

EXPOSURE DRAFT

2022-2023-2024

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Payment Times Reporting Amendment Bill 2024

No. , 2024

(Treasury)

A Bill for an Act to amend the *Payment Times Reporting Act 2020*, and for related purposes

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedules.....	2
	Schedule 1—Amendments	3
	<i>Payment Times Reporting Act 2020</i>	3

EXPOSURE DRAFT

1 **A Bill for an Act to amend the *Payment Times***
2 ***Reporting Act 2020*, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

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

6 **2 Commencement**

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

EXPOSURE DRAFT

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	

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

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

3 Schedules

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9 repealed as set out in the applicable items in the Schedule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

1 **Schedule 1—Amendments**
2

3 ***Payment Times Reporting Act 2020***

4 **1 Title**

5 After “terms”, insert “, times”.

6 **2 Section 3**

7 Repeal the section, substitute:

8 **3 Objects of this Act**

9 The objects of this Act are:

- 10 (a) to promote timely payment practices by large businesses,
11 certain government entities and volunteering entities; and
12 (b) to foster a culture of prompt payment practices by those
13 entities to:
14 (i) support economic growth; and
15 (ii) improve outcomes for small business suppliers; and
16 (c) to encourage those entities to improve their payment terms,
17 times and practices in relation to their small business
18 suppliers; and
19 (d) to provide for those entities to report on payment terms,
20 times and practices in relation to their small business
21 suppliers; and
22 (e) to make information reported under this Act publicly
23 available.

24 **3 Section 4**

25 Repeal the section, substitute:

26 **4 Simplified outline of this Act**

27

<p>28 This Act requires certain entities to report their payment terms, 29 times and practices in relation to their small business suppliers. Other entities may volunteer to give reports.</p>

EXPOSURE DRAFT

Schedule 1 Amendments

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A reporting entity must give the Payment Times Reporting Regulator a report for each period of 6 months. The Regulator keeps the reports 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 analysis on the payment terms, times and practices of reporting entities.

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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*.

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.

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,

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EXPOSURE DRAFT

1 considered as a group, for a financial year of the controlling
2 entity;
3 worked out in accordance with the accounting standards, even if
4 those standards do not otherwise apply to such an entity (including
5 a controlling entity) or group.

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

8 **Section 5 (definition of *controlling corporation*)**

9 Repeal the definition.

10 **Section 5**

11 Insert:

12 *exempt reporting entity* means a reporting entity in relation to
13 which a determination under subsection 10L(1) is in effect.

14 *financial year*, in relation to an entity:

- 15 (a) if a paragraph of the definition of *financial year* in section 9
16 of the *Corporations Act 2001* applies to the entity—has the
17 meaning given by that definition; or
18 (b) otherwise—means an income year for the entity.

19 **Section 5 (subparagraph (b)(i) of the definition of *income*** 20 ***year*)**

21 Omit “financial year”, substitute “period of 12 months starting on
22 1 July”.

23 **Section 5 (definition of *member*)**

24 Repeal the definition.

25 **Section 5 (definition of *notifiable event*)**

26 Repeal the definition.

27 **Section 5**

28 Insert:

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 *provisional reporting period*, of an entity, means, in relation to a
2 financial year of the entity:
- 3 (a) if the entity is a reporting entity for the whole of the financial
4 year—a reporting period of the entity in the financial year; or
5 (b) otherwise—a part of the financial year that would be a
6 reporting period for the entity if the entity were a reporting
7 entity for the whole of the financial year.

- 8 *reporting cycle*: each of the following is a *reporting cycle*:
- 9 (a) a period of 6 months starting on 1 January;
10 (b) a period of 6 months starting on 1 July.

11 *reporting nominee* has the meaning given by section 22H.

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

13 **14 Section 5 (definition of *responsible member*)**

14 Repeal the definition, substitute:

- 15 *responsible member*, of an entity, in relation to a requirement
16 under this Act that a report, application or other matter be
17 approved, means:
- 18 (a) an individual member of the entity's principal governing
19 body who is authorised to approve the report, application or
20 other matter; or
21 (b) if the entity is a trust administered by a sole trustee—that
22 trustee; or
23 (c) if the entity is a corporation sole—the individual constituting
24 the corporation; or
25 (d) if the entity is under administration within the meaning of the
26 *Corporations Act 2001*—the administrator; or
27 (e) if the entity is of a kind prescribed by the rules—a prescribed
28 member of the entity.

29 **15 Section 5**

30 Insert:

31 *slow small business payer*: see section 22B.

32 *slow small business payer direction* means a direction given under
33 subsection 22A(1).

1 **16 Section 5 (note to the definition of *small business*)**

2 Repeal the note.

3 **17 Section 5 (definition of *standard payment period*)**

4 Repeal the definition.

5 **18 Section 5 (definition of *subsidiary*)**

6 Repeal the definition.

7 **19 Section 5**

8 Insert:

9 *subsidiary reporting entity* has the meaning given by section 10E.

10 **20 Section 5 (definition of *volunteering entity*)**

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

13 **21 Section 7**

14 Repeal the section, substitute:

15 **7 Meaning of *reporting entity***

16 (1) A constitutionally covered entity becomes a *reporting entity* at the
17 start of a financial year for the entity if the entity is covered by
18 subsection (2).

19 (2) An entity is covered by this subsection if:

20 (a) the entity:

21 (i) carries on business in Australia; or

22 (ii) is a company that is incorporated in Australia; or

23 (iii) is a company that is not incorporated in Australia, but
24 has either its central management and control in
25 Australia, or its voting power controlled by shareholders
26 who are residents of Australia; or

27 (iv) is a corporate Commonwealth entity, or a
28 Commonwealth company, within the meaning of the
29 *Public Governance, Performance and Accountability*
30 *Act 2013*; and

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (b) the entity's consolidated revenue for the previous financial
2 year is more than \$100 million; and
3 (c) the entity is not controlled by another entity that is a
4 reporting entity; and
5 (d) the entity is not registered under the *Australian Charities and*
6 *Not-for-profits Commission Act 2012*.

- 7 (3) If the Regulator determines under subsection 10B(1) that a
8 constitutionally covered entity is a reporting entity, the entity
9 becomes a **reporting entity** at the time the determination takes
10 effect (unless the reporting entity is already a reporting entity at
11 that time).

12 Note: A reporting entity that is a reporting entity only because of a
13 determination under subsection 10B(1) is a **volunteering entity** (see
14 the definition of **volunteering entity** in section 5).

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

20 *Ceasing to be a reporting entity*

- 21 (5) A reporting entity continues to be a **reporting entity** until:
22 (a) if the entity is a volunteering entity—any of the following
23 occurs:
24 (i) the determination under subsection 10B(1) that relates
25 to the entity is revoked under section 10D;
26 (ii) the entity begins to be controlled by another entity that
27 is a reporting entity;
28 (iii) the entity becomes a reporting entity under
29 subsection (1) of this section; or
30 (b) if the entity is a subsidiary reporting entity—the
31 determination under subsection 10E(1) that relates to the
32 entity is revoked under section 10G; or
33 (c) a notice under section 10H (notice that entity has ceased to
34 be a reporting entity) takes effect; or

EXPOSURE DRAFT

1 (d) the entity ceases to be a reporting entity under subsection
2 10K(2) (Regulator may determine that entity is to cease to be
3 a reporting entity).

4 **22 Subsection 8(1)**

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

6 **23 Paragraphs 8(1)(a) and (b)**

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

8 **24 Subsections 8(2) and (3)**

9 Repeal the subsections, substitute:

10 *Volunteering entities*

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

16 **25 After Part 1**

17 Insert:

18 **Part 1A—Provisions about reporting entities**

19 **Division 1—Introduction**

20 **10A Simplified outline of this Part**

21 This Part provides for various ways that a constitutionally covered
22 entity can become, or cease to be, a reporting entity.

23 Division 2 provides for an entity to apply to the Regulator to
24 volunteer to be a reporting entity.

EXPOSURE DRAFT

Schedule 1 Amendments

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Division 3 provides for subsidiary reporting entities. An 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 the Regulator to exempt reporting entities from reporting obligations.

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Division 2—Volunteering entities

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10B Volunteering entity determination

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- (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: An entity to which a determination under this subsection applies is a *volunteering entity*, unless it is also a reporting entity for some other reason (see the definition of *volunteering entity* in section 5).
- (2) A determination under subsection (1) takes effect on the day specified in the determination, which:
 - (a) if the application specifies a day for the purposes of paragraph 10C(2)(c)—may be that day, or, if the Regulator considers it appropriate, the first day of the next provisional reporting period for the entity; or
 - (b) if the application does not so specify a day—must be the first day of the next provisional reporting period for the entity after the determination is made.
- (3) A determination under subsection (1) is not a legislative instrument.

10C Application for Regulator to make 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.
- (2) An application under subsection (1):
- (a) must be given in the form and manner (if any) approved in an instrument under subsection (3); and
 - (b) must state the name of the applicant; and
 - (c) may state that the applicant wishes the determination to take effect on either of the following days:
 - (i) the first day of the provisional reporting period of the applicant in which the application is made;
 - (ii) the first day of the following provisional reporting period of the applicant; and
 - (d) must include the information determined by the Regulator under subsection (4); and
 - (e) must be approved in writing by a responsible member of the applicant; and
 - (f) must state the name of the responsible member of the applicant who approved the application.
- (3) The Regulator may, by notifiable instrument, approve a form or manner for the purposes of paragraph (2)(a).
- (4) The Regulator may, by legislative instrument, determine information that must be included in an application for the purposes of paragraph (2)(d).

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

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (b) refuse to take any action, or any further action, in relation to
2 the application.

3 **10D Revocation of volunteering entity determination**

4 *Revocation by Regulator*

- 5 (1) The Regulator may revoke a determination under subsection
6 10B(1), by written notice given to the entity to which the
7 determination relates, if the Regulator reasonably suspects that the
8 entity has failed to comply with this Act.

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

11 Note: If the entity to which the determination relates is a reporting entity
12 only because of the determination, the entity may cease to be a
13 reporting entity when the revocation takes effect.

14 *Revocation on notice by reporting entity*

- 15 (3) If:
16 (a) the Regulator has made a determination under subsection
17 10B(1) in respect of a reporting entity; and
18 (b) the determination has not been revoked;
19 the entity may, by written notice to the Regulator, inform the
20 Regulator that the entity wishes to cease to be a volunteering
21 entity.
- 22 (4) A notice under subsection (3) must specify the time when the
23 determination under subsection 10B(1) is to be revoked, which
24 must be either:
25 (a) the start of the reporting period of the entity in which the
26 entity gives the notice to the Regulator; or
27 (b) the start of the reporting period of the entity that follows the
28 reporting period mentioned in paragraph (a) of this
29 subsection.
- 30 (5) If a reporting entity gives the Regulator a notice under
31 subsection (3), the determination mentioned in paragraph (3)(a) is
32 taken to be revoked at the time specified in the notice for the
33 purposes of paragraph (4)(a) or (b).

1 Note: If the entity to which the determination relates is a reporting entity
2 only because of the determination, the entity may cease to be a
3 reporting entity when the revocation is taken to take effect.

4 **Division 3—Subsidiary reporting entities**

5 **10E Subsidiary reporting entity determination**

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

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

19 Note 2: Rules made for the purposes of section 14 may provide that:
20 (a) a payment times report given by a subsidiary reporting entity
21 must include information about the payment terms, times and
22 practices of the entity and other entities that the entity controls;
23 and
24 (b) that information is not required to be included in a payment times
25 report given by the reporting entity that controls the subsidiary
26 reporting entity.

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

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

32 *When determination takes effect*

- 33 (3) A determination under subsection (1) takes effect at the time
34 specified in the determination, which must be:

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (a) the time specified in the application for the purposes of
2 paragraph 10F(2)(c); or
3 (b) if the application does not specify a time for the purposes of
4 paragraph 10F(2)(c)—at the start of the first provisional
5 reporting period of the entity that begins after the Regulator
6 makes the determination.

- 7 (4) Despite paragraph (3)(a), the time specified in the determination
8 may be the start of the first provisional reporting period of the
9 entity that begins after the Regulator makes the determination, if
10 the Regulator considers it appropriate in all the circumstances for
11 the determination to take effect at that time.

12 *Determination is not a legislative instrument*

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

15 **10F Application for Regulator to make a subsidiary reporting entity** 16 **determination**

- 17 (1) A constitutionally covered entity (the *applicant*) may apply, in
18 writing, for the Regulator to determine, under subsection 10E(1),
19 that the applicant is a subsidiary reporting entity.
- 20 (2) An application under subsection (1):
- 21 (a) must be given in the form and manner (if any) approved in an
22 instrument under subsection (3); and
 - 23 (b) must state the name of the applicant; and
 - 24 (c) may specify the time when the applicant proposes the
25 determination to take effect, which must be either:
 - 26 (i) the start of the provisional reporting period of the
27 applicant in which the applicant gives the application to
28 the Regulator; or
 - 29 (ii) the start of the provisional reporting period of the
30 applicant that follows the reporting period mentioned in
31 subparagraph (i); and
 - 32 (d) must include the information determined by the Regulator
33 under subsection (4); and

EXPOSURE DRAFT

- 1 (e) must be approved in writing by a responsible member of the
2 applicant; and
3 (f) must state the name of the responsible member of the
4 applicant who approved the application.
- 5 (3) The Regulator may, by notifiable instrument, approve a form or
6 manner for the purposes of paragraph (2)(a).
- 7 (4) The Regulator may, by legislative instrument, determine
8 information that must be included in an application for the
9 purposes of paragraph (2)(d).
- 10 *Regulator may require further information*
- 11 (5) The Regulator may, by written notice given to the applicant,
12 require the applicant to give the Regulator further information in
13 connection with the application.
- 14 (6) If the applicant does not comply with a notice under subsection (5),
15 the Regulator may, by written notice given to the applicant:
16 (a) refuse to consider the application; or
17 (b) refuse to take any action, or any further action, in relation to
18 the application.

19 **10G Revocation of subsidiary reporting entity determination**

- 20 *Revocation by Regulator*
- 21 (1) The Regulator may revoke a determination under subsection
22 10E(1) by written notice given to the subsidiary reporting entity to
23 which the determination relates.
- 24 (2) A revocation under subsection (1) takes effect at the time specified
25 in the notice, which must be either:
26 (a) the start of the reporting period of the entity in which the
27 Regulator gives the notice; or
28 (b) the start of the reporting period of the entity that follows the
29 reporting period mentioned in paragraph (a) of this
30 subsection.

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 *Revocation on notice by reporting entity*
- 2 (3) If:
- 3 (a) the Regulator has made a determination under subsection
- 4 10E(1) in respect of an entity; and
- 5 (b) the determination has not been revoked;
- 6 the entity may, by written notice to the Regulator, inform the
- 7 Regulator that the entity wishes to cease to be a subsidiary
- 8 reporting entity.
- 9 (4) A notice under subsection (3) must specify the time when the
- 10 determination under subsection 10E(1) is to be revoked, which
- 11 must be either:
- 12 (a) the start of the reporting period of the entity in which the
- 13 entity gives the notice to the Regulator; or
- 14 (b) the start of the reporting period of the entity that follows the
- 15 reporting period mentioned in paragraph (a) of this
- 16 subsection.
- 17 (5) If a subsidiary reporting entity gives the Regulator a notice under
- 18 subsection (3), the determination mentioned in paragraph (3)(a) is
- 19 taken to be revoked at the time specified in the notice for the
- 20 purposes of paragraph (4)(a) or (b).

21 **Division 4—Ceasing to be a reporting entity**

22 **10H Notice that entity has ceased to be a reporting entity**

- 23 (1) A reporting entity ceases to be a reporting entity if:
- 24 (a) any of the following circumstances exist:
- 25 (i) paragraph 7(2)(a) does not apply to the entity;
- 26 (ii) the entity's consolidated revenue for each of the 2
- 27 previous financial years was not more than \$100
- 28 million;
- 29 (iii) the entity is controlled by another entity that is a
- 30 reporting entity; and
- 31 (b) the reporting entity gives the Regulator a notice under
- 32 subsection (2); and
- 33 (c) the notice takes effect under subsection (5).

EXPOSURE DRAFT

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Giving of notice

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(2) A reporting entity may give the Regulator a notice for the purposes of paragraph (1)(b).

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(3) The notice:

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(a) must be given in the form and manner (if any) approved in an instrument under subsection (4); and

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(b) must state the name of the reporting entity; and

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(c) must state which circumstance or circumstances mentioned in paragraph (1)(a) exist; and

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(d) must be approved in writing by a responsible member of the entity; and

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(e) must state the name of the responsible member of the entity who approved the notice.

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(4) The Regulator may, by notifiable instrument, approve a form or manner for the purposes of paragraph (3)(a).

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When notice takes effect

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(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)(a) apply to the entity at the start of that reporting period.

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Note: If no subparagraphs of paragraph (1)(a) 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.

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Withdrawing a notice

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(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).

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(7) If an entity withdraws, under subsection (6), a notice given under subsection (2):

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(a) the notice under subsection (2) is taken never to have had effect; and

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(b) the entity is taken not to have ceased to be a reporting entity because of the notice.

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EXPOSURE DRAFT

Schedule 1 Amendments

1 **10J Civil penalty provision for giving false or misleading notice**

2 *Reporting entities that are not volunteering entities*

- 3 (1) A reporting entity is liable to a civil penalty if:
- 4 (a) the entity gives the Regulator a notice under subsection
- 5 10H(2); and
- 6 (b) the notice is false or misleading in a material particular; and
- 7 (c) the entity is not a volunteering entity.

8 Civil penalty: 350 penalty units.

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

14 Note: This subsection modifies the maximum pecuniary penalty that a body

15 corporate can be ordered to pay for a contravention of subsection (1).

16 *Volunteering entities*

- 17 (3) A volunteering entity must not give the Regulator a notice under
- 18 subsection 10H(2) that is false or misleading in a material
- 19 particular.

20 **10K Regulator may determine that entity is to cease to be a**

21 **reporting entity**

- 22 (1) The Regulator may determine, in writing, that an entity that is a
- 23 reporting entity is to cease to be a reporting entity at the time
- 24 specified under subsection (2), if:
- 25 (a) the entity is not:
- 26 (i) a volunteering entity; or
- 27 (ii) a subsidiary reporting entity; and
- 28 (b) the Regulator is satisfied that:
- 29 (i) the entity has ceased to exist; or
- 30 (ii) paragraph 7(2)(a) does not apply to the entity; or

EXPOSURE DRAFT

- 1 (iii) the entity’s consolidated revenue for each of the 2 most
2 recent financial years was not more than \$100 million;
3 or
4 (iv) the entity is controlled by another entity that is a
5 reporting entity; or
6 (v) a circumstance prescribed by the rules applies.
- 7 (2) If the Regulator makes a determination under subsection (1) in
8 relation to an entity, the entity ceases to be a reporting entity at the
9 time specified in the determination, which must be either:
10 (a) the start of the reporting period of the entity in which the
11 determination is made; or
12 (b) the start of the reporting period of the entity that follows the
13 reporting period mentioned in paragraph (a).
- 14 (3) The Regulator must give written notice of a determination under
15 subsection (1) to the entity concerned.
- 16 (4) The Regulator may publish a notice of a determination under
17 subsection (1) on the register. The notice may include:
18 (a) the identity of the entity concerned; and
19 (b) the fact that the entity is no longer a reporting entity.
- 20 (5) To avoid doubt, a determination under subsection (1) that relates to
21 an entity does not prevent the entity becoming a reporting entity
22 again.
- 23 *Determination is not a legislative instrument*
- 24 (6) A determination under subsection (1) is not a legislative
25 instrument.

26 **Division 5—Exempt reporting entities**

27 **10L Exempt reporting entity determination**

- 28 (1) The Regulator may determine, in writing, that a constitutionally
29 covered entity is an *exempt reporting entity* if:
30 (a) the entity applies to the Regulator under subsection 10M(1);
31 and
32 (b) the Regulator is satisfied that:
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EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (i) the entity is a reporting entity; and
2 (ii) it is appropriate in the circumstances to make the
3 determination, having regard to the objects of this Act.

4 *When exemption has effect*

- 5 (2) A determination under subsection (1) must specify:
6 (a) the day the determination takes effect, which:
7 (i) may be, but need not be, the day (if any) specified in the
8 application under paragraph 10M(2)(c); and
9 (ii) may be a day before the day the determination is made;
10 and
11 (b) the day the determination ceases to have effect, which must
12 be no more than 2 years after the day the determination takes
13 effect.
14 (3) The determination takes effect, and ceases to have effect, as
15 specified under subsection (2).

16 *Determination is not a legislative instrument*

- 17 (4) A determination under subsection (1) is not a legislative
18 instrument.

19 **10M Application for Regulator to make an exempt reporting entity** 20 **determination**

- 21 (1) A reporting entity (the *applicant*) may apply, in writing, for the
22 Regulator to determine, under subsection 10L(1), that the applicant
23 is an exempt reporting entity.
24 (2) An application under subsection (1):
25 (a) must be given in the form and manner (if any) approved in an
26 instrument under subsection (3); and
27 (b) must state the name of the applicant; and
28 (c) may specify the day that the applicant proposes the
29 determination to take effect; and
30 (d) must include the information (if any) prescribed by the rules;
31 and

EXPOSURE DRAFT

- 1 (e) must include the information (if any) specified in the
2 approved form; and
3 (f) must be approved in writing by a responsible member of the
4 applicant; and
5 (g) must state the name of the responsible member of the
6 applicant who approved the application.
- 7 (3) The Regulator may, by notifiable instrument, approve a form or
8 manner for the purposes of paragraph (2)(a).
- 9 *Regulator may require further information*
- 10 (4) The Regulator may, by written notice given to the applicant,
11 require the applicant to give the Regulator further information in
12 connection with the application.
- 13 (5) If the applicant does not comply with a notice under subsection (4),
14 the Regulator may, by written notice given to the applicant:
15 (a) refuse to consider the application; or
16 (b) refuse to take any action, or any further action, in relation to
17 the application.

18 **10N Revocation of exempt reporting entity determination**

- 19 (1) The Regulator may revoke a determination under subsection
20 10L(1), by written notice given to the exempt reporting entity to
21 which the determination relates, if the Regulator is satisfied that it
22 is no longer appropriate in the circumstances for the entity to be an
23 exempt reporting entity.
- 24 (2) A revocation under subsection (1) takes effect on the day specified
25 in the notice, which may be a day before the day the notice is given
26 to the exempt reporting entity.
- 27 *Revocation may apply retrospectively*
- 28 (3) An entity may be liable for a civil penalty under section 15 if:
29 (a) the Regulator revokes a determination under subsection
30 10L(1) that relates to the entity; and

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (b) the revocation takes effect before the Regulator decides to
2 revoke the determination, or before the Regulator gives the
3 notice of revocation; and
- 4 (c) the revocation results in the entity having failed to comply
5 with a requirement to give the Regulator a payment times
6 report in accordance with Division 2 of Part 2 at a time
7 before the Regulator decides to revoke the determination or
8 before the Regulator gives the notice of revocation.

9 **26 Section 11**

10 Repeal the section, substitute:

11 **11 Simplified outline of this Part**

12 This Part requires a reporting entity to give the Regulator a
13 payment times report for each reporting period. The report must be
14 given within 3 months after the end of the reporting period, unless
15 the Regulator allows an extension of time.

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

19 Civil penalties apply to reporting entities (other than volunteering
20 entities) that fail to report, or that give the Regulator a false or
21 misleading report.

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

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

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

1 **27 Section 12**

2 Before “A reporting”, insert “(1)”.

3 **28 At the end of section 12**

4 Add:

5 (2) However, a reporting entity is not required to give the Regulator a
6 payment times report for a reporting period if the entity is an
7 exempt reporting entity for any part of the reporting period.

8 **29 Section 14**

9 Repeal the section, substitute:

10 **14 Reporting requirements**

11 *Content requirements*

12 (1) The report must include:

- 13 (a) the information and documents, relating to an entity’s
14 payment terms, times or practices (including supply chain
15 financing) in relation to small business suppliers, that are
16 prescribed by the rules; and
17 (b) the information and documents, relating to the timing of an
18 entity’s payments of small business invoices, that are
19 prescribed by the rules; and
20 (c) any other information or documents prescribed by the rules.

21 (2) Without limiting subsection (1), the rules may do any of the
22 following:

- 23 (a) require the report to include information or documents
24 relating to a constitutionally covered entity that is controlled
25 by the reporting entity;
26 (b) prescribe a method for working out any of the matters that
27 must be included in the report.

28 (3) Without limiting subsection (1), the rules may:

- 29 (a) require reports to include different information and
30 documents in different circumstances; and

EXPOSURE DRAFT

Schedule 1 Amendments

1 (b) require a report to include a statement about whether a
2 circumstance mentioned in paragraph (a) of this subsection
3 applies.

4 Note: See sections 16 and 22L in relation to false or misleading reports.

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

7 *Approval requirement*

8 (5) The report must:

9 (a) be approved in writing by a responsible member of the entity;
10 and

11 (b) include the name of the responsible member of the entity
12 who approved the report.

13 *Form and manner for giving report*

14 (6) The report must be given in a form and manner (if any) approved
15 in an instrument under subsection (7).

16 (7) The Regulator may, by notifiable instrument, approve a form or
17 manner for the purposes of subsection (6).

18 *Applying, adopting or incorporating other instruments etc.*

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

24 **30 Sections 18 to 21**

25 Repeal the sections, substitute:

26 **18 Contents of register**

27 (1) The register must contain the payment times reports given to the
28 Regulator under:

29 (a) Division 2 (reporting payment times); and

30 (b) subsection 22J(2) (reporting nominees).

EXPOSURE DRAFT

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

3 *Information that is not to be published on the register*

- 4 (3) The rules may prescribe information that, if the information is
5 included in a report, the Regulator must remove from the report
6 before the report is published on the register.

7 Note: For example, rules made for the purposes of section 14 may require a
8 report to include contact information for individuals. Rules made for
9 the purposes of this subsection may require that information to be
10 removed before the report is published.

- 11 (4) If:
12 (a) the rules prescribe information for the purposes of
13 subsection (3); and
14 (b) the Regulator has arranged for payment times reports to be
15 published on the register automatically;
16 the Regulator's arrangements must result in the information being
17 removed from reports before they are published.

18 **19 Revised payment times reports**

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

22 Note: See sections 16 and 22L in relation to false or misleading reports.

- 23 (2) The revised version of the payment times report must indicate the
24 date of the revision and include a description of the changes made
25 to the most recent version of the report given by the entity.

- 26 (3) The Regulator may arrange for revised versions of payment times
27 reports given to the Regulator under this section to be published on
28 the register automatically.

29 **20 Regulator may remove certain information**

- 30 (1) The Regulator may remove information contained in a payment
31 times report from the register if the Regulator considers that

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 continuing to make the information publicly available would be
2 contrary to the public interest.
- 3 (2) In making a decision under subsection (1), the Regulator must have
4 regard to:
- 5 (a) whether the information is personal information (within the
6 meaning of the *Privacy Act 1988*); and
7 (b) whether the information is commercial-in-confidence; and
8 (c) any other matters prescribed by the rules.
- 9 (3) Information is *commercial-in-confidence* if the Regulator is
10 satisfied that:
- 11 (a) further release of the information would cause competitive
12 detriment to a constitutionally covered entity; and
13 (b) removing the information from the register is likely to be
14 effective in removing the information from the public
15 domain; and
16 (c) the information is not required to be disclosed under another
17 Australian law; and
18 (d) removing the information from the register is likely to be
19 effective in preventing the information from being readily
20 discoverable.

21 **21 Removal or non-publication of payment times reports for** 22 **volunteering entities that fail to comply with Act**

- 23 (1) This section applies if the Regulator is reasonably satisfied that a
24 volunteering entity has failed to comply with this Act.
- 25 (2) The Regulator may decide that any payment times reports that have
26 been or will be given to the Regulator by the entity:
- 27 (a) are not to be made available for public inspection on the
28 register; or
29 (b) are to be removed from the register;
30 until the Regulator is satisfied that the entity has taken appropriate
31 remedial action.

32 **31 Subsection 22(1)**

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

1 **32 At the end of Part 2**

2 Add:

3 **Division 4—Slow small business payers**

4 **22A Minister may give slow small business payer direction**

5 (1) The Minister may give a reporting entity a direction under this
6 section (a *slow small business payer direction*) if:

- 7 (a) the Minister is satisfied that the entity was a slow small
8 business payer in 2 consecutive reporting cycles; or
9 (b) the Minister is satisfied that the entity was a slow small
10 business payer in a reporting cycle, and the entity did not
11 comply with a requirement to give a payment times report in
12 the preceding reporting cycle; or
13 (c) the Minister is satisfied that the entity was a slow small
14 business payer in a reporting cycle, and the entity did not
15 comply with a requirement to give a payment times report in
16 the following reporting cycle.

17 (2) Before the Minister decides to give a slow small business payer
18 direction to an entity, the Minister must:

- 19 (a) give the entity notice in writing of the proposed decision and
20 the reasons for the proposed decision; and
21 (b) invite the entity to make written submissions to the Regulator
22 about the proposed decision within the period of 28 days
23 beginning on the day the notice is given.

24 (3) In considering whether to give an entity a slow small business
25 payer direction, the Minister must have regard to the following:

- 26 (a) the entity's history of compliance or non-compliance with
27 this Act;
28 (b) the entity's practices in relation to paying small business
29 invoices;
30 (c) whether the slowness of the entity's payment of small
31 business invoices has been because of circumstances beyond
32 the entity's control;

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (d) the likely cost and burden for the entity of complying with
2 the direction, and whether that cost and burden is reasonable
3 in the circumstances;
- 4 (e) any written submissions made by the entity in accordance
5 with the invitation mentioned in paragraph (2)(b).
- 6 (4) A slow small business payer direction:
7 (a) must be in writing; and
8 (b) may include one or more requirements under section 22C;
9 and
10 (c) may specify, for the purposes of paragraph 22D(1)(b), the
11 day that the direction ceases to be in effect.
- 12 (5) The Minister may only give a slow small business payer direction
13 before the end of 12 months after:
14 (a) if paragraph (1)(a) applies—the end of the later of the 2
15 consecutive reporting cycles mentioned in that paragraph; or
16 (b) if paragraph (1)(b) applies—the end of the reporting cycle in
17 which the entity was a slow small business payer; or
18 (c) if paragraph (1)(c) applies—the end of the reporting cycle in
19 which the entity failed to comply with a requirement to give
20 a payment times report.
- 21 (6) The Minister must not give a slow small business payer direction
22 to a volunteering entity.
- 23 (7) A slow small business payer direction is not a legislative
24 instrument.

25 **22B Slow small business payers**

- 26 (1) A reporting entity is a *slow small business payer* for a reporting
27 cycle if the reporting entity was within the slowest 20% of small
28 business payers for that reporting cycle.
- 29 (2) For the purposes of subsection (1), *slowest 20% of small business*
30 *payers*, for a reporting cycle, has the meaning prescribed by the
31 rules.

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

- 1
2
- 3 (1) A slow small business payer direction given to an entity (the
4 *recipient*) may require the recipient:
- 5 (a) to publish specified statements or information in accordance
6 with this section; or
- 7 (b) to take reasonable steps to cause a constitutionally covered
8 entity that the recipient controls (a *controlled entity*) to
9 publish specified statements or information in accordance
10 with this section.
- 11 (2) The direction may require the recipient to publish, or take
12 reasonable steps to cause to be published, any of the following:
- 13 (a) a statement that the recipient or the controlled entity is a slow
14 small business payer;
- 15 (b) information on how to access payment times reports that
16 relate to the recipient or the controlled entity.
- 17 (3) The direction may require the recipient to publish the statement or
18 information, or take reasonable steps to cause the statement or
19 information to be published:
- 20 (a) on the recipient's website or the controlled entity's website;
21 or
- 22 (b) in documents relating to procurement processes, including
23 requests for quotes and tender documents; or
- 24 (c) in documents relating to the environmental, social and
25 governance policies or performance of the entity or the
26 controlled entity; or
- 27 (d) in invoices; or
- 28 (e) in other kinds of commercial documents; or
- 29 (f) in any other way that the Minister considers appropriate.
- 30 (4) The direction may require the statement or information to be
31 published in a specified manner, including by imposing any of the
32 following requirements:
- 33 (a) a requirement relating to the prominence of the statement or
34 information;
- 35 (b) a requirement relating to the location of the statement or
36 information in relation to other material.

EXPOSURE DRAFT

Schedule 1 Amendments

22D Duration of slow small business payer direction

- 1
- 2 (1) A slow small business payer direction given to an entity continues
- 3 in effect until the earliest of the following:
- 4 (a) the day the entity gives the Regulator a payment times report
- 5 with a 95% payment time of 30 calendar days or less;
- 6 (b) if the direction specifies a day that it ceases to be in effect—
- 7 that day;
- 8 (c) the day 1 year after the day the direction is given;
- 9 (d) if the Minister revokes the direction under subsection (2)—
- 10 the time the Minister gives the entity the notice of revocation.
- 11 (2) The Minister may, by written notice given to the entity to which a
- 12 slow small business payer direction was given, revoke the
- 13 direction.
- 14 (3) For the purposes of paragraph (1)(a), a payment times report has a
- 15 95% payment time of 30 calendar days or less in the circumstances
- 16 prescribed by the rules.

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

- 17
- 18
- 19 (1) A reporting entity is liable to a civil penalty if:
- 20 (a) the Minister gives the entity a slow small business payer
- 21 direction; and
- 22 (b) the entity fails to comply with the direction.
- 23 Civil penalty: 200 penalty units.
- 24 (2) For the purposes of subsection (1), the reference in
- 25 paragraph 82(5)(a) of the Regulatory Powers Act to 5 times the
- 26 pecuniary penalty specified for the civil penalty provision has
- 27 effect as if it were a reference to 0.6% of the total income for the
- 28 person for the income year in which the contravention occurred.
- 29 Note: This subsection modifies the maximum pecuniary penalty that a body
- 30 corporate can be ordered to pay for a contravention of subsection (1).
- 31 (3) Subsection (1) does not apply if compliance with the direction
- 32 (including compliance by a constitutionally covered entity

1 controlled by the reporting entity) would contravene any Australian
2 law.

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

5 **22F Minister may direct Regulator to include statement on Register**

6 (1) If the Minister gives a slow small business payer direction to an
7 entity, the Minister may, in writing, direct the Regulator to publish
8 on the register:

9 (a) a statement that the entity has been given a slow small
10 business payer direction; and

11 (b) a description of the slow small business payer direction.

12 (2) The Regulator must comply with a direction under subsection (1).

13 (3) To avoid doubt, information published on the register in
14 accordance with a direction under subsection (1) may remain on
15 the register after the slow small business payer direction has ceased
16 to be in effect.

17 **33 After Part 2**

18 Insert:

19 **Part 2A—Reporting nominees**

20 **Division 1—Introduction**

21 **22G Simplified outline of this Part**

22 This Part provides for constitutionally covered entities to nominate
23 to give payment times reports on behalf of other entities.

EXPOSURE DRAFT

Schedule 1 Amendments

1 **Division 2—Reporting nominee determination**

2 **22H Reporting nominee determination**

3 (1) The Regulator may determine, in writing, that a constitutionally
4 covered entity (the *first entity*) is a *reporting nominee* for another
5 entity that is a reporting entity if:

6 (a) the first entity applies to the Regulator under
7 subsection 22M(1); and

8 (b) the Regulator is satisfied that the other entity has consented
9 to the first entity being a reporting nominee for the other
10 entity; and

11 (c) the Regulator is satisfied that granting the application:

12 (i) would not be contrary to the public interest; and

13 (ii) would be consistent with the objects of this Act; and

14 (d) the Regulator is satisfied of any other matters prescribed by
15 the rules.

16 Note 1: The determination does not result in the reporting nominee becoming
17 a reporting entity (although the reporting nominee may be a reporting
18 entity under another provision of this Act).

19 Note 2: The determination does not result in the other entity ceasing to be a
20 reporting entity.

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

24 *When determination takes effect*

25 (3) A determination under subsection (1) takes effect at the time
26 specified in the determination, which must be:

27 (a) the time specified in the application for the purposes of
28 paragraph 22M(2)(d); or

29 (b) if the application does not specify a time for the purposes of
30 paragraph 22M(2)(d)—at the start of the first reporting
31 period of the other entity that begins after the Regulator
32 makes the determination.

33 (4) Despite paragraph (3)(a), the time specified in the determination
34 may be the start of the first reporting period of the other entity that

1 begins after the Regulator makes the determination, if the
2 Regulator considers it appropriate in all the circumstances for the
3 determination to take effect at that time.

4 *Determination is not a legislative instrument*

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

7 **Division 3—Effect of reporting nominee determination**

8 **22J Reporting obligations of reporting nominee**

9 (1) This section applies if a determination under subsection 22H(1),
10 that an entity is a reporting nominee for another entity, is in effect.

11 *Requirement to give payment times report*

12 (2) The reporting nominee must give the Regulator a payment times
13 report for the other entity for each reporting period for the other
14 entity.

15 (3) Section 13 applies to the report in the same way as it applies to a
16 report that is required to be given under section 12. For this
17 purpose, a reference in section 13 to an entity is taken to be a
18 reference to the reporting nominee.

19 Note: The other entity must also give the Regulator a payment times report,
20 in accordance with Division 2 of Part 2, for each reporting period.

21 *Contents of payment times reports*

22 (4) The report must be in accordance with section 14. For this purpose,
23 the references to an entity in subsection 14(5) are taken to be
24 references to the reporting nominee.

25 Note: Rules made for the purposes of section 14 may prescribe different
26 reporting requirements for different circumstances (see
27 subsections 14(3) and (4)). For example, the rules may provide that a
28 report given by the other entity need not include certain information
29 that is required to be included in the reporting nominee's report.

EXPOSURE DRAFT

Schedule 1 Amendments

1 **22K Civil penalty provision for failure to report by reporting**
2 **nominee**

- 3 A reporting nominee is liable to a civil penalty if:
- 4 (a) the reporting nominee is required to give the Regulator a
 - 5 payment times report in accordance with section 22J; and
 - 6 (b) the reporting nominee fails to comply with the requirement.
- 7 Civil penalty: 60 penalty units.

8 **22L Reporting nominees must not give false or misleading reports**

- 9 (1) A reporting nominee is liable to a civil penalty if:
- 10 (a) the reporting nominee gives the Regulator a payment times
 - 11 report in accordance with section 22J; and
 - 12 (b) the report is false or misleading in a material particular.
- 13 Civil penalty: 350 penalty units.
- 14 (2) For the purposes of subsection (1), the reference in
- 15 paragraph 82(5)(a) of the Regulatory Powers Act to 5 times the
- 16 pecuniary penalty specified for the civil penalty provision has
- 17 effect as if it were a reference to 0.6% of the total income for the
- 18 person for the income year in which the contravention occurred.
- 19 Note: This subsection modifies the maximum pecuniary penalty that a body
- 20 corporate can be ordered to pay for a contravention of subsection (1).

21 **Division 4—Application for, and revocation of, reporting**
22 **nominee determination**

23 **22M Application for Regulator to make a reporting nominee**
24 **determination**

- 25 (1) A constitutionally covered entity (the *applicant*) may apply, in
- 26 writing, for the Regulator to determine under subsection 22H(1)
- 27 that the applicant is a reporting nominee for another entity that is a
- 28 reporting entity.
- 29 (2) An application under subsection (1):

EXPOSURE DRAFT

- 1 (a) must be given in the form and manner (if any) approved in an
2 instrument under subsection (3); and
3 (b) must state the name of the applicant; and
4 (c) must state the name of the other entity; and
5 (d) may specify the time when the applicant proposes the
6 determination to take effect, which must be either:
7 (i) the start of the reporting period, of the other entity, in
8 which the applicant gives the application to the
9 Regulator; or
10 (ii) the start of the reporting period, of the other entity, that
11 follows the reporting period mentioned in
12 subparagraph (i); and
13 (e) must include the information determined by the Regulator
14 under subsection (4); and
15 (f) must be approved by a responsible member of the applicant;
16 and
17 (g) must state the name of the responsible member of the
18 applicant who approved the application.
- 19 (3) The Regulator may, by notifiable instrument, approve a form or
20 manner for the purposes of paragraph (2)(a).
- 21 (4) The Regulator may, by legislative instrument, determine
22 information that must be included in an application for the
23 purposes of paragraph (2)(e).
- 24 *Regulator may require further information*
- 25 (5) The Regulator may, by written notice given to the applicant,
26 require the applicant to give the Regulator further information in
27 connection with the application.
- 28 (6) If the applicant does not comply with a notice under subsection (5),
29 the Regulator may, by written notice given to the applicant:
30 (a) refuse to consider the application; or
31 (b) refuse to take any action, or any further action, in relation to
32 the application.

EXPOSURE DRAFT

Schedule 1 Amendments

22N Revocation of reporting nominee determination

- 1
- 2 (1) The Regulator may revoke a determination under subsection
3 22H(1) by written notice given to the reporting nominee and the
4 other entity to which the determination relates.
- 5 (2) A revocation under subsection (1) takes effect on the day specified
6 in the notice, which must be either:
- 7 (a) the start of the reporting period, of the other entity, in which
8 the Regulator gives the notice; or
- 9 (b) the start of the reporting period, of the other entity, that
10 follows the reporting period mentioned in paragraph (a) of
11 this subsection.

Revocation on notice by reporting nominee or reporting entity

- 12
- 13 (3) If:
- 14 (a) the Regulator has made a determination under subsection
15 22H(1) that an entity is a reporting nominee for another
16 entity; and
- 17 (b) the determination has not been revoked;
- 18 the reporting nominee or the other entity may, by written notice to
19 the Regulator, inform the Regulator that the determination is to be
20 revoked.
- 21 (4) A notice under subsection (3) must specify the time when the
22 determination under subsection 22H(1) is to be revoked, which
23 must be either:
- 24 (a) the start of the reporting period, of the other entity, in which
25 the notice is given to the Regulator; or
- 26 (b) the start of the reporting period, of the other entity, that
27 follows the reporting period mentioned in paragraph (a) of
28 this subsection.
- 29 (5) If the Regulator is given a notice under subsection (3), the
30 determination mentioned in paragraph (3)(a) is taken to be revoked
31 at the time specified in the notice for the purposes of
32 paragraph (4)(a) or (b).

34 Section 23

Omit:

EXPOSURE DRAFT

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

3 substitute:

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

9 **35 After paragraph 25(b)**

10 Insert:

- 11 (ba) to undertake research, and publish analysis, on the payment
12 terms, times and practices of reporting entities, for the
13 purpose of informing the Commonwealth;
14 (bb) to provide users of the register with data and tools to assist
15 them to understand and use information made available on
16 the register;

17 **36 Section 28**

18 Omit:

19 This Part applies Parts 2, 3, 4 and 5 of the Regulatory Powers Act
20 with suitable modifications. Those Parts of that Act deal with
21 monitoring and investigation powers, civil penalty provisions and
22 infringement notices. The Regulator may appoint authorised
23 officers and infringement officers to exercise powers under the
24 Regulatory Powers Act.

25 substitute:

26 This Part applies Parts 2, 3, 4, 5 and 6 of the Regulatory Powers
27 Act with suitable modifications. Those Parts of that Act deal with
28 monitoring and investigation powers, civil penalty provisions,
29 infringement notices and enforceable undertakings. The Regulator
30 may appoint authorised officers and infringement officers to
31 exercise powers under the Regulatory Powers Act.

EXPOSURE DRAFT

Schedule 1 Amendments

1 **37 Division 2 of Part 4 (at the end of the heading)**

2 Add “and reporting nominees”.

3 **38 Section 29 (at the end of the heading)**

4 Add “—reporting entities”.

5 **39 After section 29**

6 Insert:

7 **29A Record-keeping requirements—reporting nominees**

8 *Reporting nominee must keep records*

9 (1) An entity that is a reporting nominee for another entity must keep
10 records of any information used in the preparation of a payment
11 times report for a reporting period for the other entity for at least 7
12 years after the end of the reporting period.

13 *Civil penalty*

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

18 Civil penalty: 200 penalty units.

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

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

26 **40 Subsection 30(1)**

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

1 **41 After Division 2 of Part 4**

2 Insert:

3 **Division 2A—Information-gathering powers**

4 **30A Regulator may obtain information**

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

24 **30B Civil penalty provision for failure to comply with notice**

25 A person is liable to a civil penalty if:

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

28 Civil penalty: 60 penalty units.

EXPOSURE DRAFT

Schedule 1 Amendments

1 **42 After section 34**

2 Insert:

3 **34A Enforceable undertakings**

4 *Enforceable provisions*

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

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

10 *Authorised person*

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

14 *Relevant court*

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

18 *Extension to external Territories etc.*

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

22 **43 After section 40**

23 Insert:

24 **40A Research and analysis**

25 An entrusted person may use protected information, or disclose
26 protected information to another entrusted person, in undertaking
27 research, or publishing analysis, on the payment terms, times and
28 practices of reporting entities for the purpose of informing the
29 Commonwealth.

EXPOSURE DRAFT

1 **44 Section 47**

2 Omit:

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

7 substitute:

8 This Part deals with miscellaneous matters, such as the review of
9 decisions, the continuation of certain obligations for former
10 reporting entities and former reporting nominees, annual reporting
11 and the power to make rules.

12 **45 Subsections 48(1) and 49(1)**

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

15 **46 Subsection 50(1)**

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

17 **47 Section 51 (table)**

18 Repeal the table, substitute:

19

Reviewable decisions		
	Column 1	Column 2
Item	Decision	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(1)
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	Subsection 10G(1)

EXPOSURE DRAFT

Schedule 1 Amendments

Reviewable decisions		
	Column 1	Column 2
Item	Decision	Provision
	a subsidiary reporting entity	
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 an exempt reporting entity	Subsection 10L(1)
7	A decision to revoke a determination under subsection 10L(1) that an entity is an exempt reporting entity	Subsection 10N(1)
8	A decision not to allow further time to give a payment times report	Subsection 13(4)
9	A decision to publish the identity of an entity or details of non-compliance	Subsection 22(1)
10	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 22A(1)
11	A decision not to determine that an entity is a reporting nominee for another entity	Subsection 22H(1)
12	A decision to revoke a determination that an entity is a reporting nominee for another entity	Subsection 22N(1)

1

2 **48 Section 54**

3 Before “Applications”, insert “(1)”.

4 **49 At the end of section 54**

5 Add:

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

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

4 **50 After subsection 55(1)**

5 Insert:

6 (1A) Subsection (1) does not apply if the entity was a volunteering
7 entity during the reporting period.

8 **51 After section 55**

9 Insert:

10 **55A Former reporting nominees**

11 *Former reporting nominees*

- 12 (1) The requirement for a reporting nominee to give the Regulator a
13 payment times report for a reporting period for another entity under
14 section 22J continues to apply to the reporting nominee if:
- 15 (a) the reporting nominee has not given the Regulator a payment
16 times report for the reporting period under that section; and
 - 17 (b) the reporting nominee ceases to be a reporting nominee for
18 the other entity at any time after the end of the reporting
19 period.

20 *Other rights and obligations*

- 21 (2) The following provisions continue to apply to a reporting nominee
22 that has ceased to be a reporting nominee for another entity, as if it
23 were still a reporting nominee for that other entity:
- 24 (a) section 22K (civil penalty provision for failure to report);
 - 25 (b) section 22L (false or misleading reports);
 - 26 (c) Division 3 of Part 2 (access to payment times reports);
 - 27 (d) Division 2 of Part 4 (obligations of reporting entities and
28 reporting nominees);
 - 29 (e) Division 2 of this Part (treatment of certain kinds of entities).

EXPOSURE DRAFT

Schedule 1 Amendments

1 **55B Delegation by the Minister**

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

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

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

10 **52 After paragraph 57(1)(a)**

11 Insert:
12 (aa) the Minister; and

13 **53 Sections 57A and 57B**

14 Repeal the sections.

15 **54 Before section 58**

16 Insert:

17 **57C Fees**

18 (1) The Regulator may, on behalf of the Commonwealth, charge a fee
19 specified in an instrument under subsection (2) for dealing with
20 any of the following applications under this Act:

21 (a) an application under subsection 10F(1) for the Regulator to
22 determine that an entity is a subsidiary reporting entity;

23 (b) an application under subsection 10M(1) for the Regulator to
24 determine that an entity is an exempt reporting entity;

25 (c) an application under subsection 22M(1) for the Regulator to
26 determine that an entity is a reporting nominee.

27 (2) The Regulator may, by notifiable instrument, determine fees that
28 may be charged in relation to any of the applications mentioned in
29 subsection (1).

30 (3) A fee must not be such as to amount to taxation.

EXPOSURE DRAFT

Amendments **Schedule 1**

- 1 (4) A fee charged under subsection (1):
2 (a) is a debt due to the Regulator, on behalf of the
3 Commonwealth; and
4 (b) is recoverable by the Regulator, on behalf of the
5 Commonwealth, in a court of competent jurisdiction.
6

EXPOSURE DRAFT