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BUSSQ submission: Early release of superannuation benefits consultation paper

Thank you for the opportunity to comment on the Treasury's Consultation paper, "Early release of superannuation benefits."

About BUSSQ

Formed over 30 years ago, BUSSQ is a profit for members industry superannuation fund, catering for members and employers in the building, construction and civil industries.

With over 85,000 members, 14,000 participating employers and \$4.5 billion in funds under management, BUSSQ is focused on the welfare of our members – in particular, with respect to their financial well being and mental health issues.

In the five years from 2012 to 2017, BUSSQ has paid over \$13.2 million to 783 members on Compassionate Grounds; and over \$29.1 million to 3,616 members on Financial Hardship grounds.

Focus on members' welfare

BUSSQ has carried out extensive research, drawing on our own experience along with published research, on the link between financial hardship and the overall health and well being of our members.

The alarming rate of suicide in Australia is well documented. Less well known is that certain subgroups within the working population are particularly vulnerable to suicide, including men employed in the construction industry (Milner et al, 2017).

Further, construction workers are particularly vulnerable to the wider economic environment (Milner and Law, 2017).

Conscious of this, BUSSQ has devoted significant resources to assisting members in hardship. We have established a team which, in part, assists members through the financial hardship application process. Where members are ineligible for superannuation benefits, we help them to locate alternative resources. We also assist members in seeking help where their mental welfare may be of concern.

We are acutely aware of the effect that financial hardship can have on members. According to figures provided by Mates in Construction:

- Construction workers are more than twice as likely to take their own life as other people in Australia.
- Construction workers are six times more likely to take their own life than through a workplace accident.
- Apprentices in construction are two and a half times more likely to take their own life than other young men their age.

Further, according to a recent [PricewaterhouseCoopers report](#) on mental health in the workplace, 25.1% of workers in the construction industry were shown to have had a mental health condition. In addition, 8.9% of construction workers have a condition affecting their mood, such as depression – which is considered one of the risk factors for suicide.

BUSSQ encourages the Government to consider its policies with respect to early release of benefits in the broader context of members' overall safety and well being.

Answers to questions posed in the consultation paper follow. BUSSQ has addressed only questions where we are qualified to respond.

Yours sincerely,



Linda Vickers
Chief Executive Officer
BUSSQ

BUSSQ Submission

Early Release of Superannuation Benefits

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?

BUSSQ is in broad agreement with the principles proposed. However, we believe that, as part of the “genuine hardship” principle, consideration should be given to the consequences of non payment.

Such consequences may include:

- Eviction from the place of residence, resulting in homelessness for both the member and dependant/s;
- Threat to the member’s well being. Members may be at risk of depression, self harm, harming others, violence, or be denied an important medical treatment;
- Time in jail; and
- Disconnection of vital services such as telephone or electricity.

We also suggest that, included with the “fair and effective” principle, rules need to be practical. Increasing requirements for evidence proving hardship may be impractical and time consuming to enforce. In any case, it is doubtful whether fund staff, who specialise in superannuation matters, have the skills or the resources to undertake the detailed evaluations required for many cases.

Question 0.2

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

BUSSQ believes that it is not a matter of making benefits more or less difficult to obtain – it is a matter of establishing criteria that better targets members in genuine need of financial assistance.

Under the current rules, in particular with respect to financial hardship, members in genuine and at times desperate need of assistance are being denied access to vital funds. Others are accessing their super in accordance with the rules where other options may be available.

We have provided further comments on this in later questions.

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?

We are unaware of the standards of proof required by the DHS to assess financial capacity. However, BUSSQ believes that it is appropriate for members, once the need for funds has been established, to be required to demonstrate that they cannot meet the expense and that there are no alternative funding sources available.

We note that responsibility for authorising releases on compassionate grounds will soon be transferred to the ATO, who may have access to relevant information on the applicant's financial capacity.

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?

BUSSQ has little visibility on the uses of compassionate grounds payments once authorised by the DHS. Unless we have been assisting members with the application process, we are unaware of how the funds released are to be applied.

We do note however that anecdotally, there is a higher awareness of compassionate grounds among members as a possible source of funds. There is also occasional publicity in the popular media of the ability to access superannuation for some medical procedures. Some of this publicity has led to misinformation – for example, members believing that they are able to access their superannuation for purposes such as plastic surgery.

Further, we understand that there are organisations advertising their services to assist members with their applications for compassionate grounds claims, for a fee.

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?

While we have limited knowledge of the extent and reasons for compassionate grounds payments, BUSSQ makes the observation that there is little point in saving for retirement if a member's current quality of life is reduced to an unacceptable level – or if the member does not reach retirement age at all.

With respect to medical grounds, BUSSQ is not in a position to suggest which medical grounds are appropriate to qualify as life threatening conditions or which cause acute pain. However, we encourage the principle that use of superannuation funds should not be broadened to fund lifestyle choices. Superannuation savings are intended first and foremost for retirement. Lifestyle choices should be funded by other means.

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?

BUSSQ believes that each request should be treated on its own merits, and we do not agree with imposing arbitrary restrictions on the number or amount of releases. A genuine claim is a genuine claim, irrespective of the time the claim is made or the amounts involved.

Repeated claims or excessive amounts however may indicate a need for closer scrutiny.

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?

No comment.

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?

No comment.

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)?

No comment.

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)?

No comment.

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?

No comment.

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?

While not opposed to this suggestion, BUSSQ is aware anecdotally of claims that have been accepted by the DHS (appropriately) for dental work. This is consistent with the criteria of alleviating acute pain. The provision for dental work in effect already exists.

As per previous comments, we do not believe that an arbitrary restriction on dollar amounts or number of claims is appropriate, providing each claim satisfies the principles for early release of benefits.

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?

BUSSQ believes that it is imperative that members be able to alleviate acute or chronic pain. Research has suggested that chronic pain, especially when resulting with an inability to work, is linked to mental illness and possibly suicide (Milner et al 2017).

Consistent with the Last Resort principle, all alternative sources of funds should be explored first, including income protection or TPD cover, private health insurance and benefits available from Centrelink. Every effort should be made to preserve superannuation savings for retirement.

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?

There is merit in this suggestion. We are aware of occasions where it is suspected that members may be “doctor shopping” – that is, searching for medical practitioners that are most likely to provide reports supporting their cases.

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?

BUSSQ supports this principle, however this may be difficult to enforce where members reside in remote locations, or in cases of rare medical conditions. In such cases the regulator should have the discretion to seek other evidence.

One alternative is to follow the model of some insurers, who appoint a panel of independent medical practitioners to liaise with the member’s doctors to help establish the legitimacy of the claim. Such a panel would have no financial interest in the outcome of the application.

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?

In keeping with the Preservation principle, BUSSQ believes that such payments should be restricted to cases of dependency. There is merit however in providing the government with the discretion to extend these payments to parents. BUSSQ is aware of situations where the financial welfare of elderly parents in effect becomes the responsibility of their children.

Consistent with the Last Resort principle, the member should be required to confirm that all other avenues have been exhausted.

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.)

BUSSQ agrees that a cap would be appropriate, such as an amount that the Regulator considers to be 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?

BUSSQ can see merit in having discretion to, in limited circumstances, extending early release of benefits to a person other than the person on the mortgage title. Strict criteria should be in place, for example:

- The person listed on the mortgage title should be the first person required to meet mortgage payments. Only in cases where the person listed on the mortgage title cannot meet repayments, including via early release of superannuation benefits, should other parties be considered for release of benefits.
- Such persons should be restricted to dependents, spouses or partners, and appropriate evidence of such relationships should be required.

BUSSQ also recognises that this is an area which may be open to abuse. While aware of current legislative restrictions on to whom superannuation benefits may be paid, BUSSQ believes that such payments should be made directly to the financial institution involved. This would ensure the release of benefits is applied to its intended use.

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)?

BUSSQ is acutely aware of the extent of the effect that homelessness has on its members. Numerous members approach us who are ineligible for financial hardship, and who are under threat of becoming homeless due to being in arrears with their rent.

Research by the Australian Institute of Health and Welfare (AIHW) suggests that homelessness can profoundly affect a person's mental and physical health, their education and employment opportunities, and their ability to participate fully in social and community life (AIHW, 2017).

Where a person and, in many cases, their dependents are evicted due to rent arrears, they often have no alternative except to turn to social housing. The AIHW has reported that (AIHW, 2017):

- Each night in Australia, more than 105,000 Australians are homeless.
- In 2015–16, homelessness agencies were supporting nearly 280,000 people who are homeless, or who are at risk of becoming homeless.
- Social housing programs that provide rental housing at below market rates are available for eligible Australians. The programs focus on low-income households in greatest need. These households include Aboriginal and Torres Strait Islander Australians, younger and older Australians, people with disability, people experiencing domestic and family violence, and the homeless.

There were 394,000 households living in social housing at 30 June 2016. A further 195,000 were on the waiting list at that time.

The number of people on waiting lists is in particular of great concern.

BUSSQ strongly supports any measures to keep people off the homeless lists. We agree with the principle of allowing rental repayments as a ground for early access, under strict criteria in accordance with the Last Resort principle. Such criteria may include:

- Provision of an eviction notice.
- Evidence that all other avenues have been exhausted – such as Government assistance.

BUSSQ would again suggest that in cases such as this, it would be appropriate for the fund to make payment of any early release on these grounds directly to the landlord to avoid the risk of these funds being spent elsewhere.

BUSSQ is however aware of the possibility of the exploitation of this provision. Members may in effect begin to “budget” for receipt of funds – that is, assume that the release of funds will continue to be available and therefore make regular applications.

The ATO will most likely be able to ascertain the member's financial situation and we would suggest that second and subsequent requests for release on these grounds be closely scrutinised with a higher level of evidence being required from the member.

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?

BUSSQ agrees with the principle of allowing disability aids if certain criteria are met relating to the necessity of the aid to enable the member to lead an acceptable quality of life. Evidence from the member's treating physician attesting to this should be required.

As stated earlier, BUSSQ does not believe in imposing caps with little relevance to the member's requirements or cost of the necessary aids.

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?

Consistent with the Last Resort principle, BUSSQ agrees that members seeking approval for disability aids should go through all other avenues first. The advent of the National Disability Insurance Scheme (NIDS) in particular is designed to provide people with special needs with the support they require. Avenues such as this should be explored first before looking to retirement savings.

Members should also be required to confirm that other potential sources of funding have been pursued – including any private health cover, Workers Compensation and insurance cover through their superannuation funds or any personal policy.

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?

We do not believe that the Regulator's discretion should be removed. It is not possible to regulate for all possible situations, and discretion should be retained for cases which are consistent with the early release principles.

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?

BUSSQ occasionally receives requests to access superannuation from members in danger of becoming bankrupt, or losing their businesses. They argue that their business is their retirement, and if they lose their business they will never be in a position to save any further for retirement.

BUSSQ understands the rationale behind the legislation to keep superannuation retirement savings separate from the member's business. Members in this situation though have enquired as to whether they can access their voluntary personal contributions that they have made in prior years.

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?

BUSSQ believes that it is appropriate to apply the principles pertaining to early release of superannuation benefits to victims of domestic violence. In many cases, the imperative to access funds for immediate needs – such as for housing, relocation and living expenses etc – outweighs the necessity to save for retirement.

BUSSQ further understands that this is likely to exacerbate the existing gap between males and females with respect to retirement savings (assuming the female is more likely to be the victim of domestic violence). In keeping with the principle of Last Resort, all

other avenues should be explored before accessing superannuation, including any government assistance and personal support available.

Further, it should be a condition that withdrawals on this ground cannot form a part of any agreement between the parties, such as a divorce settlement.

It is further noted that unique and sensitive circumstances will often surround such claims. Procedures and appropriate training of staff will need to be in place to ensure the member's privacy and safety during the claim process.

BUSSQ suggests that the appropriate avenue for this access would be via an additional criteria for compassionate grounds. This is so the payment is not restricted to the arbitrary amount of \$10,000 (before tax), and because superannuation fund staff are likely to lack the skills and sensitivities involved in handling domestic violence cases.

Evidence required should not be excessively prescriptive, but should be sufficient to support the existence of a domestic violence situation – for example, a copy of a Domestic Violence Order, reports from an independent counsellor outlining the member's situation etc.

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?

The link between financial stress and suicide rates in the construction industry is an area that BUSSQ observes closely. A recent study of 34 suicide cases revealed that seven cases were likely to be linked to large debts owing to such parties as the ATO and landlords and other financial difficulties (Milner et al, 2017).

BUSSQ believes that the current requirement to be receiving Centrelink benefits for a minimum of 26 consecutive weeks is not a reasonable indicator of a member's financial hardship, for several reasons:

- Members losing their jobs often fall into financial hardship well before the expiration of 26 weeks. This is particularly the case where the job loss is due to illness or injury, where medical bills along with normal living expenses accumulate quickly.

- The intermittent nature of work in the construction means that members may pick up employment for a very short period, before needing to look for work again. Many of these members remain in genuine financial hardship.
- The 26 weeks of continuous Centrelink benefits serves as a disincentive for members to return to work if it makes them ineligible for financial hardship. BUSSQ is aware of many cases where members have tried to do the right thing in genuinely seeking and finding work, but would have been better off remaining on Centrelink benefits and claiming their financial hardship benefit, before returning to their job search.
- Other members have chosen to use up any savings they have before applying to Centrelink, well after they became eligible to receive benefits.

It is understood that the rationale behind the 26 week requirement is based on the “last resort” principle – to ensure that the social security system has been tried and proved to be insufficient. This is however a poor indicator of the financial needs of the member.

BUSSQ agrees that proposals such as loosening the current criteria to (for example) 26 weeks over a period of 40 weeks would be an improvement. However, BUSSQ suggests that ideally the system should better target members in genuine financial need and who have exhausted all other avenues. Such criteria could be:

- Members are required to have registered with Centrelink and be currently receiving a benefit.
- A statement should be provided from Centrelink confirming that they have considered the member’s circumstances, and that the member is not eligible for any other benefits.

This would provide members with the incentive to explore all social security avenues, and remove the disincentive for members to seek any form of work, whether the opportunity be temporary, casual etc.

BUSSQ notes that the current system in effect results in the payment of a lump sum designed to cover a shortfall of regular living expenses over a period of up to 12 months. In future, BUSSQ would like to explore the option of paying the benefit in fortnightly instalments and directly to the appropriate creditor. This would help ensure that the funds are being applied to the purpose intended.

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?

BUSSQ supports a principle – based approach to establishing eligibility for financial hardship payments. Prescribing specific standards of proof is impractical due to the countless possible scenarios constituting a member’s financial situation.

Excessive requirements for evidence is contrary to the fair and effective principle, and runs the risk of superannuation funds taking on the role of investigation agencies and case managers. Trustee staff lack the resources and expertise to properly ascertain a member’s financial situation.

The process of approving financial hardship claims is a relatively resource intensive process, and we are aware of at least two major superannuation funds that no longer pay these claims. Such funds refer financial hardship claims to other funds, thereby shifting the administrative burden for ultimately the same outcome.

We do not believe this to be in the best interests of the member. Increasing prescriptive requirements will add to the cost of processing these benefits and may runs the risk of more funds taking this option.

There is however a need to close some loopholes. For example:

- Members of multiple funds may have the opportunity to make claims from more than one fund, thereby circumventing the 12 month restriction and / or the \$10,000 cap.

Alternatively, members may receive a payment from one fund, then roll the remainder of their balance to another fund in order to make another claim.

- Anecdotally, we are aware of members that have fallen in to a routine of claiming for financial hardship every year, after the expiration of the 12 month period. While these claims appear to be legitimate, it is doubtful as to whether some members are making genuine efforts to improve their financial situation.
- There is no visibility or control as to whether funds paid to the member are being applied for the purpose intended.

Further, we note that there is a lack of consistency across funds of the standard of evidence required to prove financial hardship. This issue was considered at length as far back as 2002, when a Senate Select Committee recommended that a single responsible agency, such as Centrelink, be responsible for authorising these payments.

BUSSQ suggests that one measure is to revisit the possibility of allowing funds, wherever possible, to pay funds directly to the creditor organisation – for example, the payments of rates, rent, premiums, water and electricity etc. This would assist in ensuring that the claims are genuine.

Another alternative is for second and subsequent claims to be subject to a higher level of scrutiny. While multiple claims do not necessarily indicate non-genuine claims, it may suggest that their first payment has not been used for the purposes intended; or that members may be “budgeting” for an annual release of benefit. Such higher scrutiny for second and subsequent payments may include the requirement for ATO approval in addition to Centrelink’s certification.

Question 3.1

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

BUSSQ is not convinced on the merits of this proposal. Consideration needs to be given to the potential consequences. We make the following observations:

- As noted in the consultation paper, avenues exist via various government schemes to compensate victims of crime.
- Trustees of superannuation funds have a duty of care not only to members of their funds, but also to their beneficiaries. This proposal may impact upon innocent parties including the perpetrator’s spouse and children. If this proposal were to proceed, we would suggest limiting it to a situation where the perpetrator has no dependants. At a minimum, the needs of any dependents should be taken into account.
- In the case of civil action, BUSSQ would support any actions to prevent the practice of moving funds into superannuation to protect them from creditors, victims of crime or other potential claimants.

At face value, this would appear to be a significant departure from the sole purpose of superannuation – to provide benefits to members upon their retirement, or for beneficiaries if a member dies.

We offer no opinion on Questions 3.2 – 3.8.

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