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Navigating the retirement conditions of release

This article explains the retirement conditions of release and highlights areas of uncertainty when accessing super.

Overview

Most of the conditions of release that allow clients to access their super have remained unchanged for many years. However, many areas still cause confusion.

This article reviews the retirement condition of release. Specifically, it identifies areas that can be unclear or seem contradictory and reviews practical issues relating to managing a previous condition of release. It also explores the documentation requirements to substantiate that a retirement condition of release has been met.

For more detailed information about the retirement and other conditions of release, see our adviser article [Guide to accessing super](#).

Retirement – the basics

Clients aged 60 or over may satisfy one of two retirement conditions of release to access their super.

They must either:

- cease a gainful employment arrangement from age 60, or
- have ceased a gainful employment arrangement at any time and declare permanent retirement (never intend to work 10 or more hours in any week in the future).

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What is gainful employment?

Gainful employment is defined as being employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment. The definition has two components:

- employment or self-employment, and
- receipt of gain or reward.

Defining employment and self-employment

While not defined in superannuation law, common indicators that a person is employed include:

- an employment contract
- the receipt of salary from an employer which includes the deduction of PAYG tax, and
- payment of superannuation guarantee contributions and entitlement to leave payments.

A self-employed person must generally carry on a business. A business includes any profession, trade, employment, vocation or calling except an occupation performed as an employee. Employment or self-employment is not confined to Australian activities. However, if relying on foreign employment or self-employment, the maintenance of robust documentation is recommended, particularly if translation is required.

Receipt of gain or reward

The receipt of gain or reward in respect of gainful employment requires the gain or reward to be in return for personal exertion. The gain or reward may include receipt of remuneration such as salary or wages, business income, bonuses, commissions, fees or gratuities.

The receipt of passive income (for example income distributions from an investment portfolio or rental income) does not constitute gain or reward from gainful employment.

The concept of gain or reward is broad enough to encompass payments other than salary or wages, such as free housing and payment of utilities associated with the housing. However, the gain or reward must be directly related to employment activities and be commensurate with the personal exertion undertaken.

Expense reimbursements do not constitute gain or reward, as they reflect compensation for expenditure incurred rather than a payment for personal exertion.

Does volunteer work constitute gainful employment?

Advisers are often asked if volunteering constitutes gainful employment. While this question is more prevalent when considering the work test for contribution purposes, it is also a consideration when determining whether ceasing this activity would meet the retirement condition of release.

Although gain or reward does not have to be monetary in nature, personal satisfaction and other non-monetary receipts are unlikely to substantiate an employment arrangement in most cases. Volunteer arrangements are rarely likely to satisfy this requirement, as there is invariably no employer/employee relationship for volunteers. Likewise, activities of a personal or domestic nature, such as babysitting for family, will generally not qualify.

Termination of employment required

To satisfy the retirement condition of release, the arrangement under which the member was gainfully employed must be terminated. A significant change to the arrangement, on its own, is not sufficient.

This is a particularly important point for advisers, as clients often do not appreciate the technical significance of termination. They may believe they have retired, or are working only minimal hours, and therefore assume they have met a retirement condition of release.

We regularly see situations where clients intend to retire fully, but are encouraged by their employer to remain on the books and perform casual or relief duties, or continue working on an ongoing part-time basis. In these circumstances, the employment arrangement may not have terminated. Instead, the arrangement may simply have changed, meaning the retirement condition of release has not been met.

If the member has not met a condition of release, payment of a super benefit may breach the payment standards and constitute illegal early access to super. The amount will be included in the member's assessable income and taxed at their marginal tax rate, with personal tax penalties potentially applying. In addition, if the payment is made from an SMSF, the trustee could receive a penalty for breaching an operating standard.

Example 1 – Termination of employment not met

Ashira worked full time for 30 years with Big Company and is now age 60. Ashira commenced taking all her accrued leave and expected to retire afterwards. Prior to the accrued leave expiring, she was convinced to accept a casual role with Big Company, working two days per week. Although Ashira's hours have changed dramatically, there was no termination of employment with Big Company, meaning a retirement condition of release has not been met.

Example 2: Never worked

Linda, age 62, has never been in paid employment in her life. All her super contributions have been non-concessional. Linda is not eligible to access her super benefit under the retirement condition of release as she cannot satisfy the requirement of ceasing a gainful employment arrangement. Linda may commence a transition to retirement (TTR) pension if she needs access to her super. Her super will become unrestricted non-preserved upon reaching age 65 (an automatic condition of release). She may access her super benefit in the event of severe financial hardship, terminal illness, or under compassionate grounds, if eligible.

Is termination met when a company director resigns?

As explained above, for termination to occur, there must be a termination of an employment arrangement. Company directors are typically office holders rather than an employee. However, there is a provision in superannuation law¹ that potentially enables a director to be considered an employee.

For gain or reward to exist, the director must be paid for their directorship duties. Directors are generally entitled to be paid if the company constitution permits the payment. If a director is entitled to and receives payment, then the resignation as a director on or after age 60 may trigger a retirement condition of release.

Is the condition of release met where employment income from a company or trust is classified as passive income?

The ATO may review arrangements involving retirement of directors, or similarly, employees of a trust, to ensure there is no ongoing involvement in directing the business. The ATO website provides the [**Crackle case study example**](#) to demonstrate the potential methodology in establishing whether gainful employment has ceased for a director and employee. The case study illustrates that merely terminating the arrangement 'on paper' is not sufficient if the person continues to receive some form of reward for their personal exertion.

Termination from age 60

From age 60 to 64, the retirement condition is automatically satisfied where an arrangement under which the member was gainfully employed has been terminated. The member benefits accrued to the date of termination become unrestricted non-preserved and accessible. All future contributions or earnings are preserved. Where a person has multiple employment arrangements, terminating one of the arrangements after age 60 satisfies the retirement condition of release.

Example 3 - multiple job termination

Philip is age 62 and employed fulltime with RBA Pty Ltd. In March 2024, he was employed as an Electoral assistant and that employment terminated on 30 March 2026. All his superannuation accrued to 30 March 2026 can be accessed.

Permanent retirement

Permanent retirement requires the person have ceased a gainful employment arrangement (at any stage) and to declare that they intend to never again be gainfully employed for at least 10 hours per week. When considering meeting permanent retirement, the termination of employment can be prior to age 60.

Example 4 – permanent retirement

Able is 60 in July 2026 when he agrees with his employer Medium Company Pty Ltd that he will only work one day per week (7.5 hours). Able does not terminate his employment with Medium Company Pty Ltd. However, over his working life he has terminated employment with various employers. Able meets the retirement condition of release, as he has reached age 60, terminated a gainful employment arrangement in the past and does not intend to be gainfully employed for 10 hours or more in a week in the future.

¹ Superannuation Industry (Supervision) Act 1992 s15A

Example 5 – permanent retirement

Alla is 60 and ceased her role as a self-employed florist when she was 59. She accepts a position with a local events management company to work for six hours each Friday preparing floral arrangements. She has no intention of doing any other work. Although Alla has secured employment, she meets the retirement condition of release by terminating her self-employment and having no intention of working 10 or more hours per week.

If a person returns to the workforce, will their super become preserved again?

Advisers are often asked what happens if a person genuinely intended to permanently retire but returns to the workforce after they have accessed their super or started a retirement phase pension. Provided that their intention to permanently retire was genuine and not a contrived arrangement, there is no requirement for the unrestricted benefits to return to a preserved status. However, any future contributions and investment returns in accumulation phase will be preserved until satisfying another condition of release.

JobSeeker Payment and mutual obligations

When a client receives JobSeeker Payment, they will need to meet mutual obligations, unless exempt. From age 60, mutual obligations can be met by completing any combination of 30 hours per fortnight of approved voluntary work, or suitable paid work/self-employment. Importantly, those meeting their mutual obligations via voluntary work only must still accept any offer of suitable paid work. Therefore, those aged 60 to 64 receiving JobSeeker Payment cannot satisfy the permanent retirement condition of release.

Accessing benefits

Timing

When a person reaches age 65, all benefits are accessible.

When a person terminates employment after age 60, only the benefits accrued up to the date of termination become accessible. Meeting the definition of retirement is a point in time test. All future contributions and growth are preserved. To access preserved amounts, a condition of release must be met again. The person can rely on their previous retirement if their circumstances haven't changed. If the person returns to gainful employment, the person must satisfy another condition of release to access any preserved amounts.

Advice tip

If a client meets the permanent retirement condition of release and receives significant investment returns or new contributions, it may be worth having these amounts made unrestricted non-preserved by the trustee. If the person's circumstances change in the future and they intend to return to work, these amounts are accessible. Otherwise, these amounts remain preserved as they no longer meet the retirement condition of release.

A common strategy for clients who intend to continue with gainful employment is to start a retirement phase pension. This solidifies the unrestricted non-preserved (UNP) nature of the pension interest and any earnings in the pension will also be UNP. Withdrawals can be made from the pension at any time and future preserved benefits can grow in accumulation phase.

The person can access the benefit amount accrued to the date of termination of employment after age 60 at any future time. However, there may be practical difficulties in calculating the value of a benefit at the relevant historic date. Some retail funds may not be able to calculate a benefit payment amount in a prior financial year. If the fund is an SMSF that uses a professional administration system, the calculation may be readily determined and proven to an auditor or the ATO. SMSFs that do not use professional administration systems may need to have interim accounts prepared.

Documentation

The restriction on paying member benefits unless a condition of release has been met is an operating standard. In an SMSF, the SMSF auditors need to review compliance with the payment standards and they generally require proof that a condition of release has been met.

Retirement documentation

Where a person has permanently retired after age 60, it is important to ensure the termination of employment is documented and the member attests to their intention to permanently retire.

In a retail fund, the retirement declaration will generally form part of the withdrawal request. In an SMSF, it is important that the documents are retained on file. Given the mutuality of the member and the trustee in an SMSF, documentation of retirement is often overlooked. However, if the member subsequently returns to employment and is not retired at the time of audit, there may be difficulties in demonstrating that the benefits are legitimately unrestricted non-preserved.

Termination documentation

If a member was an employee of an unrelated employer, evidence of termination of employment is relatively easy to obtain. Documentation may include a letter/email of resignation and acceptance by the employer, a termination notice, a statement of payment of final leave entitlements or a PAYG payment summary with a non-30 June end date (unless the termination date is 30 June).

If a member was employed as a casual, proof may be more difficult and written confirmation that the member is terminating employment is recommended. This could be an email or a text.

Evidencing cessation of self-employment

Where a person is self-employed or employed by a related employer, whether a termination of gainful employment has occurred can be problematic. Robust documentation can include documentation of the sale of the business, and/or the assets required to run the business. These can include the business premises, goodwill and tools of the trade. The sale of a business does not automatically mean the arrangement of employment has ceased. For some business sales, the former owner is still employed in the business and a condition of release may not be satisfied.

Cancellation of the business name and ABN are helpful, however, there may be valid reasons for retaining a trust or company and therefore not cancelling the ABN. Lodgement of final tax returns for the business and notification to service providers (such as accountant or auditors) that their services will not be required in the future can also assist.

It is also important for clients to appreciate that the ATO has sophisticated data matching capabilities. They can readily identify inconsistencies such as declaring permanent retirement whilst receiving JobSeeker Payments or receiving employment related income.

Transferring SMSF service providers

When an SMSF is transitioning from one service provider to another, there may be missing or inaccurate preservation information. In the absence of proof that a member has met a condition of release, the new service provider generally must allocate all benefits as preserved.

Retirement and limited recourse borrowing arrangements

Where a member of an SMSF has a limited recourse borrowing arrangement (LRBA) and they meet a retirement condition of release, their total super balance (TSB) may be increased. The outstanding LRBA amount is added to the TSB if:

- the LRBA commenced on or after 1 July 2018 and:
 - the LRBA is a related party loan, or
 - the member has met a condition of release with a nil cashing restriction, and
- the LRBA is over an asset which is supporting the member's interest in the fund.

Whilst the related party loan aspect of the addition of the LRBA amount relating to the member's interest to the TSB is generally well understood, the meeting of a nil cashing restriction is often missed.

Example 6 – Limited recourse borrowing arrangement

Min's SMSF acquired a property with an LRBA from Lender Bank on 1 July 2019. Ill-health causes Min to terminate employment on 1 June 2026 at age 61. Min starts an account based pension with the unrestricted non-preserved amount. Min immediately gets a full-time sedentary position with another employer. The termination of employment after age 60 is a nil cashing restriction condition of release and the outstanding LRBA amount will be added to Min's TSB at 30 June 2026.

Asset	Value at 30 June 2026
Cash and shares	\$850,000
Plus property	\$1,100,000
Less LRBA	-\$450,000
Account balance	\$1,500,000
Plus LRBA	\$450,000
Total super balance	\$1,950,000

Min will only be eligible to make \$260,000 of non-concessional contributions to the SMSF in 2026/27 as their total super balance at 30 June 2026 is between \$1.84 million and \$1.97 million.

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