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Manager, Early release of superannuation
Retirement Income Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam

Vision Super submission
Review of superannuation and victims of crime compensation, May 2018 (Review)

Vision Super is a long-standing industry fund, run only to benefit members.

Support for proposals 1 and 2

Like the Government, Vision Super is concerned to protect the interests of its members, particularly those who have been victims of crime. As such, Vision Super supports draft proposals 1 and 2 as set out in the Review.

Another important and related issue

In addition, Vision Super wishes to draw to the Government's attention a related issue that might affect the *existing* retirement savings of victims of crime. We believe the Government should address this issue as part of the Review.

Binding nominations to a member's killer

As you are no doubt aware, if a member of a super fund signs a binding death benefit nomination, the relevant trustee is bound by statute to give effect to that nomination when paying out the member's benefit after death. Such payments are often large (as they usually include life insurance proceeds).

Regulation 6.17A (**Regulation**) of the *Superannuation Industry (Supervision) Regulations 1994* (Cth) (**SIS Regs**) is the statutory provision that imposes the above-mentioned obligation. The advantage of the Regulation is that it allows a member to direct a trustee to pay his or her death benefit compulsorily to a specific person (e.g., a spouse). However, in one particular case, the Regulation's mandatory effect is also its weakness: when a member makes a binding nomination in favour of a person who subsequently commits or contributes to the member's wrongful death, the trustee is required to pay the benefit to the member's killer (who is often also their domestic abuser). Clearly, this is an unsatisfactory situation.

While the issues identified in the Review are important, the problem facing victims in the above-mentioned situation needs even more urgent attention. We understand that, as part of the Review, the Government proposes to open perpetrators' super to compensate victims (ie it seeks to provide an *additional* avenue of redress). In Vision Super's opinion, addressing the above-mentioned problem is more urgent because, without a fix, victims will lose *existing* hard-earned retirement savings to their perpetrators.



Vision Super's circumstances

We are currently dealing with a situation of this very nature at Vision Super. In particular, a member made a binding death benefit nomination in favour of her partner who, after her death,

was convicted of her manslaughter. The partner had a violent history and was found to have shot and killed the deceased in circumstances described by the Court as appallingly reckless. (The partner was sentenced to over nine years' imprisonment and is currently serving that time.) The problem in this case is that the partner's conviction did *not* render the deceased's earlier binding nomination invalid. As such, under the current Regulation, Vision Super is compelled to pay the deceased's benefit to her convicted killer.

None of this is to say that Vision Super has not considered and tried other avenues. Indeed, we have done just that. Among other things, we applied to the Australian Prudential Regulation Authority (APRA) seeking that it exercise its powers under s 332 of the *Superannuation Industry (Supervision) Act 1993* (Cth) to modify the Regulation in relation to the fund. For its own internal reasons, APRA has indicated that it is reluctant to make the modification.

We have also considered whether it might be open to us to apply to the Supreme Court of Victoria for an order that the common law forfeiture rule defeat the partner's interest in the benefit. However, we understand that the likelihood of success of such an application is theoretical at best (particularly given the mandatory nature of the Regulation). Furthermore, there is a significant risk that the cost of the application itself (whatever the outcome) might erode the value of the deceased member's benefit (or, at best, impose an unfair cost burden on other members).

While we understand that the above-mentioned matter is unusual and concerns Vision Super alone, the problem is likely to recur in respect of other funds and members. Our concern goes beyond Vision Super: we want to ensure, in all cases, that victims of crime (and their loved-ones) are not deprived of their rights by and in favour of violent perpetrators.

Suggested way to fix the problem

In our view, there is a simple and straightforward statutory fix. We suggest that reg 6.17A(7) of the SIS Regs (which specifies circumstances in which binding nominations cease to have effect) be amended by inserting an additional (new) subparagraph (c) as follows:

“(c) if a person mentioned in the notice is responsible for the member's wrongful death--at the time of the member's death.”

As should be evident, the proposed modification imposes a general condition on the validity or effectiveness of binding nominations in relevant circumstances. Further, we have suggested the use of the term “wrongful death” as it reflects well-known and commonly-applied terminology from the (analogous) common law forfeiture rule. And finally, given that our suggested amendment is to a *federal* statute, the Government will not need to seek the cooperation of the states or territories to achieve what is an unambiguously good (and simple) reform.

We would be happy to discuss in more detail if this would be useful. If so, please contact Rebekka Power on 0404 796 183 or email rpower@visionsuper.com.au.

Yours sincerely

A handwritten signature in blue ink that reads "Stephen Rowe".

Stephen Rowe
Chief Executive Officer