

SUBMISSION

The Treasury

Review of the early
release of
superannuation benefits

Consultation Paper

19 February 2019

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Retirement Income Policy Division
The Treasury
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Lodged via e-mail to superannuation@treasury.gov.au

19 February 2019

Dear Mr Magennis,

**Review of Early Release of Superannuation Benefits - Further consultation and draft proposals -
November 2018**

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the Treasury's further consultation and draft proposals in its review of the early release of superannuation benefits.

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$2.7 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing over 90 per cent of the 15.6 million Australians with superannuation.

Should you have any queries or comments in relation to the content of our submission, please contact me on (03) 9225 - 4021 or by email to fgalbraith@superannuation.asn.au.

Yours sincerely

Fiona Galbraith
Director, Policy

General comments

ASFA welcomes the consultation on the early release of superannuation benefits.

Our overarching observation is that the sole purpose of the superannuation system is to save and invest to produce an income in retirement and, accordingly, it should not be used to fund gaps in other policy areas – in particular healthcare and income support.

To the extent that superannuation is accessed early it will have the effect of reducing the amount available in retirement, which is likely to increase the reliance on the age pension in future. This means future taxpayers effectively will be subsidising the member's current expenditure, which is grounds for ensuring early access to superannuation should be restricted to circumstances where it is essential to do so.

Acknowledging that some people will need early access to their superannuation, the current level of superannuation benefits generally is not sufficient to cater both for present needs, such as healthcare, and needs in retirement. Accordingly, if there is a significant increase in amount of superannuation accessed early, the level of contribution to superannuation will need to increase to compensate for this.

There are, and will always be, cases where early access to superannuation can be justified but, given that superannuation is for retirement, there should be stringent controls over enabling such access.

The main issues are whether there is a genuine and immediate financial need and whether the member may have access to financial resources outside superannuation. There is an argument that all options should be explored prior to granting early access to superannuation, including whether a member has access to other assets that could be utilised or could look at consolidating / refinancing debts-.

In addition, to make it easier for members and advisers to understand a member's potential eligibility for early access, and to minimise the compliance burden on affected stakeholders, we recommend making the criteria as objective and clear as possible, while retaining an appropriate degree of flexibility and discretion to provide for different circumstances.

ASFA members generally are supportive of the measures being put forward, subject to some comments below.

Responses to specific proposals

1. FOUR GUIDING PRINCIPLES (EXECUTIVE SUMMARY - BOX 1)

ASFA is supportive of the four guiding principles that need to be balanced in the design of rules for early release – the principles of Preservation; Hardship; Last Resort, and Fair and Effective.

2. EARLY RELEASE ON COMPASSIONATE GROUNDS – GENERAL COMMENTS

ASFA members organisations generally are supportive of the measures put forward to strengthen the existing rules.

Some members did express reservations to the effect covering medical treatment for those who cannot afford it largely should be the responsibility of the Government and were concerned that the expansion of the definition to include medical treatment meant that superannuation, which should be used to provide retirement income, would be funding a gap in the health system.

The number of applications and approvals for early access for specific health conditions should be monitored and reported to government. Any significant increase should act as a signal to government that the healthcare needs of the Australian population are not being served adequately by the healthcare system and reforms, including increased and better targeted funding, are necessary.

2.1 Draft proposal 1 – Mental illness release

ASFA is supportive of the proposal to change the condition of release with respect to mental health necessitating a diagnosed medical illness or behavioural disorder, as opposed to the current definition of release to ‘alleviate an acute or chronic mental disturbance’, as the latter was considered by ASFA member organisations to be too broad and potentially open to abuse.

Together with draft proposal 4 (clinically relevant treatment) and draft proposal 5 (medical practitioners) this proposal should tighten eligibility criteria for mental illness sufficiently to mitigate the risk of inappropriate release of benefits from the superannuation system.

2.2 Draft proposal 2 – Overseas medical treatment

ASFA member organisations generally are supportive of the proposal that overseas medical treatment should be limited to circumstances where the medical condition is considered to be life threatening, or the member resides outside of Australia, to more appropriately reflect the principle of last resort.

2.3 Draft proposal 3 – Information on alternative support

ASFA is supportive of this proposal.

2.4 Draft proposal 2 – Clinically relevant treatment

ASFA is supportive of this measure.

2.5 Draft proposal 5 – Medical practitioners

2.5.1 Specialist medical practitioner must be in the field related to the individual's illness or injury

ASFA is supportive of the proposal to require that the two medical practitioners who provide certification that supports a diagnosis, are to be specialists in the field related to the member's illness or injury.

2.5.2 One of the medical practitioners must be the individual's regular treating practitioner

ASFA is supportive of the proposal that one must be the member's regular treating practitioner, as this would serve to provide a safeguard against inappropriate applicant for release.

2.6 Draft proposal 6 - Dental treatment

ASFA member organisations generally are supportive of this proposal, however, some expressed the view that dental treatment for those who cannot afford it largely should be the responsibility of the Government and were concerned that the expansion of the definition to include dental treatment meant that superannuation, which should be used to provide retirement income, would be financing a gap in the health system.

2.7 Draft proposal 7 – Family and Domestic violence

ASFA member organisations have expressed a range of views with respect to the release of superannuation for survivors of domestic violence, including that this measure would amount to utilising superannuation to fund what should be the responsibility of government to provide.

On balance, ASFA is supportive of the release of a limited amount of superannuation to survivors of domestic violence, as a matter of last resort. While payments to survivors of domestic violence represent a shift away from the primary purpose of superannuation, given that the current level of welfare support can be inadequate, from a social policy perspective ASFA is supportive of this proposal.

Any such measure would need to employ suitably stringent definitions and ensure robust processes are put in place.

Consideration may also need to be given as to how this condition of release would operate in conjunction with family law payment splits. In particular, there may be a need to ensure that, where a member has accessed part or all of their superannuation to escape domestic violence, there is an ability to take this into account when determining the splitting of the parties' superannuation to ensure that the survivor is not left worse off because of the early access to their superannuation, through an appropriate splitting of the parties' superannuation.

ASFA member organisations provided feedback that care should be taken to ensure that implementation of this proposal, given the proposed caps on amounts, does not create an unnecessary administrative burden and cost for superannuation funds, members or the ATO. In particular, funds should not be required to report to the ATO details of amounts actually released to member on compassionate grounds – which could be less than (but not more than) the amount approved for release by the ATO.

ASFA suggests that a pragmatic approach should be taken by the ATO when ensuring compliance with the proposed cap, whereby it proceeds on the basis that a member has applied to the fund for, and received, the amount authorised by the ATO (which generally will be the case) without requiring information as to amounts paid by the fund to a member to be reported by the fund to the ATO. The relatively rare case where the ATO has authorised amount(s) equivalent to \$10,000, the member has not applied to the fund to have the full amount released, and within the 24 months the member applies to the ATO for the release of a further amount, could be dealt with on a case by case, exceptions, basis.

Should an obligation be imposed in funds to report benefits paid to the ATO and / or accept authorisations electronically ASFA asks that there be a suitable lead time to allow funds to implement the changes to their systems in an appropriate and orderly fashion.

ASFA would be willing and able to engage with the ATO with respect to the transition of the administration to the ATO and asks that there be sufficient transition time to allow systems, processes and procedures, and disclosure material to be reviewed and updated as necessary.

2.8 Draft proposal 8 - Housing

2.8.1 Tighten to permit release once in a 24 month period, per person

ASFA member organisations generally were supportive of this proposal, subject to the observations made above with respect to draft proposal 7 that care should be taken to ensure that implementation of this proposal does not create an unnecessary administrative burden and cost for superannuation funds, members or the ATO and that, in particular, funds should not be required to report to the ATO details of amounts actually released to a member.

2.8.2 Person must give written statement from mortgagee that mortgage is serviceable once arrears rectified

ASFA member organisations had diverging opinions with respect to the proposed requirement for members to give a written statement that the mortgage is serviceable once arrears rectified:

- some member organisations did not support the requirement for lenders to provide a letter confirming the individual is likely to be in a position to continue to service their loans if a payment is made. The major concern expressed is that this would have the effect of alerting the lender to the borrower's financial hardship which may unnecessarily alter their risk profile with the lender. It was identified that the requirement for a mortgagee statement may have the effect of putting both the property and the amount released at risk, thereby limiting, or even negating, the usefulness of this condition of release
- other member organisations were of the view that there was validity in requiring an assessment as to whether the member is in a position to service their loan.

Rental arrears

ASFA member organisations generally were supportive of not extending the availability of early release to cover rental arrears at this time, as preventing mortgage foreclosure serves to protect a major asset that will support the member in retirement, while rent represents a day to day living expense, albeit a significant one. Some member organisations expressed a concern that early release for the payment of rent would be at odds with retirement income principles and potentially could be open to significant abuse.

Conversely, some member organisations indicated that renters should have the same rights as mortgage holders to be able to access a last resort mechanism in superannuation to protect them from being rendered homeless.

ASFA is of the view that at this time early release should not be made available for rental arrears. Having said that, given the level of rental stress experienced by low income earners in some rental markets, this should be monitored closely and, were it to increase materially, consideration could then be given to extending this condition of release to rental arrears.

2.9 Draft proposal 9 – Severe disability

ASFA is supportive of this proposal, subject to the caveat that, in circumstances where the member, or their dependent, is eligible to obtain support for disability aids and/or modified vehicles through the National Disability Insurance Scheme (NDIS) they should not be eligible for the early release of their superannuation for this purpose.

2.10 Draft proposal 10 – Residual discretion - removal

ASFA does not believe it is necessary to remove the Regulator's discretion to improve the integrity of the system, as it provides an avenue to access superannuation in circumstances not otherwise contemplated, where individual circumstances do not meet the prescribed legislative requirements. By way of an example provided by a fund, an incarcerated member may be in severe financial hardship with compounding debt or need access to their superannuation on compassionate grounds to, for example, cover the cost of a warden to enable them to attend a funeral. Retaining this discretion will ensure the system is able to cater for future developments without the need for amending regulations.

The proposed changes outlined in the consultation paper, together with the integrity measures already being adopted by the ATO, should ensure that the Regulator is able to administer the legislation fairly and effectively.

3. EARLY RELEASE ON THE GROUNDS OF FINANCIAL HARDSHIP

3.1 Draft proposal 11 – Severe Financial Hardship Test

3.1.1 *Cumulative income support payment test*

ASFA is supportive of moving to a Commonwealth income support payment test which necessitates a cumulative period of 26 weeks out of 40 weeks, considering it preferable to the current consecutive 26 weeks test.

The consecutive test is unreasonably onerous for members who have experienced a break in their income support payments, generally through having returned to work for a short period. Accordingly, this can act as a disincentive for members to find temporary work as this may affect their Commonwealth income support payments, thereby 're-starting the clock' and penalising the member.

Given the increasing casualisation of the workforce, a cumulative rule better reflects modern work practices.

3.1.2 *Multiple releases up to a maximum of \$10,000 over a 24 month period*

ASFA is supportive of this proposal, subject to the observations made above with respect to draft proposal 7 that care should be taken to ensure that implementation does not create an unnecessary administrative burden and cost for superannuation funds, members or the ATO and that, in particular, funds should not be required to report to the ATO details of amounts actually released to a member.

3.2 Draft proposal 12 – Administration of Severe Financial Hardship

ASFA is strongly supportive of the proposal to have the ATO assume responsibility for the administration of financial hardship grounds.

In particular this would ensure a more standardised approach to assessing applications across the industry, strengthen the integrity of the system by enabling caps on the amount being released to be applied on a per member basis (as opposed to the current position where the caps can only be applied on a per fund basis), simplify the application process for members and utilise economies of scale to reduce the cost of administering early release on the grounds of financial hardship.

ASFA recommends that ATO systems and processes currently used for notifying superannuation funds and administrators of compassionate grounds release approvals are leveraged and utilised for notification of financial hardship release approvals to achieve efficiencies and minimise implementation costs. The ATO issuing a release authority to the relevant superannuation fund (as well as the applicant) has proven an efficient mechanism and should continue for the foreseeable future. Should amendments to the SuperStream network be contemplated in future, consideration could be given at that time to facilitating the delivery of release authorities via SuperStream, allowing a suitable period for implementation by superannuation funds, administrators and the ATO.

4. OTHER

4.1 Draft proposal 13 – Future Review

ASFA is supportive of this proposal.

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