

PS LA 2026/D4 - Making Commissioner-initiated assessments: section 36 of the Superannuation Guarantee (Administration) Act 1992

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 For information about the status of this draft Practice Statement, see item [4253] on our [Advice under development program](#)



Making Commissioner-initiated assessments: section 36 of the *Superannuation Guarantee (Administration) Act 1992*

This Practice Statement outlines the guidelines in relation to issuing a Commissioner-initiated assessment under section 36 of the *Superannuation Guarantee (Administration) Act 1992*.

❗ Relying on this draft Practice Statement

This Practice Statement is a draft for consultation purposes only. When the final Practice Statement issues, it will have the following preamble:

This Practice Statement is an internal instruction to ATO staff, published externally in the interest of open tax administration.

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What this draft Practice Statement is about

1. Under subsection 36(1) of the *Superannuation Guarantee (Administration) Act 1992* (SGAA), the Commissioner may make an assessment of an employer's

superannuation guarantee (SG) shortfall¹ and liability to the superannuation guarantee charge (SGC) for a QE day.²

2. The Commissioner can make this assessment in one of 2 ways³:
 - based on information in a voluntary disclosure statement lodged by the employer for the QE day, or
 - on the Commissioner's own initiative (referred to in this draft Practice Statement⁴ as a Commissioner-initiated assessment).⁵
3. An employer can avoid having an SG shortfall and liability to the SGC for a QE day by making the minimum prescribed SG contributions for all of its employees within certain specified periods and complying with the choice of fund requirements.⁶
4. The Commissioner may make an assessment of an employer's SG shortfall and the resulting SGC for a QE day at any time. Accordingly, there is no time limit on when an initial assessment may be made.
5. This Practice Statement outlines when a Commissioner-initiated assessment can be made and the factors to consider in making this kind of assessment.
6. The principles outlined in this Practice Statement also apply, where relevant, to the amendment of existing SGC assessments, regardless of whether the original assessment was based on a voluntary disclosure statement or made on the Commissioner's own initiative.
7. All further legislative references in this Practice Statement are to the SGAA, unless otherwise indicated.

Key concepts and terminology

8. A **Commissioner-initiated assessment** is an assessment of an employer's SG shortfall and SGC that is⁷:
 - made under subsection 36(1) for an employer and a QE day
 - of an amount of SGC that is greater than nil
 - made on the Commissioner's own initiative, and
 - not based on a voluntary disclosure statement.
9. A **voluntary disclosure statement** is a statement that is⁸:
 - made by an employer about an SG shortfall for a QE day

¹ An employer's SG shortfall for a QE day is equal to the sum of the total of the employer's individual final SG shortfalls for the QE day, the total of the employer's individual notional earnings for the QE day, the employer's administrative uplift amount for the QE day, and the total of the employer's choice loadings for the QE day: subsection 16B(2) of the SGAA.

² A QE day is day on which an employer makes a payment of qualifying earnings to or for an employee – section 17A of the SGAA.

³ Subsection 36(2) of the SGAA.

⁴ All further references to 'this Practice Statement' refer to the Practice Statement as it will read when finalised. Note that this Practice Statement will not take effect until finalised.

⁵ The distinction between an assessment based on a voluntary disclosure statement and a Commissioner-initiated assessment is relevant to the calculation of the administrative uplift amount under section 19B of the SGAA.

⁶ Section 32C of the SGAA.

⁷ Subsections 13C(4) and (5) of the *Superannuation Guarantee (Administration) Regulations 2018*.

⁸ Section 33.

- lodged before the day an assessment is made for the employer for the QE day, and
- in the approved form.

10. A **purported voluntary disclosure statement** is a statement lodged by an employer that purports to be a voluntary disclosure statement but does not satisfy the requirements of a voluntary disclosure statement – for example, because it does not include material information required by the approved form.

11. An assessment made in response to a statement that is later found to be a purported voluntary disclosure statement is a Commissioner-initiated assessment.

12. An amended assessment is not a Commissioner-initiated assessment, regardless of whether the original assessment was based on a voluntary disclosure statement or was a Commissioner-initiated assessment, because an amended assessment is not made under subsection 36(1).

Points to consider before making a Commissioner-initiated assessment under section 36

13. When making your decision, you should consider:

- Has the employer lodged a voluntary disclosure statement?⁹
- Has the employer been informed of your intention to make a Commissioner-initiated assessment, as well as the basis upon which the SGC liability will be calculated, prior to the assessment being made?

14. The employer should be provided with an explanation of why we are considering making an assessment and afforded the opportunity to provide additional information relevant to determining their potential SGC liability. Our explanation should include details about the apparent SG shortfall, the basis on which it has been identified, and a reasonable opportunity for the employer to correct any reporting errors or provide additional information before the assessment is made. The employer may also choose to lodge a voluntary disclosure statement before an assessment is made.¹⁰

15. This will ease costs for the employer in meeting their obligations and may also lead to a reduction in disputes.

16. Exceptions to this general principle include where there is a:

- risk of flight by the employer
- risk of the dissipation of assets or movement of funds, or
- history of the employer being uncooperative.

⁹ If the employer has lodged a voluntary disclosure statement for a QE day, an assessment for that QE day may be made based on the information in that statement. You may also consider whether any of the information contained in the voluntary disclosure statement should be corrected, or supplemented, based on other information available to us. Where an assessment has already been made for the QE day, consideration should instead be given to whether an amendment is required to correct that assessment, including adding additional employees to the assessment where required, based on the information available to us.

¹⁰ Where an employer lodges a valid voluntary disclosure statement before an assessment is made, and the assessment is based on that statement, the assessment will not be a Commissioner-initiated assessment (although the amendment principles in this Practice Statement may still be relevant if the assessment is later amended). This may have consequences for the administrative uplift component in section 19B.

Gathering information to make an assessment

17. We use information available to us, including data reported through Single Touch Payroll (STP) and the Member Account Transaction Service (MATS) to determine whether an employer has an SG shortfall for a QE day.

18. These datasets may be considered together with other information available to us, including information provided by the employer (including anything relevant contained in a purported voluntary disclosure statement lodged by the employer) and information provided by an affected employee.¹¹

19. The information available to us indicating the apparent SG shortfall should be presented to the employer, along with an informal request for any missing data if required. This may include information about the affected QE days and the unpaid SG amounts identified for those QE days. The employer should also be advised to contact us if they believe the information is incorrect or can provide additional information relevant to determining their liability. The employer may provide supporting documentation (for example, bank statements) that may evidence that SG contributions have already been made and when they were made, including contributions made after the relevant due date but before an assessment is made. This information should be considered in determining the employer's SG shortfall and may demonstrate that no SG shortfall exists or that the amount of the shortfall is different from that initially calculated.

20. The absence of complete employer records does not necessarily prevent an SG shortfall from being determined where sufficient information is available from other sources.

21. If the employer does not respond satisfactorily, and if further information is still required, you should then consider whether it is appropriate to use our formal information-gathering powers.¹²

Making the assessment

22. Where the information available to us supports the conclusion that an employer has an SG shortfall for a QE day, you can make a Commissioner-initiated assessment.

23. Information from multiple sources may be considered together and the information relied on should provide a reasonable basis for determining the employer's SG shortfall and liability to SGC for a QE day.

24. Your decision in relation to the Commissioner-initiated assessment must be defensible, sound and in accordance with:

- relevant laws
- the commitments made in the [ATO Charter](#)
- the principles of the [Compliance model](#), and
- the [Good decision-making model](#) (link available internally only).

25. Your decision must be documented in the relevant ATO case management systems, outlining why you decided the employer has an SG shortfall for a QE day and the process you used to calculate the SG shortfall and SGC.

¹¹ An employee in this context is an employee as defined in section 12.

¹² Our formal information-gathering powers include issuing a notice under subsection 353-10(1) of Schedule 1 to the *Taxation Administration Act 1953*, requiring a person to give the Commissioner any information or documents under their control, attend and give evidence before the Commissioner, or both.

26. As a general rule, we will only make assessments for QE days for which the employer is still required to have retained records under section 79. However, if there is sufficient evidence of an SG shortfall, and that liability can be determined with a fair degree of certainty, you may raise an assessment for an earlier QE day despite the expiry of the employer's record-keeping retention period for that QE day.¹³

27. The Commissioner must give written notice of an SGC assessment.¹⁴

28. The same evidentiary and decision-making principles apply when amending an assessment, regardless of whether the original assessment was based on a voluntary disclosure statement or was a Commissioner-initiated assessment. An amendment should be based on information available to us and supported by information that provides a reasonable basis for determining the employer's SG shortfall and liability to the SGC for a QE day.

Loss of records

29. Where an employer is impacted by a natural disaster and relevant records are lost or damaged, you should consider whether information is available from other sources to determine the employer's SG shortfall and liability to the SGC for a QE day.

30. This may include information already available to us, or supporting documentation provided by the employer or affected employees, such as bank statements, payslips, payment summaries or superannuation fund records.

31. The absence of employer records does not, of itself, prevent us from making a Commissioner-initiated assessment. Information from other sources may be sufficient to determine the employer's liability.

Late payment penalty for unpaid superannuation guarantee charge

32. An employer (other than a government body) is liable to pay a penalty if the employer:

- does not pay the SGC by the day after the end of the 28th day that started on the day the SGC became payable¹⁵
- receives a Notice to Pay¹⁶ a specified amount that includes all or part of the SGC that was assessed, and
- does not pay the specified amount within 28 days after the day specified in the Notice to Pay (the 28 day notice payment period).

33. The amount of the penalty is equal to a percentage (up to 50%) of so much of the amount specified in the Notice to Pay that remains unpaid at the end of the 28 day notice payment period.¹⁷

¹³ This same principle applies to the raising of default assessments for quarters ending on or before 30 June 2026. See Law Administration Practice Statement PS LA 2007/10 *Making default superannuation guarantee charge assessments for quarters ending on or before 30 June 2026*.

¹⁴ Section 40.

¹⁵ SGC is payable on the day that the SGC assessment is made (subsection 36(4)). An assessment of SGC is made on the day that notice of the assessment is served on the taxpayer, this being the final step in the process of making an assessment: see *The Commissioner of Taxation of the Commonwealth of Australia v Ryan, Gwenda Blanche* [1998] FCA 320, per Merkel J and *Batagol v Federal Commissioner of Taxation* [1963] HCA 51, per Kitto J and Owen J.

¹⁶ Under section 59A.

¹⁷ Section 59C.

34. The Commissioner must make an assessment of the amount of the penalty and notify the employer. The penalty becomes due for payment on the day specified in the notice which must be at least 14 days after the day the notice is given to the employer.¹⁸

35. This penalty cannot be remitted, but it must be amended if:

- the underlying amount of SGC is reduced or ceases to exist, or
- the amount of the penalty set out in the penalty notice is reduced to nil because an exceptional circumstances determination covers the employer for any part of the period from the day the SGC became payable to the end of the 28-day period after the day specified in the Notice to Pay.¹⁹

Review rights

36. An employer who is dissatisfied with a Commissioner-initiated assessment can apply for an amendment of that assessment.²⁰ An application for amendment must generally be made within 4 years of when the assessment was made.

37. An employer who is dissatisfied with a Commissioner-initiated assessment, an amended assessment or a late payment penalty assessment may also object in the manner set out in Part IVC of the *Taxation Administration Act 1953*.²¹ An objection must generally be lodged within 60 days of when the assessment is made.

Examples

Example 1 – reason to issue a Commissioner-initiated assessment

38. *An employer ceases making SG contributions for their employees. STP records and MATS data show the employer has been paying qualifying earnings to its employees but hasn't been making SG contributions to the employees' funds. We commence an audit and provide this information to the employer and ask them to correct any errors in the data. The employer does not advise of any errors in the data and has not lodged any voluntary disclosure statements for the relevant QE days. We issue Commissioner-initiated assessments for all QE days for which an SG shortfall exists.*

Example 2 – purported voluntary disclosure statement

39. *Before any compliance action has commenced, an employer lodges statements indicating that they wish to disclose unpaid SG contributions for the QE days where they have an SG shortfall. However, the statements do not satisfy the requirements of a voluntary disclosure statement because they do not contain sufficient information to identify all the affected employees or accurately determine the employer's SG shortfall for the relevant QE days.*

40. *After compliance activity commences, the employer advises us they lodged statements for the relevant periods. We confirm no assessments have been made for the relevant QE days based on their statements, explain to the employer why the statements do not satisfy the requirements of a voluntary disclosure statement, and give them an*

¹⁸ Section 59D.

¹⁹ Section 59E.

²⁰ Subsection 37(5). This subsection is not limited to an amendment of a Commissioner-initiated assessment and may also apply to the amendment of an assessment based on a voluntary disclosure statement.

²¹ Section 42 and subsection 59D(4). These objection rights under Part IVC of the *Taxation Administration Act 1953* are not limited to Commissioner-initiated assessments and also apply to assessments based on a voluntary disclosure statement.

opportunity to provide additional information to help us make an assessment. The employer does not provide the required information.

41. We make SGC assessments for the relevant QE days using STP data and other information available to us, including some information from the statements lodged by the employer. As the statements were not voluntary disclosure statements, the assessments are Commissioner-initiated assessments.

42. However, if the employer lodges valid voluntary disclosure statements before any assessments are made, the assessments may be based on those voluntary disclosure statements rather than being Commissioner-initiated assessments.

Example 3 – assessment based on a voluntary disclosure statement

43. As a result of compliance activity, we identify that an employer has made payments of qualifying earnings to its employees but failed to make sufficient SG contributions for several of them, resulting in SG shortfalls across a number of QE days. Before any assessments are made, we notify the employer of the SG shortfalls. The employer lodges voluntary disclosure statements in the approved form containing complete and reliable information about all the affected employees, the relevant QE days, the contributions made and the outstanding SG shortfall for each QE day.

44. We rely on the information provided in the voluntary disclosure statements to assess the employer's SG shortfalls for the QE days and the resulting SGC. These are not Commissioner-initiated assessments.

Example 4 – amending an assessment

45. A Commissioner-initiated assessment is made based on information available to us at the time. After the assessment is issued, the employer objects to the assessment. The employer provides bank statements and contribution records demonstrating that some SG contributions were made for the relevant QE day before the assessment was issued but had not previously been taken into account.

46. We consider the new information provided under the objection and amend the assessment to reflect the correct SG shortfall and liability to SGC for the QE day. The amended assessment is not a Commissioner-initiated assessment, however this does not alter the fact that the original assessment was a Commissioner-initiated assessment.

Example 5 – assessment after record-keeping period has ended

47. An employee notifies us that their former employer did not pay SG contributions to their fund for a period of 12 months more than 5 years ago.

48. As the relevant period is more than 5 years ago, the employer is no longer required to have retained their records for that period. We're unable to determine whether there are any SG shortfalls for QE days during the period from our STP records and MATS data. We require sufficient written evidence from the employee.

49. The employee provides payslips, a payment summary and their superannuation fund statement which supports the conclusion that SG shortfalls for QE days during the period exist. We advise the employer of this information and give them a chance to respond. They state their records do not go back this far so are unable to either confirm or deny that there are SG shortfalls for QE days in this period. As a result, we may issue Commissioner-initiated assessments for the QE days for which the employee has provided sufficient supporting documentary evidence.

More information

50. For more information, see:

- Law Companion Ruling [LCR 2026/2](#) *Payday Super: eligible contributions*
- Law Companion Ruling [LCR 2026/3](#) *Payday Super: calculation and assessment of the superannuation guarantee charge*
- Law Administration Practice Statement [PS LA 2026/2](#) *Payday Super: exceptional circumstances determinations.*

Date issued: 15 October 2026

Date of effect: When finalised, this Practice Statement will apply in relation to the assessment of SG shortfalls and SGC liabilities for QE days on or after 1 July 2026

Appendix – Your comments

51. You are invited to provide comments on this draft Practice Statement. Forward your comments to the contact officer by the due date.

52. A compendium of comments is prepared as part of the finalisation of this Practice Statement. An edited version of the compendium (with names and identifying information removed) is published to the ATO Legal database on ato.gov.au.

53. Advise the contact officer if you do not wish for your comments to be included in the edited compendium.

Due date: 13 November 2026
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References

Previous draft:

Not previously issued as a draft

Related rulings and determinations:

LCR 2026/2; LCR 2026/3

Legislative references:

- SGAA 1992 12
- SGAA 1992 16B(2)
- SGAA 1992 17A
- SGAA 1992 19B
- SGAA 1992 32C
- SGAA 1992 33
- SGAA 1992 36
- SGAA 1992 36(1)
- SGAA 1992 36(2)
- SGAA 1992 36(4)
- SGAA 1992 37(5)
- SGAA 1992 40
- SGAA 1992 42
- SGAA 1992 59A
- SGAA 1992 59C
- SGAA 1992 59D
- SGAA 1992 59D(4)
- SGAA 1992 59E
- SGAA 1992 79

- SGAR 2018 13C(4)
- SGAR 2018 13C(5)
- TAA 1953 Pt IVC
- TAA 1953 Sch 1 353-10(1)

Cases relied on:

Batagol v Federal Commissioner of Taxation [1963] HCA 51; 109 CLR 243; (1963) 37 ALJR 235; [1964] ALR 480; (1963) 13 ATD 202

The Commissioner of Taxation of the Commonwealth of Australia v Ryan, Gwenda Blanche [1998] FCA 320; 82 FCR 345; 98 ATC 4323; 38 ATR 464

Related practice statements:

PS LA 2007/10

PS LA 2026/2

Other references:

[Compliance model](#)

[Good decision-making model](#) (link available internally only)

[ATO Charter](#)

ATO references

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