

Dear Committee Secretary Senate Legal and Constitutional affairs committee,

Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Bill 2019 - Proposed Transitional Provisions - Schedule 4, Part 2, Section 3

My name is [REDACTED].

I am a XX -year-old mother of four.

I have been embroiled in proceedings against my former de facto husband in the Family Court of Western Australia for over 10 years.

I was in a relationship with my former partner from mid-1XXX until early 2XXX. We each had two children from previous relationships, who I looked after during the relationship, and we also had two children of our own who are now aged 1X and 1X.

My former partner was a very senior accountant, as was his closest friend and business partner. They owned investments together and had a high profile client base. When our relationship broke down he entered into a number of transactions which were designed to defeat or minimise any child support or property settlement entitlement I might receive. One of the major tools he used to achieve this was to transfer assets into superannuation. He did this using what I am told are a combination of CGT rollovers, concessional and non-concessional contributions.

A few months after we separated, in mid-2XXX, I was diagnosed with breast cancer. As a result, I was not watching what my former partner was doing with our money. I was in fact, under the impression that as he was extremely au fait with our healthy financial position that he would act as a gentlemen to allocate us each a home and then get on with separate coherent parenting. At this time my GP brought it to my attention that he was making an insurance claim for trauma on my behalf. He pocketed \$2XX,XXX without my knowledge.

I have since discovered that in the years to follow, elaborate and strategic financial shuffling was taking place and I was dealing with his lack of disclosure in the legal system.

Between 2XXX and 2XXX, I spent around \$3XX,XXX on lawyers. Eventually, we were unable to find the money my partner had disposed of, and I was unable to continue funding my lawyers. As a result, I was self-represented in the Western Australian Family Court from around early 2XXX through to mid-2XXX. I appreciate the Court is drastically under resourced, and I was completely out of my depth. Having spent the best part of two decades focusing on raising our children, I did not understand the complicated financial affairs my partner had constructed. What I did understand was that my children and I have gone from living in a large house in an affluent suburb, to having no money, being forced to stay on couches with friends, and at times not knowing where we would be living next week or how we would feed or clothe ourselves.

In mid-2XXX, while using my sons laptop to try to prepare my trial affidavit, I noticed the laptop was logged into my husband's email account. From that I could see emails between him and his friends talking about assets he had disposed of, and his legal plans to ensure I received nothing! These legal plans included transferring assets into superannuation as he knew it could not be split in Western Australia. While I now know this was happening, I needed unequivocal proof for the eyes of the court and notwithstanding that he had not been complying with disclosure and maintenance orders

and had a child support debt in excess of \$2XX,XXX the court seemed to err on the side of leaving things where they were.

Early 2XXX I had relocated to NSW (my home state) with our two children and with the help of local solicitor I was directed to a Western Australian law firm and a senior barrister to deal with my case on the basis that they would not be paid until after the trial. I appreciate this required a significant risk on the part of the law firm and the barrister, and I am aware that it is a luxury that most women in my position would not have.

My case proceeded to the first portion of a trial in late 2XXX in Family Court of Western Australia. As we approached trial, and after dozens of subpoenas, it became clear that the asset pool available for distribution between us was significant (in the order of \$X - \$X million) but almost all of it was held as superannuation in the form of a 'Self-Managed Superannuation Fund'. The members of the fund were myself (with a modest member balance), my partner, his adult daughter from a prior relationship and his elderly mother who he claimed no longer had capacity. Both his mother and his daughter were added as members to the fund by him after our separation and without my knowledge.

The trial judge set aside around \$9XX,XXX of contributions that were made to the Self Managed Superannuation Fund in the last couple of years prior to the our trial. The judge was not able to set aside these transactions before this time. That money was used to repay my partners' child support debt, which by the time the judgment was made, was around \$5XX,XXX. The remainder of the funds was paid to me by way of a partial property settlement. I used these funds to repay family members who had loaned me money in the years proceeding for our rental accommodation. Around \$2XX,XXX went to pay the lawyers and barrister that assisted me. I otherwise continue to use the money to meet the ongoing expenses for the children and me and to meet my ongoing legal fees.

The judge otherwise adjourned the remainder of the trial until either my partner has access to superannuation, his mother passes away (he being due to receive inheritance) or until the legislative amendments are made which had been foreshadowed at the time.

My partner has appealed the judge's decision from the trial of the WA Family Court and we are now awaiting an appeal hearing before the full Court of the Supreme Court of Western Australia. Most of the money and assets remain in superannuation, and around 95% of it is within my former partners' member account.

My lawyer has recently informed me that while there is an intention to amend the legislation to allow Superannuation to be split between de facto couples in Western Australia, as it is currently drafted, that legislation would exclude me and anyone else who already has proceedings before the court.

In my mind, the legal proceedings I have been engaged in have been completely unnecessary but I have been caught in this web, so to speak. I am dealing with bully behaviour from someone that has expertise in the financial and legal world and its loop holes available. Through this unpleasant journey, I have had no choice but to continue with my right for justice and for the responsibility for my future. It has caused irreparable damage to family and me. Three of my children are under the belief that I have had the power to end these legal proceedings at any time (to just let go). As a women and a mother I have turned to the only system that can help me, the legal system. I now turn to the members of parliament to listen to me, as my future in is your hands. I believe I also represent many others that are currently or soon to be in the same position and while my journey for the last 10 years has been horrible, I am sure there will be many which are worse.

I can understand that Parliament would not like to see the already drowning Family Courts become inundated with matters that had previously been resolved with final orders. I cannot see however why it would be useful to prevent people already before the court from having access to a mechanism that will likely help them resolve matters, and where the absence of such a mechanism will certainly lead to a greater unfairness, particularly against women.

It is well known in Western Australia that superannuation cannot be split in de facto relationships – particularly among some of the more wealthy people (who are typically well informed and who have the ability to abuse that loop hole). I am aware of a number of cases where it is, or has, led to an injustice almost exclusively against the female partner.

It also seems to me that excluding access in existing proceedings will provide an incentive for the financially stronger partner in any fractured de facto relationships in Western Australia to commence proceedings now, thereby excluding their partner from access to their superannuation. This cannot be the intention.

Might I ask why the transitional provisions have been drafted the way they have, and ask that they be changed so that people like me are not left ‘out in the cold’?

I hope to hear from you shortly.

Kind regards,

[REDACTED]