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Neena Pai
First Assistant Secretary
Retirement Income and Superannuation Division
Revenue, Small Business and Law Group
The Treasury
Treasury Building, Langton Crescent
Parkes ACT 2600
Via email: superannuation@treasury.gov.au

Dear First Assistant Secretary,

Access to Super for Victims of Child Sexual Abuse – Draft Legislation

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission to Treasury's consultation on the Access to Superannuation for Victims of Child Sexual Abuse Crimes exposure draft legislation.

About ASFA

ASFA, the voice of super, has been operating since 1962 and is the peak policy, research and advocacy body for Australia's superannuation industry. ASFA represents the APRA regulated superannuation industry with over 100 organisations as members from corporate, industry, retail and public sector funds, and service providers.

We develop policy through collaboration with our diverse membership base and use our deep technical expertise and research capabilities to assist in advancing outcomes for Australians. We unite the superannuation community, supporting our members with research, advocacy, education and collaboration to help Australians enjoy a dignified retirement. We promote effective practice and advocate for efficiency, sustainability and trust in our world-class retirement income system.

Response

ASFA supports Treasury's endeavour to establish a framework intended to further support victims of child sexual abuse while holding perpetrators of such crimes financially accountable.

While the intent of the exposure draft legislation in supporting victims is evident, ASFA raises the concern that several provisions within the exposure draft appear to not be fully considered, requiring further revision to ensure successful implementation.

For the consideration of Treasury, ASFA submits the following points for further clarification:

1. **Notification to perpetrators:** ASFA notes the processes surrounding the various notifications obligations have not been sufficiently clarified, and specifically in relation to the order such notifications are sent and received by the various parties.

Here, ASFA's primary concern is ensuring notifications are received by a perpetrator at the point where regulators have been able to secure the respective superannuation assets, denying a perpetrator any possibility of insulating said assets from the legal proceedings stipulated under the exposure draft.

2. **Release authority timeframe:** The 10 business day release authority timeframe in the draft legislation aligns with current release authority requirements under Schedule 1 of the *Taxation Administration Act 1953*.
 - Notwithstanding this point, ASFA notes this proposed framework and its processes may unintentionally see funds receive conflicting court orders.
 - In such circumstances, it would be necessary for the ATO to allow for follow up responses between itself and a fund via Superstream to have the ATO provide direction where the account in question is subject to other court orders and what the priority is for the Release authority.
 - A longer period of 15-20 business days may be more appropriate under these circumstances.
3. **Conflicting court orders:** Under the release authority model, what process sequencing might occur where legal processes (such as an active Family Law superannuation splitting matter) occurs simultaneously to a release authority conferred under the draft legislation.
4. **Concurrent release authorities:** Where multiple separate release authorities are issued concurrently and in relation to the same fund member account, how this should be managed by a fund, and particularly in relation to the division of funds.
5. **Data reliability:** In cases where fund member information has not been updated, and such information is likely to remain unobtainable, how funds should proceed in complying with their respective obligations.
6. **Administrative materials:** Whether relevant administrative materials, such as release authority forms, will be provided to superannuation funds by the Australian Taxation Office (ATO).
7. **Defined Benefit Schemes:** What a Defined Benefit Scheme (DBS) should consider when assessing the possibility of voluntary application of obligations under the draft legislation.
8. **Exception management:** ASFA notes ATO guidance will be required on exception management, including how disputes, calculation errors, or challenges by perpetrators are handled pre- and post-payment.

9. **Tax treatment:** ASFA notes there is a distinct lack of clarity in relation to how any relevant taxation processes may interact with compensation payments derived from superannuation assets received by victims.

Closing Remarks

We thank Treasury for the opportunity to provide this submission. To discuss any of these issues further please contact ASFA Policy Manager Luke O'Donnell at lodonnell@superannuation.asn.au or on 0407 486 877.

Yours sincerely



James Koval
Chief Policy & Advocacy Officer

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