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Submission on Early Release of Superannuation Consultation

About Domestic Violence Victoria (DV Vic)

As the peak body for family violence services in Victoria, DV Vic has a broad membership of over 80 state-wide and regional family violence agencies across Victoria, which provide a variety of responses to women and children who have experienced family violence, including specialist family violence services. Our members also include community and women's health agencies, some local governments and other community service agencies.

DV Vic holds a central position in the Victorian integrated family violence system and its governance structures. DV Vic is a member of the Australian Women Against Violence Alliance (AWAVA) and the Economic Abuse Reference Group, a group of community organisations which aims to influence government and industry responses to the financial impact of family violence.

In February 2018, DV Vic wrote a submission responding to Section 1.22 of Treasury's *Review of the early release of superannuation benefits* discussing if the early release of superannuation should be expanded to victim survivors of family violence. In this submission we considered the financial impact of family violence on victim survivors, including the financial barriers that often prevent victim survivors from leaving an abusive relationship, and the need to balance addressing 'hardship' now versus 'preservation of superannuation' to avoid financial hardship in the future.

Equal economic participation and financial security is critical to women's financial independence and their ability to make genuine choices in their lives, including the ability to leave a violent relationship. We are pleased that the Government is recognizing the link between economic inequality, family violence and women's ability to leave a violent relationship in its *Women's Economic Security Statement*. We recognise that for some victim survivors and their children, early access to superannuation could provide financial support at critical moments as they pursue lives free from violence. We also acknowledge that several organisations who work with women experiencing family violence ultimately support the early release of superannuation. However, while we respect and understand our colleagues' argument, DV Vic does not support this proposal due to concerns that:

- 1) early access to superannuation will have a negative impact on victim survivors', predominately women's, ability to be financially secure later in life, and
- 2) this proposal is a move towards absolving the Australian Government from its responsibility to provide support for women, children and people at risk of family violence.

Women's financial security

Currently women are retiring with less than half the average superannuation payouts received by men.¹ Women who have experienced family violence are likely to have even less money in their superannuation accounts as a result of violence and the impact it has on women's workforce participation. Between 30 and 40 percent of older, single, retired women are estimated to be experiencing poverty and financial hardship² and older, single women are also now the fastest growing cohort of people experiencing homelessness.³ Unfortunately, women who experience additional forms of discrimination either due to race, disability, age, sexuality or socio-economic status are at even greater risk of experiencing poverty later in life.⁴

Research also suggests that women's economic security is also disproportionately affected by relationship breakdown. The Australian Institute of Families Studies found that in Australia a woman's equivalised household income falls by 21 percent following a divorce. Six years after separation, their income was found to only have recovered by half.⁵ For victim survivors of family violence, the economic impacts of separation can be even more extreme due to ongoing economic abuse post separation that can manifest in prolonged family court proceedings, joint property or debt settlements and non-payment of child support.⁶ In most cases, victim survivors never fully financially recover from family violence. At best, they can only try to gain or regain financial-wellbeing.⁷

In this environment, DV Vic believes that it is unfair to expect victim survivors to draw on their retirement savings to try to recover from family violence, particularly as victim survivors are likely to have even less economic resources at their disposal than the average Australian woman. Such a policy essentially penalises victims later in life for a perpetrator's choice to use violence against them and continues the impact of living with violence through the life span, into retirement.

Government responsibility

As a signatory to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the Australian Government has a responsibility to respect, protect and promote the safety of its residents, including victim survivors of family violence.⁸ By allowing early access to

¹ Ross Clare, "Superannuation Account Balances by Age and Gender," 2017, https://www.superannuation.asn.au/ArticleDocuments/359/1710_Superannuation_account_balances_by_age_and_gender.pdf.aspx?Embed=Y.

² Roger Wilkins and Inga Lass, "The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 16" (Melbourne Institute Applied Economic and Social Research, 2018), https://melbourneinstitute.unimelb.edu.au/__data/assets/pdf_file/0005/2839919/2018-HILDA-SR-for-web.pdf. & Susan Feldman and Harriet Radermacher, "Time of Our Lives? Building Opportunity and Capacity for the Economic and Social Participation of Older Australian Women" (Lord Mayor's Charitable Foundation, 2016), <https://www.lmcf.org.au/getmedia/23a2ebd6-b2dc-48b1-bc81-59e1bc0f27cd/2016-03-07-LMCF-Time-of-Our-Lives-Report.pdf.aspx>.

³ ABS, "Cat No 2049 Census of Population and Housing: Estimating Homelessness, 2016," March 14, 2018, <https://www.abs.gov.au/ausstats/abs@.nsf/mf/2049.0>.

⁴ Somali Cerise et al., "Accumulating Poverty? Women's Experiences of Inequality over the Lifecycle" (Sydney: Australian Human Rights Commission, September 2009), https://www.humanrights.gov.au/sites/default/files/document/publication/accumulating_poverty.pdf.

⁵ David de Vaus et al., "The Economic Consequences of Divorce in Six OECD Countries," *Australian Journal of Social Issues* 52, no. 2 (June 2017): 180–99, <https://doi.org/10.1002/ajs4.13>.

⁶ Nilmini Fernando, "Financial 'Teachable Moments' for Women Affected by Family Violence" (WIRE, November 1, 2018), <https://www.wire.org.au/assets/Uploads/WhenIsTheRightTimeToTalkAboutMoney.pdf>.

⁷ Fernando, N. (2018) "Financial 'Teachable Moments' for Women Affected by Family Violence."

⁸ "OHCHR | CEDAW in Your Daily Life," accessed February 12, 2019, <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/DailyLife.aspx>.

superannuation, we believe that the Commonwealth Government is shifting this responsibility onto individuals, rather than ensuring that a robust and well-resourced community service safety net is in place to support victim survivors of family violence to achieve safety.

We appreciate that the Review says that the early release of superannuation is not intended to be a substitute for adequate government support, and that timely and targeted assistance through the welfare system is the preferred method of assisting victim survivors. However, budget allocations speak louder than words. The overarching discourse from the Commonwealth Government that spending on welfare and human services needs to be rationalised to balance the budget does not lend confidence to the idea that early access to superannuation for family violence will not eventually replace public spending on services.

The number of women experiencing family violence who will need to access their superannuation early is directly related to the extent to which governments fund, or do not fund, community support services, as well as the extent to which the Australian Government provides an adequate safety net to women and children through the social security system. If a woman experiencing family violence has accessed the service system and Centrelink, including the Crisis Payment, and still needs to access her superannuation, this indicates that the level of assistance available through existing programs is not adequate to support women and children to escape and recover from violence.

Allowing early access to superannuation is also likely to benefit only a small number of women and exclude those who have the least access to financial resources, are most reliant on income support services and are at the greatest risk of poverty. This proposal assumes that women have superannuation to access, an assumption that is largely based on the experiences of middle-class women. As mentioned, victim survivors of family violence are likely to have much less superannuation than the average Australian woman. Many women, particularly women from migrant backgrounds who have no work history in Australia and Aboriginal women who have traditionally been excluded from employment, will have no superannuation at all, rendering this proposal useless in supporting women who face multiple structural disadvantages.

Instead of allowing early access to superannuation to fill gaps in the system, the Commonwealth Government needs to support victim survivors by providing income support at a level that equally enables women and children from all backgrounds and circumstances to leave a violent situation without entering a life of poverty and disadvantage. The National Social Security Rights Network released a report last year identifying numerous ways in which the social security system falls short in properly supporting victims of family violence.⁹ We urge the Commonwealth Government to urgently implement the recommendations listed in this report and increase the level of income support payments in general to prevent recipients from getting stuck in a cycle of poverty.

The Commonwealth Government also needs to adequately fund specialist services including family violence services, community legal services and financial counselling. These services can help victim survivors safely leave violent relationships through direct service delivery, case management, and in Victoria, through the allocation of flexible support packages, which we discuss below. A report by WIRE in 2018 looking into what types of financial support would be most useful to women

⁹ National Social Security Rights Network, "How Well Does Australia's Social Security System Support Victims of Family and Domestic Violence?," 2018.

experiencing family violence found that over half of the survey respondents believed the most useful services for them would have been specialist family violence counselling, financial counselling and the banks' help to manage joint accounts and debts.¹⁰ These types of services are what is needed to support women to financially recover from family violence, not policies that individualise and privatise systemic social problems and make a women's access to support dependent on her access to income and economic resources.

In addition to our concerns above, we have several concerns about the proposal's implementation should the proposal go ahead.

1. Current evidentiary requirements undermine the need to facilitate quick access to funds to provide women with an early intervention

We are pleased that the Review clearly acknowledged that timely support is important for victims of family violence. If this proposal goes ahead it is important that victim survivors can quickly access the money they need to safely leave a violent relationship as early as possible. However, we feel that the proposed evidentiary requirements will undermine women's ability to access this money as an early intervention. Making women obtain a judicial order or documentation from police and other relevant professionals takes time and causes women to have to jump through bureaucratic hoops to access their own personal money, which could delay their ability to leave a violent relationship.

Women's experiences of gender-based violence, harassment and sexual assault are consistently questioned and dismissed by accusations (usually by men) that women are lying about their experiences.¹¹ Requiring women to produce evidence beyond her word that she is experiencing violence implies that women should not be believed. It is imperative that women are not 'put on trial' to prove their experiences in order to access their own superannuation. Furthermore, many women do not seek the support of speciality services and may wish to access their superannuation in order to avoid needing to access the service system entirely. The proposed evidentiary requirements prevent women from doing this.

DV Vic supports that notion that some evidence needs to be provided to justify early access to superannuation. However, if this plan is to go ahead, we believe the evidentiary requirements need to be low to facilitate early access to superannuation and minimise the burden on women to "prove" their experiences. We share AWAVA's concerns about the narrow list of professionals able to provide evidence and the type and number of supporting documents currently required. We believe that further consultation needs to be undertaken on what types of evidence are appropriate if this proposal is to proceed.

2. The principle of "last resort" is unclear and needs to be defined

We support the principle of "last resort" but are unclear about how this principle will be applied in practice. The reality of the family violence sector is that services are struggling to meet demand and consequently some victim survivors do not get the support they need. As awareness of family violence increases, demand for these services will only rise. In Victoria, specialist family violence

¹⁰ Fernando, "Financial 'Teachable Moments' for Women Affected by Family Violence."

¹¹ ANROWS, "The National Community Attitudes towards Violence Against Women Survey (NCAS) 2017."

services are already feeling the impact of the reforms instigated by the Royal Commission into Family Violence and are struggling to respond to the number of women approaching them for support. We support the initiative that the ATO, as the new Regulator of early access to superannuation, would be required to provide victim survivors with information about alternative options prior to accessing superannuation to strengthen the principle of “last resort.” However, we are not convinced that doing so without dedicated resourcing to the service system will result in a system able to respond to the demands that this new referral pathway will create.

We argue that the principle of “last resort” needs to be more clearly defined to ensure women do not feel they need to access their superannuation when other supports are available to them. Guidelines should make it clear if a woman must be case managed or have contacted a service before she is able to access superannuation early, or if she only needs to demonstrate that she has no other personal resources available to her at the time. Without clear guidelines, we feel that this principle will be unenforceable and essentially meaningless.

While we are mindful not to create barriers for women to access their superannuation, we believe that women should be required to see a financial counsellor, ideally a specialist family violence financial counsellor, prior to being able to access their superannuation. This would ensure that women are able to get the financial information they need to make informed decisions about accessing their superannuation early. It also would also help protect women from accessing superannuation to pay off debts or address other financial issues that could have been addressed by a financial counsellor or another part of the service system. If this proposal goes forward, we advocate for funding to be included in this proposal to scale up financial counselling services so they are able to meet the additional demand that will be generated through this scheme in a timely manner so as not to delay women’s ability to access their superannuation quickly if this is the course of action they decide to take.

3. ATO staff need to be properly trained and equipped to accurately assess cases involving family violence and refer to appropriate supports

We recognise that the ATO was chosen to be the Regulator of early access to superannuation so funds could be accessed faster. We are supportive of this aspiration and believe it makes sense to move this function to the ATO considering the ATO’s increased role in facilitating access to a perpetrator’s superannuation as part of family law property settlements as recommended by Women’s Legal Service Victoria’s *Small Claims, Large Battles* report.¹² However, we have concerns about the ATO’s expertise to accurately and respectfully assess cases involving family violence.

A recent report into how the social security system supports victim survivors of family violence found that although the system has made improvements in the last few decades, many victim survivors still have negative experiences, particularly with Centrelink, with staff ‘gatekeeping’ access to the social security system and lacking the skills to discretely and effectively work with clients experiencing family

¹² Women’s Legal Service Victoria, “Small Claims, Large Battles: Achieving Economic Equality in the Family Law System” (Melbourne: Women’s Legal Service Victoria, 2018), <https://womenslegal.org.au/files/file/WLSV%20Small%20Claims,%20Large%20Battles%20Research%20Report%202018.pdf>.

violence.¹³ ATO personnel will need to be trained to understand the nature, dynamics and impact of family violence and how to respectfully work with victim survivors. They also will need to be trained on how to avoid potentially colluding with perpetrators of family violence and to identify instances where the perpetrator may be coercing a victim survivor to access her superannuation for his benefit.

In addition, we have concerns about the potential risk of engaging with the ATO for some women and their willingness to engage with the ATO to access their superannuation as a result. Economic abuse is estimated to be prevalent in as many as 50-90 percent of all family violence cases¹⁴ and can include perpetrators accruing debts in their victim's name, ruining their victim's credit rating or withholding information about income or assets to make it impossible for their partner to accurately inform Centrelink. In addition, perpetrators may coerce their partner to not declare income or claim social security payments to which they were not entitled.¹⁵

Women who have experienced economic abuse may be reluctant to approach the ATO for fear of these debts and/or discrepancies with Centrelink being investigated. Furthermore, some women may lack confidence in their ability to manage money after experiencing repeated abuse,¹⁶ which could compound their fear of approaching the ATO. If this proposal is to proceed, policy makers need to give careful thought to how victim survivors of family violence will be assured protection and support to overcome the effects of economic abuse in a way that validates their experience and helps them recover. In addition to strong policies that protect victim survivors, the ATO would need to develop strong referral pathways to specialist family violence services, financial counsellors and community-based lawyers for women in these circumstances who are not already linked with services.

4. Assumptions that early access to superannuation will be used in a similar manner to Flexible Support Packages are flawed

DV Vic has been directly involved in the development and implementation of Flexible Support Packages (FSPs) in Victoria and employs a state-wide coordinator to oversee the implementation of the scheme. FSPs play a critical role in the family violence system by providing flexible funds that enable an earlier intervention to support women and children to escape family violence in a way that was not previously possible. The program has enabled positive outcomes for women and children and we believe that this program should be expanded.

However, we question comparisons made in the Review between FSPs in Victoria and how early access to superannuation is predicted to be used. It is true that most funds disbursed as part of FSPs have been used for housing, security and transport to leave a relationship. However, this is the case because the agencies responsible for accessing and distributing the FSPs are crisis and accommodation agencies and distribute funds according to certain guidelines that are designed to

¹³ National Social Security Rights Network, "How Well Does Australia's Social Security System Support Victims of Family and Domestic Violence?"

¹⁴ Owen Camilleri, Tanya Corrie, and Shorna Moore, "Restoring Financial Safety: Legal Responses to Economic Abuse" (Good Shepherd Australia New Zealand and Wyndham Legal Services Inc., 2015), https://www.goodshep.org.au/media/1220/restoring-financial-safety_legal-responses-to-economic-abuse_web.pdf.

¹⁵ National Social Security Rights Network, "How Well Does Australia's Social Security System Support Victims of Family and Domestic Violence?"

¹⁶ Fernando, "Financial 'Teachable Moments' for Women Affected by Family Violence."

meet women's immediate crisis needs. There is no stipulation that women experiencing family violence must be in crisis to access superannuation, so it is not accurate to assume that superannuation will be spent in the same way as FSPs.

Family violence has long-term financial impacts for victim survivors and economic abuse can continue long after post-separation, when the perpetrator has lost other mechanisms of control.¹⁷ In the first two years post-separation, victim survivors often continue to grapple with multiple legal processes in multiple legal systems and other forms of post-separation financial abuse, including dealing with joint debts, delayed asset settlements, perpetrators breaching court orders, not complying with child support payments and disputing parenting arrangements.¹⁸

Some women may request to access superannuation when they are in crisis, particularly if they are not in Victoria and do not have access to FSPs, and may request to do so to fund housing, security and transport costs. However, we expect that some women will access superannuation early to fund ongoing legal battles that are being drawn out by the perpetrator. This is particularly likely in the context of chronically underfunded community legal and financial counselling services¹⁹ who operate with persistent doubt about their ongoing sustainability.²⁰ Without access to community legal support or financial advice, women are forced to either seek private counsel at significant personal cost or often settle for poor legal and financial outcomes.

It is not unusual for women to be entangled in the Family Court for five years at significant cost. In such a scenario, it becomes easy to imagine how even the proposed cap of \$10,000 over two years will quickly be eaten up and perhaps utilised multiple times to fund ongoing court costs and in turn decimate the victim survivor's superannuation. Lack of safeguards against this leaves women vulnerable to ongoing economic abuse from their perpetrator.

If this proposal was to proceed, DV Vic would not support a prescriptive list of what superannuation could be spent on, or a certain time frame within which a woman is able to access it. As the Review mentions, victim survivors' needs will vary according to personal circumstances and women should be able to access their superannuation for what they need when they need it. However, it does, once again, point to the importance of having a strong community services sector to support women throughout the continuum of recovery. It also illustrates the value of implementing a nation-wide FSP scheme to help women across the country get equitable access to early intervention funds that can help them cover housing, transport and security costs instead of requiring them to access their personal retirement funds to get this support.

¹⁷ Camilleri, Corrie, and Moore, "Restoring Financial Safety: Legal Responses to Economic Abuse."

¹⁸ Fernando, "Financial 'Teachable Moments' for Women Affected by Family Violence."

¹⁹ Productivity Commission, "Access to Justice Arrangements: Overview" (Canberra: Australian Government Productivity Commission, 2014). P 30

²⁰ Gareth Hutchens, "Coalition Gives Short Reprieve to Aid and Charity Groups after Slashing Funding," *The Guardian*, November 17, 2018, sec. Australia news, <https://www.theguardian.com/australia-news/2018/nov/18/coalition-gives-short-relieve-to-aid-and-charity-groups-after-slashing-funding>.

5. Lack of regulation opens women up to exploitation from unscrupulous providers and/or their perpetrator

Among the concerns already articulated in this paper, DV Vic is also concerned that allowing early access to superannuation will open women up to exploitation from unregulated and unscrupulous providers. In the section discussing early access to superannuation on medical grounds, the Review paper discussed the issue of the integrity of some medical practitioners certifying claims for early release when they either did not have any medical expertise relevant to the patient's condition or had no relationship with the patient.²¹ In these cases, it is questionable if accessing superannuation early was really in the patient's best interest.

DV Vic has similar concerns that some private providers may suggest to women that they could access their superannuation early to pay for their services when it is not in the woman's best interest to do so. For example, it is possible that a lawyer, contracted by a woman involved in drawn out legal proceedings as a result of family violence, may suggest to their client that she could continue to pay legal costs by accessing her superannuation. Such a scenario clearly opens women to risk of exploitation when they are already vulnerable. It also gives a perpetrator a new mechanism through which he can perpetrate abuse and affect a victim's financial security.

DV Vic has seen such risks of exploitation in our experience of FSPs, particularly related to the related Personal Safety Initiative (PSI) which will cover security measures such as locks, security doors and surveillance. Since the Royal Commission and the increased awareness of family violence, many businesses suddenly are "in the business" of family violence but in reality, have no understanding of family violence risk management to keep women and children safe. This resulted in the Victorian Government implementing clear guidelines and minimum standards to which security companies and other industry partners need to adhere in order to partner in delivering FSPs and PSI. Implementing these standards has delayed the project, but it has weeded out unscrupulous companies and minimised risk to women by ensuring providers, and the products they provide, are reputable and up to a certain standard.

The risk of exploitation demonstrates yet another risk in allowing early access to superannuation. A better policy would be to fund a national, regulated FSP program to provide flexible, early intervention responses to women and children experiencing family violence across the country. We advocated for such a scheme in our last submission. Unfortunately, we feel that early access to superannuation is being proposed instead of the Government funding a national scheme. We urge the Commonwealth Government to implement and fully fund flexible support packages across the country to give women and children equal access to support.

Conclusion

DV Vic maintains our concerns about this scheme's impact on women's long-term financial security and the diminution of Government's role in providing government services to support vulnerable

²¹ Australian Government The Treasury, "Review of Early Release of Superannuation Benefits: Further Consultation and Draft Proposals," n.d.

citizens. In addition to these concerns, we have concerns with how this scheme would be implemented and the range of issues and risks for women that this scheme would create. We feel that this scheme is too fraught to be implemented well and that it should be abandoned.

Instead of granting early access to superannuation for victims of family violence, we call for the Federal Government to:

- 1) fund a national Flexible Support Package style program,
- 2) fully fund support services for victims of family violence to a level that allows them to respond to true demand, particularly specialist family violence services, community legal services and financial counsellors, and
- 3) fix the social security system so it provides a genuine safety net for people who need it.

Thank you for the opportunity to respond to this Review.

If you would like to speak further about the issues in this submission, please contact:

Kate Mecham

Policy Advisor

Domestic Violence Victoria

Katemecham@dvvic.org.au | 03 9921 0825

Alison Macdonald

Policy Manager

Domestic Violence Victoria

alisonmacdonald@dvvic.org.au | 03 9921 0821