AFFILIATION OF AUSTRALIAN WOMEN'S ADVOCACY ALLIANCES

# Preventing perpetrators from accessing victims' super death benefits

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The Affiliation of Australian Women's Advocacy Alliances (AAWAA) thanks Treasury for the opportunity to comment on Preventing perpetrators from accessing victims' super death benefits. AAWAA is an independent national affiliation of women's rights organisations with established expertise on male violence, coercive control, economic abuse and legal responses to sexual and domestic violence.[1]

Superannuation is a key part of women's economic safety after a lifetime of lower earnings, unpaid care and interrupted employment. When a male who has used violence and coercive control against a woman is able to receive her superannuation death benefit, the superannuation system is enabling him to be financially rewarded from her retirement savings.

We support the Government's recognition that Commonwealth systems, including superannuation, can be weaponised by male perpetrators of family and domestic violence and that specific reforms are needed to close financial abuse loopholes. We focus on ensuring that superannuation law and trustee practice do not continue to default to paying super death benefits to males who have used violence against women, particularly in the absence of criminal convictions or clear court findings.

**THE PROBLEM: SUPER DEATH BENEFITS AND MALE VIOLENCE**

Superannuation death-benefit rules do not operate in a vacuum: the legal framework applies to all perpetrators of family and domestic violence, regardless of sex. In practice, however, the problem overwhelmingly involves males using such violence against females, and this submission focuses on that reality. These rules interact with relationships where men have exercised violence and coercive control over women, including economic abuse, threats and intimidation. In that context, current law and practice can and do result in abusive men receiving women's superannuation death benefits.

These benefits sit outside the deceased woman's estate and are generally distributed by trustees to 'dependants' or the legal personal representative. Binding death-benefit nominations and prescriptive governing rules can require trustees to pay benefits to a nominated spouse or partner even where there is evidence he has used violence against the deceased. Because trustees have very limited discretion when a valid binding nomination or rigid rule applies, they may have 'no option' but to pay a male perpetrator. This can include abusive male partners, adult sons and other male family or household members who qualify as dependants or legal personal representatives under superannuation law.

[1] See womensadvocacy.net

Where trustees do have discretion, they are expected to make a ‘fair and reasonable’ distribution, guided mainly by tests of dependency and the Australian Financial Complaints Authority (AFCA) guidance. AFCA now recognises that ‘persuasive evidence’ of violence or abuse by a claimant can justify excluding him from a death benefit, and encourages trustees to consider such evidence. However, there is no single definition of family and domestic violence for trustees to apply, and no consistent evidentiary standard. Trustees are not courts, yet they are being asked to weigh sometimes complex and conflicting material about abuse without clear, statutory tools.

These problems are compounded by the realities of male violence. Many women never report abuse, or withdraw from legal processes under pressure, fear or exhaustion. Where women do engage systems, they may be misidentified as aggressors, particularly when men use legal mechanisms to reverse roles and present themselves as victims. Nominations made in relationships characterised by coercive control and economic dependence are then treated as free choices, even when a woman has nominated a male partner to avoid escalation or because she has been isolated from other options.

The result is a system in which trustees are being asked to prevent ‘systems abuse’ case by case, without clear legislative backing and with limited information. There is a real risk that, in the name of speed and simplicity, superannuation death benefits will continue to be paid to men who have been violent towards and who have coercive control against women, especially in the many cases where there are no criminal convictions or formal court findings.

**MINIMUM REFORM: A CODIFIED FORFEITURE-LIKE RULE**

The consultation paper proposes a forfeiture-like rule for superannuation death benefits, so that where a court has found a person guilty of specified offences, he is ineligible to receive the deceased member’s superannuation. In our view, this is a necessary minimum reform. At present, the common-law forfeiture rule can prevent an offender who has unlawfully killed a woman from benefiting from that killing, but its application is uncertain and often requires separate court proceedings. Trustees may need to seek directions from a court, which is slow and costly. A clear statutory rule in superannuation law would require trustees to set aside a beneficiary who has been convicted of prescribed offences, regardless of any binding nomination or governing-rule priority.

Such a rule should cover murder and manslaughter, and should extend to other serious offences where a court has found that the man’s violent offending caused or contributed to the woman’s death in a family and domestic violence context. The list of prescribed offences should be developed with input from those who work directly on family and domestic violence, so that it captures relevant offending patterns without being drawn so narrowly that it rarely applies. The rule should not retain a ‘moral culpability’ test that trustees are not equipped to apply; once there is a qualifying conviction, the consequence should be automatic disentitlement in relation to superannuation death benefits.

This reform, however, has obvious limits. It will only assist in the subset of cases where a relevant conviction is recorded and available to trustees in time. It does nothing in the far more common situations where a woman experiences serious violence and coercive control

over years but there is no conviction linked to her death. For this reason, a codified forfeiture-like rule should be seen as a floor, not a ceiling.

**CORE REFORM: STRENGTHENED BROAD TRUSTEE DISCRETION (OPTION 1)**

Option 1 would give trustees explicit power to set aside an otherwise eligible beneficiary, set aside a binding death-benefit nomination, or depart from prescriptive governing rules where they believe on a fair and reasonable basis that the beneficiary has been a perpetrator of violence against the deceased woman. We support this direction, provided the reforms are designed with clear safeguards.

First, any legislative test must recognise the reality of family and domestic violence as male patterns of behaviour, not isolated incidents. The definition that guides trustees should explicitly include coercive control, economic abuse, psychological abuse and other forms of ongoing male domination that remove a woman's practical ability to act freely, including around financial decisions and death-benefit nominations. This matters because many women's nominations and relationship choices are made in a context where a violent or abusive man is already controlling housing, money, access to family, and physical safety.[2]

Secondly, trustees should be empowered and expected to act on a broad evidentiary base. Relevant material should include criminal and civil court outcomes, police information, protection orders, evidence from family and friends, information from domestic violence services, medical and counselling records (with appropriate consent), community legal centre advice, financial counsellor evidence, and informal documentation such as texts, emails and social media. Trustees should also be able to rely on credible accounts from family members, friends and others with direct knowledge of the violence, including where the alleged perpetrator is an adult son or other male relative. Trustees should assess this material cumulatively, looking for consistent patterns and corroboration across multiple sources. The absence of court findings must not be treated as proof that no violence has occurred.

Thirdly, where a trustee is satisfied on the available evidence that a man has been violent towards the deceased woman, there should be a clear presumption against him receiving any share of her superannuation death benefit. Allowing trustees to reduce, but still pay, a share to a perpetrator would sit uneasily with the stated objectives of protecting victim-survivors' interests and upholding fairness. In our view, once the threshold is met, the appropriate outcome is exclusion from eligibility for that benefit.

We recognise that trustees must observe basic standards of procedural fairness. This can be achieved without importing criminal-trial standards into trustee processes or requiring direct engagement between the male and the deceased woman's family. For example, trustees can notify a proposed decision, allow written responses within set timeframes, and assess all material in a trauma-informed way, giving appropriate weight to safety concerns and to the difficulty many women face in producing neatly documented proof of long-term abuse.

[2] See our submission at Why NSW's sexual consent review must confront the limits of 'consent' itself

Finally, we acknowledge that Option 1 may increase complexity and, in some cases, lengthen decision-making. Rather than avoiding difficult cases by defaulting to payment, government should ensure trustees are properly resourced, given clear statutory guidance, and required to report on how they apply these powers, so that decisions move closer to the stated principles of legal certainty, evidence-based decision-making, administrative simplicity, trauma-informed practice and procedural fairness.

## WHAT WE DO NOT SUPPORT AS PRIMARY MODELS: OPTIONS 2 AND 3

### Option 2 – prescribed court-findings approach

Option 2 would allow trustees to set aside a beneficiary or binding nomination only where a court has made a prescribed finding that the beneficiary perpetrated family and domestic violence against the deceased member, either giving trustees a discretion (Option 2a) or requiring automatic disentitlement (Option 2b). We do not support Option 2 as the primary mechanism for reform.

Tying protection to court findings ignores the well-documented reality that most men who use violence and coercive control against women will never face criminal conviction or clear civil findings that accurately reflect that violence. Many women do not report male violence at all; many withdraw from legal processes under pressure or fear; many matters resolve through plea deals or consent orders that were never designed to capture the true extent of abuse. Misidentification of the primary aggressor can also result in orders being made against women who were in fact the ones subjected to violence.

A model that only allows trustees to act when there are ‘relevant court findings’ would therefore fail precisely the women who most need protection. It would create a system where the safety of a deceased woman’s superannuation depends on whether the man who abused her was ever convicted or named in a particular way in orders or judgments, rather than on what actually happened in the relationship.

If, despite these concerns, Option 2 is adopted, it should only ever operate as a supplementary trigger that adds to trustees’ powers under a strengthened Option 1. In that context, a criminal conviction or relevant civil finding would automatically disentitle a man from receiving a death benefit. It must not constrain trustees’ ability to act on other strong evidence of violence in the many cases where the legal record is incomplete or distorted.

### Option 3 – referral to estate or court

Option 3 would allow trustees who reasonably suspect family and domestic violence to pay a death benefit into the deceased woman’s estate, or into court, rather than directly to a beneficiary under a binding nomination or governing rule. The question of who ultimately receives the superannuation would then be decided under succession law by the relevant court.

We do not support this as a default pathway. Litigation is expensive, slow and often retraumatising for families who have already experienced male violence and grief. Court processes can erode the very superannuation balance that is supposed to provide economic security for a deceased woman’s children or other dependants. Men who have been violent and who have greater access to resources, or who are more willing to prolong disputes, may be advantaged in these contests.

There are particular risks where the violent man is also the legal personal representative of the estate – for example an abusive partner or son – or the only person willing or able to take on that role. In those cases, routing superannuation through the estate or into court can give him further leverage, including procedural control and access to information, which may be used against other family members. This is inconsistent with the objective of embedding safety and closing financial abuse loopholes in Commonwealth systems.

We recognise that in a small number of complex, highly contested matters, court involvement may be unavoidable. If Option 3 is retained, it should be framed as a last resort for genuinely disputed cases where trustee powers under Options 1 and 2 cannot resolve the issues. Any such model would need explicit safeguards on costs, clear guidance on which court should hear such matters, and directions requiring decision-makers to prioritise the interests of the deceased woman's dependants and to minimise delay and trauma.

**PREFERRED PACKAGE AND FURTHER MEASURES**

Taken together, the consultation paper's proposals show a recognition that men who are violent, abusive or controlling should not be able to benefit from women's superannuation death benefits. Those men may be current or former partners, adult sons or other male relatives or household members. In our view, this requires a model built primarily on a statutory forfeiture-like rule and strengthened trustee powers under Option 1, with any use of Options 2 and 3 tightly confined and strictly supplementary.

We therefore support a statutory forfeiture-like rule as a minimum reform. Where a court has convicted a man of murder, manslaughter, or prescribed serious offences in a family and domestic violence context that caused or contributed to a woman's death, he should be automatically ineligible to receive her superannuation death benefit, regardless of any nomination or governing rule. This is the least the system should do to ensure that a man is not financially rewarded from a woman's super as a result of his own unlawful killing or serious violence.

Beyond that, we see strengthened broad trustee discretion, as envisaged in Option 1, as the core reform. Trustees must be explicitly empowered to set aside male perpetrators and override binding nominations and prescriptive rules where there is evidence of family and domestic violence, assessed on a broad, trauma-informed evidentiary base. There should be a clear presumption against paying any share of a superannuation death benefit to a man who has used violence and coercive control against the deceased woman.

Options 2 and 3 may may have a limited, supplementary role, but should not be the primary mechanisms. Court findings can be a useful additional trigger under Option 2, but must not be a gatekeeper that excludes the many cases where abuse is never accurately captured in formal orders or judgments. Court referral under Option 3 should be a last resort for genuinely complex disputes that cannot be resolved through trustee powers, and only with safeguards to protect families from excessive costs, delay and further harm.

Finally, we recommend that any legislative change be accompanied by explicit recognition of coercive control and economic and psychological abuse in the relevant superannuation provisions, systematic collection and publication of data on death-benefit decisions in male violence cases against women, and structured involvement of independent women's

organisations in designing trustee guidance, training and monitoring. Without these measures, there is a genuine risk that good intentions will not translate into consistent practice, and that superannuation will continue to operate as a vehicle through which men who have been violent or controlling benefit from women's lifetime savings.

We also recommend that the reforms be subject to an independent review no later than five years after commencement, and at regular intervals thereafter. That review should assess whether the changes have reduced instances of violent and abusive men receiving women's superannuation death benefits, evaluate impacts on timeliness and administrative burden, and draw on the experience of women's organisations and affected families to identify any further changes required.