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Preventing perpetrators from accessing victims' super death benefits

The Super Members Council strongly endorses the Government's commitment to tackle family and domestic violence from every angle and close loopholes that entrench harm or reward abuse.

The Council has long championed reforms to close a loophole in super law that can enable a perpetrator to benefit financially from the harm they inflicted on a partner by enabling family and domestic violence perpetrators to inherit their victims' superannuation death benefits.

Under existing laws, a perpetrator can claim a spouse or partner's super death benefits unless their actions are found to be the direct cause of that person's death, even where there is clear evidence of abuse.

This currently applies even if the perpetrator has been convicted of family violence offences, or in cases when there was systemic abuse which indirectly contributed to the cause of the victim's death.

We welcome the proposals outlined by Treasury in the current consultation to codify a forfeiture-like rule to give legislative certainty to superannuation trustees and develop a framework to let trustees consider domestic and family violence in decisions about the distribution of members' death benefits.

The proposals enable trustees to set aside a potential beneficiary who would otherwise be eligible to inherit due to a dependency relationship recognised under superannuation law, a binding death nomination made by the deceased member, or a prescription in the fund's governing rules.

Together, these much-needed reforms will give trustees new tools to address some of the heartbreaking member stories where a fund's hands are currently tied in circumstances that are not fair, reasonable and aligned with community expectations.

About the Super Members Council

We are a strong voice advocating for the interests of more than 12 million Australians with over $1.9 trillion in retirement savings managed by profit-to-member super funds. Our purpose is to protect and advance the interests of super fund members throughout their lives, advocating on their behalf to ensure super policy is stable, effective, and equitable. We produce rigorous research and analysis and work with Parliamentarians and policy makers across the full breadth of Parliament.

Introduction

Superannuation law (collectively SIS law) deals with the division of super after a member's death through the definition of dependant. Trustees are restricted in how they can interpret and assess dependency relationships which can lead to circumstances that are not fair or just, especially in cases involving abuse.

In the five years to 30 June 2025, APRA-regulated super funds paid more than 220,000 death benefit claims to the families of deceased members. Ensuring that benefits are paid to a member's rightful beneficiaries is one of the core responsibilities of a super fund.

Trustees must actively assess a deceased member's relationships and circumstances at the time of

their death and consider each case on its own facts so that distribution decisions are fair and reasonable in all the circumstances. Each case must be handled sensitively, recognising that members' families are grieving their loved one.

When investigating a death claim, trustees are sometimes made aware of allegations of abuse. These disclosures most often arise during claim staking where family members seek to exclude a perpetrator from the fund's consideration or disputes a proposed payment decision. Disputes on claim decisions are rarely straightforward and can take considerable time and cost to resolve.

Family and domestic violence adds another layer of inherent complexity. Proposals to draw abusive conduct into the trustee decision-making framework must be balanced against industry efforts to provide swift resolutions and speedy payments in accordance with a proposed mandatory service standard.

The consultation paper proposes to both codify a forfeiture-like rule in the SIS law to help guide death benefit distributions and establish a framework to factor in family and domestic abuse in trustee decision-making. Treasury has indicated that it sees these proposals as separate but complementary. It does not move family and domestic violence into the scope of the forfeiture rule. Accordingly, the consultation applies to two distinct cohorts of members:

1. Members who are unlawfully killed, directly or indirectly, by a perpetrator
2. Members who die of causes unrelated to their abuse, but abuse was a feature in their relevant relationships before they died

A forfeiture-like rule applies to the first cohort while the reform options will address a broader range of conduct that is not a causative factor in the death.

Together, these proposals empower trustees to set aside an otherwise eligible beneficiary, set aside a binding death nomination made in favour of the perpetrator or overrule a prescriptive obligation under the fund's governing rules if the trustee is satisfied that they perpetrated abuse against the deceased.

The forfeiture rule

The forfeiture rule is a long-standing principle in estate law that provides that a person who unlawfully kills another person should not inherit from the person they killed. It exists predominantly in the common law rather than in any clear legislative framework and its scope and application are determined through judicial interpretation and precedent. There are jurisdictional differences in its codification, modification and interpretation in cases such as manslaughter, defensive homicide, negligent killings and assisted suicide.

SMC strongly supports the proposal to codify a national uniform forfeiture-like law applying to superannuation death benefits. Explicit recognition of the principle in SIS law and a framework to guide its interpretation will allow trustees to interpret and apply the common law consistently when determining death benefit distributions.

As it is grounded on the principle of an unlawful killing, it should be broad enough to capture the full spectrum of domestic homicide offences and adaptable enough to apply where the criminal law is yet to recognise conduct that contributes to the death. Two clear examples are suicides in the context of family violence, and deaths arising from neglect, particularly of older people.

There is a clear link between domestic, family and sexual violence victimisation and suicide, the scale of which outstrips that of abuse-linked homicide[1]. Abuse-related suicide is not routinely recognised as a form of homicide[2]. Recognising the contribution of abuse to the cause of death in coronial investigations could provide trustees with an avenue to more fairly settle these devastating cases. Given the scale of abuse-linked suicide, Treasury should not design a rule that only works for "traditional" homicide. Where coronial findings identify abuse as materially contributing to death, trustees should be able to rely on those findings to prevent perpetrators benefiting.

Funds can invoke the forfeiture rule in clear homicide cases but there is no leeway where there is moral culpability that contributed to the death but no criminal charge. This allows perpetrators who were acquitted or never charged to inherit from those they killed, either directly or indirectly. This gap

[1] See submissions to the Standing Committee on Social Policy and Legal Affairs Inquiry into the relationship between domestic, family and sexual violence and suicide

[2] Two recent groundbreaking coronial inquests in the UK have concluded in findings of Unlawful Killing resulting from domestic abuse and a campaign is underway for a new law that captures the culpability of perpetrators of domestic abuse in the causation of suicide. See https://aafda.org.uk/

undermines community expectations and produces perverse outcomes: perpetrators can still benefit where prosecutors do not proceed, the criminal standard cannot be met, or charges fail for reasons unrelated to culpability.

Where criminal charges fail, families can apply to the civil court to obtain compensation and hold responsible parties accountable where the death was caused by the negligent, reckless, or intentional actions of another party. Wrongful death claims are assessed on the balance of probabilities, not to the criminal standard.

As these deaths are reportable situations requiring coronial investigation, evidence establishing the culpability of the perpetrator under this option should be unambiguous. It should include criminal or civil court findings and coronial reports establishing relevance to the cause of death. These cases will take the most time to resolve as they are reliant on coronial investigation and resolution of court actions, highlighting the need for a differentiated regulatory approach to "standard" claim servicing timelines while waiting on the outcomes of these processes.

Super funds already respond to clear directions from the courts to freeze assets where there is a bankruptcy finding or to pay out super splitting orders in financial settlements after relationship breakdowns. Treasury should mirror existing, workable court instruction models. Just as trustees act on bankruptcy freezes and super splitting orders, trustees should be empowered to act on a clear court or coronial instruction in culpable killing matters. A targeted information sharing mechanism should also be established so families can access the fund account information they need. This could be modelled on the ATO-Family Court super splitting arrangements.

Treasury should consult closely with family and domestic violence experts to define: (i) the relevant offences; and (ii) the standard of proof that trustees can rely on (criminal, civil, coronial) to invoke the forfeiture-like rule where the perpetrator is culpable for the death. Treasury should also legislate a clear limitation period on trustee liability once a trustee applies the rule in good faith on the prescribed evidence, similar to that which exists in wrongful death law.

Options for policy reform

In addition to the forfeiture-like rule, Treasury has proposed three options to extend the scope of 'disentitling conduct' beyond the common law rule forfeiture rule. These options are deliberately not limited to circumstances where the conduct was relevant to the cause of death and will capture the significant number of people who endure a long history of abuse but die from unrelated causes. This broader scope is essential to ensuring the reform responds to the lived experience of victim-survivors, not just the narrow subset of cases where abuse directly causes death. It will also provide a basis for funds to interpret complex cases where, for example, the deceased is the perpetrator or there is abuse alleged on both sides, and apply the framework in scenarios that are not limited to intimate partner violence, such as elder abuse and intergenerational (parent-child) abuse.

We support Treasury's sensitive consideration of these matters and share the concern that limiting consideration to abuse unambiguously linked to the death would be too narrow and would undermine the policy objectives. Perpetrators of abuse should not be perversely rewarded for harming their victims, and dangerous patterns of behaviour should not be reinforced. A framework that ignores sustained abuse simply because it did not cause death risks entrenching injustice and weakening community confidence in the super system.

The three reform options proposed are:

1. Broad trustee discretion
2. A prescribed approach, with or without an element of trustee discretion
3. Referral to a deceased estate or court.

Across the super system, there is a strong will to adopt processes to tackle abuse. Each of the proposed options has relative merits and flaws, many of which have been captured in the consultation paper, and SMC has considered a range of views trying to weigh up the tensions, trade-offs and risks of unintended outcomes.

Super funds are not experts in the nuances of abusive relationships, and while disclosures to a fund,

backed up by credible evidence of abuse, do occur from time to time, these are by no means a common occurrence.

Outsourcing the decision-making capability

SMC does not support option 3, which would require superannuation death benefits to be dealt with as part of the deceased estate. This approach shifts responsibility away from trustees and forces grieving families into the court system at precisely the time they are most vulnerable.

Families would be required to formally appoint an estate representative and navigate any legal challenges raised by the perpetrator. While this pathway may be workable for large balances or families with the means to fund legal representation, it is inappropriate as a default policy response. It effectively abandons low-balance members and vulnerable families by replacing trustee decision-making with lengthy and costly adversarial court processes. This would undermine trustees' duties and the protective purpose of the super system.

If Treasury nevertheless pursues an outsourcing model in limited circumstances, a low-cost specialist option such as an independent tribunal that is empowered to make fast, expert, trauma-informed decisions would be far more appropriate. This could be a standalone statutory "guardian" empowered to hold funds in trust for complex cases and make urgent interim payments, or a specialist function within AFCA which is already empowered to mediate family disputes over death claim decisions and instruct trustees on a final course of action. Any such model must preserve accessibility, minimise cost, and prioritise speed and trauma-informed practice.

Any outsourcing of a decision will incur its own costs, be subject to that jurisdiction's timelines and will have its own administrative hurdles to navigate so may work counter to fund efforts to ensure benefits are rapidly available to families who were reliant on the deceased for ongoing financial support. For this reason, outsourcing should be tightly constrained and used only where genuinely necessary. As a general rule, reforms should strengthen—rather than displace—trustee decision-making, supported by clear legislative authority and safeguards, to ensure benefits are paid fairly, promptly and without forcing families into avoidable litigation.

Insourcing the decision-making capability

Maintaining a decision-making function inhouse requires staff who are equipped to deal with such matters sensitively and are empowered to apply informed judgement to complex and often contested facts. It also requires sustained investment in specialist capability, governance oversight, training and legal support, all of which carry material cost and resource implications for funds – costs which are borne by super fund members. The policy challenge is therefore how much discretion to confer on trustees, and how much prescription to impose, to achieve fair outcomes without undermining consistency, timeliness or legal certainty.

Broad trustee discretion aligns with the existing superannuation framework, which requires trustees to assess each claim on its own facts. Its primary advantage is flexibility: it allows trustees to respond to the realities of abusive relationships, which rarely fit neatly within predefined categories. However, wide discretion also carries a risk of inconsistent application and uneven outcomes across funds. It is also the most complex and costly model to administer, requiring higher-skilled decision-makers, access to specialist advice, enhanced procedural fairness processes, and longer assessment timeframes in contested cases. These costs ultimately flow through the system and can place pressure on funds' ability to meet broader service-standard expectations.

By contrast, a more prescribed framework offers clarity and legal certainty. Clear guardrails can support decision-makers, reduce dispute risk, and provide families with predictable outcomes, particularly while legal and societal understandings of family violence continue to evolve. The trade-off is reduced flexibility in cases that do not meet rigid thresholds. Providing a prescribed list of relevant conduct offences and evidence sources will provide assessors and families with certainty but carries greater risk of overlooking relevant conduct for which no clear bright-line evidence is able to be provided. Most abuse goes unreported or unprosecuted, and criminal charges are pursued only where there is a reasonable prospect of conviction. As a result, prescription risks excluding serious abuse simply because it has not been formally recognised by the legal system.

Restricting a list of set evidence creates a hierarchy of specific conduct that may or may not be recognised as contributing toward a broad spectrum of collective behaviours that are rarely mutually exclusive or isolated to a single punishable event. Abuse is cumulative and patterned. A rigid evidentiary hierarchy risks fragmenting conduct that, taken together, demonstrates coercion, control and harm.

While most Australian jurisdictions are shifting toward criminalising abusive non-physical patterns of behaviour, NSW became the first jurisdiction to hand down a criminal conviction for coercive control as recently as February 2026. This highlights the pace at which the law is still developing, and the risk of freezing policy settings around evidentiary standards that lag lived experience.

Mandating set evidence for automatic disqualification would give certainty to trustees in their application of the law but may lead to circumstances where it may be manifestly unjust to rule a perpetrator out of a distribution, such as where they are the sole remaining guardian of the deceased's minor children. Conversely, overly rigid disqualification rules may also produce unjust outcomes if they fail to account for broader dependency and caregiving arrangements.

It also embeds the risk of systems abuse into the framework, particularly in marginalised communities where police misidentification rates remain disturbingly high, and where perpetrators have often weaponised legal systems against their victims. Any evidentiary framework must therefore be designed to avoid entrenching systems abuse, particularly for First Nations people and other marginalised communities who are disproportionately impacted by misidentification and over-policing.

The consultation paper is silent on whether any such prescribed evidence must have a nexus to the death. Treasury should clarify whether prescribed conduct requires a nexus to the death or to the relevant relationship at the time of death. While stale or irrelevant historical conduct should not be determinative, past findings (particularly where patterns of abuse are evident) may be the only objective evidence available to families. This is consistent with AFCA's expectation that trustees assess circumstances as at the date of death.

In SMC's view, any evidence, whether prescribed or not, should be independent, reliable, credible and relevant to the member's circumstances, including their relationships, when they died. These principles should anchor any evidentiary framework, regardless of whether Treasury adopts a discretionary or prescribed model.

It is also vitally important that appeal pathways are maintained. AFCA should be empowered to make trauma-informed decisions about family violence conduct and communicate expectations through updated Approaches guidance and published decisions. While AFCA's current Superannuation Death Benefit Approach document includes a brief acknowledgement of family violence as a relevant consideration, this will need to be expanded to both reflect changes to the legislation and provide specific rules and guidelines to set expectations about the parameters on which AFCA will consider complaints regarding trustee decisions. Over time, this would enable a principled mechanism for consistency without relying solely on prescriptive legislation. It also plays an important cost-containment role by reducing duplicative litigation and giving trustees clearer reference points for future decisions.

Ultimately, tighter prescription will necessarily limit the reach of the policy. At minimum, the policy needs to set a baseline that can be evolved over time, by legislative direction or by fund interpretation and adaptation to their risk appetite. This may be an appropriate outcome as super funds are the trustees of retirement savings, not the sole moral arbiters for conduct that needs to be addressed at a whole of society level.

Other relevant matters

Notification of abuse

The policy framework should set out that trustees are only required to investigate and verify abuse in death claim cases where there has been a reasonable disclosure made by an interested party to the claim, including by the victim prior to their death. This threshold is essential to ensure proportionality and to avoid unnecessary delay to uncontested claims. Funds should not be required to proactively investigate potential abuse in every claim as a matter of course, or to reopen settled claims absent new, substantive information.

Victim-survivors must be able to safely and privately provide notice to their fund that they are experiencing abuse. Funds can only accept nominations in favour of eligible beneficiaries. In this context, existing nomination frameworks may entrench outcomes that do not reflect the member's true intentions, particularly where abuse has constrained their ability to update or revoke a nomination. Without a safe disclosure mechanism, members may have no effective way to signal their wish to exclude an abuser and direct benefits elsewhere

Self Managed Super Funds (SMSFs)

The consultation is primarily directed at the trustees of APRA-regulated super funds who routinely make death claim decisions on behalf of their members. However, limiting the operation of these reforms to APRA-regulated funds leaves a significant gap in the policy response.

We recognise Treasury's decision to scope this consultation around APRA-regulated funds, given their central role in administering death benefit claims at scale.

That said, SMSFs are well-documented vehicles through which financial abuse is perpetrated, facilitated and concealed, particularly in intimate and family relationships. Excluding SMSFs from reform risks entrenching precisely the harms this policy seeks to address.

SMC strongly supports Recommendation 9 of the Financial Abuse Inquiry which calls for a dedicated review of the intersection between financial abuse and SMSFs. Findings of such a review will help to inform targeted and proportionate interventions to address abuse risks inherent in SMSF structures, including control over assets, decision-making concentration and information asymmetry.

SMSFs should not be treated as a neutral carve-out simply because they sit outside the regulated framework. Related reform processes, including the coerced directorships inquiry, highlight common risk factors that are equally present in SMSFs and should inform Treasury's thinking in this area.

Any reform that leaves SMSFs untouched risks displacing, rather than preventing, financial abuse within the super system.

Definition of a death benefit and defined benefit interests

While the bulk of the death benefit payments made by super funds are lump sum payments, there are important categories of benefits where this is not the case. These include reversionary pensions, defined benefit survivor pensions, and lifetime income streams, which raise distinct policy and operational considerations.

Many pension members nominate a reversionary beneficiary at the time a pension is established. In most cases, this nomination is irrevocable without fully commuting the pension and commencing a new income stream. As a result, reversionary arrangements can lock in outcomes that persist despite subsequent changes in relationships, including the emergence or escalation of abuse. In addition, certain reversionary pensions are payable to disabled children, and when family and domestic violence is committed by a child—especially one with a disability—the question of how disentitling conduct should be handled becomes especially complex.

Similarly, some defined benefit schemes provide for automatic surviving spouse pensions, often payable for life and without discretion at the point of death. As these benefits often arise automatically under trust deeds and governing rules, these arrangements operate differently from lump sum death benefits and may sit outside trustee decision-making frameworks that rely on post-death assessment.

The policy framework must therefore clearly define "death benefit" to ensure that reforms appropriately capture reversionary pensions, defined benefit survivor pensions and lifetime income products, including those issued through life companies rather than trustees, and any legislative reform should explicitly override trust deeds and regulations to ensure practical implementation,

Without this clarity, there is a risk that significant classes of benefits (often involving long-term, high-value income streams) fall outside the reform perimeter, undermining both fairness and policy intent.

Treasury should also undertake consultation on developing workable solutions for the treatment of defined benefit interests, including the treatment of residual capital if a pension is disentitled.