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File Ref: D2018/0940-LP

Ms Kylie Bourke
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The Treasury
Level 6, 120 Collins Street
MELBOURNE VIC 3000

By email to Kylie.Bourke@treasury.gov.au

Dear Ms Bourke

Review of superannuation and victims of crime compensation

The Northern Territory Department of the Attorney-General and Justice (the Department) has considered both proposals in the consultation paper for the Review of superannuation and victims of crime compensation (the Review) dated May 2018.

Generally the proposals are supported in principle as they provide additional support to victims of crime.

In relation to the second proposal, the consultation paper indicates that the term 'compensation order' is intended to encompass compensation orders made in the context of sentencing, as well as 'civil compensation claims' in circumstances where there has been a prior criminal conviction. In the Northern Territory, a Court may make a compensation or restitution order, pursuant to section 88 of the *Sentencing Act* (NT). That section provides that the Court may order an offender to:

- (a) pay compensation for injury suffered by a person in the course of or in connection with the commission of an offence;
- (b) make restitution of property taken in the course of or in connection with the commission of an offence;
- (c) pay compensation for the loss or destruction or damage to property that occurs in the course of or in connection with the commission of an offence.

The above compensation and restitution orders are part of the Northern Territory's sentencing regime. They may be made by the Court in favour of a victim upon a finding of guilt, either on the court's own motion or on the application of the prosecutor.

It is assumed that damages awarded pursuant to the *Personal Injuries (Liabilities and Damages) Act* (NT) may be considered to be equivalent to 'civil compensation orders'. Under the *Personal Injuries (Liabilities and Damages) Act* (NT), an injured person can seek damages for pecuniary loss, including damages for loss of earning capacity, as well as damages for non-pecuniary loss, depending on the

degree of permanent impairment suffered by the injured person. Proceedings under the *Personal Injuries (Liabilities and Damages) Act* (NT) might be commenced by a victim against an offender following criminal proceedings if, for example, the court imposes a sentence on an offender that does not include a compensation or restitution order.

In considering how these proposals might have an impact on the Northern Territory in a practical way, it is noted that the consultation paper appears to contemplate that applications to access an offender's superannuation would be made to the court by the victim. In the Northern Territory, unpaid compensation and restitution orders made in favour of a victim will usually be, unless the Court specifies otherwise, referred to the Northern Territory's 'Fines Recovery Unit' for enforcement. Pursuant to the *Fines and Penalties (Recovery) Act* (NT), the Fines Recovery Unit can enforce unpaid compensation and restitution orders in various ways, including by issuing a property seizure order, or by issuing a garnishee of wages order.

In addition, it is noted that victims of crime in the Northern Territory may not necessarily have the resources to make an application to a court for access to an offender's superannuation. A number of victims may also be dependent on legal assistance from non-government and community legal organisations, which also often have limited resources and may not be funded for these types of applications. This may restrict opportunities for some victims to seek such orders. It is recommended that these issues be taken into account in the development of the proposals.

If you have any questions concerning above please contact Ms Alexandra Lillis on 08 8935 7744.

Yours sincerely



Jenni Daniel-Yee
Director, Legal Policy
29 June 2018