8 May 2025

Superannuation Access and Compliance Unit
Retirement Income and Superannuation Division
Treasury
Langton Crescent
Parkes ACT 2600

By email: paydaysuper@treasury.gov.au

Dear Director,

Payday super – exposure draft legislation

The Australian Bookkeepers Association, Chartered Accountants Australia and New Zealand, CPA Australia, the Financial Advice Association of Australia**,** the Institute of Certified Bookkeepers, the Institute of Public Accountants, the SMSF Association and The Tax Institute (together, **the Joint Bodies**) write to you as the peak professional accounting and tax practitioner bodies in Australia representing the tax profession, the superannuation sector and financial advisers. We welcome the opportunity to make a submission to the Treasury regarding its consultation on the package of exposure draft legislation on payday super (**PDS**).

The package of draft legislation released on 14 March 2025 comprises:

- Treasury Laws Amendment Bill 2025: SG reforms to address unpaid super (**the draft Bill**);
- Superannuation Guarantee Charge Amendment Bill 2025 (**draft Imposition Bill**);
- Treasury Laws Amendment Bill 2025: ban on advertising super funds during onboarding (**draft Advertising Ban Bill**);
- accompanying explanatory materials (**draft EM**);
- Treasury Laws Amendment Instrument 2025: SG reforms to address unpaid super (**draft Regs**); and
- accompanying explanatory statement (**draft ES**).

In the development of this submission, we have closely consulted with members of the Joint Bodies who have specific knowledge, experience and expertise in taxation, superannuation and, specifically, the superannuation guarantee (**SG**) regime.

The Joint Bodies broadly support the Government’s proposed policy of introducing PDS. The introduction of PDS would get SG contributions into employees’ superannuation accounts sooner and take important steps towards addressing the SG gap, which was $5.2 billion in 2021–22 alone. We also regard the reforms as an opportunity to address the harshest aspects of the existing SG regime, and make it fairer and easier for employers to meet their obligations under the *Superannuation Guarantee (Administration) Act 1992* (Cth) (**SGAA**).

It is pleasing to see that many of the recommendations we made in our joint submission dated 8 November 2023 on the consultation paper titled 'Securing Australians' Superannuation' have been incorporated into the design of the new SG charge, including the proposed:

- removal of the SG statement;
- removal of the current $20 per employee per quarter administration component;
- alignment of the earnings base for calculating the SG shortfall with the base used for calculating the SG;
- notional earnings which are proposed to apply for only the period that SG contributions remain unpaid;
- deductibility of the SG charge; and
- SG charge late payment (**LP**) penalty that proportionately increases with culpability.

However, we have concerns about some design aspects of the new SG charge and the operation of the PDS regime. These concerns include the following:

- the proposed start date of 1 July 2026 is unreasonable and should be deferred for, ideally, 24 months, but at least 12 months;
- the window of seven calendar days for SG contributions to be allocated to members' superannuation accounts without employers having an SG shortfall is unreasonable and should be a longer period;
- the proposed repeal of the definition of 'approved clearing house' detracts from the broader and more important issue of the role played by clearing houses in the payment process, which requires further consideration;
- the proposed design of the changes to the maximum contribution base and the current operation of the employer shortfall exemption certificate are impractical and require further urgent consultation;
- the absence of a power of remission for the Commissioner to partially or fully remit penalties is inconsistent with the objective of ensuring that the imposition of penalties on employers is proportionate and properly reflects the nature, extent, and specific circumstances of an employer's non-compliance.

Our detailed response and recommendations are contained in **Appendix B**.

We would be pleased to work with the Government to further discuss the points raised in our submission. The Joint Bodies can provide the Government with access to the range of tax technical and industry experts who have contributed to our submission.

We look forward to engaging with you further in the next stage of this consultation process.

If you would like to discuss any of the above, please contact The Tax Institute's Head of Tax & Legal, Julie Abdalla, on (02) 8223 0058.

Yours faithfully,

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Appendix A

Summary of recommendations

Our recommendations aim to ensure a smoother transition to the PDS regime, provide clarity and fairness for employers, and protect the superannuation entitlements of all employees.

See **Appendix C** for a summary of the abbreviations.

	Recommendation and explanation
1	**Proposed start date** ● Postpone the start date of the proposed PDS regime by at least 12 months, ideally 24 months, to allow stakeholders sufficient time to comply. ● Introduce a grace period to allow employers to receive education and support without immediate penalties for non-compliance.
2	**Tiered implementation approach** Implement a tiered approach where larger entities transition first, followed by smaller businesses.
3	**Earnings base** ● **Simplification of OTE**: The ATO should simplify and finalise its guidance on the definition of OTE before PDS commences. ● **Education campaign**: Conduct an extensive education campaign to ensure employers understand the changes in the earnings base for SG charge purposes. ● **Information for employees:** Provide basic information for employees to ensure they understand that the amount of their superannuation entitlement is not expected to change in the majority of cases. ● **Alignment with reporting bases**: Align the earnings base for SG charge purposes with existing reporting bases, such as STP phase two. ● **Binding rulings**: Amend the TAA to make the issue of public and private rulings for the administration of the SGAA binding on the Commissioner. ● **Certainty on ATO rulings:** Ensure that employers relying on SG rulings later found to be incorrect upon judicial review are allowed to make good underpayments of superannuation without penalty.
4	**Maximum contribution base and employer shortfall exemption certificates** **Further consultation:** The MCB and ESEC policy settings are complex areas and require further consultation and substantial amendment for them to be workable in the PDS regime.

Recommendation and explanation	
5	**Surplus payments and refunds** • **Further consultation:** The Treasury should consult on how a revised refund mechanism would operate to avoid unintended consequences. • **Automatic refunds**: Implement a mechanism for automatic refunds to employers of overpaid SG contributions that cannot be applied to a future QE day for the employee.
6	**Concessional contributions cap** • **Temporary increase in CC cap**: Introduce a one-off increase in the CC cap for the start year to 125% of the normal cap. • **Division 293**: Increase the Division 293 income threshold by the amount of the temporary increase in the CC cap for the start year. • **No change to NCC in the start year:** The NCC should remain at a multiple of four times the standard CC cap, so no change is required for the NCC in the start year other than the application of any standard indexation.
7	**New SG charge** • **Employers' right of reply:** Require the ATO to seek further information from employers, and provide employers with a reasonable opportunity to respond before issuing a notice under proposed section 59A of the SGAA. • **Distinguish between accidental and deliberate shortfalls:** Ensure the severity of penalties imposed on employers corresponds with the nature of the underpayment. • **Proportionate penalties:** Ensure the severity of the SG charge LP penalty corresponds with the nature of the underpayment, having regard to the degree of culpability. • **Voluntary disclosures:** Allow employers with a good compliance history to make voluntary disclosures of historical shortfalls without penalties. • **Remedy for honest mistakes:** Allow employers with a good compliance history to promptly remediate the shortfall plus notional earnings without penalties. • **Commissioner's power of remission:** The Commissioner should have the authority to fully or partially remit the LP penalty in cases where there are no signs of deliberate non-compliance, and it is deemed appropriate by the Commissioner. • **Consideration of compliance history:** The Commissioner should consider the employer's compliance history and any mitigating circumstances when determining penalties.

Recommendation and explanation	
8	**Individual notional earnings component of SG charge** • **Option to nominate earlier date**: In calculating the NEC, employers should be allowed to nominate an earlier date if they can substantiate that the fund received the amount before the end of the deemed seventh day. • **Evidence**: The deeming date should not apply if employers are able to provide irrefutable evidence to show that the contribution was received by the fund before the window. • ***de minimis* threshold:** A *de minimis* threshold should be introduced so the ATO does not issue an assessment if the late payment results in a nominal NEC amount of less than $50. • **Basis for calculation of NEC:** The ATO should provide the underlying data and information that form the basis of the calculation of the NEC to employers.
9	**Problem of shortfalls for successive QE days arising from a single underpayment** • **Allocation of contributions**: Allocate SG contributions to the QE day for which they were paid and apply any excess to the earliest QE day with a shortfall. • **Offset election:** Section 23A of the SGAA offset election should be retained if the employer prefers to allocate the contribution to an earlier QE day for which there is a shortfall instead of the current QE day.
10	**Administrative uplift amount of SG charge — 20% reduction** **ATO held data**: Once the ATO becomes aware of third-party information, the Commissioner should be compelled to inform the employer of the inaccuracy or the incompleteness of the VDS and give the employer adequate time to correct it to avoid receiving a Commissioner-initiated assessment.
11	**Administrative uplift amount of SG charge — 120-day period for reduction** • **Voluntary disclosure reduction**: Employers should be eligible for a voluntary disclosure reduction for longer than 120 days when they make efforts to correct errors as soon as practicable. • **Additional reduction category**: The Treasury should consider adding a reduction category for more than 120 days in appropriate circumstances as determined by the Commissioner.

	Recommendation and explanation
12	**Due dates** • **Extend the seven-day window:** The Treasury should extend the window of seven calendar days for SG contributions to be processed and received by superannuation funds to 10 business days**.** • **Design consideration:** The Treasury should consider any further mechanisms in the design of PDS to ensure employers are not unfairly penalised for delays outside their control. • **Alternative option:** SG charge and any LP penalty should apply only if the employer cannot substantiate that they 'made' (within the meaning of subsection 290-60(1) of the ITAA 1997) the SG payment to the clearing house or the superannuation fund by the due date.
13	**Validation of employee information received for the first time** **Extend the window**: The additional 14 days that apply when an employee is paid QE by an employer for the first time should also be available in circumstances where employee information is received for the first time by the fund.
14	**Rejected payments** **Extend the window:** all contribution rejections due to incorrect fund information should be extended to a minimum of 21 days, or alternatively to a 42-day window to allow erroneous contribution data to be corrected.
15	**'Approved clearing house'** **Timing of recognition of employers' SG contributions:** Employers using commercial clearing houses should be considered to have 'made' their SG contribution once it is received by the clearing house, unless the contribution is made directly to a fund.
16	**Processing times by clearing houses** • **Payment Standards for clearing houses:** Licensed commercial clearing houses should adhere to payment standards, ensuring prompt processing of contributions and timely error messaging, as a condition of their AFSL. • **Penalties:** Clearing houses and other intermediaries should be subject to penalties if they do not adhere to their AFSL conditions.
17	**Employer certainty through greater visibility of contribution data** • **Transparency**: Provide employers with full real-time transparency over ATO data relating to their SG obligations. • **Visibility**: The Treasury should consider the interaction with the tax secrecy provisions and the ability of employers to have visibility over the status of contributions.
18	**Validation of data** **SuperStream**: The proposed new SuperStream message could be used for verifying fund membership to improve the SG contribution process.

Recommendation and explanation	
19	**Self-managed superannuation funds** **Verification of fund status**: Ensure employers are not penalised for late payments due to changes in an SMSF's status on Super Fund Lookup.
20	**SMSF reporting regime** **Targeted consultation:** The Treasury should consider consulting with key stakeholders to ensure that a regime best fits the purpose of SMSFs.
21	**Employer assessments** ● **PDS reporting:** Consideration should be given to including a schedule in the SAR to satisfy the PDS reporting requirements for each financial year. ● **Interim Statement**: The Commissioner should be able to request an interim statement from an SMSF trustee when there is a concern whether SG contributions have been received by a fund. ● **Voluntary reporting**: Introduce voluntary reporting to the ATO by the trustee of the SMSF for any SG shortfalls. ● **ATO communication**: The Commissioner should first contact employees in case of a shortfall of SG contributions, as MATS does not apply to SMSFs.
22	**Application to Commonwealth entities** ● **Exemption from SG charge**: The Joint Bodies would like to engage in further discussion with the Treasury to ensure all employees are treated equally under PDS, and all employers, including Commonwealth entities, have equivalent obligations and responsibilities under the proposed PDS policy.

Appendix B

We have set out below our detailed comments and observations in relation to the package of exposure draft legislation for your consideration.

Proposed start date and implementation approach

Proposed start date

The overarching position of the Joint Bodies is that the proposed start date of 1 July 2026 for PDS is practically unworkable and should be deferred. The payment of employer SG contributions is significantly more complicated than the payment of salary and wages directly to an employee's bank account with PAYG withholding. The complexity arises because the design of the superannuation contribution network involves various intermediaries such as clearing houses, gateways and superannuation funds.

The framework needs to be fully designed and legislated well in advance of the start date, with sufficient time to enable stakeholders — including but not limited to employees, employers, payroll software providers, superannuation funds, clearing houses, gateways, and other intermediaries and approved deposit taking institutions — to reasonably comply with their obligations and to ensure the new regime can be sensibly administered by the regulator.

Our key concerns with the proposed start date of 1 July 2026 are as follows:

- Successful implementation of PDS hinges on all stakeholders, including the Australian Taxation Office (**ATO**), making significant technological and system adjustments to handle increased transaction volumes efficiently. For example, the ATO should be developing robust systems for superannuation guarantee matching and compliance assessment, and provide educational resources to support this transition. Concurrently, superannuation funds and payroll software providers need to adapt their systems to accommodate these changes, ensuring the capability for real-time payment processing through the New Payment Platform (**NPP**).
- Enacting the legislative framework to implement PDS well ahead of the start date is imperative — this will provide commercial certainty to digital service providers (**DSPs**) before they invest in designing and developing systems needed by employers, superannuation funds, clearing houses, payroll providers, system gateways, and other stakeholders to comply with PDS.
- The design and implementation process of the proposed regime involves several phases including:
- co-designing the legislative framework and administration processes to achieve the policy objective;
    - understanding the legislative requirements;
    - designing new systems and processes, followed by building and testing software;
    - deploying system changes to the market; and
    - supporting employer entry to PDS.

- Further, this transition will require considerable upfront cash flow and system changes, posing difficulties for small businesses that may lack the resources and technological proficiency to adapt swiftly.
- From our discussions with our members who deal with employers, SMSF trustees, DSPs and superannuation funds, we understand that many stakeholders are not currently prepared, as they have been awaiting the enactment of relevant laws before making necessary changes. In addition, the federal election this year introduced a period of uncertainty among stakeholders regarding the future direction of government policy regarding PDS. It is difficult for stakeholders to commit substantial resources without a clear understanding of whether the incoming government will continue with PDS. The apprehension surrounding potential policy shifts creates a challenging environment for investment decisions, as stakeholders seek stability and predictability in governance to justify their financial commitments.
- Superannuation fund trustees have a legislative obligation to comply with the best financial interests duty (**BFID**)[1], with the potential for severe penalties for failing to be able to justify any disputed outgoings. It is generally accepted that incurring expenditure to implement potential legislative changes would not satisfy the BFID obligation. As a result, most superannuation fund trustees will not implement the PDS regime until the legislation has received Royal Assent and related regulations are registered.
- We have identified several design flaws in the proposed PDS framework that may hinder its practicality, which we have elaborated further in this submission. One significant concern is the requirement for SG contributions to be made within seven calendar days after the qualifying earnings (**QE**) are paid. This requirement fails to account for potential delays caused by public holidays and the time necessary for clearing houses to process funds. Further refinement is necessary to address these issues effectively.
- It is also important to note that not all superannuation funds are equal. The capabilities and infrastructure of self-managed superannuation funds (**SMSFs**) differ significantly from those of industry or retail superannuation funds.

Recommendation 1

- Considering the governing law is yet to be enacted, we are of the view that it is prudent to postpone the start date of the proposed measure by a minimum of 12 months, or ideally by two years. The delay in the start date would allow for further consultation among stakeholders regarding the design of the PDS framework, ensuring a coordinated approach to compliance and service delivery.
- If the Government remains committed to the currently proposed start date, we propose introducing a grace period. This grace period would serve as a buffer, enabling employers to receive education and support without facing immediate penalties for non-compliance. This approach would help to create a more seamless transition for those affected, ensuring they have sufficient time to prepare and adjust to the new requirements.

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[1] Section 52(2)(c) of the *Superannuation Industry (Supervision) Act 1993* (Cth).

Tiered implementation approach

Ideally, all employers would be required to comply with PDS from the same date. However, we acknowledge the challenges that businesses, particularly small businesses, will face in making what will generally be more frequent payments of superannuation for their employees to comply with PDS.

In our view, there may be merit in a staged implementation process by empowering the ATO to delay the implementation PDS to a group or range of employers. Under a tiered implementation approach, larger businesses would transition first. This approach is based on the grounds that larger businesses are likely to possess more resources and advanced systems, which would facilitate a smoother transition. By allowing larger businesses to adapt first, any initial challenges could be addressed before smaller firms are required to comply, thereby mitigating the potential financial burden on them.

To assist the Government in assessing the merits of such an approach, positive lessons were learned from the staged implementation of Single Touch Payroll (**STP**).

Recommendation 2

The ATO could require compliance with PDS from the start date for those larger employers, i.e. those employers with at least 20 employees (being the same threshold as was used for the implementation of STP), immediately before the start date. All other employers could be required to comply 12 months later. As with STP, a very small number of (mostly) micro-employers may:

- not be able to comply with PDS;
- be impacted by exceptional or unforeseen circumstances as outlined in PS LA 2011/15; or
- run their business in an area with no internet service.[2]

In these cases, the ATO should be able to administratively exempt these employers on a case-by-case basis.

Earnings base

Ordinary time earnings

Relevantly, under the current law, an employer is required to make SG contributions based on an employee's OTE, but pay the SG charge when an SG shortfall arises based on total salary and wages. Subsection 18C(1)[3] of the draft Bill proposes that the SG charge should be based on OTE. We support this important simplification.

The Joint Bodies agree with the generally accepted view that, in many cases, an employee's OTE may be less than their total salary and wages. This is due primarily to the payment of overtime, but also because OTE does not include earnings consisting of certain kinds of lump sum payments made to the employee on the termination of their employment.

[2] www.ato.gov.au/business/single-touch-payroll/concessional-reporting/micro-employers/

[3] Which in turn refers to the meaning of 'individual base superannuation guarantee shortfall' in subsection 17A(2) of the draft Bill.

OTE is a highly complex area that frequently changes due to amendments in the law.[4] Further, we are aware that the ATO currently has a small group of payroll and tax professionals providing feedback to improve the guidance for employers around what is or is not OTE for SG purposes.[5] We welcome this work because determining and understanding what constitutes OTE is fundamental to applying the SGAA.

At this time, we understand the ATO does not intend to adjust or review its long-standing position on the meaning of the terms 'OTE' and 'salary and wages' in Superannuation Guarantee Ruling SGR 2009/2, which was last updated on 19 October 2022.[6]

The length of SGR 2009/2, which is 60 pages, is a clear indication of the complexity of the topic. The complexity around OTE arises because of the diversity of employment and related remuneration arrangements that exist across workplaces in Australia and their interplay with Commonwealth and State industrial laws. This is compounded by differences between OTE and total salary and wages (as explained in SGR 2009/2). This complexity results in some employers making genuine errors despite their best efforts. In practice, this definition also requires employers to keep additional records to demonstrate the base payment the employee earns, which increases compliance costs for employers.

Observations about related ATO guidance

In time, the alignment of the earnings bases should mean that the ATO could reduce the amount of content in, and the size of, SGR 2009/2. However, the ruling is likely to remain a substantial and complex document.

Of concern to the Joint Bodies is that the ATO's public and private rulings on the administration of the SGAA are not administratively binding on the Commissioner of Taxation (**the Commissioner**), in contrast to public and private rulings on other areas (e.g. taxation rulings). For example, the preamble to SGR 2009/2 states that:

> Superannuation Guarantee Rulings (whether draft or final) are not legally binding on the Commissioner. However, if the Commissioner later takes the view that the law applies less favourably to you than this Ruling indicates, the fact that you acted in accordance with this Ruling would be a relevant factor in your favour in the Commissioner's exercise of any discretion in regards to the imposition of penalties.

This means that employers and their service providers, such as payroll software businesses, can never have certainty on the Commissioner's position, and whether future penalties, including interest, may arise. We consider this to be an unsatisfactory situation for employers who cannot rely on the ATO's advice and therefore may be exposed to SG charge liabilities, as well as interest and penalties, if they are later deemed to have underpaid SG.

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[4] For example, the introduction of Paid Parental Leave (**PPL**) as a government benefit or changes in the employment market (for example, PPL as an employer-provided benefit).

[5] ATO matters currently under consultation for superannuation: [202505] Ordinary time earnings guidance review – www.ato.gov.au/about-ato/consultation/in-detail/matters/matters-under-consultation/superannuation#BK_202505

[6] The previous update to this ruling was in 2009 when it replaced a much earlier released ruling.

Recommendation 3

Accordingly, we recommend the following:

- Simplification and early finalisation of the ATO's guidance on the definition of OTE so employers are provided with a sufficient explanation of what constitutes an OTE under the PDS before it commences.
- The proposed change in the earnings base for SG charge purposes should be accompanied by an extensive education campaign to ensure that employers understand that, under PDS, the SG charge would no longer be based on total salaries and wages.
- Once the regime is legislated, the ATO website should provide information to employees so they understand the amount of superannuation they are receiving is not expected to change in the vast majority of cases — rather, the certainty of an aligned base should ensure greater confidence by employees that they are receiving the correct amount of their entitlements.
- The earnings base for SG charge purposes should be aligned with existing reporting bases. For example, it may be possible to align the definition of OTE with the components employers are required to report under STP phase two. This would simplify the record-keeping and compliance requirements for businesses, while also making it easier for employers and the ATO to identify under- or over-payments.
- The TAA should be amended to make the issue of public and private rulings on the administration of the SGAA binding on the Commissioner. This would provide employers and employees with greater certainty on the application of the law.
- If a judicial decision were to determine that an SG ruling by the Commissioner was incorrect, and an employer, relying on that ruling, had underpaid SG for an employee, then that employer should be able to make good that underpayment of superannuation without penalty.

Maximum contribution base and employer shortfall exemption certificates

The MCB serves as a cap on the amount of SG contributions an employer must make. The MCB is designed so that an employer is not required to make SG contributions for employees with QE above a certain threshold. Built into the MCB, as it is indexed annually, is a mechanism that ensures that SG contributions based on the MCB for a financial year cannot exceed the CC cap.[7] The MCB currently applies on a quarterly basis.

We are aware of employers who disregard the concession afforded by the MCB concession – that is, they make employer SG contributions based on an employee's OTE without applying the MCB. This results in the employee receiving higher employer contributions than the SGAA requires without the employer having a shortfall.

[7] Under section 15(5) of the SGAA, the MCB is limited to one quarter of the CC cap divided by the charge percentage.

Employer shortfall exemption certificates (**ESECs**) reduce an employer's SG obligations for high income earners with multiple employers to nil. ESECs must be issued by the ATO and may be issued only where the employee has at least one other employer for a specific financial year. Applications for ESECs must be made with the ATO by the employee at least 60 days before the commencement of an SG quarter.

Members of the Joint Bodies have provided feedback that ESECs are impractical for most employees who could potentially use them, primarily due to the 60-day period, and are therefore rarely used.

Proposed maximum contribution base annual basis

The current application of the MCB each quarter, together with the complexities surrounding the MCB, necessitates a re-evaluation of the current design of the MCB. The proposed policy should enhance clarity, increase efficiency, and provide fairness for employers and employees.

Subsection 10A(4) of the draft Bill proposes to apply the MCB on an annual basis.

We have considered this proposal from a wide range of different employee circumstances, including those:

- whose OTE does not vary significantly from one pay period to the next;
- whose OTE varies significantly from one pay period to the next — for example, this may occur for those who regularly receive over-award payments and shift loadings but the amount earned from these items varies considerably from one pay period to the next. As these items are earned regularly, they would be included in OTE;
- who move from one employer to another during a financial year; and
- who receive a salary package that is either inclusive or exclusive of superannuation.

Implementing an annual MCB for SG contributions could result in the following outcomes:

- **Impact on salary packages** — If the employee's salary package is 'salary plus super', the employer could stop making SG contributions for the remainder of the financial year, which would not impact the employee's take-home pay. However, if the package is inclusive of superannuation, the employee would presumably want to negotiate an increase in their take-home pay after the MCB is exceeded. It is expected that exceeding the MCB during a financial year could lead to potential errors by employers if salary packages are adjusted, and potential misunderstandings about whether the employee is entitled to an increase in their take-home pay. This may also be informed by the terms in the employment contract which, given the MCB is relevant only to high income earners, are unlikely to be affected by industrial awards or agreements.

- **Impact on take-home pay throughout the year** — For employees on salary packages, implementing an annual MCB would mean that a larger portion of their overall remuneration is directed towards SG contributions earlier in the financial year.[8] This shift could adversely affect their take-home pay, as they may experience a reduction in their disposable income during the initial months of each financial year before it reverts to a higher amount once the MCB is exceeded. Consequently, employees may face financial strain as they adjust to the new allocation of their remuneration, which could impact their ability to service their mortgage or rent payments, and influence their spending habits and overall financial well-being.
- **Impact when changing employers** — The issue is exacerbated when an employee changes jobs during a financial year, as their new employer may not have access to information about previous SG contributions made by the former employer during that financial year. An assurance mechanism may be needed to relieve the new employer from being required to pay SG contributions for the employee for the remainder of that financial year, which would complicate applying the MCB and compliance with the SGAA.
- **Cash flow challenges for employers** — Employers could face significant cash flow challenges, particularly for employees whose salary package is 'salary plus super'. In this case, the payment of the employees' salaries is quite distinct from their SG contributions, as these are not paid as part of an inclusive remuneration package. This separation could lead to cash flow issues for employers, as they would need to ensure that sufficient funds are available to meet both salary and superannuation obligations throughout the year, with fluctuating amounts of SG contributions once the MCB is exceeded.

In all the above situations, the Joint Bodies do not consider that an annual MCB provides a practical solution. It is the Joint Bodies' view that an annual MCB creates more complexity and uncertainty for employers and employees.

Proposed employer shortfall exemption certificate changes

The draft Bill proposes to move the ESEC provisions to newly drafted sections 17B, 17C and 17D. The proposed provisions are substantially the same as the current provisions found in sections 19AA, 19AB and 19AC of the SGAA. However, the proposed provisions differ from the current provisions in that they are intended to apply from a specified QE period during a financial year.

[8] For example, an employee who earns a salary of $1 million per year would have notional annual superannuation of $120,000 ($1 million × 12%, assuming all the remuneration is OTE). However, when the MCB is applied, the SG contributions for the year would be capped at $30,000 (see below). If such an employee is paid monthly, they would receive $10,000 of SG contributions each month, so it would take only three months before they reach the maximum contributions under the MCB of $30,000. For the rest of that financial year, any subsequent payment of qualifying earnings by that employer would be treated as equal to nil to calculate the individual SG shortfall amount. Assuming a concessional contributions cap of $30,000, the MCB would be $30,000 × (100/12%) = $250,000, so the maximum SG contributions for the year would be $250,000 × 12% = $30,000.

We noted above that the existing provisions are mostly ineffectual and are rarely used in practice. As the proposed provisions are broadly similar to the existing provisions, we have good reason to expect there will be a similar outcome.

Recommendation 4

The Joint Bodies consider that the MCB and ESEC policy settings require substantial amendment to be broadly workable throughout the Australian employment market. Our analysis of these two provisions shows that it is a very complex area.

We suggest that the Treasury conduct a face-to-face consultation on these two policy settings with the Joint Bodies to work through potential solutions to determine the best outcome.

Surplus payments and refunds

An employer can make SG contributions in surplus of the individual base SG shortfall for a QE day. Where an overpayment is made that is in surplus for an employee who continues to be employed by the employer, the overpayment is attributed[9] (i.e. applied) to reduce the individual base SG shortfall for the next QE day. In the case of an overpayment for a continuing employee due to a simple arithmetic error, this is an appropriate outcome.

However, overpayments can also arise where the contributions are based on earnings that are ultimately not earned by the employee. For example, an employee may be paid monthly, two weeks in arrears and two weeks in advance. Where the employee's employment is terminated within the two-week 'advance' period without completing the full period of service, they are not entitled to receive SG contributions beyond their termination date.

It is a fair and reasonable outcome for employers to receive a refund of superannuation paid on behalf of an employee who is not entitled to it, where the contribution cannot be applied to a future QE for the employee. Members of the Joint Bodies have provided feedback that employers find it extremely difficult, if not impossible, to be repaid by superannuation funds where an overpayment has been made. The proposed law does not contain a mechanism for employers to be refunded overpaid SG contributions that cannot be applied to a future QE for the employee.

The complexities involved in adjusting SG contributions upon an employee's exit can lead to discrepancies, resulting in employers potentially over-contributing to superannuation funds. Such complications necessitate careful management and oversight to avoid financial losses.

Recommendation 5

We consider that where an employee has received an SG contribution in their superannuation account to which they are not ultimately entitled, it should be automatically refunded by the superannuation fund to the employer if it cannot be assigned to a subsequent QE day for the employee.

The refund should be paid to the employer and processed in the same way they paid the original SG contributions — that is, if the payment was made to the fund using a clearing house, the refund should be paid by the superannuation fund to that clearing house for processing and payment back to the employer.

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[9] Subparagraph 18C(1)(c) of the draft Bill.

The Treasury should consult with the Joint Bodies on how this revised refund mechanism would operate in practice to ensure there are no unintended consequences and that it operates as intended.

Concessional contributions cap

The current quarterly payment model for SG contributions has an inherent timing feature that means contributions for the June quarter of a financial year are often paid by 28 July (still complying with the employer's SG obligations). This can result in an employee's June quarter contributions counting towards their CC cap for the following financial year. Ordinarily, this would not be an issue, as the SG contributions for the June quarter of that following financial year are often paid in the first quarter of the subsequent financial year.

Issues with the impact of payday super

PDS will impact employees' CC caps for the financial year in which PDS commences (**the start year**). As employers shift to PDS, many employers will likely continue to pay the SG contributions for the June quarter preceding the start year by 28 July of the start year. However, they would also be required to pay SG contributions relating to OTE for all the QE days throughout the start year. This means that an extra quarter of SG contributions may be made during the start year. This is a one-off consequence of the interaction and overlap of the current SG regime and the proposed PDS regime for the first quarter of the start year.

In many cases, this would be detrimental to many employees who may, as a result of the extra quarter of SG contributions being made:

- exceed their CC cap for the start year; and/or
- have additional amounts included in their 'taxable contributions' under Division 293, which may cause them to exceed the Division 293 income threshold of $250,000 for the start year.

Recommendation 6

To ensure no employee is adversely affected by the policy change to PDS, we recommend that temporary transitional arrangements relating to the CC cap and Division 293 are implemented. Under such transitional arrangements:

- A one-off increase in the concessional contributions cap should apply for the start year only, to 125% of the normal cap, after accounting for usual indexation. This adjustment would accommodate the potential additional SG contributions due to the change in the timing of the allocation of SG contributions, ensuring that affected employees have adequate cap space without being penalised for circumstances beyond their control. This adjustment would revert to the normal cap (after indexation) from the financial year following the start year.
- The income threshold for Division 293 tax should also be increased by a one-off amount, being the amount of the temporary increase in the CC cap for the start year, to ensure that employees are not inadvertently adversely affected in the start year. This adjustment would revert to the normal cap from the financial year following the start year.

- We suggest no change is required to be made to the non-concessional contributions (**NCC**) cap for the start year (other than the application of any standard indexation) so it should remain at a multiple of four times the standard CC cap.

We take this opportunity to point out that the lack of indexation with respect to the total superannuation balance (**TSB**) limit on carry forward CC (fixed at $500,000) penalises Australians with lower superannuation balances and should be indexed. The CC cap is now $30,000, which is equivalent to 12% of $250,000 (the current income threshold for Division 293 tax). We consider that indexation of the TSB limit of $500,000 for carry forward concessional contributions and the Division 293 income threshold of $250,000 should now apply for each income year.

New superannuation guarantee charge

Administration of the penalty regime

Feedback from members of the Joint Bodies indicates that employers and practitioners have concerns about the ATO's capacity to meet the enhanced administrative and compliance obligations of the new regime. The administrative framework currently does not work effectively, and we have concerns that it will be less functional under the PDS system. Practitioner feedback indicates there have been instances where the ATO has rejected SG statements provided by employers due to minor errors. For example, SG statements have been rejected due to arithmetic errors and formula issues in the ATO's proforma Excel spreadsheet, which is completed and submitted by employers. This has raised doubts about the ATO's capacity to transition to a much more frequent reporting schedule, as often as weekly, under PDS.

While some aspects of the superannuation regime are now automated, such as STP and SuperStream, other areas are still initiated and manually processed by the ATO, such as assessments and objections. There is widespread concern that the ATO will not be able to keep up with the demand of processing weekly and fortnightly superannuation payments through its reporting systems. More broadly, there are concerns that the ATO will not be ready to meet the administrative demands of the proposed PDS regime by 1 July 2026. Feedback from members of the Joint Bodies indicates that employers are currently experiencing significant delays with the ATO's administration of objections and assessments under a quarterly regime. We are concerned that such delays will be exacerbated when the frequency of superannuation payments increases by up to 13 times[10] the current frequency.

Proposed new section 59A[11] of the SGAA provides that, if an SG charge remains unpaid for more than 28 days after the SG charge became payable, the Commissioner must, as soon as practicable after the end of those 28 days, give the employer a notice requiring the employer to pay the SG charge. The provision does not specify an exact period within which the Commissioner must issue the notice; only that it be issued 'as soon as practicable'.

[10] An employer with a weekly payroll who currently pays superannuation quarterly will be paying 52 times a year instead of four times, a multiple of 13.

[11] Item 59 of the Bill.

Under the existing framework, in many cases, employers are unaware that they have a historical superannuation shortfall, particularly where it arose unintentionally or mistakenly. The impact of accruing penalties and interest on outstanding shortfalls is compounded if there are delays in the ATO providing a written notice to the employer under section 59A, requiring the outstanding amount to be paid. This can unfairly punish employers for honest mistakes where the shortfall remains undetected for extended periods. Given the current experience with ATO delays noted above, there are heightened concerns around the Commissioner's ability to promptly issue these notices to employers.

Any delays in the ATO issuing notices under section 59A will be detrimental to employers who do not detect shortfalls themselves. With the lack of transparency over data held by the ATO on superannuation payments, it is impractical and unreasonable to require employers to undertake extensive data analytics following each QE day to identify any shortfalls and historical errors. This suggests that the proposed approach may be unworkable for many small businesses, as shortfalls may continue to remain undetected for extended periods.

Distinguishing between accidental and deliberate shortfalls

The proposed amendments do not provide any scope to characterise an SG shortfall as arising from accidental/inadvertent or deliberate conduct by the employer.

The draft EM states, at paragraph 1.107, that the LP penalty is intended to provide strong incentives for the prompt payment of outstanding amounts. However, the design of the LP penalty does not distinguish between outstanding amounts arising as a consequence of an accidental or a deliberate underpayment.

The Joint Bodies recognise that the proposed LP penalty, which ranges from 25%[12] to 50%[13] of the outstanding unpaid SG charge amount is a significant reduction from the current Part 7 penalty, which can be up to 200% of the SG charge. However, we are concerned about the potential absence of principles of fairness in cases when harsh penalties are imposed for unintentional or accidental underpayment. This has the potential to result in excessive punishment for certain employers.

No Commissioner's power to remit late payment penalty

The proposed LP penalty at the rate of 25% or 50% — that would apply where the employer does not pay the SG charge within 28 days of the Commissioner's notice — will not be able to be remitted. This contrasts with the current position where the Commissioner can remit penalties imposed under Part 7 of the SGAA.[14]

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12 The LP penalty is proposed to be 25% of the unpaid amount where it remains unpaid 28 days after the date specified in the notice issued under section 59A.

13 The LP penalty is proposed to increase to 50% if the penalty has previously been imposed on the employer within the prior 24 months.

14 The power of remission of the Part 7 penalty is limited to no more than half of the SG charge by subsection 62(4) of the SGAA.

In addition to the range of penalties that can be imposed, we are concerned that the absence of a power of remission of penalties unfairly punishes employers that have a history of good compliance but have unintentionally (or through circumstances beyond their control) caused an amount to be outstanding. One of our concerns with the design of the existing SG charge and penalty regime is the lack of flexibility afforded to the Commissioner in genuine cases where a full or partial remission of the charge and penalties could be justified. The new legislative framework should not be harsher on employers than is currently the case under the existing law. It should strive to achieve equitable outcomes.

Recommendation 7

To address this, we recommend the following:

- The ATO should be required to seek further information from the employer and provide the employer with a reasonable opportunity to respond, before issuing a notice under section 59A. Once the ATO has the information to determine the amount of the shortfall, the ATO should be required to issue a notice under section 59A after a finite period of receiving the employer's response, such as 14 days.
- Accidental underpayments of the superannuation amount owing should be delineated from deliberate underpayments.
- The severity of the LP penalty should correspond with the nature of the underpayment — that is, regard should be had to whether the underpayment is the consequence of an inadvertent mistake or error, or intentional non-compliance.
- Employers with a good compliance history should be given the opportunity to make voluntary disclosures of historical shortfalls, which would enable them to remedy the outstanding amount with notional earnings, but without penalties imposed.
- Where the ATO identifies a shortfall that has arisen due to an honest mistake, employers with a good compliance history should be allowed to promptly remedy the shortfall, plus NEC, without penalties. This would eliminate the unfairness of imposing penalties where honest mistakes have occurred and allow for employers to correct historical shortfalls without harsh penalties. Importantly, under this proposal, employees would not be disadvantaged.
- The Commissioner should be given the power to fully or partially remit the LP penalty in circumstances where there are no indicators of deliberate non-compliance and it is, in the Commissioner's view, appropriate to do so.
- The Commissioner should be allowed to take into account the employer's compliance history and mitigating circumstances so that penalties more accurately reflect the gravity of the employer's culpability, including whether the underpayment of SG was accidental or deliberate. A remission of the LP penalty would ensure that highly compliant employers who made an inadvertent mistake are not treated as punitively as repeat offenders who frequently and/or deliberately disregard their obligations.

Individual notional earnings component of SG charge

Deemed date of receipt of late payment

As discussed in paragraph 1.81 of the draft EM, one of the data points required to calculate the proposed individual NEC of the SG charge is the date on which late SG contributions are received by the employee's superannuation fund.[15] However, as paragraph 1.81 of the draft EM goes on to note, in many cases, the employer will not have ready access to data as to the specific date on which the contribution is received by the fund.

Accordingly, subsection 19B(2) of the draft Bill contains a deeming rule on the receipt date for the purposes of calculating the NEC of the SG shortfall. In working out the number of days that the employer's individual final SG shortfall is greater than nil, the contribution will be treated as being received by the fund on the seventh day (**seventh day**) after the day on which it is paid or debited from the employer's account. There is no discretion as to the operation of this deemed timing rule. Where the fund receives the contribution within, say, a day or two of the date on which the employer makes the payment, the effect of this rule is that the NEC would be higher than reflects the period during which the contribution was outstanding.

Recommendation 8

We make the following recommendations:

- Employers should have the option to nominate an earlier date if they can substantiate that the fund received the amount before the end of the deemed seventh day in subsection 19B(2). This would stop the accrual of the NEC on the actual date that the contribution was received rather than up to the deemed seventh day. For example, if a late payment arose because an employee changed superannuation funds or their remuneration arrangements, the employer may be able to readily ask the employee to check their online superannuation fund account and provide evidence of the date of receipt by the fund.
- A deeming date that adds to the financial burden on employers by increasing the amount of the NEC should not apply if irrefutable evidence can be provided by the employer that shows the contribution was received by the fund before the seventh day.
- If a late payment results in a nominal NEC amount, a *de minimis* threshold should apply, i.e. no assessment will be issued for amounts less than, for example, $50.
- The ATO should provide the underlying data and information that form the basis of the calculation of the NEC.

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[15] See paragraph 19A(1)(b) of the draft Bill.

Problem of shortfalls for successive qualifying earnings days arising from a single underpayment

Under section 18D of the draft Bill, an eligible contribution made during the late period for a QE day will be automatically applied to reduce the SG shortfall. Where an employer inadvertently underpays SG for a QE day, then a portion of the next payment (in a week, fortnight or month) would be automatically allocated against that shortfall. Given the close frequency of QE days, this allocation could happen for several cycles before the employer eventually either identifies that there was a shortfall in the original contribution or receives an ATO assessment. By that time, a portion of each QE day's SG contributions would have been automatically allocated to the shortfall for the previous QE day, thereby creating a new shortfall for the latest QE day.

That is, a single original error for one QE day could result in an underpayment for subsequent, successive QE days, even where the SG contributions for those subsequent QE days are correctly calculated and paid on time.

For example, an employer regularly pays an employee OTE of $1,000 fortnightly with SG of $120. However, one fortnight, the employer inadvertently paid SG of $100 because an amount was incorrectly classed as not being within the definition of OTE. The consequences for the employer for this QE day 1 underpayment are as follows:

- The next fortnight, on QE day 2, the employer correctly pays SG of $120.
- However, $20 of that payment is automatically allocated to QE day 1 to satisfy the $20 shortfall. Now there is a $20 shortfall for QE day 2.
- On QE day 3, the same thing happens — $20 is automatically allocated to satisfy the shortfall for QE day 2.
- It is not until QE day 4 that the employer identifies through an internal reconciliation that an error was made for QE day 1.
- Four instances of SG shortfalls have arisen instead of just the original shortfall for QE day 1.
- In many cases, some employers may not be aware of this problem until the ATO issues an SG charge assessment.

Recommendation 9

We recommend that SG contributions should be allocated to the QE day for which they were paid. If the contribution exceeds the SG amount, the excess should be automatically applied to the earliest QE day for which there is a shortfall, and any remainder should then be allocated to the next QE day for which there is a shortfall.

The current offset election in section 23A of the SGAA should be retained (necessarily modified for PDS) in the event the employer prefers to allocate the contribution to an earlier QE day for which there is a shortfall instead of the current QE day.

We do not agree that the proposed method in section 18D will 'reduce the administrative burden on employers'.[16] Given that the employer would have to track the amount of the original single underpayment through all contributions made for subsequent QE days, and that new underpayments would arise for each of those subsequent QE days, we are of the opinion that the administrative burden on employers would be unnecessarily increased. The proposed methodology in section 18D is likely to cause confusion as a contribution the employer intended to be made for a particular QE day would instead be automatically allocated to an earlier QE day (for which they may not have been aware that there was an underpayment). This would result in a shortfall and potential penalties in respect of multiple successive QE days.

Our proposed methodology would remove this outcome and minimise the employer's compliance burden. We also consider that our proposed methodology would more effectively reduce any ambiguity around the period to which a contribution should be attributed, as the contribution would clearly be allocated to the current QE day in accordance with the employer's express intention, rather than being automatically applied against a historical QE day. The employer could then make a choice to pay a late contribution specifically in respect of the original underpayment once they become aware of it.

Administrative uplift amount of SG charge

20% further reduction based on a 24-month look-back period

We acknowledge that the cascading levels of reduction to the administrative uplift amount are designed to recognise and reward an employer's good compliance history and their willingness to promptly take corrective action. Based on the extent of timeliness of lodging a voluntary disclosure statement (**VDS**), a further 20% reduction would apply where the employer has not had a Commissioner-initiated assessment in the past 24 months.[17]

According to page 4 of the draft ES, a Commissioner-initiated assessment would include a situation where the employer lodged an inaccurate or incomplete VDS and the Commissioner makes an assessment relying on information from other sources.

The inaccuracy or incompleteness of a VDS could arise because of deliberate underpayment of SG, or from a mere oversight or carelessness. The employer could lodge inaccurate or incomplete VDS regularly or on only one occasion. An employer may not realise that a shortfall arose from an unintentional error and may therefore not lodge a VDS. Alternatively, they may not lodge a VDS as a deliberate act of non-compliance with the SG obligations. Any of these situations could trigger an ATO assessment.

The proposed 20% additional reduction would not be available to employers who had a Commissioner-initiated assessment within the past 24 months, irrespective of the culpability of the employer (whether inadvertent or deliberate).

Further, there is no set timeframe within which the Commissioner must initiate an assessment. This means that the 24-month period after an assessment, within which the employer would not be eligible for an additional 20% reduction, may relate to a single incident from many years ago.

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[16] Paragraph 1.69 of the draft EM.

[17] Section 13C of the draft Regs.

Recommendation 10

We recommend that, once the ATO becomes aware of third-party information, the Commissioner should then be compelled to inform the employer of the inaccuracy or the incompleteness of the VDS, and give the employer adequate time to correct it to avoid receiving a Commissioner-initiated assessment.

This would provide honest employers, who are genuinely making their best efforts to comply with the law, an opportunity to avoid receiving a Commissioner-initiated assessment and therefore protect their eligibility for the additional 20% reduction, should a shortfall arise in the future.

120-day period for reduction

The minimum reduction level (other than nil) of 15% is proposed to apply if an employer lodges their VDS after the end of 120 days starting on the QE day.[18]

An error or miscalculation may not come to the employer's attention for some time, for example, when an employee receives a quarterly or annual report from their superannuation fund or upon an internal review or reconciliation by the employer.

Recommendation 11

Employers should be eligible for a voluntary disclosure reduction for longer than 120 days after the QE day when they make their best efforts to correct the errors as soon as practicable after it comes to their attention.

We suggest the Treasury consider whether it would be appropriate to insert an additional reduction category for a period beyond 120 days where, in the Commissioner's view, it is appropriate to do so.

We note that there is no time limit within which a Commissioner-initiated assessment must be issued — this could be years after a QE day. Employers should benefit from a penalty reduction where they lodge a VDS before an assessment is issued by the Commissioner.

Due dates

Payment processing times

The Superannuation Transmission Network (**STN**) is the infrastructure that provides efficient and secure processing of superannuation contributions made by employers to superannuation funds. The reporting of contributions is undertaken separately by superannuation funds through to the ATO.

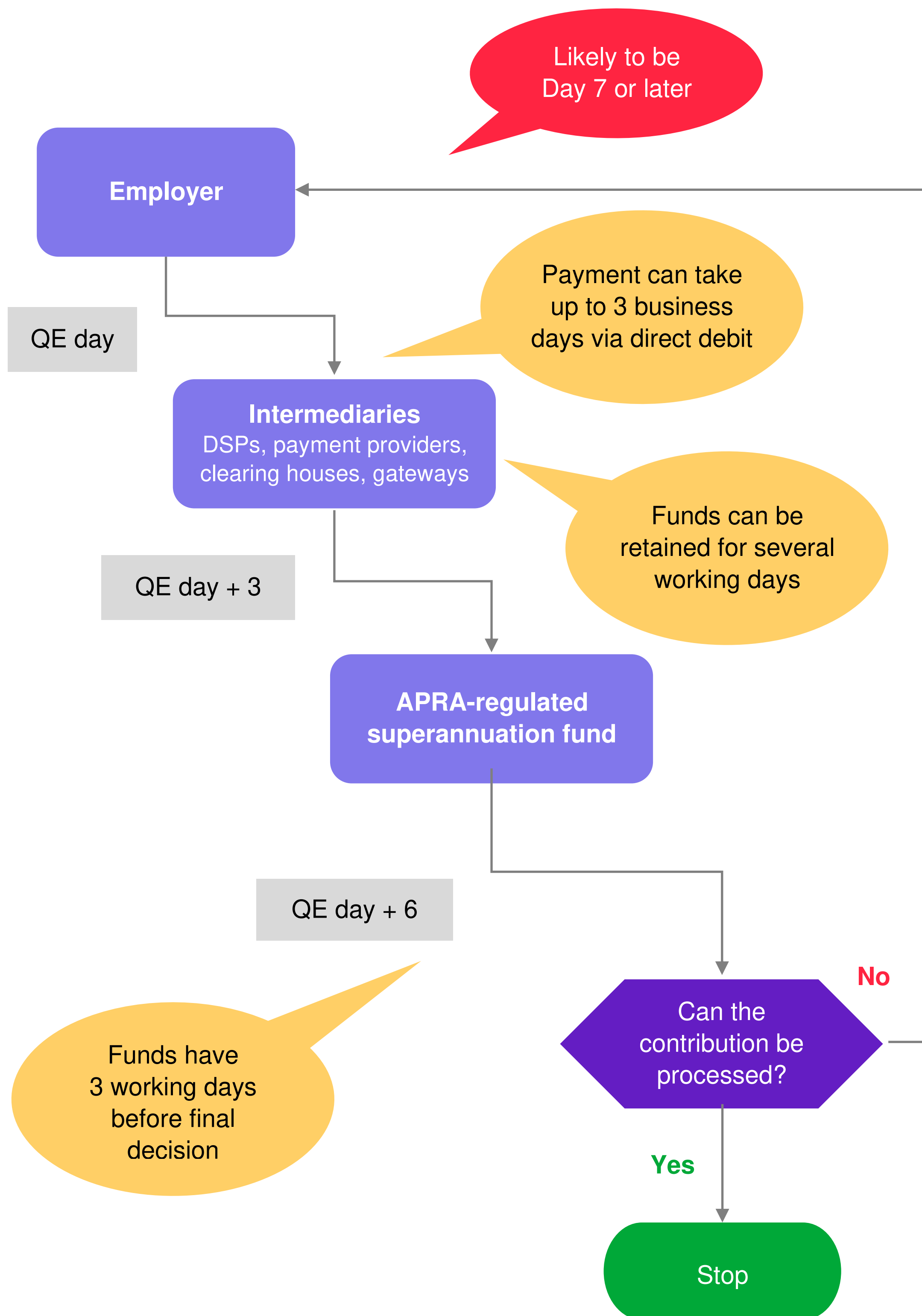
Table 1 below sets out our expected timeframe for payments to be processed through the STN under PDS.

[18] Section 13D of the draft Regs.

TABLE 1: Expected timeframe for payments to be processed through the STN

Day	Explanation
Day 0	**Employer** ● The employer initiates the superannuation payment. ● This is typically a combination of sending funds through a variety of methods, and the transmission of a SuperStream message, typically the contribution transaction request (**CTR**) message. ● Funds may be sent via a number of methods with variable timeframes: ○ NPP (immediate, with some exceptions) ○ direct credit (1 working day, subject to cut-offs) ○ BPay (1–2 working days) ○ direct debit (up to 3 working days).
Days 2–4	**Intermediaries, including DSPs, payment providers, clearing houses and gateways** ● Payments are initiated through a variety of DSPs and payment providers. ● The payment is received and reconciled at the clearing house for processing. ● Some time may be needed to ensure that data and payments can be matched. ● Data received by the clearing house undergoes a transformation to ensure that contributions can be transferred in bulk to superannuation funds via payment gateways, including electronic service addresses (**ESAs**) operated on behalf of SMSFs. ● Some errors can be communicated back to employers directly from clearing houses.
Day 4–6	**Superannuation funds** ● The payment arrives at the employee's chosen superannuation fund. ● Funds are required to allocate contributions to the member's account as soon as they are able. ● However, they have up to 3 working days to determine whether contributions are able to be allocated.
Day 6	**Decision point** If a contribution has not already been allocated or processed, a final check is made to determine if the contribution can be processed. ● If Yes — the process stops here. ● If No — the payment is returned to the employer.
Day 7	**Employer** The returned payment is received by the employer.

The diagram below shows the expected timeframe outlined above, assuming all days are business days.



Seven-day ‘usual period’

Proposed subparagraph 18C(1)(c)(ii) of the draft Bill treats an employer as not having an individual base SG shortfall for an employee if the eligible contribution[19] is received by the fund by the end of the seventh[20] calendar day after the QE day.

Each seven-day block after a QE day is not confined to business days and will include, at a minimum, two weekend days. Additionally, the period of seven days can include public holidays, at a federal, state and regional level (such as ANZAC Day, Melbourne Cup Day, Hobart Regatta Day etc.). The proposed window of seven (calendar) days after the QE day for payments to be received by the fund without employers having a shortfall means that employers are already at a disadvantage due to weekends and public holidays.

For example, in 2025, the receipt by a fund of a payment made by an employer on Thursday 17 April (QE day) would easily be potentially delayed until Thursday 24 April if made through the direct debit system. This would be as a result of the Good Friday and Easter Monday public holidays either side of the weekend, and the ANZAC Day public holiday falling in the same week as Easter Monday. This assumes that intermediary businesses were not closed between Easter and ANZAC Day, as may have been required under union bargaining, enterprise agreements, ordinary hours of operations or similar. This would see the contribution processed only as far as the clearing house when, by this stage, under the seven (calendar) day rule, the payment should be in the hands of the fund by this date. Accordingly, despite the contribution having been paid by the employer on the QE day, it is likely that the contribution is already late by the time the superannuation fund receives the contribution, and has not commenced its administration process to determine if it can allocate the contribution to the member’s account.

Proposed SG charge unfairly penalises employers for delays outside their control

The proposed SG charge is designed such that the employer is liable for the SG charge if the SG contribution is not able to be correctly allocated to the employee’s superannuation account by the end of the seventh calendar day after the QE day. The individual NEC for the employee accrues from that time until a late contribution is made (see above).

The result is that employers may be subject to the SG charge due to events outside their control. This is fundamentally unfair and fails to recognise that penal consequences should proportionately reflect the scope and extent of the mischief or error. Employers that fail to correctly undertake their part of the SG process on a timely basis should be subject to penalties. However, it is unreasonable and unfair to penalise an employer for a late payment when the delay arose from the actions of a third party.

The discussion below explains why the proposal to make employers liable for the SG charge if the contribution cannot be correctly allocated to the member’s account by the seventh day is unfair and unreasonable for employers who make their best efforts to comply.

[19] Section 18A of the draft Bill.

[20] By reference to the term ‘usual period’ defined in subsection 6(1) at item 24 of the draft Bill.

Delays outside the employer's control

Factors that the employer does not and cannot control include the following:

- The payment processing times for intermediaries, such as clearing houses, and the superannuation fund to process contributions and rejected payments (see above).
- An employee is required to correctly complete a superannuation standard choice form at onboarding as a new employee, and when they change their superannuation fund. The employee may inadvertently provide incorrect information on their choice form or provide information that does not match the fund's records. In this case, the employer may not become aware of this until the contribution is rejected.
- Changes to superannuation funds may occur — e.g. changes in bank details, the Unique Superannuation Identifier (**USI**) and Australian Business Number (**ABN**). This information is often not provided to the employer until after a payment has been rejected.
- Disruptions to the employer's business and payment processes caused by internet and power outages, hacking, and attempted or successful cyber attacks.[21]

Reliance on employees for accuracy of employee information

Each time an employer makes a contribution for an employee, certain employee information must be provided to the fund. Proposed new paragraph 7.07G(2)(b) of the Superannuation Industry (Supervision) Regulations 1994 (**SISR**) provides that where the fund does not receive this information and is unable to allocate the contribution, it must return the contribution within three business days (reduced from 20 business days) and the contribution is taken not to have been made.

The proposed period of three business days extends to five calendar days where they straddle a weekend (or six calendar days with an adjoining public holiday). This will not provide employers with sufficient time for a contribution to be correctly allocated to the member's account within the requisite window of seven calendar days to avoid liability for the SG charge.

Employers can provide employee information to the superannuation funds only where that information is supplied to them by the employee. For example, an employee who moves house or changes their legal name upon marriage may advise their superannuation fund of the new information, but neglect to tell their employer. Outdated or incorrect information will likely cause contributions to be rejected and refunded to the employer. It would be unreasonable and cost-prohibitive for employers to (re)confirm employee details with each employee on every QE day.

Further, it is unfair to subject employers to the SG charge in circumstances where they are making their best efforts to comply with the law and rely on employee-provided information in good faith.

Recommendation 12

To address the above concerns, the proposed window of seven calendar days for contributions to be processed and received by the superannuation funds before an employer has an SG shortfall should be extended to 10 business days.

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[21] See, for example, the recent cyberattacks on eight major superannuation funds in early April 2025.

The Joint Bodies also recommend that the Treasury consider whether any further mechanisms could be incorporated into the design of PDS to ensure the consequences of a late SG contribution are not borne entirely by an employer where that outcome is disproportionate to the employer's actions or extent of non-compliance, without disadvantaging the employee.

Alternatively, an employer's SG obligation should be satisfied when payment is made on time. Under this approach, the employer could be considered to satisfy their SG obligations once they make the requisite SG payment (i.e. the amount is debited from their bank account and there is evidence to prove this), assuming the correct employee information is provided to the clearing house or the superannuation fund. This contrasts with the proposed approach that a contribution is taken to be made[22] only once the fund receives the contribution and it is able to be allocated to the member's account. The SG charge and any LP penalty should apply only if the employer cannot substantiate that they made the SG payment to the clearing house or the superannuation fund by the due date.

Our proposed alternative approach would also overcome the difficulty employers experience in determining whether a contribution has been 'made'[23] for the purpose of subsection 290-60(1) of the *Income Tax Assessment Act 1997* (Cth) (**ITAA 1997**). This is particularly relevant when contributions are made towards the end of June, and employers need to ascertain whether contributions have been received by their employees' superannuation funds to identify the income year in which a deduction is claimed for the contributions.

Validation of employee information received for the first time by the superannuation fund in certain circumstances

A proposed amendment to subregulation 7.07B(4) of the SISR provides that where a receiving fund (other than an SMSF or a fund chosen by the employee) receives employee information provided by the employer for the first time, the receiving fund must validate the information with the Commissioner within two business days (reduced from three business days). If the Commissioner cannot validate the information, the fund would then have two business days[24] (reduced from five business days) to reconfirm the details with the employer.

If the fund and the ATO take the maximum time allowed, it would take four business days for the employer to be made aware that incorrect information was submitted. Given that the prescribed window of seven calendar days equates to, at most, five business days, employers would have only one business day to rectify the situation (or no days in which to rectify in the case of an adjoining public holiday) before becoming liable for the SG charge. If the fund and/or the ATO exceed two business days — i.e. where the validation process takes no less than five business days (seven calendar days) — it would not be possible for the contribution to be received and accepted by a superannuation fund, due to the delay by the fund and/or the ATO which is out of the employer's control.

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[22] The ATO's current position is that, '… as a general rule, the contribution will be made when the funds are received by the superannuation provider' (paragraph 12 of Taxation Ruling TR 2010/1).

[23] See paragraph 13 of Taxation Ruling TR 2010/1.

[24] Proposed amendment to subregulation 7.07D(2) of the SISR.

We note that an additional 14 calendar days applies in the case of new employees, which would cover many of the circumstances in which employee information is received for the first time by the fund. However, these additional days apply only for the first time an employee is paid QE by that employer.

The window of seven calendar days would still apply in a range of circumstances, including where employee information is received by a fund for the first time due to:

- a continuing employee changing their superannuation fund;
- the employer changing its default fund;
- a change to the default fund in an award or enterprise agreement; or
- a former employee who has previously been paid QE by that employer and subsequently returns to work for that employer months or years later, providing new or updated employee information.

In these cases, the fund is still receiving the employee information for the first time. However, because it is not in circumstances where the employee is paid QE by that employer for the first time, it does not qualify for the extended 14-day window.

Recommendation 13

The additional 14 days that apply where an employee is paid QE by an employer for the first time should also be available in circumstances where employee information is received for the first time by the fund, even though the employee has previously been paid QE by that employer. Given that the same challenges arise as for new employees, we consider that an equally long window to process the contribution is warranted.

Rejected payments

The timeframes discussed above do not take into account additional processing time and further delays that might be caused by a contribution being rejected by the fund. In the case of our example above with the extended Easter–Anzac Day break, nearly two weeks may have elapsed before the final date that a fund could receive the contribution and attempt to process it, only then to identify that the payment must be rejected. Where a payment is rejected by a fund and returned to the employer, it is highly likely the window of seven days has been exceeded, meaning that the employer has a shortfall and is liable for the SG charge.

It can then take up to a further three days to notify the employer of the rejected payment. The requirement to accept or reject payments within three working days applies only to APRA-regulated superannuation funds (or Retirement Savings Accounts (**RSAs**)).[25] No equivalent requirement applies to SMSFs.

The vast majority of errors are due to incorrect contributions data submitted through SuperStream, where the data may have been provided by an employee[26]. This can take multiple weeks to fix.

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[25] Regulation 7.07H of the Superannuation Industry (Supervision) Regulations 1994. Section 34M of the SISA relevantly requires trustees to ensure that contributions are dealt with in a manner that complies with any applicable regulations. A contravention is an offence of strict liability.

[26] Gateway Network Governance Body (2024). *Payday Super – Getting the data right*. [online] *gngb.com.au*, Sydney: Gateway Network Governance Body, p.2. Available at: https://tinyurl.com/4m6w5f3u [Accessed 30 April 2025].

We note that the additional 14-day window (i.e. a total of 21 days[27]) acknowledges errors can inadvertently arise in fund information received from employees as part of the choice of fund selection process during onboarding.

We also note that a 42-day window after the QE day to ensure that a valid choice of fund selection is received from employees is proposed to apply where:

- a contribution is not accepted by a stapled fund identified in the Commissioner's notification;[28]
- a default fund consecutively fails the performance test.[29]

These extensions recognise that, under these circumstances, employers require additional time to obtain the relevant details to make the contributions.

The draft legislation does not consider incorrect fund information being provided by an existing employee (where the additional 14-day window is not available). Conceptually, the errors in fund information, whether provided by an existing or new employee, would be the same and would be resolved in the same way.

Recommendation 14

In all these cases, the errors are caused by incorrect fund information, where the employer is not at fault in any way. We therefore recommend that the timeframe for all contribution rejections due to incorrect fund information should be extended from the proposed seven-day window to a minimum of 21 days (being the seven days plus the additional 14 days that is currently only available in respect of first-time payments of QE to employees) to allow erroneous contribution data to be corrected. Alternatively, the timeframe could be aligned with the 42-day window that applies in the case of stapled and default funds.

Clearing houses

'Approved clearing house'

Clearing houses are essential intermediaries that support the payment of employer contributions. They will continue to fulfil a vital role under the PDS model. Clearing houses assist employers in reasonably meeting their choice of fund obligations and processing the payment of SG contributions to superannuation funds.

Using an approved clearing house under the SGAA currently offers a considerable advantage for employers. Paragraph 45 of the Prudential Practice Guide SPG 270 Contribution and Benefit Accrual Standards (**SPG 270**) clarifies that:

> Under Section 23B of the Superannuation Guarantee Administration Act 1992, where an employer pays an amount to an 'approved clearing house' and that amount is accepted by that clearing house, the employer is taken to have paid the amount to the relevant RSE for the purposes of satisfying its superannuation guarantee obligations, though not necessarily for income tax deductibility purposes.

[27] Subparagraph 18C(1)(c)(iii) of the draft Bill.

[28] Subparagraph 18C(1)(c)(vii) of the draft Bill.

[29] Subparagraph 18C(1)(c)(viii) of the draft Bill.

The ATO's small business superannuation clearing house (**SBSCH**) is currently the only 'approved clearing house'. It is intended that the SBSCH will be decommissioned after 30 June 2026 to coincide with the proposed introduction of PDS. With the closure of the SBSCH, small business employers will no longer be able to access this facility. Once the SBSCH is decommissioned, the ATO and employers will be relying on commercial clearing houses to fill the void that will be left by the closure of the SBSCH.

The definition of 'approved clearing house' in subsection 6(1) of the SGAA is proposed to be consequently repealed as there would no longer be any approved clearing houses.

In contrast, an employer satisfies their SG obligations for contributions made to other clearing houses (**commercial clearing houses**) — that are not approved clearing houses — only once the funds are received by the superannuation fund and allocated to the member's account. This means that, where payments are made through commercial clearing houses, employers must allow a longer window than is necessary when using the SBSCH.

Clearing houses are highly reputable and are heavily regulated by the Australian Securities and Investments Commission (**ASIC**), with whom they must hold an Australian Financial Services Licence (**AFSL**) to be authorised to provide retail financial services. The governance standards that apply to clearing houses are high, as is their demonstrated ability to securely handle large volumes of SG contributions.

Recommendation 15

Licensed commercial clearing houses should be recognised in the same way as approved clearing houses. This would mean employers would not have a shortfall provided the contributions are received by a licensed commercial clearing house within the required window, rather than the fund itself, unless they have made the contribution directly to a fund.

Processing times by clearing houses

Currently, there are no requirements for intermediaries, such as clearing houses, to ensure that payments they receive are passed onto the superannuation fund in a timely manner. It is expected that, once in place, the NPP will be able to support an almost immediate transfer of contributions from employers to funds. This will replace the Bulk Electronic Clearing System[30] (**BECS**) which is currently used to make payments. We do not expect that the NPP will be immediately implemented, as we understand that there will still be a need for efficient data dissemination by intermediaries such as clearing houses.

Recommendation 16

Licensed commercial clearing houses should be subject to payment standards to ensure that the contributions and associated error messaging to the employer are promptly processed. We recommend that these standards be made a condition of a commercial clearing house's AFSL.

We also recommend that clearing houses and other intermediaries should be subject to penalties where they do not pass on contributions to the superannuation fund or process data within a set number of business days as part of their AFSL conditions.

[30] BECS is Australia's primary system for account-to-account payments. In 2023, industry announced intentions to decommission the BECS framework, identifying 2030 as the target end date.

We consider that a period of no more than three working days under the BECS should apply, but this period should be reduced once the BECS is retired and replaced with the NPP.

Administrative issues

Employer certainty through greater visibility of contribution data

The existing rules are complex, and employers can face substantial adverse outcomes when they get things wrong, despite doing their best to comply with the law. Employers have little visibility over data relating to contributions made by them that is held by the ATO. Employers have even less visibility when contributions are sent via the clearing houses.

Under PDS, employers will face additional challenges in ensuring that contributions have been successfully processed. Employers will be required to make SG contributions each QE day. More frequent payments mean more frequent reconciliation tasks, which increases the administrative burden and the risk of discrepancies and errors. Contributions may pass through multiple stages, including clearing houses and gateways, before they reach the superannuation funds. Delays can arise at any stage, making it difficult for employers to confirm the contributions have been successfully processed within the required timeframe. With the decommissioning of the SBSCH, small business employers will face increased pressure to follow up on contributions and ensure that they have been correctly processed and received by the fund.

Employers will need to carefully manage their cash flow and monitor the status of their employees' contributions. Member feedback indicates that existing error messaging is useful in addressing exceptions that have not been successfully processed.

Recommendation 17

Employers should be given full real-time transparency over ATO data relating to their SG obligations, including visibility over information held by the ATO that may enable employers to identify shortfalls sooner. Employers should also be able to have visibility that contributions have been successfully received by the superannuation fund within the window, either from the ATO, the clearing house (where used), or the superannuation fund. This would also assist employers to determine whether a contribution has been 'made'[31] for the purpose of subsection 290-60(1) of the ITAA 1997 to ascertain in which income year the contributions are deductible (see **page 29**).

Consideration should be given to the interaction with the tax secrecy provisions and the ability of employers to have visibility over the status of contributions and whether they are being processed correctly. This would have the following benefits:

- **Transparency**: employers would be able to access real-time updates on the status of contributions, reducing uncertainty and enabling prompt resolution of issues.
- **Accountability**: with visibility over the processing stages, employers would be better able to comply and address any errors or delays more effectively.
- **Security**: sensitive information would remain protected while enabling employers to verify the successful processing of contributions.

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[31] See paragraph 13 of Taxation Ruling TR 2010/1.

We consider that the optimal method of providing visibility to employers would be via a portal that can verify the status of contributions made on behalf of employees. An alternative method could be to mandate confirmation messages through SuperStream. However, we acknowledge the additional traffic through the network from confirmation messages may create other issues.

Validation of data

We support the proposed new SuperStream message for verifying fund membership of employees outside of pay cycles. The introduction of a new SuperStream message to verify fund membership details multiple times a year would ensure that superannuation details are accurate at the time of contributions. Fund details can theoretically change multiple times a year through no fault of employers or employees, meaning that contributions can be delayed. Factors affecting these include changes to administrators or fund gateways, fund mergers or successor fund transfers, and funds changing contribution acceptance rules or failing the performance test.

The availability of this new message type would ensure that employees' superannuation fund details can be tested at various intervals to ensure that they are up to date and able to take contributions before QE days.

Such messaging would have the following benefits:

- **Accuracy**: regular verification would help maintain up-to-date records, reducing the risk of contributions being sent to incorrect or outdated accounts.
- **Efficiency**: automated verification processes would streamline the management of superannuation contributions, reducing the administrative workload for employers.
- **Compliance**: ensuring that employee superannuation details are correct would help employers meet their obligations and avoid penalties for incorrect contributions.

Recommendation 18

We recommend that the Government proceed with this new messaging. By addressing these challenges and implementing these measures, the SG contribution process can be made more efficient, transparent, and secure for both employers and employees.

Self-managed superannuation funds

Verification and change of fund status

The SMSF sector continues to evolve and is seeing increasing growth of younger members, with members aged 25–44 representing 48.7% of new fund establishments.[32] The value of SMSF sector assets now exceeds $1 trillion[33], representing a quarter of the total superannuation system[34], with 638,411 SMSFs and 1,184,287 individual members.[35] This population is not insignificant, with more than $5.9 billion in employer contributions made to SMSFs annually.[36]

Discrete issues arise for employers with employees who are members of SMSFs. These nuances require careful consideration and a practical approach to the operation of the PDS regime for employers.

The complying fund status of an SMSF can be verified at any time via Super Fund Lookup.[37] However, this may be a manual process, is time-consuming, and would be impractical if verification were required for each SMSF every QE day. This is particularly the case where the fund has previously been verified, and regularly receives SG contributions for the employee.

We understand that some software services will undertake a check of Super Fund Lookup when preparing the payroll. However, outcomes vary regarding when an employer is notified of a change in fund status or remittance failure. Variables include the software used, timing of the preparation and remittance of payroll, payroll service provider, or clearing house used.

Practical issues can arise as an SMSF's complying fund status can be changed or withheld by the Commissioner at any time, and without warning. This is problematic for employers as that change can occur between the time the fund's status was checked and when the employer remits the SG contributions.

The greatest risk to employers arises from the status of the fund changing to 'regulation details withheld'. The withdrawal of these particulars prevents the transmission of SG contributions via SuperStream as the complying fund status cannot be verified. This change of status can, for example, be due to the late lodgment of the SMSF annual return (**SAR**). This can result in SG contributions being rejected, which can subject the employer to the SG charge.

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32 Australian Taxation Office, *SMSF Quarterly Statistical Report* (Report, December 2024) Table 11.2.

33 Ibid Table 2: Asset Allocation, 'Total Australian and Overseas Assets'. https://data.gov.au/data/dataset/self-managed-superannuation-funds.

34 Australian Prudential Regulation Authority (APRA), Quarterly Superannuation Performance Statistics – December 2024 (Report, 27 February 2025), Table: Key Statistics https://www.apra.gov.au/quarterly-superannuation-statistics.

35 Ibid (n 1), Table 1.2 Population – quarterly data.

36 Ibid Table 10: Flow of funds, 'Employer Contributions'.

37 Australian Taxation Office, 'Super Fund Lookup', *Search by ABN, ACN or name* (Web Page) https://superfundlookup.gov.au/.

We acknowledge that this is an important integrity measure available to the Commissioner, ensuring SMSF trustees meet their statutory reporting obligations. While care is taken by the Commissioner, this system is imperfect and, at times, fund details have been withheld in error, such as where a registered tax agent formally arranges for a lodgment extension.

Heavy reliance is placed on the employee notifying the employer of their fund's change of status, however, in practice, often the employee/trustee is unaware of the change of fund status.

Once the matter is rectified, such as following the lodgment of the fund's SAR, delays of varying duration for the fund's status to be reinstated can still occur, despite its obligations being fulfilled, or a formal lodgment deferral being approved.

Recommendation 19

Where an employer has previously confirmed the SMSF's particulars, including its complying fund status, and has been making regular SG contributions to the fund, the employer should not be penalised for a late payment of the employee's SG due to a change in the status of the fund on Super Fund Lookup.

The 21-day window that applies when onboarding a new employee should also apply to failed SG remittances to SMSFs due to a change in the fund's status. Alternatively, the timeframe could be aligned with the 42-day window that applies in the case of stapled and default funds.

This would allow additional time for the employer to either recontribute to the SMSF, where the fund's status is restored in time, or have the employee provide details of an alternative superannuation fund account.

SMSF reporting regime

The impact that a reporting regime would have for the SMSF sector is a complex issue given the highly fragmented nature of the SMSF population.

Aligning reporting by SMSFs with the proposed fund reporting obligations would have imposed significant demand on registered tax agents and fund administrators. Practitioners are already operating beyond capacity, with staffing and resourcing a primary concern. We welcome the exclusion of SMSFs from the compulsory fund reporting regime at this time.

Recommendation 20

We recommend that a targeted consultation involving key industry stakeholders, including the Joint Bodies, should be undertaken to ensure that a regime that is efficient and fit for purpose is put in place for SMSFs.

Employer assessments

ATO reconciliations and issuance of employer assessments must be approached with caution where the pool of employees includes members of SMSFs. SMSFs are excluded from the MATS reporting framework, so any fund reporting data will be absent for those members.

This may distort the assessment process and could result in default assessments being issued. This would impose an unnecessary administrative burden and cost on compliant employers when objecting to an ATO assessment.

Recommendation 21

- While employer contributions received are reported in aggregate in the SAR, consideration should be given to including a schedule in the SAR to satisfy the PDS reporting requirements for each financial year.
- The Commissioner should be able to request an interim statement from an SMSF trustee where there are concerns as to whether an employee's contributions have been received by the fund.
- Introduce voluntary reporting of non-payment of SG to the ATO by the trustee of the SMSF and actively promote this to members of SMSFs that receive SG contributions.
- Given that MATS does not apply to SMSFs, the Commissioner should be required to contact employees where the ATO has concerns about the non-payment of SG contributions to their SMSFs, asking them to check their contributions, and report any non-payment.

Final observation

Application to Commonwealth entities

Existing subsection 5(1) of the SGAA provides that the Commonwealth, Commonwealth Departments and untaxable Commonwealth authorities (collectively **Commonwealth entities**) are not liable to pay the SG charge.

The Joint Bodies would like to understand the basis on which Commonwealth entities are exempt from the SG charge and related penalties, as this would seem to result in a differentiation between employees of Commonwealth entities and those of other employers.

Recommendation 22

The Joint Bodies would like to engage in further discussion with the Treasury on this issue to ensure all employees are treated equally under PDS, and all employers, including Commonwealth entities, have equivalent obligations and responsibilities under the proposed PDS policy.

Appendix C

Summary of abbreviations

Below is a summary of the abbreviations and terms used in this submission.

Package of draft legislation

Term	Explanation
Draft Bill	Treasury Laws Amendment Bill 2025: SG reforms to address unpaid super
Draft Imposition Bill	Superannuation Guarantee Charge Amendment Bill 2025
Draft Advertising Ban Bill	Treasury Laws Amendment Bill 2025: ban on advertising super funds during onboarding
Draft EM	Accompanying explanatory materials
Draft Regs	Treasury Laws Amendment Instrument 2025: SG reforms to address unpaid super
Draft ES	Accompanying explanatory statement

Other abbreviations and terms

Term	Explanation
AFSL	Australian Financial Services Licence
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
BECS	Bulk Electronic Clearing System
BFID	Best financial interests duty
CC	Concessional contributions
Commissioner	Commissioner of Taxation
CTR	Contribution transaction request
DSP	Digital service provider
ESA	Electronic service address
ESEC	Employer shortfall exemption certificate

Term	Explanation
ITAA 1997	*Income Tax Assessment Act 1997* (Cth)
Joint Bodies	Australian Bookkeepers Association, Chartered Accountants Australia and New Zealand, CPA Australia, the Financial Advice Association of Australia, the Institute of Certified Bookkeepers, the Institute of Public Accountants, the SMSF Association and The Tax Institute
LP penalty	Late payment penalty
MATS	Member Account Transaction Service
MCB	Maximum contribution base
NCC	Non-concessional contributions
NEC	Notional earnings component
NPP	New Payment Platform
OTE	Ordinary time earnings
PDS	Payday super
PPL	Paid parental leave
QE	Qualifying earnings
RSA	Retirement Savings Account
SAR	SMSF annual return
SBSCH	Small business superannuation clearing house
Seventh day	The end of the seventh day after the day on which an SG contribution is paid or debited from the employer's account
SG	Superannuation guarantee
SGAA	*Superannuation Guarantee (Administration) Act 1992* (Cth)
SISR	Superannuation Industry (Supervision) Regulations 1994
SMSF	Self-managed superannuation fund
Start year	The financial year in which PDS commences
STN	Superannuation Transmission Network
STP	Single Touch Payroll
TAA	*Taxation Administration Act 1953* (Cth)

Term	Explanation
TSB	Total superannuation balance
VDS	Voluntary disclosure statement
Window	The period within which an SG contribution is made by an employer, received by the employee’s superannuation fund and allocated to the employee’s account without the employer having an SG shortfall for that contribution