

8 April 2026

Our ref: [SS:MC]

Email: policy@qls.com.au

Dr James Popple
Chief Executive Officer
Law Council of Australia
Level 1, MODE3
24 Lonsdale Street
BRADDON ACT 2612

By email: [REDACTED]

Dear Dr Popple

Treasury consultation on preventing perpetrators from accessing victims' superannuation death benefits

Thank you for the opportunity to provide feedback on the Treasury consultation paper, *Preventing perpetrators from accessing victims' super death benefits (Consultation Paper)*. The Queensland Law Society (QLS) appreciates being consulted on the important policy issues raised in the Consultation Paper.

This response has been compiled by the QLS Domestic and Family Violence Law Committee, whose members have substantial expertise in this area.

QLS supports the Federal Government's pledge to improve Commonwealth systems that may be open to abuse by perpetrators of family and domestic violence. We welcome the review of superannuation death benefits as part of this process.

At the outset, we note that, without a conviction, it can be difficult to determine whether someone has committed domestic and family violence after the superannuation fund member has deceased. For example, in circumstances where there were no complaints made during the member's lifetime, it will be difficult to successfully levy these allegations on behalf of someone who is no longer alive to provide evidence about the alleged conduct.

Further, in the absence of a conviction, we have concerns with providing trustees under Option 1 the broad discretion to determine, in their reasonable belief, whether a beneficiary has perpetrated domestic and family violence against a deceased member. Without adequate guidelines, training and resources, trustees are unlikely to have the expertise to assess and weigh up complex, conflicting or insufficient evidence.

Treasury consultation on preventing perpetrators from accessing victims' superannuation death benefits

In relation to Option 2, we query how a trustee will be able to access evidence of a relevant court finding that the beneficiary has perpetrated family and domestic violence against the deceased member. As domestic and family violence proceedings and *Family Law Act* proceedings usually all have prohibitions on publication of documents and decisions etc, it may be difficult for the trustee to obtain this information.

Additionally, we are concerned that referral to the deceased estate under Option 3 may not achieve the policy objective. Under current intestacy provisions or a valid Will, a perpetrator may still be entitled to benefit from the estate unless the forfeiture rule applies. Moreover, referral to a court raises the concerns outlined above about running a trial where the deceased member cannot provide evidence.

Our committee members have suggested that less prescriptive requirements could be considered. In our members' experience, a lot of domestic and family violence conduct may not neatly fit the way the Treasury is approaching the issue, such as the following scenarios:

- The police bring a domestic violence application against one partner of an older couple which resolves in consent without admission. The victim in the couple may say the perpetrator is starting to suffer with dementia or Alzheimer's Disease which is contributing to their alleged violent behaviour.
- A perpetrator committed alleged domestic violence against their partner during a genuine mental health episode. The victim may support the perpetrator to obtain mental health support, which results in the perpetrator never experiencing another similar mental health episode for 20 years.

In these types of scenarios, we query whether it is appropriate to override a member's decision to make a binding death nomination to leave their superannuation to their partner.

Regardless of which policy option is preferred, the legislation must be carefully considered and adequately drafted to achieve the policy intent without introducing unintended consequences. QLS would welcome further opportunities to comment on the drafting as it is being developed.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on [REDACTED]

Yours faithfully

[REDACTED]
Peter Jolly
President