



Victims Of Crime Assistance League Inc NSW



Division Head
Retirement Income Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

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Submission: Early release of superannuation benefits under compassionate and financial hardship grounds and for crimes of crime compensation

Victims of Crime Assistance League (VOCAL) Inc NSW supports men, women and children whose lives have been impacted by crime. The NSW Department of Justice, via Victims Services, funds our Victim Support Unit to provide emotional and practical assistance to victims of crime in the Hunter Region. VOCAL Inc NSW is also a registered charity that provides support to any victim of crime throughout NSW.

VOCAL Inc NSW acknowledges that preserving a person's private retirement income is important. The key issue that we address in this submission is whether an offender's superannuation should be made available to pay reasonable compensation or restitution to respective victims of their crime(s).

Should access to superannuation benefits be available to assist victims of domestic violence?

Financial control and abuse is arguably the largest reason as to why victims are forced to remain in an abusive relationship. For any victim contemplating escaping domestic violence, having access to their own money is often impossible and has been for a long time through the relationship. VOCAL Inc NSW strongly believes that access to superannuation benefits, in the form of a capped amount, should be made available to assist victims of domestic violence.

We repeatedly see circumstances where, irrespective of their financial contribution within the relationship, victims are forced to leave their home environment with their children and seek alternative accommodation. Having limited access to money makes it extremely difficult for victims to relocate, pay rent, buy furniture and – in most cases – look after dependent children. Conversely, domestic violence perpetrators frequently remain in the family home with access to previously-shared assets. Particularly significant in these instances is their access to everyday household items such as washing machine, fridge, bedding, children's toys and personal items. While the *Victims Rights and Support Act 2013* (NSW) makes provisions for covering some of the costs associated with rental accommodation and furniture, this undertaking is a substantially slow process to enact in reality. Funds are rarely available



with the immediacy at which they are required, placing many victims at risk of homelessness if they have no extended family to provide urgent financial assistance. Allowing victims to access their own superannuation in these circumstances, either as a lump sum or in fortnightly instalments, would prove a huge step forward in supporting victims of domestic violence.

The uncoordinated responses between State and Federal legal systems, Centrelink, State/Territory compensation schemes and housing services means that victims are often immediately thrust into financial hardship and/or homelessness as soon as they leave a violent relationship. A regular example of this among clients at VOCAL Inc NSW is their extreme difficulty accessing Child Support. Even where assessments for payments are made in favour of a victim, the perpetrator frequently incurs large debts. Alternatively, financial circumstances of the perpetrator can be misrepresented to the Family Court and/or Department of Human Services, to the victim's detriment. For example, a perpetrator may be working for cash, paying outright for vehicles or holidays, and yet claim to be unemployed and therefore not required to lodge a tax return. Where there is evidence that child support is not being paid or being paid irregularly, then an application to access a perpetrator's superannuation would be a welcome initiative to further support victims of domestic violence. This would have the additional benefit of holding perpetrators accountable for their actions.

In cases where a criminal conviction is upheld requiring compensation or restitution to be paid from the perpetrator's superannuation direct to the victim would rightfully ensure that a victim's material and safety needs can be met. This immediate assistance could take the form of periodic payments. This would also assist in covering costs of repair for any property damage that was caused as part of the criminal charge, as this is a large area of concern for victims of crime as discussed below.

If a victim has joint assets with the perpetrator, these assets may be eventually frozen by the court until property settlement.

Another area where access to superannuation should be permitted for victims of domestic violence is legal proceedings. The majority of VOCAL Inc NSW clients are rejected for legal representation by Legal Aid owing to the presence of joint assets. Unfortunately, these same clients are also unable to access private solicitors due to their requirement that large, lump sums (often \$5000-\$10,000, or more) are paid before even the first representation can begin. Even with cost agreements, private solicitors at times inform our clients that they need to hand over the deeds to their assets in order to secure further representation.

We repeatedly see that women's refuges are at capacity, Staying Home Leaving Violence often have closed books and are unable to take new referrals and with limited funding for specific DV assistance, the amount of victims that report experiencing financial hardship is devastating.

Should victims of crime be able to access a perpetrator's superannuation for compensation?

VOCAL Inc NSW supports the proposal that victims have access to a perpetrator's superannuation for compensation in limited and specific circumstances. VOCAL Inc NSW would argue for a scheme in favour of transferring an amount from a perpetrator's superannuation into a victim's superannuation account, rather than using the funds simply to make unrestricted cash payments to the victim.

Additionally, as stated above, VOCAL Inc NSW recommends a domestic violence clause which would allow a capped amount to be transferred to the victim for immediate access.

Should access to superannuation be limited to cases where a criminal conviction has been made?

In the interests of consistency and certainty of sentencing, VOCAL Inc NSW would support criminal conviction as a threshold condition for access to a perpetrator's superannuation.

The consultation paper associated with this review acknowledges that victims of crime can seek compensation via State and Territory statutory compensation schemes or through orders made in a criminal trial. In our experience, however, it is extremely rare that personal compensation or restitution orders are made as part of the sentencing process in a criminal trial. At best, we see some local court Magistrates make an order for a perpetrator to pay for property damage, but even these cases are rare. While the financial impact of the crime can be expressed in a Victim Impact Statement, there is no obligation for a court to consider compensation or restitution orders as part of the sentencing process.

The consultation paper also refers to victims being able to take civil action against a perpetrator, even after a criminal trial. In VOCAL Inc NSW's 30 years of operation, it has been extremely rare that a client has undertaken civil action in order to seek compensation from the perpetrator. Reasons for this include:

- prohibitive costs of funding a private civil suit, noting the financial penalties if a case ends prior to completion
- a lack of confidence in reaching timely and satisfactory outcomes through the judicial system
- emotional labour involved in undertaking a slow and adversarial legal battle
- ongoing fear of retribution from the perpetrator or their associates
- a lack of guarantee that the perpetrator is in a financial position to adequately compensate the victim's physical and psychological injuries

Should access to a perpetrator's superannuation be available for compensation or restitution arising from all crimes, just violent crimes, or another threshold?

Violent crimes, and crimes that cause permanent physical and/or psychological injury, should qualify as reason to access a perpetrator's superannuation. Property damage that meets a specified financial threshold should also permit recourse to a perpetrator's superannuation.

Should access to a perpetrators superannuation only be available if the perpetrator made irregular or out of character contributions to superannuation to shelter assets?

VOCAL Inc NSW believes that limiting the scope of restitution through superannuation to cases where perpetrators have made irregular contributions, thereby signalling wilful activity to avoid compensation, is inappropriate. While these specific types of cases arguably should be targeted, focusing only on these cases would unacceptably narrow the scope of the remedy. Such an approach runs the risk of becoming yet another naïve systems response that fails to comprehend the scope, intent and reality of the manipulation exercised by perpetrators.

How might a victim's right to a perpetrator's superannuation be enforced?

Unlike other asset holding structures which can be obscured from full view (for example, being held on trust or overseas), complying superannuation accounts are Australian based, regulated by the Australian Tax Office (ATO) and linked to an individual's unique Tax File Number (TFN). The ATO holds records on all superannuation accounts attached to every TFN. Thus, mechanisms for the identification of a perpetrator's superannuation as well as enforcement systems (administered by the ATO) already exist. In appropriate circumstances, a court could simply issue a compensation order directing the Federal Commissioner of Taxation to comply, by providing a list of the perpetrator's superannuation accounts to the Court Registrar. That list could then be used to enforce a compensation order in the same way as any other court-enforced debt recovery action.

How much of a perpetrator's superannuation should be available?

While VOCAL Inc NSW does not believe any limit should be placed on access to the perpetrator's superannuation to satisfy a compensation order, we do believe that some percentage should be mandated as a contribution to the victim's complying superannuation account in order to avoid a net loss to the superannuation pool.

Ideally, VOCAL Inc NSW believes the amount should not be contingent in any way on the perpetrator's financial circumstances. A perpetrator's violent crime against a victim can be horrifically life changing. Such a victim may suffer not only physical health impacts but also significant and ongoing mental health challenges as a direct result of the trauma caused by a perpetrator's actions.

Victims of crime suffer financially due to the multitude of out of pocket expenses not covered by State and Territory compensation schemes, compounded by the fact that taking necessary time off work often forces a protracted period of 'leave without pay'. VOCAL Inc NSW acknowledges that the *Victims Rights and Support Act 2013* (NSW) offers some reimbursement for economic loss due to inability to work, however this is not matched to the victim's normal salary or wage. Additionally, in some instances, victims may lose their employment as they are unable to effectively work while addressing their trauma. In turn, this has a direct impact on the victim's own superannuation contributions.

Should access to a perpetrator's superannuation be in the form of a lump sum, portions of income stream payments or both?

VOCAL Inc NSW is of the view that access to a perpetrator's superannuation should be available both in the form of a lump sum or as portions of income stream payments. The nature of the payment would ideally depend on the victim's needs at the time an order was made.

How should defined benefit products and annuities that have not yet commenced payments be treated?

VOCAL Inc NSW believes that excluding perpetrators who are members of a defined benefit scheme is unfair. If the compensation order were to exceed the lifespan of the victim but not the perpetrator, we believe that the rights under the order should then pass to executors of a victim's estate.

Where a criminal conviction has been made, should victims be able to access a perpetrator's superannuation to pay either outstanding compensation or restitution orders?

Where there are no other assets available to an offender to repay compensation or restitution orders, VOCAL Inc NSW would argue that a perpetrator's superannuation should be accessed to repay such orders.

Should State and Territory compensation schemes be able to recover the cost of their payments to victims from the perpetrators superannuation?

VOCAL Inc NSW agrees with the proposition that State and Territory compensation schemes should be able to seek access to a perpetrator's superannuation to satisfy their costs. In relation to both this and the above circumstances, VOCAL Inc NSW advocates for a prospective change only.

Final comments

Allowing a victim to access a portion of their superannuation to avoid homelessness and/or financial hardship would enhance their physical and psychological health as well, possibly putting less strain on an already over-loaded public health system.

Our above comments would necessitate new regulations and possibly provisions being inserted into the *Taxation Administration Act 1953* (Cth) to compel the Federal Commissioner of Taxation to release otherwise protected information. It would also require the creation of systems and procedures within the Australian Tax Office to facilitate such processes required to eventually make payments to the victim. VOCAL Inc NSW believes that a specific working group should be tasked to bring about the above proposed changes, and that a representative from the victims community assist with their implementation.

We thank you for allowing us to provide input on this matter.



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