

11 June 2021

Director  
Tax and Compliance Unit  
Retirement Income Policy Division  
Treasury  
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By email: [superannuation@treasury.gov.au](mailto:superannuation@treasury.gov.au)

Dear Director

**Treasury Laws Amendment (Measures for Consultation) Bill 2021: Superannuation information for family law proceedings – submission**

Relationships Australia welcomes the opportunity to comment on the Exposure Draft of a Bill to improve the visibility of assets in family law proceedings ('the Treasury Laws Amendment Bill'). Relationships Australia supports the passage of legislation to prevent and deter non-disclosure or under-disclosure of superannuation assets, and urges Government to expedite introduction and passage of such legislation. We suggest, however, that the mechanism by which this occurs should more closely resemble the information sharing mechanisms included in the Family Law Amendment (Federal Family Violence Orders) Bill 2021 ('FFVO Bill').

**Work of Relationships Australia**

The Relationships Australia federation is a leading provider of secular, not-for-profit services, helping individuals, families and communities to achieve and maintain safe, positive and respectful relationships. Relationships Australia believes that violence, coercion, control and inequality are unacceptable. We offer counselling, family dispute resolution, mental health services, and a range of family and community support and education programs. Relationships Australia State and Territory organisations, along with our consortium partners, operate around one third of the 66 Commonwealth-funded Family Relationship Centres. Relationships Australia Queensland operates the national Family Relationships Advice Line and the Telephone Dispute Resolution Service. Our member organisations have served Australians for over 70 years and are funded by a range of federal, state and local government grants to work across over 100 sites in metropolitan, regional and rural Australia.

We respect the rights of all people, in all their diversity, to live life fully and meaningfully within their families and communities with dignity and safety, and to enjoy healthy relationships. A commitment to fundamental human rights, to be recognised universally and without discrimination, underpins our work. Relationships Australia is committed to:

- Working in regional, rural and remote areas, recognising that there are fewer resources available to people in these areas, and that they live with pressures, complexities and uncertainties not experienced by those living in cities and regional centres.
- Collaboration. We work collectively with local and peak body organisations to deliver a spectrum of prevention, early and tertiary intervention programs with older people, men, women, young people and children. We recognise that often a complex suite of supports (for example, family support programs, mental health services, gambling services, drug

and alcohol services, and housing) is needed by people affected by family violence and other complexities in relationships.

- Enriching family relationships, and encouraging clear and respectful communication.
- Ensuring that social and financial disadvantage is no barrier to accessing services.
- Contributing our practice evidence and skills to research projects, to the development of public policy, and to the provision of effective and compassionate supports to families.

### **Prevalence of family violence in our services**

Relationships Australia welcomes the various initiatives taken by Government and the family law courts in responding to family violence and the exigencies of the COVID-19 pandemic. We further acknowledge and warmly welcome the substantial additional funding of family law services announced in the 2021-2022 Federal Budget.

Concealment or under-disclosure of assets and income is one way in which perpetrators continue, post-separation, to exert control and perpetuate their patterns and dynamics of financial abuse (see, for example, Eriksson & Ulmestig (2021), and sources cited therein; Postmus et al, 2020; Cortis & Bullen (2016)). Opportunities to do so compound adverse financial and economic consequences of separation; it is well established that, post-separation, financial difficulties persist for several years (with more dire, and longer-lasting, consequences for women; see, for example, de Vaus et al, 2007; de Vaus et al, 2015; Fehlberg & Millward, 2014; Gray et al, 2010).

Relationships Australia welcomes the Government's attention in making legislative changes to deter, prevent, identify and respond this kind of abuse. Family violence remains a serious and highly prevalent problem among Relationships Australia clients. It is not a discrete phenomenon, but is generally accompanied by a constellation of interacting co-morbidities including substance abuse, mental health problems, harmful gambling behaviours and personality disorders.<sup>1</sup> A recent national study of family dispute resolution conducted by Relationships Australia involved approximately 1700 participants, of whom:

- nearly a quarter (23%) presented with high levels of psychological distress, and
- 68% reported experiencing at least one form of abuse, with verbal abuse being the most common (64%).

### **Non-disclosure of assets as a form of financial family violence and systems abuse**

Relationships Australia has, in numerous other family law reform consultations over recent years, advocated for the removal of opportunities and incentives to use court processes (including existing processes to mandate disclosure of assets) to perpetuate violence. We have made detailed recommendations about how this should be done; see, for example, our submissions to:

- the Parliamentary Joint Select Committee inquiry into improving Australia's family law system (2020)

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<sup>1</sup> See, for example, the submission of Relationships Australia South Australia in response to ALRC IP48 (submission 62), 4, and Family Law Council, *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems – Interim Report* (2015).

- the inquiry of the House of Representatives Social Policy and Legal Affairs Committee into Family, Domestic and Sexual Violence (2020)
- the inquiry of the Senate Standing Committee on Legal and Constitutional Affairs into the Federal Circuit and Family Court of Australia Bill 2019 (2020), and
- the Australian Law Reform Commission, responding to Issues Paper 48 and Discussion Paper 86 (2018).<sup>2</sup>

Existing powers to manage unmeritorious or abusive use of the court system – including through non-disclosure or under-disclosure of superannuation assets - have proven inadequate.<sup>3</sup> Powers to identify and respond to abuse of systems and processes need to recognise the multiplicity of systems and processes that can be used, in concert or in succession, to perpetuate abuse, control, intimidation and coercion. The fragmentation of various bureaucratic systems (relevantly, here, the lack of interface between the family law courts and the Australian Taxation Office) allows significant scope - even incentives - to someone who chooses to engage in financial abuse.

Relationships Australia therefore welcomed Recommendation 15 in the 2017 report of the House of Representatives Social Policy and Legal Affairs Committee into Family, Domestic and Sexual Violence ('House of Representatives report') and the Government's acceptance of that recommendation in the Inaugural Women's Economic Security Statement. Implementation will support equitable property division not only in court proceedings, but also in mediations about property division, as the community becomes aware of the powers that can be exercised to extract information from the Australian Taxation Office if a property matter does ultimately go to court, and conduct family dispute resolution 'in the shadow of the law' (see Mnookin & Kornhauser, 1979; Crowe et al, 2018). By supporting equitable property division, this measure will prevent ongoing financial abuse and promote women's financial recovery from separation.

### **Interaction of this Bill with the FFVO Bill**

Relationships Australia supports mechanisms aimed at reducing fragmentation. We have recently made a submission to the Senate Committee on Legal and Constitutional Affairs in support of the FFVO Bill. That Bill would impose on family law courts an obligation to inspect public records, databases and registers for existing relevant orders, to reduce the risk of inconsistencies, overlaps and gaps in protective orders across Commonwealth and State/Territory courts (see, eg, proposed subclauses 68AC(7), 68AI(7), 68B(1D), 113AC(5), and 114(1D) of the Bill). We also welcome the work, described for example at paragraphs 401 and 712 of the Explanatory Memorandum to the FFVO Bill, to enable the family law courts to make information about FFVOs readily accessible to police attending incidents. Fragmentation of information across government agencies, and tiers of government, has been a consistent theme raised by reports and inquiries into the family law system, and steps to share information are key to responding to these concerns.

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<sup>2</sup> Links to these submissions are included in the references list at the end of this submission.

<sup>3</sup> Relationships Australia acknowledges that disclosure of information within the scope of the Treasury Laws Amendment Bill is already required: see, for example, Rules 2.02 (Table 2.2), 12.02 of the *Family Law Rules 2004*; paragraph 1.19 of the Explanatory Memorandum.

Relationships Australia regards the Treasury Laws Amendment Bill as critical to Government's efforts to:

- reduce the burden, experienced by those against whom financial family violence is directed, of navigating siloed and fragmented government systems, and
- remove incentives for perpetrators to exploit the opportunities for abuse created by discrete systems.

We are, however, concerned that the process contemplated by the Treasury Laws Amendment Bill is more complex and less direct than the approach taken in the FFVO Bill, and does not reflect the intention underlying Recommendation 15 of the House of Representatives report: to provide a simple administrative process. The Treasury Laws Amendment Bill requires a party to make an application to the registry, whereas the FFVO Bill, as noted above, imposes on the court a duty to inspect public records, databases and registers for the existence of a relevant order.

Imposing this duty on the court minimises the administrative burdens experienced by people against whom family violence is used when seeking relief from the court. It is consistent with a trauma-informed and person-centred approach, and recognises the debilitating effects that family violence can have on the ability to initiate and undertake bureaucratic processes (an effect that people who use family violence exploit).

The considerable work done between the Commonwealth and State/Territory governments to better share information about family violence orders and related matters should be consistently leveraged to enhance information sharing within and among Commonwealth government bodies such as the federal family law courts and the Australian Taxation Office.

In this instance, Relationships Australia suggests that the Treasury Laws Amendment Bill should adopt an approach more closely aligned with the FFVO Bill, in which a positive duty is explicitly imposed on the court. The amendment should be to the effect that, whenever property settlement proceedings are filed in a family law court, the court would be required – without further action of the party filing the proceedings - to make a request of the Commissioner of Taxation for disclosure of the superannuation information.

### **Complexity of the legislation**

Relationships Australia acknowledges that the Treasury Laws Amendment Bill includes amendments of the *Taxation Administration Act 1953 (Cth)* as well as amendments of the *Family Law Act 1975 (Cth)*.

It is, however, pertinent to note that numerous inquiries and commentators have advocated for the Family Law Act to be simplified over many years. The Australian Law Reform Commission canvassed this in detail in its 2019 report of the review of the family law system. Relationships Australia is concerned that the enduring complexity of the Act impairs the ability of parties (especially when self-represented, as often occurs in the family law courts) to know the options available to protect themselves at the same time as creating opportunities to perpetuate family violence. Accordingly, we take this opportunity to reiterate our recommendation, made in various other submissions listed below, to recommend that Government expedite simplification of the Family Law Act.

## CONCLUSION

Family violence costs the Commonwealth \$13.5 billion per year; measures to identify and respond to it are much needed. The Treasury Laws Amendment Bill is another significant step taken by Government to respond to concerns that:

- fragmentation, silos and complexity of navigation compound the dangers and disadvantages faced by those against whom family violence is used, and
- that those who use violence are enabled and incentivised by these systemic shortcomings.

We again thank you for the opportunity to express our views, and would be happy to discuss further the contents of this submission if this would be of assistance. I can be contacted directly on (02) 6162 9301. Alternatively, you can contact Dr Susan Cochrane, National Policy Manager, Relationships Australia National, on (02) 6162 9309 or by email: [scochrane@relationships.org.au](mailto:scochrane@relationships.org.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nick Tebbey', with a stylized flourish at the end.

Nick Tebbey



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