



ASIC

Australian Securities & Investments Commission

Our Reference:
Your Reference:

National Office Melbourne
485 LaTrobe Street, Melbourne
GPO Box 5179AA, Melbourne VIC 3001,
DX 423 Melbourne

Telephone: (03) 9280 3300
Facsimile: (03) 9280 3306

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The Secretary
Senate Select Committee on Superannuation and Financial Services
Parliament House
CANBERRA ACT 2600

Re: Discussion Paper – Early Access to Super

Your discussion paper raises a number of important issues in respect of which the Australian Securities and Investment Commission (ASIC) – as a co-regulator of the superannuation sector - has a role. The main issues about which we wish to comment are:

- If there is a perception amongst members of the public that their superannuation benefits are their money which should be available for their use whenever required, what might be done to overcome this perception (see Question 2 in your discussion paper)
- Is there sufficient public awareness of the role of the Superannuation Complaints Tribunal in hearing complaints about decisions on the early release of benefits? Should trustees be making available more information and/or education for superannuation fund members about the Tribunal's role? (see Question 29 in your discussion paper)
- What proportion of the Tribunal's work deals with complaints about early release of benefits? (see question 30 in your discussion paper)
- Do people need the assistance of financial or legal advisers to obtain early release of their benefits? Is there a need for better education for fund members about their access to early release on severe financial hardship or compassionate grounds? (see question 33 in your discussion paper)
- Are any steps being taken to protect fund members from unscrupulous advisers in circumstances such as those outlined above? (see question 34 in your discussion paper)

For convenience we have referred to superannuation funds only (although our comments are also relevant to RSA products).

Consumer Education

A number of the issues mentioned above (questions 2, 29, 33 and 34) raise the role of consumer education in early release of benefits. We consider consumer education to be an important aspect of our regulatory activities. We recognise, however, that consumer education is also a responsibility of industry including trustees of superannuation funds and financial intermediaries who might advise clients about, or otherwise become involved with, accessing superannuation benefits.

ASIC has undertaken consumer education:

1. About superannuation generally (including information about how to make superannuation related complaints); and
2. Specifically in relation to early access to superannuation benefits.

General superannuation education

ASIC is not in a position to comment definitively on the extent to which there is some misunderstanding amongst consumers about when you can and can't get access to your superannuation. ASIC encourages people to understand that their superannuation is their money and is therefore worth looking after, however it is also important that consumers understand the reasons for any restrictions on accessing super. In particular, consumers need to understand the underlying purpose of superannuation funds so that they can understand the type of investment their superannuation represents.

ASIC provides information for consumers on superannuation both in hardcopy and on its website. ASIC's two consumer publications that relate to superannuation and investing money from super are:

- *Super decisions – a guide through the superannuation maze*. This guide deals with choosing a fund, changing a fund, what to expect while you are in a fund, complaints and what to do with your money when you retire.
- *Don't kiss your money goodbye*, which gives tips and information about choosing the right financial adviser.

Hardcopies of these guides have been distributed directly by ASIC (eg. at public forums held by ASIC) and by industry participants (eg. *Don't kiss your money goodbye* has been distributed via the Financial Planning Association and its members). Both these guides are also available from ASIC's consumer website.

In October 2001 the Consumer Protection Directorate released ASIC's first consumer education strategy. In that strategy ASIC stated that

"The types of superannuation issues we are likely to focus upon include:

- What to look for when choosing or changing a superannuation fund - including how to use the new disclosure documents introduced by the FSR legislation and understanding the fees associated with super and their impact.
- How to read, understand and use a superannuation statement.
- Information and warnings about accessing superannuation before retirement."

ASIC is also interested in education projects which generally enhance consumer's understanding of the nature of their superannuation benefits and how they might be accessed, for eg. projects which cover:

- basic types of insurance offered with superannuation and what to do with your insurance if you change funds
- calculators for assessing the impact of fees and comparing different superannuation funds
- communication with your super fund – understanding information and making complaints
- different ways of receiving your super eg lump sum, pension, annuity

ASIC refers to the SCT on its consumer website – Fido (www.fido.asic.gov.au). It is referred to in relation to information on how to complain and in the sections on superannuation. Details of the tribunal and contact details are provided.

In 2002, ASIC is planning to produce an information sheet called "How to Complain". This information sheet will deal with the basic steps to complaining, legal requirements for internal and external complaints procedures under the Financial Service Reform Act, and contact details for where you can go to complain. The SCT will feature in this information sheet. The information sheet will also be translated in a number of other languages.

Education targeted at early release of benefits

ASIC believes that there is a need for better education of fund members about the circumstances in which they might have access to early release of their super benefits, as evidenced by recent enforcement action. If people understand the reasons behind restricting early access to super, then they may be less likely to fall victim to scams or to be tempted by offers of quick and easy access to their super funds before retirement.

As mentioned in your discussion paper (at paragraph 5.13) ASIC has released a consumer alert warning the public about advisers who offer to help them easily access their super before retirement (Media Release 01/100, 21 March 2001). This consumer alert is available from the website and it outlines the restricted circumstances in which a person can access their super early.

In its alert, ASIC warned consumers under 55 of advisers offering early access to their preserved superannuation benefits. The release detailed a number of successful enforcement actions by ASIC against financial advisers who had fraudulently

arranged for their clients' preserved superannuation benefits to be paid out in cash. In these cases the adviser's either fraudulently took all or part of their client's superannuation benefits or they took large fees before forwarding on the benefits.

ASIC suggests that people should first ask their super fund or the Australian Prudential Regulation Authority (APRA) for information about early access to superannuation in legitimate cases of severe hardship. If consumers are unsure about these issues, ASIC recommends they should seek independent advice from their lawyer, employer or union representative.

Disclosure

The issues mentioned in questions 2, 29, 33 and 34 also raise the adequacy of disclosure requirements that apply to trustees of superannuation funds.

ASIC has responsibility for these disclosure requirements. We note that whilst the current Superannuation Industry (Supervision) Regulations (SIS Regulations) and future financial services reforms regulations include some general requirements for the disclosure of what benefits are payable and when, there is no specific obligation for trustees to provide information or more detailed information about accessing super early. (See, for example, SIS Regulations 2.10(3)(d) & (e) and 2.16(1)(c) & (d)).

Also this type of benefits information must only be given prior to or soon after a joining a superannuation fund i.e. it is not information which is required to be repeated in annual reports (although changes to the benefit arrangements of a fund will need to be notified from time to time). What this may mean is that a member of a superannuation fund who has reason to seek early release of benefits may not be easily able to access information about how to access benefits early without approaching the fund and/or the regulator for this information.

Licensing and conduct of intermediaries (question 34)

As indicated by ASIC's consumer alert (referred to above) ASIC has undertaken a number of successful enforcement actions against financial adviser's involved in accessing superannuation benefits early.

Our role in supervising the licensing and conduct of financial services intermediaries arises under the current Corporations Law and the Insurance (Agent & Brokers) Act (and, in future, under financial services reform legislation). Our surveillance and enforcement activities in this area are generally aimed at ensuring:

- intermediaries comply with their legal obligations including their general obligations under their licence or authorisation (regardless of whether they provide advice);
- where advice is given, that advice is given in accordance with applicable legal requirements;
- participation of intermediaries in relevant complaints handling mechanisms; and

- misleading and deceptive conduct does not occur.

With the commencement of financial services reforms on 11 March 2002, there may be increased opportunity for ASIC to deal with third parties involved in accessing super benefits early. An interesting aspect of the reforms is to bring within the scope of dealing in financial products, which is a distinct financial service that requires to be carried out under a licence, "arranging" the disposal of financial products. As a result, a person who is involved in arranging a member to obtain an early release of that member's benefits is likely to be considered as a person conducting a dealing service regardless of whether or not any advice is provided. Therefore such activities may trigger the application of the licensing and conduct requirements under the FSR. This is likely to provide ASIC scope for regulating such activities more directly than under the current provisions.

Complaints-handling (question 30)

We note that the Superannuation Complaints Tribunal may not be the only complaints mechanism that may deal with complaints relating to early access of benefits. To the extent that a complaint relates to conduct of an intermediary, the appropriate avenue for complaint may be another dispute resolution scheme (for example, FICS).

It may therefore also be useful to seek and consider information from other schemes about consumer complaints – and complaint trends – that may relate to early release of benefits.

If you have any queries in relation to our submission, please contact Andrea Corfield on (03) 9280 3340. For further information relating to our consumer education strategy, please contact Peter Kell, Executive Director, Consumer Protection on (02) 9911 2092.

Yours faithfully



Ian Johnston
Executive Director,
Financial Services Regulation