



Explanatory Statement

Superannuation Guarantee (Administration)(Out-of-Cycle Qualifying Earnings) Determination 2026

General outline of instrument

1. This instrument is made under subsection 18C(3) of the *Superannuation Guarantee (Administration) Act 1992* (Act).
2. Under the Payday Super reforms that commenced on 1 July 2026, employers are incentivised to pay an employee's superannuation at the same time they pay their salary or wages. Employers are incentivised because a contribution is generally only 'on time' if it is received within 7 business days after payday, measured from when the employee is paid their qualifying earnings (the amounts of pay on which the employer's superannuation guarantee is calculated). The day an employer pays the employee's qualifying earnings is called the 'QE day'.
3. This instrument determines the kinds of out-of-cycle qualifying earnings (such as allowances, commissions, bonuses, payments in advance and back payments), and the circumstances that must exist in respect of those kinds of qualifying earnings, for an employer to be eligible for an extended period to make 'on-time' superannuation guarantee (SG) contributions for those earnings.
4. The extended period for out-of-cycle payments ensures that employers can maintain a regular schedule of SG contributions based on their usual pay cycle, without needing to make small ad hoc SG contributions due to out-of-cycle payments. The ability for the Commissioner to determine that certain payments are out of cycle ensures that the SG framework remains up to date as different forms of employee remuneration develop over time.
5. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Date of effect

6. This instrument commences on 1 July 2026.

Background

7. The Payday Super reforms align the timing of payment of SG contributions with the payment of salary or wages to employees and replace the previous quarterly system. Employers ordinarily have 7 business days after a QE day to make an on-time eligible contribution for an employee.
8. However, the standard 7 business day timeframe may at times impose an unnecessary administrative burden on employers. Accordingly, in certain circumstances, the Act allows a longer period (allowable longer period) – more than the usual 7 business days after the QE day – for an on-time eligible contribution to be made.
9. Subsection 18C(2) of the Act gives effect to these arrangements by providing a table that outlines the circumstances in which allowable longer periods apply. Where an allowable longer period applies, an eligible contribution is treated as having been made on time if it is received within

that period. In particular, under item 2 of the table the eligible contribution is treated as received on time if:

- there is a payment of qualifying earnings of a kind determined by the Commissioner under subsection 18C(3) (out-of-cycle qualifying earnings),
- there is a later QE day for the employer and the employee where there is a payment of qualifying earnings not of that determined kind (qualifying earnings that are not out of cycle), and
- it is received within 7 business days after that later QE day.

10. Under subsection 18C(3) of the Act, the Commissioner of Taxation is authorised to determine the kinds of qualifying earnings and the circumstances in which those earnings are 'out-of-cycle' qualifying earnings.

Effect of the Instrument

11. This instrument determines the kinds of qualifying earnings that are out-of-cycle qualifying earnings. A longer period is allowed to make on-time eligible contributions in relation to payments of these out-of-cycle qualifying earnings.

What out-of-cycle qualifying earnings are

12. Without this instrument, the standard 7 business day timeframe to make an on-time eligible contribution in respect of payments of out-of-cycle qualifying earnings would apply. Such an outcome could increase compliance costs for employers, as they would need to make contributions in respect of out-of-cycle payments on an ad-hoc basis or incur the superannuation guarantee charge.

13. Instead, under subsections 5(1) and (2) of the instrument, if:

- the employer has an established timing, pattern or schedule for making payments of qualifying earnings to or for the employee, and
- the payment of qualifying earnings is made on a day that is outside of the employer's usual timing, pattern or schedule for making payments of qualifying earnings to or for the employee,

then, the following are out-of-cycle qualifying earnings:

- allowances
- bonuses
- commissions
- loadings
- payments in advance, and
- back payments.

14. Under subsection 5(3) of the instrument, a payment of qualifying earnings that satisfies the criteria in subsections 5(1) and (2) (the first payment) will only be a payment of out-of-cycle qualifying earnings if:

- the employer makes another payment of qualifying earnings to or for the employee (the subsequent payment), and
- the subsequent payment is not a payment of out-of-cycle qualifying earnings, and

- the subsequent payment is made on the next day that is consistent with the employer's usual timing, pattern or schedule for making payments of qualifying earnings to or for the employee following the day the first payment was made.

15. In effect, the characterisation of the first payment depends on whether there is a later payment made to the employee in the ordinary course of the employer's payroll cycle.

16. Subsection 5(4) makes it clear that there may be further payments of out-of-cycle qualifying earnings between the first payment and the subsequent payment.

Allowable longer period for out-of-cycle earnings

17. Where an employer makes a payment of out-of-cycle qualifying earnings, a longer period applies for the employer to make on-time eligible contributions for the relevant QE day. The allowable longer period ends 7 business days after the next payment of qualifying earnings that are not out-of-cycle qualifying earnings. The effect of this is that an employer has additional time to make an on-time SG contribution in relation to out-of-cycle qualifying earnings (such as an allowance) that are paid during a pay cycle. The additional time to make the on-time SG contribution ends 7 business days following the next usual payday after the allowance is paid.

18. However, there are instances where some kinds of payments of qualifying earnings cannot be out-of-cycle qualifying earnings because of the legislative requirement, in table item 2 of subsection 18C(2) of the Act, that there be a later QE day for the employer and the employee for an allowable longer period to apply in respect of a payment of out-of-cycle qualifying earnings. For example, a termination payment may be made to an employee on the day of the termination of their employment, rather than in accordance with the employer's usual pay cycle, and may include amounts of qualifying earnings. As the employment of that employee has ceased, there will be no later QE day for the employer and that (former) employee. While the employer may have later QE days as part of their usual pay cycle for other employees, that is not a relevant consideration, and the employer must make an SG contribution within 7 business days of the termination payment for the contribution to be on-time under the standard payday superannuation rules.

Established timing pattern or schedule

19. Under paragraph 5(2)(a), an employer has an established timing, pattern or schedule for making payments of qualifying earnings to or for the employee where the employer has a demonstrated history of making those payments on a consistent frequency.

20. For example, employers are commonly required under the industrial instruments governing their employment relationships with their employees to make payments of salary or wages on a weekly, fortnightly or monthly basis. An employer who regularly makes payments of salary or wages to an employee in accordance with the relevant industrial instrument will have an established timing, pattern or schedule consistent with that weekly, fortnightly or monthly cadence.

21. An employer may also make payments of qualifying earnings to particular employees on an intermittent or irregular basis. For example, an employer may make payments of qualifying earnings to a person who works under a contract that is wholly or principally for the labour of the person, and is therefore an employee under subsection 12(3) of the Act, on an intermittent or irregular basis following the presentation of an invoice by the employee.

22. In these circumstances, the employer will not have an established timing, pattern or schedule of making payments of qualifying earnings to or for the employee, the condition in paragraph 5(2)(a) of the instrument will not be satisfied, and the employer must make SG contributions within 7 business days of each payment for the contributions to be on-time under the standard payday superannuation rules.

23. Under paragraph 5(2)(b), for a payment of qualifying earnings to be out of cycle the payment must be made on a day that falls outside the employer's established timing, pattern or schedule for

making payments of qualifying earnings to or for the employee. A payment will therefore not be a payment of out-of-cycle qualifying earnings if it is made on a day that the employer usually pays qualifying earnings to the employee.

24. For example, an employer may process the payment of a bonus separately from payments relating to an employee's ordinary hours of work. While a bonus payment is of a kind that may constitute out-of-cycle qualifying earnings, it will not be a payment of out-of-cycle qualifying earnings if it is made on the same day as payments for the employee's ordinary hours of work as part of the employer's usual pay cycle.

25. In this situation, the employer must include the bonus payment (to the extent it constitutes the qualifying earnings of the employee) with the payment relating to the employee's ordinary hours of work when determining the amount of the qualifying earnings for the purposes of calculating the employer's individual superannuation guarantee amount for the employee under subsection 17A(2) of the Act.

Subsequent payment of qualifying earnings consistent with established timing, pattern or schedule

26. Under subsection 5(3), for a payment of qualifying earnings to be out of cycle, the employer must make another payment of qualifying earnings to or for the employee that is not a payment of out-of-cycle qualifying earnings. This subsequent payment of qualifying earnings must be made on the next day that is consistent with the employer's established timing, pattern or schedule of making payments of qualifying earnings to or for the employee after the day the first payment was made.

27. For example, upon an employee commencing an extended period of leave an employer may make a payment in advance to the employee representing their entire entitlement to leave payments during their absence from work. In that circumstance, the employer may not make the next 'regular' payment of qualifying earnings to the employee until their return to work, which in some cases could be 12 months or more after the payment in advance was made.

28. Absent the condition in subsection 5(3), the next 'standard QE day' for the employer and the employee for the purposes of item 2 in the table in subsection 18C(2) of the Act may also therefore be 12 months or more after the payment in advance was made. This would mean that the allowable longer period for making an eligible contribution in respect of the payment in advance could also extend for 12 months or more after the payment in advance. Such a deferral of the timeframe for making eligible contributions is not consistent with the intent of the Payday Super reforms and is not an appropriate outcome.

29. Therefore, under subsection 5(3) the employer must make a 'regular' payment of qualifying earnings to or for the employee consistent with the employer's established timing, pattern or schedule for making payments of qualifying earnings to or for the employee. For example, if the employer has an established timing, pattern or schedule for making payments of qualifying earnings to or for the employee on a monthly basis on the 15th day of each month, a payment made out of cycle on 19 March 2027 will, provided all the other requirements in the instrument are satisfied, be a payment of out-of-cycle qualifying earnings if the employer still makes a payment of qualifying earnings to or for the employee on 15 April 2027.

30. Subsection 5(4) also makes it clear that an employer may make more than one payment of out-of-cycle qualifying earnings to or for an employee prior to the next 'regular' payment of qualifying earnings.

31. The fact that an employer may make payments of qualifying earnings to other employees consistent with their established timing, pattern or schedule for making payments of qualifying earnings to or for those employees is not a relevant consideration. For example, a payment in advance made to an employee undertaking leave for 12 months does not satisfy subsection 5(3) merely because the employer makes payments of qualifying earnings to other employees not on leave as part of its usual pay cycle.

Example – out-of-cycle qualifying earnings

Sam is employed under an award that requires salary or wages to be paid fortnightly. Sam's employer makes payments for Sam's ordinary hours of work every second Thursday in accordance with that award.

On Thursday 2 July 2026, Sam's employer pays Sam for his ordinary hours of work. On the same day, the employer also pays Sam a bonus in recognition of his performance during the 2025–26 financial year.

Although a bonus is one of the kinds of qualifying earnings specified in the instrument, the bonus paid on 2 July 2026 is not a payment of out-of-cycle qualifying earnings. This is because it was paid on a day that forms part of the employer's usual pay cycle for Sam.

The next payment of qualifying earnings that Sam's employer makes under the usual pay cycle is on Thursday 16 July 2026.

However, on Tuesday 7 July 2026 Sam becomes entitled to an allowance, and his employer pays the allowance on that day. The allowance is a payment of out-of-cycle qualifying earnings because:

- the allowance constitutes a payment of qualifying earnings*
- the allowance is paid on a day outside the employer's usual pay cycle, and*
- Sam's employer makes a 'regular' payment of qualifying earnings to him on 16 July 2026 in accordance with the usual pay cycle.*

An allowable longer period therefore applies in relation to the allowance paid on 7 July 2026. That allowable longer period ends on 27 July 2026, 7 business days after the next 'standard QE day' for Sam, which is the QE day on 16 July 2026.

Meaning of key terms used in the instrument

32. Where expressions used in the instrument are not defined in the instrument itself or in the Act, they take their ordinary meaning.

Employer

33. In the instrument, the expression 'employer' has the same meaning as in section 12 of the Act. A person or entity is an employer for superannuation guarantee purposes if they employ a worker who is an employee under the ordinary meaning, or if they engage a worker who is treated as an employee by specific provisions in section 12 of the Act.

34. As a result, a person or business may be an employer for superannuation guarantee purposes even if the worker is not an employee at common law. Where the Act treats a person as an employee – for example, because they perform work under a contract that is wholly or principally for their personal labour or skills – the person who is required to make payments to them for that work is treated as their employer for superannuation guarantee purposes.

Employee

35. In the instrument, the expression 'employee' has the same meaning as in section 12 of the Act. It also includes a former employee, consistent with the application of section 15B of the Act.

36. Under section 12 of the Act, an employee includes a person who is an employee under the ordinary (common-law) meaning, as well as certain other persons who are treated as employees for superannuation guarantee purposes by specific provisions in section 12 of the Act.

37. As a result, a person may be an employee for superannuation guarantee purposes even if they are not an employee at common law. For example, a person who performs work under a

contract that is wholly or principally for their personal labour or skills may be treated as an employee under section 12 of the Act. Whether a person is an employee does not depend solely on how the arrangement is described by the parties, but on the proper characterisation of the relationship under the Act.

Qualifying earnings

38. In the instrument, 'qualifying earnings' has the same meaning as in section 10A of the Act. In broad terms, qualifying earnings are the amounts paid to, or for, an employee that are taken into account when working out an employer's superannuation guarantee obligations. They include an employee's earnings for their ordinary hours of work, as well as a broader range of other earnings, remuneration and payments that arise from the employment relationship.

39. Qualifying earnings includes amounts that would otherwise be qualifying earnings but are instead exchanged for additional employer superannuation contributions under a salary sacrifice arrangement, and amounts paid in respect of a person who is treated as an employee under the extended meaning of that term in section 12 of the Act. Some payments are specifically excluded from qualifying earnings under the Act or the regulations; however, unless an exclusion applies, amounts paid to an employee that reward them for their work will generally constitute qualifying earnings.

Allowances

40. 'Allowances' is not defined in the instrument and, therefore, takes its ordinary meaning. Payments of allowances include, but are not limited to, payments to an employee who:

- does certain tasks, for example, leading hand or supervisor allowances
- holds particular qualifications, for example, first aid or safety officer allowances
- uses their own equipment, for example, tool allowances
- works in unpleasant or hazardous conditions, for example, danger, height or dirt allowances, or
- incurs an expense in performing their work, for example, uniform, car or travel allowances.

41. An allowance will not always constitute the qualifying earnings of an employee. A particular payment of an allowance can only be considered to be a payment of out-of-cycle qualifying earnings to the extent the payment constitutes the qualifying earnings of the employee.

Bonuses

42. 'Bonuses' are not defined in the instrument and, therefore, takes its ordinary meaning. Bonuses are extra payments made by an employer to an employee usually in recognition of good performance or service. A bonus payment may be calculated in various ways, including as a percentage of the proceeds from a particular business transaction.

43. A bonus payment may be of a one-off nature and may not be related to a particular period of work. Bonus payments include, but are not limited to, payments of a Christmas bonus, a once-only payment made as compensation for a changed work location or an amount paid as a sign-on bonus upon commencement of employment.

44. Bonuses generally constitute the qualifying earnings of an employee. However, a particular bonus payment can only be considered to be a payment of out-of-cycle qualifying earnings to the extent the payment constitutes the qualifying earnings of the employee.

Commissions

45. 'Commissions' are not defined in the instrument and, therefore, takes its ordinary meaning. They are payments made by an employer to an employee on the basis of the volume of sales achieved by the employee or other similar criteria.

46. Commissions are commonly calculated as a fee or percentage of the employee's total sales. The commission may be paid as an extra incentive in addition to payments in respect of the employee's ordinary hours of work or may represent the entirety of the employee's remuneration.

47. Commissions always constitute the qualifying earnings of an employee.

Loadings

48. 'Loadings' are not defined in the instrument and, therefore, takes its ordinary meaning. Loadings are additional payments made by an employer to an employee to compensate for entitlements, such as penalty rates, allowances or overtime pay, that the employee is not presently entitled to, for example, because they are taking a period of annual leave.

49. Loadings generally constitute the qualifying earnings of an employee. However, a particular loading payment can only be considered to be a payment of out-of-cycle qualifying earnings to the extent the payment constitutes the qualifying earnings of the employee.

50. Loadings are also commonly paid to casual employees to compensate for the employee not being entitled to paid leave. Such loadings are commonly paid as a fixed percentage in addition to the ordinary pay of the employee, for example, a 25% casual loading. Casual loadings are unlikely to constitute a payment of out-of-cycle qualifying earnings given they are generally paid at the same time as payments in respect of the employee's ordinary hours of work.

Payments in advance

51. A 'payment in advance' is defined in the instrument as a payment by an employer to an employee that is paid earlier than the time the employee would ordinarily become entitled to the payment. A loan by an employer to an employee is expressly excluded from the definition of a payment in advance.

52. Payments in advance are commonly made to employees undertaking periods of leave. For example, an employer may make a single lump sum payment to an employee on commencement of a period of leave that represents the employee's entitlement to pay for the full leave period.

53. Payments in advance generally constitute the qualifying earnings of an employee. However, a particular payment in advance can only be considered to be a payment of out-of-cycle qualifying earnings to the extent the payment constitutes the qualifying earnings of the employee.

Back payments

54. A 'back payment' is defined in the instrument as a payment by an employer to an employee that is paid after the time the employee became entitled to the payment.

55. Back payments are commonly made when an employer discovers they have under-paid an employee due to an error or oversight. For example, an employer may miscalculate the rate of pay in respect of ordinary hours of work an employee is entitled to under an industrial instrument or incorrectly record that an employee is not entitled to a particular allowance when the employee is in fact entitled to that allowance.

56. A back payment will not always constitute the qualifying earnings of an employee. A particular back payment can only be considered to be a payment of out-of-cycle qualifying earnings to the extent the payment constitutes the qualifying earnings of the employee.

Compliance cost assessment

57. Compliance cost impact: Minor – There will be no additional regulatory impacts as the instrument is minor and machinery in nature (OIA26-11773).

Consultation

58. For this instrument, broad public consultation was undertaken for a period of 2 weeks ending on 22 May 2026.

59. The draft instrument and draft explanatory statement was published to the ATO Legal database. Publication was advertised via the 'What's new' page on that website, and via the 'Open Consultation' page on ato.gov.au. Major tax and superannuation publishers and associations typically monitor these pages and include the details in the daily and weekly alerts and newsletters to their subscribers and members.

60. As a result of a submission received during consultation, the legislative instrument and the explanatory statement were amended to prevent unintended outcomes in certain circumstances, including where payments in advance are made to an employee undertaking an extended period of leave. As the operation of the draft instrument would have led to outcomes that were not consistent with the intent of the Payday Super reforms, the instrument and the explanatory statement were amended to ensure an appropriate outcome applies in these circumstances.

61. Some submissions also requested:

- a transitional approach to determining out-of-cycle payments for QE days between 1 July 2026 and 30 June 2027, similar to that taken in the ATO's Practical Compliance Guideline PCG 2026/1 *Payday Super – first year ATO compliance approach*, and
- a simplified approach for determining out-of-cycle payments for small business employers that aligned with their payroll practices.

However, such approaches are outside of the scope what this instrument allowed to do under the Act.

62. Finally, feedback was received which requested more examples and practical guidance, particularly to assist people without specialist tax knowledge or access to professional advice. The ATO considers that such material is better provided through content on the ATO's website which can be readily updated to reflect changing payroll practices. The ATO will develop and publish further examples and practical guidance for employers on the application of the instrument and publish that material on ato.gov.au.

Statement of compatibility with human rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Superannuation Guarantee (Administration)(Out-of-Cycle Qualifying Earnings) Determination 2026

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

Under the Payday Super reforms that commenced on 1 July 2026, employers are incentivised to pay an employee's superannuation at the same time they pay their salary or wages. Employers are incentivised because a contribution is generally only 'on time' if it is received within 7 business days after payday, measured from when the employee is paid their qualifying earnings (the amounts of pay on which the employer's superannuation guarantee is calculated).

This instrument determines the kinds of out-of-cycle qualifying earnings (such as allowances, commissions, bonuses, payments in advance and back payments), and the circumstances that must exist in respect of those kinds of qualifying earnings, for an employer to be eligible for an extended period to make 'on-time' superannuation guarantee (SG) contributions for those earnings.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms. The legislative instrument ensures that employers can maintain a regular schedule of SG contributions based on their usual pay cycle, without needing to make small ad hoc SG contributions due to out-of-cycle payments.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.