# ACT Government – Justice and Community Safety Directorate

The Justice and Community Safety Directorate supports the concept of victims of family violence being able to access their own superannuation on compassionate grounds. Accessing superannuation funds may provide added support and incentive for a victim who is seeking safety. For instance, it may encourage someone who is considering leaving a family violence situation, however is concerned about finances, to do so by accessing a lump sum for accommodation or other emergency expenses. Early access to super will provide another option or fill a gap where existing services and supports are not always accessible or targeted to all family violence victims. This may be the case for people living in regional and rural Australia; where services have restricted availability; or where people feel shame or discrimination accessing other forms of assistance. In addition, people with certain health conditions are currently able to access superannuation with evidence from medical professionals. Similar to some medical conditions, family violence can have physical impacts – it can even pose a threat to life – and psycho-social impacts on a victims’ ability to engage in employment and live independently.

However, consideration should be given to mechanisms to define eligibility and ensure a minimum amount of funds are preserved for retirement, particularly as women are disproportionately affected by family violence and have less superannuation. Appropriate safeguards must be in place to ensure that early access to superannuation is a last resort, and this must be balanced with an application process that is as accessible as possible. Providing victims of family violence with access to superannuation does not remove responsibility for the proper resourcing of family violence prevention and services.

We are also supportive of the concept of victims of crime accessing an offender’s superannuation for the purposes of recovering funds where a criminal or civil court has ordered reparation, as this provides victims with access to the payment owed. In terms of recovering funds for the ACT Government’s Victims of Crime Financial Assistance Scheme (VOCFAS), this will aid in holding offenders accountable and increase the success of Government initiated recovery proceedings.

However, there would be need to be further considerations as outlined below.

**Human rights considerations**

These reforms require balancing the rights of the victim of crime and the offender. The *Human Rights Act 2004* (ACT, s. 28) outlines that any limitation on a human right must be reasonable and proportionate, and the least restrictive means available should be used to achieve the purpose of the limitation. There may be certain circumstances which warrant access to an offender’s superannuation, for instance where they have moved funds into an account to avoid payment.

In a small number of cases there may be concurrent family law and victim of crime compensation proceedings, where two parties are competing for superannuation funds. These cases may take into consideration the seriousness of the crime - one definition is contained in the *Victim of Crime (Financial Assistance) Act 2016* (ACT, s. 7) - and whether an agreement can be made to split the superannuation between the two parties.

A limitation could also be placed on the amount of superannuation a victim can access for compensation. This would ensure a minimum amount of the offender’s superannuation is protected in order to substitute or supplement the Age Pension. A different formulation for the minimum amount could apply where an offender has financially dependent third parties such as child or spouse, to ensure they are not unduly affected.

**Implementation considerations**

If state based compensation schemes are to have access to an offender’s superannuation for recovery of funds, further consultation with the Victims of Crime Commissioner and the Human Rights Commission would be required. This scheme would impact on the operation of the *Victim of Crime (Financial Assistance) Act 2016* and legislative change may be required. It is the role of the Human Rights Commission to ensure that the rights of victims and offenders are considered and balanced, and this may include providing offenders with an opportunity to object to the recovery of funds.

Access to an offender’s superannuation for victim of crime compensation could also be administered and enforced through referral to a centralised debt recovery agency. The agency would be responsible for complying with privacy legislation and ensure that access to an offender’s superannuation is a last resort and other assets have been exhausted, to ensure retirement income is preserved where possible. An external agency may also have more power to address complexities between state based compensation mechanisms accessing commonwealth superannuation schemes.