

# ***PS LA 2026/D3 - Payday Super: exceptional circumstances determinations***

⚠ This cover sheet is provided for information only. It does not form part of *PS LA 2026/D3 - Payday Super: exceptional circumstances determinations*

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



## Payday Super: exceptional circumstances determinations

This Practice Statement provides guidance to ATO staff on when the Commissioner may make an exceptional circumstances determination under subsection 18C(4) of the *Superannuation Guarantee (Administration) Act 1992* for the purposes of Payday Super. This includes the events that constitute exceptional circumstances and the considerations relevant to allowing a longer period of time to make eligible contributions.

### **📌 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. This draft Practice Statement relates to the reforms to the Superannuation Guarantee (SG) framework made by the *Treasury Laws Amendment (Payday Superannuation) Act 2025* and the *Superannuation Guarantee Charge Amendment Act 2025*.
2. These reforms, referred to as ‘Payday Super’ or ‘the Payday Super reforms’, apply from 1 July 2026. For an overview of the Payday Super reforms, see paragraphs 8 to 12 of draft Law Companion Ruling LCR 2026/D3 *Payday Super: calculation and assessment of the superannuation guarantee charge*.
3. This draft Practice Statement<sup>1</sup> provides guidance on what you need to consider when deciding whether to exercise the Commissioner’s power to make a determination under subsection 18C(4) of the *Superannuation Guarantee (Administration) Act 1992*.
4. This Practice Statement explains:
  - the legislative context
  - which employers the determination applies to
  - what constitutes exceptional circumstances to enliven the Commissioner’s power to make a determination
  - the relevant considerations in making a determination, and
  - the content of a determination.
5. All further legislative references in this Practice Statement are to the *Superannuation Guarantee (Administration) Act 1992*, unless otherwise indicated.

**Legislative context**

6. An employer must pay sufficient, timely superannuation contributions (eligible contributions)<sup>2</sup> to their employee’s superannuation fund for each day the employer pays qualifying earnings<sup>3</sup> to the employee (QE day)<sup>4</sup> to avoid incurring a superannuation guarantee (SG) charge liability. The eligible contributions must usually be received by the employee’s superannuation fund and be able to be allocated to the employee’s account within 7 business days after the QE day (the usual period)<sup>5</sup>.
7. There are certain situations where a longer period of time is allowed for contributions to be received by an employee’s superannuation fund. These contributions are considered to be ‘on-time’ and an employer will not incur an SG charge liability if they are paid in full within that longer period.<sup>6</sup>
8. One of the situations referred to in paragraph 7 of this Practice Statement is where the Commissioner determines that one or more kinds of employers are affected by certain prescribed exceptional circumstances that impact the ability of the employer to make on-time eligible contributions during a specified period of time.

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<sup>1</sup> 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.

<sup>2</sup> An eligible contribution under section 18A is a contribution made to a complying superannuation fund for the benefit of an employee and which is able to be allocated within the fund for the benefit of the employee.

<sup>3</sup> Section 10A. For more information on what constitutes qualifying earnings, see draft Law Companion Ruling LCR 2026/D1 *Payday Super: qualifying earnings*.

<sup>4</sup> Sections 16A, 16B and 17A.

<sup>5</sup> Subparagraph 18C(1)(c)(i).

<sup>6</sup> For more information on the longer allowable periods, see draft Law Companion Ruling LCR 2026/D2 *Payday Super: eligible contributions*.

9. If a determination is made, it allows additional time for affected employers to make eligible contributions. If it is made before the relevant QE day, the employer has 20 business days after the QE day. If it is made on or after the QE day, the employer has 20 business days starting the day after the determination is made.

10. The existence of exceptional circumstances allows the Commissioner to decide whether or not to make a determination. In deciding whether to make a determination, the Commissioner must have regard to whether those circumstances meaningfully affect the ability of affected employers to make eligible contributions within the usual period.

### **Which employers the determination applies to**

11. Where the Commissioner makes a determination in response to exceptional circumstances, the determination will be published and will specify the relevant class, or classes, of employer and the period covered by the determination.

12. Determinations can only be made under subsection 18C(4) for one or more kinds of employer (also referred to as 'a class' or 'classes' of employer in this Practice Statement). They cannot be made for individual employers.

13. The kinds, or classes, of employer may include those defined by:

- geographic location (such as declared disaster or Local Government Areas (LGAs))
- reliance on particular systems or platforms, or
- industries or sectors uniquely affected.

14. The class of employers specified for the purposes of a determination may also be defined by characteristics or conditions that describe how the exceptional circumstances affect the ability of the class to make eligible contributions within the usual period.

15. Whether an employer falls within the class of employers covered by a determination depends on the definition of the class specified in the determination. An employer that falls within the specified class is covered by the determination, regardless of whether the employer has the ability to make contributions within the usual period.

### **Exceptional circumstances**

16. There are 2 categories of exceptional circumstances capable of enlivening the Commissioner's power to make a determination, being<sup>7</sup>:

- natural disasters, and
- widespread outages of
  - information and communication technology (ICT) services, or
  - other technology services or platforms that facilitate or support employers to make contributions.

### **Scope of exceptional circumstances**

17. Subsection 18C(4) is concerned with whether the ability of affected employers to make eligible contributions is affected by the occurrence of a prescribed exceptional circumstance.

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<sup>7</sup> Section 13 of the *Superannuation Guarantee (Administration) Regulations 2018*.

18. Regard should be had to whether the exceptional circumstances disrupt the systems, infrastructure or processes required to calculate, authorise, transmit or settle contributions such that eligible contributions cannot be made within the usual period. This may include impacts on access to funds or financial systems where those impacts arise from disruption to the processes by which contributions are made (for example, where payment or banking systems are unavailable).

19. Cash flow or liquidity difficulties (including those arising from expenditure or financial pressures caused by the exceptional circumstances) do not, of themselves, mean that the ability of a class of employers to contribute is affected for the purposes of subsection 18C(4). The inability to fund a contribution, without any disruption to the processes required to make the contribution, is not sufficient. This distinction reflects that the provision is directed to the ability to complete the contribution process, rather than an employer's financial capacity to make eligible contributions.

20. The impacts on the employer must arise directly from the exceptional circumstances and materially affect the ability of employers, as a class, to make eligible contributions within the usual period.

21. Ordinary operational issues or disruptions that arise in the routine operation of payroll, business systems or compliance processes are not exceptional circumstances. These are part of the normal risks of operating a business.

### ***Natural disasters***

22. Natural disasters are naturally occurring events that cause significant harm, destruction or damage, and often occur with rapid onset. They include bushfires, floods, cyclones, earthquakes or severe storms.

23. Factors relevant in determining whether a naturally occurring event may constitute a natural disaster for these purposes include the event:

- affecting a wide geographical area or multiple industries
- impacting a significant number of employers.

24. Consistent with paragraphs 17 to 21 of this Practice Statement, a determination will be appropriate where a natural disaster meaningfully prevents the class, or classes, of employers from making contributions so that they are received, and able to be allocated, by their employees' funds within the usual period. This may happen when a natural disaster causes significant disruption to payroll, banking or contribution processing systems or infrastructure. This disruption may include:

- long power or telecommunications outages
- evacuations, exclusion zones or forced business closures
- damage to, or inaccessibility of, business premises and business records, or
- key personnel being unavailable due to emergency conditions.

25. A natural disaster does not automatically necessitate a determination. There must be a demonstrable causal connection between the disaster and the effect on the ability of the class of employer to make timely contributions.

26. The event does not have to be declared a natural disaster by the federal government for the purposes of issuing a determination. However, if such a declaration is issued, this would support any decision to do so.

27. You should liaise through appropriate incident response and service co-ordination channels, including with relevant government agencies and internal response areas, to confirm the disaster's scope, duration, geographic footprint and infrastructure impacts.

***Widespread outages of information and communication technology or other technology services that facilitate or support employers to make contributions***

28. A widespread technology outage occurs when substantial issues impact the availability of technology services that employers use to make contributions to superannuation funds for their employees. A determination will be appropriate where the outage meaningfully prevents the class, or classes, of employers from making contributions so that they are received and able to be allocated to the member's account by their employees' funds within the usual period.

29. This may occur when there is a significant disruption of:

- systems used by the class of employers to calculate or report qualifying earnings
- platforms required to validate member or fund information
- superannuation fund or fund administrator infrastructure that enables the receipt or processing of contributions, or
- payment or settlement systems through which contributions are transmitted.

30. An outage for this purpose must generally be:

- unplanned and unscheduled
- outside the control of the owners and users of the system and impacting on the usual operation of the system, and
- widespread (that is, system or platform wide and affecting an entire user base or sector, not a single or small number of employers).

31. Impacts on the timeliness of contributions which are part of the design of the system used by the employer or a fund are not outages.

32. Relevant systems may include:

- payroll systems used to calculate qualifying earnings and superannuation contributions
- ATO superannuation enabling services that affect the making of eligible contributions (for example, the online service to request a stapled superannuation fund)
- industry superannuation gateways or clearing platforms, and
- banking or payment systems integral to contribution processing.

33. Possible causes may include:

- damage to or failure of infrastructure of external service providers due to natural disasters or other unexpected events, and
- cybersecurity incidents exploiting vulnerabilities in information technology products or services.

34. You should liaise through appropriate incident response and service co-ordination channels (including with relevant government agencies, industry groups and service owners) to confirm the outage scope, system coverage and duration.

*When an information and communication technology outage is 'widespread'*

35. An ICT outage is generally 'widespread' when:

- it is system wide or platform wide (for example, incidents affecting most or all users of a payroll, clearing house, national payments network or banking service)
- it arises from a shared external dependency (for example, an upstream service provider failure or national payments infrastructure issues), or
- an employer's inability to comply arises from a shared system or dependency and is not attributable to employer-specific configurations or practices.

36. Indicators of a widespread ICT outage include:

- provider incident notices indicating tenant-wide<sup>8</sup> or all-user base impact
- national payment system advisories<sup>9</sup>
- coordinated government or industry notifications.

37. Planned maintenance or routine degradation will not ordinarily constitute a widespread outage.

### **Relevant considerations in making an exceptional circumstances determination**

38. In deciding whether to make a determination, you must balance competing considerations, including for the:

- nature of the exceptional circumstances
  - whether they are sudden, external and beyond system user control
  - whether they disrupt the usual operation of essential systems or infrastructure used to make contributions, and
  - the expected duration of the circumstances, including whether the disruption is sufficiently sustained to justify making a determination
- extent and significance of the impact, including
  - the scale and reach of the impact across employers
  - whether the impact affects an entire sector, region or system
  - the duration and severity of the impact relative to the 7 business days that is the usual period
  - whether the exceptional circumstances have materially affected the ability of employers, as a class, to make contributions, including through impacts on access to funds or financial resources

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<sup>8</sup> 'Tenant-wide' refers to an incident affecting all or substantially all users of a system or service (for example, all employers using a particular payroll or clearing platform).

<sup>9</sup> National payment system advisories refer to formal notices of disruptions to major payment systems (for example, outages affecting interbank or real-time payment systems).

- employee interest considerations – in considering whether to make a determination (and, in particular, the period of time to which a determination should apply), you should have regard to
  - employees’ strong interest in having eligible contributions made as close as possible to the QE day
  - the policy intent of Payday Super to reduce unpaid and late superannuation contributions, and
  - the risk that providing an allowable longer period to make contributions may delay retirement savings or investment earnings
- proportionality and appropriateness of making a determination in response to the exceptional circumstances
  - whether allowing a longer time to make eligible contributions is necessary in light of the nature, scale and duration of the disruption
  - whether a determination could be appropriately scoped by geography, platform, system or sector, and
  - whether the period that would be required to address the disruption would be proportionate, having regard to employees’ interests in timely superannuation contributions.

39. In considering whether to make a determination, you should do so as soon as practicable once there is sufficient information to assess the nature, scope and impact of the exceptional circumstances. This may require allowing a reasonable period to understand the extent and duration of the disruption before making a determination.

### ***Duration of the relevant event***

40. Determinations are not intended for incidents of relatively short duration (for example, several hours) but for more sustained events that meaningfully prevent affected employers from making eligible contributions within the usual period.<sup>10</sup>

41. The timeframes set out in paragraphs 42 to 48 of this Practice Statement provide guidance only. They are not rules or thresholds. You must consider all relevant circumstances.

### ***Extended (equal to or more than 4 business days)***

42. A determination will usually be supported, subject to other factors, where the disruption persists for 4 or more business days.

43. Where a disruption persists for 4 business days or more, employers may have 3 business days or fewer remaining in the usual period once systems are restored. Having regard to the steps required for contributions to be received and able to be allocated (including payroll processing, validation, payment settlement and fund acceptance, as well as the fund’s ability to reject contributions), this reduced timeframe may not provide a reasonable or reliable opportunity for affected employers, as a class, to make the contributions within the usual period.

<sup>10</sup> The Explanatory Statement to *Treasury Laws Amendment (Payday Superannuation) Regulations 2026*, which prescribes the kinds of exceptional circumstances, provides that an outage of a key enabling service may be widespread and completely prevent contributions from being made but only persist for several hours, in which case a determination would not be appropriate.

44. In these circumstances, failure to allow a longer period to make contributions is more likely to result in systemic and unavoidable SG shortfalls, such that a determination may be a proportionate and appropriate response.

*Substantial (2 to 3 business days)*

45. A determination may be supported where the disruption persists for 2 to 3 business days if, having regard to the circumstances, the disruption nonetheless meaningfully prevents the affected class of employers from making eligible contributions within the usual period.

46. This may occur, for example, where there is a complete and sustained outage of a critical dependency (such as a national payments network outage or essential validation service) or intermittent disruptions with no clear timeframe on restoration, and there are no practical alternatives reasonably available to the affected class as a whole.

*Short (hours)*

47. A determination will not ordinarily be supported where the disruption persists for part of a day or several hours only, as these disruptions will not be expected to meaningfully prevent employers, as a class, from making eligible contributions within the usual period.

*Multiple or rolling disruptions*

48. Sequential or rolling events should be assessed collectively. Where multiple disruptions together occur over several business days, they may support a determination where the cumulative effect meaningfully prevents timely compliance. This may be the case even where individual events causing disruptions are shorter in duration.

**Content of a determination**

49. A determination must include:

- the class (or classes) of employers covered by the determination
- the date the determination is made
- the period covered (which may include a period that commences prior to the date of the determination).

50. In specifying the class (or classes) of employers for the purposes of a determination, you may include descriptive characteristics or conditions to ensure the class does not inadvertently cover employers who are not affected by the exceptional circumstances. This may include characteristics relating to how contributions are made, such as whether the systems, locations or functions used to make eligible superannuation contributions within the usual period are subject to the exceptional circumstances described in the determination (for example, where those functions are performed in an affected location or rely on affected systems).

51. These characteristics operate to define the class and do not require an assessment of each individual employer's ability to make contributions within the usual period.

52. It is the employer's responsibility to self-assess their inclusion in the relevant class of employer specified in the determination and maintain records to substantiate their eligibility.

**Governance, record-keeping and authorisation**

53. You must document:

- the exceptional circumstances identified
- how the exceptional circumstances have impacted the ability of the class of employer to make on-time eligible contributions
- consideration of employee interests in the class of employers making prompt eligible contributions
- reasons for making or deciding not to make a determination under subsection 18C(4).

54. This information should be recorded in appropriate internal decision records.

55. Where relevant, you should also retain evidence supporting:

- the class definition
- verification of the outage or disaster
- consultation with relevant stakeholders, and
- any analysis of alternative options (such as deciding to not make a determination or limiting its scope).

56. Decisions under subsection 18C(4) must be made by an officer who holds the appropriate delegation or authorisation to exercise this power. You must ensure you are acting within the scope of your delegation at the time the decision is made.

57. Where you do not hold the appropriate delegation or authorisation, the matter must be escalated for approval to an officer who does, in accordance with established governance arrangements.

**Publication and communication**

58. Where the Commissioner makes a determination under subsection 18C(4), the determination must be published promptly and must clearly specify the period covered by the determination.

59. As a determination is a legislative instrument, it must be registered in accordance with the *Legislation Act 2003*. In addition, appropriate publication channels may also include:

- our website (ato.gov.au)
- ATO news and updates channels
- relevant employer or industry stakeholder communication channels
- other avenues as determined by stakeholders.

60. The purpose of this communication is to ensure employers can easily determine their eligibility, understand their obligations and comply with the longer period allowed for payment of contributions.

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**Example 1 – natural disaster – severe flooding (determination made)**

61. *On 3 February 2027, severe flooding in the Riverside Heights and Lower Basin LGAs in western New South Wales triggers mandatory evacuation orders and causes prolonged electricity, telecommunications and road outages for approximately 10 days.*

62. Lucia is a Senior Executive Services (SES) Band 1 Assistant Commissioner and has delegation to make an exceptional circumstances determination. She identifies that the flood was a natural disaster, as it was a naturally occurring event that caused significant destruction and damage. This conclusion is supported by a natural disaster declaration by the federal government. The flood, therefore, qualifies as an exceptional circumstance for the purposes of paragraph 18C(4)(a).

63. Lucia also identifies that all employers in these LGAs would be unable to access their payroll systems and banking services because of the electrical and telecommunications outages that the floods have caused and it will take 10 days for those services to be restored.

64. Lucia determines that employers whose principal place of business and payroll operations are in either of these 2 LGAs forms a class of employers that could not reasonably make eligible contributions within the usual period of 7 business days.

65. The determination is made on 7 February 2027. It applies to QE days that fell in the period from 3 February to 17 February 2027, inclusive of those days.

66. In making the determination, Lucia considers the inability of the class of employer to access payroll and banking systems and the length of time that employer systems would be down. This is weighed against employees' interests in having contributions that are paid in the usual period resume as soon as possible.

#### **Example 2 – payroll service outage (determination not made)**

67. A national outage at Where's My Pay Co, a payroll service provider, temporarily stops standard payroll processing for approximately 8,000 employers. The outage lasts for 24 hours.

68. Mariona is an SES Band 1 Assistant Commissioner and has delegation to make an exceptional circumstances determination. She identifies that the outage was widespread because it disrupted technology services for a significant number of employers. It constitutes an exceptional circumstance for the purposes of paragraph 18C(4)(a).

69. There is a class of employers affected by the outage, that is, the employers who use the payroll services of Where's My Pay Co. However, because the outage only lasts 24 hours, it does not meaningfully prevent that class of employers from making contributions within the usual period.

70. Although the outage may have resulted in some employers being unable to make contributions within the usual period, Mariona considers that the short duration of the disruption does not mean that the affected class of employers, taken as a whole, were meaningfully prevented from making contributions within the usual period. Providing a longer period in these circumstances would delay contributions for the majority of employees who would otherwise have had their contributions made within the usual period.

71. Based on these considerations, Mariona decides that it is not appropriate to make an exceptional circumstances determination.

#### **Example 3 – localised power outage (not an exceptional circumstance)**

72. A power interruption affects several streets in the Sydney central business district for approximately 10 hours. Although the power interruption means that employers in the affected areas are unable to access payroll and banking systems, it was of short duration and was not widespread – it only affected a small number of employers in a confined area.

73. *Thiago is an SES Band 1 Assistant Commissioner and has delegation to make an exceptional circumstances determination. He concludes that this outage does not constitute a widespread outage of ICT technology or supporting technology services. It, therefore, does not amount to exceptional circumstances for the purposes of paragraph 18C(4)(a). Accordingly, Thiago decides that a determination should not be issued.*

**Example 4 – cyclone and cumulative service failures across a region (determination made)**

74. *A cyclone affects 4 coastal LGAs in Queensland, causing significant physical damage and ongoing disruptions to electricity, telecommunications and critical information technology infrastructure. In the following week, banking systems and superannuation fund gateways experience intermittent outages, preventing many employers from transmitting contributions within the usual period.*

75. *While some employers can partially operate using unaffected channels, many face repeated disruptions across multiple systems.*

76. *Miguel is an SES Band 1 Assistant Commissioner and has delegation to make an exceptional circumstances determination. He determines that the cyclone was a natural disaster as it caused physical damage. This conclusion is supported by a natural disaster declaration by the federal government. The cyclone also caused disruption to the information technology infrastructure and communications, which impacted employers' ability to make contributions.*

77. *Miguel identifies that the disruptions to systems that allowed for the transmission of contributions, although intermittent, persisted for more than 4 business days. Because of the cumulative and unpredictable nature of the disruptions across banking and gateways services, employers whose principal place of business or payroll operations, or both, are in any of the 4 LGAs comprises a class of employer that was meaningfully prevented from having their contributions received by the employees' funds within the usual period. Although some employers had better access to unaffected systems than others, it was not practicable to separately identify those employers given the variable and evolving nature of the service outages across the region. Miguel decides that, in these circumstances, a geographically defined class is appropriate.*

78. *Miguel makes a determination on 14 March 2027. It applies to QE days in the period from 4 to 19 March 2027, inclusive of those days.*

79. *In making the determination, Miguel considers the impact of ongoing and unpredictable disruptions on the employers' ability to make contributions and the length of time it may take to re-establish electricity and telecommunications services. This is weighed against the employees' interests in having contributions that are paid in the usual period resume as soon as possible.*

**Example 5 – cyber incident affecting super fund (determination made)**

80. *A cyber incident requires the I Want Retirement Trust, a large Australian Prudential Regulation Authority-regulated superannuation fund, to shut down key systems from 18 to 22 September 2027. Employers are unable to complete verification checks or transmit payments to the superannuation fund during this period, as the fund's infrastructure is offline for containment and unable to process transactions as usual.*

81. *Lionel is an SES Band 1 Assistant Commissioner and has delegation to make an exceptional circumstances determination. He determines that the cyber incident was a widespread ICT outage of fund infrastructure because it was unplanned and disrupts systems relied on by a class of employers. This results in an inability for many employers*

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*to make contributions during the outage. It, therefore, qualifies as an exceptional circumstance for the purposes of paragraph 18C(4)(a).*

82. *Lionel identifies that the class of employers affected by the outage are those employers who made contributions to the I Want Retirement Trust for the benefit of their employees.*

83. *Lionel determines that this class of employer is unable to make contributions within the usual period for QE days that fell within the period from 18 to 22 September 2027.*

84. *Lionel makes a determination on 24 September 2027. It applies to QE days from 18 to 22 September 2027, inclusive of those days.*

85. *In making the determination, Lionel takes into account the severity of the cyber attack on the fund's systems and the period of the disruption. This is weighed against employees' interests in having contributions that are paid in the usual period resume as soon as possible.*

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**Date issued:** 27 May 2026

**Date of effect:** When finalised, this Practice Statement will apply from 1 July 2026

## Appendix – Your comments

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

87. 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](http://ato.gov.au).

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

**Due date:** 26 June 2026  
**Contact officer:** Bonita Tsang  
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## References

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*Related rulings and determinations:*

LCR 2026/D1  
LCR 2026/D2  
LCR 2026/D3

- SGAA 1992 18C(1)(c)(i)
- SGAA 1992 18C(4)
- SGAR 2018 13
- Legislation Act 2003
- Treasury Laws Amendment (Payday Superannuation) Act 2025
- Superannuation Guarantee Charge Amendment Act 2025

*Legislative references:*

- SGAA 1992 10A
- SGAA 1992 16A
- SGAA 1992 16B
- SGAA 1992 17A
- SGAA 1992 18A

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ATO references

NO: 1-1AS6RUIE  
ISSN: 2651-9526  
BSL: SEO  
ATOlaw topic: Superannuation ~~ Employers ~~ Making contributions  
Superannuation ~~ Employers ~~ Other

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