



Statutory Rules 1997 No. *1*

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Department.

## Superannuation Industry (Supervision) Regulations<sup>2</sup> (Amendment)

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia,  
acting with the advice of the Federal Executive Council, make the  
following Regulations under the *Superannuation Industry  
(Supervision) Act 1993*.

Dated *1* 1997.

*25 June*

*1* WILLIAM DEANE/  
Governor-General

By His Excellency's Command,

*1*  
Assistant Treasurer

*C.R. KEMP*

### 1. Commencement

1.1 These Regulations commence on 1 July 1997.

### 2. Amendment

2.1 The Superannuation Industry (Supervision) Regulations are  
amended as set out in these Regulations.

**3. Regulation 6.01 (Interpretation)****3.1 Subregulation 6.01 (2):**

Insert the following definitions:

**“‘Commonwealth income support payment’ means:**

- (a) an income support supplement; or
- (b) a service pension; or
- (c) a social security benefit; or
- (d) a social security pension;

as defined in section 23 of the *Social Security Act 1991*;

**‘compassionate ground’**, in relation to the release of a member’s preserved benefits, or restricted non-preserved benefits, in a superannuation entity, means a ground listed in subregulation 6.19A (1);”.

**3.2 Subregulation 6.01 (5):**

Omit the subregulation, substitute:

**“(5) For the purposes of Schedule 1, a person is taken to be in severe financial hardship if:**

- (a) the person is aged less than 55 years and 39 weeks and the trustee of a superannuation entity is satisfied, based on written evidence provided by at least one Commonwealth department or agency responsible for administering a class of Commonwealth income support payments, that:
  - (i) the person has received Commonwealth income support payments for a continuous period of 52 weeks; and
  - (ii) the person was in receipt of payments of that kind on the date of the written evidence; or
- (b) the person is aged 55 years and 39 weeks, or more, and the trustee of a superannuation entity is satisfied:
  - (i) based on written evidence provided by at least one Commonwealth department or agency responsible for administering a class of Commonwealth income support payments—that the person received Commonwealth income support payments for a cumulative period of 39 weeks after the person turned 55 years of age; and

- (ii) that the person was not gainfully employed on a full-time, or part-time, basis on the date of the application for cashing of his or her preserved benefits, or restricted non-preserved benefits, in the entity.

“(5A) The written evidence provided for by paragraph (5) (a) is of no effect if it is dated more than 21 days before the date of the person’s application to the trustee for cashing of his or her preserved benefits or restricted non-preserved benefits.”.

#### **4. New regulation 6.19A**

4.1 After regulation 6.19, insert:

##### **Release of benefits on compassionate grounds**

“**6.19A. (1)** A person may apply to the Commissioner for a determination that an amount of the person’s preserved benefits, or restricted non-preserved benefits, in a superannuation entity may be released on the ground that it is required:

- (a) to pay for medical treatment or medical transport for the person or a dependant; or
- (b) to enable the person to make a payment on a loan, to prevent:
  - (i) foreclosure of a mortgage on the person’s principal place of residence; or
  - (ii) exercise by the mortgagee of an express, or statutory, power of sale over the person’s principal place of residence; or
- (c) to modify the person’s principal place of residence, or vehicle, to accommodate the special needs of the person, or a dependant, arising from severe disability; or
- (d) to pay for expenses associated with the person’s palliative care, in the case of impending death; or
- (e) to pay for expenses associated with a dependant’s:
  - (i) palliative care, in the case of impending death; or
  - (ii) death; or
  - (iii) funeral; or
  - (iv) burial.

“(2) The Commissioner must determine, in writing, that the person has satisfied, for the purposes of subregulation 6.18 (1) or 6.19 (1), a condition of release on a compassionate ground if the Commissioner is satisfied that:

- (a) the release is required on a ground mentioned in subregulation (1); and
- (b) the person does not have the financial capacity to meet an expense arising from that ground.

“(3) The Commissioner cannot be satisfied that money is required for medical treatment unless 2 registered medical practitioners (at least one of whom must be a specialist) certify that:

- (a) the medical treatment is necessary to:
  - (i) treat a life threatening illness or injury; or
  - (ii) alleviate acute, or chronic, pain; or
  - (iii) alleviate an acute, or chronic, mental disturbance; and
- (b) the treatment is not readily available to the person, or the dependant, through the public health system.

“(4) The Commissioner cannot be satisfied that money is required for medical transport unless the medical treatment for which the medical transport is required has been certified, under subregulation (3), as necessary for a reason mentioned in paragraph (3) (a).

“(5) The Commissioner cannot be satisfied that money is required on the ground mentioned in paragraph (1) (b) unless the person gives to the Commissioner a written statement from the mortgagee that:

- (a) payment of an amount is overdue; and
- (b) if the person fails to pay the amount, the mortgagee will:
  - (i) foreclose the mortgage on the person’s principal place of residence; or
  - (ii) exercise its express, or statutory, power of sale over the person’s principal place of residence.

“(6) A statement under subregulation (5) must include the following information:

- (a) the amount that is equal to 3 months’ repayments under the mortgage; and

- (b) the amount that is 12 months' interest on the outstanding balance of the loan at the time the statement is made.

“(7) In this regulation:

‘**medical transport**’ means transport, for medical attention, by land, water or air.”.

**5. Schedule 1 (Conditions of release and cashing restrictions—preserved benefits and restricted non-preserved benefits)**

**5.1 Part 1:**

Omit item 105, substitute:

“105	Severe financial hardship	For a person taken to be in severe financial hardship under paragraph 6.01 (5) (a)—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 \$15,000
		For a person taken to be in severe financial hardship under paragraph 6.01 (5) (b)—Nil”.

## 5.2 Part 1:

Omit item 107, substitute:

- “107      Compassionate ground      A single lump sum, not exceeding an amount determined, in writing, by the Commissioner, being an amount that:
- (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 paragraph 6.19A (1) (b)—in each 12 month period (beginning on the date of first payment), does not exceed an amount equal to the sum of:
    - (i) 3 months’ repayments; and
    - (ii) 12 months’ interest on the outstanding balance of the loan”.

5.3 Part 2:

Omit item 205, substitute:

- “205      Severe financial hardship      For a person taken to be in severe financial hardship under paragraph 6.01 (5) (a)—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 \$15,000
- For a person taken to be in severe financial hardship under paragraph 6.01 (5) (b)—Nil”.

5.4 Part 2:

After item 206, insert:

- “207      Compassionate ground      A single lump sum, not exceeding an amount determined, in writing, by the Commissioner, being an amount that:
- (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 paragraph 6.19A (1) (b)—in each 12 month period (beginning on the date of first payment), does not exceed an amount equal to the sum of:
  - (i) 3 months' repayments; and
  - (ii) 12 months' interest on the outstanding balance of the loan".

## **6. Transitional**

6.1 An application to the Commissioner, before 1 July 1997, for a determination that benefits be provided for the member on compassionate grounds, must, if it is an application capable of being dealt with, be dealt with by the Commissioner as if the amendments of the Superannuation Industry (Supervision) Regulations made by subregulations 3.1, 4.1, 5.2 and 5.4 had not occurred.

6.2 An application to the Commissioner, before 1 July 1997, for a determination under subregulation 6.01 (5) of the Superannuation Industry (Supervision) Regulations as in force immediately before the commencement of these Regulations, must be dealt with by the Commissioner as if the amendments of the Superannuation Industry (Supervision) Regulations made by subregulations 3.1, 3.2, 5.1 and 5.3 had not occurred.



**NOTES**

1. Notified in the *Commonwealth of Australia Gazette* on *1* 1997. *26 June*
2. Statutory Rules 1994 No. 57 as amended by 1994 Nos. 189 and 432; 1995 Nos. 47, 64, 142, 158, 159, 240, 293, 384 and 430; 1996 Nos. 44, 57, 122 and 344; 1997 Nos. 69 and 117.