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On The Money

MARCH 2026

We have hit the ground running, and as 2026 rolls on we wish you all the best for the coming year. The following articles will help keep you up to date. If you have any questions, please don't hesitate to ask us.

Included are the following:

- Payday Super part 1: understanding the new law
- Payday super part 2: not quite 'all systems go'
- Deceptive Conduct in Business Sales: Your Legal Rights

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Payday Super part 1: understanding the new law

Passage of the Payday Super reforms through parliament has cleared the way for employee superannuation to be paid by employers more frequently. In the first of a two-part series (Part 2 is below), this article explains the myriad elements of the new law.

This article explains the new Payday Super (PDS) law and the work that is needed to implement the reforms.

The problem is getting bigger

Not paying superannuation for employees is like not paying wages. Wage theft, which includes failing to pay superannuation, became a federal criminal offence on 1 January 2025. Non-payment of superannuation has been an issue for years, and the problem is getting bigger.

The Australian Taxation Office's (ATO) Superannuation Guarantee (SG) gap data shows that, in 2017–18, unpaid employee superannuation exceeded $3.6 billion. This shortfall has increased by over 70 per cent to $6.2 billion in 2022–23. While the ATO's gap data shows that 94 per cent of SG is being paid it still leaves one-in-four workers out of pocket for their retirement, according to the Super Members Council. Its August 2024 report, Fixing unpaid super: Making super fairer for workers and employers alike, suggests this can equate to up to $30,000 less in retirement.

Small business employers are most likely to have unpaid SG. According to the Australian National Audit Office's 2022 report, Addressing Superannuation Guarantee Non-Compliance, **92 per cent of the businesses audited by the ATO for unpaid SG had a turnover of less than $10 million.**

The PDS reforms start on 1 July 2026 and will require employers to pay their employees' superannuation at the same time as salary and wages, instead of quarterly. Small business employers are most likely to find the cash flow challenges associated with

PDS harder to navigate. With less than five months to go, the race is on to get systems and employers ready for the most substantial change to superannuation in more than 30 years.

New law

What is Payday Super?

From 1 July 2026, employers will need to make SG contributions on the same day employees are paid their salaries and wages, called 'qualifying earnings' (QE). The date that QEs are paid to the employee is called the 'QE day'.

Qualifying earnings

A person's QE include OTE, commissions, payments made under salary sacrifice arrangements, and other payments relevant to the expanded definition of employee in section 12 of the SGAA. This includes payments made under a contract that is wholly or principally for the labour of the person.

What isn't changing?

No changes have been made to:

- The OTE component of QE used to work out an SG amount, which remains 12 per cent of OTE.
- The exclusions from the SG framework.
- How salary sacrifice arrangements are recognised for SG purposes.
- Further clarify the 'employee versus contractor' distinction, which remains a bane for employers in navigating their obligations.

When an employer 'makes a contribution' is still taken to be when a fund receives the contribution. This is despite stakeholder efforts during consultation that pressed for the date of payment instead. Treating contributions as having been 'made' only when they are received by the fund means employers remain liable for the SG charge after the timing is no longer in their hands and delays are due to reasons or factors beyond their control. These can include processing or banking delays by intermediaries and incorrect data provided by employees that thwart the employer's efforts to make the contribution within the prescribed period.

What is changing?

The key changes and elements of PDS are explained below.

1. SG charge – the SG charge is equal to the SG shortfall (shortfall) for a QE day, which comprises the total of that QE day's individual final shortfalls, notional earnings components,

administrative uplift amounts and choice loadings.

2. Shortfall – the current 'total salaries and wages' base will no longer be used to work out the shortfall. Instead, the SG charge base has been sensibly aligned with the OTE base used to calculate SG amounts.

3. Notional earnings – the current 'nominal interest component' is being replaced with a new 'notional earnings component' (NEC). The NEC will begin to accrue when an employer has a shortfall for a QE day, and it compounds at the GIC daily rate (currently 10.61 per cent) until a late contribution reduces the shortfall to nil. This is an improvement on the current law, as it will be payable only for the period the late contribution is actually outstanding.

4. Administrative uplift – the current administration component of $20 per employee per quarter is being replaced with a new administrative uplift amount (AUA) for late or non-payment. While employers with a shortfall will be initially liable for an AUA equal to 60 per cent of the shortfall plus the NEC, the AUA can be reduced to nil. The method of reducing the AUA will be prescribed by regulation, so we don't yet have the details. Whether the Commissioner has previously raised an SG charge assessment or the employer has lodged a voluntary disclosure statement (see below) will be relevant factors in determining whether the AUA is reduced, and by how much.

5. Choice loading – the choice loading, which forms part of the SG shortfall, is an additional 25 per cent calculated on the value of the eligible contributions for any QE day where the employer has not complied with the choice of fund provisions.

6. General interest charge – the GIC will accrue on a daily compounding basis on any outstanding SG shortfall and NEC amounts, as well as on any outstanding AUA.

7. SG charge payment penalty – a new late payment penalty (LPP) (still in Part 7 of the SGAA) will apply to employers that fail to pay the SG charge within 28 days of being assessed. The penalty is equal to 25 per cent of the outstanding amount and increases to 50 per cent if the employer has previously been liable for the penalty in the previous two years. The penalty cannot be remitted and does not accrue GIC. This penalty is more proportionate and applies based on culpability.

8. Seven-day period – eligible SG contributions received by their employees' superannuation funds within seven business days after the QE day (the usual period) can reduce the shortfall for that QE day to nil. This replaces the current period of 28

days after the end of a quarter. A 'business day' means a day that is not a weekend or a public holiday for the whole of a State or Territory (this would exclude, for example, the Royal Queensland Show, the Royal Hobart Show and the Geelong Cup, which would still count as business days). The draft legislation proposed seven calendar days, but the usual period was changed to seven business days in response to consultation.

9. Longer period – a longer period of 20 business days (the extended usual period) applies to the first payment of QE for a new employee (including a returning employee) and the first contribution to a different superannuation fund. An extended period also applies where the employer and the QE day are covered by an 'exceptional circumstances determination'. This is intended to address natural disasters or widespread information and communications technology outages.

10. Ordering rule – SG contributions are applied for QE days in the order in which they are received by the fund. This means a payment intended for a QE day can be applied to an earlier QE day for which there is a shortfall, even if the employer is not aware of an earlier under- or non-payment. This could result in a shortfall for the current QE day.

11. Contributions made before the QE day – employers will still be able to make SG contributions in advance, but instead of up to 12 months before the start of the quarter as currently applies, the new rule will be up to 12 months before the QE day. This includes any amounts that exceed the SG amount for a QE day (overpayments); these can be carried forward for up to 12 months.

12. Voluntary disclosure – the current SG statement is being replaced with a voluntary disclosure statement (VDS). The VDS can be lodged in the approved form at any time before the Commissioner makes an assessment of the shortfall for a QE day. While 'voluntary', employers will be incentivised to make prompt disclosures to reduce the AUA. Stakeholder feedback has encouraged the ATO to scrap the archaic SG charge Excel spreadsheets in favour of a digitalised mechanism incorporated into ATO online services.

13. Deductibility – section 26-95 of the ITAA 1997 has been repealed. This means the new SG charge will be fully deductible for income tax purposes, irrespective of whether the contributions were made on time. However, the GIC and the LPP are non-deductible.

14. Fund allocation and SuperStream updates – the deadline for superannuation funds to allocate or return contributions that cannot be allocated to an employee's account is being reduced from 20 business days to three business days. The SuperStream data and payment standards will be revised to allow faster payments via the New Payments Platform and improve error messaging so employers and intermediaries can quickly address errors.

15. Removal of late payment election – the current election under section 23A of the SGAA, which allows an employer to offset a late payment against the SG charge for a particular quarter, will not be available under PDS. Instead, eligible contributions made late but before the SG charge is assessed will be automatically applied by the fund in the order they are received to reduce shortfalls.
16. Maximum contribution base – the current maximum contribution base (MCB) is a quarterly earnings amount above which an employer is not liable for the SG charge if they do not make SG contributions (currently $62,500 per quarter, or a yearly equivalent of $250,000). Under PDS, the MCB will instead be applied as an annual limit. Once an employee's QE exceed the MCB in a financial year, any subsequent QE by that employee in that financial year are disregarded in calculating any shortfall amount. The annual MCB will be the concessional contributions cap divided by 12 per cent (assuming the concessional contributions cap remains unchanged in 2026–27, the MCB would be $250,000).

17. Employer exemption certificates – currently, an employer shortfall exemption certificate allows a high-income earner with multiple employers to 'opt out' of receiving SG for a quarter from one or more of their other employers to avoid exceeding the concessional contributions cap. Employees can apply for these certificates only if they have two or more employers concurrently in the same quarter. To accommodate PDS, the certificates will also be available where an employee has more than one employer in the same financial year, but consecutively. This important modification means that employees who change employers during the year can apply for a certificate where the combined SG contributions made by their former and new employers are likely to exceed the concessional contributions cap. The employee is treated as having reached the annual MCB if a certificate is in force; this can be provided to the new employer.

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Payday Super part 2: not quite 'all systems go'

The reforms are finally law, but now the work to implement payday super begins.

This article explains why the race is now on to get the necessary systems ready in time.

Now the work begins

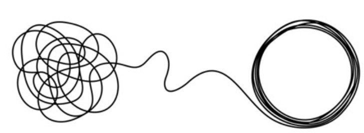
The PDS reforms start on 1 July 2026. The reforms will require employers to pay their employees' superannuation at the same time as salary and wages, instead of quarterly. Small business employers are most likely to find the cash flow challenges associated with PDS harder to navigate. With only four months to go, the race is on to get systems and employers ready for the most substantial change to superannuation in more than 30 years.

The legislative framework is finally in place. The focus now turns to the digital service providers (DSPs) who, understandably, have been waiting for the enacted law before proceeding and commercially investing time and money in the extensive work required to upgrade payroll and related systems in readiness for PDS.

Further:

Providing 18 months in lead time between the planned legislation of the changes in late 2024 and the start date of 1 July 2026 will also mitigate negative impacts on DSPs.

What's still an issue?



A short runway to 1 July 2026

Payday Super part 2: not quite 'all systems go'

Concerns regarding the readiness of the system and employers from 1 July 2026 were frequently raised throughout consultation, particularly given that it was only a few months ago, the enabling legislation was introduced.

Even the ATO has acknowledged these concerns:

There is concern that employers will not have had sufficient time to deploy, test and embed changes within their payroll systems and business processes prior to Payday Super law commencing on 1 July 2026. This increases the risk that employers will be unable to fully meet the requirements to reliably have contributions processed and accepted by super funds in the Payday Super timeframes.

Practical approaches, including a minimum 12-month deferral or transitioning large employers to PDS before small business employers, were repeatedly recommended by the professional associations and other key stakeholders. Yet, the Government has remained firm on its announced start date of 1 July 2026.

The ATO will prioritise compliance resources in respect of employers in the high-risk (red) zone ahead of those in the medium-risk (amber) zone. The ATO will not have cause to apply compliance resources in respect of employers in the low-risk (green) zone.

- Green zone: the employer attempts to reduce their shortfall to nil by making sufficient on-time contributions, but some of or all the contributions were not received by the fund within the usual period, and the contributions are received by the fund and allocable for the employee's benefit as soon as reasonably practicable.
- Amber zone: the employer does not meet the criteria to be in the green zone but has no shortfalls by 28 days after the end of the quarter in which the QE were paid. This would apply to an employer that makes sufficient contributions but does not change the frequency of contributions in line with PDS.
- Red zone: the employer does not meet the requirements to be in the green or amber zone and has one or more shortfalls by 28 days after the end of the quarter in which the QE were paid.

National Employment Standards

The National Employment Standards (NES) make up the minimum entitlements for employees in Australia. Superannuation is an entitlement under the NES. Entitlements to superannuation under the NES align with the superannuation laws, so an employer who complies with the SGAA also meets their obligations under the NES.

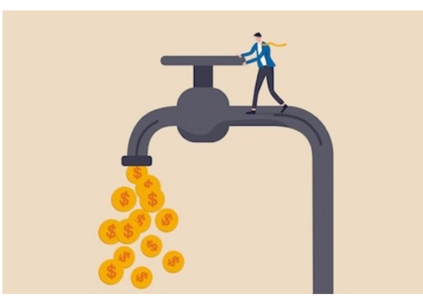
A breach of the NES means that most employees covered by the NES can take court action against their employer under Part 4-1 of the Fair Work Act 2009 (FWA) to recover unpaid superannuation, unless the ATO has already commenced proceedings in relation to that superannuation.

Whether the ATO investigates an employer that has not paid the minimum SG for their employees is completely independent from whether employees take legal action against their employer under the FWA for late or non-payment of superannuation.

Usual period

Eligible SG contributions received by employees' funds and allocable to the employee's account within seven business days after the QE day (the usual period) can reduce the shortfall for that QE day to nil. The usual period of just seven business days will be extremely challenging for employers.

Managing cash flow



Cash flow will be the single largest PDS issue for many small businesses to navigate. Moving from quarterly to as frequent as weekly payment obligations will likely place an enormous strain on cash flow.

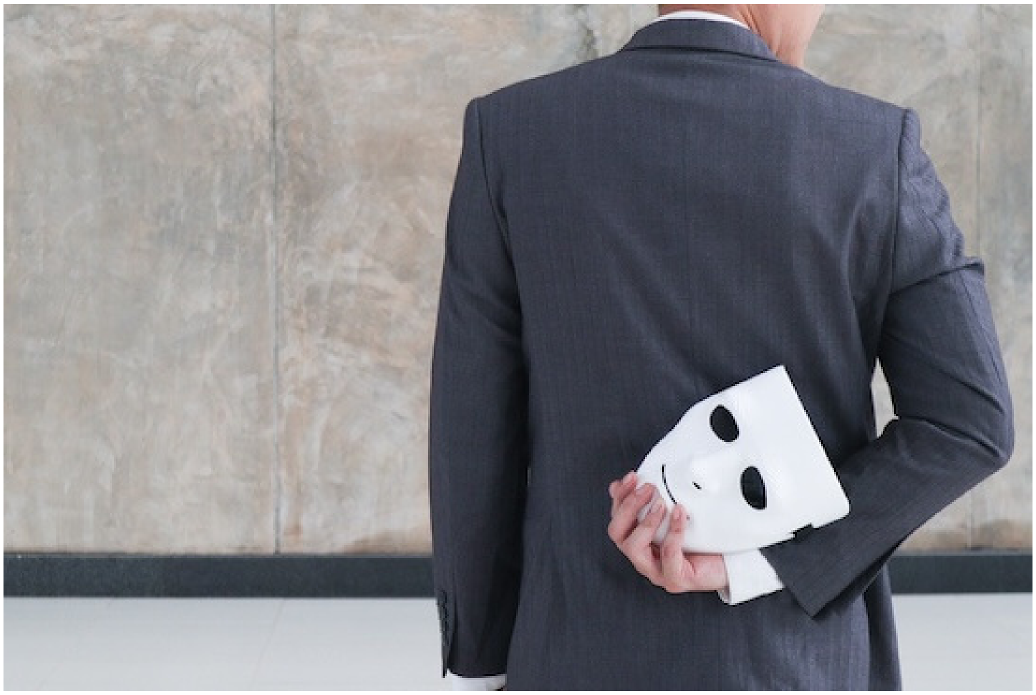
Some employers are thinking of changing to less frequent payroll cycles. Transitioning to monthly payroll may improve cash flow, but employers must be aware that such a change may be prohibited by relevant awards, enterprise agreements or employment agreements. Some awards and agreements require employers to pay their employees weekly or fortnightly. A monthly cycle may not be permitted. Employers should seek independent advice before attempting to shorten the frequency of their payroll cycle to ensure they comply with relevant laws, awards and agreements.

Closing comments

With so many aspects to PDS, employers, tax professionals and bookkeepers must be across the new rules. While the DSPs are busy designing the new systems that will be needed, tax practitioners can start having the necessary conversations with their clients now. Employers can start to review their software, systems and processes to identify what is needed to be PDS-ready.

We have only a short runway to 1 July 2026.

Deceptive Conduct in Business Sales: Your Legal Rights



Buying or selling a business is a major commercial decision. Whether you are acquiring a café, professional practice or online business, you rely heavily on the information provided during negotiations. When that information is misleading or false, the law provides strong protections. This article outlines your rights in relation to deceptive conduct, which is essential to managing risk in a business sale.

What is Deceptive Conduct?

Deceptive conduct occurs when a party engages in behaviour that is misleading or likely to mislead another party. In Australia, deceptive conduct in business sales is primarily regulated by section 18 of the Australian Consumer Law (ACL), which prohibits misleading or deceptive conduct in trade or commerce.

Importantly, deceptive conduct does not require an intention to mislead. Even honest mistakes or careless statements can breach the law if they mislead the other party.

In the context of business sales, deceptive conduct can occur during:

- negotiations;
- due diligence;
- advertising or marketing of the business; or
- pre-contractual representations made verbally or in writing.

Common Examples in Business Sales

Deceptive conduct in business sales often arises from misrepresentations about the performance, assets or risks of the business. Common examples include:

- overstating revenue, profits or growth prospects;
- providing inaccurate or incomplete financial statements;
- failing to disclose the loss of key clients or suppliers;
- misrepresenting the condition or ownership of business assets;
- misleading statements about licences, permits or regulatory compliance; and
- incorrect assurances about lease terms or landlord consent.

Who is Protected?

The ACL applies broadly to conduct ‘in trade or commerce’, meaning it captures most business sale transactions. Buyers of businesses are generally protected, even where both parties are commercial entities.

However, protection under the ACL does not extend to purely private sales or conduct unrelated to commercial dealings.

Representations vs. Contract Terms

A common misconception is that only what appears in the sale contract matters. In reality, pre-contractual representations are often central to deceptive conduct claims. Statements made in emails, information memoranda, spreadsheets, pitch decks or conversations can all be relied upon. Even where a contract includes disclaimers or ‘entire agreement’ clauses, these will not automatically protect a seller from liability under the ACL.

Well-drafted contracts can reduce risk and influence how a court assesses reliance and loss.

Reliance and Loss

To bring a claim for deceptive conduct, a buyer generally needs to show that:

1. the seller engaged in misleading or deceptive conduct;
2. the buyer relied on that conduct; and
3. the buyer suffered a loss as a result.

Reliance does not need to be the sole reason for entering into the transaction. It is sufficient if the misleading conduct materially influenced the buyer’s decision.

Loss can include:

- overpaying for the business;
- lost profits;
- costs of rectifying issues; or
- losses arising from undisclosed risks.

Remedies Available

The ACL provides a range of remedies for deceptive conduct, including:

- damages to compensate for loss suffered;
- rescission of the contract (in serious cases);
- injunctions to prevent ongoing misleading conduct; and
- orders to vary or void contract terms.

Courts have wide discretion when awarding remedies, particularly where fairness requires adjustment of contractual outcomes.

Defences and Risk Management for Sellers

Sellers are not without protection. Key risk-management strategies include:

- ensuring all information provided is accurate and up to date;
- avoiding predictions or forecasts without reasonable grounds;
- clearly qualifying statements where uncertainty exists;
- disclosing known risks and adverse matters; and
- maintaining clear records of what was disclosed.

While disclaimers do not override the ACL, they can help demonstrate that a buyer was aware of limitations or risks.

Practical Steps for Buyers

Buyers should take proactive steps to protect themselves, including:

- conducting thorough legal and financial due diligence;
- requesting warranties and indemnities in the sale contract;
- documenting key representations in writing; and
- seeking legal advice before signing binding agreements.

Early advice can help identify red flags and preserve rights if issues later arise.

Key Takeaways

Deceptive conduct in business sales can have significant financial and legal consequences for both buyers and sellers. Australian law provides strong protections, but enforcing those rights depends on the specific facts, documentation and conduct involved.

Whether you are buying or selling a business, understanding deceptive conduct obligations and obtaining legal advice early is essential to protecting your commercial interests.