

REVIEW OF EARLY RELEASE OF SUPERANNUATION BENEFITS – FURTHER CONSULTATION AND DRAFT PROPOSALS

Submission from:



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1 ABOUT THIS SUBMISSION

Consumer Action Law Centre, Financial Counselling Australia and the State and Territory financial counselling associations appreciate the opportunity to make a submission in response to this second Treasury consultation on the early release of superannuation (the “paper”). There is more information about each organisation of our organisations in Attachment 1.

Our organisations collectively interact with thousands of people each year. All of our organisations also provide financial counselling services or provide support to financial counsellors. These organisations assist many people who are experiencing financial hardship and where early access to superannuation is an option to consider. All of our organisations are also involved in policy reform and advocating for a fairer marketplace to benefit consumers.

We generally support the proposals in the paper, subject to some specific comments which are detailed below. However, we remain concerned that there are a number of systemic problems with seeking early access that have been overlooked. Accordingly, there are two parts to this submission:

Part A: Responses to the specific proposals in the paper

Part B: Systemic issues in relation to the early release of super that still need to be addressed.

The largest systemic problem with early access to super is that some people are seeking money because Government income support payments are too low or because they have low incomes. Superannuation in Australia is **not** meant to be a safety net, but rather is supposed to be building adequate retirement funds. If it is operating as a safety net on a regular basis for certain people then there is a systemic problem. We believe there is evidence (based on working with the public to provide legal advice or financial counselling assistance) that early access to super is due to an inadequate social safety net.

People should not have to seek early access to super because:

- Centrelink Newstart is inadequate as it is below the poverty line;
- they are living in poverty because they cannot access Centrelink payments;
- there is inadequate support for victims/survivors of family and domestic violence;
- dental treatment is not covered by Medicare;
- waiting times for medical treatment are so long that desperation sets in; and
- disability aids are not covered by the NDIS.

Recommendation:

The data from early release should prompt an immediate review on the adequacy of income support, coverage of dental treatment under Medicare, waiting times and the coverage of the NDIS.

The other systemic issues that need to be addressed (discussed in Part B below) are:

- disclosure and warnings about early access;
- providing a referral to a financial counsellor through the National Debt Helpline;
- taxation on early release of super should be reduced to nil;
- addressing the particular issues for people who have a life-threatening illness;
- banning fees to third party intermediaries;
- making it mandatory for all superannuation funds to offer early access on compassionate grounds or in cases of financial hardship;
- conducting a gender impact analysis to ensure that women are not adversely affected by the proposed changes and to identify potential improvements for women; and
- further consultation and considered amendments to address the specific needs of Aboriginal and Torres Strait Islander people.

PART A: THE SPECIFIC PROPOSALS IN THE ISSUES PAPER

2 EARLY RELEASE ON COMPASSIONATE GROUNDS

2.1 Medical grounds

Issue 1: Eligibility criteria and expenses claimed

1A Tightening the eligibility criteria

Mental illness

We support Draft Proposal 1. The definition proposed of “treat a diagnosed mental illness or behavioural disorder” is understandable and consistent with medical practice.

Overseas medical treatment

We support Draft Proposal 2.

1B Ensuring access to superannuation is a last resort

We support Draft Proposal 3 – information on alternative support.

We contend that financial counselling is an important and useful alternative support. People accessing their super early must (as part of the process) be referred to the National Debt Helpline for a referral to a free and independent financial counsellor. This is to ensure people know about the option of seeing a financial counsellor. This is discussed in detail at Part 6 below. Financial counsellors have extensive training on providing advice and options for people in financial hardship.

We still remain concerned (as are other stakeholders), about long waiting lists or exclusions from Medicare that prevent people getting medical treatment that is needed. We consider that this situation needs to be monitored. If people are repeatedly getting super for particular medical reasons then this should prompt a review of whether this procedure should be publicly funded.

Detailed information on alternative support for victims/survivors of family and domestic violence must also be provided. Governments (both Federal, State and Territory) provide funding for support and the existing support may mean it is unnecessary to seek the early release of super for family and domestic violence.

Finally, many people are unaware that they often have insurance with their super. The insurance usually includes life insurance, income protection insurance and total and permanent disability cover. Some people in financial hardship may have a valid claim on their insurance on the basis they are seriously ill or unemployed. It is critical that people know that this may be an option and should be covered in information on alternative support.

Recommendations:

Information on alternative support should be supplied which includes the following information on:

- the National Debt Helpline and how a financial counsellor can help;
- family and domestic violence services;
- seeking medical and dental assistance; and
- that there may be insurance available in super for total and permanent disability and income protection (and how to check this and make a claim).

Early access to super for medical reasons should be monitored. The procedures in highest demand should prompt a review on whether further funding or other changes are needed under the public health system.

1C Limiting the amount of expenses that can be claimed

The paper concludes that there is no proposal to introduce “caps”, a “reasonableness” test or requiring multiple quotes. We support those conclusions on the basis that it is difficult to apply those requirements without unfair outcomes for some people.

1D Limiting treatments that can be claimed

We support Draft Proposal 4 which requires treatment to be clinically relevant. As always, when people are desperate, they can end up getting treatment from doctors that is unproven and not generally accepted. This provides protection for those people.

We also support the decision to keep the current definitions of ameliorate and treat in relation to the severity of medical conditions.

Issue 2: Certification of early release on medical grounds

2A Certifying specialist

We support the suggested change of requiring a specialist to be in the field of treatment for the proposed medical treatment.

2B Continuity of care

We support a change to require that one of the two treating doctors is the individual’s regular treating doctor. We also support an exception for individuals who do not have a regular treating doctor (for whatever reason).

2C Independent medical advice

We support the decision not to require independent medical advice as this is unlikely to solve the problems identified.

We support Draft Proposal 5.

2.2 Dental treatment

We support Draft Proposal 6.

We again reiterate that dental treatment should be comprehensively covered under Medicare. The Government should consider providing further funding for oral health as a priority. In the meantime, we support early release of super for

dental treatment to ensure people get assistance with acute or chronic dental problems as soon as possible.

2.3 Victims/survivors of family and domestic violence

We support the proposal that there should be a ground for the early release of super for victims/survivors of family and domestic violence. We give this support while strongly maintaining that support services for victims/survivors of family and domestic violence must be increased across Australia. Currently, Victoria has the widest range of support services for victims/survivors of domestic and family violence. The Commonwealth Government and other States and Territories in Australia should be benchmarking their support to ensure a similar or better level of support services.

We want to particularly mention the need for housing services for people across Australia escaping or surviving domestic and family violence. A key part of rehabilitation is to have stable and safe housing. We welcome the announcement by the Commonwealth Government on 12 February 2019¹ to invest \$78 Million in ensuring that women and children escaping domestic violence have a safe place to sleep. It is essential that the effectiveness of this extra funding and existing funding is audited to ensure that no woman is left without housing when escaping violence. We encourage the Government to consider providing further funding if necessary.

Recommendations:

There must be adequate support services for victims and survivors of domestic and family violence. As a first step, all States and Territories in Australia should ensure their support services are the same (or better than) the support services provided in Victoria.

24 months and \$10,000 cashing restriction

We are very concerned that the above restrictions are too limited. Our experience is that family and domestic violence can go on for years after the victim/survivor has escaped. A perpetrator can continue the abuse in many ways including financial abuse, threats, stalking, breaching orders and finding the new address of a victim/survivor. This means that escape may be needed again years after the initial escape.

Limiting the release to 24 months ignores the reality of ongoing family and domestic violence that is experienced by many people. The early release of super on the grounds of family and domestic violence is particularly important

¹ See Media Release at <https://ministers.dss.gov.au/media-releases/4506>

because when a person is forced to escape again, the support services available may also be limited (because the person has accessed them already). The access to super may be the only option left for the person escaping violence.

We consider that a time limit of 24 months is arbitrary and does not take into account the protracted and long-term nature of the abuse for some people. We contend that the time limit must be removed.

We are concerned that the cashing restriction of \$10,000 may be inadequate. It is noted that the early release of super is taxed which means the \$10,000 is reduced by tax. Rent, bond and removal costs are all expensive. This is particularly so in Melbourne and Sydney where the median weekly rent costs are \$420² and \$600³ respectively. This makes a rental bond \$1,680 and \$2,400. These are only some of the costs that may need to be covered. We consider that \$20,000 should be the limit to ensure that the costs of housing relocation are fully covered. This limit should be reset every five years to cover people who are experiencing ongoing abuse or have been abused by another person.

Recommendations:

There must be no time limit on early release of super on the grounds of domestic and family violence.

The cashing restriction should be \$20,000. The cashing restriction should be reset every five years up to \$20,000 to ensure people who are still experiencing domestic and family violence can get access if needed.

There must be no tax on the early release of super on the grounds of family and domestic violence.

Evidentiary requirements

We argue that in most instances it should be sufficient evidence for the person to say they are a victim/survivor of family and domestic violence (by making a statutory declaration). This is because:

- There should be no requirement to seek court orders as this may not be appropriate in some instances and may increase danger

² See Rental Report 2018 at <https://dhhs.vic.gov.au/publications/rental-report>.

³ See rent.com.au at <https://www.rent.com.au/blog/rental-snapshot-june-2018>

- Obtaining evidence can be stressful when the victim may already be suffering trauma
- The victim may not want to engage with nearby services for their own safety. This is a particular problem in small communities where anonymity can be hard to maintain
- The organisations where evidence can be obtained are under resourced and underfunded so it may take some time to get the required evidence. This causes further unnecessary harm and trauma to the victim.
- Complex evidence requirements can be a barrier which means a woman may give up getting access even when the release could significantly improve her safety.

Importantly, and we wish to stress this point, people accessing a release of super as a victim/survivor of family and domestic violence are accessing their own money for their own safety and rehabilitation. They are not accessing Government funding. It is reasonable to have evidence requirements for seeking Government money but it does not follow that rigorous evidence requirements for family and domestic violence are necessary for early release of super. We would argue that making the evidence requirements too onerous will defeat the intent of this proposal.

It would be our preference that evidence of family and domestic violence is provided on a voluntary basis only. We concede that this may lead to some false claims but we submit that this risk is more than balanced out by avoiding causing further stress to people who are victims/survivors of domestic and family violence.

If this submission is not accepted, an appropriate compromise is to require only one piece of non-judicial evidence which can be any of the evidence listed in the paper including a statutory declaration from the applicant. This means that evidence has been supplied but the stress of providing two pieces of evidence is avoided. For some people, obtaining two pieces of non-judicial evidence could be the difference between getting access to emergency funds through their super or not.

Recommendation:

The evidence requirements for the early release of super for family and domestic violence should be a requirement for one piece of evidence out of the following list:

1. Statutory declaration from the victim
2. Judicial order
3. Statement from a police officer

4. Supporting statement from a financial counsellor, caseworker, social worker, medical practitioner, health practitioner, psychologist, counsellor, manager or coordinator of a women's refuge (or crisis or counselling service), school principal, school welfare coordinator, or officer from a child welfare or protection authority.

Expenses to include

We support the recommendation of not placing restrictions on the types of expenses that may need to be covered. The money needed can vary enormously depending on the circumstances of the victim.

Confidentiality as a safety issue

The ATO will be processing requests for the early release of super for family and domestic violence. It is very important that the access and details are kept confidential. When people (usually women) are escaping violence, the perpetrator can go to a lot of effort to get details of the location of the victim/survivor. The ATO must keep this information secure and not share the information with any other Government Department.

2.4 Housing grounds

Rental Arrears

We agree with the proposal to exclude rental arrears as a ground for early release of superannuation.

Non-mortgage title holders

We support the decision not to extend a ground of release to non-title holders on a mortgage.

Tightening the current housing grounds of early release

We continue to support the early release of super for mortgage arrears *as a last resort*. We are concerned that the proposed changes do not achieve the objective of making the early release a last resort.

Draft Proposal 8 suggests two changes.

Release once in a 24-month period per person that is equal to the sum of 3 months' repayments and 12 months' interest on the outstanding balance of the loan

This change is an improvement but it still means that over the course of a 30-year loan a person can potentially access their super 15 times to catch up arrears. This is essentially accessing super to partly pay for a home. This type of use of early release of super is not consistent with the objectives of early release.

Regular early release of super every two years is also an indication of financial hardship that remains unresolved and an inability to afford the mortgage repayments over the long term.

Another concern is that 24 months is an arbitrary period. It is more than possible to have two significant life events that cause financial hardship in a 24-month period. For example, a person could lose their job, finally find another job and then a few months later get sick with cancer. It is possible that even as a last resort two early releases are needed in a two-year period and then no other releases for the remainder of the mortgage.

In our view, flexibility is needed for early release as a last resort while preventing "rolling" access. To meet the objective of the early release being a last resort, it is suggested that people be allowed three releases in a 10-year period. This would prevent "rolling" access but provide flexibility when misfortune follows misfortune.

Recommendation:

Early release of super under the mortgage foreclosure ground should only be permitted three times in a 10-year period.

The requirement that the early release be equal to three months' payments and 12 months' interest has been standard for many years.

We are also concerned that there is some uncertainty about the effect of the 12 months' interest on repayments going forward. The intent of the 12 months' interest is to give the debtor "breathing room". This may not occur if the contract requires the debtor to continue to make the scheduled repayments immediately after the release (regardless of the fact that the interest amount would reduce the debt). Financial counsellors are also aware of instances where the "interest" component has not been released at all.

When seeking early release, it is important that there is certainty. That the parties know what will happen. We support maintaining the current provisions but to add further clarification as follows:

- the amount released must be 3 months' repayments and 12 months' interest; and
- the lender must make an arrangement in writing with the debtor on the impact on repayments of 12 months' interest being credited to the loan. For example, the debtor can continue to make reduced repayments for a period of time if needed.

Recommendation:

We support the current release arrangements of 3 months' repayments and 12 months' interest subject to clarification (by arrangement between the parties) on whether the interest credited can provide further "breathing room" such as reduced repayments for a period of time.

Written statement from the mortgagee that they believe the mortgage is serviceable by the person once the arrears have been rectified

We support the requirement for the lender to make a statement that the mortgage is serviceable once the arrears have been rectified.

We again contend that it is also vital that the person seeking early release is also referred to a financial counsellor. This should not be compulsory but an option for all people seeking early release of their super. The financial counsellor could then provide advice on:

- all possible options including a hardship variation;
- managing money and a workable budget;
- what repayments are affordable;
- prioritising debts;
- negotiating with the lender;
- lodging a dispute in AFCA; and
- accessing super to pay mortgage arrears (if this is a suitable option as a last resort).

Recommendations:

The lender must provide a written statement that the loan would be serviceable after the arrears have been rectified.

A referral to a financial counsellor should be provided to all people seeking early release of super to deal with mortgage hardship.

We also believe it is important to remind people that they have other options including the right to request a hardship variation. The ATO access process through MyGov should include a referral to a financial counsellor, information about financial hardship and AFCA.

Recommendation:

The early release of super process in MyGov should include a referral to a financial counsellor, information about the right to request a repayment arrangement on the grounds of financial hardship and AFCA.

We also want to make the strong point that the early release of super for mortgage arrears is a last resort. People who are in arrears on their mortgage should be following these steps:

1. Telling the lender they are in financial hardship;
2. Negotiating a hardship variation they can afford. This will usually include reduced repayments for a period of time, capitalising arrears and extending the term of the loan;
3. If the lender will not agree to a hardship variation lodging a dispute in the Australian Financial Complaints Authority;
4. Seeing a financial counsellor for assistance in making the variation, or if the loan is really not affordable making a repayment arrangement while they are selling the home; and
5. Last Resort: considering early release of super with great care and understanding that it is only an option if there are genuine prospects of loan serviceability after release.

The above process of giving notice of hardship, negotiating a hardship variation, and lodging in AFCA if the parties cannot agree is all set out in the *National*

Credit Code.⁴ Getting early release of super before going through the above process is not the intention of the legislation as well as arguably not being in the best interests of the debtor.

We contend that the early release of super provisions should be consistent with the intention of the financial hardship provisions under the *National Credit Code*. It is essential the debtor has the opportunity to get a hardship variation (and avoid losing super where the loan cannot be serviced in the longer term) as the first option. This also means that lenders must have effective and fair hardship processes in place and that ASIC should ensure they are effective.

To ensure that lenders consider a hardship variation as the first option the written statement from the lender should confirm that:

- It has reasonably considered a variation on the grounds of financial hardship including capitalising the arrears and/or extending the term of the loan.

We suggest developing a standard form for both parties to use to streamline the process and collect any required information.

Recommendation:

Access to superannuation for mortgage arrears should include a certification from the lender that they have reasonably considered a repayment arrangement/variation on the grounds of financial hardship (including capitalising the arrears and extending the term of the loan).

Where the lender has a court judgment, further steps are needed to address detriment

Finally, if the lender has obtained a court judgment for possession of the home and the early release of super is being negotiated, further requirements are needed to protect the mortgagor/judgment debtor. As the lender has judgment they need to agree in writing to:

- not enforce the judgment while the scheduled repayments are being made; and
- give a reasonable notice period (30 days) if a payment is missed giving the judgment debtor time to rectify the default.

⁴ Being Schedule 1 of the *National Consumer Credit Protection Act 2009* (Cth).

These further agreements should be in the form of a letter. If there is a subsequent dispute about this agreement, the mortgagor/judgment debtor must be able to lodge a dispute in AFCA.

If these further agreements are not made, the lender can simply accept the super and then enforce the judgment by seeking possession of the home.

2.5 Funeral grounds

Dependency relationships

We are disappointed in the proposal to leave the existing arrangements unchanged for early release of super for funeral expenses. We know that funeral expenses are a serious issue for many people. We know there has been an explosion in funeral insurance (which is junk insurance in many cases) because people are worried about the costs of their funeral.

We also know that Aboriginal and Torres Strait Islander people and some ethnic communities have strong cultural views about the importance of funerals.

There were no submissions in relation to the first consultation paper on this issue from specific Aboriginal and Torres Strait Islander groups or any specific ethnic groups. This means that those stakeholder views have not been provided and it is unclear what views those groups may have. In this situation, further specific consultation is required to ensure that this possible solution (access to super) is not overlooked simply because those groups missed the review or did not have the resources or time to respond.

Recommendations:

Further consultation is required on early release of super for funeral expenses. This further targeted consultation should be part of a wider consultation to address the ongoing issues related to funeral expenses for Aboriginal and Torres Strait Islander people and certain ethnic communities.

A reason given in the discussion for not extending early access to super to cover non-dependants was that this may expose a person to coercion or pressure. We would argue that financial abuse (including pressure) is more likely from a dependant than a non-dependant. In any event, that type of pressure is unacceptable and measures should be put in place for prevention.

We contend that extra checks need to be put in place in any situation where a person is accessing their super for the benefit of another person. Staff

processing requests should be aware of signs of abuse and have a procedure for welfare checks if there is a concern.

Recommendation:

Specific procedures should be put in place for all early access of super requests to check for signs of pressure, coercion or abuse. If there are signs of abuse a referral process for assistance should be used.

Limiting releases

We agree with the proposal to leave releases uncapped.

2.6 Severe disability

We support the introduction of Draft Proposal 9 to include early release for disability aids. However, we contend that if the early access to super for disability aids is a direct result of the failure of the NDIS to cover reasonable disability aids then this should prompt a review process.

2.7 Regulator's residual discretion

We do not support the removal of the Regulator's residual discretion. We contend that it would lead to serious consequences for certain people. The main examples of the serious consequences are council rates and body corporate fees. As detailed below the people who do not pay council rates or body corporate fees face losing their home.

Recommendation:

The Regulator's residual discretion is maintained.

Council rates

Financial counsellors sometimes have clients who have unpaid council rates. These cases can be very difficult to resolve as local councils can be very aggressive debt collectors. Councils are highly litigious and often commence court proceedings for unpaid rates. The homeowner who becomes unemployed or gets sick can often face a council unwilling to be reasonable.

A solution (or at least a significant step) to this problem would be to ensure that State and Territory Governments all have mandatory financial hardship processes in place that Local Councils must comply with. This would markedly reduce litigation and give many homeowners the chance to recover from their financial hardship and catch up any arrears. Although some steps have been taken (for example, NSW Office of Local

Government Debt Management and Hardship Guidelines⁵) there is still considerable reform needed.

Local Councils all have a power of sale. This means that the Local Council can sell the homeowner's home for unpaid rates of any amount. This can lead to homelessness. It can also mean that the home can be sold for less, due to a forced sale.

Council rates are a cost for owning a home. Paying interest on a mortgage is also a very common cost for owning a home. If council rates are not paid you cannot keep your home. It is arguable therefore that council rates contribute toward providing an asset in retirement. There is no doubt that mortgage foreclosure and the local council power of sale both pose a risk of losing the home.

Recommendation:

A specific ground for early release should be introduced to pay council rate arrears. The early release should be permitted up to an amount of \$20,000 to prevent a local council exercising a power of sale over the person's principal place of residence.

Body corporate/strata/owners' corporation fees

People who own a strata unit are required to pay fees to cover the insurance and management of the building and common property. These fees can be high and people on a low income or in financial hardship can struggle to pay these fees.

If a person gets behind on their body corporate fees, the body corporate can engage lawyers and commence legal proceedings to recover the fees. All the legal fees and court costs are automatically added to the debt. The strata unit owner has very limited rights to negotiate a repayment arrangement to catch up the fee payments.

If the unpaid fees amount to more than \$5,000 the body corporate can commence bankruptcy proceedings against the strata unit owner.⁶ If the strata unit owner is made bankrupt then the unit would usually be sold by the Trustee. This means that unpaid body corporate fees can mean the loss of a person's home.

Case study

Susan, a woman in her late 50s, fell behind on the strata fees for her unit in NSW due to illness. She tried to catch up but the body corporate employed solicitors

⁵ November 2018, Available at https://www.olg.nsw.gov.au/sites/default/files/OLG_DebtManagementAndHardship_Guidelines_FINAL.pdf.

⁶ The threshold for a creditor's petition for bankruptcy is \$5,000.

to collect the debt which was now close to \$5,000. Susan could now pay the normal strata fees but could not pay the arrears in a lump sum. The solicitors for the body corporate began proceedings in the Local Court and obtained a judgment.

A bankruptcy notice was then issued as the arrears were now more than \$5,000 including legal costs. In desperation, Susan saw a financial counsellor for assistance. She had no other debts just body corporate fees and legal costs. The financial counsellor explained that Susan could not access her super to pay the debt. Susan now faces being made bankrupt and losing her unit unless she can get a loan.

In 2018, according to the Commonwealth Courts portal, there were 60 Creditor's Petitions (applications to make a debtor bankrupt) issued by body corporates, strata plans and owners' corporations. This means that at least 60 people were facing the loss of their home due to unpaid body corporate fees. An important option to save a person's home should be to access their super.

An improvement would be for all State and Territory governments to introduce a hardship process for people behind on their body corporate fees. This would need to include a dispute resolution process to avoid unnecessary court action. While these protections are not in place people should have the option of releasing their super to save their home.

Recommendation:

A specific ground for early release should be introduced to pay body corporate arrears. The early release should be permitted up to an amount of \$20,000 to prevent bankruptcy proceedings that would mean the loss of the person's principal place of residence.

2.8 Integrity of payments

We support the tightening of eligibility criteria and evidentiary requirements as an approach to ensure the early release money is used as intended.

3 EARLY RELEASE ON SEVERE FINANCIAL HARDSHIP GROUNDS

3.1 Eligibility criteria/the amount and frequency of releases

We support Draft Proposal 11. We would have preferred more flexibility (as outlined in our previous submission) but it is certainly a vast improvement to calculate the 26 weeks over a 40-week period. This provides flexibility for people who may pick up some very limited casual work. We also support permitting multiple releases over a 24-month period subject to the \$10,000 cashing restriction.

People in severe financial hardship who cannot access Centrelink

We also contend that people who do not qualify for Centrelink but are on nil income or a very low income should also be able to access their superannuation on the grounds of severe financial hardship. The presumption that everyone without an income can access Centrelink payments is inaccurate.

Some examples of people who may have no income or very low income (and cannot access Centrelink) are:

- Citizens of New Zealand living in Australia
- Prisoners
- Asylum seekers
- People on reduced WorkCover payments
- People in exclusion periods for compensation payments
- People who are struggling to comply (for example, people with disability, people who are vulnerable and disadvantaged, people who are unwell, sole parents and so on) with Centrelink obligations (for example, mutual obligations and ParentsNext) and payments have been suspended.

Case study

Leia, a single mother with a 15-year-old son, is in custody awaiting sentencing. While in custody she was diagnosed with breast cancer and is undergoing treatment. Her son works part-time after school and is living with Leia's brother.

After being placed in custody Leia could not afford her rent and all her belongings were moved into storage. Her son and brother are struggling to keep up with the storage costs. Leia desperately needs access to her superannuation so she does not lose all her possessions if the storage is not paid. Access to superannuation would also help pay a rental bond when she is released so she can provide housing for herself and her son.

Case study

Corey was in a remand centre awaiting sentencing when he saw a financial counsellor. Corey was granted bail and ended up at his mother's house as he had no money. His mother is an alcoholic with memory problems. His mother accused him of stealing her wallet and threatened to call the police. Corey left and ended up in an altercation and breaching his bail conditions. Now he is back in prison. His car is in storage with fees he cannot pay. When he is released, he needs to get his car and housing so he can get back to working in concreting. Early access to super would help him re-establish his life.

People who have no income or a low income (below \$15,000) should not be left in poverty when they could access super for basic living expenses.

Recommendations:

We support expanding the Commonwealth income support payment test to a cumulative period of 26 weeks out of 40 weeks.

We support permitting multiple releases over a 24-month period per person up to \$10,000 cashing restriction.

People earning less than \$15,000 p.a. in severe financial hardship should be able to access their super even if they do not qualify for Centrelink.

3.2 Administration

We support Draft Proposal 12. The administration function for severe financial hardship should be with the Australian Taxation Office (ATO). We agree that this would reduce the administrative burden on people seeking early access to their super.

Subjective test

We also support the introduction of guidelines for the subjective test. This would support a consistent and fair approach to the evidence requirements for release on the grounds of severe financial hardship. We contend there is a need to strike a balance between access for genuine need with reasonable evidence of that need.

Recommendation:

The ATO should develop guidelines for the subjective test for early release of super.

The ATO must consult stakeholders (including consumer advocates) on the development of the guidelines.

Uniformity of early access

The transfer of administration to the ATO does not guarantee uniformity of access. The ATO website clearly warns people they still have to check with their super fund as to whether it permits early access. In this sense, it is still a two-step process.

It should not matter what super fund the person is a member of - the ability to seek early access should be uniform. If early access rules are not uniform, people may switch to a worse performing superannuation fund just to get early access. It is also not in the public interest or consistent with sound financial literacy for people to be making superannuation fund choices on the basis of early access.

At least two super funds in Australia do not permit early access to superannuation (and there may be more). These are Rest Super, the second largest in the country, and Sun Super, the 11th largest fund. Their members are therefore disadvantaged if they find themselves in severe financial hardship.

Recommendation:

All super funds must provide uniform access for early release.

Urgent access

Urgent access should be available. It is hoped that setting up a streamlined process through the ATO will improve access time. However, there are still instances where the access needs to be expedited. Some examples include for family and domestic violence needs, funeral expenses, disability aids and debts (where legal action is threatened).

Recommendation:

There should be specific conditions where a person can request urgent access to super.

4 DATA COLLECTION AND FUTURE REVIEW

We support Draft Proposal 13. Comprehensive data should be collected and published on a quarterly basis. This data should inform a further review in five years' time.

PART B: SYSTEMIC ISSUES THAT STILL NEED TO BE ADDRESSED

5 DISCLOSURE AND WARNINGS ABOUT EARLY ACCESS

A key principle of the superannuation system in Australia is preservation. Early access to superannuation is an important financial decision. It should be accompanied by clear and effective mandated disclosure. Any disclosure should be tested to ensure it is effective.

In meeting that principle it is important that people receive disclosure about:

- The consequences of access including the reduction in compounding the returns on the available funds
- The tax treatment
- The availability and details of other options
- The availability of financial counselling and how to contact a free financial counsellor by calling the National Debt Helpline on 1800 007 007

Disclosure is required to ensure that people who are accessing their superannuation are doing so as a last resort. It is undesirable for people to access their superannuation when their hardship or other need could have been resolved in another way.

The disclosure needs to be timed to ensure it is provided at the optimal time for the person. The disclosure should be included in all paper forms and integrated into the MyGov process.

Recommendation:

That disclosure be developed by the Regulator to provide critical information in an effective way for people. The disclosure must be tested to ensure efficacy.

6 REFERRAL TO A FREE FINANCIAL COUNSELLOR

All people who are considering the early access of superannuation should be told of the existence of free and independent financial counsellors as part of the disclosure outlined above. The disclosure should be included as part of the application process. People considering early access can be referred to the

National Debt Helpline 1800 007 007 www.ndh.org.au The National Debt Helpline is staffed by qualified financial counsellors and provides free and independent advice on debts.

It is critical that people consider all their options in deciding whether to access their superannuation early. In many cases, the person may not know or be aware of other options to resolve their hardship, such as accessing creditor hardship schemes.

A common example where there are other more effective options is early access to superannuation for mortgage arrears (this is also discussed again below under housing). Lenders are required, under law and industry codes of practice, to have effective and reasonable policies to make repayment arrangements on the grounds of hardship. If the lender does not agree to a reasonable repayment arrangement that decision can be reviewed and determined by an External Dispute Resolution scheme.

A repayment arrangement with the capitalisation of any arrears is a far more effective way to resolve mortgage hardship than accessing super. A financial counsellor can assist a person to access a reasonable repayment arrangement and to negotiate hardship arrangements.

Recommendation:

People accessing super should receive clear information and contact details to see a free financial counsellor through the National Debt Helpline 1800 007 007.

7 TAXATION OF EARLY ACCESS TO SUPER

The current taxation on super funds released early is excessive and unfair. The current arrangement effectively means that people in financial difficulty are paying 35% taxation should they receive monies paid under financial hardship or compassionate grounds. People accessing superannuation early are in financial hardship and often desperate for the money. Many people who access superannuation early are on low incomes (and do not pay any tax) or even middle incomes where they pay a lower tax rate.

We believe that the taxation rate, on release, should be reduced to nil in those circumstances to enable people to maximise the amount to resolve their hardship. This would also acknowledge that the people accessing the money are often on a lower tax rate or not paying any tax at all (as their income falls below the threshold).

Recommendation:

The taxation on early access to super on compassionate and financial hardship grounds should be reduced to nil.

8 EARLY RELEASE BASED ON LIFE THREATENING ILLNESS

It is acknowledged that there is a right to access superannuation early if a person has a terminal illness and are likely to die within 24 months. The original time period was 12 months but in 2015 that was changed to 24 months. At the moment, people need to obtain confirmation from two doctors that the illness is terminal within 24 months. However, such confirmation is difficult to obtain because of the nature of terminal illnesses.

This provision does not assist people who have a life-threatening illness that will substantially shorten their life. Specifically, we refer to those people who will never live to their preservation age because of their illness. People with an illness that is aggressive or advanced may need to access their superannuation earlier to pay for needs and wants when facing a deteriorating quality of life.

We suggest the following criteria apply to early access for people with an illness that will substantially shorten their life:

- the person is not expected to live to their preservation age;
- the chronic illness and life expectancy is confirmed by two doctors; and
- the person is able to access up to 50% of their superannuation to meet ongoing needs

Recommendation:

There should be provisions for early access to superannuation of a portion of their funds when a person has a chronic illness that will substantially shorten their life and they will not live to reach the preservation age.

9 PROTECTING AGAINST EXPLOITATION BY THIRD PARTY INTERMEDIARIES

We are concerned about the possible exploitation of people by third party intermediaries who charge a fee for arranging early access to superannuation. We have seen this become a problem in financial services. In particular, people (who may be in desperate circumstances) are charged a fee to access their superannuation.

Problems have already been identified with commercial entities misleading people that they can access their superannuation early by opening a self-managed super fund.

It is essential to put in place strong protections to minimise the harm that results.

Recommendation:

That third parties be prohibited from charging a fee for providing advice or services in relation to obtaining early access for superannuation.

10 PROTECTING WOMEN

There has been much discussion and analysis about why women have lower super balances than men. A contributing factor is the known gender pay gap. Given the lower wages, women may be more likely to be in hardship, and therefore more likely to access super early.

We support the submission from the Human Rights Commission that calls for a gender impact analysis in relation to the proposed reforms. Such analysis is important to identify any disproportionate effect on women and to propose changes to better protect and maximise the retirement funds for women.

Recommendation:

A gender impact analysis should be conducted on the proposed reforms.

11 ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE

At 2.5 above, we discussed the cultural importance of funerals to Aboriginal and Torres Strait Islander people. We recommended that the importance of kinship is considered to provide wider grounds for the early release of super for funeral expenses.

We have also discussed an early release option at 8 above, which is relevant to some Aboriginal and Torres Strait Islander people with life-threatening illness that means they are very unlikely to live until they reach preservation age.

There are particular problems with the mis-selling of funeral insurance in Aboriginal and Torres Strait Islander communities.⁷ A streamlined way to access super to pay for one's funeral costs (for everyone with super) is one way to tackle this issue (see below at 12). Another option would be to set up a government-run funeral expenses savings scheme.

In our view, the above options need to be considered to make access to super fair for Aboriginal and Torres Strait Islander people. At a minimum further consultation is required to make sure these issues are addressed. We strongly recommend that there is a targeted consultation with the Aboriginal and Torres Strait Islander community.

12 ACCESSING YOUR OWN SUPER TO PAY FOR YOUR OWN FUNERAL

Many people would not need funeral insurance if there were a streamlined system to access superannuation in the event of one's own death. People should be able to set up the early access prior to their death and provide authorities with information on who can access the set amount of money on an urgent basis after their death.

Having a system to use superannuation for funerals would give many people peace of mind about funeral costs. It would be a low-cost and effective way to use super when a person is concerned they will not be able to afford their own funeral.

In summary the process would work as follows:

1. The person contacts their superannuation fund to ask they be able to access their superannuation to pay for their funeral in the event of their death.
2. Their superannuation fund sends out a form requiring a signature from the fund member that instructs the fund to release their superannuation in the event of their death, who is authorised to access the superannuation, and the set amount to be released to cover the funeral expenses.
3. In the event of the person's death, that authority is produced by the authorised person with evidence of the death.
4. Payment is made urgently within five days to enable the funeral costs to be paid.

This would give people peace of mind about their funeral being paid from their own superannuation. For people who have exhausted their super or do not have

⁷ See for example ABC News report: "Babies among thousands of Aboriginal children signed up to 'shocking' funeral insurance schemes" at <http://www.abc.net.au/news/2015-11-21/aboriginal-babies-being-signed-up-to-shocking-insurance-schemes/6958342>

super, other options would need to be considered. However, for many people this would be a great option giving peace of mind.

Attachment 1 – About each of our organisations

Consumer Action Law Centre

Consumer Action Law Centre is an independent, not-for-profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

Financial Counselling Australia

FCA is the peak body for financial counsellors in Australia. FCA's member groups are the seven State and Territory financial counselling associations. FCA is the national voice for the financial counselling profession, providing resources and support for financial counsellors and advocating for people who are financially vulnerable.

State and Territory Financial Counselling Associations

The State and Territory financial counselling organisations are:

- Financial Counsellors ACT
- Financial Counsellors Association of New South Wales
- Financial Counsellors Association of Queensland
- South Australian Financial Counsellors Association
- Financial Counselling Tasmania
- Financial and Consumer Rights Council (Victoria)
- Financial Counsellors Association of Western Australia

These organisations are member-based bodies. They support financial counsellors in their jobs by providing professional development opportunities, acting as an information hub to disseminate information and advocating for changes that benefit either financial counsellors or their clients.

Financial counsellors assist people experiencing financial difficulty. Working in community organisations, they provide advice to help people deal with their immediate financial situation and minimise the risk of future financial problems. Their services are free, confidential and independent.

Financial counsellors need an in-depth knowledge of credit law, bankruptcy law, debt collection law and practices, industry hardship processes and government concession frameworks.

Financial counselling agencies are exempt from holding either a Credit Licence or an Australian Financial Services Licence as long as they meet certain criteria, including that the services are free and staff are adequately trained.

There are 800 financial counsellors employed throughout Australia. They work in welfare organisations, community legal centres and community health centres.