



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: IIC/DHvk:1438256

7 February 2018

Mr Jonathan Smithers
Chief Executive Officer
Law Council of Australia
DX 5719 Canberra

By email: natasha.molt@lawcouncil.asn.au

Dear Mr Smithers,

Review of the early release of superannuation benefits

Thank you for your memo dated 24 January 2017 seeking the contribution of the Law Society of NSW in respect of a Law Council submission to the Treasury on the review of the early release of superannuation benefits (the "Review"). The Law Society's response is informed by the Indigenous Issues Committee. Given the short timeframe for response, we have not had the opportunity to consider the issues in detail. However, we have attempted to set out some of the more pressing concerns in general terms.

Attached for your information is a brief paper prepared by the Public Interest Advocacy Centre ("PIAC paper") following a forum attended by key stakeholders in 2013 on securing better outcomes for Aboriginal and Torres Strait Islander people in superannuation. While the issues canvassed in the PIAC paper are broader than the issues raised in the Review, we include this paper as it provides useful context for the challenges facing Indigenous people in respect of accessing superannuation. While we do not necessarily endorse all of the recommendations made in the PIAC paper, in our view it is useful background. The Law Council may wish to bring to the Treasury's attention the specific factors that affect Indigenous people in respect of accessing superannuation, including:

- issues around identifying members and their family, kinship structures, distribution and dependency;
- the lower life expectancy of Indigenous peoples leading to reduced opportunities to enjoy superannuation; and
- the need for specific education, communication and assistance for Indigenous community members in respect of superannuation generally, and in particular, the distinction between how superannuation is distributed after death and probate processes.

1. General comments

The Law Society's submission does not address specific questions posed in the Review. Rather, we take the opportunity to draw attention to the experience of our members in respect of some of the challenges related to early release of superannuation faced by their Indigenous clients.

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We note the tension between the preservation principle and the principles in respect of early release on compassionate grounds, or for severe financial hardship. We note the stated purpose of the Review, which is to determine whether the superannuation system continues to be fit for purpose and whether it serves the interests of consumers.

As an in-principle position, the Law Society supports allowing trustees discretion for the payment of superannuation benefits for severe financial hardship and for medical services based upon the member's particular circumstances. However, it is the Law Society's view that public policy makers should not view superannuation as a replacement (or indeed a supplement) for a sufficient social safety net that meets the health, housing, legal, educational and social security needs and rights of individuals. Generally, in the experience of our members, the underlying crises driving attempts to access superannuation earlier by Indigenous clients should, in-principle, be met by an adequate social safety net. However, as the social safety net is not always sufficient to meet individual needs, there are many who seek to access superannuation early as a matter of last resort. In our view, inadequate social spending requiring individuals to access funds intended for a different, longer term purpose will likely entrench existing disadvantage. If individuals are in fact successful in accessing superannuation assets early to address crises, they may merely be postponing the larger question of financial solvency to a point in time where they are no longer able to generate an income, when they may be older, more unwell and even less able to access services.

With that in mind, we make the following comments on particular issues below.

2. Earlier preservation date for Aboriginal people

The life expectancy gap between Indigenous people and the mainstream population is well-documented. We refer to the detailed discussion in the PIAC paper on this issue (pp 2-4). We note that Indigenous people on average reach the preservation and tax-free threshold ages closer to the end of their lives than the general population. We agree with the argument that there is a compelling case for a lower preservation and lower tax-free threshold age to give Indigenous people the same opportunity as the rest of the general population to enjoy a higher standard of living in their retirement years. We note the example given in the PIAC paper (p 3) where the law has recognised that a difference in life expectancy justifies a difference in treatment based on gender, in respect of the respective pension ages for men (55) and women (60).

We note also that many Indigenous people experience poorer health and suffer a higher rate of chronic illness than the general population. For example, there is a high prevalence of serious diseases such as diabetes and kidney disease among Australia's Indigenous population. These conditions are likely to affect those individuals' life expectancy.

We submit that there should be flexibility in respect of the preservation and tax-free threshold age for Indigenous people. One strategy would be to adjust the preservation age based on the population average, consistent with the actuarial evidence in this regard. Another approach would be to allow for individual preservation ages to be lowered on a case by case basis, considering the circumstances and likely life expectancy of individuals, in addition to the options for early access now available, for example in cases of terminal illness. Regard will have to be had in respect of an appropriate definition of such medical conditions. In our view, such flexibility would be consistent with the preservation principle.

3. Housing

It continues to be very difficult for individuals to access social housing, and the lack of housing affordability in NSW is an acknowledged and ongoing phenomenon. In the

experience of our members, many low-income people are required to enter into private rental accommodation, often at the edge of their means.

The Review consultation paper notes the tension between the preservation principle, and the genuine hardship and fair and effective principles in respect of making superannuation funds available for rental payments. It is our position that governments should bear primary responsibility for providing adequate housing, consistent with Australia's obligations under the International Covenant on Social, Economic and Cultural Rights. However, we acknowledge the current reality is that governments are not adequately meeting this need.

We note that our members hold a diversity of views on whether early access to superannuation benefits should be permitted for rental arrears. For example, we note the concern that accessing superannuation benefits early to pay rental arrears is in conflict with the preservation principle as no equity is being built. We also note the concern that using superannuation in this way might simply run down the assets of disadvantaged individuals, without ultimately resulting in greater housing security, particularly given that no-fault evictions are an option for landlords in NSW.

We note concerns also that providing access to superannuation benefits early to meet rental arrears may create perverse incentives for landlords. For example, we understand that Housing NSW has the discretion to waive debts but might not do so if it first requires individuals to run down their superannuation benefits.

However, the Law Society notes that a person facing rental eviction is in the same situation as a person facing mortgage foreclosure – that is, they are both facing the prospect of homelessness.

The Law Council might consider a proposal to allow early access to superannuation benefits to meet rental arrears in limited circumstances. For example, the individual should have already accessed all available emergency government payments. Additionally, the person might be required to be in private rental arrangements, as public housing providers should not be evicting tenants into homelessness (notwithstanding that this is in fact taking place). If the Law Council saw the merit in this suggestion, in our view, a rental eviction notice might be the appropriate threshold requirement.

Some of our members noted that it would not be inconsistent with the preservation principle to allow individuals to access superannuation assets early to provide a rental bond, or to provide a deposit for a small mortgage (for example for accommodation options such as a mobile home). However, other members are concerned that it is incumbent on governments to meet the right to adequate housing, and that allowing access to private funds (intended for retirement) incorrectly shifts the burden on to individuals. The Law Society has not come to a settled view on this issue, and we raise it for the Law Council's consideration.

4. Domestic and Family Violence

The Law Society agrees with the view of the Australian Law Reform Commission in *Family Violence and Commonwealth Laws – Improving Legal Frameworks (ALRC Report 117)* that it is not appropriate to include family violence as a purpose for which an individual may apply for early access on compassionate grounds, or to create a new ground of early release on the basis of family violence. In our view, the hardships that can arise out of situations of domestic violence, including financial hardship and homelessness, should be met by the social safety net, and to draw on private funds to meet these needs again shifts the burden on to individual victims, potentially entrenching disadvantage. We also note some of the funding available to support victims of domestic and family violence under domestic violence reforms in NSW.

5. Victims of crime compensation

The Law Society does not agree that victims of crime should be able to access a perpetrator's superannuation for compensation. In NSW, fines and restitution orders can be rolled into other state debt, which is managed by Revenue NSW. Debtors can pay off their debts through a work and development order scheme, which provides for debtors to undertake various forms of community service, volunteer activities, and health activities, such as participation in rehabilitation or mental health treatment. In NSW, there is currently a positive alternative to bankruptcy or accessing superannuation in relation to such debts. In our view, this system should be made available in other jurisdictions. We note that this scheme is not in relation to private debts, such as costs orders or civil awards. In those cases, we are of the view that the current bankruptcy system correctly protects superannuation and this position should be maintained.

6. Consistency of decision-making

In the experience of our members, applications to access superannuation early on compassionate grounds or for reasons of financial hardship may receive uneven treatment. It is not clear to us whether this is due to inconsistency between individuals applying the rules, or whether there is inconsistency between the policies of different funds. In any event, in our view, there should be an industry-wide effort to address the issue of standard and consistent decision-making.

7. Other issues relevant to Indigenous people

While some of these issues may not be directly within the scope of this Review, we take the opportunity of raising them for consideration as they are broadly relevant to the question of whether the superannuation system is serving the interests of consumers.

We are advised by our members that issues around accessing lost and unclaimed superannuation are particularly pertinent to Indigenous people, where awareness of the superannuation system, and financial literacy levels, may be low. For example, there are issues in respect of nominations that are not updated. Many Indigenous people work at many different jobs throughout their working life. We understand also that many Indigenous people start working earlier than the general population and may nominate their partner at the time as a beneficiary. However, they may not revisit the nomination if their life circumstances change.

As for many in the general population, education is needed for Indigenous communities in respect of superannuation, distribution and to highlight the distinction between superannuation distribution and probate processes.

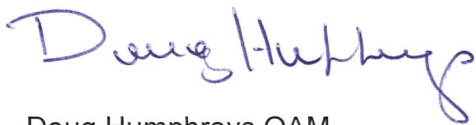
We endorse the view set out in the PIAC paper (p 5) that there should be a positive obligation on trustees to notify members and beneficiaries about the superannuation benefits of deceased fund members that remain inactive or unclaimed. We echo the view that consideration should be given to processes that could operate to notify trustees, or to actions trustees could be expected to take, to search for information relating to the death of members. For example, trustees could be obliged to periodically review the online published probate notices NSW (and its equivalent in other States). However, for a number of reasons, this is only a partial solution. We understand that superannuation benefits are often unclaimed because the member changes name, address or (mostly) both. The probate notice will state the deceased's name in the will, and the address at date of death. These may each be different to the trustee's records. Further, this does not address lost and unclaimed superannuation benefits for deceased fund members where there is no estate.

We suggest that it would also assist if superannuation funds made it easier for a deceased person's representative to search for unclaimed money and uncollected superannuation benefits. For example, in the case of a deceased member who may not have worked for some years, the executor or administrator may not have the deceased's tax file number and may not be easily able to find it. A search based on a range of factors, such as date of birth, name of former employer, previous name, and previous address, would make it easier for an executor, or administrator, to properly search. Again, this measure would only address lost and unclaimed superannuation benefits for deceased fund members where there is an estate to administer.

We also support the call for superannuation fund staff to undertake specialised training in communicating effectively with Indigenous people (and/or to employ Indigenous people in liaison roles), and for the Federal Government to allocate additional resources to appropriate organisations to provide assistance to Indigenous people applying for superannuation benefits (PIAC paper pp 7-8).

Thank you for the opportunity to provide comments. Questions may be directed at first instance to Vicky Kuek, Principal Policy Lawyer, at victoria.kuek@lawsociety.com.au or (02) 9926 0354.

Yours sincerely,



Doug Humphreys OAM
President
Encl.



**Securing better outcomes for Aboriginal
and Torres Strait Islander people in
superannuation**

5 April 2013

**Sarah Bassiuoni, Solicitor, Indigenous Justice Program
Alexis Goodstone, Principal Solicitor**

Introduction

On 12 March 2013, in partnership with the Anti Discrimination Board (ABD) and the National Congress of Australia's First People (National Congress), the Public Interest Advocacy Centre (PIAC) hosted a forum to discuss the difficulties faced by Aboriginal and Torres Strait Islander people in relation to superannuation. This paper is a summary of the issues raised at the forum with some further explanation and research included.

The forum was attended by consumer advocates, legal professionals and others working in the area. The forum participants shared their experiences and discussed potential solutions and further work to be done to achieve better outcomes for Aboriginal and Torres Strait Islander people. A list of those who attended is at Appendix A.

Some of the main issues raised, and reflected in this paper, were:

- The lower life expectancy of Aboriginal and Torres Strait Islanders, leading to reduced opportunities to enjoy a retirement income generated by superannuation;
- Consideration of Aboriginal and Torres Strait Islander kinship in relation the distribution of benefits;
- The difficulties of locating lost and unclaimed superannuation;
- Issues of identification of members of superannuation funds (members) and their family;
- The need for more effective communication with Aboriginal and Torres Strait Islander members and their families;
- The need for specific assistance for Aboriginal and Torres Strait Islander people to access their superannuation or the superannuation of deceased relatives;
- The importance of education to fill the significant gap in the Aboriginal and Torres Strait Islander community's knowledge of superannuation and financial literacy skills more generally.

The issues raised in this paper have been raised by numerous organisations and individuals before and have been presented at various industry and government forums. We acknowledge the work already being done by government and industry on a number of fronts to address them.

This paper seeks to add further to the growing body of written work documenting the issues and potential solutions in relation to Aboriginal and Torres Strait Islander people and superannuation. Many of the individuals and organisations who attended PIAC's forum have a wealth of useful information to share about the real-life experience of Aboriginal and Torres Strait Islander people trying to navigate a complex system to claim their entitlements. Others have expertise in superannuation law and processes, and all have a high degree of commitment to achieving change.

The issues in relation to Aboriginal and Torres Strait Islander people and superannuation are a 'work in progress'.¹ PIAC and the organisations who attended our Forum hope to engage with the superannuation industry and government to address the problems and barriers to access identified in this paper.

¹ National Aboriginal and Torres Strait Islander Women's Alliance, 'Aboriginal & Torres Strait Islander Women and Superannuation', Report, 5 February 2013.

Disadvantage

The issues raised in this paper occur against a history of the dispossession of Aboriginal and Torres Strait Islander people and of forced dependency and discrimination.²

As a result of this, Aboriginal and Torres Strait Islander people suffer grossly disproportionate rates of disadvantage against all measures of socio-economic status, including education, employment, income, housing and health.³

This explains many of the factors discussed below, which create difficulties for Aboriginal and Torres Strait Islander people in accessing the superannuation system. It also highlights the importance of getting the superannuation system right, in order to address disadvantage, rather than further entrenching it.

In 2011, 55.4% of Aboriginal and Torres Strait Islander people 15 – 64 years old were participating in the labour force in mainstream employment or in the Remote Jobs and Communities Program. In comparison, 66.5% of non-Indigenous people were participating in the workforce.⁴ As a result, fewer Aboriginal and Torres Strait Islander people in this age bracket will have superannuation at all in their retirement.

The Women's Action Alliance has suggested some initiatives to address this disparity for women (which would also assist men, perhaps to a lesser extent), including a suggestion that single income families be able to take out superannuation in the name of the non-earning spouse in any scheme to which the earning spouse is eligible, with all the consequent tax benefits, and a means-tested superannuation voucher scheme for welfare recipients and those on low incomes to allow them to participate in a scheme.⁵

These broader issues are important to acknowledge and address in any discussion of Aboriginal and Torres Strait Islander people and superannuation, as Indigenous socio-economic disadvantage will be reflected in the area of superannuation unless and until the broader issues of disadvantage are addressed. However, these broader issues are beyond the scope of this paper, which focuses on access to existing entitlements.

Lower life expectancy

The lower life expectancy of Aboriginal and Torres Strait Islander people compared with other Australians is well documented. Over the period 2005 – 2007, the gap in life expectancy between Aboriginal and Torres Strait Islander males and non-Aboriginal and Torres Strait Islander males was 11.5 years and for females 9.7 years.⁶ The median age of the Aboriginal and Torres Strait

² Ibid 10.

³ Australian Institute of Health and Welfare, *Socio-economic context of Indigenous health*, <<http://www.aihw.gov.au/socio-economic-context-of-indigenous-health/>>.

⁴ Australian Bureau of Statistics, *Labour Force Characteristics of Aboriginal and Torres Strait Islander Australians, Estimates from the Labour Force Survey 2011 [6287.0]* (26 July 2012), <<http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/FB67B9C99718CEB4CA257A460018E280?opendocument>>.

⁵ National Aboriginal and Torres Strait Islander Women's Alliance, above n1, 8.

⁶ Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait*

Islander population is 21 to 16 years less than the national median age.⁷ Two of the main indicators of lower life expectancy are multiple health difficulties and location.⁸

As a result of their lower life expectancy, many Aboriginal and Torres Strait Islander people do not enjoy their superannuation to the same extent as other Australians. The superannuation preservation and tax-free threshold ages are reached by Aboriginal and Torres Strait Islander people, on average, closer to the end of their life, than for the rest of the community. Because of their increased risk of chronic illness, it would appear reasonable to assume that Aboriginal and Torres Strait Islander people tend to retire at an earlier age than non-Indigenous people.

Participants at PIAC's Forum argued that Aboriginal and Torres Strait Islander people should be able to access their superannuation at a reasonable age, comparative to the broader community. They considered that there was a compelling case for a lower preservation and a lower tax-free threshold age to give Aboriginal and Torres Strait Islander people the same opportunity as the broader community to achieve a higher standard of living in their retirement years.

One example of where the law has recognised that a difference in life expectancy justifies a difference in treatment is the case of women and men accessing the pension. Life expectancy for males in Australia is 79.5 years and for women 84.⁹ The pension ages for women and men reflect this significant difference. The pension age for men is 55 and for women 60.¹⁰

It should be noted that the difference in life expectancy between Aboriginal and Torres Strait Islander and non-Indigenous people is significantly greater than the life expectancy difference between men and women.

The superannuation system is designed to provide money for people in the years between their retirement and their death. Participants at PIAC's Superannuation Forum identified that further data was needed in relation to the average age of retirement amongst Aboriginal and Torres Strait Islander people, and the percentage of Aboriginal and Torres Strait Islanders in paid employment at different ages, in order to further consider ways to address the impact of lower life expectancy for Aboriginal and Torres Strait Islander people.

Islander People (cat. No 4704.0) (October 2010),

<<http://www.abs.gov.au/AUSSTATS/abs@.nsf/lookup/4704.0Chapter218Oct+2010>>.

⁷ Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander Australia revealed as 2011 Census data is released* (21 June 2012),

<<http://www.abs.gov.au/websitedbs/censushome.nsf/home/CO-63?opendocument&navpos=620>>.

⁸ Australian Bureau of Statistics, *Year Book Australia 2012: Health* (24 May 2012),

<<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/1301.0~2012~Main%20Features~Mortality,%20life%20expectancy%20and%20causes%20of%20death~231>>.

⁹ Australian Bureau of Statistics, *Our Health Risks – How does Australia compare?* (cat. No 4102.0), (June 2012),

<<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features20Jun+2012#INTRODUCTION>>.

¹⁰ Australian Tax Office, *Guide to Superannuation for individuals* (29 January 2013),

<<http://www.ato.gov.au/individuals/PrintFriendly.aspx?doc=/content/00250233.htm>>.

Kinship in Aboriginal and Torres Strait Islander communities

In many Aboriginal and Torres Strait Islander families, people maintain financial obligations towards others not necessarily closely related to or living with them, including towards people who are not related to them by blood or marriage. People at PIAC's Superannuation Forum reported that Aboriginal and Torres Strait Islander people often found it very difficult to establish financial dependency or interdependency, as those concepts were interpreted by superannuation trustees within a Western cultural framework. As a result, superannuation or death benefits were not always distributed to those who were financially dependent on the fund member.

It was acknowledged that some funds are already leading the way in relation to recognising Aboriginal cultural relationships and, where possible and within the law, taking a broad view in using their discretion as fund trustees.

Participants considered that more work needs to be done to educate trustees regarding these cultural issues. Better communication and relationships between funds and their Aboriginal and Torres Strait Islander members was considered key, as well as a commitment to understanding kinship in Indigenous communities (including the variation within it), and to taking the time involved in properly listening to people's stories and helping them to explain their extended family relationships.

Participants at the Forum also reported that even if certain relationships had the potential to be recognised as relationships of dependency, Aboriginal and Torres Strait Islander people found it very difficult to meet superannuation funds' evidentiary requirements (see further below).

The rigidity of the rules for nominating beneficiaries was also raised as a significant issue. Participants reported that many Aboriginal and Torres Strait Islander people did not know about the option of nominating beneficiaries or found the process confusing and difficult. Many also did not fully understand the legal status of a binding and non-binding nomination. Participants thought there was scope to simplify the process, educate people about it and possibly to remove or alter the need to remake binding nominations every three years.

Participants at the PIAC Forum also discussed whether it would be desirable to seek law reform to increase the categories of people considered as beneficiaries and/or to broaden the definition of interdependent. Recognising the complexity of these issues, and the multiple factors weighing for and against, no firm conclusions were reached.

Lost and unclaimed super

Locating lost and unclaimed super is an issue for many in the community. There are also major challenges for potential beneficiaries in locating deceased members' entitlements. Industry and governments alike have recognised that unclaimed superannuation benefits represent a flaw in the superannuation system.

Participants at PIAC's Forum working in the superannuation system reported that the current reforms being implemented in relation to the auto-consolidation of inactive accounts, and the introduction of the Tax File Number as a primary locator to link contributions and to search for accounts that members hold, as well as other Stronger Super measures, are positive long-term initiatives that will help to simplify the system for all in the community, including Aboriginal and

Torres Strait Islander people. However, these measures will take a significant time to be fully implemented and gaps will likely remain.

Participants agreed that better communication between superannuation funds, the Australian Taxation Office and Aboriginal and Torres Strait Islander fund members is essential for ensuring that people are able to access their entitlements. Assistance for Aboriginal and Torres Strait Islander people to locate their lost and unclaimed superannuation that is, services adequately funded to assist Indigenous people make enquiries and applications are also needed. These are discussed further below.

Participants at PIAC's Forum also discussed whether a positive obligation could be imposed on trustees to notify members and beneficiaries about the superannuation benefits of deceased fund members that remain inactive or unclaimed. The central issue in relation to unclaimed superannuation for deceased members is that trustees may not be aware of a fund member's death. Participants thought that consideration should be given to processes that could operate to notify trustees, or to actions trustees could be expected to take to search for information relating to the death of members.

Identification of members and their family

Participants at the forum reported that the identification and documentary evidence requirements of many superannuation funds create major procedural difficulties for Aboriginal and Torres Strait Islander people in relation to locating lost superannuation, making applications for early access to superannuation and/or locating and claiming the superannuation of a deceased member.

Many members of the broader community find it difficult to provide the identification papers and other documentary evidence required for superannuation enquiries and applications. For Aboriginal and Torres Strait Islander people, participants reported that the issue is further complicated by, for example, the misspelling of unusual or traditional names and lack of accuracy with regard to the reporting and recollection of dates of birth. Many Aboriginal and Torres Strait Islander people do not have important documents such as birth certificates, and find it especially difficult to deal with large companies by telephone, and to navigate the complex requirements in relation to providing appropriate identification.

Even if people have the necessary identification documents, having their documents verified in remote locations can be difficult, with access to justices of the peace and solicitors being very limited.

As is the case regarding lost and unclaimed superannuation, better communication between superannuation funds and Aboriginal and Torres Strait Islander members was identified as part of the solution, as was better resourced services to assist Indigenous communities.

Participants at PIAC's Forum also discussed whether superannuation funds could loosen the requirements for proving identity, or introducing flexibility in relation to methods of proving identity, in order to overcome the special difficulties faced by some Aboriginal and Torres Strait Islander fund members and beneficiaries. It was recognised that making the system more accessible has to be balanced with protecting the security of members' funds.

Communication and education

Super funds encourage communication via the telephone, emails or websites. Offices of super funds are often not accessible to members of the public and are generally located in the central business districts of Sydney or Melbourne. Written communication from superannuation funds is often drafted in technical language, with dense information booklets enclosed.

When contacting a superannuation company by telephone, callers are often required to respond to an automated message and select the required option. Once a fund staff member is reached, identification issues may prevent the person making the enquiry from obtaining the desired information. Technical terms and complex requirements can make comprehension difficult, and may alienate people trying to understand and access the system.

These issues affect many in the community, but particularly Aboriginal and Torres Strait Islander people, many of whom experience high levels of socio-economic disadvantage and lack of financial literacy skills.

In addition, a significant number of Indigenous people face a language barrier. The main language spoken at home for 11.5% of Aboriginal and Torres Strait Islander people aged 15 years and over is an Aboriginal or Torres Strait Islander language. More Aboriginal and Torres Strait Islander people in remote areas speak an Aboriginal or Torres Strait Islander language (49%) than those in non-remote areas (7%).¹¹

Many Aboriginal and Torres Strait Islander people are not comfortable dealing with people other than on a face-to-face basis, and due to past negative experience with mainstream services or institutions, may be reluctant and anxious about handling the process on their own.

Participants at PIAC's Superannuation Forum considered that one of the key short-term initiatives that superannuation funds, the Department of Human Services and the Australian Taxation Office could implement to address the access issues faced by Aboriginal and Torres Strait Islander people would be to employ designated liaison staff to work with Aboriginal and Torres Strait Islander communities and people making enquiries or applications.

Participants suggested that these designated staff should undertake specialised training in communicating effectively with Aboriginal and Torres Strait Islander people, including cultural awareness training. As far as possible, superannuation companies could seek to employ Aboriginal and Torres Strait Islander staff in these roles.

With such programs already implemented successfully by a number of funds, such staff enable appropriate time and consideration to be given to the particular difficulties commonly experienced by Aboriginal and Torres Strait Islander people, and a level of expertise to be developed in addressing them.

¹¹ Australian Bureau of Statistics, *Summary Booklet National Aboriginal and Torres Strait Islander Social Survey*, Canberra (2008),
<[http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/4AA7ADCD74C0561ACA25771F0018AF87/\\$File/NATSISS%20A5%20booklet-Australia%2028%20June.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/4AA7ADCD74C0561ACA25771F0018AF87/$File/NATSISS%20A5%20booklet-Australia%2028%20June.pdf)>.

Participants considered that having designated liaison staff for Aboriginal and Torres Strait Islander clients should be a short-term initiative. The long-term aim should be to have all customer service staff undertake regular, specialised training in communicating effectively with Aboriginal and Torres Strait Islander clients, including cultural awareness training.

Many Aboriginal and Torres Strait Islander people who feel intimidated by the superannuation application process seek to appoint people that they trust to act for them, including financial counsellors, Aboriginal Legal Service field officers and solicitors employed by local Aboriginal Land Councils. However, participants at PIAC's Superannuation Forum reported that superannuation funds sometimes refuse to act on authorities provided by financial counsellors and others seeking to make enquiries or applications on their clients' behalf.

It was acknowledged that rules relating to authorities to act must balance the rights of people to appoint representatives with the need to guard against fraudulent applications.

Participants at the Forum agreed that further consultation on the issue of authorities, and a better understanding of the practice of superannuation companies, was required before this discussion could be taken any further.

Another issue discussed in relation to communication was the need for superannuation funds to simplify their written communication and use plain English when writing to members.

Participants also agreed that superannuation funds, in partnership with the Federal Government, should ensure that interpreters are available to assist Aboriginal and Torres Strait Islander members who do not speak English.

In relation to education more broadly, participants considered that better targeted education for Aboriginal and Torres Strait Islander communities was required.

The National Aboriginal and Torres Strait Islander Women's Alliance, in its recent report, *Aboriginal & Torres Strait Islander Women & Superannuation*, states that, in relation to education:

- A verbal transfer of knowledge has the potential to work more effectively – this may be achieved via targeted workplace visits;
- Superannuation funds could link in with Indigenous conferences to deliver superannuation education;
- Superannuation companies could form relationships with Indigenous peak bodies, where many Aboriginal and Torres Strait Islander people are employed; and
- Superannuation funds could provide education via Indigenous TV channels, radio stations, YouTube and social media.¹²

Assistance for Aboriginal and Torres Strait Islanders

Participants at PIAC's Superannuation Forum considered that there was inadequate support and assistance provided to Aboriginal and Torres Strait Islander people in relation to locating and/or making applications for release of superannuation. Assisting clients with superannuation applications, for example applications for early access, is resource intensive and time consuming.

¹² National Aboriginal and Torres Strait Islander Women's Alliance, above n1,16.

Currently organisations such as the Aboriginal Legal Services, Legal Aid and Aboriginal Land Councils' are generally not funded to provide superannuation assistance, with some exceptions.

Participants at PIAC's forum agreed that the Federal Government should allocate additional resources to appropriate organisations to provide assistance to Aboriginal and Torres Strait Islander people applying for superannuation benefits.

Low financial literacy

There are low levels of understanding of the superannuation system throughout the Australian community. In Aboriginal and Torres Strait Islander communities, this combines with low rates of financial literacy and health, educational and social disadvantage with the result that many Aboriginal and Torres Strait Islander people find it very difficult to access their superannuation benefits, including early access on compassionate or other grounds and access by dependants on the death of fund members.

Participants at the Forum considered that the Federal Government, in partnership with the superannuation industry, should conduct an extensive and targeted information campaign about superannuation in Aboriginal and Torres Strait Islander communities. Campaign information should be provided in local community languages, where appropriate, and Aboriginal and Torres Strait Islander people should be involved in the design and delivery of the education campaign.

Participants considered that it would be helpful for consumer advocates to be educated about what questions to ask Aboriginal and Torres Strait Islander people when discussing superannuation, and for Indigenous people to be provided with information and education about what kinds of questions they should ask when speaking with someone from a superannuation fund.

Inadequate data

It is difficult to identify basic data concerning superannuation and Aboriginal and Torres Strait Islander people. While anecdotal evidence suggests there are significant problems with access to superannuation in Aboriginal and Torres Strait Islander communities, evidence-based solutions will require that better data is obtained and analysed.

Participants at PIAC's Superannuation Forum suggested that superannuation funds ask members whether they wish to identify as Aboriginal or Torres Strait Islander.

Basic data about the number of Aboriginal and Torres Strait Islanders who make applications for early release of superannuation, on what grounds, and with what rate of success, would also assist appropriate policy development.

Appendix A
Attendees at PIAC's Superannuation Forum
12 March 2013

Name	Organisation	Title
Rod Little	The National Congress of Australia's First People	Director
Felicity Huntington	Anti-Discrimination Board (ADB)	Team Leader, Aboriginal and Torres Strait Islander Outreach
Stepan Kerkyasharian	Anti-Discrimination Board (ADB)	President (part attendance)
Colleen Starkis	Aboriginal and Torres Strait Islander Advisory Group, ADB	Community Member
Nathan Tyson	Aboriginal and Torres Strait Islander Advisory Group, ADB	Community Member
Anna Payten	Allens Linklaters – Sydney	Pro bono coordinator Sydney
John Berrill (by telephone)	Maurice Blackburn – Melbourne	Principal, Superannuation & insurance
Kathryn Rich (Kate) (by telephone)	Tangentyere Council – Alice Springs	Financial Counsellor
Alexander Grosart	Legal Aid NSW	Senior Solicitor, Human Rights Section
David Coorey	Legal Aid NSW	Solicitor, Consumer Law Section
Francesca Ciantar	Legal Aid NSW	Solicitor, Community Outreach, Civil Law
Unaise Buli and Benitta Addo (by telephone)	Indigenous Consumer Action Network (Qld)	Financial Counsellors (in training)
Vicky Kuek	Law Society	Senior Policy Lawyer
Gordon Simon	NSW Aboriginal Land Council	Indigenous Money Mentor
Phil Turner	Clayton Utz – Sydney Office	Senior Associate, Superannuation
Robynne Quiggin	Australian Securities and Investment Commission	Senior Manager, Indigenous Outreach Team
Alexis Goodstone	Public Interest Advocacy Centre	Principal Solicitor
Deirdre Moor	Public Interest Advocacy Centre	Manager Policy & Programs
Louise Beange	Public Interest Advocacy Centre	Seconded Solicitor
Sarah Bassiuoni	Public Interest Advocacy Centre	Solicitor, Indigenous Justice Program