

Victorian Liberal Nationals submission in response to Part 3 on rules for early release of superannuation benefits for victims of crime compensation

General comments in response to Part 3

The Victorian Liberal Nationals Coalition believes that victims of crime deserve a justice system that recognises and meets their needs. We believe that convicted offenders must take personal responsibility for the consequences of their offending behaviour and the welfare of the victims of their criminal acts.

We believe that the rights of victims should come first, not those of offenders. Therefore, we vigorously support the establishment of a system by which superannuation could be made available to victims of crime in situations in which a convicted criminal's other financial assets are insufficient to meet their financial obligations to their victims.

We believe that the early release of superannuation benefits for victims of crime compensation should be governed by principles that recognise a convicted offender's moral and legal obligations to primary and secondary victims of their offending behaviour and take into account the hardship experienced by those victims as a direct result of the offending in question.

Therefore, we believe that victims of crime should be able to access offenders' superannuation benefits irrespective of when an offender's superannuation contributions have been made, including for outstanding compensation and restitution orders made prior to any change in the law. An offender's personal circumstances may be taken into account by a court in making a compensation or restitution order, but should not prevent victims from receiving the compensation they are otherwise owed.

In addition, we believe that convicted criminals who attempt to rearrange their financial affairs in order to make use of legal loopholes to deny victims proper compensation and restitution should face serious consequences for their actions. This includes by making out-of-character contributions. For this reason, the Victorian Liberal Nationals Coalition supports the introduction of tough penalties financial for this behaviour.

As far as possible, superannuation should not be treated any differently to other asset classes.

Principles underpinning early release

Question 0.1 Do these proposed principles provide an appropriate guide to determine the grounds for early release under compassionate and financial hardship grounds, and for victims of crime compensation? If not, what should these principles be?

Part 1: Compassionate grounds

Question 1.21 Are there situations outside of the current compassionate grounds which may justify inclusion in the early release of superannuation provisions, balanced against the need to preserve superannuation benefits to provide income in retirement?

Yes, see below.

Question 1.22 Should access to superannuation benefits be available to assist victims of domestic violence? Why / why not? If yes, under what particular grounds (for example, financial hardship, homelessness, victims of crime), which expenses should be included, and what evidence should be required?

Yes, see below.

Part 3: Victims of crime compensation

Question 3.1 Should victims of crime be able to access a perpetrator's superannuation for compensation?

Yes.

Question 3.2 Should access to superannuation be limited to cases where a criminal conviction has been made?

As far as possible, superannuation accessibility should align with other assets that a victim of crime may presently be able to access.

Question 3.3 Should access to a perpetrator's superannuation be available for compensation or restitution arising from all crimes, just violent crimes, or another threshold (such as the maximum penalty for offence)?

Priority ought to be given to compensating victims suffering from violent crimes.

Question 3.4 Should access to a perpetrator's superannuation only be available if the perpetrator made irregular or out of character contributions to superannuation to shelter assets?

No.

Question 3.5 How would a victim's right to a perpetrator's superannuation be enforced? How would the victim gain visibility over the perpetrator's superannuation assets?

No particular view is expressed other than to urge that access not be so cumbersome for victims as to discourage them from pursuing their entitlements.

Question 3.6 How much of a perpetrator's superannuation should be available? Should the amount be different based on the perpetrator's circumstances (for example, low balances, dependent children)?

As far as possible, superannuation should not be treated differently to other asset classes.

Question 3.7 Should access to a perpetrator's superannuation be in the form of a lump sum, portions of income stream payments or both? How should defined benefit products and annuities that have not yet commenced payments be treated?

No particular view is expressed other than to urge that payment periods should be imposed in favour of victims receiving compensation as early as possible.

Question 3.8 Should contributions into superannuation after a compensation order has been made count towards the amount that can be accessed?

Yes.

Question 3.9 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?

Yes.

Question 3.10 Should State and Territory compensation schemes be able to recover their payments to victims from the perpetrator's superannuation?

Yes.

Question 3.11 In circumstances where there are concurrent family law and victim of crime compensation proceedings, how should these matters be addressed and prioritised? What other issues might arise?

Duplication of proceedings ought to be minimised and consolidation of matters promoted.