Australian Government
Australian Taxation Office

Law Administration Practice Statement Compendium – PS LA 2026/2

Relying on this Compendium

This Compendium of comments summarises and provides responses to submissions received during public consultation on draft Law Administration Practice Statement PS LA 2026/D3 *Payday Super: exceptional circumstances determinations*. It is intended to promote transparency and explain how stakeholder feedback was considered in finalising the document only.

It is not a publication that has been approved to allow you to rely on it for any purpose and is not intended to provide you with advice or guidance, nor does it set out the ATO's general administrative practice. Therefore, this Compendium does not provide protection from primary tax, penalties or interest for any taxpayer that purports to rely on any views expressed in it.

Consultation period: 27 May 2026 to 26 June 2026

We thank all submitters for their time and contributions.

Summary of issues raised and responses

All legislative references in this Compendium are to the *Superannuation Guarantee (Administration) Act 1992*.

Issue 1 – superannuation fund allocation obligations and interaction with employer relief

Paragraph or section of draft product

Paragraph 6

Issues raised

The final Practice Statement should clarify how the requirement that contributions be received and be capable of allocation interacts with superannuation fund allocation obligations where a fund is affected by the same disruption that supports an exceptional circumstances determination.

A determination may provide an employer with additional time to make contributions, while superannuation funds remain subject to separate obligations concerning the processing, allocation and return of contributions. Disruptions affecting fund systems may create practical difficulties where contributions are received during an extended period but cannot be processed or allocated in the ordinary timeframe.

Further clarification is sought in the final Practice Statement regarding whether delays in fund processing, allocation or return of contributions are relevant to assessing an employer's compliance position where those delays arise from the same exceptional circumstances affecting the receiving fund.

ATO response

The Practice Statement is directed to the exercise of the Commissioner's power under subsection 18C(4) and the circumstances in which an allowable longer period may apply to employers.

The Practice Statement is not intended to provide guidance regarding obligations imposed on superannuation funds under other legislative or regulatory frameworks, including obligations relating to the processing, allocation or return of contributions. These matters extend beyond the exercise of the Commissioner's power under subsection 18C(4) and are outside the scope of the Practice Statement.

However, disruptions affecting contribution processing or fund systems may be relevant when assessing whether exceptional circumstances materially affect the ability of a class of employers to make eligible contributions within the usual period and, if so, for what period of time. Consistent with paragraphs 8, 21 and 50 of the final Practice Statement, disruptions affecting systems relied upon to receive, process or allocate contributions may be relevant where they affect the ability of employers, as a class, to make eligible contributions. This is distinct from the obligations imposed on superannuation funds in relation to the processing, allocation or return of contributions. Detailed guidance on the meaning of an eligible contribution, including the requirement that contributions be able to be allocated for the benefit of an employee and the treatment of rejected contributions, is provided in paragraphs 7 to 25 of Law Companion Ruling LCR 2026/2 *Payday Super: eligible contributions*.

Outcome

No change

Issue 2 – overlapping allowable longer periods

Paragraph or section of draft product

Paragraph 9

Issues raised

Clarification is sought regarding how allowable longer periods for exceptional circumstances interact with other allowable longer periods that may apply to the same QE day.

The draft Practice Statement explains the operation of the 20 business-day period arising from an exceptional circumstances determination but does not address circumstances where more than one allowable longer period applies to the same QE day.

Examples include circumstances where a QE day is simultaneously covered by an exceptional circumstances determination and another allowable longer period available under the *Superannuation Guarantee (Administration) Act 1992*. Employers require guidance regarding how overlapping periods are to be applied, whether one period takes precedence over another, and whether the applicable period is determined by reference to the later end date or some other hierarchy.

Worked examples should be included in the final Practice Statement illustrating the interaction of overlapping allowable longer periods.

ATO response

Questions regarding the interaction of multiple allowable longer periods are outside the scope of this Practice Statement, which is directed solely to the exercise of the Commissioner's power under subsection 18C(4).

Guidance on the interaction of multiple allowable longer periods is already provided in paragraph 52 of LCR 2026/2. In broad terms, where more than one allowable longer period applies in respect of an employee and QE day, the period for the employer to make on-time contributions for that employee and QE day will be the end of the last day of any applicable allowable longer period.

Worked examples illustrating this point can be found in paragraphs 72 to 73 (Example 9) of LCR 2026/2 and paragraphs 70 to 73 (Example 9) of Law Companion Ruling LCR 2026/3 *Payday Super: calculation and assessment of the superannuation guarantee charge*.

Accordingly, no changes have been made in the Practice Statement.

Outcome

No change

Issue 3 – distinction between process disruption and financial incapacity

Paragraph or section of draft product

Paragraph 19

Issues raised

The final Practice Statement should clarify the distinction between disruptions affecting the contribution process and financial incapacity.

Natural disasters and technology outages may simultaneously affect payroll systems, banking systems, payment processes, physical business operations and revenue-generating activities. In some circumstances, process disruption and financial impacts may be closely connected and difficult to distinguish.

Examples include inaccessible banking systems, disrupted payment infrastructure, delayed or unreconciled payments, interruptions to revenue collection and business closures arising from the same underlying event.

Clarification is sought in the final Practice Statement regarding the circumstances in which these impacts may be relevant to determining whether exceptional circumstances affect the ability of employers to make eligible contributions within the usual period.

ATO response

The final Practice Statement distinguishes between disruptions affecting the processes required to make contributions and an employer's financial capacity to make contributions.

Paragraphs 21 to 23 of the final Practice Statement reflect the fact that the determination power in subsection 18C(4) is directed to circumstances affecting an employer's ability to meet the timing requirements associated with making eligible contributions, rather than the employer's underlying financial capacity or ability to pay those contributions. The appropriate question is whether exceptional circumstances disrupt the systems, infrastructure or processes required to calculate, authorise, transmit, receive, process, settle or allocate contributions such that eligible contributions cannot be made within the usual period. This may include disruptions affecting payroll systems, payment systems, banking systems or other components of the contribution process.

As outlined in paragraph 22 of the final Practice Statement, cash flow or liquidity difficulties do not, of themselves, mean that the ability of employers to make eligible contributions is affected for the purposes of subsection 18C(4).

A natural disaster or technology outage may have both operational and financial consequences. However, the existence of financial hardship, reduced revenue, liquidity constraints or diminished capacity to fund contributions is not relevant to determining whether exceptional circumstances exist for the purposes of subsection 18C(4). The relevant question is whether the exceptional circumstances affect the ability of employers to make on-time eligible contributions within the usual period.

No changes have been made in the final Practice Statement.

Outcome

No change

Issue 4 – natural disasters and government declarations

Paragraph or section of draft product

Paragraph 26

Issue raised

A natural disaster does not need to be declared by the federal government for the purposes of subsection 18C(4). Natural disasters may also be recognised or declared by state, territory or local governments.

The final Practice Statement should clarify whether declarations made by these levels of government may be relevant when considering whether a naturally occurring event constitutes a natural disaster for the purposes of making a determination.

ATO response

The Commissioner's assessment of whether a naturally occurring event constitutes a natural disaster for the purposes of subsection 18C(4) is not dependent on a government declaration. However, declarations made by government authorities may provide supporting evidence regarding the nature, scope and impact of the event.

Paragraph 30 of the final Practice Statement clarifies that declarations made by state, territory and local governments may also be relevant in this context.

Outcome

Clarified

Issue 5 – natural disasters – timing of engagement with relevant agencies and internal response areas

Paragraph or section of draft product

Paragraph 27

Issue raised

The final Practice Statement should emphasise the importance of timely engagement with relevant government agencies and internal response areas when assessing the impact of a natural disaster.

ATO response

Paragraph 31 of the final Practice Statement clarifies that, as soon as practicable, staff should liaise through appropriate incident response and service coordination channels to confirm the disaster's scope, duration, geographic footprint and infrastructure impacts. This supports the timely gathering of information relevant to the assessment of whether a determination should be made.

Outcome

Clarified

Issue 6 – meaning of 'significant disruption' and examples of affected technology services

Paragraph or section of draft product

Paragraphs 29 and 32

Issues raised

The final Practice Statement should provide additional guidance on the meaning of 'significant disruption' for the purposes of determining whether a widespread technology outage may support an exceptional circumstances determination. The relevant indicators may include the number of employers affected, the number of employees whose contributions may be impacted, the proportion of a provider's user base affected, and whether critical functionality is unavailable.

Consideration should also be given to the inclusion of quantitative thresholds or safe harbours to assist service providers in assessing whether a determination may be warranted and whether an outage should be brought to the ATO's attention.

The examples of affected technology services in paragraphs 29 and 32 of the draft Practice Statement should be expanded to expressly refer to payroll software, payroll service providers, digital service providers and SuperStream registered clearing houses and other services used to facilitate the calculation, reporting or transmission of superannuation contributions. The final Practice Statement should also clarify that the lists of affected systems are non-exhaustive and continue to apply as contribution processing technology evolves.

Further, the examples of affected technology services in paragraph 29 of the draft Practice Statement should be expanded to expressly refer to the Superannuation Transaction Network (STN), superannuation gateways and other infrastructure used to facilitate the transmission of contribution data between employers, intermediaries, gateways and superannuation funds. Clear guidance should be provided regarding whether disruptions affecting this shared infrastructure may constitute a widespread technology outage where they materially affect the ability of employers to make eligible contributions within the usual period.

ATO response

No change has been made to specifically define 'significant disruption' or to introduce quantitative thresholds. The final Practice Statement adopts a principles-based approach and requires consideration of all relevant facts and circumstances. Whether an outage is sufficiently significant to support the making of a determination will depend on factors such as the nature of the affected service, the duration and extent of the disruption, and whether the outage meaningfully prevents a class of employers from making eligible contributions within the usual period.

We acknowledge stakeholder concerns regarding the practical application of concepts such as a 'significant number' or a 'small number' of employers. Those concepts are intended to be considered in the broader context of the event and are not determined solely by numerical thresholds or percentages. For this reason, the final Practice Statement does not adopt benchmark ranges or quantitative tests.

Further, no change has been made to include safe harbour thresholds. The significance of a disruption is intended to be assessed holistically, having regard to all relevant circumstances. Introducing predetermined numerical thresholds based on the number of affected employers, employees or users would be inconsistent with the policy intent underpinning the provision, as such thresholds may place undue emphasis on a single factor rather than the overall impact of the disruption on the ability of a class of employers to make eligible contributions within the usual period.

Payroll software and digital service providers are already encompassed by the existing references to payroll systems and technology services. To improve clarity, paragraphs 33 and 36 of the final Practice Statement expressly refer to payment, clearing and settlement systems and to clearing houses within the examples of affected services and systems. Paragraph 33 of the final Practice Statement now also refers to data infrastructure, including the STN, used to transmit contribution data between employers, intermediaries, superannuation gateways and superannuation funds. This clarifies that disruptions affecting shared contribution-processing infrastructure may be relevant when assessing whether a widespread technology outage has occurred. The examples of affected services are illustrative and are not intended to limit the kinds of systems, services or platforms that may be relevant in a particular case.

Outcome

Clarified

Issue 7 – meaning of 'widespread' technology outages

Paragraph or section of draft product

Paragraphs 30 to 35

Issues raised

The final Practice Statement should clarify the meaning of 'widespread' for the purposes of information and communications technology (ICT) outages and other technology service outages, including whether an outage may be considered widespread in the following circumstances:

- where service providers operate both cloud-hosted and on-premise deployment models and an outage affects a hosted environment used by a substantial majority of customers, potentially representing a very large number of employers, while alternative deployment models remain unaffected
- where an outage affects a substantial subset of users, a product cohort, a particular deployment environment, or another identifiable employer group that shares common technology infrastructure or dependencies, including circumstances where a large number of users are affected but not all users of the affected system or platform
- where employers rely on cloud-hosted payroll, contribution-processing and related technology services and have no practical alternative for making contributions despite their own systems and controls continuing to operate as intended
- where outages arise from shared technology dependencies and interconnected digital services that support contribution processing, including cloud infrastructure, application programming interface services, authentication providers, payment messaging services, telecommunications infrastructure, cybersecurity controls and other shared services relied upon by employers, software providers, gateways and superannuation funds
- where disruptions affect superannuation gateways, the STN or other shared contribution-processing infrastructure and materially affect the ability of employers to make eligible contributions within the usual period.

These circumstances are raised because paragraphs 30, 34 and 35 of the draft Practice Statement indicate that a widespread outage generally affects most or all users of a system, service or platform. Modern technology services often operate through multiple deployment environments, shared infrastructure and interconnected dependencies and significant disruptions may affect a large class of employers even where some users remain unaffected.

When the draft Practice Statement is finalised:

- paragraph 33 should recognise cloud-hosted services, cloud infrastructure, software platforms, third-party technology providers and shared technology dependencies as potential causes of widespread outages
- paragraphs 34 and 35 should recognise disruptions affecting gateways, the STN and related transmission infrastructure.

The final Practice Statement should clarify that the concept of a widespread outage focuses on the impact of the disruption on a shared system, platform, service or dependency relied upon by a class of employers, rather than whether every user of the affected system is impacted.

The final Practice Statement should also clarify, through the examples in paragraphs 33, 34 and 35, that the relevant technology services are not limited to those expressly listed and may continue to evolve as contribution-processing arrangements and supporting technologies change over time.

ATO response

The focus of subsection 18C(4) is on whether a disruption affects a shared system, service, platform or dependency relied upon by a class of employers and meaningfully prevents that class from making eligible contributions within the usual period.

Consistent with this approach, the final Practice Statement clarifies at paragraphs 34 and 42 that an outage may be widespread even if some users of the affected system, platform or service remain unaffected. The focus is not on whether every user is affected, but on the nature of the affected system, service, platform or dependency and its impact on the relevant class of employers.

This recognises that outages affecting cloud-hosted environments, deployment models, shared infrastructure, gateways, shared technology dependencies and other contribution-processing services may still affect a significant class of employers even where alternative deployment environments, products, configurations or user groups remain operational. Consistent with paragraph 42 of the final Practice Statement, the assessment is not determined solely by the proportion of users affected and may also take account of the scale and significance of the impact on affected employers.

The existing references to failures of infrastructure of external service providers and cyber security incidents are intended to encompass a broad range of technology failures, including those involving cloud-hosted environments, cloud infrastructure and shared technology dependencies. To improve clarity, paragraph 37 of the final Practice Statement includes examples involving cloud-based infrastructure, platforms and software services, as well as shared technology dependencies and digital services relied upon to facilitate contribution processing. This recognises that contribution processing commonly relies on interconnected systems and supporting services operated by multiple parties.

To further improve clarity, paragraph 40 of the final Practice Statement includes a reference to superannuation gateways as examples of shared systems and dependencies that may be relevant when assessing whether an ICT outage is widespread. Paragraph 33 of the final Practice Statement also refers to data infrastructure, including the STN, used to transmit contribution data between employers, intermediaries, gateways and superannuation funds. These amendments recognise that disruptions affecting shared contribution-processing infrastructure may be relevant when assessing whether a widespread technology outage has occurred.

The term ‘product’ has not been adopted because it may create uncertainty by extending the concept of a widespread outage to particular products, features, modules or configurations that are not necessarily indicative of disruption to a shared system, service, platform or dependency. Similarly, the references to ‘most users’ and a ‘significant number of employers’ in the final Practice Statement should be read together with the broader guidance regarding shared systems, shared dependencies and impacts on a class of employers.

The existence of an outage affecting a cloud-hosted service, third-party provider, shared dependency, gateway or other contribution-processing infrastructure does not, of itself, support the making of a determination. Whether an outage is sufficiently widespread to support a determination will depend on all relevant facts and circumstances, including the nature of the affected service, the extent and significance of the impact across employers, and whether the outage meaningfully prevents a class of employers from making eligible contributions within the usual period.

The examples included in the final Practice Statement are illustrative and are not intended to limit the kinds of systems, services, platforms or dependencies that may be relevant in a particular case as contribution-processing arrangements and supporting technologies continue to evolve.

Outcome

Clarified

Issue 8 – assessment of the duration of exceptional circumstances

Paragraph or section of draft product

Paragraph 38

Issue raised

The reference in paragraph 38 of the draft Practice Statement to the 'expected duration' of exceptional circumstances when assessing whether a determination should be made may place undue emphasis on forecasts and estimates. The duration of natural disasters and technology outages may be uncertain and can extend significantly beyond initial estimates.

The final Practice Statement should place greater emphasis on the duration and impact of the disruption, while recognising that determinations may need to be made before the full duration of an event is known.

ATO response

The duration of natural disasters and technology outages may be uncertain when a determination is being considered and may ultimately differ from initial estimates. However, decisions regarding exceptional circumstances determinations will often need to be made before the full duration of the event is known.

The third dot point under 'nature of the exceptional circumstances' heading in paragraph 44 of the final Practice Statement now refers to the actual or anticipated duration of the circumstances. This recognises that decision-makers must assess the circumstances based on the information available at the time, while allowing consideration of both the ongoing and likely duration of the disruption.

Paragraph 47 of the final Practice Statement also clarifies that continuing impacts on the affected class of employers may be considered where services have been restored but the disruption continues to materially affect their ability to make eligible contributions within the usual period.

Outcome

Clarified

Issue 9 – duration of the relevant event (assessing outage duration and progressive recovery)

Paragraph or section of draft product

Paragraphs 40 to 48

Issues raised

The recovery from technology outages may be progressive, partial or uneven across affected employers. A service provider's reported restoration time may not reflect that some employers may continue to experience material impacts due to data reconciliation activities, cascading dependencies, payroll processing timing issues or partial restoration of critical functionality.

The final Practice Statement should clarify that the duration of exceptional circumstances is assessed having regard to the practical impact on the affected class of employers, including where residual or continuing impacts remain after services have been restored that prevent a class of employers from making eligible contributions within the usual period.

The practical impact of a disruption should also be assessed having regard to the operation of the end-to-end contribution process and the interdependencies between payroll systems, validation services, payment systems, gateways, clearing houses, fund administration systems and other components of the contribution processing chain.

The final Practice Statement should also clarify how classes of employers are constructed where exceptional circumstances affect interconnected systems, intermediaries or other shared dependencies. Class definitions should focus on the functional connection between the employer and the exceptional circumstance and should appropriately account for employers indirectly affected through the contribution processing chain.

ATO response

The focus of subsection 18C(4) is on whether the exceptional circumstances meaningfully prevent a class of employers from making eligible contributions within the usual period. Consistent with this approach, the assessment is not limited to a service provider's reported restoration time.

Paragraph 47 of the final Practice Statement clarifies that continuing impacts on the affected class of employers may be considered where services have been restored but the disruption continues to materially affect their ability to make eligible contributions within the usual period. Paragraph 39 of the final Practice Statement also clarifies that information regarding the commencement, duration or restoration of services may assist in assessing the circumstances but is not determinative.

The final Practice Statement requires consideration of the duration, extent and significance of the impact of the disruption. Paragraph 44 of the final Practice Statement requires consideration of the duration and severity of the impact. Paragraph 50 of the final Practice Statement recognises that employers may need to complete a range of processing activities following restoration of services, including payroll processing, validation, payment settlement and fund acceptance, reflecting the end-to-end nature of the contribution process. Paragraphs 53 and 55 of the final Practice Statement further recognise the relevance of critical dependencies, practical alternatives and the cumulative effect of multiple or rolling disruptions. Example 4 (paragraphs 84 to 89 of the final Practice Statement) also illustrates the relevance of cumulative and unpredictable disruptions affecting multiple interconnected systems when assessing the practical impact of exceptional circumstances on the ability of a class of employers to make eligible contributions within the usual period.

Paragraph 21 of the final Practice Statement also recognises that the relevant assessment extends to systems, infrastructure and processes required to calculate, authorise, transmit, receive, validate, process, settle and allocate contributions. Together, these provisions allow consideration of the practical impact of a disruption across interconnected systems and services involved in making contributions.

The legislation requires determinations to apply to a class of employers. Whether a particular class should be defined by reference to geography, systems, service providers, industries or other characteristics will depend on the nature of the exceptional circumstances. The final Practice Statement adopts a principles-based approach and allows flexibility to ensure classes can appropriately reflect the way in which employers are affected by the relevant event. No changes have been made to prescribe class construction criteria or establish special rules for employers at the margins of a class.

We do not agree that disruption at a single critical point in the contribution process is, of itself, sufficient to support the making of a determination. While a disruption affecting a critical component of the contribution process may be highly relevant, subsection 18C(4) requires consideration of all relevant facts and circumstances. The relevant question remains whether the exceptional circumstances meaningfully prevent a class of employers from making eligible contributions within the usual period. Adopting a ‘single critical point’ test may place undue emphasis on a particular component of the contribution process rather than the overall impact of the exceptional circumstances on the affected class of employers.

We do not agree with providing prescriptive rules or formulas for assessing the duration of a disruption or the effective loss of business hours, as these matters depend on the particular facts and circumstances of each event.

Outcome

Clarified

Issue 10 – duration of the relevant event (assessing the practical impact of short-duration outages)

Paragraph or section of draft product

Paragraph 47 and Example 2

Issues raised

The final Practice Statement should recognise that the impact of a disruption on the end-to-end contribution process may not be fully reflected by its elapsed duration alone.

Making eligible contributions involves multiple sequential steps, including payroll processing, data transmission, validation, payment settlement, fund receipt and allocation, and the correction of any errors or rejections. An outage occurring early in the contribution process may reduce the time available to complete later stages of the process, resolve errors and make contributions within the usual period.

The timing of a disruption within payroll and contribution processing cycles may also materially affect employers' ability to make contributions. A disruption occurring immediately before payroll processing, employer approval, payment processing or settlement activities may significantly affect the contribution process even where the interruption is relatively short in duration. As a result, the practical and operational impact of a disruption may not be fully reflected by its elapsed duration alone.

The final Practice Statement should adopt a principle under which each business day (or part of a business day) lost due to an outage is treated as effectively reducing the usual period by the same amount. Example 2 in the draft Practice Statement should also be reconsidered or supplemented to recognise circumstances where a 24-hour outage materially compresses the available contribution processing timeframe.

ATO response

The final Practice Statement recognises that the impact of a disruption extends beyond the period during which a service is unavailable. Paragraph 44 of the final Practice Statement requires consideration of the duration and severity of the impact of the disruption. Paragraph 50 of the final Practice Statement expressly recognises that, once systems are restored, employers must still complete a range of processing activities, including payroll processing, validation, payment settlement and fund acceptance, and that the remaining time available may not provide a reasonable or reliable opportunity to make contributions within the usual period. Paragraphs 53 and 55 of the final Practice Statement further recognise that the significance of a disruption may depend on the nature of the affected systems, the availability of practical alternatives, and the cumulative effect of multiple or rolling disruptions.

Paragraph 47 of the final Practice Statement also clarifies that continuing impacts or residual effects may be taken into account where services have been restored but the disruption continues to materially affect the ability of the affected class of employers to make eligible contributions within the usual period.

Consistent with this approach, the assessment is not limited to the elapsed duration of an outage and may take into account the practical effect of the disruption on the contribution process as a whole, including payroll schedules, employer approval cycles, banking settlement windows, clearing house processing, fund allocation timing and the timing of the disruption within payroll and contribution processing cycles.

We have not included prescribed methodologies based on business hours or formula-based reductions to the usual period. The significance of a disruption is intended to be assessed having regard to all relevant facts and circumstances, including the practical impact of the disruption on the ability of a class of employers to make eligible contributions within the usual period.

No change has been made to Example 2. The example is intended to illustrate the application of the principles to a particular factual scenario and should not be read as establishing a minimum duration threshold or a rule that a 24-hour outage can never support a determination.

Outcome

No change

Issue 11 – status of a determination

Paragraph or section of draft product

Not applicable – relevant to document topic generally

Issue raised

The final Practice Statement should clearly state that exceptional circumstances determinations under subsection 18C(4) are legislative instruments.

ATO response

Paragraph 68 of the final Practice Statement clarifies that a determination under subsection 18C(4) is a legislative instrument. This provides important context for the exercise of the power and the associated governance, registration and publication requirements.

Outcome

Clarified

Issue 12 – decision-maker compliance with the *Legislation Act 2003* and internal procedures

Paragraph or section of draft product

Not applicable – relevant to document scope

Issue raised

The final Practice Statement should remind decision-makers of the need to comply with the *Legislation Act 2003* and internal governance requirements when making a determination and that there are consequences for non-compliance.

ATO response

Paragraph 65 of the final Practice Statement reminds staff of the need to comply with applicable requirements relating to the making of legislative instruments, including the *Legislation Act 2003* and relevant internal governance arrangements.

Outcome

Clarified

Issue 13 – protections during consideration of determination and penalties

Paragraph or section of draft product

Not applicable – relevant to document scope

Issues raised

The final Practice Statement should clarify whether employers receive any protection from incurring superannuation guarantee charge liabilities during the period the Commissioner is considering whether to make an exceptional circumstances determination.

The final Practice Statement should also clarify whether employers are protected from incurring superannuation guarantee charge liabilities during the period between the occurrence of exceptional circumstances and the publication of a determination, whether retrospective operation of a determination provides sufficient protection and whether any expected assessment or publication timeframes apply.

ATO response

There is no interim protection from incurring superannuation guarantee charge liabilities under the law while a determination is under consideration. A determination only has effect according to its terms once it is registered on the Federal Register of Legislation.

Paragraph 12 of the final Practice Statement clarifies that the occurrence of a natural disaster or technology outage does not, of itself, provide employers with a longer period to make eligible contributions. The allowable longer period only applies if, and when, the Commissioner makes a determination. Paragraph 12 of the final Practice Statement also notes that a determination may apply to a period that commenced before the determination was made. This is illustrated in Examples 1 and 5, where the determination is made after the commencement of the period during which QE days are affected by the exceptional circumstances.

The final Practice Statement does not specify target assessment or publication timeframes, as the time required to assess whether a determination should be made will depend on the nature, scope and complexity of the event and the information available to the Commissioner.

Paragraph 11 of the final Practice Statement also notes that a determination may affect the operation of the late payment penalty provisions in section 59C. The final Practice Statement does not provide detailed guidance on the administration of those provisions, as its primary focus is the exercise of the Commissioner's power under subsection 18C(4).

Outcome

Clarified

Issue 14 – interaction with voluntary disclosure statements

Paragraph or section of draft product

Not applicable – relevant to document scope

Issues raised

The final Practice Statement should clarify the sequencing and interaction between exceptional circumstances determinations and voluntary disclosure statements (VDS), including whether VDS lodgment is suspended when an exceptional circumstances determination has been sought.

Employers may experience difficulty lodging a VDS during an outage and may refrain from lodging it and risk forfeiting any administrative uplift reduction available.

The final Practice Statement should also clarify the position of employers where the usual period expires before the Commissioner has made a determination, including whether a superannuation guarantee (SG) charge liability arises before a determination is made, the effect of a

retrospective determination on that liability, and how employers should manage voluntary disclosure decisions during periods where the availability or scope of a determination remains uncertain.

ATO response

The purpose of this Practice Statement is to provide guidance on the exercise of the Commissioner's power under subsection 18C(4), including what constitutes exceptional circumstances, when a determination may be appropriate, and the governance and publication requirements associated with that power. Subsections 18C(2) and (4) only provide an allowable longer period for making eligible contributions. They do not otherwise alter or suspend the operation of the *Superannuation Guarantee (Administration) Act 1992*.

As such, guidance on the administration of SG charge liabilities, VDS, the timing at which liabilities arise, or the operation of provisions outside section 18C are outside the scope of the Practice Statement and no changes have been made.

Outcome

No change

Issue 15 – notification of technology outages and evidentiary requirements

Paragraph or section of draft product

Not applicable – relevant to document scope

Issues raised

The final Practice Statement, or accompanying guidance, should include a mechanism for notifying the ATO of technology outages that may support an exceptional circumstances determination.

The final Practice Statement should also clarify:

- when technology outages should be reported
- the information and evidence that should be provided to the ATO
- whether a formal notification pathway will be available for employers, superannuation funds, administrators and service providers
- how the timing of determinations will be managed once notification occurs, and

- the appropriate ATO notification channels for outages affecting shared industry infrastructure, including the STN, gateways and processing services.

The final Practice Statement should provide additional guidance regarding employer self-assessment, including reliance on information provided by agents, payroll providers, clearing houses and other service providers, the records and evidence that should be retained, the use of incident notifications and software-generated audit reports, and the treatment of situations where information is incomplete, fragmented or evolving.

Further suggestions include structured communications, engagement arrangements and notification mechanisms for software providers and industry participants together with practical implementation material, self-assessment tools, communication protocols and service standards to support operation of the exceptional circumstances framework.

ATO response

The final Practice Statement is intended to provide guidance to ATO staff on the exercise of the Commissioner's power under subsection 18C(4), including what constitutes exceptional circumstances and the considerations relevant to making a determination. It is not intended to prescribe operational processes for notifying the ATO of potential outage events nor the evidence required to support those notifications.

The Practice Statement does not prescribe notification pathways for specific types of outages or industry infrastructure. Matters relating to outage reporting channels and notification processes are operational in nature and will be addressed outside of the Practice Statement.

The Practice Statement is also not intended to prescribe communication mechanisms, subscription services, developer notifications or engagement arrangements for software providers and industry participants. These matters are operational and implementation-related and fall outside the scope of the Practice Statement.

To improve clarity, the final Practice Statement recognises that communication regarding determinations may occur through engagement with relevant stakeholders, industry groups and professional bodies to assist dissemination of information regarding determinations.

Paragraph 39 of the final Practice Statement clarifies that information regarding the commencement, duration and restoration of services may assist in assessing the circumstances but is not determinative.

Paragraph 60 of the final Practice Statement makes clear that employers are responsible for self-assessing whether they fall within the class of employers covered by a determination and for maintaining records to substantiate their eligibility. To provide additional guidance, paragraph 61 of the final Practice Statement clarifies that records retained for this purpose may include incident notifications, system-generated reports, communications with service providers, government disaster or emergency declarations, evidence of disruption to business operations or critical infrastructure and other evidence capable of demonstrating that the employer fell within the class specified in the determination.

The final Practice Statement does not prescribe detailed evidentiary requirements or exhaustive lists of acceptable records. The examples included in paragraph 61 of the final Practice Statement are intended to be illustrative only. More prescriptive requirements may inadvertently imply that particular records are mandatory, suggest that only specified forms of evidence can be relied upon, or become outdated as

technologies, service models and contribution processing arrangements evolve. Whether an employer is able to substantiate their eligibility will depend on all relevant facts and circumstances and the evidence available in the particular case.

The matters raised regarding notification mechanisms, communication channels, service commitments, agent communications and implementation tools extend beyond the scope of the Practice Statement and are more appropriately addressed through operational guidance, employer-facing support material or administrative processes.

Accordingly, no changes have been made to include notification requirements, formal reporting processes, service standards or prescribed notification mechanisms in the final Practice Statement.

Outcome

Clarified

Issue 16 – third-party payroll provider failure to remit contributions scenario

Paragraph or section of draft product

Not applicable – relevant to document scope

Issues raised

The final Practice Statement should clarify whether subsection 18C(4) may apply where an employer has taken steps to remit superannuation contributions through a third-party payroll or payment provider before the end of the usual period, but the provider fails to forward the contributions to the employee's superannuation fund.

The issue arises where the employer reasonably believes contributions will be made on time, but the provider neither remits the contributions nor returns the funds, and the employer only becomes aware of the issue after the usual period has expired. The final Practice Statement should also clarify whether these circumstances could constitute 'exceptional circumstances' affecting an employer's ability to make eligible contributions, whether any resulting SG shortfall remains the employer's responsibility, and whether any form of safe harbour or similar relief is available where the failure arises from the actions of a third-party provider rather than the employer.

Further, the final Practice Statement should clarify the interaction between the new Payday Super framework and administrative approaches previously reflected in Law Administration Practice Statement PS LA 2007/1 (GA) *Assessing superannuation guarantee charge where the employers have done what they could reasonably be expected to do to comply with the law by the due date, for periods ending before 1 July 2026*, including whether any alternative legislative provisions provide relief in circumstances involving third-party provider failures.

ATO response

The circumstances described would not fall within the scope of 'exceptional circumstances' for the purposes of subsection 18C(4). The provision applies where prescribed exceptional circumstances affect one or more kinds (that is, a class) of employers. It is not directed to individual employer circumstances or isolated failures involving a particular employer and its service provider.

Paragraph 24 of the final Practice Statement clarifies that subsection 18C(4) is concerned with the effect of the exceptional circumstances on a class of employers, and that the particular circumstances of an individual employer are not determinative.

An employer remains responsible for ensuring that eligible contributions are received by the employee's superannuation fund within the required timeframe. Accordingly, where a third-party provider fails to forward contributions to the fund, any resulting SG shortfall remains the responsibility of the employer.

Where an individual base SG shortfall arises, employers may reduce the overall impact by making the outstanding contributions as soon as practicable and lodging a VDS. This may affect the calculation of certain components of the SG charge such as the administrative uplift component.

The administrative approaches reflected in PS LA 2007/1 (GA) do not apply to any periods from 1 July 2026.

Outcome

No change

Issue 17 – outage affecting a subset of users of an employer contribution portal

Paragraph or section of draft product

Not applicable – relevant to document scope

Issues raised

The final Practice Statement should clarify whether an outage affecting a superannuation fund employer portal may constitute exceptional circumstances for the purposes of subsection 18C(4).

The scenario involves an outage of a third-party gateway used by employers to establish default fund accounts, transmit contributions and access related fund services. The outage affects a subset of employers using the portal and prevented those employers from accessing the portal for several business days.

Given the number of employers affected, and the potentially significant number of employees impacted, clarification is sought as to whether such a disruption could satisfy the criteria for a widespread outage and support the making of an exceptional circumstances determination. Consideration should also be given to whether an example should be included in the final Practice Statement dealing with a fund or gateway outage.

Additional examples should also be included in the final Practice Statement to assist employers and intermediaries in understanding how the framework applies to partial outages, rolling disruptions, contribution-chain failures, situations involving incomplete information and other borderline scenarios.

ATO response

Whether a particular outage constitutes a widespread ICT outage and supports the making of a determination depends on all relevant facts and circumstances. Relevant considerations include the scale of the outage, the nature of the affected systems or services, the extent of the impact across employers, the duration of the disruption, and whether the outage meaningfully prevented a class of employers from making eligible contributions within the usual period.

Paragraph 42 of the final Practice Statement clarifies that an outage may be widespread even where some users of the affected system, platform or service remain unaffected. However, the information provided is insufficient to determine whether the particular scenario described would satisfy the requirements of subsection 18C(4), and further evidence would be required before such an assessment could be made.

The examples included in the final Practice Statement are intended to illustrate the application of the framework to a range of common scenarios. While no additional examples have been included at this time, we will continue to monitor the operation of the framework and consider whether further examples or supplementary guidance may be appropriate in light of implementation experience and emerging practical issues.

Outcome

No change

Issue 188 – external administration appointments and appointment-related process disruption

Paragraph or section of draft product

Not applicable – relevant to document scope

Issues raised

The final Practice Statement should recognise appointment-related process disruption arising in external administrations as an exceptional circumstance or, alternatively, clarify when such disruption may fall within the existing category of widespread ICT or technology service outages.

The issue arises where a registered liquidator, trustee, receiver, administrator or other insolvency practitioner assumes control of a trading business and inherits payroll, banking, superannuation and tax systems that they did not establish and may not be able to immediately access or verify. Difficulties obtaining payroll records, employee information, access to banking arrangements, SuperStream services, clearing houses, ATO online services and Client Activity Centre access may delay the ability to calculate, authorise, transmit and settle contributions for post-appointment trading periods.

A class-based determination should be made for insolvency practitioners acting in their appointed capacity where appointment-related access, authority, system or data disruption materially affects the ability to make eligible contributions within the usual period. Alternatively, an administrative approach should be adopted to provide relief where contribution delays arise from appointment-related process disruption rather than financial incapacity or ordinary non-compliance.

ATO response

The circumstances described do not fall within either category of exceptional circumstances prescribed by the *Superannuation Guarantee (Administration) Regulations 2018* for the purposes of subsection 18C(4), namely natural disasters and widespread outages of information and communication technology services or other technology services or platforms that facilitate or support employers to make contributions.

The Practice Statement is intended to provide guidance on the operation of the existing legislative framework. It cannot expand the categories of exceptional circumstances beyond those prescribed by law, nor create a separate class of exceptional circumstances for entities in external administration.

The practical difficulties identified, that may arise when control of a business transfers to an insolvency practitioner, generally result from the legal and operational consequences of the appointment itself, including obtaining access to records, systems, accounts, authorities and information. These circumstances are not equivalent to a natural disaster or a widespread technology outage affecting a class of employers.

To the extent that appointment-related disruption arises because a business is affected by a natural disaster or a qualifying widespread outage of a shared technology service, platform or dependency, the existing framework may apply in the same way as for any other affected employer. Whether a determination may be appropriate will depend on the facts and circumstances of the relevant event.

The submission raises broader policy questions regarding whether insolvency appointments should be treated as a separate category of exceptional circumstances or otherwise receive relief under the Payday Super framework. Those matters are outside the scope of this Practice Statement.

Outcome

No change

Date of publication: 1 October 2026

© AUSTRALIAN TAXATION OFFICE FOR THE COMMONWEALTH OF AUSTRALIA

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).