

Wednesday, 1 May 2024

Government Response and Reform Unit
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Via [Email](#)

Payment Times Reporting Act 2020 primary legislation amendments

Chartered Accountants Australia and New Zealand (CA ANZ) and CPA Australia (CPA) welcome the opportunity to provide feedback to Treasury on the *Payment Times Reporting Act 2020 primary legislation amendments* exposure draft (exposure draft).

We are pleased to see Treasury's implementation of the recommendations from the *Statutory review of the Payment Times Reporting Act 2020 (the statutory review)*. We support the additional regulatory powers that have been granted to the regulator as well as improvements to streamline reporting and the expansion of the *Payment Times Reporting Act 2020* (the Act)'s object.

Operation of Act – independent review

The proposed amendments represent major changes to the Act, such as modifications to the primary purpose of the Payment Times Reporting Scheme and the introduction of additional powers for the Regulator. The proposed independent review of the operation of the Act within five years of the commencement of the amendments, should in our opinion, be carried out within a three-year period (with a subsequent five-year review period). This will enable a timely review to be undertaken to determine if these major legislative amendments support achieving the objectives of the Act.

Public awareness

We encourage the regulator to continue to provide transparent public information in relation to payment trends and improvements in payment behaviour to illustrate the effectiveness of the framework. To date, there has been little improvement in actual payment times. Therefore, currently the reporting burden borne by entities outweighs any benefits for small businesses.

As a part of our continued engagement with members from small to medium sized business, many are still unaware that this reporting regime exists let alone the regime's intent to improve payment times for their sector. We encourage the Regulator and Government to continue to raise awareness of the regime, particularly with small to medium sized businesses and leverage the use of case studies to demonstrate the improvements in payment times.

Penalties

Subsection 10J(2) proposes to impose a penalty of 0.6 per cent of "total income for the income year". This reference appears to introduce Income Tax definitions into the Act. This is inconsistent to other sections of the Act, which refers to consolidated revenue from the Corporations Act 2001 (rather than income).

Finding 3 from the statutory review¹ indicated that 'using total income to determine whether an entity is a reporting entity creates complexity and inconsistencies for large businesses' therefore, for consistency with other sections of the Act we recommend subsection 10J(2) be redrafted to '0.6 per cent of consolidated revenue for the financial year'. In addition, other references within the Act to 'total income' should also be amended.

Reporting nominee

As outlined in subsection 22J(3) and paragraph 1.130 of the explanatory memorandum (EM), an entity can nominate a reporting nominee to make its payment times report on its behalf, however it is unclear why the entity is still required to give the Regulator a payment times report. Further guidance will be needed for reporting entities to understand expectations of reporting entities and reporting nominees.

Ministerial discretion to make a written direction against a slow paper

We are concerned with the ministerial discretion in section 22A. This section allows the Minister to give slow small business payers a ministerial direction. We believe that this inclusion undermines the role of the regulator, and that this discretion should only be exercised by the independent regulator.

Section 22F(3) outlines that a ministerial direction may remain on the register after the slow small business payer direction has ceased to be in effect. We are concerned that this penalises the reporting entity beyond the period of the ministerial discretion and may therefore reduce the incentive to quickly respond to a direction.

¹ Statutory Review of the Payment Times Reporting Act 2020, Page 11

Cost recovery fees

We understand that fees in particular circumstances, as outlined in section 57C, might be appropriate, however we do not support the application of fees outside of those which have been outlined. Businesses complying with this law are already incurring costs in compiling and reporting on their payment times. Businesses should not be required to fund or contribute to the Regulator costs.

Other jurisdictions

We encourage the Government to consider developments in other jurisdictions. In 2024, the New Zealand Government repealed the Business Payment Practices Act (seen as the equivalent to the Act) and announced the intention for business payment times to be addressed through non-regulatory measures such as ramping up the adoption of eInvoicing.

If you have any questions about our submission, please contact Karen McWilliams (CA ANZ) at karen.mcwilliams@charteredaccountantsanz.com or Gavan Ord (CPA Australia) at gavan.ord@cpaaustralia.com.au.

Sincerely,

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