



# **ACCESSING SUPER – KEEPING IT LEGAL**

CPAL Technical Team – Melinda Bendeich / Peter Kelly  
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# AGENDA

1. Introducing conditions of release
2. Retirement
3. Permanent incapacity



# LEARNING OUTCOMES

By participating in this session, you will:



Gain insights into the broad range of conditions of release

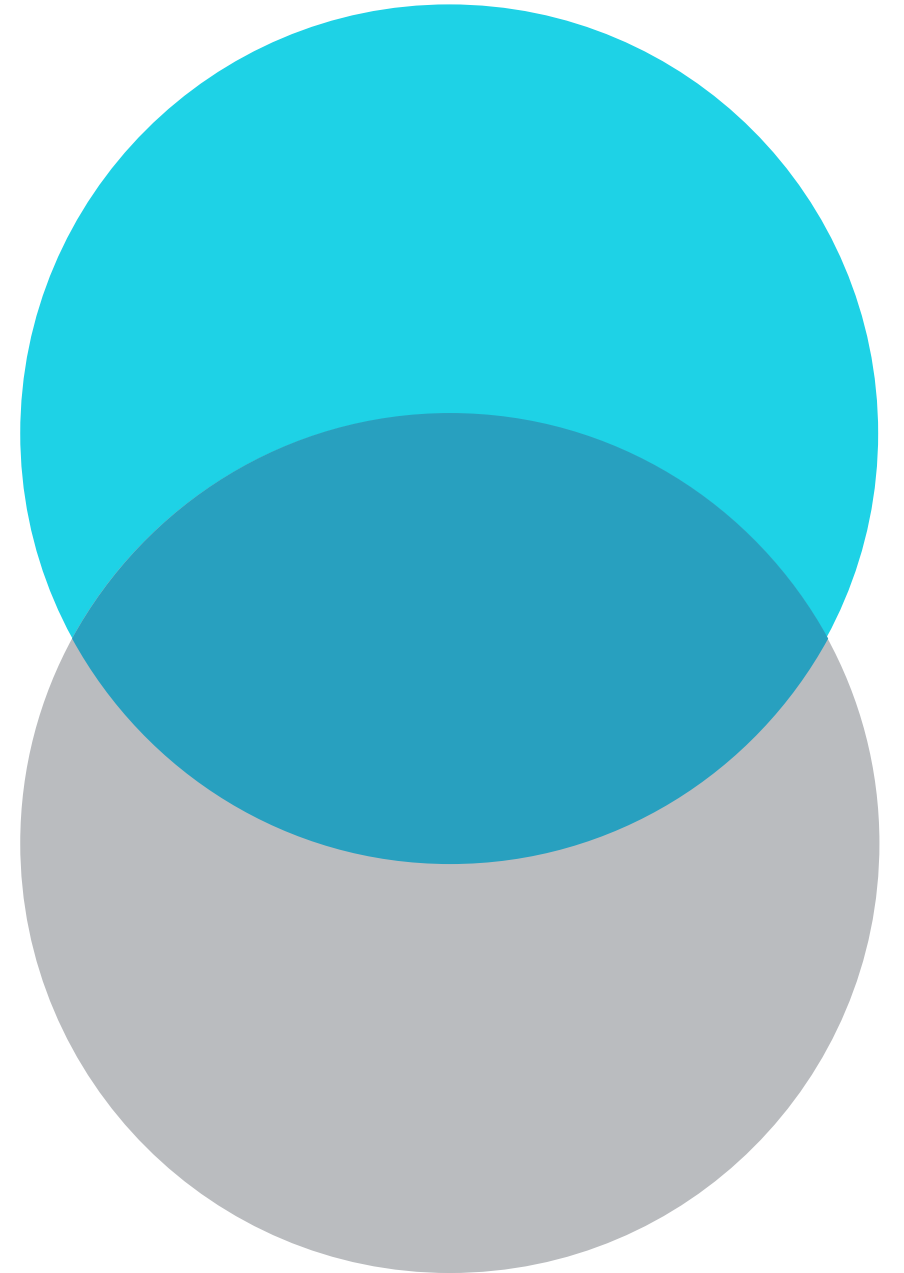


Appreciate the two limbs of the retirement condition of release



Understand the nuances of the permanent incapacity condition of release

# INTRODUCTION



## CONDITIONS OF RELEASE (CoR) – GUIDING PRINCIPLES

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1. Benefits may be;
  - a. Unrestricted non-preserved,
  - b. Restricted non-preserved,
  - c. Preserved.
2. Most accumulation and TRIS account benefits are preserved
3. Reaching age 65 is an automatic CoR
4. Once a benefit becomes URNP, it remains URNP – but what about:
  - a. Investment earnings
  - b. Future contributions
5. Super funds may be more restrictive in their interpretation

## CONDITIONS OF RELEASE – SIS

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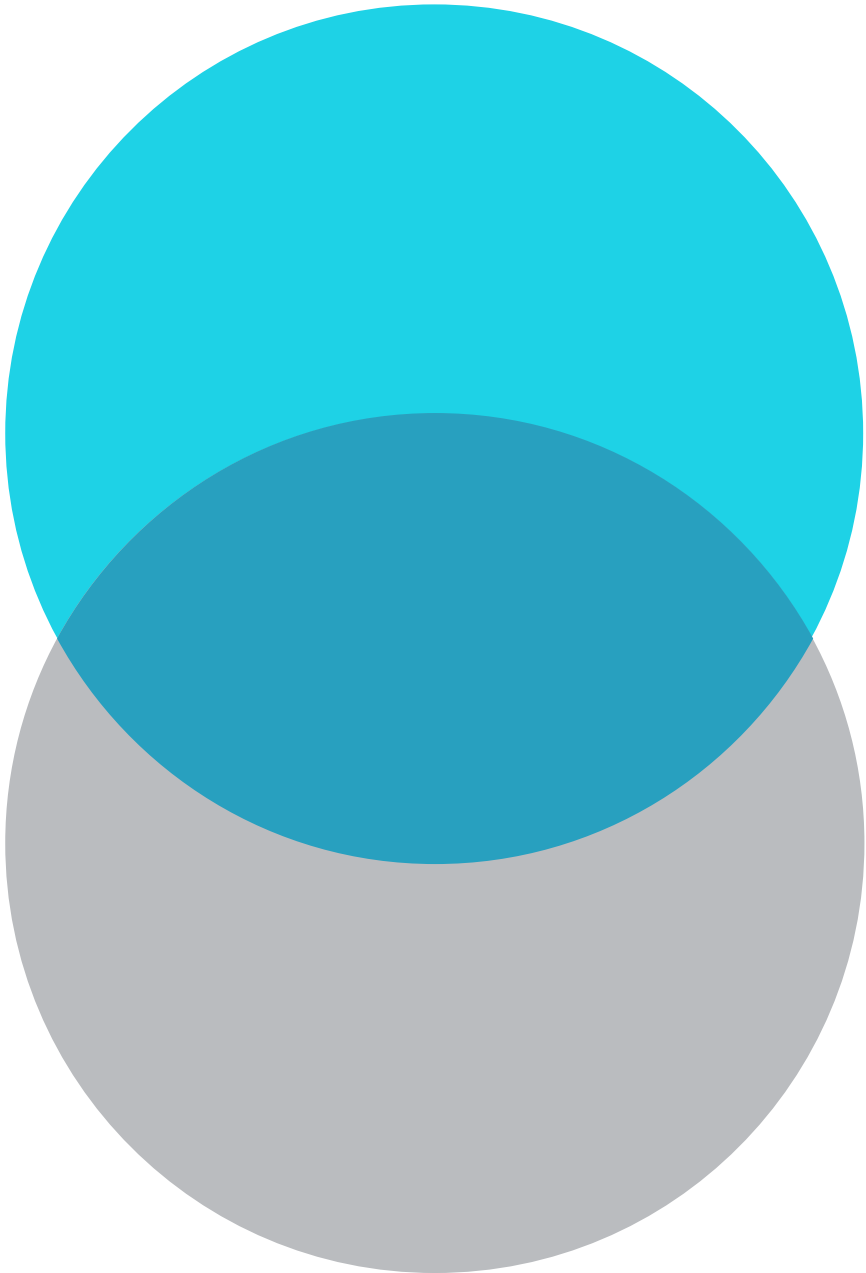
Common Conditions	Less Common Conditions (not exhaustive)
Retirement	Former temporary resident leaving Australia (DASP)
Death	Termination of gainful employment (<\$200)
Permanent incapacity	Terminal medical condition
Attaining age 65	Compassionate grounds
Temporary incapacity (non-commutable income stream)	Severe financial hardship
Attaining preservation age (TRIS)	Release authority (e.g. FHSSS, excess contributions, Div. 293)
	Transfer to New Zealand (KiwiSaver)

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# RETIREMENT



## TEST YOUR KNOWLEDGE

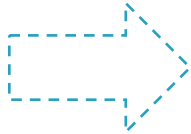
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In which of the following situations has the retirement condition of release been met?

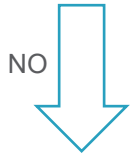
1. Elizabeth is 54. She has ceased gainful employment as a nurse in order to care for her ageing parents
2. Joe is 59. He has negotiated with his current employer to reduce his working hours to 8 hours per week from 1 July 2023.
3. Mary-Ann comes from a wealthy pastoral family, and she has just turned 60. She has never been gainfully employed.
4. David is 62 years old and is a self-employed mechanic, operating as a sole trader. A major business client has just cancelled a contract with him to service their vehicle fleet, however he continues to service vehicles for retail clients.

# STEP 1 - PRESERVATION AGE

Has member met their preservation age?



Retirement can occur at any age – but benefits can only be accessed from preservation age

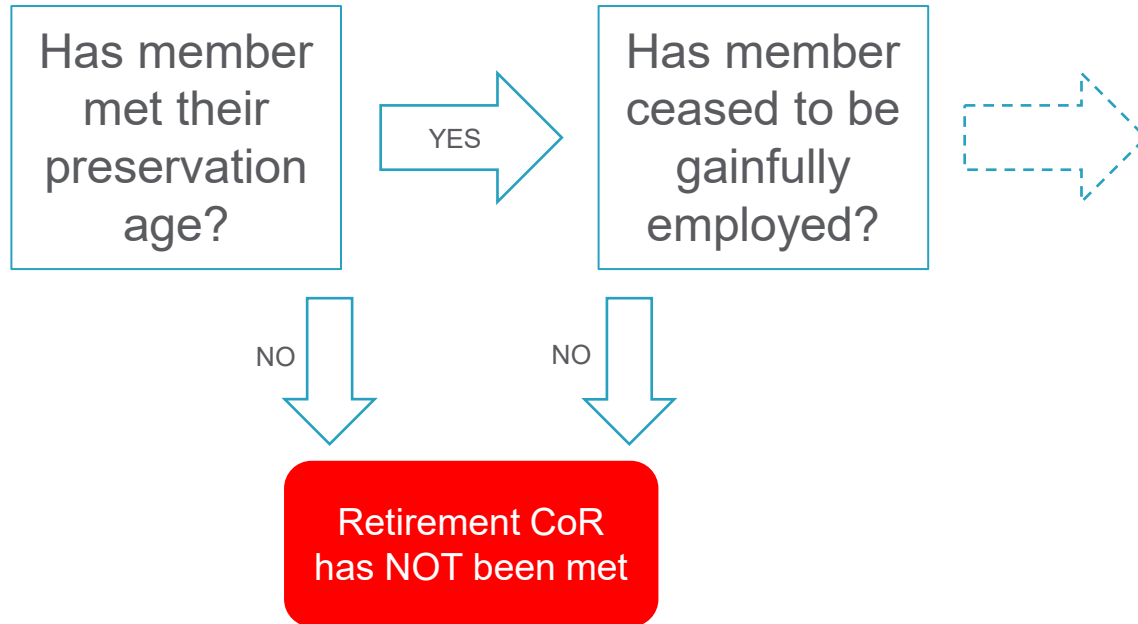


Retirement CoR has NOT been met

Date of Birth	Preservation Age
Before 1 July 1960	55
1/7/60 to 30/6/61	56
1/7/61 to 30/6/62	57
1/7/62 to 30/6/63	58
1/7/63 to 30/6/64	59
After 30/6/64	60

## STEP 2 - CEASING GAINFUL EMPLOYMENT

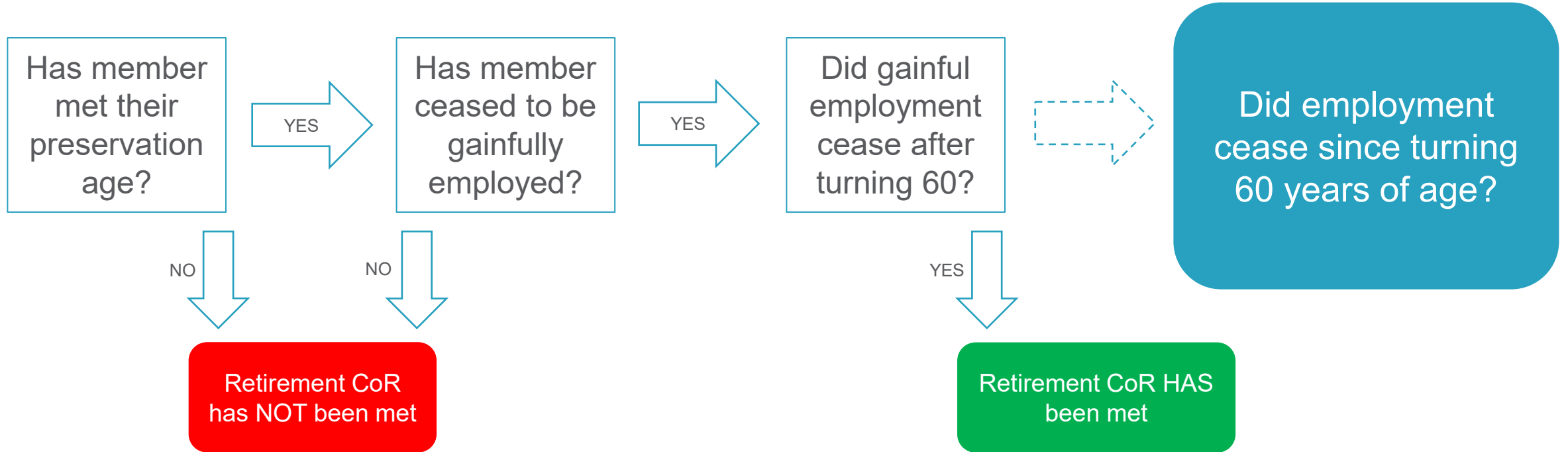
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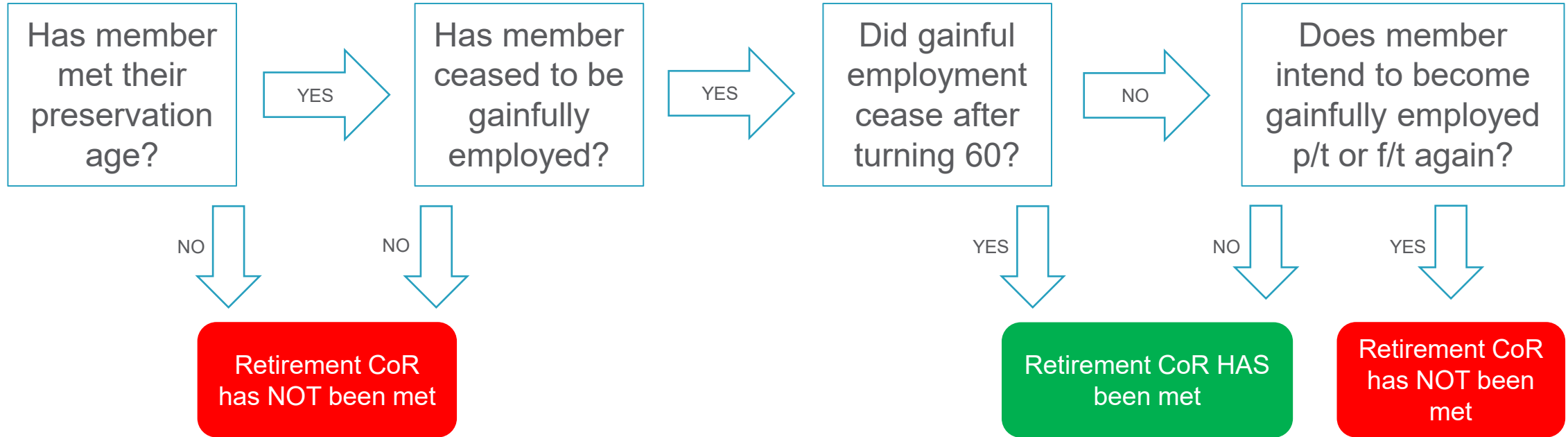
Gainfully employed means  
*“employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.”*

SISR 1.03(1)

## STEP 3 - AGE WHEN EMPLOYMENT CEASED



## STEP 4 – FUTURE WORK INTENTION



### TIP

Keep evidence of having previously ceased employment.

Part time – at least 10, and not more than 30 hours pw  
Full time – 30 hours per week or more

## CASE STUDY - ELIZABETH

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Elizabeth is 45. She has ceased gainful employment as a nurse in order to care for her ageing parents.

1. Gainful employment has ceased
2. Preservation age has not been met
3. Retirement CoR is met:
  - i. Once Elizabeth turns 60, and
  - ii. She has no intention of becoming gainfully employed on either a p/t or f/t basis.



## CASE STUDY - JOE

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Joe is 59. He negotiated with his employer to reduce his working hour to 8 hours per week from 1 July 2023.

1. Has reached preservation age
2. Employment has not ceased
3. Reducing working hours does not satisfy a CoR unless Joe has, at some point in the past, ceased an arrangement under which he was gainfully employed.

Some superannuation funds may interpret this differently.  
i.e. requiring cessation of employment and reduction in  
hours to be simultaneous.



## CASE STUDY – MARY ANN

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Mary-Ann comes from a wealthy pastoral family, and she has just turned 60.

She has never been gainfully employed.

1. Has reached preservation age
2. She has never ceased gainful employment
3. Retirement CoR is not available
4. Must wait until 65 to access super



## CASE STUDY – DAVID

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David is 62 year old self-employed mechanic (sole trader). He operates as a sole trader. A major business client has just cancelled a contract to service their vehicle fleet, however he continues to service vehicles for other clients.

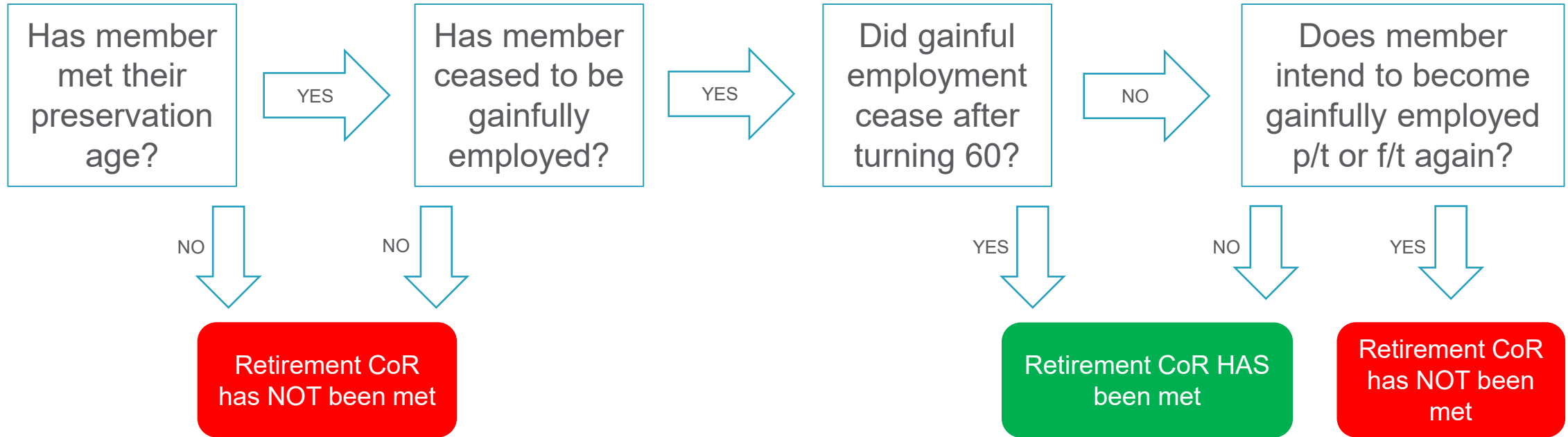
1. Has reached preservation age
2. Continues to work fulltime
3. Loss of a contract to provide services is unlikely to satisfy the CoR.

## COMMON ADVISER SCENARIOS

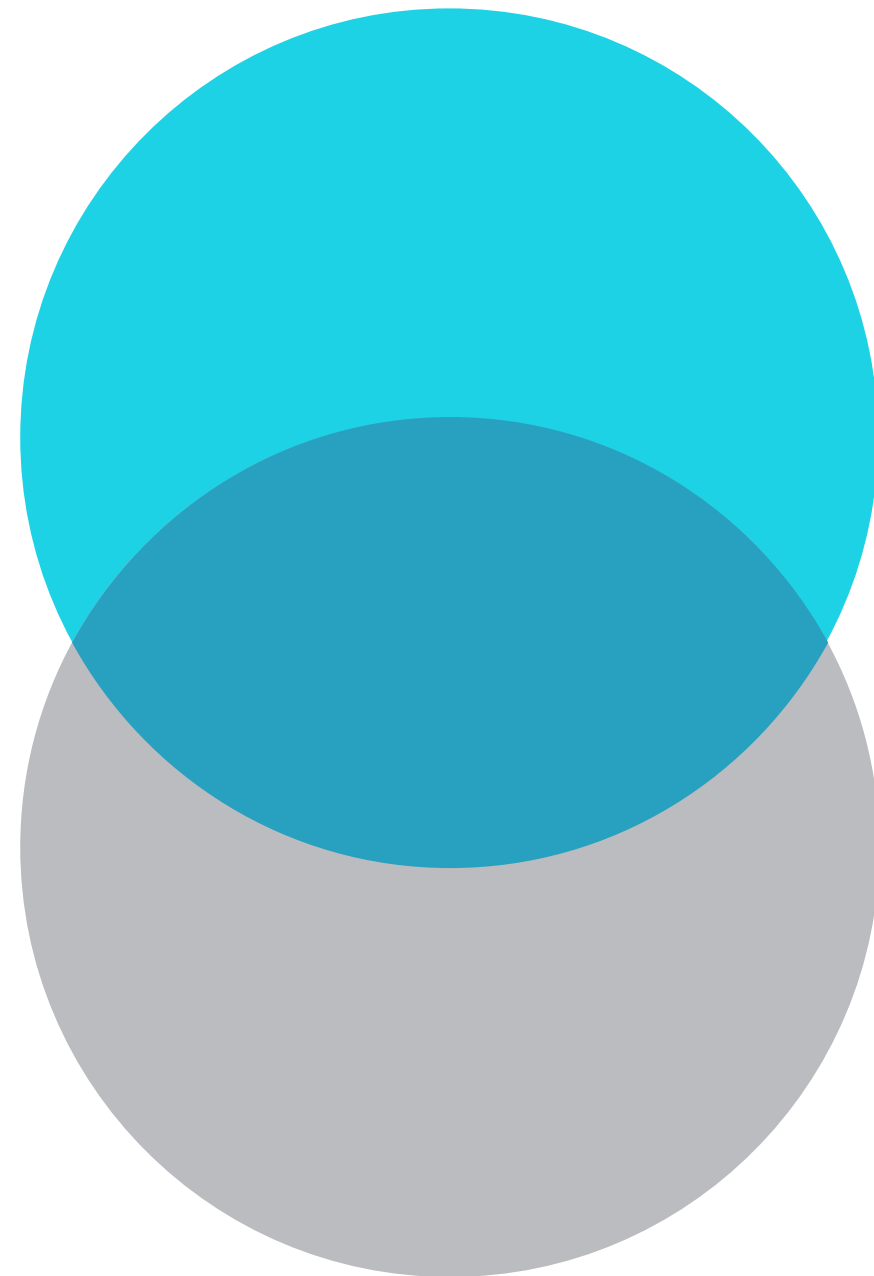
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1. Changing an existing employment arrangement – e.g. permanent to casual employment
2. Meeting the retirement CoR, but then re-entering gainful employment
3. Having more than one job.

# THE RETIREMENT CoR – IT ISN'T EASY



# PERMANENT INCAPACITY



## FIRSTLY - WHAT ABOUT TPD INSURANCE

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Key features:

1. Inside super – policy owner is the super fund trustee
2. Own occupation or any occupation?
  - Own occupation through super – legacy policies only
  - From 1 July 2014 – insurance cover must align with a CoR – (i.e. any occupation only)
3. Evidentiary requirements to support a valid claim
4. Policy proceeds paid to member's account – taxable component
5. ROSP
  - Lump sum payment (subject to CoR having been met), or
  - Rollover

# PERMANENT INCAPACITY – TWO CONSIDERATIONS

## 1. Accessing super

Condition of release must be met to access benefits (including insurance proceeds).



## 2. Taxation

Taxed as a lump sum member benefit. Tax-free component may be modified (increased) – “Tax-free uplift”

### SIS Reg. 1.03C

Trustee is reasonably satisfied that the member’s ill-health makes it unlikely the member will engage in gainful employment for which the member is reasonably qualified by education, training or experience.



Trustees will generally require two medical practitioners certify permanent incapacity



### ITAA 97 s.307-145

“Disability superannuation benefit”  
Tax-free component is increase to reflect future service period.  
Only applicable to benefits withdrawn as a lump sum or rolled over.

## CASE STUDY

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### Background

1. Samantha is 48 (D.O.B) 15/3/1975
2. Ceased gainful employment on 30/08/2022 due to permanent incapacity
3. Eligible service state date was 18/2/1998
4. Has \$900,000 in super (including \$500,000 TPD proceeds)
5. Current tax-free component is \$50,000
6. Wishes to withdraw \$400,000 to discharge mortgage





## ACTIVITY

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What are the issues that need to be considered if you were advising Samantha?

1. Insurance claim has been admitted
2. Has a condition of release been met?
3. Will the tax-free uplift occur?
4. Alternative strategy – draw a disability income stream from super?

## TAX CONSEQUENCES

No tax-free uplift

Component	Amount	Tax
Tax-free	\$ 22,240	\$0
Taxable	\$377,760	\$83,107

Tax-free uplift

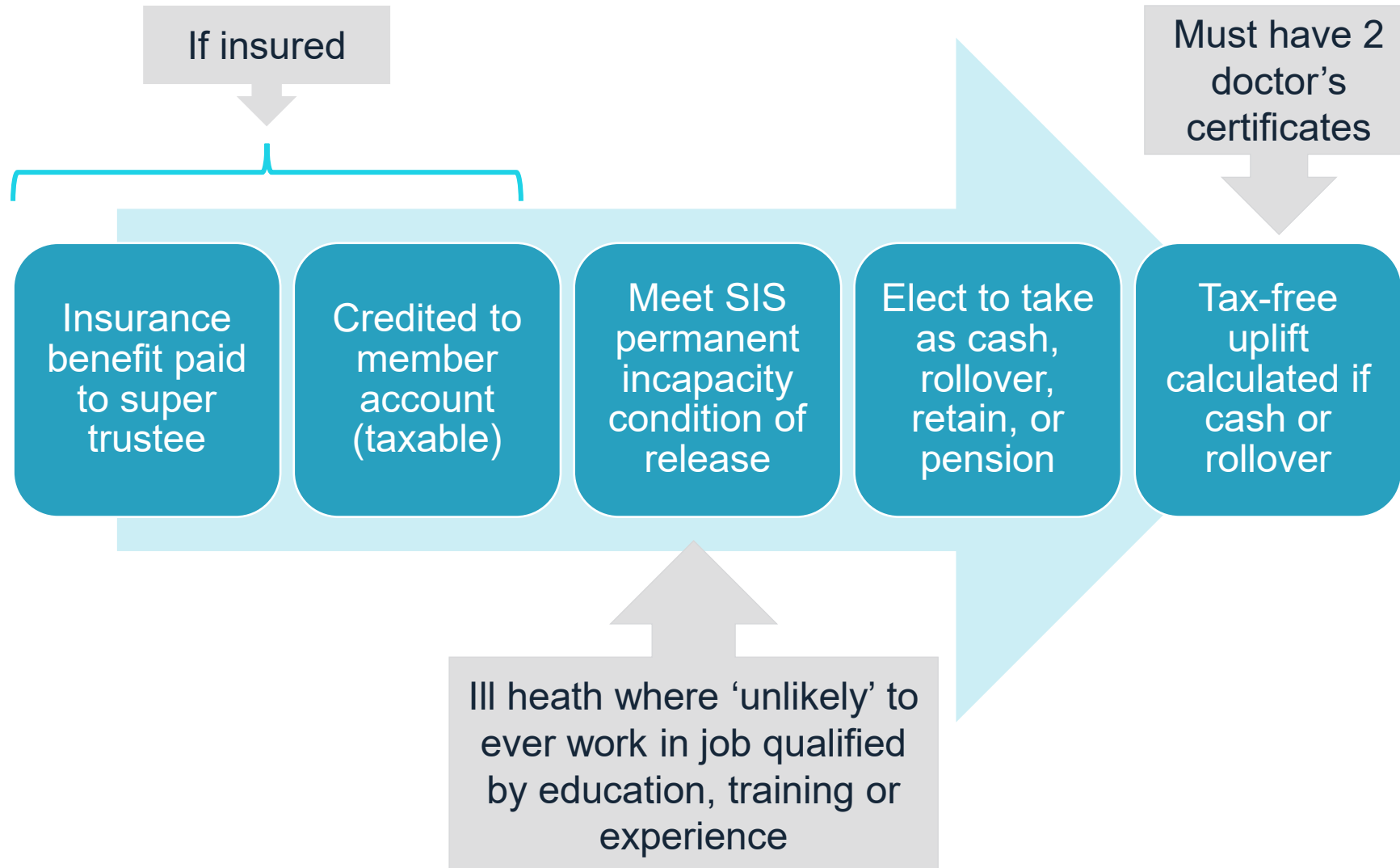
Component	Amount	Tax
Tax-free	\$188,999	\$0
Taxable	\$211,001	\$46,420

$$\text{Amount of benefit} \times \frac{\text{Days to retirement}}{\text{Service days + days to retirement}} = \text{Increase in tax-free component}$$

$$\$400,000 \times \frac{6408}{15367} = \$166,799$$

$$\text{Existing tax-free } (\$22,240) + \text{Uplift } (\$166,799) = \$188,999$$

# PERMANENT INCAPACITY – JUMPING THROUGH HOOPS



## PERMANENT INCAPACITY – TIPS AND TRAPS

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1. If income stream commences with the same trustee, no tax-free uplift (but a 15% tax offset is available)
2. If an income stream is required, consider rolling over benefit to a new fund to get the tax-free uplift before commencing a pension. Provide medical evidence to enable the new fund to pay the pension as disability pension (to get the 15% tax offset).
3. Even though super may be unpreserved, updated medical certification may be required for later lump sum withdrawal (tax-free uplift or 15% tax offset if commencing a pension).
4. Age and eligible service start date are important to maximise the tax-free uplift. The younger the member and/or the shorter the ESP, the greater the tax-free uplift
5. Tax-free uplift is (almost) irrelevant from age 60 except for estate planning purposes.
6. Consider social security (DSP) implications before commencing an income stream.

# CONSEQUENCES FOR ILLEGAL EARLY RELEASE MAY INCLUDE:

## 1. For fund members:

- Amount withdrawn taxed at the marginal tax rate
- Tax penalties

## 2. For SMSF trustees:

- Penalties
- Disqualification

## 3. For scheme promoters:

- Loss of professional license
- Penalties
- Criminal prosecution

ATO, COMPLIANCE, SUPERANNUATION

## Early release schemes on ATO radar

June 22, 2023 | Todd Wills



The ATO is set to step up compliance actions against individuals who illegally access their super early, with severe penalties for those who choose this course of action.

Source : Early release schemes on ATO radar - SMS Magazine

## WRAP UP

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### **Retirement CoR**

- Requires the cessation of employment
- Benefits can't be released until preservation age is attained
- Different rules depending on whether under or over 60
- Ability to re-enter workforce may be restricted

### **Permanent incapacity**

- Medical requirements for insurance (if applicable) and accessing super may differ
- Tax-free uplift only applies if lump sum is withdrawn or rolled over
- Benefit paid to a person under 60 may still be taxable

## TECHNICAL ADVICE TEAM CONTACT

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[technical@cpal.com.au](mailto:technical@cpal.com.au)



Mel – 02 8987 3068  
Peter – 07 5668 1100  
Mark – 07 5668 1109  
Office – 1300 557 598

# THANK YOU

Questions

