



## **Access to offenders' superannuation for victims and survivors of child sexual abuse**

The National Women's Safety Alliance (NWSA) welcomes the opportunity to provide feedback to The Treasury's discussion paper on facilitating access to offender superannuation for victims of and survivors of child sexual abuse.

The NWSA brings together 309 individual and organisational members, including those who provide front-line services, research, and legal expertise to women and children escaping domestic and family violence as well as individual survivors of sexual violence, including child sexual abuse.

Our interest in this reform measure reflects our representative framework and understanding that violence, including sexual abuse and violence, stems from gender inequality and that for many victim survivors of child sexual abuse their road to recovery is a lifelong journey that can involve support from some of our organisational members.

### **Policy considerations**

The NWSA supports the general premise of this proposal, which will facilitate a degree of redress for victim survivors and plug a loophole which prevented recognisance orders from being realised when perpetrators converted their liquid assets to additional superannuation contributions. While we support the premise of this reform, we use this submission to raise policy and implementation considerations which should be addressed in the drafting process.



## Retrospectivity

It is noted that the discussion paper proposes that the policy will apply retrospectively to historical offences, but that the 'full extent' of what this would look like is yet to be determined. For context, nearly 7,000 survivors of child sexual abuse were interviewed by the Royal Commission into Institutional Responses to Child Sexual Abuse which found that the average time between the onset of sexual abuse and disclosure was almost 24 years. Further, around 10% of those interviewed by the Royal Commission, used their interview to disclose their abuse for the first time.<sup>1</sup>

We believe retrospectivity in the policy is a necessary inclusion, given the realities of disclosure timelines. It is possible however that the measure could be largely unavailable to a specific cohort of survivors of historic offences. In this regard however, we ask the drafters to consider what this will mean for those, now adult, survivors of child sexual abuse whose abuse pre-dates the widespread introduction of the superannuation guarantee or pre-dates traceable records, and where the abuser may not have an eligible or a traceable superannuation asset. For those survivors whose abusers have been convicted and sentenced prior to the implementation of this proposal permitting out of character superannuation contributions to be seized, will they be able to retrospectively pursue redress through this scheme?

## Limiting assumptions

The policy proposal, as it reads in the discussion paper, operates from a presumption that there will be one claimant per offender rather than a theoretically limitless number. We ask the drafters to consider the possibility of multiple claimants per offender as could occur in the case of serial child sex offenders perpetrating abuse over an extended period. In such a scenario, each survivor of the same offender may be at different points of recovery and

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<sup>1</sup> [Identifying and disclosing child sexual abuse | Royal Commission into Institutional Responses to Child Sexual Abuse \(childabuseroyalcommission.gov.au\)](https://www.childabuseroyalcommission.gov.au/identifying-and-disclosing-child-sexual-abuse)



disclosure – does the proposal limit recognisance claims to the first claimant and where does this leave redress for any subsequent survivors who may come forward in their own time?

We are also concerned that the discussion paper does not sufficiently convey the dynamics of child sexual abuse which may include other parties who were either negligent in protecting children or a willing conspirator in facilitating their abuse. In this regard it is not clear if offences under Subdivision B of the *Criminal Code ACT 1995* (Cth) will be captured under the proposal (that is 273B.4 and 273B.5; *Failing to protect child at risk of child sexual abuse offence* and *Failing to report child sexual abuse offence*).

### Evidentiary burden

The discussion paper notes that for a release order to be made, a criminal standard of proof must be achieved. Conviction rates for sex offences, including those against children, sit below the average conviction rate for all offences. We ask the drafters to reflect on recent data sets from Australian court systems that show conviction rates of child sexual abuses are declining while matters being considered are increasing.

The path to justice for survivors of child sexual abuse can be retraumatising, costly and slow. The evidentiary standard is extremely challenging, particularly when dealing with historical offences which will be expected to be captured under this measure. Faith in the justice system among survivors is low, jurisdictional standards vary and attrition rates can be high.<sup>2</sup> We urge the government to consider how this important reform can coexist alongside more holistic and system wide judicial reforms and that will support all survivors of sexual violence and abuse through the justice system.

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<sup>2</sup> There were more than 8,000 sexual offence incidents involving a child victim reported to NSW Police in 2019. Criminal proceedings were initiated in just over 1,000 of the reported incidents, with a conviction rate of 67%. <https://www.bocsar.nsw.gov.au/Documents/RCS-Annual/2020-08-05-sexualattributiondiagrams-2019v2.pdf>



## **Implementation considerations**

### The deeming period

The discussion paper suggests that the deeming period commence six or twelve months before the offender is charged and that additional contributions deposited during this time be subject to release orders. While we appreciate the policy needs to be guided by some arbitrarily defined limits, we urge that in establishing the deeming period the policy accommodate the complex reality of child sexual abuse and offender behaviour, including the following; that offenders can operate without detection for an extended period, that additional contributions may be made over the course of an offending period and that the offender may be doing to deliberately shield assets from any future claim; that many survivors of the same offender may come forward over a period of years and that where an offender is already incarcerated for earlier child sex abuse crimes subsequent survivors may not have the opportunity to access the redress scheme.

### Technical considerations

There are technical considerations in implementation to be considered such as the need for a comparable standard of forensic accounting and data retrieval systems across superannuation funds. We also query how self-managed super funds, with obvious limits in automation and record keeping, will be accommodated in the scheme.

To achieve a level of consistency and transparency, there is also a need for this type of redress mechanism to be fully removed from the subjective interpretation of the super fund itself. Accordingly, the release of funds must be subject to a court order, rather than being influenced by biases or subjectivity at the point of release.



**National Women's  
Safety Alliance**

Thank you for the opportunity for NWSA and its members to contribute to such an important issue.

Regards,

**Katherine Berney (She/Her)**

Director NWSA

Level 2, 71 Northbourne Avenue Canberra, ACT 2601

Ngunnawal Country

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