

Withdrawal of super for all disasters great & small

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Typically, the problem with writing an article such as this one is that you might be accused of encouraging the “illegal” withdrawal of superannuation. However, not all premature super withdrawals, are strictly speaking, illegal. In fact, some withdrawals of super, prior to retirement, are completely legal. They are so legal that they are enshrined in superannuation legislation and ought to be clearly recognized as genuine bases for the releasing of funds early. They ought to be sorecognized even by those large superannuation funds, which bureaucratically can make it so difficult for an individual to obtain their funds.

Not only are the bases of withdrawing super stated below legal, but the ATO has decided to write about them, at a time, when the world’s economic crisis is having a profound effect on people’s lives and when climatic conditions around Australia are impacting entire local communities.

For a withdrawal of super to be legal any of the following conditions of release must be met:

- compassionate grounds;
- severe financial hardship;
- temporary incapacity;
- permanent incapacity; or
- death.

All of the above alternative grounds of withdrawal should be viewed as extreme exceptions to the usual rule that superfunds are only available for use to an individual upon their retirement. We will now consider in more detail the different basis for release. Interestingly, the conditions of release may be met not only where the disaster is on a large scale (eg the Victorian bushfires), but also on a

smaller scale such as where, for example, an individual is diagnosed with cancer.

Compassionate grounds

An individual can apply to APRA for a release of their superannuation funds, prior to the individual's retirement, on compassionate grounds.

The following are instances where you may be granted a release on compassionate grounds:

Mortgage assistance

- preventing your home from being sold by mortgagee. This is only allowed at such time as the lender has decided to sell the property and it cannot be in relation to a second home or investment property; and
- such a release is only available for the individual's personal mortgage and not that of a dependant or family member (regulation 6.19(A) of the *Superannuation Industry (Supervision) Regulations 1994 & APRA Superannuation Circular No. I.C.2*, paragraph 98).

Medical treatment & medical transport

- medical costs relating to a life-threatening illness or injury; alleviate acute or chronic pain; and alleviate an acute or chronic mental condition;
- the treatment required must not readily be available through Medicare, private health insurance and/or worker's compensation; and
- to modify individual's home or vehicle to accommodate the special needs of an individual or a dependant as a result of a severe disability (regulation 6.19(A) of the *Superannuation Industry (Supervision) Regulation 1994 & APRA Superannuation Circular No. I.C.2*, paragraph 98).

Expenses associated with death

- for example, funeral, burial and cremation of a dependant; and

- the deceased party must have been reliant on you financially, domestically or on a personal level (*APRA Superannuation Circular No. I.C.2*, paragraph 98).

The amount an individual can withdraw on any of the above bases is limited to what is reasonably required. The payment must also be in one lump sum and not exceed an amount which takes into account the circumstances and the member's financial capacity as determined by APRA (*APRA Superannuation Circular No. I.C.2*, paragraph 99).

However, in the case of the payment of a loan in relation to your house, you may withdraw an amount equal to or less than 3 months' repayments or 12 months' interest on the outstanding balance (*APRA Superannuation Circular No. I.C.2*, paragraph 99).

Severe financial hardship

Different conditions of release apply depending on the age of the member suffering severe financial hardship (*APRA Superannuation Circular No. I.C.2*, paragraph 92).

To be able to withdraw your superannuation on the basis of serious financial hardship you must meet both of the following conditions:

- be in receipt of Commonwealth income-support payments continuously for 26 weeks. That is, you must receive the dole for 6 months; and
- be unable to meet reasonable and immediate family living expenses (regulation 6.01(5)(a) of the *Superannuation Industry (Supervision) Regulations 1994*).

A member suffering severe financial hardship and who has not reached their preservation age plus 39 weeks, will be entitled to receive between \$1,000 and \$10,000 from their superannuation fund. Only one such lump sum payment is allowed per member in any 12 month period (*APRA Superannuation Circular No. I.C.2*, paragraph 94).

On the other hand, members who have reached their preservation age plus 39 weeks who satisfy the above conditions will not be subject to any cashing restrictions (*APRA Superannuation Circular No. I.C.2*, paragraph 96).

Some superannuation funds, however, may impose more stringent conditions of release in respect of this condition. They may make it difficult for an individual to access their funds even though those funds would otherwise be available to the individual.

Temporary incapacity

An individual may also be able to obtain their superannuation funds early if they have temporarily ceased to be gainfully employed due to physical or mental ill-health, but are not permanently incapacitated.

The individual does not need to have fully ceased working, but generally cannot be entitled to receive sick leave benefits. This is only allowable when the member's temporary incapacity benefits and remuneration after partial return to gainful employment do not exceed the member's remuneration before becoming ill (*APRA Superannuation Circular No. I.C.2*, paragraphs 84 and 85).

The benefit must be paid as a non-commutable income stream - that is, as regular payments.

It is important to note that benefits may not be paid from the member's minimum benefits (*APRA Superannuation Circular No. I.C.2*, paragraph 86).

There is no limit to the term of payment for temporary incapacity under the SIS Act. However, there may be tax implications in regards to the deductibility of insurance premiums if the duration of payments exceeds 2 years (*APRA Superannuation Circular No. I.C.2*, paragraph 88).

Permanent incapacity

An individual may also be eligible to receive all their superannuation benefits if the individual is permanently incapacitated. The individual must have ceased gainful employment which means that they would have to have been working at least 10 hours a week before becoming permanently incapacitated (*APRA Superannuation Circular No. I.C.2*, paragraph 89).

Permanent incapacity means that you are unlikely, because of ill-health (whether physical or mental), to ever engage in gainful employment of the type for which you are reasonably qualified by education, training or experience. At least 2 medical practitioners will need to certify this. **Death**In most cases, a superannuation fund must pay out the member's superannuation interest/s upon the death of the member. The legal personal representative of the member should contact the member's fund as soon as possible after the death of the member.

Conclusion

It is important to note that the early release of superannuation funds is only possible if an individual also meets the conditions stated in the governing rules of the individual's superannuation fund. Depending on the ground of release, once a condition for release is met a member seeking the release of their funds will have to obtain the consent from the trustee(s) of the fund and/or APRA or the ATO.

It is also important to bear in mind that each of the above bases of withdrawal of superannuation, before retirement, are designed to be exceptional and extreme. However, there is no doubt that they are not just limited to disasters that happen on a grand scale, being available also in circumstances which happen also within an individual's own household (and which do not stretch to a State-wide natural disaster).