



**Submission by the
Financial Rights Legal Centre**

Treasury

Early Release of Superannuation Benefits –
Consultation Paper, December 2017

February 2018

About the Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumer's understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies. Financial Rights took close to 25,000 calls for advice or assistance during the 2016/2017 financial year.

Financial Rights also conducts research and collects data from our extensive contact with consumers and the legal consumer protection framework to lobby for changes to law and industry practice for the benefit of consumers. We also provide extensive web-based resources, other education resources, workshops, presentations and media comment.

This submission is an example of how CLCs utilise the expertise gained from their client work and help give voice to their clients' experiences to contribute to improving laws and legal processes and prevent some problems from arising altogether.

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National Debt Helpline 1800 007 007
Insurance Law Service 1300 663 464
Aboriginal Advice Service 1800 808 488

Monday – Friday 9.30am-4.30pm

Introduction

Thank you for the opportunity to comment on the *Early Release of Superannuation Benefits Consultation Paper*. The Financial Rights Legal Centre will address all three parts of the Paper, with a focus on:

- The proposed principles;
- Early release on compassionate grounds;
- Early release on the grounds of severe financial hardship.

Principles

0.1 Do these proposed principles provide an appropriate guide to determine the nature and scope of the rules for early release under compassionate and financial hardship grounds, and for victims of crime compensation? If no, what should the principles be?

Financial Rights agrees that the proposed principles are an appropriate guide in determining the rules for early release of superannuation on compassionate and hardship grounds.

It is our view that *preservation* and *last resort* should be the key guiding principles in considering the rules for early release of superannuation. When superannuation is accessed before retirement, the long term effect on the balance of the fund is significant. The compounding effect on a fund is very important to achieving a sufficient balance at retirement age. Early release of superannuation should therefore always be a last resort and should offer the individual a long term benefit, rather than a short term solution to financial needs.

'Genuine' hardship

Further, we note that principle 2 refers to 'genuine hardship' as relating to:

"circumstances where the benefits of early access to superannuation for an individual will exceed the benefits of preserving balances until retirement."

Financial Rights believes that the use of the word 'genuine' in this context is not appropriate or necessary as it suggests a value judgment on the applicant's circumstances, rather than a consideration of the individual's competing interests of preservation versus immediate needs. We suggest that this principle should simply be referred to as 'hardship'.

Financial Rights does not support the creation of a mechanism whereby victims of crime may access a perpetrator's superannuation to satisfy a restitution or compensation order. As discussed in Part 3 below, the principles are not relevant to the question of whether superannuation should be accessed by a third party.

0.2. Having regard to these principles, should early release of superannuation benefits generally be more or less difficult to obtain?

Early release of superannuation should not become more difficult to obtain for those individuals who qualify.

For most individuals seeking early access to their superannuation, it truly is a last resort. The criteria for release should remain limited, and therefore there should be a limited group of individuals who qualify. However, where an individual does meet the requirements for early access, the process for obtaining it should be simple and efficient.

If an individual meets the criteria for early release of superannuation, it should not be procedurally difficult to do so and there should not be any needless hurdles.

Accessibility

In this regard, we note that the current application process for compassionate grounds using the myGov portal is exclusionary for individuals who are not computer literate, do not have reliable internet access or cannot access support such as a financial counsellor for assistance in applying.

Many callers to our Centre have intermittent access only to the internet depending on their capacity to pay for credit on their phone in any given period. According to the Australian Bureau of Statistics (ABS) only 70 per cent of those not employed were internet users.¹ For those in the lowest income quintile almost only 67 per cent were internet users. Households located in remote or very remote parts of Australia were less likely to have internet connections than their urban counterparts (79 per cent). Among the main reasons given for not accessing the internet at home were a lack of confidence or knowledge (22 per cent), and cost (16 per cent).² There are others who simply cannot access the internet, be it because it is not available in rural and remote areas or they do not have the requisite knowledge or experience to use electronic communications, for example older Australians.

Further, the online form does not allow individuals to view the entire form before commencing the application. While the online form may suit many applicants, particularly those who already use the myGov portal, the option to complete and return a paper form should be available (and easy to find) for those who require it. Further, the ability for applicants to view the entire form would assist applicants in preparing their application more comprehensively before submitting.

Delay

The Department of Human Services (DHS) currently takes up to 28 days to decline or approve applications for release on compassionate grounds. If approved, the applicant must then also have the application approved by their fund. Such lengthy time periods could result in a release being too late. Whilst Financial Rights acknowledges that there are administrative challenges

¹ ABS, 8146.0 - Household Use of Information Technology, Australia, 2014-15, 18 February 2016 <http://www.abs.gov.au/ausstats/abs@.nsf/mf/8146.0>

² *ibid*

in reviewing such applications, we do recommend that provision should be created for urgent applications to be dealt with expeditiously.

Financial Rights also notes that under the current system, where an application is incomplete or not accompanied by the appropriate supporting documents, it is rejected and a new application required. This administrative procedure causes significant delays. Financial Rights proposes that in those circumstances, individuals should be contacted to allow them the opportunity to provide the information required and continue with their application, rather than having to recommence the process.

Certainty

At present individual funds have the discretion to refuse a release on compassionate grounds even where it has been approved by DHS. This creates inconsistency and results in a situation where a person may need to roll over their superannuation into an alternative fund to facilitate the release. This is unnecessarily burdensome for the individual and due to the length of the application process, may result in the release being made too late.

Financial Rights recommends that all funds be required to offer early release where an individual meets the rules for release, increasing certainty amongst applicants.

Recommendations

1. Financial Rights supports the proposed principles as a guide for determining the rules for early release of superannuation under compassionate and financial hardship grounds, with the foremost principles being preservation and last resort.
 2. Principle 2 should refer to 'hardship' not genuine hardship.
 3. The principles do not, and Financial Rights does not, support the release of superannuation to satisfy victims compensation orders.
 4. The early release of superannuation should not be made more difficult to obtain, for those who meet the criteria. It should be procedurally simple to do so, with:
 - a) non-Internet based options made available;
 - b) provision made for urgent applications to be dealt with expeditiously;
 - c) opportunities to provide information required be provided to continue an application, rather than having to recommence the process.
 5. The regulator's decision on whether to release funds on compassionate grounds should be binding on individual funds.
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Part 1: Early Release on Compassionate Grounds

1.1 Should the assessment of financial capacity be made more prescriptive and/or objective? If so, how? What information might applicants need to provide?

The assessment of financial capacity for release on compassionate grounds should be an objective process. However, it need not be an overly prescriptive process.

The Early Release of Super Form should be readily available to download and print, to ensure maximum accessibility, rather than via an online portal, for the reason outlined above.

Financial Rights also recommends that referral to free financial counselling at this stage should be standard practice, by way of a prominent statement on the form referring applicants to contact the National Debt Helpline for assistance. This would allow individuals to seek advice on whether release would be beneficial to them and investigate other options, as well as to obtain assistance with filling out the statement of financial position if required. However, we do not recommend that financial counselling be made compulsory for applicants, as this:

- May not be reasonable for individuals who can not access face to face services due to lack of available services or their distance from services;
- Sets up financial counsellors as gatekeepers in relation to access to super when their role should be one of support and advocacy;
- Creates another step in the process which may be both unnecessary and create further delays when time may of the essence.

Application form

Financial Rights would also like to make the following comments with respect to the current application form sections relating to (a) financial capacity and (b) Mortgage assistance.

a. Financial Capacity

Question 19 asks for details of money held by “you and your partner” in a savings accounts, and “your percentage.” Financial Rights is concerned that this question poses problems for some applicants experiencing domestic and/or economic abuse or other difficulties. Sometimes an applicant that has a joint account with a partner with whom they have a dispute (eg family law, separation) is often blocked from gaining access to the account. Financial Rights recommends that a reference should be added for situations where funds cannot be accessed. The question could be altered to ask: “what is your *available* share of savings? If not available, please state why.”

The same issue also applies to Question 20 with respect to “Shares and other investments”. Again there may very well be a dispute over joint assets.

Question 21 in the Application Form regarding “Other assets” asks about market value of other assets that the applicant owns which they would be able to sell “within a reasonable time.” It is our view that this is too broad and should say something like “assets realisable in time to prevent foreclosure.” The question should also refer to “net value available after

meeting any loan costs and selling costs”, as some assets may be secured, such as real estate and motor vehicles. However those assets may not be realisable in a reasonable time.

b. Mortgage assistance

The Mortgage assistance section of the form asks for details of threats faced by the applicant that a mortgagee or other party will sell your principal place of residence. Applicants can add details of third parties, other than mortgagees and councils, which is very helpful for clients facing debt recovery with debts over the bankruptcy threshold, especially owners corporations seeking strata debt recovery. However, Financial Rights believes that it would be helpful if notes could be added to cover this situation under Questions 23 and 24. For example, “third party threats could include bankruptcy threats from organisations such as an owners corporation for a strata scheme.”

In relation to mortgagee assistance, any assessment must take into account whether the applicant is able to resume making the regular mortgage payments and other outgoings going forward. Otherwise there is a real risk the house will be sold in any event. Many consumers who are seeking to access their superannuation to clear arrears (because they are unable to refinance or have the arrears capitalised) are also routinely advised to consider selling the property (before the bank takes possession). This has caused problems in the past where the release has been refused solely because the property is currently on the market. To date, Financial Rights has advised clients to undertake by way of statutory declaration that they will not sell if the superannuation is released. It would be beneficial to consumers if the process for accessing superannuation recognised that it is sensible for consumers to pursue a back-up option in the event that their application is unsuccessful and not automatically exclude people on these grounds.

c. Money paid to third parties

Finally, the form should include an option for people to opt to have the money paid directly to the other party – e.g mortgagee, strata, council etc. Financial Rights does not believe that money going directly to a third party should be compulsory, but people should be allowed to tick a box on the form to have money paid to relevant party.

1.14 Should early access to superannuation benefits to meet expenses associated with palliative care, death, funeral or burial be limited to where there is a dependency relationship? Why/why not? Could there be any unintended consequences from expanding this provision?

Financial Rights does not support the expansion of the availability of early release of superannuation to meet palliative care, death, funeral or burial costs where no dependency relationship exists. It is Financial Rights’ view that this may lead to abuse of the system, or financial abuse within families where individuals may be pressured to access superannuation for the benefit of family members, to their own eventual long term detriment.

We do however support the expansion of the “dependency relationship” definition to include Aboriginal kinship relationships as proposed by Legal Aid NSW.

1.15 Should there be a maximum amount that can be released to meet a funeral expense? (For example, the amount that the Regulator considers reasonable).

Financial Rights supports the introduction of a maximum amount that can be released to meet funeral expenses. In the interests of promoting the principle of preservation, the early release of superannuation for the purposes of funeral expenses should be limited to the reasonable costs of a funeral. Unfortunately the funeral industry has been blighted with scandals in relation to uncompetitive and non-transparent pricing³. The regulator needs to be mindful of the industry in setting the amount, and to have some flexibility in certain situations (such as distance, transport costs and some cultural factors that may influence price).

Furthermore, the applicant should be required to provide documentation that the amount sought relates to the actual cost of the funeral, such as invoices or quotes.

1.16 Should early release of superannuation benefits be available to meet mortgage payments regardless of whether a person's name is on the mortgage title for their principal place of residence? What might be the implications of broadening the provisions in this way and what additional limitations might be required? For example, should release be limited to dependants or spouses or partners?

Financial Rights does not support the broadening of the *Superannuation Industry (Supervision) Regulations 1994 (SIS)* reg. 6.19A(1)(b) to include release of superannuation benefits to meet mortgage arrears where the individual's name is not on the title for the property.

It is Financial Rights' view that there may be circumstances where early release of superannuation could be used to meet mortgage payments where a person's name is not on the title. However, we do not support the extension of this provision. Rather, it may be appropriate that this situation be covered by a limited expansion on the discretionary grounds of compassionate release under reg. 6.19A(1)(f) particularly for a spouse where it is their principal place of residence. This should be an exception, rather than the rule.

Financial Rights' concern in this regard is that while the early release may preserve the person's rights to occupy the property by preventing repossession (at least temporarily), it would not preserve the *asset* for the benefit of that individual. Therefore the detriment to the individual's long term financial situation would outweigh the potentially brief benefit of maintaining the residence.

In the context of the current consumer lending requirements, accessing superannuation to pay arrears on a mortgage is not usually the most appropriate solution for borrowers in mortgage hardship.

Under the *National Consumer Credit Protection Act 2010* and *National Credit Code* (Schedule 1 of the Act) lenders are required to consider hardship applications and give reasons for any refusal. Consumers then have the right to dispute this decision in the dispute resolution scheme to which the lender is a member.

³ <https://www.choice.com.au/health-and-body/healthy-ageing/ageing-and-retirement/articles/funeral-homes-hit--grieving-with-inflated-prices-250515>

Usually, the most appropriate way to assist a consumer who is in mortgage hardship is with a hardship variation allowing one or more of the following:

- a. a period of reduced payments or moratorium;
- b. capitalisation of arrears;
- c. or if the borrower can not service the loan time to sell the property before repossession.

The superannuation (of the person on title or any other person) should not be released where the borrower cannot prove their ability to service the mortgage going forward.

If this ground were to be expanded to be made available to dependents or spouses who are not on the title to a property, the decision maker ought to consider the following factors (without any being prescriptive or determinative):

- a. whether the title holder has first unsuccessfully sought a hardship variation from the lender;
- b. whether the title holder has unsuccessfully attempted to resolve the financial hardship matter through an external dispute resolution scheme;
- c. whether the title holder has sufficient funds held in any superannuation fund to meet the arrears;
- d. whether the individual seeking release has sought independent legal or financial advice;
- e. whether the individual seeking release will obtain a genuine benefit in all the circumstances (such as a equitable interest in the property) and
- f. whether the individual has (or will be able to have) their interest registered on the title to the property.

If superannuation was to be released where the applicant was not on the title to the property steps would need to be taken to adequately safeguard the long term interests of the individual seeking the release, such as registering the interest on the title by way of a caveat.

Further, if this ground were to be expanded, it should certainly be limited to spouses or those in a dependency relationship, who are at risk of homelessness if they can show that they already have a legal or equitable interest in the property (for example a family law claim). Expansion outside of these circumstances could potentially allow financial abuse within families.

1.17 Is there a fundamental difference between meeting mortgage payments and meeting rental payments which would warrant a difference in treatment (for example, in respect of the asset available to mortgagees once all repayments have been made)? Or should early release on compassionate grounds be extended to include individuals who are unable to meet rental payments? If so, what evidence should be required and what should be the threshold for release (for example, in rental arrears or rental eviction notice)?

Yes, there is a fundamental difference between meeting mortgage payments and meeting rental payments. Financial Rights' concern with regard to expanding this ground to include

meeting rental payments is that the release of superannuation would not go towards preserving an asset for the individual, which would be of benefit to them in retirement.

Further, the release of the superannuation to meet rental arrears would not give the tenant any rights to continue the tenancy for any significant period, and so would not offer the individual genuine housing security. Following the release of superannuation a landlord may still choose to give the tenant notice to terminate the lease at any time, regardless of the tenant paying their arrears, and therefore the release in that situation would benefit only the landlord, who may otherwise be unable to recoup the arrears from the individual, if they had been evicted before the superannuation was accessed.

Financial Rights notes that there are occasions where it may be appropriate to access superannuation where an individual is in financial hardship and temporarily cannot meet their rental payments. This should be considered a factor in an application to release due to financial hardship, rather than a distinct category.

1.20 Should the Regulator's residual discretion in SIS Regulation 6.19A(1)(f) be removed? What would be the consequence of doing so?

Financial Rights believes that the Regulator's residual discretion is an important element of the current system. The removal of this discretion would necessitate a more prescriptive approach and remove the ability of the Regulator to consider applications which may not fit squarely within a specific ground but which are consistent with the principles.

1.21 Are there situations outside of the current compassionate grounds which may justify inclusion in the early release of superannuation provisions, balanced against the need to preserve superannuation benefits to provide income in retirement?

Strata Arrears and Council Rates

Housing grounds should be expanded so that superannuation benefits can be released early in order to pay for strata arrears and council rates as well as to make a payment on a loan. Both are to prevent the loss of the home, which is an asset that can provide a benefit in retirement.

Strata committees have the power to bankrupt a homeowner after they have accrued over \$5000 in arrears. The bankruptcy trustee can then force the sale of the home for the benefit of creditors. This new ground should have the safeguard of establishing that the person is able to pay for all of the strata fees (and mortgage payments and rates) going forward. However, we do not support the requirement that the strata committee would need to issue a default notice or commence proceedings before the person can access their superannuation benefits. Financial Rights is concerned that by the time a strata committee issued a default notice there would not be enough time to access benefits before significant enforcement expenses are incurred or the person is made bankrupt.

Instead, the individual should be required to provide alternative evidence, such as the person is three months in arrears, has over \$5000 in arrears and can show evidence that he or she has applied for financial hardship from a lender. Again, the principle behind this ground would be

that a person can only access their superannuation as a last resort, that is they cannot obtain a hardship arrangement instead, and they have a plan to service their strata fees going forward.

1.22 Should access to superannuation benefits be available to assist victims of domestic violence? Why / why not? If yes, under what particular grounds (for example, financial hardship, homelessness, victims of crime), which expenses should be included, and what evidence should be required?

Victims of domestic violence should be able to access their superannuation benefits early under an additional compassionate ground for early release of superannuation. However, it is critical that this ground be carefully drafted so as to not create further opportunities for financial abuse, or lead to unnecessary long term financial detriment to the individual.

It is well established that victims of domestic violence are also subjected to ongoing financial hardship as a result of the abuse they have suffered and we support those victims being assisted to gain financial independence. However, we do not believe that victims should unnecessarily erode their own superannuation to achieve this. Financial Rights is concerned that allowing victims to access their own superannuation may push the onus back on to victims to remedy the damage caused by the perpetrator.

Furthermore, accessing superannuation early could have a lasting effect on victims by causing significant financial hardship in retirement, for example, in situations where an individual's accumulated funds in superannuation are already lower than average due to economic abuse and isolation. It is therefore important to emphasise that accessing superannuation under this ground should be the last resort for victims. If victims are being forced to rely on superannuation, a review of the services available to them may be of more value in the long term.

Organisations such as the Economic Abuse Reference Group (**EARG**), which exist to inform government on the financial impact of family violence, are best placed to provide guidance on the specific types of expenses which should be included as well as the evidence that may realistically be expected to be provided at the time of the relevant application (bearing in mind the complex issues surrounding victims of family violence). However, Financial Rights would envisage that the types of expenses that may be included would be to meet the costs associated with escaping violence and re-establishing themselves, such as rental bonds. This may extend to the purchase of necessary household and personal goods as well as transport costs such as the purchase of a vehicle. These large expenses are difficult to fund on short notice and would offer significant benefit to a victim fleeing domestic violence.

Financial Rights also emphasises that early release of a victim's superannuation is only appropriate as a last resort, where the immediate needs of the individual outweigh the benefit in retaining the balance of the fund. Superannuation should not be accessed where:

1. there are other services available to meet the costs;
2. a debt may be waived or reduced by way of a hardship variation made by a lender; or
3. there are legal grounds to dispute a debt through external dispute resolution (e.g. joint debts where the victim received no benefit).

It is therefore imperative that individuals who are considering making an application to access their own superannuation under this additional compassionate ground have access to appropriate support and advocacy services such as community based financial counselling and legal advice on their consumer rights. This would establish whether there are alternatives to releasing superannuation unnecessarily. In assessing applications for release under this ground, the Australian Tax Office (**ATO**) should be sufficiently familiar with the other services and options available to victims and make appropriate referrals, to ensure that this ground is only utilised as a last resort.

Furthermore, to avoid creating opportunities for further financial abuse, safeguards would be necessary to ensure that funds released are utilised for the benefit of the individual and do not become accessible to the perpetrator, or example, by paying the release directly to the Rental Bond Board or equivalent service, to assist with relocation.

In relation to what evidence should be required to support such applications, we would defer to specialist domestic violence services and advocacy organisations such as EARG for guidance on the most appropriate and reasonable evidence that could be obtained.

Recommendations

6. Financial Rights does not support the extension of the early release of superannuation to meet mortgage payments where a person's name is not on title. Financial Rights recommends instead that this situation be covered by a limited expansion on the discretionary grounds of compassionate release under reg. 6.19A(1)(f).
 - a) If the mortgage hardship ground were to be extended, it should be limited to spouses or partners who have an equitable interest in the property and their interest should be safeguarded.
 7. Financial Rights does not recommend the extension of early release to superannuation to meet rental payments.
 - a) If this ground were to be extended to rental payments, safeguards will be required to ensure that the release of superannuation would result in long term benefit to the individual.
 8. Financial Rights strongly supports the Regulator maintaining their residual discretion in SIS Reg. 6.19A(1)(f).
 9. Financial Rights supports the addition of 'domestic violence' as a ground for early release of superannuation on compassionate grounds. Appropriate safeguards are required to ensure that superannuation is only accessed as a last resort and that any money released to the victim is utilised for the benefit of that individual (and any dependant children as appropriate).
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Part 2: Early Release on the Grounds of Severe Financial Hardship

2.1 Having regard to the necessary trade-off between simplicity, objectivity and flexibility, should the criteria for severe financial hardship be amended? If so, how? In particular, is there merit in expanding or contracting the 26-week rule and/or the definition of qualifying Commonwealth income support payments?

The 26-week rule

Financial Rights supports the expansion of the current 26-week rule. As noted in the consultation paper, under the current definition, an individual may disqualify themselves from accessing their superannuation by forfeiting their Centrelink payment for just one week out of 26 by accepting intermittent work. This is far too strict and inflexible. It may also have the effect of discouraging individuals to attempt to return to work earlier or accept casual work following a period of unemployment during the 26 week qualification period.

To allow more flexibility, Financial Rights recommends that the criteria be expanded to allow individuals to be eligible for Centrelink payments for any 26 weeks within a specific time period, for example the last 12 months, rather than 26 weeks of continuous payments.

Alternative evidence of severe financial hardship

Furthermore, the receipt of qualifying Centrelink payments should not be the only way to establish that a person is in severe financial hardship.

Individuals who are not eligible for Centrelink (for reasons other than the application of the income and assets tests), such as foreign workers, refugees and those in a Centrelink preclusion period, should not be entirely excluded from accessing their superannuation on financial hardship grounds.

Financial Rights supports the introduction of an additional definition for 'severe financial hardship' to include those who are not eligible to receive Centrelink payments, but who would otherwise meet the Centrelink income and asset tests.

For example, the trustee may apply an income and asset test over the preceding 12 months, similar to the Centrelink income and asset tests. If an individual can show that, had they been eligible for one of the qualifying Centrelink payments, they would have met the income and asset tests, due to their low income level and lack of assets, that would indicate to the trustee that they are in financial hardship. Alternatively, financial hardship may be assumed by establishing that the household income has been below the Henderson Poverty Index for a period of time.

In addition to a consideration of expansion of the current criteria for financial hardship, we note that currently superannuation funds have the discretion not to allow early access despite an individual meeting the criteria. Individuals do have the option to roll over their funds to a fund which does allow early release. It is Financial Rights' view though that this is an unnecessary step for individuals to take in circumstances where they are in serious financial

hardship, and a delay in accessing the funds could have negative ramifications for the individual.

Without appropriate advice, a consumer may lose long term benefits such as accrued insurance benefits if they switch funds without regard to the potential negative impacts on any insurance policies held by them.

The superannuation industry recently sought to standardise their approach through the “Insurance in Superannuation Working Group Insurance in Superannuation Code of Practice”, the Voluntary Code was released in December 2017 and requires a trustee to clearly explain its process on their website and explain the reasons why they do not release funds⁴. The Code also obliges trustees to advise the implications of release on superannuation⁵

We recommend that the Government consider amending the SIS Act to mandate that they allow release for early release of superannuation if it is the Governments position that consumers ought to have a right to early access to their superannuation on the ground of severe financial hardship. Alternatively, that the SIS is amended that the current Voluntary Insurance Code is mandatory and the provisions of clause 6.11 and 6.12 strengthened to ensure trustees are appropriately communicating information about early release and its consequences to their members.

2.2 Should there be a prescribed standard of proof of being ‘unable to meet reasonable and immediate family living expenses’? How can the legislation guard against non-genuine claims?

The current approach to satisfying the requirement that an applicant be ‘unable to meet reasonable and immediate family living expenses’ is determined by the individual funds, with each requiring varying evidence to support an application for early release on severe financial hardship ground.

For example, one fund requires the applicant to provide details of the expense(s) that cannot be met, as well as the applicant’s available asset(s) Another fund requires the applicant to sign a statutory declaration that they are unable to meet their reasonable and immediate living expenses, without requiring the individual to provide any details on the type of expense. The latter approach relies on the applicant themselves making an assessment on the reasonableness of the expense, which could result in inappropriate applications being approved by funds.

Financial Rights recommends that there may well be a need for additional information to prevent unnecessary erosion of account balances with non-genuine claims. Such as, requiring supporting evidence which proves a lack of accumulated funds, and no available assets, in conjunction with the consideration of the applicant’s income status, would give the fund a clear view of whether or not they could meet their reasonable and immediate family living expenses. Financial Rights does not suggest that any prescriptive list of ‘acceptable’ expenses be included

⁴ See clause 6.11 of the Insurance in Superannuation Voluntary Code of Practice

⁵ Ibid see clause 6.12

in any reforms. Funds should be encouraged to provide guidance, not be overly prescriptive and publish requirements on their website.

Recommendations

10. Financial Rights recommends expanding the current 26-week rule to any 26 weeks in the last 12 months.
 11. Financial Rights recommends expanding the ground to allow those who are not eligible for Centrelink to prove they are in severe financial hardship by way of an income test or by reference to the Henderson Poverty Index.
 12. Financial Rights recommends the Government consider amending the SIS Act to mandate that they allow release for early release of superannuation if it is the Governments position that consumers ought to have a right to early access to their superannuation on the ground of severe financial hardship.
 - a) Alternatively, that the SIS is amended that the current Voluntary Insurance Code is mandatory and the provisions of clause 6.11 and 6.12 strengthened to ensure trustees are appropriately communicating information about early release and its consequences to their members.
 13. Financial Rights recommends that there be a prescribed standard of proof of being 'unable to meet reasonable and immediate family living expenses'.
 - a) Financial Rights does not suggest that any prescriptive list of 'acceptable' expenses be included in any reforms. Funds should be encouraged to provide guidance, not be overly prescriptive and publish requirements on their website.
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Part 3: Victims of Crime Compensation

3.1 Should victims of crime be able to access a perpetrator's superannuation for compensation?

Financial Rights does not agree that it is appropriate to give access to a perpetrator's superannuation for victims of crime compensation. Accessing the superannuation of a perpetrator by a victim or a state/territory compensation scheme is not 'early release' of superannuation but rather it is giving access to an otherwise protected asset. As previously outlined, the principle of preservation is of paramount importance and making an exception for access where there is a victim's compensation order is not appropriate or within the guiding principles.

Superannuation is an asset that is protected in bankruptcy. It may be appropriate for a victim to access a perpetrator's superannuation where they have made out of character contributions to defeat creditors; however, this should be explored in the usual course of bankruptcy, rather than under a specific scheme for early access to superannuation.

Recommendations

14. Financial Rights does not recommend that victims of crime, or the compensation scheme seeking recovery of an amount paid as compensation, be able to access a perpetrator's compensation. Superannuation is an asset protected in bankruptcy and a specific exception for victims of crime compensation orders should not be created.

Other Issues:

Financial Rights is concerned that entities known as Debt Management Firms may see an opportunity to take advantage of vulnerable people by offering to assist people to access their support, for a fee. Given that a number of Debt Management Firm types such as debt negotiators, credit repairers and budgeting services already undertake fairly similar services, which are of little to no value to those that use their services, we do not think it is out of the realm of possibility for unscrupulous companies from exploiting people further through a new niche service. Financial Rights believe that Treasury needs to examine ways to ensure that this does not occur, including the potential of a ban on such fee-based services with respect to accessing superannuation.

Recommendations

15. Financial Rights recommends Treasury examine ways to prevent exploitation of vulnerable consumers considering early access to their superannuation by Debt Management Firms.

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Financial Rights on (02) 9212 4216.

Kind Regards,



Karen Cox
Coordinator
Financial Rights Legal Centre
Direct: (02) 8204 1340
E-mail: Karen.Cox@financialrights.org.au