Australian Government
The Treasury

Ministerial Submission

MS24-002443

FOR ACTION - Payday Super - Legislation Exposure Draft and residual policy details

TO: Treasurer - The Hon Jim Chalmers MP
CC: Assistant Treasurer – The Hon Stephen Jones MP

s 47C, s 47E(d)

Signature	Date: / /2025

KEY POINTS

- The Government announced the details of the Payday Super measure as part of the 2024-25 MYEFO. We have prepared draft legislation and regulations reflecting the parameters agreed at MYEFO (**Attachments B and C**) along with associated explanatory materials (**Attachments D and E**) for your consideration. Also included separately are the amendments to the SG charge imposition bill, restriction on superannuation fund advertising during onboarding, and employee onboarding reforms (**Attachments F, G and H**)

- Subject to your agreement, we will release an exposure draft with a 4-week period for public consultation. This will give the greatest prospect of Parliamentary introduction and legislative passage as early as possible in 2025, which is essential to be able to maintain the possibility of a commencement date of 1 July 2026.

  – We strongly recommend the 4-week consultation period at a minimum, given the breadth and complexity of the legislation. Industry stakeholders have also urged for a full-length consultation period.

DRAFT LEGISLATION

- The draft legislation and regulations capture the policy elements agreed s 34(3) [redacted] through the 2024-25 MYEFO, and announced in the Treasury Fact sheet published in September 2024. It also reflects the outcomes of consultation with industry stakeholders and the ATO over the course of 2023 and 2024. A list of key relevant features is contained at **Attachment A**.

- The draft legislation and regulations also include refinements that are necessary to implement the intent of the submission s 34(3) [redacted] or make slight adjustments to parameters in that submission. These refinements have arisen throughout the law design process and concurrent system design with the ATO; s 47C, s 47E(d) [redacted]

- None of these amendments carries a financial impact within the forward estimates, that has not already been agreed as part of MYEFO s 34(3) [redacted] Further information on each of these refinements is contained at **Attachment A.**

- We anticipate that there will continue to be strong stakeholder engagement resulting from the release of this exposure draft. Release in early 2025 aligns with the Government's objective of passage in 2025, and program commencement from 1 July 2026.

s 47C, s 47E(d) [redacted]

- Industry stakeholders, particularly DSPs and Payroll platforms, have repeatedly stated that they need legislative certainty before they will commit resources towards the required ICT changes. Many of these platforms operate within international business funding cycles and consider that at least an 18-month lead time is needed to secure funding and effect the changes.

s 47C, s 47E(d)

[redacted]

s 47C

[redacted]

- The ATO has already been running technical working groups with key stakeholders to consult on the implementation and administration of the measure. Based on existing feedback from those sessions, stakeholder concerns on the draft law may include:

  - Employers being exposed to SG charge where there are delays in contributions being successfully received and allocated, despite them paying the amount ‘on time’ initially. This is a key focus of the non-legislative elements of the measure; the ATO’s work to revise the SuperStream data and payment standards to ensure transactions can be processed rapidly and information is fit-for-purpose.

  - The use of calendar days in the ‘7 day due date’, but business days for the obligation on funds to return contributions, may create challenges during public holiday periods where an employer is not returned a contribution until it is too late for them to reasonably fix the issue prior to the due date. We will consider feedback on this and provide further advice following consultation.

  - Employers not having visibility of the contributions and STP reporting the ATO will be relying upon for compliance. You previously decided that funding for an ATO-provided data visualisation service should not to be sought for this ATO service. However, this should be mitigated in part by the ATO’s intended approach to engaging with an employer who is suspected of non-payment based on ATO data (for example, via a ‘nudge’ letter). The ATO will be transparent in communicating the data they are relying on, employers will have the opportunity to correct any reporting before SG charge is assessed.

- While not included in draft legislation, the ATO have also made us aware that DSP stakeholders are resistant to the announced move to mandate the inclusion of ordinary time earnings (OTE) in STP reporting. This change is critical to ensure the ATO can correctly calculate the required contributions for employees, but DSPs have questioned it’s necessity and the timeframes to deliver system changes.
  - The draft legislation introduces a new term – ‘qualifying earnings’ – to capture the earnings that are subject to SG, but this is simply a reorganising of the various provisions that currently modify what counts towards SG calculations. The underlying concept of OTE is being left unchanged, and the expected administration by employers (and DSPs) is not intended to change. The explanatory memorandum to the draft bill makes this intent clear. Nevertheless, it is possible DSPs will claim this increases the burden involved in reporting OTE.

NEXT STEPS

- We will release draft legislation as soon as practicable for a consultation period of four weeks s 47E(d) .
  - During the consultation period, Treasury will undertake roundtable discussions with superannuation fund, employer, DSP, administrator and clearinghouse associations and groups.
- The final legislation and explanatory materials will be sent to you for final text approval before introduction into Parliament.

<u>Clearance Officer</u>
Adam Hawkins
Assistant Secretary
Retirement Income and Superannuation Division
s 47E(d)

<u>Contact Officer</u>
s 22
Director
s 22

CONSULTATION

Law Division, Australian Taxation Office.

ATTACHMENTS

A: Additional Information – Summary of policy refinements
B: Payday Super Legislation – Exposure Draft
C: Payday Super Regulations – Exposure Draft
D: Payday Super Legislation – Explanatory Memorandum
E: Payday Super Regulations – Explanatory Statement

ATTACHMENT A – ADDITIONAL INFORMATION

Features of the draft legislation and regulations that reflect s 34(3)

	Feature	Description
1	The 7 calendar day ‘due date’ model	SG charge will be imposed where a contribution is not received by the superannuation fund within 7 days of payday (save for some limited exceptions where an extended date is automatically applied).
2	Aligning the earnings base	Using OTE as the base for calculating how much needs to be contributed, as well as how much SG charge is imposed. This removes the current mismatch where OTE is used for the former but ‘salary or wages’ is used for the latter.
3	Redesigned rules to attribute contributions	A contribution will automatically apply to the earliest possible payday (that has not already been covered by prior contributions, or already been assessed by the ATO). This means that, if there are no other missing contributions, a late contribution will automatically be counted towards the payday it was meant for. The existing ‘late payment offset’ rules are removed.
4	Reforming the components of the SG charge	Replacing the existing ‘individual shortfall’, ‘nominal interest’ and ‘administrative charge’ components with: • The ‘final’ individual shortfall for an employee that remains unpaid after taking into account late contributions • Notional earnings that compound daily at the general interest charge (GIC) rate and accrue for the day after the contributions ‘due date’ until the day the unpaid shortfall is fully paid off by late contributions (or the day the ATO assesses SG charge if the amount is not paid off). • An administrative uplift, which encourages employers to voluntarily disclose non-compliance through a scaling uplift component. The uplift is a maximum of 60 per cent of the unpaid SG, but if an employer discloses their non-compliance early there are proportionately light consequences via a reduction in this percentage.
5	The new Late Payment Penalty	This element penalises employers who do not pay the SG charge, even after it is assessed by the ATO and remains an unpaid Commonwealth debt. The late payment penalty reflects 25% of the outstanding SG charge, increasing to 50% if the employer has previously been liable for the penalty in the last 24 months.

6	Deductibility	The SG charge will be deductible for the employer, as will any late contributions. GIC will continue to be non-deductible
7	System changes	Making adjustments to other employer and fund provisions to align with the payday super future state: • Allowing employers to request stapled fund information from the ATO prior to going through the choice of fund process with a new employee, so that they can give those fund details to the employee to assist their choice of fund. • Reducing the time a fund has to return a contribution that they cannot allocate to 3 business days.
8	Ban on superannuation fund advertising during onboarding	Advertising for superannuation products to new employees will not be permitted, except for the employer's default fund, and other MySuper products that have met the performance test and are not provided by a related party to the advertiser.

Features of the draft legislation and regulations that reflect further policy refinements

	Policy amendments	**Description**
1	Administrative uplift: adjusted calculation	As outlined above, this new element of the SG charge is designed to incentivise employers to voluntarily disclose non-compliance, by scaling an employer's contribution requirement (uplift) according to their behaviour. A secondary purpose of this element is to replace the existing administration fee (currently $20 per employee per quarter). No part of the administrative uplift is paid as employer compensation. The calculation has been adjusted to incorporate late contributions that have been made directly to super funds prior the assessment of the charge. If an employer makes a late contribution, their exposure to the administrative uplift will be reduced. Their exposure would then be based on the amount owing after contributions, rather than the outstanding amount immediately following payday.

		s34(3)
2	Late payment penalty: notice process and penalty timeframe	Employers will become liable for a late payment penalty when they have been assessed for SG charge and fail to pay the amount specified in a Notice to Pay issued by the ATO. The amount in the Notice to Pay will be equal to the amount of outstanding SG charge and General Interest Charge (GIC) at the time the Notice is issued. The ATO will issue the Notice to Pay 28 days after SG charge is assessed and the employer will then have a further 28 days to pay the amount in the Notice. This means an employer has 56 days following their assessment for SG charge to pay the outstanding amount and avoid becoming liable for the late payment penalty. The late payment penalty will be 25% of any outstanding amount in the Notice to Pay. This increases to 50% of the outstanding amount if the employer has been liable for the late payment penalty in the last 24 months. The Notice to Pay design has necessitated a minor increase in the minimum time before a penalty is imposed, from 1 month to 2 months, s 34(3). However, this has no financial impact over the forward estimates period, and only a minimal impact over the medium term.
3	Maximum contribution base	The maximum contribution base (MCB) allows employers to stop paying SG if an employee’s Ordinary Time Earnings (OTE) exceed the MCB amount for a quarter. The updated MCB will now be referred to as the maximum contribution limit (MCL) and will apply annually on a running tally basis instead of being separately calculated each quarter. This reflects the fact that the new SG charge will no longer be tied to fixed quarters. The effect of the MCL will remain the same as the MCB insofar as it prevents most employers paying SG when those contributions would cause the employee to exceed their concessional contributions cap. This change may mean that certain employees who are paid irregularly (for example, large one-off lump sums) may be entitled to additional SG they are not currently eligible for, since the MCB will consider the entire years earnings and not impose a ceiling on each quarter.
4	Choice loading	The choice loading is a part of the SG charge and is applied when an employer does not provide an employee a choice form within the required timeframe, does not pay superannuation to the employee’s chosen fund, or pays to a fund without

		requesting a stapled fund. The loading is 25% of the contributions that were made in breach of the choice of fund rules, subject to a total cap of $500 per employee that applies to the entire period of the breach. The legal design of the choice loading has been adjusted so that it is a separate component of the SG charge rather than being baked into the calculation of employee's SG shortfall directly. This change was made to ensure the choice loading operates correctly with the broader changes to the SG charge for payday. Additionally, the total cap is being increased to a maximum of $1,200 compared to the current $500, as it has not been adjusted since 2005 and is being re-aligned with current economic conditions and increases in the SG rate.
5	Commissioner's ability to extend SG due date for exceptional circumstances	The Commissioner will have the ability to extend the due date for an employer to make 'on-time' SG contributions via determinations for exceptional circumstance such as natural disasters and major communications outages. These will be class determinations; the Commissioner will not be able to extend dates on a case-by-case basis. Further consultation will be undertaken on the precise criteria that will enliven the Commissioner's power to make these determinations.
6	Using OTE and incorporating inclusions and exclusions	An individual's SG shortfalls will now be calculated on OTE, not on salary and wages as under the current framework. This change from salary or wages to OTE is intended to reduce complexity in the administration of the SG Charge. However, the various inclusions, exclusions and modifications that occur under the existing law have been reworked and consolidated into a new term 'qualifying earnings', which picks up OTE and these adjustments. This relevantly includes workers who meet the 'extended definition' of employee for SG purposes (such as labour contractors and performing artists). The payments these workers receive are currently expressly included in 'salary or wages' by law and will now be included in 'qualifying earnings'. This ensures these workers continue to have an appropriate level of superannuation support prescribed.
7	Deemed date for voluntary disclosure	Generally, employers do not have visibility of the exact date that the SG contributions are received by their employee's superannuation fund. This makes it difficult for employers to determine the date notional earnings cease accruing when voluntarily disclosing a late payment of SG. Legislative change will allow the ATO to use a deemed date for when a SG contribution is received by an employer who has voluntarily disclosed a late contribution. The deemed date will be seven calendar days from the date the SG contribution is

		paid by the employer. This is only for the purposes of determining the date Notional earnings will cease to accrue; the actual received date will be relied upon for the remainder of the legislation (for example, for testing whether contributions have in fact been made 'on-time' for a payday). If an employer does not make a voluntary disclosure the ATO can use other data sources to work out the date a contribution was received.
8	Remission of penalties for directors	Under the current law, director penalties are remitted if the company begins wind up or voluntary administration and they lodged an accurate and complete <u>SG statement</u> for the quarter by the due date (one month and 28 days after the end of the quarter). However, if an SG statement was not lodged by that date, director penalties can only be remitted if the underlying SG charge debt is paid off in full. This is known as the penalty 'lockdown'. After Payday Super commences, this will be updated to require an accurate and complete <u>voluntary disclosure</u> as employers will no longer have an obligation to lodge an SG statement. Further, the penalty 'lockdown' will now occur unless the employer made a voluntary disclosure within 30 days of the relevant pay event.

Australian Government
The Treasury

Ministerial Submission

MS25-002336

FOR ACTION - Payday Super - residual policy authority for Bill introduction

TO: Treasurer - The Hon Dr Jim Chalmers MP
CC: Assistant Treasurer and Minister for Financial Services - The Hon Dr Daniel Mulino MP

s 47C, s47E(d)

[redacted]

Signature	Date: / /2025

KEY POINTS

- Final policy authority is needed for residual policy items to the Treasury Laws Amendment (Payday Super) Bill 2025, which were not included in the s 34(2) [redacted] or MYEFO authority s 34(2) [redacted] ahead of introduction to Parliament in the week beginning 1 September 2025.

- This includes four policy items you agreed to before and after consultation on the draft Bill (MS24-002443, MS25-000825 refer) which require the Prime Minister's approval:

    1. adjusting the ordinary due date for making contributions to 7 business days,
    2. the final categories of due date extensions for events outside of the employer's control, and the length of extension,
    3. the additional late payment penalty where employers fail to pay an ATO SG charge debt in a timely manner will not accrue general interest charge,
    4. increasing the maximum per-employee penalty for failing to comply with choice-of-

s 47C, s47E(d) [redacted]

Consequential authority

- As a part of the final law approval process you must seek the Minister for Finance's agreement to the final text of the provisions in the Bill that amend their portfolio's legislation; consequential amendments to the enabling legislation for several Commonwealth superannuation schemes, to align with revised legislative terminology.
    - A draft letter to the Minister for Finance seeking agreement is included for your signature in **Attachment C**.

- Additionally, because the Bill contains consequential amendments to the *Corporations Act 2001* (Corporations Act) you need to write to the Legislative and Governance Forum on Corporations to notify the States and Territories as required by the *Corporations Agreement 2002*.
    - A copy of the Bill in near/final form will be provided to States and Territories on a confidential basis for their review. There is a minimal risk of subsequent changes to the Bill, and there are unlikely to relate to the provisions relevant to the Corporations

Agreement. You will still have the opportunity for a full text review prior to introduction.

– Subject to your agreement, Treasury will provide a near final version of the explanatory memorandum to states and territories as soon as it is available. A draft letter to States and Territories notifying them of changes to the Corporations Act is included for your signature in **Attachment D**.

Next steps

- The final legislation and explanatory memorandum will be sent to you for final text approval before introduction into Parliament.

<u>Clearance Officer</u>
s 22 s
Director
Retirement Income and Superannuation Division
s 47E(d)

<u>Contact Officer</u>
s 22
Superannuation Access and Compliance Unit
Ph: s 22

CONSULTATION

Law Division, Department of the Prime Minister and Cabinet, Office of Parliamentary Counsel

ATTACHMENTS

s 47C, s47E(d)

C: Letter to the Finance Minister
D: Letter to the Legislative and Governance Forum on Corporations (LGFC)

THE HON JIM CHALMERS MP
TREASURER

Ref: MS25-002336

Senator the Hon Katy Gallagher
Minister for Finance
Minister for Women
Minister for Public Service and Government Services
Parliament House
CANBERRA ACT 2600

Dear Minister

I write to seek your agreement to the text of consequential amendments to various acts that you administer, which are necessary to implement the Government's payday super reforms announced on 2 May 2023.

The Treasury Laws Amendment (Payday Super) Bill 2025 amends *Superannuation Guarantee (Administration) Act 1992* to incentivise employers to make superannuation contributions for employees' on, or shortly after, the day that employees are paid wages or salary. Currently, employers only need to make contributions on a quarterly basis to avoid liability to pay the superannuation guarantee charge.

Subject to your approval, I propose consequential amendments to the following Acts to ensure they continue to operate consistently with the Superannuation Guarantee framework:

- *Governor-General Act 1974*
- *Judges' Pensions Act 1968*
- *Parliamentary Contributory Superannuation Act 1948*
- *Parliamentary Superannuation Act 2004*
- *Superannuation Act 1976*
- *Superannuation Act 2005*
- *Superannuation (Productivity Benefit) Act 1988*

The amendments reflect the changed timing for making superannuation contributions and other updates to terminology that will be made by the Payday Super Bill. I enclose a copy of the Bill, which includes the relevant consequential amendments (in Part 2 of the Bill).

Officials of your department have been consulted during the drafting of these consequential amendments. There may also be changes required to some subordinate legislation in your portfolio, which I understand that your department will progress following passage of the Bill, and will continue to work closely with my department.

I intend to introduce the Payday Super Bill in the Spring 2025 sittings and would appreciate your response by 11 August 2025 in order to meet legislation approval timeframes. The consequential amendments are settled, subject to minor editorial changes.

Yours sincerely

The Hon Jim Chalmers MP

Enc Treasury Laws Amendment (Payday Super) Bill 2025

CC: Assistant Treasurer and Minister for Financial Services, the Hon Daniel Mulino MP

Attachment D

THE HON JIM CHALMERS MP

TREASURER

Ref: MS25-002336

TO:	**Ms Tara Cheyne MLA** Attorney-General Australian Capital Territory	**The Hon Kyam Maher MLC** Attorney-General South Australia
	The Hon Michael Daley MP Attorney-General New South Wales	**The Hon Guy Barnett MP** Attorney-General Tasmania
	The Hon Marie-Clare Boothby MLA Attorney-General Northern Territory	**The Hon Sonya Kilkenny MLC** Attorney-General Victoria
	The Hon Deborah Frecklington MP Attorney-General Queensland	**The Hon John Quigley MLA** Attorney-General Western Australia
DATE:	*[XX]*	
SUBJECT:	Notification: Amendment to *Corporations Act 2001* by the Treasury Laws Amendment (Payday Superannuation) Bill 2025	

Attorneys-General,

In accordance with clauses 506 and 507 of the Corporations Agreement 2002, I write to notify you of the proposed amendments contained in the Treasury Laws Amendment (Payday Superannuation) Bill 2025 (the Bill). The Government is proposing to introduce amendments to the *Corporations Act 2001* (Corporations Act), to:

- Make consequential amendments to provisions dealing with the priority of payments in the winding up of a company in the Corporations Act to reflect the changes in terminology in the payday super reforms.

Pursuant to sub-clauses 507(1)(f) and (g) of the Corporations Agreement 2002, the amendments to the Corporations Act in Schedule 1 to the Bill do not require your approval, as they relate to superannuation matters and are also amendments of a technical nature with nil regulatory impact.

The relevant Schedules to the proposed Bill and the Explanatory Memoranda are attached.

Nature of the amendments

<u>Priorities:</u>

Currently, the priorities provisions in subsections 556(1AB) to (1AG) of the Corporations Act outline how a superannuation guarantee shortfall of a company is to be dealt with in the context of the payments of debts and claims made in the winding up of companies.

The new provisions repeal these subsections and insert new subsections 556(1AB) to 556(1AE), which update the provisions to reflect that superannuation guarantee shortfalls will be linked to the day an makes a payment of qualifying earnings (i.e. payday) rather than on a quarterly basis. This is the QE day, as defined in the Bill. Subsection 556(2) will also be amended to repeal the definition of a 'quarter' and insert the definition of a 'QE day'.

These amendments will apply to QE days on or after 1 July 2026. Section 556 continues to apply, as if these amendments had not been made, for quarters ending before 1 July 2026.

The changes are intended to maintain the current rules for determining how superannuation guarantee shortfalls are to be prioritised in the winding up of companies. In doing so, the amendments will support reforms to Australia's superannuation system to ensure that the superannuation guarantee is paid on time and in full while addressing unpaid superannuation.

Public consultation on the draft payday superannuation legislation was open for four weeks from 14 March to 11 April 2025. Treasury received 166 written submissions as part of this consultation process. The consequential amendments to the Corporations Act were identified after this process and were not included in that exposure draft.

Next steps

The Bill is being prepared for introduction in the 2025 Spring sittings.

If you have any questions in relation to the Schedules, please contact s 22 of the Retirement Income and Superannuation Division, Treasury on s 22 .

Yours sincerely,

The Hon Jim Chalmers MP