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Retirement Income and Superannuation Division
The Treasury

Submitted through Treasury Consultation Hub at <https://consult.treasury.gov.au/c2026-747658>

Preventing perpetrators of domestic and family violence from accessing victims' super death benefits

Thank you for the opportunity to contribute to The Treasury's consultation on preventing perpetrators of domestic and family violence (DFV) from accessing the superannuation death benefits of those whom they harmed. Relationships Australia supports in principle the policy of preventing people who have used DFV benefiting from the deaths of those who have suffered DFV at their hands. We also agree that it is invidious that trustees are in some instances compelled to pay superannuation death benefits to persons who engaged in DFV against a deceased member. We are pleased to see that these proposals do not differentiate intergenerational DFV against older adults from other forms of DFV.

However, we hold some serious concerns about the practical implementation of certain options put forward in the Consultation Paper, including the impact on professionals and institutions currently working with victim survivors of DFV and those who use DFV.

Relationships Australia has previously supported reforms to prevent perpetrators of child sexual abuse from shielding their assets against orders for compensation and advocated for the extension of those reforms to victim survivors of DFV.¹ We consider that implementation of such reforms would provide far greater financial and practical benefit – and distributive justice – for victim survivors during their lifetimes. This is particularly significant given that victim survivors often face serious barriers to full participation in education and employment, limiting their capacity to build assets that will fund their retirements. Implementation of such reforms would align with Government's policy intention to harden the superannuation, tax, corporate and social security systems against exploitation by perpetrators of DFV, including systems abuse.² Exclusion of DFV victim survivors from this reform further entrenches gender inequity and is contrary to evidence about the financial and economic consequences of being a DFV survivor. We therefore recommend that Government extend the operation of the recently-introduced *Treasury Laws Amendment (The Survivors Law) Bill 2026* to survivors of DFV. (**Recommendation 1**)

¹ See our submissions to Treasury in 2023 and February 2026, available at <https://www.relationships.org.au/research/#advocacy>

² See Australian Government, Department of the Prime Minister and Cabinet, Audit of Australian Government Systems: <https://www.pmc.gov.au/office-women/womens-safety/audit-australian-government-systems>

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 crumble³
- family separation and relationship breakdown

³ See, eg, Evaluate (2022).

- experience of domestic, family and sexual violence, which are strongly gendered,⁴ and
- for women who experience violence as older women, and who separate – intersecting and compounding burdens of ageism in participating in the paid workforce or seeking other means to preserve financial independence and stable housing.⁵

Principle 5 – Persons who use violence against another should not be permitted to profit from their death, regardless of the cause of death

It is repugnant that someone who has caused harm to another be permitted to profit from their death, whether or not the death was in any way related to the harm caused. We understand that Government’s proposals align with this principle.

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
- 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

⁴ 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.

⁵ AHRC, 2019.

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

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

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.

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.

Recommendations

This submission makes the following recommendations.

- Recommendation 1* That Government extend the operation of the recently-introduced *Treasury Laws Amendment (The Survivors Law) Bill 2026* to survivors of DFV.
- Recommendation 2* That trustees ought to be permitted to take into account the Family Law Act definition and any definition of domestic and family violence in the state or territory in which the relevant DFV is said to have occurred.
- Recommendation 3* That legislative amendments introduced to achieve the core objectives should explicitly include intimate partner violence and abuse and mistreatment of older adults.
- Recommendation 4* That amendments to implement this policy be explicit that DFV, for these purposes, includes psychological abuse, economic and financial abuse, sexual abuse, exploitation, and neglect.
- Recommendation 5* That the reforms be expressed to allow trustees to consider family violence used by a minor.
- Recommendation 6* That administrative tribunals be empowered to substitute a trustee of a SMSF for, and on the application of:
- a legal personal representative of a deceased person who experienced DFV
 - an executor of the will of a deceased person who experienced DFV
 - another family member, or
 - the Public Trustee,
- where a tribunal finds, on the balance of probabilities, that the SMSF trustee may have perpetrated DFV against a deceased member.
- Recommendation 7* That Option 1 be progressed.
- Recommendation 8* That Government should factor in the resource impost on courts in responding to trustees' requests for access to information.
- Recommendation 9* That legislation should empower a trustee to make reasonable inquiries if they receive allegations that DFV has occurred.
- Recommendation 10* That the trustee's discretion as to payment of superannuation death benefits should be enlivened by a reasonable likelihood that DFV was perpetrated by an otherwise eligible beneficiary against a deceased member.

Recommendation 11 That legislation, through mandatory service standards, provide for ongoing training and development, as well as professional supervision, to support trustees to perform their functions, and exercise their powers and discretions consistently with the objectives and principles of the amendments.

Overarching comments in response to the Consultation Paper

Objectives and key principles

Relationships Australia supports the core objectives set out in the Consultation Paper, as well as the five key principles (see p 4).

Scope of reforms

Varying definitions of DFV

Although the Commonwealth, states and territories have agreed on *National Principles to Address Coercive Control in Family and Domestic Violence*,⁶ a national definition of DFV remains an aspiration, not a reality. The Commonwealth statute book does include a broad definition of ‘family violence’ in section 4AB of the *Family Law Act 1975* and states and territories have their own disparate definitions of DFV which vary in material respects.

Trustee should have certainty and clarity about which definitions they apply in performing their functions. As a matter of fairness, beneficiaries should also have certainty about circumstances which trustees are permitted to consider. Accordingly, Relationships Australia **recommends** that trustees ought to be permitted to take into account the Family Law Act definition and any definition of domestic and family violence in the state or territory in which the relevant DFV is said to have occurred.⁷ (**Recommendation 2**)

Superannuation reforms should explicitly include abuse of older adults, whether in the context of intimate partner violence or intergenerational abuse

Legislative amendments introduced to achieve the core objectives should explicitly include intimate partner violence and abuse and mistreatment of older adults. (**Recommendation 3**) This is because, in the absence of explicit provision to include what is sometimes known as ‘elder abuse’, references to DFV can be read down by policy makers, funders and service providers as referring only to intimate partner violence.

⁶ Available at <https://www.ag.gov.au/system/files/2023-09/national-principles-to-address-coercive-control-family-and-domestic-violence.PDF>

⁷ Noting that the Australian Capital Territory has a discrete offence involving abuse of older adults: *Crimes Act 1900* (ACT), section 36A.

Types of abuse

Amendments to implement this policy should also be explicit that DFV, for these purposes, includes psychological abuse, economic and financial abuse, sexual abuse, exploitation, and neglect, to avoid the risk that they be read down to only refer to physical abuse.

(Recommendation 4)

Minors who engage in violence against family members

It is unclear from the Consultation Paper whether Government has turned its mind to whether the measures should apply to DFV perpetrated against a parent, sibling or other family member when the otherwise eligible beneficiary was a minor. The nature and prevalence of violence directed by minors at other family members is only now beginning to be understood, and policy responses are in nascent stages of development. In 2022, researchers reported that one in five adolescents (n = 1006) surveyed in a Government-funded study self-disclosed that they had used violence against a family member.⁸ Of those who were able to identify when they started to use violence in the home (n = 598), 42% reported that they were 10 years old or younger.

Relationships Australia **recommends** that the reforms be expressed to allow trustees to consider family violence used by a minor. **(Recommendation 5)**

Self-managed superannuation funds

Relationships Australia recognises the particular opportunities for abuse and exploitation offered by SMSFs. We look forward to participating in further consultation about how these opportunities can be minimised, including by identifying mechanisms by which these reforms can be applied to SMSFs. If SMSFs are excluded from these reforms, we are concerned that perpetrators would be further encouraged to move away from more regulated superannuation arrangements to purposefully establish SMSFs as a means of perpetrating financial and economic abuse, and benefiting financially from that abuse. Pending further consultation, and as an interim measure, Relationships Australia **recommends** that administrative tribunals be empowered to substitute a trustee of a SMSF for, and on the application of:

- a legal personal representative of a deceased person who experienced DFV
- an executor of the will of a deceased person who experienced DFV
- another family member, or
- the Public Trustee,

where a tribunal finds, on the balance of probabilities, that the SMSF trustee may also have perpetrated DFV against a deceased member. **(Recommendation 6)**

⁸ Fitz-Gibbon et al, 2022.

Relationships Australia comments on proposals

Codification of a forfeiture-like rule for superannuation death benefits

Relationships Australia does not consider that codification of a forfeiture-like rule is necessary to achieve the policy objectives stated in the Consultation Paper. Further, an attempt to codify the rule may add to complexity of superannuation legislation without delivering offsetting clarification and certainty for trustees. However, were Government to seek to codify a forfeiture-like rule, Relationships Australia agrees that there should be no ‘moral culpability’ element, to improve clarity and certainty.

Support for Option 1 (broad discretion)

Relationships Australia recommends that Option 1 be progressed. (**Recommendation 7**) Option 1 would relieve trustees of the obligation to distribute to a beneficiary who has engaged in DFV against a deceased member, while also minimising the risk of unintended consequences that would reach beyond the superannuation system to impose additional resourcing burdens on the criminal justice, family law and family violence systems, as well as on health care and community service providers.

Options 2a and 2b – not supported

Relationships Australia cannot support amendments that rely on a judicial finding of DFV (Options 2a and 2b), for the following reasons.

First, the Consultation Paper itself acknowledges the plethora of reasons and circumstances in which DFV does not lead to a judicial determination in any kind of court. Relationships Australia would like to emphasise, too, that this is a particular concern in relation to abuse, mistreatment, neglect and exploitation of older adults. In our practice experience,⁹ all forms of violence against older adults are under-disclosed, with barriers to disclosure and help-seeking including shame, embarrassment, and well-founded lack of confidence that appropriate support is available, as well as cultural and linguistic barriers. Formal justice system mechanisms are often inappropriate and unresponsive to the wishes and agency of older adults seeking to preserve but improve valued relationships. This is a key consideration in deterring older adults from reporting or taking other legal action in relation to DFV perpetrated against them by another family member.

Second, Relationships Australia is concerned that legislation disentitling beneficiaries on the basis of a court finding might have the unintended consequence of deterring people using violence from consenting to intervention orders, making admissions or engaging in plea negotiations. Consent orders, admissions and plea bargaining can support victim survivors by bringing an end to costly, stressful and long drawn-out legal proceedings. These behaviours also help to manage scarce court resources.

⁹ Which is consistent with the research literature: see, eg, Qu et al, 2021.

If defendants are deterred from availing themselves of these options, there would be a significant increase in the number and duration of contested matters across criminal, family violence and family law courts. This would adversely affect victim survivors who would be required to give evidence and be subjected to cross-examination, as well as having significant and compounding workload effects on all those working in the legal and justice systems.

Third, courts do not always specify DFV in an order, findings, or reasons for judgment. While it would be possible for legislation to specify disentitling offences, trustees would still need to look behind court orders and verdicts to identify whether there was a relevant family relationship and whether there was DFV. For example, a driving offence conviction may be recorded; but associated DFV might not, for a range of reasons. Requiring trustees to interrogate court records may result in higher administration costs as well as slower decision-making. Further, if Government is minded to confer on trustees powers to access court records, Relationships Australia **recommends** that Government should factor in the resource impost on courts in responding to requests for access. (**Recommendation 8**)

Fourth, there are resource implications for others from whom information will be sought by trustees, including counsellors, psychologists, psychiatrists and social workers. Practitioners are already heavily burdened with responding to subpoenae and other information sharing measures, and are already faced with demand that far outstrips supply. How will the impact on their client-facing practices be mitigated? Professionals cannot indefinitely absorb such (unfunded) obligations.

Option 3 – not supported

Relationships Australia agrees that there may be circumstances in which it is reasonable and appropriate for a trustee to seek judicial guidance about distribution of a death benefit. That option should not be removed. However, the expense, stress and delays of litigation are often out of proportion to the size of the superannuation balance for most families. Trustees should not be required to routinely refer matters to Court for adjudication. Accordingly, Relationships Australia does not support implementation of Option 3.

Thresholds and standards

Relationships Australia agrees that trustees should not be subject to a general requirement to proactively inquire and investigate as to whether an otherwise eligible beneficiary has used DFV against a deceased member. We **recommend** that legislation should empower a trustee to make reasonable inquiries if they receive allegations that DFV has occurred. ‘Reasonable inquiries’ would provide flexibility to the trustee to calibrate the extent of inquiries to be undertaken in light of a range of case by case circumstances. (**Recommendation 9**)

The options put forward in the Consultation Paper vary as to the extent to which a trustee must be satisfied. Option 1 (broad trustee discretion) is said to only require a belief on a ‘fair and reasonable basis’ that the otherwise eligible beneficiary has used DFV against a deceased member. Option 3 would allow a trustee to pay a benefit to an estate or into a court if the

trustee 'reasonably suspects' DFV was perpetrated by an otherwise eligible beneficiary against a deceased member. It is unclear why different thresholds are used in these Options.

For the purposes of Option 1 (broad trustee discretion), Relationships Australia **recommends** that the trustee's discretion as to payment of superannuation death benefits should be enlivened by a reasonable likelihood that DFV was perpetrated by an otherwise eligible beneficiary against a deceased member. (**Recommendation 10**)

Workforce considerations – trustees

The past decade has seen rapid enhancement of community awareness of the nature and prevalence of DFV, including abuse of older adults. Sectors of the economy including banks, insurers and telecommunications service providers have been required to enhance their capacities to engage fairly, effectively and empathetically with customers experiencing a range of difficult circumstances, including DFV. The proposed reforms should be leveraged as an opportunity to require trustees to continually develop their DFV literacy and their capacities to provide DFV-informed, trauma-informed, and culturally-sensitive services.

There is a risk that if trustees and their employees do not have the necessary specialist expertise, then the reforms may in practice make things worse for the bereaved. This would leave the superannuation industry misaligned with other parts of the banking and financial services sector.

Understanding of DFV and related concepts is dynamic, constantly evolving to respond to emerging and increasingly-nuanced research and to practice observations by those working directly with victim survivors. Determinations about the presence of DFV are not always straightforward. For example, the complexities of coercive control remain under-appreciated across significant groups in the community, including those working directly with victim survivors in the health, justice and banking/finance sectors. It should not be assumed that trustees are immune from misconceptions and misunderstandings, including those which still too frequently give rise to misidentification of the person most in need of protection.

Finally, as employers, trustees have duties of care to their employees to prevent psycho-social injuries. Accordingly, Relationships Australia **recommends** that legislation, through mandatory service standards, provide for ongoing training and development, as well as professional supervision, to support trustees to perform their functions, and exercise their powers and discretions consistently with the objectives and principles of the amendments.

(**Recommendation 11**)

AFCA resourcing

While Relationships Australia acknowledges that AFCA already deals with death benefit matters, we note that it will need to be resourced in a way that reflects the known prevalence of DFV, and the increase, predicted in the Consultation Paper, in challenges from aggrieved beneficiaries, as well as to support AFCA's acquisition and maintenance of necessary skills and expertise.

Conclusion

Thank you for the opportunity to participate in this consultation. We look forward to continuing to work with Government to support victim survivors of DFV. Should you wish to discuss any aspect of this submission further, please do not hesitate to contact me at ntebbey@relationships.org.au, or our National Policy Manager, Dr Susan Cochrane, at scochrane@relationships.org.au.

Kind regards

A handwritten signature in black ink, appearing to read 'Nick Tebbey', with a long, sweeping tail extending to the right.

Nick Tebbey
National Executive Officer

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