

28/02/2018

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Dear Mr Jeremenko

Re: AUSTRALIANSUPER SUBMISSION TO TREASURY – CONSULTATION PAPER ‘EARLY RELEASE OF SUPERANNUATION BENEFITS’

AustralianSuper welcomes the opportunity to respond to the Consultation Paper above.

About AustralianSuper

AustralianSuper is Australia’s largest single superannuation fund and is run only to benefit members. We don’t pay commissions to anyone to recommend us, nor do we pay dividends to shareholders. The fund has over 2.2 million members and manages over \$130 billion of members’ assets. Our sole focus is to provide the best possible retirement outcomes for members.

This submission addresses a number of questions from the consultation paper and makes the following key points:

- AustralianSuper believes that the purpose of superannuation is to provide adequate retirement incomes for Australians to improve quality of life in retirement. Therefore AustralianSuper supports the early release of superannuation only in very limited circumstances and believes the release of superannuation benefits should generally be more difficult to obtain.
- A significant uptick in the applications and approvals for early access to superannuation for specific physical or mental health conditions should act as a signal to government that the healthcare needs of the Australian population are not being adequately served by Australia’s healthcare system.
- On average, women’s’ long-term financial well-being is already under considerable stress due to structural inequities. Victims of domestic violence - disproportionately women - should not be required to trade their quality of life in retirement in order to be financially capable of escaping an abusive partner.
- The idea that a provision for the early release of superannuation benefits is a legitimate answer to help women escape violent domestic situations

underscores the critical need for a review of the adequacy of Australia's social security system and crisis assistance for victims of domestic violence.

- The current test for early release on the grounds of financial hardship is subjective and therefore consumer experience across funds differs. AustralianSuper proposes that subjectivity should be eliminated from legislation to ensure fairness and consistency of experience for the consumer across the industry.
- Renters and mortgage holders should have equal rights in accessing a last resort mechanism in superannuation to protect them from being made homeless.
- Where a perpetrator has made superannuation contributions in order to avoid paying court-ordered compensation, a victim should have access to those contributions.
- Consideration should be given as to whether granting a victim access to a perpetrator's superannuation may unfairly infringe on spousal entitlements to the same superannuation monies.

Principles Underpinning Early Release

AustralianSuper supports the principle to allow access where the benefits of early access to superannuation for an individual exceed the benefit of preserving balances until retirement.

AustralianSuper does not believe that early access should be generally easier to obtain.

Since the original grounds for early release of superannuation were established, only a small fraction of overall superannuation assets have been paid out as early release benefits. The relatively stable number of applications for early release of superannuation benefits, up until at least 2012, indicate that for the most part the system has established a balance between competing principles of preservation, genuine hardship, last resort and fairness that has been reasonable. On this basis AustralianSuper supports the early release of superannuation under the very limited circumstances described.

Early Release on Compassionate Grounds

Medical Grounds

AustralianSuper believes that the purpose of super is to provide adequate retirement incomes for Australians to improve quality of life in retirement. The purpose of superannuation is not and should never be to underwrite government responsibility to provide adequate and affordable healthcare options for Australians suffering severe mental health and other life threatening conditions. Further, Australians should not be compelled to trade off the quality of their life in retirement for their health in their working life. Australians should be able to access adequate health services to treat

severe mental health disturbances and life threatening conditions affordably through Australia's health care system.

It is clear from the data that the increase in applications and approvals for the early release of superannuation on compassionate grounds is out of step with historic data and deserves investigation.

Indeed, the increase in these types of applications signals that the changing health of Australians and their needs are not yet adequately supported by Australia's healthcare system. A significant uptick in the applications and approvals for early access to superannuation for specific physical or mental health conditions should act as a signal to government that the healthcare needs of the Australian population are not being adequately served by Australia's healthcare system.

In addition, it may signal an increase the intermediation of the early release of superannuation on compassionate grounds. Intermediaries involved in the early release of superannuation have long existed in Australia and in some cases target vulnerable Australians. In addition, intermediaries may charge a percentage-based fee in order to provide assistance in accessing superannuation earlier. Charging a percentage-based fee is unconscionable and mechanisms to protect people from being exploited by intermediaries is necessary.

Funeral expense grounds

AustralianSuper believes there should be a maximum amount that can be released to meet funeral expenses and burial expenses. Keeping in mind the principle of preservation, it is unreasonable that when accessing superannuation benefits early for funeral and/or burial expenses that there is no cap. Unlike medical treatment or palliative care, funeral and burial expenses are a common fixed cost, the average of which is relatively easy to quantify. On this basis, the regulator setting a maximum withdrawal is fair.

Other potential new grounds - Victims of domestic violence

The consultation paper suggests that several stakeholders have raised with Treasury the possibility that the provisions for early release of superannuation be extended to for victims of domestic violence in order to meet short-term financial needs.

Accessing superannuation benefits prior to retirement places a person's short-term well-being in direct contrast with their long-term well-being. As victims of domestic violence are disproportionately women, a provision for early release of superannuation benefits for domestic violence victims places the well-being of those women in retirement in jeopardy.

On average, women's' long-term financial well-being is already under considerable stress due to the structural inequities inherent in employment and workforce participation in Australia, and the way women's roles as caregivers are valued in society. On average, female members of AustralianSuper have 40% less in accumulation accounts compared to male members. According to ASFA, women are currently retiring on an average balance of \$157,050 compared to an average

balance for men of \$270, 710.¹ Furthermore, single older women represent the fastest growing group among the homeless in Australia.²

The purpose of superannuation is not to underwrite government responsibility to assist victims of domestic meet short-term financial needs. Victims of domestic violence should not be required to trade their quality of life in retirement in order to be financially capable of escaping an abusive partner.

To the extent that the early release of superannuation benefits appears to stakeholders involved in supporting victims of domestic violence as a legitimate way to help those victims escape violent domestic situations underscores the critical need for a review of the adequacy of Australia's social security system and crisis assistance for victims of domestic violence.

Housing Grounds

AustralianSuper does not believe that there is a fundamental difference between meeting mortgage payments and meeting rental payments to warrant a difference in treatment in early release provisions of superannuation. Thus to the extent that superannuation benefits may be released early to enable an individual to maintain their principal place of residence and avoid homelessness, the same rights should be extended to renters otherwise facing homelessness. The immediate consequences for the loss of one's home are broadly similar for mortgage holders and renters. Thus an individual wishing to access a last resort mechanism to maintain their principal place of residence should not be discriminated against on the basis of their prior inability to buy a property or their choice not to do so.

AustralianSuper believes that this rule in particular requires updating to keep pace with the declining trend of home ownership in Australia.³

An appropriately high threshold for release should be set with reference to evidence of imminent eviction and subsequent homelessness. Maximum limits for withdrawal should also be set to avoid system manipulation.

The legislation does not currently set maximum limits for withdrawal on the basis of meeting mortgage payments. In developing a maximum limit for renters a similar maximum limit should also apply to mortgage holders. The original spirit of the provision was to provide people a second chance to find work and/or improve their financial situation without becoming homeless. Regulation should not provide recurring opportunities for mortgage holders and renters alike to avoid foreclosure or eviction.

¹ ASFA (2017) Superannuation Account Balances in Retirement by Age and Gender https://www.superannuation.asn.au/ArticleDocuments/359/1710_Superannuation_account_balances_by_age_and_gender.pdf.aspx?Embed=Y

² St Vincent De Paul Facts about Homelessness <https://www.ceosleepout.org.au/facts/>

³ Census, HILDA Data https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/Quick_Guides/TrendsHomeOwnership

Early Release the Grounds of Financial Hardship

Unlike the early release of superannuation benefits on compassionate grounds, the ultimate discretion to release superannuation benefits on grounds of financial hardship lies with the trustee of a superannuation fund. Current regulations state that a trustee must be satisfied based on written evidence that the person has received a qualifying Commonwealth income support payment for a continuous period of 26 weeks and that the 'person is unable to meet reasonable and immediate family living expenses.' However, current regulations do not prescribe the specific matters that a trustee must take into account in order to meet the second element of this objective. As such, the early release of superannuation benefits on the grounds of financial hardship becomes subjective and consumer experience across funds subsequently differs.

AustralianSuper believes that this fails the principle of fairness and effectiveness. In order to ensure fairness and consistency of experience for the consumer across the industry, AustralianSuper proposes that the second element of the objective – that a trustee must be satisfied that the person is unable to meet reasonable and immediate family living expenses – should be eliminated from legislation. Therefore written evidence that the person has received a qualifying Commonwealth income support payment for a period of 26 weeks should be adequate evidence for a trustee that the member is in financial hardship. In addition, the legislation should override anything in a trustee's governing rules which imposes a higher requirement.

The alteration of the current legislation to the suggested simpler test will also prevent consumers from opening new account and transferring superannuation balances for the purpose of finding a superannuation fund that will honour their claim for the early release of super on financial hardship grounds. This will also prevent the cross-subsidisation of administration costs by members in funds which typically honour financial hardship.

In addition, AustralianSuper proposes that the current test that a person must have received a qualifying Commonwealth income support payment for a continuous period of 26 weeks should be altered to consider the cumulative receipt of a qualifying Commonwealth income support payment rather than the continuous receipt of the payment. The current legislation provides a disincentive for a person experiencing financial hardship needing to access their superannuation from accepting ad-hoc or casual work over a short period of time because this may break the 26 week continuous receipt requirement.

AustralianSuper also believes the amount and frequency with which a person can access early release of superannuation on the grounds of financial hardship should be capped. A centralised system run by the Australian Taxation Office (ATO) should be designed to ensure that the amount and frequency with which a person is accessing early release of superannuation is recorded. In the event of an early release claim, the ATO should share information with trustees on previous records of

granted early release benefits in order to prevent a person from opening a new account with another superannuation fund for the purposes of accessing early release beyond stipulated maximum limits.

Victims of Crime Compensation

AustralianSuper supports the access of superannuation to victims of crime compensation in limited circumstances. Where a perpetrator has made contributions to their own superannuation account or a third party's account in order to avoid paying court-ordered compensation, the victim of crime should have access to those superannuation contributions.

In the event of bankruptcy, superannuation account balances are protected except where contributions have been made to superannuation to defeat creditors. In determining this claim, the law considers whether the recent pattern of making contributions is out of step with the pattern of contributions prior to bankruptcy. AustralianSuper believes a similar review of a perpetrator's pattern of contributions could be used in order to determine if the perpetrator has used superannuation contributions as a way to avoid paying compensation to a victim.

In general, AustralianSuper does not support broader access of a perpetrator's superannuation to a victim of crime because one superannuation account is often shared by two people in retirement. In particular where one spouse has acted as a homemaker throughout their earning years or has been a low income earner.

Any decision to grant access to superannuation benefits needs to carefully take into account competing claims from spouses and other financial dependents. Granting a victim access to a perpetrator's superannuation may unfairly infringe on the rightful claim of financial dependents to the same benefit. As such any provision which allows victims of crime to access perpetrator's superannuation must, at a minimum, consider whether a perpetrator has financial dependents and prioritise such dependents entitlements to the superannuation monies.

If you have any questions of us or would like further information please do not hesitate to contact Claire Heeps on 03 8648 3848 or cheeps@australiansuper.com in the first instance.

Yours sincerely



Louise du Pre-Alba
Strategic Policy Advocate

