



Payday plus 7 days

Proposed payday super reforms correcting the SG gap

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On 14 March 2025, the Treasury released draft legislation for the federal government's (government) previously announced reforms to Payday Super, Treasury Laws Amendment Bill 2025: Superannuation Guarantee (SG) reforms to address unpaid super.

The reforms propose amending the time limits imposed on employers to pay superannuation guarantee (SG) contributions for their employees from a quarterly basis to within seven calendar days of the payment of ordinary time earnings (OTE). The current exposure draft builds on the Treasury's Payday Super factsheet that was released on 18 September 2024 which provided a first glimpse of the proposed reforms.

Set to commence on 1 July 2026, the Payday Super reforms would make sweeping changes to the administration of superannuation in Australia. The reforms—summarised in Table 1—are in draft and subject to change following the end of consultation period on 11 April 2025.

Note: In a joint submission to Treasury in early May, eight professional bodies have requested implementation of Payday Super be deferred until July 2028 to ensure a smooth transition to the new model once all stakeholders are prepared.

Employers must be aware of the new Payday Super obligations and ensure their payroll administration systems are ready, or risk significant penalties. Details on some of the key proposed changes are follows:

Table 1. Payday Super reforms

Proposed amendment	Summary of changes
Shorter timeframe to make contributions	Superannuation Guarantee (SG) contributions must be paid and received by an employee's superannuation fund within seven calendar days of a payment of OTE
Redesigned SG charge	<p>The SG charge (SGC) will comprise of:</p> <ul style="list-style-type: none">the employee's outstanding individual SG shortfall calculated based on OTE (previously, the SG shortfall was calculated on total salary and wages which is a broader base than OTE)the general interest charge (GIC) calculated on a daily, compounding basis each day an individual base SG shortfall remains unpaid (previously, interest was calculated at a rate of 10% simple interest). The current GIC rate for the April to June 2025 quarter is 11.17% p.a. (or 0.031% per day)a 60% administrative uplift of the individual SG shortfall, which may be reduced if an employer lodges a voluntary disclosure (previously, an administration fee of \$20 per employee per quarter in respect of who a SG shortfall existed) <p>The SGC (other than GIC component) will also now be deductible.</p>

Additional interest and penalties	The GIC will accrue on the entire SGC that remains unpaid following an assessment by the Australian Taxation Office (ATO). Previously, interest only accrued on an employer's SG shortfall. The GIC will also not be deductible. Instead of a 200% penalty, a 25% or 50% penalty (if the employer has been previously assessed with a late payment penalty within two years) equal to the amount of unpaid SGC will apply when the SGC is not paid in full within 28 days of the notice of assessment. This penalty remains non-deductible. The GIC will also not accrue on any outstanding SGC penalties.
No remission of penalties available	The ATO would no longer have the discretion to remit any late payment of SGC penalties in full or in part.
Relaxed choice of fund requirements	Employers can now request the ATO to provide an employee's stapled superannuation fund details before or during the onboarding process (previously, employers could only make a request to the ATO once the employee had first been offered a choice of fund and the employee did not elect a fund).
Prohibited advertising of certain superannuation products during onboarding	Employers will also be generally prohibited from advertising non-MySuper superannuation products during an employee's onboarding process.
Retirement of the ATO small business clearing house	The Small Business Superannuation Clearing House will be retired from 1 July 2026.

Source: Clayton Utz

Shorter timeframe to make contributions

Current law

The current drafting of the *Superannuation Guarantee (Administration) Act 1992* (SGAA) does not impose an explicit obligation on employers to pay SG contributions for the benefit of their employees. Instead, the SGAA requires that a minimum amount of SG support must be provided to employees to avoid the SGC.

Currently, employers are only required to pay superannuation contributions 28 days after the end of the relevant quarter—that is 28 October, 28 January, 28 April and 28 June. An employer becomes liable to the SGC if they fail to provide the minimum level of SG support to an employee on amounts that constitute OTE for a quarter—subject to certain exceptions. OTE includes many common types of payments for an employee's ordinary hours of work, including ordinary pay, bonuses (excluding for overtime), many types of leave and other regular payments made in respect of an employee's ordinary hours of work at ordinary rates of pay.

Proposed law

The Treasury Laws Amendment Bill 2025: SG reforms to address unpaid super, aims to amend the SGAA to ensure the payment of SG contributions broadly aligns with the timing of the payment of an employee's ordinary pay.

The proposed reforms enshrine an obligation for employers to pay SG contributions for the benefit of their employees if an employer has an individual SG amount. The 'individual SG amount' arises when an employer

makes a payment of qualifying earnings to or for an employee on a particular day—known as the "QE day".

Qualifying earnings include not only OTE, but also:

- commissions
- payments to, and remuneration of, persons that are deemed to be employees for the purposes of section 12 of the SGAA
- amounts that have been salary sacrificed in exchange for additional SG contributions.

SG contributions of 12%—from 1 July 2025—must be received by the relevant superannuation fund within seven calendar days after an employer makes a payment of qualifying earnings or the employer will be liable to the SGC. The effect is that employers that pay on-time SG contributions within the seven-day period will reduce their individual base SG shortfalls for a QE day—including to nil, which would avoid imposition of the SGC.

Certain time extensions to pay and receive SG contributions apply, including:

- new employees – employers will generally have a 14-day extension to make eligible contributions
- out-of-cycle payments – the Commissioner of Taxation (Commissioner) may by legislative instrument designate certain payments as out-of-cycle payments which extend the SG contribution due date to the next QE day—which will vary from employer to employer. Out-of-cycle payments may include commissions, bonuses, payments in advance and back payments
- exceptional circumstances – include natural disasters and widespread outages of information and communication technology services affecting multiple employers on a large scale, 21 days from the QE day (i.e. a 14-day extension)
- where a stapled superannuation fund provided by the Commissioner does not accept the SG contribution, 42 days from the QE day (i.e. a 35-day extension)
- where an employer's default superannuation fund fails APRA performance tests, 42 days from the QE day (i.e. a 35-day extension).

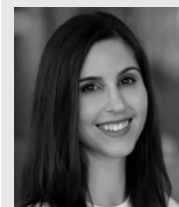
Additional changes include:

- late payment offsets – currently, employers can elect to pay the SG shortfall to the employee's superannuation fund with the ATO offsetting that amount against the employer's nominal interest component, with the remainder applied to the SG shortfall. These payments will now be automatically applied to reduce an employer's individual final SG shortfall
- maximum contributions base – will be calculated on an annual rather than quarterly basis
- shortfall exemption certificate – amendments to simplify the process, including changing the qualifying conditions to receive an exemption certificate
- defined benefit schemes – amendments to the SGAA to ensure the proposed changes preserve the existing contribution framework with respect to defined benefit schemes.



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SG contributions of 12%—from 1 July 2025—must be received by the relevant superannuation fund within seven calendar days after an employer makes a payment of qualifying earnings or the employer will be liable to the SGC.

Redesigned SG charge

Current law

Currently, if SG contributions are not paid by the relevant quarterly due dates, the employer becomes liable to a non-deductible tax called the SGC which has three components:

- SG shortfall – an employee's unpaid or underpaid superannuation amount calculated on an employee's total salary or wages. This is a broader base than OTE and includes items such as overtime and termination payments for unused annual, long service or sick leave
- nominal interest – 10% simple interest on the SG shortfall for the quarter accruing from the start of the relevant quarter until the SGC becomes payable
- administration fee – \$20 per employee per quarter in respect of whom there is a SG shortfall.

Proposed law

The reforms propose a significant rewrite of the SGC and involve the following new components:

- the total of the employer's individual final SG shortfalls
- the total of the individual's notional earnings components for the QE day
- the employer's 60% administrative uplift amount (if any)
- the total of the employer's choice loadings for the QE day (if any).

The sum of these four components comprises the SG shortfall on which the SGC is payable:

Individual final SG shortfall

An employer's individual final SG shortfall for a particular employee is worked out under the following process:

- **Step 1:** work out individual SG amount = qualifying earnings x charge percentage. This is called the 'individual SG amount'.
- **Step 2:** subtract eligible—on time—contributions for the QE day from Step 1. If this amount is nil, then no SG shortfall arises. If this amount is greater than nil, this is called the 'individual base SG shortfall' and you must proceed to Step 3.
- **Step 3:** subtract eligible contributions—late—contributions for the QE day from Step 2. The result is the 'individual final SG shortfall'.

The overall effect is similar to the current SGC regime in that the 'individual final SG shortfall' represents the amount of SG contributions that remain unpaid following a particular QE day after all on-time and late SG contributions (if any) have been applied.

Notional earnings components

To incentivise employers to pay SG contributions on time, and to compensate employees for lost superannuation fund earnings due to late contributions, an 'individual notional earnings component' will apply. This involves multiplying the individual base SG shortfall amount for the employee by the GIC rate—which is currently 11.17% on an annual basis and 0.031% on a

daily basis. The GIC will apply on a compounding, daily basis and will accrue for each day an employer's final SG shortfall is greater than nil.

Under these proposed changes, interest effectively accrues where insufficient SG contributions have been paid to an employee notwithstanding if late SG contributions are later made. Interest will cease accruing once an employee receives their correct SG entitlements.

Administrative uplift

One of the more significant changes to the redesigned SGC is the administrative uplift. A 60% administrative uplift will apply to the total of an employer's individual final SG shortfall amount, representing a significant increase on the current \$20 administration fee per employee per quarter.

The 60% administrative uplift amount may be reduced, including to nil, by the amounts shown in Table 2, if the relevant criteria are satisfied.

The key takeaway is that an immediate 20% reduction of the administrative uplift is available if the Commissioner has previously not made an assessment within 24 months and further reductions ranging from 40% to 15% are available if the employer lodges a voluntary disclosure within 30 to 120 days or later after the QE day.

Table 2. Criteria for a reduction in the 60% administrative uplift

Reduction amount	Criteria
20%	Either: (1) The Commissioner has not issued a "Commissioner-initiated assessment" within 24 months of the QE day; or (2) the Commissioner has issued an assessment because an employer lodged a voluntary disclosure that was in the incorrect form as it was inaccurate or incomplete
40%	The employer has lodged a voluntary disclosure statement of the superannuation shortfalls within 30 days of the QE day
35%	The employer has lodged a voluntary disclosure statement of the superannuation shortfalls within 30 days after the conclusion of the above 30 day period (i.e., within 60 days of the QE day)
30%	The employer has lodged a voluntary disclosure statement of the superannuation shortfalls within 60 days after the conclusion of the above 30 day period (i.e., within 120 days of the QE day)
15%	The employer has lodged a voluntary disclosure statement of the superannuation shortfalls after the end of 120 days after QE day.

Source: Clayton Utz

Choice loadings

Currently, an employer will be liable to a choice shortfall if they fail to comply with their choice of fund obligations. A choice shortfall results in a 25% uplift in an employee's SG shortfall—limited to \$500 per notice period per employee.

Under the proposed reforms, a choice shortfall will remain but form a separate component of the SGC. The choice shortfall cap will increase to \$1,200 per notice period.



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Additional interest and penalties and administration

Current law

Currently, if an employer fails to pay the SGC or lodge SG statements on time, an employer becomes automatically liable to a penalty equal to 200% of the SGC (however, while an employer becomes automatically liable to this penalty, it is payable only when the Commissioner issues an assessment). Other administrative penalties, such as penalties for false or misleading statements and aggravating circumstances, may also apply, and the GIC accrues on the SG shortfall component of the SGC.

Proposed law

The proposed reforms significantly alter the administration and penalties for SG non-compliance.

The effect of those changes can be summarised as:

- an employer becomes liable to the SGC if SG contributions are not paid within seven days of the payment of OTE
- an employer may pay the SGC—via a voluntary disclosure in the approved form—before the Commissioner issues an assessment to reduce the administrative uplift component of the SGC. The lodgement of SG charge statements is no longer required
- the Commissioner may at any time issue a notice of assessment to the employer to pay the SGC
- if the SGC remains unpaid within 28 days of notice of assessment:
 - GIC will accrue from the date it is due and payable—effectively resulting in double interest as GIC is already levied on the notional earnings component of the SGC
 - the Commissioner will issue a written notice instructing the employer to pay. Administrative and unremittable penalties of 25% or 50% of the outstanding amount will also apply and become payable at least 14 days after the Commissioner issues a notice of assessment.

Key takeaways

The proposed Payday Super reforms, if passed by parliament, significantly alter the current superannuation administration landscape.

Key implications for employers are:

- employment terms and conditions—including under contracts of employment, workplace policies and applicable industrial instruments—may need to be updated to reflect that SG contributions must be received by superannuation funds within seven days of payday. As a separate exercise, there will be a need to clearly communicate the changes to employees, so they are aware of their effects.
- SG contributions must be received by superannuation funds within seven days of payday, so employers should ensure payments are made as promptly as possible, and well before the end of the 7th day, to allow for any delays in processing that are outside of their

control. Employers should consider whether any adjustments are required to their current pay cycles to facilitate the faster payments.

- from a record-keeping perspective, employers will be required to make and keep records of superannuation payments for each pay cycle, rather than quarterly. Employers should take steps to ensure that their record-keeping processes are sufficiently robust to facilitate the more frequent production and maintenance of superannuation records.
- small and medium-sized enterprise employers, especially small businesses that currently budget for quarterly payment of SG contributions, may need to adjust their financial planning in order to facilitate payment within seven days of payday.
- the redesigned SGC appears to incentivise employers to disclose SG underpayments quickly and voluntarily. A severe upfront uplift will apply to increase late contributions by 60%. Both the uplift and overall SGC are subject to daily compounding interest, so employers that fail to comply with their SG obligations before a notice of assessment is issued by the Commissioner will see the SGC accumulate at a faster and higher rate than under the current scheme.
- although the proposed reforms are slated to commence from 1 July 2026, employers must act now to ensure their payroll processes and software, as well as their cash flow position, are ready to facilitate paying SG contributions at or within seven days of payday.
- given the proposed reforms also require the ATO to actively remind employers who have not met their SG obligations, further ATO compliance and enforcement action, particularly with respect to issuing penalties, can now be expected. Employers who fail to meet their SG obligations can expect to face increased scrutiny from both the ATO and employees.
- as superannuation is now regulated under the *Fair Work Act 2009*, employers who fail to meet their SG obligations may contravene it – meaning employers in breach of their SG obligations may also face scrutiny from the Fair Work Ombudsman and be exposed to civil penalties (although the ATO remains the primary regulator for non-compliance with SG obligations).
- the ATO is currently consulting with industry on amendments that may be required to the ATO's publicly available administrative guidance on what amounts the ATO considers to be OTE. Consultation is expected to be completed in June 2025, so employers should look out for any further changes or announcements. **FS**



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