



Promoting opportunities. Protecting rights. For older Victorians.

COTA Victoria & Seniors Rights Victoria

Preventing perpetrators from accessing victims' super death benefits

To:

The Treasury
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1 About us

[Council on the Ageing \(COTA\) Victoria](#) is the leading not-for-profit organisation representing the interests and rights of people aged over 50 in Victoria. Celebrating 75 years of service in 2026, we have led government, corporate and community thinking about the positive aspects of ageing in the state.

Today, our focus is on promoting opportunities for and protecting the rights of people 50+. We value ageing and embrace its opportunities for personal growth, contribution, and self-expression. This belief brings benefits to the nation and its states alongside communities, families, and individuals.

[Seniors Rights Victoria \(SRV\)](#) is the key state-wide service dedicated to advancing the rights of older people and the early intervention into, or prevention of, elder abuse in our community.

SRV has a team of experienced advocates, lawyers, and social workers who provide free information, advice, referrals, legal advice, legal casework, and support to older people who are either at risk of or are experiencing elder abuse. SRV supports and empowers older people through the provision of legal advice directly to the older person.

2 Background

Elder abuse is both prevalent and under-recognised within Australia. Annually, approximately one in six (14.8%) older Australians experience some form of elder abuse. Research by the Australian Institute of Family Studies (AIFS) in 2021ⁱ found that psychological abuse is the most common form, followed by financial abuse – a trend that mirrors the case data of SRVⁱⁱ. The AIFS survey also found that around 53% of perpetrators of elder abuse were family members, including current or former partners, with perpetration by family members highest in cases of financial abuse (64%). These forms of mistreatment frequently intersect, with coercive and controlling behaviours underpinning many instances of abuse.

The relational dynamics of elder abuse, particularly parent and adult-child relationships, mean that such abuse is significantly underreported and often overlooked. The same AIFS study found that only 36% of older Australians who experienced abuse sought help or advice from a third party, such as a family member, friend, or professional. This figure falls further to 30% in cases involving financial abuse.

Consequently, only a limited number of elder abuse cases are reflected in formal systems through police reports, criminal charges, or court determinations. Misidentification is also a serious and recurring issue, often driven by ageist assumptions regarding capacity or a reluctance to implicate family members. In some instances, this results in victim-survivors being incorrectly identified as perpetrators, further compounding harm and limiting access to justice. The frequent misuse of legal systems by perpetrators reinforces that, reliance on formal legal findings alone, is insufficient and risks excluding many victim-survivors from protection.

Within this context, superannuation death benefits can act as a driver of elder abuse. A sense of financial entitlement, possibly exacerbated by ageist beliefs, can fuel dependency, coercive control, and create conditions in which older individuals may be pressured or manipulated into making or maintaining binding death benefit nominations that do not reflect their preferences.

Accordingly, this submission strongly supports an approach in which the existence of violence, coercion, or abuse rather than the formal characterisation of the relationship is the central consideration. In practice, this means all forms of domestic and family violence, whether perpetrated within an intimate relationship or by another family member or trusted person, is included in the decision of super death benefit allocations.

Additionally, greater attention must be given to ensuring that binding nominations and related agreements are made with the full, informed, and voluntary consent of the older person. This includes recognising the role of digital exclusion, cognitive vulnerability, age discrimination and potential systems abuse, and coercive control in undermining genuine consent.

With these considerations in mind, this submission supports a variation of Option 1 proposed in the consultation paper, alongside the codification of the forfeiture rule. The proposed variation is set out in detail below.

3 Reform objectives and key principles

While Australia's *Social Security Act 1991* nor the *Social Security (Administration) Act 1999* provide a single, nationally agreed definition of domestic and family violence, it is generally understood to include patterns of coercive, controlling, abusive, or neglectful behaviour within intimate, family, or household relationships. This behaviour can take shape as physical (including neglect), sexual, emotional, psychological, and/or economic abuse.

These patterns and behaviours mirror the abuse and harms observed in elder abuse, which is defined by the World Health Organisation as “a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person”.ⁱⁱⁱ

Within the death benefit framework, three key issues arise.

First, whether trustees should be empowered to set aside a binding death benefit nomination where there is persuasive evidence of domestic and family violence, such as financial abuse. We agree that granting such powers is a necessary reform that provides trustees with a clear legal basis to use their best judgement in circumstances where adherence to a nomination would produce an unjust outcome.

Second, whether trustees should be required and considered capable to assess evidence of domestic and family violence or financial abuse in determining whether an otherwise eligible beneficiary should be deemed ineligible. We support the position that trustees should both hold this obligation and be recognised as having the appropriate expertise to

undertake such assessments. Given the nature of elder abuse as a form of domestic and family violence, which frequently lacks formal legal documentation, a flexible and evidence-based approach is needed.

Third, how death benefits should be redistributed where a beneficiary is deemed ineligible. We suggest that no substantive reform is required in this respect. Trustees already exercise discretion in distributing death benefits, and oversight by the Australian Financial Complaints Authority provides an effective and accessible mechanism for review. Maintaining this framework preserves consistency and avoids unnecessary complexity.

4 Recommended approach

With the advice outlined above in mind, COTA Victoria and Seniors Rights Victoria propose a refined version of Option 1, supported by codification of the forfeiture rule, and a broader recognition of evidence sources.

Under this approach, we agree that trustees should be expressly empowered to set aside a binding death benefit nomination and to deem an otherwise eligible beneficiary, including a legal personal representative, ineligible where there is persuasive evidence of domestic or family violence against the deceased member.

We also support the proposal that trustees should be required to undertake a fact-based assessment where credible concerns arise. This obligation would be triggered where an allegation of domestic or family violence is made by any party, or where information provided during the death benefit claims process reasonably indicates that such conduct may have occurred. We strongly advise that this extends beyond intimate partner and domestic violence, to include others forms of family violence such as adult child to parent-perpetrated elder abuse.

The evidence framework should focus on whether violence, coercion, or abuse occurred between the perpetrator and the deceased member. It should not require trustees to establish the precise legal nature of the relationship, which may be complex, fluid, or deliberately obscured in cases of elder abuse.

At the same time, trustees should not be required to proactively investigate every death benefit claim where no allegation or indication of abuse exists. This balances the need for protection with the efficient administration of death benefits.

We support an outcome that sees this approach operate alongside a codified forfeiture rule. Conduct that falls outside the scope of that rule, such as manslaughter or non-criminal forms of coercive control and financial abuse, should still be capable of constituting persuasive evidence for the purposes of trustee decision-making.

Based on our elder abuse expertise, we believe that this model would best achieve the objectives outlined in the consultation paper by strengthening protections against abuse while minimising complexity and leveraging existing superannuation frameworks.

5 Additional recommendations

The reform should also address circumstances in which the deceased member was the perpetrator of family violence, and the victim-survivor had already left the relationship. In such cases, a victim-survivor should be recognised as an eligible dependant where they would have satisfied dependency criteria but for the abuse and resulting separation.

This approach reflects the reality that family violence frequently disrupts financial dependency in ways that disadvantage victim-survivors under existing eligibility frameworks. In Australia, many separations due to family violence occur later in the life course, limiting the capacity of victim-survivors to rebuild their financial security prior to retirement.

As a result, victim-survivors (particularly older women), face a heightened risk of economic insecurity in retirement. This risk is compounded in cases involving costly family law proceedings, or where financial control and economic abuse meant that assets and savings were held solely in the perpetrator's name. In such circumstances, victim-survivors may leave the relationship with limited access to property or superannuation entitlements, particularly where legal claims are not pursued or are settled without full asset recovery.

Further, the reforms should apply consistently across all segments of the superannuation system, including self-managed superannuation funds. Amendments to the *Superannuation Industry (Supervision) Act 1993* will necessarily affect these arrangements. Excluding them would undermine legal certainty, create fragmentation, and introduce opportunities for exploitation; particularly given evidence that perpetrators of financial abuse may seek to manipulate structural gaps within financial systems.

6 Role of trustees and existing framework strengths

The proposed approach builds on the strengths of the existing system. Superannuation trustees are uniquely positioned to assess complex family dynamics, including elder abuse. This form of abuse is embedded within family relationships and require a nuanced, context-sensitive assessment that trustees are well equipped to provide.

Trustees, together with the Australian Financial Complaints Authority, have substantial experience in managing complex death benefit claims. Compared to courts, which typically engage with such matters through an estate law lens, trustees offer greater flexibility, accessibility, and subject-matter expertise.

Maintaining trustee discretion also aligns with the fundamental principle that superannuation benefits sit outside the estate. The proposed reforms preserve this principle while strengthening protections against abuse, ensuring that the system remains fair, practical, and responsive to the realities of domestic and family violence, including elder abuse.

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- ⁱ <https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/older-people#data>
- ⁱⁱ <https://seniorsrights.org.au/wp-content/uploads/2021/03/2020August26PolicySevenYearsEADDataVictoriaSummary.pdf>
- ⁱⁱⁱ <https://www.who.int/news-room/fact-sheets/detail/abuse-of-older-people>