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Division Head
Retirement Income Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

CPA Australia Ltd
ABN 64 008 392 452
Level 20, 28 Freshwater Place
Southbank VIC 3006
Australia
GPO Box 2820
Melbourne VIC 3001
Australia
Phone 1300 737 373
Outside Aust +613 9606 9677
Website cpaustralia.com.au

Via email: superannuation@treasury.gov.au

Dear Mr Jeremenko

Early release of superannuation benefits under compassionate and financial hardship grounds and for victims of crime compensation

CPA Australia represents the diverse interests of more than 160,000 members in 118 countries. We make this submission in consultation with and on behalf of our members and in the broader public interest.

The sole purpose of superannuation is to provide benefits, primarily income in retirement, for an individual and their dependants. However, it must be recognised that superannuation is an individual's own money and there may be situations of genuine hardship where there would be greater benefit for them to access it early than to preserve it until retirement.

CPA Australia supports the principles proposed in the consultation paper. In particular, the purpose of superannuation to provide income in retirement is paramount. Accessing superannuation before retirement should only be a last resort, after other means of support have been exhausted.

CPA Australia notes data in the consultation paper showing more instances of early release of superannuation benefits to fund certain out of pocket medical expenses. If there is a genuine medical need for these treatments then they should be funded by the health system. If this is not occurring, CPA Australia believes the primary focus should be on changes to Medicare and health system funding to better support provision of these treatments, rather than shifting the costs to an individual's retirement savings.

We understand the Departments of Health, Treasury and Human Services are reviewing this issue.

CPA Australia is also concerned that the test for financial capacity for early release on compassionate grounds may be overly restrictive and may not support the principal of genuine hardship. We would support the introduction of a more objective set of measures against which determinations of genuine financial hardship and a lack of financial capacity can be made, irrespective of the circumstances which gave rise to the hardship.

Early release on compassionate grounds for housing should be extended to cover renters. Both rent and mortgage payments are regular payments to ensure a stable medium to long-term place of residence for an individual and their dependants. As the incidence of home ownership in Australia reduces, renters face the same consequences as home owners if they cannot meet rental payments due to genuine hardship.

Early release for housing should also be available to both individuals named on the mortgage title or rental agreement and their spouses/ partners provided it is their principal place of residence. This would be consistent with the superannuation downsizing measure introduced in 2017.

CPA Australia supports a test for 'severe financial hardship'. However, there are situations where the continuous 26-week rule is overly strict. These include by:

- being limited to Commonwealth income support payment it excludes individuals receiving support from state accident insurance schemes, Workcover and income protection.
- precluding individuals from seeking any short-term employment as the 26-week rule is continuous with any break in support resetting the 26-week period.
- excluding individuals who experience short-term financial hardship that would not qualify for income support.

We agree that early release for severe financial hardship should only be a last resort to the income support system to cover unexpected life events. However, the test should be expanded to:

- include an equivalency test to cover state income support schemes
- allow for broken qualifying periods by changing the test to 26 weeks of support within a longer period, as an example, 40 weeks
- allowing some discretion to recognise short-term severe financial hardship.

Consideration should also be given to increasing the upper maximum payment threshold for releases for severe financial hardship from \$10,000 per annum, which has not been increased for many years and does not reflect increases in the cost of living.

CPA Australia does not support the early release of superannuation to compensate a victim of crime. Superannuation is for the provision of benefits for an individual and their dependants. Allowing access to a perpetrator's superannuation may unfairly disadvantage their dependants, who may have no relationship to the crime, by reducing their retirement benefits.

CPA Australia's responses to the specific questions asked in the consultation paper are contained in the attachment to this letter.

If you require further information on the views expressed in this submission, please contact Michael Davison, Senior Policy Adviser – Superannuation on +61 2 6267 8552 or at michael.davison@cpaustralia.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Stuart Dignam', with a long horizontal line extending to the right.

Stuart Dignam
General Manager, Policy & Corporate Affairs

Attachment: CPA Australia response to specific questions

Principles underpinning early release

Question 0.1 *Do these proposed principles provide an appropriate guide to determine the grounds for early release under compassionate and financial hardship grounds, and for victims of crime compensation? If not, what should these principles be?*

CPA Australia supports the principles proposed in the consultation paper. In particular, the sole purpose of superannuation to provide income in retirement is paramount and accessing superannuation before retirement should only be a last resort after other means of support have been exhausted.

We also agree that due consideration should be given to the fact that superannuation is an individual's own money and there may be situations of genuine hardship where there would be greater benefit for them to access it early than to preserve it until retirement.

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

Overall, CPA Australia believes the settings are appropriate. However, the increasing release of benefits on compassionate grounds for medical reasons and member feedback on the arbitrary nature of the financial hardship provisions suggests fine-tuning of the parameters is required.

Part 1: Compassionate grounds

Question 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?*

CPA Australia does not support a shift to a more prescriptive assessment of financial capacity as this may impose unnecessary barriers to people experiencing genuine hardship. However, our organisation supports the introduction of a more objective set of measures against which determinations of genuine financial hardship and a lack of financial capacity can be made, irrespective of the circumstances which gave rise to the hardship.

Question 1.2 *What factors might be driving the increase in the amount of superannuation released on medical grounds and are these factors any cause for concern?*

CPA Australia is not in the position to comment on this.

Question 1.3 *Do the current provisions for early release on medical grounds strike the appropriate balance between preserving income for retirement and providing assistance in times of genuine hardship? If no, what are the alternatives?*

The fact that there has been an increase in the early release of superannuation benefits to fund certain out of pocket medical expenses indicates a policy response is required. CPA Australia's view is that if there is a genuine medical need for these treatments then they should be funded by the health system. If this is not occurring, CPA Australia believes the primary focus should be on changes to Medicare and health system funding to better support provision of these treatments, rather than shifting the costs to an individual's retirement savings.

We understand the Departments of Health, Treasury and Human Services are reviewing this issue.

Question 1.4 *Should there be a limit on the number of releases permitted within a certain timeframe (for example, 12 months) and/or should there be cashing restrictions on the amount released? If so, should there be different restrictions for different medical conditions?*

It would be difficult to place restrictions when there may be situations that require multiple amounts. If the assessment of financial capacity is such that the threshold for demonstrating genuine financial hardship is met, then there should be no need to restrict the number or amount of releases.

Question 1.5 *Have you observed any trends in the types of treatments that are being funded by superannuation benefits and are these trends any cause for concern?*

CPA Australia is not in the position to provide observations, other than to reiterate our view that if there is a genuine medical need for these treatments, based on clinical evidence, then they should be funded by the health system.

Question 1.6 *Are there certain treatments for which early release of superannuation should not be permitted? If so, what is the basis upon which these treatments should be excluded?*

CPA Australia is not in the position to comment on this.

Question 1.7 *When might ART (IVF) be necessary to treat a life-threatening illness or alleviate acute or chronic pain or mental disturbance (in general – noting that this will depend upon the specific circumstances of each case)?*

CPA Australia is not in the position to provide medical opinion.

Question 1.8 *When might bariatric surgery be genuinely necessary to treat a life-threatening illness or alleviate acute or chronic pain or mental disturbance (in general – noting that this will depend upon the specific circumstances of each case)?*

CPA Australia is not in the position to provide medical opinion.

Question 1.9 *Should the rules explicitly require that the Regulator be satisfied that the amount claimed for a particular treatment is reasonable? If so, what evidence might be relevant to that determination?*

It may be difficult to determine that the expense is reasonable. It would be reasonable however to place restrictions on expenses not directly related to the treatment.

Question 1.10 *Should there be an additional category of early release in respect of dental treatment? If so, under what circumstances should early release be available and should there be any limits or restrictions?*

The early release superannuation for medical reasons should only be a last resort. Where clinical evidence supports a genuine medical need for these treatments, they should be funded by the health system.

We note that if the treatment is to alleviate chronic pain it would most likely be covered under the existing Regulator's determination under SIS Regulation 6.19A(1)(f).

Question 1.11 *Should SIS Regulation 6.19A(a)(ii) and (iii) be amended to refer to 'treatment' rather than 'alleviation' of acute or chronic pain? Alternatively, should those provisions be removed entirely (so that early access is only available where the individual's condition is life-threatening)? What would be the consequences of this approach?*

CPA Australia is not in the position to provide medical opinion.

Question 1.12 *Should the reference to a medical specialist in SIS Regulation 6.19A(3) be clarified to ensure that the practitioner is a specialist in the field most relevant to the proposed condition being treated?*

Yes.

Question 1.13 *Should the Regulator be entitled to seek a second opinion from an approved medical practitioner/s, or should the individual be required to receive a reference from a list of approved medical practitioners, to ensure the objectiveness of the assessment?*

No. The requirements under SIS Regulation 6.19A(3) for two registered medical practitioners are appropriate.

Question 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?*

Yes, as this is consistent with the sole purpose of superannuation, which requires the provision of benefits for the individual and their dependants.

Question 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.)*

It should be restricted to an amount the Regulator considers reasonable.

Question 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?*

Yes. It should be available to individuals named on the mortgage title and their spouses/partners provided it is their principal place of residence. This would be consistent with the superannuation downsizing measure introduced in 2017.

Question 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)?*

CPA Australia's view is that early release on compassionate grounds for housing should be extended to renters. Both rent and mortgage payments are regular payments to ensure a stable medium to long-term place of residence for an individual and their dependants. As the incidence of home ownership in Australia reduces, renters face the same consequences as home owners if they cannot meet rental payments due to genuine hardship.

Evidence and thresholds for renters should be similar: a statement that rental repayments are overdue, non-payment will result in eviction and the individual can demonstrate genuine hardship. Amounts should be limited to three months' rental payments.

Question 1.18 *Are the current disability grounds fit for purpose, or should early release be extended to disability aids? If the latter, which expenses should be included, what evidence should be required, and should there be a cap on funds released?*

Question 1.19 *Should individuals for early release of superannuation under disability grounds be required to demonstrate that they have sought assistance from other Government or non-Government programs prior to being approved? If so, how would this requirement be administered?*

We believe the current disability grounds are fit for purpose. As reflected in the consultation paper, they allow the modification of assets that provide more of a long-term benefit in keeping with the long-term nature of superannuation.

If the provision was to be extended to disability aids then consideration should be given to the preservation principal with superannuation being a last resort after other sources of support, such as Government or non-Government programs, have been exhausted.

Question 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?*

No. There will always be cases that do not fit within the ambit of specific rules. Allowing the Regulator discretion is consistent with the fair and effective principle.

Question 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?*

No.

Question 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?*

No. We agree with the ALRC¹ that the principle of preservation should be observed and support should come from the social security system and not be cost-shifted to an individual's retirement savings.

Part 2: Severe financial hardship ground

Question 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?*

There are situations where the continuous 26-week rule is overly strict. These include by:

- being limited to Commonwealth income support payment it excludes individuals receiving support from state accident insurance schemes, Workcover and income protection.
- precluding individuals from seeking any short-term employment as the 26-week rule is continuous with any break in support resetting the 26-week period.
- Excluding individuals who experience short-term financial hardship that would not qualify for income support.

We agree that early release for severe financial hardship should only be a last resort to the income support system to cover unexpected life events. However, the test should be expanded to:

- include an equivalency test to cover state income support schemes
- allow for broken qualifying periods by changing the test to 26 weeks of support within a longer period, as an example, 40 weeks
- allowing some discretion to recognise short-term severe financial hardship.

Question 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?*

No. We believe it is fair and reasonable to allow some discretion in determining if an individual is able to meet immediate living expenses.

Part 3: Victims of crime compensation

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

No. While the arguments are sound regarding accessing the superannuation of a perpetrator to compensate a victim of crime, consideration must be given to the sole purpose of superannuation. Superannuation is for the provision of benefits for an individual and their dependants. Allowing

¹ Australian Law Reform Commission, *Family Violence and Commonwealth Laws – Improving Legal Frameworks*.

access to a perpetrator's superannuation may unfairly disadvantage their dependants, who may have no relationship to the crime, and thus fail the preservation principal for them.

Rules similar to those for bankruptcy could be introduced to prevent individuals from protecting proceeds from crime within superannuation, although the lower contribution caps now make it difficult to contribute large amounts to superannuation.

Question 3.2 *Should access to superannuation be limited to cases where a criminal conviction has been made?*

Refer response to Question 3.1.

Question 3.3 *Should access to a perpetrator's superannuation be available for compensation or restitution arising from all crimes, just violent crimes, or another threshold (such as the maximum penalty for offence)?*

Refer response to Question 3.1.

Question 3.4 *Should access to a perpetrator's superannuation only be available if the perpetrator made irregular or out of character contributions to superannuation to shelter assets?*

Refer response to Question 3.1.

Question 3.5 *How would a victim's right to a perpetrator's superannuation be enforced? How would the victim gain visibility over the perpetrator's superannuation assets?*

Refer response to Question 3.1.

Question 3.6 *How much of a perpetrator's superannuation should be available? Should the amount be different based on the perpetrator's circumstances (for example, low balances, dependent children)?*

Refer response to Question 3.1.

Question 3.7 *Should access to a perpetrator's superannuation be in the form of a lump sum, portions of income stream payments or both? How should defined benefit products and annuities that have not yet commenced payments be treated?*

Refer response to Question 3.1.

Question 3.8 *Should contributions into superannuation after a compensation order has been made count towards the amount that can be accessed?*

Refer response to Question 3.1.

Question 3.9 *Where a criminal conviction has been made, should victims be able to access a perpetrator's superannuation to pay either outstanding compensation or restitution orders?*

Refer response to Question 3.1.

Question 3.10 *Should State and Territory compensation schemes be able to recover their payments to victims from the perpetrator's superannuation?*

Refer response to Question 3.1.

Question 3.11 *In circumstances where there are concurrent family law and victim of crime compensation proceedings, how should these matters be addressed and prioritised? What other issues might arise?*

Refer response to Question 3.1.