Working with Women Alliance

Preventing perpetrators from accessing victims' super death benefits

Submission by the Working with Women Alliance (WwWA)

April 2026

Acknowledgment of Country

The Working with Women Alliance acknowledges the Traditional Custodians of the land on which we work and live.

We pay our respects to Aboriginal and Torres Strait Islander Elders past and present, and we value the enduring connection Aboriginal and Torres Strait Islander people have to this land.

We value Aboriginal and Torres Strait Islander histories, cultures, and knowledge.

About WwWA

The Working with Women Alliance (WwWA) represents two key portfolios: National Women's Safety (NWS) and National Women's Equality (NWE).

The WwWA connects the critical areas of gender-based violence prevention and the advancement of women's economic equality and leadership, bridging these important policy fields for greater impact.

We work with members and stakeholders, including the Australian Government, to provide expertise and advice on gender equality and women's safety.

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Executive Summary

The Working with Women Alliance (WwWA) welcomes the federal Government's focus on financial systems abuse following the 2024 report *Financial abuse: an insidious form of domestic violence*,[1] and the commitment to preventing systems abuse and closing loopholes that continue to harm victim-survivors and their families and friends. In principle, WwWA supports reform to ensure that perpetrators of domestic and family violence (DFV) cannot financially benefit from the death of their victim-survivors.

This reform is important given previous determinations within the superannuation system that have prioritised financial spousal dependency above other elements of dependency. Australian Financial Complaints Authority (AFCA) decision outcomes on death benefits mirror this structural feature: AFCA primarily will side with dependants, with a 2024 empirical study into the distribution of superannuation death benefits finding that 90.2% of financially dependent individuals received a death benefit, and that only 7.6% of non-financial dependants received anything.[2] While this implies the law is working as intended, it has resulted in outcomes where perpetrators of DFV have received superannuation death benefits despite credible evidence of abuse.[3]

Addressing these structural limitations is critical to preventing the superannuation system from financially rewarding perpetrators.

WwWA considers *Option 1: Broad trustee discretion* to be the most suitable option for achieving the stated policy objectives. This option holds the lowest administrative and evidentiary burden on victim-survivors' families and friends and unnecessary reliance on court processes. Importantly, it allows trustees the flexibility to respond to the realities of DFV, including chronic under-reporting, the absence of formal court proceedings in many cases, and the risk of misidentification within legal and administrative systems. Its effectiveness, however, will also depend on whether family members, friends and victim-survivors themselves are aware of, and able to safely engage with the superannuation death-benefit process in practice.

Our support for this option is conditional on the recommendations set out below that seek to minimise the risk of inconsistent or harmful outcomes. These recommendations are intended to ensure appropriate oversight to support trustees that do not have subject-matter expertise and embed trauma-informed practice within their existing decision-making frameworks.

Trustee decision-making constraints

Handling of death-benefits is typically a transactional process and fund trustees are not equipped to appreciate the contextual and dynamic evidence that may accompany domestic and family violence offending. Rather, they are governance structures charged with applying the *Superannuation Industry (Supervision) Act* 1993 (SIS Act) and tax-law rules. Yet, under the proposed reform, they would be expected to:

- Characterise the nature and dynamics of complex intimate relationship histories at the time of death, including patterns of coercion, control, financial abuse, violence, and psychological pressure.
- Differentiate between genuine expressions of the deceased's wishes and situations where those wishes may have been constrained or distorted by ongoing abuse.
- Decide what weight to give to evidence that may be highly sensitive or traumatic, including communications of a sexual or intimate nature, medical and mental-health records, and statements from family members and friends.

Evidentiary complexity

Trustees of superannuation funds are regularly required to assess complex interpersonal relationships and weigh competing evidence in accordance with the common-law standard of what is "fair and reasonable". However, there are clear and well recognised limits to trustee expertise in the context of DFV.

Under the SIS Act, trustees must act in the best financial interests of beneficiaries and consider all relevant evidence. In addition, the Australian Security and Investment Commission's (ASIC) 2025 report *"Taking ownership of death benefits: How trustees can deliver outcomes Australians deserve"* emphasised the need for procedural consistency and transparent assessment of evidence.[4]. Despite these obligations, there remains a significant gap in published guidance on what constitutes a fair and reasonable consideration in practice, particularly in how trustees should assess conflicting accounts, determine evidentiary weight, or identify when evidence is sufficiently persuasive.

This complexity is heightened in the context of domestic and family violence (DFV), where evidentiary assessment is rarely straightforward. For example:

- Trustees may be presented with evidence from a frontline service indicating abuse, alongside a valid binding nomination that names the alleged perpetrator as the beneficiary.

- Trustees must recognise that victim-survivors of domestic violence are experts in understanding and managing their own unique experience and may have maintained a genuine nomination for a partner who used violence.
- Misidentification and counter claims of violence that further complicate determination and make the perpetrator less easily identifiable.
- Families' hostility to a deceased person's sexual orientation or gender identity may dispute or undermine the legitimacy of a surviving partner's claim to prevent them from accessing death benefits.

These scenarios illustrate that trustees will need to navigate complex narratives and the unique circumstances of a given relationship. Thus, trustees must hold a nuanced conceptualisation of DFV within their death benefit determinations that balances evidentiary fairness with respect for the deceased's dignity.

Capacity and capability constraints

Claims teams are generally structured to operate within rigid procedural frameworks and are often staffed by junior staff. Expecting these teams to independently develop and apply their own evidentiary frameworks, definitions of financial abuse, or DFV risk-assessment methodologies without clear external guidance creates a significant risk of procedural unfairness and inconsistent decision-making. It would also increase the likelihood that trustees mishandle sensitive information or fail to provide the necessary respect for the deceased's autonomy and the safety of surviving family members.

Further, the identity, qualifications and internal resourcing of the "trustee" making these decisions will vary significantly across the superannuation sector. Larger, well-resourced funds may be better placed to implement these reforms, while smaller funds may lack the capability to do so effectively. Without additional guidance and support, this disparity risks producing uneven outcomes, effectively creating a fund-dependent "lottery" where outcomes depend more on the deceased's superannuation fund rather than on the circumstances of violence or the evidence available.

Facilitating the evidentiary collection process

The ability for family and friends to come forward with evidence about family and domestic violence is an important and welcome step. It recognises that the most relevant information often sits with people who are close to the deceased but may not be financial beneficiaries themselves. This aligns with long-standing advocacy for the inclusion of domestic-violence services, homelessness services, legal-aid providers, and other frontline support organisations in evidence collection processes.

If the Government is serious about ensuring that perpetrators do not benefit from the death benefits of their victims, then there needs to be an actively facilitated and trauma-informed process for evidence-giving. Noting that in the existing framework, there is ambiguity that needs to be addressed around how trustees will ensure that people who are not natural beneficiaries are still meaningfully heard and not dismissed as "third-party" commentators.

For Option 1 to operate as intended, there must be consistent and transparent mechanisms that enable non-beneficiaries to provide evidence in a manner that is both accessible and trauma-informed. This includes clarifying that family members, friends and relevant service providers can initiate the evidence-giving process even where they are not eligible beneficiaries and ensuring that these processes are facilitated by the trustee rather than relying on informal or ad hoc engagement.

Expert oversight recommendations

Given these challenges, WwWA considers that expert oversight is necessary to support the effective implementation of Option 1. The recommendations outlined below present a range of options for incorporating expert knowledge into the superannuation system and trustee decision-making. WwWA considers that a combination of these measures would provide the most effective and proportionate model of support for trustee decision-making, rather than reliance on a single mechanism.

1. Expert Panel

WwWA proposes the creation of a systems-level expert advisory panel or governance committee. This panel would sit within the superannuation regulatory environment. This panel would operate as a guidance and capability-building mechanism, rather than as a decision-making or enforcement body. It would not be involved in individual determinations of death benefit cases. It could undertake the following functions:

- Develop and maintain nationally consistent guidance on how to define and evidence family and domestic violence and financial abuse in the context of superannuation death benefits.
- Provide a formalised mechanism for consistent evidentiary standards and administrative procedures, reducing the risk of ad-hoc or inconsistent approaches across funds.

- Advise on how to test evidence, including identifying what types of information may be relevant, what should be avoided, and how to protect the privacy and dignity of all parties.
- Oversee the development of resources and best-practice standards for trustees.
- Facilitate workshops and training for trustees and claims teams.

Over time, the panel would ideally support the implementation of recommendations from the *Financial abuse: an insidious form of domestic violence* inquiry report. Expansion could also include advising the wider financial-services sector on domestic, family and sexual violence policies and procedures.

2. DFV expertise within AFCA

AFCA is Australia's independent external dispute resolution body for superannuation, with a statutory mandate to resolve complaints in a manner that is fair and reasonable in all the circumstances. When determining a complaint, an AFCA decision-maker effectively "stands in the shoes" of the trustee and has all the powers and discretions of the trustee.[5] AFCA is also not confined to considering only the information that was before the trustee at the time the original decision and can consider new evidence. The decision-maker can then reassess all evidence and substitute its own view of what outcome is "fair and reasonable" in the circumstances.

An additional mechanism to ensure DFV expertise oversight is to embed specialist capability within AFCA. This ensures that where a person is dissatisfied with a trustee's final death-benefit and lodges a complaint with AFCA, that the review is conducted through a specialist lens, particularly where evidence is complex and/or has been mishandled by the trustee.

In this context, WwWA considers it necessary that there is a mechanism to ensure DFV expertise oversight by embedding specialist capability within AFCA. This ensures that where a person is dissatisfied with a trustee's final death-benefit and lodges a complaint with AFCA, that the review is conducted through a specialist lens, particularly where evidence is complex and/or has been mishandled by the trustee. This is a critical counterbalancing safeguard within a system structurally organised around dependency.

Without such expertise, there is a risk that DFV-informed trustee decisions may be reassessed through a narrower application of the "fair and reasonable" test that privileges dependency-based considerations. Embedding DFV capability within AFCA may include:

- Dedicated decision-makers with expertise and experience in DFV for superannuation death-benefit complaints involving allegations of violence or abuse.
- Specialist guidance/training for AFCA staff on assessing DFV related evidence, including on misidentification and coercive control.
- Greater transparency in determinations about how DFV evidence is weighted to support trustees' capability building and improve consistency over time.

While this option does not resolve all issues identified above, including limitations relating to standing, it serves as a necessary safeguard to mitigate against perpetrators being disproportionately advantaged through the review process.

WwWA therefore supports enhanced DFV capability within AFCA as a necessary complement to trustee discretion and system-level oversight, rather than as a standalone solution.

3. Regulatory oversight

WwWA recommends regulatory oversight to ensure that the implementation of Option 1 is consistent and aligns with its intent. In addition to individual intervention through AFCA, regulatory oversight would ensure effective implementation at a systems-level. Without regulatory monitoring, there is a risk that variation in trustees and superfunds will result in a fund dependent "lottery" where materially similar cases produce different outcomes depending on which superannuation fund is involved.

Existing regulatory schemes within the superannuation sector already provide scope for oversight. The Australian Prudential Regulatory Authority (APRA) and the Australian Securities and Investments Commission (ASIC) operate in a shared regulatory environment, and each have distinct mandates around risk management and governance, including trustee decision-making,

Regulatory oversight in this context should focus on ensuring that trustees exercise discretion consistently with the intent of the reform, supported by appropriate governance arrangements, policies and decision-making processes. A high-level regulatory role would help promote consistency across different superfunds and reinforce regulatory expectations around 'fair and reasonable' decision-making in DFV-related determinations.

Australian Prudential Regulatory Authority (APRA)

As the prudential regulator, APRA's mandate extends beyond financial safety to include governance and risk management that materially affect superfund members' interests.

APRA therefore could consider the implementation of the proposed death-benefit reforms as part of its risk-based approach to trustee governance and risk management, including how discretion is exercised. This could include:

- Issuing a statement of regulatory expectations on trustee governance arrangements relating to DVF-related death benefit decisions.
- Monitoring whether trustees have appropriate training, policies, and procedures to support the exercising of this new discretion.
- Reviewing risk management and decision-making behaviours in relation to death-benefit determination.
- Engaging directly with trustees where compliance concerns arise including recommendations for remediation.
- Incorporating DFV-related considerations into broader assessments of trustee capability, risk management and member-outcomes obligations.

This would promote consistency across the sector and reduce the risk that outcomes depend on fund size and resourcing.

Australian Securities and Investments Commission (ASIC)

ASIC is the conduct regulator for superannuation and focuses on trustee conduct and consumer protection, particularly where decision-making affects fairness and confidence in the superannuation system.

Under Option 1, trustees will need to exercise discretion in DFV death benefit decisions. ASIC's existing regulatory powers provide important levers to ensure these processes are carried out fairly and transparently. This could include:

- Monitoring trustee conduct in DFV death benefit decision-making and whether they are acting fairly when exercising discretion.
- Assessing compliance with record-keeping relating to sensitive DFV evidence.
- Escalating to enforcement where trustee conduct creates poor consumer outcomes and/or undermines the confidence in the superannuation system.
- Working collaboratively with APRA where regulatory remit intersects.

4. Awareness and access

Public understanding of superannuation death benefit settings, unless addressed, may undermine the proposal. Option 1 depends on whether family members, friends and victim-survivors themselves are aware of their ability to engage with the superannuation death-benefit process at a relevant time. Family members and friends who hold

information about violence may be unaware that superannuation death benefits are being distributed outside the deceased's estate, may not know which fund the deceased belonged to, or may not understand that they can bring forward evidence to a trustee even if they are not beneficiaries.

Evidence also indicates that the use of binding death benefits is currently under-utilised in Australia. Therefore, there may be a need to review existing settings (such as the three-year expiration window) to submit or update binding death benefit nominations or introduce non-lapsing options. Where reforms are introduced in line with the options outlined in this Consultation Paper, WwWA broadly supports campaigns to enhance public awareness of death-benefit settings and processes and the role of binding death benefit nominations. A public education campaign would complement necessary skill acquisition within Australia's superannuation and financial industries.

Self-managed super funds

While this consultation is rightly focused on regulated superannuation funds, WwWA urges Government to not lose sight of the broader superannuation system. Any serious effort to prevent perpetrators from benefiting from their victims' super death benefits must ultimately extend to self-managed superannuation funds (SMSFs). If SMSFs remain outside the scope of reform, there is a real risk that this otherwise important policy change will be undermined.

SMSFs are a significant and growing part of the superannuation landscape, with SMSF assets in Australia exceeding $1 trillion[6] and representing around a quarter of total superannuation assets.[7] Advocates and lawyers have long warned that SMSFs' relatively light-touch regulatory framework leaves them vulnerable to being used as tools of coercion and control. The Australian Law Reform Commission (ALRC) has already highlighted the risks of financial abuse in SMSFs and recommended next steps, including that the Australian Taxation Office amend its guidance material to help SMSF trustees experiencing family violence protect their interests.[8]

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[1] Parliament of Australia, 2024, *Financial abuse: an insidious form of domestic violence*, Government of Australia, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/FinancialAbuse/Report

[2] Tobias Barkley and Xia Li, 'An Empirical Study of the Distribution of Superannuation Death Benefits' [2024] SydLawRw 10; (2024) 46(2) *Sydney Law Review* 199.

[3] Melissa Fyfe, 'The 23-year-old court clerk, the 68-year-old-magistrate who became her friend and the tragedy that followed', *The Age* (online 10 July 2021) Ashleigh Petrie, 23, her 68-year magistrate fiance Rod Higgins, and the tragedy that followed

[4] Australian Securities and Investment Commission, 2025, *Taking ownership of death benefits: How trustees can deliver outcomes Australians deserve, https://download.asic.gov.au/media/edznpbwm/rep-806-published-31-march-2025.pdf*

[5] Australian Financial Complaints Authority, 2022, *The AFCA Approach to superannuation death benefit complaints*, https://www.afca.org.au/sites/default/files/2022-05/AFCA%20Approach%20-%20Superannuation%20death%20benefit%20complaints.pdf

[6] Australian Tax Office, 2025, *Latest annual statistics for SMSFs*, https://www.ato.gov.au/individuals-and-families/super-for-individuals-and-families/self-managed-super-funds-smsf/smsf-newsroom/latest-annual-statistics-for-smsfs

[7] Australian Prudential Regulatory Authority, 2025, *Quarterly superannuation performance statistics - December 2004 to December 2025*, https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.apra.gov.au%2Fsites%2Fdefault%2Ffiles%2F2026-02%2FQuarterly%2520superannuation%2520performance%2520statistics%2520-%2520December%252002004%2520to%2520December%25202025.xlsx&wdOrigin=BROWSELINK

[8] Australian Law Reform Commission, 2011, *Superannuation and coercion*, https://www.alrc.gov.au/publication/family-violence-and-commonwealth-laws-improving-legal-frameworks-alrc-report-117/19-superannuation-law-2/superannuation-and-coercion-3/#:~:text=19.46%20As%20a%20result%2C%20the,and%20SMSFs%20would%20be%20useful.