

EXPOSURE DRAFT

2019-2020

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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**

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

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 **1 Short title**

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

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Part 1 Preliminary

Section 2

1 **2 Commencement**

- 2 (1) Each provision of this Act specified in column 1 of the table
3 commences, or is taken to have commenced, in accordance with
4 column 2 of the table. Any other statement in column 2 has effect
5 according to its terms.
6

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.	

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

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

13 **3 Simplified outline of this Act**

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

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

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

4 **4 Definitions**

5 In this Act:

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

7 (a) has the same meaning as in the *Income Tax Assessment Act*
8 *1997*; or

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

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

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

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

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

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

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

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

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

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Part 1 Preliminary

Section 4

- 1 **constitutional corporation** means a corporation to which
2 paragraph 51(xx) of the Constitution applies.
- 3 **constitutionally covered entity** has the meaning given by section 5.
- 4 **controlling corporation** means an entity that:
5 (a) is a body corporate incorporated in Australia; and
6 (b) is not a subsidiary of another body corporate that is
7 incorporated in Australia.
- 8 **enforcement day** has the meaning given by subsection 37(2).
- 9 **engage in conduct** means:
10 (a) do an act; or
11 (b) omit to perform an act.
- 12 **entity** has the same meaning as in the *Income Tax Assessment Act*
13 *1997*.
- 14 **Federal Circuit Court** means the Federal Circuit Court of
15 Australia.
- 16 **Federal Court** means the Federal Court of Australia.
- 17 **foreign entity** has the same meaning as in the *Income Tax*
18 *Assessment Act 1997*.
- 19 **income tax** has the same meaning as in the *Income Tax Assessment*
20 *Act 1997*.
- 21 **income year** for an entity:
22 (a) has the same meaning as in the *Income Tax Assessment Act*
23 *1997*; or
24 (b) if income tax is not payable by the entity under that Act—
25 means:
26 (i) a financial year; or
27 (ii) if the rules prescribe a period of 12 months—the
28 prescribed period.

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1 **internal decision reviewer** has the meaning given by subsection
2 44(1).

3 **issuing officer** means:

- 4 (a) a magistrate; or
5 (b) a Judge of the Federal Court or the Federal Circuit Court.

6 **member**: a subsidiary of the controlling corporation is a **member** of
7 the controlling corporation's group, unless:

- 8 (a) the subsidiary is also a subsidiary of another body corporate
9 because the other body corporate meets the requirement in
10 subparagraph 46(a)(i) or (ii) of the *Corporations Act 2001* in
11 relation to the subsidiary; and
12 (b) the other body corporate is not a member of the group
13 (including by reason of a previous operation of paragraph (a)
14 of this definition).

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

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

- 18 (a) the body, or group of members of the entity, with primary
19 responsibility for the governance of the entity; or
20 (b) if the entity is of a kind prescribed by the rules—a prescribed
21 body within the entity, or a prescribed member or members
22 of the entity.

23 Example: Examples of principal governing bodies are as follows:

- 24 (a) for a company—the company's board of directors;
25 (b) for a superannuation fund—the fund's board of trustees.

26 **reconsideration decision** means a decision made under subsection
27 44(2).

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

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

31 **relevant court** means:

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Part 1 Preliminary

Section 5

- 1 (a) the Federal Court; or
2 (b) the Federal Circuit Court; or
3 (c) a court of a State or Territory that has jurisdiction in relation
4 to matters arising under this Act.

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

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

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

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

- 9 (a) an individual member of the entity's principal governing
10 body who is authorised to sign payment times reports; or
11 (b) if the entity is a trust administered by a sole trustee—that
12 trustee; or
13 (c) if the entity is a corporation sole—the individual constituting
14 the corporation; or
15 (d) if the entity is under administration within the meaning of the
16 *Corporations Act 2001*—the administrator; or
17 (e) if the entity is of a kind prescribed by the rules—a prescribed
18 member of the entity.

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

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

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

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

25 **5 Meaning of constitutionally covered entity**

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

- 27 (a) a constitutional corporation;
28 (b) a foreign entity;
29 (c) an entity, other than a body politic, that carries on business in
30 a Territory;

- 1 (d) a body corporate that is incorporated in a Territory;
2 (e) a body corporate that is taken to be registered in a Territory
3 under section 119A of the *Corporations Act 2001*;
4 (f) a corporate Commonwealth entity, or a Commonwealth
5 company, within the meaning of the *Public Governance,*
6 *Performance and Accountability Act 2013*.

7 **6 Meaning of reporting entity**

8 *Becoming a reporting entity*

- 9 (1) A constitutionally covered entity becomes a **reporting entity** at the
10 start of an income year (the **relevant income year**) for the entity, if:
11 (a) the entity carries on business in Australia, and either of the
12 following apply:
13 (i) the assessable income for the entity for the most recent
14 income year for the entity was at least \$100 million;
15 (ii) if the entity is a controlling corporation or a member of
16 a controlling corporation's group—the total assessable
17 income for all members of the controlling corporation's
18 group for the most recent income year for the
19 controlling corporation was at least \$100 million; or
20 (b) before the start of the relevant income year, the entity gives
21 the Regulator notice in writing that the entity elects to
22 become a reporting entity at the start of that income year.

23 *Ceasing to be a reporting entity*

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

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

29 *Application for determination*

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

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Part 1 Preliminary

Section 7

- 1 (4) The application must include any information, and be accompanied
2 by any documents, prescribed by the rules.
- 3 (5) After considering the application, the Regulator must make the
4 determination if:
- 5 (a) the Regulator is satisfied:
- 6 (i) that the assessable income for the entity for each of the
7 2 most recent income years for the entity was less than
8 \$100 million; and
- 9 (ii) if the entity is a controlling corporation or a member of
10 a controlling corporation's group—that the total
11 assessable income for all members of the controlling
12 corporation's group for each of the 2 most recent
13 income years for the controlling corporation was less
14 than \$100 million; or
- 15 (b) the Regulator is satisfied that the entity is a reporting entity
16 only because of an election under paragraph (1)(b).

17 *When determination has effect*

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

20 *Notice of decision*

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

24 **7 Meaning of reporting period**

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

- 26 (a) the first 6 months of each income year for the entity in which
27 the entity is a reporting entity;
- 28 (b) the remainder of each such income year.

29 **8 Act binds the Crown**

30 This Act binds the Crown in each of its capacities.

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1 **9 Extension to external Territories**

2 This Act extends to every external Territory.

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Part 2 Reporting payment times

Division 1 Introduction

Section 10

1 **Part 2—Reporting payment times**

2 **Division 1—Introduction**

3 **10 Simplified outline of this Part**

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

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

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

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

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

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1 **Division 2—Reporting payment times**

2 **11 Reporting entities must report payment times**

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

5 **12 When report must be given**

6 *Timeframe for reporting*

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

9 *Extension of time*

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

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

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

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

17 **13 Reporting requirements**

18 *Content requirements*

19 (1) The report must:

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

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

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

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Part 2 Reporting payment times

Division 2 Reporting payment times

Section 14

- 1 (d) if the entity is a member of a controlling corporation's
2 group—identify the controlling corporation; and
3 (e) include any other information, and be accompanied by any
4 documents, prescribed by the rules.

5 *Approval requirements*

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

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

10 **14 Civil penalty provision for failure to report**

11 An entity is liable to a civil penalty if:

- 12 (a) the entity is a reporting entity, other than because of
13 paragraph 6(1)(b) (which deals with entities that elect to be
14 reporting entities); and
15 (b) the entity is required to give the Regulator a payment times
16 report in accordance with this Division; and
17 (c) the entity fails to comply with the requirement.

18 Civil penalty: 60 penalty units.

19 **15 Civil penalty provision for false or misleading reports**

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

23 Civil penalty: 350 penalty units.

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

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Part 2 Reporting payment times

Division 3 Access to payment times reports

Section 16

1 **Division 3—Access to payment times reports**

2 **16 Payment Times Reports Register**

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

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

7 **17 Registration of payment times reports**

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

11 **18 Registration of revised payment times reports**

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

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

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

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

23 **19 Publication of information about failure to comply with Act**

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

27 (a) on the Payment Times Reports Register; or

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Reporting payment times **Part 2**
Access to payment times reports **Division 3**

Section 19

1

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

2

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

3

4

5

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

6

7

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

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10

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

11

12

(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

13

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15

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

16

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Part 3 Payment Times Reporting Regulator

Section 20

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;

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- 1 (d) any other function prescribed by the rules;
2 (e) any other function conferred on the Regulator by any other
3 law of the Commonwealth;
4 (f) to advise the Minister about matters relating to any of the
5 functions mentioned in paragraphs (a) to (e);
6 (g) to do anything incidental or conducive to the performance of
7 any of the preceding functions.

8 **23 Powers of the Regulator**

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

12 **24 Staff**

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

- 15 (a) employed in the Department; and
16 (b) made available for the purpose by the Secretary.

17 **25 Consultants**

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

21 **26 Delegation by the Regulator**

- 22 (1) The Regulator may, in writing, delegate all or any of the
23 Regulator's functions or powers under this Act or the rules to:
24 (a) an SES employee, or acting SES employee, in the
25 Department; or
26 (b) a person who holds, or is acting in, an Executive Level 2, or
27 equivalent, position in the Department.

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

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Part 3 Payment Times Reporting Regulator

Section 26

- 1 (2) However, the Regulator must not delegate the Regulator's
2 functions or powers under section 35 (appointment of authorised
3 officers) or section 36 (appointment of infringement officers).
- 4 (3) In performing a delegated function or exercising a delegated
5 power, the delegate must comply with any written directions of the
6 Regulator.

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Compliance and enforcement **Part 4**

Introduction **Division 1**

Section 27

1 **Part 4—Compliance and enforcement**

2 **Division 1—Introduction**

3 **27 Simplified outline of this Part**

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

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

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

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

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

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Part 4 Compliance and enforcement

Division 2 Obligations of reporting entities

Section 28

1 **Division 2—Obligations of reporting entities**

2 **28 Record-keeping requirements**

3 *Entity must keep records*

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

7 Civil penalty: 200 penalty units.

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

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

16 **29 Notification requirements for reporting entities**

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

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

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

25 (c) any of the following:

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

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

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Compliance and enforcement **Part 4**
Obligations of reporting entities **Division 2**

Section 29

- 1 (iii) in the case of a partnership—a creditor’s petition or a
2 debtor’s petition is presented against the entity under
3 Division 2 or 3 of Part IV of the *Bankruptcy Act 1966*.
- 4 (2) The notice must:
- 5 (a) be given within 28 days after the occurrence; and
6 (b) include any information prescribed by the rules.
- 7 Civil penalty: 60 penalty units.

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Part 4 Compliance and enforcement

Division 3 Audits

Section 30

1 **Division 3—Audits**

2 **30 Compliance audits**

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

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

7 (a) to appoint as an auditor:

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

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

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

15 (i) the entity's compliance with this Act;

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

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

20 (i) the period specified in the notice; or

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

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

25 (3) The notice must specify:

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

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

29 (c) the form and content of the report.

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1

Civil penalties

2

- (4) The entity must comply with the notice.

3

Civil penalty: 60 penalty units.

4

- (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.

5

6

7

Civil penalty: 200 penalty units.

8

- (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.

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

16

Auditor's fees and expenses

17

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

18

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Part 4 Compliance and enforcement

Division 4 Regulatory powers

Section 31

1 **Division 4—Regulatory powers**

2 **31 Monitoring powers**

3 *Provisions subject to monitoring*

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

6 (a) a provision of this Act; or

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

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

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

15 *Information subject to monitoring*

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

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

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

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

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

30 (a) there are no related provisions; and

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Compliance and enforcement **Part 4**

Regulatory powers **Division 4**

Section 32

- 1 (b) the Regulator and each authorised officer is an authorised
2 applicant; and
3 (c) the Regulator and each authorised officer is an authorised
4 person; and
5 (d) an issuing officer (as defined in section 4 of this Act) is an
6 issuing officer; and
7 (e) the Regulator is the relevant chief executive; and
8 (f) each relevant court (as defined in section 4 of this Act) is a
9 relevant court.

10 *Person assisting*

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

15 *Extension to external Territories etc.*

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

19 **32 Investigation powers**

20 *Provisions subject to investigation*

- 21 (1) A provision is subject to investigation under Part 3 of the
22 Regulatory Powers Act if it is:
23 (a) a civil penalty provision of this Act; or
24 (b) an offence against the *Crimes Act 1914* or the *Criminal Code*
25 that relates to this Act.

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

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

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Part 4 Compliance and enforcement

Division 4 Regulatory powers

Section 33

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

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

- 6 (a) there are no related provisions; and
7 (b) the Regulator and each authorised officer is an authorised
8 applicant; and
9 (c) the Regulator and each authorised officer is an authorised
10 person; and
11 (d) an issuing officer (as defined in section 4 of this Act) is an
12 issuing officer; and
13 (e) the Regulator is the relevant chief executive; and
14 (f) each relevant court (as defined in section 4 of this Act) is a
15 relevant court.

16 *Person assisting*

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

21 *Extension to external Territories etc.*

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

25 **33 Civil penalty provisions**

26 *Enforceable civil penalty provisions*

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

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

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

4 *Authorised applicant*

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

8 *Relevant court*

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

12 *Liability of Crown*

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

16 *Mistake of fact—bodies corporate*

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

- 21 (a) the employee, agent or officer of the body corporate who
22 carried out the conduct was under a mistaken but reasonable
23 belief about facts that, had they existed, would have meant
24 that the conduct would not have contravened the civil penalty
25 provision; and
26 (b) the body corporate proves that it exercised due diligence to
27 prevent the conduct.

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

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Part 4 Compliance and enforcement

Division 4 Regulatory powers

Section 34

- 1 (a) inadequate corporate management, control or supervision of
2 the conduct of one or more of its employees, agents or
3 officers; or
4 (b) failure to provide adequate systems for conveying relevant
5 information to relevant persons in the body corporate.

6 *Extension to external Territories etc.*

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

10 **34 Infringement notices**

11 *Provisions subject to an infringement notice*

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

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

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

19 *Infringement officer*

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

- 23 (a) the Regulator;
24 (b) a person appointed as an infringement officer under
25 subsection 36(1).

26 *Relevant chief executive*

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

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1 *Extension to external Territories etc.*

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

5 **35 Appointment of authorised officers**

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

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

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

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

18 **36 Appointment of infringement officers**

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

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

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

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

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Part 4 Compliance and enforcement

Division 5 Delayed compliance and enforcement powers

Section 37

1 **Division 5—Delayed compliance and enforcement powers**

2 **37 Delayed compliance and enforcement powers**

3 *Application of civil penalty provisions*

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

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

8 *Publishing information regarding non-compliance*

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

12 *Audit powers*

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

16 *Monitoring powers*

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

20 *Investigation powers*

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

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Miscellaneous **Part 5**
Introduction **Division 1**

Section 38

1 **Part 5—Miscellaneous**

2 **Division 1—Introduction**

3 **38 Simplified outline of this Part**

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

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

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

EXPOSURE DRAFT

Part 5 Miscellaneous

Division 2 Treatment of certain kinds of entities

Section 39

1 **Division 2—Treatment of certain kinds of entities**

2 **39 Treatment of partnerships**

- 3 (1) This Act applies to a reporting entity that is a partnership with the
4 changes set out in this section.
- 5 (2) An obligation that would otherwise be imposed on the partnership
6 by this Act is imposed on each partner instead, but may be
7 discharged by any of the partners.
- 8 (3) A civil penalty provision of this Act that would otherwise have
9 been contravened by the partnership is taken to have been
10 contravened by each partner in the partnership, at the time the
11 provision was contravened, who:
12 (a) did the relevant act or made the relevant omission; or
13 (b) aided, abetted, counselled or procured the relevant act or
14 omission; or
15 (c) was in any way knowingly concerned in, or party to, the
16 relevant act or omission (whether directly or indirectly and
17 whether by any act or omission of the partner).
- 18 (4) For the purposes of this Act, a change in the composition of a
19 partnership does not affect the continuity of the partnership.

20 **40 Treatment of unincorporated associations or bodies of persons**

- 21 (1) This Act applies to a reporting entity that is an unincorporated
22 association or body of persons with the changes set out in this
23 section.
- 24 (2) An obligation that would otherwise be imposed on the association
25 or body of persons by this Act is imposed on each member of the
26 committee of management of the association or body instead, but
27 may be discharged by any of those members.
- 28 (3) A civil penalty provision of this Act that would otherwise have
29 been contravened by the unincorporated association or body of

EXPOSURE DRAFT

- 1 persons is taken to have been contravened by each member of the
2 committee of management of the association or body, at the time
3 the provision was contravened, who:
4 (a) did the relevant act or made the relevant omission; or
5 (b) aided, abetted, counselled or procured the relevant act or
6 omission; or
7 (c) was in any way knowingly concerned in, or party to, the
8 relevant act or omission (whether directly or indirectly and
9 whether by any act or omission of the member).

10 **41 Treatment of trusts and superannuation funds and approved** 11 **deposit funds that are trusts**

- 12 (1) This Act applies with the changes set out in this section to each of
13 the following entities (the *relevant entity*) that is a reporting entity:
14 (a) a trust;
15 (b) a superannuation fund or approved deposit fund (within the
16 meaning of the *Superannuation Industry (Supervision) Act*
17 *1993*) that is a trust.

18 *Relevant entities with a single trustee*

- 19 (2) If the relevant entity has a single trustee:
20 (a) an obligation that would otherwise be imposed on the
21 relevant entity by this Act is imposed on the trustee instead;
22 and
23 (b) a civil penalty provision of this Act that would otherwise
24 have been contravened by the relevant entity is taken to have
25 been contravened by the trustee.

26 *Relevant entities with multiple trustees*

- 27 (3) If the relevant entity has 2 or more trustees:
28 (a) an obligation that would otherwise be imposed on the
29 relevant entity by this Act is imposed on each trustee instead,
30 but may be discharged by any of the trustees; and
31 (b) a civil penalty provision of this Act that would otherwise
32 have been contravened by the relevant entity is taken to have

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Part 5 Miscellaneous

Division 2 Treatment of certain kinds of entities

Section 41

- 1 been contravened by each trustee of the relevant entity, at the
2 time the provision was contravened, who:
- 3 (i) did the relevant act or made the relevant omission; or
 - 4 (ii) aided, abetted, counselled or procured the relevant act or
5 omission; or
 - 6 (iii) was in any way knowingly concerned in, or party to, the
7 relevant act or omission (whether directly or indirectly
8 and whether by any act or omission of the trustee).

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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		
	Column 1	Column 2
Item	Decision	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.

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Part 5 Miscellaneous

Division 3 Reviewable decisions

Section 44

44 Reconsideration of reviewable decision

- 1
- 2 (1) After receiving the application, the Regulator must:
- 3 (a) personally reconsider the decision to which the application
- 4 relates; or
- 5 (b) cause the decision to be reconsidered by a delegate of the
- 6 Regulator who:
- 7 (i) was not involved in making the decision; and
- 8 (ii) occupies a position that is at least the same level as that
- 9 occupied by the person who made the decision.

10 The person who reconsiders the decision is the *internal decision*

11 *reviewer*.

- 12 (2) After reconsidering the reviewable decision, the internal decision
- 13 reviewer must:
- 14 (a) affirm the decision; or
- 15 (b) vary the decision; or
- 16 (c) set the decision aside and substitute a new decision.

- 17 (3) After the internal decision reviewer makes the reconsideration
- 18 decision, the reviewer must give written notice of the following to
- 19 the applicant:
- 20 (a) the reconsideration decision;
- 21 (b) the date that decision takes effect;
- 22 (c) the reason for that decision.

23 Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires

24 the applicant to be notified of the applicant's review rights.

- 25 (4) The internal decision reviewer is taken to have affirmed the
- 26 reviewable decision if the reviewer does not give notice of the
- 27 reconsideration decision to the applicant within 90 days after
- 28 receiving the application.
- 29 (5) The reconsideration decision is taken to have been made under the
- 30 provision under which the reviewable decision was made other
- 31 than for the purposes of section 43.

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Miscellaneous **Part 5**
Reviewable decisions **Division 3**

Section 45

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

3 **45 Review by the Administrative Appeals Tribunal**

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

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Part 5 Miscellaneous

Division 4 Other matters

Section 46

1 **Division 4—Other matters**

2 **46 Former reporting entities**

3 *Obligation to report*

- 4 (1) The requirement for a reporting entity to give the Regulator a
5 payment times report for a reporting period for the entity under
6 section 11 continues to apply to the entity if:
7 (a) the entity has not given the Regulator a payment times report
8 for the reporting period under that section; and
9 (b) the entity ceases to be a reporting entity at any time after the
10 end of the reporting period.

11 *Other rights and obligations*

- 12 (2) The following provisions continue to apply to an entity that has
13 ceased to be a reporting entity, as if it were still a reporting entity:
14 (a) section 14 (civil penalty provision for failure to report);
15 (b) section 15 (civil penalty provision for false or misleading
16 reports);
17 (c) Division 3 of Part 2 (access to payment times reports);
18 (d) Divisions 2 and 3 of Part 4, other than section 29
19 (notification requirements for reporting entities);
20 (e) Division 2 of Part 5 (treatment of certain kinds of entities).

21 **47 Annual report**

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

26 **48 Rules**

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

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Miscellaneous **Part 5**
Other matters **Division 4**

Section 48

- 1 (a) required or permitted by this Act to be prescribed by the
2 rules; or
3 (b) necessary or convenient to be prescribed for carrying out or
4 giving effect to this Act.
- 5 (2) To avoid doubt, the rules may not do the following:
- 6 (a) create an offence or civil penalty;
7 (b) provide powers of:
8 (i) arrest or detention; or
9 (ii) entry, search or seizure;
10 (c) impose a tax;
11 (d) set an amount to be appropriated from the Consolidated
12 Revenue Fund under an appropriation in this Act;
13 (e) directly amend the text of this Act.

14