



# Australian Government The Treasury

## Access to offenders' superannuation for victim- survivors of child sexual abuse.

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February 2023



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## About the Victims of Crime Assistance League (Hunter)

Victims of Crime Assistance League (VOCAL) is an incorporated charity that supports all people, including children, throughout NSW who are victim-survivors of violent crime. For the past 30 years we have been providing information, guidance and support to individuals and families who have been impacted by crime. We act in a consultative capacity to State and Federal governments on matters pertaining to victims' rights.

VOCAL's Victim Support Unit receives funding from the NSW Department of Communities and Justice (via Victims Services) to provide a free service to victims of crime, particularly in the NSW Hunter Region. Support is individualised to the specific needs of each survivor and includes physical, psychological and socioeconomic support and assistance.

## Scope of eligible child sexual abuse offences

VOCAL acknowledges the complexities of defining child sexual abuse offences for the purpose of this proposed legislation. Our experience is primarily working with matters under the *Crimes Act 1900* in NSW. However, we have some experience with child sex offences that come under the *Crimes Act 1914*.

It is our recommendation that the proposed definition of child sexual abuse offences incorporates both Section 3 of *The Crimes Act 1914* and Divisions 270 and 271 of the *Criminal Code Act 1995*. As outlined in the discussion paper, we believe the proposal encompasses all relevant Commonwealth and State/Territory offences relating to physical child sexual abuse, child pornography, and child sexual exploitation.

## Is it feasible and/or appropriate to allow compensation debts to survive bankruptcy?

In general, we recommend that compensation orders be kept separate from bankruptcy proceedings. However, if this is not possible we support changes to the Bankruptcy Act that prevents offenders using bankruptcy as a means to avoid paying compensation orders.

If the National Personal Insolvency Index (NPII) determines the offender is bankrupt, or has bankruptcy proceedings afoot, we believe the superannuation release order should stand, and payment prioritised as opposed to waiting for bankruptcy proceedings to be finalised. As stated in the discussion paper, the likelihood of victim-survivors receiving the full amount after bankruptcy has been finalised is highly unlikely. Lengthy bankruptcy proceedings will cause additional trauma to victim-survivors, who have already experienced a traditionally drawn-out and traumatic criminal court matter. To further expose a victim-survivor to additional legal proceedings to chase court ordered compensation is unjust. The trauma of child sexual abuse and the impact on physical, psychological and socio-economic health and wellbeing must be recognised and prioritised. Legislative changes to ensure this occurs could include prioritising compensation orders over secured creditors.

## Superannuation release and ‘additional’ contributions

It is important to understand that the NSW Victim Support Scheme (The Scheme) provides recognition payments for victim-survivors who have been impacted by violent crime. The Scheme is not one of compensation, but rather provides for a relatively small payment to recognise the disruptive impact that the crime has had on a person’s life. It is our experience that many victim-survivors hold the expectation, or are told by professionals, that the Scheme provides compensation – a word that for many holds a promise of high monetary value. This is not the case, and victims of child sexual abuse often report feeling invalidated by the maximum \$10,000 payment. In recent cases, some victim-survivors have received \$1,500 for reporting their experience of child sexual abuse.

We acknowledge that the National Redress Scheme (NRS) offers redress for victim-survivors of institutional abuse. Eligible victim-survivors provide positive feedback on the NRS, however it excludes victim-survivors who have been subjected to child sexual abuse within the immediate family, extended family, or family social networks.

NRS is not a compensation scheme and it is capped at \$150,000, falling short (in most instances) of compensation that may be ordered as a result of civil litigation. The redress payment focuses on the nature of the assault but does not address the physical, psychological or social impact on a victim’s financial earning capacity as a result of the violence. Victim-survivors have a right to commence civil litigation for compensation. It is for these reasons that VOCAL agrees that compensation orders awarded through both criminal and civil proceedings be eligible for a superannuation release order.

We note that the discussion paper stipulates offenders must be found guilty in a criminal court for the superannuation release to be available to victim-survivors. Many victim-survivors of child sexual abuse are unable to have their matter prosecuted in a criminal court. VOCAL recommends that when a victim-survivor is a litigant in civil court, and the court finds in favour of the victim-survivor, that the superannuation release is available in these matters as well.

### The deeming period

VOCAL believes the proposed deeming period(s) of six or 12 months (from when an offender is charged) is inadequate. Our recommendation is for the deeming period to be a minimum of 24 months, and that the court is given discretion to extend this deeming period based on the circumstances of each case.

It is our experience that investigations for child sexual abuse matters, specifically historical abuse cases, are lengthy in process and typically take well over 12 months from the time of reporting to the time of criminal charge(s). With competing priorities for NSW Police, this time frame can be even longer. In rural and regional areas, where victim-survivor and perpetrator may still reside, whispers of criminal investigations circulate, especially when additional witnesses are asked to provide statements during the investigation period. This has the potential to alert the perpetrator to criminal investigations, triggering the protection of any financial assets. Similarly, in instances where police facilitate the victim-survivor phoning the perpetrator to elicit an admission of the act of violence, the offender may become suspicious of potential criminal charges and start processes to “protect” assets held in their name. It is for this reason that we propose that the deeming period includes both additional contributions *and* identifying ‘transactions’ that relate to the movement of assets, namely ‘deemed transactions’.

### Additional contribution and deemed transactions.

VOCAL supports the discussion paper's proposal on what constitutes an additional contribution. To extend this further, however, we believe it must be expanded to include the interest accrued on these extra payments.

VOCAL recommends that any significant asset transactions made within the deeming period are also covered in legislation. For example, if in the deeming period the offender moves significant assets, such as transferring the deed of the family home solely into the spouses' name, this becomes a 'deemed transaction' and is viewed in the same manner as an additional contribution. This will safeguard any compensation ordered to a victim-survivor. Some offenders may choose not to make additional superannuation contributions, but instead facilitate the purchasing/transferring of significant assets to family members. If the scope is extended to incorporate this, and compensation orders remain unpaid, forensic accountants may investigate any movement of assets that occurred during the police investigation period. The inclusion of 'deemed transactions' would mean there may be a reduced need to access spouse superannuation for the payment of a compensation order.

### Accessing the offender's spouse's additional superannuation

Accessing the offenders' spouse's superannuation would rely solely on the complicity of the offender in paying the order. If the additional contributions to superannuation are inadequate to complete payment, VOCAL's recommendation is that 'deemed transactions' are identified and reversed, with the money paying the compensation order. If this is unsuccessful, then accessing any additional contributions spouse superannuation would need to occur to complete the payment of the compensation order.

### Treatment of defined benefit schemes

Given the small percentage of Australians who are members of a defined benefit scheme, and the complexities of the scheme that is largely based on employer contributions, VOCAL recommends not to include defined benefit schemes in the superannuation release procedure. Once a benefit is paid to the offender, whether it be via a defined benefit scheme or accumulative fund, access to these funds can be sought through civil proceedings.

### Tax treatment of released superannuation

VOCAL strongly supports the proposition outlined in the discussion paper that recommends that any compensation amount recovered, from superannuation, be considered tax-free. This is in line with other financial benefits that are paid to victim-survivors under the NSW Victim Support Scheme and the Federal National Redress Scheme. Should any tax still be required to be paid it would be offensive that this burden should be borne by the survivor. However, if it does remain the case that superannuation is still to be taxed consideration should be given to a mechanism that ensures the tax burden remains with the offender and is not borne by the survivor.

## Other issues for consideration

The issue of parallel court proceedings, as outlined in the discussion paper, appears to prioritise bankruptcy and/or family law proceedings over the victim-survivors right to receive their compensation. Lengthy proceedings can be seen as an attempt to avoid, or prolong, compensation payments, and will have a detrimental impact on victim-survivors. As seen in the Royal Commission into Institutional Abuse, drawn out legal proceedings for an abuse survivor can be re-traumatising and exacerbate already poor or damaged mental health. Amending legislation to prioritise compensation orders is recommended. To have victim-survivors wait for all other court proceedings to be finalised before they are awarded their payment is unfair, unjust and unacceptable.

With regards to how compensation from superannuation funds are made, VOCAL proposes that consideration be given to the following options:

1. In circumstances where the victim-survivor is an adult, payment of funds be made directly into their nominated bank account.
2. In circumstances where the victim-survivor is under 18 years of age, the funds be paid directly into a trust account, with minimal fees and accruing tax-free interest.

VOCAL views Proposal Two as feasible and appropriate in allowing victim-survivors to submit a superannuation information request form to ascertain the total value of additional contributions and associated interest made during the deeming period. Noting the discussion papers comment that the judicial system has limited investigative and forensic powers to obtain visibility of an offender's non-superannuation assets, we recommend that 'deemed transactions' be considered a mechanism to cover the movement of non-superannuation assets to avoid paying compensation orders.

## Conclusion

Victim-survivors of child sexual abuse often experience ongoing physical, psychological, financial and social hardship as a direct result of the violence they experienced. Compensation will not erase their suffering, but it provides them with acknowledgement, validation and offender accountability which is essential for post-traumatic growth. VOCAL appreciates the opportunity to provide feedback on this important issue.