

22/04/2026

Retirement Income and Superannuation Division
The Treasury
Langton Crescent
PARKES ACT 2600

Submitted via email: superannuation@treasury.gov.au

Dear Treasury,

Re: Consultation Paper - Preventing perpetrators from accessing victims' super death benefits

AustralianSuper welcomes the opportunity to provide feedback on Treasury's proposed policy options to prevent perpetrators of family and domestic violence (FDV) from accessing their victims' superannuation death benefits.

AustralianSuper is Australia's largest superannuation fund and is run only to benefit members. Over 3.6 million Australians are members of AustralianSuper, and we manage over \$410 billion of members' assets on their behalf.

We take the trust placed in us to support members and their families at critical moments very seriously. Paying out members' retirement savings after they die is one of the most important services we provide them and decisions are often made in circumstances of profound grief for affected families and dependants.

The sensitivities and complexities of this process are particularly acute where FDV may be present. This is largely attributable to existing safeguards not sufficiently preventing superannuation from being used as a mechanism for financial gain or further abuse by perpetrators.

Under current laws, trustees have no clear statutory mechanism to withhold or redirect superannuation death benefit payments where evidence of FDV exists. Unless they are the direct cause of the member's death, a person may be entitled to receive a deceased member's superannuation death benefit even if they have been convicted of FDV offences or have indirectly contributed to the victim's death through systemic abuse.

AustralianSuper is committed to advocating for superannuation settings that better protect those who have been wronged rather than those who have caused harm. We therefore welcome this consultation as an important step toward addressing this longstanding gap in superannuation law. Clear legislative pathways for processing FDV-related death benefit claims would provide greater legal certainty to trustees, which could help facilitate faster, fairer and more consistent outcomes for affected families and dependants of victims.

While our submission primarily focuses on setting out our preferred reform option, it also includes broader implementation and administrative recommendations necessary to ensure that any change operates effectively.

Trustee decision-making under the current death benefit framework

Current superannuation law affords trustees flexibility and discretion to assess claimant information and determine its relevance to a death benefit decision. However, in certain scenarios, there are limited legal mechanisms to give effect to that information, particularly where binding death benefit nominations or prescriptive governing rules apply.

Under existing rules, AustralianSuper is able to receive and assess FDV-related information as part of its death benefit claims process. Matters involving criminal proceedings, court actions or coronial investigations are escalated internally, and specialist advice is sought to determine the appropriate next steps. Waiting for the completion of criminal proceedings and the receipt of court orders can result in significant delays in the finalisation of death benefit assessments, processing and payments.

While trustees may, in some cases, apply a hierarchy of potential beneficiaries consistent with SIS and the fund governing-rules, all eligible individuals are often still required to be treated as interested parties to the claim and afforded procedural fairness, including participation in the claims-staking process.

Further, while situations involving binding death benefit nominations in AustralianSuper FDV-related cases currently arise less frequently due to the lower submission of these types of nominations, they have exposed some structural limitations in the current law. Where there are no dependants other than a beneficiary who has been either accused or convicted of family or domestic violence, trustees are significantly constrained in their ability to redirect or withhold payments.

Gaps in existing guidance for FDV-related cases

Recommendation 1: Detailed guidance on the practical steps involved in exercising discretion would assist trustees in cases of non-binding nominations or where no nomination is in place. Areas this guidance could address include:

- judgements around the temporal relevance of evidence;
- the treatment of de facto relationships;
- the weight that should be given to the financial interdependency between claimants and the deceased (particularly where the perpetrator remains responsible for dependent children); and
- the management of privacy, procedural fairness and safety considerations in claims involving multiple parties.

Although AFCA recognises that persuasive evidence of violence or abuse may be relevant to the fairness and reasonableness of a decision, existing guidance remains high-level. This may result in inconsistent outcomes across the sector particularly noting that trustees may be required to assess a mix of verified and unverified information. This absence of clear direction increases the risk of inconsistent approaches and outcomes across funds.

To ensure trustees are equipped to manage FDV situations effectively, it is crucial that any legislative or regulatory reform considers not only the legal mechanisms for exclusion, but also ensures the availability of practical guidance for funds.

AustralianSuper's response to the consultation's proposals

1. Codifying a forfeiture-like rule within SIS legislation

Recommendation 2: Determining which specific criminal offences should be captured and how far a prospective forfeiture-like rule should extend needs to be carefully defined and informed by further consultation.

Recommendation 3: A reliance on court findings/convictions to trigger forfeiture may delay the final distribution of death benefits. Accordingly, any mandatory service standards introduced for death benefit processing should explicitly account for delays arising from criminal or civil proceedings.

AustralianSuper welcomes the consultation's proposal to codify a forfeiture-like rule within SIS legislation to improve clarity and consistency in the treatment of superannuation death benefits across funds and jurisdictions.

The application of the forfeiture rule based on clearly prescribed offences, rather than broader *types of offences*, would provide greater certainty and reduce pressure on trustee decision-making.

At the same time, consideration is needed around whether, and to what extent, trustees should retain discretion not to apply the rule where extenuating circumstances are present. For example, if manslaughter became subject to the rule, automatic forfeiture could produce an unjust result in cases where a person is convicted of manslaughter in the context of prolonged FDV perpetrated by the deceased.

2. AustralianSuper's recommended approach is Option 2 implemented through Option 2A

Recommendation 4: The scope and type of prescribed findings that would trigger disentitlement under Option 2 should be informed by consultation with experts and practitioners directly involved in FDV matters.

Recommendation 5: Option 2 should operate as a baseline reform approach, where scope for future expansion is considered after its practical impacts and limitations have been evaluated.

In assessing the three reform options outlined in the consultation paper, the key policy question that emerges is how to create clear, actionable laws that would allow claims to be progressed in a timely way, without requiring trustees to make determinations beyond their role or introducing rigid payment rules that could lead to exclusionary outcomes for affected families/dependants of victims. Ultimately, the goal is to balance procedural fairness with timely outcomes that recognise the emotional and financial hardship experienced by those left behind, while safeguarding the integrity of the superannuation system.

We consider Option 2, which would enable trustees to override beneficiary status, binding nominations or fund governing-rules allocations in instances where a court has found that a beneficiary perpetrated FDV against the deceased victim, as best placed to address this.

On balance, this approach offers greater certainty and transparency for all parties, while remaining workable within the practical limitations of trustee decision-making. Further, it is consistent with our view that the assessment and testing of FDV claims and evidence sits most appropriately with courts, who are properly qualified and empowered to investigate and make findings in these matters.

Within Option 2, Treasury outlines two implementation approaches that reflect different levels of trustee discretion:

- Option 2A would allow funds to have the discretion to either set aside the beneficiary or distribute the death benefit in accordance with existing practice when a relevant court finding is provided.
- Option 2B is an automatic disentitlement approach triggered by a relevant court finding. Trustees would be required to set aside the perpetrator as an eligible beneficiary, including in instances when they are the binding nominee.

AustralianSuper's recommendation within Option 2 is Option 2A because it captures the benefits of anchoring decision-making to court findings, while preserving a level of trustee discretion necessary to account for relevant context where a court finding alone may not fully capture the circumstances of a death benefit determination.

Detailed comments on AustralianSuper's recommendation regarding Option 2 are provided in the Attachment.

We would be pleased to provide additional information or to discuss this submission in further detail. If that would be of assistance, please do not hesitate to contact me at ecarr@australiansuper.com.

Yours sincerely



Emma Carr

Head of Government Relations and Public Policy

Attachment: Assessment of reform options

Assessment of Option 2 relative to Option 1 and 3

Grounding trustee decision-making in court findings best avoids placing an unreasonable expectation on trustees to investigate and determine complex FDV matters, in which they are not specialists (as entailed by **Option 1**) or on grieving families/friends to resolve those cases through estate or court processes (as per **Option 3**).

Option 1 – broad trustee discretion

AustralianSuper's assessment: Option 2 could materially reduce the risk of inconsistent outcomes and procedural fairness challenges across funds that may arise under Option 1, particularly where binding nominations apply.

Under Option 1, trustees would have the discretion to set aside a beneficiary that they *reasonably believe* has perpetrated family and domestic violence against the deceased member. Without prescribed laws as per Option 2, trustees would be required to:

- Obtain and assess complex, incomplete or conflicting information to determine whether an eligible dependant or legal personal representative (LPR) should be excluded from receiving a superannuation death benefit.
- Undertake investigation and analysis beyond the knowledge and expertise of trustees generally, which falls outside their intended role and statutory function.
- Exercise discretion on the assumption that FDV claims are always disclosed to trustees and all relevant evidence is made available to a trustee. Where FDV claims are not disclosed or where evidence provided is incomplete, inconsistent or contradictory in nature, it would be very difficult for trustees to properly exercise their discretion.

Option 3 – referral to an estate or court

AustralianSuper's Assessment: Option 2 is likely to support more timely outcomes for the family/friends of victims compared with directing death benefits into an estate or court, as envisaged by Option 3.

The delays and practical constraints associated with a referral-based model may:

- Extend timeframes for the payment of benefits, restricting timely access to funds for beneficiaries while matters are resolved through estate or court processes.
- Reduce the final benefit amounts available to dependants/beneficiaries. The incursion of significant legal costs and potential for benefits to be exposed to estate creditors could result in the full benefit being no longer available to those in need.
 - The possible erosion of benefits under referral is inconsistent with the purpose of a superannuation death benefit, which is to support those people who would have reasonably expected to be financially supported by the member if the member had not died. In addition, mandating the payment of a death benefit to an LPR does not account for the fact that superannuation death benefits do not automatically form part of a person's estate.
- Place a very heavy burden on the deceased's family and loved ones, who would essentially be left to 'fight it out' in the judicial system. The emotional, mental and financial cost would be significant for grieving families, particularly in circumstances where the deceased member has experienced FDV.

- Be difficult to apply in cases where no LPR has been appointed (noting that in the absence of a valid will, family or friends may be reluctant to apply for letters of administration where the value of the total estate is small), or where the LPR is the alleged perpetrator.

Design considerations under Option 2

Conviction types and evidentiary thresholds

AustralianSuper currently takes into account court orders, police reports, coronial outcomes, media, cause of death on Death Certificates, apprehended violence orders (AVOs) and medical reports, as made available, in the assessment of death benefits involving claims of FDV. This is in the context of circumstances where a valid binding nomination is not in place and the trustee has discretion in relation to who benefits should be paid to.

A significant consideration under Option 2 is defining the types of convictions and the evidentiary thresholds that would qualify for disentitlement. This is critical because overly broad triggers risk unjust outcomes, while a narrow approach could fail to address serious FDV conduct that falls out of scope, undermining the purpose of the reform.

Recommendation:

Those directly involved in FDV matters - including the police, relevant court and legal personnel, medical professionals, support services and advocates - are best placed to advise the Government on the appropriate type and scope of prescribed findings to be included in this option.

Limitations associated with an approach based on court findings

AustralianSuper acknowledges that Option 2 is inherently constrained by its reliance on court findings. This is a real limitation reflected in the following factors:

- The under-reporting of FDV, such that the absence of a conviction should not be taken to imply an absence of violence.
- The ongoing evolution in legal and societal understandings of FDV means some patterns of abuse are yet to be formally recognised and engagement with the legal system does not necessarily result in a criminal conviction.

Notwithstanding this, AustralianSuper considers Option 2 to provide the most workable baseline for reform, preferable to Options 1 and 3 for the reasons outlined above.

Recommendation:

If Option 2 is implemented and applied successfully by superannuation trustees as a 'starting point', then further consideration could be given to expanding the approach at a later time, once the impacts, limitations and potential unintended consequences of any broader scope have been fully assessed.

Sub-options under Option 2

Option 2A (narrowed discretion)

This approach grants clear legislative authority to set aside a binding death benefit nomination or to depart from fund governing-rules allocations where a relevant court finding exists.

Retaining a level of discretion is necessary; it allows trustees to assess whether a court finding is relevant to the death benefit determination. This is particularly important in cases where court findings are historic, procedural, conflicting, or only indirectly connected to the claimant's conduct toward the deceased member. An automatic determination in these circumstances may not appropriately reflect the substance or context in which the court finding was made.

AustralianSuper notes that, without clear guidance on what constitutes a 'relevant' court finding, Option 2A could carry forward some of the complexity and variability that exists under the current framework. This risk can be best mitigated by clearly defining the types of conduct intended to be captured by the proposed legislative changes (see *Design considerations under Option 2 - Conviction types and evidentiary thresholds*).

Option 2B (automatic disentitlement)

AustralianSuper recognises that Option 2B offers a clear and consistent process with operational advantages. By removing trustee discretion, this approach could support faster processing and broadly aligns with how trustees administer other court-based orders affecting superannuation benefits (e.g. bankruptcy, proceeds of crime and family law orders). This may limit opportunities for objection or complaint to trustees or AFCA that can materially delay distribution.

However, Option 2B prioritises procedural and administrative simplicity over flexibility. Requiring trustees to act automatically on a court document without discretion to assess relevance presents a risk of unintended or exclusionary outcomes. This could result in a claimant whom the trustee should be considering being overlooked or it could limit the ability of trustees to take into account FDV claims and evidence where no court finding exists.

AustralianSuper's recommendation within Option 2 is Option 2A.

Notwithstanding the operational efficiencies associated with Option 2B, retaining a narrowed level of discretion under Option 2A provides a more workable application of Option 2. This approach better reflects the practical realities of individual circumstances and is operationally defensible in its alignment with current trustee practice.