2019‑2020

The Parliament of the

Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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| **EXPOSURE DRAFT (18/02/2020)** |

Payment Times Reporting Bill 2020

No. , 2020

(Employment, Skills, Small and Family Business)

A Bill for an Act to provide for certain entities to report payment terms and practices, and for related purposes

Contents

Part 1—Preliminary 1

1 Short title 1

2 Commencement 2

3 Simplified outline of this Act 2

4 Definitions 3

5 Meaning of *constitutionally covered entity* 6

6 Meaning of *reporting entity* 7

7 Meaning of *reporting period* 8

8 Act binds the Crown 8

9 Extension to external Territories 9

Part 2—Reporting payment times 10

Division 1—Introduction 10

10 Simplified outline of this Part 10

Division 2—Reporting payment times 11

11 Reporting entities must report payment times 11

12 When report must be given 11

13 Reporting requirements 11

14 Civil penalty provision for failure to report 12

15 Civil penalty provision for false or misleading reports 12

Division 3—Access to payment times reports 14

16 Payment Times Reports Register 14

17 Registration of payment times reports 14

18 Registration of revised payment times reports 14

19 Publication of information about failure to comply with Act 14

Part 3—Payment Times Reporting Regulator 16

20 Simplified outline of this Part 16

21 Payment Times Reporting Regulator 16

22 Functions of the Regulator 16

23 Powers of the Regulator 17

24 Staff 17

25 Consultants 17

26 Delegation by the Regulator 17

Part 4—Compliance and enforcement 19

Division 1—Introduction 19

27 Simplified outline of this Part 19

Division 2—Obligations of reporting entities 20

28 Record‑keeping requirements 20

29 Notification requirements for reporting entities 20

Division 3—Audits 22

30 Compliance audits 22

Division 4—Regulatory powers 24

31 Monitoring powers 24

32 Investigation powers 25

33 Civil penalty provisions 26

34 Infringement notices 28

35 Appointment of authorised officers 29

36 Appointment of infringement officers 29

Division 5—Delayed compliance and enforcement powers 30

37 Delayed compliance and enforcement powers 30

Part 5—Miscellaneous 31

Division 1—Introduction 31

38 Simplified outline of this Part 31

Division 2—Treatment of certain kinds of entities 32

39 Treatment of partnerships 32

40 Treatment of unincorporated associations or bodies of persons 32

41 Treatment of trusts and superannuation funds and approved deposit funds that are trusts 33

Division 3—Reviewable decisions 35

42 Reconsideration and review of decisions 35

43 Application for reconsideration of reviewable decision 35

44 Reconsideration of reviewable decision 36

45 Review by the Administrative Appeals Tribunal 37

Division 4—Other matters 38

46 Former reporting entities 38

47 Annual report 38

48 Rules 38

A Bill for an Act to provide for certain entities to report payment terms and practices, and for related purposes

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act is the *Payment Times Reporting Act 2020*.

2 Commencement

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

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this Act | As follows:  (a) if this Act receives the Royal Assent before 1 January 2021—1 January 2021;  (b) if this Act receives the Royal Assent on or after 1 January 2021—the first 1 January or 1 July to occur after the day this Act receives the Royal Assent. |  |

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

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

3 Simplified outline of this Act

This Act requires certain entities that carry on business in Australia to report their payment terms and practices in relation to their small business suppliers. Other entities may elect to report voluntarily.

A reporting entity must give the Payment Times Reporting Regulator a report for each period of 6 months. The Regulator keeps the reports on a publicly available register, known as the Payment Times Reports Register.

The Regulator is to be an SES employee in the Department. The functions of the Regulator include monitoring and enforcing compliance with this Act.

4 Definitions

In this Act:

***assessable income***, for an income year for an entity:

(a) has the same meaning as in the *Income Tax Assessment Act 1997*; or

(b) if income tax is not payable by the entity under that Act—means the assessable income that would apply if income tax were payable by the entity under that Act.

***authorised officer*** means a person appointed as an authorised officer under subsection 35(1).

***carries on business in a Territory***: an entity carries on business in a Territory if the entity:

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

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

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

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

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

***civil penalty provision*** has the same meaning as in the Regulatory Powers Act.

***constitutional corporation*** means a corporation to which paragraph 51(xx) of the Constitution applies.

***constitutionally covered entity*** has the meaning given by section 5.

***controlling corporation*** means an entity that:

(a) is a body corporate incorporated in Australia; and

(b) is not a subsidiary of another body corporate that is incorporated in Australia.

***enforcement day*** has the meaning given by subsection 37(2).

***engage in conduct*** means:

(a) do an act; or

(b) omit to perform an act.

***entity*** has the same meaning as in the *Income Tax Assessment Act 1997*.

***Federal Circuit Court*** means the Federal Circuit Court of Australia.

***Federal Court*** means the Federal Court of Australia.

***foreign entity*** has the same meaning as in the *Income Tax Assessment Act 1997*.

***income tax*** has the same meaning as in the *Income Tax Assessment Act 1997*.

***income year*** for an entity:

(a) has the same meaning as in the *Income Tax Assessment Act 1997*; or

(b) if income tax is not payable by the entity under that Act—means:

(i) a financial year; or

(ii) if the rules prescribe a period of 12 months—the prescribed period.

***internal decision reviewer*** has the meaning given by subsection 44(1).

***issuing officer*** means:

(a) a magistrate; or

(b) a Judge of the Federal Court or the Federal Circuit Court.

***member***: a subsidiary of the controlling corporation is a ***member*** of the controlling corporation’s group, unless:

(a) the subsidiary is also a subsidiary of another body corporate because the other body corporate meets the requirement in subparagraph 46(a)(i) or (ii) of the *Corporations Act 2001* in relation to the subsidiary; and

(b) the other body corporate is not a member of the group (including by reason of a previous operation of paragraph (a) of this definition).

***payment times report*** means a report prepared for the purposes of Division 2 of Part 2 (reporting payment times).

***principal governing body***, of an entity, means:

(a) the body, or group of members of the entity, with primary responsibility for the governance of the entity; or

(b) if the entity is of a kind prescribed by the rules—a prescribed body within the entity, or a prescribed member or members of the entity.

Example: Examples of principal governing bodies are as follows:

(a) for a company—the company’s board of directors;

(b) for a superannuation fund—the fund’s board of trustees.

***reconsideration decision*** means a decision made under subsection 44(2).

***Regulator*** has the meaning given by subsection 21(3).

***Regulatory Powers Act*** means the *Regulatory Powers (Standard Provisions) Act 2014*.

***relevant court*** means:

(a) the Federal Court; or

(b) the Federal Circuit Court; or

(c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

***reporting entity*** has the meaning given by section 6.

Note: See also section 46 (former reporting entities).

***reporting period*** has the meaning given by section 7.

***responsible member***, of an entity, means:

(a) an individual member of the entity’s principal governing body who is authorised to sign payment times reports; or

(b) if the entity is a trust administered by a sole trustee—that trustee; or

(c) if the entity is a corporation sole—the individual constituting the corporation; or

(d) if the entity is under administration within the meaning of the *Corporations Act 2001*—the administrator; or

(e) if the entity is of a kind prescribed by the rules—a prescribed member of the entity.

***rules*** means rules made under section 48.

***Secretary*** means the Secretary of the Department.

***small business supplier***, in relation to an entity, means another entity prescribed by the rules that supplies goods or services to the first‑mentioned entity.

***subsidiary*** has the same meaning as in the *Corporations Act 2001*.

5 Meaning of *constitutionally covered entity*

Each of the following is a ***constitutionally covered entity***:

(a) a constitutional corporation;

(b)a foreign entity;

(c) an entity, other than a body politic, that carries on business in a Territory;

(d) a body corporate that is incorporated in a Territory;

(e) a body corporate that is taken to be registered in a Territory under section 119A of the *Corporations Act 2001*;

(f) a corporate Commonwealth entity, or a Commonwealth company, within the meaning of the *Public Governance, Performance and Accountability Act 2013*.

6 Meaning of *reporting entity*

Becoming a **reporting entity**

(1) A constitutionally covered entity becomes a ***reporting entity*** at the start of an income year (the ***relevant income year***) for the entity, if:

(a) the entity carries on business in Australia, and either of the following apply:

(i) the assessable income for the entity for the most recent income year for the entity was at least $100 million;

(ii) if the entity is a controlling corporation or a member of a controlling corporation’s group—the total assessable income for all members of the controlling corporation’s group for the most recent income year for the controlling corporation was at least $100 million; or

(b) before the start of the relevant income year, the entity gives the Regulator notice in writing that the entity elects to become a reporting entity at the start of that income year.

Ceasing to be a **reporting entity**

(2) A reporting entity continues to be a ***reporting entity*** until the Regulator determines, in writing, that the entity has ceased to be a reporting entity.

Note: A decision not to determine that the reporting entity ceases to be a reporting entity is reviewable: see section 42.

Application for determination

(3) A reporting entity may apply in writing for a determination under subsection (2).

(4) The application must include any information, and be accompanied by any documents, prescribed by the rules.

(5) After considering the application, the Regulator must make the determination if:

(a) the Regulator is satisfied:

(i) that the assessable income for the entity for each of the 2 most recent income years for the entity was less than $100 million; and

(ii) if the entity is a controlling corporation or a member of a controlling corporation’s group—that the total assessable income for all members of the controlling corporation’s group for each of the 2 most recent income years for the controlling corporation was less than $100 million; or

(b) the Regulator is satisfied that the entity is a reporting entity only because of an election under paragraph (1)(b).

When determination has effect

(6) The determination has effect immediately before the start of the income year for the entity in which it is made.

Notice of decision

(7) The Regulator must give the entity written notice of the Regulator’s decision on whether to make a determination under subsection (2).

7 Meaning of *reporting period*

Each of the following is a ***reporting period*** for a reporting entity:

(a) the first 6 months of each income year for the entity in which the entity is a reporting entity;

(b) the remainder of each such income year.

8 Act binds the Crown

This Act binds the Crown in each of its capacities.

9 Extension to external Territories

This Act extends to every external Territory.

Part 2—Reporting payment times

Division 1—Introduction

10 Simplified outline of this Part

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

A payment times report must comply with a number of requirements relating to its preparation, approval and content.

Civil penalties apply to certain reporting entities that fail to report, and to reporting entities that give the Regulator a false or misleading report.

The Regulator must register payment times reports on a publicly available register, known as the Payment Times Reports Register. A reporting entity may request the Regulator to register a revised payment times report.

If the Regulator is satisfied that a reporting entity has failed to comply with this Act, the Regulator may publish the identity of the entity, or details of the entity’s non‑compliance, on the register.

Division 2—Reporting payment times

11 Reporting entities must report payment times

A reporting entity must give the Regulator a payment times report for each reporting period for the entity.

12 When report must be given

Timeframe for reporting

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

Extension of time

(2) However, the entity may apply in writing to the Regulator for further time to give the report.

(3) The application must include any information prescribed by the rules.

(4) The Regulator may, by written notice to the entity, allow the entity such further time to give the report as is specified in the notice.

Note: A decision not to allow further time is reviewable: see section 42.

13 Reporting requirements

Content requirements

(1) The report must:

(a) specify the reporting period to which the report relates; and

(b) include information prescribed by the rules relating to the entity’s payment terms and practices during the reporting period in relation to its small business suppliers; and

(c) include details of the principal governing body of the entity; and

(d) if the entity is a member of a controlling corporation’s group—identify the controlling corporation; and

(e) include any other information, and be accompanied by any documents, prescribed by the rules.

Approval requirements

(2) The report must be approved by the principal governing body of the entity and be signed by a responsible member of the entity.

Note: A payment times report may be signed electronically: see section 10 of the *Electronic Transactions Act 1999*.

14 Civil penalty provision for failure to report

An entity is liable to a civil penalty if:

(a) the entity is a reporting entity, other than because of paragraph 6(1)(b) (which deals with entities that elect to be reporting entities); and

(b) the entity is required to give the Regulator a payment times report in accordance with this Division; and

(c) the entity fails to comply with the requirement.

Civil penalty: 60 penalty units.

15 Civil penalty provision for false or misleading reports

(1) A reporting entity is liable to a civil penalty if:

(a) the entity gives the Regulator a payment times report; and

(b) the report is false or misleading in a material particular.

Civil penalty: 350 penalty units.

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

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

(3) Subsection (1) does not apply to an entity that gives the Regulator a payment times report if the report is accompanied by a written statement signed by a responsible member of the entity:

(a) stating that the report is, to the knowledge of the member, false or misleading in a material particular; and

(b) setting out, or referring to, the material particular in which the report is, to the knowledge of the member, false or misleading.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (3) (see section 96 of the Regulatory Powers Act).

Note 2: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

Division 3—Access to payment times reports

16 Payment Times Reports Register

(1) The Regulator must maintain a register of payment times reports, to be known as the Payment Times Reports Register.

(2) The register must be made available for public inspection, without charge, on the internet.

17 Registration of payment times reports

The Regulator must register a payment times report given to the Regulator in accordance with Division 2 (reporting payment times).

18 Registration of revised payment times reports

(1) A reporting entity may, by written notice to the Regulator accompanied by a revised version of a registered payment times report given by the entity, request the Regulator to register the revised version.

Note: See section 15 in relation to false or misleading reports.

(2) The revised version of the payment times report must indicate the date of the revision and include a description of the changes made to the most recently registered version of the report.

(3) The Regulator must register the revised version of the payment times report, if the revised version complies with the requirements set out in section 13 (reporting requirements).

19 Publication of information about failure to comply with Act

(1) If the Regulator is reasonably satisfied that a reporting entity has failed to comply with this Act, the Regulator may publish the identity of the entity, or details of the non‑compliance:

(a) on the Payment Times Reports Register; or

(b) in any other way the Regulator considers appropriate.

Note 1: The Regulator must not publish information under this subsection if the non‑compliance occurred before the enforcement day: see subsection 37(3).

Note 2: A decision to publish the identity of an entity or details of non‑compliance is reviewable: see section 42.

(2) Before the Regulator decides to publish the identity of the entity or details of the non‑compliance under subsection (1), the Regulator must:

(a) give the entity notice in writing of the proposed decision and the reasons for the proposed decision; and

(b) invite the entity to make written submissions to the Regulator about the proposed decision within the period of 28 days beginning on the day the notice is given; and

(c) have regard to any written submissions made by the entity within that period.

Part 3—Payment Times Reporting Regulator

20 Simplified outline of this Part

This Part requires the Secretary to designate a position of Payment Times Reporting Regulator in the Department. The Regulator is to be an SES employee.

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

The staff of the Regulator are to be certain employees of the Department. The Secretary may, on behalf of the Commonwealth, engage consultants to assist the Regulator.

The Regulator may delegate certain functions or powers.

21 Payment Times Reporting Regulator

(1) The Secretary must, by writing, designate a position in the Department as the position of Payment Times Reporting Regulator.

(2) That position can only be occupied by an SES employee.

(3) The ***Regulator*** is the SES employee who occupies, or the acting SES employee who is acting in, that position.

(4) An instrument made under subsection (1) is not a legislative instrument.

22 Functions of the Regulator

The Regulator has the following functions:

(a) to administer this Act;

(b) the functions conferred on the Regulator by this Act;

(c) to monitor and enforce compliance with this Act;

(d) any other function prescribed by the rules;

(e) any other function conferred on the Regulator by any other law of the Commonwealth;

(f) to advise the Minister about matters relating to any of the functions mentioned in paragraphs (a) to (e);

(g) to do anything incidental or conducive to the performance of any of the preceding functions.

23 Powers of the Regulator

The Regulator has power to do all things necessary or convenient to be done for, or in connection with, the performance of the Regulator’s functions.

24 Staff

The staff necessary to assist the Regulator are to be persons engaged under the *Public Service Act 1999* who are:

(a) employed in the Department; and

(b) made available for the purpose by the Secretary.

25 Consultants

The Secretary may, on behalf of the Commonwealth, engage consultants or independent contractors to assist in the performance of the Regulator’s functions.

26 Delegation by the Regulator

(1) The Regulator may, in writing, delegate all or any of the Regulator’s functions or powers under this Act or the rules to:

(a) an SES employee, or acting SES employee, in the Department; or

(b) a person who holds, or is acting in, an Executive Level 2, or equivalent, position in the Department.

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

(2) However, the Regulator must not delegate the Regulator’s functions or powers under section 35 (appointment of authorised officers) or section 36 (appointment of infringement officers).

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

Part 4—Compliance and enforcement

Division 1—Introduction

27 Simplified outline of this Part

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

A reporting entity is required to keep records of information used to prepare a payment times report for 7 years. A reporting entity is also required to notify the Regulator if certain events occur, including if the entity’s business name or applicable accounting period changes, or the entity becomes insolvent.

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

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

The application of compliance and enforcement powers under this Act is delayed for 18 months.

Division 2—Obligations of reporting entities

28 Record‑keeping requirements

Entity must keep records

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

Civil penalty: 200 penalty units.

(2) For the purposes of subsection (1), the reference in paragraph 82(5)(a) of the Regulatory Powers Act to 5 times the pecuniary penalty specified for the civil penalty provision has effect as if it were a reference to 0.2% of the assessable income for the person for the income year in which the contravention occurred.

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

29 Notification requirements for reporting entities

(1) A reporting entity must notify the Regulator in writing if any of the following events occur:

(a) the entity is notified that a business name, or a different business name, has become registered to the entity on the Business Names Register established and maintained under section 22 of the *Business Names Registration Act 2011*;

(b) the entity’s applicable accounting period changes under section 18 or 18A of the *Income Tax Assessment Act 1936*;

(c) any of the following:

(i) in the case of a natural person—the entity becomes an insolvent under administration;

(ii) in the case of a body corporate—the entity becomes a Chapter 5 body corporate (within the meaning of the *Corporations Act 2001*);

(iii) in the case of a partnership—a creditor’s petition or a debtor’s petition is presented against the entity under Division 2 or 3 of Part IV of the *Bankruptcy Act 1966*.

(2) The notice must:

(a) be given within 28 days after the occurrence; and

(b) include any information prescribed by the rules.

Civil penalty: 60 penalty units.

Division 3—Audits

30 Compliance audits

(1) This section applies if the Regulator suspects that a reporting entity has contravened a provision of this Act.

(2) The Regulator may, by written notice given to the entity, require the entity:

(a) to appoint as an auditor:

(i) a person nominated by the entity and approved, in writing, by the Regulator; or

(ii) if the Regulator does not approve a person nominated by the entity—another person approved, in writing, by the Regulator; and

(b) to arrange for the auditor to carry out an audit of whichever of the following is specified in the notice:

(i) the entity’s compliance with this Act;

(ii) one or more specified aspects of the entity’s compliance with this Act; and

(c) to give the Regulator a written report setting out the results of the audit within:

(i) the period specified in the notice; or

(ii) if the Regulator allows a longer period—that longer period.

Note: The Regulator must not give notice under this subsection before the enforcement day: see subsection 37(4).

(3) The notice must specify:

(a) requirements relating to the qualifications and independence of the auditor to be appointed under paragraph (2)(a); and

(b) the matters to be covered by the audit; and

(c) the form and content of the report.

Civil penalties

(4) The entity must comply with the notice.

Civil penalty: 60 penalty units.

(5) The entity must provide the auditor, and any persons assisting the auditor, with all reasonable facilities and assistance necessary for the effective exercise of the auditor’s duties under this section.

Civil penalty: 200 penalty units.

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

Note: This subsection modifies the maximum pecuniary penalty that a body corporate can be ordered to pay for a contravention of subsection (5).

Auditor’s fees and expenses

(7) The reasonable fees and expenses of the auditor for preparing the audit report are payable by the entity.

Division 4—Regulatory powers

31 Monitoring powers

Provisions subject to monitoring

(1) A provision is subject to monitoring under Part 2 of the Regulatory Powers Act if it is:

(a) a provision of this Act; or

(b) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note 1: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether this Act has been complied with. It includes powers of entry and inspection.

Note 2: The provisions mentioned in this subsection are not subject to monitoring under Part 2 of the Regulatory Powers Act before the enforcement day: see subsection 37(5) of this Act.

Information subject to monitoring

(2) Information given in compliance or purported compliance with a provision of this Act is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note 1: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

Note 2: The information mentioned in this subsection is not subject to monitoring under Part 2 of the Regulatory Powers Act before the enforcement day: see subsection 37(5) of this Act.

Related provisions, authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court

(3) For the purposes of Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2):

(a) there are no related provisions; and

(b) the Regulator and each authorised officer is an authorised applicant; and

(c) the Regulator and each authorised officer is an authorised person; and

(d) an issuing officer (as defined in section 4 of this Act) is an issuing officer; and

(e) the Regulator is the relevant chief executive; and

(f) each relevant court (as defined in section 4 of this Act) is a relevant court.

Person assisting

(4) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) or information mentioned in subsection (2).

Extension to external Territories etc.

(5) Part 2 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2), extends to every external Territory.

32 Investigation powers

Provisions subject to investigation

(1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:

(a) a civil penalty provision of this Act; or

(b) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note 1: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

Note 2: The provisions mentioned in this subsection are not subject to investigation under Part 3 of the Regulatory Powers Act before the enforcement day: see subsection 37(6) of this Act.

Related provisions, authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court

(2) For the purposes of Part 3 of the Regulatory Powers Act, as it applies in relation to evidential material that relates to a provision mentioned in subsection (1):

(a) there are no related provisions; and

(b) the Regulator and each authorised officer is an authorisedapplicant; and

(c) the Regulator and each authorised officer is an authorised person; and

(d) an issuing officer (as defined in section 4 of this Act) is an issuing officer; and

(e) the Regulator is the relevant chief executive; and

(f) each relevant court (as defined in section 4 of this Act) is a relevant court.

Person assisting

(3) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).

Extension to external Territories etc.

(4) Part 3 of the Regulatory Powers Act, as it applies in relation to a provisionmentioned in subsection (1), extends to every external Territory.

33 Civil penalty provisions

Enforceable civil penalty provisions

(1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note 1: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Note 2: Each civil penalty provision of this Act does not apply in relation to conduct engaged in before the enforcement day: see subsection 37(1) of this Act.

Authorised applicant

(2) For the purposes of Part 4 of the Regulatory Powers Act, the Regulator is an authorised applicant in relation to the civil penalty provisions of this Act.

Relevant court

(3) For the purposes of Part 4 of the Regulatory Powers Act, each relevant court (as defined in section 4 of this Act) is a relevant court in relation to the civil penalty provisions of this Act.

Liability of Crown

(4) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, does not make the Crown in right of the Commonwealth liable to a pecuniary penalty.

Mistake of fact—bodies corporate

(5) A body corporate can only rely on section 95 of the Regulatory Powers Act (mistake of fact) in respect of conduct that would, apart from this section, constitute a contravention on its part of a civil penalty provision of this Act if:

(a) the employee, agent or officer of the body corporate who carried out the conduct was under a mistaken but reasonable belief about facts that, had they existed, would have meant that the conduct would not have contravened the civil penalty provision; and

(b) the body corporate proves that it exercised due diligence to prevent the conduct.

(6) A failure to exercise due diligence may be evidenced by the fact that the prohibited conduct was substantially attributable to:

(a) inadequate corporate management, control or supervision of the conduct of one or more of its employees, agents or officers; or

(b) failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate.

Extension to external Territories etc.

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

34 Infringement notices

Provisions subject to an infringement notice

(1) A civil penalty provision of this Act is subject to an infringement notice under Part 5 of the Regulatory Powers Act.

Note 1: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

Note 2: Each civil penalty provision of this Act does not apply in relation to conduct engaged in before the enforcement day: see subsection 37(1) of this Act.

Infringement officer

(2) For the purposes of Part 5 of the Regulatory Powers Act, each of the following persons is an infringement officer in relation to the provisions mentioned in subsection (1):

(a) the Regulator;

(b) a person appointed as an infringement officer under subsection 36(1).

Relevant chief executive

(3) For the purposes of Part 5 of the Regulatory Powers Act, the Regulator is the relevant chief executive in relation to the provisions mentioned in subsection (1).

Extension to external Territories etc.

(4) Part 5 of the Regulatory Powers Act, as it applies in relation tothe provisions mentioned in subsection (1), extends to every external Territory.

35 Appointment of authorised officers

(1) The Regulator may, in writing, appoint an APS employee who holds or performs the duties of an Executive Level 1 position, or an equivalent or higher position, as an authorised officer for the purposes of this Act.

(2) The Regulator must not appoint a person as an authorised officer unless the Regulator is satisfied that the person has the knowledge or experience necessary to properly exercise the powers of an authorised officer.

(3) An authorised officer must, in exercising powers as such, comply with any directions of the Regulator.

(4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

36 Appointment of infringement officers

(1) The Regulator may, in writing, appoint an APS employee who holds or performs the duties of an Executive Level 2 position, or an equivalent or higher position, as an infringement officer for the purposes of this Act.

(2) The Regulator must not appoint a person as an infringement officer unless the Regulator is satisfied that the person has the knowledge or experience necessary to properly exercise the powers of an infringement officer.

(3) An infringement officer must, in exercising powers as such, comply with any directions of the Regulator.

(4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

Division 5—Delayed compliance and enforcement powers

37 Delayed compliance and enforcement powers

Application of civil penalty provisions

(1) Each civil penalty provision of this Act does not apply in relation to conduct engaged in before the enforcement day.

(2) The ***enforcement day*** is the day occurring 18 months after the commencement of this section.

Publishing information regarding non‑compliance

(3) The Regulator must not publish information in relation to a reporting entity under subsection 19(1) because of a failure by the entity before the enforcement day to comply with this Act.

Audit powers

(4) The Regulator must not give a reporting entity a notice under subsection 30(2) (requiring the entity to arrange an audit) before the enforcement day.

Monitoring powers

(5) The provisions and information mentioned in subsections 31(1) and (2) are not subject to monitoring under Part 2 of the Regulatory Powers Act before the enforcement day.

Investigation powers

(6) The provisions mentioned in subsection 32(1) are not subject to investigation under Part 3 of the Regulatory Powers Act before the enforcement day.

Part 5—Miscellaneous

Division 1—Introduction

38 Simplified outline of this Part

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

This Part also provides for obligations and conduct of entities that do not have legal personality to be attributed to legal persons.

Note: See section 97 of the Regulatory Powers Act in relation to civil penalty provisions contravened by employees, agents or officers of bodies corporate.

Division 2—Treatment of certain kinds of entities

39 Treatment of partnerships

(1) This Act applies to a reporting entity that is a partnership with the changes set out in this section.

(2) An obligation that would otherwise be imposed on the partnership by this Act is imposed on each partner instead, but may be discharged by any of the partners.

(3) A civil penalty provision of this Act that would otherwise have been contravened by the partnership is taken to have been contravened by each partner in the partnership, at the time the provision was contravened, who:

(a) did the relevant act or made the relevant omission; or

(b) aided, abetted, counselled or procured the relevant act or omission; or

(c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).

(4) For the purposes of this Act, a change in the composition of a partnership does not affect the continuity of the partnership.

40 Treatment of unincorporated associations or bodies of persons

(1) This Act applies to a reporting entity that is an unincorporated association or body of persons with the changes set out in this section.

(2) An obligation that would otherwise be imposed on the association or body of persons by this Act is imposed on each member of the committee of management of the association or body instead, but may be discharged by any of those members.

(3) A civil penalty provision of this Act that would otherwise have been contravened by the unincorporated association or body of persons is taken to have been contravened by each member of the committee of management of the association or body, at the time the provision was contravened, who:

(a) did the relevant act or made the relevant omission; or

(b) aided, abetted, counselled or procured the relevant act or omission; or

(c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the member).

41 Treatment of trusts and superannuation funds and approved deposit funds that are trusts

(1) This Act applies with the changes set out in this section to each of the following entities (the ***relevant entity***) that is a reporting entity:

(a) a trust;

(b) a superannuation fund or approved deposit fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) that is a trust.

Relevant entities with a single trustee

(2) If the relevant entity has a single trustee:

(a) an obligation that would otherwise be imposed on the relevant entity by this Act is imposed on the trustee instead; and

(b) a civil penalty provision of this Act that would otherwise have been contravened by the relevant entity is taken to have been contravened by the trustee.

Relevant entities with multiple trustees

(3) If the relevant entity has 2 or more trustees:

(a) an obligation that would otherwise be imposed on the relevant entity by this Act is imposed on each trustee instead, but may be discharged by any of the trustees; and

(b) a civil penalty provision of this Act that would otherwise have been contravened by the relevant entity is taken to have been contravened by each trustee of the relevant entity, at the time the provision was contravened, who:

(i) did the relevant act or made the relevant omission; or

(ii) aided, abetted, counselled or procured the relevant act or omission; or

(iii) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the trustee).

Division 3—Reviewable decisions

42 Reconsideration and review of decisions

A decision mentioned in an item in column 1 of the following table that is made by the Regulator under the provision mentioned in column 2 of that item is a ***reviewable decision***.

| Reviewable decisions | | |
| --- | --- | --- |
| Item | Column 1  Decision | Column 2  Provision |
| 1 | A decision not to determine that an entity has ceased to be a reporting entity | Subsection 6(2) |
| 2 | A decision not to allow further time to give a payment times report | Subsection 12(4) |
| 3 | A decision to publish the identity of an entity or details of non‑compliance | Subsection 19(1) |

43 Application for reconsideration of reviewable decision

(1) If another provision of this Act requires written notice to be given of a reviewable decision, the notice must include:

(a) the reasons for the decision; and

(b) information regarding a person’s rights to seek reconsideration or review of the decision under this section.

(2) A person whose interests are affected by a reviewable decision may apply, in writing, to the Regulator for the Regulator to reconsider the decision.

(3) The application must:

(a) set out the reasons for the application; and

(b) be given to the Regulator within 14 days after the applicant is notified of the decision.

44 Reconsideration of reviewable decision

(1) After receiving the application, the Regulator must:

(a) personally reconsider the decision to which the application relates; or

(b) cause the decision to be reconsidered by a delegate of the Regulator who:

(i) was not involved in making the decision; and

(ii) occupies a position that is at least the same level as that occupied by the person who made the decision.

The person who reconsiders the decision is the ***internal decision reviewer***.

(2) After reconsidering the reviewable decision, the internal decision reviewer must:

(a) affirm the decision; or

(b) vary the decision; or

(c) set the decision aside and substitute a new decision.

(3) After the internal decision reviewer makes the reconsideration decision, the reviewer must give written notice of the following to the applicant:

(a) the reconsideration decision;

(b) the date that decision takes effect;

(c) the reason for that decision.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the applicant to be notified of the applicant’s review rights.

(4) The internal decision reviewer is taken to have affirmed the reviewable decision if the reviewer does not give notice of the reconsideration decision to the applicant within 90 days after receiving the application.

(5) The reconsideration decision is taken to have been made under the provision under which the reviewable decision was made other than for the purposes of section 43.

(6) The Regulator must, as soon as is practicable, give the Secretary a copy of a notice given under subsection (3).

45 Review by the Administrative Appeals Tribunal

Applications may be made to the Administrative Appeals Tribunal for review of a reconsideration decision of an internal decision reviewer.

Division 4—Other matters

46 Former reporting entities

Obligation to report

(1) The requirement for a reporting entity to give the Regulator a payment times report for a reporting period for the entity under section 11 continues to apply to the entity if:

(a) the entity has not given the Regulator a payment times report for the reporting period under that section; and

(b) the entity ceases to be a reporting entity at any time after the end of the reporting period.

Other rights and obligations

(2) The following provisions continue to apply to an entity that has ceased to be a reporting entity, as if it were still a reporting entity:

(a) section 14 (civil penalty provision for failure to report);

(b) section 15 (civil penalty provision for false or misleading reports);

(c) Division 3 of Part 2 (access to payment times reports);

(d) Divisions 2 and 3 of Part 4, other than section 29 (notification requirements for reporting entities);

(e) Division 2 of Part 5 (treatment of certain kinds of entities).

47 Annual report

The annual report prepared by the Secretary and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must include a report from the Regulator on the operation of this Act during the period.

48 Rules

(1) The Minister may, by legislative instrument, make rules prescribing matters:

(a) required or permitted by this Act to be prescribed by the rules; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) To avoid doubt, the rules may not do the following:

(a) create an offence or civil penalty;

(b) provide powers of:

(i) arrest or detention; or

(ii) entry, search or seizure;

(c) impose a tax;

(d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;

(e) directly amend the text of this Act.