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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PAYMENT TIMES REPORTING AMENDMENT BILL 2024

EXPOSURE DRAFT EXPLANATORY MATERIALS

Consultation preamble

Treasury seeks feedback on the effectiveness of this exposure draft explanatory material in explaining the policy context and operation of the proposed new law, including, but not limited to:

- how the new law is intended to operate;
- whether the background and policy context is sufficiently comprehensive to support understanding of the policy intent and outcomes of the new law;
- the use of relevant examples, illustrations or diagrams as explanatory aids; and
- any other matters affecting the readability or presentation of the explanatory material.

Feedback on these matters will assist to ensure the Explanatory Memoranda for the Bill aids the Parliament's consideration of the proposed new law and the needs of other users.

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

Abbreviation	Definition
AASB	Australian Accounting Standards Board
Act	Payment Times Reporting Act 2020
Bill	Payment Times Reporting Amendment Bill 2024
Register	Payment Times Reports Register
Regulator	Payment Times Reporting Regulator
Regulatory Powers Act	Regulatory Powers (Standard Provisions) Act 2014
Review	Statutory Review of the Payment Times Reporting Act 2020, released on 31 August 2023
Rules	Payment Times Reporting Rules 2020
Scheme	Reference to the Payment Times Reporting Scheme

Chapter 1: Amendments to the Payment Times Reporting Act in response to the Statutory Review

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Outline of chapter

- 1.1 The Bill amends the Act to implement the Government’s response to the Review, improve the operation of the Scheme and to better align the objects with the intended purpose of the Act. The amendments give effect to the Government’s commitment to improve small business payment times. The

amendments seek to influence the behaviour of large businesses with poor small business payment practices and encourage fair and improved payment terms and practices for small businesses.

- 1.2 All legislative references in this Chapter are to the Act unless otherwise indicated.

Context of amendments

- 1.3 The Scheme commenced on 1 January 2021 and was established by the Act and the Rules. The Scheme was introduced to improve payment outcomes to assist Australian small businesses.
- 1.4 The Government commissioned the Review to assess the effectiveness of the Act, and the Scheme in achieving its objects. The Review's report was provided to the Minister for Small Business on 29 June 2023, and subsequently released in August 2023. The Review made a number of recommendations to improve the operation of the Scheme and better achieve the overall objectives of the Scheme.
- 1.5 The Government response to the Review was released on 5 December 2023. The response agreed with all the findings and recommendations of the Review. In response, the Government agreed to amend the Act and the Rules to address the issues identified in the Review.
- 1.6 The Bill implements the Government's response and makes other amendments to the Act to improve the operation of the Scheme.

Summary of new law

- 1.7 The amendments to the Act seek to improve the operation of the Scheme to influence large businesses to improve their payment practices in dealing with small businesses. The key amendments are:
- expanded and revised objects of the Act to better express the purpose of the Scheme;
 - Additional functions for the Regulator to undertake research and publish analysis relating to payment terms, times and practices, and provide data and tools to assist users of the register, to improve the effectiveness of the Act and better achieve its objectives;
 - Clearer and more effective criteria and processes for entry and exit of the scheme for reporting entities;

- Using AASB standards to recognise consolidated business structures, allowing the top entity in a consolidated group to provide a payment times report for that group;
- Allowing entities to apply to the Regulator to alter the default reporting arrangements by either having an entity report on their behalf (reporting nominee) or have certain entities within the group report individually (subsidiary reporting entity), as appropriate to the reporting entity’s structure and circumstances.
- Consolidating Payment Times Report content requirements in the Rules rather than the Act to provide for greater clarity and ease of use for entities who make payment times reports;
- a new power for the Minister to require an entity, that is found to be amongst the slowest payers of small businesses, to publish on their website and other documentation that they are a slow small business payer;
- improved compliance and enforcement mechanisms, including:
 - expanding the information gathering powers of the Regulator by enabling the Regulator to issue a notice to a person to produce documents and provide information to assist in the administration of the Act; and
 - providing that civil penalty provisions in the Act are subject to an enforceable undertakings framework; and
 - ensuring the Regulator can effectively investigate and publish on the register an entities non-compliance with the Act; and
- requiring that an independent review of the operation of the Act must be undertaken within five years of the commencement of the amendments.

Comparison of key features of new law and current law

Table 1.1 Comparison of new law and current law

New law	Current law
The Act contains the following new objects: <ul style="list-style-type: none"> • promote timely payment practices by large business and certain other entities; and 	The objects of the Act are to require large businesses, and other entities to report on their payment terms and practices applied to their small business suppliers for public release to support small businesses and

New law	Current law
<ul style="list-style-type: none"> • foster a culture of prompt payment by large business and certain other entities for small business suppliers. <p>The Regulator has new functions to undertake research on payment terms, times and practices and publish analysis for the purposes of informing the Commonwealth, and to provide users of the Register with data and tools to assist in the understanding and use of the information on the Register.</p>	<p>encourage reporting entities to improve their payments terms and practices.</p> <p>The functions of the Regulator include administering the Act including monitoring and enforcing compliance with the Act, carrying out the function of the Regulator under the Commonwealth laws, advice to the Minister on the functions and matters that are incidental to the functions.</p>
<p>Entities that either carry on business in Australia, are incorporated in Australia, have their central management and control in Australia, or shareholder voting power in Australia, must provide reports on their payment times and practices to small businesses.</p> <p>An entity that controls a consolidated group of entities (based on the AASB standards concept of control), will provide reports on behalf of that entire group.</p> <p>A reporting entity must have an annual consolidated revenue of greater than \$100 million to be required to provide reports.</p>	<p>Certain large entities that carry on an enterprise in Australia and have an annual income of greater than \$100 million, must provide reports on their payment times and practices to small businesses.</p>
<p>An entity that wishes to become a volunteering entity must apply to the Regulator.</p> <p>A volunteering entity may have its volunteering status revoked by the Regulator.</p>	<p>Entities that do not meet the criteria to be obligated to be a reporting entity, but wish to provide payment times reports, may do so by notifying the Regulator they wish to become a volunteering entity.</p>
<p>Entities may apply to the Regulator to alter the default reporting arrangements by either having another entity report on their behalf (reporting nominee) or have certain entities within the group report individually (subsidiary reporting entity), as appropriate to the reporting entity’s structure and circumstances.</p> <p>These entities will have reporting obligations under the Act.</p>	<p>No comparison.</p>

New law	Current law
<p>The Regulator may revoke a reporting nominee or subsidiary reporting entity's status.</p>	
<p>Reporting entities are required to report twice annually based on the entity's financial year. Reports may be published on the Register automatically by a reporting entity.</p>	<p>Reporting entities are required to report twice annually, based on an entity's income year, on their payment terms and practices for their small business suppliers. Reports are published on the Register by the Regulator.</p>
<p>As reports may now be published automatically by reporting entities, the Regulator has the power to remove certain information from the Register that is not in the public interest and arrange for the automatic removal of such information.</p>	<p>The Regulator may decide to not publish information in payment times reports that it considers would be contrary to the public interest.</p>
<p>The Regulator may exempt, for no longer than two years, a reporting entity from its obligation to provide payment times reports, where appropriate with regard to the objects of the Act.</p>	<p>No comparison.</p>
<p>An entity that no longer meets the criteria to be a reporting entity ceases being a reporting entity upon giving notice to the Regulator.</p>	<p>An entity that no longer meets the criteria to be a reporting entity, ceases to be a reporting entity upon receiving a determination by the Regulator.</p>
<p>Where the Regulator is satisfied that an entity no longer meets the criteria to be a reporting entity, or has ceased to exist, the Regulator may determine that the entity has ceased to be a reporting entity.</p>	<p>No comparison.</p>
<p>Report content requirements are consolidated in the Rules.</p>	<p>Reporting entities are required to provide identifying information and details of their payment practices to small businesses including details of the proportion by value of payments to small business and the payment time categories in which small business invoices were paid, as well as additional content requirements set out in the rules.</p>
<p>Where the Minister is satisfied that a reporting entity is a slow small business payer, the Minister may direct that entity to publish on its website and other documents that it is a slow small business payer.</p>	<p>No comparison.</p>

New law	Current law
The direction may be recorded on the Register.	
The Regulator’s monitoring and investigation powers are expanded to enable the Regulator to issue a notice requiring a person to produce documents and provide information to assist in the administration of the Act.	The Regulator is given monitoring and investigation powers, consistent with provisions of the Regulatory Powers Act. The Regulator may search premises and inspect and copy any document on the premises.
The Regulator may accept an enforceable undertaking from an entity in relation to non-compliance with provisions of the Act that attract a civil penalty.	No comparison.
An independent review of the operation of the Act must be undertaken within five years of the commencement of the Bill.	An independent review of the operation of the Act is required within two and a half years of the commencement of the Act. This review has been undertaken.
The Regulator may charge fees on a cost recovery basis for applications made by entities (with the exception of an application to be a volunteering entity).	No comparison.
Disclosure of protected information can be made by the Regulator for regulatory activities.	No comparison.

Detailed explanation of new law

Objects of the Act and Regulator’s functions

Objects of the Act

- 1.8 The Bill amends the objects in section 3 of the Act. Prior to the amendments, the objects of the Act only referred to providing for payment times reports and a register for the purposes of making those reports publicly available. The amendments extend the objects to reflect the purpose and intended outcomes of the Scheme, in accordance with Recommendation 1 of the Review.
- 1.9 The amended objects of the Act are to:
- promote timely payment practices by large businesses, certain government entities and volunteering entities;

- foster a culture of prompt payment practices by those entities to:
 - support economic growth; and
 - improve outcomes for small business suppliers;
 - encourage those entities to improve their payment terms, times and practices of those entities in relation to their small business suppliers;
 - provide for those entities to report on payment terms, times and practices in relation to their small business suppliers; and
 - make information reported under the Act publicly available.
- 1.10 The existing object – to make information publicly available to enable small businesses to make more informed decisions about potential customers – has been removed from the Act. The Review concluded this object was unrealistic, due to the inherent power imbalances between small and large businesses that cannot be eliminated by the operation of the Scheme.
[Schedule 1, item X, section 3 of the Act]

Functions of the Regulator

- 1.11 The amendments broaden the functions of the Regulator set out in section 25 of the Act, by inserting the following additional functions:
- to undertake research, and publish analysis, on the payment terms and practices of reporting entities for the purposes of informing the Commonwealth; and
 - to provide users of the Register with data and tools to assist them to understand and use information made available on the register.
- 1.12 Prior to the amendments, the Regulator’s functions related only to the administration and compliance aspects of the Scheme. The amendments introduce new functions into the Act to align with the amended objects (outlined above). The new functions provide the Regulator with the necessary legislative support to advance those objects, and to provide tools, guides or publications to assist users of the Register to understand the comparative payment practices of reporting entities.
- 1.13 Other examples of activities the Regulator may undertake in carrying out its functions include performing quantitative and qualitative analysis to publish detailed insights (including sector-specific research, emerging issues or identifying entities with exemplary payment practices).
[Schedule 1, item 35, paragraphs 25(ba) and (bb) of the Act]
- 1.14 The Regulator is not required to undertake any particular activity in carrying out its functions. The Regulator is expected to apply appropriate judgement in carrying out the regulatory function and apply resources consistent with the benefits from undertaking specific activities under its functions.

- 1.15 An entrusted person will be allowed to use or disclose protected information in undertaking the new research and analysis functions.
[Schedule 1, item 43, section 40A]

Reporting entities

Meaning of reporting entity

- 1.16 The Bill clarifies the operation of provisions that set out which entities have obligations under the Act. These amendments are intended to help entities determine if the Scheme applies to them and also introduce principles of consolidation for corporate groups, in accordance with accounting standards.
- 1.17 The Bill amends the criteria in the Act for determining if a constitutionally covered entity is a reporting entity.
- 1.18 The amended criteria are as follows:
- The entity:
 - carries on business in Australia; or
 - is a company that is incorporated in Australia or, has either its central management and control in Australia, or its voting power controlled by shareholders who are residents of Australia; or
 - is a corporate Commonwealth entity, or a Commonwealth company, within the meaning of the *Public Governance, Performance and Accountability Act 2013*; and
 - the entity’s consolidated revenue for the previous financial year is more than \$100 million; and
 - the entity is not controlled by another entity that is a reporting entity; and
 - the entity is not registered under the *Australian Charities and Not-for-profits Commission Act 2012*.

[Schedule 1, item 21, subsection 7(2) of the Act]

- 1.19 Several elements of the amended criteria for a reporting entity are unchanged from the criteria in the Act. These are that:
- a reporting entity must be a ‘constitutionally covered entity’, as defined in sections 5 and 6 of the Act; and
 - the entity is not registered under the *Australian Charities and Not-for-profits Commission Act 2012*.

- 1.20 Consolidation of entities using the AASB standards provides a consistent and well understood framework for entities, reduces the unnecessary administrative and compliance burden of individual entities in a group, and will reduce the clutter of multiple reports for the one corporate group on the register for the one reporting period.
- 1.21 To support the amendments, the Bill introduces new definitions for the associated concepts of ‘accounting standards’, ‘carries on business in Australia’, ‘consolidated revenue’, ‘control’, ‘evidential burden’, ‘exempt reporting entity’, ‘financial year’, ‘provisional reporting period’, ‘reporting nominee’, ‘responsible member’, ‘slow small business payer’, ‘slow small business payer direction’ and ‘subsidiary reporting entity’. Detailed explanations of these terms are included later in this Explanatory Material. *[Schedule 1, item 5, 7, 9, 10, 13, 15, 19, section 5 of the Act]*
- 1.22 The definitions of ‘ABN’, ‘Business Industry Codes’, ‘controlling corporation’, ‘member’, ‘notifiable event’, ‘standard payment period’ and ‘subsidiary’ are repealed as the terms are no longer used via amendments of the Act. The Note to the definition of ‘small business’ is repealed as it does not properly define the meaning of small business which may be based on total revenue. *[Schedule 1, items 4, 5, 6, 8, 11, 12, 14, section 5 of the Act]*

Carries on business in Australia

- 1.23 Prior to these amendments, entities were reporting entities if they carried on an enterprise in Australia and met certain other criteria. This requirement is removed by the Bill and replaced by criteria that a reporting entity must carry on a business in Australia or otherwise satisfy the below alternative criteria. *[Schedule 1, item 21, subparagraph 7(2)(a)(i) of the Act]*
- 1.24 Using these concepts makes it easier for entities to assess if they are a reporting entity, particularly for holding companies and other entities with passive investments. This replaces more complex legal definitions and reduces burdens on entities and the Regulator to identify large businesses that are required to report.
- 1.25 An entity (whether a body corporate or not), will be considered to be carrying on business in Australia if it undertakes any of the activities that section 21 of the *Corporations Act 2001* sets out as the activities that would mean a body corporate is carrying on business in Australia. *[Schedule 1, item X, section 5 of the Act]*

Incorporated or controlled in Australia

- 1.26 A constitutionally covered entity that is a company satisfies the first of the criteria to be a reporting entity if it is incorporated in Australia or has either its central management or control in Australia, or its voting power is controlled by shareholders who are residents of Australia. This ensures that

all companies either incorporated or controlled in Australia that meet certain other criteria are subject to the Act.

[Schedule 1, item 21, subparagraphs 7(2)(a)(ii) and (iii) of the Act]

Corporate Commonwealth entity or Commonwealth company

- 1.27 Corporate Commonwealth entities or Commonwealth companies are explicitly included as while they do not satisfy the requirement of carrying on a business in Australia, it is intended that they are also a reporting entity if they meet the other relevant criteria.

[Schedule 1, item 21, subparagraph 7(2)(a)(iv) of the Act]

Not controlled by another reporting entity

- 1.28 Reporting entities are limited to those entities not controlled by another reporting entity. This ensures that for a corporate group with a number of entities, only the entity at the top of the group is a reporting entity, providing a single report for the consolidated group.

[Schedule 1, item 21, paragraph 7(2)(c) of the Act]

- 1.29 ‘Control’ of an entity by another entity is defined in the Bill by reference to the accounting standards. The Bill further defines ‘accounting standards’ to have the same meaning as in the *Corporations Act 2001*, which defines accounting standard as an instrument in force under section 334 of that Act, or a provision of such an instrument. Section 334 gives the AASB power to make accounting standards.

[Schedule 1, items 5 and 7, section 5 of the Act]

- 1.30 Using definitions in the accounting standards provides an entity with useful pre-existing guidance to consistently determine if it is controlled by another entity. The accounting standards also ensure that control can be determined for entities such as investment companies and joint ventures to allow consolidation to occur. For example, in AASB 10 – Consolidated Financial Statements (released on 7 April 2022), ‘control of an investee’ is defined as:

“An investor controls an investee when the investor is exposed, or has rights, to variable returns from its involvement with the investee and has the ability to affect those returns through its power over the investee.”

- 1.31 For the purposes of determining if an entity is controlled by another entity, accounting standards are treated as applying to an entity, even if those standards do not otherwise apply to the entity for accounting purposes. For example, Company B is a member of a consolidated group, but is not required to prepare consolidated financial statements in accordance with the AASB standards. However, Company B must still apply the definition of control in those standards to determine if it controlled by Company A. If Company B is controlled by Company A under the accounting standards, then it is controlled

by Company A for the purposes of the Act. Consequently, if Company A is a reporting entity, then Company B is excluded from the definition of reporting entity. Further if Company B controls Company C, then Company C cannot be a reporting entity because it is ultimately controlled by Company A.

- 1.32 These amendments form part of wider reforms to introduce consolidated reporting using AASB standards for corporate structures, as recommended by the Review. By excluding entities that are controlled by another reporting entity from becoming reporting entities, only the reporting entity that controls the consolidated group is subject to the Scheme. Reporting content requirements can ensure that a reporting entity is required to report for all the entities it controls. This lessens the administrative burden for entities and the Regulator and reduces the potential for multiple entries from the same group in the Register. Reporting at the group level also benefits users of the Register that access its data. Finally, it reduces the number of individual reports and, in doing so, streamlines the Register.
- 1.33 Determining whether an entity controls another entity is also necessary to determine an entity's consolidated revenue, which is discussed below.

Total consolidated revenue of over \$100 million

- 1.34 To be a reporting entity, an entity's consolidated revenue for the previous financial year must be more than \$100 million. Prior to the amendments, the \$100 million threshold applied in relation to an entity's 'total income' (or combined total income in the case of 'controlling corporations') for that entity's most recent income year.

[Schedule 1, item 21, paragraph 7(2)(b) of the Act]

- 1.35 'Total income' is defined in the Act by reference to the *Taxation Administration Act 1953* but the term is not uniformly applicable to all entities. Using total income therefore created inconsistencies in which entities the Scheme applies to and in turn decreased the effectiveness of the Regulator in identifying non-compliance. 'Consolidated revenue' is a term with more consistent application for entities. Replacing 'total income' with 'consolidated revenue' also ensures the qualifying criteria to be a reporting entity operate together using principles of consolidation. Accordingly references to 'total income' have been removed from the reporting entity definition in the Act.
- 1.36 The Bill defines 'consolidated revenue' of an entity to mean the total revenue of the entity for a financial year under the accounting standards, or if the entity controls another entity or entities, the total revenue of the entity and all of the entities it controls, considered as a group, for a financial year of the controlling entity. This may include revenue earned in Australia or overseas.
- #### ***[Schedule 1, item 7, section 5 of the Act]***
- 1.37 Determining if an entity is controlled by another entity is discussed above. Using a threshold based on consolidated revenue assessed on a group basis

ensures that revenue from intercompany transactions within the group is excluded.

- 1.38 An entity's consolidated revenue is worked out in accordance with the accounting standards made by AASB. For the purposes of determining an entity's consolidated revenue, the accounting standards are treated as applying to an entity, even if the standards do not otherwise apply to the entity for accounting purposes. Using definitions in accounting standards means that entities can more easily determine if they meet the relevant criteria.

[Schedule 1, item 5, section 5 of the Act]

- 1.39 For example, in AASB 15 – Revenue from Contracts with Customers (released on 3 January 2019), 'revenue' means increases in economic benefits arising in the course of an entity's ordinary activities during the accounting period, in the form of inflows or enhancements to assets or decreases in liabilities that result in an increase in equity, other than those relating to contributions from equity participants.

- 1.40 Limiting consolidated revenue to entities the reporting entity controls excludes entities where the reporting entity may have only 'significant influence' or 'minority interest' which may otherwise be included as part of consolidated revenue under the 'equity method' of the accounting standards.

Financial year – reporting period

- 1.41 The Bill replaces references to 'income year' in the definition of reporting entity with 'financial year'. Using income year aligned with the total income threshold in the criteria to be a reporting entity. Since 'total income' has been substituted with 'consolidated revenue', 'income year' has been removed accordingly. Consequently, the definition of 'reporting period' has been amended to substitute references to 'income year' with 'financial year' for consistency.

[Schedule 1, items 21 to 24, paragraphs 7(2)(b), 8(1)(a) and (b) and subsections 7(1), 8(2) and (3) of the Act]

- 1.42 If a paragraph of the definition of financial year in section 9 of the *Corporations Act 2001* applies to the entity, then financial year has the meaning given by that definition. Where an entity does not have such a financial year, financial year means an entity's income year.

[Schedule 1, item 9, section 5 of the Act]

- 1.43 The Act retains a definition of income year. The definition of income year remains the same as prior to the amendments, with the exception that the reference to 'financial year' is substituted with 'period of 12 months starting on 1 July'. This amendment is necessary because 'financial year' is now defined separately in the Bill, which links to the definition of 'income year'.

[Schedule 1, item 10, section 5 of the Act]

- 1.44 As a result, if an entity does not have a financial year specified by the *Corporations Act 2001* or an income year under the *Income Tax Assessment Act 1997* as no income tax is payable by the entity, then the entity uses a standard financial year of 12 months starting on 1 July or if the Rules prescribe a period of 12 months, that 12 month period.
- 1.45 Based on these amendments, both the consolidated revenue test, as well as an entity's reporting periods, will be aligned with the entity's financial year.

Ceasing to be a reporting entity

When a reporting entity no longer meets the criteria to be a reporting entity

- 1.46 If at the start of a reporting period, an entity no longer meets the entity criteria to be a reporting entity, becomes controlled by another entity that is a reporting entity (such as in the case of an acquisition), or its consolidated revenue was less than \$100 million for each of its two most recent financial years, the entity ceases to be a reporting entity upon notice to the Regulator.
[Schedule 1, item items 21 and 25, subsections 10K(1) and (5) of the Act; subsection 7(2)(a) of the Act]
- 1.47 For the avoidance of doubt, a reporting entity that begins to control another reporting entity (such as by acquisition), will subsequently include that entity in its payment times reports content as set out in the Rules. This applies whether the ceasing reporting entity has provided a valid notice or not.
- 1.48 The Regulator may, by notifiable instrument, approve the form or manner that notice is to be given to the Regulator. Notice must be given in the approved form and manner (if any), state the name of the applicant, and specify the circumstances which apply to them. The notice must be approved in writing by a responsible member of the entity and state the name of that responsible member.
[Schedule 1, item X25, subsections 10K(2) to (4) of the Act]
- 1.49 Where an entity has given a notice to cease being a reporting entity, the entity may withdraw that notice and the notice will be taken to have never had effect and the reporting entity will be treated as never have ceased being a reporting entity.
[Schedule 1, item 25, subsections 10K(6) and (7) of the Act]
- 1.50 A reporting entity must not provide a notice to cease being a reporting entity based on false circumstances. A reporting entity, that is not a volunteering entity, which provides the Regulator with false or misleading material in relation to a notice to cease to be a reporting entity is subject to a civil penalty of 350 penalty units.
[Schedule 1, item 25, subsection 10J(1) and (3) of the Act]

- 1.51 The maximum pecuniary penalty that a body corporate may be liable to pay for providing the Regulator with a false or misleading notice to cease being a reporting entity is 0.6 per cent of the total income of the person for the income year in which the contravention occurred. This differs from the standard maximum amount of five times the pecuniary penalty as provided by subsection 82(5) of the Regulatory Powers Act, to provide sufficient deterrent to reporting entities that are by their nature large entities.
[Schedule 1, item 25, subsection 10J(2) of the Act]
- 1.52 Volunteering entities are not liable to the penalty reflecting that they are not required to participate in the scheme, but have chosen to do so, and are likely to not be a large entity.

Ceasing by Regulator determination

- 1.53 The Regulator may, in writing, determine that a reporting entity has ceased to be a reporting entity, where the Regulator is satisfied that the entity is not a volunteering entity or a subsidiary reporting entity, a circumstance in paragraph 10K(1)(a) applies (controlled by a reporting entity, consolidated revenue below \$100 million etc), the relevant entity has ceased to exist, or a circumstance prescribed by the Rules apply.
- 1.54 Where such a determination is made, the entity ceases to be a reporting entity at the time specified in the determination which must be either the start of the reporting period of the entity in which the determination was made, or the start of the following reporting period.
[Schedule 1, item 25, subsections 10K(1) and (2) of the Act]
- 1.55 The Regulator must provide the relevant entity with a notice of the determination and may publish a notice of the determination on the register. The notice may include the identity of the entity concerned and the fact that they are no longer a reporting entity.
[Schedule 1, item 25, subsections 10K(3) and (4) of the Act]
- 1.56 A determination which provides that an entity has ceased being a reporting entity, does not prevent that entity from becoming a reporting entity again.
[Schedule 1, item 25, subsection 10K(5) of the Act]
- 1.57 For the avoidance of doubt, the Regulator's written determination is not a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003*.
[Schedule 1, Item 25, subsection 10K(6) of the Act]

Exemptions from reporting obligations

- 1.58 The Regulator may exempt a reporting entity from its reporting obligations where the entity applies to the Regulator, and the Regulator is satisfied that it is appropriate in the circumstances to make a determination, having regard to the

objects of the Act.

[Schedule 1, item 25, subsection 10J(1) and items 18 and 19 of the Act]

- 1.59 The exemption process is intended to address any potential anomalies that may occur where the criteria to become a reporting entity would inadvertently include an entity that is not intended to be a reporting entity. This may include if an entity that has a one off sale of assets that would for that financial year lead to a total consolidated revenue of greater than \$100 million.
- 1.60 A determination to exempt a reporting entity from the operation of the Act must specify the day the determination takes effect, which may be the day specified in the entity's application to the Regulator. However, the determination may specify an alternative start date if the Regulator considers that an alternative start date is more appropriate. The date of effect may also be a day before the determination is made.
- 1.61 The determination must specify the day it ceases to have effect. Determinations apply for a maximum of two years from the date they start to take effect. This ensures that there is a regular review of the need for the exemption to apply.
[Schedule 1, item 25, subsections 10L(2) and (3) of the Act]
- 1.62 A determination to exempt a reporting entity from its obligations under the Act is not a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003*.
[Schedule 1, item 25, subsections 10L(5) of the Act]
- 1.63 Applications to determine that an entity is an exempt reporting entity must be made in writing to the Regulator.
- 1.64 They must be given in the approved form and manner (if any) specified by notifiable instrument by the Regulator, state the name of the applicant, specify the day that the applicant proposes the determination to take effect, and include any information specified in the approved form or prescribed by the Rules. They must also be approved in writing by a responsible member of the applicant and state the name of that responsible member.
[Schedule 1, item 25, subsections 10M(1) to (3) of the Act]
- 1.65 The Regulator may, by written notice given to the applicant, require further information from the applicant in connection with their application in order to determine whether to approve the application.
- 1.66 The Regulator may, where the applicant does not comply with a notice for further information, refuse to consider their application or refuse to take any action, or any further action, in relation to their application.
[Schedule 1, item 25, subsections 10M(4) and (5) of the Act]
- 1.67 Where the Regulator is satisfied that it is no longer appropriate for a reporting entity to be exempt from the operation of the Act, it may by written notice revoke the determination.

- 1.68 Revocation takes effect on the day specified in the notice, which may be a day before the notice is given to the exempt reporting entity.
[Schedule 1, item 25, subsections 10N(1) and (2) of the Act]
- 1.69 An entity that has had its reporting exemption revoked, will be obligated to provide payment times reports for its reporting periods that begin after the revocation takes effect, including for reporting periods that begin prior to the date the revocation is made, and may be liable for a civil penalty for failure to comply.
[Schedule 1, item 25, subsection 10N(3) of the Act]
- 1.70 An exempt reporting entity is not required to give the Regulator a payment times report for a reporting period where they are exempt for any part of that reporting period.
[Schedule 1, item items 27 and 28, subsection 12(2) of the Act]

Volunteering entities

Approval to be a volunteer entity

- 1.71 The Bill modifies the process under which an entity becomes a volunteering entity. The Regulator may determine, in writing, a constitutionally covered entity is a volunteering entity upon application from the relevant entity if the Regulator is satisfied that the entity is not a reporting entity as defined under subsection 7(1) of the Act and is not controlled by another entity that is a reporting entity under subsection 7(1).
- 1.72 If a volunteering entity subsequently meets the criteria for being a reporting entity under subsection 7(1) of the Act, it will become a reporting entity. An entity changes status at the earliest time it satisfies the criteria.
- 1.73 These amendments are intended to provide greater oversight by the Regulator to prevent entities that are obligated to report under the Act, and face penalties from non-compliance, from registering and reporting as volunteering entities.
[Schedule 1, items 20 and 25, section 5 and subsection 10B(1) of the Act]
- 1.74 Where the Regulator determines an entity to be a volunteer entity, the determination takes effect on the day specified in the entity's application (if a day is specified), or if the Regulator considers it appropriate, the first day of the next provisional reporting period for the entity. If the application does not specify a day, the determination must take effect on the first day of the next provisional reporting period for the entity after the determination is made.
[Schedule 1, item 25, subsection 10B(2) of the Act]
- 1.75 For the avoidance of doubt, a provisional reporting period represents a hypothetical reporting period for that entity that is not yet a reporting period because the entity has not yet been given a determination at the time of its

- application. The provisional reporting period would become a reporting period once the determination is given.
- 1.76 Were a Regulator to inadvertently determine that a reporting entity was a volunteering entity, the determination would have no effect and the entity would remain a reporting entity obligated to make reports and liable for penalties for non-compliance.
[Schedule 1, item 21, subsection 7(3)]
- 1.77 A determination which provides that a constitutionally covered entity is a volunteering entity, is not a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003*.
[Schedule 1, item 25, subsection 10B(3) of the Act]
- 1.78 A constitutionally covered entity (the applicant) that wishes to become a volunteering entity must apply in writing to the Regulator to make a determination.
- 1.79 Applications must be given in any approved form and manner prescribed by the Regulator in a notifiable instrument and state the name of the applicant. Applications may also state the day the applicant wishes the determination to take effect, with the proposed day being either, the first day of the reporting period in which the application was made or the first day in the following reporting period.
- 1.80 Applications must include any information the Regulator determines must be included in an application and must be approved in writing by a responsible member of the applicant and state the name of that responsible member.
[Schedule 1, item 25, subsections 10C(1) and (2) of the Act]
- 1.81 The Regulator may, by legislative instrument, determine information that must be included in an application to become a volunteering entity. This information may be determined by the Regulator in a standardised ongoing way, that is information that all applicants would be required to provide.
[Schedule 1, item 25, subsections 10C(3) and (4) of the Act]
- 1.82 The Regulator may, by written notice given to the applicant, require further information from the applicant in connection with an application. The information required may be determined on a case by case basis by the Regulator when considering each individual application.
- 1.83 The Regulator may, where the applicant does not comply with a notice for additional information, refuse to consider their application or refuse to take any action, or any further action, in relation to their application.
[Schedule 1, item 25, subsections 10C(5) and (6) of the Act]

Revoking a volunteer entity's status

- 1.84 Where the Regulator suspects that a volunteering entity has failed to comply with the Act, the Regulator may revoke a determination that an entity is a volunteering entity by providing written notice to the entity to which the

determination relates. The revocation takes effect on the day specified in the notice.

[Schedule 1, item 25, subsections 10D(1) and (2) of the Act]

- 1.85 As volunteering entities are not subject to the civil penalties included in the Act, revocation powers provide the Regulator with a mechanism to discourage non-compliance with the Act and ensures that a volunteering entity that fails to comply with the Act cannot prevent the application of the Act to a reporting entity by seeking to remain a volunteering entity.
- 1.86 The Regulator has the power to specify that revocation applies retrospectively, meaning that revocation can take effect on a day before notice is given to an entity. This prevents the Regulator from having to pursue outstanding reports from the volunteering entity if it is non-compliant where no penalties apply to their compliance. This seeks to encourage volunteering entities to satisfy their obligations under the Act.

[Schedule 1, item 25, subsections 10D(1) and (2) of the Act]

- 1.87 A volunteering entity may, by written notice to the Regulator, inform the Regulator that it wishes to cease to be a volunteering entity and request that the Regulator revoke its determination under section 10B. A notice to the Regulator to revoke a determination must set out the date at which the volunteering entity seeks to cease to be a reporting entity. This can be either the start of the reporting period of the entity in which the entity gives the notice to the Regulator or the start of the immediately following reporting period.

[Schedule 1, item 25, subsections 10D(3) and (4) of the Act]

- 1.88 If an entity gives the Regulator a notice seeking to cease to be a volunteering entity, the Regulator's determination is taken to be revoked at the time specified in the notice. This is subject to the notice specifying a time at the start of the reporting period of the entity in which the entity gives the notice to the Regulator or the start of the immediately following reporting period.

[Schedule 1, item 25, subsection 10D(5) of the Act]

- 1.89 Where a volunteering entity has failed to give the Regulator a payment times report, the entity is not required to give that report once it ceases to be a volunteering entity. This is consistent with voluntary nature of the entity's commitment under the Scheme. However, the rights and obligations set out in subsection 55(2) of the Act, where applicable, continue to apply to entity after it ceases to be a reporting entity.

[Schedule 1, item 50, subsection 55(1) of the Act]

Subsidiary reporting entities

- 1.90 The Bill introduces a new category of entity in the Act known as a 'subsidiary reporting entity'. This new category allows an entity, which is 'controlled' by a reporting entity, to provide its own payment times reports.

- 1.91 These amendments are intended to address anomalies which arise under the reporting entity definition, by providing the Regulator with the power to determine that an entity is a ‘subsidiary reporting entity’.
- 1.92 An example of where such a situation would arise is when a reporting entity is a participant in a joint venture. AASB consolidation principles provide that the reporting entity is considered to ‘control’ the joint venture, however in practice the joint venture is jointly controlled and operated under a separate governance structure. The joint venture may apply to the Regulator to be a subsidiary reporting entity and provide its own payment times report, and the reporting entity will provide its own payment times report, with the joint venture excluded from this report.
[Schedule 1, item 25, section 10E of the Act]

Approval to be a subsidiary reporting entity

- 1.93 The Regulator may determine, in writing, that a constitutionally covered entity is a subsidiary reporting entity. The entity must apply to the Regulator and be an entity which is controlled by another entity that is a reporting entity.
- 1.94 The Regulator must be satisfied that granting an application would not be contrary to the public interest, is consistent with the objects of the Act, and that any other matter prescribed by the Rules are satisfied.
[Schedule 1, item 25, subsections 10E(1) to (2) and 10H(1) of the Act]
- 1.95 A subsidiary reporting entity determination takes effect at the time specified in the determination. This can be the time specified in the application to the Regulator. If the application does not specify a time, the determination takes effect at the start of the first reporting period that begins after the Regulator makes the determination.
- 1.96 However, where there is a time specified in an application, the Regulator has the discretion to provide that despite this, the determination takes effect at the start of the reporting period that begins after the Regulator makes the determination, if it considers it appropriate in all the circumstances. This discretion ensures the Regulator would not be required to make a determination that would result in a subsidiary reporting entity automatically have an overdue payment times report.
[Schedule 1, item 25, subsections 10E(3) to (4) of the Act]
- 1.97 Were a Regulator to inadvertently determine that an existing reporting entity that was not controlled by another entity, was a subsidiary reporting entity, the determination would have no effect, and would not reset the time the entity becomes a reporting entity.
[Schedule 1, item 21, subsection 7(3)]
- 1.98 A determination which provides that a constitutionally covered entity is a subsidiary reporting entity is not a legislative instrument not a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003*.
[Schedule 1, item 25, subsection 10E(5) of the Act]

- 1.99 The Regulator, may by notifiable instrument, approve a form or manner for the purposes of making an application for the Regulator to make a determination that an entity is a subsidiary reporting entity.
- 1.100 Applications must be given in any approved form or manner and state the name of the applicant. The application may specify the time the applicant proposes the determination to take effect, which must be either the start of the provisional reporting period after the application is provided to the Regulator, or the start of the following provisional reporting period.
- 1.101 Applications must include any information that the Regulator has determined, by legislative instrument, is necessary to be included in an application, and must be approved by a responsible member of the applicant and state the name of that responsible member.
[Schedule 1, item 25, subsections 10H(1) to (3) of the Act]
- 1.102 The Regulator may, by legislative instrument, determine further information that must be included in an application to become a subsidiary reporting entity. This information may be determined by the Regulator in a standardised ongoing way, that is, information that all applicants would be required to provide.
[Schedule 1, item 25, subsection 10H(4) of the Act]
- 1.103 The Regulator may, by written notice given to the applicant, require further information from the applicant in connection with an application. The information required may be determined on a case by case basis by the Regulator when considering each individual application. If the applicant does not provide that further information, the Regulator may refuse to consider the application.
[Schedule 1, item 25, subsections 10H(5) to (6) of the Act]

Ceasing to be a subsidiary reporting entity

- 1.104 The Regulator may, by written notice, revoke a determination that an entity is a subsidiary reporting entity. The revocation may take effect either at the start of the entities current reporting period or the start of the next reporting period.
[Schedule 1, item 25, subsections 10J(1) to (2) of the Act]
- 1.105 A subsidiary reporting entity may, by written notice, inform the Regulator that they wish to cease being a subsidiary reporting entity.
- 1.106 Such a notice must specify the time when the determination is to be revoked, which must be either the start of the reporting period in which notice is given, or the start of the following reporting period. Where a notice is given to the Regulator, the determination is taken to be revoked at the time specified in the notice.
- 1.107 As provided by section 55 of the Act, where a determination is revoked the relevant entity remains obliged to provide reports for the reporting periods

where it was a subsidiary reporting entity.

[Schedule 1, item 25, subsections 10J(3) to (5) and section 55 of the Act]

Reporting nominees

1.108 Reporting nominees are an entity that has been approved by the Regulator to report on behalf of a reporting entity. The reporting nominee framework addresses anomalies where an entity other than the reporting entity is better placed to report to the Regulator on behalf of the reporting entity.
[Schedule 1, item 33, Part 2A of the Act]

1.109 The amendments address situations, for example, where a corporate group has several large businesses that are members of the group, which are reporting entities, operating in Australia but consolidate under a foreign entity that does not meet the criteria to be a reporting entity. Although the large businesses may be controlled by the foreign entity, those businesses that operate in Australia are not excluded from the definition of reporting entity because the foreign entity is not itself a reporting entity. In this case the foreign entity may apply to be a reporting nominee and report on behalf of the reporting entities within the corporate group.

Approval to be a reporting nominee

1.110 If an entity applies to the Regulator to become a reporting nominee for another entity and the Regulator approves, by written determination, the entity becomes a reporting nominee for that entity. An entity may apply to become a reporting nominee for more than one other entity.
[Schedule 1, item 33, subsection 22H(1) of the Act]

1.111 The Regulator must be satisfied that the other entity has consented, and that the arrangement would be consistent with the Objects of the Act, and not contrary to the public interest. The Regulator must also be satisfied of any other matters that may be prescribed by the Rules.
[Schedule 1, item 33, subsections 22H(1) and (2) of the Act]

1.112 A determination takes effect at the time specified in the determination. This can be a time specified in the reporting nominees application, however if the Regulator considers it appropriate, the determination may also take effect at the start of the reporting period of the other entity (i.e. the entity which is not the applicant) that begins after the determination is made.
[Schedule 1, item 33, paragraph 22H(3)(a) and subsection 22H(4) of the Act]

1.113 If the applicant doesn't specify a time, then the determination takes effect at the start of the reporting period of the other entity that begins after the determination is made.
[Schedule 1, item 33, paragraph 22H(3)(b) of the Act]

- 1.114 To avoid doubt, a reporting nominee determination does not result in the reporting nominee becoming a reporting entity under the definition in the Act. However, a reporting nominee may still be a reporting entity in its own right under another provision of the Act. For example, the entity may become a reporting entity by meeting the criteria in subsection 7(2) of the Act, and would have reporting obligations in both its capacity as a reporting nominee and as a reporting entity.
[Schedule 1, item 33 Note 1 to subsection 22H(1) of the Act]
- 1.115 A reporting nominee determination does not result in the other entity ceasing to be a reporting entity. This clarifies that the other entities remain reporting entities for the purposes of the Act. The intention of these amendments is to permit an entity to report for a reporting entity, where that entity is in an appropriate position to do so; not change the scope of entities covered by the Act.
[Schedule 1, item 33, Note 2 to subsection 22H(1) of the Act]
- 1.116 A reporting nominee determination made by the Regulator is not a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003*.
[Schedule 1, item 33, subsection 22H(5) of the Act]

Application requirements

- 1.117 An entity (the applicant) may apply in writing, for the Regulator to determine that the applicant is a reporting nominee for another entity. The applicant must be a constitutionally covered entity (see sections 5 and 6 of the Act).
[Schedule 1, item 33, subsection 22M(1) of the Act]
- 1.118 The Regulator may, by notifiable instrument, approve the form or manner of a reporting nominee application, and, by legislative instrument, determine information that must be included in such an application.
[Schedule 1, item 33, subsections 22M(3) and (4) of the Act]
- 1.119 Reporting nominee applications must be given in the approved form and manner (if any), state the name of the applicant and the other entity for which the application is made, and include any information required to be included by legislative instrument.
[Schedule 1, item 33, paragraphs 22M(2)(a) to (c) and (e) of the Act]
- 1.120 The applicant may propose a time in the application when the determination is to take effect. That time must be either the start of the reporting period of the other entity in which the applicant gives the application, or the start of the reporting period of the other entity that immediately follows that reporting period.
[Schedule 1, item 33, subparagraphs 22M(2)(d)(i) and (ii) of the Act]
- 1.121 Reporting nominee applications must also be approved by a responsible member (defined in section 5 of the Act) of the applicant and state the name of

that responsible member.

[Schedule 1, item 33, paragraphs 22M(2)(f) and (g) of the Act]

- 1.122 The Regulator may, by written notice given to the applicant, require the applicant to give the Regulator further information in connection with the application. This ensures that all necessary information is available to the Regulator to make the determination.

[Schedule 1, item 33, subsection 22M(5) of the Act]

- 1.123 Failure of the applicant to comply with a notice to give further information may result in the Regulator refusing to consider the application, or refusing to take any action, or any further action, in relation to the application.

[Schedule 1, item 33, paragraphs 22M(6)(a) and (d) of the Act]

Revoking a reporting nominees status

- 1.124 The Regulator may revoke a reporting nominee determination by written notice given to the reporting nominee and the other entity to which the determination relates. The revocation may take effect on the day in the notice, which must be the start of the other entity's reporting period in which the notice is given or the start date of the next reporting entity.

[Schedule 1, item 33, subsections 22N(1) and (2) of the Act]

Ceasing a reporting nominee arrangement

- 1.125 Where the Regulator has determined that an entity is a reporting nominee for another entity, the reporting nominee or the other entity may, by written notice to the Regulator, inform the Regulator that the determination is to be revoked, if it has not already been revoked by the Regulator.

[Schedule 1, item 33, subsection 22N(3) of the act]

- 1.126 In that case, the determination is taken to be revoked at the time specified in the notice for the revocation to take effect. The notice must specify such a time, which must be either the start of the other entity's reporting period in which the notice is given to the Regulator, or the start of the reporting period following that reporting period.

[Schedule 1, item 33, subsections 22N(4) and (5) of the Act]

Reporting nominee obligations

Reporting obligations

- 1.127 The Bill sets out the reporting obligations of reporting nominees once the determination is in effect. Broadly, the obligations of a reporting nominee are the same obligations of a reporting entity, except the reporting nominee reports for another entity.

[Schedule 1, item 33, subsection 22J(1) of the Act]

- 1.128 A reporting nominee must give the Regulator a payment times report for the other entity for each reporting period of the other entity.
[Schedule 1, item 33, subsection 22J(2) of the Act]
- 1.129 The timing requirements in section 13 of the Act for reports given by reporting entities also apply to a report given by a reporting nominee for another entity. That is, the report must be given within three months after the end of the reporting period for the other entity and the reporting nominee will be able to apply in writing for extensions of time.
[Schedule 1, item 33, subsection 22J(3) of the Act]
- 1.130 The other entity is still a reporting entity and will still be required to give the Regulator a payment times report, in accordance with the requirements of Division 2 of Part 2 of the Act (as amended by the Bill), for each reporting period for the other entity. The Rules may set out modified payment times reporting content that is simplified (i.e. does not contain payment times data) but would note the reporting nominee arrangement to provide a holistic narrative on the register and improve transparency.
[Schedule 1, item 33, subsection 22J(3) and note to subsection 22J(3) of the Act]
- 1.131 The report content requirements in section 14 of the Act (as amended by the Bill) for reports given by reporting entities also apply to a report given by the reporting nominee for the other entity. For this purpose, the references to an ‘entity’ in subsection 14(5) is taken to be references to the reporting nominee.
[Schedule 1, item X, subsection 22B(4) of the Act]
- 1.132 However, Rules made for the purpose of section 14 of the Act (reporting requirements) may prescribe different circumstances. For example, the Rules may provide that reports given by the other entity are not required to include certain information that is required to be included in the reporting nominee’s report for the other entity.
[Schedule 1, item 33, subsection 22J(4) and note to subsection 22J(4) of the Act]
- 1.133 Failure of a reporting nominee to give the Regulator a payment times report when required to attracts a civil penalty of 60 penalty units. This penalty level is consistent with the level of civil penalty in section 15 of the Act for a reporting entity’s failure to report.
- 1.134 A reporting nominee is treated the same as a reporting entity in respect of reporting obligations under the Act. This penalty provision ensures that the consequences for contravention of those obligations are aligned. Failure of the other entity to give a report to the Regulator is covered under the civil penalty for reporting entities (section 15).
[Schedule 1, item 33, section 22K of the Act]
- 1.135 If a reporting nominee gives the Regulator a report that is false or misleading in a material particular, the reporting nominee is liable to a civil penalty of 350 penalty units. This amount of penalty is consistent with the level of civil

penalty in section 16 of the Act for a reporting entity that gives a false or misleading report.

[Schedule 1, item 33, subsection 22L(1) of the Act]

- 1.136 For the purposes of a contravention by a reporting nominee in giving a false or misleading report, the reference in paragraph 82(5)(a) of the Regulatory Powers Act that a pecuniary penalty ordered by a court for the contravention must not be more than five times the pecuniary penalty for the civil penalty provision, has effect as if it were a reference to 0.6 per cent of the total income for the person in the income year in which the contravention occurred. This modifies the maximum pecuniary penalty that a body corporate can be ordered to pay for such a contravention. This aligns with the modification to the Regulatory Powers Act made by subsection 16(2) of the Act in respect of contravention by a reporting entity in giving a false or misleading report.
- [Schedule 1, item 33, subsection 22L(2) of the Act]***

Record-keeping requirements

- 1.137 Record-keeping requirements for a reporting nominee are the same as the requirements for reporting entities. A reporting nominee is required to keep records of any information used in the preparation of a payment times report for another entity for at least seven years after the end of the reporting period in respect of the report.
- [Schedule 1, items 37, 38 and 39, Division 2 of Part 4 and subsection 29A(1) of the Act]***
- 1.138 Failure of a reporting nominee to comply with record keeping requirements attracts a civil penalty of 200 penalty units.
- [Schedule 1, item 39, subsection 29A(2) of the Act]***
- 1.139 For the purposes of a contravention of this civil penalty provision, the reference in paragraph 82(5)(a) of the Regulatory Powers Act that a pecuniary penalty ordered by a relevant court for the contravention must not be more than five times the pecuniary penalty specified for the civil penalty provision, has effect as if it were a reference to 0.2 per cent of the total income for the person for the income year in which the contravention occurred. This modifies the maximum pecuniary penalty that a body corporate can be ordered to pay for such a contravention. This penalty level and modification to the Regulatory Powers Act are consistent with subsections 29(2) and (3) of the Act for a reporting entity's failure to keep records.
- [Schedule 1, item 39, subsection 29A(3) of the Act]***

Consequential amendments to the Act to give effect to the reporting nominee framework

- 1.140 The Bill amends the existing provisions empowering the Regulator to require an entity to undertake a compliance audit so that the provision applies to entities that are reporting nominees.
- [Schedule 1, item 40, subsection 30(1) of the Act]***

1.141 The Bill also makes consequential amendments to the provisions concerning the treatment of partnerships, the treatment of unincorporated associations or bodies of persons and the treatment of trusts and superannuation funds and approved deposit funds that are trusts, so that those provisions apply to entities that are reporting nominees.

[Schedule 1, items 44 to 46, subsections 48(1), 49(1) and 50(1) of the Act]

Former reporting nominee obligations

1.142 Where a reporting nominee has failed to give the Regulator a payment times report for another entity, the requirement to give that report continues to apply even if the reporting nominee ceases to be a reporting nominee for the other entity at any time after the end of the reporting period.

[Schedule 1, item 51, subsection 55A(1) of the Act]

1.143 The following provisions in the Act continue to apply to an entity that has ceased to be a reporting nominee for another entity (i.e. a former reporting nominee), as if it were still a reporting nominee for that other entity:

- the civil penalty provision for failure to report (section 22K);
- the civil penalty provision for giving false or misleading reports (section 22L);
- access to payment times reports (Division 3 of Part 2);
- obligations of reporting entities (Division 3 of Part 4); and
- treatment of certain kinds of entities (Division 2 of Part 6).

[Schedule 1, item 51, subsection 55A(2) of the Act]

Payment Times Reports and changes to the register

Payment times reporting requirements

1.144 A reporting entity's reporting content requirements are consolidated within the Rules. Prior to the amendments, section 14 of the Act set out an entity's reporting requirements, detailing the content, approval, form, and manner for providing a report. The amendments instead provide the Regulator with rule-making powers in relation to reporting requirements.

[Schedule 1, items 11 and 29, sections 11 and 14 of the Act]

1.145 This will provide greater flexibility to ensure that the reporting content obligations can be modified to ensure they are effective and continue to be fit for purpose.

1.146 The Rules may require payment times to include the following:

- any information and documents, relating to an entity's payment terms, times or practices (including supply chain financing) in relation to small business suppliers, that are prescribed by the Rules;
- the information and documents relating to the timing of an entity's payments of small business invoices, that are prescribed by the Rules; and
- any other information or documents prescribed by the Rules.
[Schedule 1, item 29, subsection 14(1) of the Act]

1.147 The Rules will also give effect to the key reform of providing for consolidated reporting. The Bill provides that the Rules may also do any of the following:

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

[Schedule 1, item 29, subsections 14(2) and (4) of the Act]

1.148 The new Rule making powers prescribe that the Rules may require reports to include different or additional information and documents in certain circumstances. Potential circumstances that would warrant the inclusion of additional or different information and documents in a report include, but are not limited to where:

- a reporting entity is currently in administration, in a liquidation process, or in receivership;
- a reporting entity is subject to a deed of company arrangement;
- an application has been made by ASIC to have the entity wound up;
- a reporting entity has an agreed nominee reporting entity undertaking reporting obligations on its behalf; and
- the entity is a reporting nominee.

1.149 An entity with modified reporting obligations continues to be in the Scheme and their classification as a reporting entity does not change.

1.150 An entity must not inform the Regulator via its report that a circumstance prescribed by the rules applies to it, where that is not the case. Reporting such 'false or misleading' information attracts a civil penalty of 350 civil penalty units. This mirrors the existing civil penalty for providing the Regulator with false or misleading reports under section 16 of the Act.

1.151 Volunteering entities must also not provide the Regulator with false or misleading information regarding a circumstance prescribed by the Rules.
[Schedule 1, item 29, subsection 14(3) of the Act]

1.152 The requirement for reports to be signed by a responsible member of the entity is removed and replaced with the requirement that the report be approved in

writing by a responsible member of the entity. The name of that responsible member must be included in the report.

[Schedule 1, item 29, subsection 14(5) of the Act]

- 1.153 Reports must be given in an approved form and manner (if any). The Regulator may, by notifiable instrument, approve a form or manner in which a report must be provided.

[Schedule 1, item 29, subsections 14(6) and (7) of the Act]

- 1.154 Despite subsection 14(2) of the *Legislation Act 2003*, Rules relating to payment times requirements 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.

[Schedule 1, item 29, subsection 14(8) of the Act]

Extensions of time

- 1.155 The Bill will also include provisions reforming applications for extensions of time for providing payment times reports. An entity may apply in writing for an extension of time.

- 1.156 The Regulator may grant a short-term extension of up to 28 days for an entity to submit a payment times report, where the Regulator is satisfied that the entity requires additional time to submit a report.

- 1.157 The Regulator may grant a long-term extension of greater than 28 days for an entity to submit a payment times report, where the Regulator is satisfied that circumstances resulting in the need for further time were exceptional or outside the entity's control.

- 1.158 The Regulator must not allow an entity further time to give a payment times report unless the entity made the application for further time within the period of three months mentioned in subsection 13(1) of the Act.

Payment times reports register

- 1.159 The Register must contain a reporting entities and reporting nominees payment times reports that they have given to the Regulator. The Register can automatically publish payment times reports.

[Schedule 1, item 30, subsections 18(1) to (2) of the Act]

- 1.160 The Rules may prescribe that certain information, for example the contact information of individuals, must be removed by the Regulator before being published on the register. Where this is the case and the Regulator has arranged for reports to be automatically published on the register, the Regulator must ensure those arrangements result in the prescribed information being removed before publication of the reports occur.

[Schedule 1, item 30, subsections 18(3) and (4) of the Act]

- 1.161 A reporting entity or reporting nominee may provide the Regulator with a revised version of a payment times report previously given to the Regulator. The civil penalty provisions in section 16 and 22L of the Act apply where revised reports are false or misleading.
- 1.162 The revised 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 to the Regulator.
- 1.163 The Regulator may arrange for the automatic publication of revised versions of payment times reports on the Register.
[Schedule 1, item 30, subsections 19(1) to (3) of the Act]
- 1.164 The Regulator has the discretionary power to remove information in a payment times report from the register where the Regulator considers that making the information publicly available would be contrary to the public interest. When deciding to remove information in a payment times report from the Register, the Regulator must have regard to whether the information is personal information (within the meaning of the *Privacy Act 1988*), whether the information is commercial-in-confidence, and any other matters prescribed by the Rules.
[Schedule 1, item 30, subsections 20(1) and (2) of the Act]
- 1.165 Information is ‘commercial-in-confidence’ where the Regulator is satisfied that:
- further release of the information would cause competitive detriment to a constitutionally covered entity;
 - removing the information from the register is likely to be effective in removing the information from the public domain;
 - the information is not required to be disclosed under another Australian law; and
 - removing the information from the register is likely to be effective in preventing the information from being readily discoverable.
[Schedule 1, item 30, subsection 20(3) of the Act]
- 1.166 Where the Regulator is reasonably satisfied that a volunteering entity has failed to comply with the Act, the Regulator may decide that payment times reports given by the volunteering entity should not be made available for public inspection on the register, or should be removed from the register until the Regulator is satisfied that the entity has taken appropriate remedial action.
[Schedule 1, item 30, section 21 of the Act]
- 1.167 Section 22 of the Act is amended to ensure the Regulator may engage with and publish the details of any constitutionally covered entity the Regulator is reasonably satisfied has failed to comply with the Act, whether they are a confirmed reporting entity, a reporting nominee, or an entity that the Regulator

believes is a reporting entity but has not engaged with the Scheme.

[Schedule 1, item 31, subsection 22(1) of the Act]

- 1.168 The Bill will also provide the Regulator with the discretionary power to upload other information to the register that is relevant to the administration of the Act. This allows for a comprehensive chronology of a reporting entity's history with the scheme on the register and could include applications made under the Act (and the resulting decision), notification of reliance upon circumstances for modified reporting, notices of exit, and any other information the regulator believes it is in the public interest to include on the register.
- 1.169 The Regulator may also use this power to add certain classes of information on the register on an ongoing and automatic basis, such as where the Regulator determines that particular classes of information, for example initial entity information, notification of reliance upon circumstances for modified reporting, and notices of exit, should always be published.

Ministerial Direction - Slow Small Business Payers

- 1.170 The Bill inserts a new direction making power into the Act that empowers the Minister to make a written direction to a reporting entity that it is a slow small business payer, requiring the entity to take certain action.
[Schedule 1, item 32, Division 4 of Part 2 of the Act]
- 1.171 The amendments are not intended to address formal non-compliance with the Scheme by reporting entities, for which the Regulator has oversight. Rather, the Minister's direction making power is discretionary and provides the Government a means to highlight the payment practices of reporting entities that are slow small business payers, in order to advance the objects of the Act. The amendments leverage information reported under the Act and entities' existing environmental, social and governance frameworks to encourage slow small business payers to improve their payment terms, times and practices.
- 1.172 A reporting entity is a slow small business payer for a particular reporting cycle if the reporting entity was within the slowest 20 per cent of small business payers for that reporting cycle. 'Slowest 20 per cent of small business payers' has the meaning prescribed by the Rules.
[Schedule 1, item 32, subsections 22B(1) and (2) of the Act]
- 1.173 A period of six months starting on 1 January and a period of six months starting on 1 July are each a separate 'reporting cycle'.
[Schedule 1, item 21, definition of 'reporting cycle' in section 5 of the Act]
- 1.174 The Minister may give a reporting entity a 'slow small business payer direction', if the Minister is satisfied of any of the following circumstances:
- the entity was a slow small business payer in two consecutive reporting cycles;

- the entity was a slow small business payer in a reporting cycle, and did not comply with a requirement to give a payment times report in the preceding reporting cycle; or
- the entity was a slow small business payer in a reporting cycle, and did not comply with a requirement to give a payment times report in the following reporting cycle.

This ensures that an entity cannot avoid being a slow small business payer and receiving a direction by failing to give a report.

[Schedule 1, item 32, subsection 22A(1) of the Act]

1.175 A direction may only be given in the 12 month period following the end of the later reporting cycle in each of the above circumstances. For example, if an entity is a slow small business payer in reporting cycle A and fails to comply with a requirement to give a report in subsequent reporting cycle B, then the Minister is only permitted to give a direction in the 12 months following the end of reporting cycle B for that particular circumstance. However, if in the next reporting cycle C, the entity is once again a slow small business payer, then the Minister's time to give a direction continues for the 12 months after the end of reporting cycle C.

[Schedule 1, item 32, subsection 22A(5) of the Act]

1.176 Before the Minister decides to give a direction to an entity, the Minister is required to give the entity a written notice of the proposed decision and the Minister's reasons for the proposed decision, and invite the entity to make written submissions to the Regulator about the proposed decisions. If the entity chooses to make submissions, it must do so within 28 days beginning on the day the notice is given.

[Schedule 1, item 32, subsection 22A(2) of the Act]

1.177 Both a notice of proposed decision and a slow small business payer direction must be in writing. The notice and direction may be given to an entity by means of an electronic communication, in accordance with subsection 9(1) of the *Electronic Transactions Act 1999*.

[Schedule 1, item 32, paragraph 22A(4)(a) of the Act]

1.178 To avoid doubt, the amendments clarify that a slow small business direction is not a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003*.

[Schedule 1, item 32, subsection 22A(7) of the Act]

1.179 In considering whether to give an entity a direction, the Minister is required to have regard to:

- the entity's history of compliance or non-compliance with the Act;
- the entity's practices in relation to paying small business invoices;
- whether the slowness of the entity's payments has been because of circumstances beyond the entity's control;

- the likely costs and burden for the entity of complying with the direction, and whether that cost and burden is reasonable in the circumstances; and
- any written submissions made by the entity.
[Schedule 1, item 32, subsection 22A(3) of the Act]

1.180 The Minister cannot give a direction to a volunteering entity, because such an entity is only voluntarily subject to the Act.
[Schedule 1, item 32, subsection 22A(6) of the Act]

1.181 A slow small business payer direction may require the recipient entity to publish specified statements or information, or take reasonable steps to cause a constitutionally covered entity that the recipient controls to publish specified statements or information. The direction may include more than one such requirement.
[Schedule 1, item 32, paragraph 22A(4)(b) and subsection 22C(1) of the Act]

1.182 The direction may require the recipient to publish, or take reasonable steps to cause to be published, a statement that the recipient or the controlled entity is a slow small business payer, information on how to access payment times reports of the recipient or controlled entity, or both.
[Schedule 1, item 32, subsection 22C(2) of the Act]

1.183 The direction may require that such statements or information be published on the recipient or controlled entity's website, in documents relating to procurement processes (including requests for quotes and tender documents), in documents relating to the entity's environmental, social and governance policies or performance of the recipient or controlled entity, in invoices, in other kinds of commercial documents, or in any other way the Minister considers appropriate. The Minister may require the statements or information be made available by one or more of these means. For example, the Minister may require the entity be published on the recipient's website and in the recipient's requests for quotes.
[Schedule 1, item 32, subsection 22C(3) of the Act]

1.184 The direction may require the statements or information to be published in a specified manner, including by imposing requirements relating to the required prominence of the information or the presentation of the information in relation to other material.
[Schedule 1, item 32, subsection 22C(4) of the Act]

1.185 The Minister may give a written notice revoking the direction to the entity.
[Schedule 1, item 32, subsection 22D(2) of the Act]

1.186 The direction continues in effect until the earliest of the following:

- the day the entity gives the Regulator a payment times report with a 95 per cent payment time of 30 calendar days or less;

- the day specified in the direction that it ceases to be in effect, if specified;
- one year after the direction is given; or
- if the Minister revokes the direction, the time the Minister gives the entity the notice of revocation.

[Schedule 1, item 32, subsection 22D(1) of the Act]

1.187 A payment times report has a 95 per cent payment time of 30 calendar days or less in the circumstances prescribed by the Rules.

[Schedule 1, item 32, subsection 22D(3) of the Act]

1.188 Failure to comply with a direction attracts a civil penalty of 200 penalty units. For the purposes of such a contravention, the reference in paragraph 82(5)(a) of the Regulatory Powers Act that a pecuniary penalty ordered by a relevant court for the contravention must not be more than five times the pecuniary penalty specified for the civil penalty provision, has effect as if it were a reference to 0.2 per cent of the total income for the person for the income year in which the contravention occurred. This modifies the maximum pecuniary penalty that a body corporate can be ordered to pay for such a contravention.

1.189 This penalty amount reflects the seriousness of an entity's non-compliance with a direction. The effectiveness of the direction would be comprised if contravention of the direction did not have genuine consequences.

[Schedule 1, item 32, subsections 22E(1) and (2) of the Act]

1.190 However, an entity is not liable to a civil penalty if compliance with the direction (including compliance by a constitutionally covered entity controlled by the entity) would contravene any Australian law. The entity bears the evidential burden in relation to this.

[Schedule 1, item 32, subsections 22E(3) and (4) of the Act]

1.191 If the Minister gives a direction to an entity, the Minister has the further discretion to direct the Regulator, in writing, to publish a statement on the Register that the entity has been given a slow small business payer direction, and a description of the direction. The Regulator must comply with such a direction from the Minister.

[Schedule 1, item 32, subsections 22F(1) and (2) of the Act]

1.192 To avoid doubt, information published on the Register by the Regulator in compliance with the Minister's direction may remain on the Register even after the slow small business payer direction ceases to be in effect.

[Schedule 1, item 32, subsection 22F(3) of the Act]

1.193 The Minister may delegate its direction making powers to the Regulator. The Regulator as delegate is required to comply with any written directions of the Minister, in performing a delegated function or exercising a delegated power.

[Schedule 1, item 51, subsections 55B(1) and (2) of the Act]

- 1.194 The amendments provide the Minister certain protection against civil liability, for an act done or omitted to be done in good faith in the performance or purported performance of functions or exercise or purported exercise of powers under the Act. Specifically, no action for defamation, breach of confidence or infringement of copyright applies against the Minister for such acts or omissions. This is consistent with the protection afforded to the Commonwealth, the Regulator, delegates of the Regulator and APS employees in the Department who have been made available to assist the Regulator.
[Schedule 1, item 52, paragraph 57(1)(a) of the Act]
- 1.195 An entity may apply to the Administrative Appeals Tribunal for review of the Minister’s decision to give a slow small business payer direction. However, if the decision is made by the Regulator in accordance with a delegation, the decision is a ‘reviewable decision’ as set out in section 51 of the Act, which is subject to a separate process. In that case an entity may only apply to the Administrative Appeals Tribunal for review of the decision after it has been reconsidered in accordance with the Act.
[Schedule 1, items 48 and 49, subsections 54(1) and (2) of the Act]

Enforcing compliance with the Act

Information-gathering powers

- 1.196 The Bill inserts new information-gathering powers into the Act (which deal with compliance and enforcement). Under the amendments, the Regulator has the power to give a written notice to a person requiring them to give information or produce documents or things to the Regulator. Failure to comply with such a notice attracts a civil penalty.
[Schedule 1, item 41, subsection 30A(2), section 30B and Division 2A of the Act]
- 1.197 The amendments implement Recommendation 6.3 of the Review which concerns constraints on the effectiveness of the Regulator. One constraint identified was that while the Regulator has powers to ensure compliance (including powers to undertake a compliance audit or conduct on-site monitoring or investigation activities), it lacks powers more proportionate to the regulatory risk being managed. Accordingly, the Review recommended introducing information-gathering powers in the Act.
- 1.198 Such powers are intended to supplement the Regulator’s existing audit, monitoring and investigation powers in Divisions 2 and 3 of Part 4 of the Act (such as the power to search premises or the power to inspect and copy documents on the premises). For example, it provides the Regulator with the power to obtain information or documents without having to visit an entity’s premises.

- 1.199 These amendments are generally consistent with principles outlined in Chapter 9 of the Attorney-General’s Department Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers. Where the amendments deviate from those principles, justification is provided for such derogations.
- 1.200 It is not an intended consequence of these amendments to abrogate the privilege against self-incrimination.
- 1.201 A notice may only be given to a person where the Regulator has reasonable grounds to believe that the person has information or a document or thing that is relevant to the operation of the Act. This ensures the Regulator has proper justification for imposing the information notice requirement on a person.
[Schedule 1, item 41, subsection 30A(1) of the Act]
- 1.202 The scope of the information-gathering powers is not restricted to reporting entities under the Act or individuals in the employ or otherwise directly associated with those entities. For example, the Regulator may issue a notice to an entity it considers to be a reporting entity that has not met its obligations and current and past subsidiaries in a group structure where those subsidiaries are not themselves reporting entities.
- 1.203 The written notice must specify the name of the person subject to the notice, the manner and form for compliance and the date at which compliance is required.
[Schedule 1, item 41, subsection 30A(3) of the Act]
- 1.204 A notice may be hand delivered or sent by post or electronic communication to the person. This provides the Regulator with the flexibility to determine on a case-by-case basis the appropriate manner and form for giving the notice. Where the notice is given by means of an electronic communication, the requirements of subsection 9(1) of the *Electronic Transactions Act 1999* must be satisfied.
- 1.205 The Regulator has discretion to determine the period within which the person is required to comply a notice. However, that period must be at least 14 days after the notice is given to the person. The Regulator may extend the period for compliance, by written notice given to the person. An extension may also be given after the original period has expired.
[Schedule 1, item 41, paragraph 30A(3)(c) and subsection 30A(4) of the Act]
- 1.206 The Regulator also has discretion with respect to the manner and form in which a person is required to comply with the notice. For example, the Regulator may require some or all of the information or documents or things are to be given or produced in a physical or electronic format, or in accordance with particular information technology requirements.
- 1.207 The Regulator may by notice require a person to give information that may not exist in written form or otherwise in a record of information. For example, by requiring the person to give written statements or answers in response to questions in the notice. This clarifies that the notice to provide information

extends both to existing records and also to provide general information relevant to the operation of the Act.

[Schedule 1, item 41, paragraph 30A(3)(b) of the Act]

1.208 The Regulator may also withdraw a notice, by written notice given to the person.

[Schedule 1, item 41, subsection 30A(5) of the Act]

1.209 The Regulator may delegate its information-gathering powers, including giving a notice, extending the period of time for compliance with a notice and withdrawing a notice. In accordance with section 27 of the Act, the Regulator may only delegate these powers to an APS employee of the Department with the duties of an Executive Level 2, or an SES employee or acting SES employee in the Department.

1.210 Failure to comply with a notice attracts a civil penalty of 60 penalty units. The application of a civil penalty does not extinguish the obligation to comply with notice, even if the period for compliance has passed (see subsection 93(1) of the Regulatory Powers Act). Each day of non-compliance is itself a contravention of the provision and attracts further penalty, pursuant to subsection 93(2) of the Regulatory Powers Act. However, under subsection 85(1) of the Regulatory Powers Act, a relevant court (defined in section 5 of the Act) may make a single civil penalty order for multiple contraventions if they are based on the same facts or form, or are part of, a series of contraventions of the same or similar character. Such a penalty order must not exceed the sum of the maximum penalties that could be ordered if a separate penalty order was ordered for each contravention (see subsection 85(2) of the Regulatory Powers Act).

1.211 The amount of the penalty is proportionate and consistent with other civil penalty provisions in the Act, such as section 15 (60 penalty units for failure to report) and section 30 (60 penalty units for failing to comply with compliance audit notice requirements). The amount of the penalty reflects the serious consequences if the Regulator is unable to obtain information to support the operation of the Act. The Regulator can extend the period for the provision of information to ensure that additional time can be provided if needed by recipients of notices to allow them to comply.

[Schedule 1, item 41, subsection 30A(4) and section 30B of the Act]

1.212 A decision to issue a notice to produce is not subject to merits review. Consistent with the Administrative Review Council's 1999 publication *'What decisions should be subject to merit review?'*, a decision of a law enforcement nature, including decisions relating to investigations, should not be made subject to merits review as the review process could be used to delay or jeopardise the investigation.

Enforceable Undertakings

- 1.213 The Bill inserts into the Act a framework of accepting and enforcing undertakings relating to non-compliance with an obligation that would attract a civil penalty, via Part 6 of the Regulatory Powers Act.
[Schedule 1, item 42, subsection 34A(1) and section 34A of the Act]
- 1.214 The Regulator is the authorised person to exercise enforceable undertaking powers, and any authorised officers appointed under section 35 of the Act. The Regulator may accept any of the undertakings set out in subsection 114(1) of the Regulatory Powers Act. The Regulator may apply to a relevant court if it considers there has been a breach of an undertaking given under section 114 of the Regulatory Powers Act, which has not been withdrawn or cancelled. This ensures that there is a mechanism for the Regulator to monitor and respond to any breaches of undertakings by entities.
[Schedule 1, item 42, subsection 34A(2) of the Act]
- 1.215 The courts that can enforce such undertakings are the Federal Court, the Federal Circuit and the Family Court of Australia (Division 2) and a court of a State or Territory that has jurisdiction in relation to matters arising under the Act. Subsection 115(2) of the Regulatory Powers Act sets out what orders the court may make for a breach of an undertaking.
[Schedule 1, item 42, subsection 34A(3) of the Act]
- 1.216 Part 6 of the Regulatory Powers Act as it applies in relation to the civil penalty provisions of the Act extends to every external Territory.
[Schedule 1, item 42, subsection 34A(4) of the Act]

Application fees, Independent Review of the Act, and miscellaneous amendments

Application fees

- 1.217 The Bill inserts into the Act a discretionary power for the Regulator to charge and recover application fees on a cost-recovery basis, on behalf of the Commonwealth.
- 1.218 Such fees may be charged by the Regulator for dealing with discretionary applications that seek for the Regulator to determine that an entity is:
- an exempt reporting entity;
 - a subsidiary reporting entity; or
 - determine that an entity is a reporting nominee.
[Schedule 1, item 54, subsection 57C(1) of the Act]
- 1.219 The Bill will also include a provision providing for fees to be charged for applications for an extension of time to submit a payment times report.

1.220 The fees that may be charged in relation to any of these applications may be determined by the Regulator by notifiable instrument and must not exceed the reasonable costs of the Regulator to process an application so as not to amount to taxation.

[Schedule 1, item 54, subsections 57C(2) and (3) of the Act]

1.221 A fee charged under the Act is a debt due to the Regulator, and is recoverable in a court of competent jurisdiction.

[Schedule 1, item 54, subsection 57C(4) of the Act]

Independent review

1.222 The Bill is intended to include amendments that provide for an independent review of the operation of the Act to be undertaken at a time that is at least three years after the commencement of the Bill but not more than five years after the commencement of the Bill.

1.223 The person or persons conducting the review must give the Minister a written report of the review and the Minister must provide for a copy of the report to be tabled in each House of the Parliament within 15 sitting days after the report is given to the Minister.

1.224 The review must consider if:

- the operation of the Act is consistent with the objects of the Act;
- related government policies, including policies relating to electronic invoicing, have improved the payment terms and practices of reporting entities in relation to their small business suppliers;
- other measures such as mandating one or more maximum periods (the mandated maximum payment periods) for the payment of small business invoices by reporting entities would be more effective in improving those payment terms and practices; and
- other matters that are considered by the review to require examination.

1.225 The Bill removes the current review provisions from the Act. Those provisions are no longer operative as they relate only to the Review that initiated these amendments to the Act.

[Schedule 1, item 53, sections 57A and 57B of the Act]

Reviewable decisions

1.226 Section 51 of the Act sets out decisions made by the Regulator which are reviewable under the review process in Division 3 of Part 6.

1.227 The Bill inserts a new table in section 51 of the Act, which updates the provision references for existing reviewable decisions affected by the amendments and adds certain new decisions introduced by the amendments.

1.228 The following decisions are reviewable:

- A decision not to determine that an entity is a reporting entity (in respect of volunteering entities).
- A decision to revoke a determination that an entity is a reporting entity (in respect of volunteering entities).
- A decision not to determine that an entity is a subsidiary reporting entity.
- A decision to revoke a determination that an entity is a subsidiary reporting entity.
- A decision to determine that a reporting entity ceases to be a reporting entity.
- A decision not to determine that an entity is a reporting nominee for another entity.
- A decision to revoke a determination that an entity is a reporting nominee for another entity.
- A decision not to determine that an entity is an exempt reporting entity.
- A decision to revoke a determination that an entity is an exempt reporting entity.
- A decision to give a slow small business payer direction, if the decision was made by the Regulator in accordance with a delegation.
- A decision not to allow further time to give a payment times report.
- A decision to publish the identity of an entity or details of non-compliance.

[Schedule 1, item 47, section 51 of the Act]

Use of protected information

1.229 Section 42 of the Act allows for an entrusted person under the Act to disclose protected information to an enforcement body for the purpose of enforcement related activities. The Bill amends section 42 of the Act to provide for additional instances where the Regulator may disclose protected information.

1.230 The Regulator may disclose protected information to other Government Departments/agencies to assist with the regulatory activities of those agencies.

1.231 If an auditor has been appointed and approved by the Regulator under section 30 of the Act, the Regulator may disclose protected information to the auditor where the Regulator believes that protected information will assist the auditor in conducting a compliance audit under section 30 of the Act.

1.232 Section 39 of the Act provides for disclosure of protected information in performing functions or duties or exercising powers under the Act. This

includes the research and analysis function of the Regulator inserted by these amendments. For certainty, the Bill specifically provides for disclosure of protected information in undertaking research, or publishing analysis, on the payment terms, times and practices of reporting entities for the purpose of informing the Commonwealth.

[Schedule 1, item 43, section 40A of the Act]

Updating delegation of functions

- 1.233 It is intended that the Bill will include amendments to update the delegation of Regulator functions and powers to take into account the new and revised functions of the Regulator and revisions to the exiting delegations to suitable APS staff to enable more efficient administration of the Act.

Consequential amendments

- 1.234 Consequential amendments are made to sections 4 (simplified outline of the Act), 11 (simplified outline of Part 2), 23 (simplified outline of Part 3) and 28 (simplified outline of Part 4) of the Act to reflect other amendments made by the Bill.

[Schedule 1, items 4, 23, 34, and 36, sections 4, 11, 23 and 28 of the Act]

- 1.235 Similarly, the amendments insert new simplified outline provisions for Parts of the Act introduced by the Bill.

[Schedule 1, items 25 and 33, sections 10A and 22G of the Act]

Commencement, application, and transitional provisions

Commencement

- 1.236 Schedule 1 to the Bill commences the day after Royal Assent.

Transitional provisions

- 1.237 The Bill will include transitional provisions which provide that reporting-related amendments in the Bill take effect for reporting periods commencing on or after a fixed transition date of 1 July 2024. Reports with a reporting period start date that occurs on or after this date must be provided under consolidated structures and given in accordance with the revised requirements that apply under the Bill.

- 1.238 However, an entity with a reporting period start date that is within three months after the transition date of 1 July 2024 automatically receives an extension to give that report to a date 12 months from the transition date (ie to 1 July 2025). This additional period beyond the usual three month deadline for reporting after the end of the reporting period provides affected entities will further time on a transitional basis only to consider the new reporting arrangements and prepare their reports.
- 1.239 Entities that no longer satisfy the definition of reporting entities as a result of the amendments in the Bill cease to have reporting obligations under the scheme once the transitional arrangements end. This cessation of reporting obligations has effect from the beginning of the reporting period of the exiting entity with a start date on or after the transition date of 1 July 2024.