# Response to Treasury Consultation Paper on Early Release of Superannuation Benefits

## Background

1. I make this submission as the author of the 1997 regulations providing for the early release of preserved superannuation benefits on compassionate grounds.
2. Preservation of superannuation until retirement age is at the heart of the Australian retirement income system. This is generally well accepted within the community, with the concessional taxation of super being seen as fair compensation for not having immediate access to those savings.
3. However, there are occasions where extreme life circumstances outside the control of the individual impose a significant financial burden. If, despite having superannuation savings locked away, they experience financial hardship because this burden cannot be met from their ordinary resources or general public assistance, then the legitimacy of the preservation policy can be called into question.
4. This was the fundamental rationale for the 1997 regulations; to provide a safety valve to release some superannuation money in extraordinary circumstances, and so help maintain the consensus around the legitimacy of preservation.

## Principles underpinning early release

1. As noted above, the four guiding principles proposed for the review of the early release of superannuation are consistent with those adopted in 1997 – the general primacy of the preservation principle, release to be available only in instances of genuine hardship, and hence generally only when the member’s other resources had been depleted. The fourth proposed principle, that administration of the rules be fair and effective, was not articulated but was implicit in the considerations of the time.
2. Three additional principles are proposed.
	1. Firstly, the grounds on which release is granted should not be within the control of the individual. The capacity for gaming the system should be minimised.
	2. Secondly, having regard to the importance of the preservation principle, the effectiveness of the rules in addressing imminent harms within the community and the cost of administration, the fewer grounds which are recognised for early release, the better.
	3. Thirdly, early release should not be made available where the effect is likely to be the substitution of the retirement savings of people in hardship for public expenditure.
3. These principles inform the discussion later in this submission.

## Medical treatment grounds

1. It is understandable that there should have been an increase in the amount of superannuation released on medical grounds due to:
	1. Increased knowledge of the facility among selected practitioners, advisers and counsellors;
	2. Increased medical costs for treatment of similar conditions; and, conceivably,
	3. Reduced attention from regulators to the constraint on release imposed by SIS R6.19A(3)(b) which requires that a release may only occur if the treatment is not readily available to the person, or their dependant, through the public health system.
2. From an initial design perspective, the intention was that overseas treatment would be funded only if no comparably effective treatment for the condition was available in Australia. To the extent that that expectation has not been fulfilled, it is desirable that the regulation be amended to make it explicit.
3. In order to avoid forum shopping, or the use of medical practitioners aligned with an adviser to help secure early release, it is desirable that the regulation be amended to require that the person requiring medical treatment must have had a doctor/patient relationship with at least one of the certifying practitioners that extended for at least three years.
4. If those additional constraints were in place, it is reasonable to continue to allow the release of such money as is required to undertake the approved treatment. It would be inconsistent with the design principles to leave a person facing a life threatening condition, or acute or chronic pain but not being able to afford treatment notwithstanding that they had money available in their superannuation account.

## Dental treatment

1. The existing condition for medical treatment encompasses dental conditions in the improbable event that they are life threatening, or more probably that they generate severe or chronic pain. The existence of public dental clinics means that it is unlikely that a person both could not access treatment from their own resources and could not access them through the public health system.
2. For these reasons, allowing dental treatment as an additional specific ground for compassionate release is unwarranted.

## Severity of condition to be treated

1. Referring to the original intent of early release on compassionate grounds as providing a safety valve to maintain public support for preservation in the vast majority of circumstances, it would seem counterproductive – as well as politically inept – to seek to remove the alleviation of severe or chronic pain as a ground for release when the person’s only realisable resource is their superannuation.

## Funeral expenses

1. Providing early release for the payment of funeral expenses is more open than some other grounds to the control of the individual. Nevertheless, it is important to retain it for cultural reasons in many communities. It should, however, not be extended beyond the existing ground of providing for a dependent’s funeral.
2. While it would be tempting to seek to limit the amount that could be released to a “reasonable” amount, the level of subjectivity this would introduce, and the burden on the agency administering the provision, would not be justified by the potential reduction in leakage from the super system.
3. If there were to be any change from the existing arrangements, a monetary limit of, say, $10,000 could be imposed for any funeral. I suspect that the extent of any abuse of this provision is not so great as to warrant change.

## Housing

1. The 1997 rules provided for early release of preserved benefits if a person was at risk of losing their principal place of residence due to repossession by their mortgagee. It remains particularly relevant today as high housing prices have meant that many homeowners are financially stretched in meeting mortgage repayments, even with interest rates at record lows.
2. As noted in the discussion paper, the rules were justified as helping preserve a person’s financial situation in retirement, as the forced sale of a home rarely achieves a genuine market price, and involuntarily incurs significant transaction costs. This represents a significant erosion of the person’s savings that would otherwise enhance their well-being in retirement.
3. The policy discussion recognised that there was some risk of manipulation of the provision, and hence tight controls were placed around the release. In particular, there was a concern that early release should neither become the vehicle for funding ongoing mortgage repayments, nor allow a person to unduly extend an unsustainable financial situation, effectively sending good money after bad when repossession was inevitable. On that basis, the amount available to be released was limited to provide the person with a breathing space to re-establish themselves financially from a crisis that had triggered their mortgage default.
4. While the short term effect of eviction for a renter is not dissimilar to foreclosure for a home buyer, the longer term and retirement income impacts are markedly dissimilar.
5. Further, there is a much lower disincentive for a renter to fall behind in payments; while the short term impact of loss of residence is the same for homeowners and renters, and is unquestionably severe, it is well established that Australian home buyers will make great sacrifices before losing control of their mortgaged home.[[1]](#footnote-1)
6. If, for reasons other than retirement income policy, it was decided that early release should be made available for those facing rental arrears, then the amount should be limited to a one off payment not exceeding three months’ rent. The application should be accompanied by evidence from a financial counsellor that the person had in place a plan to be able to meet future rental payments. The release should be payable only to the landlord.
7. Such an approach, while satisfying some of the social harms associated with potential eviction, may place tenants in an even more vulnerable position if they were pressured by their landlord to seek access to their superannuation, even if the longer term prospect for rent sustainability were poor.

## Severe disability grounds

1. Particularly given the creation of the National Disability Insurance Scheme, there is no basis for extension of the current early release provisions in this space.

## Victims of domestic violence

1. Some victims of domestic violence will already meet one of the other criteria for early release of superannuation.
2. To create a new category for early release based purely on financial hardship arising from domestic violence generates two principal new risks; namely, that the perpetrator of violence could pressure the victim into applying and then misappropriate the money; and, secondly, that governments will reduce their commitment to funding in this field. Further, the victim of violence faces reduced financial well-being in retirement – potentially, a compounding of their victimisation.
3. The risk of further financial abuse could be mitigated by requiring an application to be supported by a social worker or counsellor from a reputable organisation dealing with domestic violence issues. It should provide evidence of the violence, including court orders taken out against the perpetrator, and evidence that the applicant no longer shared an address with the perpetrator.
4. In considering this policy change, the demonstrated benefit to abuse victims would need to be weighed against the added complexity of the system and the further attenuation of the principle of preservation.

## Accessing the superannuation of perpetrators to pay compensation for victims of crime

1. I would strongly advocate against any change to the early release rules for this purpose. It would be inconsistent with the principles of simplicity and not substituting for public expenditure, as set out at paragraphs 6b and 6c above. It would also be a significant step in removing the current shield of superannuation from creditors in bankruptcy. The complexity of information gathering, assessment and determination of appropriate compensation should be left to the courts, or to established administrative regimes in the States.

**Roger Brown**

Principal

rbConsult

*Superannuation expertise*

1. See for example, Mike Berry, Tony Dalton and Anitra Nelson, Mortgage default in Australia: nature, causes and social and economic Impacts, Australian Housing and Urban Research Institute,, March 2010 [↑](#footnote-ref-1)