

2022–2023–2024

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

[HOUSE OF REPRESENTATIVES/SENATE]

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SUPERANNUATION GUARANTEE CHARGE AMENDMENT BILL 2025

TREASURY LAWS AMENDMENT BILL 2025: SUPERANNUATION  
GUARANTEE REFORMS TO ADDRESS UNPAID SUPER

TREASURY LAWS AMENDMENT BILL 2025: BAN ON ADVERTISING SUPER  
FUNDS DURING ONBOARDING

TREASURY LAWS AMENDMENT BILL 2025: EMPLOYEE ONBOARDING  
REFORMS

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EXPOSURE DRAFT EXPLANATORY MATERIALS



## **Consultation preamble**

Treasury seeks feedback on the effectiveness of this exposure draft explanatory material in explaining the policy context and operation of the proposed new law, including, but not limited to:

- how the new law is intended to operate;
- whether the background and policy context is sufficiently comprehensive to support understanding of the policy intent and outcomes of the new law;
- the use of relevant examples, illustrations or diagrams as explanatory aids; and
- any other matters affecting the readability or presentation of the explanatory material.

Feedback on these matters will assist to ensure the Explanatory Memoranda for the Bill aids the Parliament's consideration of the proposed new law and the needs of other users.

Treasury and the ATO work closely to identify aspects of new tax laws which may benefit from ATO public advice and guidance (PAG). Feedback is also sought on any aspects of the new law where ATO PAG should be considered, to support stakeholders' understanding and application of the new law. Stakeholder feedback on this question will be shared with the ATO.

Note that a statement of compatibility with human rights and a statement of compatibility with the objective of superannuation will be included in the Explanatory Memorandum when the Bill is introduced into Parliament.



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# Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

<b>Abbreviation</b>	<b>Definition</b>
ATO	Australian Taxation Office
Commissioner	Commissioner of Taxation
DBS	defined benefit superannuation
QE day	Qualifying earnings day
GIC	General Interest Charge
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
OTE	Ordinary Time Earnings
RSA	Retirement Savings Account
SG	Superannuation guarantee
SGA Act	<i>Superannuation Guarantee (Administration) Act 1992</i>
SGC Act	<i>Superannuation Guarantee Charge Act 1992</i>
TAA 1953	<i>Taxation Administration Act 1953</i>





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# **Chapter 1: Superannuation Guarantee reforms to address unpaid superannuation**

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## Outline of chapter

- 1.1 The Superannuation Guarantee Charge Amendment Bill 2025 and the Treasury Laws Amendment Bill 2025: SG reforms to address unpaid super ('the SG Bills') amend the SGC Act and the SGA Act to align the payment of eligible contributions to employees with the day on which they are paid qualifying earnings.
- 1.2 This Bill implements the Government's policy commitment for SG contributions to be paid at the same time as an employee's salary or wages. This will address the issue of unpaid superannuation and secure dignified retirement outcomes for working Australians.
- 1.3 The amendments accomplish this by:
  - determining whether employers have any SG shortfalls, and the amount, by reference to whether contributions have been received by the superannuation fund within a specified period (usually 7 days) from the day on which their employees are paid qualifying earnings (the relevant QE day), rather than on a quarterly basis;
  - updating the calculation of the corresponding SG charge;
  - making employer disclosures of any SG shortfall amounts voluntary, before the Commissioner issues a Notice of Assessment;
  - imposing a late payment penalty when the SG charge remains outstanding after a specified period of time;
  - updating the imposition of the choice loading component of the SG charge where the employer fails to comply with the choice of fund requirements;
  - other amendments to the administration (including payment and apportionment of the SG charge) to facilitate the change above; and
  - removing references to 'approved clearing houses'.

## Context of amendments

- 1.4 The superannuation system is one of the core pillars of Australia's retirement income system, with the total pool of superannuation assets valued at over \$4.1 trillion as at September 2024. 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.
- 1.5 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' OTE within legislated timeframes.
- 1.6 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.
- 1.7 This reform will strengthen Australia's superannuation system and help ensure that SG is paid on time and in full and address unpaid superannuation, which totalled nearly \$5.2 billion in 2021-22 alone.
- 1.8 Employees will benefit from higher retirement savings from more frequent and earlier superannuation contributions throughout their working life. It will also improve the ATO's ability to identify employers not making contributions earlier.
- 1.9 Employers will benefit from smoother payroll management and a simpler calculation of the SG charge if contributions are missed or late. Smaller, more frequent payments (and earlier intervention) will help prevent a build-up of large liabilities for employers.
- 1.10 Where eligible contributions are not made and the assessed SG charge remains outstanding, it has significant impacts on retirement outcomes, potentially delaying retirement, reducing the retirement savings of individuals due to the loss of compounding returns in the fund and resulting in a loss of insurance coverage for some members. Additionally, employers who consistently avoid paying the full amount of contributions or the SG charge on time, have an unfair advantage over employers who do.
- 1.11 A recalibrated calculation of the SG charge will better ensure employees are accurately compensated for lost earnings if their contributions are delayed. It will prompt employers to immediately rectify any late or missed payments and deliver more significant consequences and penalties for ongoing and repeated non-payment of the SG charge.
- 1.12 This reform is consistent with the objective of superannuation to preserve savings to deliver income for a dignified retirement, alongside government

support, in an equitable and sustainable way. By addressing the issue of unpaid SG, the reform takes key positive steps to improve the level of preserved savings and secure retirement outcomes.

## Comparison of key features of new law and current law

**Table 1.1 Comparison of new law and current law**

<b>New law</b>	<b>Current law</b>
<b>Accrual and calculation of SG shortfalls</b>	
A tax, the SG charge, is imposed on employers if they have an SG shortfall for the relevant QE day. This will be the case if they have one or more individual base SG shortfalls, or one or more choice loadings, for the QE day.	A tax, the SG charge, is imposed on employers if they have an SG shortfall for the quarter. This will be the case if they have one or more individual SG shortfalls for the quarter.
<p>Eligible contributions made on-time (generally within 7 days after the QE day) reduce the individual base SG shortfalls for a QE day, including to nil.</p> <p>An eligible contribution is made when it is received by the relevant superannuation fund (other than a DBS scheme) and able to be allocated to the relevant employee's account.</p>	On-time SG contributions (within 28 days after the end of the relevant quarter) reduce the charge percentage amount (including to nil), with which the employer's individual SG shortfalls are calculated.
<p>Employers have an individual SG amount for an employee in relation to the relevant QE day for that employee.</p> <p>The employer's individual <i>base</i> SG shortfall is then calculated as the individual SG amount minus any on-time eligible contributions.</p> <p>In practice, prior to the employer making any eligible in-time contributions that can be applied to the relevant QE day, the individual SG amount for an employee and the individual <i>base</i> SG amount for the employer are the same amount when qualifying earnings are paid.</p>	Employers have an individual SG shortfall for an employee for a quarter (a period of 3 months beginning on 1 January, 1 April, 1 July, or 1 October), which can be reduced by making SG contributions to that employee's superannuation fund.
Eligible contributions that are not on time but made prior to an SG charge assessment will be applied to calculate the individual	Employers can elect to have late SG contributions (other than a sacrificed contribution) offset the nominal interest component for that quarter, and any

*Superannuation Guarantee reforms to address unpaid superannuation*

<b>New law</b>	<b>Current law</b>
<p><i>final</i> SG shortfall amount for the relevant employee.</p>	<p>remaining amount can be used to offset the individual SG shortfall for that employee for that quarter.</p>
<p>Eligible contributions are automatically applied to the earliest QE day that they can be applied to.</p> <p>Any eligible contributions in surplus of the individual <i>base</i> SG shortfall for a QE day will be attributed (“carried forward”) to the next QE day that has an individual <i>base</i> SG amount not yet covered by other contributions. This roll over will occur regardless of whether the contribution is on time. Contributions may be “carried forward” up to 12 months after the day they are made.</p>	<p>SG contributions made in a quarter may be treated as if they had been made during a future quarter up to 12 months after the beginning of the quarter in which the contribution is made (typically referred to as a “carry forward”).</p>
<p>The maximum contributions base limits the amount of qualifying earnings for a year for which an employer can have an individual superannuation guarantee amount. The maximum contributions base is calculated as the concessional contributions cap, multiplied by 100, and divided by the charge percentage.</p> <p>The charge percent is expressed as the whole number, without being a percentage or decimal.</p>	<p>The maximum contribution base limits the amount of OTE for which an employer will have an SG shortfall. It is worked out quarterly, and is the lower of:</p> <ol style="list-style-type: none"> <li>1) the previous maximum contribution base for a quarter in the previous year multiplied by an indexation factor, and</li> <li>2) one quarter of the charge percentage, divided by 100, multiplied by the concessional contributions cap.</li> </ol>
<b>Calculating SG charge</b>	
<p>Employers’ total SG shortfall for the relevant QE day comprises:</p> <ul style="list-style-type: none"> <li>• the total of their individual <i>final</i> SG shortfalls for the QE day;</li> <li>• the sum of all individual notional earnings components for the QE day;</li> <li>• any administrative uplift amount for the QE day; and</li> <li>• the total of the employer’s choice loadings for the QE day (if any).</li> </ul>	<p>Employers’ total SG shortfall for the relevant quarter comprises:</p> <ul style="list-style-type: none"> <li>• the total of their individual SG shortfalls for the quarter;</li> <li>• the sum of all nominal interest for the quarter; and</li> <li>• any administration component for the quarter.</li> </ul>
<p>The individual notional earnings component for an employee is calculated by applying the general interest charge rate</p>	<p>Nominal interest component of the SG shortfall amount is calculated by applying the interest rate prescribed by the</p>

<b>New law</b>	<b>Current law</b>
<p>to the individual <i>base</i> SG shortfall, on a daily compounding basis until the day a late eligible contribution is made that reduces the relevant individual <i>final</i> SG shortfall for the employee to nil, or otherwise until the day an SG charge assessment is made.</p>	<p>regulations, to the total individual SG shortfalls for the quarter, from the beginning of the quarter until the date on which the SG charge imposed would be payable.</p>
<p>Employers have an initial administrative uplift amount of 60 per cent of the sum of their individual <i>final</i> SG shortfalls and individual notional earnings components for an QE day.</p> <p>The regulations will set out any reduction of this amount (including to, but not below, nil) that is available to an employer.</p>	<p>The administration component of the SG shortfall amount is calculated by multiplying \$20.00 by the number of employees in respect of whom employers have an individual SG shortfall for that quarter.</p>
<p>When an amount of SG charge is unpaid 28 days after becoming payable, the Commissioner is required to give the employer a written notice to pay the outstanding amount.</p> <p>The employer will become liable to pay a penalty if they do not pay the amount in the notice within 28 days of the notice being issued.</p> <p>The penalty is equal to 25% of the outstanding amount, or 50% of the outstanding amount if the employer has previously been liable for the penalty in the prior 24 months.</p> <p>The penalty cannot be remitted and does not accrue a general interest charge.</p>	<p>Employers may face additional SG charge (the “Part 7 penalty”) if they fail to lodge an SG statement or supply information relevant to assessing their SG charge liability by the end-of-quarter due date.</p> <p>The additional SG charge can be up to 200% of the amount payable and can be remitted by the Commissioner.</p>
<b>Administration</b>	
<p>Employers with an SG shortfall for a QE day may lodge a voluntary disclosure statement before the day an assessment is issued by the Commissioner for the QE day. While lodging an SG statement is no longer mandatory, lodging a complete and accurate voluntary disclosure statement before SG charge is assessed may reduce the administrative uplift component of the SG shortfall for that QE day.</p>	<p>Employers with an SG shortfall for a quarter must lodge an SG Statement on or before the 28<sup>th</sup> day of the second month of the next quarter.</p> <p>An employer who fails to do this is liable, by way of penalty, to additional SG charge.</p>

<b>New law</b>	<b>Current law</b>
<p>The Commissioner may assess an employers' SG shortfall for a specified QE day.</p> <p>The Commissioner may make this assessment:</p> <ul style="list-style-type: none"> <li>• if the employer has lodged a voluntary disclosure statement for the QE day; or</li> <li>• on their own initiative.</li> </ul> <p>The SG charge is payable on the day the assessment is made.</p>	<p>The lodgement of an SG Statement is taken to be an assessment of the employers' SG shortfall amount for that quarter.</p> <p>If an employer has not lodged an SG Statement for a quarter, and the Commissioner is of the opinion that they are liable to pay SG charge for that quarter, the Commissioner may make a default assessment.</p>

## Detailed explanation of new law

**Table 1.2 Summary of Introduced Terms**

<b>New Term</b>	<b>Definition</b>	<b>Section</b>
Qualifying earnings	<p>Qualifying earnings are the amount of earnings an employee is paid on which individual SG amounts are calculated. The provisions are being streamlined but qualifying earnings uses the existing earnings base for contributions under the current law (currently called the 'OTE base').</p> <p>This consists of:</p> <ul style="list-style-type: none"> <li>• OTE as it was defined and calculated under the current SG framework. This Bill does not change the substance of the provisions that define the scope of OTE. Importantly, this amount is calculated the same way as it was under the current SG framework for most employees;</li> <li>• Amounts of OTE that have been sacrificed in exchange for an additional superannuation contribution under a salary sacrifice arrangement; and</li> <li>• Payments that were expressly included within 'salary or wages' under the existing law for arrangements that fell</li> </ul>	10A

<b>New Term</b>	<b>Definition</b>	<b>Section</b>
	<p>within the extended meaning of employee for the SGA Act.</p> <p>Similarly, qualifying earnings excludes certain payments that are currently excluded from OTE and/or ‘salary or wages’ under the current law. The amounts excluded remain the same, and the Bill moves these into the regulations to consolidate all exclusions into the one place.</p>	
QE day	The day on which the employer makes a payment of qualifying earnings to or for the employee.	17A
Individual SG amount	<p>Qualifying earnings multiplied by the charge percentage (12%).</p> <p>A reduction in the amount of qualifying earnings can occur where an employee’s earnings reach the maximum contributions base.</p>	17A
Individual <i>base</i> SG shortfall	<p>The individual <i>base</i> SG shortfall is used to recognise any on-time contributions an employer made and reflects the amount by which these are less than the individual SG amount.</p> <p>A lower individual <i>base</i> SG shortfall creates a lower individual <i>final</i> SG shortfall, which in turn leads to a lower SG shortfall.</p> <p>The individual <i>base</i> SG shortfall is also used to calculate notional earnings. This means notional earnings are calculated on the amount of SG that was not paid on time.</p>	18C
Individual <i>final</i> SG shortfall	<p>The individual <i>final</i> SG shortfall is used to determine the individual SG shortfall component of the SG charge.</p> <p>It is calculated as the individual <i>base</i> SG shortfall minus any additional late period contributions (that is, contributions made after the 7<sup>th</sup> day of qualifying earnings being paid but before the Commissioner makes an SG assessment for that QE day).</p> <p>In practice, it is a measure of how much of the original individual SG amount remains outstanding at the time an assessment is made after applying all on-time and late contributions.</p>	18D
SG shortfall	An employer has an SG shortfall for a QE day if they have one or more individual <i>base</i> shortfalls	16B

<b>New Term</b>	<b>Definition</b>	<b>Section</b>
	<p>for an QE day that are greater than nil, or one or more choice loadings for that day.</p> <p>The SG shortfall for the QE day is equal to the sum of the:</p> <ul style="list-style-type: none"> <li>- total individual <i>final</i> SG shortfalls,</li> <li>- total of the employer’s individual notional earnings components,</li> <li>- employer’s administrative uplift amount</li> <li>- total of the employer’s choice loadings</li> </ul> <p>If an employer has an individual <i>base</i> SG shortfall greater than nil, it means they made no contribution or contributions less than the individual SG amount that arose when they paid QE.</p>	
SG charge	SG charge imposed on an employer’s SG shortfall for a QE day	16A

- 1.13 In addition to the introduction of key terms discussed at *Table 1.2 Summary of Introduced Terms* above the Bill also repeals and introduces several definitions into the SGA Act that reflect the new framework.  
*[Schedule #, items 2-25, subsection 6(1) of the SGA Act]*

## Liability for SG Charge

- 1.14 The Treasury Laws Amendment Bill 2025: SG reforms to address unpaid super Bill amends the SGA Act so that an employer has an individual SG amount for an employee if they make a payment of qualifying earnings (including an entitlement that is reduced in exchange for a superannuation contribution made as part of a salary sacrifice arrangement) to or for that employee on a particular day (by or on behalf of the employer). The day the qualifying earnings are paid to an employee is a ‘QE day’.
- 1.15 Under this amended framework, the individual SG amount for each employee is calculated by multiplying the total amount of qualifying earnings paid to the employee, whether in one or more payments, on the QE day, by the charge percentage divided by 100. The charge percentage is 12, which is the charge percentage that applies under the existing law in the SGA Act on and after 1 July 2025. Dividing this amount by 100 ensures the formula produces the accurate individual SG amount.  
*[Schedule #, item 37, sections 17 and 17A of the SGA Act]*



- 1.16 An employer will be liable for the SG charge if they have a SG shortfall due to the following:
- they do not make ‘on time’ eligible contributions equal to or in surplus of all individual SG amounts (and so have an individual *base* SG shortfall greater than nil) for the relevant QE day; and/or
  - they fail to comply with the choice of fund requirements (this is further discussed below).
- 1.17 The SG Bills also amend the SGC Act and the SGA Act to impose a charge on any SG shortfall of an employer for a QE day.  
***[Item 1, sections 5 and 6 of the SGC Act and schedule #, item 37, sections 16, 16A, 16B of the SGA Act]***

## Qualifying Earnings

- 1.18 Currently, the SGA Act uses two distinct ‘earnings bases’ in its calculations: OTE is used to determine any contributions that an employer needs to make to reduce their charge percentage to nil, while ‘salary or wages’ is used to calculate their individual SG shortfalls if they do not reduce their charge percentage to nil. In practice, this means employers needed to contribute 12% of OTE if they made contributions for the employee ‘on time,’ but needed to pay 12% of ‘salary or wages’ if they pay the SG charge. These different earnings bases could result in different amounts.
- 1.19 Under this amended framework, the use of ‘salary or wages’ in the calculation of SG charge is removed; the earnings base is aligned to OTE for both calculating contributions and calculating the amount of SG charge if an employer has an SG shortfall. Importantly, this amount is calculated the same way it is under the current SG framework (besides adjustments to the ‘maximum contributions base’ which are discussed below), and so the overall earnings base for determining how much an employer needs to contribute to avoid liability for the SG charge is not changing.
- 1.20 Under the amended framework, the underlying meaning of OTE remains the same. This is intended to preserve the current approach for reporting via Single Touch Payroll for most employees. The only change to the legislative definition of OTE is for employees who exceed the maximum contributions base, discussed further below. OTE still consists of the employee’s total earnings in respect of ordinary hours of work and earnings consisting of over-award payments, shift-loading, or commission. The following lump sum payments made to the employee on the termination of their employment are still excluded from OTE:
- a payment in lieu of unused sick leave; and
  - an unused leave payment or unused long service leave payment within the meaning of the ITAA 1997.

- 1.21 As the definition of the earnings that makes up OTE remains unchanged under this amended SG framework, ‘earnings in respect of ordinary hours of work’ and ‘earnings consisting of over-award payments, shift-loading or commission’ are to be calculated as they are under the current SG framework.  
*[Schedule #, items 14 and 31, subsection 6(1), subsection 10A(1) of the SGA Act]*
- 1.22 The current law also contains various modifications that include, exclude or adjust the amounts upon which SG charge is calculated. To preserve their effect, these amendments introduce the new term ‘qualifying earnings,’ which is utilised to calculate an employers’ individual SG amount(s). Qualifying earnings are made up of OTE, as it is defined under the current SG framework, and various adjustments which are contained in separate provisions.
- 1.23 In the amended framework, the term ‘salary or wages’, as defined under the current SG framework, will be removed. However, payments that are specifically included in, or excluded from, ‘salary or wages’ under the current law will remain. This includes, for example, certain payments to workers who satisfy the ‘extended meaning’ of employee for the SGA Act. These inclusions and exclusions, as they are under the current SG framework, are retained for the purposes of determining employers’ individual SG amounts. This change is intended to reduce complexity in the administration of the SG framework, whilst ensuring that the treatment of earnings or payments that are currently carved-in or out remains the same.
- 1.24 The exclusions under the current SG framework are found in both legislation and regulations. These will all continue to apply under the amended SG framework and will all be consolidated in the regulations to improve readability of the legislation. It is appropriate that the exclusions are set out in regulations as they are technical and specific exclusions to the general law.  
*[Schedule #, item 31, subsections 10A(1) and (2) of the SGA Act]*
- 1.25 The day on which the employer pays qualifying earnings to or for an employee is the QE day, for the purposes of determining when the employer has an individual SG amount and to subsequently calculate the employer’s SG shortfall for that QE day (if any).  
*[Schedule #, item 37, subsection 17A(1) of the SGA Act]*

## **Salary Sacrifice Arrangements**

- 1.26 The Bill does not make significant changes to the operation of salary sacrifice arrangements. The definition of a salary sacrifice arrangement remains the same, but has been included in the definition of qualifying earnings. Sacrificed contributions continue to be excluded from eligible contributions that can reduce an employer’s individual SG amount (this reduced amount is the individual base SG shortfall). Sacrificed QE also continue to be included in the calculation of an employer’s individual base SG shortfall – the sacrificed QE

amount.

*[Schedule #, items 20 and 21, subsection 6(1) of the SGA Act]*

- 1.27 These integrity measures are retained to continue ensuring that salary sacrifice arrangements do not result in employees receiving less than their entitled SG contribution for each QE day.
- 1.28 However, any amount that initially constituted as sacrificed QE that is ultimately paid back to the employee, as part of a reversal of the salary sacrifice arrangement, is excluded from QE in relation to the calculation of that employee's next individual base SG shortfall. This prevents double counting this amount in relation to the next QE day.

*[Schedule #, item 31, paragraph 10A(1)(h) of the SGA Act]*

### **Maximum Contributions Base**

- 1.29 The maximum contributions base will continue to act as a ceiling on the maximum amount of the contributions payable by an employer for an employee. Rather than imposing a limit on the maximum contribution for a quarter, under the new regime, the maximum contributions base will now apply on an annual basis.
- 1.30 The maximum contributions base is calculated by using the following formula (rounded down to the nearest 10 dollar multiple):

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

- 1.31 The charge percentage is 12, and the concessional contributions cap is the basic concessional contributions cap (within the meaning of the ITAA 1997) for the financial year in which the payment is made.  
*[Schedule #, item 31 subsection 10A(4) of the SGA Act]*
- 1.32 If during a financial year an employer's payment of qualifying earnings to or for an employee exceeds the maximum contributions base, any subsequent payment of qualifying earnings by that employer in that financial year is treated as equal to nil for the purpose of calculating the individual SG shortfall amount.  
*[Schedule #, item 31, subsection 10A(5) of the SGA Act]*
- 1.33 If a payment of qualifying earnings is made to an employee that would exceed the maximum contributions base, the amount of that qualifying earnings payment that would not cause the maximum contributions base to be exceeded is included in the calculation of the individual SG amount. As noted above, any amount beyond that, or any future qualifying earnings payment in that financial year, is deemed to be nil for the purpose of the individual SG amount. .  
*[Schedule #, item 31, paragraphs 10A(5)(c) and 10A(5)(d) of the SGA Act]*

- 1.34 The maximum contributions base allows each employer to reduce the superannuation guarantee amount referable to a payment of qualifying earnings if an employee's qualifying earnings exceeds the maximum contributions base on an annual basis (rather than a quarterly). This reflects that the SG charge is now tied to individual payments of qualifying earnings throughout the year, rather than to salary and wages paid during fixed quarters.

## **Applying for and Issuing Exemption Certificates**

- 1.35 The Bill simplifies the shortfall exemption certificate provisions, while broadly maintaining its current operation. If a shortfall exemption certificate is in force for an employee, the employee is treated as having already reached the maximum contributions base in relation to qualifying earnings from the specified employer.

*[Schedule #, item 37, section 17B of the SGA Act]*

- 1.36 The Commissioner may issue an employer shortfall certificate, on application by an employee, for a specified employer of the applicant and for a specified period, which ceases at the end of a financial year.

*[Schedule #, item 37, subsection 17C(1) of the SGA Act]*

- 1.37 To issue the certificate, the Commissioner must be satisfied that the following conditions are met:

- if the certificate is not issued, the applicant is likely to have excess concessional contributions for the financial year (whether or not issuing the certificate would prevent that result);
- if the certificate is issued, at least one other employer of the applicant is likely to have an individual SG amount for the applicant and an QE day that is greater than nil; and
- it is appropriate in the circumstances to issue the certificate.

*[Schedule #, item 37 subsection 17C(2) of the SGA Act]*

- 1.38 Prior to issuing a shortfall exemption certificate, the Commissioner must have regard to the following matters:

- whether any other shortfall exemption certificate has been issued, or is proposed to be issued to the application for the same period;
- the effect that issuing the certificate is likely to have on the applicant's concessional contributions for the financial year; and
- any other matters that the Commissioner considers relevant.

- 1.39 The sort of matters that the Commissioner may have regard to in determining whether it is appropriate in the circumstances, were set out in the Explanatory Memorandum to the Treasury Laws Amendment (2018 Superannuation Measures No. 1) Bill 2019, which introduced the exemption certificate provisions into the SGA Act. These factors may include whether a certificate

would result in contributions being reduced by a substantially larger amount than necessary; or whether the individual has engaged in behaviour that artificially enables them to apply for a certificate.].

***[Schedule #, item 37, subsections 17C(2) and 17C(3) of the SGA Act]***

1.40 The shortfall exemption certificate application requirements remain consistent with the current framework, with the references to quarter updated to period. The requirements are that the application:

- must be in the approved form; and
- must specify the employer, period and financial year to be specified in the certificate; and
- must be made at least 60 days before the first day of the period.

***[Schedule #, item 37 subsection 17C(4) of the SGA Act]***

1.41 A person may object against the decision of the Commissioner to issue, or not issue, an employer shortfall exemption certificate in the manner set out in Part IVC of the TAA.

***[Schedule #, item 37, subsection 17C(5) of the SGA Act]***

1.42 The Commissioner may not vary or revoke an employer shortfall exemption certificate.

***[Schedule #, item 37, subsection 17C(6) of the SGA Act]***

1.43 An employer shortfall exemption certificate is not a legislative instrument. This certificate is declaratory and is covered by item 19 of the table in section 6 of the *Legislation (Exemptions and Other Matters) Regulations 2015*.

***[Schedule #, item 37, subsection 17C(7) of the SGA Act]***

## The SG Shortfall

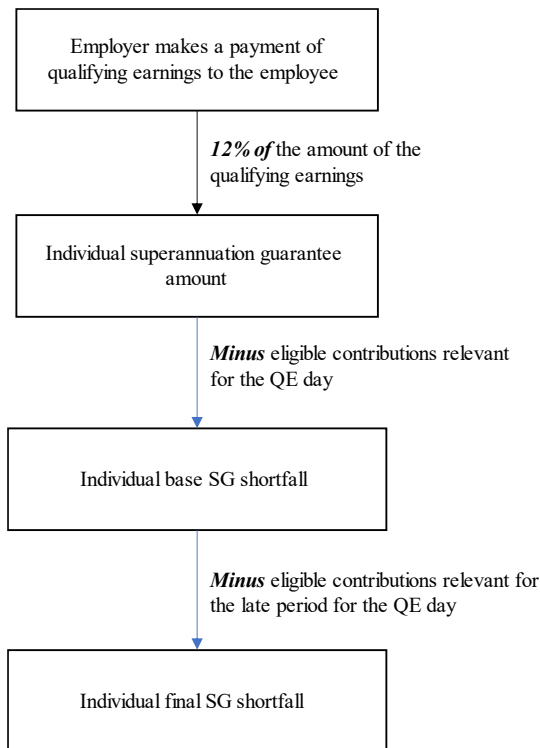
1.44 An employer has an SG shortfall for a QE day if they have one or more individual *base* SG shortfalls for that QE day, or if they have choice loadings greater than nil for that QE day.

1.45 Choice loading is an additional amount imposed on employers if they do not comply with choice of fund requirements (discussed below).

***[Schedule #, item 37, section 16B of the SGA Act]***

## Individual *base* SG shortfalls and individual *final* SG shortfalls

1.46 The first component of the employer's SG shortfall is the sum of any individual *final* SG shortfalls they have for any employees for the relevant QE day. In effect, the individual *final* SG shortfall reflects any portion of the individual SG amount for that employee that remains unpaid after applying all eligible contributions. The below diagram illustrates the calculation sequence used to determine an individual *final* SG shortfall:



## Eligible Contributions

1.47 Employers can reduce their individual base and final SG shortfalls (including to nil), by making one or more eligible contributions, which are:

- a contribution (other than a contribution made as part of a salary sacrifice arrangement) for the benefit of the employee to a complying superannuation fund (other than a DBS scheme) or to an RSA, as defined in the *Retirement Savings Accounts Act 1997*; and
- able to be allocated to that employee’s account within the fund or RSA – the superannuation fund or RSA must be able identify the member or RSA holder the contribution relates to in order to be able to allocate the contribution to an active account of the employee within the fund or RSA; or
- a contribution that is notionally paid to a DBS scheme for the benefit of the employee, in accordance with a benefit certificate.

***[Schedule #, item 37, section 18A of the SGA Act]***

1.48 If the employer makes one or more contributions the sum of which are equal to or in surplus of the individual SG amount for an employee for a particular QE day before the end of the 7<sup>th</sup> day after the QE day, the employer will have a nil individual *base* SG shortfall for that employee. They will not be liable for SG charge for that employee and that QE day (provided the employer has

complied with choice of fund requirements). The period for making eligible contributions can be extended in certain circumstances (discussed below).

- 1.49 If an employer does not make one or more contributions the sum of which are equal to or in surplus of the individual SG amount before the end of the 7<sup>th</sup> day after the QE day, they will have an individual *base* SG shortfall in respect of that employee and QE day. The employer will be liable for the SG charge. However, the employer can reduce their individual *final* SG shortfall (and the amount of SG charge) by making eligible contributions during the late period for the QE day (that is, from the 8<sup>th</sup> day after the QE day until the Commissioner makes an assessment for that QE day).

### **‘On-Time’ Contributions Relevant for the QE Day**

- 1.50 As noted above, eligible contributions made on-time for the benefit of an employee are recognised in the calculation for the individual *base* SG shortfall in relation to that employee for that QE day (being the current QE day). These are contributions that have been made (i.e., received, and able to be allocated to the member’s account, by the superannuation fund) before the end of the 7<sup>th</sup> day after the payment of qualifying earnings. This is distinct from eligible contributions received during the late period for the QE day, which are used to calculate the individual *final* SG shortfall (discussed below).

***[Schedule #, item 37, sections 18A and 18C of the SGA Act]***

- 1.51 For an eligible contribution to be relevant for the current QE day for a particular employee, it cannot have been applied to a previous QE day, nor can it have been applied during the late period for another QE day for that employee.

***[Schedule #, item 37, paragraph 18C(1)(a) of the SGA Act]***

- 1.52 The eligible contributions made for the benefit of an employee outlined above are applied to reduce the individual *base* SG shortfall for that employee in the order that they are received by the employee’s fund, scheme or RSA.

***[Schedule #, item 37, paragraph 18C(1)(b) of the SGA Act]***

### ***Usual period***

- 1.53 A contribution is only taken to be made when it is received, and able to be allocated to the member’s account, by a superannuation fund or RSA. Generally, to reduce an individual *base* SG shortfall for an employee in relation to the current QE day (and therefore the employer’s SG shortfall itself), employers must make eligible contributions so that the employee’s fund or RSA receives an eligible contribution for the benefit of that employee before the end of the 7<sup>th</sup> calendar day after the current QE day. Contributions received during this time are described as being made during the ‘usual period’.

***[Schedule #, items 24 and 37, subsection 6(1) and subparagraph 18C(1)(c)(ii) of the SGA Act]***

- 1.54 This time period allows for the movement of funds between the payment network when a contribution is made, while maintaining the expectation that an employer initiates a contribution on the same day as the payment of qualifying earnings to ensure the timeframe is met.

#### *Contributions made prior to the QE day*

- 1.55 Eligible contributions made within 12 months before the current QE day can also be applied to the individual *base* SG shortfall for the current QE day, providing the contribution has not been attributed to any other QE day. For example, if an employer makes an eligible contribution for a previous QE day that is greater than the individual SG amount for that employee and that previous QE day (with the individual *base* SG shortfall for the previous QE day already reduced to nil), the unapplied amount of that contribution will carry forward to reduce the individual *base* SG shortfall for the current QE day. The 12-month timeframe is in line with the current carry forward rules. **[Schedule #, item 37, subparagraph 18C(1)(c)(i) of the SGA Act]**

#### *New Employees*

- 1.56 Employers will have additional time to make SG contributions for QE days where it is the first time an employee is paid qualifying earnings by that employer. This is to accommodate the additional time it may take to onboard new employees and obtain the details of the superannuation fund to which contributions need to be made. If the current QE day is the first time an employee was paid qualifying earnings by that employer, an eligible contribution will be applied to reduce the individual *base* SG shortfall for the current QE day if it is made before the end of the 21<sup>st</sup> calendar day after that QE day. Employers therefore have an additional 14 calendar days to make eligible contributions for new employees.
- 1.57 If an employer's pay cycle means that the next QE day for a new employee occurs less than 14 days after the employee's first QE day, the employer must make the eligible contribution for that employee before the end of 21 days after the first QE day. For QE days occurring 14 days or more after the first QE day, the usual period of 7 days will apply, since this will be after the 21 days that applies to the first QE day. This time-period ensures that employers have a standard period of 21 days from the first QE day to make eligible contributions for new employees for any QE days occurring in that initial 14 days after the first QE day, regardless of the frequency or design of their pay cycle. **[Schedule #, item 37, subparagraphs 18C(1)(c)(iii) and (iv) of the SGA Act]**

#### *Out-of-cycle payments*

- 1.58 An extended period to make eligible contributions also applies for out-of-cycle qualifying earnings, which may include commissions, bonuses, payments in advance, and back payments. The Commissioner may, by legislative instrument, determine the kinds of payments to employees that constitute an



out-of-cycle payment and the requirements that must be met for a particular payment to be treated as an out-of-cycle payment. If the current QE day relates to a payment that the Commissioner has determined to be out-of-cycle, the employer has until the end of the usual period for the next QE day for which the employee is paid qualifying earnings that are not out-of-cycle.

- 1.59 This extension ensures that employers can maintain a regular schedule of SG contributions based on their usual pay cycle, without needing to make small ad-hoc SG contributions due to out-of-cycle payments.
- 1.60 The ability for the Commissioner to determine that certain payments are out-of-cycle ensures that the SG framework remains up to date as different forms of employee remuneration develop over time.  
***[Schedule #, item 37, subparagraph 18C(1)(c)(v) and subsection 18C(2) of the SGA Act]***

#### *Exceptional circumstances*

- 1.61 Another extended period to make eligible contributions applies for qualifying earnings made in a period covered by an exceptional circumstances determination. These are circumstances that may impact the ability of a class of employers to make SG contributions on time, for example, natural disasters or widespread ICT or communications outages. In these circumstances the Commissioner can make a determination that a class of employers are affected by exceptional circumstances of a kind that are prescribed by the regulations, as well as the period during which any QE days by those employers are affected by such circumstances.
- 1.62 Where the usual period for a QE day is in the time period specified in the determination, the usual period will be extended to be the later of the 21 days from the day after the determination is made and 21 days starting on the day after the QE day.
- 1.63 In practice this means where an employer within the class of employers covered by a determination has paid qualifying earnings before the determination and is still in the usual period for the QE day, they will have a further 21 days to make an eligible contribution and reduce their individual base SG shortfalls for that QE day. Where the employer within that class pays qualifying earnings during the period of time specified in the determination, they will have 21 days from the QE day to make an eligible contribution.  
***[Schedule #, item 37, subparagraph 18C(1)(c)(vi) and subsection 18C(3) of the SGA Act]***

#### *Extension when contribution is not accepted by stapled fund identified in Commissioner's notification*

- 1.64 An extended period to make eligible contributions applies when an employer makes a contribution to a stapled fund in reliance on a notification by the Commissioner, and that superannuation fund does not accept the contribution. The employer will have 42 days from the QE day to make a replacement

eligible contribution to an appropriate superannuation fund for that employee. This extension recognises that under these circumstances, employers will require additional time to obtain details of the appropriate superannuation fund to make the SG contributions.

***[Schedule #, item 37, subparagraph 18C(1)(c)(vii) of the SGA Act]***

#### *Extension when default fund consecutively fails the performance test*

- 1.65 The Bill also maintains the existing extended period to make eligible contributions as a result of section 60F of the *Superannuation Industry (Supervision) Act 1993* (a determination by the Australian Prudential Regulation Authority requiring trustees to ensure a particular product has no new beneficiaries after that product has failed two annual assessments). However, the Bill updates the extended period to 42 days after the QE day.
- 1.66 This generally applies where an employer's default fund has failed the performance test twice and cannot accept a new member. The 42-day timeframe will allow for a second 21-day period in addition to the standard 21-day period for new employees, for employers to re-offer choice of fund and make a replacement contribution for the new employee.

***[Schedule #, item 37, subparagraph 18C(1)(c)(viii) of the SGA Act]***

#### **Late Period Contributions for the QE Day**

- 1.67 Employers can continue to make eligible contributions to their employees' superannuation funds to reduce their SG shortfall after the usual period for the QE day, but before they have been assessed by the Commissioner for SG charge. Eligible contributions made during this period are contributions made during the 'late period' for the QE day.
- 1.68 Eligible contributions made during the late period reduce an employer's SG shortfall by the same amount as eligible contributions made during the usual period. However, the notional earnings component of the SG shortfall will continue to accrue until the individual final SG shortfall amount is reduced to nil by eligible contributions made during the late period, or when the Commissioner makes an assessment.
- 1.69 Currently, an employer can elect a late contribution be offset against the employer's SG shortfall. In the revised SG framework, there is no such requirement. Instead, eligible contributions made during the 'late period' for the QE day will be applied automatically to reduce the SG shortfall in the calculation of the individual *final* SG shortfall. This reduces any ambiguity around the period a contribution should be attributed to and will reduce the administrative burden on employers.

***[Schedule #, item 37, subsections 18D(1) and (2) of the SGA Act]***

- 1.70 Employers are also incentivised to make eligible contributions on time to maximise the reduction of their SG shortfalls, as the individual notional earnings component of their SG shortfalls (on which the administrative uplift

component is partly calculated) is calculated using the individual *base* SG shortfall.

*[Schedule #, item 37, subsection 19A(2) of the SGA Act]*

- 1.71 The same eligible contribution cannot be used to reduce an employer's SG shortfall more than once. An eligible contribution made during the late period for the OTE day cannot be applied to reduce the employer's individual *final* SG shortfall if it has already been applied to reduce an individual *base* or *final* SG shortfall for that employee in relation to a previous QE day.

*[Schedule #, item 37, paragraph 18D(2)(a) of the SGA Act]*

The late period for a QE day is the period starting on the eighth day of that OTE day and ends on the day before the day the Commissioner makes an assessment of the employer's SG shortfall for that QE day.

*[Schedule #, item 12, subsection 6(1) of the SGA Act]*

### **Eligible contributions and defined benefit schemes**

- 1.72 The existing framework recognises that employers with employees that are members of a DBS scheme may not make contributions for each individual employee that neatly reflect the level of superannuation support the SG regime provides, as the employees' benefits in that scheme may be ascertained by different factors.
- 1.73 Instead, an employer obtains a benefit certificate for the members in that scheme. A benefit certificate attests to the level of superannuation contributions that the members' benefits are equivalent to – this is known as the notional employer contribution rate.
- 1.74 These arrangements are not intended to change in the amended framework; employers with employees who are members of DBS schemes will continue to obtain benefit certificates in order to reduce or eliminate their exposure to SG shortfalls.
- 1.75 To accomplish this, eligible contributions include a notional contribution, made by the employer for the benefit of the employee, that is deemed to have been received by the DBS scheme, on the QE day, where that employee is covered by a valid benefit certificate. This notional contribution is ascertained by multiplying the notional employer contribution rate by the amount of qualifying earnings for that QE day.

*[Schedule #, item 37, subsection 18A(3) of the SGA Act]*

### **Components of the SG Shortfall**

- 1.76 An employer has an SG shortfall if one or more individual *base* SG shortfalls for a QE day are greater than nil or one or more choice loadings for a QE day are greater than nil.

*[Schedule #, item 37, subsection 16B(1) of the SGA Act]*

- 1.77 If an employer has an SG shortfall for the QE day it comprises:
- the total of all of the employer’s individual final SG shortfalls for that QE day;
  - the total of the employer’s individual notional earnings components for that QE day;
  - the employer’s administrative uplift amount for that QE day; and
  - the total of the employer’s choice loadings for that QE day.
- [Schedule #, item 37, subsection 16B(2) of the SGA Act]*

### **Individual Notional Earnings Component**

- 1.78 The individual notional earnings component of the employer’s SG shortfall is similar to the nominal interest component of the current SG framework. To incentivise employers to make eligible contributions at the same time they pay qualifying earnings, individual notional earnings will begin to accrue when the employer has an individual *base* SG shortfall greater than nil for that QE day. The individual notional earnings will then compound at a daily rate during the late period for that QE day for each day the employer has an individual *final* SG shortfall greater than nil. This ensures that employees are compensated for the employer’s delay in paying their minimum SG contribution.
- 1.79 The individual notional earnings amount for each day during the late period for an employee is calculated by multiplying the individual base SG shortfall for that employee for the QE day by the general interest charge rate (as determined under section 8AAD of the TAA 1953). For each subsequent day during the late period, the general interest charge rate is then applied to the sum of the individual base SG shortfall for that employee and the notional earnings amount for that employee for that QE day in relation to previous days in the late period. Effectively, this calculation means that notional earnings will accrue until the day a late contribution finally ‘satisfies’ the original individual SG amount by reducing the individual final shortfall to nil.
- 1.80 Notional earnings, together with GIC imposed on the employee entitlement components of the SG charge, are intended to collectively provide a continuous and non-overlapping period of an interest-like payment, compensating an employee for lost earnings on an outstanding individual SG amount, covering the late period for the relevant QE day.
- 1.81 One of the key data points required to calculate the SG charge is the date that SG contributions are received by the employee’s fund. However, in many cases this data may not be readily available to the employer and the employer may instead provide the date that they paid the contribution if they make a voluntary disclosure statement. Accordingly, the law provides for a deemed date to be used for when the SG contribution is received, for the purposes of calculating the notional earnings component of the SG shortfall. This deemed

date will be seven days from the date the SG contribution is debited from an account owned by an employer.

*[Schedule #, item 37, sections 19A and 19B of the SGA Act]*

- 1.82 Because the nominal interest component is no longer a relevant term in the updated framework, consequential amendments have been made to remove references to the nominal interest component.

*[Schedule #, items 13 and 40, subsection 6(1) and former section 32 of the SGA Act]*

## **Administrative Uplift Amount**

- 1.83 Under the amended framework, the current administration component of the SG charge will be substituted with a scalable model intended to influence employers to take certain voluntary steps – the administrative uplift amount. The purpose of this component is to:

- recognise and recoup the cost to taxpayers of the Commissioner’s activity in investigating and assessing the SG charge; and
- incentivise prompt voluntary disclosure to minimise the above costs.

- 1.84 Employers are initially liable for an administrative uplift amount equal to 60% of the sum of the total of the employer’s individual *final* SG shortfalls and individual notional earnings for the QE day. This amount can be reduced (but not below nil) in accordance with regulations.

*[Schedule #, item 37, subsection 19C(1) and (2) of the SGA Act]*

- 1.85 The regulations may prescribe a method for reducing an employer’s administrative uplift amount for an QE day that relies on, one or both of the following, whether the Commissioner has previously made an assessment on the Commissioner’s own initiative and whether and when the employer lodges a voluntary disclosure statement under section 33 for the QE day and in the approved form.

*[Schedule #, item 37, subsection 19C(3) of the SGA Act]*

## **Choice Loading**

- 1.86 Currently under subsection 19(2A) of the SGA Act, where an employer makes one or more contributions to an RSA or complying superannuation fund (other than a DBS scheme) for the benefit of an employee, and the contribution is not made in compliance with the choice of fund requirements, this results in a choice loading that increases the amount of the employers’ individual superannuation guarantee shortfall in respect of that employee. A choice loading will continue to apply for non-compliance with the choice of fund requirements, with some adjustments to reflect the new SG framework. Under the new framework, the choice loading will be a separate component of the SG shortfall.

*[Schedule #, item 37, paragraph 16B(2)(d) of the SGA Act]*

- 1.87 The current 25 percent choice loading will continue to apply and will be calculated on the value of the eligible contributions for any QE day where the employer has not complied with the choice of fund provisions.  
*[Schedule #, item 37, section 20A of the SGA Act]*
- 1.88 The choice loading limit per notice period was originally set at \$500 in 2005 and has not been adjusted since. The choice loading limit is now increased to \$1,200 per notice period to reflect the increases in the SG rate since that time.  
*[Schedule #, item 37, section 20C of the SGA Act]*
- 1.89 Choice loading will not apply where an employer attempts to pay a contribution to a fund in accordance with information provided by the Commissioner that a fund is the employee's stapled fund, but the fund will not accept the contribution.  
*[Schedule #, item 37, section 20D of the SGA Act]*

### **Defined Benefit Schemes**

- 1.90 Where an employee is a member of an existing DBS scheme, they are unable to choose another fund. The existing settings that deal with the application of choice loading to these employees are retained.  
*[Schedule #, item 37, section 20B of the SGA Act]*
- 1.91 For employees that are a member of an existing DBS scheme, an employer, subject to the relevant criteria being met, is not subject to choice loading for a failure to comply with the choice of fund provisions. The criteria are as follows:
- the scheme is in surplus as certified by an actuary;
  - an actuary has also certified that the employer is not required to make contributions for a period including the QE day (and there has been such a certificate covering all times since 1 July 2005);
  - the employee has been a member of the defined benefit fund continuously since before 1 July 2005; and
  - the employee has accrued their maximum benefit, and any increases will be because of increases in the employee's salary or remuneration, or accruals of investment earnings or indexation, or in some other way prescribed by the regulations; and
  - the employees benefits would not be affected if the employer made contributions to a fund other than the DBS scheme.
- [Schedule #, item 37, subsections 20B(2),(3) and (4) of the SGA Act]*

## Payment of the shortfall component of the SG Charge for the Benefit of Employees

- 1.92 The SG Charge that is imposed on an employer's SG shortfall for a QE day is payable by an employer. The total individual final SG shortfalls, individual notional earnings and choice loading components of the SG charge are collected by the Commissioner and distributed for the benefit of the employee into their superannuation fund.
- 1.93 The amount of SG charge that comprises the administrative uplift component will be retained in consolidated revenue (like the current administration component).
- 1.94 GIC accrues on the whole unpaid SG charge and will be allocated so it follows the components of the SG charge. This means the amounts will be distributed to the employee or consolidated revenue.
- 1.95 The shortfall components that were referred to in subsection 64A(3) of the SGA Act have been amended to reflect the amounts that will make up the SG shortfall under the new framework. The 'employee entitlement' and 'total employee entitlement' amounts for an assessment will now be made up of:
- the total of the employer's individual *final* superannuation guarantee shortfall for the QE day specified in the assessment; and
  - the total of the employer's individual notional earnings for the QE day; and
  - the total of the employer's choice loading for the QE day; and
  - the amount of GIC that is payable in relation to these components.

The 'employee entitlement' and 'total employee entitlement' amounts are reduced by the amounts of any previous payments that relate to the relevant assessment, employer, and employee.

***[Schedule #, items 64 and 66, subsection 64A(3) and subsection 64B(4) of the SGA Act]***

- 1.96 The Bill amends the calculation for determining an employee's proportion of an amount (where there is more than one benefitting employee) to the following formula:

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

***[Schedule #, item 65, subsection 64B(3) of the SGA Act]***

- 1.97 The definition of charge payment has been amended to reflect that a payment of SG charge is made in relation to an assessment in relation to a QE day.  
*[Schedule #, item 62, subsection 63A(2), definition of charge payment, SGA Act]*

## Voluntary Disclosure Statements

- 1.98 Under the amended SG framework, employers are no longer required to lodge SG statements. Instead, employers can lodge a voluntary disclosure statement reporting that they have an SG shortfall. Employers can do this any time before the Commissioner makes an assessment of the SG shortfall for a QE day. A disclosure is only valid (and able to reduce the employer's SG shortfall) if the employer lodges it before the SG shortfall for the QE day is assessed by the Commissioner and it is in the approved form.  
*[Schedule #, item 50, section 33 of the SGA Act]*
- 1.99 Employers are incentivised to lodge a voluntary disclosure statement because it will reduce the administrative uplift amount of the SG shortfall. A voluntary disclosure that does not comply with the approved form (including because it is inaccurate or incomplete) will not be a valid disclosure and therefore will not reduce the administrative uplift component of the employer's SG shortfall.  
*[Schedule #, item 37, subparagraph 19C(3)(a)(ii) of the SGA Act]*

## Assessments

- 1.100 Under the amended SG framework, the Commissioner may make an assessment of an employers' SG shortfall amount for a specified QE day and the SG charge payable on that shortfall at any time. An assessment may be made on the Commissioner's own initiative or if the employer has lodged a voluntary disclosure statement for that QE day. If the employer is liable for any SG charge, it is payable on the day that the assessment is made by the Commissioner.  
*[Schedule #, items 51 and 54, sections 36, former 46 and 47 of the SGA Act]*
- 1.101 As employers are no longer required to lodge SG statements, the Commissioner will use data available through sources including employer voluntary disclosure statements, single touch payroll and superannuation fund reporting to determine the amount of SG charge and issue an SG charge Notice of Assessment.
- 1.102 Consistent with the current subsection 49(3) of the SGA Act, the employer will be liable to pay the GIC for each day from the date the SG charge is due and payable until the date the SG charge is paid. Section 8AAD of the TAA 1953 specifies how the GIC is calculated.



- 1.103 GIC is intended to work in the same manner as it currently applies, accruing from the date of the SG charge Notice of Assessment until it is paid in full for all the components of the charge for the relevant period. For an outstanding individual SG amount, this means that the notional earnings component and the GIC collectively provide an unbroken stream of compensation for the lost earnings from the outstanding individual SG amount until the SG charge is paid in full.
- 1.104 Unlike the current system (see subsection 49(2) of the SGA Act), GIC would apply on the entire SG charge amount rather than applying on just the sum of the individual SG shortfalls.  
*[Schedule #, items 55 to 59, former notes 1 and 2 to subsection 49(1), former subsections 49(2) and 49(3A), subsection 49(4) and former 49(5) of the SGA Act]*
- 1.105 For completeness, the Bill also amends the provision that allows the Commissioner to make an amended assessment to put beyond doubt the operation of the provisions.  
*[Schedule #, item 52, subsection 37(8) of the SGA Act]*
- 1.106 The amount that is to be included in a refund of an overpaid amount of SG charge has been amended to reflect the amended framework, and will include:
- any overpaid amount of SG charge in the form of GIC that became payable under section 49 of the SGA Act;
  - if the reduction in the liability results in an amended assessment of an administrative penalty—any overpayment of the administrative penalty;
  - any overpayment of administrative penalty under Part 4-25 in Schedule 1 to the TAA 1953 relating to the reduction in the liability.  
*[Schedule #, item 53, subsection 38(2) of the SGA Act]*

## Penalties for late or non-payment of SG Charge

- 1.107 The late payment penalty is intended to provide strong incentives for employers who are assessed for SG charge to pay the outstanding amounts promptly, so that money can be distributed into employees' funds in a timely manner.
- 1.108 If an employer is liable to pay an amount of SG charge and it is unpaid after 28 days from the date the charge became payable, the Commissioner must issue the employer a notice to pay the amount. If the amount is not paid, the employer may be liable to an administrative penalty.
- 1.109 The Commissioner must issue a notice to pay as soon as practicable when the following conditions are met:
- an amount of SG charge remains unpaid the day after the 28-day period that started on the day the SG charge became payable;

- the amount of SG charge and GIC that remains unpaid is greater than \$30 (or a higher amount if specified by the regulations);
- the notice to pay does not include SG charge amounts that has been specified as payable in a previous notice to pay; and
- a notice to pay has not been issued to the employer in the past 50 days, ending on the day before the current notice day.

***[Schedule #, item 61, sections 59 and 59A of the SGA Act]***

- 1.110 Where a notice to pay is issued to an employer, they must pay the full amount specified in the notice by the end of the 28<sup>th</sup> day after the day specified in the notice. An employer who fails to pay in full or otherwise discharge the amount of SG charge and any GIC specified in the notice will become liable for a late payment penalty for the unpaid amount. For completeness, the GIC will continue to accrue until the SG shortfall is paid in full, even after the notice has been issued. To avoid any late payment penalty, the employer must pay the amount specified on the notice to pay issued to them by the Commissioner. While GIC that accrues between the time the notice to pay was issued and payment will not increase the amount specified on the notice, it will still form part of the debt to the Commonwealth that needs to be paid by the employer.  
***[Schedule #, item 61, section 59C of the SGA Act]***
- 1.111 If an SG charge assessment is amended so that liability for charge is reduced while a notice to pay is still on foot, it is intended that any potential exposure to the late payment penalty is similarly reduced. To achieve this, when a notice to pay relating to the amended SG charge amount has been issued and the 28-day period in the notice has not expired, the law provides that the amount specified in the notice to pay is treated as if it were reduced by the amount the SG charge liability has been reduced. If an SG charge assessment is amended resulting in the specified amount being reduced to nil or ceasing to exist, the law provides that the notice is treated as having been revoked.  
***[Schedule #, item 61, section 59B of the SGA Act]***
- 1.112 The amount of the late payment penalty is 25 percent of the unpaid portion of the amount specified in the notice to pay, where the amount remains unpaid 28 days after the date specified in the notice. That is, if an employer makes a partial payment of the amount specified in the notice to pay, the late payment penalty is calculated on the amount that remains unpaid. If the amount specified in the notice to pay has been reduced in accordance with section 59B, the late payment penalty will be calculated by reference to the reduced amount. Similarly, if a notice to pay has been revoked under section 59B, no late payment penalty will be imposed in respect of that notice.
- 1.113 The penalty amount will increase to 50 percent if a late payment penalty has been imposed on the employer on a previous occasion within the 24 months prior to the date of the current notice to pay. Where the notice is revoked, it will not be taken into account for determining if the employer is liable for the penalty increase of 50 percent pursuant to section 59C, discussed below (that

is, a revoked notice is treated to have never been issued).

*[Schedule #, item 61, section 59C of the SGA Act]*

- 1.114 The Commissioner must make an assessment of the amount of an administrative penalty payable by the employer. For the penalty to be payable, the Commissioner must give a written notice of the assessment to the employer.

*[Schedule #, item 61, subsections 59D(1) and(2) of the SGA Act]*

- 1.115 The penalty will become due for payment on the day specified in the notice from the Commissioner, which must be at least 14 days after the day the notice is given to the employer. This allows the Commissioner to provide an employer sufficient time to make the payment. The GIC does not accrue on any late payment of the penalty.

*[Schedule #, item 61, subsection 59D(3) of the SGA Act]*

- 1.116 If an employer is dissatisfied with the assessment, the employer may object against it in the manner set out in the TAA 1953

*[Schedule #, item 61, subsection 59D(4) of the SGA Act]*

- 1.117 While the Commissioner must not remit all or part of the penalty set out in an assessment for a late payment penalty, the Commissioner must amend such an assessment if a liability under the SGA Act to pay an amount relevant to the assessment is reduced, including to nil, or ceases to exist.

*[Schedule #, item 61, subsections 59E(1) and (2) of the SGA Act]*

- 1.118 The amount of penalty payment under any amended assessment is to be worked out in the same way that the amount is worked out under the original assessment.

*[Schedule #, item 61, subsection 59E(3) of the SGA Act]*

## Other amendments

### Income Tax Assessment Act

- 1.119 The new SG framework will change the rules for tax deductibility of contributions and the SG charge. Currently only on-time contributions are deductible. Under the new framework, both on-time and late contributions will be deductible. The SG charge will now also be deductible. This reflects the fact that the SG charge is, at its core, a substitute for the payment of superannuation contributions to employees in respect of services rendered, which is itself deductible expenditure for employers.

- 1.120 Any applicable GIC or late payment penalty related to SG charge will not be tax deductible. The late payment penalty will not be deductible to reflect its status as a penalty for failing to pay either on-time contributions or the SG charge.

- 1.121 For employers who have a payment plan with the ATO that consists of SG charge and other tax debts, payments made towards the plan will be deductible up to the value of the amounts of the core SG charge, being the total of the individual SG *final* shortfall components, the total of the individual notional earnings components, administrative uplift amount and any choice loading.
- 1.122 Certain provisions in the ITAA 1997 regarding the deductibility of the SG charge and its related components are being repealed, as they are currently being addressed by Government as part of other taxation reforms in the *Treasury Laws Amendment (Tax Incentives and Integrity) Bill 2024*.  
**[Schedule #, items 69, 70, 82, section 12-5 (table item headed “superannuation guarantee charge”, section 26-95, section 290-95 of the ITAA 1997)]**
- 1.123 To ensure deductions for superannuation contributions continue to operate as intended, several amendments are made to the ITAA 1997 to update the relevant provisions for new concepts included in the SGA Act.  
**[Schedule #, items 71 to 86, subsection 85-25(3), subsection 85-25(4), 86-75(1) (the note), 86-75(2), 86-75(3) (including the note), paragraph 290-80(1)(c), subsection 290-80(2A), paragraph 290-80(2B)(b), paragraph 290-85(1)(a), paragraph 290-85(1)(b), subparagraph 290-85(1A)(d)(i), section 290-95 and subsection 995-1(1) of the ITAA 1997]**
- 1.124 The integrity measures limiting taxpayers and personal services entities from deducting a super contribution paid to their associate or an individual are updated to reflect new concepts and terminology outlined in the SGA Act. This includes ‘individual final superannuation guarantee shortfalls’ and ‘QE days’, in replacement of ‘individual superannuation guarantee shortfalls’ and ‘quarters’ respectively.  
**[Schedule #, items 71 and 74, subsection 85-25(3) and subsection 86-75(2) of the ITAA 1997]**
- 1.125 The amount required to be contributed by the taxpayer or the personal services entity to be eligible for the deduction, is updated to be calculated with reference to payments of qualifying earnings defined within the SGA Act.  
**[Schedule #, items 72 and 75, subsection 85-25(4) and subsection 86-75(3) of the ITAA 1997]**
- 1.126 Similarly, the conditions limiting the ability of employers to deduct a contribution made to employees or former employees are updated to reflect the alignment of qualifying earnings to the calculation of both contributions and the amount of SG charge. Subsequent references to this requirement in forming the amount required for a contribution to be deductible are also updated.  
**[Schedule #, items 76-78, 79-81, paragraph 290-80(1)(c), subsection 290-80(2A), paragraph 290-80(2B)(b), paragraph 290-85(1)(a), paragraph 290-85(1)(b), subparagraph 290-85(1A)(d)(i) of the ITAA 1997]**
- 1.127 The definitions section of the ITAA 1997 is amended to include and align the newly defined terms of ‘individual *final* superannuation guarantee shortfall’,

‘QE day’ and ‘superannuation guarantee shortfall’ to their corresponding references in the SGA Act.

*[Schedule #, items 83-86, subsection 995-1(1) of the ITAA 1997]*

## Retirement Savings Accounts Act 1997

1.128 An amendment is being made to align provisions in the *Retirement Savings Accounts Act 1997* with the amended framework to update terminology used under the current SG framework including repealing the use of “approved clearing house”.

*[Schedule #, item 87, subsection 183(2A) of Retirement Savings Accounts Act 1997]*

## Superannuation Industry (Supervision) Act (SIS Act)

1.129 Several amendments are made to the SIS Act so that those provisions still operate effectively under the amended SG Act.

1.130 Several provisions are updated to reflect that 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.

*[Schedule #, items 88, 95 and 96, subsection 29R(4) and the note in subsection 68A(1) and (3) of the SIS Act]*

1.131 Subsection 64(2A) is being repealed, as the concept of ‘approved clearing house’ is being removed from the SGAA (as discussed below).

*[Schedule #, item 89, subsection 64(2A) of the SIS Act]*

1.132 The provision dealing with the employer-sponsor contribution exception is amended to align with the amendments in the SG Act, including the substitution of QE day for quarter.

*[Schedule #, items 90-94, section 68AAE of the SIS Act]*

## Taxation Administration Act (TAA)

1.133 So that the SG regime can be effectively administered, several consequential amendments are also made to Schedule 1 of the TAA that reflect the updated SG Act. Some of these amendments mainly deal with renumbered provisions and updated terminology.

*[Schedule #, items 97-99, 101, 102 – 108, 110-114, Schedule #, paragraph 265-90(1)(b) and (3)(b), paragraph 268-10(1)(b) and example 2 to subsection 268-10(3), paragraph 268-90(2A)(b), note to subsection 268-90(2A), table heading to column 1 in subsection 269-10(1), table items 1, 2, 3, 5, 6 and 7 of subsection 269-10(1), paragraph 269-10(5)(b), table item 3 of subsection 269-30(2), note 2 of subsection 269-30(2), table item 9 of subsection 355-65(3) and table item 2 of subsection 384-10(1) of Schedule 1 to the TAA]*

- 1.134 To support the Commissioner’s ability to estimate unpaid and overdue amount of a liability to pay an SG charge for a QE day, the SG charge for a QE day is to be treated as being payable on the first day at the end of the usual period (within the meaning of the SG Act) for the QE day, even if the charge has not actually been assessed yet.  
***[Schedule #, item 100, subsection 268-10(1A) in Schedule 1 to the TAA]***
- 1.135 Amendments are also made so that, for the Director Penalty Notice provisions, a company’s SG charge is treated as being payable on the earlier of the first day after the end of the 30-day period starting on the QE day, and the day the charge is payable under a default assessment under the SG charge, even if the charge has not yet been assessed under that Act.  
***[Schedule #, item 109, subsection 269-10(3) in Schedule 1 to the TAA]***

## Consequential amendments

- 1.136 Consequential amendments are made to replace references to ‘quarters’ to ‘QE days’, to update terminology used under the current SG framework and to align provisions in relation to lodging SG statements to reflect the change to voluntary disclosure statements that are not a mandatory requirement. Other consequential amendments are made to update provision cross referencing and to remove references to approved clearing houses.  
***[Schedules # and #, items 38 to 46, 63, 67 and 68, paragraph 30(b), section 30, former sections 31 and 32, section 32A, subsection 32C(2B), the note in subsection 32C(10), paragraphs 32D(d) and (e), subsections 32NA(7) and (8), note to subsection 63A(3), subsection 79(2) and section 79A of the SGA Act]***
- 1.137 Currently, the only approved clearing house is the Australian Taxation Office, who operate a clearing house for small business employers. This clearing house is being retired from 1 July 2026, as it will not be fit-for-purpose to operate alongside this new law. As there will no longer be any approved clearing houses, the provisions that specifically apply to them will no longer serve any purpose.

## **Chapter 2: Advertising ban on certain superannuation products during onboarding**

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### Outline of chapter

- 2.1 The Treasury Laws Amendment Bill 2025: ban on advertising super funds during onboarding imposes a ban on advertising certain financial products to employees during the employee onboarding process, with certain exceptions.

### Comparison of key features of new law and current law

**Table 2.1 Comparison of new law and current law**

<b>New law</b>	<b>Current law</b>
There will be a ban on advertising certain superannuation products to an employee during the employee onboarding process.	No comparison

### Detailed explanation of new law

#### General prohibition

- 2.2 The Bill introduces a general prohibition on advertising superannuation products (as defined in section 9 of the *Corporations Act 2001*) during employee onboarding, with certain exceptions. Broadly, this means that the only superannuation products that may be advertised as part of the onboarding of a new employee are MySuper products that meet the relevant conditions set out below.
- 2.3 The prohibition supports other aspects of the SG reforms to improve superannuation outcomes for Australians by protecting employees from being influenced to make uninformed decisions, open inappropriate products and unintentionally create duplicate accounts.
- 2.4 The prohibition applies so that a person must not:

- advertise a superannuation product; or
  - make a statement that directly or indirectly refers to a superannuation product; or
  - cause such an advertisement or statement.  
*[Schedule #, item 1, paragraph 992AB(1)(a) of the Corporations Act 2001]*
- 2.5 The prohibition is intended to ban the advertising of certain superannuation products to a new employee and therefore applies during the period:
- starting at the time that an employee accepts an offer of employment with an employer; and
  - ending at the time the employer first complies with the choice of fund requirements in the SG Act in relation to that employee.  
*[Schedule #, item 1, paragraph 992AB(1)(b) of the Corporations Act 2001]*
- 2.6 The prohibition is constrained to an advertisement or statement that is targeted to the employee or to a class of employees that includes a particular employee, and is not accessible by the public. This is intended to ensure that the prohibition does not extend to entities that do not target employees during onboarding, alongside the exception described below for businesses distributing, or enabling the distribution of, content.  
*[Schedule #, item 1, paragraph 992AB(1)(c) of the Corporations Act 2001]*
- 2.7 A person will breach this prohibition if they satisfy the above criteria, and it would reasonably be expected that the advertisement or statement could induce the employee to choose the product.  
*[Schedule #, item 1, paragraph 992AB(1)(d) of the Corporations Act 2001]*
- 2.8 Failure to comply with this prohibition may attract a civil penalty. .  
*[Schedule #, items 1 and 2, subsection 992AB(1) and subsection 1317E(3) of the Corporations Act 2001]*

## Exceptions

- 2.9 The Bill establishes several exceptions to this general prohibition. A person wishing to rely on an exception bears an evidential burden in doing so (see subsection 1317QD(1) of the Corporations Act).

### **Employer's default fund**

- 2.10 The prohibition does not apply to a person in relation to a superannuation product, employee, and employer if the product is in the employer's default fund.
- 2.11 To satisfy this exception, the superannuation product must be the fund specified in the employer's standard choice form provided by an employer to the employee, and is the fund which the employer will contribute to if the



employee does not make a choice of fund or have a stapled fund under Part 3A of the SG Act.

*[Schedule #, item 1, subsection 992AB(2) of the Corporations Act 2001]*

### **Certain other MySuper products**

2.12 The prohibition also does not apply to a person when advertising products that meet the following criteria:

- The product is a MySuper product (as defined in section 10 of the SIS Act); and
- If there is at least one published APRA determination for the annual performance test under subsection 60C(2) of the SIS Act about whether the requirement in subsection 60D(1) of that Act has been met for a product, the most recent determination is that the product met the requirement; and
- The person providing or facilitating the advertising or making or facilitating a statement about the product is not a connected entity, within the meaning of section 10 of the SIS Act, of the RSE licensee that is offering the product; and
- Any additional criteria set out in regulations; and
- The advertisement or statement referring to the product is accompanied by clear and unambiguous disclosures as prescribed by the regulations.

*[Schedule #, item 1, subsection 992AB(3) of the Corporations Act 2001]*

2.13 The regulations are expected to include requirements to clearly label advertising material, include appropriate disclaimers and disclose any fees or payments, among other things.

2.14 This exception to the general prohibition balances the benefits of protecting employees from poor outcomes while ensuring that employees and employers can still benefit from superannuation onboarding services.

### **Businesses distributing, or enabling the distribution of, content**

2.15 The prohibition will not apply to a person in relation to making or causing an advertisement or statement if:

- The person does so in the ordinary course of business of distributing content or enabling such distributions; and
- The person did not know, and had no reason to suspect that the advertisement or statement would contravene the prohibition.

*[Schedule #, item 1, subsection 992AB(4) of the Corporations Act 2001]*



# Chapter 3: Employee onboarding reforms

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## Outline of chapter

- 3.1 The Treasury Laws Amendment Bill 2025: employee onboarding reforms, amends the SGA Act to provide greater flexibility for when an employer may request details of an employee’s stapled superannuation fund from the Commissioner during the onboarding process for that employee. This will streamline onboarding processes so employers can efficiently identify a superannuation fund in which to make SG contributions for new employees.

## Comparison of key features of new law and current law

**Table 3.1 Comparison of new law and current law**

<b>New law</b>	<b>Current law</b>
Employers will be able to make an information request to the Commissioner for an employees’ stapled fund details <i>prior</i> to or during the ‘choice of fund’ process.	Employers make an information request to the Commissioner to identify a stapled fund for an employee <i>after</i> the choice of fund process.
If the Commissioner notifies an employer, in response to such a request, an employee has a stapled fund, employers may disclose information from the notification to the employee. Regulations may specify requirements for any such disclosure.	No comparison.

## Detailed explanation of new law

### Choice of Fund

- 3.2 The Bill amends the stapled fund provisions to allow an employer, or an employer’s agent, to make a request to the Commissioner to identify a stapled fund for an employee of the employer before, at, or after the time the employee
-

is offered choice of fund.

***[Schedule #, item 1, subsection 32R(1A) of the SGA Act]***

- 3.3 Currently, a request can only be made to the Commissioner to determine if an employee has a stapled fund when the employee has first been offered choice of fund and has not elected a chosen fund.
- 3.4 The Bill also clarifies that the employer may provide details to an employee of a notification given by the Commissioner about that employees' stapled fund as long as the notification is about the employee, and the disclosure is made in accordance with any requirements prescribed by the regulations.  
***[Schedule #, item 2, subsection 32R(4) of the SGA Act]***
- 3.5 Permitting employers to request stapled fund details from the Commissioner and show the details to employees during onboarding will make it easier for employees to see, consider and select their existing fund when they start a new job if they choose to do so. It will also reduce unintended duplicate accounts and give employers more timely and accurate details.
- 3.6 Consistent with the existing choice of fund rules, employees will still be able to actively select a different fund as appropriate to their circumstances.