

I am writing in about the Superannuation Industry (Supervision) Act 1993 (Cth) (SIS Act) and Superannuation Industry (Supervision) Regulations 1994 (Cth) (SIS Regs) and the lack of protections in place to prevent death benefits going to abusers.

I would like to draw your attention to the fact that financial abuse can be interpreted as financial dependency under death benefit applications.

A family member recently died by suicide while in a relationship which I would characterise to be emotionally abusive. The ease at which a person could claim a death benefit despite a relatively short emotionally abusive relationship disturbed me greatly. The case is currently with AFCA.

It is difficult to know what went on behind closed doors, but I witnessed some concerning things. My family member tried to talk to me about the fact he was stressed about money. She spoke over the top of him saying "it's worth it though" then shut down the conversation. On his 29th birthday, the last birthday he had on this earth, she said to him "You're 29, What have you even done with your life." She reported to the police they argued about money on the day of his death. Thousands of dollars had been spent from his account in a relatively short period of time before his death and he died with almost nothing.

Now I have no idea whether the relationship met the criteria for financial abuse. However, the fact that she was able to override his valid death benefit nomination to his Estate with a signed lease agreement, which he expressed regret about signing, seems like an extension of the abuse he experienced when he was alive. This was supported by a trustee who did not know him and did not know what she put him through. Nine statutory declarations from his closest family and friends, including his 3 best friends, who had nothing to gain but to stand up for their dead friend, were all ignored. Evidence that she failed to hand over his phone and laptop passcodes to police and accessed his accounts after his death was also ignored.

It is common knowledge that a marriage affords a spouse certain rights. It is also commonly understood that after living with a partner for a period of time and when you take steps towards commitment to a shared life together such as having children or purchasing property together, then that will also afford a partner the same rights as marriage. What is not common knowledge is that something as simple as a signed lease agreement and a Facebook relationship status could be equated with a marriage license and that death benefit nominations mean very little unless they are binding. This makes this area of legislation ripe for abuse, particularly in the context of a housing and financial climate which is forcing people to fast track their relationships to cope with cost-of-living pressures.

Around thirteen years ago, I was in a domestic violence relationship. I signed a 12 months lease with him. At some point, he lost his job. From then on I took over paying the bills and rent. It was hard and I felt like I had no choice but to support him in this circumstances. He was also receiving money from a family member to cover his portion of the rent, but it did not go on rent.

He had an expectation that I was to support him. Under SIS regulations, this would have made him my “financial dependent” which, unbeknownst to me, would have strengthened his death benefit claim, had I died while living with him. Neither the short timeframe of the relationship, nor the evidence of abuse are likely to have been considered relevant. Nor would it have been relevant that I did not nominate him. The relationship ended in a restraining order six months into my lease with him. I was one of the lucky ones.

Sometimes financial abuse involves withholding access to money. Other times it involves forcing a partner to pay for their living expenses. There is nothing in the SIS legislation that prevents a financial abuser from claiming financial dependency in a death benefit claim.

I would like to draw your attention to the sad case of Claire Redfern (Ievers vs SCT). Her partner moved into the family home when her parents moved interstate for work. Their relationship was marked by escalating domestic violence. Her income was going into his account and he kept the bank cards. She reportedly had to borrow money from family for basic necessities. Miss Redfern was 20 when she died. Her death was ruled a suicide. The suicide ruling was never accepted by the family, who believed her death was suspicious. Her abusive partner (who had already allegedly broken up with her before her death), successfully claimed her death benefit using what I would consider to be financial abuse as proof of financial dependency. Both the SCT and the federal court sided with the partner as the abuse was not considered relevant to a death benefit pay out.

Consent is often compromised in relationships marked by coercive control. A relationship involving emotional abuse and manipulation, undermines the victim’s ability to give their consent freely to be in the relationship. Abusive relationships are much harder to leave than non-abusive relationships that have come to their natural end for a variety of different reasons. This concept does not appear to be given due consideration under the current legislation.

I am aware there is a forfeiture rule in place, but it is extremely narrow in scope. Death by suicide in the context of coercive control is unlikely to be covered. This means that someone could potentially profit from coercive control through a death benefit. This also highlights how a failure to address family violence and financial abuse in SIS legislation could be potentially dangerous for victims.

A recent AFCA case highlights the issues in this area when the following comment was made “even if the relationship had fallen below community expectations and standards in respect of domestic violence, the law does not recognise this as a reason to prevent a person from receiving a death benefit (Case: ████████).” This is a hugely disappointing response, given that trustees have a fiduciary duty to act in the best interest of their members and this duty should not end with a person’s death.

I have recently requested the government overtly address family violence in superannuation legislation by referencing the definition of family violence in the Family Law Act (1975). This

definition includes financial abuse. Family violence should exclude a person from profiting from their victim's death and should always be considered relevant to death benefit payouts. Financial abuse should never be confused with financial dependency.

I am a clinical psychologist who works with domestic violence victims and would very much like to see change in this area.

Thank you for taking the time to read my submission.