

EXPOSURE DRAFT

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Inserts for
**Treasury Laws Amendment Bill 2025:
SG reforms to address unpaid super**

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details

1.

2. Schedule #	At the same time as the <i>Superannuation Guarantee Charge Amendment Act 2025</i> commences.
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Schedule #—Superannuation guarantee reforms to address unpaid superannuation

Part 1—Main amendments

Superannuation Guarantee (Administration) Act 1992

1 Subsection 5(3)

Repeal the subsection, substitute:

(3) Part 8 has effect as if any superannuation guarantee charge in respect of a superannuation guarantee shortfall of either of the following entities:

(a) a responsible Department;

(b) an untaxable Commonwealth authority;

had been paid on the day that the charge would have become payable had that entity been a company.

2 Subsection 6(1) (definition of *administration component*)

Repeal the definition.

3 Subsection 6(1)

Insert:

administrative uplift amount has the meaning given by subsection 19C(1).

4 Subsection 6(1) (definition of *approved clearing house*)

Repeal the definition.

5 Subsection 6(1) (definition of *assessment*)

Repeal the definition, substitute:

assessment means:

(a) for the amount of:

(i) an employer's superannuation guarantee shortfall; and

(ii) the superannuation guarantee charge payable on the shortfall;

an assessment under subsection 36(1); or

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(b) for the amount of an administrative penalty payable under section 59C—an assessment under subsection 59D(1).

6 Subsection 6(1)

Insert:

associate has the meaning given by section 318 of the *Income Tax Assessment Act 1936*.

choice loading has the meaning given by subsection 20A(1).

choice loading limit has the meaning given by section 20C.

concessional contributions has the same meaning as in the *Income Tax Assessment Act 1997*.

conversion notice has the meaning given by section 6B.

eligible contribution has the meaning given by sections 18A and 18B.

7 Subsection 6(1) (definition of *employer shortfall exemption certificate*)

Omit “19AB”, substitute “17C”.

8 Subsection 6(1)

Insert:

excess concessional contributions has the same meaning as in the *Income Tax Assessment Act 1997*.

9 Subsection 6(1) (definition of *indexation factor*)

Repeal the definition.

10 Subsection 6(1)

Insert:

individual base superannuation guarantee shortfall has the meaning given by subsection 18C(1).

individual final superannuation guarantee shortfall has the meaning given by subsection 18D(1).

individual notional earnings component has the meaning given by subsection 19A(1).

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1 *individual superannuation guarantee amount* has the meaning
2 given by subsection 17A(2).

3 **11 Subsection 6(1) (definition of *individual superannuation***
4 ***guarantee shortfall*)**

5 Repeal the definition.

6 **12 Subsection 6(1)**

7 Insert:

8 *late period*, for a QE day and an employer, means the period:

- 9 (a) starting on the eighth day after the QE day; and
10 (b) ending on the day before the day an assessment for the QE
11 day is made for the employer under subsection 36(1).

12 *maximum contributions base* has the meaning given by
13 subsection 10A(4).

14 **13 Subsection 6(1) (definition of *nominal interest component*)**

15 Repeal the definition.

16 **14 Subsection 6(1) (definition of *ordinary time earnings*)**

17 Repeal the definition, substitute:

18 *ordinary time earnings*, for a person, means all of the person's
19 earnings as an employee made up of:

- 20 (a) earnings in respect of ordinary hours of work; and
21 (b) earnings consisting of over-award payments, shift-loading or
22 commission;

23 other than a lump sum payment of any of the following kinds made
24 to the person on the termination of the person's employment:

- 25 (c) a payment in lieu of unused sick leave;
26 (d) an unused annual leave payment, or unused long service
27 leave payment, within the meaning of the *Income Tax*
28 *Assessment Act 1997*.

29 **15 Subsection 6(1)**

30 Insert:

31 *payment of qualifying earnings to or for an employee* has the
32 meaning given by subsection 10A(3).

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16 Subsection 6(1) (definition of *penalty charge*)

Repeal the definition.

17 Subsection 6(1)

Insert:

QE day has the meaning given by subsection 17A(1).

qualifying earnings has the meaning given by subsection 10A(1).

18 Subsection 6(1)

Repeal the following definitions:

(a) definition of *quarter*;

(b) definition of *quarterly salary or wages base*.

19 Subsection 6(1)

Insert:

resident regulated superannuation fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

20 Subsection 6(1) (definition of *sacrificed contribution*)

Repeal the definition, substitute:

sacrificed contribution means a contribution to a complying superannuation fund or an RSA made under an arrangement described in paragraph 10A(1)(h) (about salary sacrifice arrangements).

21 Subsection 6(1)

Repeal the following definitions:

(a) definition of *sacrificed ordinary time earnings amount*;

(b) definition of *sacrificed salary or wages amount*;

(c) definition of *salary sacrifice arrangement*.

22 Subsection 6(1) (definition of *superannuation guarantee shortfall*)

Omit “17”, substitute “16B”.

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1 **23 Subsection 6(1) (definition of *superannuation guarantee***
2 ***statement*)**

3 Repeal the definition.

4 **24 Subsection 6(1)**

5 Insert:

6 *usual period*, for a QE day and an employer, means the period:

7 (a) starting on the QE day; and

8 (b) ending on the seventh day after the QE day.

9 **25 Subsection 6(1)**

10 Insert:

11 *voluntary disclosure statement* has the meaning given by section
12 33.

13 **26 Subsection 6(3)**

14 Repeal the subsection.

15 **27 Subsection 6A(4)**

16 Omit “a quarter that ended”, substitute “a QE day”.

17 **28 Subsection 6B(5)**

18 Omit “30 days”, substitute “7 days”.

19 **29 Subsection 6B(6)**

20 Repeal the subsection.

21 **30 Section 9**

22 Repeal the section.

23 **31 After section 10**

24 Insert:

25 **10A Interpretation: expressions relating to qualifying earnings**

26 *Meaning of qualifying earnings*

27 (1) A person’s *qualifying earnings* are as follows:

28 (a) the person’s ordinary time earnings;

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-
- 1 (b) all commissions payable to the person;
2 (c) all payments for the performance of the person's duties as a
3 member of the executive body (whether described as the
4 board of directors or otherwise) of a body corporate;
5 (d) all payments under a contract referred to in subsection 12(3)
6 that are in respect of the person's labour under the contract;
7 (e) all remuneration of the person as a member of the Parliament
8 of the Commonwealth or a State or the Legislative Assembly
9 of a Territory;
10 (f) all payments to the person for work referred to in
11 subsection 12(8);
12 (g) all remuneration of the person in circumstances referred to in
13 subsection 12(9) or (10);
14 (h) if under an arrangement the person agreed for:
15 (i) a contribution to be made to a complying
16 superannuation fund or an RSA for the benefit of the
17 person by the person's employer; and
18 (ii) in return, for the reduction (including to nil) of one or
19 more amounts of a kind described in paragraphs (a) to
20 (g) of this subsection but not in subsection (2) of this
21 section;

22 an amount equal to the total of those reductions.

23 Note: For paragraph (h), reductions are not counted if they are of amounts
24 excluded by subsection (2) from being qualifying earnings.

25 *Exclusions*

- 26 (2) However, a person's *qualifying earnings* do not include any of the
27 following:
28 (a) a payment of an amount that represents the reversal of all or
29 part of a sacrificed contribution;
30 (b) earnings or remuneration of, or payments to, the person for
31 work done of a kind prescribed by the regulations;
32 (c) earnings, remuneration or payments of a kind prescribed by
33 the regulations.

34 *Meaning of payment of qualifying earnings to or for an employee*

- 35 (3) A *payment of qualifying earnings to or for an employee* by an
36 employer means:
37 (a) a payment of qualifying earnings to the employee by or on
38 behalf of the employer; or

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-
- 1 (b) for qualifying earnings described by paragraph (1)(h)—the
2 reductions described in that paragraph made in return for the
3 making of the sacrificed contribution for the benefit of the
4 employee.

5 *Meaning of maximum contributions base*

- 6 (4) The *maximum contributions base*, for a payment of qualifying
7 earnings to or for an employee, is the following amount (rounded
8 down to the nearest multiple of \$10):

9
$$\text{Concessional contributions cap} \times \frac{100}{\text{Charge percentage}}$$

10 where:

11 *charge percentage* has the same meaning as in subsection 17A(2).

12 *concessional contributions cap* is the basic concessional
13 contributions cap (within the meaning of the *Income Tax*
14 *Assessment Act 1997*) for the financial year in which the payment
15 is made.

- 16 (5) For the purposes of this Act (other than this section), if an
17 employer's payment of qualifying earnings to or for an employee
18 during a financial year results in the employee's total qualifying
19 earnings:

20 (a) during the financial year; and

21 (b) in relation to the employer;

22 exceeding that base, then treat the amount of that payment as if it
23 were equal to:

24 (c) if that payment caused that total to exceed that base—so
25 much of that payment as does not include the excess; or

26 (d) if an earlier payment had already caused that total to exceed
27 that base—nil.

28 **32 Section 11**

29 Repeal the section.

30 **33 Sections 15 and 15A**

31 Repeal the sections.

32 **34 Before section 15B**

33 Insert:

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1 **Division 1—Application to former employees and for** 2 **international social security agreements**

3 **35 Section 15B**

4 Omit “salary or wages paid to, and contributions for the benefit of,”
5 substitute “payments of qualifying earnings to or for”.

6 **36 Subsection 15C(8)**

7 Omit “salary or wages”, substitute “qualifying earnings”.

8 **37 Sections 16 to 29**

9 Repeal the sections, substitute:

10 **Division 2—Superannuation guarantee charge payable by** 11 **employers**

12 **Subdivision A—Superannuation guarantee charge is payable** 13 **on superannuation guarantee shortfalls**

14 **16 Simplified outline of this Division**

15 Superannuation guarantee charge is payable on an employer’s
16 superannuation guarantee shortfalls.

17 Such a shortfall can arise in 2 ways.

18 The first way is if the employer:

- 19 (a) pays qualifying earnings to or for an employee (which
20 includes reducing an employee’s qualifying earnings so
21 that a sacrificed contribution can be made for the
22 employee) at a time when an exemption certificate is not
23 in force (see Subdivision B); and
24 (b) makes insufficient timely eligible superannuation
25 contributions for the benefit of the employee (see
26 Subdivision C).

27 The amount of charge on a shortfall arising in this way will include
28 notional earnings on the shortfall and an administrative uplift
29 amount (see Subdivision D).

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The second way is if the employer fails to comply with the choice of fund requirements when making eligible superannuation contributions for the employee (see Subdivision E).

16A Superannuation guarantee charge payable by employers

Superannuation guarantee charge imposed on an employer's superannuation guarantee shortfall for a QE day is payable by the employer.

16B Superannuation guarantee shortfalls

(1) This section applies if an employer has:

- (a) one or more individual base superannuation guarantee shortfalls for a QE day that are greater than nil; or
- (b) one or more choice loadings for a QE day that are greater than nil.

(2) The employer has a *superannuation guarantee shortfall* for the QE day equal to the sum of the following:

- (a) the total of the employer's individual final superannuation guarantee shortfalls for the QE day;
- (b) the total of the employer's individual notional earnings components for the QE day;
- (c) the employer's administrative uplift amount for the QE day;
- (d) the total of the employer's choice loadings for the QE day.

Note: Some (but not all) of these amounts may be nil.

Subdivision B—Individual superannuation guarantee amounts arise if qualifying earnings are paid etc.

17 Simplified outline of this Subdivision

If on a particular day an employer:

- (a) pays qualifying earnings to an employee; or
- (b) reduces an employee's qualifying earnings so that a sacrificed contribution can be made for the employee;

then, on that day, the employer has an individual superannuation guarantee amount for the employee equal to a particular percentage of the payment or reduction.

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1 However, the amount will be nil if an exemption certificate covers
2 the employer and the employee for that day.

3 **17A When an individual superannuation guarantee amount arises**

- 4 (1) This Subdivision applies if an employer makes a payment of
5 qualifying earnings to or for an employee on a particular day (the
6 *QE day*).

7 Note: This includes reducing the employee's earnings so that a sacrificed
8 contribution can be made for the employee (see paragraphs 10A(1)(h)
9 and (3)(b)).

- 10 (2) On the QE day, the employer has an *individual superannuation*
11 *guarantee amount* for the employee equal to:

12 Amount of the qualifying earnings $\times \frac{\text{Charge percentage}}{100}$

13 where:

14 *amount of the qualifying earnings* means:

- 15 (a) if there is one such payment—the amount of the payment; or
16 (b) if there are 2 or more such payments—the sum of the
17 amounts of the payments.

18 Note: If the payment of qualifying earnings is in the form of a reduction so
19 that a sacrificed contribution can be made, the amount of the payment
20 is the amount of the reduction (see paragraph 10A(1)(h)).

21 *charge percentage* means 12.

22 **17B An exemption certificate can reduce this amount to nil**

23 However, if an employer shortfall exemption certificate is in force
24 for the employee in relation to:

- 25 (a) the employer; and
26 (b) a period that includes the QE day;

27 treat the employee as having already reached the maximum
28 contributions base before the QE day.

29 Note 1: This means:

- 30 (a) the amount of the payment of qualifying earnings on the QE day
31 is treated as if it were nil (see subsection 10A(5)); and
32 (b) the individual superannuation guarantee amount is nil.

33 Note 2: If the employee has more than one employer and the certificate is
34 issued in relation to only this employer, then the certificate does not

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1 affect the other employers' individual superannuation guarantee
2 amounts.

3 **17C Issuing an exemption certificate**

4 *Issuing of certificate*

5 (1) The Commissioner may, on application by an employee, issue a
6 certificate (an *employer shortfall exemption certificate*) to the
7 applicant for:

8 (a) a specified employer of the applicant at the time the
9 application is made; and

10 (b) a specified period ending at the end of a specified financial
11 year;

12 if the Commissioner is satisfied of the matters in subsection (2).

13 (2) The matters are that:

14 (a) if the certificate is not issued, the applicant is likely to have
15 excess concessional contributions for that financial year
16 (whether or not issuing the certificate would prevent that
17 result); and

18 (b) if the certificate is issued for that period, at least one other
19 employer of the applicant is likely to have an individual
20 superannuation guarantee amount for:

21 (i) the applicant; and

22 (ii) a QE day during that period;

23 that is greater than nil; and

24 (c) it is appropriate in the circumstances to issue the certificate.

25 (3) When considering a matter in subsection (2), the Commissioner:

26 (a) for the matter in paragraph (2)(a) or (b)—must have regard to
27 any other employer shortfall exemption certificate that has
28 been issued, or is proposed to be issued, to the applicant for
29 that period; and

30 (b) for the matter in paragraph (2)(c)—may have regard to:

31 (i) the effect that issuing the certificate is likely to have on
32 the applicant's concessional contributions for that
33 financial year; and

34 (ii) any other matter that the Commissioner considers
35 relevant.

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Application for certificate

- 1
- 2 (4) An application for an employer shortfall exemption certificate:
- 3 (a) must be in the approved form; and
- 4 (b) must specify the employer, period and financial year to be
- 5 specified in the certificate; and
- 6 (c) must be made at least 60 days before the first day of the
- 7 period.

Objections and other matters

- 8
- 9 (5) A person who is dissatisfied with a decision of the Commissioner
- 10 under subsection (1) may object against the decision in the manner
- 11 set out in Part IVC of the *Taxation Administration Act 1953*.
- 12 (6) The Commissioner may not vary or revoke an employer shortfall
- 13 exemption certificate.
- 14 (7) An employer shortfall exemption certificate is not a legislative
- 15 instrument.

17D Notice about an exemption certificate

- 16
- 17 (1) If the Commissioner makes a decision under subsection 17C(1)
- 18 about an application, the Commissioner must give written notice of
- 19 the decision to:
- 20 (a) the applicant; and
- 21 (b) if the decision is to issue a certificate—the employer to
- 22 which the certificate relates.
- 23 (2) A notice of a decision to issue a certificate must include a copy of
- 24 the certificate.
- 25 (3) The Commissioner is treated as having decided not to issue a
- 26 certificate to the applicant if the Commissioner does not give
- 27 notice (under subsection (1)) of the decision during the 60-day
- 28 period starting on the day the application was made.

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1 **Subdivision C—Individual superannuation guarantee shortfalls**
2 **arise if insufficient timely eligible superannuation**
3 **contributions are made**

4 **18 Simplified outline of this Subdivision**

5 The Subdivision is relevant if an employer has an individual
6 superannuation guarantee amount for an employee that is greater
7 than nil.

8 The employer will have an individual base superannuation
9 guarantee shortfall for the employee that will result in
10 superannuation guarantee charge if the employer does not make an
11 equivalent amount of eligible superannuation contributions:

- 12 (a) for the benefit of the employee; and
13 (b) within a particular period.

14 The employer can reduce the amount of the charge by making
15 eligible superannuation contributions:

- 16 (a) for the benefit of the employee; and
17 (b) up until the day before the Commissioner makes an
18 assessment of the amount of the charge.

19 **18A Meaning of *eligible contribution*—main rules**

- 20 (1) An *eligible contribution*, made by an employer for the benefit of
21 an employee, is:
22 (a) a contribution (other than a sacrificed contribution) made by
23 the employer for the benefit of the employee:
24 (i) to a complying superannuation fund other than a defined
25 benefit superannuation scheme; and
26 (ii) that is able to be allocated within the fund for the
27 benefit of the employee; and
28 (iii) that is not made at a time when a conversion notice has
29 effect in relation to the fund; or
30 (b) a contribution (other than a sacrificed contribution) made by
31 the employer for the benefit of the employee:
32 (i) to an RSA; and
33 (ii) that is able to be allocated within the RSA for the
34 benefit of the employee; or

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- 1 (c) if:
2 (i) the employee has died; and
3 (ii) the employer would, if the employee had not died, have
4 made a contribution covered by paragraph (a) or (b) for
5 the benefit of the employee; and
6 (iii) the employer instead pays an equivalent amount to the
7 employee's legal personal representative;
8 that equivalent amount paid by the employer; or
9 (d) a contribution notionally made as described in subsection (3)
10 to a defined benefit superannuation scheme for the benefit of
11 the employee.

12 Note: For the purposes of subparagraphs (a)(ii) and (b)(ii), regulations under
13 the *Superannuation Industry (Supervision) Act 1993* and under the
14 *Retirement Savings Accounts Act 1997* deal with the allocation of
15 contributions.

16 *Presumption for contributions to certain superannuation funds*

- 17 (2) A contribution made by the employer for the benefit of the
18 employee to a superannuation fund is conclusively presumed to be
19 a contribution to a complying superannuation fund for the purposes
20 of subparagraph (1)(a)(i) if:
21 (a) at or before the time the contribution is made, the employer
22 has obtained a written statement provided by or on behalf of
23 the trustee of the fund; and
24 (b) the statement provides that the fund:
25 (i) is a resident regulated superannuation fund; and
26 (ii) is not subject to a direction under section 63 of the
27 *Superannuation Industry (Supervision) Act 1993*.

28 Note 1: The presumption does not extend to any of the other elements of
29 paragraph (1)(a), such as that the contribution must not be a sacrificed
30 contribution.

31 Note 2: The presumption may not always be available (see section 18B).

32 *Notional contributions to defined benefit superannuation schemes*

- 33 (3) If, on a QE day for the employer and the employee:
34 (a) a benefit certificate for a defined benefit superannuation
35 scheme has effect; and
36 (b) the scheme is operating for the benefit of the employee in
37 relation to payments of qualifying earnings to or for the
38 employee by the employer; and

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- 1 (c) the benefit certificate:
- 2 (i) covers a class of employees (that includes the
- 3 employee) as members of the scheme; and
- 4 (ii) specifies the notional employer contribution rate in
- 5 relation to that class of employees; and
- 6 (d) the employer has a written statement, provided by or on
- 7 behalf of the trustee of the scheme, that the scheme:
- 8 (i) is a resident regulated superannuation fund; and
- 9 (ii) is not subject to a direction under section 63 of the
- 10 *Superannuation Industry (Supervision) Act 1993*; and
- 11 (iii) has not been subject to such a direction at any time
- 12 since the beginning of the day on which the benefit
- 13 certificate is expressed to take effect;
- 14 treat the scheme as having received, on the QE day, a notional
- 15 contribution made by the employer for the benefit of the employee
- 16 that is equal to:

17
$$\text{Amount of the qualifying earnings} \times \text{Notional employer contribution rate}$$

18 where:

19 *amount of the qualifying earnings* has the same meaning as in

20 subsection 17A(2) for the one or more payments of qualifying

21 earnings to or for the employee made by the employer on the QE

22 day.

23 Note: The written statement may not always have effect (see section 18B).

24 **18B Meaning of eligible contribution—exceptions**

- 25 (1) However:
- 26 (a) the presumption in subsection 18A(2) is unavailable for a
- 27 contribution to a fund if subsection (2) of this section applies
- 28 on the day the contribution is made; or
- 29 (b) a statement provided as described in paragraph 18A(3)(d) has
- 30 no effect for a scheme if subsection (2) of this section applies
- 31 on the QE day.
- 32 (2) This subsection applies on a day if, on that day:
- 33 (a) one of the following subparagraphs applies:
- 34 (i) the employer is the trustee or manager of the fund or
- 35 scheme;

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- 1 (ii) the employer is an associate of the trustee or manager of
2 the fund or scheme;
- 3 (iii) the trustee or manager of the fund or scheme is an
4 associate of the employer; and
- 5 (b) the employer has reasonable grounds to believe that the fund
6 or scheme:
- 7 (i) is not a resident regulated superannuation fund; or
8 (ii) is operating in contravention of a regulatory provision
9 (within the meaning of section 38A of the
10 *Superannuation Industry (Supervision) Act 1993*).
- 11 (3) Section 39 of the *Superannuation Industry (Supervision) Act 1993*
12 applies for the purposes of subparagraph (2)(b)(ii) of this section in
13 a corresponding way to the way that section applies for the
14 purposes of Division 2 of Part 5 of that Act.
- 15 Note: Section 39 of that Act allows certain contraventions to be ignored.

16 **18C Employer's individual base superannuation guarantee shortfall** 17 **for an employee and a QE day**

- 18 (1) An employer's *individual base superannuation guarantee*
19 *shortfall* for an employee and a QE day is equal to:
- 20
$$\text{Individual superannuation guarantee amount for the employee and the QE day} - \text{Eligible contributions relevant for the QE day}$$
- 21 where:
- 22 *eligible contributions relevant for the QE day* means so much of
23 each eligible contribution made by the employer for the benefit of
24 the employee as:
- 25 (a) is applied under this subsection for the QE day (the *current*
26 *QE day*), and has not been applied under this section or
27 section 18D for an earlier QE day; and
- 28 (b) is applied under this subsection in the order that it is received
29 by the relevant fund, RSA, representative or scheme; and
- 30 (c) is so received in accordance with any of the following
31 subparagraphs:
- 32 (i) during the 12-month period ending on the day before
33 the current QE day;
- 34 (ii) during the usual period for the current QE day;
- 35 (iii) if the current QE day relates to the first instance of a
36 payment of qualifying earnings to or for the employee

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- 1 by the employer—before the end of the 21st day after
2 the current QE day;
- 3 (iv) if the current QE day is less than 14 days after the QE
4 day for the first instance of a payment of qualifying
5 earnings to or for the employee by the employer—
6 before the end of the 21st day after that earlier QE day;
- 7 (v) if the current QE day relates to qualifying earnings of a
8 kind determined under subsection (2)—before the end
9 of the usual period for the QE day for the next payment
10 of qualifying earnings to or for the employee by the
11 employer that is not of a kind determined under that
12 subsection;
- 13 (vi) if the employer, and the current QE day, are covered by
14 a determination under subsection (3)—before the end of
15 the later of the 21-day period starting on the day after
16 the current QE day and the 21-day period starting on the
17 day after the determination is made;
- 18 (vii) if section 20D (relying on most recent Commissioner
19 notification) applies to the eligible contribution—before
20 the end of the 42nd day after the current QE day;
- 21 (viii) if making the eligible contribution was initially
22 prevented by the operation of section 60F of the
23 *Superannuation Industry (Supervision) Act 1993*
24 (consequences of 2 consecutive fail assessments)—
25 before the end of the 42nd day after the current QE day;
26 and
- 27 (d) does not cause the amount resulting from this subsection for
28 the employee and the QE day to be less than nil.

29 Note: An eligible contribution in the form of a notional contribution to a
30 defined benefit superannuation scheme will always be covered by this
31 definition, as it is treated as being received on the current QE day (see
32 subsection 18A(3)).

33 *Kinds of out-of-cycle qualifying earnings*

- 34 (2) The Commissioner may, by legislative instrument, determine:
35 (a) kinds of out-of-cycle qualifying earnings; and
36 (b) the circumstances that must exist for qualifying earnings to
37 be one of those kinds.

38 *Qualifying earnings in exceptional circumstances*

- 39 (3) The Commissioner may, by legislative instrument, determine:
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- 1 (a) one or more kinds of employers that are affected by
2 exceptional circumstances of a kind prescribed by the
3 regulations that affect the ability of the employers to make
4 eligible contributions; and
5 (b) the period during which any QE days for payments of
6 qualifying earnings by those employers are affected by those
7 exceptional circumstances.

8 The period determined for the purposes of paragraph (b) may start
9 before the day the determination is made.

10 Note 1: Examples of exceptional circumstances for this purpose include
11 natural disasters, or widespread outages of information and
12 communications technology services, that affect multiple employers
13 on a large scale.

14 Note 2: If the period starts before the day the determination is made, eligible
15 contributions can still be counted if made within the 21-day period
16 starting on the day after the determination is made (see
17 subparagraph (c)(vi) of the definition of *eligible contributions*
18 *relevant for the QE day* in subsection (1)).

19 **18D Employer’s individual final superannuation guarantee shortfall** 20 **for an employee and a QE day**

21 (1) An employer’s *individual final superannuation guarantee*
22 *shortfall* for an employee and a QE day is:

- 23 (a) if the employer’s individual base superannuation guarantee
24 shortfall for the employee and QE day is nil—nil; or
25 (b) otherwise—equal to the amount in subsection (2).

26 (2) The amount is:

27 Individual base superannuation guarantee shortfall – Eligible contributions relevant for
the late period for the QE day

28 where:

29 *eligible contributions relevant for the late period for the QE day*
30 means so much of an eligible contribution made by the employer
31 for the benefit of the employee as:

- 32 (a) is applied under this subsection for the QE day, and has not
33 been applied under section 18C or this section for an earlier
34 QE day; and
35 (b) is applied under this subsection in the order that it is received
36 by the relevant fund, RSA, representative or scheme; and
37 (c) is so received during the late period for the QE day; and

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1 (d) does not cause the amount resulting from this subsection for
2 the employee and the QE day to be less than nil.

3 **Subdivision D—Notional earnings and administrative uplift**

4 **19 When this Subdivision applies**

5 This Subdivision applies if an employer has an individual base
6 superannuation guarantee shortfall for an employee and a QE day
7 that is greater than nil.

8 **19A Individual notional earnings component—sum of an amount** 9 **for each day that the individual final superannuation** 10 **guarantee shortfall is greater than nil**

- 11 (1) The employer's *individual notional earnings component* for the
12 employee and the QE day is the sum of each amount worked out
13 under subsection (2) for each day that:
14 (a) is during the late period for the QE day; and
15 (b) is a day on which the employer's individual final
16 superannuation guarantee shortfall for the employee and the
17 QE day is greater than nil.

18 Note: Section 19B may affect the days that paragraph (b) applies to.

- 19 (2) For a day referred to in subsection (1) for the QE day, work out:

20 Notional sum \times General interest charge rate

21 where:

22 *general interest charge rate* has the same meaning as in
23 section 8AAD of the *Taxation Administration Act 1953*.

24 *notional sum* means the sum of:

- 25 (a) the employer's individual base superannuation guarantee
26 shortfall for the employee and the QE day; and
27 (b) the amount worked out under this subsection for each earlier
28 day referred to in subsection (1) for the QE day.

29 **19B Individual notional earnings component—working out the** 30 **number of days that the individual final superannuation** 31 **guarantee shortfall is greater than nil**

- 32 (1) This section applies to each eligible contribution that:

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- 1 (a) is covered by paragraph 18A(1)(a), (b) or (c); and
2 (b) is applied under subsection 18D(2) for the employer, the
3 employee and the QE day.
4 This section applies only for the purposes of paragraph 19A(1)(b).
- 5 Note 1: Paragraph (a) means this section applies to contributions other than
6 those to defined benefit superannuation schemes.
- 7 Note 2: This section can change the day when the contribution is so applied
8 for the purposes of working out the employer's individual final
9 superannuation guarantee shortfall on a particular day for the purposes
10 of section 19A. Any such change does *not* apply for the purposes of
11 paragraph 16B(2)(a) or any other provision of this Act.
- 12 (2) Treat the contravention as being *received* by the relevant fund,
13 RSA, representative or scheme on the seventh day after the day it
14 was paid, or debited, from an account (however described)
15 belonging to:
16 (a) the employer; or
17 (b) a person who is making the contribution on behalf of the
18 employer.
- 19 (3) In this section:
20 *account* includes an account held with an ADI (within the meaning
21 of the *Banking Act 1959*).

22 19C Administrative uplift for a QE day

- 23 (1) The employer's *administrative uplift amount* for the QE day is
24 equal to 60% of the sum of:
25 (a) the total of the employer's individual final superannuation
26 guarantee shortfalls for the QE day; and
27 (b) the total of the employer's individual notional earnings
28 components for the QE day.
- 29 Note: The administrative uplift amount will be nil if these totals are nil.
- 30 (2) However, this amount may be reduced (but not below nil) in
31 accordance with the regulations.
- 32 (3) For the purposes of (but without limiting) subsection (2), the
33 regulations may prescribe the following:
34 (a) a method for reducing an employer's administrative uplift
35 amount for a QE day that relies on either or both of the
36 following:

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- 1 (i) whether the Commissioner has previously made an
2 assessment under subsection 36(1) for the employer on
3 the Commissioner’s own initiative;
4 (ii) whether (and when) the employer lodges a voluntary
5 disclosure statement under section 33 for the QE day;
6 (b) a method that depends on a person being satisfied of one or
7 more specified matters.

8 **Subdivision E—Loading for failing to comply with choice of**
9 **fund requirements**

10 **20 When this Subdivision applies**

11 This Subdivision applies if:

- 12 (a) an employer has an individual superannuation guarantee
13 amount for an employee and a QE day; and
14 (b) the employer makes, for the benefit of the employee, one or
15 more eligible contributions that:
16 (i) result in the employer’s individual base superannuation
17 guarantee shortfall, or individual final superannuation
18 guarantee shortfall, for the employee and the QE day
19 being less than what it would otherwise be; or
20 (ii) if the amount mentioned in paragraph (a) is nil—would
21 have resulted in a shortfall mentioned in
22 subparagraph (i) being less than what it would have
23 otherwise been had the amount mentioned in
24 paragraph (a) been greater than nil.

25 **20A Employer’s choice loading for the QE day**

- 26 (1) The employer’s *choice loading* for the employee and the QE day
27 is:
28 (a) if subsection (2) or (3) applies to some or all of those eligible
29 contributions—the lower of:
30 (i) the amount equal to 25% of the total of the contributions
31 to which that subsection applies; and
32 (ii) the choice loading limit for the QE day; or
33 (b) otherwise—nil.

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1 *Contributions made to an RSA or a fund other than a defined*
2 *benefit superannuation scheme*

- 3 (2) This subsection applies if:
4 (a) some or all of the contributions mentioned in paragraph 20(b)
5 are not made in compliance with the choice of fund
6 requirements; and
7 (b) section 20D (relying on most recent Commissioner
8 notification) does not apply to the contributions.

9 *Contributions notionally made to a defined benefit superannuation*
10 *scheme*

- 11 (3) This subsection applies if:
12 (a) some or all of the contributions mentioned in paragraph
13 20(b):
14 (i) are notionally made as described in subsection 18A(3)
15 to a defined benefit superannuation scheme; and
16 (ii) would not have been made in compliance with the
17 choice of fund requirements if they had been actually
18 (rather than notionally) made to the scheme; and
19 (b) none of subsections 20B(2), (3) and (4) apply to the
20 employer for the employee, the scheme and the QE day; and
21 (c) section 20D (relying on most recent Commissioner
22 notification) does not apply to the contributions.

23 **20B Defined benefit schemes—certain cases where members cannot** 24 **choose another fund**

- 25 (1) This section applies for the purposes of paragraph 20A(3)(b).

26 *Scheme in surplus*

- 27 (2) This subsection applies if:
28 (a) the employee was a defined benefit member of the fund
29 immediately before 1 July 2005 and has not ceased to be
30 such a member during the period (the *membership period*):
31 (i) starting on 1 July 2005; and
32 (ii) ending at the end of the QE day; and
33 (b) an actuary has provided a certificate in accordance with
34 regulations under the *Superannuation Industry (Supervision)*
35 *Act 1993* stating that the employer is not required to make
36 contributions for a period including the QE day, and there

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1 has been such a certificate covering all times since 1 July
2 2005; and

- 3 (c) an actuary has provided a certificate stating that, in the
4 actuary's opinion, at all times during the membership period
5 there is a high probability that the assets of the scheme are,
6 and will be, equal to or greater than 110% of the greater of
7 the scheme's liabilities in respect of vested benefits and the
8 scheme's accrued actuarial liabilities.

9 The certificate under paragraph (c) must have been provided no
10 earlier than 15 months before the QE day.

11 *Member has accrued maximum benefit*

- 12 (3) This subsection applies if, on the QE day, the defined benefit that
13 has accrued to the employee will not increase other than:
14 (a) as a result of increases in the employee's salary or
15 remuneration; or
16 (b) by reference to accruals of investment earnings; or
17 (c) by reference to indexation based on, or calculated by
18 reference to, a relevant price index or wages index; or
19 (d) in any other way prescribed by the regulations.

20 *Member's benefit not affected*

- 21 (4) This subsection applies if the employee would be entitled, on the
22 employee's retirement, resignation or retrenchment, to the same
23 amount of benefit from the defined benefit superannuation scheme,
24 whether or not the employee had contributions:
25 (a) for the QE day; and
26 (b) made by the employer for the benefit of the employee;
27 to a fund (within the meaning of Part 3A) other than the defined
28 benefit superannuation scheme.

29 *Meaning of scheme's accrued actuarial liabilities and scheme's*
30 *liabilities in respect of vested benefits*

- 31 (5) In this section:

32 *scheme's accrued actuarial liabilities*, at a particular time, means
33 the total value, as certified by an actuary, of the future benefit
34 entitlements of members of the scheme in respect of membership
35 up to that time based on assumptions about:

- 36 (a) future economic conditions; and

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1 (b) the future of matters affecting membership of the scheme;
2 being assumptions made in accordance with applicable
3 professional actuarial standards (if any).

4 *scheme's liabilities in respect of vested benefits*, at a particular
5 time, means the total value of the benefits payable from the scheme
6 to which the members of the scheme would be entitled if they all
7 voluntarily terminated their service with their employers at that
8 time.

9 **20C Limit on choice loading for the QE day**

10 (1) The *choice loading limit* for the QE day (the *current QE day*) is
11 \$1,200.

12 (2) However, this amount is reduced (but not below nil) by the amount
13 equal to 25% of the sum of any other eligible contributions:

- 14 (a) made by the employer for the benefit of the employee; and
15 (b) to which subsection 20A(2) or (3) applies for any earlier QE
16 day for the employer and employee during the notice period
17 that includes the current QE day.

18 (3) In this section:

19 *notice period* means the period:

20 (a) beginning on the latest of:

- 21 (i) the day the employee's employment with the employer
22 starts; and
23 (ii) the day after the end of the immediately preceding
24 notice period for the employer and the employee; and
25 (iii) 1 July 2026; and

26 (b) ending on the day the Commissioner gives the employer
27 written notice that the employer's notice period for the
28 employee has ended.

29 **20D Relying on most recent Commissioner notification**

30 This section applies to an eligible contribution for the benefit of the
31 employee that is not made in compliance with the choice of fund
32 requirements if:

- 33 (a) the employer attempts to make the contribution at a particular
34 time; and
35 (b) at that time, there is no chosen fund for the employee; and

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- 1 (c) at that time, the most recent notification to the employer:
2 (i) by the Commissioner; and
3 (ii) relating to a request by the employer (or by the
4 employer’s agent) for the Commissioner to identify any
5 stapled fund for the employee;
6 is that the Commissioner is satisfied that the fund is the
7 stapled fund for the employee; and
8 (d) the fund does not accept the contribution from the employer
9 for the benefit of the employee; and
10 (e) the employer made the contribution to another fund for the
11 benefit of the employee.

12 **Division 3—Arrangements to avoid paying superannuation** 13 **guarantee charge**

14 **38 Paragraph 30(b)**

15 Omit “a quarter”, substitute “a QE day”.

16 **39 Section 30**

17 Omit “the quarter”, substitute “the QE day”.

18 **40 Sections 31 and 32**

19 Repeal the sections.

20 **41 Section 32A**

21 Omit “individual superannuation guarantee shortfall for an employee
22 for a quarter”, substitute “superannuation guarantee shortfall for a QE
23 day”.

24 **42 Subsection 32C(2B)**

25 Repeal the subsection.

26 **43 Subsection 32C(10) (note)**

27 Repeal the note.

28 **44 Paragraph 32D(d)**

29 Repeal the paragraph, substitute:

- 30 (d) at that time, paragraphs 18A(3)(a) and (d) of this Act (about
31 defined benefit superannuation schemes) are satisfied for the
32 fund and the employer; or

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45 Paragraph 32D(e)

Omit “section 25”, substitute “subsection 18A(2) of this Act”.

46 Subsections 32NA(7) and (8)

Repeal the subsections, substitute:

(7) An employer is not required under section 32N to give an employee a standard choice form for a QE day if:

(a) the employee is a defined benefit member of a defined benefit superannuation scheme; and

(b) subsection 20B(2) applies to the employer for the employee, the scheme and the QE day.

(8) An employer is not required under section 32N to give an employee a standard choice form for a QE day if:

(a) the employee is a defined benefit member of a defined benefit superannuation scheme; and

(b) subsection 20B(3) applies to the employer for the employee, the scheme and the QE day in relation to the defined benefit that has accrued to the employee under the scheme.

47 Part 4 (heading)

Repeal the heading, substitute:

Part 4—Voluntary disclosure statements and assessments

48 Sections 33 to 35

Repeal the sections, substitute:

33 Voluntary disclosure statements

(1) An employer who has a superannuation guarantee shortfall for a QE day may lodge a statement about that shortfall.

(2) The statement is a *voluntary disclosure statement* if it:

(a) is lodged before the day an assessment is issued to the employer for the QE day; and

(b) is in the approved form.

Note 1: A statement is voluntary. Lodging a statement containing accurate and complete information can reduce the employer’s administrative uplift

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1 amount of the employer's superannuation guarantee shortfall for the
2 QE day (see subsection 19C(3)).

3 Note 2: The statement need not state the amount of the superannuation
4 guarantee shortfall, but will need to contain the information required
5 by the approved form.

6 **49 Section 36**

7 Repeal the section, substitute:

8 **36 Assessments of superannuation guarantee charge**

- 9 (1) The Commissioner may at any time make an assessment of the
10 amount of:
- 11 (a) an employer's superannuation guarantee shortfall for a
12 specified QE day; and
 - 13 (b) the superannuation guarantee charge payable on the shortfall.
- 14 (2) The Commissioner may make such an assessment:
- 15 (a) if the employer has lodged a voluntary disclosure statement
16 for the QE day; or
 - 17 (b) on the Commissioner's own initiative.
- 18 (3) Superannuation guarantee charge in relation to such an assessment
19 is payable on the day that the assessment is made.

20 **50 At the end of section 37**

21 Add:

- 22 (8) To avoid doubt, a reference in this section to an assessment is a
23 reference to an assessment under subsection 36(1).

24 **51 Subsection 38(2)**

25 Repeal the subsection, substitute:

- 26 (2) In this section:
- 27 *overpaid amount* includes each of the following:
- 28 (a) any overpaid amount of superannuation guarantee charge in
29 the form of general interest charge that became payable under
30 section 49;
 - 31 (b) if the reduction in the liability results in an amended
32 assessment under subsection 59E(2) of an administrative
33 penalty—any overpayment of the administrative penalty;

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1 (c) any overpayment of administrative penalty under Part 4-25 in
2 Schedule 1 to the *Taxation Administration Act 1953* relating
3 to the reduction in the liability.

4 **52 Sections 46 and 47**

5 Repeal the sections.

6 **53 Subsection 49(1) (note 1)**

7 Omit “Note 1”, substitute “Note”.

8 **54 Subsection 49(1) (note 2)**

9 Repeal the note.

10 **55 Subsections 49(2) and (3A)**

11 Repeal the subsections.

12 **56 Subsection 49(4)**

13 Omit “*additional*”.

14 **57 Subsection 49(5)**

15 Repeal the subsection.

16 **58 Section 50**

17 Repeal the section.

18 **59 Part 7**

19 Repeal the Part, substitute:

20 **Part 7—Penalty for late or non-payment of**
21 **superannuation guarantee charge**
22

23 **59 Simplified outline of this Part**

24 The Commissioner must issue an employer a notice to pay an
25 amount of superannuation guarantee charge if the charge remains
26 unpaid 28 days after the charge became payable.

27 The employer may become liable to an administrative penalty if
28 the employer does not comply with the notice.

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1 59A Notice to pay unpaid superannuation guarantee charge

- 2 (1) This section applies if superannuation guarantee charge payable by
3 an employer is unpaid on the day (the *current notice day*) that is
4 the day after the end of the 28-day period that started on the day
5 the charge became payable.

6 Note: The superannuation guarantee charge could be:

- 7 (a) charge assessed and payable under section 36; or
8 (b) charge in the form of general interest charge payable under
9 section 49.

- 10 (2) The Commissioner must, as soon as practicable after the current
11 notice day, give the employer a written notice (the *current notice*)
12 requiring the employer to pay a specified amount of
13 superannuation guarantee charge if:

- 14 (a) at least some of the specified amount is the amount referred
15 to in subsection (1); and
16 (b) the remainder (if any) of the specified amount is charge
17 payable by the employer that is unpaid on the current notice
18 day; and
19 (c) the specified amount exceeds \$30 or any higher amount
20 prescribed by the regulations; and
21 (d) the employer has not been given an earlier notice under this
22 subsection during the 50-day period ending on the day before
23 the current notice day; and
24 (e) no part of the specified amount has been included in any
25 earlier notice under this subsection.

26 Note 1: As well as including the amount referred to in subsection (1), the
27 amount specified in the current notice could also include:

- 28 (a) any (other) unpaid general interest charge that has accrued under
29 section 49 since the employer was given the last notice under this
30 subsection; and
31 (b) any (other) unpaid charge that has been assessed under section 36
32 since the start of the 50-day period mentioned in paragraph (d).

33 Note 2: The employer remains liable to pay the amounts making up the
34 specified amount. The notice does not create a separate liability to pay
35 the specified amount. However, a failure to comply with the notice
36 may result in an administrative penalty under section 59C.

- 37 (3) The Commissioner must ensure that the current notice includes
38 words to the effect that an administrative penalty will arise if the
39 employer fails to pay the specified amount during the period:

- 40 (a) starting on the day specified in the notice (which must be
41 after the current notice day); and
-

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1 (b) ending on the 28th day after that day specified in the notice.

2 **59B Consequences if a liability to pay all or part of the specified**
3 **amount is reduced or ceases to exist**

4 (1) If:

5 (a) the 28-day period included in the current notice for paying
6 the specified amount has not expired; and

7 (b) a liability under this Act to pay any of the amounts making
8 up the specified amount is reduced (but not to nil);

9 treat the specified amount in the current notice as if it were reduced
10 by the amount of the reduction referred to in paragraph (b).

11 (2) If:

12 (a) the 28-day period included in the current notice for paying
13 the specified amount has not expired; and

14 (b) each liability under this Act to pay an amount making up the
15 specified amount either:

16 (i) is reduced to nil; or

17 (ii) ceases to exist;

18 treat the current notice as if it were revoked.

19 **59C Penalty for failing to pay unpaid superannuation guarantee**
20 **charge specified in the notice**

21 (1) The employer is liable to pay a penalty if the employer fails to pay
22 the amount specified in the current notice during the 28-day period
23 starting on the day after the day specified in the current notice for
24 the purposes of paragraph 59A(3)(a).

25 (2) The amount of the penalty is equal to a percentage of so much of
26 the specified amount as remains unpaid at the end of that 28-day
27 period. The percentage is:

28 (a) unless paragraph (b) applies—25%; or

29 (b) if the employer has become liable under subsection (1) for
30 another notice during the 24-month period ending on the day
31 the employer is given the current notice—50%.

32 **59D Assessment and notification of liability to pay the penalty**

33 (1) The Commissioner must make an assessment of the amount of an
34 administrative penalty payable under section 59C by the employer.

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-
- 1 (2) The Commissioner must give written notice to the employer of the
2 assessment.
- 3 (3) The penalty becomes due for payment on the day specified in the
4 notice, which must be at least 14 days after the day the notice is
5 given to the employer.
- 6 Note 1: For provisions about collection and recovery of the penalty, see
7 Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.
- 8 Note 2: General interest charge does not accrue on any late payment of the
9 penalty.
- 10 (4) If the employer is dissatisfied with the assessment, the employer
11 may object against it in the manner set out in Part IVC of the
12 *Taxation Administration Act 1953*.

13 **59E Amending assessments of liability to pay the penalty**

- 14 (1) The Commissioner must not remit all or a part of the penalty set
15 out in an assessment under subsection 59D(1).
- 16 (2) However, the Commissioner must amend such an assessment if a
17 liability under this Act to pay an amount relevant to the assessment
18 is reduced (including to nil) or ceases to exist.
- 19 (3) The amount of penalty payable under the amended assessment is to
20 be worked out in a manner consistent with subsection 59C(2).

21 **60 Subsection 63A(2) (definition of *charge payment*)**

22 Repeal the definition, substitute:

23 *charge payment* means a payment of superannuation guarantee
24 charge that:

- 25 (a) was assessed in relation to a QE day; or
26 (b) was in the form of general interest charge payable under
27 section 49 in relation to non-payment of superannuation
28 guarantee charge assessed in relation to a QE day.

29 **61 Subsection 63A(3) (note)**

30 Omit “a quarter”, substitute “a QE day”.

31 **62 Subsection 64A(3)**

32 Repeal the subsection, substitute:

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-
- 1 (3) The *employee entitlement*, calculated at a particular time in
2 relation to the assessment, is the sum of the following amounts:
3 (a) the employer's individual final superannuation guarantee
4 shortfall for the employee and the QE day specified in the
5 assessment;
6 (b) the employer's individual notional earnings component for
7 the employee and the QE day;
8 (c) the employer's choice loading for the employee and the QE
9 day;
10 (d) so much of any general interest charge as:
11 (i) relates to non-payment of superannuation guarantee
12 charge payable in relation to the amounts in
13 paragraphs (a), (b) and (c); and
14 (ii) has been paid by, or is payable at, the particular time;
15 reduced (but not below zero) by the amounts of any previous
16 payments to which this Part applies that relate to the QE day,
17 employer and employee.

18 Note: The employee's entitlement does not include so much of any general
19 interest charge as relates to the employer's administrative uplift
20 amount for the QE day (see subparagraph (d)(i)).

21 63 Subsection 64B(3)

22 Repeal the subsection, substitute:

- 23 (3) Subject to subsection (3A), an *employee's proportion* of an amount
24 is the following proportion:

$$\frac{\text{Total of the employer's individual final superannuation guarantee shortfall, individual notional earnings component and choice loading for the employee and the QE day specified in the assessment}}{\text{Total of the employer's individual final superannuation guarantee shortfalls, individual notional earnings components and choice loadings for all employees and the QE day specified in the assessment}}$$

26 64 Subsection 64B(4)

27 Repeal the subsection, substitute:

- 28 (4) The *total employee entitlement*, calculated at a particular time in
29 relation to the assessment, is the sum of the following amounts:
30 (a) the total of the employer's individual final superannuation
31 guarantee shortfalls for all employees and the QE day
32 specified in the assessment;

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-
- 1 (b) the total of the employer's individual notional earnings
2 components for all employees and the QE day;
3 (c) the total of the employer's choice loadings for all employees
4 and the QE day;
5 (d) so much of any general interest charge as:
6 (i) relates to non-payment of superannuation guarantee
7 charge payable in relation to the totals in paragraphs (a),
8 (b) and (c); and
9 (ii) has been paid by, or is payable at, the particular time;
10 reduced (but not below zero) by the amounts of any previous
11 payments to which this Part applies that relate to the QE day,
12 employer and employees.
- 13 Note: The employee's entitlement does not include so much of any general
14 interest charge as relates to the employer's administrative uplift
15 amount for the QE day (see subparagraph (d)(i)).

16 **65 Subsection 79(2)**

17 Repeal the subsection, substitute:

- 18 (2) The records must include any documents relevant to working out:
19 (a) whether the employer has a superannuation guarantee
20 shortfall for a QE day; and
21 (b) the amount of such a shortfall.

22 **66 Section 79A**

23 Repeal the section.

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1 Part 2—Other amendments

2 *Income Tax Assessment Act 1997*

3 **67 Section 12-5 (table item headed “superannuation** 4 **guarantee charge”)**

5 Repeal the item.

6 **68 Section 26-95**

7 Repeal the section.

8 **69 Subsection 85-25(3)**

9 Omit “*individual superannuation guarantee shortfalls in respect of the
10 associate for any of the *quarters”, substitute “*individual final
11 superannuation guarantee shortfalls for the associate and any *QE
12 days”.

13 **70 Subsection 85-25(4)**

14 Repeal the subsection (including the note), substitute:

15 (4) To work out the amount you would have to contribute under
16 subsection (3), assume under the *Superannuation Guarantee*
17 *(Administration) Act 1992* that your payments of qualifying
18 earnings (within the meaning of that Act) to the associate do not
19 include any amounts that section 85-10 or 85-20 of this Act would
20 prevent you from deducting.

21 Note: See paragraph 85-10(2)(e) for deductions relating to employment of
22 associates.

23 **71 Subsection 86-75(1) (note)**

24 Repeal the note.

25 **72 Subsection 86-75(2)**

26 Omit “*individual superannuation guarantee shortfalls in respect of the
27 individual for any of the *quarters”, substitute “*individual final
28 superannuation guarantee shortfalls for the individual and any *QE
29 days”.

30 **73 Subsection 86-75(3)**

31 Repeal the subsection (including the note), substitute:

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1 (3) To work out the amount the entity would have to contribute under
2 subsection (2), assume under the *Superannuation Guarantee*
3 *(Administration) Act 1992* that the entity's payments of qualifying
4 earnings (within the meaning of that Act) to the individual do not
5 include any amounts that section 86-60 of this Act would prevent
6 the entity from deducting.

7 Note: Section 86-60 will apply the limitations under sections 85-10 and
8 85-20 on an individual's entitlement to deductions (but see
9 paragraph 85-10(2)(e) on employment of associates).

10 **74 Paragraph 290-80(1)(c)**

11 Repeal the paragraph, substitute:

12 (c) the contribution must result in you having a lower *individual
13 final superannuation guarantee shortfall for the employee and
14 one or more *QE days than what you would have otherwise.

15 **75 Subsection 290-80(2A)**

16 Repeal the subsection, substitute:

17 (2A) If only paragraph (1)(c) applies, you can deduct only the amount of
18 the contribution that causes the result described in that paragraph.

19 **76 Paragraph 290-80(2B)(b)**

20 Repeal the paragraph, substitute:

21 (b) the amount of the contribution that causes the result
22 described in paragraph (1)(c).

23 **77 Paragraph 290-85(1)(a)**

24 Repeal the paragraph, substitute:

25 (a) results in you having a lower *individual final superannuation
26 guarantee shortfall for the other person and one or more *QE
27 days than what you would have otherwise because of
28 section 15B of the *Superannuation Guarantee*
29 *(Administration) Act 1992*; or

30 **78 Paragraph 290-85(1)(b)**

31 Omit "salary or wages", substitute "qualifying earnings (within the
32 meaning of that Act)".

33 **79 Subparagraph 290-85(1A)(d)(i)**

34 Repeal the subparagraph, substitute:

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1 (i) results in the company or entity having a lower
2 *individual final superannuation guarantee shortfall for
3 the other person and one or more *QE days than what it
4 would have otherwise because of section 15B of the
5 *Superannuation Guarantee (Administration) Act 1992*;
6 or

7 **80 Section 290-95**

8 Repeal the section.

9 **81 Subsection 995-1(1)**

10 Insert:

11 *individual final superannuation guarantee shortfall* has the same
12 meaning as in the *Superannuation Guarantee (Administration) Act*
13 *1992*.

14 **82 Subsection 995-1(1) (definition of *individual***
15 ***superannuation guarantee shortfall*)**

16 Repeal the definition.

17 **83 Subsection 995-1(1)**

18 Insert:

19 *QE day* has the same meaning as in the *Superannuation Guarantee*
20 *(Administration) Act 1992*.

21 **84 Subsection 995-1(1) (definition of *superannuation***
22 ***guarantee shortfall*)**

23 Omit “meaning given by section 17 of”, substitute “same meaning as
24 in”.

25 ***Retirement Savings Accounts Act 1997***

26 **85 Subsection 183(2A)**

27 Repeal the subsection.

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Superannuation Industry (Supervision) Act 1993

86 Subsection 29R(4)

Omit “an increased individual superannuation guarantee shortfall”,
substitute “a choice loading”.

87 Subsection 64(2A)

Repeal the subsection.

88 Subsection 68AAE(1)

Omit “a quarter”, substitute “a QE day”.

89 Paragraph 68AAE(1)(c)

Omit “the quarter ends”, substitute “the QE day is”.

90 Paragraph 68AAE(1)(d)

Repeal the paragraph, substitute:

(d) the amount the employer-sponsor contributes to the fund for
the QE day exceeds the amount that the employer-sponsor
would need to contribute to avoid an individual final
superannuation guarantee shortfall for the member and the
QE day; and

91 Paragraph 68AAE(1)(e)

Omit “quarter”, substitute “QE day”.

92 Subsection 68AAE(2)

Repeal the subsection, substitute:

(2) In this section:

individual final superannuation guarantee shortfall has the same
meaning as in the *Superannuation Guarantee (Administration) Act 1992*.

QE day has the same meaning as in the *Superannuation Guarantee
(Administration) Act 1992*.

93 Subsection 68A(1) (note)

Omit “an increased individual superannuation guarantee shortfall”,
substitute “a choice loading”.

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94 Subsection 68A(3) (note)

Omit “an increased individual superannuation guarantee shortfall”, substitute “a choice loading”.

Taxation Administration Act 1953

95 Paragraph 265-90(1)(b) in Schedule 1

Omit “quarter under section 16”, substitute “*QE day under section 16A”.

96 Paragraph 265-90(3)(b) in Schedule 1

Repeal the paragraph, substitute:

(b) if the amount referred to in paragraph (1)(a) or (b) relates to a *QE day—set out the QE day; and

97 Paragraph 268-10(1)(b) in Schedule 1

Omit “*quarter under section 16”, substitute “*QE day under section 16A”.

98 Subsection 268-10(1A) in Schedule 1

Repeal the subsection, substitute:

(1A) For the purposes of this Division, your superannuation guarantee charge for a *QE day is treated as being payable on the first day after the end of the usual period (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) for the QE day, even if the charge has not yet been assessed under that Act.

99 Subsection 268-10(3) in Schedule 1 (example 2)

Repeal the example, substitute:

Example 2: In the case of an underlying liability to pay superannuation guarantee charge for a QE day, the Commissioner may have regard to information about your contributions to RSAs and complying superannuation funds for earlier QE days.

100 Paragraph 268-90(2A)(b) in Schedule 1

Repeal the paragraph, substitute:

(b) for each employee for whom you have an *individual final superannuation guarantee shortfall for the relevant *QE day—the information that:

(i) relates to the employee and the shortfall; and

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(ii) is required by the approved form for a voluntary disclosure statement under section 33 of the *Superannuation Guarantee (Administration) Act 1992*;

101 Subsection 268-90(2A) in Schedule 1 (note)

Repeal the note, substitute:

Note: The amount of the individual final superannuation guarantee shortfall mentioned in paragraph (b) is a factor in determining the amount of the superannuation guarantee charge mentioned in paragraph 268-10(1)(b).

102 Subsection 269-10(1) in Schedule 1 (table, heading to column 1)

Repeal the heading, substitute:

Column 1

This Division applies if, on a particular day (the *initial day*), a company is a company registered under the *Corporations Act 2001*, and ...

103 Subsection 269-10(1) in Schedule 1 (table items 1, 2 and 3)

Before “the company”, insert “on the initial day”.

104 Subsection 269-10(1) in Schedule 1 (table item 5)

Repeal the item, substitute:

5 the initial day is a *QE day for the company superannuation guarantee charge for the QE day in accordance with the *Superannuation Guarantee (Administration) Act 1992*.

105 Subsection 269-10(1) in Schedule 1 (table item 6)

Before “a *tax period”, insert “on the initial day”.

106 Subsection 269-10(1) in Schedule 1 (table item 7)

Before “a GST instalment quarter”, insert “on the initial day”.

107 Subsection 269-10(3) in Schedule 1

Repeal the subsection, substitute:

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Superannuation guarantee charge

- 1
2 (3) For the purposes of this Division, the company's superannuation
3 guarantee charge for a *QE day under the *Superannuation*
4 *Guarantee (Administration) Act 1992* is treated as being payable
5 on the earlier of the following days (the *due day*):
6 (a) the first day after the end of the 30-day period starting on the
7 QE day;
8 (b) the day the charge is payable (see subsection 36(3) of that
9 Act);
10 even if, if paragraph (a) of this subsection applies, the charge has
11 not yet been assessed under that Act.

12 **108 Paragraph 269-10(5)(b) in Schedule 1**

13 Omit "last day of the *quarter", substitute "*QE day".

14 **109 Subsection 269-30(2) in Schedule 1 (table item 3)**

15 Repeal the item, substitute:

- 16
- | | | | |
|---|--|--------------|---|
| 3 | superannuation guarantee charge for a *QE day, | the due day, | if the company, on or before the due day, lodges under section 33 of the <i>Superannuation Guarantee (Administration) Act 1992</i> a voluntary disclosure statement for the QE day. |
|---|--|--------------|---|

17 **110 Subsection 269-30(2) in Schedule 1 (note 2)**

18 Repeal the note.

19 **111 Subsection 355-65(3) in Schedule 1 (table item 9)**

20 Repeal the item.

21 **112 Subsection 384-10(1) in Schedule 1 (table item 2)**

22 Repeal the item.

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Part 3—Application and transitional provisions

113 Definitions

In this Part:

new Act means the *Superannuation Guarantee (Administration) Act 1992* as amended by this Schedule.

new law means an Act (other than the *Superannuation Guarantee (Administration) Act 1992*) as amended by this Schedule.

old Act means the *Superannuation Guarantee (Administration) Act 1992* as that Act was in force immediately before 1 July 2026.

old law means an Act amended by this Schedule (other than the *Superannuation Guarantee (Administration) Act 1992*) as that Act was in force immediately before 1 July 2026.

114 Application of amendments of the *Superannuation Guarantee (Administration) Act 1992*

Application of the amendments

- (1) The new Act applies in relation to a QE day that is 1 July 2026 or a later day.
- (2) Without limiting subitem (1), the new Act applies to:
 - (a) payments of qualifying earnings to or for an employee by an employer on such a QE day that relate to work, labour or performance of duties before, on or after 1 July 2026; and
 - (b) arrangements for such payments that are made before, on or after 1 July 2026.

Saving of the old Act

- (3) Despite the amendments made by this Schedule of the old Act, the old Act continues to apply on and after 1 July 2026 in relation to a quarter ending before that day as if the amendments had not been made.
- (4) Without limiting subitem (3), the old Act continues to apply on and after 1 July 2026 in relation to:
 - (a) a liability to pay superannuation guarantee charge relating to a quarter ending before 1 July 2026 (whether the liability arose before, on or after 1 July 2026); or
 - (b) a related liability (whether the related liability arose before, on or after 1 July 2026).

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1 Note: Paragraph (b) includes, for example, any additional superannuation guarantee charge
2 under section 49 or Part 7 of the old Act relating to a liability to pay superannuation
3 guarantee charge relating to a quarter ending before 1 July 2026.

4 **115 Application of amendments of other Acts**

5 *Application of the amendments*

- 6 (1) The new law applies in relation to the following:
- 7 (a) a QE day that is 1 July 2026 or a later day;
 - 8 (b) a liability to pay superannuation guarantee charge relating to
9 a QE day that is 1 July 2026 or a later day;
 - 10 (c) individual final superannuation guarantee shortfalls relating
11 to a QE day that is 1 July 2026 or a later day.

12 *Saving of the old law*

- 13 (2) Despite the amendments made by this Schedule of the old law, the old
14 law continues to apply on and after 1 July 2026 in relation to the
15 following as if the amendments had not been made:
- 16 (a) a liability to pay superannuation guarantee charge relating to
17 a quarter ending before 1 July 2026 (whether the liability
18 arose before, on or after 1 July 2026);
 - 19 (b) a related liability (whether the related liability arose before,
20 on or after 1 July 2026);
 - 21 (c) individual superannuation guarantee shortfalls relating to a
22 quarter ending before 1 July 2026;
 - 23 (d) contributions to reduce a charge percentage relating to a
24 quarter ending before 1 July 2026;
 - 25 (e) salary or wages relating to a quarter ending before 1 July
26 2026;
 - 27 (f) an obligation to give a statement or information to the
28 Commissioner under the *Superannuation Guarantee*
29 *(Administration) Act 1992* relating to a quarter ending before
30 1 July 2026.

31 **116 Transitional—reversal after commencement of** 32 **pre-commencement sacrificed contributions**

33 For the new Act, a reversal of a sacrificed contribution includes a
34 payment made on or after 1 July 2026 that represents the reversal of all
35 or part of a contribution that was:

- 36 (a) a sacrificed contribution (within the meaning of the old Act);
37 and

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(b) made before 1 July 2026.

117 Transitional—excess contributions made before 1 July 2026

- (1) This item applies to an amount that:
- (a) is an eligible contribution made by an employer; or
 - (b) for a defined benefit superannuation scheme—would be a notional contribution to the scheme (and, as a result, an eligible contribution made by an employer) if the new Act applied in relation to QE days before 1 July 2026.

For the purposes of subitem (2), treat an amount covered by paragraph (b) as an *eligible contribution*.

- (2) Subparagraph (c)(i) of the definition of *eligible contributions relevant for the QE day* in subsection 18C(1) of the new Act is taken to include so much of the amount that:
- (a) was received during the 12-month period mentioned in that subparagraph but before 1 July 2026; and
 - (b) was not applied under the old Act to reduce the charge percentage for the employer for a quarter ending before 1 July 2026.

118 Transitional—ending notice periods under the old Act

An employer's notice period that:

- (a) was within the meaning of subsection 19A(4) of the old Act; and
- (b) was in force on 30 June 2026;

is taken to end at the end of 30 June 2026.

119 Transitional—providing information from notifications

Subsection 32R(4) of the new Act applies to disclosures on or after 1 July 2026 of information from notifications, whether the notifications were given before, on or after 1 July 2026.