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Payday Super - ATO Draft Practical Compliance Guideline

SMC welcomes the opportunity to make a submission to this consultation.

As a strong voice advocating for more than 12 million everyday Australians with retirement savings in profit-to-member super, SMC backs the Government's clear commitment to tackle the scourge of unpaid super.

The *Treasury Laws Amendment (Payday Superannuation) Bill 2025* and *Superannuation Guarantee Charge Amendment Bill 2025* have now been made law, commencing 1 July 2026. These reforms will be a game-changer—ensuring Australians get the super they have earned and are rightfully owed, on time and in full, and enabling all businesses to compete on a level playing field.

Transition approach

SMC supports the ATO's risk-based, phased compliance approach for the first year of Payday Super. The draft framework's categorisation of employers into low, medium, and high risk is a practical way to allocate compliance resources and encourage behavioural change while focusing resources on the areas of greatest risk. We value the clarity provided on the proposed transition approach, which will give comfort to employers who genuinely try to do the right thing if they encounter circumstances beyond their control. This proportionate strategy supports businesses in adapting to new processes while maintaining a strong focus on ensuring employees are paid the super entitlements they are owed.

It is vital that the approach is clearly communicated. Clear communication will set expectations, actively lift standards of contribution behaviour, and enable clarity about the ATO's expectations in its dealings with the employer community. The transition approach must reinforce confidence in the new contribution rules and trust in the super system.

The Payday Super laws recognise that full adoption of the reform is a seismic shift in how Australian businesses handle their payroll, and that large scale ICT infrastructure changes are required across the economy to ensure super funds, payment intermediaries, software providers and employers are prepared. With such a wholesale change, some errors are inevitable - particularly in the early stages as systems modernise and data issues are resolved.

Practical Compliance Guidance

The 12-month phased compliance approach gives employers time to adapt and update systems. This is not a signal for employers to do nothing. To the contrary. The draft framework categorises employers into low, medium and high-risk zones according to their contribution behaviour.

Employers in the low-risk zone are recognised for promptly correcting contributions that are assessed and paid on a QE day according to the new Payday timeframes but failed to meet the deadline. This pragmatic approach allows new processes to become embedded into practice, supporting those who genuinely strive to comply without imposing unnecessary penalties.

The medium and high-risk categories are directly tied to current standards - paying SG on a quarterly basis - not on "genuine efforts" to comply. While the medium-risk zone may be appropriate for employers waiting on delayed system updates, it does not truly demonstrate a proactive commitment to behavioural change. An overly flexible stance risks giving a free pass to deliberately poor practices or lax adoption of the policy, effectively pushing back the intended start date - at a cost to everyday working Australians.

The medium risk band states that "resources **may** be applied to investigate." This could easily be interpreted to imply that employers who follow the status quo and are compliant with the current quarterly regime are unlikely to be targeted for active intervention in the first year of the policy.

The high-risk band is for employers who do not meet quarterly SG obligations on time, stating that "resources will be applied **to investigate**." Investigation alone is not enough and this framing raises concerns that the ATO will not have the technical and resourcing capacity to enforce compliance during the transition period. This basically lets employers off the hook if they haven't been paying super on time, contrary to the policy's objective. The guidance should be explicit about the ATO's intent to phase up its compliance efforts over the 12-month period as systems and capacity uplifts occur and indicate how such evolution will contribute to efforts after 30 June 2027.



To date, some limitations in the Single Touch Payroll system data fields have made it harder for the ATO to identify incidences of unpaid SG at scale - and this task has been undertaken by manual data matching. This has put the burden of chasing non-compliance onto workers themselves - when the primary duty to ensure compliance with the law should rightly rest with the ATO.

While infrastructure to data match payroll and contributions data is a key deliverable of the Payday Super laws, without an enforcement process, the proposed approach would give non-compliant employers more leniency than the existing regime where liabilities for the SG charge are applied when unpaid super is recovered. There is a significant risk that, until such time as non-compliance is visible and measurable, followed by swift and decisive enforcement action by the ATO, delays will continue to contribute to the scourge of unpaid super, despite the new laws.

SMC recommends that the ATO allocate resources to scale up data-driven surveillance before the commencement of Payday Super. Once the new laws take effect, the ATO should notify all employers who fail to pay on time in the first pay cycle of the financial year, signalling that real-time monitoring has begun and urging them to meet their super obligations promptly. The ATO should then track responses to these notifications and take swift follow-up action to address any ongoing non-compliance.

The guideline treats each QE day as a discrete assessment point - overlooking an employer's compliance history. While the medium- and high-risk zones reference "one or more" individual final SG shortfalls missing a quarterly deadline, this is the only mention of ongoing non-compliance. The ATO may factor in past behaviour during its usual compliance activities, but this is not made clear in the document. To strengthen the approach, prior instances of poor compliance should trigger an automatic elevation of the employer's risk rating to the next category.

The document currently lacks clear details on the consequences or interventions the ATO will apply to employers in each risk zone. As participants in the Payday Super Working Groups, we recognise that the communications program and ATO's internal processes are being refined as part of the ongoing communications plan and Public Advice and Guidance workstream. We look forward to continuing to work with the ATO on these important streams of work, as well as on the final regulations and the supporting materials that will soon follow now that the legislation has received Royal Assent.

Recommendations

1. Compliance history

The guideline currently treats each QE day as a discrete assessment point and does not consider an employer's compliance history. SMC recommends that the ATO explicitly factor in previous instances of non-compliance when determining risk ratings. Persistent or repeated non-compliance should result in an elevated risk rating and targeted enforcement.

2. Consequences and interventions

The draft does not outline the consequences or interventions for employers in each risk zone. SMC recommends the ATO publish clear, transparent consequences for each category, including examples of interventions, penalties, and support measures. This will give certainty and incentivise genuine compliance.

3. Medium-risk zone

The medium-risk zone, as currently defined, risks enabling poor practices or lax adoption of the policy. SMC recommends the ATO clarify that the medium-risk category is a temporary, transitional measure and that employers are expected to move promptly to full compliance.

4. Communications and support

SMC welcomes the development of the ATO's communications program and internal processes. We recommend the ATO give clear guidance and support for employers, particularly small businesses, during the transition period.

5. Data & Surveillance

SMC recommends the ATO resource the scale-up of data-driven surveillance ahead of the start date for Payday Super. After commencement of the new laws, the ATO should message all employers that have not paid on time in the first pay cycle of that financial year to signal the ATO has commenced monitoring in real time - and they should meet their super obligations as soon as possible if they haven't already. The ATO should then monitor and follow-up responses to those messages to rectify non-compliance swiftly after the new laws take effect.



About the Super Members Council

We are a strong voice advocating for the interests of 12 million Australians with over \$1.6 trillion in retirement savings in profit-to-member super. 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.