



Guidance Notes and Circulars

Superannuation Circular No. I.C.2

Payment Standards for Regulated Superannuation Funds

September 2006



Disclaimer and copyright

1. The purpose of this circular is to provide general guidance on how the Australian Prudential Regulation Authority (APRA) interprets and administers relevant legislation. It is not exhaustive in its coverage of rights or obligations under any law.
2. This circular is based on APRA's interpretation of existing laws and may be affected by changes to legislation and Court decisions after the date of this circular.
3. This circular is not legal advice and users are encouraged to obtain professional advice about the application of the relevant legislation to their particular circumstances and to exercise their own skill and care in relation to any material contained in this circular.
4. APRA disclaims any liability for any loss or damage arising out of any use of this circular.
5. This circular is copyright. You may use and reproduce this material in an unaltered form only for your personal, non-commercial use or non-commercial use within your organisation. Apart from any use permitted under the *Copyright Act 1968*, all other rights are reserved. Requests for other types of use should be directed to APRA.

Contents

Objective	5
Introduction	5
Cashing of benefits	6
Meaning of cashed	6
In-specie payment	6
To whom benefits may be cashed	6
Release of benefits for ancillary purposes	8
Death benefit nominations	8
Compulsory cashing of benefits	10
Form of benefit payments	10
Voluntary cashing of benefits	11
Voluntary cashing of preserved and restricted non-preserved benefits	11
Voluntary cashing of unrestricted non-preserved benefits	11
Priority in cashing benefits	11
Rollovers and transfers	12
Portability rules	12
Consent to a transfer or rollover of benefits	13
Successor Funds	13
Conditions of release	14
Retirement	14
Attaining preservation age – transition to retirement	15
Attaining age 65	16
Death	16
Terminating gainful employment – less than \$200	16
Terminating gainful employment – \$200 or more	16
Temporary incapacity	17
Permanent incapacity	17
Severe financial hardship	18
Compassionate grounds	18
Departing temporary residents	19

Contents (cont.)

Eligible spouse contributions	20
Family Law Act payments	20
Capital gains tax exempt components	20
Preservation	21
Preserved benefits	21
Restricted non-preserved benefits	22
Unrestricted non-preserved benefits	22
Power to alter preservation status	23
Penalties	23
Schedule 1	24
Conditions of release and cashing restrictions – preserved benefits and restricted non preserved benefits	24

Objective

1. The aim of this circular is to explain the requirements of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) for the payment of members' benefits from regulated superannuation funds.
2. This circular replaces *Superannuation Circular No. I.C.2. Payment Standards for Regulated Superannuation Funds* which was released by the Australian Prudential Regulation Authority (APRA) in March 2006.

Introduction

3. The payment standards operate in conjunction with the sole purpose test (refer to *Superannuation Circular No. III.A.4 The Sole Purpose Test*) to regulate the timing and manner of payment of benefits provided by regulated superannuation funds.
4. The payment standards provide that a benefit can be accessed upon the occurrence of specific events (conditions of release) which are generally retirement related. In practice, most benefits are classified as preserved benefits and are subject to age-based access restrictions.
5. The payment standards prescribe the circumstances and manner in which a member's benefits:
 - must be cashed – i.e. compulsory cashing rules;
 - may be cashed – i.e. voluntary cashing rules (refer to paragraphs 38 to 44); and
 - may be rolled over or transferred to another entity within the superannuation system (refer paragraphs 45 to 59).
6. Fund members should be aware that there may be significant tax implications associated with the payment of a benefit. Appropriate advice should be sought from professional taxation or investment advisers, or the Australian Taxation Office (ATO) at www.ato.gov.au/super.
7. For information on payment standards applying to Approved Deposit Funds, refer to *Superannuation Circular No. I.C.3 Payment Standards for Approved Deposit Funds*.

Cashing of benefits

Meaning of cashed

Section 10, Regulations 5.01, 6.01, Division 6.3 and Schedule 1 (Part 1)

8. 'Cashed' refers to the payment of a benefit from the superannuation system (refer to paragraphs 35 and 44). A benefit is cashed when the beneficiary accepts the money (or, in the case of lump sums only, other assets representing the benefit), banks a cheque which is subsequently honoured or receives a credit by way of an electronic transfer from a fund in payment of benefits.

In-specie payment

Regulation 6.01

9. Where permitted under the fund's governing rules, a lump sum payment may be in the form of 'cash' or *in specie*. The definition of lump sum allows a lump sum payment to be paid in the form of cash or *in specie*. An *in specie* payment is made with fund assets (e.g. shares in a publicly listed company) rather than money. When making an *in specie* payment, trustees must be able to substantiate the value of the relevant asset or assets for both SIS and taxation purposes.
10. Payments cannot be paid *in specie* where the payment relates to severe financial hardship, compassionate grounds (refer paragraphs 92 to 100), or the payment is in respect of a pension or annuity.

To whom benefits may be cashed

Sections 10, 10A, and 62, Regulations 1.04AAAA, 6.22, 6.22B and Part 7A

11. While the member is alive, benefits must be cashed to:
- (i) the member; or
 - (ii) the member's legal personal representative (the trustee of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted by a person);

except where the benefits are cashed to:

- (iii) another person with the express permission of the Regulator under r. 6.22B of the SIS Regulations (refer paragraphs 18 and 19); or
 - (iv) another person at the express direction of the member (refer to paragraph 18); or
 - (v) a non-member spouse, where payment splitting is permitted under Part 7A of the SIS Regulations.
12. After the member's death, benefits must be cashed to:
- (i) one or more of the member's dependants; or
 - (ii) the member's legal personal representative (the executor of the will or administrator of the estate of the deceased member);
- except where the benefits are cashed to:
- (iii) another person in circumstances where no dependant or legal personal representative can be found (refer to paragraphs 13, 31 and 32); or
 - (iv) to another person with the express permission of the Regulator under r. 6.22B of the SIS Regulations (refer paragraphs 20 and 21); or
 - (v) a non-member spouse pursuant to divorce proceedings.
13. A dependant includes:

- a spouse regardless of whether the spouse was financially dependent on the member. A spouse includes a person who although not legally married to the member, lived with the member on a genuine domestic basis as the member's husband or wife at the time of death;
- a child of the person including an adopted child, a step-child or an ex-nuptial child, regardless of whether the child was financially dependent on the member;

- any person who was financially dependent on the member at the time of the member's death. It is the trustee's responsibility to decide whether such a person was financially dependent on the member at the time of death; and
 - a person who had an interdependency relationship with the deceased member. An interdependency relationship between two people is characterised by a close personal relationship, living together, financial support, domestic support and personal care of a type and quality above the care and support that might be provided by a mere friend or flatmate. This may include a partner who does not meet the definition of a spouse. An interdependency relationship may also exist where there is a close personal relationship between two people but they do not live together, provide financial support, domestic support or personal care due to one or both of them having a physical, intellectual or psychiatric disability or they are temporarily living apart due to one (or both of them) temporarily working overseas or serving a gaol sentence.
14. The SIS Regulations specify the following matters to be taken into account in determining whether an interdependency relationship exists:
- all of the circumstances of the relationship between the persons, including:
 - the duration of the relationship;
 - whether or not a sexual relationship exists;
 - the ownership, use and acquisition of property;
 - the degree of mutual commitment to a shared life;
 - the care and support of children;
 - the reputation and public aspects of the relationship;
 - the degree of emotional support;
 - the extent to which the relationship is one of mere convenience;
 - any evidence suggesting that the parties intend the relationship to be permanent;
 - the existence of a statutory declaration signed by one of the persons that the person is or was in an interdependency relationship with the other person.
15. Two persons do not have an interdependency relationship if one of them provides domestic support and personal care to the other:
- under an employment contract or contract for services; or
 - on behalf of another person or organisation such as a government agency, a body corporate or a benevolent or charitable organisation.
16. There is no need for one person to be wholly dependent upon another for that person to be a 'dependant' for the purposes of the payment standards. Financial dependency can be established where a person relies wholly or in part on another for his or her means of subsistence. Nor must the recipient show a need for the money received from the deceased member in order to qualify as a dependant. Moreover, since partial financial dependency can generally be sufficient to establish a relationship of dependence, it is possible for two persons to be dependent on each other for the purposes of the payment standards.
17. The SIS legislation does not prescribe rules for benefits cashed in favour of a minor. Relevant state or territory laws concerning provision of benefits for minors, including trust provisions, may need to be considered by trustees when cashing in these circumstances.
18. Benefits may be paid to a person other than the member if:
- (a) the member has expressly directed that the payment be made to a third party; or

(b) the Regulator has expressly permitted this under r. 6.22B of the SIS Regulations, i.e. as an ancillary purpose under the sole purpose test (refer paragraphs 20 and 21 and *Superannuation Circular No. III.A.4 The Sole Purpose Test*).

19. APRA expects that where a member gives express direction for cashing in favour of the member to a third party, the trustee will exercise the utmost caution and implement strict control procedures to ensure benefits go to the member's lawful nominee. For example, particularly where the trustee is unfamiliar with the nominated third party, the trustee could request the member to provide written indemnity for any result of cashing to a third party adverse to the member's interest.

Release of benefits for ancillary purposes

Section 62(1)(b)(v) and Regulation 6.22B

20. The Regulator may give written approval for the cashing of benefits in restricted circumstances. Under s. 62(1)(b)(v) of the SIS Act, the Regulator has the power to determine ancillary benefits for which funds may be maintained. Accordingly, the Regulator has the power to approve circumstances in which those benefits may be cashed.

21. Approval will only be given where this is consistent with the purpose and intent of SIS legislation and the Government's retirement incomes policy (refer to *Superannuation Circular No. III.A.4 The Sole Purpose Test*). Applications for an approval under s. 62(1)(b)(v) of the SIS Act would need to address this.

Death benefit nominations

Sections 59(1) and 59(1A)

22. The payment of a death benefit is ultimately a matter of trustee discretion, subject to the payment standards and provided the decision is fair and reasonable, with the exception being the requirement to comply with a binding death benefit nomination as outlined in paragraph 24 or a non-binding death benefit nomination as outlined in paragraph 25. The discretionary nature of payment of a death benefit can impose

significant compliance costs on superannuation entities, particularly due to the complexity of the decision in some cases. While generally the governing rules of a fund must not permit an exercise of discretion by anyone other than the trustee, the two relevant exceptions are pursuant to either s. 59(1)(a) or to s. 59(1A) of the SIS Act.

23. Most superannuation funds permit members to make death benefit nominations in a non-binding fashion. In such cases, members simply provide trustees with guidance regarding their preferred death benefit recipients, with trustees making the eventual decision in the light of all the relevant circumstances. Alternatively, the trustee may provide for greater certainty to members in making death benefit nominations in two mutually exclusive ways: pursuant to either s. 59(1)(a) or to s. 59(1A) of the SIS Act.

24. A nomination of a person as the recipient of a death benefit, if allowed under the governing rules of the fund to bind the trustee, would, in the absence of a statutory exception, represent a breach of s. 59(1) of the SIS Act as it would be contrary to the prohibition on the exercise of a discretion by a person other than the trustee. Section 59(1A) of the SIS Act provides an exception to the s. 59(1) SIS Act prohibition, allowing members to determine, with substantial certainty, the persons to whom death benefits would be paid. Provided the regulations are complied with, a member's nomination binds the trustee.

25. Section 59(1)(a) of the SIS Act is also an exception to the prohibition. It provides that the governing rules may permit a discretion exercisable by a person other than the trustee if the governing rules require the trustee's consent to the exercise of the discretion. Section 59(1)(a) of the SIS Act also permits members to determine, with greater certainty than the non-binding guidance, the persons to whom death benefits would be paid. To enable this, the governing rules must, of course, provide that the trustee consent to the death beneficiary nomination. To implement this, the trustee must actively consent to such nominations through a process of appropriate consideration. The difference between requiring trustee consent to member discretion under s. 59(1)(a) of the SIS Act and non-binding guidance referred to in paragraph

- 22 is that the use of s.59(1)(a) provides greater certainty for member nomination within a more systematic framework, without being binding on the trustee.
26. Where the governing rules allow a s. 59(1)(a) SIS Act procedure to be adopted, APRA expects trustees to have formally documented processes in consenting to member nominations. A passive process where nominations are consented to without adequate consideration would not meet the requirements, apart from exposing the trustee (and possibly the fund) to avoidable legal action and costs. As members' circumstances change over the period of membership, the consent process should include a periodical review mechanism to take into consideration any changes to members' circumstances. This would be consistent with the duty of the trustee to act in the best interests of members.
 27. The essential difference between the two provisions is the absence of a requirement for consent by the trustee in s. 59(1A) of the SIS Act, which instead requires compliance with r. 6.17A of the SIS Regulations: this includes a format for the member notice to the trustee. Principally, the notice must have been signed and dated by the member, witnessed appropriately by two individuals not mentioned in the notice, the nominated beneficiaries must be either dependants or the legal personal representative of the deceased member, and the nominated beneficiaries must also be either dependants or the legal personal representative at the date of the member's death. The maximum term that an unchanged notice can remain in effect is three years, and there is provision for the governing rules of the fund to fix a shorter term. The notice of nomination must also specify the proportion of the benefit to be paid to each nominated beneficiary.
 28. Trustees should decide in advance how to deal with a benefit if the circumstances of a nominated beneficiary have changed. For example, if the member previously nominated a spouse but has since divorced and remarried, the former spouse may no longer be a dependant. Another example is where a nominee may have predeceased the member and the member has not changed or revoked the notice, or a nominated beneficiary is under a legal disability when the benefit is payable.
 29. The Corporations Act and Regulations require trustees to disclose to members the significant features of the superannuation fund and material or significant changes to them – see s. 1013D and s. 1017B of the Corporations Act. Significant features include procedures for dealing with death benefits. During prudential reviews, APRA would expect to be able to verify that the nomination, and where appropriate, consent process is robust and is being implemented accordingly.
 30. Finally, while the term 'binding' is not found in s. 59(1A) of the SIS Act (it occurs in the bracketed heading inserted by CCH as a guide to the provision and is not, technically, part of the SIS Act), it is useful to employ the term in relation to death benefit nominations made pursuant to that subsection as opposed to death benefit nominations made pursuant to s. 59(1)(a) of the SIS Act, a generic provision relating to trustee consent to the exercise of discretion by other parties. To avoid confusion, APRA expects that the adjective 'binding' should only be used to describe 'death beneficiary nominations' made under s. 59(1A) of the SIS Act.
 31. If the member has died and the trustee, after making reasonable enquiries, has been unable to find either a legal personal representative or a dependant of the member, the trustee may cash the member's benefits in favour of another individual, subject to the fund's governing rules. The trustee must make a decision in relation to the benefit that is fair and reasonable to the circumstances of all parties who have, or are likely to have, an interest in the death benefit. Interested parties who consider that the trustee's decision is unfair or unreasonable may have the matter dealt with by the Superannuation Complaints Tribunal (SCT). For further information refer to the SCT website www.sct.gov.au.
 32. If the trustee is unable to find an appropriate beneficiary, the benefit must be dealt with under the unclaimed money provisions of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (formerly contained in Part 22 of the SIS Act which has been repealed), administered by the ATO. For further information refer to the ATO website www.ato.gov.au/super.

Compulsory cashing of benefits

Regulations 1.03 and 6.21

33. Benefits in a regulated superannuation fund (including a member's 'post-65 employer-financed benefits') must be cashed or rolled over for immediate cashing as soon as practicable after the member has died (death benefits).
34. Modification declaration No. 3 of 2006 made under s. 332 of the SIS Act removes the obligations to compulsorily cash benefits, other than death benefits, in accordance with r. 6.21 of the SIS Regulations during the period 10 May 2006 to 30 June 2007. It is expected that the SIS regulations, including r. 6.21 of the SIS Regulations, will be amended before 1 July 2007 to implement the Government's proposal, announced in *A Plan to Simplify and Streamline Superannuation* with the 2006 Commonwealth budget, to remove the requirement for compulsory cashing of benefits of members over the age of 65 with effect from 1 July 2007. Further details of modification declaration No. 3 of 2006 can be obtained from the APRA website at www.apra.gov.au and details of the simplification plan are available at the Treasury's website www.simplersuper.treasury.gov.au.

Form of benefit payments

Section 10, Regulations 1.05, 1.06 and 6.21(2)

35. If member benefits must be cashed, they can be paid in one or more of the following forms:
 - a single lump sum in respect of each person to whom benefits are cashed;
 - an interim lump sum and a final lump sum in respect of each person to whom the benefits are cashed;
 - one or more pensions; or
 - the purchase of one or more annuities.
36. For these purposes, a benefit in the form of income which conforms to r. 1.06 of the SIS Regulations is taken to be a pension. Other forms of benefits are not taken to be pensions for the purpose of the Act.
37. A benefit, in the form of income, provided by a life insurance company or a registered organisation in accordance with r. 1.05 of the SIS Regulations is taken to be an annuity. Other forms of benefits are not taken to be annuities for the purpose of the Act.

Voluntary cashing of benefits

Regulations 6.18, 6.19 and 6.20

38. Subject to its preservation status (refer paragraphs 39 to 43 and 110 to 126) and the fund's governing rules, a member's benefit may be cashed upon the occurrence of certain conditions of release such as retirement before age 65 or termination of employment. These are discussed at paragraphs 60 to 104. The preservation status of a benefit, or portion of a benefit, may be 'preserved', 'restricted non-preserved' or 'unrestricted non-preserved'.

Summary of voluntary cashing provisions
Subject to a fund's governing rules:
<ul style="list-style-type: none"> preserved benefits may, generally, be cashed when a condition of release, such as retirement, is satisfied;
<ul style="list-style-type: none"> restricted non-preserved benefits may be cashed on termination of employment with an employer who had contributed to the superannuation fund on behalf of the member; and
<ul style="list-style-type: none"> unrestricted non-preserved benefits may be cashed at any time.

Voluntary cashing of preserved and restricted non-preserved benefits

Regulations 1.05, 1.06, 6.01, 6.12, 6.18, 6.19 and Schedule 1 (Part 1)

39. Preserved and restricted non-preserved benefits may be cashed if any of the prescribed conditions of release are satisfied, subject to any cashing restrictions associated with the conditions of release.
40. Where a condition of release with no cashing restriction is satisfied, the benefits in the fund at the time of satisfying the condition of release become unrestricted non-preserved benefits. Attaining age 65 is a condition of release with no cashing restriction and all benefits become

unrestricted non-preserved when a member attains age 65. As a member will continuously satisfy this condition of release, any contributions made and any benefits accrued after a member has attained age 65 are also unrestricted non-preserved benefits.

Voluntary cashing of unrestricted non-preserved benefits

Regulation 6.20

41. Subject to a fund's governing rules, unrestricted non-preserved benefits may be cashed at any time. There are no restrictions in cashing these benefits.
42. Where unrestricted non-preserved benefits are cashed, they must be cashed in any one or more of the following forms:
- one or more lump sums;
 - one or more pensions (refer to paragraph 36); or
 - the purchase of one or more annuities (refer to paragraph 37).
43. The lump sum payments must not be paid later than the time when a member's benefit must be compulsorily cashed (refer to paragraphs 33 to 37).

Priority in cashing benefits

Regulation 6.22A

44. Where benefits are cashed following satisfaction of a condition of release with a cashing restriction (e.g. attaining preservation age or upon severe financial hardship under r. 6.01(5)(a) of the SIS Regulations or compassionate grounds) the trustee must cash the benefit in the following order:
- unrestricted non-preserved benefits; then
 - restricted non-preserved benefits; then
 - preserved benefits.

Rollovers and transfers

Regulations 1.03, 5.01, 6.27B to 6.39

45. Members' benefits may be either rolled over or transferred within the 'superannuation system' upon the occurrence of certain events, which may be at the initiation of the member or the trustee. The superannuation system comprises:

- regulated superannuation funds;
- approved deposit funds (ADFs);
- retirement savings accounts (RSAs);
- EPSSS (exempt public sector superannuation schemes e.g., some schemes established under Commonwealth, state or territory Government legislation);
- deferred annuities (a type of annuity offered by life companies which commence payment when the payment standards permit but no later than when the annuitant reaches age 65);
- annuities; and
- the ATO or the state or territory Superannuation Unclaimed Money Authorities as the collectors of unclaimed superannuation money (refer to paragraph 32).

46. In ordinary usage the terms rollover and transfer are often used interchangeably. Under the SIS legislation, a benefit is 'transferred' when it is paid to or received from a regulated superannuation fund, an ADF, RSA or EPSSS without the member satisfying a condition of release. A benefit is 'rolled over' when it is paid as an eligible termination payment (otherwise than by way of being transferred) within the superannuation system. An eligible termination payment from an employer (employer ETP), a transfer from an overseas superannuation fund and a Capital Gains Tax exempt amount are examples of transfers or rollovers from outside the superannuation system. For the purposes of the SIS legislation these payments are contributions and are subject to the contribution standards. For information on the contribution standards refer to *Superannuation Circular No.I.A.1 Contributions and Benefit Accrual Standards for Regulated Superannuation Funds*.

47. The trustee of a regulated superannuation fund must only make rollovers and transfers

in accordance with Part 6 of the SIS Regulations. One of the requirements of Part 6 is that a trustee must not rollover or transfer a member's benefits to a registrable superannuation entity (an approved deposit fund or a regulated superannuation fund other than a self managed fund) unless the entity is registered under Part 2B of the SIS Act.

Portability rules

Regulations 1.03B, 6.27B to 6.39

48. Subject to some limited exceptions and conditions set out in r. 6.30 to r. 6.38 of the SIS Regulations, the SIS portability provisions require a trustee to rollover or transfer the whole or a part of a member's benefits where the member requests this in writing. Trustees are only required to effect one transfer within any 12 month period per member, although they may allow more regular transfers.

49. From 1 July 2005, a member wishing to transfer benefits under the portability provisions is no longer required to wait for six months after the last employer contribution had been made before making a request. That is, a member may request the transfer of all or part of their withdrawal benefit despite employer contributions continuing to be made to the fund on behalf of the member.

50. If a member wishes to make a partial transfer (less than the amount of the member's withdrawal benefit at the time of the request), the trustee may require the member to leave a balance of up to \$5,000 behind in the fund. In general, a trustee cannot impose a minimum balance requirement if the member has requested a transfer of their whole withdrawal benefit, notwithstanding that employer contributions may continue to be made to the fund in respect of the member. However, where employer contributions will continue to be made, the trustee can retain sufficient funds to meet any accrued or impending expenses (such as insurance premiums and administration fees) until further contributions are received to avoid the member's account being closed. A member who transfers the whole or part of their withdrawal benefit is excluded from being a protected member of the fund making the transfer.

51. The portability regulations require that, prior to making a transfer, the trustee is satisfied that the member is aware of their right to receive information

on the effect of the transfer (for example, in regard to the impact of fees or insurance cover) and is satisfied that the member does not require such information. This is to ensure members are informed of their right to information but must not unnecessarily delay a transfer. The Corporations Act and Regulations require trustees to provide information and documents to members on request (see s. 1017C of the Corporations Act).

52. Trustees should ensure that requests for rollovers and transfers are processed as soon as practicable and in any event within 90 days. To meet the 'as soon as practicable' test, most benefits would need to be transferred well in advance of the 90 day limit. As with any new measure, APRA's supervision activities will include a review of the trustee's implementation of the portability requirements.
53. In APRA's view, the 'as soon as practicable' test does not preclude the trustee waiting for a final contribution to the fund, where the contribution is expected within a short period of the transfer request being received, say a month. The trustee should be satisfied that the outstanding contribution will be a final contribution, for example, because the trustee knows that the member has ceased employment or has chosen a new fund for future contributions.
54. In processing transfer requests, trustees should ensure that reasonable appropriate internal controls are complied with, including guarding against fraud and illegal early access. Reasonable controls include obtaining evidence of the member's identity before actioning the member's request and ensuring that payments are made only to a complying superannuation fund, ADF, RSA or EPSSS. Where a member requests a transfer to a self managed superannuation fund, APRA considers it reasonable for the trustee to request the member to provide evidence from the ATO that the fund is a regulated fund (an employer is able to request this evidence before accepting a self managed superannuation fund as the member's chosen fund).
55. APRA considers it preferable that transfers and rollovers are completed electronically through the banking system. Where this is not possible,

all relevant transfer/roll-over documentation should include the destination fund's ABN or SFN and, where available, its SPIN (Superannuation Product Identification Number) and/or the member's account number in the fund.

56. The portability regulations provide APRA with the power to alter a fund's ability to provide portability if it believes there may be an adverse financial impact on the fund.

Consent to a transfer or rollover of benefits

57. A member's benefit must not be rolled-over or transferred (in whole or in part) from a regulated superannuation fund, unless:
 - the member has given consent;
 - the transfer is to a successor fund (refer to paragraph 59); or
 - the transfer is to an Eligible Rollover Fund (refer to *Superannuation Circular No. I.B.1 Protection of member benefits*).
58. A member's consent may be written or in any other manner that complies with the APRA Determination for the 'Form of Non Written Consent Sufficient for Rolling Over or Transferring Benefits' available at the APRA website www.apra.gov.au. The determination sets out the factors to ensure the sufficiency of the non-written consent e.g. verbal or electronic.

Successor Funds

Regulations 1.03, 6.2, and 13.16

59. A 'successor fund' is a fund that confers on the member equivalent rights in respect of the benefits transferred to the rights that the member had in respect of those benefits in the transferring fund. Prior to the transfer, the trustee of the successor fund must agree with the transferring fund's trustee that it will confer equivalent rights on the member. In addition to the agreement, the successor fund must in fact confer equivalent rights on the transferred member (refer to *Superannuation Circular No. I.C.4 Equivalent Rights for Members in Successor Fund Transfers* for further information). It would be in the interests of all parties if trustees consulted with APRA in regard to successor fund transfers so that APRA may provide input before the transfer arrangements are finalised.

Conditions of release

Regulations 6.01, Division 6.3 and Schedule 1 (Part 1)

60. The following are the conditions of release that may or must cause benefits to be cashed. These conditions are subject to the fund's governing rules and any preservation restrictions that either restrict access or impose compulsory cashing upon the occurrence of certain events. Benefits may only be released under the conditions discussed in this circular.
61. The cooling-off provisions in the Corporations Regulations allowing for the return of a superannuation product do not constitute a condition of release for the purposes of the SIS legislation. The Corporations Regulations were amended in March 2002 to reflect the preservation requirements of Part 6 of the SIS Regulations. Contributions which are repaid under the cooling-off provisions must be transferred or rolled over to another superannuation entity and retained in the superannuation system until a condition of release is met. Preserved and restricted non-preserved rollovers, which are repaid under the cooling-off provisions must be transferred or rolled over to another superannuation entity and retained in the superannuation system until a condition of release is met. Unrestricted non-preserved rollovers may be paid to the member under the cooling-off provisions.
62. Trustees and members of superannuation funds must be wary of engaging the services of individuals or companies promoting early access to preserved benefits before retirement. Obtaining the unlawful release of superannuation benefits would normally involve committing a criminal offence and could expose the recipient to taxation liabilities and penalties.
63. In some cases a person may be in more than one gainful employment arrangement or may commence another some time after satisfying a condition of release in respect of one arrangement. Preserved benefits which accrue after a condition of release has been satisfied, other than reaching age of 65 (refer to paragraph 38), (e.g. through subsequent contributions, investment earnings, rollovers or transfers) may only be cashed if another condition of release is

satisfied for subsequent cashing. This may involve satisfying a new condition of release, (e.g. reaching age 65 or re-satisfying a condition of release which the member has previously met, e.g. retirement or permanent incapacity).

Retirement

Regulations 6.01(7), 6.12 and Schedule 1 (Part 1)

64. A member may access benefits upon retirement, subject to the governing rules of the fund. For superannuation purposes, 'retirement' depends on a person's age and future employment intentions.
65. A 'retired' member cannot access their preserved benefits before they reach their preservation age. The preservation age differs according to when a member was born (refer to the table below).

Table 1 Preservation age

Date of birth	Preservation age
Before 1 July 1960	55 years
1 July 1960–30 June 1961	56 years
1 July 1961–30 June 1962	57 years
1 July 1962–30 June 1963	58 years
1 July 1963–30 June 1964	59 years
After 30 June 1964	60 years

66. Where a member has reached a preservation age that is less than 60, their 'retirement' occurs when:
- an arrangement under which the member was gainfully employed has come to an end. This may have occurred at any time, including prior to their preservation age; and
 - the trustee is reasonably satisfied that the member intends never again to become gainfully employed either part-time or full-time, (i.e. for 10 or more hours per week).

67. The trustee must be satisfied that retirement has occurred. This may include obtaining evidence:

- of the member's age;
- that the member's gainful employment has ceased (e.g. a statement from the employer); and
- of the member's intention, at the time of the claim, to never again be gainfully employed either part-time or full-time (i.e. for 10 or more hours per week).

68. A member with a preservation age of less than age 60 who ceases gainful employment before age 60 may still retire after age 60, provided that the trustee is satisfied, at the time of the benefit claim, that the member intends to never again be gainfully employed either part-time or full-time.

69. Apart from the circumstances set out in preceding paragraph, when a member has reached age 60, 'retirement' occurs when an arrangement under which the member was gainfully employed has ceased on or after the member reached age 60.

70. While a trustee generally does not need to form an opinion on the member's intentions concerning future gainful employment where the member has reached age 60, the trustee must obtain satisfactory evidence of the cessation of an employment arrangement and the member's age. Where a member, aged 60 or more, is in two or more employment arrangements at the same time, the cessation of one of the employment arrangements is the condition of release in respect of all preserved benefits accumulated up until that time. The occurrence of the 'retirement' condition of release in these circumstances will not enable the cashing of any preserved or restricted non-preserved benefits which accrue AFTER the condition of release has occurred. A member will not be able to cash those benefits until a fresh condition of release occurs.

71. If a member aged 60 to 64 commences a new employment arrangement after satisfying a condition of release, such as retirement from

a previous employment arrangement at or after age 60, benefits in respect of the new employment will remain preserved until a further condition of release is satisfied.

Attaining preservation age – transition to retirement

Regulation 6.01(2) and Schedule 1(Part 1)

72. 'Attaining preservation age' is a new condition of release which came into effect on 1 July 2005 under the Government's transition to retirement policy. Members who have attained their preservation age (see paragraph 65) are able to cash their benefits in a prescribed form without retiring or ceasing an employment arrangement.

73. A member may elect to cash benefits under the 'attaining preservation age' condition of release at any time on or after attaining preservation age. Any benefits which the member has accrued at the time they make such an election are eligible for cashing. Benefits may be cashed under this condition of release only in the form of a non-commutable annuity, a non-commutable pension, a non-commutable allocated annuity or a non-commutable allocated pension. The characteristics of these 'transition to retirement' pensions and annuities are set out in the SIS Regulations and these characteristics must be reflected in the governing rules of a fund which provides these types of benefits.

74. Subject to the exceptions set out below, a member must not be able to cash benefits in a transition to retirement pension or annuity in whole or part as a lump sum until the member satisfies a condition of release with a 'nil' cashing restriction (e.g. retirement or attaining age 65). Non-commutable lifetime pensions and annuities can only be cashed as a lump sum payment within 6 months of commencement. The prohibition on cashing benefits in a transition to retirement pension or annuity in the form of a lump sum does not apply where the commutation is for the purpose of:

- cashing an unrestricted non-preserved benefit;

- paying a superannuation contributions surcharge; or
- giving effect to an entitlement of a non-member spouse under a *Family Law Act 1975* payment split.

Commutations where the resulting ETP is rolled over or transferred within the superannuation system are also permitted.

75. As 'attaining preservation age' is not a condition of release with a 'nil' cashing restriction, benefits transferred to a transition to retirement pension or annuity will retain the preservation status they had before they were transferred, i.e. unrestricted non-preserved, restricted non-preserved and preserved and must be cashed in that order. A trustee may however, change the preservation status of restricted and unrestricted non-preserved benefits to preserved benefits (refer to paragraph 127).
76. Investment earnings in relation to a benefit that is cashed as a non-commutable annuity, a non-commutable pension, a non-commutable allocated annuity or a non-commutable allocated pension are preserved until the member meets a condition of release with a 'nil' cashing restriction.
77. The provision of transition to retirement pensions and annuities is not mandatory and trustees who do not wish to offer these types of non-commutable benefits are not obliged to do so. Members of a fund which does not offer transition to retirement pensions or annuities may be able to use the SIS portability provisions to transfer or rollover their benefits to another fund which provides these benefits.

Attaining age 65

Schedule 1 (Part 1)

78. When members reach age 65 their benefits may be cashed notwithstanding their employment arrangements. Modification declaration No.3 of 2006 removes the obligations to compulsorily cash benefits, other than death benefits in accordance with r. 6.21 of the SIS Regulations for members aged 65 and over for the period 10 May 2006 to 30 June 2007(see paragraph 34).

Death

Regulation 6.01, 6.21(d) and Schedule 1 (Part 1)

79. Upon the death of a member all benefits must be paid. Paragraphs 11 to 19 explain to whom the benefits may be paid.

Terminating gainful employment – less than \$200

Section 16(5), Regulation 6.01 and Schedule 1 (Part 1)

80. A member may cash preserved and restricted non-preserved benefits from a regulated superannuation fund upon terminating employment with a standard employer-sponsor (on or after 1 July 1997) if the preserved benefits are less than \$200 at the time of the termination and the governing rules of the fund allow this. A standard employer-sponsor is an employer that contributes to the fund (or has ceased only temporarily to contribute) wholly or partly pursuant to an arrangement between the employer and the trustee of the fund.

Terminating gainful employment – \$200 or more

Regulation 6.01 and Schedule 1 (Part 1)

81. Subject to the governing rules of the fund, a member's preserved and restricted non-preserved benefits may be accessed upon terminating employment (i.e. upon resignation, retrenchment or dismissal prior to retirement) with an employer who had, or any of whose associates had, at any time contributed to that fund in relation to the member.
82. A member's restricted non-preserved benefit relating to this employer will become unrestricted non-preserved benefits, which are accessible at any time.
83. A member's preserved benefit can only be paid in the form of a non-commutable life pension or non-commutable life annuity upon termination of gainful employment prior to retirement and reaching preservation age.

Temporary incapacity

Regulations 5.08, 6.01(2) and Schedule 1 (Part 1)

84. Subject to the governing rules of the fund a member may access benefits where the trustee is satisfied that temporary incapacity exists, i.e. the member has temporarily ceased work as a result of physical or mental ill-health which does not constitute permanent incapacity (refer paragraphs 89 to 91). It is not necessary for the member's employment to fully cease.

85. Benefits may be paid where a member makes a partial return to gainful employment whilst incapacitated, provided that the member's remuneration plus the temporary incapacity benefits do not exceed the member's remuneration at the time the member became ill.

86. Payment of preserved benefits and restricted non-preserved benefits on temporary incapacity is subject to the following restrictions:

- the benefit is paid as a non-commutable income stream;
- the purpose of the payment is to continue (in whole or in part) the gain or reward which the member received before the temporary incapacity. Generally a member on fully paid leave (e.g. sick leave) will not be eligible to receive temporary incapacity benefits;
- the period of benefit payments must not exceed the period of incapacity from full employment at the level of weekly hours of the kind engaged in immediately before the member became ill; and
- the benefits must not be paid from the member's minimum benefits (refer *Superannuation Circular No. I.C.1 Minimum Benefits Standards*).

87. A non-commutable income stream:

- cannot be commuted;
- has no residual capital value;
- pays benefits at least monthly; and

- makes payments which may increase from month to month in accordance with the definition in r. 6.01(2) of the SIS Regulations.

88. SIS does not limit the term of the payment. However, where payments are made beyond two years there are taxation implications in relation to the deductibility of insurance premiums. For further information contact the ATO or refer to Taxation Determination 98/27.

Permanent incapacity

Regulation 6.01(2) and Schedule 1 (Part 1)

89. A member may access preserved benefits and restricted non-preserved benefits on the grounds of permanent incapacity if:

- the governing rules permit;
- the member has ceased gainful employment (i.e. working at least 10 hours each week – a member who has never been gainfully employed is therefore unable to satisfy the permanent incapacity condition of release); and
- the trustee is reasonably satisfied that the member is unlikely, because of physical or mental ill-health, to ever again engage in gainful employment for which the member is reasonably qualified by education, training or experience

90. A trustee is not required to assess the extent of the incapacity at the time the member ceased gainful employment. That is, the full extent of the incapacity may have developed at some later time and the trustee's decision should take account of these developments.

91. Where a member settles a Total and Permanent Disability (TPD) claim, including a settlement conciliated through the SCT, the member's preserved benefits will include the settlement amount and will be able to be cashed under the permanent incapacity condition of release only where the trustee is reasonably satisfied that the member is unlikely because of ill health ever again to engage in gainful employment for which the member is reasonably qualified by education, training or experience.

Severe financial hardship

Regulation 6.01(5) and Schedule 1 (Part 1)

92. Subject to the governing rules of the fund, benefits may be released on the grounds of severe financial hardship. Different conditions for release apply depending on the age of the member.
93. For members who have not reached their preservation age (refer to paragraph 65) plus 39 weeks, the trustee must be satisfied on written evidence that a member:
 - is unable to meet reasonable and immediate family living expenses; and
 - has received a relevant Commonwealth income support payment for at least the previous 26 weeks from a Commonwealth Department or Agency (i.e. Centrelink, Department of Veterans' Affairs) or a Commonwealth Community Development Employment Projects (CDEP) organisation.
94. The payment of benefits on grounds of severe financial hardship must be a single gross lump sum of no more than \$10,000 and no less than \$1,000, or a lesser amount if the balance of the member's benefit is less than \$1,000. Only one payment per member is permitted in any twelve month period.
95. Where members have reached their preservation age plus 39 weeks, benefits may be released on the grounds of severe financial hardship if a member:
 - is not gainfully employed on the date of the application; and
 - has received a relevant income support payment provided by a Commonwealth Department or Agency for a cumulative period of at least 39 weeks or more after reaching their preservation age.
96. Benefits released for these members are not subject to cashing restrictions.

97. Applications for release on severe financial hardship must be made directly to trustees, many of whom have forms and information available. Before dismissing applications, or referring them to APRA for consideration under compassionate grounds, trustees should ensure that no other means for release are available to the member e.g. cashing unrestricted non-preserved amounts, retirement etc. Further information is available at the APRA website www.apra.gov.au.

Compassionate grounds

Regulation 6.19A and Schedule 1 (Part 1)

98. Preserved benefits and restricted non-preserved benefits may be released on specified compassionate grounds where a member does not have the financial capacity to meet the applicable expenses outlined in dot points below. Compassionate release is available when it is allowable under the governing rules of the fund and APRA determines, in writing, that release is permitted. The grounds for release are:
 - to pay for medical treatment or medical transport for the member or a dependant where the treatment or transport is not readily accessible through the public health system. The medical treatment must be necessary to treat a life threatening condition, alleviate acute or chronic pain, or alleviate an acute or chronic mental disturbance. Certificates, to this effect, from two medical practitioners (one a specialist) are necessary;
 - to enable the member to make a payment on a loan to prevent foreclosure on, or a mortgagee sale of, the member's principal place of residence (home);
 - to modify the member's family home and/or vehicle to meet the special needs of a severely disabled member or their severely disabled dependant;
 - to pay for the palliative care of a member or their dependant;

- to pay for expenses associated with the death, funeral or burial of a dependant of the member; or
 - to meet other expenses where the release is consistent with any of the above grounds.
99. Payment under this condition of release must be in the form of:
- a single lump sum not exceeding an amount that has taken into account the circumstances and the member's financial capacity as determined by APRA; and
 - if release is to make a payment on a housing loan, the payment cannot exceed in a 12 month period the sum of 3 months' repayments and 12 months' interest on the outstanding balance of the loan.
100. Applications for approval of release on compassionate grounds are made directly to APRA, but the final decision to release the benefits is with the trustee. Further information and the application form are available at the APRA website www.apra.gov.au.
- ### Departing temporary residents
- Regulations 6.01(2), 6.20A, 6.20B and 6.24A*
101. Eligible temporary residents may access their superannuation benefits upon permanent departure from Australia. The eligible visa classes are specified in regulations and do not extend to departing Australian citizens, permanent residents or New Zealanders.
102. Access to benefits under this condition of release is subject to withholding tax arrangements (30 per cent from a taxed fund and 40 per cent from an untaxed fund and zero for personal undeducted contributions) to claw back the tax concessions for which the benefits had been eligible on the basis that they would be used for retirement income purposes. Where the trustee of a regulated superannuation fund receives a request from a member under this condition of release, the benefits must be cashed within 28 days after the request is lodged.
103. While the measure is compulsory on superannuation funds (other than unfunded public sector superannuation schemes), departing temporary residents have the option of leaving their money in the fund until they reach retirement age if they wish to retain the concessional tax treatment afforded to the benefits.
104. Consistent with the Government's policy that small superannuation balances not be diminished by fees and charges, simplified verification arrangements are available to members with account balances less than \$5,000. For members with balances greater than \$5,000, external verification by the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) will be required prior to a superannuation fund releasing the benefits, incurring an application fee. The ATO also provides a free online application service via the ATO website, which includes the DIMIA certification. For further information refer to the ATO website www.ato.gov.au/super.

Eligible spouse contributions

Regulation 1.03(1) and Schedule 2

105. Eligible spouse contributions are preserved benefits. *Superannuation Circular No. 1.A.1 Contributions and Benefits Accrual Standards for Regulated Superannuation Funds* provides information on such contributions.
106. A spouse who has never been gainfully employed can only satisfy the conditions of release by reaching age 65 or upon a non-employment related event such as attaining preservation age (where the benefit can only be cashed as a non-commutable pension or annuity), death, severe financial hardship or compassionate grounds. The conditions of release apply regardless of whether the benefit to be cashed arose from contributions by or on behalf of the member or from a rollover or transfer, including a contributions-splitting ETP.
107. If the spouse has, at any time (before or during membership), been gainfully employed all conditions of release may apply.

Family Law Act payments

Regulations Part 7A

108. The restrictions on cashing, rollover and transfer permit interests that are subject to a payment split to be divided between the parties. A trustee may pay part of a member's interest to the non-member spouse if the non-member spouse has satisfied a condition of release applicable to a non-member spouse. Alternatively, the trustee may pay part of the member spouse's interest into a new interest in the fund that the trustee creates for the non-member spouse, or the trustee may roll over or transfer part of the member spouse's interest to another fund to be held for the non-member spouse.

Capital gains tax exempt components

Regulation 1.03(1) and Schedule 2

109. Benefits arising from the capital gains tax exempt component of the proceeds of the sale of a small business which are contributed to a regulated superannuation fund (in order that the capital gains tax exemption applies) are preserved. For further information refer to the ATO website www.ato.gov.au/super.

Preservation

Regulations Part 6

110. The SIS preservation rules, in conjunction with the cashing requirements, restrict access to benefits until a condition of release is satisfied. Benefits may be preserved, restricted non-preserved or unrestricted non-preserved depending on the nature and timing of the contribution or accrual, the fund's governing rules and the satisfaction of a condition of release.
111. Generally, unless a condition of release has been satisfied, the category of a member's benefits may not be altered so as to decrease the amount of preserved benefits or increase the amount of unrestricted non-preserved benefits.
112. On and after 1 July 1999, all contributions made by or on behalf of a member under the age of 65 years are preserved. Where a condition of release with no cashing restriction is satisfied, preserved benefits in the fund at that time become unrestricted non-preserved benefits. As attaining age 65 is a condition of release with no cashing restriction, all benefits become unrestricted non-preserved when a member attains age 65. As the member will continuously satisfy this condition of release, any contributions made or benefits accrued after a member has attained age 65 are also unrestricted non-preserved benefits.
113. All investment earnings in respect of the period after 30 June 1999 are preserved. Where an unrestricted non-preserved benefit has been cashed in the form of a pension, annuity or the benefit is a non-commutable life pension or non-commutable life annuity, the investment earnings are unrestricted non-preserved benefits.
114. Fixed dollar amounts of members' restricted non-preserved benefits and unrestricted non-preserved benefits were calculated as at 1 July 1999. These amounts:
- cannot increase through contributions or investment earnings accruing on and after 1 July 1999 (refer to paragraph 113 in relation to investment earnings on pensions);
 - can increase through rollovers or transfers to the fund;
 - can decrease by cashing, rollovers or transfers from the fund, reclassification of preservation category (refer to paragraph 127), administration costs and negative investment earnings (refer to paragraph 118).
- Preserved benefits**
- Regulations 6.03, 6.12, 6.15, 6.15A and 6.16A*
115. A member's preserved benefits will be the residual amount of:
- the member's total benefits; less
 - the member's restricted non-preserved benefits (refer to paragraphs 119 to 123) and the member's unrestricted non-preserved benefits (refer paragraphs 124 to 126) in the fund.
116. Preserved benefits remain preserved until a condition of release (with no cashing restrictions) is satisfied in respect of those benefits. The benefits in the fund at the time the condition of release is satisfied will then become unrestricted non-preserved benefits. Where a condition of release is subject to cashing restrictions (e.g. terminating gainful employment with an employer sponsor, attaining preservation age) preserved benefits may be cashed in accordance with those restrictions.
117. Benefits rolled over or transferred to a regulated superannuation fund are taken to be preserved benefits, unless and until the trustee is satisfied that they are not preserved benefits.
118. Where a negative investment return which exceeds the amount of a member's preserved benefits in the fund occurs for a period after 30 June 1999, the excess negative investment return may be allocated against the member's non-preserved benefits (firstly against restricted non-preserved benefits and then, if required, against unrestricted non-preserved benefits). Alternatively, these negative returns can be absorbed against the fund's reserves, if any. Trustees are responsible for determining the 'period' when investment returns are ascertained

and allocated to member's benefits. Depending on the circumstances of the fund this may be on a daily, weekly, monthly, annual basis etc. However, this period should be no longer than 12 months, consistent with the disclosure requirements for reporting periods under s. 1017D of the Corporations Act.

- (ii) the member's restricted non-preserved benefits in the fund (calculated under r. 6.07(1) of the SIS Regulations) payable to the member on 1 July 1999 if the member had been retrenched from employment on that day.

Restricted non-preserved benefits

Regulations 6.07, 6.08, 6.09, 6.12 and 6.16

119. The restricted non-preserved benefits of all type B members and those type A members (refer to r. 6.01 of the SIS Regulations for the definition of type A and B members) who are not defined benefit members (refer to r. 6.07 and 6.08 of the SIS Regulations) are the sum of:

- the amount of the member's restricted non-preserved benefits in the fund as at 30 June 1999; and
- the amount of the member's restricted non-preserved benefits rolled over or transferred into the fund on or after 1 July 1999.

120. The restricted non-preserved benefits of type A members who are defined benefit members are the sum of:

- the amount of the member's restricted non-preserved benefits rolled over or transferred into the fund, on or after 1 July 1999; and
- at the discretion of the trustee, either:
 - (a) the amount of the member's restricted non-preserved benefits in the fund as at 30 June 1999 calculated under regulation 6.07 of the SIS Regulations; or
 - (b) the greater amount of:
 - (i) the member's restricted non-preserved benefits in the fund (calculated under r. 6.07(1)) of the SIS Regulations payable to the member on 1 July 1999 if the member had resigned from employment on that day; or

- 121. These calculations are subject to r. 6.16 of the SIS Regulations which permits the trustee or the governing rules of the fund to alter the category of a member's benefits in a fund but not so as to decrease the amount of the member's preserved benefit in the fund or increase the member's unrestricted non-preserved benefits in the fund.
- 122. Any restricted non-preserved benefits held by the member before 1 July 1999 will generally remain in this category until a condition of release (with no cashing restrictions) is satisfied when they will become unrestricted non-preserved benefits.
- 123. Restricted non-preserved benefits arising from personal member contributions (made before 1 July 1999) by self employed or substantially self employed persons for which they are allowed a deduction under s. 82AAT of the *Income Tax Assessment Act 1936* (ITAA) may become preserved benefits upon a claim for a tax deduction made on or after 1 July 1999. The reclassification will be from the date of the deduction (the date the trustee accepts the member's declaration made under s. 82AAT of the ITAA). Such personal member contributions, made on or after 1 July 1999, are preserved.

Unrestricted non-preserved benefits

Regulations 6.10, 6.12, 6.13 and 6.15A

124. A member's unrestricted non-preserved benefits are the sum of:
- unrestricted non-preserved benefits held in the fund as at 1 July 1999;
 - unrestricted non-preserved benefits that are rolled over or transferred into the fund on or after 1 July 1999;

- certain ETPs from a source other than a regulated superannuation fund, RSA, ADF or deferred annuity received by the fund before 1 July 2004 (i.e. ETPs from an employer following termination of employment);
- restricted non-preserved benefits and preserved benefits becoming unrestricted non-preserved benefits;
- investment earnings accumulated on unrestricted non-preserved benefits in respect of the period before 1 July 1999;
- investment earnings where an unrestricted non-preserved benefit has been cashed in the form of a pension or annuity or the benefit is a non-commutable life pension or non-commutable life annuity (investment earnings on all types of transition to retirement pensions and annuities are preserved until the member satisfies a condition of release with a nil cashing restriction); and
- benefits taken to be unrestricted non-preserved benefits by the trustee.

125. The last point refers to benefits that were in a fund subject to *Occupational Superannuation Standards* (OSS) requirements. Benefits which were of the nature of unrestricted non-preserved benefits (a category not recognised under OSS) are treated, on rollover or transfer, as unrestricted non-preserved benefits in the receiving fund if the trustee is reasonably satisfied that a condition of release with a nil cashing restriction has been met.

126. Unrestricted non-preserved benefits arising initially from personal member contributions (made before 1 July 1999) by self employed or substantially self employed persons for which they are allowed a deduction under s. 82AAT of the ITAA may become preserved benefits upon a claim for a tax deduction. The reclassification will

be from the date of the deduction (the date the trustee accepts the member's declaration made under s. 82AAT of the ITAA). These benefits arise from the initial member contribution being classified as restricted non-preserved benefits then becoming unrestricted non-preserved benefits through a condition of release being satisfied.

Power to alter preservation status

Regulation 6.16

127. Despite the SIS preservation rules, a trustee or the fund's governing rules may alter the preservation category of any member's benefits provided that:
- the amount of the member's preserved benefits is not decreased; and
 - the amount of the member's unrestricted non-preserved benefits is not increased.

Penalties

SIS Act Part 3

128. Most of the requirements outlined in this circular are operating standards which must be complied with at all times.
129. The payment standards are operating standards. Trustees must be able to demonstrate compliance with the operating standards to their fund's auditor and to APRA.
130. Significant penalties may apply to trustees for failing to comply with these standards.

Schedule 1

Regulation 6.01

Conditions of release and cashing restrictions – preserved benefits and restricted non preserved benefits

Part 1 Regulated superannuation funds		
Item	Conditions of release	Cashing restrictions
101	Retirement	Nil
102	Death	Nil
103	Permanent incapacity	Nil
103A	Temporary resident permanently departing Australia in circumstances described in r. 6.20A or r. 6.20B of the SIS Regulations, and requesting in writing the release of the temporary resident's benefits	Amount that is at least the amount of the temporary resident's withdrawal benefit in the fund, paid: <ul style="list-style-type: none"> (a) as a single lump sum; or (b) if the fund receives any combination of contributions, transfers and rollovers after cashing the benefits – in a way that ensures that the amount is cashed
104	Termination of gainful employment with a standard employer-sponsor of the regulated superannuation fund on or after 1 July 1997 (where the member's preserved benefits in the fund at the time of the termination are less than \$200)	Nil
105	Severe financial hardship	For a person taken to be in severe financial hardship under r. 6.01(5)(a) of the SIS Regulations – in each 12 month period (beginning on the date of first payment), a single lump sum not less than \$1,000 (except if the amount of the person's preserved benefits and restricted non-preserved benefits is less than that amount) and not more than \$10,000 For a person taken to be in severe financial hardship under r. 6.01(5)(b) of the SIS Regulations – Nil.
106	Attaining age 65	Nil

Part 1 Regulated superannuation funds (cont.)		
Item	Conditions of release	Cashing restrictions
107	Compassionate ground	<p>A single lump sum, not exceeding an amount determined, in writing, by the Regulator, being an amount that:</p> <ul style="list-style-type: none"> (a) taking account of the ground and of the person's financial capacity, is reasonably required; and (b) in the case of the ground mentioned in r. 6.19A(1)(b) of the SIS Regulations – in each 12 month period (beginning on the date of first payment), does not exceed an amount equal to the sum of: <ul style="list-style-type: none"> (i) 3 months' repayments; and (ii) 12 months' interest on the outstanding balance of the loan
108	Termination of gainful employment with an employer who had, or any of whose associates had, at any time, contributed to the regulated superannuation fund in relation to the member	<ol style="list-style-type: none"> 1. Preserved benefits: Non-commutable life pension or non-commutable life annuity 2. Restricted non-preserved benefits: Nil
109	Temporary incapacity	<p>A non-commutable income stream cashed from the regulated superannuation fund for:</p> <ul style="list-style-type: none"> (a) the purpose of continuing (in whole or part) the gain or reward which the member was receiving before the temporary incapacity; and (b) a period not exceeding the period of incapacity from employment of the kind engaged in immediately before the temporary incapacity
109A	Attaining 'preservation age'	<p>One or more of the following:</p> <ul style="list-style-type: none"> (a) a non-commutable allocated annuity (b) a non-commutable allocated pension (c) a non-commutable annuity (d) a non-commutable allocated pension
110	Any other condition, if expressed to be a condition of release, in an approval under subparagraph 62(1)(b)(v) of the Act	Restrictions expressed in the approval to be cashing restrictions applying to the condition of release



Telephone
1300 13 10 60

Email
contactapra@apra.gov.au

Web site
www.apra.gov.au

Mail
GPO Box 9836
in all capital cities
(except Hobart and Darwin)