

# Director & Governance Obligations

## Why Payday Super Raises the Stakes for the Company Directors

If you're a director of a small business, Payday Super isn't just an HR or payroll issue. It's a governance issue that could directly affect your personal legal exposure.

The new rules don't just change how super is paid — they change the legal landscape around director responsibilities, insolvency protections, and personal liability.

### The Safe Harbour Problem

Under Australian insolvency law, directors have a duty to prevent a company from trading while insolvent. The Safe Harbour provisions under the Corporations Act provide some protection — they allow directors to continue trading while pursuing a restructuring plan, provided certain conditions are met.

One of those conditions is that employee entitlements are being paid on time. And from 1 July 2026, super is front and centre.

Under Payday Super, if your company is not paying super contributions within seven business days of each payday, you may not be eligible for Safe Harbour protection. This is a significant change. Previously, with quarterly deadlines, there was more flexibility. Now, every missed payday super payment could undermine your ability to rely on Safe Harbour if your business faces financial difficulty.

For directors of businesses with fluctuating revenue or tight cash flow, this creates a much narrower path. You need to be meeting super obligations in real time to maintain your legal protections.

### Personal Liability for Directors

Directors should also be aware of the director penalty regime. Under existing law, the ATO can issue Director Penalty Notices (DPNs) to recover unpaid super. If super goes unreported or unpaid for more than three months, the penalty becomes "lockdown" — meaning it can only be discharged by paying the full amount. It cannot be avoided through voluntary administration or liquidation.

With Payday Super, the shift from quarterly to per-payday obligations means shortfalls can accumulate faster and become visible sooner. The ATO will have much more frequent data points to identify non-compliance, and the window for DPN lockdown is tighter.

In plain terms: if your company falls behind on super under the new rules, the personal risk to you as a director escalates more quickly than it did before.

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## Treasury's Frank Acknowledgement

It's worth noting that Treasury has openly acknowledged the reform is likely to trigger an increase in insolvencies. Many businesses have historically used the quarterly super cycle as an informal cash flow tool — holding contributions until the due date to manage short-term liquidity.

That practice is no longer viable under Payday Super. Businesses that can't fund super with every pay run will need to either restructure their operations or face the consequences. For directors, this means having honest conversations about your company's financial position — now, not in July.

## How to Protect Yourself

- Know your obligations. Understand how the Safe Harbour provisions interact with Payday Super and what you need to do to maintain eligibility.
- Monitor cash flow closely. Build cash flow forecasts that incorporate per-payday super obligations and flag potential shortfalls early.
- Stay current on super payments. Even one missed payment could have consequences. Ensure your payroll and payment systems are automated and reliable.
- Document your decision-making. If your business faces financial difficulty, keeping clear records of your efforts to comply and restructure can support a Safe Harbour defence.
- Get professional advice early. If you're concerned about your company's ability to meet Payday Super obligations, speak to your accountant and a restructuring advisor before problems escalate.

## This Is Not One to Ignore

Payday Super raises the governance bar for company directors. The stakes are personal, the timelines are tighter, and the consequences of non-compliance are more immediate.

If you're a director and you're unsure how these changes affect your legal position, **book a time to speak with us**. We can help you understand your obligations, review your company's readiness, and put a plan in place that protects both your business and you personally.

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