



Australian Government

Department of Industry, Science,
Energy and Resources

Payment Times Reporting Framework Consultation Paper

Draft Payment Times Reporting Bill and associated
Minister's Rules

February 2020

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Capital Works & Land Remediation

Executive Summary

Late payments are a systematic problem for Australia's 3.4 million small businesses, with negative impacts not only on small business but also more broadly across the economy as small businesses that are paid slowly pay their suppliers more slowly in turn.

A recent study by accounting software firm, Xero, highlights the importance of addressing the issue of late payments from large to small business. Looking at over 10 million invoices from 83,000 small and medium businesses, the analysis found the estimated value of late payments to these businesses was \$115 billion over the 2017-18 financial year. If these payments were made on time it would be the equivalent of transferring \$7 billion in working capital from large to small and medium business.

To address this issue, the Government intends to introduce a Payment Times Reporting Framework (the Framework) requiring large businesses with over \$100 million in annual turnover to publish information on their small business payment times and practices. The Framework will cover Australia's approximately 2,500 largest businesses including foreign companies and government corporate entities.

The Framework's overall goal is to improve payment outcomes for Australian small businesses. To achieve this, it has three objectives:

- **Improve the collection of information** about the payment practices of large businesses and government agencies towards small business.
- **Make information about payment practices visible** and easily accessible to small businesses and other interested stakeholders.
- **Limit the compliance and administrative burden** associated with the reporting framework for government agencies, small and large businesses.

Subject to passage of legislation, the Framework will commence on 1 January 2021.

Once the scheme commences, large businesses will be required to report their small business payment information to a central web portal. A Payment Times Reporting Small Business Identification Tool will be developed to assist large businesses in the process of identifying their small business suppliers. The payment times reporting information will be made available on a public website for small business and other interested stakeholders.

Stakeholder Consultation

Since early 2019, the government has consulted extensively on the development of the Framework. Consultation has been held with a range of small and large businesses as well as industry organisations. The most recent round of consultation was held from November to December 2019.

The Department of Industry, Science, Energy and Resources (the department) intends to continue consulting with business in the lead up to implementation of the Framework. In particular, stakeholders will be engaged in the design of guidance material and other supporting information to ensure businesses are well aware of what, and how, they will be required to report. The department will also provide businesses with sufficient information to update their payment and reporting systems to meet the reporting requirements.

Purpose of this Consultation

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

As a companion to the legislation, the department is also seeking feedback on the draft subordinate legislation, otherwise known as Minister's Rules. These Rules specify the particulars of how the provisions of the primary legislation will work in practice. For example, they will specify administrative details on what information a large business must include in an application to request an extension to the reporting time. Detail on the Rules is included in this document.

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-bill-exposure-draft>

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

Payment Times Reporting Bill – Plain English Guide

The following sections outline the key requirements of the Bill.

The Payment Times Reporting Regulator

The Bill sets out the creation of a Payment Times Reporting Regulator who is responsible for the administration of the scheme including gathering information relating to payment times, publishing this information and monitoring, compliance and enforcement.

Who will report under the scheme

Which types of entities will be required to report?

Entity types required to report under the Framework will include:

- constitutional corporations;
- entities that carry on business in a territory; and
- foreign entities

The Framework is designed to cover commercial entities in the private and public sector. We encourage stakeholders to advise us if they feel the coverage in the draft Bill extends beyond this.

What is the size threshold for entities required to report?

Entities with at least \$100 million annual turnover (defined as assessable income) will be required to report.

Can entities volunteer to report?

Entities may volunteer to report if they are an entity type covered by the legislation (see above for examples of different entity types) and their annual turnover is less than \$100 million. These entities will be subject to compliance and enforcement arrangements under the Framework.

Arrangements for companies who are no longer required to report

Entities will be able to stop reporting if their annual turnover falls below \$100 million in each of the two most recent income years, or if their business structure means they no longer meet the entity criteria above.

The Regulator will decide whether an entity can stop reporting based on an assessment of the entity's latest lodged tax returns, or advice from an independent and suitably qualified auditor about the entity's turnover, or evidence of a change in business structure.

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

Will reporting be at an entity or group level?

The Bill requires individual entities to report at an entity rather than at a group level. A key objective of the Framework is to increase transparency around payment times. Reporting at a group level won't allow small businesses to know the payment performance of a particular entity in a large group made up of different businesses.

How will entities report under the scheme

When will the scheme start?

Reporting will commence from January 2021, assuming that the Bill passes through Parliament in time. If not, it will begin on 1 January or 1 July following the passage of the Bill through Parliament. This approach will give businesses time to adapt their financial and other systems to comply with the new reporting requirements.

What will entities be required to report?

Entities will report both on their standard payment terms for their small business suppliers (i.e. how quickly they say they will pay) and their performance (i.e. how quickly they actually pay). In addition, they will need to report on whether and how much they use supply chain financing arrangements (where small businesses can opt to be paid quicker if they accept a reduced payment).

Further detail on the content of reports, the definition of a small business supplier and how entities will identify their small business suppliers are in the discussion of the Rules for the Framework in the second half of this paper.

What will be the reporting periods for the scheme?

Entities will be required to submit two six monthly reports each year to the Regulator under the Framework. The financial year which entities use to report will be based on the financial year they use for tax purposes.

When will reports be due?

Entities must report within 3 months following the conclusion of the six month reporting period.

Will extensions be granted?

Entities can receive an extension if they write to the Regulator within 3 month after the 6 month reporting period and the Regulator agrees to the extension. This correspondence must set out the reason the extension is required.

If an entity is not granted an extension it can ask for this to be reconsidered through an internal review process and by application to the Administrative Appeals Tribunal.

Can entities provide revised reports?

Entities may request the Regulator register a revised version of their payment times report.

Who will sign off and approve the reports?

The report will need to be signed off by a responsible member of an entity such as the CEO. It will then need to be approved by the principal governing body of the entity such as a company's board of directors.

This approach will ensure that payment times and practices are a focus for the most senior members of an entity, helping drive a change in approach.

How will the reports be published?

All reports will be displayed on a public website to provide a transparent view of how entities pay their small business suppliers. This will allow small businesses to make better informed decisions about who they do business with. It will also provide an incentive for large businesses to improve their payment times performance.

What are the compliance arrangements for the scheme

Penalties will be applied for failure to comply with arrangements under the Framework as follows. Separate penalties will apply to body corporates such as corporations whereas penalties for individuals will apply to partnerships and other entities which do not have a separate legal personality.

Failure to report, notify the regulator of changes and comply with a notice of audit

The entity may be subject to a penalty if they do not:

- report within the three month lodgement period;
- provide a compliant report;
- notify the regulator of changes such as a new business name or insolvency; or
- comply with a notice to appoint an auditor, arrange for an auditor to give a written report and give this report to the regulator.

The resulting penalty will be a daily penalty of 60 penalty units for an individual and 300 penalty units for a body corporate (a penalty unit = \$210). Penalties can be applied on a daily basis.

Failure to provide an auditor with assistance and keep records

The entity may be subject to a penalty if they do not:

- provide an auditor with reasonable assistance and facilities to carry out an audit; and
- keep appropriate records for at least seven years after the end of a reporting period.

The resulting penalty will be a civil penalty of up to 200 points for an individual or up to 0.2% of annual turnover for a body corporate.

Providing false and misleading information

If an entity provides false or misleading reports they may be subject to penalties of up to 350 penalty units for an individual or 0.6% of annual turnover for a body corporate.

False and misleading information provision penalties may not apply where the entity considered what it put in its report, and was under a mistaken but reasonable belief that what they put in their payment times report was true.

Other compliance arrangements

The Regulator can require an entity to undertake an audit if they suspect it has contravened a provision of the Bill. The auditor can be nominated by the entity or the Regulator can nominate its own auditor if it does not approve of the nomination. The entity will be required to pay for the audit.

If the entity fails to comply with the provisions of the Bill, the Regulator may publish the entity's name and/or the details of the entity's non-compliance on the payment times register or in other forums. An entity can ask for this decision to be reconsidered through an internal review process and by application to the Administrative Appeals Tribunal.

Regulatory Powers

The Bill imports a number of powers from the Regulatory Powers Act including those relating to monitoring and investigation. These are standard powers designed to be available to all Commonwealth agencies when developing compliance approaches. The Regulatory Powers available to the Regulator under the Framework will be investigation powers, monitoring powers, infringement notice powers, and the power to bring civil penalty proceedings in a court.

Transition arrangements

The compliance and enforcement arrangements in the Bill will not come into effect until 18 months after the Framework begins. This is designed to provide reporting entities with the opportunity to become familiar with the reporting requirements.

Minister's Rules

We note that only five Rules are currently required to be made to support the implementation of the Framework. Any remaining Rules can be made on an as-needed basis.

As subordinate legislation, the Rules will not be formally drafted until after the passage of the primary legislation. The purpose of the following is to provide an outline of what is intended to be included in the Rules.

Rule 1 – Definition of a small business supplier

Legislative Provision

Minister's Rule under Section 4 of the Bill, *Definitions*

Purpose

The Rule to be made under this section will define what constitutes a small business for the purpose of the Framework's requirement for large businesses to report on their small business suppliers.

During consultation on the policy for the Framework, stakeholders emphasised concerns about how they would identify their small business suppliers, highlighting that this information is not publicly available and is potentially costly for both small and large business to collect and verify.

Stakeholders subsequently recommended that the Framework should be supported by a look-up tool to help automate the payment times reporting small business identification process. The look-up service would be based on a 'negative screen' of small businesses, where large businesses could enter identifying information about their suppliers and automatically see if the entities had a negative match to being a large or medium business.

Importantly, access to this service may be restricted to reporting entities. Small businesses concerned by the identification process would have the ability to opt-out of association with the tool.

Content of Draft Rule

A small business supplier will be as identified through the Payment Times Reporting Small Business Identification Tool. A Small business will be a business with turnover of less than \$10 million that is not part of a larger entity or grouping of entities.

Extract from the draft Payment Times Reporting Bill

Section 4 Definitions

small business supplier, in relation to an entity, means another entity prescribed by the rules that supplies goods or services to the first-mentioned entity.

Rule 2 – Application to cease being a reporting entity

Legislative Provision

Minister’s Rules under Section 6(2) of the Bill, *Meaning of reporting entity*

Purpose

Businesses may cease to be a reporting entity if they no longer meet the reporting threshold of having an annual turnover of at least \$100 million for each of the two most recent income years (or if they have voluntarily opted in to the scheme and have decided to leave the scheme). This rule will list the type of information that must be included in a written application for an entity to cease being a reporting entity.

Content of Draft Rule

The reporting entity must include the following information in a written application for a determination:

- *Name of entity (and, if relevant, the name of the controlling corporation)*
- *Entity’s Australian Business Number (ABN) (and, if relevant, the name of the controlling corporation)*
- *The date on which the entity will cease to be a reporting entity*
- *The reason that the entity will cease to be a reporting entity*
- *Documentation to provide evidence to support the application, for example, taxation returns showing annual turnover below \$100m or a statement from an independent and suitably qualified auditor.*

Extract from the draft Payment Times Reporting Bill

Section 6 Meaning of Reporting Entity

Ceasing to be a reporting entity

- (2) A reporting entity continues to be a **reporting entity** until the Regulator determines, in writing, that the entity has ceased to be a reporting entity.

Note: A decision not to determine that the reporting entity ceases to be a reporting entity is reviewable: see section ^42.

Application for determination

- (3) A reporting entity may apply in writing for a determination under subsection (2).
- (4) The application must include any information, and be accompanied by any documents, prescribed by the rules.
- (5) After considering the application, the Regulator must make the determination if:
- (a) the Regulator is satisfied:
 - (i) that the assessable income for the entity for each of the 2 most recent income years for the entity was less than \$100 million; and
 - (ii) if the entity is a controlling corporation or a member of a controlling corporation’s group—that the total assessable income for all members of the controlling corporation’s group for each of the 2 most recent income years for the controlling corporation was less than \$100 million; or
 - (b) the Regulator is satisfied that the entity is a reporting entity only because of an election under paragraph (1)(b).

Rule 3 – Application to seek an extension to report

Legislative Provision

Minister's Rule under Section 12(3) of the Bill, *When a report must be given*

Purpose

The Rule to be made under this section will list the type of information that must be included in a written application for an entity to seek an extension to the 3 month lodgement period for a report.

Content of Draft Rule

The reporting entity must include the following information in a written application to extend the time to submit a report (after a reporting period):

- *Name of entity (and, if relevant, the name of the controlling corporation)*
- *Entity's ABN (and, if relevant, the name of the controlling corporation)*
- *The reporting period to which the application relates*
- *The date on which the entity will submit the report*
- *The reason that the entity is seeking an extension of time to report*
- *Documentation to provide evidence to support the application, for example, a statement regarding unforeseen technological issues with the company's payment system.*

Extract from the draft Payment Times Reporting Bill

Section 12 When a report must be given

Timeframe for reporting

(1) The report must be given within 3 months after the end of the reporting period.

Extension of time

(2) However, the entity may apply in writing to the Regulator for further time to give the report.

(3) The application must include any information prescribed by the rules.

(4) The Regulator may, by written notice to the entity, allow the entity such further time to give the report as is specified in the notice.

Note: A decision not to allow further time is reviewable: see section 42.

Rule 4 – Content requirements for a report

Legislative Provision

Minister’s Rule under Section 13(1) of the Bill, *Reporting requirements*

Purpose

The Rules to be made under this section will set out the information that reporting entities need to include in a report for each reporting period. This will include administrative information, such the entity name and ABN, as well as aggregated data on both the company payment terms and its actual performance against these terms (that is, the actual time taken to pay suppliers).

Content of Draft Rule

The reporting entity must include the following information in a payment times report:

- *The name of the entity (and, if relevant, the name of the controlling corporation)*
- *Entity’s ABN (and, if relevant, the name of the controlling corporation)*
- *The primary industry of the entity (based on ANZSIC codes)*
- *Date the report was approved by the entity*
- *Name of the principal governing body of the entity and the responsible member of the entity who approved the report*
- *The shortest and longest payment terms the entity offers and any changes made to these terms during the reporting period*
- *The total proportion (number and value) of invoices paid in the calendar day periods of 1-20 days, 21-30 days, 31-60 days and 60 + days*
- *The total proportion (number and value) of invoices paid within the contract terms*
- *Whether the entity offers any form of supply chain finance, reverse factoring or discounting and, if so, details of that arrangement and the total proportion (number and value) of invoices where these arrangements were utilised*
- *Any written information to provide context or explanation in relation to the information provided in the report.*

Extract from the draft Payment Times Reporting Bill

Section 13 Reporting requirements

(1) The report must:

- (a) specify the reporting period to which the report relates; and
- (b) include information prescribed by the rules relating to the entity’s payment terms and practices during the reporting period in relation to its small business suppliers; and
- (c) include details of the principal governing body of the entity; and
- (d) if the reporting entity is a member of a controlling corporation’s group—identify the controlling corporation; and
- (e) include any other information, and be accompanied by any documents, prescribed by the rules.

Rule 5 – Notification requirements for reporting entities

Legislative Provision

Minister's Rule under Section 29(2)(b) of the Bill, *Notification requirements for reporting entities*

Purpose

The Rule to be made under this section will list the type of information that must be included in a written notice given to the Regulator in the event of the following circumstances:

- there is a change in the entity's business name,
- there is a change in the entity's accounting period,
- the entity becomes insolvent,
- the entity becomes a Chapter 5 body corporate (i.e. a receiver is appointed), or
- a creditor's petition or debtor's petition is presented against the entity.

Content of Draft Rule

The reporting entity must include the following information in a written notice given to the Regulator to notify of particular circumstances:

- *Name of entity (and, if relevant, the name of the controlling corporation)*
- *Entity's ABN (and, if relevant, the name of the controlling corporation)*
- *Type of notifiable event*
- *Any documentary evidence of the event, for example, the new business name or evidence of insolvency.*

Extract from the draft Payment Times Reporting Bill

Section 29 Notification requirements for reporting entities

(1) A reporting entity must notify the Regulator in writing if any of the following events occur:

- (a) the entity is notified that a business name, or a different business name, has become registered to the entity on the Business Names Register established and maintained under section 22 of the *Business Names Registration Act 2011*;
- (b) the entity's applicable accounting period changes under section 18 or 18A of the *Income Tax Assessment Act 1936*;
- (c) any of the following:
 - (i) in the case of a natural person—the entity becomes an insolvent under administration;
 - (ii) in the case of a body corporate—the entity becomes a Chapter 5 body corporate (within the meaning of the *Corporations Act 2001*);
 - (iii) in the case of a partnership—a creditor's petition or a debtor's petition is presented against the entity under Division 2 or 3 of Part IV of the *Bankruptcy Act 1966*.

(2) The notice must:

- (a) be given within 28 days after the occurrence; and
 - (b) include any information prescribed by the rules.
-