

Review of superannuation and victims of crime compensation May 2018

Access to superannuation for victims of crime compensation

HESTA welcomes the opportunity to submit a short response to the Review of superannuation and victims of crime compensation distributed in May 2018.

About HESTA

HESTA is an industry superannuation fund, established in 1987 to provide retirement benefits for workers in the Health and Community Services Sector, and we operate only to benefit members. We have approximately 850,000 members and manage over \$44 billion of members' assets.

The typical HESTA member is aged 43, is female and has a balance of approx. \$19,000 in superannuation.

Because of our traditional industry base our members are:

1. More likely to live for five years longer than an average Australian male
2. More likely to suffer the inconsistencies and discrimination of the gender pay gap
3. More likely to take time out of the workforce on periods of unpaid leave
4. More likely to be at risk of poverty in retirement.

Our mission is to make a real difference in the retirement outcome of every member. The settings of the system impact our members, although the early release of super should be rare, we know our members can sometimes rely on this function in critical times. It is important to us that changes to early release, either through a compensation scheme or more broadly are well considered and able to be easily understood by our members.

We note that this paper focuses on access to superannuation for victims of crime compensation and that broader issues relating to early release on compassionate and severe financial hardship grounds will be progressed through a separate process. Our main focus for reform of early release provisions continues to be directed to the way hardship and compassionate grounds are considered. We make the following brief remarks to aid the Government and Treasury in determining reform for victims of crime compensation.

We welcome the opportunity to discuss the submission further, should you have any queries please contact Mary Delahunty, Head of Impact 03 8660 1673 mdelahunty@hesta.com.au

Key points

In our earlier submission to the broader discussion of early release, we stated that we believe it to be a reasonable consideration for victims of crime to access to the perpetrators superannuation.

However, we reinforce the strong opinion that the current victim compensation schemes be the primary resource for victims regardless of the crime.

We encouraged further consultation and exploration of scenarios to understand how compensation might be operationalised. We welcome the focus of this second paper.

We still believe there is merit in considering access to superannuation in cases of family violence or other crisis situations where the victim has had to access their superannuation as the result of the crime.

To use the example of a family violence victim – if a member of HESTA accesses \$10,000 from their superannuation account to meet their immediate needs and move on from a violent situation. It is reasonable that they then be able to replace that sum with the same amount from the perpetrators account.

This protects the role of the taxpayer in the superannuation system as the money then stays preserved for her retirement.

The role of the taxpayer is important in this discussion and some attention has been paid to that consideration in the scenarios that outline a preservation amount for dependents.

HESTA is sympathetic to the principle taken in the second draft proposal that the interests of the uncompensated or partially compensated victims of crime should be prioritised over the retirement income needs of the perpetrator. We recognise that this proposal includes safeguards to protect the interests of dependents of the perpetrator, for that reason it is preferable.

We would encourage a narrower approach however that protects the role of the taxpayer by quarantining the superannuation money to being held in the superannuation system. Compensation for early release due to crime from the victims account to be reimbursed from the perpetrators account.

We are concerned that victims of family violence be considered, given the following key point:

“The Review proposes that superannuation trustees should be required to release a member’s funds to a court, as a lump sum, where an officer of the court certifies that: The crime is a serious crime, involving violence against an individual, that has a maximum custodial sentence of 10 years or greater.”

We seek that further consultation occurs with legal and family violence experts to ensure that serious crimes that may typically arise from family violence circumstances fall within the proposed maximum custodial sentence threshold. As there are varying criminal jurisdictions both federally and across States and Territories, it’s also important to ensure that compensation eligibility is consistently applied across the country.

Taxation settings

It is pleasing to see the inclusion of some discussion of the tax treatment of monies released early from the super system. We believe the current tax treatment under the hardship and compassionate grounds provisions to be inappropriate.

It is noted that the discussion paper says –

Issue 9: Tax rate applied to compensation

Ordinarily, money released from superannuation accounts prior to the applicant reaching preservation age is taxed at the lower of either the marginal rate of the recipient or 22 per cent.

In cases where the payment comes from an untaxed source, the tax rate on the released amount increases to 32 per cent. This reflects the generally concessional tax treatment that superannuation contributions receive in order to support retirement incomes; in circumstances where the contributions are not going to support retirement incomes, it is generally appropriate that they be taxed less concessionaly.

We support the principle that money meeting conditions of early release either through a compensation scheme or otherwise should not be subject to a potentially harsh rate bearing in mind that the monies have already been subject to a 15% contributions tax.

We support the principle to apply this consistently with the existing treatment of court-ordered compensation that any money released to the victim would not be assessable for tax purposes. This ensures that other benefits the victim may be eligible for are not adversely impacted.

As we have previously submitted, the same principle that applies to early release on the grounds of terminal illness, should apply across all early release grounds:

INCOME TAX ASSESSMENT ACT 1997 - SECT 303.10¹

Superannuation lump sum member benefit paid to member having a terminal medical condition

- (1) This section applies to a * superannuation member benefit that:
 - (a) is a * superannuation lump sum; and

¹ Australasian Legal Information Institute. (2018) Commonwealth Consolidated Acts. Retrieved from http://www5.austlii.edu.au/au/legis/cth/consol_act/itaa1997240/s303.10.html

(b) is:

(i) paid from a * complying superannuation plan; or

(ii) a * superannuation guarantee payment, a * small superannuation account payment, an * unclaimed money payment, a * superannuation co-contribution benefit payment or a * superannuation annuity payment.

(2) The lump sum is not assessable income and is not * exempt income if a * terminal medical condition exists in relation to you when you receive the lump sum or within 90 days after you receive it.

Note: For a lump sum you receive in the 2007-08 financial year, the period of 90 days may be extended until 30 June 2008: see section 303-10 of the [Income Tax \(Transitional Provisions\) Act 1997](#) .

References

- Australian Government Federal Register of Legislation. Cited 14/06/2018. Superannuation Industry (Supervision) Regulations 1994. Division 6.3-Cashing of Benefits. Retrieved from [http:// https://www.legislation.gov.au/Details/F2017C00511](http://https://www.legislation.gov.au/Details/F2017C00511)
- Australasian Legal Information Institute. Cited 14/06/2018. Commonwealth Consolidated Acts. Retrieved from http://www5.austlii.edu.au/au/legis/cth/consol_act/itaa1997240/s301.35.html
- Australasian Legal Information Institute. Cited 14/06/2018. Commonwealth Consolidated Acts. Retrieved from http://www5.austlii.edu.au/au/legis/cth/consol_act/itaa1997240/s303.10.html

This submission is made by H.E.S.T. Australia Limited ABN 66 006 818 695 AFSL No. 235249, Trustee of Health Employees Superannuation Trust Australia ('HESTA') ABN 64 971 749 321. The content of this submission is information only, and it not is intended to be taken as financial, legal or any other advice, and should not be relied on as such. This submission includes information taken from sources considered reliable. While every attempt has been made to ensure the accuracy and reliability of the information, it is not guaranteed in any way. This submission is based on information available at 14 June 2018. For more information about HESTA products you should read the relevant Product Disclosure Statement (call 1800 813 327 or visit hesta.com.au for a copy), and consider any relevant risks hesta.com.au/understandingrisk.