

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Treasurer and Minister for Financial Services**

*Superannuation Guarantee (Administration) Act 1992*

*Superannuation Industry (Supervision) Act 1994*

*Treasury Laws Amendment (Payday Superannuation) Regulations 2026*

Section 80 of the *Superannuation Guarantee (Administration) Act 1992* (the SGA Act) and subsection 353(1) of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) provide that the Governor-General may make regulations prescribing matters required or permitted by the relevant Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 6AA of the SGA Act provides that the regulations may prescribe circumstances in which a member, who is not otherwise a defined benefit member under the SGA Act, is taken to be a defined benefit member.

Subsection 10A(3) of the SGA Act provides that the regulations may prescribe earnings, remuneration or payments that are excluded from qualifying earnings.

Subsection 19B(2) of the SGA Act provides that regulations may prescribe methods for reducing an employer's administrative uplift amount, which forms part of the superannuation guarantee charge (SG Charge).

Subsection 31(1) of the SIS Act provides that the regulations may prescribe standards applicable to the operation of regulated superannuation funds and to trustees and RSE licensees of those funds. Subsection 31(2) of the SIS Act sets out a non-exhaustive list of what the prescribed standards may include.

Subsection 34K(1) of the SIS Act provides that regulations may make provision for and in relation to data and payment matters to be complied with by trustees of eligible superannuation entities and employers in their dealings with eligible superannuation entities.

Subsection 168(1) of the *Superannuation Act 1976* (1976 Act), which establishes the Commonwealth Superannuation Scheme (CSS), provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which are required or permitted by the Act to be prescribed, or which are necessary or convenient to be prescribed for the carrying out or giving effect to the Act. Subsection 155C(1) of the 1976 Act provides, in part, that the regulations may make such provision as is necessary to ensure CSS benefits comply with requirements under the SGA Act.

Subsection 315(1) of the *Bankruptcy Act 1966* provides that the Governor-General may make regulations prescribing matters which are required or permitted by the Act to be prescribed, or which are necessary or convenient to be prescribed for the carrying out or giving effect to the Act. Subparagraph 139L(1)(b)(v) provides that the regulations may provide that a payment or amount is not income of the bankrupt.

The purpose of the *Treasury Laws Amendment (Payday Superannuation) Regulations 2026* (the Regulations) is primarily to amend the *Superannuation Guarantee (Administration) Regulations 2018* (SGA Regulations) and the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) to support amendments made by the *Treasury Laws Amendment (Payday Superannuation) Act 2025* (the Amending Act). The Amending Act amends the SGA Act to align the payment of eligible superannuation guarantee (SG) contributions to employees with the day on which they are paid qualifying earnings (the QE day).

Consequential amendments to the *Bankruptcy Regulations 2021* (Bankruptcy Regulations) update relevant definitions, as well as insert new definitions to align the Bankruptcy Regulations with the SGA Act. Consequential amendments to the *Superannuation (CSS) (Superannuation Guarantee) Regulations* (CSS SG Regulations) ensure that employer benefits provided under the Commonwealth Superannuation Scheme (CSS), a defined benefit scheme, continue to meet the SGA Act requirements after the commencement of the Amending Act on 1 July 2026.

The superannuation system is one of the core pillars of Australia's retirement income system. Superannuation plays a central role to fund and support a dignified retirement for Australians, through the compulsory saving of individuals' income during their working life. A foundational feature of Australia's superannuation system is the SG, which ensures employees receive a minimum level of superannuation support from their employers. The SG does this by imposing a tax (the SG charge) on employers who do not make contributions for the required percentage of their employees' earnings within legislated timeframes.

In the 2023-24 Budget, the Government announced that the SG framework would be reformed to align the payment of SG contributions with the payment of salary and wages (which is usually on a weekly, fortnightly, or monthly basis), instead of the current quarterly requirements.

Employers that do not contribute the full amount of SG (or do not comply with the choice of fund requirements in Part 3A of the SGA Act) for their employees have an SG shortfall for those employees, for the relevant QE day, and become liable to the SG charge. Under the Amending Act 'qualifying earnings' is the earnings base for calculating both the minimum contributions amount and the amount of SG charge.

The Amending Act sets out a recalibrated SG charge that will better ensure employees are accurately compensated for lost earnings if their contributions are delayed. One of the components of the recalibrated SG charge is an administrative uplift amount. The administrative uplift amount replaces the previous administration component of the SG charge, and its purpose is to:

- recognise and recoup the cost of ATO activity to enforce the SG charge; and
- incentivise prompt disclosure of SG shortfalls in order to minimise these costs.

The Amending Act provides that the administrative uplift default amount is 60 per cent of the total of the employer's individual final SG shortfalls and individual notional earnings components for the QE day. The purpose of the Regulations is to introduce added scalability by providing the capacity for the administrative uplift amount to be reduced where certain voluntary steps have been taken by an employer. These steps would reduce

the administrative burden on the ATO in enforcing the assessment and payment of SG charge.

The Regulations make a number of other necessary and consequential amendments to give effect to the changes in the Amending Act.

The Regulations also amend the SIS Regulations to update requirements for the allocation of contributions by trustees of superannuation funds. The Regulations reduce the amount of time for a superannuation fund to address situations where a contribution cannot be allocated to a member's account. This change will support compliance and align the allocation requirements with the new timeframes for an employer to make an eligible contribution to avoid or reduce their liability to the SG charge.

The authorising Acts do not specify any conditions that need to be satisfied before the power to make the Regulations may be exercised.

Public consultation on an Exposure Draft of the regulations was undertaken from 14 March to 11 April 2025 at the same time as consultation on the Amending Act. The Exposure Draft included proposed new elements including the administrative uplift amount of the SG charge and the proposed changes to the SIS Regulations requiring funds to process or return contributions. Key feedback from superannuation industry stakeholders concerned ensuring the changes to the SIS Regulations operated as intended in all situations, and the need for amendments to the SGA Regulations concerning defined benefits superannuation interests to align with changes in the Amending Act. This feedback was incorporated into the Regulations.

Following consultation, further amendments have been included in the Regulations to consolidate exemptions from the SGA Act with those already in the Regulations. Consequential amendments to the *Bankruptcy Regulations 2021*, the *Superannuation (CSS) (Superannuation Guarantee) Regulations 2008* and the *Superannuation Industry (Supervision) Regulations 1994* have also been included.

The Regulations include amendments to the SIS Regulations, which are exempt from sunseting in accordance with the exemption in item 59A of section 12 of the *Legislation (Exemption and Other Matters) Regulation 2015*. This exemption recognises that the SIS Regulations set out key operational rules for superannuation funds, and it is necessary and appropriate to provide commercial certainty as to those rules.

The Regulations include amendments to the CSS SG Regulations, which are also exempt from sunseting in accordance with the exemption in item 59 of section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. Instruments pertaining to the calculation of CSS benefits are intended to have enduring operation and the existence of uncertainty in respect of an individual's CSS benefit entitlements would not be appropriate.

Other than the amendments to the SIS Regulations and the CSS SG Regulations, the rest of the Regulations are subject to sunseting.

The Regulations are subject to disallowance.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence at the same time as the *Superannuation Guarantee Charge Amendment Act 2025*.

Details of the Regulations are set out in the Attachment A.

A statement of Compatibility with Human Rights is at Attachment B.

A Statement of Compatibility with the Objective of Superannuation is at Attachment C.

The Office of Impact Analysis (OIA) has been consulted and agreed that an Impact Analysis was required for this measure. The full text of the Impact Analysis has been included in the Explanatory Memorandum to the Amending Act, which received Royal Assent on 6 November 2025 and is not required to be replicated here. The regulatory costs in relation to the introduction of the Amending Act is estimated to be \$136 million over 10 years.

**Details of the Treasury Laws Amendment (Payday Superannuation) Regulations 2026**

**Section 1 – Name**

This section provides that the name of the regulations is the *Treasury Laws Amendment (Payday Superannuation) Regulations 2026* (the Regulations).

**Section 2 – Commencement**

The Regulations commence at the same time as the *Superannuation Guarantee Charge Amendment Act 2025* commences.

**Section 3 – Authority**

The Regulations are made under the *Superannuation Guarantee (Administration) Act 1992* (the SGA Act), the *Superannuation Industry (Supervision) Act 1993* (SIS Act), the *Superannuation Act 1976* (the 1976 Act), and the *Bankruptcy Act 1966* (Bankruptcy Act).

**Section 4 – Schedules**

This section provides that each instrument that is specified in the Schedules to this instrument are amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

**Schedule 1 – Superannuation guarantee reforms to address unpaid superannuation**

**Part 1 – Main amendments**

**Amendments to the SGA Regulations**

**Administrative uplift amounts for superannuation guarantee shortfalls**

The administrative uplift amount is one of the components of the SG charge. It is calculated as 60 percent of the sum of the total of the employer's individual final SG shortfalls and individual notional earnings components for a QE day.

The administrative uplift amount is reduced from the full 60 percent if certain criteria in the Regulations are satisfied. The uplift amount cannot be reduced otherwise than in accordance with the Regulations – there is no overarching discretion or power to reduce the administrative uplift amount.

There are two ways for the administrative uplift amount to be reduced. A reduction may apply if:

- no Commissioner-initiated assessment or estimate under 268-10 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) has been made for the employer in the past 24 months ending on the QE day, and/or
- an employer lodges a voluntary disclosure statement for the QE day before the day an assessment is made for the employer and the QE day.

Each reduction can be applied separately or cumulatively.  
***[Schedule 1, item 15, section 13A of the SGA Regulations]***

*Amount of an employer's administrative uplift amount*

The Regulations set out the reductions that may be applied to an employer's administrative uplift amount worked out under subsection 19B(1) of the SGA Act. The reductions cannot operate to reduce the uplift amount to below nil.

***[Schedule 1, item 15, section 13B of the SGA Regulations]***

*Reduction if no Commissioner-initiated assessment or estimate in the past 24 months*

A reduction in the administrative uplift amount applies where there has been no Commissioner-initiated assessment or estimate of SG charge liability during the 24 month period ending on the relevant QE day. For this criterion, there must have been no Commissioner-initiated assessment made for the employer during the 24-month period ending on the relevant QE day that is still in force. Further, there must be no estimate made under subsection 268-10(1) in Schedule 1 to the TAA for the employer about a liability to pay SG charge during the 24-month period ending on the QE day that has not been revoked or reduced to nil on, or before, the QE day. If this criterion is satisfied, the administrative uplift amount will be reduced by 20 percentage points from 60 percent to 40 percent.

The purpose of this first step of reduction is to encourage employers to maintain a good compliance history and to make prompt disclosures if they have any superannuation guarantee shortfalls.

For this reduction, the 24-month period being considered cannot commence any earlier than 1 July 2026. This has the effect that all employers will start with a 'clean slate' of compliance history from 1 July 2026.

The definition of Commissioner-initiated assessment covers two circumstances:

- The employer did not lodge a voluntary disclosure statement and the Commissioner makes an assessment for the employer based on the Commissioner's own initiative. In many cases, the Commissioner can make an SG charge assessment based on information acquired from other means, such as data from Single Touch Payroll and Member Account Transaction Service reporting and/or reviewing information from employee notifications of unpaid super.
- The employer lodges a statement that purports to be a voluntary disclosure statement, but this fails to meet the requirements in section 33 of the Amending Act, and the Commissioner makes an assessment for the QE day in response to that statement but relying on information from other sources.

Subsection 268-10(1) of Schedule 1 to the TAA allows, among other things, the Commissioner to estimate the unpaid amount of an employer's liability to the SG charge for a QE day. If an estimate is made by the Commissioner under this power during the period 24 months ending on the relevant QE day, the 20-percentage points reduction is not available. This is the case whether or not amount of the estimate has been discharged. An estimate may be made under this power where the Commissioner does not have sufficient information on which to make an SG charge assessment (for example, the employer has not made a voluntary disclosure statement and other data sources are not available or are incomplete). As this scenario is akin to a Commissioner-initiated assessment, it is

appropriate for an employer not to have the reduction available to them in those circumstances. The existing provisions in section 268-15 of Schedule 1 to the TAA require the Commissioner to give notice to the employer of the estimate, and Subdivision 268-D of Schedule 1 to the TAA deals with the Commissioner's power to reduce or revoke estimates in certain circumstances. If an estimate was made during the 24-month period ending on the QE day, but has since been revoked, or the amount of the estimate has been reduced to nil (other than by the employer discharging the estimate liability) on or before that QE day, the estimate can be disregarded for the purpose of the calculating the available reduction in administrative uplift amount.

An amended assessment will not meet the definition of Commissioner-initiated assessment for the purpose of paragraph 13C(4)(b), as an amended assessment is not *made under* subsection 36(1) of the Amending Act. However, if an original assessment was made under subsection 36(1) for a QE day in response to a purported voluntary disclosure statement, and the Commissioner subsequently made an amended assessment upon establishing that the statement had in fact failed the approved form requirements, the original assessment would be a Commissioner-initiated assessment.

If a previous Commissioner-initiated assessment is no longer in force – for example because the assessment was amended to reduce the employer's SG charge liability to nil – the reduction will be available. This is because the employer will no longer have an SG liability, and there is therefore no need to incentivise lodging a voluntary disclosure statement of any outstanding SG amounts. A Commissioner initiated-assessment will still be considered 'in-force', even if the underlying liability has been discharged.

***[Schedule 1, item 15, section 13C of the SGA Regulations]***

*Reduction if a voluntary disclosure statement is lodged for the QE day*

A reduction in the administrative uplift amount will be applied if the employer lodges a voluntary disclosure statement for the QE day, and the voluntary disclosure statement is lodged before the day an SG charge assessment is made by the Commissioner for the QE day.

The amount of the reduction will depend on the timeliness of the voluntary disclosure statement. Specifically, if the employer lodges the voluntary disclosure statement:

- before the end of the 30-day period starting on the QE day – the reduction will be 40 percentage points;
- after the end of the 30-day period but before the end of the 60-day period starting on the QE day – the reduction will be 35 percentage points;
- after the end of the 60-day period but before the end of the 120-day period starting on the QE day – the reduction will be 30 percentage points;
- after the end of the 120-day period starting on the QE day – the reduction will be 15 percentage points.

There is no discretion available to the Commissioner to alter the administrative uplift amount beyond the allowable reductions set out under section 13D.

***[Schedule 1, item 15, section 13D of the SGA Regulations]***

The cascading levels of reduction provide an incentive for employers to make a voluntary disclosure statement as early as possible if they have an SG shortfall. Practically, this means there are ten possible final outcomes of the administrative uplift amount:

**Table 1 Possible outcomes of the administrative uplift component**

<b>If the employer has not had a Commissioner-initiated assessment in the past 24 months and has...</b>	<b>Administrative uplift percentage</b>	<b>If the employer has had a Commissioner-initiated assessment in the past 24 months and has...</b>	<b>Administrative uplift percentage</b>
Lodged a voluntary disclosure statement (VDS) within the 30-day period starting on the QE day.	Nil	Lodged a VDS within the 30-day period starting on the QE day.	20%
Lodged a VDS during the period immediately after the 30-day period mentioned in the row above, but within the 60-day period starting on the QE day	5%	Lodged a VDS during a period immediately after the 30-day period mentioned in the row above, but within the 60-day period starting on the QE day	25%
Lodged a VDS during the period immediately after the 60-day period mentioned in the row above, but within the 120-day period starting on the QE day	10%	Lodged a VDS during the period immediately after the 60-day period mentioned in the row above, but within the 120-day period starting on the QE day	30%
Lodged a VDS after the end of the 120-day	25%	Lodged a VDS after the end of the 120-day	45%

period starting on the QE day		period starting on the QE day	
Not lodged a VDS in relation to the relevant QE day.	40%	Not lodged a VDS in relation to the relevant QE day	60%

If the information in a voluntary disclosure statement (*original statement*) contains minor errors or discrepancies, but the Commissioner has found that the employer has substantially complied with the approved form requirements, the statement will still be considered to be a voluntary disclosure statement. If the employer subsequently provides information to correct or update the initial statement (*second statement*), the administrative uplift amount is calculated based on the date of the original statement, even where the Commissioner amends an SG charge assessment for that QE day on a later date in response to the second statement.

However, if the information in a statement is inaccurate or incomplete to the extent that it fails to meet the approved form requirements, the employer is treated as never having lodged a voluntary disclosure statement (because the statement will not meet the definition of voluntary disclosure statement in section 33 of the SGA Act).

If a voluntary disclosure statement overstated the amount of individual final SG shortfalls for a QE day, and the Commissioner subsequently amends the assessment to reduce SG charge for the QE day once this is identified, this does not impact the uplift reduction, assuming the initial voluntary disclosure statement met the approved form requirement.

### Example 1

An employer lodges a voluntary disclosure statement (the *original statement*), in the approved form, 50 days after the relevant QE day and has not had a Commissioner-initiated assessment made for them in the past 24 months – the uplift percentage applied on their original SG charge assessment for the QE day would be 5% (60 percentage points *less* 20 percentage points *less* 35 percentage points). The 35-percentage point reduction is based on this disclosure being made more than 30 days from, but within 60 days of, the QE day.

However, the employer discovers a minor error that led to them under-calculating individual final SG shortfalls for some employees in the original statement. The employer subsequently discloses this error to the ATO (the *second statement*) 80 days after the relevant QE day (i.e., 30 days after the original statement) that resulted in an increased SG shortfall amount and amended SG charge assessment.

The uplift percentage applied on their amended SG charge assessment for the QE day would still be 5%. While the second statement was more than 60 days after the QE day, the reduction in the uplift percentage continues to be based on the timing of the first statement.

## Example 2

15 days after a QE day, an employer lodges a statement, purporting to be a voluntary disclosure statement, indicating that they had individual final SG shortfalls for several employees for that QE day.

However, this statement understates the employer's individual final SG shortfalls and fails to include necessary information to ascertain the employer's SG charge liability – information that is required for the statement to be in the approved form. As the statement fails to meet the approved form requirements it is not a voluntary disclosure statement.

If the employer subsequently lodged a voluntary disclosure statement that meets the approved form requirements 150 days after the QE day, their administrative uplift percentage would be 25% (60 percentage points *less* 20 percentage points *less* 15 percentage points). The 15 percentage point reduction is based on the voluntary disclosure statement being lodged more than 120 days after the QE day because the earlier purported statement did not constitute a voluntary disclosure statement and therefore did not entitle them to any greater reduction.

### Exclusions for certain kinds of employees

An employer will have an individual SG amount for an employee if they make a payment of qualifying earnings to or for that employee. The exclusions for certain payments and employees from the SG framework were previously set out in both the SGA Act and the SGA Regulations. However, to improve readability of the legislation, the Amending Act removed the exclusions from the SGA Act so that they could be consolidated in the Regulations. As such, the Amending Act retained the power for the SGA Regulations to prescribe that the earnings or remuneration of, or payments to a kind of employee to be excluded from the calculation of that employee's qualifying earnings. The Regulations consolidate the relevant prescribed employees as set out below, and there are no substantive changes to these exclusions:

- An employee who has been appointed by a company operating in Australia to be the national managing executive or deputy national managing executive or a state manager and who is the holder of either a Subclass 456 (Business (Short Stay)) visa or a Subclass 400 (Temporary Work (Short Stay Specialist)) visa granted under the *Migration Act 1958*.
- An employee who is the holder of either a Subclass 456 (Business (Short Stay)) visa or a Subclass 400 (Temporary Work (Short Stay Specialist)) visa granted under the *Migration Act 1958* that also satisfies the following conditions:
  - the employee holds a position as a senior executive of a company operating in Australia or is establishing a business activity in Australia on behalf of their employer; and
  - the employee's position must also carry substantial executive responsibility; and
  - the employees' qualifications for the position must be appropriate; and

- the employee’s position must be a full-time position.
- An employee who is the holder of a Subclass 482 (Skills in Demand or Temporary Skill Shortage) visa or a Subclass 457 (Temporary Work (Skilled)) visa granted under the *Migration Act 1958* and they have been appointed by a company operating in Australia to be either the national managing executive, deputy national managing executive or a state manager. The employee must be also nominated under the provisions in the *Migration Regulations 1994* relevant to those visa subclasses.
- An employee who is the holder of a Subclass 482 (Skills in Demand or Temporary Skill Shortage) visa or a Subclass 457 (Temporary Work (Skilled)) visa granted under the Migration Act 1958 and holds a position as a senior executive of a company operating in Australia. The employee must also be nominated under the provisions in the Migration Regulations 1994 relevant to those visa subclasses. The employee’s position must also carry substantial executive responsibility, their qualifications for the position must be appropriate, and the employee’s position must be a full-time position.
- An employee who is the holder of a Subclass 482 (Skills in Demand or Temporary Skill Shortage) visa or a Subclass 457 (Temporary Work (Skilled)) visa granted under *the Migration Act 1958* that also satisfies the following conditions:
  - the employee is establishing a business activity in Australia on behalf of their employer,
  - the employee’s position must carry substantial executive responsibility,
  - the employee’s qualifications for the position must be appropriate, and
  - the employee’s position must also be a full-time position.
- An employee who is a part-time employee who is under 18.

***[Schedule 1, item 15, section 11 of the SGA Regulations]***

Exclusions from qualifying earnings

The Regulations replace and consolidate the former exclusions from salary and wages that were contained in both the SGA Act and SGA Regulations. The amendments do not change the substance of the existing exclusions. However, the amendments reframe and update the terminology for consistency with the updated framework as ‘earnings, remuneration or payments’ that are excluded for the purpose of determining qualifying earnings when calculating employers’ SG obligations. Earnings, remuneration or payments to a person of the following kinds are excluded from that person’s qualifying earnings:

- Payments during a period of parental leave.
- Payments during an engagement in an eligible community service activity, paid by the person’s usual employer, while the person is absent from their usual employment. This carve out does not apply to payments where the person engages in the eligible community service activity as an employee of the employer that undertakes that activity. This carve out does not apply to a payment made relating to annual leave,

sick leave, or long service leave, paid in relation to the time engaged in the eligible community service activity.

- Payments in respect of service that the person is undertaking with the Australian Defence Force and is paid by the person's usual employer (and is not paid by the Australian Defence Force), while they are absent from their usual employment. This carve out does not apply to a payment made relating to annual leave, sick leave, or long service leave, paid in respect of service undertaken with the Australian Defence Force.
- Payments to an employee for the relevant work are exempt from the SGA Act if a scheduled international social security agreement provides that the employer is not subject to the SGA Act in relation to that work.
- Payments to an employee on or after 1 November 2022 that are funded by a payment made to the person's employer under the *Aged Care Registered Nurses' Payment*, established by the Commonwealth to reward clinical skills and leadership.
- Payments that are fringe benefits within the meaning of the *Fringe Benefits Tax Assessment Act 1986*.
- Payments to an employee who is not a resident of Australia for work done outside Australia (except to the extent that the salary or wages relate to employment covered by a certificate covering international social security agreements under section 15C of the SGA Act).
- Payments to an employee who is not a resident of Australia for work done in the Joint Petroleum Development Area (within the meaning of the *Petroleum (Timor Sea Treaty) Act 2003*).
- Payments to an employee who is a resident of Australia for work done outside Australia, where the employer is not a resident of Australia.
- Payments to a person that are exempt from income tax under item 1.4 of the table in section 51-5 of the *Income Tax Assessment Act 1997* (pay and allowances as a member of the Naval Reserve, the Army Reserve or the Air Force Reserve, except pay and allowances for continuous full-time service).
- Payments to a person under a contract of employment for work that is wholly or principally of a domestic or private nature, for 30 hours or less per week.

***[Schedule 1, item 15, section 12 of the SGA Regulations]***

Preserving these carve-outs ensures that the components of qualifying earnings, on which employers' SG liabilities are calculated, remains consistent. Consolidating these exclusions in the regulations is appropriate to aid readability with all exclusions being set out in one place. Further, these are specific and technical matters that are more appropriate for inclusion in subordinate legislation.

## Exceptional circumstances

Subsection 18C(4) of the SGA Act allows the Commissioner to determine, through legislative instrument, that one or more kinds of employers are affected by the exceptional circumstances as prescribed by the SGA Regulations. Employers covered by this determination will have an extended period (until the later of 20 business days after the relevant QE day or 20 business days after the determination is made) to make on time contributions. For these purposes, the Regulations prescribe the following exceptional circumstances about which the Commissioner can make such a determination:

- natural disasters; and
- widespread outages of information and communications technology services or other enabling technology services or platforms that facilitate or support employers to make eligible contributions.

The first category concerns natural disasters. Natural disaster takes its ordinary meaning, referring to naturally occurring events that cause significant harm, destruction or damage, often with rapid onset. It includes events like bushfires, floods, earthquakes or cyclones. A natural disaster will generally impact employers in a localised region, such as a particular local government area (LGA), and the Commissioner may consider it appropriate to make a determination for employers in that LGA.

The second category of exceptional circumstances describe an event where substantial issues are impacting the availability of technology or services that employers use to make contributions to superannuation funds for their employees. The impact would be on an ongoing basis, rather than temporary, limited or small-scale issues affecting a small number of businesses. For example, if there is an ongoing internet service provider outage over an extended period that impacts the ability of employers to make superannuation contributions, the Commissioner may consider it appropriate make a determination in relation to employers who rely on that internet service provider.

While the existence of exceptional circumstances prescribed by the Regulations enlivens the Commissioner's power to make a determination, it does not necessarily mean the Commissioner will do so. The Commissioner has the discretion to consider whether to make a determination for a class of employers whose ability to make eligible contributions is impacted by those circumstances.

For example, an outage of a key enabling service may be widespread and completely prevent contributions from being made but only persist for several hours. A determination would not be appropriate, despite the existence of the exceptional circumstances prescribed by the Regulations.

It is generally expected that a determination will be appropriate where exceptional circumstances would meaningfully prevent the relevant employers from being able to make eligible SG contributions within seven business days of the QE day, necessitating the relief of an extended period to make such contributions.

As the Commissioner is responsible for the administration of the SGA Act, it is appropriate that the Commissioner has the ability to issue an exceptional circumstances determination in extenuating circumstances likely to impact the ability of a class of employers to make

SG contributions on time and avoid SG Charge liability. In doing so, it is expected that the Commissioner will consider factors such as the nature of the exceptional circumstances and how significant or widespread the impact is on employers, and balance this against the interests of employees in having SG contributions made promptly following a QE day.  
***[Schedule 1, item 15, section 13 of the SGA Regulations]***

### Defined benefit schemes

The Amending Act made a minor update to limit the scope of the benefit certificate provisions to defined benefit members of defined benefit superannuation (DBS) schemes, rather than applying to the whole of the scheme. This means that actual SG contributions will be relevant for non-defined benefit members of DBS schemes, rather than the notional contributions in accordance with the benefit certificate. The Regulations contain further amendments to give effect to this update and allow benefit certificate arrangements to continue to apply under the payday SG framework.

### Defined benefit members

The Amending Act repeals provisions that enable benefit certificates to cover members of certain defined benefit schemes in which employers can draw from superannuation fund reserves or investment surpluses to satisfy their SG obligations for those members. These amendments preserve a small existing cohort of such arrangements to ensure employers can continue to satisfy their SG obligations this way.

The Regulations do this by prescribing an additional circumstance in which a person is to be treated as a defined benefit member for the purpose of the SGA Act that is when:

- the person is a member of a defined benefit superannuation scheme (DBS) that is a superannuation entity (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); and
- their minimum benefits are met, or will be met, wholly or in part, from the reserves or surplus of the DBS during the period of the benefit certificate; and
- a benefit certificate is currently in effect for the scheme.

The words ‘wholly or in part’ account for any circumstance where the employer allocates from reserves or surpluses and also makes actual contributions.

The requirement that a benefit certificate is currently in effect for the scheme means that an employer who has stopped the practice of allocating from reserves or surpluses prior to the operation of the benefit certificate must make actual contributions.

***[Schedule 1, item 3, section 5A of the SGA Regulations]***

### Benefit certificates

The Regulations simplify and reflect amendments from the Amending Act that deal with benefit certificates by removing references to a superannuation guarantee statement so that an employer must obtain a benefit certificate from an actuary at or before the time specified in subsections 10(3) and (4) of the SGA Act, or on or before such later date as the Commissioner allows.

***[Schedule 1, items 6 and 7, paragraphs 7(1)(a) and (b) of the SGA Regulations]***

## Notional employer contribution rate

The Regulations amend the notional employer contribution rate provisions to ensure consistency with the Amending Act. Changes in the Amending Act mean benefit certificates (containing notional employer contribution rates) will only be used for defined benefit members in defined benefit schemes, including for any accumulation benefits those members may have.

There has been minimal change to the calculation of the notional employer contribution rate for accumulation benefits. The notional contribution rate applies to employees who are defined benefit members and members of a defined benefit superannuation scheme, where the minimum requisite benefit in respect of each employee in the class is calculated as an accumulation of employer contributions and the employer contribution rate used in that calculation is the same for each employee in that class.

*[Schedule 1, items 8 and 9, subsection 8(1) and section 9 of the SGA Regulations]*

## Consequential and minor amendments to the SGA Regulations

Consequential amendments have also been made to the SGA Regulations to reflect the changes to the SGA Act made by the Amending Act. For example, references to ‘ordinary time earnings’ or ‘OTE’ have been updated to ‘qualifying earnings’ or ‘QE’, and ‘FOTE’ has been updated to ‘FQE’ and the relevant definitions repealed and replaced accordingly. These ensure that the earnings base referred to by an actuary when calculating a notional employer contribution rate in a benefit certificate for a defined benefit scheme aligns with the qualifying earnings used as the earnings base in the Amending Act, and the rate itself is expressed a percentage of qualifying earnings.

A cross reference to the SGA Act about prescribed information is also updated in light of the Amending Act, and the section dealing with approved clearing houses is removed.

*[Schedule 1, items 1, 2, 4, 5, 10 to 14, 16 and 17; sections 5 and 10, paragraph 16(e) and Part 7 of the SGA Regulations]*

## **Part 2 – Other amendments**

### **Amendments to the SIS Regulations**

#### *Streamlining the process to allocate or refund SG contributions*

The Regulations streamline the process for superannuation trustees to allocate or refund contributions by imposing a uniform deadline of three business days, from receiving the contribution from employers, to allocate or refund the contribution.

Regulation 7.07E requires employers to give the following information to the superannuation fund every time that they make a contribution for an employee: the employee’s full name, residential address, tax file number and telephone number. To support the objectives of the Amending Act, the Regulations centralise and streamline the process for dealing with contributions under the SIS Regulations. This is achieved by removing previous distinctions between incomplete contribution information and contributions that can be allocated, reflecting the reality of how trustees are able to treat contributions.

The Regulations simplify regulation 7.07G so that when a fund receives a contribution for a member and the trustee is not able to allocate that contribution (for example, because it does not include sufficient information to identify the member), the trustee must return the contribution as soon as practicable, and in any case, no later than three business days after receiving the contribution.

However, if the trustee is able to allocate the contribution, notwithstanding that some of the information was not provided or not accurate, the trustee must allocate the amount as soon as practicable, and in any case, no later than three business days after receiving the contribution. For example, if a contribution lacks the employee's telephone number, or the telephone number is incorrect, but the trustee is able to determine the member for whom the contribution is being made, the trustee must allocate the contribution.

Formerly, superannuation fund trustees were required to seek corrective information from an employer within five business days and return the contribution if they could not allocate it within 20 business days. The Regulations repeal these requirements so that trustees must refund the contribution to the employer within three business days of receiving it from the employer, without needing to go back to the employer for additional information. This reduces the administrative burden on employers and superannuation trustees by enabling the employer to re-attempt this contribution. It is expected that a trustee will, when refunding a contribution, outline the reason the contribution has been refunded. Refunds of contributions are governed by the SuperStream data and payment standards made for the purposes of section 34K of the SIS Act, and these standards prescribe information that must be provided to inform why a contribution could not be allocated.

Allowing trustees to accept contributions with available information from employers which may be incomplete reduces the compliance burden which would otherwise be placed on funds and employers, saving time and resources and will also support superannuation being paid on time.

A trustee is expected to consider whether a contribution is able to be allocated based on the information provided to it alongside the contribution, even if not all the required information fields are filled out. If the information provided alongside a contribution does not provide the trustee with enough information to allocate a contribution to a member, the trustee will be unable to allocate the contribution. Likewise, if the operation of the SIS Regulations precludes the fund from accepting a contribution, for example regulation 7.04, the fund will be unable to allocate that contribution.

***[Schedule 1, item 37, sub-regulation 7.707G of the SIS Regulations]***

This three-business day requirement to allocate or refund applies to superannuation trustees (except for trustees of self-managed superannuation funds (SMSFs)), whether or not contributions are made in accordance with superannuation data and payment standards made under section 34K of the SIS Act.

Formerly, if contributions were not made in accordance with the relevant data and payment standards, superannuation fund trustees were required to allocate the contribution within 28 days after the end of the month within which it was received (or if this was not possible, a longer period as is reasonable in the circumstances). These amendments reduce administrative complexity by creating a uniform three-business-day deadline.

Where a contribution is refunded, it is taken not to have been made to the fund by the employer (or other entity that made the contribution if it was not made by an employer).  
***[Schedule 1, item 37, sub-regulation 7.07G(4) of the SIS Regulations]***

#### *Updates to timeframes to validate information*

To support the streamlined allocation and refund requirements, the Regulations update the requirement for a trustee to make a request to validate information it has been provided from 3 business days to 2 business days. The same change has been made to information received by a trustee from the Commissioner.

***[Schedule 1, items 35 and 36, sub-regulation 7.07B(4) and 7.07D(2) of the SIS Regulations]***

#### *Treatment of SMSFs*

The Regulations ensure the treatment of contributions for SMSFs remain unchanged by reflecting former regulation 7.08 for the purpose of SMSFs. This will ensure that SMSF contributions must be allocated not later than 28 days after the end of the month, or a longer period as is reasonable in the circumstances.

***[Schedule 1, items 37 and 38, regulations 7.07H and 7.08 of the SIS Regulations]***

#### *Application of allocation requirements for funds with less than five DBS members*

The Regulations repeal and replace regulation 7.09 but only make minor changes to the application provision of Division 7.3 to clarify that these allocation requirements only apply to a superannuation fund or a sub-fund with fewer than five DBS members (unless grandfathering arrangements for funds that previously had more than five DBS members apply), and only for the specific contributions to those defined benefit (DB) interests, rather than an entire superannuation fund that may have sub-funds with less than five DBS members. This reaffirms the original policy intent. Specifically, the original Division 7.3, introduced by the *Superannuation Industry (Supervision) Amendment Regulations 2007 (No. 2)*, focused on contributions required to be allocated by the former regulation 292-170.03 of the *Income Tax Assessment Regulations 1997*.

***[Schedule 1, item 39, regulation 7.09 of the SIS Regulations]***

To ensure that defined benefit interests are dealt with solely by Division 7.3 of the SIS Regulations, the Regulations ensure that a contribution to a defined benefit scheme may not incidentally be dealt with under 7.07G or 7.07H. Contributions to a defined interest for a fund or sub-fund with more than 5 defined members will not have allocation requirements under the SIS Regs.

***[Schedule 1, item 37, paragraphs 7.07G(1)(b) and 7.07H(1)(b) of the SIS Regulations]***

#### **Amendments to the Bankruptcy Regulations**

Consequential amendments have been made to the Bankruptcy Regulations to update the definition of 'relevant superannuation guarantee charge' to 'charge percentage', and the definition of 'ordinary time earnings' to 'qualifying earnings' as well as to insert definitions of 'charge percentage' and 'qualifying earnings' which have the same meaning as in the SGA Act.

A transitional rule has also been inserted into the Bankruptcy Regulations to deal with a *contribution assessment period* (defined in section 139K of the *Bankruptcy Act 1966*) that begins before the Amending Act commences on 1 July 2026 that ends on the day, or after the day, the Amending Act commences on 1 July 2026.

The old law, defined as the SGA Act and any instruments made under that Act as in force on 30 June 2026, will continue to apply on or after 1 July 2026 in relation to so much of the contributions assessment period as happens before 1 July 2026. The new law, defined as the SGA Act and any instruments under that Act as in force on or after 1 July 2026 will apply in relation to so much of the contributions assessment period as happens on or after 1 July 2026.

***[Schedule 1, items 18 to 24, sections 34 and 118 of the Bankruptcy Regulations 2021]***

### **Amendments to the CSS SG Regulations**

Consequential amendments have been made to the CSS SG Regulations to ensure that employer benefits provided under the Commonwealth Superannuation Scheme (CSS), a defined benefit scheme, continue to meet the SGA Act requirements after the commencement of the Amending Act on 1 July 2026. The Regulations do this by making amendments to create a clear distinction between the treatment of contributions under the SG framework pre-1 July 2026, before the Amending Act commences, and the SG framework after it commences.

The methodology for the SG minimum contribution component in the CSS SG Regulations reflects the terminology currently used in the SGA Act to set the method for calculating an employer's SG obligations. As the Amending Act amends or replaces a number of those terms in the SGA Act, it is necessary to amend the CSS SG Regulations to reflect changes to these terms and new requirements. To assist readability of the CSS SG Regulations and support compliance, the existing provisions are substantially retained, so they can be read alongside the provisions dealing with the amended SG framework.

***[Schedule 1, items 25 to 34, regulations 3 and 5 of the CSS SG Regulations 2008]***

## **Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Treasury Laws Amendment (Payday Superannuation) Regulations 2026***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The purpose of the *Treasury Laws Amendment (Payday Superannuation) Regulations 2026* (the Regulations) is to amend the *Superannuation Guarantee (Administration) Regulations 2018* (SGA Regulations) and the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) to support amendments made by the *Treasury Laws Amendment (Payday Superannuation) Act 2025* (the Amending Act). The Amending Act amends the SGA Act to align the payment of eligible superannuation guarantee (SG) contributions to employees with the day on which they are paid qualifying earnings (the QE day).

Under the Amending Act ‘qualifying earnings’ becomes the single earnings base for calculating the minimum contributions amount and the SG charge amount.

The Amending Act sets out a recalibrated SG charge that will better ensure employees are accurately compensated for lost earnings if their contributions are delayed. One of the components of the recalibrated SG charge is an administrative uplift amount. The administrative uplift amount is a substitute for the previous administration component of the SG charge, the purpose of which is to:

- recognise and recoup the taxpayer cost of ATO activity to enforce the SG charge; and
- incentivise prompt disclosure of SG shortfalls in order to minimise these costs.

The Amending Act provides that the administrative uplift default amount is 60 percent of the total of the employer’s individual final SG shortfalls and individual notional earnings components for the QE day. The purpose of the Regulations is to introduce added scalability by providing the capacity for the administrative uplift amount to be reduced where certain voluntary steps have been taken by an employer. These steps would reduce the administrative burden on the ATO in enforcing the assessment and payment of SG charge.

The Regulations reduce the amount of time that a superannuation fund has to address situations where a contribution cannot be allocated to a member’s account, in order to align with the new timeframes an employer has to make an eligible contribution to reduce their SG shortfall.

**Human rights implications**

The Regulations do not engage any of the applicable rights or freedoms.

**Conclusion**

The Regulations are compatible with human rights as they do not raise any human rights issues.

**Statement of Compatibility with the Objective of Superannuation**

Prepared in accordance with section 7 of the *Superannuation (Objective) Act 2024*

***Treasury Laws Amendment (Payday Superannuation) Regulations 2026***

This Legislative Instrument is compatible with the objective of superannuation as set out in section 5 of the *Superannuation (Objective) Act 2024*. The objective of superannuation is to preserve savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way.

The Regulations complement the *Treasury Laws Amendment (Payday Superannuation) Act 2025*, which amends the SGA Act to align employer payment of superannuation guarantee (SG) contributions with their payment of qualifying earnings. The Regulations give effect to matters required or permitted by the Act to be prescribed, including:

- criteria for reducing an employer’s administrative uplift amount;
- earnings, remuneration or payments that are excluded from qualifying earnings;
- categories of events that enliven the Commissioner’s power to make a determination of exceptional circumstances; and
- updated requirements for the allocation or refund of contributions received by superannuation fund trustees.

**Detailed assessment**

A foundational feature of Australia’s superannuation system is the SG. It ensures employees receive a minimum level of superannuation from their employers to support a dignified retirement, alongside government support. As of 1 July 2025, the SG rate has increased to 12 per cent.

Unpaid SG decreases an individual’s preserved retirement savings due to loss of contributions and associated foregone compounded earnings, which can lead to poorer retirement outcomes. It may also extend the working lives of individuals who need to work longer to make up for these lost contributions. The Australian Taxation Office (ATO) estimates that unpaid SG totalled around \$6.2 billion in 2022-23.

Payday Super will increase the frequency employees receive SG contributions to their superannuation funds, which will benefit around 9.4 million working Australians. The increased frequency will mean higher investment earnings over their working lives because of the compounding effect of having SG invested sooner.

The Regulations streamline the process for superannuation trustees to allocate or refund SG contributions, by imposing a uniform deadline of three business days. This reduces administrative complexity for funds and employers and ensures contributions that cannot

be allocated are returned to an employer quickly so issues can be rectified and contributions can be successfully completed sooner.

Elements of the SG Charge provided for in the Regulations help to prompt employers to immediately rectify any late or missed payments while imposing more significant consequences and penalties for ongoing and repeated non-payment of the SG charge. The Regulations also ensure that employers impacted by exceptional circumstances, such as a natural disaster, receive appropriate additional time to make contributions.

Collectively these settings will promote voluntary compliance and quicker rectification of errors or mistakes, improving retirement incomes.

The prescribed exclusions from qualifying earnings replicate the existing policy settings concerning the coverage of the SG; they are not increasing or decreasing employees' superannuation entitlements.

## **Conclusion**

The Regulations are compatible with the objective of superannuation as they complement the Amending Act to help to address the issue of unpaid superannuation, taking key positive steps to improve the level of preserved savings and secure dignified retirement outcomes for working Australians in an equitable way. The Regulations give effect to important aspects of the Amending Act, including ensuring superannuation trustees quickly address situations where SG contributions cannot be allocated, incentivising employers to rectify late or missed payments immediately, and recognising exceptional circumstances that lead to employers requiring additional time to make contributions.