



Australian Government
Department of Industry, Science,
Energy and Resources

Payment Times Reporting Scheme - Rules

Consultation Paper

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Executive Summary

Long (after 30 days) and late payments are a systemic problem for Australia's 3.4 million small businesses, with negative impacts not only on these businesses but also more broadly across the economy as small businesses that are paid slowly pay their suppliers more slowly in turn.

A 2019 study by economic consulting firm Alphabeta, highlights the importance of addressing the issue of long and late payments from large to small business. Looking at over 10 million invoices from more than 76,000 small businesses, they estimated that the quantum of long payment from large business to small business is \$77 billion per year. More than a third of small business invoices are paid after 30 days, and these invoice can take an average of 63 days to be paid. This is estimated to equate to \$7 billion in working capital that is transferred from small to large business every year.

To address this issue, the Government is implementing the Payment Times Reporting Scheme (the Scheme) requiring large businesses and large government enterprises with a total annual income of over \$100 million to publicly report on their payment terms and practices for their small business suppliers. The Scheme will cover over 3000 of Australia's largest businesses including foreign companies.

The objective of the Scheme is to improve payment outcomes for small business by creating transparency around the payment practices of large businesses. By providing access to information on large business payment performance, small business will be able to make more informed decisions about their potential customers. Greater transparency will also create an incentive for large businesses to improve their payment performance.

The principal legislation for the Scheme, the Payment Times Reporting Bill, was introduced into the Parliament on 13 May 2020. The principal legislation allows for subordinate legislation to be made, namely the Payment Times Reporting Rules as outlined in this Consultation Paper.

Subject to passage of this legislation, the Scheme is intended to commence on 1 January 2021.

Large business using a standard financial year who meet the income threshold will provide their first report six months after the Scheme commences.

Large business will be required to report their small business payment information to a central web portal. Information from these reports will be made available on a public website for small business and other interested stakeholders.

A Payment Times Reporting Small Business Identification Tool will be developed to assist large businesses in the process of identifying their small business suppliers.

Stakeholder Consultation

Since early 2019, the Government has consulted extensively on the design and development of the Scheme. Consultation has been held with a range of small and large businesses as well as industry organisations and government agencies. The most recent round of consultation was held during February and March 2020 in response to an exposure draft of the primary legislation, along with the draft policy for the subordinate legislation.

The Department of Industry, Science, Energy and Resources (the department) intends to continue consulting with business in the lead up to implementation of the Scheme in 2021. In particular,

stakeholders will be engaged in the design of guidance material and other supporting information to ensure businesses are aware of what, and how, they will be required to report.

Purpose of this Consultation

An exposure draft of the Scheme's subordinate legislation, referred to as the Payment Times Reporting Rules (the Rules), has been released to seek the views of businesses on any implementation issues associated with these requirements. The draft Rules can be viewed on the department's consultation hub at <https://consult.industry.gov.au/small-business/payment-times-reporting-rules>

Interested stakeholders can submit their written views and comments by accessing the links on the consultation hub website at <https://consult.industry.gov.au/small-business/payment-times-reporting-rules>

Any issues or questions associated with the consultation process can be directed to paymenttimes@industry.gov.au

Payment Times Reporting Rules

The primary legislation for the Scheme, the Payment Times Reporting Bill (the Bill), sets out the core obligations of large business to report on their payment terms and practices. This includes matters such as which businesses need to report, the process for reporting and how often to report, as well as the consequences for those who breach the reporting obligations.

The Rules set out more technical and administrative details on how certain provisions in the Bill will work in practice. Setting out these details in Rules rather than the primary legislation, provides the necessary flexibility to respond to changing business and industry practices, such as changes to accounting practices and terminology over time.

The draft Rules provide detail on the scheme and interact with the Bill in the following ways:

- the Rules specify the use of the Payment Times Small Business Identification Tool for reporting businesses to identify their small business suppliers;
- while the Bill specifies the main obligations for businesses to report on their payment terms and practices, the Rules details certain additional matters to include in a Payment Times Report such as:
 - the use of supply chain financing arrangements;
 - the method for calculating payment times;
 - the types of expenditure covered by the scheme; and
 - the proportion of the businesses' procurement that was from small business suppliers;
- the Rules extend provisions in the Bill that give the Regulator discretion to not publish certain information to include information that is irrelevant to the objective of the scheme; and
- the Rules list the content requirements for an application for businesses to cease reporting their payment terms and practices, as provided for through the Bill.

Further details on the Rules provisions is included below.

As subordinate legislation Rules can only be made after the primary legislation comes into operation. By consulting now, the Department intends to use this process to receive feedback on these draft Rules to ascertain whether they will work as intended and not have unforeseen consequences, to inform final drafting of the Rules should the Bill pass the Parliament and receive Royal Assent.

Rule Provision 1: Defining a small businesses

Section 5 of the Bill enables a rule to be made to specify what constitutes a small business supplier for the purposes of the Scheme.

The draft Rule uses a common definition of a small business supplier, by describing a small business as any business with an annual turnover of less than \$10 million.

The Rule also establishes that a small business is any business that is identified as such through the Payment Time Small Business Identification Tool (the Tool). This means that large businesses will be required to use the Tool in order to prepare their Payment Times Report.

The Tool is being developed by the department to make it easy for large businesses to identify which of their suppliers are small businesses, and to avoid small businesses having to comply with potentially onerous requirements to prove they are a small business.

In practice, the tool will operate to allow a large business to look up each of its suppliers and quickly and easily identify whether or not they are a small business and therefore whether they need to be included in their Payment Times Report.

The department intends to continue consulting with small and large business to ensure the design of the Tool is fit for purpose. Importantly, access to the Tool may be restricted to reporting entities. Small business concerned by being identified as a small business by this process will also have the ability to 'opt out' of being identified by the tool.

Rule Provision 2: Defining a standard payment period

Section 5 of the Bill further enables a rule to be made to specify what constitutes a standard payment period or more generally, a business's standard payment terms.

The draft Rule defines a standard payment period as the agreed contractual lengths of time a large business offers to its small business suppliers for payment to be made for goods and services. If there are no contractually agreed payment periods, it is the most common payment period used by the business to pay small business suppliers during the reporting period.

This definition aims to provide guidance to large business on what to include in a Payment Times Report in reference to their payment terms.

Section 14 of the Bill and Rule 4 below further explain the type of information that businesses must include in a Payment Times Report.

Rule Provision 3: Content for an application to cease reporting

Subsection 7(3) of the Bill outlines the conditions under which a large business may cease reporting their payment times. In particular, a business may cease to be a reporting entity if it no longer meets the reporting threshold of having a total annual income of over \$100 million for each of the two most recent income years or if they have voluntarily opted into the reporting scheme and have decided to leave.

In either case, the business must apply in writing to the Payment Times Reporting Regulator for a determination that they are no longer required to report.

Subsection 7(6) of the Bill enables a Rule to be made to list the information that business will need to include in their application to cease reporting.

The draft Rule provides for the following to be in the application:

- the business name and ABN (and, if relevant, the name and ABN of the controlling corporation),
- the reason and date on which the business will cease to be a reporting entity, and
- documentation to provide evidence to support the application, for example, taxation returns showing annual turnover below \$100 million or a statement from an independent and suitably qualified auditor for those entities that are not a volunteering entity or who have registered under the *Australian Charities and Not-for-profits Commission Act 2012* .

The Regulator will decide whether a large business can cease reporting based on an assessment of their latest lodged tax returns, or advice from an independent and suitably qualified auditor about the business' turnover.

A decision requiring an entity to continue to report under the Scheme can be reconsidered through an internal review process and by application to the Administrative Appeals Tribunal.

Rule Provision 4: Additional information for a report

The Bill and the Rules operate together to specify the content requirements for a Payment Times Report.

The Bill lists elements central to a business's payment terms and practices whereas the Rules includes matters that may require future flexibility to adjust to changes such as changes to business terminology or accounting practices. For example, supply chain finance is dealt with in the Rules as it is a rapidly developing area where new approaches are being introduced to the market on a regular basis. It is important that the Scheme can adjust to these changes so that small businesses and other stakeholders can be fully informed about the practices of their potential customers.

Under subsection 14(1) of the Bill, the report must include:

- the reporting period to which the report relates;
- the shortest and longest standard payment periods that the business offers including any changes to these periods;
- the total proportion (by number and value) of invoices paid in the calendar day periods of 1-20 days, 21-30 day, 31-60 days and 60 + days;
- details of the principal governing body of the entity and if applicable, the controlling corporation;
- a declaration from a responsible member within the business that the report will be provided to the business' principal governing body; and
- details of any notifiable event including changes to the business name or the accounting period used by the business.

Under subsection 14(1)(i) of the Bill, rules may be made requiring other information or documents to also be included in a report. It is proposed that rules would be made to require a report must also include:

- the name and ABN of the business;
- the primary industry of the business (based on ATO's Business Industry Codes);

- the name and contact details of the person who provided the report;
- the name of the responsible member within the business who signed (approved) the report;
- the standard payment periods that the business offers including any changes to these periods;
- details of any arrangements under which small business invoices must be provided to the business, for example, by the end of the month.
- the total proportion (by value) of the businesses procurement during the reporting period that was from small business suppliers;
- whether the business offers any form of supply chain finance and if so, details of that arrangement including the total proportion (by number and value) of small business invoices paid under these arrangements in the reporting period;
- any additional information to provide context or explanation in relation to the information provided in the report.

The additional information provided for in the Rules is necessary to provide small business suppliers and the public more detailed information on the payment terms and practices of large businesses. For example, larger businesses may have different contract arrangements in place that determine when an invoice can be provided to the business. These arrangements may set out that a supplier may not be able to submit an invoice until the end of each month, with these invoices to be paid 30 days after they are submitted. It is important that small business have transparency on these practices.

Great transparency on the use of supply chain financing, reserve factoring and other discounting practices is also important for small business. Supply chain finance is a problem when it is used by large businesses to extend their payment times, and where a small business is forced to agree to be paid a reduced amount in order to be paid in a reasonable time. This is why large businesses will be required to report if they use these practices and if so, how these arrangements apply.

Information on the primary industry of larger businesses, based on the ATO's Business Industry Codes (BIC), will also provide useful information on how payment performance in one industry compares to other industries. A business industry code (BIC) is a five-digit code included on relevant tax returns and schedules that describes a businesses' main business activity. BICs are derived from the Australian and New Zealand Standard Industrial Classification (ANZSIC) codes and have been simplified for tax return reporting purposes.

Businesses can find their BIC by using the Australian Taxation Office's BIC Tool available at <https://www.ato.gov.au/Calculators-and-tools/Business-industry-code-tool/AnzsicCoder.aspx>.

Rule Provision 5: Calculating information for a report

Subsection 14(2) of the Bill enables a Rule to be made to specify how certain content of a Payment Times Report, such as the proportion of small business invoices paid within a certain period, should be calculated. The intent of this Rule is provide business with clear guidance and a methodology for calculating and reporting their payment times.

Under the Rule, a business must apply the following conditions in order to calculate and report their payment times:

- A payment time 'commences' from the date an invoice is received by the procuring business that meets all the relevant requirements of the written or oral contract.

- The payment time 'ends' when relevant monies have been debited from the business' account. For cash transactions, the payment 'ends' when the payment has been given to the supplier.
- The calculation of a payment time includes:
 - weekends and public holidays;
 - disputed invoices - the payment 'clock' will continue while the invoice is in dispute;
 - only invoices that are paid under a trade credit arrangement*.
- The calculation of a payment time excludes:
 - payments between entities in the same group.

*Section 4 of the Rules defines a trade credit arrangement as any arrangement under which the business and supplier agree for payment to occur after supply of a good or service.

Rule Provision 6: Report information not published

Section 20 of the Bill provides the Payment Times Regulator with the discretion to not publish certain information contained in a Payment Times Report where the Regulator considers the publication of the information not to be in the public interest.

In making this decision, the Regulator must consider whether the information is personal information, commercial-in-confidence or any other type of information prescribed in the Rules.

This Rule making provision under subsection 20(2)(c) of the Bill is intended to be used to create a Rule that the Regulator may not publish information from a Payment Times Report where the information is irrelevant to the objective of the Scheme.

This recognises that while the purpose of the Payment Times Reports Register is to enhance transparency about payment times and practices, there are circumstances where the publication of certain kinds of information provided in a Payment Times Report may not assist in achieving this objective. For example, where content has been provided in a report that is irrelevant to a business's payment terms or practices.