



Mallee Family Care

Access to super for victims of child sexual abuse – draft legislation

Submission response

February 2026

Executive Summary

Mallee Family Care (MFC) welcomes the opportunity to respond to the draft legislation to help victims and survivors of child sexual abuse access the offender's super for court-ordered compensation payments.

MFC is a place-based, not-for-profit community service organisation (CSO) that has been supporting the regional, rural, and remote communities of northwest Victoria, and far west New South Wales since 1979. Our organisation employs almost 300 staff to deliver more than 60 federally and state funded programs reaching thousands of community members across the Mallee region.

These programs span family, youth and children, disability, mental health, housing, legal, financial, research, education, philanthropy, and advocacy. MFC embodies what it means to be truly place based, by creating and leading local solutions tailored to the specific needs of our community. We are committed to ensuring that clients get the right support, in the right environment, at the right time. To this end we work tirelessly to achieve the best outcomes for vulnerable children, individuals, and families who are facing disadvantage in the Mallee region.

This response provides general feedback to the public consultation on the draft legislation from our Community Legal Centre staff who specialise in working with victims of crime. We have provided an analysis of this law reform, with merits and concerns noted and have included a comparison with other jurisdictions and conclusion.

Victims Legal Service

Mallee Family Care Community Legal Centre (MFCCLC) has been delivering the Victims Legal Service funded by Victoria Legal Aid for past three years. During this time, VLS has proven to be a vital and effective program, providing essential legal support and advocacy to victims of crime. The program covers a catchment area of 74,313km² providing this service to the following local government areas: Mildura, Swan Hill, Gannawarra, Buloke, Yarriambiack, Hindmarsh, Loddon, Campaspe, Greater Bendigo, Central Goldfields, Mount Alexander, Macedon Ranges and Hume.

The program helps victims better understand their rights and options and makes it easier for them to access legal and financial support. It supports victims to feel safer, more confident, and less overwhelmed when dealing with the justice system. By providing early and practical assistance, the program reduces financial stress, helps victims access protection and recovery services, and connects them with the right supports at the right time. It is with this specialist work in mind that we provide the following feedback.

Access to superannuation for victims of child sexual assault – law reform analysis

The Government has released draft legislation for public consultation that would enable access to an offender's superannuation for the purpose of satisfying unpaid, court-ordered compensation arising from child sexual abuse. The legislation would ensure that convicted child sexual abuse offenders cannot use their superannuation to avoid paying court-ordered compensation to their victims and survivors.



This reform would allow victim-survivors to apply for a court order to access eligible superannuation contributions of an offender where a related compensation order has remained unpaid (for 12 months) and enables applications to the ATO to identify relevant superannuation prior to seeking recovery. It closes a significant loophole that has enabled some perpetrators in the past to shield wealth from compensation obligations and reinforces the principle that offenders must be held fully accountable for the harm they have caused.

This proposed legislation sits alongside and operates in a complementary manner with the Victoria's Financial Assistance Scheme (FAS). This scheme provides state-based financial support to victims of violent crime – including counselling, medical costs, safety costs, damaged clothing, lost earnings, other recovery-related expenses and Special Financial Assistance – without requiring a court process or a conviction. While FAS plays a vital role in meeting practical recovery needs for victims, this new legislation is about ensuring compensation where court-ordered awards are made, closing the gap between state assistance and justice through the courts.

Merits of the proposed legislation

This reform strengthens the practical enforceability of courts' compensation orders by providing a legal mechanism to access an offender's concealed funds – reducing the risk of victims being left without redress once liability is established.

It reflects a core law reform principle that legal liability should be meaningful and not illusory: an offender ordered to compensate should not be able to avoid payment by exploiting structural protections in superannuation. In effect, this reform shifts the cost burden back towards offenders wherever possible, rather than publicly funded social support.

Concerns of the proposed legislation

One foundational policy concern is that superannuation in Australia is expressly designed to provide retirement income—not to serve as a general pool of funds for creditors or claimants. Permitting compulsory access to an offender's superannuation contravenes this core policy principle if not precisely confined, with potential precedent effects for other classes of creditors over time.

Integrating superannuation, bankruptcy, civil compensation, and family law frameworks creates significant legal complexity. Superannuation law has its own protected assets regime; family law property settlements involve different principles about how assets (including super) are divided. Overlapping these systems may generate conflicts of priority between competing legal processes (e.g., Family Court property orders vs. criminal compensation enforcement).

The reform may also lead to an increase in litigation as parties (offenders, victims, and possibly former spouses) dispute entitlements. This will undoubtedly lead to administrative burdens for courts determining what contributions are "additional" and what are legitimately protected.

Comparing other Jurisdictions

Some U.S. federal courts have held that pension funds can be accessed to pay court-ordered restitution in criminal cases under the Victim's Restitution Act. This is primarily focused on criminal restitution, not specifically on child sexual abuse.

Many European jurisdictions, including the UK, do not permit seizure of pension or retirement assets to satisfy private compensation orders against individuals. Instead, state-administered victim



compensation schemes fill the gap where offenders cannot pay. For example, England has a public Criminal Injuries Compensation Authority (CICA) that pays victims of violent crime, funded by government, without targeting offenders' pension assets directly.

In jurisdictions like California, special boards (e.g., California Victim Compensation Board) provide compensation to victims of violent crime without regard to the offender's personal finances, often funded by a mix of state resources and offender restitution collections.

Conclusion

The Government's draft legislation is a targeted, problem-specific reform that seeks to close a clearly identified loophole where offenders hide assets to avoid liability. At its core, the reform is trying to fix a genuine problem – situations where offenders can avoid paying compensation by sheltering money in superannuation. However, allowing access to superannuation for this purpose introduces complexity, particularly where those funds are also subject to division under the Family Law Act. Without clear rules governing priority and timing, there is a risk that family law property settlements may be disrupted, potentially affecting former partners who bear no responsibility for the offending.

In this broader context, the reform should be understood as complementary to, rather than a substitute for, existing victim support mechanisms such as the Victorian Financial Assistance Scheme (FAS). FAS provides a structured and accessible form of assistance that does not depend on enforcement against an offender's assets. To avoid unintended consequences, careful drafting and alignment with the Family Law Act will be essential to ensure that victims are supported without undermining certainty and fairness in related legal processes.

Mallee Family Care appreciates the opportunity to provide this general feedback to the public consultation process and would be happy to discuss further if required.

For further information, please contact:

Name; Teresa Jayet
Role; Chief Executive Officer
Email tjayet@malleefamilycare.com.au
Phone 03 50 235966