

## Early Release of Superannuation Consultation Submission from economic Security4Women (eS4W)

### I. Preamble

On 8 December 2017 the Government announced that Treasury will conduct a review of the rules governing the early release of superannuation benefits, including for victims of crime compensation.

The rules governing early release of superannuation benefits have not changed substantially since 1997. The superannuation system has come a long way since then and it is important to ensure the arrangements remain fit for purpose.

An issues paper has been released for public consultation, examining the key issues related to the early release of superannuation benefits under compassionate grounds and severe financial hardship grounds.

economic Security4Women (eS4W) is providing comment on the issues raised.

### II. What is economic Security4Women

economic Security4Women (**eS4W**) is a national women's alliance, funded by the Australian Government through the Office for Women in the Commonwealth Department of Prime Minister and Cabinet.

It is an alliance of women's organisations united in the belief that economic wellbeing and financial security are essential for women and will enable women of all ages to have an equal place in society.

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### III. Our responses to the questions proposed

#### Principles underpinning early release

##### QUESTIONS

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

- 0.1 The principles outlined seem fair and strict enough to ensure that superannuation funds are released only where severe hardship exists. For women, who traditionally have less superannuation accumulated than men, it is particularly important to balance current hardship with the potential for poverty in retirement if funds are diminished. Regarding victims of crime, this is complex and needs more detailed consideration than is given in the paper. Consideration would depend on the crime and the difficulty for the perpetrator of the crime to access funds through other channels.
- 0.2 Early release of superannuation funds should be a last resort taking into consideration a multitude of factors – age, personal circumstance, earning capacity in subsequent years, reasons for requiring early release.

## Part 1: Early release on compassionate grounds

### Financial capacity

#### 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?

The assessment of financial capacity regarding early release of superannuation should be objective, rather than prescriptive, and should weigh up the importance, particularly for single women, of preserving their home as an asset in terms of overall financial wellbeing in retirement. The risk of homelessness for both mortgagees and renters should be weighed up.

### Medical treatment grounds

#### QUESTIONS

- 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?
- 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?
- 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?

1.2 There is a growing issue in Australia with the cost of medical treatment which needs addressing beyond this examination of the use of superannuation. There are now many debilitating medical issues (mental health for example) which prevent people from working and require lengthy treatment at a high financial cost. This is of huge concern and needs to be examined and addressed through a government review of both Medicare and private health funds.

1.3 and 1.4 The medical conditions involved, the amount to be accessed and the frequency of access should be attended to by those with financial and medical expertise. In some instances, the final decision to be taken by the superannuation fund trustee may not be an appropriate approach.

## Treatments and costs that can be covered

### QUESTIONS

- 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?
- 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?
- 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)?
- 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)?

This is difficult to comment because there are a range of community values at play when it comes to medical treatment such as ART and IVF. If the rules around multiple medical practitioners signing off are maintained, that should be sufficient for the Regulator and the trustee to make final decisions.

### QUESTIONS

- 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?

There will need to be a comprehensive review of current medical costs in order for the Regulator to assess what is 'reasonable', including the gap between Medicare rebates and medical expenses, and should probably be undertaken separately through a broader review of medical costs, the Medicare gap and private health caps. There is also the potential for early access to superannuation to be a driver for inflating the cost of some treatments.

## Dental 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?

There should be improved and increased delivery in publicly funded dental services in order to assist those in financial hardship. This is a public health issue that government should be managing, rather than those in financial hardship accessing superannuation and reducing their financial situation in retirement. The cost of dental procedures appears to have slipped under the radar and needs a significant review by government because of the long term and costly health implications of dental problems/issues.

## Severity of condition to be treated

## QUESTION

- 1.11 Should SIS Regulation 6.19A(3)(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?

Whether ‘treatment’ or ‘alleviation’ is more compelling should be on the recommendation of medical specialists – these are otherwise somewhat subjective. Limiting the use of superannuation funds to individuals with a life threatening condition is very narrow. The extend of financial hardship resulting from a medical condition is based on the personal circumstances of each individual which makes it difficult to restrict it to life threatening conditions.

## QUESTIONS

- 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 condition being treated?
- 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 obtain a reference from a list of approved medical practitioners, to ensure the objectiveness of the assessment?

- 1.12 eS4W agrees that a medical practitioner participating in the approval process should be a specialist.
- 1.13 A second opinion should be selected by the Regulator from approved specialists rather than nominated by the applicant, even if from a specified list.

## Funeral expenses grounds

## QUESTIONS

- 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?
- 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).

- 1.14 In the case of terminal illness, and the need for palliative care and funeral costs, it would seem fair to provide substantial access to superannuation funds. The only caveat would be the extent to which dependents could be impacted, particularly if they do not have their own, or minimal, superannuation funds.
- 1.15 The Regulator should consult with industry on the level of costs that would be reasonable for funerals and burials.

## Housing grounds

### QUESTIONS

- 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?
- 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)?

The potential for homelessness should be considered on compassionate grounds, whether or not a person is a mortgagee or a renter. If the aim is to prevent homelessness and hardship, should we have a system that requires an individual to be close to eviction or significantly in arrears and financial distress before they can access a portion of their superannuation?

## Other potential new grounds, not currently in the legislation

### Victims of domestic violence

#### 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?

A person subjected to violence should not be financially disadvantaged due to the actions of another. Assisting victims of violence should be undertaken comprehensively through separate, fully funded, government programs and support, rather than diminishing the victim's superannuation funds.

## Part 2: Early release on the grounds of severe financial hardship

### Discussion against the principles

#### QUESTIONS

- 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?
- 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 definition of severe financial hardship needs greater flexibility than the 26-week rule – intermittent work while receiving unemployment benefits does not necessarily mean that reasonable and immediate family living expenses can be met.

In addition, eS4W supports National Council of Single Mothers and their Children’s (NCSMC) submission to the *Royal Commission into Misconduct in The Banking, Superannuation and Financial Services Industry* called *Avoidance of Child Support & Superannuation*

Essentially hardship provisions should extend to the holder’s dependent children as per the statement below. It extends the current provisions but we are up for the conversations.

*Superannuation either by design or default serves as a legalised portal to hide liquid assets to avoid paying the lawful Child Support obligations. The Child Support Agency can use a Section 72A notice to gain access to superannuation in some limited circumstances. The limitations and challenges associated with accessing superannuation is completely inadequate and the existing laws and rules are out of step with community expectation and desire to protect children from hardship. Currently, superannuation can be accessed on the grounds of hardship, and we see no reason as to why this should not extend to the holder’s dependent children. It is NCSMC’s belief that closing this avenue would promote increased responsibility and payment of child support and it would reduce the need for women who have a child support debt to cash their superannuation.*

*“I had to cash all of my Superannuation to provide for my children”*

*Erin - October 2017, in response to her child support debt*

*Furthermore, it would reduce Government expenditure and it has capacity to decrease hardship experienced by children .*

### Part 3: Victims of crime compensation

eS4W finds it difficult to comment on whether victims of crime should be compensated by accessing the perpetrator’s superannuation funds. There are issues related to the extent and impact of the crime, the difficulty in implementing compensation in this way, and how it overlaps with a multitude of State and Territory compensation schemes. There are also issues related to the impact that access to superannuation could have on the perpetrator’s dependents. There is not enough in the consultation paper to come to conclusions on this aspect of accessing superannuation – it needs a separate and thorough review, including through Regulators in all jurisdictions.