

30 April 2024

Government Response and Reform Unit
Small and Family Business Division
Treasury
Langton Cres
Parkes ACT 2600

By email: paymenttimesreformSMB@treasury.gov.au

Dear Sir/Madam

Payment Times Reporting Act 2020 primary legislation amendments

Thank you for the opportunity to consider the proposed amendments to the *Payment Times Reporting Act 2020 (Act)* via the Payment Times Reporting Amendment Bill.

As the professional body representing around 85% of Australia's insolvency, turnaround and restructuring professionals, the Australian Insolvency, Turnaround and Restructuring Association (**ARITA**) is Australia's largest representative body of insolvency practitioners. More about ARITA is provided at the end of this submission.

As a general comment, ARITA supports the objective of the amendments to encourage fair payment terms and practices for small business. As insolvency practitioners, our members see the impact of delayed payments on the cashflow of small businesses.

More specifically we note that the Act will provide that the Payment Times Reporting Rules 2020 (**Rules**) "may require reports to include different or additional information and documents in certain circumstances. Potential circumstances that would warrant the inclusion of additional or different information and documents in a report include ... where a reporting entity is currently in administration, in a liquidation process, in receivership ... subject to a deed of company arrangement".

The proposed Rules have not been provided as part of the consultation. Therefore, we are unable to provide specific commentary on the implications of such a Rule for external administrations (such as voluntary administration, liquidation etc). We would, however, make a general comment that where an external administrator is appointed, the company they are appointed to is necessarily insolvent, or likely to become insolvent, and therefore payments to pre-appointment creditors are stayed by statutory provisions and will ordinarily be outside

of terms. Notably, in a voluntary administration there is no mechanism for the payment of pre-appointment creditors.

The stated aim of the Act to “improve the operation of the [Payment Times Reporting] Scheme to influence large businesses to improve their payment practices in dealing with small businesses” would not be relevant in such circumstances where payment of creditors is outside of the ordinary course and not subject to the ongoing operation of the business. We recommend that a specific exemption be considered to remove reporting requirements for payments stayed following the appointment of an external administrator.

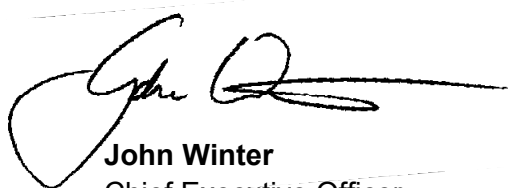
An external administrator has many time-sensitive tasks to attend to on appointment, including wherever possible turning around the business, therefore any requirements placed on external administrators should not be such that they impinge on the effectiveness of the various insolvency regimes under Chapter 5 of the *Corporations Act 2001* (**Corporations Act**). Nor should they distract the external administrator from their duties.

Furthermore, the imposition of reporting requirements on an external administrator is, in most cases, likely to be an unnecessary regulatory burden that will consume the limited resources of the distressed company and in fact may act against the interests of creditors who the law is actually meant to serve.

Should it be proposed to impose specific reporting requirements in the Rules in situations where an external administrator is appointed and continues to trade a business, ARITA would be available to assist with understanding how any such requirements would fit within the framework of the Corporations Act.

Should you wish to discuss any aspect of our submission, please contact Ms Kim Arnold, ARITA’s Policy & Education Director, on 02 8004 4340.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Winter', with a long horizontal flourish extending to the right.

John Winter
Chief Executive Officer



About ARITA

The Australian Restructuring Insolvency and Turnaround Association (ARITA) represents professionals who specialise in the fields of restructuring, insolvency and turnaround.

We have more than 2,200 members and subscribers including accountants, lawyers and other professionals with an interest in insolvency and restructuring.

We are a not-for-profit, incorporated professional association run for the benefit of our members.

Around 80% of Registered Liquidators and Registered Trustees choose to be ARITA members.

ARITA's ambition is to lead and support appropriate and efficient means to expertly manage financial recovery.

We achieve this by providing innovative training and education, upholding world class ethical and professional standards, partnering with government and promoting the ideals of the profession to the public at large. In 2022, ARITA delivered 82 CPE events with over 5,000 attendees.

ARITA promotes best practice and provides a forum for debate on key issues facing the profession.

We also engage in thought leadership and advocacy underpinned by our members' knowledge and experience. We represented the profession at 14 inquiries, hearings and public policy consultations during 2022.

