

EXPOSURE DRAFT

EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Superannuation Guarantee (Administration) Act 1992

Superannuation Industry (Supervision) Act 1994

Treasury Laws Amendment Instrument 2025: SG reforms to address unpaid super

Subsection 19(3) of the *Superannuation Guarantee (Administration) Act 1992* (the SGA Act) provides that regulations may prescribe:

- A method for reducing an employer's administrative uplift amount for a QE day that relies on either or both of the following:
 - Whether the Commissioner has previously made an assessment under the SGA Act for the employer on the Commissioner's own initiative;
 - Whether (and when) the employer lodges a voluntary disclosure statement under the SGA Act for that QE day;
- A method that depends on a person being satisfied of one or more specified matters.

The purpose of the *Treasury Laws Amendment Instrument 2025: SG reforms to address unpaid super* (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 Bill 2025: SG reforms to address unpaid super* (the Amending Bill). The Amending Bill 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).

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 fail to make contributions for the required percentage of their employees' ordinary time earnings (OTE) within legislated timeframes.

In the 2023-24 Budget, the Government announced that the SG framework will be reformed to align the payment of SG contributions with the payment of OTE (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 for their employees have an SG shortfall for those employees, for the relevant QE day, and become liable to the SG charge.

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Under the Amending Bill ‘qualifying earnings’ effectively aligns the current ‘ordinary time earnings’ method for calculating both contributions and the amount of SG charge.

The Amending Bill 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 component. The administrative uplift 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 that minimises these costs.

The Amending Bill 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 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 also amend the SIS Regulations to reflect the updated requirements to comply with the choice of fund requirements introduced as part of the Amending Bill. Under the amended framework, a failure to comply with the choice of fund provisions will now result in a choice loading, rather than an increased individual superannuation guarantee shortfall. 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.

Details of the Regulations are set out in the [Attachment](#).

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ATTACHMENT A

Details of the Treasury Laws Amendment Instrument 2024: SG reforms to address unpaid super

Section 1 – Name

This section provides that the name of the regulations is the *Treasury Laws Amendment Instrument 2025: SG reforms to address unpaid super* (the Regulations).

Section 2 – Commencement

Schedule 1 to the Regulations commence 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).

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 # – Superannuation guarantee reforms to address unpaid superannuation

Part 1 – Administrative uplift amounts for superannuation guarantee shortfalls

Amendments to the SGA Regulations

The administrative uplift amount is calculated at the employer level rather than at the individual employee level. It is calculated as 60% of the sum of the total of the employer's individual final SG shortfalls and individual notional earnings components for the QE day.

Employers are putatively liable for the full 60%, but reductions are applied to the administrative uplift amount if certain criteria are satisfied. There are two ways for the administrative uplift amount to be reduced. A reduction may apply if:

- no Commissioner-initiated assessment has been made for the employer in the past 24 months ending on the QE day.
- an employer lodges a voluntary disclosure 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 #, item 3, sections 13A and 13B 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 19C(1) of the Act. The reductions cannot

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operate to reduce the uplift amount to below nil.

[Schedule #, item 3, section 13B of the SGA Regulations]

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

A reduction in the administrative uplift amount will be applied if no Commissioner-initiated assessment has been made for the employer during the 24-month period ending on the QE day. If this criterion is satisfied, the administrative uplift amount will be reduced by 20 percentage points from 60% to 40%.

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

For this step of 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' compliance history from 1 July 2026.

To support understanding and compliance, a definition of Commissioner-initiated assessment is introduced. This will cover the following three circumstances:

- The employer did not lodge a voluntary disclosure 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 matching from Single Touch Payroll and Member Account Transaction Service reporting and/or reviewing information from employee notifications of unpaid super.
- The employer lodges a voluntary disclosure that contains inaccurate or incomplete information; the Commissioner makes an assessment for the QE day relying on information acquired from other means; and prior to the Commissioner making the assessment for the QE day, the employer does not lodge a subsequent voluntary disclosure containing additional information that would, had it been included in the initial voluntary disclosure, have resulted in that statement being accurate and correct.
- Alternatively, if the Commissioner makes an SG charge assessment using information from a voluntary disclosure that contained inaccurate or incomplete information, and the Commissioner subsequently makes an amended SG charge assessment for the employer relying on information acquired from other means.

[Schedule #, item 3, section 13C of the SGA Regulations]

Reduction if a voluntary disclosure is lodged for the QE day

A reduction in the administrative uplift amount will be applied if the employer makes/lodges a voluntary disclosure statement for a period that includes the QE day, and the voluntary disclosure statement is made/lodged before the day an SG charge assessment is made for a 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:

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- Before the end of the 30-day period starting on the QE day – the reduction will be 40%;
- 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%;
- 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%;
- After the end of the 120-day period starting on the QE day – the reduction will be 15%.

[Schedule #, item 3, section 13D of the SGA Regulations]

The cascading levels of reduction provide an incentive for employers to disclose as early as possible. Practically, this means there are ten possible final outcomes of the administrative uplift amount:

Table # Possible final outcomes of the administrative uplift component

If the employer has not had a Commissioner-initiated assessment in the past 24 months and has...	Administrative uplift percentage	If the employer has had a Commissioner-initiated assessment in the past 24 months and has...	Administrative uplift percentage
Voluntarily disclosed within a 30-day period starting on the QE day.	Nil	Voluntarily disclosed within a 30-day period starting on the QE day.	20%
Voluntarily disclosed during a period immediately after the 30-day period mentioned in the row above, but within a 60-day period starting on the QE day	5%	Voluntarily disclosed during a period immediately after the 30-day period mentioned in the row above, but within a 60-day period starting on the QE day	25%
Voluntarily disclosed during a period immediately after	10%	Voluntarily disclosed during a period immediately after	30%

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the 60-day period mentioned in the row above, but within an 120-day period starting on the QE day		the 60-day period mentioned in the row above, but within an 120-day period starting on the QE day	
Voluntarily disclosed after the end of the 120-day period starting on the QE day	25%	Voluntarily disclosed after the end of the 120-day period starting on the QE day	45%
Not voluntarily disclosed in relation to the relevant QE payment, resulting in the employer being 'default assessed'	40%	Not voluntarily disclosed in relation to the relevant QE payment, resulting in the employer being 'default assessed'	60%

If the information in a voluntary disclosure statement is inaccurate or incomplete, resulting in a lower SG shortfall than the actual SG shortfall had the information in the voluntary disclosure been accurate and complete, and the employer subsequently makes a supplementary disclosure containing the additional information required for the initial voluntary disclosure to be accurate and complete, and that resulted in a higher SG shortfall, the reduction in the administrative uplift will be based on the time elapsed from the QE day until the day the employer makes the subsequent accurate and complete voluntary disclosure.

Similarly, if the information in a voluntary disclosure statement is inaccurate or incomplete, resulting in a lower SG shortfall than the SG shortfall had the information been accurate and complete, and the employer did not lodge a subsequent voluntary disclosure with more accurate or complete information, the employer is treated as never having lodged the statement.

This approach calibrates the consequences so that if a voluntary disclosure contains inaccurate or incomplete information that would result in the SG shortfall being a higher amount than if the information was accurate and complete, the employer would have the benefit of the date that the original voluntary disclosure was lodged for the purpose of calculating the administrative uplift amount.

[Schedule #, item 3, subsection 13D(2) of the SGA Regulations]

Example 1

An employer lodges a voluntary disclosure statement 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 component applied on their original SG charge assessment for the QE day would

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be 5% (60% - 20% - 35%). The 35% is based on this disclosure being made more than 30 days, but within 60 days, of the QE day.

However, if after discovering a mistake in the previous disclosure, the employer subsequently lodges a supplementary disclosure 80 days after the relevant QE day (i.e., 30 days after the first disclosure) that resulted in an increased SG shortfall amount – the uplift component applied on their amended SG charge assessment for the QE day would be 10% (60% - 20% - 30%). The 30% is based on the voluntary disclosure that is made in the approved form (i.e. the second or subsequent disclosure) being made more than 60 days, but within 120 days, of the QE day.

Example 2

An employer discloses that they had individual final SG shortfalls for 12 employees and subsequently realises and discloses that they only had individual final SG shortfalls for 11 employees, resulting in a reduced SG shortfall amount. The employer would have the benefit of the date of the original voluntary disclosure for the purpose of calculating the administrative uplift amount, even if they lodge a supplementary disclosure at a later time

Part 2 – Other amendments

Amendments to the SGA Regulations

Consequential amendments have also been made to Part 3 of the SGA Regulations to reflect the amended framework.

[Schedule #, items 4 and 5, paragraphs 7(1)(a) and (b) of the SGA Regulations]

Amendments to the SIS Regulations

Reduction to the amount of time a superannuation fund has to validate and seek to correct employee details from an employer

Prior to, or when, an employer makes a contribution to an employee's superannuation fund, other than a self-managed superannuation fund or a superannuation fund chosen by the employee, for the first time, they must provide the following information to the fund:

- the employee's full name;
- the employee's date of birth;
- the employee's tax file number;

The receiving fund must then validate this information with the Commissioner of Taxation within 2 business days of receiving it. This is a reduction from 3 business days.

[Schedule #, item 6, sub-regulation 7.07B(4) of the SIS Regulations]

If the Commissioner cannot not validate the information provided, the fund will also have 2 business days, reduced from 5 business days, to ask the employer to confirm:

- the employee's full name;
- the employee's date of birth;

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- the employee's tax file number;
- the employee's residential address
[Schedule #, item 7, sub-regulation 7.07D(2) of the SIS Regulations]

The reduction in the time period (from 3 and 5 business days respectively to 2 business days) that a superannuation fund has to validate and subsequently seek the correct employee details from the Commissioner and the employer is intended to assist employers in being notified that the information that they have provided is not valid as soon as practicably possible. It is intended that this will assist employers in correcting details to allow contributions to be allocated by the funds sooner.

Reduction to the amount of time a superannuation fund has to refund contributions that cannot be allocated to a member's account

Employers must also give the following to the fund every time that they make a contribution:

- the employee's full name;
- the employee's residential address;
- the employee's tax file number; and
- the employee's telephone number;

When a fund receives a contribution for a member that does not include this information, they must return the contribution within 3 business days unless they are otherwise able to allocate the contribution. For example, if a contribution lacks the employee's telephone number, or the telephone number is incorrect, but the fund is able to determine the member for whom the contribution is being made, the fund may allocate the contribution and not refund it. If the trustee is unable to allocate the contribution to the member, the trustee must refund that amount to the employer as soon as practicable, and in any case, no later than 3 business days after receiving the contribution.

[Schedule #, item 8, sub-regulation 7.07G(2) of the SIS Regulations]

Where a contribution is refunded in this manner due to a lack of information, it is taken not to have been made to the fund by the employer.

[Schedule #, item 8, sub-regulation 7.07G(3) of the SIS Regulations]

Formerly, superannuation fund trustees were required to seek corrective information from an employer within 5 business days, and return the contribution if they could not allocate it within 20 business days. These amendments reduce the time before a contribution that cannot be allocated is refunded. This aligns with the new timeframes an employer has to make an eligible contribution to reduce their SG shortfall.

Other amendments are made to the SIS Regulations so that the trustee of a fund with members that have a defined benefit interest are required to allocate a contribution within 5 business days after receiving that contribution.

[Schedule #, items 9 and 10, regulation 7.11 and subparagraph 7.11(a)(i) of the SIS Regulations]