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**Submission to Treasury:
Early Release of Superannuation**

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This submission is being made on behalf of The National Foundation for Australian Women (NFAW) and the Equality Rights Alliance (ERA).

NFAW is dedicated to promoting and protecting the interests of Australian women, including intellectual, cultural, political, social, economic, legal, industrial and domestic spheres, and ensuring that the aims and ideals of the women’s movement and its collective wisdom are handed on to new generations of women. NFAW is a feminist organisation, independent of party politics and working in partnership with other women’s organisations, including the National Women’s Alliances Equality Rights Alliance. These organisations include those committed to increasing support for women in Australia as well as those with a special interest in women's history.

NFAW is concerned about the financial security of women, and the role of superannuation in achieving that security. To that end we have made a number of submissions to previous Parliamentary and Treasury enquiries into the superannuation system and to the Senate Inquiry into the Financial Security of Women in Retirement.

As we have noted in previous submissions to Treasury and Senate Parliamentary Inquiries, the current superannuation system, being based on earnings, is inherently gender biased as it does not recognise the effect that gendered workforce participation patterns have on lifetime earnings. Interrupted work patterns affect the amount of superannuation that is accumulated by women through the compulsory superannuation guarantee contribution, and many women do not have the resources to make additional contributions. Accordingly the average superannuation balances of women aged 60 to 64 are about 58% of men of the same age (Clare 2017).

**Preservation Principle:** The ability to access superannuation before retirement reduces the effectiveness of the superannuation guarantee scheme and, particularly in the case of women or other low income earners, this will be reflected in lower balances at retirement. Therefore, on principle we submit that early access to superannuation will compromise security in retirement and the rules surrounding access to superannuation must remain tight.

The “preservation principle” is fundamental to the success of the superannuation system, and we have previously supported moves to enshrine this principle in legislation through the *Superannuation (Objective) Bill* 2016.

**Last Resort Principle:** We agree that the “last resort” principle should be applied to ensure that if other forms of funding are available these should be accessed first. However we would go further and call for increased public funding for health, housing and welfare expenditure so that people are not forced to draw on their retirement savings and superannuation to fund medical procedures or deal with a financial emergency.

**Fair and Effective Principle:** We agree that any rules relating to the early release of superannuation should be capable of being applied consistently. Consistency requires either the development of firm rules that can be applied uniformly by a multitude of decision makers, being the trustees of superannuation funds; or the centralisation of decision making through the regulator. If exceptional circumstances are to be considered on the basis of fairness, the regulator should become the decision maker through the exercise of a residual power.

**Genuine Hardship Principle**: We recognise that unexpected expenditures arise from time to time when a person is in critical need and are in “genuine hardship”. However women should not need to draw on their superannuation to fund these emergencies, putting their security in retirement at risk. There should be other sources of emergency funding available for women to draw on when their personal health or safety are at risk; and where it is clear that health funding or emergency housing funds are inadequate, this should be dealt with as a matter of priority.

**Limits** **on Withdrawals**: Taking these principles into account, there may be circumstances where a person with a substantial sum in superannuation does not have access to other funds, for example through the application of a means test. We note that under the changes to the superannuation system that were introduced last year there are two thresholds applied in different circumstances: there is a transfer balance cap of $1.6m that limits the amount that can be retained in the tax-free retirement phase, but there is also a balance cap of $500,000 that applies in relation to the carry forward concessional contributions cap (s.291-20 Income tax Assessment Act 1997).

A similar base line could be applied to applications for early release. If a person with a balance in excess of $500,000 was granted access to an amount no more than that excess, and paid the appropriate level of lump sum tax applicable to that withdrawal, the balance remaining is close to the amount that ASFA calculates that a single person requires for a comfortable retirement (ASFA 2016). The application of a balance test would assist people who may not satisfy means tests for financial assistance.

Regardless of the balance, however, early withdrawals should still be subject to strict conditions of release.

Addressing some of the specific matters raised in the Issues Paper:

**Financial Capacity:** We recommend that the assessment of financial capacity be made more objective in line with the financial hardship requirement. Where a person is unable to meet an expense as a result of poor financial management or decisions, the principle of preservation is paramount.

**Release of Funds on Medical Grounds:** The data provided in the Issues Paper shows that this is the fastest growing area of applications.

The best way to address the growing number of applications under medical grounds is to increase public health funding for procedures that meet the first requirement, being necessary to treat a life threatening illness or injury; or alleviate acute or chronic pain; or alleviate an acute or chronic mental disturbance. Increased public health funding for appropriate procedures, including major dental procedures that meet the stated requirements, will save ongoing costs in the health care system.

In particular, the cost to the health system of obesity is estimated at $8.6bn in 2015, with a ten-fold increase by 2024-25 (van Smeerdijk et al, 2015). Van Smeerdijk makes a strong case for a public health intervention that includes funding for the cost of bariatric surgery where appropriate. We would submit that it is not appropriate for the cost of such surgery to be effectively privatised at the cost of the patient’s financial wellbeing in retirement.

We recommend that the true cost to public health should be recognised, with increased funding through the health system for procedures that are currently not readily available and to fund other public health measures to reduce the rate of obesity.

It is not uncommon to see advertisements for procedures including bariatric and ART procedures where the provider offers to facilitate access to superannuation funds. This business model is exploitative. There needs to be independence between the medical assessment of the need for the procedure and the funding of that procedure, and integrated business models should be regulated. This should include ensuring that the medical practitioners certifying the treatment are specialists in that field of medicine; and provision for a second opinion from a medical practitioner who is not associated with the primary provider.

**Funeral Expenses:** The preservation principle again should take priority, accordingly the regulator should have the power to review the amount of a claim. However there are circumstances where cultural requirements need to be taken into consideration and these cases should be considered sympathetically. Therefore a strict cap would not be appropriate.

Any extension to the current dependency requirement should be constrained to close relatives and should subject to the applicant showing that there is insufficient funding in the estate of the deceased to pay the cost of the funeral.

**Housing Grounds**: The current requirements require that the applicant be in hardship, and access is very restricted. We support the retention of this strict test which allows a person a short period of time to develop a longer term financial strategy. We would oppose the release of funds on this ground to a person who is not named on the title as this is effectively a transfer of wealth to the person owning the property.

In respect of renters, including women fleeing domestic violence, there needs to be more public funding allocated to housing. The current rates of Commonwealth Housing Support are inadequate, with the 2017 Anglicare Housing Survey finding that there is a severe shortage of affordable rental properties for low income earners. It is not a fair and effective solution to require people to draw on their superannuation to pay their rent, trading off their wellbeing in retirement for current accommodation.

This requires structural changes to the housing market and rental subsidies provided to low income earners and income support recipients.

**Disability Grounds:** The introduction of the NDIS should ensure that disability aids become more easily obtained by those who need to use such aids. Accordingly we agree that as the NDIS rolls out applicants should be directed into that scheme rather than accessing their superannuation.

**Domestic Violence**: We note that domestic violence is often accompanied by financial abuse. Including domestic violence as grounds for early access to superannuation is likely to prolong and exacerbate the effects of that violence as the financial impact will endure into retirement.

The issues paper notes that the Government recognises the difficulties facing victims of domestic violence and provides support through timely and targeted assistance, including through the welfare system, however the National Plan to Reduce Violence Against Women and their Children 2010-2022 is not delivering reductions to violence against women.

Despite the promise of a bipartisan, long-term, Australia wide approach, and some state governments accelerating state based initiatives, the National Plan has neither delivered the funding nor the strategic initiatives required to achieve substantial and sustainable reductions nationally. Funding priorities must include the immediate needs women fleeing violence, including capital and recurrent funding for emergency and longer term accommodation options and better targeting of support in welfare and social services.

Women should not be forced to raid their already inadequate superannuation balances in order to escape family violence.

**Severe Financial Hardship:** The 26 week test is an objective test, and there will always be outliers where such a test is applied. There are procedural differences between the operation of Reg 6.19A and Reg 6.01(5). The purpose of the objective test for severe financial hardship is to facilitate administration by the trustee of the fund.

The timeline of the different tests is relevant here: the severe hardship grounds were removed from the Insurance and Superannuation Commissioner in 1997; and the compassionate grounds tests were transferred from APRA to DSS in 2018.

Given that the DSS now has the responsibility for administering the compassionate grounds requirements, it would be appropriate to develop a similar procedure in relation to the severe financial hardship requirement. This would ensure consistency of outcomes, and would allow some discretion to be conferred on the regulator, consistent with Reg 6.19A.

Once again, this comment is subject to our previous comments about access to and funding of the welfare system. If a person is in sever financial hardship such that they cannot maintain their family, income support programmes should be available to assist.

**Victims of Crime Compensation:** We are sympathetic to the issues raised in the issues paper, however allowing access to the perpetrator’s superannuation would need to be approached with caution to ensure that the law in this respect is consistent with other sanctions.

The approach applied in matters of bankruptcy has merit, whereby the bankruptcy trustee can recover amounts owing to creditors where they can be shown to have been in order to defeat creditors. However, given that this is already available as a final course of action to victims of crime, there does not seem to be any need to extend this specifically to a specified class of creditors.

In the opening section we have outlined a suggestion that the $500,000 threshold be used as a base line below which early withdrawal would be only permitted in exceptional circumstances. A similar approach could be applied where a victim of crime has an enforceable order for compensation, allowing the order to be enforced against a superannuation balance. This would reduce the necessity to pursue the perpetrator into bankruptcy and to identify contributions that may have been made to avoid payment of the order.

**Final Comments:** NFAW believes that the primary principle to be applied in determining policies around early release of superannuation is the preservation principle. This cannot be achieved without appropriate levels of funding being allocated to the provision of public services to support individuals in medical or financial distress.

We have noted that individuals with higher superannuation balances are less likely to suffer deprivation in retirement through early access to superannuation, although this should still be in exceptional circumstances

The regulator should retain a residual power under both the compassionate and severe financial hardship grounds to ensure consistency and fairness in the system.

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