



Payment Times Reporting Amendment Act 2024

No. 65, 2024

**An Act to amend the *Payment Times Reporting Act
2020*, and for related purposes**

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An Act to amend the *Payment Times Reporting Act 2020*, and for related purposes

[Assented to 9 July 2024]

The Parliament of Australia enacts:

1 Short title

This Act is the *Payment Times Reporting Amendment Act 2024*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after the end of the period of 60 days beginning on the day this Act receives the Royal Assent.	7 September 2024

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Amendments

Payment Times Reporting Act 2020

1 Title

After “**terms**”, insert “, **times**”.

2 Section 3

Repeal the section, substitute:

3 Objects of this Act

The objects of this Act are:

- (a) to promote timely payment practices by large businesses, certain government entities and volunteering entities; and
- (b) to foster a culture of prompt payment practices by those entities to:
 - (i) support economic growth; and
 - (ii) improve outcomes for small business suppliers; and
- (c) to encourage those entities to improve their payment terms, times and practices in relation to their small business suppliers; and
- (d) to provide for those entities to report on payment terms, times and practices in relation to their small business suppliers; and
- (e) to improve the transparency of the payment terms, times and practices of large businesses.

3 Section 4

Repeal the section, substitute:

4 Simplified outline of this Act

<p>This Act requires certain entities to report their payment terms, times and practices, and those of certain other entities they control,</p>

in relation to their small business suppliers. Other entities may volunteer or nominate to give reports.

A reporting entity or reporting nominee must give regular reports to the Payment Times Reporting Regulator. These reports are published on a publicly available register, known as the Payment Times Reports Register.

The Regulator is to be an SES employee in the Department. The functions of the Regulator include monitoring and enforcing compliance with this Act, and undertaking research and publishing reports and analysis on the payment terms, times and practices of reporting entities and reporting nominees.

4 Section 5 (definition of ABN)

Repeal the definition.

5 Section 5

Insert:

accounting standards has the same meaning as in the *Corporations Act 2001*.

Australian and New Zealand Standard Industrial Classification means the *Australian and New Zealand Standard Industrial Classification (ANZSIC) 2006*, as published from time to time by the Australian Bureau of Statistics.

6 Section 5 (definition of Business Industry Codes)

Repeal the definition.

7 Section 5

Insert:

carries on business in Australia: an entity *carries on business in Australia* if the entity:

- (a) in the case of a body corporate—carries on business in Australia, a State or a Territory within the meaning of the *Corporations Act 2001* (see section 21 of that Act); or

- (b) in any other case—would be taken to do so within the meaning of that Act if the entity were a body corporate.

8 Section 5 (definition of *commencement day*)

Repeal the definition.

9 Section 5

Insert:

consolidated revenue, of an entity, means:

- (a) the total revenue of the entity, for a financial year; or
(b) if the entity controls another entity or entities—the total revenue of the entity and all of the controlled entities, considered as a group, for a financial year of the controlling entity;

worked out in accordance with the accounting standards, even if those standards do not otherwise apply to such an entity (including a controlling entity) or group.

control, of an entity by another entity, means control of the entity within the meaning of the accounting standards.

10 Section 5 (definition of *controlling corporation*)

Repeal the definition.

11 Section 5 (definition of *enforcement day*)

Repeal the definition.

12 Section 5

Insert:

exempt entity means an entity in relation to which a determination under subsection 10P(1) is in effect.

fast small business payer: see subsection 22J(1).

financial year, in relation to an entity:

- (a) if a paragraph of the definition of ***financial year*** in section 9 of the *Corporations Act 2001* applies to the entity—has the meaning given by that definition; or

(b) otherwise—means an income year for the entity.

13 Section 5 (subparagraph (b)(i) of the definition of *income year*)

Omit “financial year”, substitute “period of 12 months starting on 1 July”.

13A Section 5

Insert:

list of fast small business payers means the list maintained and published on the register in accordance with section 22K.

14 Section 5 (definition of *member*)

Repeal the definition.

15 Section 5 (definition of *notifiable event*)

Repeal the definition.

16 Section 5

Insert:

provisional reporting period, of an entity, means a period in a financial year:

- (a) if the entity is a reporting entity or a reporting nominee for the whole of the financial year—that is a reporting period of the entity in the financial year; or
- (b) otherwise—that would be a reporting period for the entity if the entity were a reporting entity or a reporting nominee for the whole of the financial year.

reporting cycle: each of the following is a *reporting cycle*:

- (a) a period of 6 months starting on 1 January;
- (b) a period of 6 months starting on 1 July.

reporting nominee means an entity in relation to which a determination under subsection 10L(1) is in effect.

Note: See also section 55A (former reporting nominees).

17 Section 5 (definition of *responsible member*)

Repeal the definition, substitute:

responsible member, of an entity, in relation to a requirement under this Act that a report, application or other matter be approved, means:

- (a) an individual member of the entity's principal governing body who is authorised to approve the report, application or other matter; or
- (b) if the entity is a trust administered by a sole trustee—that trustee; or
- (c) if the entity is a corporation sole—the individual constituting the corporation; or
- (d) if the entity is under administration within the meaning of the *Corporations Act 2001*—the administrator; or
- (e) if the entity is of a kind prescribed by the rules—a prescribed member of the entity.

18 Section 5

Insert:

reviewable decision: see section 51.

slow small business payer: see section 22D.

slow small business payer direction means a direction given under subsection 22B(1).

19 Section 5 (note to the definition of *small business*)

Repeal the note.

20 Section 5 (definition of *standard payment period*)

Repeal the definition.

21 Section 5 (definition of *subsidiary*)

Repeal the definition.

22 Section 5

Insert:

subsidiary reporting entity means an entity in relation to which a determination under subsection 10E(1) is in effect.

23 Section 5 (definition of *volunteering entity*)

Omit “an election under subsection 7(1A)”, substitute “a determination under subsection 10B(1)”.

24 Section 7

Repeal the section, substitute:

7 Meaning of *reporting entity*

- (1) A constitutionally covered entity becomes a *reporting entity* at the start of a financial year for the entity if the entity is covered by subsection (2).
- (2) An entity is covered by this subsection if:
 - (a) the entity:
 - (i) carries on business in Australia; or
 - (ii) is a company that is incorporated in Australia; or
 - (iii) is a company that is not incorporated in Australia, but has either its central management and control in Australia, or its voting power controlled by shareholders who are residents of Australia; or
 - (iv) is a corporate Commonwealth entity, or a Commonwealth company, within the meaning of the *Public Governance, Performance and Accountability Act 2013*; and
 - (b) the entity’s consolidated revenue for the previous financial year is more than \$100 million; and
 - (c) the entity is not controlled by another entity that is a reporting entity; and
 - (d) the entity is not registered under the *Australian Charities and Not-for-profits Commission Act 2012*.
- (3) If the Regulator determines under subsection 10B(1) that a constitutionally covered entity is a reporting entity, the entity becomes a *reporting entity* at the time the determination takes effect (unless the reporting entity is already a reporting entity at that time).

Note: An entity that a determination under subsection 10B(1) applies to is a **volunteering entity** (see the definition of **volunteering entity** in section 5).

- (4) If the Regulator determines under subsection 10E(1) that a constitutionally covered entity is a subsidiary reporting entity, the entity becomes a **reporting entity** at the time the determination takes effect (unless the subsidiary reporting entity is already a reporting entity at that time).

Ceasing to be a reporting entity

- (5) A reporting entity continues to be a **reporting entity** until:
- (a) if the entity is a volunteering entity—the determination under subsection 10B(1) that relates to the entity is revoked, or taken to be revoked, under subsection 10D(2), (3) or (7); or
 - (b) if the entity is a subsidiary reporting entity—the determination under subsection 10E(1) that relates to the entity is revoked under section 10G; or
 - (c) a notice under subsection 10H(2) (notice that entity has ceased to be a reporting entity) takes effect; or
 - (d) the entity ceases to be a reporting entity under subsection 10K(2) (Regulator may determine that entity is to cease to be a reporting entity).

25 Subsection 8(1)

Omit “subsections (2) and (3)”, substitute “subsections (2) and (4)”.

26 Paragraphs 8(1)(a) and (b)

Omit “income year”, substitute “financial year”.

27 Subsections 8(2) and (3)

Repeal the subsections, substitute:

Volunteering entities

- (2) If a volunteering entity becomes a reporting entity on a day in a financial year for the entity that is not the first day of that financial year, any part of that financial year before the day the entity becomes a reporting entity is not a reporting period, or part of a reporting period, for the entity.

Reporting nominees

- (3) A **reporting period** for a reporting nominee is any period, in a financial year, to which both of the following apply:
- (a) a determination under subsection 10L(1) is in effect for the entity for the whole of the period;
 - (b) the period would be a reporting period for the reporting nominee if the reporting nominee were a reporting entity for the whole of the financial year (subject to subsection (4)).

Reporting periods where an entity's financial year changes

- (4) If:
- (a) a reporting entity's financial year changes; and
 - (b) as a result of the change, the entity has a financial year that is longer or shorter than 12 months;
- then, subject to subsection (2), the entity has the following reporting periods in that financial year:
- (c) if there is a period of 6 months that begins at the start of the financial year and falls entirely within the financial year—that period;
 - (d) subject to subsection (5)—each subsequent period (if any) of 6 months that falls entirely within the financial year;
 - (e) any period of less than 6 months that remains in the financial year after applying paragraphs (c) and (d).
- (5) If:
- (a) section 323D of the *Corporations Act 2001* applies to a reporting entity; and
 - (b) a financial year of the entity is made longer under subsection (2) of that section;
- then the period of 6 months mentioned in paragraph (4)(d) of this section, as it applies to that financial year, is taken to include the days by which the financial year was made longer.

Note: Subsection 323D(2) of the *Corporations Act 2001* provides for the financial years of certain kinds of entities to be made longer (or shorter) by a period of not more than 7 days.

28 After Part 1

Insert:

Part 1A—Provisions about reporting entities and reporting nominees

Division 1—Introduction

10A Simplified outline of this Part

This Part provides for various ways that an entity can become, or cease to be, a reporting entity.

This Part also provides for entities to nominate as reporting nominees, and provide payment times reports relating to other entities they control.

Division 2 provides for a constitutionally covered entity to apply to the Regulator to volunteer to be a reporting entity.

Division 3 provides for subsidiary reporting entities. A constitutionally covered entity, that is controlled by another entity that is a reporting entity, may apply to the Regulator to become a reporting entity in its own right.

Division 4 provides for ways for an entity to cease to be a reporting entity.

Division 5 provides for reporting nominees.

Division 6 provides for the Regulator to exempt reporting entities and reporting nominees from reporting obligations.

Division 7 provides for the rules to require reporting entities and reporting nominees to give information about themselves, and other entities they control, to the Regulator.

Division 2—Volunteering entities

10B Volunteering entity determination

- (1) The Regulator may determine, in writing, that a constitutionally covered entity is a **reporting entity** if:
- (a) the entity applies to the Regulator under subsection 10C(1); and
 - (b) the Regulator is satisfied that:
 - (i) the entity is not a reporting entity as a result of becoming a reporting entity under subsection 7(1); and
 - (ii) the entity is not controlled by another entity that is a reporting entity.

Note 1: An entity to which a determination under this subsection applies is a **volunteering entity** (see the definition of **volunteering entity** in section 5).

Note 2: A decision not to determine that an entity is a reporting entity is reviewable: see section 51.

- (2) A determination under subsection (1) takes effect at the time specified in the determination, which must be:
- (a) the time specified in the application for the purposes of subsection 10C(2); or
 - (b) if the application does not specify a time for the purposes of subsection 10C(2)—at the start of the first provisional reporting period of the entity that begins after the Regulator makes the determination.
- (3) Despite paragraph (2)(a), the time specified in the determination may be the start of the first provisional reporting period of the entity that begins after the Regulator makes the determination, if the Regulator considers it appropriate in all the circumstances for the determination to take effect at that time.
- (4) A determination under subsection (1) is not a legislative instrument.

10C Application for Regulator to make a volunteering entity determination

- (1) A constitutionally covered entity (the *applicant*) may apply, in writing, for the Regulator to determine, under subsection 10B(1), that the applicant is a reporting entity.

Note: See section 27A (requirements for applications made to the Regulator).

- (2) An application under subsection (1) may specify the time when the applicant proposes the determination to take effect, which must be either:
 - (a) the start of the provisional reporting period of the applicant in which the application is made; or
 - (b) the start of the provisional reporting period of the applicant that follows the provisional reporting period mentioned in paragraph (a).

10D Revocation of volunteering entity determination

Automatic revocation

- (1) A determination under subsection 10B(1) that relates to an entity is taken to be revoked if the entity becomes a reporting entity under subsection 7(1).
- (2) A determination under subsection 10B(1) that relates to an entity is taken to be revoked if the entity begins to be controlled by another entity that is a reporting entity.

Revocation by Regulator

- (3) The Regulator may revoke a determination under subsection 10B(1), by written notice given to the entity to which the determination relates, if the Regulator reasonably suspects that the entity has failed to comply with this Act.

Note: A decision to revoke a determination under subsection 10B(1) that an entity is a reporting entity is reviewable: see section 51.

- (4) The revocation takes effect on the day specified in the notice, which may be before the Regulator revokes the determination.

Revocation on notice by reporting entity

- (5) If:
- (a) the Regulator has made a determination under subsection 10B(1) in respect of a reporting entity; and
 - (b) the determination has not been revoked;
- the entity may, by written notice to the Regulator, inform the Regulator that the entity wishes to cease to be a volunteering entity.
- (6) A notice under subsection (5) must specify the time when the determination under subsection 10B(1) is to be revoked, which must be either:
- (a) the start of the reporting period of the entity in which the entity gives the notice to the Regulator; or
 - (b) the start of the reporting period of the entity that follows the reporting period mentioned in paragraph (a) of this subsection.
- (7) If a reporting entity gives the Regulator a notice under subsection (5), the determination mentioned in paragraph (5)(a) is taken to be revoked at the time specified in the notice for the purposes of paragraph (6)(a) or (b).

Division 3—Subsidiary reporting entities

10E Subsidiary reporting entity determination

- (1) The Regulator may determine, in writing, that a constitutionally covered entity is a *subsidiary reporting entity* if:
- (a) the entity applies to the Regulator under subsection 10F(1); and
 - (b) the entity is controlled by another entity that is a reporting entity; and
 - (c) the Regulator is satisfied that granting the application:
 - (i) would not be contrary to the public interest; and
 - (ii) would be consistent with the objects of this Act; and
 - (d) the Regulator is satisfied of any other matters prescribed by the rules.

Note 1: A subsidiary reporting entity becomes a reporting entity when the determination under this subsection takes effect (see subsection 7(4)).

Note 2: Rules made for the purposes of section 14 may provide that:

- (a) a payment times report given by a subsidiary reporting entity must include information about the payment terms, times and practices of the entity and other entities that the entity controls; and
- (b) that information is not required to be included in a payment times report given by the reporting entity that controls the subsidiary reporting entity.

Note 3: Rules made for the purposes of section 14 may make other provision in relation to subsidiary reporting entities.

Note 4: A decision not to determine that an entity is a subsidiary reporting entity is reviewable: see section 51.

- (2) In deciding whether to make a determination under subsection (1), the Regulator must have regard to any matters prescribed by the rules.

When determination takes effect

- (3) A determination under subsection (1) takes effect at the time specified in the determination, which must be:
 - (a) the time specified in the application for the purposes of subsection 10F(2); or
 - (b) if the application does not specify a time for the purposes of subsection 10F(2)—at the start of the first provisional reporting period of the entity that begins after the Regulator makes the determination.
- (4) Despite paragraph (3)(a), the time specified in the determination may be the start of the first provisional reporting period of the entity that begins after the Regulator makes the determination, if the Regulator considers it appropriate in all the circumstances for the determination to take effect at that time.

Determination is not a legislative instrument

- (5) A determination under subsection (1) is not a legislative instrument.

10F Application for Regulator to make a subsidiary reporting entity determination

- (1) A constitutionally covered entity (the *applicant*) may apply, in writing, for the Regulator to determine, under subsection 10E(1), that the applicant is a subsidiary reporting entity.

Note: See section 27A (requirements for applications made to the Regulator).

- (2) An application under subsection (1) may specify the time when the applicant proposes the determination to take effect, which must be either:
- (a) the start of the provisional reporting period of the applicant in which the applicant gives the application to the Regulator; or
 - (b) the start of the provisional reporting period of the applicant that follows the reporting period mentioned in paragraph (a).

10G Revocation of subsidiary reporting entity determination

Revocation by Regulator

- (1) The Regulator may revoke a determination under subsection 10E(1) by written notice given to the subsidiary reporting entity to which the determination relates.

Note: A decision to revoke a determination that an entity is a subsidiary reporting entity is reviewable: see section 51.

- (2) A revocation under subsection (1) takes effect at the time specified in the notice, which must be either:
- (a) the start of the reporting period of the entity in which the Regulator gives the notice; or
 - (b) the start of the reporting period of the entity that follows the reporting period mentioned in paragraph (a) of this subsection.

Revocation on notice by reporting entity

- (3) If:
- (a) the Regulator has made a determination under subsection 10E(1) in respect of an entity; and
 - (b) the determination has not been revoked;

the entity may, by written notice to the Regulator, inform the Regulator that the entity wishes to cease to be a subsidiary reporting entity.

- (4) A notice under subsection (3) must specify the time when the determination under subsection 10E(1) is to be revoked, which must be either:
- (a) the start of the reporting period of the entity in which the entity gives the notice to the Regulator; or
 - (b) the start of the reporting period of the entity that follows the reporting period mentioned in paragraph (a) of this subsection.
- (5) If a subsidiary reporting entity gives the Regulator a notice under subsection (3), the determination mentioned in paragraph (3)(a) is taken to be revoked at the time specified in the notice for the purposes of paragraph (4)(a) or (b).

Division 4—Ceasing to be a reporting entity

10H Notice that entity has ceased to be a reporting entity

- (1) A reporting entity ceases to be a reporting entity if:
- (a) the entity is not:
 - (i) a volunteering entity; or
 - (ii) a subsidiary reporting entity; and
 - (b) any of the following circumstances exist:
 - (i) paragraph 7(2)(a) does not apply to the entity;
 - (ii) the entity's consolidated revenue for each of the 2 previous financial years was not more than \$100 million;
 - (iii) the entity is controlled by another entity that is a reporting entity;
 - (iv) the entity is registered under the *Australian Charities and Not-for-profits Commission Act 2012*; and
 - (c) the reporting entity gives the Regulator a notice under subsection (2); and
 - (d) the notice takes effect under subsection (5).

Giving of notice

- (2) A reporting entity may give the Regulator a notice for the purposes of paragraph (1)(c).
- (3) The notice:
 - (a) must be given in the form and manner (if any) approved in an instrument under subsection (4); and
 - (b) must state the name of the reporting entity; and
 - (c) must state which circumstance or circumstances mentioned in paragraph (1)(b) exist; and
 - (d) must be approved in writing by a responsible member of the entity; and
 - (e) must state the name of the responsible member of the entity who approved the notice.
- (4) The Regulator may, by notifiable instrument, approve a form or manner for the purposes of paragraph (3)(a).

When notice takes effect

- (5) The notice takes effect at the start of the reporting period in which the notice is given, but only if one or more subparagraphs of paragraph (1)(b) apply to the entity at the start of that reporting period.

Note: If no subparagraphs of paragraph (1)(b) apply to the entity at the start of the reporting period, the entity does not cease to be a reporting entity and must continue to give payment times reports.

Withdrawing a notice

- (6) An entity that has given a notice under subsection (2) may, by written notice given to the Regulator, withdraw the notice (even if the entity has ceased to be a reporting entity).
- (7) If an entity withdraws, under subsection (6), a notice given under subsection (2):
 - (a) the notice under subsection (2) is taken never to have had effect; and
 - (b) the entity is taken not to have ceased to be a reporting entity because of the notice.

10J Reporting entities must not give false or misleading notices

- (1) A reporting entity is liable to a civil penalty if:
- (a) the entity gives the Regulator a notice under subsection 10H(2); and
 - (b) the notice is false or misleading in a material particular.

Civil penalty: 350 penalty units.

- (2) For the purposes of subsection (1), the reference in paragraph 82(5)(a) of the Regulatory Powers Act to 5 times the pecuniary penalty specified for the civil penalty provision has effect as if it were a reference to 0.6% of the total income for the person for the income year in which the contravention occurred.

Note: This subsection modifies the maximum pecuniary penalty that a body corporate can be ordered to pay for a contravention of subsection (1).

10K Regulator may determine that entity is to cease to be a reporting entity

- (1) The Regulator may determine, in writing, that a reporting entity is to cease to be a reporting entity at the time specified under subsection (2), if:
- (a) the entity is not:
 - (i) a volunteering entity; or
 - (ii) a subsidiary reporting entity; and
 - (b) the Regulator is satisfied that:
 - (i) the entity has ceased to exist; or
 - (ii) paragraph 7(2)(a) does not apply to the entity; or
 - (iii) the entity's consolidated revenue for each of the 2 most recent financial years was not more than \$100 million; or
 - (iv) the entity is controlled by another entity that is a reporting entity; or
 - (v) the entity is registered under the *Australian Charities and Not-for-profits Commission Act 2012*; or
 - (vi) a circumstance prescribed by the rules applies.

Note: A decision to determine that a reporting entity is to cease to be a reporting entity is reviewable: see section 51.

- (2) If the Regulator makes a determination under subsection (1) in relation to an entity, the entity ceases to be a reporting entity at the time specified in the determination, which must be either:
 - (a) the start of the reporting period of the entity in which the determination is made; or
 - (b) the start of the reporting period of the entity that follows the reporting period mentioned in paragraph (a).
- (3) The Regulator must give written notice of a determination under subsection (1) to the entity concerned.
- (4) To avoid doubt, a determination under subsection (1) that relates to an entity does not prevent the entity becoming a reporting entity again.

Determination is not a legislative instrument

- (5) A determination under subsection (1) is not a legislative instrument.

Division 5—Reporting nominees

10L Reporting nominee determination

- (1) The Regulator may determine, in writing, that a constitutionally covered entity (the *first entity*) is a *reporting nominee* for one or more other entities (the *other entities*) specified in the determination if:
 - (a) the first entity applies to the Regulator under subsection 10M(1); and
 - (b) the application specifies each of the other entities for the purposes of paragraph 10M(2)(a); and
 - (c) the Regulator is satisfied that the first entity controls each of the other entities; and
 - (d) the Regulator is satisfied that at least one of the other entities is a reporting entity; and
 - (e) the Regulator is satisfied that each of the other entities that is a reporting entity has consented to the first entity being a reporting nominee for that other entity; and

- (f) the Regulator is satisfied that the first entity is not a reporting entity; and
- (g) the Regulator is satisfied that granting the application:
 - (i) would not be contrary to the public interest; and
 - (ii) would be consistent with the objects of this Act; and
- (h) the Regulator is satisfied of any other matters prescribed by the rules.

Note 1: The determination does not result in the reporting nominee becoming a reporting entity.

Note 2: If any of the other entities are reporting entities, the determination does not result in those entities ceasing to be reporting entities. However, rules made for the purposes of section 14 may prescribe different reporting requirements for different circumstances (see subsections 14(3) and (4)). For example, the rules may provide that a report given by one of the other entities need not include certain information that is required to be included in the reporting nominee's report.

Note 3: A decision not to determine that an entity is a reporting nominee is reviewable: see section 51.

- (2) In deciding whether to make a determination under subsection (1), the Regulator must have regard to any matters prescribed by the rules.

When determination takes effect

- (3) A determination under subsection (1) takes effect at the time specified in the determination, which must be:
 - (a) the time specified in the application for the purposes of paragraph 10M(2)(b); or
 - (b) if the application does not specify a time for the purposes of paragraph 10M(2)(b)—at the start of the first provisional reporting period of the first entity that begins after the Regulator makes the determination.
- (4) Despite paragraph (3)(a), the time specified in the determination may be the start of the first provisional reporting period of the first entity that begins after the Regulator makes the determination, if the Regulator considers it appropriate in all the circumstances for the determination to take effect at that time.

Determination is not a legislative instrument

- (5) A determination under subsection (1) is not a legislative instrument.

10M Application for Regulator to make a reporting nominee determination

- (1) A constitutionally covered entity (the *applicant*) may apply, in writing, for the Regulator to determine under subsection 10L(1) that the applicant is a reporting nominee for one or more other entities.

Note: See section 27A (requirements for applications made to the Regulator).

- (2) An application under subsection (1):
- (a) must identify the other entity or entities; and
 - (b) may specify the time when the applicant proposes the determination to take effect, which must be either:
 - (i) the start of the provisional reporting period of the applicant in which the applicant gives the application to the Regulator; or
 - (ii) the start of the provisional reporting period of the applicant that follows the provisional reporting period mentioned in subparagraph (i).

10N Revocation of reporting nominee determination

- (1) The Regulator may revoke a determination under subsection 10L(1) by written notice given to:
- (a) the reporting nominee; and
 - (b) each reporting entity to which the determination relates.

Note: A decision to revoke a determination that an entity is a reporting nominee is reviewable: see section 51.

- (2) A revocation under subsection (1) takes effect on the day specified in the notice, which must be either:
- (a) the start of the reporting period of the reporting nominee in which the Regulator gives the notice; or

- (b) the start of the reporting period of the reporting nominee that follows the reporting period mentioned in paragraph (a) of this subsection.

Revocation on notice by reporting nominee or reporting entity

- (3) If:
 - (a) the Regulator has made a determination under subsection 10L(1) that an entity is a reporting nominee for one or more other entities; and
 - (b) the determination has not been revoked;the reporting nominee, or any of the other entities that is a reporting entity, may, by written notice to the Regulator, inform the Regulator that the determination is to be revoked.
- (4) A notice under subsection (3) must specify the time when the determination under subsection 10L(1) is to be revoked, which must be either:
 - (a) the start of the reporting period of the reporting nominee in which the notice is given to the Regulator; or
 - (b) the start of the reporting period of the reporting nominee that follows the reporting period mentioned in paragraph (a) of this subsection.
- (5) If the Regulator is given a notice under subsection (3), the determination mentioned in paragraph (3)(a) is taken to be revoked at the time specified in the notice for the purposes of paragraph (4)(a) or (b).

Division 6—Exempt entities

10P Exempt entity determination

- (1) The Regulator may determine, in writing, that an entity that is a reporting entity or a reporting nominee is an *exempt entity* if:
 - (a) the entity applies to the Regulator under subsection 10Q(1); and
 - (b) the Regulator is satisfied that:
 - (i) the entity is a reporting entity or a reporting nominee; and

- (ii) it is appropriate in the circumstances to make the determination, having regard to the objects of this Act.

Note 1: An exempt entity is not required to give certain payment times reports (see subsections 12(2) and (4)).

Note 2: A decision not to determine that an entity is an exempt entity is reviewable: see section 51.

- (2) The Regulator may impose conditions on a determination under subsection (1).

When exemption has effect

- (3) A determination under subsection (1) must specify:
 - (a) any conditions imposed under subsection (2); and
 - (b) the time the determination takes effect, which:
 - (i) may be, but need not be, the time (if any) specified in the application under subsection 10Q(2); and
 - (ii) may be before the day the determination is made; and
 - (c) the time the determination ceases to have effect, which must be no more than 2 years after the determination takes effect.
- (4) The determination takes effect, and ceases to have effect, as specified under paragraphs (3)(b) and (c).

Determination is not a legislative instrument

- (5) A determination under subsection (1) is not a legislative instrument.

10Q Application for Regulator to make an exempt entity determination

- (1) An entity (the *applicant*) that is a reporting entity or a reporting nominee may apply, in writing, for the Regulator to determine, under subsection 10P(1), that the applicant is an exempt entity.

Note: See section 27A (requirements for applications made to the Regulator).

- (2) An application under subsection (1) may specify the time that the applicant proposes the determination to take effect.

10R Revocation of exempt entity determination

- (1) The Regulator may revoke a determination under subsection 10P(1), by written notice given to the exempt entity to which the determination relates, if the Regulator is satisfied that:
- (a) the entity has failed to comply with a condition imposed on the determination under subsection 10P(2); or
 - (b) it is no longer appropriate in the circumstances for the entity to be an exempt entity.

Note: A decision to revoke a determination that an entity is an exempt entity is reviewable: see section 51.

- (2) A revocation under subsection (1) takes effect on the day specified in the notice, which may be a day before the day the notice is given to the exempt entity.
- (3) To avoid doubt, if a revocation under subsection (1) takes effect on a day before the day the notice is given, the entity concerned is taken not to have been an exempt entity on or after the day the revocation takes effect (including for the purposes of subsections 12(2) and (4)).

Timeframe for reporting

- (4) If:
- (a) a revocation under subsection (1) takes effect on a day that is before the day (the **notice day**) on which the notice is given; and
 - (b) the revocation results in a reporting entity or reporting nominee being required to give a payment times report for a reporting period that ended before the notice day; and
 - (c) section 13 would, but for this subsection, require that report to be given to the Regulator by a time before the end of 3 months after the notice day;
- then section 13 is taken to require the report to be given to the Regulator within 3 months after the notice day (subject to any extension of time allowed by the Regulator under section 13A or 13B).

Division 7—Entity information

10S Requirement to provide entity information

- (1) The rules may require an entity (the *first entity*) that is a reporting entity or a reporting nominee to give the Regulator information about:
 - (a) the first entity; and
 - (b) any entities that the first entity controls.

Note: The rules may require a payment times report given by the entity to include a declaration that information given to the Regulator under rules made for the purposes of this section is correct (see paragraph 14(2)(d)).

- (2) Without limiting subsection (1), the rules may do any of the following:
 - (a) require information relating to any of the following:
 - (i) the identity of an entity;
 - (ii) an entity's financial, accounting or governance arrangements;
 - (iii) a description or classification of an entity's business activities;
 - (iv) an entity's principal governing body and responsible members;
 - (v) contact details;
 - (vi) an entity's invoicing and procurement practices;
 - (b) require information to be given at particular times;
 - (c) require the first entity to update or correct information that has previously been provided;
 - (d) require information to be given in the form and manner (if any) approved in an instrument under subsection (3).
- (3) The Regulator may, by notifiable instrument, approve a form or manner for the purposes of paragraph (2)(d).

29 Section 11

Repeal the section, substitute:

11 Simplified outline of this Part

This Part requires reporting entities and reporting nominees to give the Regulator payment times reports for their reporting periods. A report for a reporting period must be given within 3 months after the end of the period, unless the Regulator allows an extension of time.

A payment times report must contain the information and documents prescribed by the rules, and must comply with a number of requirements relating to the preparation and approval of reports.

Civil penalties apply to reporting entities (other than volunteering entities) and reporting nominees that:

- (a) fail to report; or
- (b) give the Regulator a false or misleading report.

Payment times reports are published on a publicly available register, known as the Payment Times Reports Register. A reporting entity or reporting nominee may register a revised payment times report.

If the Regulator is satisfied that an entity has failed to comply with this Act, the Regulator may publish the identity of the entity, or details of the entity's non-compliance, on the register.

Division 4 provides for the Minister to give slow small business payer directions, which may require reporting entities or reporting nominees to publish the fact that they are slow small business payers.

Division 5 requires the Regulator to maintain and publish a list of fast small business payers on the register. The Regulator can exclude an entity from the list of fast small business payers for a period in certain circumstances.

Civil penalties apply to entities that make representations about being a fast small business payer when the entity is not included in the list of fast small business payers.

30 Sections 12 to 14

Repeal the sections, substitute:

12 Reporting entities and reporting nominees must report payment times

Reporting entities

- (1) A reporting entity must give the Regulator a payment times report for each reporting period for the entity.
- (2) However, a reporting entity is not required to give the Regulator a payment times report for a reporting period if the entity is an exempt entity for any part of the reporting period.

Reporting nominees

- (3) A reporting nominee must give the Regulator a payment times report for each reporting period for the reporting nominee.
- (4) However, a reporting nominee is not required to give the Regulator a payment times report for a reporting period if the reporting nominee is an exempt entity for any part of the reporting period.

13 When report must be given

The report must be given within 3 months after the end of the reporting period.

13A Extension of time to give report—single extension of 28 days or less

- (1) An entity that is required to give a payment times report may apply, in writing, to the Regulator for a further period of 28 days or less to give the report.

Note: See section 27A (requirements for applications made to the Regulator).

- (2) An application under this section may only be made if:
 - (a) the period in which the report is required to be given has not ended; and

- (b) the Regulator has not previously allowed the entity further time to give the report under this section or section 13B.
- (3) The application must:
 - (a) state the further period that the applicant is seeking to give the report, which must end 28 or fewer days after the day the applicant would otherwise be required to give the report; and
 - (b) state the circumstances that have resulted in the need for further time.
- (4) The Regulator may, by written notice to the entity, allow the entity such further time to give the report as is specified in the application, if:
 - (a) the Regulator has considered the application and any matters prescribed by the rules; and
 - (b) the Regulator is satisfied that the applicant requires additional time to give the report.

Note: A decision not to allow further time is reviewable: see section 51.

13B Extension of time to give report—other extensions

- (1) An entity that is required to give a payment times report may apply, in writing, to the Regulator for a further period to give the report.

Note: See section 27A (requirements for applications made to the Regulator).

- (2) An application under this section may only be made if:
 - (a) the period in which the report is required to be given (including that period as previously extended under this section) has not ended; and
 - (b) the Regulator has not previously allowed the entity further time to give the report under section 13A.
- (3) The application must:
 - (a) state the further period that the applicant is seeking to give the report; and
 - (b) state the circumstances that have resulted in the need for further time; and
 - (c) include evidence of those circumstances.

- (4) The Regulator may, by written notice to the entity, allow the entity such further time to give the report as is specified in the notice, if:
- (a) the Regulator has considered the application and any matters prescribed by the rules; and
 - (b) the Regulator is satisfied that the circumstances that have resulted in the need for further time are exceptional.

Note: A decision not to allow further time is reviewable: see section 51.

- (5) The Regulator must not specify more time in the notice than the Regulator considers appropriate, having regard to:
- (a) the severity of the circumstances that have resulted in the need for further time; and
 - (b) the strength of the evidence of those circumstances included in the application.

14 Reporting requirements

Content requirements

- (1) A payment times report that is required to be given to the Regulator by an entity (the **first entity**) that is a reporting entity or a reporting nominee must include:
- (a) the information and documents, relating to the first entity's payment terms, times or practices in relation to small business suppliers, that are prescribed by the rules; and
 - (b) the information and documents, relating to the timing of the first entity's payments of small business invoices, that are prescribed by the rules; and
 - (c) any other information and documents prescribed by the rules.
- (2) Without limiting subsection (1), the rules may do any of the following:
- (a) require the report to include information and documents of a kind referred to in subsection (1) in relation to an entity that the first entity controls;
 - (b) require the report to consolidate information and documents relating to different entities;
 - (c) prescribe a method for working out any of the matters that must be included in the report;

- (d) require the report to include a declaration that information provided by the first entity under rules made for the purposes of section 10S is correct, or was correct at a particular time.

Note: The rules may, in accordance with paragraph (a), require a report given by a reporting nominee to include information and documents relating to another entity specified in the determination under subsection 10L(1).

- (3) Without limiting subsection (1), the rules may:
 - (a) require reports to include different information and documents in different circumstances; and
 - (b) require a report to include a statement about whether a circumstance mentioned in paragraph (a) of this subsection applies.

Note: See section 16 in relation to false or misleading reports.

- (4) Subsection (3) does not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

Approval requirement

- (5) The report must:
 - (a) be approved in writing by a responsible member of the first entity; and
 - (b) include the name of the responsible member of the first entity who approved the report.

Form and manner for giving report

- (6) The report must be given in the form and manner (if any) approved in an instrument under subsection (7).
- (7) The Regulator may, by notifiable instrument, approve a form or manner for the purposes of subsection (6).

Applying, adopting or incorporating other instruments etc.

- (8) Despite subsection 14(2) of the *Legislation Act 2003*, rules made for the purposes of this section may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

31 Section 15

Before “A reporting entity”, insert “(1)”.

32 At the end of section 15

Add:

- (2) A reporting nominee is liable to a civil penalty if:
- (a) the reporting nominee is required to give the Regulator a payment times report in accordance with this Division; and
 - (b) the reporting nominee fails to comply with the requirement.

Civil penalty: 60 penalty units.

33 Section 16 (heading)

After “Reporting entities”, insert “and reporting nominees”.

34 At the end of section 16

Add:

Reporting nominees

- (4) A reporting nominee is liable to a civil penalty if:
- (a) the reporting nominee gives the Regulator a payment times report; and
 - (b) the report is false or misleading in a material particular.

Civil penalty: 350 penalty units.

- (5) For the purposes of subsection (4), the reference in paragraph 82(5)(a) of the Regulatory Powers Act to 5 times the pecuniary penalty specified for the civil penalty provision has effect as if it were a reference to 0.6% of the total income for the person for the income year in which the contravention occurred.

Note: This subsection modifies the maximum pecuniary penalty that a body corporate can be ordered to pay for a contravention of subsection (4).

35 Sections 18 to 21

Repeal the sections, substitute:

18 Contents of register

- (1) The register must contain the payment times reports given to the Regulator under Division 2 (reporting payment times).
- (2) The Regulator may arrange for payment times reports given to the Regulator to be published on the register automatically.

Information that is not to be published on the register, or that is to be removed

- (3) The rules may prescribe information that, if included in a report, the Regulator must:
 - (a) take reasonable steps to remove from the report before the report is published on the register; or
 - (b) remove from a published report as soon as practicable after the Regulator becomes aware that the information is included in the report.

Note: For example, rules made for the purposes of section 14 may require a report to include contact information for individuals. Rules made for the purposes of this subsection may require the Regulator to take reasonable steps to remove that information from the report before the report is published on the register, or remove that information from a report that has been published on the register (if the Regulator is aware of it).

19 Revised payment times reports

- (1) An entity that is a reporting entity or a reporting nominee may give the Regulator a revised version of a payment times report previously given by the entity.

Note: See section 16 in relation to false or misleading reports.

- (2) The revised version of the payment times report must indicate the date of the revision and include a description of the changes made to the most recent version of the report given by the entity.
- (3) The Regulator may arrange for revised versions of payment times reports given to the Regulator under this section to be published on the register automatically.

20 Regulator may remove certain information

- (1) The Regulator may remove information contained in a payment times report from the register if the Regulator considers that continuing to make the information publicly available would be contrary to the public interest.
- (2) In making a decision under subsection (1), the Regulator may have regard to:
 - (a) whether the information is personal information (within the meaning of the *Privacy Act 1988*); and
 - (b) whether the information is commercial-in-confidence; and
 - (c) any other matters prescribed by the rules; and
 - (d) any other matters the Regulator considers relevant.
- (3) Information is *commercial-in-confidence* if the Regulator is satisfied that:
 - (a) further release of the information would cause competitive detriment to a constitutionally covered entity; and
 - (b) removing the information from the register is likely to be effective in removing the information from the public domain; and
 - (c) the information is not required to be disclosed under another Australian law; and
 - (d) removing the information from the register is likely to be effective in preventing the information from being readily discoverable.

21 Removal or non-publication of payment times reports for volunteering entities that fail to comply with Act

- (1) This section applies if the Regulator is reasonably satisfied that a volunteering entity has failed to comply with this Act.
- (2) The Regulator may decide that any payment times reports that have been or will be given to the Regulator by the entity:
 - (a) are not to be made available for public inspection on the register; or
 - (b) are to be removed from the register;

until the Regulator is satisfied that the entity has taken appropriate remedial action.

36 Subsection 22(1)

Omit “reporting entity”, substitute “constitutionally covered entity”.

37 Subsection 22(1) (note 1)

Repeal the note.

38 Subsection 22(1) (note 2)

Omit “Note 2”, substitute “Note”.

39 At the end of section 22

Add:

(3) If:

- (a) the Regulator has published the identity of an entity and details of non-compliance in accordance with this section; and
- (b) the Regulator is considering whether to publish the identity of that entity and details of the non-compliance again (including by publishing that information in some other way);

the Regulator need not comply with subsection (2) in relation to the publication mentioned in paragraph (b) of this subsection.

40 At the end of Division 3 of Part 2

Add:

22A Publication of other information

The rules may prescribe the following:

- (a) information that the Regulator may publish on the register;
- (b) information that the Regulator must publish on the register;
- (c) procedures relating to the publication of information on the register in accordance with rules made for the purposes of paragraphs (a) and (b).

41 At the end of Part 2

Add:

Division 4—Slow small business payers

22B Minister may give slow small business payer direction

- (1) The Minister may give an entity that is a reporting entity or a reporting nominee a direction under this section (a *slow small business payer direction*) if:
 - (a) the Minister is satisfied that the entity was a slow small business payer in 2 consecutive reporting cycles; or
 - (b) the Minister is satisfied that the entity was a slow small business payer in a reporting cycle, and the entity did not comply with a requirement to give a payment times report in the preceding reporting cycle; or
 - (c) the Minister is satisfied that the entity was a slow small business payer in a reporting cycle, and the entity did not comply with a requirement to give a payment times report in the following reporting cycle.
- Note: A decision to give a slow small business payer direction is reviewable: see sections 51 and 54AA.
- (2) Before the Minister decides to give a slow small business payer direction to an entity, the Minister must:
 - (a) give the entity notice in writing of the proposed decision and the reasons for the proposed decision; and
 - (b) invite the entity to make written submissions to the Regulator about the proposed decision within the period of 28 days beginning on the day the notice is given.

Matters the Minister must have regard to

- (3) In considering whether to give an entity (the *first entity*) a slow small business payer direction, the Minister must have regard to any written submissions made in accordance with the invitation mentioned in paragraph (2)(b).

- (4) In particular, and without limiting subsection (3), the Minister must have regard to the following in relation to the relevant entities mentioned in subsection (5):
- (a) the relevant entities' history (if any) of compliance or non-compliance with this Act;
 - (b) any of the following matters raised in a written submission made in accordance with the invitation mentioned in paragraph (2)(b):
 - (i) the relevant entities' practices in relation to paying small business invoices;
 - (ii) any improvements in those practices;
 - (iii) whether any slowness of the relevant entities' payment of small business invoices has been because of circumstances beyond the relevant entities' control;
 - (iv) the likely cost and burden of complying with the direction, and whether that cost and burden is reasonable in the circumstances.
- (5) For the purposes of subsection (4), the *relevant entities* are:
- (a) the first entity; and
 - (b) any other constitutionally covered entity that rules made for the purposes of section 14 require the first entity's payment times reports to include information about.

22C Other provisions about giving slow small business payer directions

- (1) A slow small business payer direction:
- (a) must be in writing; and
 - (b) may include one or more requirements under section 22E; and
 - (c) may specify, for the purposes of paragraph 22F(1)(b), the day that the direction ceases to be in effect.
- (2) The Minister may only give a slow small business payer direction before the end of 12 months after:
- (a) if paragraph 22B(1)(a) applies—the end of the later of the 2 consecutive reporting cycles mentioned in that paragraph; or

- (b) if paragraph 22B(1)(b) applies—the end of the reporting cycle in which the entity was a slow small business payer; or
 - (c) if paragraph 22B(1)(c) applies—the end of the reporting cycle in which the entity failed to comply with a requirement to give a payment times report.
- (3) The Minister must not give a slow small business payer direction to a volunteering entity.
 - (4) A slow small business payer direction is not a legislative instrument.

22D Slow small business payers

- (1) An entity that is a reporting entity or a reporting nominee is a *slow small business payer* for a reporting cycle if the entity was within:
 - (a) the slowest 20% of small business payers for that reporting cycle; or
 - (b) the slowest 20% of small business payers in a Division of the Australian and New Zealand Standard Industrial Classification for that reporting cycle.
- (2) For the purposes of subsection (1), *slowest 20% of small business payers* and *slowest 20% of small business payers in a Division of the Australian and New Zealand Standard Industrial Classification*, for a reporting cycle, have the meanings prescribed by the rules.
- (3) Without limiting subsection (2), rules made for the purposes of that subsection may provide that whether an entity is within a class of entities mentioned in paragraph (1)(a) or (b) is to be worked out with regard to the payment terms, times and practices of:
 - (a) the entity; and
 - (b) if the rules require the entity’s payment times reports to include information or documents about other entities that the entity controls—those other entities.
- (4) Despite subsection (1), an entity is not a *slow small business payer* for a reporting cycle if:
 - (a) the entity has given the Regulator a payment times report for a reporting period that ended within that reporting cycle; and

- (b) the payment times report has a qualifying payment time of 30 days or less.
- (5) For the purposes of paragraph (4)(b), *qualifying payment time of 30 days or less* has the meaning given by the rules.

22E Requirements that may be included in slow small business payer direction

- (1) A slow small business payer direction given to an entity (the *recipient*) may require the recipient:
 - (a) to publish specified statements or information in accordance with this section; or
 - (b) to take reasonable steps to cause a constitutionally covered entity that the recipient controls (a *controlled entity*) to publish specified statements or information in accordance with this section.
- (2) The direction may require the recipient to publish, or take reasonable steps to cause to be published, any of the following:
 - (a) a statement that the recipient or the controlled entity is a slow small business payer;
 - (b) information on how to access payment times reports that relate to the recipient or the controlled entity.
- (3) The direction may require the recipient to publish the statement or information, or take reasonable steps to cause the statement or information to be published:
 - (a) on the recipient's website or the controlled entity's website; or
 - (b) in documents relating to procurement processes, including requests for quotes and tender documents; or
 - (c) in documents relating to the environmental, social and governance policies or performance of the entity or the controlled entity; or
 - (d) in invoices; or
 - (e) in other kinds of commercial documents; or
 - (f) in any other way that the Minister considers appropriate.

- (4) The direction may require the statement or information to be published in a specified manner, including by imposing any of the following requirements:
- (a) a requirement relating to the prominence of the statement or information;
 - (b) a requirement relating to the location of the statement or information in relation to other material.

22F Duration of slow small business payer direction

- (1) A slow small business payer direction given to an entity continues in effect until the earliest of the following:
- (a) the day the entity gives the Regulator a payment times report with a qualifying payment time of 30 days or less;
 - (b) if the direction specifies a day that it ceases to be in effect— that day;
 - (c) the day 1 year after the day the direction is given;
 - (d) if the Minister revokes the direction under subsection (2)— the time the Minister gives the entity the notice of revocation.
- (2) The Minister may, by written notice given to the entity to which a slow small business payer direction was given, revoke the direction.
- (3) For the purposes of paragraph (1)(a), *qualifying payment time of 30 days or less* has the meaning given by the rules.

22G Civil penalty provision for failure to comply with slow small business payer direction

- (1) An entity that is a reporting entity or a reporting nominee is liable to a civil penalty if:
- (a) the Minister gives the entity a slow small business payer direction; and
 - (b) the entity fails to comply with the direction.

Civil penalty: 200 penalty units.

- (2) For the purposes of subsection (1), the reference in paragraph 82(5)(a) of the Regulatory Powers Act to 5 times the pecuniary penalty specified for the civil penalty provision has

effect as if it were a reference to 0.6% of the total income for the person for the income year in which the contravention occurred.

Note: This subsection modifies the maximum pecuniary penalty that a body corporate can be ordered to pay for a contravention of subsection (1).

- (3) Subsection (1) does not apply if compliance with the direction (including compliance by a constitutionally covered entity controlled by the reporting entity publishing statements or information, as mentioned in paragraph 22E(1)(b)) would contravene any Australian law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

22H Publication on Register

- (1) If the Minister gives a slow small business payer direction to an entity, the following must be published on the register:
- (a) a statement that the entity has been given a slow small business payer direction;
 - (b) a description of the slow small business payer direction.
- (2) To avoid doubt, information published on the register under subsection (1) may remain on the register after the slow small business payer direction has ceased to be in effect.

Division 5—Fast small business payers

22J Fast small business payers

- (1) An entity is a *fast small business payer*, at a particular time, if:
- (a) at that particular time, the entity is a reporting entity or reporting nominee; and
 - (b) at that particular time, the entity has given the Regulator payment times reports for 2 consecutive reporting periods and both of the payment times reports for the 2 consecutive reporting periods have a qualifying payment time of 20 days or less; and
 - (c) at that particular time, the period of 9 months, starting on the day after the end of the later of the 2 consecutive reporting periods, has not ended; and

- (d) in the case that, at that particular time, the entity has given the Regulator a payment times report for the next reporting period starting immediately after the end of the later of the 2 consecutive reporting periods—that payment times report also has a qualifying payment time of 20 days or less.
- (2) For the purposes of this Division, *qualifying payment time of 20 days or less* has the meaning given by the rules.

22K List of fast small business payers

List of fast small business payers

- (1) The Regulator must maintain and publish on the register a list of entities that are fast small business payers, to be known as the list of fast small business payers.
- (2) The Regulator must update the list as soon as practicable after an entity becomes, or ceases to be, a fast small business payer.

Regulator can exclude entities

- (3) Despite subsections (1) and (2), the Regulator may decide to exclude an entity from the list for a period if the Regulator reasonably believes (or is considering whether):
 - (a) the entity has engaged in procurement practices that limit, reduce or restrict small business participation; or
 - (b) the entity has engaged in payment practices that are contrary to the objects of this Act; or
 - (c) the entity has given the Regulator a payment times report for a reporting period that has a misleading qualifying payment time of 20 days or less.
- (4) If the Regulator makes a decision under subsection (3) to exclude an entity from the list, the Regulator must give the entity written notice of the decision.
- (5) The notice must:
 - (a) set out the reasons for the Regulator's decision; and
 - (b) specify the period in which the entity is excluded from the list.

22L False representations in relation to fast small business payers

An entity that is a reporting entity or a reporting nominee is liable to a civil penalty if:

- (a) the entity does an act or omits to do an act; and
- (b) the act or omission results in, or is reasonably capable of resulting in, a representation that the entity:
 - (i) is a fast small business payer; or
 - (ii) has a qualifying payment time of 20 days or less; and
- (c) at the time the act or omission results in, or is reasonably capable of resulting in, the representation, the entity is not included in the list of fast small business payers.

Civil penalty: 200 penalty units.

42 Section 23

Omit:

The Regulator has functions relating to the administration of this Act, including monitoring and enforcing compliance with this Act.

substitute:

The Regulator has functions relating to the administration of this Act, including monitoring and enforcing compliance with this Act. The Regulator also has functions relating to undertaking research and publishing reports and analysis on the payment terms, times and practices of reporting entities.

43 After paragraph 25(b)

Insert:

- (ba) to undertake research on the payment terms, times and practices of reporting entities and reporting nominees, for the purpose of informing the Commonwealth;
- (bb) to publish reports on, or other results of, that research;
- (bc) to publish analysis of the payment terms, times and practices of reporting entities and reporting nominees, for purposes incidental to the purpose of informing the Commonwealth;

- (bd) to provide users of the register with data and tools to assist them to understand and use information made available on the register;

44 After subsection 27(1)

Insert:

- (1A) Without limiting subsection (1), the Regulator may, in writing, delegate the Regulator's functions or powers under section 13A or 13B to a person who holds, or is acting in, an Executive Level 1, or equivalent, position in the Department.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

45 Subsection 27(3)

Repeal the subsection, substitute:

- (3) The Regulator must not delegate a power to make a legislative instrument or a notifiable instrument.

46 At the end of Part 3

Add:

Division 3—Applications made to the Regulator

27A Requirements for applications made to the Regulator

- (1) This section applies to an application to the Regulator under any of the following provisions:
- (a) subsection 10C(1) (application for Regulator to make a volunteering entity determination);
 - (b) subsection 10F(1) (application for Regulator to make a subsidiary reporting entity determination);
 - (c) subsection 10M(1) (application for Regulator to make a reporting nominee determination);
 - (d) subsection 10Q(1) (application for Regulator to make an exempt entity determination);
 - (e) subsection 13A(1) (extensions of time of 28 days or less);
 - (f) subsection 13B(1) (other extensions of time).

- (2) The application must:
- (a) be given in the form and manner (if any) approved by the Regulator under subsection (3); and
 - (b) include the information determined by the Regulator under subsection (4); and
 - (c) state the name of the applicant; and
 - (d) be approved in writing by a responsible member of the applicant; and
 - (e) state the name of the responsible member of the applicant who approved the application.

Note: There may also be fees charged for making certain applications (see section 27B).

- (3) For the purposes of paragraph (2)(a), the Regulator may, by notifiable instrument, approve a form or manner for a kind of application mentioned in subsection (1).
- (4) For the purposes of paragraph (2)(b), the Regulator may, by legislative instrument, determine information that must be included in a kind of application mentioned in subsection (1).

Regulator may require further information

- (5) The Regulator may, by written notice given to the applicant, require the applicant to give the Regulator further information in connection with the application.
- (6) If the applicant does not comply with a notice under subsection (5), the Regulator may, by written notice given to the applicant:
- (a) refuse to consider the application; or
 - (b) refuse to take any action, or any further action, in relation to the application.

27B Fees for applications made to the Regulator

- (1) The Regulator may, by legislative instrument, determine a fee for making any of the following applications under this Act:
- (a) an application under subsection 10F(1) for the Regulator to determine that an entity is a subsidiary reporting entity;

- (b) an application under subsection 10M(1) for the Regulator to determine that an entity is a reporting nominee;
 - (c) an application under subsection 10Q(1) for the Regulator to determine that an entity is an exempt entity;
 - (d) an application under subsection 13A(1) for further time to give a payment times report;
 - (e) an application under subsection 13B(1) for further time to give a payment times report (except in a case where the applicant has already made an application under subsection 13B(1), and paid any fee for that application, in relation to the same report).
- (2) A fee must not be such as to amount to taxation.
- (3) If the Regulator determines, under subsection (1), a fee for making an application, the application is taken not to have been made unless the fee is paid.

47 Section 28

Repeal the section, substitute:

28 Simplified outline of this Part

This Part imposes certain obligations on reporting entities and reporting nominees, and provides for compliance and enforcement powers.

Reporting entities and reporting nominees are required to keep records of information used to prepare payment times reports for 7 years.

The Regulator may require a reporting entity or reporting nominee to arrange an audit of the entity's compliance with this Act.

The Regulator may require a person to give the Regulator information, a document or a thing that is relevant to the operation of this Act.

This Part applies Parts 2, 3, 4, 5 and 6 of the Regulatory Powers Act with suitable modifications. Those Parts of that Act deal with

monitoring and investigation powers, civil penalty provisions, infringement notices and enforceable undertakings. The Regulator may appoint authorised officers and infringement officers to exercise powers under the Regulatory Powers Act.

48 Division 2 of Part 4 (at the end of the heading)

Add “and reporting nominees”.

49 Section 29 (at the end of the heading)

Add “—reporting entities”.

50 After section 29

Insert:

29A Record-keeping requirements—reporting nominees

Reporting nominee must keep records

- (1) A reporting nominee must keep records of any information used in the preparation of a payment times report for a reporting period for at least 7 years after the end of the reporting period.

Civil penalty

- (2) A reporting nominee is liable to a civil penalty if:
- (a) the reporting nominee is required to keep records under subsection (1); and
 - (b) the reporting nominee fails to comply with the requirement.

Civil penalty: 200 penalty units.

- (3) For the purposes of subsection (2), the reference in paragraph 82(5)(a) of the Regulatory Powers Act to 5 times the pecuniary penalty specified for the civil penalty provision has effect as if it were a reference to 0.2% of the total income for the person for the income year in which the contravention occurred.

Note: This subsection modifies the maximum pecuniary penalty that a body corporate can be ordered to pay for a contravention of subsection (2).

51 Subsection 30(1)

Omit “a reporting entity”, substitute “an entity that is a reporting entity or a reporting nominee”.

52 Subsection 30(2) (note)

Repeal the note.

53 After Division 2 of Part 4

Insert:

Division 2A—Information-gathering powers

30A Regulator may obtain information

- (1) This section applies to a person if the Regulator believes on reasonable grounds that the person has information or a document or thing that is relevant to the operation of this Act.
- (2) The Regulator may, by written notice given to the person, require the person:
 - (a) to give to the Regulator any such information; or
 - (b) to produce to the Regulator any such document or thing.
- (3) The notice must specify:
 - (a) the name of the person; and
 - (b) the form and manner in which the person is required to comply with the notice; and
 - (c) the period (which must be at least 14 days after the notice is given to the person) within which the person is required to comply with the notice.
- (4) The Regulator may, by written notice given to the person, extend the period mentioned in paragraph (3)(c). The Regulator may extend the period even if it has expired.
- (5) The Regulator may, by written notice given to the person, withdraw a notice given under subsection (2).

30B Civil penalty provision for failure to comply with notice

A person is liable to a civil penalty if:

- (a) the person is given a notice under subsection 30A(2); and
- (b) the person fails to comply with the notice.

Civil penalty: 60 penalty units.

54 Subsection 31(1) (note 1)

Omit “Note 1”, substitute “Note”.

55 Subsection 31(1) (note 2)

Repeal the note.

56 Subsection 31(2) (note 1)

Omit “Note 1”, substitute “Note”.

57 Subsection 31(2) (note 2)

Repeal the note.

58 Subsection 32(1) (note 1)

Omit “Note 1”, substitute “Note”.

59 Subsection 32(1) (note 2)

Repeal the note.

60 Subsection 33(1) (note 1)

Omit “Note 1”, substitute “Note”.

61 Subsection 33(1) (note 2)

Repeal the note.

62 Subsection 34(1) (note 1)

Omit “Note 1”, substitute “Note”.

63 Subsection 34(1) (note 2)

Repeal the note.

64 After section 34

Insert:

34A Enforceable undertakings

Enforceable provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 6 of the Regulatory Powers Act.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

Authorised person

- (2) For the purposes of Part 6 of the Regulatory Powers Act, the Regulator and each authorised officer is an authorised person in relation to the civil penalty provisions of this Act.

Relevant court

- (3) For the purposes of Part 6 of the Regulatory Powers Act, each relevant court (as defined in section 5 of this Act) is a relevant court in relation to the civil penalty provisions of this Act.

Extension to external Territories etc.

- (4) Part 6 of the Regulatory Powers Act, as it applies in relation to the civil penalty provisions of this Act, extends to every external Territory.

65 Division 4 of Part 4

Repeal the Division.

66 After section 40

Insert:

40A Compliance auditors

The Regulator may disclose protected information to an auditor appointed to carry out an audit in accordance with section 30, if the

Regulator is satisfied that the information will assist in carrying out the audit.

67 Section 47

Omit:

This Part deals with miscellaneous matters, such as the review of decisions, the continuation of certain obligations for former reporting entities, annual reporting, a statutory review and the power to make rules.

substitute:

This Part deals with miscellaneous matters, such as the review of decisions, the continuation of certain obligations for former reporting entities and former reporting nominees, delegations by the Minister, annual reporting, a statutory review and the power to make rules.

68 Section 47

Omit:

In addition, this Part provides that certain entities are taken to have become reporting entities before the commencement day, with their first reporting periods starting on or after the commencement day. It also provides for further time after the commencement day for entities to voluntarily elect to become reporting entities.

69 Subsections 48(1) and 49(1)

Omit “a reporting entity”, substitute “an entity that is a reporting entity or a reporting nominee”.

70 Subsection 50(1)

After “a reporting entity”, insert “or a reporting nominee”.

71 Section 51

Before “A decision mentioned”, insert “(1)”.

72 Section 51 (table)

Repeal the table, substitute:

Reviewable decisions		
Item	Column 1 Decision	Column 2 Provision
1	A decision not to determine that an entity is a reporting entity	Subsection 10B(1)
2	A decision to revoke a determination under subsection 10B(1) that an entity is a reporting entity	Subsection 10D(3)
3	A decision not to determine that an entity is a subsidiary reporting entity	Subsection 10E(1)
4	A decision to revoke a determination under subsection 10E(1) that an entity is a subsidiary reporting entity	Subsection 10G(1)
5	A decision to determine that a reporting entity is to cease to be a reporting entity	Subsection 10K(1)
6	A decision not to determine that an entity is a reporting nominee	Subsection 10L(1)
7	A decision to revoke a determination that an entity is a reporting nominee	Subsection 10N(1)
8	A decision not to determine that an entity is an exempt entity	Subsection 10P(1)
9	A decision to revoke a determination under subsection 10P(1) that an entity is an exempt entity	Subsection 10R(1)
10	A decision not to allow further time to give a payment times report	Subsections 13A(4) and 13B(4)
11	A decision to publish the identity of an entity or details of non-compliance	Subsection 22(1)
12	A decision to give a slow small business payer direction, if the decision was made by the Regulator in accordance with a delegation under section 55B	Subsection 22B(1)
13	A decision to exclude an entity from the list of fast small business payers	Subsection 22K(3)

73 At the end of section 51

Add:

- (2) The rules may provide that a decision made under a prescribed provision of the rules is a *reviewable decision*.

74 Section 54 (at the end of the heading)

Add “—reconsideration decisions”.

75 At the end of Division 3 of Part 6

Add:

54AA Review by the Administrative Appeals Tribunal—decisions made by the Minister

Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Minister to give slow small business payer directions (not including such decisions made by the Regulator in accordance with a delegation under section 55B).

Note: For review of a decision to give a slow small business payer direction made by the Regulator in accordance with a delegation, see section 51.

76 Sections 54A and 54B

Repeal the sections.

77 After subsection 55(1)

Insert:

- (1A) Subsection (1) does not apply if the entity was a volunteering entity during the reporting period.

78 Paragraph 55(2)(d)

After “reporting entities”, insert “and reporting nominees”.

79 After section 55

Insert:

55A Former reporting nominees

Former reporting nominees

- (1) The requirement for a reporting nominee to give the Regulator a payment times report under section 12 for a reporting period continues to apply to the reporting nominee if:
 - (a) the reporting nominee has not given the Regulator a payment times report for the reporting period under that section; and
 - (b) the reporting nominee ceases to be a reporting nominee at any time after the end of the reporting period.

Other rights and obligations

- (2) The following provisions continue to apply to a reporting nominee that has ceased to be a reporting nominee as if it were still a reporting nominee:
 - (a) section 15 (civil penalty provision for failure to report);
 - (b) section 16 (false or misleading reports);
 - (c) Division 3 of Part 2 (access to payment times reports);
 - (d) Division 2 of Part 4 (obligations of reporting entities and reporting nominees);
 - (e) Division 2 of this Part (treatment of certain kinds of entities).

55B Delegation by the Minister

- (1) The Minister may, in writing, delegate all or any of the Minister's functions or powers under Division 4 of Part 2 of this Act to the Regulator.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (2) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Minister.

80 After paragraph 57(1)(a)

Insert:

- (aa) the Minister; and

81 Section 57A

Repeal the section, substitute:

57A Review of operation of this Act

- (1) The Minister must cause an independent review of the operation of this Act to be conducted within 2 years after the third anniversary of the commencement of the *Payment Times Reporting Amendment Act 2024*.

Note: The reference to this Act includes the rules: see the definition of *this Act* in section 5.

- (2) The persons who conduct the review must give the Minister a written report of the review.
- (3) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

82 Subsection 57B(1)

Omit “(1)”.

83 Paragraphs 57B(1)(b) and (c)

After “terms”, insert “, times”.

84 Subsection 57B(2)

Repeal the subsection.

Part 2—Application and transitional provisions

85 Definitions

In this Part:

commencement time means the commencement of the *Payment Times Reporting Amendment Act 2024*.

new Act means the *Payment Times Reporting Act 2020* as in force immediately after the commencement time.

old Act means the *Payment Times Reporting Act 2020* as in force immediately before the commencement time.

transition day means 1 July 2024.

86 Transitional—reporting entities

- (1) An entity that was a reporting entity (other than a volunteering entity) immediately before the transition day is taken, for the purposes of the new Act (but not the old Act, including the old Act as it may continue to apply under this Part), to have ceased to be a reporting entity at the start of the transition day.
- (2) A constitutionally covered entity that:
 - (a) is covered by subsection 7(2) of the new Act at the start of the first provisional reporting period of the entity that begins on or after the transition day; or
 - (b) would be covered by that subsection if the new Act had commenced at or before the start of that provisional reporting period;becomes, or is taken for the purposes of the new Act to have become, a reporting entity for the purposes of the new Act at the start of that provisional reporting period (even if the new Act has not commenced at that time).

87 Transitional—volunteering entities

- (1) This section applies to a constitutionally covered entity if an election for the entity to be a reporting entity under subsection 7(1A) of the old Act was in effect immediately before the transition day.

- (2) Subject to subitem (3), the entity is not a volunteering entity for the purposes of the new Act.
- (3) If, at the start of the transition day, the entity would not be covered by subsection 7(2) of the new Act (if the new Act had commenced at that time), then, at and after the start of the first provisional reporting period of the entity that begins on or after the transition day, the Regulator is taken to have determined under subsection 10B(1) of the new Act that the entity is a reporting entity.
- (4) To avoid doubt, the Regulator may deal with a determination that the Regulator is taken to have made under subitem (3) as if the Regulator had made the determination under subsection 10B(1) of the new Act.

88 Transitional—payment times reports

Despite the amendments made by Part 1 of this Schedule, the old Act continues to apply, on and after the transition day (including at and after the commencement time), in relation to the following:

- (a) a payment times report for a reporting period that began before the transition day;
- (b) a requirement to give such a payment times report.

89 Transitional—extension of first reporting period

- (1) This item applies to a payment times report for a reporting period that begins:
 - (a) on or after the transition day; and
 - (b) before the end of 3 months after the transition day.
- (2) Section 13 of the new Act is taken to require the report to be given within 12 months after the transition day (subject to any extension of time allowed by the Regulator under section 13A or 13B of the new Act).

90 Transitional rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Schedule.
- (2) To avoid doubt, the rules may not do the following:

Schedule 1 Amendments

Part 2 Application and transitional provisions

- (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.
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*[Minister's second reading speech made in—
House of Representatives on 29 May 2024
Senate on 24 June 2024]*

(62/24)
