

20 February 2026

The Hon Dr Daniel Mulino MP  
Assistant Treasurer

Submitted: online

Dear Assistant Treasurer

## Treasury Laws Amendment (Victims of Crime) Bill 2026: Access to superannuation for victims of child sexual abuse crimes

Thank you for the opportunity to make a submission on proposed amendments to allow certain victim survivors of specified child sexual abuse offences to access portions of the superannuation interests of some perpetrators. Consistent with our submission in the 2023 consultation, Relationships Australia supports the proposed reforms to prevent perpetrators from shielding their assets against orders for compensation.<sup>1</sup> We welcome measures to lift procedural burdens from victim survivors, including through conferral of functions on the Commissioner; this aligns with trauma-informed policy. However, we consider that the reforms are unduly narrow in both their intent and scope, and therefore **recommend** that the reforms be expanded to:

- reflect long-term financial and economic consequences of abuse and maltreatment, and locate responsibility for those consequences with the perpetrator (through access to their superannuation interests), rather than with victim survivors, Australia's social security system, and victims of crime compensation schemes
- reflect the imbalance of power between all child victims of all forms of abuse and maltreatment, on the one hand, and perpetrators, as well as the vulnerability of children when interacting with the criminal justice system
- allow access to all superannuation interests of perpetrators
- allow access to superannuation interests on the basis of all forms of child abuse or maltreatment, not just child sexual abuse, including on the basis of being a child survivor of family or domestic homicide
- allow access by victim survivors, of any age, of domestic and family violence, as originally envisaged, and
- allow access to superannuation interests on the basis of civil litigation which has proven, on the balance of probabilities, that the owner of a superannuation interest carried out abuse or maltreatment. (**Recommendation 1**)

<sup>1</sup> This submission is accessible at <https://www.relationships.org.au/wp-content/uploads/CSA-survivors-and-access-to-super-070223FINAL-Relationships-Australia-National.pdf>

The brevity of the consultation period is unfortunate because it may preclude submissions from a range of individuals and groups with scarce resources, but with a vital interest and the ability to make substantive contributions in refining the policy to optimise its impact.

## The work of Relationships Australia

Relationships Australia is a federation of community-based, not-for-profit organisations with no religious affiliations. Our services are for all members of the community, regardless of religious belief, age, gender, sexual orientation, lifestyle choice, cultural background or economic circumstances.

Relationships Australia provides a range of services, including counselling, dispute resolution, children's services, services for victims and perpetrators of family violence, services for older people, and relationship and professional education. We aim to support all people in Australia to live with positive and respectful relationships, and believe that people have the capacity to change how they relate to others.

Relationships Australia has provided family relationships services for over 75 years. Our State and Territory organisations, along with our consortium partners, operate approximately one third of the Family Relationship Centres (FRCs) across the country. In addition, Relationships Australia Queensland operates the national Family Relationships Advice Line and the Telephone Dispute Resolution Service.

The core of our work is relationships – through our programs, we work with people to enhance not only family relationships, but also relationships with friends, colleagues, and across communities. Relationships Australia believes that violence, coercion, control and inequality are unacceptable.

We respect the rights of all people to live life fully within their families and communities with dignity and safety, and to enjoy healthy relationships. These principles underpin our work.

Relationships Australia is committed to:

- Working in rural, regional and remote areas, recognising that there are fewer resources available to people in these areas, and that they live with pressures, complexities and uncertainties not experienced by those living in cities.
- Collaboration. We work collectively with local and peak body organisations to deliver a spectrum of prevention, early and tertiary intervention programs across generations and with men, women, young people and children. We recognise that often a complex suite of supports (for example, family support programs, mental health services, gambling services, drug and alcohol services, and public housing) is needed by people affected by family violence and other complexities in relationships.
- Enriching family relationships, including providing support to parents, and encouraging good and respectful communication.
- Ensuring that social and financial disadvantage is not a barrier to accessing services.
- Contributing practice evidence and skills to research projects, the development of public policy and the provision of effective services.

This submission draws upon:

- our lengthy experience in delivering diverse programs to victim survivors of crime, domestic, family and sexual violence, and institutional abuse
- evidence-based programs and research, and
- our leadership and policy development experience.

## Framing principles of this submission

### Principle 1 - Commitment to human rights

Relationships Australia contextualises its services, research and advocacy within imperatives to strengthen connections between people, scaffolded by a robust commitment to human rights. Relationships Australia recognises the indivisibility and universality of human rights and the inherent and equal freedom and dignity of all.

### Principle 2 – Poverty is a cause, consequence and characteristic of a range of experiences, circumstances and positionalities, including domestic, family and sexual violence and abuse and maltreatment as a child

Poverty co-occurs with a range of experiences, circumstances and positionalities, including longstanding health restrictions, intimate partner violence, abuse or neglect of older adults, poor mental health, housing insecurity and instability, employment precarity, misuse of alcohol and other drugs, and harmful gambling. Causation is often multi-factorial and multi-directional and, once individuals, families and communities are caught by it, our social, economic, political and legal systems operate in concert to exacerbate poverty, while actively hindering escape and recovery from it.

### Principle 3 - Preventing poverty is key to women's economic empowerment, as well as to a thriving nation

Governments should prioritise measures to ensure that experiences of episodic poverty, including those following relationship separation and those related to trauma, do not deteriorate into entrenched, and potentially intergenerational, poverty that will not only harm the individuals experiencing it, but will hinder long-term economic, social and cultural success for Australia.

### Principle 4 – Victim survivors of domestic and family violence, including elder abuse, face particular financial and economic challenges

In its National Plan to End Violence Against Women and Children 2022-2032 (the National Plan), the Government recognises that women face particular challenges in enjoying financial independence throughout the lifecycle, including:

- the gender pay gap

- interruptions to employment experienced by many women to undertake childbearing, child care and gendered carers' roles in our society, and without which our economic, cultural, social and political lives would crumble<sup>2</sup>
- family separation and relationship breakdown
- experience of domestic, family and sexual violence, which are strongly gendered,<sup>3</sup> and
- for women who experience violence as older women, and who separate - additional burdens of ageism in participating in the paid workforce or seeking other means to preserve financial independence – and even to afford housing.<sup>4</sup>

### Principle 5 – Wrongdoers who impair another's capacity to acquire and maintain financial security should not be permitted to defeat a compensation order or other judgment debt through legal artifice

Where a person would have superannuation, or would have more superannuation, but for the wrongdoing, then the taxpayer should not have to make up the shortfall through social security payments when a wrongdoer has sought to avoid financial consequences for their acts.

### Principle 6 – Commitment to inclusive and universally accessible services

Relationships Australia is committed to universal accessibility of services, as well as inclusive and culturally safe services. Our clients (and staff) experience stigma, marginalisation and exclusion arising from diverse circumstances and positionalities, including:

- 'postcode injustice' in accessing health, justice and other social services
- poverty
- people affected by complex grief and trauma, intergenerational trauma, intersecting disadvantage and polyvictimisation
- survivors of institutional abuse
- intimate partner violence, abuse or neglect as an older adult, and/or child maltreatment
- status as users of care and support
- disability and longstanding health restrictions (including poor mental health)
- family separation
- being an adult informal carer for a child or other adult
- being a young person caring for a child or an adult
- housing insecurity and instability
- employment precarity, unemployment and under-employment
- misuse of alcohol and other drugs, or experience of gambling harms
- people who come from culturally and linguistically marginalised backgrounds (including people who have chosen to migrate and people who have sought refuge)
- people experiencing homelessness or housing precarity

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<sup>2</sup> See, eg, Evaluate (2022).

<sup>3</sup> See, eg, Cortis & Bullen (2015); Cortis & Bullen (2016); Broadway et al, 2022; de Vaus et al, 2007; de Vaus et al 2015; Easteal et al, 2018; Fehlberg & Millward, 2014; Gray et al, 2010, Smyth & Weston, 2000; Warren, 2017.

<sup>4</sup> AHRC, 2019.

- people who identify as members of the LGBTIQ+ communities, and
- younger and older people.

None of these circumstances, experiences and positionalities exists at the level of an individual or family. They become barriers to full enjoyment of human rights and full participation in economic, cultural, and social life through the operation of broader systemic and structural factors including:

- legal, political and bureaucratic frameworks
- beliefs and expectations that are reflected in decision-making structures (such as legislatures, courts and tribunals)
- policy settings that inform programme administration, and
- biases or prejudices that persist across society and that are reflected in arts, culture, media and entertainment.

### **Principle 7 – An expanded understanding of diverse ways of being and knowing**

Epistemologies and experiences of Aboriginal and Torres Strait Islander people Relationships Australia is committed to working with Aboriginal and Torres Strait Islander people, families and communities. Relationships Australia is also committed to enhancing the cultural responsiveness of our services to other culturally and linguistically marginalised individuals, families and communities. Our commitment to human rights necessarily includes a commitment to respecting epistemologies beyond conventional Western ways of being, thinking and doing. Of acute importance is a commitment to respecting epistemologies and experiences of Aboriginal and Torres Strait Islander people as foundational to policy and programme development, as well as service delivery.

### **Principle 8 – Intergenerational stewardship and equity**

Fairness to future generations should not be viewed through a reductionist fiscal lens. Relationships Australia takes seriously obligations of stewardship for future generations, which transcend the national balance sheet and require us to invest in social infrastructure (tangible and intangible). This includes fit for purpose human rights infrastructure.

### **Principle 9 – Fragmentation of policy, legislation and service delivery causes harm**

Almost every submission from Relationships Australia National Office over the past eight years has identified fragmentation as one of the principal barriers to authentic accessibility - in getting the right interventions to the right people at the right time and at the right dosage. In the context of this consultation, the narrow identification of one class of victim survivors, and the apparent hierarchy of 'victimhood' that is implied, creates a fragmentation which forms a barrier to financial repair and recovery from abuse that occurs in the context of asymmetry of power between perpetrator and victim survivor. This new silo appears not to be anchored in principle or evidence.

Government has not provided a principled rationale for confining these measures to victim survivors of child sexual abuse. Nor is this restriction based in evidence about the relative

prevalence, gravity and duration of harm suffered from various sub-types of child abuse, as is made clear by the landmark Australian Child Maltreatment Study.<sup>5</sup> The ACMS establishes that:

- emotional abuse and sexual abuse are both strongly associated with severe and debilitating long-term health risks, including mental health disorders such as major depressive disorder, generalised anxiety disorder, and PTSD
- emotional abuse is often overlooked, despite these consequences, and
- while sexual abuse rates are decreasing in 16-24 year olds, emotional abuse rates are increasing.<sup>6</sup>

Forcing service users to shoulder the burden of fragmentation is the opposite of trauma-informed and person-centred, and undermines human rights. Our commitment to accessibility underpins our advocacy for systems and processes that lift from the shoulders of those least equipped to bear them the burdens of fragmented, siloed, complex and duplicative laws, policies, programmes, and administering entities. It also underpins our advocacy for frameworks that confer greater legal certainty about rights and obligations.

### Principles underpinning early release of superannuation

This submission has been framed having regard to the principles underpinning early release as articulated in the paper released by Treasury in December 2017,<sup>7</sup> which remain salient to the issues traversed in the 2023 paper and the measures now proposed:

- preservation – that superannuation should generally be preserved to provide income in retirement to substitute or supplement the Age Pension
- genuine hardship – that early release should be available only where the benefits of early access to superannuation will exceed the benefits of preserving balances until retirement
- last resort – that early release is not an appropriate replacement for existing health and income support policies, and
- that rules relating to early release be fair and effective.

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<sup>5</sup> The ACMS has identified and measured the following forms of child maltreatment: physical, sexual and emotional abuse, neglect and exposure to family violence: see Haslam, 2023, Higgins, 2023, Lawrence, 2023, Mathews, 2023 and Scott, 2023. Emotional abuse is slightly more prevalence (30.9%) than sexual abuse (28.5%)

<sup>6</sup> See, especially, Scott & Mathews, 2023; Scott, Melacova et al, 2023.

<sup>7</sup> Treasury, 2017, p vi.

## Recommendations

This submission makes the following recommendations.

- Recommendation 1* The reforms should be expanded to:
- reflect long-term financial and economic consequences of abuse and maltreatment, and locate responsibility for those consequences with the perpetrator (through access to their superannuation interests), rather than with victim survivors, Australia's social security system, and victims of crime compensation schemes
  - reflect the imbalance of power between all child victims of all forms of abuse and maltreatment, on the one hand, and perpetrators, as well as the vulnerability of children when interacting with the criminal justice system
  - allow access to all superannuation interests of perpetrators
  - allow access to superannuation interests on the basis of all forms of child abuse or maltreatment, not just child sexual abuse, including on the basis of being a child survivor of family or domestic homicide
  - allow access by victim survivors, of any age, of domestic and family violence, as originally envisaged, and
  - allow access to superannuation interests on the basis of civil litigation which has proven, on the balance of probabilities, that the owner of a superannuation interest carried out abuse or maltreatment.
- Recommendation 2* Proposed subparagraph 139-10(2)(c)(ii) should be revised to include a reference to orders for parental responsibility under Part VII of the Family Law Act.
- Recommendation 3* Proposed paragraph 139-10(2)(d) should be revised to omit 'and' between 'financial' and 'counselling'.
- Recommendation 4* Proposed paragraph 139-55(1)(e) should be omitted, and the Bill revised to provide for two independent statutory reviews, one 12 months after commencement and the second 36 months after commencement, to allow for an interval over which unintended consequences could become apparent.
- Recommendation 5* The Bill should be clarified as to whether the immunity of a superannuation provider in respect of action taken to comply with

a release authority extends to a superannuation provider which chooses to comply with an order in respect of defined benefit interests (see, eg, Draft Exposure Explanatory Materials, paragraphs 1.102-1.104; 1.111-1.114).

## Overarching comments about the scope of the amendments

As noted in our 2023 submission, early release of superannuation to compensate victims of crime has been under consideration by Australian Governments for several years. The scope has progressively narrowed, without public explanation, to now include only certain child sexual abuse offences. It is unclear why this is the case, beyond the statement that victim survivors of such offences are

*... among the most vulnerable people to interact with the criminal justice system. By improving their experiences in the criminal justice system, we seek to minimise the likelihood of additional trauma and improve access to redress.<sup>8</sup>*

These considerations – relating to asymmetries of power and experiences in the criminal justice system - also apply to victim survivors of all sexual violence (see ALRC, 2025), all children who experience abuse and maltreatment, and many victim survivors of DFV (see Commonwealth and State/Territory inquiries and reports over nearly two decades). Similarly, each of these cohorts experiences greater risk of financial insecurity over the lifecycle.<sup>9</sup>

Treasury's 2018 paper reported that

*In discussions with stakeholders following the December consultation paper, there was strong support for the proposition that superannuation should not be used deliberately to shield assets from victims of crime and deny them compensation.<sup>10</sup>*

This, too, is a principle that is equally compelling in relation to other victim survivors of abuse and mistreatment.

The Draft Exposure Explanatory Materials state that:

*...the intention is to prevent misuse of superannuation to shield the assets of perpetrators from their victims or survivors....only amounts that are made to deliberately shield assets from compensation are eligible. [paragraph 1.29]*

Relationships Australia strongly supports enabling victim survivors of child sexual abuse to access the superannuation interests of those who have harmed them. Yet it is unclear what principles have been applied, or evidence relied upon, to determine that the harm endured by this group of victim survivors are so distinct from that endured by child and adult victim survivors of other kinds of violence to justify exclusion of the latter from accessing

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<sup>8</sup> Treasury, 2023, p 8.

<sup>9</sup> See, eg, ALRC, 2025, paragraphs 16.2-16.3.

<sup>10</sup> At p 6.

compensation by the means proposed. Indeed, as canvassed below, the evidence supports the opposite conclusion.

#### *Purpose of the amendments*

Relationships Australia strongly supports the intention to prevent perpetrators from using superannuation to evade their legal responsibilities. We consider, however, that the intention should apply to perpetrators of a broader range of harms, reflecting that perpetrators cause harms that lead to victim survivors' reliance on social security payments, and other public expenditure (eg health care costs). Perpetrators should not be able to shield themselves and divert responsibility to taxpayers through the health and social security systems.

#### *Abuse and maltreatment of children, other than child sexual abuse*

It is unclear why victim survivors of a broader range of abuse, harm and maltreatment should not have similar recourse against perpetrators who would exploit legal artifices to shelter against compensatory orders. It should be borne in mind, too, that children are increasingly recognised as primary victim survivors of domestic and family violence, and not secondary victims or simply witnesses.<sup>11</sup> A purported distinction between victim survivors of child sexual abuse from victim survivors of other forms of child abuse and is unsupported by evidence or principle.

Commonwealth data sources demonstrate that children who survive any form of abuse or mistreatment are at risk of experiencing long-term financial and economic harm. For example, the AIHW has reported that

*Child abuse in the PSS is measured as any physical and/or sexual abuse that occurred before the age of 15. These findings relate to all forms of child abuse, and are not limited to those experienced in an FDV context.*

*People who were abused as children were more likely to receive a government pension, benefit or allowance:*

- *43% of women who were abused as children were receiving a government pension, benefit or allowance, compared with 34% of women who weren't abused as children*
- *3 in 10 (31%) men who were abused as children were receiving a government pension, benefit or allowance, compared with 22% of men (ABS 2017).*

*Women who experienced childhood abuse had lower income compared with those who did not experience childhood abuse. The median gross personal weekly income was \$767 for women who experienced childhood abuse and \$863 for women who did not experience childhood abuse. (AIHW, 2025)*

#### *Child victim survivors of lethal domestic and family violence*

One group of child victim survivors that is only beginning to be recognised for the particularity and intensity of need, including financial need, are children bereaved by lethal domestic and

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<sup>11</sup> As acknowledged in other Commonwealth legislation such as the *Family Law Act 1975* and in the research literature: see ACMS, 2023.

family violence. This group includes children whose caregiver is killed by someone else in the family, and children whose caregiver takes their own life in the context of DFV.<sup>12</sup>

There is currently little tailored support for these children and young people, and they face an overwhelming combination of adverse circumstances, including those which put at risk their long-term financial stability.<sup>13</sup>

#### *Victim survivors of DFSV experienced as adults*

Adult victim survivors of DFV are also well-documented as being vulnerable in the justice system and experiencing multiple barriers to access to justice, as noted (for example) by the ALRC in its report about justice responses to sexual violence.<sup>14</sup>

Further, as noted in extensive research literature, they are more likely to be dependent on social security including income supports and disability payments as a result of experiencing DFV. From a budget policy perspective, and a distributive justice perspective, it would be preferable for 'additional' contributions to be recoverable by victim survivors from perpetrators than for victim survivors to otherwise be forced to rely on social security and other government payments, including compensation under victims of crime compensation schemes.<sup>15</sup> For example, the AIHW observed in 2025 that

*Analysis of the 2021–22 PSS<sup>16</sup> indicated that when compared with those who had never experienced partner violence, a higher proportion of women who experienced partner violence (including physical, sexual, emotional or economic violence) in the last 5 years:*

- *received a government pension or allowance (34% compared with 12%)*
- *had a government pension or allowance as their main source of income (22% compared with 7.4%) (Summers et al. 2025).*

Including victim survivors of DFSV (including elder abuse) offences in the proposed legislation would fortify other Government policies supporting the recovery of victim survivors in a range of other policy and portfolio areas and promote a conceptually coherent, less fragmented statute book. Government recognises the critical need to support the recovery of women and children affected by domestic and family violence; see, for example, the National Plan<sup>17</sup> and its responses to ALRC Report 135 and the Joint Select Committee inquiry into the family law system.

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<sup>12</sup> For links between DFV and suicide, see the recent submission of Relationships Australia to the inquiry by the House of Representatives Social Policy and Legal Affairs Committee, available at <https://www.relationships.org.au/research/#advocacy>

<sup>13</sup> See, eg, Alisic, 2025.

<sup>14</sup> See, eg, recommendations 56 and 57, concerning the removal of barriers that victim survivors of sexual violence experience when seeking to accessing financial assistance in victims of crime schemes.

<sup>15</sup> AIHW, 2025.

<sup>16</sup> The Personal Safety Survey conducted by the Australian Bureau of Statistics.

<sup>17</sup> At pp 86-88.

Financial empowerment is a substantial enabler of recovery, and access to early release of a perpetrator's superannuation clearly would promote that. Analysis of the Journeys Home survey, based on 2011 Centrelink data, demonstrated that

*Women affected by violence had similar average incomes to those not affected, and were no more or less likely to participate in paid work. However, women affected by violence fared much worse on indicators of financial hardship and stress. The economic penalty associated with violence persisted across the six waves of the survey:*

- *By Wave 6, women affected by violence in Wave 1 still had more difficulty paying bills, and carried higher average levels of debt.*
- *By Wave 6, women affected by violence in Wave 1 were more likely than other women to go without food when they were hungry due to shortage of money.*
- *In Wave 6, women who had reported violence in any wave of the study had lower levels of financial satisfaction than those not affected by violence.*

*Women affected by violence in Wave 1 were more likely to ask for material assistance from welfare agencies in Wave 6. Further, economic outcomes in Wave 6 were worse for women exposed to prolonged or repeated violence in the survey period.<sup>18</sup>*

Cortis & Bullen (2016) further observed that

*Even where economic abuse is not a tactic of violence, physical and psychological abuse can disrupt women's economic participation, and generate unfair costs borne by individual women and children, and the service systems that seek to support them. Although this economic disadvantage is experienced in different ways by women in different circumstances, it influences when and how women can avoid or escape violence, and how they can participate in employment and society, ultimately undermining women's status, independence and wellbeing over the life course.<sup>19</sup>*

The same considerations apply to victim survivors of sexual violence experienced as adults. The 2025 ALRC report into justice responses to sexual violence noted that:

*Sexual violence is one of the most common and serious harms confronting Australia today. One in five women and one in 16 men over the age of 15 have experienced sexual violence. About one in three girls and one in seven boys experience child sexual abuse. Some groups, such as First Nations women, women with disability, and migrant women, experience sexual violence at much higher rates. The harm caused by sexual violence to individuals, families, and society, is significant.*

*When it comes to sexual violence and the justice system, both what the ALRC has heard and the available data indicates significant challenges. For example, 9 out of 10 women who have experienced sexual violence do not report to the police. Where there is engagement with the justice system, that engagement is usually short-lived. In at least*

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<sup>18</sup> Cortis & Bullen, 2016, p 7.

<sup>19</sup> Cortis & Bullen, 2016, p 10.

*some Australian jurisdictions, between 75–85% of reports to police do not proceed to charge. Even fewer reports proceed to court. Once in court, many people report experiencing the justice system as retraumatising (ALRC, 2025, paragraphs 1-2; references omitted.)<sup>20</sup>*

Exclusion from the proposed reforms of victim survivors of DFSV experienced in adulthood risks further institutional entrenchment of the financial disadvantage and poverty that extensive research and analysis has found to be concurrent, characteristic and consequential upon domestic and family violence.<sup>21</sup>

We submit that the range of DFSV offences to which the arrangements should apply would be capable of sufficiently precise identification in liaison with the Attorney-General's Department. Those offences should also include elder abuse offences, in jurisdictions where these exist.

It is the view of Relationships Australia that using the superannuation system to shield assets from victim survivors is a form of systems abuse, and a mechanism by which perpetrators can continue to exert coercive control and financial abuse.

#### *Access on the basis of a civil court finding of abuse or maltreatment*

The proposed amendments are confined to circumstances in which a conviction has been secured. We submit, however, that the impact of the proposal will be unnecessarily diminished and undermined by this restriction - including for its intended beneficiaries. There is a range of reasons for this.

As acknowledged by Treasury's 2023 paper, the criminal justice system is potentially harsh and traumatising for victim survivors who, for a range of reasons, may be deterred from engagement with it, and even counselled to avoid it by their legal advisers.<sup>22</sup> Pre-eminent of these is that notwithstanding recent and emerging reforms to how evidence-in-chief is taken, and to the scope and manner of cross-examination, victim survivors may still be deterred by the prospect of extensive, vicious and public attacks on their credibility and character. Second, evidentiary and procedural difficulties arise, such as availability of timely, good quality forensic evidence, and the complexities of jury deliberations and conduct. The prosecution may not secure a conviction for many reasons unconnected to the quality of the evidence.

For these and other reasons, victim survivors may be advised by their lawyers (as well as family, friends and other professional advisers) against pursuing a prosecution, taking into account the rigours and uncertainties outlined above as well as the circumstances of the individual. In such cases, lawyers may advise pursuit of a civil action, instead. Such advice does not necessarily speak to the quality of the evidence against the accused or necessarily mean that a conviction could not have been secured.

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<sup>20</sup> See also ALRC 2025, paragraphs

<sup>21</sup> See, eg, Cortis & Bullen (2015); Cortis & Bullen (2016); Broadway et al, 2022; de Vaus et al, 2007; de Vaus et al 2015; Eastaale et al, 2018; Fehlberg & Millward, 2014; Gray et al, 2010, Smyth & Weston, 2000; Warren, 2017.

<sup>22</sup> See ALRC Report 143.

Finally, the higher standard of proof required by the criminal courts recognises the graver consequences for the liberty of the accused if an offence is made out; it should not be regarded as a necessary standard for broader purposes, including that to be served by the proposed amendments. ‘Balance of probabilities’ is not a second class or slipshod standard; indeed, substantial consequences follow civil cases that satisfy this standard, applied in accordance with the *Briginshaw* principle.<sup>23</sup> For example, governments and commercial ventures are frequently held legally and financially accountable for their actions, or hold others legally and financially accountable, on the basis of evidence that meets the balance of probabilities standard of proof.

In its 2025 report on justice responses to sexual violence, the ALRC noted general support from stakeholders of the balance of probabilities as the standard of proof for eligibility to receive compensation through victims of crime schemes. The ALRC heard that

*...precluding people who have experienced sexual violence from receiving compensation if an accused person has not been convicted imposes a significant barrier. Given that most people do not report sexual violence, and that there are high rates of attrition and low rates of conviction for sexual violence, requiring that the act of violence be proved beyond reasonable doubt may be particularly difficult for people who have experienced sexual violence. That standard of proof is not appropriate for any fact finding at all in the Schemes. [paragraph 16.172; references omitted]*

#### *Scope of the amendments should be principles-based and evidence-led*

One possible principle to be applied in identifying offences captured by the proposal could draw on the financial and economic impact suffered by victim survivors. For example, did the relevant conduct by the perpetrator affect the ability of the victim survivor to accumulate and maintain their own superannuation? No doubt other principles could be developed, as perhaps was envisaged in the earlier development of these proposals. A principles-based approach would align with the principle of fairness, required of arrangements for early release, and also support the goal of future-proofing the intended scheme (see 2023 paper, p 9).

#### *Which account holders should be included?*

Subject to the operation of the *Family Law Act 1975* (Cth), we support operation of the scheme in relation to the superannuation interests of spouses, parents, children and related entities. Again, this would be analogous to other legislative schemes, such as bankruptcy law. Indeed, if any of these potential account holders are excluded, then offenders will inevitably exploit these loopholes to the detriment of victim survivors. We do not consider that this would punish innocent parties because, the proposals do not concern early release of, or access to, ‘in character’ contributions that are made genuinely to lay a secure foundation for retirement. These proposals are confined to out of character contributions made as part of a legal artifice to avoid paying compensation to a victim survivor of unlawful conduct; analogous to

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<sup>23</sup> See *Briginshaw v Briginshaw* (1938) 60 CLR 336.

arrangements made with the intent of defeating creditors. This is money that does not belong in the offender's, or anyone else's, superannuation in the first place.

Alternatively, courts could have a discretion, in respect of a particular offender, to extend the scheme's operation to the accounts of spouses, parents, children and related entities.

#### *Standing to ask the Commissioner for information*

Proposed clause 139-10 confers standing on persons to request the Commissioner to provide information about a perpetrator's superannuation. Subparagraph 139-10(2)(c)(ii) extends that standing, where a victim is under 18 years of age, on a victim's parent or a person who has been granted 'guardianship' under a law of the Commonwealth, a State or Territory.

Relationships Australia **recommends** that, to maximise effective interoperability with the Family Law Act, and acknowledge the diversity of family formation and composition in contemporary Australia, clause 139-10 be extended to confer standing on a person who has parental responsibility for a victim pursuant to Part VII of the Family Law Act. **(Recommendation 2)**

Proposed paragraph 139-10(2)(d) as currently expressed suggests that both financial counsellors and counsellors providing other kinds of counselling could make a request of the Commissioner.<sup>24</sup> This appears to be an inadvertent extension, given the reference to assisting victims with their financial difficulties. We **recommend** that proposed paragraph 139-10(2)(d) be clarified by omitting 'and' between 'financial' and 'counselling' services.

#### **(Recommendation 3)**

#### *Interoperability with Family Law Act*

Relationships Australia supports the policy intent underlying the 'clean break' principle reflected in the *Family Law Act 1975* (Cth). Extensive research literature has, over an extended period, found associations between family separation and poverty, especially for women and children, and especially for victim survivors of domestic and family violence.<sup>25</sup> We welcome the relative prioritisation of family law orders<sup>26</sup> to limit victim survivors' access to 'additional' payments made by an offender to their former spouse after the finalisation of family law property proceedings, where those payments are out of character; this is a just and equitable balance of the relative interests of victim survivors and former spouses.

#### *Grounds on which perpetrator may oppose making perpetrator contributions release order*

Systems abuse is a well-known feature of DFV perpetrators (especially those who engage in coercive controlling conduct). Proposed paragraph 139-55(1)(e) would afford unnecessary licence to such perpetrators who will, regardless of whether Parliament intends for it happen, exploit the discretion to 're-litigate the original compensation order or debt' and plead matters such as financial hardship. If an individual is motivated to shield their assets from compensation orders through superannuation arrangements, it is not a stretch that they will be highly motivated to use this discretion to perpetuate systems abuse. It appears from the

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<sup>24</sup> Because of the language 'financial *and* counselling services'. (italics added)

<sup>25</sup> Cortis & Bullen (2015); Cortis & Bullen (2016); Broadway et al, 2022; de Vaus et al, 2007; de Vaus et al, 2015; Easteal et al, 2018; Fehlberg & Millward, 2014; Gray et al, 2010, Smyth & Weston, 2000; Warren, 2017.

<sup>26</sup> See Schedule 1, item 11.

Exposure Draft Explanatory Materials that this provision has been inserted because of the novelty of the measures, as a safeguard against unintended consequences (see Draft Exposure Explanatory Materials, paragraph 1.82). To mitigate the risk of systems abuse enabled by proposed paragraph 139-55(1)(e), and in the absence of clear guidance as to what the Court should take into account in exercising the proposed discretion, Relationships Australia **recommends** that:

- paragraph 139-55(1)(e) be omitted, and
- regardless of whether that provision is retained -the Bill provide for two statutory reviews, one 12 months after commencement and the second 36 months after commencement, to allow for an interval over which unintended consequences could become apparent. (**Recommendation 4**)

#### *Protection for superannuation providers*

Relationships Australia **recommends** that the Bill be clarified as to whether the immunity of a superannuation provider in respect of action taken to comply with a release authority extends to a superannuation provider which chooses to comply with an order in respect of defined benefit interests (see, eg, Draft Exposure Explanatory Materials, paragraphs 1.102-1.104; 1.111-1.114). (**Recommendation 5**)

## Concluding remarks

Thank you again for the opportunity to make this submission. Relationships Australia encourages Government to consider in greater depth the principles that should underlie access to the superannuation interests of persons who have caused harm, including the long-term financial impacts on a range of victim survivors, and on public expenditure on social services and health costs for victim survivors. A broader policy is not merely more trauma-informed, but is also more fiscally prudent.

Should you require any clarification of any aspect of this submission, or would like further information on the services that Relationships Australia provides, please contact me (at [ntebbey@relationships.org.au](mailto:ntebbey@relationships.org.au)) or Dr Susan Cochrane, National Policy Manager, Relationships Australia ([scochrane@relationships.org.au](mailto:scochrane@relationships.org.au)).

Yours sincerely



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