



Should you consider accessing your superannuation money to get through difficult times? It's possible, but while business owners should proceed with caution, here is the process.

Economic and financial times for SMEs are getting tougher. The need to be financially fit and healthy is paramount. Belts are being tightened, costs are being heavily scrutinised, and all avenues of finance are being explored.

One avenue of funds that some SMEs may seek to access is superannuation. The law places strict limits on when access to super before retirement is allowed, but there are ways to do it.

Of course, doing so will necessarily reduce super balances, so SME owners and operators need to be careful. There are also strict conditions on accessing superannuation, which means it will not be available to all those who might seek it.

The law is somewhat complex, but basically, preserved benefits (that is, those that cannot be paid unless a condition of release is satisfied, see below) and restricted non-preserved benefits (that is, subject to other conditions) of a super fund member must not be touched until they have retired from the workforce and have reached [preservation age](#).

If the member has not satisfied a condition of release (such as retirement, attaining age 65 or suffering from a terminal medical condition), early release of preserved superannuation benefits is only permitted in restricted circumstances. Note however, this is subject to the governing rules of the fund and fulfilling certain requirements.

Common circumstances where a member can apply to the trustee of his or her fund for early release of benefits include severe financial hardship, compassionate grounds, and temporary incapacity. In the current climate, severe financial hardship may strike a chord with some SME owners.

The basic rules

The circumstances of when a fund member is taken to be in severe financial hardship are prescribed by the superannuation regulations. The requirements to be satisfied depend on whether the member has reached his or her preservation age.

The preservation age of the member depends on his or her date of birth:

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

A super fund member who has not reached his or her preservation age is taken to be in severe financial hardship if the trustee of the super fund is satisfied that:

- Based on written evidence from Centrelink or the Department of Veteran Affairs (DVA), the member has received income support payments for a continuous period of 26 weeks and is still in receipt of payments on the date of the written evidence.
- The member is unable to meet reasonable and immediate family living expenses.

If a fund member has not attained his or her preservation age, two tests must be satisfied – an objective test and a subjective test. In its [Guidelines for Trustees Early Release of Superannuation Benefits](#), APRA (the Australian Prudential Regulation Authority) says that trustees have flexibility in how they administer the subjective test. Fund trustees may also seek other evidence outside the guidelines that they believe is relevant.

If the member has reached his or her preservation plus 39 weeks, the member is taken to be in severe financial hardship if the trustee of the super fund is satisfied that:

- Based on written evidence from Centrelink or the DVA, the member received income support payments for a cumulative period of 39 weeks after the member attained his or her preservation age.
- The member was not gainfully employed on a full-time or part-time basis (at least 10 hours per week) on the date of the application for cashing of his or her preserved benefits or restricted non-preserved benefits.

It is important to note that fund members who have reached their preservation age plus 39 weeks are not required to prove to the super fund trustee that they are unable to meet reasonable and immediate family living expenses.

Unable to meet living expenses

The phrase “unable to meet reasonable and immediate family living expenses” is not defined in the superannuation law. However, APRA has provided guidance on its meaning.

For a single super fund member, the phrase means “there is a gap between his/her personal income and his/her expenses, which are associated with everyday living; and the person has no assets which could (reasonably and realistically) be used or sold to cover the gap, apart from the asset of the preserved superannuation benefits”.

For a super fund member with a family, the phrase means “there is a gap between the combined income of the applicant and his/her family and the combined family expenses which are associated with the everyday living of the family; and the combined assets of the family could not be used or sold to cover the gap, apart from the asset of the preserved superannuation benefits”.

The family home is excluded from consideration.

The term “family” is defined to cover spouses, de facto partners, parents living with a member, children, stepchildren, foster children and same-sex couples living in a bona fide domestic relationship.

Note that if a super fund member (such as an SME owner) is claiming severe financial hardship on the grounds of inability to pay his or her business expenses, which will lead to the loss of the business and consequent inability to pay for family expenses, the trustee of the superannuation fund is not permitted to accept such claims for early release of superannuation.

The way forward

As you can see, the need to access super needs to be somewhat dire before access to those funds will be granted, but the law does provide for it and it’s important for SMEs to understand the ground rules here.

As tempting as it can be for a fund member to seek the early release of his or her superannuation benefits, it is important to remember that any early release is likely to reduce the amount of superannuation benefits the member will receive in the future. The early release of benefits is necessarily only a short-term solution.

SMEs really need to be talking with their accountants or advisers about the best way they can weather the current financial storm. Possible early access to super is one avenue to explore (although, as noted above, it has severe limits), but having a sound financial and/or business plan, good cost and debt control, and cashflow planning need to be explored fully.