



nfaw.org

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

Feb 2019

Prepared by Professor Helen Hodgson,
Curtin Law School
Director and Member Social Policy Committee, NFAW

This submission is being made on behalf of The National Foundation for Australian Women (NFAW).

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.

Funding of Services

NFAW made a submission to the first Consultation Paper on this topic, a copy of which is attached as appendix 1. In that submission we concluded 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.

Although we are of the view that many of the issues raised in this consultation should be funded through alternative forms of public funding, to the extent that access to superannuation may be the last resort, we make the following submissions in relation to the reforms proposed in the current consultation paper.

Specific Proposals

DRAFT Proposal 1 – mental illness release: Change the eligibility for the mental health ground of release from 'alleviate an acute, or chronic, mental disturbance' to 'treat a diagnosed mental illness or behavioural disorder'.

There is evidence that the mental health ground of release, as it is currently worded, has allowed access to discretionary medical procedures, including cosmetic procedures that

may improve the wellbeing generally of the applicant. However release of superannuation on compassionate grounds has a long term effect on the economic wellbeing of the applicant. Accordingly we would support a more objective test when determining whether an applicant meets the necessary threshold. The requirement that the treatment be to treat a diagnosed disorder, when taken in conjunction with the proposals that the treatment be certified as appropriate, would seem to provide appropriate safeguards.

DRAFT Proposal 2 – Overseas Medical treatment Specify that release for overseas medical treatment is only available in cases of a life threatening illness or injury *or* where the individual currently resides outside of Australia, has done so for the past 12 months and does not intend to return to Australia to live in the next 12 months.

An individual is entitled to seek medical treatment wherever that treatment is available. However where a treatment is available in Australia support should only be available where there is a valid reason to seek treatment overseas. Support through access to superannuation on compassionate grounds should, therefore, be limited to last resort circumstances.

The 24 month overseas residency requirement may be considered overly restrictive. We note that the restriction would not apply in the event of a life-threatening illness or injury, which should ensure that a person affected by a sudden onset illness would be eligible. However in an instance where a person resident overseas seeks medical treatment for a chronic condition, and subsequently decides to return to Australia to be close to family the residential requirement would not necessarily be met. The “intention” test should be administered in a way that acknowledges such circumstances.

DRAFT Proposal 3 – Information on alternative support The Regulator should provide information during the application process to individuals on alternative avenues of support relevant to the specific compassionate ground for which the individual is applying.

This is consistent with the position that NFAW has adopted that public funding should be available for relevant medical, dental and emergency situations.

Behavioural economics is increasingly recognising that the provision of relevant information can influence decisions. The provision of information relating to the alternatives available, in relation to appropriate courses of treatment and sources of support, will assist applicants making decisions regarding whether to apply for early access to superannuation.

The success of this proposal will depend on its implementation. The provision of additional information should be presented at a time when the applicant can consider the availability of alternative sources of funding, but should not unduly delay the decision-making process.

This should be accompanied by a segment within the broader financial literacy campaign regarding the accumulation effect of superannuation.

DRAFT Proposal 4 – clinically relevant treatment Specify that the two registered medical practitioners must certify that the treatment is generally accepted in the medical profession as being a clinically relevant treatment option for the patient’s diagnosed condition.

DRAFT Proposal 5 – Medical Practitioners Specify that:

- the specialist medical practitioner must be a specialist practicing *in the field related to the individual’s illness or injury*; and
- one of the medical practitioners must be the individual’s regular treating practitioner and the practitioner must attest to this in their certification.

These two proposals go to the issue of affirming that the treatment is relevant to the condition being treated. It is important that the regulations allow sufficient flexibility to ensure that the treating physicians are not limited in their choice as to the relevant treatment option. We note that the requirement is not that it is the best, or the preferred, treatment option. This allows room for the claimant and the doctors to discuss alternatives and determine which is considered to be most appropriate.

In our previous submission NFAW disapproved of business models where the medical provider also offers assistance with access to superannuation. Certification by either an independent medical practitioner or the agreement of the regular treating practitioner would ensure that the patient has the advice of a person with no vested interest.

There may be practical difficulties in ensuring that a doctor is the “regular treating practitioner”. An individual may not have an established relationship with a particular practitioner, although it should be expected that a person with such a condition has sought advice from a general practitioner before seeking medical intervention. This may of itself be a trigger to ensure that a person who is intending to undergo a medical procedure obtains further advice and information at an early stage in the process.

DRAFT Proposal 6 – Dental treatment Clarify that treatment for a life threatening condition, or acute or chronic pain includes dental treatment, with the certification of one medical practitioner and one dental practitioner.

The inclusion of dental treatment as grounds for early release is consistent with medical grounds. The lack of public provision of dental services is a larger policy issue, however where a person is in ongoing pain or where the dental condition exacerbates other health conditions it would be fair and effective to allow access on a similar basis to medical treatments.

Noting that one of the issues under discussion in the consultation is ensuring that benefits are preserved for retirement, and only accessed in circumstances of hardship or last resort, the checks and balances necessary to ensure that the treatment is appropriate and necessary should be consistent with the requirements for other forms of medical treatment, including applications on the basis of mental health. It would not be appropriate for superannuation to be released to deal with cosmetic dental treatment unless there was also an underlying condition.

DRAFT Proposal 7 – Family and domestic violence: Add a new compassionate ground of release for victims of family and domestic violence by permitting multiple releases over a 24 month period, per person, up to a \$10,000 cashing restriction, subject to judicial evidence or two pieces of specific non-judicial evidence confirming the individual is a victim of family and domestic violence.

We repeat our view that services for victims of domestic violence are currently not adequately supported by Government funding, and that expecting victims of family violence to draw on their superannuation to establish a new life is extending the effects of that violence into retirement.

We note that domestic violence extends beyond physical abuse. Economic abuse co-presents and is often intertwined with other forms of abuse including physical, sexual, psychological and, emotional abuse. It is a powerful abuse tactic as it can make it difficult for women to leave abusive relationships and/or to achieve financial security post-separation.

While economic abuse is widespread, because it manifests in a wide range of ways, it can be difficult to identify. Women's experience of economic abuse from an intimate partner is considered interpersonal. Where this is exacerbated by unsupportive or even at times oppressive systems, this is considered systemic. The Commonwealth must rigorously assess the risk of its own Commonwealth policies or programs contributing to the financial abuse of women through systems which are unsupportive of women facing economic abuse.

For example, the Commonwealth's recent decision to allow women experiencing and escaping family violence to dig into their superannuation, rather than ensure services are properly funded, will lead to even greater gender disparities in older age - where men already have more superannuation than women. It is a clear example of where the Commonwealth has recognised a real problem and responded to it, but, in the process has increased the systemic abuse of women.

The Commonwealth should undertake an expert, independent review of its activities to identify key points where Commonwealth policies and programs contribute to the financial abuse of women. The review needs to be wide-ranging and encompass the full range of relevant portfolio and policy issues. This includes policies on social security, employment eg

work value assessments, migration and settlement, Family Law, child support, Defence families and housing.

Having stated our position on principle, we acknowledge that the Government has announced this policy, and accordingly we make the following comments in relation to the mechanics of the proposal.

The limit of \$10,000 over a 24 month period is consistent with other compassionate grounds, and this restriction will moderate the long term effect on the superannuation balance of the claimant.

The evidentiary hurdle should recognise that victims of family and domestic violence do not always obtain judicial orders for a range of reasons, including (but not limited to) cultural sensitivities; the form of the domestic violence being experienced and access to the judicial system. Accordingly we agree that alternative forms of evidence should be accepted.

We do, however, note that the current proposal is for a report to a police officer and another relevant professional. In instances of non-physical abuse, including emotional or financial abuse, a person subjected to abuse may not make a report to a police officer that can be provided as evidence of abuse. The requirement for a report from a police officer in addition to another qualified professional may limit access for victims of non-physical abuse.

We note that the preferred course of action for a person escaping family violence will depend on the circumstances, and accordingly we agree that there should not be a regulated list of approved expenses.

The proposal that the regulator provide information regarding additional support services is to be commended; however given the requirement that a professional be involved in the evidentiary requirements that precede the application, it is likely that this information would be redundant.

DRAFT Proposal 8 – housing

A. Tighten access under the mortgage foreclosure ground to permit a 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.

B. Extend the current evidentiary requirements so that the person must give the Regulator a written statement from the mortgagee that they believe the mortgage is serviceable by the person once the arrears have been rectified.

Access to superannuation under compassionate grounds for housing is based on the recognition that home ownership is an asset that will enhance long term security in retirement, effectively the fourth pillar of the retirement income system. From this perspective it is reasonable to acknowledge that the transfer of superannuation to housing wealth will not significantly erode financial security in retirement.

The further restrictions proposed will limit the potential for homeowners to use leveraging strategies to progressively churn their superannuation into housing wealth.

In our previous submission we noted that tenants who fall into rental arrears do not have access to funds under this condition for release, although they may be eligible under the grounds of severe financial hardship if they are unable to meet reasonable and immediate family living expenses. We noted that the structural settings of the rental housing market and rental subsidies must be reviewed to assist people at risk.

DRAFT Proposal9 – severe disability: Clarify that release on severe disability grounds can include release for the purchase of disability aids or a specially modified vehicle; and is only available on the basis of certification from a medical practitioner that the disability aid or vehicle is required to accommodate the special needs of the person or a dependant arising from severe disability.

We note that the NDIS is available to assist with the acquisition of disability aids and motor vehicles, and should be the primary funding source for disability aids. Superannuation should only be released where funding is not available through the NDIS.

There are gaps in the NDIS. The age restriction requiring a person to be under the age of 65 to be eligible for the NDIS is not relevant here, as a person in that category would already be entitled to access their superannuation.

More concerning are the gaps in relation to the level of disability. Access to the NDIS is based on a significant reduction or loss of an ability to function. The NDIA must be satisfied that a person has a disability that is attributable to one or more impairments which results in a reduction or loss of an ability to perform certain activities.

Comparing the proposal for early access that the aid is required to meet the special needs of the person (or dependant) with the NDIS requirements, it would seem that the formal requirements are essentially the same. However there are some expenses not paid by the NDIS: the rules in relation to motor vehicles allow the person to claim the cost of modifications but not the purchase of the vehicle, which must meet requirements in relation to the age and condition to be suitable to be modified.

It may be reasonable to allow access where it is the only means for the person to acquire the base vehicle for modification, where the NDIS is contributing to the cost of the modifications under the last resort principle. However, in the context of the system overall, is it fair to allow access for the capital cost of a car when another person who has specific transport needs but is not under a severe disability, eg a country resident who needs to transport children long distances to school, cannot access superannuation on these grounds?

DRAFT Proposal10 – residual discretion Remove the Regulator’s residual discretion to approve release on grounds that are ‘consistent with’ the prescribed compassionate grounds of release.

In our earlier submission we did not support the removal of the regulator’s residual discretion. We maintain that this discretion should remain. The requirement that the discretion is “consistent with” allows for flexibility in circumstances that cannot currently be predicted. The “fair and effective” principle should be applied to ensure that where a circumstance is not listed in the closed list of grounds, an unforeseen circumstance can be given due consideration.

Closed lists of events do not adequately allow for changes in the way that institutions and systems function, forcing regular review of the regulatory framework.

We also note that under the Superannuation Industry Supervision Regulations the decision of the Regulator is reviewable.

DRAFT Proposal11 – severe financial hardship test Amend the severe financial hardship ground by:

- expanding the Commonwealth income support payment test to a cumulative period of 26 weeks out of 40 weeks; and
- permitting multiple releases over a 24 month period, per person, up to the \$10,000 cashing restriction.

While we would prefer to see adequate emergency funding available to people in severe financial hardship, we support the proposal to change the “objective test” of hardship to base it on a cumulative period of income support to account for changes in workforce participation, including increased rates of casual and part time work. We note that the subjective test will remain in place to ensure that a person who is unable to meet reasonable and immediate living expenses is eligible for a release.

The current limitation that allows a single application to access funds is likely to lead to perverse behaviours: either the applicant could request access to the full amount of \$10,000 on the basis that they will require the full amount over the foreseeable future; or they may only request what is required to meet immediate needs and be unable to reapply for a further release.

We would support the change to retain a cap of \$10,000, but allow multiple releases up to that amount.

DRAFT Proposal12 – administration of severe financial hardship Transfer the administration function of the severe financial hardship ground to the Australian Taxation Office (ATO), consistent with the transfer of the compassionate grounds function to the ATO.

The current division between compassionate grounds administered by the ATO and severe financial hardship grounds administered by the trustee can result in inconsistent treatment of applications by trustees of different funds.

Recent changes to the superannuation system have required that the systems for reporting and monitoring superannuation accounts have become more efficient and timely, and the ATO is required to monitor the superannuation balances of individuals in order to manage the transfer balance cap imposed under the 2017 reforms.

Moving the administration to the ATO ensures that all relevant information is held by the person making the relevant decisions, particularly where a person has multiple accounts held in a combination of public offer funds and Self Managed Superannuation Funds. The discussion paper lists a number of circumstances where a person may apply to different trustees for support, and the proposal is that access be limited to claims by a person not to a trustee of a fund. The only way to ensure that this change works is to delegate the decision making power to a regulator who has access to the full superannuation profile of the applicant.

Further, the ATO has well developed systems to ensure that the decision making process is transparent through the publication of rulings and practice statements that ensure consistency in decision making, and provide precedents and advice to applicants.

DRAFT Proposal 13 – Future review Use key statistics collected by the ATO to inform a further review of early release five years after any changes are implemented.

NFAW supports evidence based policy making. In particular, we urge policy makers to collect gender data to ensure that the gender effect of policy can be identified. For example, the first issues paper identified the increase in applications for early access on medical grounds. It would be useful to have a gender breakdown of the extent to which women are making these applications, and the effect that it is having on their superannuation balances.

A review in five years will be able to identify the main reasons for applicants seeking early access to superannuation, providing important information on areas of risk where public funding is not adequate to meet needs. This will be an important source of information to inform the Federal Budget process.

We have noted above the effect that Government policy may have in systemic economic abuse of women, by either imposing additional risks or failing to identify existing risks. The data collected in the review, broken down by gender, will help to identify where these areas of systemic abuse may be occurring.

Finally, if the residual power of the regulator is removed as proposed, the review will be necessary to identify any emerging grounds that do not fall within the closed list of categories.

Conclusion:

Overall, NFAW supports the direction of the issues paper to ensure that early access to superannuation is limited to circumstances where other avenues of funding are not available, the last resort principle. We support proposals to ensure that access under compassionate grounds meets objective tests of need, through ensuring that applicants are obliged to show that they have received appropriate advice.

As noted in our earlier submission, we are concerned that public funding is inadequate to ensure that people are able to access the services necessary to meet their essential requirements through Medicare, the NDIS and domestic violence services. The proposal to ensure that people are directed to these funding sources as part of an application on compassionate grounds will help, however the systemic underfunding of these services needs to be addressed.

We are still concerned that the measures to allow access to women fleeing domestic violence will have a long term detrimental impact on the economic security of those women. We also note that the evidentiary requirements are framed around cases of physical abuse, and suggest that police reports may not be available in cases of non-physical abuse.

The proposal to centralise the administration in the Australian Taxation Office as regulator is consistent with the current role that the ATO is taking in the administration of the superannuation system, and will ensure greater transparency and consistency of decisions.



nfaw.org

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

Prepared by Associate Professor Helen Hodgson, Curtin Law School

This submission is being made on behalf of The National Foundation for Australian Women (NFAW).

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 severe 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.

References:

van Smeerdijk, James; Jovic, Marty; Hutchins, Dana; Petre, Tiffany and Joyce Le, 2015, Weighing the Cost of Obesity: A Case for Action, PWC <https://www.pwc.com.au/pdf/weighing-the-cost-of-obesity-final.pdf>

Anglicare Australia, 2017, Anglicare Australia Rental Affordability Snapshot, Canberra <http://www.anglicare.asn.au/docs/default-source/default-document-library/rental-affordability-snapshot-2017.pdf?sfvrsn=4>

Clare, Ross, 2016, Superannuation account balances by age and gender, ASFA, https://www.superannuation.asn.au/ArticleDocuments/359/1710_Superannuation_account_balances_by_age_and_gender.pdf.aspx?Embed=Y

Association of Superannuation Funds of Australia (ASFA), 2016, ASFA Retirement Standard, ASFA <https://www.superannuation.asn.au/ArticleDocuments/238/ASFA-RetirementStandard-Summary.pdf.aspx?Embed=Y>