WOMEN'S LEGAL SERVICE NSW

15 April 2026

The Treasury
Langton Crescent
PARKES ACT 2600
AUSTRALIA

By email: superannuation@treasury.org.au

Dear Treasurer,

WLS NSW Response to the Preventing Perpetrators from Accessing Victims' Super Death Benefits Consultation paper

1. We thank the Treasury for the opportunity to comment on the Preventing Perpetrators from Accessing Victims' Super Death Benefits Consultation Paper.

About Women's Legal Service NSW

2. Women's Legal Service NSW (**WLS NSW**) advocates for an end to gender-based violence and for gender equity in Australia. As a state-wide specialist women's legal service, we assist women across NSW by providing legal advice and representation from our trauma informed, holistic legal practice across a range of practice areas including family law, domestic, family and sexual violence, compensation and victims support for victims of crime, discrimination, employment and sexual harassment.

Acknowledgements

3. We acknowledge the Traditional Custodians of the lands on which we work and live across NSW. We pay deep respect to Elders past and present. This is, was and always will be Aboriginal land. We also acknowledge the many women who have been subjected to gender-based violence with whom we work and whose voices and experiences inform our advocacy in our work towards positive change.

A note on language

4. We acknowledge that there are different preferences for the language used to describe a person who has been subjected to domestic and family violence (**DFV**). In this submission, we use the term 'victim-survivor' to refer to women who have experienced, or who are currently experiencing, DFV and are not deceased. We use the term 'victim' to refer to women who have not survived the violence they were subjected to out of respect for the loss of life and to acknowledge the immense cost of DFV.

5. While acknowledging that anyone can experience DFV, the research and our experience over forty years clearly highlights that DFV is predominantly perpetrated by men against women and children. Our language in this submission is gendered to reflect this.

Opening comments

6. Superannuation is one of the most significant financial assets a person will hold in their lifetime, forming a substantial part of their estate.[1] For women experiencing DFV, their superannuation may be the only asset they have that is legally required to be in their own name.

7. On principle, we welcome the consideration of measures to prevent perpetrators from accessing a victims' superannuation death benefit. We also urge the Treasury to consider the many ways in which perpetrators use superannuation as a tool of systems abuse to financially abuse victim-survivors throughout their lives, such as by forcing early withdrawal applications, coercing beneficiary nominations and impeding balance accrual by preventing workforce participation.

8. There has been large-scale advocacy to close the death benefit loophole since Molly Wilkes' death by suicide in 2022 following years of DFV by her partner. Despite his violence being a contributing factor to Molly's suicide, her perpetrator was ultimately named as the beneficiary who received her death benefit payment.[2] This exposed a significant gap in the *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**) and *Superannuation Industry (Supervision) Regulations 1994* (Cth) that allows perpetrators of DFV to profit from their abuse.

9. No perpetrator of DFV should financially benefit from their abuse. As such, we welcome the consideration of reforms to close legislative loopholes that currently allow perpetrators of DFV from being named as valid and binding beneficiaries for the purpose of receiving death benefit payments.

Consideration of how current systems and procedures respond to DFV

Narrow scope of eligible beneficiaries

10. The scope of eligible beneficiaries is narrow under the SIS Act, requiring 'dependence' on the deceased by way of a spousal relationship, an interdependency relationship, or being a child of the deceased.[3] Where there are no children, women who are experiencing DFV are precluded from nominating an alternate beneficiary, like a parent or sibling, without a valid will and nomination of a Legal Personal Representative (**LPR**). Whilst possible, the

[1]Twomey, Anne, 'The Voice and the Australian Constitution: The Future of Indigenous Constitutional Recognition' (2025) 48 *UNSW Law Journal* 31. Accessible via <https://www.austlii.edu.au/cgi-bin/viewdoc/au/journals/UNSWLawJl/2025/31.html>.
[2] Nassim Khadem, 'Superannuation death benefits have been going to domestic abusers. The industry wants it to stop' (online, 5 September 2025) *ABC News*. Accessible via <https://www.abc.net.au/news/2025-09-06/molly-wilkes-domestic-violence-but-super-went-to-abuser/105686332>.
[3] Superannuation Industry (Supervision) Act 1993 (Cth) s 10.

complexity of this process creates a significant barrier for women who are likely also experiencing coercive control and financial abuse. In some cases where there is a valid will, the perpetrator may still be nominated as the LPR.

11. This narrow scope also disproportionately excludes First Nations people from nominating their preferred beneficiary as it often does not legally recognise kinship relationships or culturally significant family members.[4] The definition of 'dependent' under the SIS Act fails to respect the 'cultural and family realities of First Nations peoples' and has been raised as an ongoing unresolved concern by First Nations financial counsellors and advocates.[5] Alongside these reforms, we urge the Treasury to consider the recommendations in the *Building Futures, Not Barriers* report that call for 'greater consistency and certainty in when money can be paid to someone in a kinship relationship with the deceased'.[6]

Lack of legal obligation to consider the context of relationship to the deceased

12. Beneficiaries are typically nominated by a Binding Death Benefit Nomination (**BDBN**) or Non-Binding Death Benefit Nomination (**NBDBN**). In circumstances where there is a BDBN, the trustee has a legal obligation to pay the death benefit to the beneficiary, regardless of the context of their relationship with the deceased.[7] This differs from non-superannuation succession law principles, that seek to balance the deceased's wishes against the court's moral imperative to prevent perpetrators from profiting from their abuse.[8]

13. Where there is a NBDBN or no nomination, trustees have discretion to determine the closest dependent beneficiary, subject to the specific governing rules of each individual super fund. There is no specific requirement for trustees to consider extenuating circumstances, such as DFV, when exercising this discretion. Current AFCA guidance suggests that 'persuasive' evidence indicating violence or abuse towards the deceased '*may*' be relevant to making a fair and reasonable determination of beneficiary nomination.[9] The outcome of a death benefit complaint and extent to which DFV is considered is thus inconsistent and entirely dependent on the internal processes of each superannuation fund.

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[4] Super Members Council, 'How the Super System Can Enhance Experiences for First Nations People' (18 March 2026) *SMC Australia*. Accessible via <https://smcaustralia.com/media/how-the-super-system-can-enhance-experiences-for-first-nations-people/\>.
[5] Super Consumers Australia, *Building Futures Not Barriers: Superannuation that Works* (Report, July 2025) 51 -52. Accessible via <https://superconsumers.com.au/wp-content/uploads/2025/07/Building-Futures-Not-Barriers-Superannuation-that-works-2.pdf>.
[6] Ibid.
[7] *Superannuation Industry (Supervision) Regulations 1994* (Cth) Regulation 6.17A.
[8] Lachlan Robb et al, 'It's the End of the World as We Know It': Generative Artificial Intelligence and the Changing Landscape of Legal Practice and Education' (2025) 48(4) *University of New South Wales Law Journal* 1129. Accessible via < https://www.austlii.edu.au/cgi-bin/viewdoc/au/journals/UNSWLawJl/2025/31.html#fn114>.
[9] Australian Financial Complaints Authority, *The AFCA Approach to Superannuation Death Benefit Complaints* (May 2025).

Establishing a forfeiture-like rule for superannuation death benefits

14. We support the common law principle - *that no one should be allowed to benefit from their own wrong*[10] - underpinning the forfeiture rule. Currently, the forfeiture rule only prevents the distribution of a death benefit payment where a perpetrator beneficiary has been convicted of murdering the deceased victim.

15. This rule does not consider the diverse range of scenarios that could occur where a victim-survivor becomes deceased by a cause other than intimate partner homicide, and the perpetrator remains the beneficiary. For example, a perpetrator of DFV may remain the beneficiary where a victim-survivor dies from causes unrelated to the DFV, or the link between the DFV and death is indirect, such as in the case of DFV related suicide. A perpetrator of DFV should not be entitled to any financial gain resulting from the death of their victim, regardless of whether the DFV was related to the cause of death.

16. Women who are victim-survivors of DFV are at a significantly higher risk of self-harm and suicidality.[11] There is limited national data available to demonstrate the extent of DFV related suicide in Australia, nor is death by suicide currently considered in the national DFV death toll. However, research indicates that people who present to a hospital for at least one DFV stay are more than twice as likely to die by suicide.[12]

17. Whilst we are supportive of measures that prevent all perpetrators of DFV, not just those convicted of intimate partner homicide, from obtaining the death benefit of their victim, a forfeiture-like provision may be less favourable than a modified broad trustee discretion option as outlined below.

Options for policy reform

Option 1 – Broad trustee discretion

18. We join the Economic Abuse Reference Group (**EARG**) in expressing a preference for their recommended modified Option 1 as the means through which to close the death benefit loophole. We endorse their submission.

19. We share their view that implementing a modified Option 1, in providing a positive obligation for trustees to undertake a fact-based investigation where DFV is raised and granting subsequent discretion to set aside a binding nomination where that DFV is

[10] Established in *Riggs v Palmer* (Elmers Case). See also Rami B Hanegbi and Mirko Bagaric, 'Disqualifying Domestic Violence Perpetrators from the Superannuation of Their Victims' (2025) 48(3) *UNSW Law Journal*. Accessible via <https://classic.austlii.edu.au/au/journals/UNSWLawJl/2025/31.html>.
[11] Kate Fitz-Gibbon and Stefani Vasil, 'New Data Reveals Rates of Family Violence Among Those Who Died by Suicide' (*The Conversation*, 17 September 2024). Accessible via <https://theconversation.com/new-data-reveals-rates-of-family-violence-among-those-who-died-by-suicide-239090>.
[12] Australian Institute of Health and Welfare, *Examination of hospital stays due to family and domestic violence 2010–11 to 2018–19* (AIHW, Cat. no. FDV 9, 2021) 48. Accessible via <https://www.aihw.gov.au/getmedia/ce7f01c2-1979-4be5-b373-f65f1c9e4134/aihw-fdv-9.pdf.aspx>.

substantiated, is the most appropriate method of closing the loophole. This approach leverages the expertise of trustees in determining death benefit nominations and provides a procedurally-fair avenue of fact-finding outside of the courts. The court system is often used as a tool of abuse against victim-survivors of DFV[13] and the cost and complexity of navigating legal processes presents an insurmountable barrier for many marginalised women and their families.[14] As such, the modified Option 1 presents the most cost-effective and accessible method of closing the loophole. We outline our concerns with Options 2 and 3 below.

20. We urge consideration of the following measures alongside Option 1 to ensure the correct and consistent application of the discretionary mechanism.

Consideration of the Harman undertaking in evidence gathering

21. The EARG submission outlines examples of evidence that may be considered 'sufficient' for the purpose of demonstrating domestic violence under reform Option 1. In regards to the use of court documents, such as affidavits, to substantiate DFV, we urge Treasury to ensure there are appropriate safeguards in place to prevent a breach of the Harman undertaking or s 114Q of the *Family Law Act 1975* (Cth).

22. The Harman undertaking prevents legal documents produced by an order of the court from being used for a collateral purpose.[15] This undertaking prevents court materials, such as affidavits or expert reports, from being used outside of their original intended purpose to provide benefit to the person producing the material. There is an exemption to the Harman undertaking where there is a legal requirement to disclose a court document to a third party, however, to ensure relatives of deceased victims are not held in contempt of court for producing such documents to trustees, we recommend consideration of how this may operate in practice.

23. In a family law context, a public communication that identifies parties to a proceeding is an indictable offence.[16] While there are exceptions to this provision that may apply, such as the carve out for communications intended primarily for use by the members of any profession, or where a body has a significant and legitimate interest in the subject matter of the communication and that interest is greater than the interests of the public generally, these are not clear or explicit in their coverage for documents produced to a superannuation trustee for the purpose of establishing domestic violence.[17]

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[13] Stephanie Beckwith *et al*, *Coercive Control Literature Review – Final Report* (Research Report, Australian Institute of Family Studies, 1 June 2023). Accessible via <https://aifs.gov.au/all-research/research-reports/coercive-control-literature-review>.
[14] Productivity Commission, *Access to Justice Arrangements: Overview* (Inquiry Report No 72, 5 September 2014). Accessible via <https://assets.pc.gov.au/inquiries/completed/access-justice/report/access-justice-overview.pdf>.
[15] Harman v Secretary of State for Home Department, affirmed in Australia by Hearne v Street. See Law Society of New South Wales, *What Is the Harman Undertaking?* (Fact Sheet, December 2025). Accessible via <https://www.lawsociety.com.au/sites/default/files/2025-12/What%20is%20the%20Harman%20undertaking.pdf>.
[16] *Family Law Act 1975* (Cth) s 114Q.
[17] Ibid, s 114S.

24. We support the recommendation of a broad and non-exhaustive list of evidence for the purpose of providing trustees with uniform guidance as to what sufficiently proves DFV. The breadth of this list is necessary to reflect the fact that most DFV occurs outside of the legal system and to ensure evidence can be reasonably attained by next-of-kin. However, we recommend further consideration of the need to safeguard a deceased's next-of-kin from potential legal consequences that may arise from the sharing of family court documents.

Mandatory service standards

25. We welcome the Australian Government's plan to implement mandatory service standards for superannuation funds. We understand there is an intention to include specific standards to improve the handling of death benefits.[18] We recommend including detailed guidance and binding process requirements regarding the implementation of the modified Option 1 to ensure consistent application of this discretion across superannuation funds. We also recommend that the AFCA Approach to Superannuation Death Benefit Complaints guidance is updated to provide specific direction for handling death benefit claims where DFV is raised.

Specialist training to ensure accurate identification of the person most in need of protection

26. Additional discretionary powers must be accompanied by mandatory practical specialist training to ensure trustees can adequately identify DFV and consider evidence appropriately. This training should specifically address and dispel myths about DFV and contain safeguards against misidentification.

27. Misidentification of the person most in need of protection has been an issue of concern across Australia for years.[19] Victim-survivors of ongoing family violence may respond with violence as a protective or resistive act. Under the modified Option 1 model, trustees must undertake training and have specialist guidance to ensure the accurate identification of the person most in need of protection.[20]

28. There also must be appropriate safeguards within this model to prevent victim-survivors who have used retaliatory or resistive violence against their perpetrator in response to DFV from being disqualified from accessing the perpetrators death benefit where they would otherwise be considered the beneficiary.

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[18] The Hon Stephen Jones MP and The Hon Jim Chalmers MP, 'Mandatory Service Standards for the Superannuation Industry' (Media Release, 28 January 2025. Accessible via <https://ministers.treasury.gov.au/ministers/stephen-jones-2022/media-releases/mandatory-service-standards-superannuation-industry>.

[19] See, for example, the finding of a 2017 review of DFV-related deaths that 44% of women who were killed had been identified as a respondent to at least one DFV protective order. For First Nations women, nearly all DFV victims had been both the applicant and the respondent of protection orders prior to their death: Heather Nancarrow et al, Accurately Identifying the Person Most in Need of Protection (Research Report No Issue 23, ANROWS, November 2020) 14.

[20] This draws on provisions from Queensland and Western Australia. See Heather Nancarrow *et al*, *Accurately Identifying the 'Person Most in Need of Protection' in Domestic and Family Violence Law* (Research Report No 23/2020, ANROWS, November 2020) 9. Accessible via <https://anrows-2019.s3.ap-southeast-2.amazonaws.com/wp-content/uploads/2019/10/25104930/Nancarrow-PMINOP-RR.3.pdf>.

Option 2 – Prescribed approach

29. We have concerns that the Option 2 approach could have potential unintended consequences for victims of DFV and their next-of-kin. Most women who are experiencing DFV do not report it. One in two women who experienced DFV from a current partner did not seek support, much less report the abuse to police.[21] For those who do seek a legal response, convictions for DFV offences are lower than for other types of offences.[22] Additionally, findings of DFV in apprehended violence order and family law proceedings are often not made. Reliance on a DFV charge or conviction or a finding of DFV in protection order and/or family law matters as an evidentiary threshold for harm would enable a significant number of perpetrators to continue using the loophole to gain access to a death benefit.

30. Misidentification of the person most in need of protection also presents a concern under the Option 2 model. Recently, there has been a sharp increase in NSW in the number of women who are victim-survivors being charged with domestic violence offences and named as defendants to ADVOs.[23] This disproportionately impacts First Nations women, who are more likely than non-First Nations women to be both victim-survivors of domestic and family abuse, and misidentified as the predominant aggressor.

Option 3 – Referral to the deceased's estate or court

31. As outlined in the consultation paper, there are significant costs and delays associated with referring superannuation death benefit distribution to the deceased's estate, LPR or to the court. Pursuing a claim through this mechanism is inaccessible to our client base, and in some cases the court costs for pursuing a death benefit payment may exceed the balance of the entitlement.

32. First Nations consumers, who already experience compounded disadvantages and delays in accessing death benefits could also be disproportionately adversely impacted by this model. We reference the *Building Futures Not Barriers* report, that comprehensively outlines the many existing barriers that exist for First Nations consumers accessing death benefits, including the difficulties and expenses involved in obtaining letters of administration and accessibility challenges of those living in rural and remote locations.[24] The modified Option 1 is preferable as it provides a free, relatively accessible avenue outside of the courts through which next-of-kin can pursue a death benefit claim or

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[21] Australian Institute of Health and Welfare, 'Family, Domestic and Sexual Violence: Summary' (30 July 2025) *Australian Institute of Health and Welfare*. Accessible via <https://www.aihw.gov.au/family-domestic-and-sexual-violence/resources/fdsv-summary#common\>.

[22] Brigitte Gilbert, 'Attrition of Domestic Assaults from the New South Wales Criminal Justice System' (3 July 2025) *NSW Bureau of Crime Statistics and Research*. Accessible via <https://bocsar.nsw.gov.au/media/2025/mr-Attrition-domestic-assaults-nsw-cjs-bb176.html\>.

[23] From 0.4% of all IPV events in July 2010 to 2.5% in February 2023: Adam Teperski and Ilya Klauzner, Examining Gender Bias in the Policing of Intimate Partner Violence (Crime and Justice Bulletin No Number 269, NSW Bureau of Crime Statistics and Research, November 2025) 3.

[24] Super Consumers Australia, Mob Strong Debt Help and Impact Economics and Policy, *Building Futures Not Barriers: Superannuation That Works* (Report, July 2025).

complaint where there is evidence of DFV.

Contact

If you would like to discuss any aspect of this submission, please contact Emily Jol on 02 8745 6900.

Yours faithfully,

Women's Legal Service NSW

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