

Early Release Review
Retirement Income Policy Division
The Treasury
Langton Crescent
Parkes ACT 2600

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13 February 2018

Consultation: Review of the Early Release of Superannuation Benefits

Dear Sir/Madam

Thank you for the opportunity to comment on this review.

In summary, Mercer submits as follows:

- The Australian welfare system should provide sufficient assistance to enable victims of domestic violence to escape from the abusive situation and begin rebuilding their lives; however if the clear unmet need that presently exists cannot be addressed via the welfare system in the near future, our view is that some early release of super for victims of family violence should be permitted where other forms of assistance have been inadequate.
- Mercer supports victims of crime being able to access the perpetrator's super for compensation, as a last resort (i.e. where the perpetrator has insufficient assets outside of superannuation) because we think compensation to a victim should take precedence over a perpetrator's retirement needs.
- In respect of access on severe financial hardship grounds, Mercer supports some easing of the continuous 26-week period requirement to accommodate those who have not been receiving qualifying Commonwealth income support payments for a short period in the previous 26 weeks.

Our detailed comments re set out below.

Access to early release for victims of domestic violence

1. The consultation paper asks for views as to whether or not access to superannuation benefits should be available to assist victims of domestic violence and, 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.
2. There is overwhelming evidence that, at present, the welfare system is not adequate in many cases to meet the volume of family violence cases in Australia. This issue impacts fund members we deal with every day. Our Mercer Superannuation Trust Helpline alone (we also provide Helpline services to a number of other large funds) received over 2000 calls in two years in relation to financial hardship and family violence. Our members call us in distress and find the current process of claiming through severe financial hardship either closed off because they have not been in receipt of a qualifying Commonwealth income support payment for a continuous 26-week period or confusing, time consuming and insensitive, adding further worry and distress at an already challenging time. Many of our members experiencing family violence are facing homelessness and need funds to relocate, often with their children, to a safe environment.
3. The current financial hardship release process requests evidence that in many cases is difficult for members experiencing family violence to provide due to loss or lack of access to property/paperwork/financial records to prove identity/debts etc or they are ineligible because they have not been in receipt of a qualifying Commonwealth income support payment for a continuous 26-week period.
4. We are currently unable to assist many such members in genuine and urgent need and see a desperate need to improve the financial support available to help victims of family violence.
5. We strongly submit that the Australian welfare system should provide sufficient assistance to enable victims of domestic violence to escape from the abusive situation and begin rebuilding their lives. Victims should not have to resort to depleting their superannuation savings in order to be able to escape family violence, particularly as most victims are women who are already likely to have inadequate superannuation savings. We also note that welfare assistance should be able to be provided on a much more timely and responsive basis than is likely to be possible for early release of super.
 - o We recommend that the Commonwealth Government institute a review of assistance provided to victims of domestic violence with a view to ensuring an adequate level of targeted assistance is available to victims wherever they live in Australia.

6. If the clear unmet need that presently exists cannot be addressed via the welfare system in the near future, our view is that some early release of super for victims of family violence should be permitted where other forms of assistance have been inadequate (the 'last resort' principle). We believe this would also clearly meet the 'genuine hardship' principle, in that the benefits of early access to super for a family violence victim that enables them (and their children) to escape the abusive situation will exceed the benefits of preserving their balances until retirement. In these circumstances the need for compassion far outweighs the broader policy objective of the superannuation system.
7. As to the amounts that should be permitted to be released and what expenses should be eligible to be met, we suggest:
 - o a minimum amount of \$1,000 and a maximum of \$10,000 (as applies under financial hardship grounds), with only one release permitted on these grounds within a 12 month period and
 - o the expenses eligible to be met are temporary accommodation expenses, short-term childcare, re-location costs and counselling expenses.
8. As to the evidence required that a person is an eligible victim of family violence, we acknowledge there may be some challenges in meeting the 'fair and effective principle' for releases on these grounds, in particular objective criteria that facilitate providing timely assistance in genuine cases and avoid early release in non-genuine cases. Mercer does not purport to be an expert in family violence matters and we would look to other parties with the necessary expertise to put forward workable options.
9. We propose that early release for victims of family violence be permitted on compassionate grounds and be assessed by the ATO (following transfer of this responsibility from DHS) as for other compassionate grounds releases. Assessment of these cases by a single body would assist meeting the 'fair and effective principle' by facilitating a consistent approach by a body with the specialist expertise we expect will be needed for these early release assessments, as well as timely responses. We believe this would be substantially more efficient and effective than the alternative of requiring each individual fund trustee to develop such expertise and note that we anticipate that the ATO's costs for administering domestic violence early release assessments would be recouped via APRA levies and so will effectively be met by all funds/fund members.
10. Finally, we suggest that there should be a time limit on the application for release e.g. within 12 months of experiencing domestic violence.

Access for victims of crime

11. The consultation paper asks whether, and in what circumstances, victims of crime might be able to recover unpaid compensation or restitution from a perpetrator's superannuation.
12. Mercer supports victims being able to access the perpetrator's super for compensation, as a last resort (i.e. where the perpetrator has insufficient assets outside of superannuation) because we think compensation to a victim should take precedence over a perpetrator's retirement needs.
13. Access should only apply where there is a criminal conviction i.e. where the criminal standard of proof of 'beyond reasonable doubt' is satisfied as compared with a civil compensation award.
14. Access should be available for compensation for any types of crimes, but to avoid administrative costs for relatively small amounts, a minimum amount (say \$10,000) should apply i.e. compensation amounts lower than this minimum could not be accessed.
15. The amount of the perpetrator's super accessible by victims should not be limited. However in a split of the perpetrator's super to their spouse should be permitted prior to access by the victim, with the split limited to the amount that would mean the spouse has 50% of the combined super prior to the split. We propose this exception to recognise a spouse's contingent interest in the perpetrator's super and that the spouse will already have lost their share of joint non-superannuation assets to the compensation claim.
16. Both lump sum and pension benefits should be able to be accessed for compensation. We suggest that splitting rules similar to Family Law arrangements apply for non-commutable income stream benefits.
17. The question of whether victims of crimes committed in the past should be eligible for access to the perpetrator's super is a difficult one, as the compensation may be critical to enable some victims to rebuild their lives. However in our view the principle of not making retrospective changes to the law should take precedence. Hence we would support prospective application, so that access for victims would not apply to crimes committed prior to the law being changed.
18. We also support allowing State and Territory compensation schemes being able to recover the cost of their payments from the perpetrator's super, as it is more appropriate that these costs are met by the perpetrator than from the public purse.

Severe financial hardship grounds

19. The consultation paper asks whether the criteria for severe financial hardship should be amended and, if so, how.
20. As noted above, Mercer deals with many customers seeking to obtain early release on financial hardship grounds. Some of these are not eligible because they have had a short period in the previous 26 weeks when they have not been receiving qualifying Commonwealth income support payments. As noted in the consultation paper, an individual may have had to forgo one week of Centrelink payments because they have worked intermittently and therefore is unable to qualify when they otherwise might be. This can be very frustrating for the individuals concerned and for our Helpline staff who are trying to assist them. It is difficult to argue that someone in these circumstances is in significantly less financial hardship than someone who does meet the continuous 26-week period requirement.
21. We acknowledge that with any objective test there will be people at the margin who are ruled out. However Mercer would support some easing of the continuous 26-week period requirement to accommodate those who have not been receiving qualifying Commonwealth income support payments for a short period in the previous 26 weeks. For example, modify the rules so that a person who does not meet the continuous 26-week period requirement would be eligible if they met an alternative test of receiving qualifying Commonwealth income support payments:
 - o continuously for the prior 8 weeks and
 - o at least 26 weeks of the prior 30-week period.
22. The consultation paper also notes that the lack of an objective test for 'unable to meet reasonable and immediate living expenses' means trustees may permit early release on financial hardship ground inconsistently. Indeed, we have observed this capacity for different approaches in the funds for which Mercer provides financial hardship assessment services.
23. Whilst ideally this would not be the case, we do not see it as a major problem and think it would be difficult to design a prescribed standard of proof that would be fairer and more effective. Of course we would be happy to provide our input on the merits of any specific proposals for a prescribed standard of proof.

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Who is Mercer?

Mercer is one of the world's leading firms for superannuation, investments, health and human resources consulting and products. Across the Pacific, leading organisations look to Mercer for global insights, thought leadership and product innovation to help transform and grow their businesses. Supported by our global team of 22,000, we help our clients challenge conventional thinking to create solutions that drive business results and make a difference in the lives of millions of people every day.

Mercer Australia provides customised administration, technology and total benefits outsourcing solutions to a large number of employer clients and superannuation funds (including industry funds, master trusts and employer sponsored superannuation funds). We have over \$150 billion in funds under administration locally and provide services to over 2.4 million superannuation members and 15,000 private clients. Our own master trust in Australia, the Mercer Super Trust, has around 230 participating employers, 224,000 members and more than \$21 billion in assets under management.

Please contact me on 03 9623 5464 or by email if you would like to discuss this submission.

Yours sincerely



Dr David Knox
Senior Partner