Law Council
OF AUSTRALIA

Consultation paper: Preventing perpetrators from accessing victims' super death benefits

Treasury

1 June 2026

Telephone +61 2 6246 3788
Email mail@lawcouncil.au
PO Box 5350, Braddon ACT 2612
Level 1, MODE3, 24 Lonsdale Street,
Braddon ACT 2612
Law Council of Australia Limited ABN 85 005 260 622
www.lawcouncil.au

Contents

Acknowledgements 2

Introduction 3

General comments 4

- Procedural fairness 4
- Presumption of innocence and right to a fair trial 5
- Certainty and consistency 6
- Constitutionality 6
- The need for broader reform to superannuation death benefits 6

Reform proposals 7

- Establishing a forfeiture-like rule for superannuation death benefits 7
  - Scope of prescribed offences 8
- Preventing payment of superannuation death benefits to perpetrators of FDV 8
  - Option 1—Broad trustee discretion 9
  - Option 2—Prescribed approach 13
  - Option 3—Referral to deceased estate or a court 16

Additional comments 20

- Broader review of death benefit rules 20
- Ante-mortem coercive control 21
- Financial hardship claims by victims of FDV 22
- Self-managed superannuation funds 22
- Family Law Act provisions 23

Attachment: Option 1—Views of the Consumer Law Committee 24

About the Law Council of Australia 25

Acknowledgements

The Law Council of Australia thanks:

- the Law Society of New South Wales;
- the Queensland Law Society;
- the Law Society of South Australia;
- the Law Institute of Victoria;
- the Law Society of Western Australia;
- the Superannuation Committee and Consumer Law Committee of its Legal Practice Section;
- the National Elder Law and Succession Law Committee; and
- the Family Law Section.

for their contribution to the preparation of this submission.

Introduction

1. The Law Council welcomes the opportunity to respond to the Treasury's Consultation Paper titled *Preventing perpetrators from accessing victims' super death benefits*.[1] The Consultation Paper seeks feedback on policy options to prevent people who have committed family and domestic violence (**FDV**) from receiving the superannuation death benefits of victim-survivors. The proposals are:

    - integrating the common law principle known as the 'forfeiture rule' into the superannuation death benefit framework;

    - giving superannuation trustees greater flexibility over the distribution of superannuation death benefits to prevent perpetrators of FDV from receiving the death benefits of deceased victim-survivors. As summarised in the Consultation Paper,[2] these options are:

        - *broad trustee discretion*: legislative amendments to allow a trustee to set aside a person as an eligible beneficiary, set aside a member's valid binding death benefit nomination (**BDBN**) or depart from an allocation otherwise required under the governing rules if the trustee believes on a fair and reasonable basis that the beneficiary has been a perpetrator of FDV against the deceased member (**Option 1**);

        - *prescribed approach*: legislative amendments to enable the setting aside of a person as an eligible beneficiary, setting aside of a member's valid BDBN or departing from an allocation otherwise required under the governing rules, but only in instances where a court has made a finding that FDV conduct was carried out by that beneficiary towards the deceased member (**Option 2**); and

        - *referral to deceased estate or a court*: legislative amendments to give a trustee the power to pay a death benefit that would otherwise have been paid to a beneficiary under a valid BDBN or as required under the fund's governing rules to the estate or into a court where the trustee reasonably suspects FDV was perpetrated by that beneficiary towards the deceased member (**Option 3**).

2. The Law Council appreciates the policy objective of ensuring that people who have committed FDV do not benefit from the superannuation death benefits of their victim-survivors. The issue that these proposed reforms seek to address are serious. However, we are concerned that several of the proposals set out in the Consultation Paper would not achieve this policy objective reliably, consistently, and with procedural fairness to all parties.

3. A range of views have been expressed by the Law Council's constituent bodies and Advisory Committees about each of the proposed reforms. While there is unanimous

---

1 Treasury, Preventing perpetrators from accessing victims' super death benefits (Consultation Paper, March 2026).

2 Ibid, 3.

support for the policy goals set out in the Consultation Paper, there is a diversity of opinion as to how these can best be achieved.

4. The Law Council supports, in-principle, the introduction of a forfeiture-like rule in relation to superannuation death benefits (subject to conditions set out in this submission). However, further careful consideration should be given to the remaining three policy options having regard to the principles and issues raised in this submission.

5. While we recognise that there is some variation of views on individual options within the profession (as noted below), we have not reached a consensus position in favour of any of these options.

6. In the interim, there would be significant benefit in educating the public about superannuation systems and processes. Many Australians falsely assume that superannuation will simply form part of their estate, and do not realise that death benefit distribution is largely left to trustee discretion. In our view, the community would benefit from education on the superannuation framework, as well as estate and family planning—including the broad range of issues to which one should turn their mind, such as tax implications, property and ownership structures.

General comments

7. We acknowledge that the distribution of superannuation death benefits is a complex area. Further, the harmful effects of FDV remain pervasive and one of the foremost challenging issues to be addressed. Accordingly, the reform to address these issues may also be challenging, given it appears that several of the proposals set out in the Consultation Paper represent a significant departure from current processes. Specifically, some proposals raise important concerns relating to key rule of law principles, in relation to:

   - regard for procedural fairness;
   - respect for the presumption of innocence and right to a fair trial; and
   - the need for certainty and clarity.

Procedural fairness

8. The Consultation Paper lists procedural fairness as one of the five key principles underpinning the reform proposals.[3] Critical to the success of any reform proposal will be the ability to demonstrate that it affords natural justice and procedural fairness for all parties, as this will be vital to ensure there is confidence in the process.

9. A determination that a beneficiary has perpetrated FDV, in this context, may result in the deprivation of a substantial property right. As such, principles of procedural fairness will be critical, and it would be unacceptable for a potential beneficiary to be disentitled due to a mere allegation of FDV. Strong views have been put to the Law Council raising concerns with any proposal that would permit the setting aside of an

[3] Treasury, Preventing perpetrators from accessing victims' super death benefits (Consultation paper, March 2026) 4.

otherwise eligible beneficiary in the absence of compelling, independently tested evidence.

10. Procedural fairness requires, at a minimum, notice of the case to be met, an opportunity to respond to all adverse material, an impartial decision-maker, reasons for the decision, and a meaningful right of review. The risks of unjust outcomes resulting from a disregard of procedural fairness is well recognised:

> *A failure to give a person affected by a decision the right to be heard and to comment on adverse material creates a risk that not all relevant evidence will be before the decision-maker, who may thereby be led into factual or other error.*[4]

11. Clear reservations have been expressed to the Law Council as to the extent to which the proposals put forward in the Consultation Paper can facilitate an approach that is consistent with procedural fairness expectations, especially proposals that would expand trustee discretion in the absence of a relevant court finding. Procedural concerns are exacerbated in this context as any fact-finding exercise in relation to allegations of FDV will not have the benefit of hearing from the deceased individual.

12. Importantly, a superannuation trustee is not impartial in the relevant sense: it owes fiduciary duties to fund members, is subject to Australian Financial Complaints Authority (**AFCA**) oversight, and generally operates at scale and is subject to cost and risk constraints that tend to favour administratively standardised approaches. It also lacks the power to compel evidence or to test witnesses, and it not required to apply the rules of evidence.

13. While it is recognised that FDV is under-reported, and barriers persist that may deter victim-survivors from seeking judicial remedies, strong views have been expressed by several Law Council constituent bodies in support of a model that prioritises judicial certainty, within the existing legislative scheme for administering superannuation death benefits, rather than one based on broad administrative discretion for trustees.

Presumption of innocence and right to a fair trial

14. Under the rule of law, all people are entitled to the presumption of innocence and to a fair and public trial. In particular, no one should be subject to punitive action by the state unless he or she has first been found guilty of an offence by an independent, impartial and competent tribunal.[5] We **attach** a copy of the Law Council's Rule of Law Policy Principles, which expands upon on these points.

15. The presumption of innocence imposes on the prosecution the burden of proving the charge, and guarantees that no guilt can be presumed until the charge has been proven beyond reasonable doubt.[6] Alleged perpetrators have not been tried or

---

4 Chief Justice Robert French, 'Administrative Law in Australia: Themes and Values Revisited' in Matthew Groves (ed), *Modern Administrative Law in Australia: Concepts and Context* (Cambridge University Press, 2014) 25, 47.

5 Law Council of Australia, Policy Statement: Rule of Law Principles, March 2011, Principle 3.

6 As recognised in, for example, Attorney-General's Department, *Presumption of innocence: Public sector guidance sheet*, <www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/presumption-innocence>. See also Parliamentary Joint Committee on Human Rights Guidance materials.

convicted of criminal offences and are entitled to the presumption of innocence and a fair trial. While the Treasury's proposals may apply to behaviours that may fall short of criminal conduct, they do sit uneasily with the above principles. We are concerned that the Consultation Paper has failed to engage with how these principles will be respected, particularly in the absence of a court determination. The absence of a judicial determination raises significant questions relating to appropriate standards of proof, as well as evidentiary rules and onus burdens.

16. We are also concerned that the Consultation Paper has not assessed potential impacts on the right to a fair trial resulting from the proposals. For example, it is unclear how a declaration from a trustee that a beneficiary is a perpetrator of FDV in the absence of a court determination will impact on any subsequent allegations, charges and the fair trial of that individual in later proceedings.

17. In our view, any proposal that would enable a superannuation trustee to perform what could be considered a quasi-judicial role must have regard to these questions.

Certainty and consistency

18. Any proposal that places broad discretion on trustees in the absence of a court finding of FDV would be likely to produce different outcomes from different funds, for similarly situated beneficiaries, based on policies and capabilities that may differ materially between individual trustees.

19. The law does not ordinarily permit property rights to be extinguished through processes that vary to that extent based on the identity of the administrative body making the determination. Courts, applying uniform rules of evidence and procedure, are the more appropriate forum for promoting greater certainty and consistency in decision-making.

20. The laws on FDV also differ across Australian jurisdictions and involve complex concepts: for example, on coercive control. Given this, it may be difficult for trustees to understand and apply FDV concepts consistently—especially for trustees operating in various Australian jurisdictions.

Constitutionality

21. We assume that the Treasury has sought and obtained advice on the validity of each proposal, and in particular on the exercise of judicial power which, under Chapter III of the Australian Constitution, is vested exclusively in courts.[7]

The need for broader reform to superannuation death benefits

22. Noting the relationship to the proposals contained in the Consultation Paper, the Law Council takes the opportunity to reiterate its support for broader superannuation law reform. We refer to suggestions made below in the section titled *Broader review of death benefit rules*.

---

[7] See *R v Kirby; Ex parte Boilermakers' Society of Australia* (1956) 94 CLR 254 (the Boilermakers' case).

Reform proposals

23. The Consultation Paper proposes a series of options to better protect the superannuation interests of deceased victim-survivors of FDV, uphold fairness by supporting equitable and just distributions of superannuation death benefits, and support their timely distribution.[8] In the context of the broad concerns noted above, feedback on these various reform proposals are set out in the following sections.

Establishing a forfeiture-like rule for superannuation death benefits

24. The Treasury seeks views on a proposal to create a set of rules in relation to superannuation death benefits that would have a similar effect to the forfeiture rule. The forfeiture rule has its origins in common law, set on the premise that a perpetrator of an unlawful killing cannot inherit from the victim's estate or otherwise benefit financially from their act.[9] The existing rule applies when the killing has been established by a criminal conviction or, in some circumstances, by a civil finding to the requisite standard.

25. As noted in the Consultation Paper, certain jurisdictions, including New South Wales, the Australian Capital Territory and South Australia have enacted legislation that allows courts to modify the effect or operation of the forfeiture rule in some scenarios:[10] for example, where a killing has occurred in response to prolonged domestic violence and the degree of moral culpability is reduced. The remaining states and territories apply the common law rule, which operates rigidly without any judicial discretion to modify its effect. It has been observed that the application of the common law forfeiture rule in Australia is currently unclear, complex, and in need of reform.[11]

26. The Law Council supports, in principle, the introduction of a forfeiture-like rule aimed at disentitling a beneficiary from receiving a death benefit where a court has found they have committed prescribed offences involving the homicide of the superannuation account holder.[12]

27. In our view it is critical that any proposed rules operate on a basis in which the application of a forfeiture-like rule is reviewable by a court. The majority of feedback we have received considers that the forfeiture-like rule should operate with formal court oversight—it does not support a forfeiture-like rule administered entirely by trustees, without the moral culpability requirement and on the basis of non-court evidence. The Australian Consumer Law Committee of the Law Council's Legal Practice Section (**Consumer Law Committee**) is of a different view. The Consumer Law Committee thinks that the AFCA, and ultimately the Federal Court,[13] can provide appropriate review options in relation to any trustee decision that might be made.

---

8 Treasury, Preventing perpetrators from accessing victims' super death benefits (Consultation paper, March 2026), 4.
9 See Victorian Law Reform Commission, *The Forfeiture Rule* (Consultation Paper, March 2014) Chs 2–3.
10 *Forfeiture Act 1995* (NSW), s 5; *Forfeiture Act 1991* (ACT), s 3; *Forfeiture Act 2024* (SA), s 9.
11 Darryl Browne; Ruth Pollard, 'Where from and Where to with the Forfeiture Rule' (2018) *Precedent (Australian Lawyers Alliance)* 55; 148 Precedent 14.
12 Ibid, 12.
13 *Corporations Act 2001* (Cth), s 1057.

Scope of prescribed offences

28. The Consultation Paper notes that, for murder, the rule is one of strict application; for manslaughter, a case-by-case approach is required. That case-by-case approach necessarily involves judicial analysis of the degree of moral culpability, the circumstances of the killing, and all relevant contextual factors.[14] The Law Council is of the view that any introduction of a forfeiture-like rule should follow this approach.

29. Most of our feedback highlights that the scope of the proposed rule should not be extended to offences beyond murder or manslaughter (and only where there has been a conviction and all avenues of appeal are exhausted). Pursuant to this view, the extension of the forfeiture-like rule beyond murder and manslaughter convictions, into areas such as FDV, would risk not taking into account circumstances where, for example, there is a genuine reconciliation between the parties, where the offending was many years before the death, or (possibly) where the beneficiary has materially contributed to the building up of the superannuation account by direct or indirect contributions.

30. There has been limited support for extending the proposed forfeiture-like rule beyond the offences of murder and manslaughter to include other serious criminal offences involving violence or abuse against the deceased member. This feedback emphasised, however, that if expanded in this way, the forfeiture-like rule must be reserved for serious and clearly established criminal conduct.

31. The Consultation Paper proposes that the forfeiture-like rule for death benefits may not retain the 'moral culpability' requirement that is a feature of the forfeiture rule at common law, given it would be applied by trustees rather than the courts.[15] This represents a significant departure from the principled, case-by-case approach described above.

32. The Consultation Paper also notes that the forfeiture-like rule and the proposed policy reform options outlined could be introduced as complementary reforms.[16] We suggest that the forfeiture-like rule could also be introduced independently of other reforms.

Preventing payment of superannuation death benefits to perpetrators of FDV

33. The three options set out in the Consultation Paper sit along a continuum, ranging from reforms that confer broad trustee discretion, to models characterised by greater judicial oversight. We received varying views across the Law Council's constituent bodies and committees about the proposals, with particular concerns raised about procedural fairness, consistency in decision-making, and the risk of erroneous decisions in the absence of a determination by an independent body with adequate guidance and thresholds. As noted, there is no consensus view strongly supporting any option.

---

[14] Treasury, Preventing perpetrators from accessing victims' super death benefits (Consultation paper, March 2026), 12.

[15] Ibid.

[16] Treasury, Preventing perpetrators from accessing victims' super death benefits (Consultation paper, March 2026), 12.

34. From the outset, we note that the Consultation Paper uses the term "binding nomination" to refer to "lapsing" binding nominations (which are binding under the SIS Regulations) and "non-lapsing" binding nominations (which are in effect "binding" under the governing rules of the relevant fund). In a previous Discussion Paper,[17] Treasury also included a reversionary benefit as being included in a "binding" nomination:

> *Reversionary beneficiary: A member in receipt of an income stream can nominate a beneficiary to whom the payments automatically revert upon the death of the member. If the nomination is valid at the time of the member's death, the trustee is bound by law to follow it.*

Option 1—Broad trustee discretion

35. Option 1 would permit a trustee to disentitle an otherwise eligible beneficiary, or to set aside a valid BDBN, on the basis of the trustee's own assessment that the beneficiary has perpetrated FDV against the deceased member. The trustee would consider a wide range of non-judicial evidence, applying a 'fair and reasonable' standard.

36. Consistent with the earlier preliminary remarks on compatibility with rule of law principles, feedback received by the Law Council has raised strong concerns with Option 1 and generally does not support a broad trustee discretion. The strongest concerns were raised in response to the suggestion that superannuation trustees would be empowered to make forfeiture-type decisions about death benefit payments based on allegations of domestic violence, potentially without any Court conviction or adherence to evidentiary rules.

37. We note that a view has been expressed by the Consumer Law Committee, that supports giving a broader trustee discretion as contemplated by Option 1, particularly where there are more than allegations and strict and specific guidance could be given to aid trustees in the exercise of their discretion. These views are set out in the **Attachment**.

Compatibility with the role of trustee

38. The Consultation Paper acknowledges that the capability demands on superannuation fund trustees under this model are significant, and that assessing complex, non-judicial evidence is arguably not a natural synergy with the core responsibilities of a superannuation fund.[18]

39. Concerningly, Option 1 would see trustees adopting an adjudicative role and undertaking forensic investigation functions, where they would be required to evaluate complex factual circumstances involving potentially conflicting and incomplete information with no clear evidentiary standards. Trustees do not generally have staff with appropriate training or experience to perform this role.

---

[17] Treasury, Superannuation binding death benefit nominations and kinship structures, (Discussion Paper, March 2019), 3.

[18] Treasury, Preventing perpetrators from accessing victims' super death benefits (Consultation Paper, March 2026), 15.

40. Further, a trustee would need to assess the veracity of allegations that may not have been tested through judicial processes. In more difficult cases, the trustee would effectively be asked to determine whether a person is a perpetrator based on contested material—something that ordinarily requires judicial consideration supported by evidentiary rules, and procedural safeguards. These are not simple issues; they require legal training, forensic skill, and a command of the applicable case law.

41. While superannuation fund trustees are sophisticated financial administrators, it is unrealistic to expect a superannuation fund trustee—however conscientious—to perform this analysis, and this proposal has the potential to go well beyond the scope of a trustee's core functions.[19] The breadth of conduct contemplated, the diversity and complexity of the evidence that might be presented, and the absence of any established evidentiary framework risks inconsistency in standards being applied.

42. Recent regulatory scrutiny and enforcement proceedings also emphasise broader existing challenges in the area of member services by trustees, including:

- ASIC's Report 806,[20] which highlighted systematic failures by some trustees in relation to delays and procedural challenges in the handling of death benefit claims; and
- civil penalty proceedings commenced by ASIC against United Super Pty Ltd and AustralianSuper Pty Ltd in relation to alleged failures in death benefit claims handling.[21]

Procedural issues

43. As noted previously, many of the concerns expressed to the Law Council regarding the proposals—particularly Option 1—relate to consistency with procedural fairness expectations in the absence of a court determination. While it is acknowledged that FDV is pervasive and can occur without documented evidence (such as judicial findings), in providing such great discretion to the trustee, there is a high risk of error and a risk of a lack of procedural fairness, particularly where decisions are made based on non-judicial evidence.

44. Unlike a court, a trustee cannot test the veracity of competing claims through cross-examination nor compel the production of evidence to verify claims, and may accordingly, be constrained in resolving contested factual matters.

45. In this context, we consider that Option 1 will predictably generate disputes (including complaints and litigation) because the stakes are significant and the factual questions are serious. Such disputes would need to be handled through the normal Internal Dispute Resolution (**IDR**) processes of the superannuation fund, and potentially also via AFCA or the Federal Court.

---

[19] SIS Act, s 52, outlines the core duties of trustees as focused on the commercial and fiduciary management of fund assets. This is to be compared with the proposed role of trustees under Option 1, which would require the exercise of quasi-judicial functions, including fact-finding regarding personal conduct and weighing criminal or quasi-criminal evidence.

[20] ASIC, Taking ownership of death benefits: How trustees can deliver outcomes Australians deserve (Report 806, 31 March 2025).

[21] See ASIC, ASIC sues AustralianSuper alleging significant death benefit claims failures (Media release, 12 March 2025).

46. All members of a fund will bear the associated costs. The Consultation Paper contemplates that the alleged perpetrator will have recourse to the AFCA.[22] Unlike decisions involving the exercise of a discretion (where there is no valid BDBN and no relevant constraints under the governing rules, and there is more than one eligible beneficiary), Option 1 means the trustee will be defending a decision to set aside a binding direction to the trustee or to depart from the fund's governing rules. On its face, and in the absence of legislative protection, this is a higher threshold for the trustee to overcome, particularly in circumstances where the decision of the trustee is based on limited and contested documentation. Equally, the psychological and financial impact on the disentitled beneficiary in disputing a claim, including in court, must also be taken into account.

Burden on trustees

47. We understand that awareness and capability vary significantly across the trustee landscape. For example, APRA-regulated funds with dedicated claims teams have generally developed more sophisticated frameworks for recognising and responding to FDV indicators. Smaller funds, and those with less specialised claims handling capacity, may lack consistent processes, staff training and evidentiary frameworks for identifying systems abuse.

48. There would be a burden placed on a superannuation fund trustee to make decisions of this sort and, in cases such as these, there will be more work than usual involved in obtaining relevant information to enable the trustee to exercise its discretion in a properly and fully informed manner in accordance with its fiduciary role, noting that aggrieved consumers would still have the appeal avenues through the AFCA and to the Federal Court.

Potential for delay

49. The need to undertake sufficient investigations is likely to result in delays in processing death benefits which is in tension with Treasury's objective to support the timely distribution of death benefits.[23] This is particularly acute where trustees currently rely on valid BDBNs to improve timeliness. It is also inconsistent with regulatory concerns around delays in processing claims.[24]

Available evidence

50. The Consultation Paper acknowledges that FDV is widely under-reported and that judicial findings capture only a small proportion of cases that occur.[25] This necessarily means that trustees may face difficulty in sourcing evidence of a sufficient standard, quantity and quality to support a disentitlement decision,

---

[22] Ibid, 14.
[23] One of the core objectives of the Government in delivering reforms on this issue. Ibid, 4.
[24] See, for example, ASIC, Taking ownership of death benefits: How trustees can deliver outcomes Australians deserve (Report 806, 31 March 2025).
[25] Treasury, Preventing perpetrators from accessing victims' super death benefits (Consultation paper, March 2026) 17.

particularly as a trustee cannot compel evidence. The following are examples of information that the trustee may be asked to rely on to inform their decision:

- police reports, intervention orders, affidavits, statutory declarations or other sworn material;
- evidence that a victim-survivor accessed a government supported FDV payment;
- evidence from trusted professionals; and
- other evidence such as witness statements, emails, text messages, social media, living arrangements.

51. Even where procedural fairness is observed, it may be difficult for an individual to refute allegations with any contrary evidence of equal or superior weight. This approach risks exacerbating current issues around misidentification of FDV perpetrators (which is expanded on below).

52. We acknowledge the difficulties for victim-survivors of FDV to access justice in the current FDV frameworks, particularly those from First Nations communities, culturally and linguistically diverse backgrounds, and those subject to migration-related coercion who face systemic barriers to accessing the court system. While we acknowledge Option 1 seeks to address these difficulties, testing the veracity of non-judicial and contested information, based on the majority of feedback, is likely to be difficult for a trustee, as they are not equipped to assess this material fairly. This heightens the risk of misinterpreting complex relationship dynamics and overriding express testamentary intent. Consequently, there may be greater potential under Option 1 for death benefit disqualifications to be contrary to the wishes of the deceased (for example, in cases where there has been genuine reconciliation).

Misidentification

53. The Consultation Paper acknowledges the phenomenon of misidentification: circumstances in which a perpetrator "utilis[es] legal processes to portray their victim-survivor as the aggressor and themselves as a victim".[26]

54. A superannuation fund trustee presented with competing statutory declarations—one from the deceased's family alleging that the beneficiary was the perpetrator, one from the beneficiary (and, possibly, the beneficiary's family) alleging that the deceased was in fact the abusive party—would be put in an extraordinarily difficult position. There may also be risks if the deceased's family misrepresents a prior state of affairs. The inherent risks presented to administrators are real, and we consider that they cannot be adequately mitigated by guidelines or training programmes.

Further considerations

55. The exercise of a discretion to disentitle a beneficiary to whom the trustee would otherwise be required to pay the benefit exposes a trustee to significant risk. Consideration could be given to providing a "safe-harbour" so that trustees who follow robust processes and act in good faith within the framework are not penalised if their decision is successfully challenged. This would need to be balanced against

[26] Ibid, 9.

the need for procedural fairness in respect of the alleged perpetrator. We note that it may be difficult for trustees to amend their fund's governing rules to include a "safe-harbour" provision covering this circumstance as it may be perceived that the amendment is in the trustee's interest.

56. There would also need to be clarity around whether a trustee would have a positive obligation to make inquiries, on notification of a member's death, to identify whether FDV is a factor in determining the payment of the benefit, or whether the trustee is only required to make inquiries if the allegation is raised within a reasonable period after the member's death.

57. The majority of our feedback has expressed strong concerns that trustees do not currently have a sufficient understanding of, and experience with, the FDV framework, and the related risks of systems abuse, including the risk of developing unconscious or uncontrolled biases that may influence decision-making.. Concerns were also expressed about AFCA's ability to manage matters in a timely manner, noting that any increase in workload needs to be accompanied by appropriate resourcing.[27]

58. For the reasons outlined above, Option 1 is thought to be problematic for trustees to implement and would involve considerable uncertainty for beneficiaries. The Law Council does not support Option 1.

59. In the event that, contrary to the Law Council's position, Option 1 does progress, the exercise of a trustee's discretion to set aside an eligible beneficiary or a valid BDBN, or to depart from the governing rules, as contemplated by Option 1 must be undertaken within a legislative or regulatory framework that gives the trustee clear guidance as to what constitutes "reasonable belief". This must include:

- sufficient clarity as to the definition of FDV (noting definitions currently vary between jurisdictions);
- a prescribed list and/or guidance as to the type and standard of evidence that a trustee may consider and the priority or weight that should be attributed to the different forms of evidence;
- clear decision-making parameters and procedural steps to support the trustee in making a defensible decision; and
- a "safe harbour" for trustees, prescribing the procedures that the trustee can adopt which will be considered to meet procedural fairness requirements, especially where non-judicial evidence is being considered.

60. The framework also must include clear recognition that timeframes for determination of the death benefit will necessarily be extended where a trustee is required to make this assessment.

Option 2—Prescribed approach

61. Option 2 envisages legislative amendments to the *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**) to enable:

---

[27] AFCA, Annual Review 2024-25: Improving timeliness and reducing delays (October 2025).

- the setting aside of a person as an eligible beneficiary;
- the setting aside of a member's valid BDBN; or
- departing from an allocation otherwise required under the governing rules,

but only in instances where a court has made a finding that FDV conduct was carried out by that beneficiary towards the deceased member.

62. The two possible approaches to implementing Options 2 are set out in the Consultation Paper as follows:

    - **Option 2a**: Where a trustee is provided with evidence of a relevant court finding, they would maintain discretion as to whether to fully set aside the beneficiary and maintain discretion to distribute the death benefit in accordance with existing practice.
    - **Option 2b**: Where a trustee is provided with evidence of a relevant court finding, they would be required to set aside the perpetrator as a beneficiary and could not consider any distributions to the perpetrator.

63. While we agree that Option 2 provides clearer rules for the administration of superannuation death benefit claims when compared with Option 1, and substantially lessens the evidentiary burden on trustees through a reliance on court findings, we raise the following issues regarding Option 2:

Legal certainty

64. Option 2b is perhaps more consistent with principles of legal certainty, evidence-based decision-making and procedural fairness, as this approach relies on an external adjudicative process rather than requiring trustees to resolve contested allegations internally. However, it remains problematic, for reasons expressed below.

65. If Option 2 were to be adopted, some feedback has expressed a preference for Option 2b (automatic disentitlement upon a relevant court finding) over Option 2a (discretion upon such a finding). Under Option 2b, the determination of FDV has been made by a court, and the trustee's residual function is administrative rather than quasi-judicial.

66. However, we note that a mandatory requirement to disentitle a person precludes the trustee from considering any countervailing evidence that might otherwise have persuaded the trustee to pay the death benefit to the perpetrator. For example, if the judicial finding is old, the perpetrator may have subsequently demonstrated real and genuine remorse and a substantive and enduring change in conduct (rehabilitation). Further, Option 2b's automatic disentitlement mechanism does not accommodate a scenario where FDV conduct findings have been made against both parties in separate proceedings (i.e. the member towards the beneficiary; and, separately, the beneficiary towards the member).

Access to evidence

67. Consideration will need to be given to how a trustee will be able to access evidence of a relevant court finding that the beneficiary has perpetrated FDV against the

deceased member. As FDV proceedings and Family Law Act[28] proceedings usually all have prohibitions on publication of documents and decisions etc, it may be difficult, though not impossible, for a trustee to obtain this information.

Potential delays

68. Option 2 is likely to result in lower claims-handling costs and faster processing times when compared with Option 1, where judicial findings are available to the trustee. However, prolonged delays in processing a claim are likely to occur where charges have not yet been brought, as a trustee is likely to (and may be required to) defer consideration of the death benefit until the outcome is known.

Suggestions regarding Option 2

69. If Option 2 is progressed, any legislative framework would need to include an unambiguous description of the prescribed offences. Views on how this should be prescribed are mixed. We have received recommendations for it to be limited to criminal convictions for offences related to the death of the deceased member; and—perhaps—to findings by a court of competent jurisdiction in civil proceedings that the respondent committed FDV against the deceased, provided that such findings were made after a contested hearing (i.e. not by consent). Civil protection orders made by consent, without admission, should not constitute prescribed court findings for this purpose.

70. We understand that in practice, protection orders are frequently made where there has never been a forensic analysis of the evidence, but the orders are made because the respondent cannot resource a defence to an order which has no consequences as long as it is complied with. This makes option 2 problematic and underlines why it would be preferable to limit court findings to criminal convictions. We add that in some jurisdictions, police can issue final protection orders in some circumstances, and it is unclear whether these would be dealt with in the same class as court orders.

71. The framework would also need to include clear recognition that timeframes for determination of the death benefit will necessarily be extended where a trustee is required to make this assessment. This could have very real implications for other eligible beneficiaries—particularly, for any minor children of the deceased member.

72. We note that Option 2 may only offer a partial solution, and neglects victim-survivors who lack judicial evidence. This has the potential to disproportionately affect victim-survivors of FDV who may be apprehensive to proceed to court, or whose experiences are not substantially documented to the standard required. As such, pursuing this proposal may not achieve the policy aims underpinning the reform proposals.

73. To offset these deficiencies, it has been suggested that Option 2 could be adopted in combination with a mechanism for referral to an appropriate independent fact-finding forum (such as a court or tribunal) where the trustee has formed a reasonable suspicion that the potential beneficiary was a perpetrator of FDV against the deceased member. Under this approach, trustees should be provided with legislative guidance on factors to consider in determining whether a referral should be made.

---

[28] *Family Law Act 1975* (Cth), Part XIVB.

74. This approach may provide more independence, evidentiary rigour and legal finality to protect the interests of all parties. It may provide a more comprehensive approach by implementing an automatic disentitlement trigger where prescribed court findings apply, while utilising an independent forum as a neutral, expert arbiter for unreported FDV, or FDV that does not meet the prescribed offence threshold. If this approach is adopted, the relevant fact-finding forum must be appropriately resourced to meet this new caseload.

75. Feedback from the Superannuation Committee of the Legal Practice Section (**Superannuation Committee**)—and supported by the Consumer Law Committee—suggests a further possible approach. Where prescribed evidence is submitted to the trustee, and the trustee confirms that the evidence meets the prescribed criteria:

- any death benefit nomination in favour of the perpetrator would be set aside and the trustee would be empowered to depart from any provision of the governing rules that would require a payment to the perpetrator;
- nonetheless, the trustee would retain a discretion to include the perpetrator in a distribution.

Option 3—Referral to deceased estate or a court

76. Option 3 would give a trustee the power to pay a superannuation death benefit that would otherwise go to a beneficiary under a valid BDBN or governing rules, to the estate or into a court, where the trustee reasonably suspects FDV was perpetrated by a potential beneficiary against the deceased member.

77. The Law Society of South Australia (**LSSA**) and National Elder Law and Succession Law Committee (**NELSC**) support Option 3. However, there are several concerns with this Option, as set out below. (As noted above, the Law Council has not reached a position of support in favour of any of the Options proposed.)

Reliance on trustee analysis

78. Whilst the decision-making is removed from the trustee under Option 3, the trustee must still be able to substantiate a position of "reasonably suspecting" FDV. This means that the trustee must still undertake sufficient analysis of any allegations without clear evidentiary or procedural guardrails—thereby raising many of the issues raised by Option 1—before referring the matter.

79. The following points from LSSA and NELSC have been provided to assist in managing this issue:

    (a) Where a trustee becomes aware of credible allegations that a beneficiary perpetrated FDV against a deceased member, the trustee could be given a clear statutory power—and, in appropriate cases, an obligation—to suspend the distribution of the death benefit pending an application to an appropriate court. This power should apply regardless of whether a valid BDBN is in force. The trustee's role in this model is not to adjudicate the allegations but to hold the benefit pending judicial determination.

Consideration will need to be given to a clear timeframe for such an allegation to be brought to the attention of the trustee, particularly where there are beneficiaries who may be minors and the relevant beneficiary is now their sole parent. There are real and practical issues where third parties may not know what assets the deceased had and who to contact about such matters.

(b) If this proposal is accepted, the following parties should have statutory standing to apply to the court for orders in relation to the distribution of a superannuation death benefit in FDV circumstances:

- the trustee of the relevant superannuation fund;
- any dependent of the deceased member within the meaning of the SIS Act;
- the legal personal representative of the deceased member's estate;
- a child or parent of the deceased member.

The court should also have a broad power to join any person whose interests may be affected by an order.

We note that there is a real risk that the legal personal representative, parent of a child, and relevant beneficiary are the same people. This may be particularly the case where the deceased member did not leave a will.

80. Feedback suggests that the appropriate court for these applications is the Supreme Court of the relevant state or territory, exercising its existing jurisdiction in succession matters.[29] Consideration could be given to whether State and Territory Civil and Administrative Tribunals—with elevated jurisdiction—may provide an accessible and cost-effective forum for lower-value matters.

Reliance on State and Territory succession law

81. Where a payment is made to the estate, there is a risk that under State and Territory succession law the benefit would in many cases be paid to the perpetrator anyway (noting that the deceased member can leave a Will). We understand that intestacy rules generally direct payments to the spouse of the deceased person (who is often the perpetrator) and children (if any), and do not provide for the spouse to be disinherited on the grounds of FDV (unless the forfeiture rule applies). If there are other family members, such as children, a family provision claim could be made.

Burden on judicial system

82. Whilst courts may be in the best position to source and analyse evidence, we acknowledge that the Australian court system is under strain due to heavy workloads. We consider that the Australian court system is generally underfunded and urgently assessing and addressing this issue should be the priority of all governments.

83. Creating a default pathway into estate administration or court processes risks delays in resolving superannuation death benefits, additional costs and potential stress to family members. We note that these concerns are not unique to Option 3 and similar

[29] For example, in South Australia, the Supreme Court has jurisdiction over estate administration and succession matters under the *Succession Act 2023* (SA).

such concerns can be expressed about an AFCA process and/or an inquiry by a trustee. The benefit that Option 3 brings is a properly supervised judicial process.

84. While our strong preference is for a well-resourced judiciary that is able to address these matters in a timely manner, we have received the following points which may assist in managing the issue of burden on the judicial system and likely claims handling delays:

    (a) The Superannuation Committee suggests that alternative forums, with appropriate independence, may be better placed to assess claims involving allegations of FDV: for example, a specialised and appropriately resourced unit set up in AFCA.

    (b) The Superannuation Committee suggests that consideration be given to adopting a process analogous to the court approval required for the compromise of claims involving a person under a disability. Such processes, which exist across Australian jurisdictions (with some variation), could be adapted to manage claims involving allegations of FDV in a judicial setting.

    While the procedural detail differs between jurisdictions, such applications are commonly determined by a judicial officer—including an Associate Judge or equivalent—often in Chambers and, where appropriate, on the papers rather than in open court.

    The process generally requires the provision of formal evidence to enable the Court to assess whether the compromise is in the best interest of the person under the disability. This may include affidavit evidence, Counsel's advice (where appropriate), and the Proposed Order (there is often a template Order—Approving a Compromise of a Claim Affecting a Person with a Disability—which is expressly designed for use in Chambers and on the papers). Where the Court has concerns, it may require further evidence or list the matter for a short oral hearing.

    As these matters are generally heard in Chambers and usually on the papers, they can often be finalised more efficiently and with reduced cost, while minimising the burden on the Court. The principal benefit of such a process is that it provides judicial oversight and a degree of certainty for all parties.

    (c) The LSSA and NELSC have suggested that the following procedural innovations may also be considered—in close consultation with the courts—to address concerns about cost, delay and re-traumatisation:

    - *Expedited hearing list*: A dedicated, expedited list for superannuation FDV matters, with directions hearings within 14 days of filing and final hearings within 60 days where possible.
    - *Protective costs regime*: A statutory presumption that costs will not be ordered against a victim-survivor or their representative in proceedings brought in good faith, regardless of the outcome.
    - *Evidence reception rules*: Specific rules permitting the court to receive and give appropriate weight to non-judicial evidence of FDV—including

professional reports, sworn statements, and documentary evidence—within a structured evidentiary framework supervised by the court.
- *Interim distribution orders*: Power for the court to order interim distributions from the suspended death benefit to dependants who would suffer hardship pending final determination.
- *No publication orders*: Ready availability of suppression orders to protect the privacy of victim-survivors and their families.
- *Trustee discharge*: Upon payment into court or payment pursuant to a court order, the trustee is discharged from all further liability in relation to the death benefit.

Potential adverse consequences

85. Option 3 risks potential exposure of the death benefit to creditors of the deceased. The Law Council has previously expressed the need for a proposal for superannuation payments into the estate to be conditional on the inclusion of a mechanism that ensures the death benefit is "ring-fenced" within a person's estate to avoid the benefit being subject to estate debts.[30]

86. We note that the underlying tax outcome is determined by the character of the ultimate recipient, and is the same whether a superannuation death benefit is paid directly by the trustee or via the estate. The "look-through" mechanism in sections 302-10 and 302-145 of the *Income Tax Assessment Act 1997* (Cth) ensures that result in both pathways. However, two more limited issues arise.

87. Firstly, where a death benefit is paid to the legal personal representative, the legal personal representative assumes responsibility for withholding and remitting any tax payable in respect of amounts ultimately received by non-dependant beneficiaries, which introduces an additional layer of administrative complexity requiring careful estate management.

88. Secondly, and more significantly, where a will does not specifically address superannuation death benefits and those proceeds fall into the residuary estate, the class of ultimate recipients may be broader than the member intended, including beneficiaries who are not death benefits dependants (for example, charities). This may result in part of the benefit being received by non-dependants, thereby attracting tax on the taxable component and reducing the net amount available for distribution, including to those beneficiaries whom the proposed reforms are intended to protect.

89. In this way, routing benefits through the estate may inadvertently broaden the class of recipients beyond those contemplated by the policy, and diminish the quantum ultimately received by intended beneficiaries—not because of any difference in the underlying tax treatment, but as a by-product of inadequate succession planning. Consideration should therefore be given to how the tax treatment of those benefits interacts with any reforms to beneficiary eligibility. A model Will clause could usefully be developed to direct superannuation death benefit proceeds to death benefits dependants in priority to other residuary beneficiaries, supported by explanatory guidance encouraging review of existing estate planning documents.

---

[30] See the Law Council of Australia, Proposed reform to superannuation death benefits (Submission, 12 January 2024) 7.

90. Our understanding is that the same considerations apply under the existing discretionary model—the proposed reforms accordingly do not introduce a new tax risk, but rather alter the administrative pathway through which an existing risk is managed.

Suggestions regarding Option 3

91. If Option 3 is adopted, we have received the following suggestions for implementation:

- The court system would need to be made more accessible, more sensitive to the circumstances of victim-survivors, and better equipped to receive the kinds of evidence that FDV cases generate.
- The feasibility of an approach to simplifying the process for assessment of a claim referred by a trustee should be explored (for example, as described above—either a specialist tribunal or a modified judicial process).
- Consideration should be given to whether there is a threshold death benefit amount that Option 3 would apply to. Where the death benefit is small and the deceased member has no material estate assets, a process that requires claimants to incur legal costs will not be viable.
- Consideration should be given to ensuring that payments to other beneficiaries (that is, beneficiaries other than the perpetrator) are finalised and, if necessary, the disputed part of the benefit quarantined until a determination is made.

Additional comments

Broader review of death benefit rules

92. There have been previous government consultations seeking feedback on the requirements under superannuation law governing how death benefits are paid.

93. For example, a consultation on Treasury's Discussion Paper titled *Superannuation binding death benefit nominations and kinship structures*[31] was undertaken in 2019. The Australian Law Reform Commission also considered issues for superannuation death benefit nominations in their consultation on *Equality, Capacity and Disability in Commonwealth Laws*,[32] but did not make a reform recommendation in the Final Report.

94. The Law Council has also previously proposed amendments to the death benefit regime to require that all superannuation death benefits, other than those subject of a valid member's BDBN, form part of the estate of a deceased person. Under this proposal, the SIS Act would be amended to require that, where there is no valid BDBN, death benefits are to be dealt with according to the laws of succession. In treating the death benefits as any other asset of the deceased person's estate, it would allow application of the forfeiture rule[33] to apply to that asset and also gain

---

[31] Treasury, Superannuation binding death benefit nominations and kinship structures (Discussion Paper, March 2019). The Law Council responded with a submission on 24 May 2019.

[32] Australian Law Reform Commission, Equality, Capacity and Disability in Commonwealth Laws (Final Report, August 2014) 299-301.

[33] This may require reform to the forfeiture rules in each jurisdiction.

access to other protections not currently available in the superannuation environment, including access to family provision claims, and other relevant principles of succession law.[34]

95. A reason for this proposal is that the current separation of superannuation death benefits creates an anomaly for practitioners advising on the estate of a deceased person, where they must account for one body of law governing the estate, and an entirely separate—and at times contradictory—body of rules governing the superannuation.

96. The Law Council also suggests that the current proliferation of superannuation death benefit nomination types—binding lapsing, binding non-lapsing, non-binding, and numerous fund-specific variants—creates complexity, inconsistency, and uncertainty for members and practitioners alike. Possible approaches for improving consistency and certainty could include prescribing a single form of death benefit nomination, which is non-lapsing and binding where properly executed and maintained; this would provide the member with certainty, the trustee with clarity, and the court with a definitive starting point. The current landscape of lapsing nominations, in particular, creates a genuine injustice in the circumstance where a member has carefully completed a nomination and may find that the nomination lapsed three years earlier, and the trustee is now exercising a discretion that the member believed they had foreclosed. Further, once an earlier nomination has lapsed, the member may no longer have the capacity to make a new valid BDBN. Matters that would need to be considered in implementation of this proposal would include:

- the prescribed form of execution, including whether execution as for a Will is required; and
- grounds for challenge (for e.g., lack of testamentary capacity or family provision style claims).

Ante-mortem coercive control

97. The Consultation Paper is confined to the post-mortem scenario, namely where a surviving perpetrator claims a superannuation death benefit. It does not address the equally serious, but converse, risk of ante-mortem interference with a member's nomination by a financial abuser, coercive controller, or attorney acting without proper authority. In circumstances where a nomination is formally valid, none of the three options proposed in the Consultation Paper provide a mechanism for review or redress.

98. Succession law has long recognised and responded to comparable forms of harm through the doctrines of undue influence, suspicious circumstances, and testamentary capacity. These protective doctrines do not presently extend to death benefit nominations. The broader structural reforms that the Law Council has previously proposed (see above) would incorporate equivalent safeguards, thereby addressing both categories of risk within a single coherent framework.

---

[34] The Law Council has previously expressed this proposal to be conditional on the inclusion of a mechanism that ensures that the death benefit is "ring-fenced" within a person's estate to avoid it being subject to estate debts. See the Law Council of Australia, Proposed reform to superannuation death benefits (Submission, 12 January 2024) 7.

Financial hardship claims by victims of FDV

99. Superannuation funds from time to time receive severe financial hardship claims from victims of FDV, and are often unable to release benefits to these claimants. The Superannuation Committee believes that these types of claims are materially greater in number and more frequent than claims involving the death of a member due to FDV by a potential beneficiary.

100. We understand that the release on these grounds is only available where:

- for a member who is less than age 60 plus 39 weeks: they must have received eligible government income support payments for a continuous period of 26 weeks; and can demonstrate they are not able to meet reasonable and immediate family living expenses—a withdrawal of $1,000 (or full balance if less) up to $10,000 is permitted; or

- for a member who is aged 60 plus 39 weeks, or older: they must have received eligible government income support payments for a cumulative period of 39 weeks after reaching age 60; and are not gainfully employed—a withdrawal of any amount is permitted.

101. Members seeking to withdraw from their superannuation to enable them to leave a FDV situation (for example to pay for relocation expenses) are often unable to meet the strict criteria for a severe financial hardship claim. In considering this matter, it should be noted that access to superannuation benefits may be the only financial support that a victim of FDV can call upon without the knowledge of a perpetrator: often the perpetrator will have access to bank accounts and credit information, and will be monitoring those streams of finance. Access to a claim for financial hardship through superannuation may not be as readily accessible by the perpetrator and may be easier for the victim to control.

102. While outside the scope of this consultation, the Superannuation Committee suggests that consideration be given to expanding the circumstances in which trustees can release superannuation benefits on severe financial hardship grounds.

Self-managed superannuation funds

103. We acknowledge that Self-managed superannuation funds (**SMSFs**) are out of scope of this consultation as they operate under their own distinct administrative arrangements and governance models.[35] However, SMSFs have the potential to facilitate payment of entitlements to a perpetrator without oversight. For example, an SMSF trustee may also be a perpetrator of FDV. This remains a concern for the Law Council, and the gap leaves a significant class of victim-survivors without protection. Specific risks in the SMSF context could include, for example:

- a perpetrator-trustee unilaterally amending a BDBN after the victim-survivor's death;

---

[35] Treasury, Preventing perpetrators from accessing victims' super death benefits (Consultation paper, March 2026) 11.

- a perpetrator-trustee controlling the fund's assets in ways that diminish or extinguish the benefit available for distribution; or
- a perpetrator-trustee making distribution decisions that favour themselves and exclude other eligible beneficiaries (in the absence of a valid BDBN).

104. These risks are compounded by the fact that SMSFs are generally subject to lighter regulatory oversight than APRA-regulated funds, and the Australian Taxation Office's enforcement role does not extend to adjudicating death benefit distribution disputes.

105. We note that Treasury has stated that additional consultation is required in relation to SMSFs and that "Government is considering its response to the Financial Abuse Inquiry Report, which recommends 'a review of the intersection between financial abuse and the superannuation system, particularly in relation to [SMSFs]'".[36] The Law Council would welcome the opportunity to engage in this additional review and encourages the development of separate but complementary reform proposals for SMSFs.

Family Law Act provisions

106. We note that under, Part VIII and Part VIIIAB of the Family Law Act, courts have broad powers to alter property interests between spouses and de facto partners, including through the splitting of superannuation interests. Where such proceedings are commenced prior to death, they may be continued by the legal personal representative, enabling the Court to make orders that effectively reallocate assets (including superannuation) as if the deceased had not died.

107. This potentially provides a mechanism—albeit a contingent one—for preventing unjust enrichment, including in circumstances involving FDV. However, where no proceedings are on foot at the time of death, this protective mechanism is unavailable, and the distribution of superannuation is left to trustee discretion or nomination, which may allow a perpetrator to benefit.

[36] Treasury, Preventing perpetrators from accessing victims' super death benefits (Consultation paper, March 2026), 11.

Attachment: Option 1—Views of the Consumer Law Committee

108. While noting the Law Council's concerns about option 1 expressed above on behalf of most contributors, the Consumer Law Committee is of a different view. The Consumer Law Committee thinks that trustees are already accustomed to making nuanced, evidence-based assessments of complex relational and financial circumstances, and that the "fair and reasonable" standard applied through AFCA oversight provides an appropriate and flexible framework. This view notes that the claim-staking process, AFCA's complaints jurisdiction, and the Federal Court's appellate role on questions of law combine to provide a robust procedural framework.

109. The feedback from the Consumer Law Committee notes that current legislative and regulatory arrangements (including AFCA guidance about the issue) are not sufficient, and there is need for legislative reform, including the adoption of a consistent definition of FDV: for example, section 4AB of the *Family Law Act 1975* (Cth).

110. The Consumer Law Committee's feedback in support of Option 1 emphasises that trustees should be required to reach a level of satisfaction supported by sufficiently cogent evidence before exercising the power to disentitle a beneficiary. Where the evidence is less than a criminal conviction, consistent with the principles underlying *Briginshaw v Briginshaw*,[37] the Committee argues that the standard of satisfaction required should be calibrated to the gravity of the finding and its financial consequences. A mere allegation, unsupported by any corroborating material, should not be sufficient to disentitle an otherwise eligible beneficiary.

111. With respect to concerns that trustees do not currently have a sufficient understanding of, and experience with, the FDV framework, and the related risks of systems abuse, including the risk of developing unconscious or uncontrolled biases that may influence decision-making, the view of Consumer Law Committee is that with more support for trustees, this burden may be alleviated.

[37] [1938] HCA 34.

About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its constituent bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice, and general improvement of the law.

The Law Council advises governments, courts, and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents its constituent bodies:

- the Australian Capital Territory Bar Association;
- the Law Society of the Australian Capital Territory;
- the New South Wales Bar Association;
- the Law Society of New South Wales;
- the Northern Territory Bar Association;
- the Law Society Northern Territory;
- the Bar Association of Queensland;
- the Queensland Law Society
- the South Australian Bar Association;
- the Law Society of South Australia;
- the Tasmanian Bar;
- the Law Society of Tasmania;
- the Victorian Bar Incorporated;
- the Law Institute of Victoria;
- the Western Australian Bar Association;
- the Law Society of Western Australia; and
- Law Firms Australia.

Through these bodies, the Law Council represents more than 110,000 Australian lawyers.

The Law Council is governed by a board of 23 Directors: one from each of the constituent bodies, and six Executive members elected by Directors. The Directors meet quarterly to set objectives, policy, and priorities for the Law Council. Between Directors' meetings, responsibility for the policies and governance of the Law Council is exercised by the Executive members, led by the President. In 2026, the Law Council Executive comprises:

- Ms Tania Wolff, President
- Ms Elizabeth Shearer, President-elect
- Mr Lachlan Molesworth, Treasurer
- Ms Jennifer Ball, Executive Member
- Mr Justin Stewart-Rattray, Executive Member
- Mr Ante Golem, Executive Member

The Chief Executive Officer of the Law Council is Dr James Popple.

The Law Council's Secretariat is based in Canberra. Its website is www.lawcouncil.au.