



Uniting Church in Australia
SYNOD OF VICTORIA AND TASMANIA



The Uniting Church in Australia
QUEENSLAND SYNOD

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Joint submission from the Uniting Church in Australia, Synod of Queensland and Synod of Victoria and Tasmania to consultation on access to super for victims of child sexual abuse – draft legislation

The Uniting Church in Australia, Queensland Synod and Synod of Victoria and Tasmania welcome the opportunity to provide this submission to the draft legislation on access to superannuation for victims of child sexual abuse. We commend the Australian Government for advancing this important reform. This legislation is a significant step toward addressing long-standing barriers faced by survivors in obtaining justice and redress.

Attached is our submission providing recommendations to improve the proposed legislation to help victims and survivors of child sexual abuse access the offender's superannuation for court-ordered compensation payments. Particularly, we recognise the draft legislation aims to prevent offenders from being able to misuse the superannuation system as a means of asset protection against civil actions taken by their victims. Our recommendations seek to ensure the legislation is equitable, workable, and genuinely responsive to the experiences of those who have suffered profound and lifelong harm.

We would welcome the opportunity to discuss this submission further and to participate in any subsequent consultation.

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Executive Summary

The Queensland Synod and Synod of Victoria and Tasmania are broadly supportive of the draft legislation to help victims and survivors of child sexual abuse access the offender's super for court-ordered compensation payments.

However, we believe several amendments are necessary to ensure the legislation effectively delivers justice and prevents barriers to compensation for victims and survivors. The Queensland Synod and Synod of Victoria and Tasmania urge Treasury to amend the draft legislation in line with the following recommendations:

Recommendation 1

Allow access to superannuation where a civil action in a court has found the perpetrator liable for child sexual abuse on the balance of probabilities, regardless of whether criminal proceedings have been pursued or concluded.

Recommendation 2

Amend the draft legislation to:

- allow access to a proportion of the perpetrator's entire superannuation pool beyond additional contributions, with a minimum protected amount remaining for basic retirement needs,
- allow access to USM of perpetrators, which is held by the ATO
- include access to Defined Benefit Super Funds

Recommendation 3

Broaden the definition of eligible offences and victims to include convictions for child sex abuse offences of Australians overseas.

Recommendation 4

Ensure survivor compensation proceedings take precedence over proceeds-of-crime actions, and where proceeds of crime have already been recovered by government, survivors should have a mechanism to make a compensation claim against those funds.

Recommendation 5

Treasury should consider future expansion of the proposed reforms to include other crimes, in consultation with stakeholders.

Recommendation 6

Amend section 139-55 to minimise the grounds under which a perpetrator can oppose the making of an order. In particular, the perpetrator should not have the ability to contest the date on which the specified child sexual abuse first occurred.



Standard of Proof and Access Following Civil Proceedings

The requirement that a survivor may only access a perpetrator's superannuation where there is a criminal conviction will, in practice, exclude the vast majority of victims and survivors. Research studies show that the majority of sexual assaults are not reported to the police, and when they are reported, do not proceed past the police investigation stage, let alone result in a conviction: ¹

- An analysis of police and court administrative data in NSW from 2003 to 2016 found that only 21.6% of cases of reported sexual abuse of a child proceeded beyond the investigation stage. Of the matters taken to court, 55.5% resulted in a conviction. However, the overall estimate was that only 12% of offences reported to police resulted in a conviction. ²
- A prospective study published in 2002 that tracked 183 child sexual abuse cases referred to two Australian Child Protection Units found a 76% attrition rate prior to prosecution. Of the cases that made it to court, 71% resulted in a conviction. ³

The criminal justice system is potentially harsh and traumatising for victims and survivors who, for a range of reasons, may be deterred from engagement with it, and even counselled to avoid it by their legal advisers, who may advise pursuit of a civil action, instead. ⁴ Such advice does not necessarily speak to the quality of the evidence against the accused or necessarily mean that a conviction could not have been secured. ⁵ In addition, the prosecution may fail to secure a conviction for many reasons other than the quality of the evidence. ⁶

Civil proceedings are more accessible to victims and survivors and recognise the harm and financial loss caused by abuse. Governments and commercial ventures are frequently held legally and financially accountable for their actions, or hold others legally and financially accountable, on the basis of evidence that meets the balance of probabilities standard of proof. ⁷

The balance of probabilities standard of proof used in civil cases is applied in accordance with the *Briginshaw* principle, ensuring that serious allegations are supported by substantial evidence. ⁸

¹ Rape Crisis Auckland, 'One in One Hundred Sexual Assaults Result in a Conviction', Media Release, 13 August 2013; Australian Law Reform Commission, Final Report Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence, ALRC Report 143, January 2025

² Judith Cashmore, Alan Taylor and Patrick Parkinson, "Fourteen-Year Trends in the Criminal Justice Response to Child Sexual Abuse Reports in New South Wales", *Child Maltreatment* 25(1), (2020), 85.

³ Bravehearts, "Convicting, treating & managing child sex offenders".

⁴ Australian Lawyers Alliance, 2023, Submission, <https://www.lawyersalliance.com.au/common/Uploaded%20files/Submissions/2023/230215SubNational.pdf>

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ See *Briginshaw v Briginshaw* (1938) 60 CLR 336, per Dixon J, as cited in Relationships Australia, 2023, Submission, <https://www.relationships.org.au/wp-content/uploads/CSA-survivors-and-access-to-super-070223FINAL-Relationships-Australia-National.pdf>



The case of *Brockhurst v Rawlings* [2021] QSC 217 illustrates problems that arise for victims and survivors, which would unfortunately not be solved by proposed legislation.⁹ A judgment was delivered on 27 August 2021 in the Supreme Court at Brisbane. The plaintiff was a boarding student in Year 8. The defendant was his teacher. The Court held that the defendant groomed and sexually abused the plaintiff and caused him personal injury. Judgment was delivered on behalf of the plaintiff in the sum of \$1,443,459.06. The Court scrutinised the evidence in the matter and accepted that the plaintiff was sexually abused by the defendant, as the plaintiff alleged. The Court noted that the plaintiff chose not to pursue the defendant through the criminal courts and that she had therefore suffered no penal sanction for her conduct. The Court considered it appropriate to make an additional award for exemplary damages to convey the Court's denunciation of the defendant's abusive conduct and to ensure that the plaintiff was adequately compensated. Despite going through extensive litigation, including in the Supreme Court, the proposed legislation reforms would not allow the plaintiff in the above case to recover any of the judgment sum through his perpetrator's superannuation. Even though the plaintiff has been through the process of giving evidence in a civil trial, including being cross-examined.

Requiring a criminal conviction creates perverse outcomes such as:

- Victims and survivors who win a case in civil court, which allows for the interrogation of evidence and cross-examination, would still be prevented from accessing the offender's superannuation, and
- Victims and survivors could be forced into two separate legal processes (criminal then civil), increasing trauma, delays, and costs to the victims and survivors.

Recommendation 1

Allow access to superannuation where a civil action in a court has found the perpetrator liable for child sexual abuse on the balance of probabilities, regardless of whether criminal proceedings have been pursued or concluded.

Access to a Portion of the Perpetrator's Full Superannuation Balance and to Defined Benefit Super Funds

The draft legislation restricts access for victims and survivors to *additional contributions*. The Queensland Synod and Synod of Victoria and Tasmania believe this approach is too narrow and would deny many survivors meaningful compensation. The Australian Lawyer's Alliance has proposed that a portion of the perpetrator's full superannuation pool should be accessible to their victims and survivors to satisfy a compensation order or agreed settlement, not merely the perpetrator's "additional" contributions. This portion of the perpetrator's full superannuation pool could be defined by a percentage or a maximum cap on how much is accessible for fulfilling a compensation order. It could also contain a stipulation as to the minimum amount that must remain

⁹ *Brockhurst v Rawlings* [2021] QSC 21 cited in Australian Lawyers Alliance, 2023, Submission, <https://www.lawyersalliance.com.au/common/Uploaded%20files/Submissions/2023/230215SubNational.pdf>



in the superannuation pool to fund a basic retirement, once the compensation order/settlement has been paid to the victim or survivor.¹⁰

The draft legislation also exempts Defined Benefit Super Funds. This has been opposed by stakeholders, Chartered Accountants Australia and New Zealand, CPA Australia, Financial Planning Association, the Institute of Public Accountants and the SMSF Association, who stated in a submission to the 2023 consultation that the family law framework contains superannuation splitting processes to manage access to Defined Benefit Super Funds, which could be repurposed as part of the current draft legislation for the benefit of victims and survivors¹¹

The Treasury's initial draft proposals in 2018, included the perpetrator's entire superannuation balance, where there were no dependents.¹² In addition, in the Treasury's 2018 consultation, an offender's unclaimed superannuation monies (USM) held by the Australian Taxation Office (ATO) was proposed to be available to a victim or survivor under proposal one, with the rationale stated to be that this was necessary to preclude offenders from potentially allowing USM be transferred to the ATO to shield it from victims and survivors.¹³

Recommendation 2

Amend the draft legislation to:

- allow access to a proportion of the perpetrator's entire superannuation pool beyond additional contributions, with a minimum protected amount remaining for basic retirement needs,
- allow access to USM of perpetrators, which is held by the ATO
- include access to Defined Benefit Super Funds

Scope of Eligible Offences

The Queensland Synod and Synod of Victoria and Tasmania support the proposed definition of *specified child sexual abuse offence* but encourages Treasury to strengthen the scope of the draft legislation by including the situation where an Australian national has been convicted of child sexual offences in a foreign jurisdiction. This is supported by other stakeholders.¹⁴

Non-government organisation Action Pour Les Enfants (APLE) Cambodia gave evidence to the 2018 UK Independent Inquiry into Child Sexual Abuse.¹⁵ They reported that in their ten-year review of assisting in the prosecution of 248 alleged child sex offenders between 2003 and 2012, 165 were

¹⁰ Australian Lawyers Alliance, 2023, Submission,

<https://www.lawyersalliance.com.au/common/Uploaded%20files/Submissions/2023/230215SubNational.pdf>

¹¹ Chartered Accountants Australia and New Zealand, CPA Australia, Financial Planning Association, the Institute of Public Accountants and the SMSF Association, 2023, Submission,

<https://www.charteredaccountantsanz.com/-/media/2663de70c37248e9ba08ccea053aeb30.pdf>

¹² Chartered Accountants Australia and New Zealand, CPA Australia, Financial Planning Association, the Institute of Public Accountants and the SMSF Association, 2023, Submission,

<https://www.charteredaccountantsanz.com/-/media/2663de70c37248e9ba08ccea053aeb30.pdf>

¹³ Ibid

¹⁴ Ibid.

¹⁵ Seila Samleang witness statement to the UK Independent Inquiry into Child Sexual Abuse, 22 December 2018, 5-6.



convicted: Of those convicted, 128 were foreign nationals. Of the seven British nationals convicted, all were convicted in Cambodian courts.¹⁶ In 2019, a Swedish court awarded US\$23,250 in compensation to six Cambodian girls who had been sexually abused and assaulted by Swedish national Ulf Christian Goransson.¹⁷

These outcomes point to the need that victims of child sexual abuse by Australians, where the Australian is convicted in the court where the offences took place, should be able to pursue compensation from the offender through the Australian legal system.

APLE Cambodia reported that between 2003 and 2017, of the cases they were involved in, 12 involved the arrest of Australians suspected of having perpetrated child sexual abuse in Cambodia.¹⁸

Given the numerous barriers survivors of child sexual abuse overseas face in seeking compensation from Australian offenders, such cases are likely to be rare. An example of an attempt at such a case was a Cambodian survivor whom Geoffrey William Moyle sexually abused.¹⁹ Mr Moyle pleaded guilty to 11 offences, eight related to sexual abuse of children aged between ten and 12. The eight offences occurred in Cambodia between 2002 and 2005. However, in this case, court action was not needed after Mr Moyle voluntarily paid \$84,000 in compensation to the survivor.²⁰

As another example, Peter Gerard Scully has been sentenced to 129 years imprisonment in the Philippines for child sexual abuse.²¹ He has sexually abused children as young as 18 months.²² He has set up a cyber sexual abuse business, abusing teenage girls from impoverished families. In March 2025, the Philippines Supreme Court upheld the life sentence of Peter Gerard Scully.²³ He was required to pay Php 600,000 (\$14,600) to each of two victims. In our view, if an offender such as Mr Scully did not pay the required compensation the Filipino victims should be able to seek access to his superannuation to obtain the compensation.

We note that the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* in Queensland <https://www.legislation.qld.gov.au/view/html/inforce/current/act-2004-052#7>

¹⁶ Seila Samleang witness statement to the UK Independent Inquiry into Child Sexual Abuse, 22 December 2018, 5-6.

¹⁷ APLE Cambodia, "Street Girl Victims Of Child Sexual Abuse Received Civil Remedies Through Verdict Of A Swedish Court", 1 October 2019.

¹⁸ Kevin Ponniah, "Should child sex offenders be allowed to travel?", *BBC*, 12 July 2027.

¹⁹ Helen Sullivan, "Cambodian child sexual abuse victim seeks compensation in Australian legal first", *The Guardian*, 23 February 2021.

²⁰ Sean Fewster, "SA pedophile Geoffrey William Moyle voluntarily pays Cambodian former child sex slave \$84,000 for abusing her in overseas brothel", *The Advertiser*, 28 June 2021.

²¹ "Australian Peter Gerard Scully jailed for 129 years in Philippines for child sexual abuse", *ABC*, 9 November 2022, <https://www.abc.net.au/news/2022-11-09/australian-peter-gerard-scully-jailed-in-philippines-129-years/101635434>

²² *Ibid.*

²³ Supreme Court of the Republic of the Philippines, "SC Upholds Life Sentence of Peter Scully for Qualified Trafficking", 24 March 2025, <https://sc.judiciary.gov.ph/sc-upholds-life-sentence-of-peter-scully-for-qualified-trafficking/>



includes in their corresponding reportable offence definition: *A corresponding reportable offence is an offence against a law of a foreign jurisdiction if a person convicted of the offence would be required to report to the corresponding registrar in the foreign jurisdiction because of the conviction.*

Recommendation 3

Broaden the definition of eligible offences and victims to include convictions for child sex abuse offences of Australians overseas.

Parallel Proceedings

The draft legislation allows court proceedings in relation to proceeds of crime to be prioritised over survivor access to compensation. This would cause unjust delays and risk re-traumatisation of victims and survivors.

The Queensland Synod and Synod of Victoria and Tasmania believe that the legislation should stipulate that legal proceedings in relation to proceeds of crime cannot commence if compensatory proceedings have already commenced. In addition, where the offender has already been subject to action under the *Proceeds of Crime Act 2002 (Cth)*, the survivor should be given a mechanism to claim compensation from the proceeds of crime recovered from the offender by the government.

Recommendation 4

Ensure survivor compensation proceedings take precedence over proceeds-of-crime actions, and where proceeds of crime have already been recovered by government, survivors should have a mechanism to make a compensation claim against those funds.

Future Expansion to Other Crimes

In 2018, the Treasury released draft proposals to legislate to ensure that victims and survivors of *serious crimes* could access the perpetrator's superannuation.²⁴ Draft proposal 1 applied to victims and survivors of a person convicted of any indictable offence, while draft proposal 2 applied to victims and survivors of a person convicted of a serious crime, involving violence against an individual, that has a maximum custodial sentence of 10 years or greater. Unfortunately, the proposals were ultimately abandoned by the then government.²⁵

Chartered Accountants Australia and New Zealand, CPA Australia, Financial Planning Association, the Institute of Public Accountants and the SMSF Association believe the scope of the policy should be broadened to cover victims and survivors of other heinous crimes.

²⁴ The Treasury, Review of superannuation and victims of crime compensation Further consultation and draft proposals May 2018, <https://treasury.gov.au/consultation/c2018-t293803>

²⁵ February 17 2023, By Mark Bland, Partner, Emma Higgs, Senior Associate, and Brittany Buchanan, Paralegal, Access to offenders' superannuation for victims and survivors of child sexual abuse, <https://www.millsoakley.com.au/insights/access-to-offenders-superannuation-for-victims-and-survivors-of-child-sexual-abuse/>



The Law Society of South Australia has suggested that careful consideration should be given to expanding the proposal to victims and survivors of other serious crimes with common characteristics to child sexual abuse, such as: ²⁶

- the vulnerability of the victim-survivors;
- the lasting nature of the harm caused; and
- the nature of the offence, given that it is committed for personal gratification.

Relationships Australia has suggested that the Government should allow access for victims and survivors of domestic and family violence offences. ²⁷

It is unclear what principles have been applied to determine that the experiences of this group of victim survivors are so distinct in degree and kind of trauma and harm endured by child and adult victim survivors of other kinds of offences to justify exclusion of the latter from accessing compensation by the means proposed. It is unclear why other victim survivors should not have similar recourse against perpetrators.

The Australian Lawyers Alliance has suggested that the proposed reform be available to all victims and survivors of abuse. ²⁸

The Chartered Accountants Australia and New Zealand, CPA Australia, Financial Planning Association, the Institute of Public Accountants and the SMSF Association has asked that the proposed reform be extended to all serious indictable offences, define as criminal trials involving a judge and jury and serious offences that an accused can elect to have heard by judge alone. ²⁹

Bravehearts advocated for the offence criteria to include a serious interpersonal crime. ³⁰

Recommendation 5

Treasury should consider future expansion of the proposed reforms to include other crimes, in consultation with stakeholders.

²⁶ Law Council of Australia, 2023, Access to offenders' superannuation for victims and survivors of child sexual abuse, <https://lawcouncil.au/publicassets/8219b5c5-cdbe-ed11-947a-005056be13b5/2023%2002%2024%20-%20S%20-%20Access%20to%20offenders%20superannuation%20for%20victims%20and%20survivors%20of%20child%20sexual%20abuse.pdf>

²⁷ Relationships Australia, 2023, Submission, <https://www.relationships.org.au/wp-content/uploads/CSA-survivors-and-access-to-super-070223FINAL-Relationships-Australia-National.pdf>

²⁸ Australian Lawyers Alliance, 2023, Submission, <https://www.lawyersalliance.com.au/common/Uploaded%20files/Submissions/2023/230215SubNational.pdf>

²⁹ Chartered Accountants Australia and New Zealand, CPA Australia, Financial Planning Association, the Institute of Public Accountants and the SMSF Association, 2023, Submission, <https://www.charteredaccountantsanz.com/-/media/2663de70c37248e9ba08ceea053aeb30.pdf>

³⁰ Bravehearts, 2018, Submission, <https://treasury.gov.au/sites/default/files/2019-03/c2018-t293803-Bravehearts.pdf>



Modification of Section 139-55

The Synods urge that section 139-55 of the Bill be amended to minimise the grounds on which a perpetrator can oppose the making of an order. Perpetrators will often seek to inflict further harm on their victims through the judicial system. Section 139-55 will allow perpetrators to make malicious, vexatious or meritless claims to draw out the provision of compensation to the victim. In particular, clauses 139-55 (1)(c) and (d) should be removed. Clause 139-55(1)(c) is the most problematic, allowing a perpetrator to make claims about the date of the first specified sexual abuse that could cause serious distress for the victim, as the court weighs up if the victim's testimony is incorrect and limiting the accessible compensation based on arguments put by the perpetrator. Given the victim can only access compensation up to a level that has already been set by a court, we believe the legislation is too favourable to the perpetrator by seeking to limit the compensation that can be obtained based on the date of the first abuse.

As noted by the evidence presented to the Senate Standing Committees on Legal and Constitutional Affairs inquiry into current and proposed sexual consent laws in Australia, the court processes are often retraumatising for victim-survivors of sexual abuse.³¹ Thus, it is desirable to limit the ability of perpetrators to further draw out processes to provide compensation to victim-survivors.

Recommendation 6

Amend section 139-55 to minimise the grounds under which a perpetrator can oppose the making of an order. In particular, the perpetrator should not have the ability to contest the date on which the specified child sexual abuse first occurred.

³¹ The Senate Legal and Constitutional Affairs References Committee, Current and proposed sexual consent laws in Australia, 2023,
https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/sexualcontentlaws/Report/Chapter_3_-_Lived_experience