design framework for a system, i.e. retirement. The framework needs to be informed by the lived experience of VSs and their families, evidence of harm and specialist DFV and elder abuse expertise. This would ensure all superannuation products and services are proactively designed to prevent their misuse for harm and to ensure protection for members.

The Superannuation Service Standards should use the same definition of DFV as this reform and apply to the entirety of a fund’s operations, not just the death benefit claims. This could be part of a fund’s approach to vulnerability, with a requirement to develop specific policies on DFV and abuse that are made publicly available so VSs and their representatives know what to expect. Obligations should include developing and implementing policies to prevent, identify and respond to DFV or abuse of members (including financial abuse of older persons), and also cover:

- Staff training to proactively identify DFV, financial abuse and related red flags in a culturally safe and trauma-informed manner, and ensuring there is a dedicated team to respond when cases or red flags are identified or when customers self-disclose.
- Disclosures and reporting, ensuring the process protects the privacy and safety of members, and minimises the need for repeated disclosures and the risk of re-traumatising VSs or their families.
- Communications to members about the fund’s policy on self-disclosure.
- Referrals to appropriate DFV services.
- Access to interpreter services, where required.

Recommendations

Recommendation 7: The mandatory Superannuation Service Standards should include a requirement for trustees to have capacity to identify and support members experiencing DFV in a trauma-informed manner to ensure consistency across the industry.

5.2 ‘Tell me once’ Government reporting should include super funds

We support the creation of any centralised Government mechanisms that notify trustees about individuals who have reported experiencing DFV in other government systems, as part of the government’s ‘tell me once’ approach (e.g. Thriving Communities Australia - One Stop One Story hub). The ATO should be given the power to disclose fund details to the relevant Government agency in order to facilitate this process.

Recommendations

Recommendation 8: The Government should create a centralised government mechanism that notifies trustees about individuals who have reported experiencing DFV in other government systems, as part of the government's 'tell me once' approach. The ATO should be given the power to disclose fund details to the relevant agency in order to facilitate this process.

5.3 Victim Survivors who flee DFV should remain eligible beneficiaries

The updated legislation should also address the reverse situation: where the deceased is the alleged perpetrator and the VS would have been an eligible beneficiary but for escaping the DFV or abuse. A VS should be an eligible dependent in cases where the deceased is the alleged perpetrator and the interdependency relationship ended due to DFV or abuse, provided:

- the VS would have previously been a dependent under the SIS Act but for the violence or abuse; and
- the separation or termination of the interdependency relationship occurred within a reasonable timeframe prior to the member's death.

The same approaches to evidence of DFV should be applied to these cases as discussed above.

Recommendations

Recommendation 9: The reform should also allow a VS to be considered an eligible beneficiary in cases where the deceased is the alleged perpetrator and the relationship ended due to DFV or abuse, within a reasonable timeframe and with persuasive supporting evidence of the DFV or abuse.

5.4 Reversionary pensions should be included in the reform

The current forfeiture rule applies to reversionary pensions. There is no policy reason why reversionary pensions should not be included in this reform, and the added clarity about who the pension can be paid to in particular circumstances would make matters clearer for trustees.

The same legislative drafting principles should apply to reversionary nominations and pensions. However, legislation should specify that trustees have discretion, as with other nominations as set out above, about who to pay the benefits to, consistent with regulation 6.22 of the SIS Regulations. It may be necessary to amend the SIS Regulations to deal with additional details to effect this reform, for example requiring that the pension be converted into a lump sum payment in certain circumstances and setting a method for calculating the value of the benefit.

These slight complexities, which the superannuation industry is well-placed to provide constructive feedback on, are not an excuse to deny families of VSs justice or to green light perpetrators' access to VS' pensions. As Australians retire and take up income stream products (in accordance with the Government's explicit retirement income strategy), this issue is only going to increase in frequency. Excluding reversionary pensions from the reform also risks sending a signal that income stream products are not as well protected against DFV compared to other retirement products and create further opportunities for perpetrators of abuse. This is particularly relevant for financial abuse of older people, where perpetrators may coerce the older person to make retirement decisions that benefit them.

Regulations should prescribe the types of evidence that should be accepted and AFCA approaches should be updated accordingly.

Recommendations

Recommendation 10: Include reversionary pensions in this reform to ensure fairness and protection across all products.

5.5 Self-managed super funds should also be included in the reform

SMSFs need to be explicitly included in the reform's scope to avoid creating two separate death benefit approaches within the super system and increasing legal and administrative complexity, particularly for individuals with both an SMSF and APRA-regulated superannuation account. SMSFs now represent almost a quarter of the Australian super industry with over $1 trillion in assets and more than 1.2 million members (as at June 2025, ATO). With this growth, the community sector is also seeing increasing use of SMSFs as a tool of financial abuse, often involving complex tax and legal issues.

The nature of SMSFs creates opportunities for DFV, coercion and financial abuse, where members are also trustees responsible for decision-making of the fund. The trustee structure can be a vector for coercion in situations where control of the SMSF sits with a spouse or adult child. This is coupled with minimal oversight within a lower regulation environment. There is evidence that perpetrators of DFV are skilled at exploiting loopholes with government and justice systems - see Case Study 2 (page 27) and Case Study 6 (page 41) of the UNSW, Redfern Legal Centre and Commonwealth Bank report on Legal responses to economic and financial abuse (2023). Excluding SMSFs from this reform will enhance these opportunities for perpetrators.

In an SMSF where trustees are also members, the perpetrator of DFV is the trustee of the VS's super and they become the fund's main decision-maker when the VS passes away. In these cases, there is a conflict of interest and increased risk of SMSF trustees not carrying out their obligations for death benefits from this reform. With minimal independent oversight, there will be limited consequences for trustees for this breach. We recommend a review of potential solutions to address this issue and allow the VS's next of kin to direct the matter to court. This aligns with how current unresolved disputes between SMSF trustees are handled, involving trust law claims and the Supreme Court in each state or territory. This is also consistent with the recommendation made by the PJC Inquiry into Financial Abuse "that the Australian Government undertake a review of the intersection between financial abuse and the superannuation system, particularly in relation to self-managed superannuation funds; and ensure that the review is informed by the lived experience of victim-survivors" (Recommendation 9).

If a court finds that an SMSF trustee should not receive another deceased trustee's death benefits, the provision regarding SMSF non-compliance in the recently introduced Treasury Laws Amendment (The Survivors Law) Bill 2026 could be relevant to ensure compliance. Within the bill's Explanatory Memorandum, there is a provision to disqualify an SMSF trustee under the SIS Act and for trustees to incur penalties for failing to comply with a release authority. Further, "in circumstances where persons are disqualified under this rule, the SMSF will need to be dissolved and the relevant superannuation interest transferred to independent management, either by rolling

over the interest into an APRA regulated fund, or ceding trustee duties to an independent trustee and converting the SMSF into a small APRA fund” (page 25).

Recommendations

Recommendation 11: Include SMSFs in this reform to avoid creating two separate death benefit approaches within the super system, increasing complexity and the risk of SMSFs being further misused for abuse.

6. Changes that are not required to achieve the reform’s objectives

6.1 It is not necessary to also create a forfeiture-like rule for superannuation to achieve the reform's objectives

The current consultation is aimed at preventing perpetrators from accessing the super of VSs who have passed away. It is not necessary to create a broad forfeiture-like rule for super to achieve this outcome. Such a change raises broader policy questions that are not directly relevant to DFV and deviate from the underlying justification of moral culpability.

It is not clear whether it is *always* just and appropriate to disentitle a beneficiary responsible for the death of a member in certain situations. While it may be universally agreed that a person should not financially benefit from the intentional murder of another person, it is far less clear where the person unintentionally kills another person, particularly where that person is a family member. For example, if a husband kills his wife in a drunk driving incident, but the couple otherwise had a positive relationship and the husband is deeply distressed at his actions, does justice actually demand that the husband be denied his wife’s super? Would the wife when alive have wanted that result under those circumstances? In such circumstances, it may very well have been the expectation of the deceased member that the family member should benefit from their super, notwithstanding the family member’s role in their death.

These are questions that do not easily lend themselves to a strict prescriptive rule.
Given how unclear the right answer is, it is not unsurprising that each state and territory has a different approach to the current forfeiture rule.

Before making a forfeiture-like rule in super that would impact death benefit cases that do not involve DFV or abuse, Treasury should undertake a broader consultation which includes the perspectives of the states and territories as well as other stakeholders who may have particular expertise, lived experience or relevant views.

Recommendations

Recommendation 12: Treasury should consult more broadly before creating a forfeiture-like rule for superannuation as it goes beyond what is required to address DFV and abuse in death benefit claims.

Appendix A: Context and contributing factors to misidentification

Misidentification occurs when:

- A VS' account of an incident has not been properly heard, understood or believed, often due to the methods used by police when responding to and investigating an incident. This includes not engaging interpreters when language barriers are identified or asking perpetrators to act as an interpreter between law enforcement and the VS.
- Perpetrators exploit police and justice systems to 'control the narrative', often by making vexatious applications and complaints in multiple systems such as intervention orders, child support, social security, divorce, family law property settlement, debt recovery claims, child protection etc. (systems abuse).
- There is limited understanding of coercive control within police and justice systems and the imbalance of power between the two parties is often not considered when identifying the perpetrator. The creation or exploitation of this power imbalance is how perpetrators trap VSs in abusive relationships.
- A VS may respond to police or the judiciary in an aggressive or uncooperative manner due to their experience of trauma, and may not fit the police's expectations of how a 'victim' should behave. Older people may be incorrectly recorded as perpetrators, for example when responding aggressively due to dementia, pain or confusion, while the actual abuse is being perpetrated by their carer or family member.

Contributing factors to misidentification:

- The power imbalance between the two parties as part of identifying the perpetrator.
- Whether the respondent belongs to a high-risk cohort for misidentification by police as the predominant aggressor, including:
  - women
  - Aboriginal or Torres Strait Islander people
  - people from culturally and racially marginalised communities (including people from migrant and refugee backgrounds), especially those who speak English as a second language
  - people on a temporary visa, or experiencing visa or migration issues
  - people with a disability
  - people from LGBTIQA+ communities
  - people experiencing mental health problems.
- Any history of DFV including history of coercion, controlling behaviour or intimidation, previous family violence intervention orders, criminal charges, or reports of DFV by either party.