

26 June 2026

Attn: Ms Bonita Tsang  
The Contact Officer  
Superannuation and Employer Obligations  
Australian Taxation Office

By email: [PAGSPR@ato.gov.au](mailto:PAGSPR@ato.gov.au)

Dear Ms Tsang,

**Draft Practice Statement Law Administration PS LA 2026/D3 Payday Super:  
exceptional circumstances determinations**

The Australian Bookkeepers Association, Chartered Accountants Australia and New Zealand, CPA Australia, the Institute of Certified Bookkeepers, the Institute of Public Accountants, the SMSF Association and The Tax Institute (together, **the Joint Bodies**) write to you as the peak professional accounting, bookkeeping, tax, financial advice and superannuation bodies in Australia. We welcome the opportunity to make a submission to the Australian Taxation Office (**ATO**) regarding its consultation on the draft PS LA 2026/D3 (the **draft PS LA**).

The Joint Bodies acknowledge the important role that the draft PS LA is intended to play in supporting the administration of the exceptional circumstances framework under Payday Super. In particular, we consider that the draft PS LA provides a clear articulation of the Commissioner's discretion and the types of events that may justify relief including natural disasters and widespread information and communication technology (**ICT**) outages ("disasters and technology outages").

However, from the employer and intermediary perspectives, the draft PS LA gives rise to a number of significant practical challenges in its current form. As outlined in our submission, the framework relies heavily on employer self-assessment, operates within a compressed compliance timeframe, and does not provide sufficient guidance on key operational issues, particularly in the period between a disruption occurring and a determination being made. These aspects create uncertainty for employers seeking to comply in good faith and potentially increase the risk of unintended non-compliance outcomes.

We are also concerned that the draft PS LA does not fully reflect the complexity of modern superannuation contribution processes, which involve multiple systems, intermediaries and dependencies beyond the employer's direct control. In this context, issues such as intermediary failure, incomplete information during outages, and the role of agents require further clarification to ensure that the framework operates effectively in practice.

Our submission, therefore, focuses on identifying areas where additional guidance, clarification, or refinement would improve the framework's operability and fairness, while maintaining its intended policy boundaries. We have recommended enhancements and clarification regarding communication and notification, evidentiary expectations, the timing and operation of determinations, and the interaction of the PS LA with broader Payday Super obligations.

We acknowledge that our submission contains many requests for further guidance for employers, their advisers and others. It may be that the ATO decides that some of our requests should not be in the finalised PS LA. In these cases, we suggest that our requests are dealt with in other formal ATO guidance publications as soon as possible.

We would welcome the opportunity to continue engaging with the ATO as the draft PS LA and, if relevant, other related formal guidance publications are finalised to ensure that the framework is both administratively workable and aligned with the practical realities faced by employers and their advisers.

Our detailed response to the draft PS LA is contained in **Appendix A**.

If you would like to discuss any of the issues we raise in our submission, please contact Richard Webb, Superannuation Lead at CPA Australia, on 0425 726 889 or at [richard.webb@cpaaustralia.com.au](mailto:richard.webb@cpaaustralia.com.au).

Yours faithfully,



**Peter Thorp**  
Chairman  
Australian Bookkeepers Association



**Tony Negline**  
Superannuation & Financial Services  
Leader  
Chartered Accountants Australia and  
New Zealand



**Richard Webb**  
Superannuation Lead  
CPA Australia



**Matthew Addison**  
Executive Director  
The Institute of Certified Bookkeepers



**Tony Greco**  
Senior Tax Advisor  
Institute of Public Accountants



**Tracey Scotchbrook**  
Head of Policy and Advocacy  
SMSF Association



**Julie Abdalla**  
Head of Tax & Legal  
The Tax Institute

# Appendix A

## Executive summary

The Joint Bodies support the intent of the draft PS LA to provide guidance on the ATO's administration of exceptional circumstances determinations under subsection 18C(4) of the *Superannuation Guarantee (Administration) Act 1992 (as amended) (SGAA)* in the context of Payday Super from 1 July 2026.

However, the draft PS LA, in its current form, introduces material uncertainty, operational risk, and compliance burden for employers and intermediaries during a critical implementation phase.

The core issue is that the framework relies heavily on employer self-assessment and ATO-driven determinations, without providing sufficient timely information, operational guidance, or practical safeguards to support real-time compliance decisions.

Across the draft PS LA, three systemic weaknesses emerge:

- Information asymmetry: employers lack access to timely and reliable information required to assess eligibility (e.g. outages, scope, class definitions).
- Timing misalignment: ATO decision-making and communication does not align with tight payroll and SG compliance timeframes.
- Insufficient practical guidance: employers are expected to make high-risk decisions without clear evidentiary standards, safe harbours, or examples.

Without refinement, these issues create a real risk of inadvertent non-compliance and inappropriate exposure to SGC, despite good-faith behaviour by employers.

## Table of recommendations

No.	Issue identified	Summary of recommendation(s)
1	<b>Notification and incident reporting</b>	Establish a formal notification channel for employers, agents and service providers to report disasters and outages to the ATO.
2	<b>Communication framework</b>	Introduce direct, proactive notification to affected employers (e.g. SMS/email, STP channels). Provide clear, employer-facing guidance on how to identify and apply determinations.
3	<b>Employer self-assessment</b>	Provide detailed evidentiary guidance, documentation expectations, and safe harbour protections for reasonable reliance.
4	<b>Interim compliance behaviour</b>	Issue clear guidance on employer actions during disruption (e.g. whether to defer or attempt payment). Clarify interaction with voluntary disclosure and SGC risk during this period.

5	<b>Timing and service standards</b>	Introduce indicative timeframes for ATO acknowledgements, preliminary views and determinations. Provide interim protections where determinations are delayed.
6	<b>“Widespread” outage definition</b>	Provide clearer criteria, indicators, and real-time decision guidance for assessing “widespread”.
7	<b>Contribution chain and geographic scope</b>	Clarify that disruption anywhere in the contribution chain (not just employer systems/location) may qualify.
8	<b>Class of employer design</b>	Provide guidance on how classes are defined, including treatment of edge cases and indirectly affected employers.
9	<b>“Significant” vs “small” numbers</b>	Introduce benchmarks and/or quantitative guidance for assessing affected employer numbers.
10	<b>Intermediary and clearing house risk</b>	Clarify treatment where employers act reasonably but delays occur in intermediaries.
11	<b>Super fund interaction</b>	Confirm how fund allocation obligations interact with extended timeframes and whether corresponding relief applies to funds.
12	<b>SGC and voluntary disclosure</b>	Clarify whether SGC liability crystallises before a determination and how later determinations affect it. Provide a worked “gap period” example.
13	<b>Overlapping time extensions</b>	Provide rules and examples for overlapping allowable periods and their hierarchy.
14	<b>Role of agents</b>	Clarify how agent/provider information can be relied upon in self-assessment.
15	<b>Cash flow vs operational disruption</b>	Clarify treatment of indirect financial impacts linked to disruption (e.g. locked payments, business interruption).
16	<b>Practical examples</b>	Expand examples to cover borderline, partial, and multi-system disruptions.

## Key concerns

### 1. Absence of an employer, agent, association or service provider notification and escalation channel

The draft PS LA implies that the ATO will identify all relevant disasters and technology outages that impact employers' ability to make eligible contributions, as defined in the SGAA, within that legislation's required timeframes. That is, the draft PS LA mentions no mechanism available to employers, tax and BAS agents, professional associations or service providers to alert the ATO about disasters and technology outages.

We do not consider it to be realistic that the ATO will independently identify all relevant events in a timely manner without a mechanism for incident reporting.

#### Recommendation 1

The PS LA should provide that a formal notification channel that enables employers, agents, professional associations, service providers, and others to notify the ATO of disasters and technological outages, to support timely decision-making.

### 2. Inadequate communication and notification framework

Under the draft PS LA, exceptional circumstance determinations made under subsection 18C(4) of the SGAA are published via the ATO website, legislative instruments<sup>1</sup> and general communication channels including those involving stakeholder groups (paragraphs 58-59).

There is no requirement for direct notification to affected employers, implying that full reliance is placed on employer awareness and monitoring of ATO public statements and mass communications.

#### Recommendations 2a and 2b

The PS LA should strengthen its communication framework by providing for more proactive and targeted dissemination of determinations. This should include, but not be limited to, requiring:

- direct notifications to affected employers wherever practicable (for example, via SMS and/or email);
- existing payroll and Single Touch Payroll (**STP**) to leverage reporting channels to deliver timely alerts;
- social media channels; and
- that information is also promptly and consistently disseminated to intermediaries such as tax and BAS agents, payroll providers, industry bodies and professional associations, which play a crucial role in supporting employer compliance.

We also recommend that the ATO publish, in conjunction with the finalised PS LA, a concise guidance document tailored for employers, explaining how to identify whether an exceptional

---

<sup>1</sup> And therefore published on the government's Federal Register of Legislation, [www.legislation.gov.au](http://www.legislation.gov.au)

circumstances determination applies to a particular employer. At a minimum, this guidance should explain:

- where determinations will be published (as noted above);
- how to read the class definition in a determination to assess eligibility;
- what records an employer or their agent should retain contemporaneously to substantiate self-assessment; and
- who to contact if an employer is uncertain whether they fall within the specified class.

This guidance should not be written for tax professionals or ATO staff but for ordinary business taxpayers, and should be available at the same time as an exceptional circumstances determination is issued. The practical utility of the exceptional circumstances framework depends on affected employers being able to identify and act on a determination quickly. A simple and accessible navigation guide would materially reduce the risk of non-compliance arising from uncertainty rather than from any failure of intent.

In item 5 below we discuss the timeframe for communication of the acknowledgement, preliminary view, and final determination of an exceptional circumstance.

### **3. Self-assessment obligation is not practically workable**

The draft PS LA states that the publication of an exceptional circumstance legislative instrument “is to ensure employers can easily determine their eligibility, understand their obligations and comply with the longer period allowed for payment of contributions” (paragraph 60).

However, employers may lack the information needed to make this determination, particularly where outages occur within complex processing chains. In addition, employers will have a very short timeframe within which to make such a determination, and this is likely to be insufficient time to obtain quality external professional advice, or to collate all necessary information. Employers require certainty and detail in relation to how to fulfill their self-assessment obligation.

#### **Recommendation 3**

The PS LA should provide more explicit details of evidentiary guidance, clear examples of acceptable documentation, and a safe harbour for reasonable reliance by employers.

### **4. No guidance on employer behaviour before a determination is made**

As provided for in the SGAA, the draft PS LA specifies that determinations may be made either before or after the relevant QE day, and sets out how the extended 20-business-day period operates in each case (paragraph 9).

However, it does not provide any practical guidance on how employers are expected to behave in the interim period between the occurrence of a disruptive event and the point at which a determination is made, particularly the period before that determination is made, after the QE day has already passed (paragraphs 9-10). During this period, employers face acute operational uncertainty: they must decide whether to proceed with contribution attempts through potentially compromised systems, delay contributions in anticipation of relief, or seek alternative processing arrangements that may not be feasible.

This uncertainty is compounded by the requirement that a determination will only be made where exceptional circumstances meaningfully affect the ability of a class of employers to make contributions within the usual period (paragraphs 7-8), and by the fact that not all disruptive events, including shorter-duration outages (paragraphs 40-48) or events where the causal connection is unclear, will ultimately qualify as exceptional circumstances (paragraphs 8–10).

In the absence of clear guidance, employers are exposed to a material risk that reasonable, good-faith decisions taken during this interim period – such as deferring contributions pending system restoration or ATO guidance – may later result in the Superannuation Guarantee Charge (**SGC**) being imposed, if a determination is not made, or is made with a narrower scope than anticipated. This creates a significant compliance and governance challenge, particularly given the strict liability framework underpinning Payday Super and the absence of any safe harbour for interim decision-making.

#### **Recommendations 4a and 4b**

The ATO must provide clear and practical guidance on how employers are expected to act when a disruption occurs, including whether they should continue attempting to process contributions through affected systems, or defer payment in anticipation of a potential determination. It should also clarify how failed or partially completed payment attempts – such as transactions rejected due to system outages – are to be treated in assessing compliance with the contribution timing requirements.

In addition, the ATO must explicitly address the interaction between exceptional circumstances determinations and the voluntary disclosure framework, including whether and how employers can mitigate SGC exposure where contributions are delayed during a period of uncertainty prior to a determination being made.

### **5. Timing of determinations is incompatible with payroll cycles**

The draft PS LA requires the Commissioner to act “as soon as practicable” once sufficient information is available (paragraph 39).

However, guidance in the draft PS LA indicates that determinations may depend on the duration of the disruption (e.g. 2–4 days or more), which may compress decision-making within the 7-day compliance window (paragraph 38).

#### **Recommendations 5a, 5b and 5c**

The PS LA should provide greater certainty around the timing of determinations by setting out indicative timeframes within which the Commissioner would act once sufficient information is available. Once the decision to issue a determination has been made, the ATO should communicate this decision to give employers, agents, service providers and other relevant stakeholders certainty in advance.

In addition, the PS LA should introduce appropriate interim protections for employers when a determination is delayed, ensuring that those who have acted reasonably and in good faith during a period of disruption are not unduly exposed to compliance risk due to the timing of the ATO's decision-making.

To support these outcomes, we recommend that the ATO publish, as part of, or alongside, the finalised PS LA, a specific service commitment setting out the timeframes within which the Commissioner will ordinarily communicate and act where a potential exceptional circumstance is identified or notified. We suggest the following as a framework for that commitment:

- a) Initial acknowledgement — within 1 business day of identifying or being notified of a potential exceptional circumstance, the ATO will acknowledge the matter and confirm that it is under assessment;
- b) Preliminary view — by the next business day after initial acknowledgement (step a.), the ATO will communicate a preliminary view as to whether the event appears likely to qualify as an exceptional circumstance, to assist employers and their advisers in making interim compliance decisions; and
- c) Determination — the Commissioner's decision to make or not to make a determination will be published within 5 business days after sufficient information is available to assess the nature, scope and duration of the event.

We acknowledge that the nature of exceptional circumstances, particularly in the early stages of a natural disaster or widespread outage, may make strict adherence to these timeframes impractical in some cases. We therefore propose that these be expressed as aspirational service standards rather than binding obligations, with an expectation that the ATO will communicate proactively where it cannot meet them. A published service commitment of this kind would materially reduce the compliance uncertainty that employers and their advisers face during the critical period between a disruptive event and the issuing of a determination. It would also demonstrate the ATO's commitment to administering the exceptional circumstances framework in a way that supports good-faith compliance.

## **Scope and definition issues**

### **6. “Widespread” outages definition lacks sufficient clarity**

The draft PS LA outlines a number of indicators that may support the conclusion that an ICT outage is “widespread”, including system-wide failures, platform-wide disruptions and issues arising from shared dependencies across multiple employers or service providers (paragraphs 28-37). However, in practice, these indicators rely heavily on information that is typically held by system operators, software providers, financial institutions or regulators, and may not be readily visible or accessible to individual employers or the ATO at the time the disruption occurs. This will impede the ability of employers to self-assess their eligibility for an exceptional circumstances determination.

In a live outage environment, employers often have only partial or fragmented information, such as system error messages, delayed processing, or informal communications from service providers, without clarity as to the broader scale or root cause of the disruption. Providers may not immediately issue formal incident notices confirming whether an outage is system-wide or more localised, and where they do, those communications may be delayed, incomplete or not sufficiently detailed to support a confident self-assessment. Many service providers furnish user alerts that merely say “some users are unable to” login to a system or perform some tasks and provide no further information or detail including the likely length of time until a system becomes functional again.

Disruptions originating at gateways or clearing house infrastructure and where the employer may have no direct visibility of the underlying issue can be particularly opaque, in terms of both the source of a particular problem and whether the issue is “widespread”.

The ATO may be similarly compromised in its level of knowledge or ability to assess a system outage.

As a result, employers are placed in a position where they are expected to assess whether the “widespread” threshold is met – an assessment that may ultimately determine their SGAA compliance outcome – without access to the same information available to system operators. This creates a material risk of inconsistent or incorrect self-assessment, particularly in the early stages of an event when the nature, scope and duration of the disruption are still evolving. It also underlines our broader concerns that the draft PS LA places significant reliance on employer judgment in circumstances where key factual inputs are inherently uncertain or outside the employer’s knowledge or ability to investigate.

### **Recommendations 6a and 6b**

The PS LA should provide more structured guidance and practical examples to clarify how employers are expected to assess whether an outage meets the “widespread” threshold, with examples also covering borderline cases. This should include clear indicators, evidentiary expectations, and decision-making principles that can be applied in real time.

The PS LA should also offer clear direction on how employers can reasonably determine the scope of an event where information is incomplete, delayed or fragmented. This should include what sources of information may be relied upon, how uncertainty should be managed, and what protections apply where employers make a good faith self-assessment based on reasonably available information.

## **7. Geographic definition creates ambiguity**

The draft PS LA permits the definition of a class of affected employers by reference to characteristics such as geographic location or reliance on particular systems or platforms (paragraph 13). While this approach provides flexibility in framing determinations, it does not fully reflect the complexity of modern superannuation contribution processes, which typically span multiple locations and interconnected systems across the contribution chain.

In practice, an employer's payroll operations, banking arrangements, clearing house provider and the receiving superannuation fund may all be located in different jurisdictions, or operate across distributed digital environments. This creates ambiguity as to which "location" is relevant for the purpose of determining whether an employer falls within a geographically defined class. For example, an employer may have its principal place of business outside an affected region but rely on a payroll provider or cloud-based system located within that region that is materially impacted by a disruption. Conversely, an employer located within a declared disaster area may have fully functional outsourced systems located elsewhere, however, that employer may have difficulty accessing those systems because of the disaster. We are of the view that geographic class membership alone may be insufficient to determine eligibility.

Similarly, where disruptions occur across multiple locations – such as cascading failures involving regional infrastructure, national payment systems and third-party service providers – the draft PS LA does not provide guidance on assessing such multi-location disruptions holistically. It is unclear whether a determination requires that all relevant elements of the contribution chain be affected, or whether disruption at a single critical point (e.g. clearing house) is sufficient.

This lack of clarity creates practical challenges for employer self-assessment, particularly where eligibility depends on how the class is defined in a determination. Employers may struggle to reconcile the geographic or system-based framing of a class with the operational reality of their own contribution processes, which often involve interconnected dependencies rather than discrete, location-based functions. Without further guidance, there is a risk of inconsistent interpretation and uncertainty about whether employers affected by indirect or downstream effects of a disruption are intended to be covered.

## **Recommendation 7**

The PS LA should clarify that eligibility for an exceptional circumstances determination may arise where disruption occurs at any point within the superannuation contribution processing chain, rather than being limited to the employer's own systems or location. The guidance should make clear that disruption to any critical component that prevents contributions from being received and allocable within the required timeframe may bring an employer within scope of a determination.

In addition, the PS LA should:

- clarify how disruptions affecting different points in the contribution chain are to be assessed, including where impacts are indirect or arise through downstream systems or intermediaries;
- confirm whether disruption at a single critical point is sufficient to satisfy the threshold, or whether a broader system impact is required;
- provide guidance on how employers should assess eligibility where contribution processes span multiple systems, locations and service providers; and
- ensure that class definitions and determinations appropriately reflect these multi-layered dependencies.

## **8. “Class of employers” construct may produce inequitable outcomes**

The draft PS LA requires that exceptional circumstances determinations apply to defined classes of employers rather than to individual employers or incidents (paragraph 13). While this reflects the legislative design and supports administrative efficiency, it may give rise to unintended and inequitable outcomes in practice.

In particular, the class-based approach may result in the exclusion of small but severely affected cohorts of employers whose circumstances do not neatly align with the parameters of a defined class. For example, employers, that are materially impacted by a disruption affecting a specific service provider, contribution chain dependency, or localised infrastructure element, may fall outside a broadly defined geographic or system-based class, despite experiencing genuine and significant impediments to compliance. Without the ability to recognise individual circumstances, these employers may be left without access to relief, even where their position is analogous to those included within the class.

Conversely, broad class definitions, particularly those based on geographic regions or widely used platforms, may result in the inclusion of employers who are not meaningfully affected by the disruption but fall within the formal boundaries of the class. While this simplifies administration, it creates a potential disconnect between eligibility for relief and the underlying policy intent, which is to address circumstances that meaningfully impair the ability to make contributions within the required timeframe.

Taken together, these outcomes highlight a structural tension between administrability and fairness. Without further guidance on how classes should be constructed, refined or applied in practice, there is a risk that the operation of the discretion may produce inconsistent or unintended outcomes across different segments of the employer population.

### **Recommendation 8**

The PS LA should provide further guidance on how classes of employers will be grouped in practice, including the principles and considerations that inform the definition of class boundaries. There should also be practical examples based on different scenarios. This would assist employers in understanding how geographic, system-based or other characteristics are applied in determining eligibility. In addition, the PS LA should address the treatment of edge cases, particularly where employers are indirectly affected or fall near the margins of a defined class. Clear guidance in this area would help reduce uncertainty and support more consistent and defensible self-assessment outcomes.

## **9. Lack of clarity around what constitutes a “significant number” or a “small number” of employers**

Paragraph 30 stipulates that in order for a technology outage to be treated as “widespread”, the outage must be “system or platform wide and affecting an entire user base or sector, not a single or small number of employers”. Similarly, paragraph 23 states that factors relevant in determining whether a naturally occurring event may constitute a natural disaster relevantly includes whether the event impacts “a significant number of employers”.

Example 3 concludes that “several streets in the Sydney central business district” constitutes a “small number of employers” and therefore the outage in the example is not treated as a “widespread outage”. There is no further information in relation to the number of employers or number of employees affected, or the geographical area covered by the “several streets” in the central business district of Australia’s most populous city (e.g. does it include George Street or only a couple of small laneways?).

In Example 2, an outage affects approximately 8,000 employers. This is considered to be a “significant number” of employers in relation to the widespread outages category of exceptional circumstances. Naturally, the “several streets in the Sydney central business district” referenced in Example 3 could plausibly also include 8,000 employers.

It is clear that the number of employers affected by a natural disaster event or a technology outage is an important factor to be taken into account in determining whether the Commissioner should make a determination. However, the draft PS LA does not provide useful guidance or benchmarks in relation to this matter.

### **Recommendation 9**

The PS LA should provide clear guidelines, benchmarks and/or quantitative ranges in relation to what may constitute a “small” or “significant” number of employers affected by a particular natural disaster or outage event. Examples should also be more detailed in this regard.

## **Interaction with broader Payday Super framework**

### **10. Clearing house and intermediary risk**

The draft PS LA recognises that ICT outages may impact a range of systems relevant to superannuation contributions, including payroll platforms, clearing houses and payment systems (paragraph 35). However, it does not explicitly address the employer’s compliance position in circumstances where contributions are initiated or submitted by the employer or an intermediary promptly, but delays subsequently arise within intermediaries that are outside the employer’s control.

In practice, many employers rely on multi-step processing chains, where contributions and related data pass through banks, clearing houses, payment intermediaries or other service providers before being received by the superannuation fund. Even where an employer has taken timely and reasonable steps to initiate a contribution within the required period, delays or failures within these downstream systems may result in the contribution not being received and allocable within the statutory timeframe. The draft PS LA does not clarify whether, or to what extent, such circumstances would be considered in assessing compliance or determining eligibility for relief.

This creates uncertainty for employers who have fulfilled their obligations to the extent possible but remain exposed to potential non-compliance due to factors beyond their direct control. Without explicit guidance, there is a risk that employers may be held accountable for delays occurring within intermediaries, despite having acted appropriately and in good faith.

## **Recommendation 10**

The PS LA should clarify the ATO's administrative approach to intermediary failures and their impact on employer compliance outcomes. In particular, it should outline how the Commissioner will take into account situations where employers have taken timely and reasonable steps to initiate contributions, but delays have arisen within intermediaries or downstream systems beyond their control.

This should include guidance on the circumstances in which such factors may be relevant to the exercise of the Commissioner's discretion, compliance approaches, or administrative relief, regardless of whether an exceptional circumstances determination is made.

## **11. Misalignment with super fund allocation obligations**

The draft PS LA requires that contributions be both received by, and capable of being allocated to, a person's superannuation member account fund within the prescribed timeframe (paragraph 6). However, it does not address how this requirement interacts with the super fund's separate obligation to allocate contributions within 3 business days of receipt of money and data, or to refund them within that period if allocation is not possible.

In practice, this creates a potential misalignment across the contribution chain. While an employer may benefit from an extended timeframe under an exceptional circumstances determination, the superannuation fund's downstream obligations remain fixed and may themselves be impacted by the same disruption. For example, where a fund's systems are unavailable or operating at reduced capacity due to an outage or disaster event, contributions received toward the end of an extended period may not be able to be processed and allocated within the required 3-business-day window. This raises uncertainty as to whether an employer's compliance position could indirectly be affected by the fund's inability to meet its own compliance requirements, particularly where allocation delays result in contributions being returned or not processed as expected.

The absence of guidance on this interaction creates a risk that the relief afforded to employers through a determination may be undermined by operational constraints further along the processing chain. It also leaves unclear whether corresponding administrative flexibility will be applied to superannuation funds in such circumstances, and how any mismatch between employer obligations and fund processing capabilities is intended to be managed. Clarification is therefore needed to ensure that the framework operates coherently across both employer and fund obligations, and that compliance outcomes appropriately reflect the reality of end-to-end system dependencies.

## **Recommendation 11**

The PS LA should clarify whether corresponding administrative relief or flexibility applies to superannuation funds where their systems are impacted by concomitant disruptions, and whether downstream processing constraints, such as delays in allocation or refunds, are taken into account in assessing employer compliance outcomes. This would help ensure that the framework operates coherently across the full contribution chain, and that employers are not disadvantaged where delays arise due to constraints within superannuation fund systems beyond their control.

## **12. Interaction with voluntary disclosure and SGC outcomes**

The draft PS LA notes that an exceptional circumstances determination may be made on or after the relevant QE day, with the extended 20-business-day period commencing from the day after the determination is made (paragraph 9). However, it does not clarify the compliance consequences for employers in the period before a determination is issued, particularly where the standard 7-business-day period has already lapsed. This creates uncertainty as to whether a SGC liability technically crystallises once the original due date is missed, even if a determination is later made that effectively extends the timeframe. This also creates uncertainty as to whether later relief alters or prevents the crystallisation of SGC liability.

In addition, the draft PS LA does not address how employers should approach voluntary disclosure in these circumstances. Employers may be required to decide, in real time and with incomplete information, whether to lodge a voluntary disclosure statement to mitigate potential penalties, or to delay lodgement in anticipation of determination being made. Without clear guidance, employers face a compliance dilemma: either lodging prematurely and potentially incurring unnecessary administrative burden, or deferring lodgement and risking increased penalties if a determination is not made or does not cover the employer.

Clarification is therefore needed to ensure that the timing and operation of determinations aligns with the SGC framework, and does not produce unintended or inequitable compliance outcomes for employers acting reasonably in uncertain circumstances.

### **Recommendation 12a and 12b**

The PS LA should provide greater clarity on the compliance consequences of exceptional circumstances determinations, particularly where a determination is made after the QE day and after the standard contribution timeframe has lapsed.

This should include:

- clarification of whether, and in what circumstances, an SGC liability is taken to arise prior to a determination being made;
- the extent to which a subsequent determination alters or negates that liability; and
- guidance on how employers should manage voluntary disclosure obligations where the availability or scope of relief is uncertain.

In addition, we recommend that the finalised PS LA include a worked example specifically addressing the 'gap period' scenario. That is, the circumstances in which:

- a) a QE day occurs;
- b) a disruptive event prevents or impedes the making of contributions;
- c) the usual 7-business-day period expires before a determination is made; and
- d) the Commissioner subsequently makes a determination covering the relevant QE day and the employer's class.

The worked example should illustrate the compliance position of an employer who deferred contributions in good faith during the disruption, the treatment of any SGC liability that may have technically crystallised before the determination was made, whether and how a subsequent determination operates to prevent or reverse that liability, and how the employer should manage any voluntary disclosure statement obligations during the interim period. A worked example of this kind would materially assist employers and their advisers in understanding the practical effect of a retrospective determination and in making real-time compliance decisions during a period of disruption.

### **13. Overlapping allowable longer periods**

The draft PS LA describes the extended 20-business-day period (paragraph 9) but does not address interactions with other allowable extensions.

#### **Recommendation 13**

The PS LA should provide guidance and worked examples addressing overlapping periods. Part of this guidance should discuss any hierarchy of which is to be applied first.

## **Additional issues identified**

### **14. Role of agents and intermediaries**

The draft PS LA provides limited guidance on the role of agents and intermediaries, despite the widespread reliance of employers on third parties such as payroll providers, registered tax agents and clearing houses to support the processing of superannuation contributions.

While responsibility for compliance with SGAA obligations remains with the employer, in practice many employers engage registered tax or BAS agents, payroll providers, and other intermediaries to support the calculation, processing and reporting of superannuation contributions.

In this context, uncertainties arise as to how information held or communicated by agents and service providers is to be treated, and how disruptions affecting agent-operated systems are to be reflected in assessing whether exceptional circumstances exist. For example, employers may rely on communications from agents or service providers regarding system outages without having direct visibility of the underlying issue.

The draft PS LA does not provide guidance on how such information can be used in making a reasonable self-assessment, or how disruptions occurring within agent-operated systems should be considered in determining eligibility for relief.

Clarifying these issues would improve the practical operation of the framework while maintaining the existing allocation of legal responsibility.

#### **Recommendation 14**

The PS LA should clarify how information provided by agents, payroll providers and other service providers may be used by employers in making a reasonable self-assessment of eligibility for an exceptional circumstances determination.

It should also clarify how disruptions affecting systems operated by agents or service providers are to be taken into account in assessing whether exceptional circumstances exist and in determining eligibility for relief.

## **15. Cash flow exclusion may be overly rigid**

The draft PS LA expressly excludes cash flow or liquidity difficulties from the scope of exceptional circumstances, even where those difficulties arise as a direct consequence of a disruptive event (paragraph 19). However, in practice, operational disruptions of the kind contemplated, such as disasters or technology outages, frequently have immediate and material impacts on an employer's cash flow position. For example, a disruption that impedes an employer's ability to access banking systems, process incoming revenue, or operate their business may simultaneously affect both the capacity to execute payment processes and the availability of funds to meet those obligations. A natural disaster may force the closure of shop front or service small businesses which rely on physical attendance by customers or clients to derive regular income. Similarly natural disasters may prevent agricultural businesses from transporting their produce to clients. A major IT outage may prevent a business from collecting revenue via electronic means, or may prevent clients or customers from accessing cash via ATMs.

An employer may initiate a contribution in good faith, but the payment may become delayed or "locked" within a disrupted system due to an outage. At that point, the employer may have limited visibility as to whether the contribution will be successfully received and allocated within the required timeframe, or whether an exceptional circumstances determination will be made. In practice, this uncertainty may lead employers to consider making an additional payment to mitigate the risk of non-compliance, even while the original transaction remains pending, delayed or unreconciled. This can create temporary duplication of payments and place significant strain on cash flow, particularly for small and medium-sized businesses.

As a result, the distinction drawn in the draft PS LA between process-based disruption (which may enliven relief) and financial incapacity (which is excluded) may be difficult to apply in real-world scenarios, particularly for small and medium-sized employers. In many cases, these factors are not easily separable; rather, they are interdependent consequences of the same underlying event. Without further clarification, there is a risk that employers experiencing genuine and significant disruption may be excluded from relief on the basis of a conceptual distinction that does not reflect the operational realities they face.

### **Recommendation 15**

The PS LA should clarify how indirect impacts of disasters are to be treated, particularly where disruptions do not directly affect payroll or payment systems but nonetheless materially impair an employer's ability to meet their SG obligations. For example, events that restrict access to premises, interrupt revenue flows, or limit access to banking services may indirectly affect both the ability to process contributions and the capacity to fund them. Clear guidance is needed on whether such impacts can be considered part of the broader disruption affecting the contribution process, and how they are to be distinguished from excluded cash flow or liquidity issues.

## **16. Insufficient practical examples**

The draft PS LA includes five worked examples intended to illustrate how the Commissioner's discretion may be applied in practice (paragraphs 61-85), and these examples are helpful in demonstrating the outer boundaries of what will typically constitute exceptional circumstances. However, they are largely confined to clear-cut scenarios involving either significant natural disasters or unequivocally widespread system outages, where the causal connection between the disruptive event and the inability to make timely contributions is readily apparent.

This limits their practical utility for employers, as many real-world events fall into more ambiguous categories, for example, shorter duration but high-impact outages, partial system failures affecting only certain functions, or disruptions involving multiple interconnected systems with differing levels of impact. Similarly, the examples do not adequately address situations where information about the nature or scope of the disruption is incomplete or evolving, which is often the case in live incident environments.

As a result, employers are left without clear reference points for assessing how the discretion is likely to be applied in borderline or complex scenarios, particularly where the facts do not align neatly with the existing examples. Expanding the suite of examples to include more nuanced and factually varied situations, such as rolling outages, intermediary failures, or mixed system and geographic disruptions, would significantly improve the practical usability of the PS LA and support more consistent and confident self-assessment by employers and their advisers.

### **Recommendation 16**

The PS LA should expand its suite of worked examples to include a broader range of more nuanced scenarios that employers are likely to encounter in practice, particularly those involving borderline cases, partial outages, and multi-system disruptions. This would assist employers in understanding how the Commissioner's discretion is intended to operate in situations where the facts are less clear-cut, where disruptions affect only components of a system rather than entire platforms, or where multiple interdependent systems are impacted to varying degrees. Providing such examples would improve the practical usability of the PS LA and support more consistent and confident self-assessment by employers and their advisers.