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The Treasury

RANZCOG Feedback on Early release of superannuation benefits - Under compassionate and financial hardship grounds and for victims of crime compensation February 2018

The Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) welcomes the opportunity to provide feedback on the Treasury's consultation *Early release of superannuation benefits - Under compassionate and financial hardship grounds and for victims of crime compensation*.

The following submission provides RANZCOG's view on early access to superannuation to cover the costs of medical services, including Medicare Benefits Schedule (MBS) listed services.

Background

The *Superannuation Industry (Supervision) Regulations 1994* allow individuals early access to their superannuation on certain compassionate grounds. This includes access to superannuation benefits to pay for medical treatment or medical transport for the individual or their dependant, where the treatment is necessary to treat a life threatening illness or injury or alleviate acute or chronic pain or mental disturbance. Release is only offered where the treatment is not readily available through the public health system and where the person does not have financial capacity to meet the expense.

The Government has observed a significant increase in applications on medical grounds, particularly for bariatric surgery and in-vitro fertilisation (IVF) treatment. The fact that such treatments are funded using superannuation does not preclude access to MBS benefits.

Individuals can apply for early access to their superannuation independently and at no cost, or with the assistance of third party commercial providers who assist the individual with their application (and may also facilitate a relationship between the applicant and a relevant medical professional).

Discussion

Questions

Principles underpinning early release

Below are three proposed guiding principles for this review:

Preservation: Superannuation benefits should generally be preserved to provide income in retirement to substitute or supplement the Age Pension. Early access to superannuation for other purposes is inconsistent with the preservation principle.

Genuine hardship: There will be circumstances where the benefits of early access to superannuation for an individual will exceed the benefits of preserving balances until retirement. The challenge for policy-makers is to identify the point at which the need for compassion outweighs the broader policy objective of the superannuation system.

Last resort: Early release of superannuation benefits should generally be a last resort where other sources of financial support have been exhausted. It is not an appropriate replacement for existing health and income support policies.

Fair and effective: The rules should be able to be administered fairly and effectively; that is, the rules should be sufficiently clear and objective to allow applications to be dealt with in a timely and consistent fashion, and ensure that similar cases can be treated alike. Rules that are highly subjective in nature will necessarily cause more red tape, expense and difficulty for applicants, trustees and Government.

Question 0.1 Do these proposed principles provide an appropriate guide to determine the grounds for early release under compassionate and financial hardship grounds, and for victims of crime compensation? If not, what should these principles be?

RANZCOG response: Yes, the above principles are an appropriate guide to determine the grounds for early release under compassionate and financial hardship grounds.

Question 0.2 Having regard to these principles, should early release of superannuation benefits generally be more or less difficult to obtain?

RANZCOG response: The principles are not too lenient in the case of IVF or gynaecological claims. All conditions should require the same stringent rules for hardship.

Part 1: Compassionate grounds

Question 1.1 Should the assessment of financial capacity be made more prescriptive and/or objective? If so, how? What information might applicants need to provide?

RANZCOG response: RANZCOG believes that assessments of financial capacity should remain objective rather than too prescriptive.

Question 1.2 What factors might be driving the increase in the amount of superannuation released on medical grounds and are these factors any cause for concern?

RANZCOG response:

- Obesity is a worldwide epidemic, with an estimated 205 million men and 297 million women over the age of 20 obese in 2008 – a total of more than half a billion adults worldwide. In 2008, 10% of men and 14% of women in the world were obese (BMI ≥ 30 kg/m²), compared with 5% for men and 8% for women in 1980 (http://www.who.int/gho/ncd/risk_factors/obesity_text/en/). Obesity reduces fertility and has been shown to affect the health of the human oocyte and the quality and development of the embryo early in gestation (Robker RL. Evidence that obesity alters the quality of oocytes and embryos. *Pathophysiology: the official journal of the International Society for Pathophysiology / ISP* 2008;15(2):115-21; Wu LL, Norman RJ, Robker RL. The impact of obesity on oocytes: evidence for lipotoxicity mechanisms. *Reproduction, fertility, and development* 2011;24(1):29-34).
- Societal trends are also seeing more people delay starting a family in order to establish their careers, with this true for both women and men.

- In preparation of this response, RANZCOG has consulted with the head of RANZCOG's Reproductive Endocrinology and Infertility group (CREI), Dr Clare Boothroyd, and she has drawn our attention to the personal experience of the IVF directors group. RANZCOG wishes to draw attention to their response to address this item:

"We have observed that some patients access their superannuation for infertility treatment. This may be for IVF but it is not uncommon for patients to access their superannuation occasionally for gynaecological surgery which may help their fertility. In particular high level surgery for endometriosis and minimally invasive myomectomy are operations that are sparingly provided in the public sector. These operations directly affect the health and welfare of the patient in terms of chronic pain and heavy bleeding and may be accessed for gynaecological and medical reasons rather than direct infertility reasons. However the patients do get a fertility benefit from this surgery."

Question 1.3 Do the current provisions for early release on medical grounds strike the appropriate balance between preserving income for retirement and providing assistance in times of genuine hardship? If no, what are the alternatives?

RANZCOG response: There has been a marked increase in the early release of superannuation under compassionate grounds from around \$42 million in 2000-01 to around \$290 million in 2016-17. In principle, this does not fit with the preservation guiding principle and indicates that more research should be carried out as to why patients are being forced to use their superannuation for medical expenses. Is it that the public system is not providing adequate coverage or are private health insurance policies excluding certain procedures which should not be subject to exclusion? Whilst acknowledging a finite health budget at Government level, it would be helpful to map the patient journey of the highest ranking medical issues for which superannuation is drawn upon to understand what are they main drivers for the out of pocket expenses incurred by the patient. Are the main drivers direct surgical cost due to lack of access in the public or private system, unacceptable surgical wait times, associated imaging, radiotherapy or chemotherapy costs directly passed onto the patient? It is also important to ensure that drawing on superannuation is treated as a last resort rather than first step to addressing the burden of medical expenses.

It would seem fair if either of the couple's superannuation could be accessed for IVF treatment. That is, men should be able to access their superannuation as well/or instead of just the woman's superannuation. Adequate levels of superannuation help improve women's health overall and assist them in meeting the future healthcare needs of the ageing population so consideration should be given to the option of allowing men to access their super for IVF treatment.

RANZCOG recommends that Government should review access to IVF in the public system.

Question 1.4 Should there be a limit on the number of releases permitted within a certain timeframe (for example, 12 months) and/or should there be cashing restrictions on the amount released? If so, should there be different restrictions for different medical conditions?

RANZCOG response: In the case of IVF particularly, RANZCOG's view is that the limit on the number of cycles should be based on established evidence of efficacy.

Question 1.5 Have you observed any trends in the types of treatments that are being funded by superannuation benefits and are these trends any cause for concern?

RANZCOG response: No, RANZCOG has not observed any trends in the types of treatments that are being funded by superannuation benefits.

Question 1.6 Are there certain treatments for which early release of superannuation should not be permitted? If so, what is the basis upon which these treatments should be excluded?

RANZCOG response: RANZCOG is not aware of any treatments that should be excluded from early release of superannuation.

Question 1.7 When might ART (IVF) be necessary to treat a life threatening illness or alleviate acute or chronic pain or mental disturbance (in general – noting that this will depend upon the specific circumstances of each case)?

RANZCOG response: In general, access to superannuation for IVF is in response to mental health disturbance. Mental illness is higher in infertility patients, (especially stress and depression). Infertility patients also have a higher risk of marital breakdown, job disruption and financial stress which can impact on mental health.

RANZCOG is of the view that the mental health assessment should remain a condition of access to superannuation for IVF treatment. A requirement to undertake a mental health assessment of the pregnant woman has recently been added to MBS item numbers related to planning and management of pregnancy (e.g. MBS item numbers 16590 and 16591). Given that women undergoing IVF treatment are at greater risk of mental health disturbance for the reasons mentioned above, serious consideration should be given to retaining the requirement to undertake a mental health assessment, and that this assessment is independent from the immediate clinical benefit (which may have a commercial component). This would make IVF in line with other serious illnesses able to utilise superannuation.

It has been brought to RANZCOG's attention that consideration should be given to an independent IVF doctor (who is not part of the clinic delivering IVF treatment) should undertake an assessment of the application to access superannuation. This independent assessment MUST be at an arm's length from any commercial relationship with the IVF provider and could possibly be accessed through the public health system. The assessments should be undertaken by specialist of similar specialist qualifications/experience but MUST be at arm's length from commercial relationships with the IVF provider.

Question 1.8 When might bariatric surgery be genuinely necessary to treat a life threatening illness or alleviate acute or chronic pain or mental disturbance (in general – noting that this will depend upon the specific circumstances of each case)?

RANZCOG response: Not applicable to RANZCOG.

Question 1.9 Should the rules explicitly require that the Regulator be satisfied that the amount claimed for a particular treatment is reasonable? If so, what evidence might be relevant to that determination?

RANZCOG response: This may be a lot of additional work for the regulator and it is unclear for what purpose or if this would serve a benefit.

Question 1.10 Should there be an additional category of early release in respect of dental treatment? If so, under what circumstances should early release be available and should there be any limits or restrictions?

RANZCOG response: Not applicable to RANZCOG.

Question 1.11 Should SIS Regulation 6.19A(a)(ii) and (iii) be amended to refer to 'treatment' rather than 'alleviation' of acute or chronic pain? Alternatively, should those provisions be removed entirely (so that early access is only available where the individual's condition is life-threatening)? What would be the consequences of this approach?

RANZCOG response: Yes, treatment should replace alleviation.

Question 1.12 Should the reference to a medical specialist in SIS Regulation 6.19A(3) be clarified to ensure that the practitioner is a specialist in the field most relevant to the proposed condition being treated?

RANZCOG response: Not applicable to RANZCOG.

Question 1.13 Should the Regulator be entitled to seek a second opinion from an approved medical practitioner/s, or should the individual be required to receive a reference from a list of approved medical practitioners, to ensure the objectiveness of the assessment?

RANZCOG response: There should be a second independent opinion to agree to access IVF from super in line with the law. This should be an independent person/organisation not related to the other IVF provider, nor the third party company assisting access to the superannuation for the patient.

Question 1.14 Should early access to superannuation benefits to meet expenses associated with palliative care, death, funeral or burial be limited to where there is a dependency relationship? Why/why not? Could there be any unintended consequences from expanding this provision?

RANZCOG response: Not applicable to RANZCOG.

Question 1.15 Should there be a maximum amount that can be released to meet a funeral expense? (For example, the amount that the Regulator considers reasonable.)

RANZCOG response: Not applicable to RANZCOG.

Question 1.16 Should early release of superannuation benefits be available to meet mortgage payments regardless of whether a person's name is on the mortgage title for their principal place of residence? What might be the implications of broadening the provisions in this way and what additional limitations might be required? For example, should release be limited to dependants or spouses or partners?

RANZCOG response: Not applicable to RANZCOG.

Question 1.17 Is there a fundamental difference between meeting mortgage payments and meeting rental payments which would warrant a difference in treatment (for example, in respect of the asset available to mortgagees once all repayments have been made)? Or should early release on compassionate grounds be extended to include individuals who are unable to meet rental payments? If so, what evidence should be required and what should be the threshold for release (for example, in rental arrears or rental eviction notice)?

RANZCOG response: Not applicable to RANZCOG.

Question 1.18 Are the current disability grounds fit for purpose, or should early release be extended to disability aids? If the latter, which expenses should be included, what evidence should be required, and should there be a cap on funds released?

RANZCOG response: Access to disability aids should stay in line with the stringent principles described above (e.g. hardship etc).

Question 1.19 Should individuals for early release of superannuation under disability grounds be required to demonstrate that they have sought assistance from other Government or non-Government programs prior to being approved? If so, how would this requirement be administered?

RANZCOG response: Not applicable to RANZCOG.

Question 1.20 Should the Regulator's residual discretion in SIS Regulation 6.19A(1)(f) be removed? What would be the consequence of doing so?

RANZCOG response: Not applicable to RANZCOG.

Question 1.21 Are there situations outside of the current compassionate grounds which may justify inclusion in the early release of superannuation provisions, balanced against the need to preserve superannuation benefits to provide income in retirement?

RANZCOG response: Not applicable to RANZCOG.

Question 1.22 Should access to superannuation benefits be available to assist victims of domestic violence? Why / why not? If yes, under what particular grounds (for example, financial hardship, homelessness, victims of crime), which expenses should be included, and what evidence should be required?

RANZCOG response: Domestic violence should be appropriately resourced from community resourcing, not the individual woman's superannuation as these women are already disadvantaged and this would make them even more so.

Part 2: Severe financial hardship ground

Question 2.1 Having regard to the necessary trade-off between simplicity, objectivity and flexibility, should the criteria for severe financial hardship be amended? If so, how? In particular, is there merit in expanding or contracting the 26-week rule and/or the definition of qualifying Commonwealth income support payments?

RANZCOG response: Not applicable to RANZCOG.

Question 2.2 Should there be a prescribed standard of proof of being 'unable to meet reasonable and immediate family living expenses'? How can the legislation guard against non-genuine claims?

RANZCOG response: Not applicable to RANZCOG.

Part 3: Victims of crime compensation

Question 3.1 Should victims of crime be able to access a perpetrator's superannuation for compensation?

RANZCOG response: Not applicable to RANZCOG.

Question 3.2 Should access to superannuation be limited to cases where a criminal conviction has been made?

RANZCOG response: Not applicable to RANZCOG.

Question 3.3 Should access to a perpetrator's superannuation be available for compensation or restitution arising from all crimes, just violent crimes, or another threshold (such as the maximum penalty for offence)?

RANZCOG response: Not applicable to RANZCOG.

Question 3.4 Should access to a perpetrator's superannuation only be available if the perpetrator made irregular or out of character contributions to superannuation to shelter assets?

RANZCOG response: Not applicable to RANZCOG.

Question 3.5 How would a victim's right to a perpetrator's superannuation be enforced? How would the victim gain visibility over the perpetrator's superannuation assets?

RANZCOG response: Not applicable to RANZCOG.

Question 3.6 How much of a perpetrator's superannuation should be available? Should the amount be different based on the perpetrator's circumstances (for example, low balances, dependent children)?

RANZCOG response: Not applicable to RANZCOG.

Question 3.7 Should access to a perpetrator's superannuation be in the form of a lump sum, portions of income stream payments or both? How should defined benefit products and annuities that have not yet commenced payments be treated?

RANZCOG response: Not applicable to RANZCOG.

Question 3.8 Should contributions into superannuation after a compensation order has been made count towards the amount that can be accessed?

RANZCOG response: Not applicable to RANZCOG.

Question 3.9 Where a criminal conviction has been made, should victims be able to access a perpetrator's superannuation to pay either outstanding compensation or restitution orders?

RANZCOG response: Not applicable to RANZCOG.

Question 3.10 Should State and Territory compensation schemes be able to recover their payments to victims from the perpetrator's superannuation?

RANZCOG response: Not applicable to RANZCOG.

Question 3.11 In circumstances where there are concurrent family law and victim of crime compensation proceedings, how should these matters be addressed and prioritised? What other issues might arise?

RANZCOG response: Not applicable to RANZCOG.