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1 May 2024

Dear Ms Jeffries

### **Payment Times Reporting: Draft Bill feedback**

KPMG Australia (KPMG) welcomes the opportunity to make a submission to Treasury on the draft Payment Times Reporting (PTR) Amendment Bill 2024 (“**Draft Bill**”) through the consultation process.

KPMG believes that the PTR Scheme has significantly improved the payment terms provided to small business suppliers across Australia’s largest reporting entities. The PTR Scheme has driven real cultural change and the prompt payment of small business suppliers is now receiving board and director level attention. However, there is always room for improvement and we welcome the Review into the PTR Act and the subsequent Draft Bill.

As a leading professional services firm, KPMG has assisted many reporting groups for PTR since late 2020 and our feedback has been gathered from the experiences our technical experts have gathered through this work with key Australian businesses.

Please find our feedback and queries regarding the Draft Bill at [Attachment 1](#). Please do not hesitate to reach out if you would like to discuss this important matter further.

Yours faithfully

**Vince Dimasi**

**Attachment 1: Exposure draft themes/ questions**

**1 Reporting entity identification and group reporting**

Topic	Section # / Paragraph #	Observation/ Query	Recommendation
<b>Constitutionally covered entity definition</b>	Section 6 Section 7	<p>The Draft Bill does not contain any proposed amendments to section 6 such that the requirement that a reporting entity must be a constitutionally covered entity remains.</p> <p>Therefore, whilst accounting consolidation concepts are used to assess whether the revenue threshold has been satisfied, the determination of whether an entity is a constitutionally covered entity appears to be undertaken on a legal entity basis.</p> <p>This may mean that if a structure is headed by a trust, it cannot be a reporting entity unless it carries on an enterprise in a Territory. In making this assessment no regard is had to the broader operations of the group.</p>	We would recommend further consideration is given to section 6 for alignment with the proposed consolidation concepts.
<b>Reporting entity criteria</b>	Section 7(2)(a)(iii)	The Draft Bill includes the current language of the company income tax residency test, such as whether the company has its central management and control in Australia.	We recommend replacing this with a resident as defined in accordance with the relevant Australian tax legislation. This will provide clarity on how this section will operate with respect to other types of legal entities such as trusts and partnerships. Additionally, any changes to the definition of a tax resident for tax purposes will not require further legislative changes to the PTR Act.

<p><b>Definition of entity</b></p>	<p>Section 5 definition</p>	<p>The definition of “entity” still references the <i>Income Tax Assessment Act 1997</i>.</p> <p>The definition of entity under the <i>Income Tax Assessment Act 1997</i> may create issues with respect to unincorporated joint ventures which are partnerships for tax purposes. Additionally there could be issues with the interaction of “entity” (as defined under the tax legislation) and accounting concepts.</p>	<p>We would recommend considering removal of the references to the <i>Income Tax Assessment Act 1997</i> given the shift away from the taxation reporting framework and greater reliance on accounting principles.</p>
<p><b>Financial year</b></p>	<p>Section 5 definition Section 8</p>	<p>The Draft Bill defines financial year as the <i>Corporations Act 2001</i> definition of financial year, or otherwise an income year of the entity. In some circumstances there could be a transitional financial year that is longer than 12 months.</p> <p>Therefore, per section 8, the reporting period for a reporting entity would be the first 6 months of each financial year and the remainder of such financial year (which could be longer than 6 months if a transitional financial year that is longer than 12 months is adopted).</p>	<p>We would recommend that the associated Rules and /or associate guidance material contain further guidance and examples in relation to reporting periods longer than 6 months.</p>
<p><b>Consolidated revenue</b></p>	<p>Section 5 definitions</p>	<p>The Draft Bill appears to suggest that consolidated revenue is worked out in accordance with the accounting standards which would capture income derived by foreign subsidiaries. This income may not necessarily have any connection with Australia.</p>	<p>We would recommend that the associated Rules contain further guidance to the inclusion/exclusion of these foreign subsidiaries in the metrics reported.</p>
<p><b>Reporting cycle definition</b></p>	<p>Section 5 definitions</p>	<p>The Draft Bill defines reporting cycle as a period of 6 months starting on 1 January, and a</p>	<p>We would recommend that the definition of the reporting cycle is amended</p>

	Slow small business payers	<p>period of 6 months starting on 1 July.</p> <p>However, some entities do not have a 30 June or 31 December financial or income year-end.</p>	to include entities with other financial or income year-ends.
<b>Subsidiary reporting entities</b>	Section 10E	<p>The Draft Bill introduces a 'subsidiary reporting entity' which allows an entity which is controlled by a reporting entity to provide its own payment times report.</p> <p>The Draft Bill provides the Regulator a discretion to determine that a constitutionally covered entity is a subsidiary reporting entity.</p>	We would recommend that further details and examples of when the Regulator will determine that an entity is a subsidiary reporting entity are included in the Rules or associated guidance material.
<p><b>When entities that have been acquired should be included</b></p> <p><b>When a reporting entity no longer meets the criteria to be a reporting entity</b></p>	Section 7 Section 10H	The Draft Bill introduces consolidated reporting, which may raise issues around when entities that have been acquired should be included for reporting purposes, and when a reporting entity ceases to be a reporting entity.	We would recommend that further details and examples of how these sections will operate in the context of Mergers & Acquisitions (M&A) transactions be included in the Rules or associated guidance material.

## 2 Slow small business payers

Topic	Section # / Paragraph #	Observation/Query	Recommendation
<b>Definition</b>	Section 22A	The Draft Bill does not provide details regarding the definition, however, states that further details regarding the definition of a slow small business payer will be included in the Rules. It is also unclear whether this will be calculated based on number or value of invoices paid in less than 30 days.	We recommend that the associated Rules contain such details regarding definition and calculation methodology.

<p><b>Current statistics</b></p>	<p>Section 22D</p>	<p>The Draft Bill references a goal for slow small business payers to reach 95% of payments to be made in less than 30 days.</p>	<p>From our experience, it may be difficult for reporting entities to meet such thresholds if they do not record invoice receipt date and therefore the comparison to other entities (who may be using invoice receipt date) may not be fair/accurate.</p> <p>We recommend a greater clarity by the Regulator on the use of invoice receipt date versus invoice date as this will impact accurate and relevant comparison.</p>
<p><b>Date of effectiveness</b></p>	<p>Section 22A</p>	<p>The Draft Bill does not cover periods of review available to the Minister. If the amended Act is to come into force on 1 July 2024.</p> <p>It is unclear whether the Minister/Regulator could look to prior reporting periods when determining the slow payers or only future reports after this date.</p>	<p>We believe it would be useful for the associated Rules to contain such details.</p>
<p><b>Intended outcome</b></p>	<p>Section 22D</p>	<p>It would appear that the intended outcome of the slow small business payers list is to work through each tranche of 'the bottom 20%' until all large businesses are paying 95% of small suppliers within 30 days.</p>	<p>We recommend that further details regarding the consequences for companies and the ongoing nature of appearing on the slow small business payers list are communicated.</p>
<p><b>Ceasing to be on the list</b></p>	<p>Section 22D</p>	<p>The direction notes that an entity may stay on the list for 1 year if other criteria is not met. There is not currently a reference to the scenario of an entity being removed after 1 year and then re-added to the list if they remain in the bottom 20%.</p>	<p>We would recommend that further details regarding being removed (and potentially re-added) from the list if entities remain in the bottom 20% would be helpful.</p>

### 3 Additional queries

Topic	Section # / Paragraph #	Observation/Query	Recommendation
<b>Expected release of rules</b>	n/a	The Draft Bill makes several references to the Rules that we know will provide further details industry would benefit from further clarity around release timing.	If there are to be significant updates to the Rules (specifically to <i>subsection 14 - Reporting requirements</i> ), we would recommend that the Rules are released for adequate consideration and consultation as soon as possible. This will help ensure adequate time for companies to update internal systems and processes in line with new reporting requirements.
<b>Transitional provisions</b>	n/a	Are you able to provide an example of when a reporting entity will need to take note of the changes? And how long they will have to produce the report?  <i>E.g., To confirm, if an entity has a year end of 30 June and reports for the periods 1 January to 30 June 2024 (due 30 September 2024) and 1 July 2024 to 31 December 2024 (due 31 March 2025), to confirm when these reports will be due.</i>	We would recommend that multiple examples of specific year ends to demonstrate the impact of the transitional provisions should be included in the Rules or associated guidance material.