**Western Australian Department of Justice**

**Review of Superannuation and Victims of Crime Compensation**

Thank you for the opportunity to comment on the second consultation paper and the draft proposals. The Department of Justice is supportive of the proposal to allow victims of crime the opportunity to access the superannuation accounts of perpetrators in order to increase the likelihood that they will receive compensation for the harm they have suffered.

There are a number of overall comments in regards to the proposals which should be addressed during the next phase of the project

* Equality between victims is an issue which needs to be addressed. Under the current proposals there appears to be an assumption that there will be a first come first serve approach to the release of the funds. This may disadvantage those victims who due to age and/or trauma are not able to proceed with criminal or civil litigation until many years after the event occurred.
* The difficulties inherent in family and domestic violence need to be carefully considered to ensure that these victims are not unfairly disadvantaged in any distribution of superannuation.
* The intersections between the *Criminal Property Confiscation Act 2000 (WA)*, the *Criminal Injuries Compensation Act 2003* (WA), and the *Fines Penalties and Infringement Notices Enforcement Act 1994 (WA)* and other appropriate legislation will need to be considered during the development of the Bill.
* There is a need to accurately assess the financial impact of the Bill in regards to information technology requirements, potential impact on the Western Australian fines enforcement registry and any other court costs.
* The draft consultation paper does not acknowledge that a consequence of this legislation is that some citizens will be more likely to need welfare assistance in their retirement due to the loss of their superannuation.
* A likely unintended consequence of the proposed schemes is that courts may grant more reparation and/or compensation orders as the means of payment of such orders has increased.

**Draft proposal 1: Preventing the use of superannuation contributions to shield assets from victims of crime**

This proposal is supported, a victim of crime with an unpaid compensation order should be able to apply to a court for an order that the trustee of the perpetrators superannuation fund release ‘out of character’ contributions made to the account. It is also supported that other superannuation contributions are exempt from this proposal.

Detailed comments on the five issues are outlined below

***Issue 1: Appropriate limits and thresholds***

The proposal that all ‘out of character’ contributions should be accessible for unpaid compensation amounts is supported.

***Issue 2: Visibility of Assets****,*

The proposal that a court could have visibility over a perpetrators superannuation assets is supported. It is recognised that substantial work will be required in relation to providing courts with visibility over “out of character” superannuation amounts and determining the processes by which applicants can apply for access to the funds, recognising that each state may have different court processes.

Issues relating to appeals would also need to be factored into the process, both appeals relating to the court ordered payout and appeals relating to the determination that the superannuation contributions were “out of character”.

**Issue 3: Determining whether contributions are out of character**

The option that a court or a superannuation trustee applies a subjective assessment of whether contributions were out of character is the preferred option. The administrative option that all voluntary contributions are considered to be ‘out of character’ is likely to be too wide.

The timeframe of the assessment should be from the point of the allegation/police report being made. There can be a significant delay between reporting an offence and charging and this time would provide the opportunity for a perpetrator to take action to protect his/her assets.

**Issue 4: Process for recovering money**

Option 1 which requires the trustee to release identified funds to the court who then distributes the funds according to the usual process is the preferred option. This process will reduce the need for further court administrative processes to be developed.

**Issue 5: Taxation rate applied to compensation**

The proposals outlined in the consultation paper are supported

**Draft Proposal 2: Allowing uncompensated or partially compensated victims of crime broader access to the perpetrators superannuation balance.**

The proposal that victims of serious crimes whose compensation orders have not be paid should be able to access funds (not just ‘out of character’ funds) held in superannuation accounts is supported.

Detailed comments on the nine issues are outlined below.

**Issue 1: Burden of Proof**

The proposal that there is a requirement for a criminal conviction for the release of any funds is supported. In addition the need for a criminal conviction in relation to unpaid civil compensation claims is also supported.

**Issue 2: What crimes should be covered?**

The scheme should only be available to victims of serious sexual and violent crimes. There will need to be alignment across state jurisdictions as to what criminal offences are eligible and a simple determination based on sentence length is not supported. Different states have significantly different sentencing patterns and sentence length is not always a determination of seriousness.

The scheme should also only be available to the victims of crimes committed within Australian jurisdictions.

**Issue 3: What victims should be eligible?**

The scheme should be limited to primary victims except in the case of homicide. In these offences the secondary victim is the primary victim.

**Issue 4 – Types of unpaid compensation orders covered**.

The scheme should be made available for all unpaid orders, criminal and civil.

**Issue 5 – How to ensure that access to superannuation is a last resort**

The scheme should only be made available for access when all other avenues have been exhausted and the amount remains unpaid after 12 months. However, within Western Australia where Time to Pay (TTP) arrangements exist, the scheme should not be available if the perpetrator has entered into a TTP arrangement and is making regular payments.

**Issue 6 balancing rights of victims with dependants**

The current model does not adequately address the issue of Family and Domestic Violence (FDV). These victims due to nature of FDV may have remained with the perpetrator and may not have initiated any criminal or family court proceedings. It is difficult to suggest a system which protects these victims but some consideration of the specific nature of the offending behaviours in these relationships should be articulated.

Notwithstanding the above comments the following proposals are supported; that

* Family Court proceedings in regards to property settlements should be finalised prior to a victims of crime compensation order being enforced via superannuation; and
* That 50% of a perpetrators total superannuation balance up to $1.6 million (plus any amounts in excess of $1.6 million to be available as an aggregate limit for any compensation claims arising out of a conviction,

**Issue 7: Application of the draft proposal to pre-existing conditions and unpaid compensation orders.**

The proposal that the scheme will be available to existing unpaid compensation orders related to the eligible criminal offences is supported.

**Issue 8 – Recovery of costs by state and territory compensation schemes**

The proposal that state and territory compensation schemes should not be able to recover the costs of payments from superannuation balances is supported.

**Issue 9 – Tax rate applied to compensation**

The proposals relating to taxation are supported.

If you have any queries on the items discussed in the response please contact the A/Commissioner for Victims of Crime, Kati Kraszlan on 08 9264 9707.