

# Payment Times Reporting Amendment Bill 2024



## Supporting Subcontractors

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Master Electricians Australia (MEA) is the trade association representing electrical contractors recognised by industry, government and the community as the electrical industry's leading business partner, knowledge source and advocate. You can visit our website at [www.masterelectricians.com.au](http://www.masterelectricians.com.au)

Our members predominately consist of small and medium entities (SMEs). On large projects these SMEs are typically subcontractors. Due to significant power imbalances, our members are vulnerable to late and/or missed payments which not only impacts their cash flow but also the macroeconomy. Late payments to subcontractors impacts their ability to make payments to suppliers and their ability to retain employees. Cumulatively, these factors contribute towards reduced disposable household income and consequently reduced spending. MEA strongly advocates that protecting SME interests is pivotal to establishing a resilient economy. It is essential SMEs are protected from essentially being treated as financiers by head contractors/principals and ensure they are paid promptly for completed contractual goods and services.

MEA commends Government's continued proactiveness in protecting our SMEs in the construction and trades industry. However, Australia still has a long way to go in addressing security of payment issues our members face. While the *Payment Times Reporting Amendment Bill 2024* (the Bill) is a good starting point towards supporting subcontractors, we advocate a nationally harmonised framework implementing the *Murray Review's* recommendations is crucial towards implementing sustainably meaningful solutions towards Australia's security of payment issues.

MEA supports the amendments in the Bill and commends the focus on improving payment terms and practices for small businesses. However, we highlight below some potential concerns with aspects of the Bill and achieving the objectives.

## Amendments

### Functions of the Regulator

Paragraph 1.14 of the draft Explanatory Materials states:

"The Regulator is not required to undertake any particular activity in carrying out its functions. The Regulator is expected to apply appropriate judgement in carrying out the regulatory function and apply resources consistent with the benefits from undertaking specific activities under its functions."<sup>1</sup>

MEA urges Government to allocate a sufficient budget to the regulator to ensure timely, efficient, and comprehensive research and analysis functions. Without sufficient resources, there is a risk that objective priorities may be overlooked.

### Reporting Entities

MEA highlights the below concerns -

#### Consolidated Group

We acknowledge the efficiencies of consolidated reporting, however, raise concerns that consolidated group reporting could act as a shield for slow-paying subsidiary head contractors, enabling such subsidiaries to blend in with an otherwise reputable payment structure within the group. MEA is keen to see whether the powers given to the Regulator will be sufficient to address this concern.

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<sup>1</sup> *Payment Times Reporting Amendment Bill 2024* (explanatory notes), at 11.

## \$100 Million Threshold

### Current Financial Threshold is too High

We believe the \$100 million threshold for reporting entities is too high and should be lowered to capture a wider range of large head contractor entities. MEA proposes it be reduced to \$50 million at the very least.

The Australian Securities & Investments Commission [ASIC] defines large companies as<sup>2</sup>:

#### Definition of a large proprietary company - financial years commencing on or after 1 July 2019

From financial years commencing on or after 1 July 2019, a proprietary company is defined as 'large' for a financial year if it satisfies at least two of the below criteria:

- the consolidated revenue for the financial year of the company and any entities it controls is \$50 million or more
- the value of the consolidated gross assets at the end of the financial year of the company and any entities it controls is \$25 million or more, and
- the company and any entities it controls have 100 or more employees at the end of the financial year.

Given the intent of the *Payment Time Reporting Act 2020* is to “foster a culture of prompt payment by large businesses and certain other entities for small business suppliers”<sup>3</sup>, it would be reasonable to reduce the payment time reporting threshold to at least \$50 million.

In addition, a lower threshold exists for financial reporting under Queensland’s building contractor licensing requirements (‘minimum financial requirements’). Those laws require detailed financial reporting for building contractor licensees with an annual revenue over \$30 million (and simpler reporting for those with lower revenue).

## Removal of Information from Register

We note the ‘public interest test’ is determined by the three following criteria, as per para 1.164:

- Personal information (within the meaning of the *Privacy Act 1988*)
- Information is commercial-in-confidence
- Any other matters prescribed by the rules.

MEA reserves judgment on the ‘public interest test’ until the Bill comes into effect. There is potential for entities to pursue removal of information that should be made available. We urge interim assessment (prior to the five-year review) to ensure the public interest test is being used sparingly and only in objectively warranted situations.

## Exemptions

MEA proposes the following in light of the exemptions provision:

- If an entity applies to be exempt for two consecutive financial years, it is no longer considered an ‘anomaly’, and that entity be required to retrospectively provide a payment times report for the first financial year they were considered ‘exempt’.

<sup>2</sup> “Are you a large or small proprietary company” ASIC < [Are you a large or small proprietary company | ASIC](#) >

<sup>3</sup> (n1), at 7.

- Companies granted an exemption should be publicly listed with justification (in so-far-as it is not commercially sensitive information).

### Report Content Rules

MEA strongly recommends conducting an interim analysis (before the five-year review period) to ensure that the flexibility provided by the regulations is not being exploited to benefit large corporations, thereby disadvantaging SMEs and ultimately undermining the effectiveness of the Act.

### Public Acknowledgement of Slow Payers

MEA supports public acknowledgement of slow small business payers. The court of public opinion can be compelling in “foster[ing] a culture of prompt payment by large business and certain other entities for small business suppliers.”<sup>4</sup>

We acknowledge cl 22A(3)(d), stipulates that the Minister must take into account “the likely cost and burden for the entity of complying with the direction, and whether that cost and burden is reasonable in the circumstances.”<sup>5</sup> We caution that such considerations should be reserved for exceptionally unique mitigating circumstances given the primary objective of this power granted to the Minister is to ensure prompt payment.

### Power to Demand Documents

MEA supports this amendment.

We do note, however, that the civil penalty attached for failure to comply with a requirement of the Regulator to provide information or documents is relatively insignificant compared to the financial size of the reporting entity. -

We recommend introducing a more incentivising penalty for failure to comply. The current penalty of 60 penalty units (or \$18,780) is unlikely to be a deterrent.

### Five Year Reviews

MEA supports this amendment. However, as mentioned throughout this submission, MEA encourages interim reports (12 months after enactment) to ensure the discretionary powers given to the Regulator are continuing to protect SMEs.

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<sup>4</sup> (n1), at 8.

<sup>5</sup> (n1), at 36.

## Conclusion

MEA commends the Federal Government's pro-active response to the security of payments issues endured by subcontractors. It is essential on both a micro and macro-economic scale that subcontractors are protected from the power imbalance of construction projects which often result in SMEs functioning as financiers for external projects, thereby jeopardising their business cash flow and going concern.

In summary –

MEA largely supports the proposed changes, but notes the following:

- *Functions of the Regulator* – Federal Government needs to ensure the increased research and reporting functions given to the Regulator is supported with budgetary support.
- *Consolidated Reporting* – potentially provides opportunity for slow payers to camouflage into an otherwise quick paying group structure.
- *\$100 million threshold* – significant number of sub-contractors will not be protected with this high threshold. We propose reducing the threshold to at least \$50 million.
- *Removal of Information from Register* – We urge interim assessment (prior to the five-year review) to ensure the public interest test is being used sparingly and only in objectively warranted situations.
- *Exemptions* – MEA has proposed additional provisions be included:
  - An entity which applies to be 'exempt' two consecutive years is no longer considered an 'anomaly' and is to retrospectively provide a payment times report for the first exempt year.
  - Companies granted an exemption should be publicly listed.
- *Report Content Rules* – An interim assessment (before the five-year review period) should be conducted to ensure this flexibility is not being abused to the detriment of SMEs.
- *Public Acknowledgement of Slow Payers* – Clause 22A(3)(d) should be considered in limited circumstances.
- *Power to Demand Documents* – We recommend a more incentivising civil penalty as the current 60 points is unlikely to act as a deterrent. .
- *Five Year Review* – We have recommended (above) some circumstances in which there should be an interim review of particular decisions, to ensure discretionary powers granted to the Regulator are applied consistently and appropriately.

In general, MEA supports the Bill, noting payment times reporting is a beneficial ancillary tool towards a much-needed set of nationally harmonised security of payments laws reflecting the Murray Review. While the Bill represents a positive step forward, MEA believes further measures are necessary to fully address the issue of non and slow payment to subcontractors.

MEA looks forward to the development of the Bill and is eager to be a part of any further discussion regarding its progress.

