

24 April 2026

Via email: [superannuation@treasury.gov.au](mailto:superannuation@treasury.gov.au)

Dear Sir/Madam

## Preventing perpetrators from accessing victims' super death benefits

Chartered Accountants Australia and New Zealand (**CA ANZ**), CPA Australia, the Institute of Public Accountants (**IPA**), the Financial Advice Association of Australia (**FAAA**) and the SMSF Association (the **Joint Associations**) welcome the opportunity to provide this submission.

The Joint Associations support the recent inquiries and reviews into financial abuse. While neither the Joint Associations nor our members are experts in the area of financial abuse, we are committed to empowering our members, particularly those in public practice to understand what financial abuse can look like and how they can contribute to reducing the opportunity for and incidence of financial abuse. We provide general comments below in response to the Treasury consultation: *Preventing perpetrators from accessing victims' super death benefits* (the Consultation).

### General comments

The Joint Associations welcome the ongoing efforts of Government and regulators to stop financial abuse, in whatever form it takes. However, the paper highlights the complexity of addressing even a comparatively small part of this very broad problem. Financial abuse is insidious and can be perpetuated via many parts of our financial and economic systems. It may be the subject of family court proceedings, arise from a diversion of tax liabilities, or result from coerced directorships. It can also be present in payouts of super death benefits, which seems contrary to natural justice.

While the efforts of stakeholders, such as the Australian Taxation Office's Vulnerability Framework, are to be applauded, individual regulators are restrained by their own remits and can only address part of the problem. It is a whole of government solution that is needed if we are to truly support those who have experienced family and domestic violence in all its guises. We would endorse calls to provide comprehensive support to those impacted.

We support the core objectives underlying the proposed reforms, to protect the superannuation interests of the deceased, and ensuring equitable and just distributions of death benefits. In principle, this extends to efforts to limit the access of beneficiaries to superannuation death benefits where such a beneficiary is also the perpetrator of family or domestic violence, including financial abuse, of the deceased.

However, while the paper provides three options for policy reform, our concern is that these options do not appear to address the initial foundational issues that we believe must be addressed before potential solutions can be considered.

To that end, the following issues, and potentially other topics, must be considered before deliberating on any solutions:

1. Trustees of all trusts, including superannuation funds, have a number of common law fiduciary duties, including the following:
  - a. A duty of loyalty – this duty takes a number of forms; however a key matter is that trustees must adhere to the terms of a trust deed and may only “depart from the words of the trust with the approval of the court”<sup>1</sup>
  - b. Duty to act impartially between beneficiaries – that is, a trustee “must act impartially between beneficiaries, particularly in matters concerning the distribution of the income and capital of the trust, unless otherwise authorised by the trust”<sup>2</sup>
2. Under the *Superannuation Industry (Supervision) Act 1993* (the **SIS Act**), APRA regulated superannuation fund trust deeds are assumed to contain various covenants including, trustees to:
  - a. Perform the trustee’s duties and exercise the trustee’s powers in the best financial interests of the beneficiaries – see subsections 52(2)(c) and 52A(2)(c).
  - b. Act fairly in dealing with classes of beneficiaries within the entity – see subsection 52(2)(e).
  - c. Act fairly in dealing with beneficiaries within a class – see subsection 52(2)(f).
3. Under the SIS Act, Self-Managed Superannuation Fund trust deeds are assumed to require a trustee to perform its duties and exercise the trustee’s powers in the best financial interests of the beneficiaries – see subsection 52B(2)(c) and deeming provision contained in section 52C.
4. Binding death benefit nominations (**BDBNs**):
  - a. We consider that it will be extremely difficult for superannuation fund trustees to deem such documents invalid, given that they are intended to bind a trustee to perform a specific action on the death of a member.
  - b. Some BDBNs include cascading clauses, similar to those found in some Wills. For example, a super fund member may want their death benefits paid to specific individuals. However, if one or more of those individuals pre-decease the fund member, alternative payment options may be specified. In these cases, if the beneficiary of the BDBN was determined to be a perpetrator of family and domestic violence, would this invalidate the whole document or only part of it?
5. Reversionary pensions – under these pensions, when the original pensioner dies, the pension automatically begins to be paid to their nominated reversionary. Such pensions are a contract. We note that the discussion of superannuation death benefit nominations on pages 5 and 6 of the consultation paper does not consider reversionary nominations.
6. Life insurance contracts – it is possible to purchase life annuities with superannuation savings; under many such contracts, if the annuitant dies, then some form of death benefit would be payable.

We share the desire to expedite the claims staking process as fairly and justly as possible. However, this objective must be balanced against the common law and statutory obligations superannuation fund trustees have, and the risks of acting outside these requirements. The potential impact this may have to all members of a superannuation fund cannot be overlooked.

We note that the splitting of superannuation benefits when a couple are separating must be officially authorised by the Federal Circuit and Family Court of Australia. Similarly, in estate matters, where a dispute arises over the terms of a will or the application of the forfeiture

---

<sup>1</sup> Evans, Michael, *Equity and Trusts*, Lexis Nexis, 3<sup>rd</sup> edition, 2012, p 565

<sup>2</sup> *Ibid*, p. 597

rule, Supreme Court action is needed to make such a determination. Notably, the forfeiture rule for estate matters sits on a bedrock of a significant body of common law guiding the court in a wide-ranging set of circumstances.

We acknowledge the desire to find a solution that is just, straightforward, expeditious, efficient, and cost-effective. In practice, the nature of these cases can be highly complex and highly fact dependent.

A solution that seeks to remove or exclude the court from the process, in the circumstances addressed in this Consultation, may not be possible. Our consultations with other stakeholders and our respective members have identified a broad range of issues that would need to be addressed to ensure appropriate safeguards are in place. However, these are less relevant at this point, given trustees' obligations and the legal structure of superannuation funds in Australia and the barriers these present.

We would welcome the opportunity to discuss with Treasury the wide-ranging issues we have identified in this submission, and the potential long-term, workable solutions that may follow from that discussion.

If you have any queries please contact Neville Birthisel, Advisor - Regulation and Standards at CPA Australia, at [neville.birthisel@cpaaustralia.com.au](mailto:neville.birthisel@cpaaustralia.com.au).

Sincerely,

**Tony Negline**  
Superannuation & Financial Services Leader  
**Chartered Accountants Australia and  
New Zealand**



**Richard Webb**  
Superannuation Lead  
**CPA Australia**



**Michael Davison**  
General Manager Advocacy & Emerging  
Policy  
**Institute of Public Accountants**



**Tracey Scotchbrook**  
Head of Policy and Advocacy  
**SMSF Association**



**Phil Anderson**  
General Manager Policy, Advocacy and  
Standards  
**Financial Advice Association of Australia**



