



AUSTRALIAN INSTITUTE of
SUPERANNUATION TRUSTEES

Early release of superannuation benefits

12 February 2018

AIST Submission to Treasury

AIST

The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.

As the principal advocate and peak representative body for the \$700 billion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST provides professional training and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.

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Executive summary

We welcome the opportunity to comment on the *Early Release of Superannuation Benefits* Consultation Paper released in December 2017.

We believe that individuals should be able to access superannuation savings prior to retirement but access should only be permitted in limited circumstances.

Accessing superannuation prior to retirement can reduce an individual's ability to achieve an adequate retirement, therefore individuals should only be able to access superannuation in response to a crisis or if there is a genuine need.

Superannuation should not be used to address structural or systemic problems in other areas of society and governments must examine the central issues that result in individuals seeking to access super early.

Modifying the existing release grounds or developing new grounds must have regard to:

- Retirement adequacy: The primary objective of the superannuation system should be to provide a reasonably comfortable living standard in retirement; an adequate retirement.
- Financial literacy: The government should consider the relation between early access and financial literacy within Australia.
- System manipulation: Given the critical importance of superannuation to Australia's retirement incomes system, any policy change must limit the opportunity for system manipulation by predatory operators.
- Consistency: It would be beneficial if there was only one decision maker that conducts early release assessments on both compassionate and financial hardship grounds. This would promote consistency, reduce administrative burden, and streamline the process for fund members.

Allowing individuals to access the superannuation of another person, such as a perpetrator of a crime, represents a fundamental departure from both the objective of superannuation and present release grounds. As such, it is vital that the release conditions are clear and operate in limited circumstances. Furthermore, governments should explore the adequacy of state based compensation schemes, because they are, and should continue to be, the primary method in which victims are able to access compensation.

Key issues

Objective of superannuation is critical

We believe that the primary objective of the superannuation system is to:¹

provide retirement income for all Australians that, when combined with or in replacement of any public pension, ensures a reasonably comfortable living standard, in the spirit of fairness within and between generations.

Accessing superannuation monies early has the potential to run counter to this objective, because the early access is before retirement and is likely to reduce an individual's ability to achieve an adequate retirement. The concept of adequacy in retirement is essential because it provides a measure of whether the superannuation system is delivering overall or if the policy settings require further work.

If the preferred objective is overlooked in this process then the reforms may result in policy settings that are inconsistent with the purpose of the system.

Superannuation is not the solution

While the superannuation system can play a role in assisting individuals in responding to a genuine crisis, the system should not be used to address structural or systemic issues in other areas of society. We agree with the statement in the consultation paper that superannuation 'is not an appropriate replacement for existing health and income support policies'.²

Governments must examine the underlying cause of the issues that result in individuals trying to access superannuation prior to retirement. It is inappropriate to use superannuation to address issues that are a consequence of poor policy, or policy failure.

Table 1 below illustrates the current and proposed conditions of release and outlines the policy areas in which governments should focus their efforts on, to ameliorate the need for individuals to access superannuation.

¹ Australian Institute of Superannuation Trustees (2016). *Objective of Superannuation*. [online] p.6. Available at: <https://tinyurl.com/zs2qg8r> [Accessed 5 Feb. 2018].

² The Treasury (2017). *Early Release of Superannuation Benefits*. [online] p.vi. Available at: <https://tinyurl.com/y767uewn> [Accessed 5 Feb. 2018].

Table 1: Grounds of release

Ground of release	Condition	Policy area
Existing Grounds		
Compassionate	Payment for medical treatment or transport for applicant or dependants.	Health
	Payment for modification of applicant’s principal place of residence (PPR) or vehicle due to disability of applicant or dependant.	
	Pay for palliative care expenses of applicant.	
	Pay for applicant expenses associated with a dependant’s palliative care, death, funeral or burial.	
	Payment on a loan to prevent foreclosure of mortgage or sale of applicant’s PPR.	Human Services and Social Security
Severe financial hardship	Applicant must be unable to meet reasonable and immediate family living expenses and be in receipt of Commonwealth income support for at least 26 weeks.	Human Services and Social Security

Proposed Grounds		
Compassionate	Payment of rental payments due to financial hardship.	Human Services and Social Security
Domestic violence	Assisting victims of violence.	The Federal Government, Human Services and state and territory governments.
Victims of crime	Accessing a perpetrator's superannuation monies.	State based compensation regimes

The table above clearly outlines some of the policy areas that both state and territory governments and the Federal Government should have regard to when attempting to address the underlying causes of early access release.

Allowing access to superannuation monies early should not be the solution, instead governments must explore the root causes behind the access and move towards addressing these.

While the underlying issues are addressed, the superannuation system can play a limited role and act as a 'safety net' allowing individuals to access monies in certain circumstances, such as in response to a crisis.

In addition to addressing the underlying issues, the Federal Government should also explore the tax treatment of lump sums released to individuals under the early release grounds. Terminal illness payments are currently tax free, however tax is applied to other grounds and the rate differs depending on the individual's age.

Key principles

We believe that the modification of existing release grounds or the development of new grounds must have regard to a basic set of guiding principles to maintain the integrity of the superannuation system.

Retirement adequacy

The consultation paper states that preservation should be one of the proposed guiding principles in the review:³

Superannuation benefits should generally be preserved to provide income in retirement to substitute or supplement the Age Pension. Early access to superannuation for other purposes is inconsistent with the preservation principle.

We recommend that this statement should be amended to address the concept of adequacy in retirement to reflect the fact that an 'adequate retirement' should be the primary objective of the superannuation system.

If adequacy in retirement is ignored, then there is a potential that the policy response would result in members being financially worse off in retirement; Scenario 1 below highlights the potential impact early release can have on an individual's superannuation:⁴

A 30 year old withdrawing \$14,000 from their superannuation under early release conditions could have superannuation that is 10% lower than a person that does not make a withdrawal.

In this scenario the member will also receive a greater Age Pension payment rate in retirement, which is a cost that must be borne by the government and tax payers.

Given the potentially negative outcomes of early release, it is critical that the concept of adequacy is considered.

³ The Treasury (2017). *Early Release of Superannuation Benefits*. [online] p.iv. Available at: <https://tinyurl.com/y767uewn> [Accessed 5 Feb. 2018].

⁴ Refer to Appendix A for the projection assumptions.

We also request the government provide evidence of the financial impact that the proposed measures will have on:

- The member in retirement.
- Fund members due to cross subsidisation that may occur during the accumulation phase.
- The superannuation system, including trustees and entities responsible for administering and assessing the release grounds.
- Government services, such as social security and Medicare.

Financial literacy

We believe that it is essential for all Australians to develop financial literacy skills so that they are equipped to make good financial decisions. Financial literacy skills can improve an individual's ability to make financial decisions that are in their best interests, both now and into the future.

A 2015 survey on adult financial literacy in Australia reads:⁵

poorly informed investment and superannuation decisions are likely to make it more difficult for consumers to plan and save effectively for their retirement as well as placing them at greater risk of suffering financial loss.

The survey also revealed that less than 28% of fund members had a target income for retirement, which may suggest that that individuals struggle with planning for their retirement.⁶

We believe that a poorly informed decision to access superannuation monies early can both negatively impact retirement outcomes and be of little value to the member, especially if the money is accessed to pay for a procedure or treatment that has limited prospects of success. Where a treatment has a low success rate, financial literacy becomes even more important as the risk of financial loss for no benefit increases.

We note that the Australian Investments and Securities Commission (ASIC) has developed a Financial Literacy Strategy and we believe this important work should continue.

⁵ ANZ (2015). *ANZ Survey of Adult Financial Literacy in Australia*. [online] p.60. Available at: <https://tinyurl.com/j4sy9hd> [Accessed 5 Feb. 2018].

⁶ ANZ (2015). *ANZ Survey of Adult Financial Literacy in Australia*. [online] p.1; p.60. Available at: <https://tinyurl.com/j4sy9hd> [Accessed 5 Feb. 2018].

The government should consider the impacts on retirement adequacy of individuals exploring the expansion of early release provisions.

System manipulation

Early release provisions must be designed in such a way that reduces, as far as practical, the ability for operators to use system for unintended purposes. There are many for-profit business enterprises that facilitate early access to superannuation savings on behalf of members. These businesses do not have a duty to act in the best interests of the member or an obligation to consider the potential impacts that early release can have on a member's retirement future. It is important that the early release grounds are not used in ways that may be inappropriate or predatory.

We acknowledge that getting the balance right between having reasonable release grounds and the avoidance of system manipulation is difficult, however given the critical importance of superannuation to Australia's retirement incomes system this should be a guiding principle of these reforms.

According to APRA September 2017 figures the superannuation system is worth approximately \$2.5 trillion dollars. The annual amount of money accessed under early release conditions was \$550 million for financial hardship⁷ and \$290 million for compassionate grounds.⁸

However, while the amount withdrawn from the system only represents a very small amount it is nevertheless critical to avoid system manipulation, especially because the sector is expected to grow to over \$3.2 trillion dollars by 2035 and represent 130% of Australia's gross domestic product.⁹

⁷ 2015-2016 Financial Year.

⁸ 2016-2017 Financial Year.

⁹ Professor Rodney Maddock, '*Superannuation Asset Allocations and Growth Projections*' (Research Paper, Financial Services Council, 17 February 2014) 6.

Consistency of decision making

Early release of superannuation benefits could be improved by centralising the release decision making function. Table 2 outlines the current and proposed decision makers for the early release of superannuation.

Table 2: Decision makers

Release ground	Decision maker
Compassionate	Department of Human Services (DHS) however expected to be transitioned to the Australian Taxation Office (ATO).
Financial hardship	Superannuation fund trustee based on written evidence from relevant government department(s).
Victim of crime	Courts.

As outlined in the table above, there are currently two decision makers for early release, the DHS and fund trustees. It would be beneficial if there was only one decision maker that conducts early release assessments on both compassionate and financial hardship grounds, such as the ATO. We note that the recently announced *Treasury Laws Amendment (2018 Measures No. 1) Bill 2018* shifts the assessment responsibility from the DHS to the ATO.

It is appropriate for the victims of crime decision maker to be the courts.

Centralising the decision-making function would be beneficial for members because it would promote consistency, particularly regarding financial hardship claims.

Currently, not all superannuation funds allow members to access superannuation on the ground of severe financial hardship and those that do may have different business rules, processes and evidentiary requirements. This results in:

- Inconsistent application processes.
- Inconsistent decision making.
- Fewer comparable outcomes.
- An incentive for some members to switch from a fund that does not offer early release to one that does.
- Member confusion.

Early release of superannuation benefits

We submit that centralising the decision-making function for both compassionate release and financial hardship would make the process easier to manage for members, promote fairness and administrative efficiency. It would also reduce the likelihood of the system being manipulated, as the decision maker would have visibility of a predatory service provider's conduct.

Centralising decision making would also provide greater security and clarity to superannuation funds, as one entity would be responsible for identifying the applicant, the legitimacy of their claim, and the amount to be released.

Under this proposed model, superannuation funds that release monies in response to a direction by the decision maker should be granted legal protection against subsequent claims.

Response to consultation questions

Q0.1 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?

The proposed principles are appropriate; however, it is critical for the preservation principle to be expanded to reflect the importance of adequacy in retirement. We agree that early release should only be allowed on grounds of genuine hardship and it is appropriate to conduct a cost-benefit analysis of early release on retirement savings.

Superannuation should only be able to be accessed early in circumstances of last resort and the rules governing early release should be clear and capable of being administered easily.

Q0.2 Having regard to these principles, should early release of superannuation benefits generally be more or less difficult to obtain?

The suggested principles in this submission should be used to inform the reform process to ensure that the balance between allowing early access and preserving superannuation money is appropriate.

Q1.1 Should the assessment of financial capacity be made more prescriptive and/or objective? If so, how? What information might applicants need to provide?

The ATO or the DHS should develop guidance on the meaning of 'financial capacity'. This would promote consistency of decision making and improve the application process for applicants, many of whom are facing difficult circumstances.

Q1.3 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?

Q1.4 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?

Q1.5 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?

We submit that the relevant government departments are most suited to answer these questions due to information asymmetry. However, setting maximum caps is appropriate.

Superannuation funds receive no information from a referral by a regulator to pay an amount of monies other than basic information such as the person's name and the amount to be released. The medical condition or treatment sought is not disclosed to the fund.

We recommend that Treasury contact the relevant government departments to access this information.

Q1.12 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?

The practitioner should be a specialist in a field relevant to the condition. This would align the release ground to the terminal medical condition ground, where at least one medical practitioner is a specialist practising in an area related to the illness or injury suffered by the person.

We do not agree that the specialist must be in the field *most relevant* to the condition as suggested because this would be a more onerous test than currently exists under the terminal medication condition ground. Furthermore, it would make it more difficult for an applicant to access the suitable specialist, especially if demand for their services is high. It would also introduce additional uncertainty as the assessment of what the 'most relevant' field may be difficult and is inherently subjective.

Q1.13 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?

The regulator should be able to refer applications to an independent medical panel. When exercising the discretion, the regulator should determine the benefits of a referral and weigh these against any potential negatives including delay, expense, impacts on efficiency and costs.

The establishment or use of an existing medical panel is beneficial because it:

- Promotes consistent decision making.
- Increases efficiency, by providing a centralised referral mechanism.
- Continues to promote impartiality of medical assessments. This will enhance objectivity, both actual and perceived.

Q1.15 Should there be a maximum amount that can be released to meet a funeral expense?

There should be clear guiding principles that the regulator has regard to when determining reasonableness of a release amount. This is because different cultural practices may require funerals to have certain minimum requirements, making those funerals more expensive.

Q1.17 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)?

Consideration should be given to expanding the grounds to include individuals that are unable to meet rental payments. Research by AIST in 2017 reveals that Australia's overall home ownership rate has been declining for the past 50 years, and that this is likely to continue.¹⁰ As fewer people are owning their homes, the number of people renting is increasing and renters often suffer just as much hardship as home owners if they fail to pay the rent.

¹⁰Australian Institute of Superannuation Trustees (2017). *No Place Like Home: The Impact of Declining Home Ownership on Retirement*. [online] p.4. Available at: <https://tinyurl.com/y8uxm33t> [Accessed 5 Feb. 2018].

Early release of superannuation benefits

If a home owner cannot discharge their mortgage and the mortgagee exercises a power of sale, or forecloses then that person, while losing the enjoyment of their home, may receive any surplus proceeds from the sale of the home. Renters do not have this opportunity.

If a renter is evicted from their rental property then they are particularly vulnerable. We submit that renters should be able to access superannuation to meet their rental payments if they can satisfy that:

- They have an obligation to pay rent;
- The rent is not paid because they are suffering financial hardship; and
- There is a reason why they are suffering financial hardship, such as a crisis.

We also believe that there is merit in examining the options of setting a maximum limit on the amounts allowed to be withdrawn per year.

Q1.22 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?

Allowing victims of domestic violence to access superannuation may be beneficial in certain circumstances. Domestic violence is an important social issue within society and governments have the responsibility for ensuring that victims are adequately supported, both financially and emotionally. Support programs such as safe housing, timely access to social security, and an adequately funded health system are essential in assisting victims of domestic violence and the development of these should be a priority.

Notwithstanding the role of governments and the complexity of this issue, there is merit in considering:

- Setting maximum caps on the amount of money that can be withdrawn.
- The administration process, and whether a government department should have the responsibility of handling the claims, application and withdrawal process.
- Establishing measures to ensure the system cannot be manipulated or used for illegitimate purposes.

It is also important that the decision maker considers how the release of monies would impact other parties, which may include the individual's potential beneficiaries or financial dependents.

Q3.1 Should victims of crime be able to access a perpetrator's superannuation for compensation?

It is crucial that state compensation regimes continue to be the primary means by which victims can access compensation following crime and governments should continue to explore the adequacy of these schemes.

Notwithstanding this, there is merit in allowing an individual to access a perpetrators superannuation in limited circumstances. Caution is required in exploring this issue, and we note the inherent complexity of any proposal to allow early access on this ground. Not only is this ground complex, but allowing individuals to access superannuation of another person is a fundamental departure from both the objective of super and the existing release grounds.

We believe that there are variety of possible policy responses to this issue, and submit that issues such as those outlined below should be examined:

- *Prospective application:* Any new access measure should have prospective application only.
- *Seriousness:* The crime must be sufficiently serious.
- *Last resort:* Access should only be permitted if no monies are available from other assets of the individual.
- *Need for criminal conviction:* The perpetrator should ideally be found guilty of the relevant offences within the criminal system.

It is also important that the decision maker (the courts or the state based compensation scheme) considers how the release of monies would impact other parties, which may include the individual's potential beneficiaries or financial dependents.

Q3.2 Should access to superannuation be limited to cases where a criminal conviction has been made?

Limiting access to cases where a criminal conviction exists is imperative because it provides clarity and defines the scope of the ground. A clear scope is important because of the potential adverse outcomes that can arise when monies are released early, such as diminishing retirement adequacy.

Q3.3 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)?

Potential responses to this issue are outlined below:

Utilise existing state based regimes:

- State based regimes may provide a useful blueprint for access because each sets out the types of victims covered, time limits, caps and the types of crimes for which compensation can be sought. Exploring these regimes in greater depth can provide a useful starting point on settling the issue of thresholds too.

National Offence Index:

- The National Offence Index (NOI), developed by the Australian Bureau of Statistics, ranks crimes on their level of severity and we recommend that, as a starting point, these should be considered. Crimes ranked on the NOI include:¹¹
 - Murder
 - Attempted murder
 - Manslaughter
 - Driving causing death
 - Manslaughter and driving causing death
 - Homicide and related offences
 - Aggravated sexual assault
 - Non-assaultive sexual offences against a child
 - Sexual servitude offences
 - Child pornography offences
- Consideration should also be given to various assault offences.

Q3.4 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?

Where an individual has used the system for a purpose other than for which it was designed an individual should be able to access a perpetrators superannuation.

¹¹Australian Bureau of Statistics (2013). *National Offence Index*. [online] Available at: <https://tinyurl.com/yd5659rm> [Accessed 5 Feb. 2018].

Q3.6 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)?

We believe that a maximum financial cap should be considered and minimum balance protection mechanisms should also be explored. Balance protection can prevent an individual's entire balance from being exhausted which can carry other impacts, such as a loss of that person's insurance cover.

Appendix A: Modelling and Assumptions

Scenario 1 assumptions:

- Age at commencement of accumulation: 20 years old
- Super balance at commencement: \$0
- Retirement age: 67 years old*
- Income stream in retirement: yes*
- Increase in the superannuation guarantee: schedule as of 2 February 2018*
- Whole of life simulation, reflecting increase in income with a wage inflation measure
- Median income: \$40,000 to reflect the likely situation where the member is in a situation of disadvantage
- Annual percentage based fee: 0.6%*
- Administration fees: \$200 per annum
- Marital status: single*
- Additional contributions: nil*
- Investment option: balanced*
- Age at time of access: 30 years old
- Amount accessed: \$14,000, which is the median amount withdrawn for release

* Denotes standard defaults used in ASIC's MoneySmart superannuation calculator