

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

1 June – 3 June 2010

Question: BET 30

Topic: Frozen Mortgage Funds

Hansard Page: E125-126 (01/06/2010)

Senator EGGLESTON asked:

Senator EGGLESTON—How many people have applied to access their money under hardship provisions since the freezing of those funds? How many have been successful with accessing redemptions? (**Question 1**)

Mr D'Aloisio—We actually have those numbers, but I do not have them in my briefing note, so I will get that for you. It is quite substantial, of those that apply. My recollection is that really a high proportion satisfy the hardship grounds and do get some of their money out. But I can get you those numbers. I know we have them.

Senator EGGLESTON—I have been approached with quite a specific case. It involves a foreign national professional—a Scottish veterinary surgeon—who has money invested under a fund in Australia. They want to withdraw that money and return to live and retire in Scotland, but they find they can only partially withdraw the money. Why would that be if they are leaving the country wishing to return to their own homeland and retire? (**Question 2**)

Mr D'Aloisio—It is an issue of fairness with other unit holders that are locked in. Really the trustee probably in that case may have exercised a judgment and said that it is not really a hardship case in the sense of financial needs. The fact that someone is overseas still means that they can get access to drip feed returns over a period of time. You are not naturally a hardship case because you are relocating to another country. You would need other factors. In answer to your previous question, Belinda has just pointed out that in fact some 4,642 applications, representing \$162 million, were received by the schemes. They paid out on 3,721, or \$86.8 million. We will give you more detailed figures on that. But there are substantial numbers that apply.

Senator EGGLESTON—I return to this particular constituent that I am referring to. They are Australian residents at the moment, not overseas. What you are saying is that, in the interests of equity to the other unit holders, they should not be allowed to withdraw all of their capital?

Mr D'Aloisio—If you create a system, a hierarchy, you say, 'These funds are illiquid. In order to protect all investors we will have a periodic workout. As income comes in, we will pay it out.' However, in order to deal with hardship cases, you say, 'Okay, we'll allow on need, on family and on incapacity.' The wider you put that class, the greater the risk there is of what I call not having horizontal equity between the unit holders. Clearly, the trustees can approach us and say, 'Well, we would like relief', for example, to extend the hardship relief to include people who go overseas. We will look at it, but it is unlikely because intuitively, if that person going overseas has other means, does it really matter that part of their funds remains locked up in Australia?

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Answer (Question 1):

As at 8 July 2010, there have been 5122 applications for redemption under hardship relief provisions, representing \$174.74 million. From those applications, there were 4082 of those applications that have met the criteria and have had their redemption requests paid, amounting to \$96.95 million. This means that 80% of requests were granted.

Answer (Question 2)

The responsible entity of an open-end scheme is required by the *Corporations Act 2001* to freeze redemptions if the scheme ceases to be 'liquid'. A scheme is not liquid unless at least 80% of its assets comprise cash, bills, marketable securities or other property that the responsible entity reasonably expects can be realised for market value within the period provided in the scheme's constitution for satisfying withdrawal requests. A frozen fund will continue to be frozen until such time as the scheme can meet the above test.

The freezing of funds is designed to ensure that, whilst a scheme is not liquid:

1. a member of a scheme obtains the same opportunities to access their capital as all other members of the scheme; and
2. withdrawal only occurs when the responsible entity considers it is in the best interest of all members of the scheme for capital to be withdrawn.

Responsible entities of schemes are required at all times, including while frozen, to manage their schemes in the best interest of members. This includes consideration of whether it is in the best interest of members to offer withdrawal opportunities to members or to terminate and liquidate a scheme. It appears from what you have said that your constituent's fund is offering its members the opportunity to partially withdraw. Presumably they will continue to do this for so long as the responsible entity of that fund considers it is in the best interest of members to do so.

In October 2008, ASIC responded quickly to facilitate withdrawals from frozen schemes for people suffering hardship. Hardship circumstances include:

1. where the member is unable to meet reasonable and immediate family living expenses;
2. compassionate grounds (e.g. medical costs for serious illness, funeral expenses or to prevent foreclosure); and
3. permanent incapacity.

In August 2009, ASIC expanded the hardship relief to permit 4 withdrawals per year up to an aggregate of \$100,000 per year. A cap was set on these withdrawals to limit

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adverse affects on remaining members of mortgage schemes following hardship withdrawals. At the same time, hardship relief was extended to:

1. cover a beneficiary of a deceased estate of a member where the beneficiary is suffering hardship; and
2. make it clear a person unemployed for at least three months without other means may apply for hardship relief.

ASIC has also extended the terms of hardship relief to facilitate operators of frozen funds making hardship payments to members where the fund is in the process of winding up. Responsible entities of frozen funds in the process of wind up will need to apply for this relief.

In relation to whether special consideration can be given to people who are leaving the country permanently, if the member is experiencing hardship, they would be entitled to make application under the existing hardship relief. The responsible entity of the scheme would need to make an application to ASIC for an amendment to the current relief to enable it to consider circumstances outside the terms of the current relief. The proposal to permit a member leaving the country to withdraw in priority to other members would amount to preferential treatment of that member's interest over the interests of all other members (as is the case with all other hardship claims that are paid). We would need to consider whether that would be in the best interest of all members of the scheme or is justifiable in circumstances where many other members of the scheme who wish to withdraw have been unable to do so. To date, the hardship relief has focused on financial and compassionate needs of investors.

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