



AUSTRALIAN INSTITUTE of
SUPERANNUATION TRUSTEES

23 March 2018

Retirement Benefits Unit
Retirement Income Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: superannuation@treasury.gov.au

Dear Sir / Madam,

Re: Regulations supporting transfer of early release of superannuation function to the ATO

Thank you for the opportunity to comment on the draft regulations that support the transfer of the early release function on compassionate grounds from the Department of Human Services (DHS) to the Australian Taxation Office (ATO). We understand that the [Treasury Laws Amendment \(2018 Measures No. 1\) Bill 2018](#) contains the provisions regarding the transfer of responsibility and that the regulations simply support these measures and impose further requirements on the ATO.

As outlined in our [submission to Treasury on early release](#), we support the transfer of the responsibility to the ATO, however we believe the measures could be improved as outlined in this submission.

Response to the proposals

Draft proposal: The ATO determination must specify the superannuation entity and the amount of benefits that may be released under compassionate grounds.

We support this measure because it improves clarity in the process, however we submit that the regulations must specify that if the trustee complies with the regulator's determination they are indemnified from subsequent claims. The ultimate decision of whether a release is warranted is not made by the trustee, therefore it would be inequitable if the trustee could be found liable if they simply adhere to the determination.

Draft proposal: The regulator must provide a copy of the compassionate ground release determination to the member and the trustee.

We also support this measure because it streamlines the process, reduces the administrative burden on the trustee and decreases the risk of fraud. Under the existing arrangements, the member usually provides a copy of the determination to the trustee and the trustee bears the

administrative burden of verifying that determination and is responsible for ensuring that it is not fraudulent. The proposal also improves the member's understanding of what they will receive.

Further recommendations

In addition to the recommendations outlined above, we believe that integrity and efficiency in the process would be improved by:

- a) Providing the ATO with the power to assess severe financial hardship claims.

Currently, severe financial hardship claims are assessed and administered by the superannuation fund where the benefits are held. Furthermore, not all funds allow members access on grounds of severe financial hardship. This means that, depending on the fund, different business rules, processes and evidentiary requirements apply to applicants. This results in an inconsistent application process and decision making, fewer comparable outcomes, increased switching between funds (which adds unnecessary cost) and member confusion.

We submit that the ATO should be responsible for assessing severe financial hardship claims and every member should be able to use the ground of release, irrespective of which fund they are with. Centralising the decision-making function for financial hardship would make the process easier to manage for members, promote fairness and administrative efficiency. It would also reduce the likelihood of the system being manipulated, as the decision maker would have visibility of a predatory service provider's conduct.

- b) The ATO should develop guidance on the meaning of 'financial capacity'.

For an application for early release on compassionate grounds to be approved, the regulator must be satisfied that the applicant does not have the 'financial capacity' to meet an expense arising from the relevant ground. 'Financial capacity' is not defined by the regulations, or the *Superannuation Industry (Supervision) Act 1993*, which can lead to confusion and reduces the consistency of decision making. We submit that the regulations should allow the ATO to develop guidance that articulates the meaning of 'financial capacity' to inform their decision making and to improve the process for applicants.

- c) The ATO should be required to deem whether a release amount is reasonable.

The early release rules do not specify that the money to be released must be reasonable. We submit that to promote consistency, and to safeguard the system against manipulation, the regulator should be required to assess whether the amount requested is reasonable in the circumstances. The requirement should be contained in the regulations, however the ATO should also publish guidance on what factors they will consider in assessing whether an amount is reasonable, and what they will do if an amount is deemed to be unreasonable.

- d) The ATO should be given the discretion, in the regulations, to refer applications to an independent medical panel.

The rules currently do not empower the regulator to refer applications to a medical panel or expert, where they relate to a medical matter. We believe that the integrity of the release framework would be improved by giving the regulator this discretion. The establishment or use of an existing medical panel is beneficial because it promotes consistent decision making, increases efficiency, and enhances objectivity, both actual and perceived.

For further information regarding our submission, please contact Jake Sims, Policy & Regulatory Analyst at 03 8677 3835 or at jsims@aist.asn.au.

Yours sincerely,



Eva Scheerlinck
Chief Executive Officer

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