



11 April 2025

The Treasury

By email: paydaysuper@treasury.gov.au

Payday super - exposure draft legislation

Introduction

The Super Members Council (SMC) thanks Treasury for the opportunity to make a submission to this consultation and welcomes the Government's commitment to ensure employers pay super on payday.

Unpaid superannuation affects one-in-four workers across Australia. In 2021-22, \$5.1 billion of super went unpaid for 2.8 million Australians, with an average underpayment of \$1,800 per worker¹. Each week, a staggering \$100 million of super never reaches workers' super accounts. This money is owed to them under the law.

Low-income workers, including young people in casual work, women in low-paid industries, and migrant or newly-arrived workers, are more likely to have unpaid super - which robs them of crucial retirement savings and compound returns to support a dignified retirement.

These payday super laws will be a gamechanger to ensure Australians are paid the super they are rightfully owed - on time and in full - and enable businesses to compete on a level playing field.

As a strong voice advocating for more than 11 million everyday Australians with retirement savings in profit-to-member super, the SMC backs the clear commitment in this legislation to tackle the scourge of unpaid super. We urge all parties and Parliamentarians to give a clear commitment to pass payday super legislation swiftly when the new Parliament sits.

When super goes unpaid, it makes working Australians poorer in retirement, denying them crucial income to pay the bills after a lifetime of hard work.

The Mid-Year Economic and Fiscal Outlook invested \$404.1 million over 4 years from 2024-25 (and \$11.2 million pa ongoing) to implement payday super reforms. This represents just 2% of the annual cost to workers of unpaid super. SMC anticipates this investment, and swift passage of strong primary legislation will yield a significant return in stronger compliance ensuring super is paid.

Executive summary

SMC strongly supports the rapid passage of the payday super package of reforms (recommendation 1). By the time these laws start on 1 July 2026, Australian workers will have waited three years for the reforms. They cannot afford to wait a day longer.

To enable a smooth transition with strong buy-in from employers SMC has also recommended:

- amending the 7-calendar-day deadline to 7 business days for super payments to land in a worker's account (recommendation 2)
- the Australian Taxation Office (ATO) clearly articulate transition arrangements, with a phased approach to enforcement to give comfort to employers who genuinely try to do the right thing but are unable to due to circumstances beyond their control (recommendation 3), and
- the ATO prioritise uplifts to its stapling service and assist employers to transition from the small business clearing house to other payment providers (recommendation 4).

This submission incorporates feedback from across the profit-to-member super sector in the interests of 11 million everyday Australians. It addresses:

- the commencement date of the payday super reforms
- issues arising from a mismatch between calendar and business days to process contributions
- transitional arrangements
- data validation and the interaction with stapling
- payment system alternatives to the ATO Small Business Clearing House (SBCH), and
- advertising during onboarding.

¹ [Link to SMC media release](#)



Full list of recommendations

1. The Government should expedite passage of the Bill to ensure that it is introduced and passed within the first 100 days of the new parliament. Swift passage of the Bill will deliver certainty and enable smooth implementation.
2. That the current 7-calendar-day contribution deadline be amended to 7 business days.
3. The exceptions to the 7-day due date be expanded to recognise fund outage periods and workers changing choice of fund.
4. The ATO clearly articulate its proposed transition approach, with a phased approach to enforcement to give comfort to employers who genuinely try to do the right thing but are unable to due to circumstances beyond their control.
5. Employers be permitted to use the stapling look-up service at any time to locate stapled funds and verify employee super fund details.
6. The ATO expedite efforts to uplift the existing stapling service or develop a new service to permit real-time integrated validation of employee fund details for any payroll run.
7. The ATO should maintain a central register of STP, SuperStream and payday super-enabled products to assist small businesses to find cost effective alternatives to the SBCH.
8. Supporting regulations should set out rules governing the presentation of advertising, including requiring an employee's stapled fund, and the relevant default fund, to be presented - and with higher prominence than other advertised funds.
9. The regulations should also require that onboarding systems that feature ads include a link to the ATO YourSuper Comparison Tool, to protect super fund members from making uninformed choices.

About the Super Members Council

We are a strong voice advocating for the interests of more than 11 million Australians who have over \$1.5 trillion in retirement savings managed by profit-to-member superannuation funds. Our purpose is to protect and advance the interests of super fund members throughout their lives, advocating on their behalf to ensure superannuation policy is stable, effective, and equitable. We produce rigorous research and analysis and work with Parliamentarians and policy makers across the full breadth of Parliament.



Key issues

Commencement date

This reform will take effect from 1 July 2026 - three years after it was announced in May 2023.

Millions of working Australians pay the price every single day their super goes unpaid - they cannot afford any delay to the introduction of payday super.

The reforms will dramatically reduce the level of unpaid super, improve compliance with the law and make the super system fairer for workers and businesses alike.

It should be implemented from the 1 July 2026 commencement date. We call on all parliamentarians to ensure that this legislation is introduced and passed within the first 100 days of the new parliament.

Over the coming year, concerted effort will be needed from the ATO, employers, payroll personnel, digital service providers (DSP's) and super funds to prepare for this crucial reform. This is why it is so crucial for the legislation to be passed swiftly - ideally in the first weeks of the next Parliamentary term - to enable these preparations to be made with confidence and certainty.

This will enable work to progress faster on an uplift in digital payment systems. Payday super reforms will also be aided by separate but related reforms to fully operationalise the New Payments Platform (NPP), uplift super stapling systems, and uplift SuperStream.

The commencement date is achievable. It must be supported by a concerted effort by ATO to improve systems (particularly employer services and tools), as well as some minor changes to the legislation to facilitate transition arrangements.

Recommendation 1

The Government should expedite passage of the Bill to ensure that it is introduced and passed within the first 100 days of the new parliament. Swift passage of the Bill will deliver certainty and enable smooth implementation.

State of Play

Treasury's October 2023 consultation paper *Securing Australians' Superannuation* outlined recent Super Guarantee (SG) payment frequency by employers. It showed that almost two-thirds of workers across Australia are already currently paid their super more frequently than quarterly, and more than one-third of all employers pay super more frequently than quarterly (based on 2021-22 data).

The payment frequency of salary payment and super by employers, employees, SG dollars is shown in tables 1 and 2 below.

Table 1: Frequency of salary and wages payments

	Weekly	Fortnightly	Monthly
By Employers	48%	29%	14%
By Jobs	43%	50%	5%

Table 2: Frequency of Super Guarantee contributions

	Weekly	Fortnightly	Monthly	Quarterly
By Employers	2%	2%	33%	62%
By Employees	1%	15%	50%	25%
By Dollars	1%	25%	52%	16%

Source: ATO consultation workshop



While payment systems and processes can always be further optimised for frequent timely super payments by employers, this data shows the current systems are indeed capable of making more frequent payments. This has important implications for the pace of reforms to deliver on the Government's policy objectives and proactive steps many employers have taken to pay their employees super in a timely manner.

Transaction timeframes

Under the exposure draft legislation, a super contribution must appear in an employee's account within a week (7 calendar days) of their salary or wages being paid. While this window recognises that current systems and processes are not sufficiently developed to make real-time payments feasible at scale, it leaves insufficient room for payment delays caused by inadvertent errors or incorrect payment information about employees.

Payment processing under the current Bulk Electronic Clearing System (BECS) banking system is not optimised to meet the aims of the policy. While investment in developing the New Payments Platform (NPP) banking system to enable a wholesale migration to data-rich real-time payments continues, this technology is currently immature and out of scope of the payday super policy. Reliance on its completion ahead of the July 2026 deadline poses challenges to a full day 1 end state of full compliance.

We appreciate Treasury's recognition of these issues and effort to balance them with the ideal end state, super contributions are received simultaneously with pay, by adopting the 7-day due date in the proposed model.

Ultimately, the goal of the legislation is to ensure super contributions are paid on payday, not within a set timeframe after a payday, so this behavioural obligation on employers is sound. There are, however, circumstances beyond an employer's control that can compound and potentially delay processing of a contribution.

These include:

- the BECS payment system processes payments in batches at set times - so settlement may occur either the same day or next business day depending on the timing of the payment. Where a public holiday occurs, the next day that is a business day in Sydney or Melbourne or both.
- direct debit authorities can add additional time to processing.
- intermediaries such as clearing houses and gateways in the payment chain creating additional steps between payment issuer (the employer) and recipient (the employee's account).
- super fund receipt of sufficiently data-rich and compliant contributions to process into the member's account or otherwise reject the payment with enough error information to assist an employer to adjust and resubmit the transaction. Super funds are required to reject a payment within 3 business days if they are unable to allocate it.

The framework only imposes consequences on the employer, and not on the parties that distribute payments for an employer, despite the limit of their remit being to make payments in a timely manner with sufficient data to enable the payment to be processed. The implementation of the policy must take care to not penalise employers who do currently pay super at the same time as wages, adopt new practices to try to implement the policy, or otherwise endeavour to do the right thing.

Obligations placed on employers should be consistent with the obligations placed on other parties in the payment processing chain. Both the BECS payment system and processing timeframes placed on super funds operate on a business day timetable and will continue to do so until such time as alternative systems are able to be fully automated in real-time with minimal manual support.

A 7-calendar day obligation will leave insufficient time for an employer to receive information that an error has occurred, obtain the correct information in a timely way, and re-make the payment to ensure it is received by the employee's super fund in seven days.

To this end, we recommend the proposed 7-calendar day timeframe be adjusted to 7 business days. This will allow for 2 business days between employer and clearing house, 2 business days between clearinghouse and fund and 2 business days for the fund to process the contribution into the account or reject it by the 3rd business day.



The draft legislation recognises that 7 days may not be achievable in some circumstances and creates categories of exceptions to allow for data errors that arise during onboarding, funds failing the performance test and exceptional circumstances such as natural disasters and large-scale technology outages impacting employers. As super funds are regularly undertaking technological migrations associated with systems uplifts and intra- or successor fund transfers, the legislation should also explicitly reference fund transaction blackout periods. This exception could also apply where funds are temporarily freezing accounts to respond to cyber events.

The onboarding exception should also apply where a worker changes their choice of fund. It is not uncommon for a worker to move to a new fund and neglect to notify their employer who then continues to contribute to their old fund. Funds may manage such contributions by creating a new default account, reinstating the closed account or rejecting the payment. Any of these approaches creates additional administrative burden and contributes to poor experience for both members and funds. Employers should have additional time to validate any new choice fund details in the same way as when they onboard a new worker.

Recommendation 2

That the 7-calendar day contribution deadline be amended to 7 business days.

Recommendation 3

The exceptions to the 7-day due date be expanded to recognise fund outage periods and workers changing choice of fund.

Transitional arrangements

The draft legislation does not make explicit provisions for transitional arrangements. We understand from consultations that Treasury intends that the ATO will have leeway in how it enforces elements of compliance in the early stages of the policy's implementation. How this will look in practice has not yet been communicated. Absent a clear provision within the letter of the law itself, we understand that there is some nervousness about how early migration efforts will be policed.

Many employers already endeavour to do the right thing and they should not be penalised, but a too-flexible approach risks giving a free pass to deliberately poor practices or lax adoption of the policy, effectively delaying its start date.

The transitional framework should incentivise improvements where improvements are required without unnecessarily penalising a genuine commitment to comply. It should also recognise the payment histories of employers, with more leniency applied to those with historically good payment records while those with poor payment histories should continue to be held to account.

The ATO should clearly set out its expectations on employers while allowing system and process uplifts to mature.

Recommendation 4

The ATO should clearly articulate its proposed transition approach, to allow a phased approach to enforcement and give comfort to employers who genuinely try to do the right thing but are unable to due to circumstances beyond their control.

Data validation and the interaction with stapling

Successful delivery of payday super, including adherence to the proposed processing timeframes, hinges on speedy straight-through processing of contributions with minimal manual intervention. Payment and recipient data will need to be accurate and reconcilable to facilitate this.

Under the current Superannuation Guarantee regime, super funds can intervene where data gaps occur that prevent contributions from being quickly allocated to members' accounts. Funds can seek other avenues to identify members or reach out to employers to provide additional detail. This will not be possible under the payday super regime where super funds will have 2 business days to allocate the contribution or reject it within 3 business days.



It is therefore vital that the data submitted by employers is of sufficiently high quality upfront and that error messages returned from super funds where data is unable to be matched are clear to allow employers to speedily rectify issues.

Errors or data that cannot be verified may arise in a variety of ways, including:

- staff give incorrect or incomplete information to their employers, such as incorrect TFN or super fund account details.
- employees provide different details than those held by formal systems (e.g. informal vs legal names, married vs birth names, professional pseudonyms, Westernised alternatives to non-English names, diminutives, etc).
- employees have non-standard residential addresses and postal arrangements (e.g. c/o a regional Community or post office, temporary accommodations such as via a hostel)
- employees do not have the requisite details to provide to employers (e.g. under 18 years old and lacking a TFN or super fund).
- employers make typographical errors when keying in supplied data.
- employers populate certain fields with dummy data to establish system records (e.g. providing the employer's contact details rather than the employee's).
- fund-held details may be out of date, including residential addresses and phone numbers.
- the fund may not hold an account for the identified person (e.g. the account has been closed).

It is clear from the examples above that not all data mismatches can be controlled for - but real-time validation of details will simplify processing. Workers expect their pay to reach their bank accounts in line with their pay schedules. Super should be no exception.

The proposed reform to enable employers to use the existing stapling service to look up an employee's stapled fund at any time is a very welcome change. This will simplify onboarding by allowing employers to present their new workers with existing valid account details. It will also help employers to validate details where an employee changes funds during their tenure.

However, there is more work to be done to deliver a fully fit-for-purpose validation solution. Looking up stapled accounts cannot be a manual process, especially where employers are regularly onboarding large numbers of new staff.

Early consultation on the payday super policy announcement contemplated establishing a new ATO service to allow employers to validate fund details and retrieve a stapled fund. While recognising that this development has been deemed to be complementary to the core payday measures and therefore out of scope for the current exposure draft consultation, SMC believes that this should be expedited to allow rapid validation of employee details which will control a major source of data issues. Ideally, validation should be linked to each payday to ensure currency of details.

Recommendation 5

Employers be permitted to use the stapling look-up service at any time to locate stapled funds and verify employee super fund details.

Recommendation 6

The ATO expedite efforts to uplift the existing stapling service or develop a new service to permit real-time integrated validation of employee fund details at any time.

Digital service providers and payment systems

The policy impact analysis suggests there are:

- 87 digital service providers offering payroll software that is enabled to meet the ATO's SuperStream requirements.
- 7 commercial clearing houses that most employers use to make SuperStream compliant SG contributions. These may be provided to employers directly, through integrations with payroll software, or through super fund portals.
- 5 major onboarding providers, some of which have other integrated services beyond onboarding, such as payroll and super.



Payroll solutions that are not SuperStream-enabled have not been contemplated in the impact analysis. To be payday super enabled, all software systems processing super contributions will require an uplift to support rapid payment processing, data validation and error messaging.

Closure of the ATO Small Business Clearing House (SBCH) will require 270,000 small businesses to make super contributions via an alternative channel. Most SBCH users already use software that has clearing house functionality. As roughly 67% of SBCH users have fewer than 5 employees, small businesses should be assisted to understand the alternative options available and weigh up the cost and benefit of each alternative.

The ATO should maintain a central register of products, noting whether they are enabled to support STP-enabled payroll, SuperStream compliant super processing and rapid payment processing, and an indication of the costs to business (e.g. free, flat annual fee, tiered subscription). Providers should be added to the register as they become compliant.

In addition to helping small businesses understand their options, such a register will give comfort to existing users about the capabilities of their software and put competitive pressure on providers to rapidly adopt innovative solutions.

Recommendation 7

The ATO should maintain a central register of STP, SuperStream and payday super-enabled products to assist small businesses to find cost effective alternatives to the SBCH.

Advertising during onboarding

The growing adoption of onboarding platforms with payday super capability underscores the importance of ensuring strong consumer protections provided by default super funds.

Consistent with our organisation's purpose to protect and advance the interests of super fund members, SMC considers the proposed approach to only permit MySuper products that have passed the latest annual APRA performance test to be advertised on onboarding platforms to be a material improvement on the status quo.

Numerous submissions made to Treasury's *Securing Australians' Superannuation* consultation paper highlighted serious consumer risks if such advertising continues unregulated, including undermining important work to prevent the proliferation of unintended duplicate accounts in the super system.

While the exposure draft legislation introduces a planned restriction on the type of fund that can engage in advertising during onboarding, there is no regulation of how that advertising can be presented. This still leaves open a door to potential consumer harm.

We recommend that regulations contemplated in the draft Section 992AB(3)(d) amendments to the Corporations Act 2001 (*Treasury Laws Amendment Bill 2025: ban on advertising super funds during onboarding*) set out clear rules on presentation of such advertising, including requiring an employee's stapled fund, and the relevant default fund, to be presented - and for these to be presented with higher prominence than other advertised funds.

As noted in the Explanatory Materials, the regulations are expected to include requirements to clearly label advertising material, include appropriate disclaimers and disclose any fees or payments, among other things. Disclosures should also include warnings about the impact changing funds may have on insurance arrangements.

The regulations should also require that onboarding systems that feature ads include a link to the ATO YourSuper Comparison Tool, to protect super fund members from making uninformed decisions.

The addition of reasonable restrictions in the regulations will ensure that the interests of members are supported in the choice of fund process and will minimise risks of consumer harm, including the proliferation of unintended duplicate accounts.

**Recommendation 8**

Supporting regulations should set out rules governing the presentation of advertising, including requiring an employee's stapled fund, and the relevant default fund, to be presented with higher prominence than other advertised funds.

Recommendation 9

The regulations should also require that onboarding systems that feature ads include a link to the ATO YourSuper Comparison Tool, to protect superannuation members from making uninformed choices.