

EXPOSURE DRAFT

EXPOSURE DRAFT EXPLANATORY STATEMENT

Issued by authority of the Minister for Housing, Minister for Homelessness and Minister for Small Business

Payment Times Reporting Act 2020

Payment Times Reporting Rules 2024

Section 58 of the *Payment Times Reporting Act 2020* (the Act) provides that the Minister may make rules prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Payment Times Reporting Rules 2024* (the 2024 Rules) is to, along with the *Payment Times Reporting Amendment Act 2024* (the Amending Act), improve the Payment Times Reporting Scheme (the Scheme), by implementing the Government response to the *Statutory Review of the Payment Times Reporting Act 2020* (the Review) and making other amendments to the operation of the Scheme.

The Scheme commenced on 1 January 2021. It was introduced to improve payment outcomes for Australian small businesses by providing for large businesses and certain other entities to publicly report on their payment terms, times and practices with respect to small business suppliers. The *Payment Times Reporting Rules 2020* (the 2020 Rules) commenced concurrently with the Act to provide additional detail for technical and administrative aspects of the Scheme.

The Review was publicly released in August 2023. The Review assessed the effectiveness of the Act and the Scheme against its objects and found that certain requirements in the Act imposed unnecessary regulatory burdens on reporting entities, compromised the effectiveness of the Payment Times Reporting Regulator (the Regulator), and limited the accuracy and accessibility of the data reported under the Act. The Government response to the Review was released on 5 December 2023 and it agreed with all the findings and recommendations of the Review. As part of the response, the Government agreed to amend the Act and the 2020 Rules to address issues identified in the Review.

The Amending Act passed both Houses of Parliament by 3 July 2024 and received Royal Assent on 9 July 2024. Broadly, it amended the Act to expand the functions and enforcement powers of the Regulator, introduce a new Ministerial direction-making power for slow small business payers, include criteria for when an entity is a fast small business payer, reform the reporting entity framework and consolidate both payment times reporting and the Payment Times Reports Register (the Register).

The 2024 Rules repeal and remake the 2020 Rules to support the wider amendments made to the Scheme by the Amending Act.

In summary, the 2024 Rules prescribe the:

- entity information that a reporting entity or a reporting nominee must provide to the Regulator (Part 2);

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- information that must be included in a payment times report, including modified content requirements for special kinds of entities (Part 3);
- method to determine whether an entity is a slow small business payer (Part 4);
- meaning of a qualifying payment time of 20 days or less, for the purposes of determining a fast small business payer (Part 5);
- information relating to the Scheme that may or must be published on the Register (Part 6); and
- transitional provisions for reporting periods beginning before 1 July 2024, with the 2020 Rules continuing to apply, on and after 1 July 2024, to a payment times report for these reporting periods (Part 20).

Details of the 2024 Rules are set out in [Attachment A](#).

A summary of the changes to reporting requirements including an overview of the reporting requirements applying in relation to payment times reports for reporting periods beginning on or after 1 July 2024 is at [Attachment B](#).

The Act does not specify any conditions that need to be satisfied before the power to make the 2024 Rules may be exercised.

The 2024 Rules is a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act).

The 2024 Rules is subject to the disallowance regime under section 42 of the Legislation Act and is subject to the sunseting regime under section 50 of the Legislation Act.

Part 1 of the 2024 Rules commences on the day after the 2024 Rules is registered. Parts 2 to 6, Part 20 and Schedule 1 to the 2024 Rules commence on the day after registration of the 2024 Rules or the day the Amending Act commences (whichever occurs later). The Amending Act will commence on 7 September 2024.

Details of the *Payment Times Reporting Rules 2024*

Part 1 – Preliminary

Part 1 contains machinery provisions, including the commencement provision, authorising legislation provision and definitions.

Section 1 – Name of the Instrument

This section provides that the name of the Instrument is the *Payment Times Reporting Rules 2024* (the 2024 Rules or the Instrument).

Legislative references in this attachment are to the Instrument unless otherwise stated.

Section 2 – Commencement

Part 1 of the Instrument commences on the day after the Instrument is registered on the Federal Register of Legislation.

Parts 2 to 6, Part 20 and Schedule 1 to the Instrument commence on the day after the Instrument is registered or the day the *Payment Times Reporting Amendment Act 2024* (the Amending Act) commences (whichever occurs later).

Section 3 – Authority

The Instrument is made under the *Payment Times Reporting Act 2020* (the Act).

As explained in the note under the section, section 58 of the Act provides that the Minister may, by legislative instrument, make rules prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 4 – Schedule

This section provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Section 5 – Definitions

This section sets out definitions of key terms used in the Instrument, which are instrumental to the Payment Times Reporting Scheme (the Scheme), in addition to the definitions set out in the Act. These definitions are:

- ‘95th percentile payment time’ – signposted to paragraph 13(1)(e) in relation to a reporting period and signposted to section 16 in relation to a reporting cycle (explained later in this Explanatory Statement).
- ‘AASB 8’ – refers to:

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- the accounting standard *AASB 8 – Operating Segments – August 2015* (as amended and in force from time to time). The accounting standard is a legislative instrument, subject to disallowance. The current version is available publicly online, without charge, on the Federal Register of Legislation with title ID F2015L01606 at the time of making this Instrument; or
- the remade instrument if *AASB 8 – Operating Segments – August 2015* [F2015L01606] is repealed and remade, with or without modifications;
- ‘ABN’ – takes the same meaning as in the *A New Tax System (Australian Business Number) Act 1999*;
- ‘ACN’ – as defined in section 9 of the *Corporations Act 2001*;
- ‘ARBN’ – as defined in section 9 of the *Corporations Act 2001*;
- ‘complete payments dataset’ – signposted to subsection 11(3) (explained later in this Explanatory Statement);
- ‘controlled entity’ – an entity is a ‘controlled entity’ of another entity if the later controls the former. For clarity, section 5 of the Act defines ‘control’;
- ‘entity information’ – signposted to subsection 8(1) (explained later in this Explanatory Statement);
- ‘nominated entity’ – an entity is a ‘nominated entity’ of a reporting nominee if the entity is specified in a reporting nominee determination in relation to the reporting nominee;
- ‘payment term’, for a payment, – means the number of calendar days in any one of the following as is relevant to the payment:
 - the number of calendar days in a period (where there is a fixed period, in which the payment must be made, that is stated on the invoice);
 - the largest possible number of calendar days in a period (where there is a non-fixed period, in which the payment must be made, that is stated on the invoice);
 - the number of calendar days between the date of the invoice and the payment due day stated on the invoice (where a payment due day is stated on the invoice and the invoice does not state a period in which payment is required);
 - the number of calendar days between the day the obligation to make the payment arises under an agreement and the day the obligation is to be fully discharged by the payment under the agreement (where a payment is made without an invoice).
- ‘payment time’, for a payment, – means the number of calendar days between the two dates as mentioned in any one of the following:

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- the day the invoice was issued and the day the invoice was fully discharged by the payment (where the invoice is not a recipient created tax invoice and that payment due day is after the day the invoice was received, or the day the invoice was received was not recorded);
 - the day the invoice was received and the day the invoice was fully discharged by the payment (in all other cases involving payment by invoice, where the invoice is not a recipient created tax invoice);
 - the day on which the supply of goods or services covered by the invoice occurred and the day the invoice was fully discharged by the payment (in a case involving payment of a recipient created tax invoice);
 - the day a notice for payment under an agreement was issued and the day that obligation was fully discharged by the payment (where a payment is made without an invoice).
- ‘Payment Times Small Business Identification Tool’ – signposted to section 6 (explained later in this Explanatory Statement);
 - ‘Peppol enabled invoice’, in relation to an invoice, in relation to an entity – means an invoice that the entity can send or receive using the Peppol network as the entity is connected to the network;
 - ‘Peppol network’ – refers to the network for electronic invoicing developed and maintained by OpenPeppol.
 - The note to this definition in the Instrument clarifies that OpenPeppol gives authority to different nations to manage the Peppol framework for members in that nation. In Australia, the Peppol framework is managed for Australian Peppol members by the Australian Taxation Office as the Australian Peppol Authority;
 - ‘recipient created tax invoice’ takes the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*;
 - ‘reporting nominee determination’ – the determination made by the Payment Times Reporting Regulator (the Regulator) under subsection 10L(1) of the Act to determine an entity is a reporting nominee for one or more other entities specified in that determination;
 - ‘small business payments dataset’ – signposted to subsection 11(4) (explained later in this Explanatory Statement);
 - ‘small business trade credit payments dataset’ – signposted to subsection 13(3) (explained later in this Explanatory Statement);
 - ‘supply chain finance arrangement’ – an arrangement under which an entity undertakes or agrees to pay a small business supplier for the supply of a good or service before the terms for payment would otherwise allow, in exchange for that supplier paying a fee or accepting a smaller payment for the supply. The undertaking or agreement may be made directly or indirectly with the supplier;

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- ‘the Act’ means the *Payment Times Reporting Act 2020*. In this Explanatory Statement any reference to the Act is a reference to the Act as amended by the Amending Act; and
- ‘trade credit arrangement’ – signposted to section 7 (explained later in this Explanatory Statement).

Section 6 – Payment Times Small Business Identification Tool

In accordance with the definition of ‘Payment Times Small Business Identification Tool’ in section 5 of the Act, section 6 prescribes the meaning of ‘Payment Times Small Business Identification Tool’.

The Payment Times Small Business Identification Tool means the tool by that name, as existing from time to time, that is accessible on a website maintained by the Department of Treasury for the provision of payment times reports to the Regulator (the Payment Times Reporting Portal website). At the time the Instrument was made, the website could be found at <https://www.paymenttimes.gov.au>.

The purpose of the tool is to assist entities identify their small business suppliers, reducing the compliance burden for entities subject to the Scheme.

Section 7 – Meaning of trade credit arrangement

The Scheme requires reporting entities and reporting nominees to include in their payment times reports the payment terms and times information for payments to small businesses for goods and services procured under a trade credit arrangement. This requirement is provided in section 13.

Section 7 provides the meaning of a trade credit arrangement. Under such arrangements an entity can make payment for a good or service supplied by a small business supplier at least one calendar day after receiving the supply. Effectively, these arrangements allow an entity to delay payment for a good or service to a time after the supply of the good or service. To avoid doubt, trade credit arrangements do not include payments that occur at the point of supply or before the supply (for example, prepayments).

Part 2 – Entity information

In accordance with subsection 10S(1) of the Act, Part 2 requires a reporting entity or a reporting nominee to provide the Regulator with entity information about it and certain other entities. The Part prescribes the types of entity information to be provided. The Part further requires a reporting entity or a reporting nominee to update or correct missing, inaccurate or out of date entity information previously provided.

Broadly, entity information is administrative information about entities that assists the Regulator to administer and ensure compliance with the Scheme. To avoid doubt, entity information is not given as part of an entity’s payment times report. However, content requirements for a report under Part 3 require the entity to confirm in its report that the entity information most recently given by the entity to the Regulator is still true and correct as at the time the report is given. The Regulator can publish entity information, other than personal information on the Payment Times Reports Register (the Register) under Part 6 of the Instrument (as explained later in this Explanatory Statement).

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Section 8 – Entity information

Prescribed entity information

Subsection 8(1) prescribes the entity information that a reporting entity or reporting nominee must give the Regulator. It comprises the following information:

- the entity's name;
- any business name registered to the entity on the Business Names Register maintained under section 22 of the *Business Names Registration Act 2011*;
- the entity's Australian Business Number (ABN), or if the entity does not have an ABN – the entity's Australian Company Number (ACN) or Australian Registered Body Number (ARBN);
- the entity's address for service for the purposes of the Act, which must contain an email address and a physical or postal address in Australia;
- the class code and title for the business conducted by the entity, under the Australian and New Zealand Standard Industrial Classification (ANZSIC);

This information is required to determine fast and slow small business payers in a particular ANZSIC Division under Parts 4 and 5. It also allows for industry-based comparison of the payment terms, times and practices in relation to small business suppliers.

As defined in section 5 of the Act, the ANZSIC mean the *Australian and New Zealand Standard Industrial Classification (ANZSIC) 2006* as published from time to time by the Australian Bureau of Statistics (ABS). It is a standard classification produced jointly by the ABS and Statistics New Zealand and used for organising data about businesses. The Australian Taxation Office and ABS use it for data collection purposes.

The ANZSIC class codes and titles are available publicly online without charge on the ABS website (<https://www.abs.gov.au>);

- the day and month the entity's financial year would ordinarily end;

To avoid doubt, an ordinary financial year refers to an entity's financial year disregarding any temporary adjustments to the start or end of a financial year that may happen from reporting year to reporting year, but *not* adjustments that are intended to change an entity's financial year for all future reporting periods.

For example, an entity had a 31 December financial year end for the previous financial year, but has altered its ordinary financial year end to 30 June on a permanent basis. Accordingly, the entity information must only include 30 June (day and month on which the entity's financial year ends) as 30 June is the entity's ordinary financial year for the current financial year and future financial years.

As another example, an entity had a 30 June financial year end for the previous financial year and 30 June is the entity's ordinary financial year. For the current financial year, 30 June fell on a Saturday so the directors of the entity lengthened the

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financial year under subsection 323D(2) of the *Corporations Act 2001* by 6 days to 6 July in order to accommodate the entity's week-based internal reporting. Accordingly, the entity information must only include 30 June;

- whether the entity's financial reports must comply with AASB 8 (or an equivalent financial reporting standard of a foreign jurisdiction) for the immediately preceding financial year. Such an entity has modified reporting obligations under Part 3;
- the type of principal governing body of the entity; and
- the name, telephone number and email address for the responsible member of the entity and an individual (other than the responsible member) that has written authorisation to act on the entity's behalf in relation to its obligations under the Act (including by accepting information on the entity's behalf).

Entity information for particular entities

Subsection 8(1) also requires the reporting entity or reporting nominee to give the Regulator certain entity information for:

- each controlled entity (if the reporting entity has one or more controlled entities). To avoid doubt, this requirement does not apply to reporting nominees;
- each controlled entity that is a subsidiary reporting entity (if the reporting entity or reporting nominee has one or more controlled entities that are subsidiary reporting entities);
- the entity that ultimately controls the reporting entity or reporting nominee (that is, the entity that is not itself a controlled entity of another entity where the reporting entity or reporting nominee is a controlled entity of one or more other entities, including that entity) to enable that entity to be identified;
- each nominated entity of a reporting nominee (if the information is being provided by that reporting nominee); and
- the reporting entity that controls the subsidiary reporting entity (if the entity is a subsidiary reporting entity).

For each of these entities, the reporting entity or reporting nominee is only required to give the Regulator entity information comprising of the entity's name, any business name registered to the entity and the entity's ABN (or the entity's ACN or ARBN, if the entity does not have an ABN).

Giving, updating and correcting entity information

Subsection 8(2) requires a reporting entity or reporting nominee to correct, give or update entity information (as appropriate) where that entity becomes aware of any of the following:

- the entity information given was false, incorrect or misleading in a material particular when given, including because of information omitted (scenario 1);
- entity information was required to be given and has not been given (scenario 2);

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- the entity information given was correct at the time it was given but has become incorrect because of a change in circumstances (scenario 3);
- entity information was not previously required to be given but is now required to be given because of a change in circumstances (scenario 4).

The reporting entity or reporting nominee must correct, give or update the entity information as soon as practicable for scenarios 1 and 2.

Similarly, the reporting entity or reporting nominee must correct, give or update the entity information no later than before the entity next gives a payment times report to the Regulator for scenarios 3 and 4.

If the entity fails to do so, the entity will not be able to satisfy the requirement to confirm entity information in subsection 10(4). As explained in the note under subsection 8(2), a payment times report given by an entity must include a statement confirming that each particular of the entity information is correct as at the time the report is given. An untrue statement may result in the report being false or misleading in a material particular, and attract a civil penalty of 350 penalty units under section 16 of the Act.

Part 3 – Payment times reports

In accordance with section 14 of the Act, Part 3 prescribes the information that must be included in a payment times report. Broadly, this Part covers:

- reporting content requirements;
- modified reporting content requirements for special kinds of entities;
- reporting content requirements where an entity is required to report on behalf of another entity but cannot access the necessary information or documents of that entity; and
- the methods for ascertaining certain prescribed information included in a report.

The *Statutory Review of the Payment Times Reporting Act 2020* (the Review) emphasised the need for reporting clear, relevant and easy-to-analyse information to enable the Scheme to operate as intended. In particular, the Review recommended streamlining and improving the quality of reported data, including by:

- excluding certain credit card transactions from reported data where an entity has an internal policy prohibiting the use of credit cards for trade credit arrangements; (Recommendation 4.1);
- introducing a value threshold to exclude certain credit card transactions from reported data (Recommendation 4.2);
- updating the reporting content requirements as detailed in the Review (Recommendation 4.3); and
- consolidating the reporting content requirements in the rules (Recommendation 4.4).

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The Review also recommended introducing consolidated reporting and reporting on operating segments, consistent with standards set by the Australian Accounting Standards Board (Recommendation 2.1).

The Instrument gives effect to this so that the Act sets out the principles and objectives of reporting and affected entities and the Instrument includes the substantive and detailed requirements of what should be reported. This Part, together with the Amending Act, address these recommendations by:

- including the reporting content requirements exclusively in the Rules;
- revising the reporting content requirements having regard to the proposed content requirements for payment times reports in the Review, to provide for more useful data and streamlined reporting;
- consolidating reporting by providing for reporting entities and reporting nominees to report on behalf of particular other entities in a single report. Prior to this requirement, multiple entities within a corporate group had to give individual reports. Under the Instrument, consolidated reporting applies so that a reporting entity will give a single report each reporting period with consolidated data for each entity it controls in the corporate structure. This has the effect of reducing the number of reports on the Register; and
- prescribing method statements for how an entity is to work out certain matters, thereby improving the comparability and consistency of reported data while still allowing for flexibility of application.

The content requirements for a payment times report have been restructured by the Instrument to give reporting entities and reporting nominees detailed guidance on preparing datasets and subsequent report content. This seeks to provide entities with greater certainty on dataset preparation and report content. It also ensures greater consistency and comparability of reported data.

The prescribed information under this Part requires an entity to create various datasets. To avoid doubt, these datasets are not included in the final report given to the Regulator. However, entities have record-keeping obligations in relation to information used in the preparation of reports under section 29 or 29A of the Act (for reporting entities and reporting nominees, respectively). These datasets may therefore be subject to compliance audits under section 30 of the Act.

Section 9 – Purpose of Part 3

In accordance with section 14 of the Act, section 9 provides that Part 3 prescribes the information that a reporting entity or reporting nominee must include in a payment times report and the methods for working out certain matters that must be included in such reports.

Section 10 – Content of report: general requirements

Section 10 sets out the general requirements for the content of an entity's payment times report for a reporting period. This includes requirements for content on:

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- the entity;
- controlled entities where the entity has one or more controlled entities; and
- nominated entities where the entity is the reporting nominee for the nominated entities.

The content reported on these entities provides greater transparency on which entities are included in consolidated payment times reporting, as well as their payment practices for their small business suppliers.

Overview

The general requirements for the content ensure the Regulator and users of the reports and the Register are provided with a comprehensive understanding of the payment terms, times and practices with small business suppliers of entities subject to the Scheme. Content required (as outlined below) includes the start and end dates of the reporting period, use of supply chain finance arrangements during the reporting period, and whether the entity was subject to other legislative and regulatory requirements in relation to payment times and practices for small business suppliers (including codes of conduct).

These content requirements provide greater transparency and context to users of the reports and the Register. For example, an entity may have prompt payment times but require their small business suppliers to pay costs to make an offer for the supply of goods or services or otherwise to issue an invoice for that supply. Similarly, an entity may utilise supply chain finance arrangements whereby it agrees to pay a small business supplier earlier than the payment terms in exchange for a discount on payment. These arrangements may facilitate faster payment times but may not improve overall outcomes for small businesses. Reporting on such arrangements provides a comprehensive understanding of an entity's payment practices, and discourages entities using these methods to artificially boost their payment times data.

Required content – reporting entities and reporting nominees

Subsection 10(1) requires the following information to be included in relation to reporting entities and reporting nominees:

- the start and end dates of the entity's reporting period; and
- the name of the responsible member that approved the report and the date of the approval.

Required content – reporting entities

Subsection 10(2) requires that reporting entities must also include the following information in a payment times report:

- whether the entity, or any of its controlled entities, had offered to enter into supply chain finance arrangements or entered into such arrangements during the reporting period;

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- whether the entity, or any of its controlled entities, had or used a practice or arrangement during the reporting period which involved one or more small business suppliers paying that entity an amount (including, but not limited to a subscription or membership fee) to be able to:
 - make an offer to the entity to supply it with goods or services; or
 - issue an invoice to the entity for the supply of goods or services; and
- whether there are any legislative and regulatory requirements that apply to the entity, or its controlled entities, in relation to their payment times and practices for small business suppliers. These requirements are imposed by or under other Commonwealth laws, State or Territory laws and a code of conduct (regulating the industry in which the entity participates, and to which the entity has voluntarily agreed to comply with it);

Required content – reporting nominees

Subsection 10(3) requires that reporting nominees must also include the following information in a payment times report:

- whether the reporting nominee, or any of its nominated entities, had offered to enter into supply chain finance arrangements or entered into such arrangements during the reporting period;
- whether the reporting nominee, or any of its nominated entities, had or used a practice or arrangement during the reporting period which involved one or more small business suppliers paying the reporting nominee or any of its nominated entities an amount (including, but not limited to a subscription or membership fee) to be able to:
 - make an offer to that entity to supply it with goods or services; or
 - issue an invoice to that entity for the supply of goods or services;
- whether there are any legislative and regulatory requirements that apply to the reporting nominee, or any of its nominated entities in relation to their payment times and practices for small business suppliers. These requirements are imposed by or under other Commonwealth laws, State or Territory laws and a code of conduct (regulating the industry in which the entity participates, and to which the entity has voluntarily agreed to comply with it).

Confirmation of entity information

Subsection 10(4) requires an entity's payment times report for a reporting period, to include a statement confirming that each particular of entity information most recently given by the entity to the Regulator is still true and correct at the time the report is given. To avoid doubt, an incorrect statement results in the report being false or misleading in a material particular, which attracts a civil penalty of 350 penalty units under section 16 of the Act.

Reports to include additional contextual information

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Subsection 10(5) requires that an entity's payment times report for a reporting period, must include any reasonable additional information providing context or explanation for anything in the report that relates to any of the following:

- a matter, occurring during the reporting period, that had an effect of a material nature, on the payment times and practices for small business suppliers;
- a change, of a material nature, to financial reporting practices, dataset creation processes, or statistical calculation methods; or
- any other details without which the report is likely to be misleading in a material respect.

Section 11 – Content of report: proportion of payments to small business suppliers

Section 11 requires an entity to include in its payment times report the proportion, expressed as a percentage, of payments made to small business suppliers for the reporting period to which the report relates. For clarity, this is the proportion of the value of the payments, not the number of payments.

To calculate this percentage, an entity must first create a 'complete payments dataset' and a 'small business payments dataset' (which is a subset of the complete payments dataset) for the relevant reporting period for the entity. To avoid doubt, these datasets are not to be included in the entity's payment times report.

The section also prescribes the methods to:

- create a complete payments dataset;
- create a small business payments dataset; and
- calculate an entity's proportion of payments to small business suppliers.

Method to create a complete payments dataset

Subject to a few exceptions, a complete payments dataset comprises all the payments made in the relevant reporting period by a reporting entity and generally each of its controlled entities; and for reporting nominees, payments for that period by the reporting nominee and each of their nominated entities. The complete payments dataset consists of payments made to suppliers including small business suppliers. To give effect to the consolidated reporting framework introduced by the Amending Act, the entity must account for payments made by certain other entities.

Subsection 11(3) provides that there are three steps to create a complete payments dataset for a reporting period for the entity.

The first step requires the entity to identify all payments made in the reporting period by:

- the reporting entity and each entity it controls (excluding controlled entities that are subsidiary reporting entities and any controlled entities of the subsidiary reporting entities, because such entities report on their own behalf) where the entity is a reporting entity; and

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- the reporting nominee and each of its nominated entities, where the entity is a reporting nominee.

The second step requires the following details to be included in the complete payments dataset in relation to each payment identified in the first step:

- the payment amount;
- the entity that made the payment (and that entity's ABN, or ACN or ARBN if the entity does not have an ABN);
- the entity receiving the payment (and that entity's ABN, or ACN or ARBN if the entity does not have an ABN);
- the date the payment was made;
- the method by which the payment was made;
- if the payment relates to an invoice:
 - an invoice reference number;
 - whether the invoice was a Peppol enabled invoice;
 - the date on which the invoice was issued;
 - the date on which the invoice was received (if recorded);
 - the specified due date for payment on the invoice (if specified);
 - the payment term;
 - whether the invoice was a recipient created tax invoice; and
 - if the invoice was a recipient created tax invoice, the date on which the supply of goods or services covered by the invoice occurred.
- if the payment was made without an invoice – a reference number for the agreement to which the payment relates (if any), the date on which the obligation to make the payment arose under the agreement, the due date for payment and the payment term;
- whether the payment fully or partially discharged the invoice or obligation (as applicable); and
- whether the payment relates to employee remuneration.

As certain payments are not relevant to the Scheme and therefore do not form part of the reported data, the third step excludes the following payments from the dataset:

- payments to entities that do not have an ABN, ACN or ARBN (as such payments are not relevant to reporting under the Scheme);

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- payments between entities where both entities' payments are included in the dataset, both entities are controlled by a common entity, or one of the entities is a controlled entity of the other entity (this has the effect of removing intragroup payments);
- payments to a government entity (within the meaning of *A New Tax System (Australian Business Number) Act 1999*) (as such payments are not relevant to reporting under the Scheme);
- payments to, or for the benefit, of employees of an entity whose payments are included in the dataset (including amounts withheld from such payments under Subdivision 12-B in Schedule 1 to the *Taxation Administration Act 1953*) (as such payments for employees are not relevant to reporting under the Scheme);
- payments that are not payments for the supply of goods or services (as such payments are not relevant to reporting under the Scheme);
- payments that were made by way of a credit card for an amount of less than \$100 if the entity elects to remove these for a reporting period (as these low value credit card payment amounts are insignificant, can be high volume and increase reporting burden, may lack ABN data and details to classify a transaction, and to not discourage the use of credit cards as an option to pay small business suppliers as they can result in faster payment times. The removal of these payments is consistent with Recommendation 4.2 of the Review);
- payments made by way of the prohibited credit card, type of credit card, or credit card holder, as covered by the entity's internal policy where the entity has genuinely enforced the internal policy not to accept payments for trade credit arrangements by a credit card, specific type of credit card, or credit card holder, in relation to a trade credit arrangement (this has the effect of not discouraging the use of credit cards as an option to pay small business suppliers. The removal of these payments is consistent with Recommendation 4.1 of the Review).

The created complete payments dataset is intended to provide the Regulator with information to ensure the entity is complying with the Scheme, should the entity be subject to a compliance audit under section 30 of the Act.

Method to create a small business payments dataset

A small business payments dataset is a subset of the complete payments dataset, as it only includes payments that were made to small business suppliers.

Subsection 11(4) provides that an entity creates a small business payments dataset for a reporting period by using the Payment Times Small Business Identification Tool. The method requires the tool to be used to remove each payment that was not made to a small business supplier from the complete payments dataset. The resulting dataset is the small business payments dataset.

As explained in the note to subsection 11(4), entities that have no payments in their small business payments dataset may have special reporting content requirements under subsection 14(2). Specifically, this applies where there were no payments to small business

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suppliers in the reporting period. These special requirements are discussed in detail later in this Explanatory Statement.

Method to calculate proportion of payments made to small business suppliers

Subsection 11(2) sets out the method by which an entity determines the proportion of payments made to small business suppliers for a reporting period for the entity. The method uses the complete payments dataset and the small business payments dataset for the reporting period. The proportion is calculated by adding up the value of all the payment amounts in each dataset, and then applying the following formula:

$$\frac{\text{aggregate of all payment amounts in the small business payments dataset for the reporting period}}{\text{aggregate of all payment amounts in the complete dataset for the reporting period}}$$

The result of this division, expressed as a percentage, is the proportion of payments made to small business suppliers for the reporting period for the entity, which must be included in the entity's payment times report for that reporting period.

Where there are no payments in the small business payments dataset for a reporting period, the proportion of payments made to small business suppliers for the reporting period is 0 per cent.

Section 12 – Content of report: proportion of payments to small business suppliers relating to Peppol enabled invoices

Section 12 requires an entity to include in its payment times report the proportion, expressed as a percentage, of payments made to small business suppliers relating to Peppol enabled invoices for the reporting period to which the report relates. This section also prescribes the method to calculate this proportion.

The Review included detailed analysis of the adoption of Peppol enabled invoices in Australia and found that a greater uptake of electronic invoicing would facilitate faster payments to small business suppliers by reducing administrative burdens and delays associated with paying invoices. The Review agreed with stakeholders that information reported on the Register should identify entities that are Peppol enabled. Reporting the proportion of payment amounts made to small businesses that relate to Peppol enabled invoices therefore provides valuable information on the relationship between the adoption of Peppol enabled invoices and payment outcomes for small business suppliers. The information reported under section 12 intends to highlight the use of electronic invoicing and encourage further uptake of electronic invoicing.

Method to calculate the proportion of payments made to small business suppliers relating to Peppol enabled invoices

Subsection 12(2) sets out the method by which an entity determines the proportion of payments made to small business suppliers that relate to Peppol enabled invoices for an entity for a reporting period.

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The proportion is calculated for an entity for a reporting period by adding up the total of all the payment amounts in the small business payments dataset and the total of the payment amounts in the small business payments dataset that relate to a Peppol enabled invoice, and then applying the following formula:

$$\frac{\textit{aggregate of payment amounts in the small business payments dataset that relate to a Peppol enabled invoice for the reporting period}}{\textit{aggregate of all payment amounts in the small business payments dataset for the reporting period}}$$

The result of this division, expressed as a percentage, is the proportion of payments made to small business suppliers relating to Peppol enabled invoices, which must be included in the entity's payment times report for the reporting period.

Section 13 – Content of report: small business trade credit payment times and terms statistics

Section 13 requires an entity to include specific information related to small business payment times and terms in its payment times report for a reporting period (including information based on the entity's small business trade credit payments dataset for the reporting period). The section also prescribes the methods to calculate median payment time and to create a small business trade credit payments dataset for the reporting period for the entity. This dataset is a subset of the small business payments dataset (which was calculated in subsection 11(4), as described earlier in this Explanatory Statement).

Method to create a small business trade credit payments dataset

A small business trade credit payments dataset for a reporting period for the entity is required to determine certain information prescribed under subsections 13(1) and (2).

Subsection 13(3) provides that there are three steps to create a small business trade credit payments dataset for a reporting period for the entity.

The first step requires all payments from the small business payments dataset for the reporting period for the entity to be included in the dataset.

The subsequent steps exclude the following payments from the dataset to reduce the burden of reporting:

- each payment that was not made under a trade credit arrangement (as these payments should not be included in the dataset as the payments for the supply of a good or service were made before or on the same day as the supply); and
- each payment that is a deposit (as these payments are made prior to the supply of a good or service).

The resulting dataset is the small business trade credit payments dataset.

Information to be included in a report

Subsections 13(1) and (2) require an entity to include specific payment times and terms information for small business suppliers (payment time and term metrics based or derived

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from the small business trade credit payments dataset) in its payment times report for a reporting period. This information provides a comprehensive overview of the entity's payment times and terms for small business suppliers during the reporting period, including providing users of the report with transparency on how quickly small business supplier payments were made during the reporting period.

Paragraph 13(1)(a) requires an entity to report the total number of payments in the small business trade credit payments dataset relative to the total number of payments in the small business dataset. Expressed as a percentage, this proportion allows the Regulator to monitor payments in the small business dataset that are either not made under a trade credit arrangement (for example, prepayments, point of sale payments and other arrangements where the entity can make a payment for a good or service supplied by a small business supplier before or on the same calendar day as the supply) or are deposits (made before the supply of a good or service). For example, an entity reports that 70 per cent of payments in a reporting period in the small business payments dataset are payments in the small business trade credit payments dataset. This means that 30 per cent of payments in the small business payments dataset for the reporting period were either not made under a trade credit arrangement or were a deposit payment.

Paragraphs 13(1)(b) to (e) also require an entity to report the following payment times information, expressed as a number of calendar days, for all payments (that discharged an invoice or obligation in full) included in the small business trade credit payments dataset for the reporting period for the entity:

- the average payment time that represents the statistical mean (i.e. the average payment time);
- the median payment time (for clarity, subsection 13(4) provides that the median payment time is the average of the two median payment times if there is an even number of payment times in the dataset);
- the payment time that is the 80th percentile of all payment times (ordered from fastest to slowest); and
- the payment time that is the 95th percentile of all payment times (ordered from fastest to slowest).

The Instrument does not prescribe a method to calculate the 80th percentile of all payment times or the 95th percentile of all payment times. However, it is intended that the Regulator will publish guidance to assist entities with calculating this information, noting that there are multiple methods which can be used to calculate a percentile and a range of statistical software available to entities for calculation purposes.

Under subparagraph 13(1)(f)(i), an entity is also required to report the payments in the small business trade credit payments dataset that discharged an invoice or obligation in full (where the payment time did not exceed the payment term) relative to all payments in the small business trade credit payments dataset that discharged an invoice or obligation in full. This is expressed as a percentage.

It provides users of an entity's reports with an understanding of the proportion of payments in the dataset that discharged invoices or obligations in full (within the payment term). It

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also includes the proportion of payments that discharged invoices or obligations in full (where the payment time was greater than the payment term) (for example, where terms for payment required full discharge of an invoice or obligation to be made by a specific time but the payment did not fully discharge the invoice or obligation by this time) relative to the payments that discharged an invoice or obligation in full in the small business trade credit payments dataset.

Subparagraphs 13(1)(f)(ii) to (iv) further require an entity to identify and report the proportion of payments that discharged invoices or obligations in full:

- for which the payment time was 30 days or less;
- for which the payment time was between 31 and 60 days; and
- for which the payment time was more than 60 days.

Cumulatively, the three percentages for these categories reported by an entity should total 100 per cent. The Review proposed content requirements for payment times reports and reasons for their selection. In line with the Review, the consolidated interval reporting includes the quantum of invoices or obligations discharged in full after 60 days. This ensures that such long payment times are highlighted for users of the data and senior staff in reporting entities and reporting nominees who must approve the payment times reports.

Subsection 13(2) also requires an entity to report the following payment terms information for the entity's reporting period:

- the payment term (expressed as a number of calendar days) that represents the statistical mode of all payment terms for all payments (that discharged an invoice or obligation in full) included in the small business trade credit payments dataset (i.e. the most frequent payment term);
- whether that payment term is longer, shorter or the same as the entity's most common terms for payment (expressed in calendar days) in which payment is required to be made by a buyer of goods or services from the entity;
- the payment term (expressed as a number of calendar days) that represents the statistical maximum and minimum of all of the following payment terms where the entity is not a reporting nominee but has one or more controlled entities (i.e. where the entity is a reporting entity with at least one controlled entity):
 - the payment term representing the statistical mode for all payment terms for all payments (that discharged an invoice or obligation in full) made by the reporting entity included in the small business trade credit payments dataset (i.e. the most frequent payment term made by the reporting entity);
 - a payment term for each of the reporting entity's controlled entities, representing the statistical mode for all payment terms for all payments (that discharged an invoice or obligation in full) made by the controlled entity included in the small business trade credit payments dataset (i.e. the most frequent payment term of each of the controlled entities);

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- the payment term (expressed as a number of calendar days) that represents the statistical maximum and minimum of all of the following payment terms where the entity is a reporting nominee:
 - the payment term representing the statistical mode for all payment terms for all payments (that discharged an invoice or obligation in full) made by the reporting nominee included in the small business trade credit payments dataset (i.e. the most frequent payment term made by the reporting nominee);
 - a payment term for each of the reporting nominee’s nominated entities, representing the statistical mode for all payment terms for all payments (that discharged an invoice or obligation in full) made by the nominated entity included in the small business trade credit payments dataset (i.e. the most frequent payment term of each of the nominated entities);
- if the entity is a reporting entity, what the reporting entity reasonably expects the payment terms (expressed as a number of calendar days) to represent that statistical maximum and minimum of all payment terms for all payments (that will discharge an invoice or obligation in full) to be made by the reporting entity and the reporting entity’s controlled entities in the small business trade credit payments dataset for the next reporting period for the reporting entity;
- if the entity is a reporting nominee, what the reporting nominee reasonably expects the payment terms (expressed as a number of calendar days) to represent that statistical maximum and minimum of all payment terms for all payments (that will discharge an invoice or obligation in full) to be made by the reporting nominee and the reporting nominee’s nominated entities in the small business trade credit payments dataset for the next reporting period for the reporting nominee.

Section 14 – Content of report: special rules for certain entities

Prior to the Amending Act, the Scheme did not include special reporting content requirements for entities in prescribed circumstances. All entities subject to the Scheme had to report the same information. The Amending Act revised the reporting requirements in section 14 of the Act and provided the rules with the ability to require an entity’s payment times reports to include different information in prescribed circumstances. Section 14 sets out the circumstances in which an entity is to provide modified information in its payment times reports and prescribes the reporting content requirements for each of those circumstances. Requiring reporting entities and reporting nominees to give the same data regardless of their circumstances can result in disproportionate burdens and payment times data that is not relevant or omits relevant data. Therefore, prescribing special reporting content requirements in these circumstances improves the quality of reported data and streamlines reporting for the relevant entities.

Section 14 prescribes special reporting content requirements for entities:

- in external administration;
- that do not make payments to small business suppliers;
- for which another entity is a reporting nominee; and

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- required to comply with AASB 8, or an equivalent financial reporting standard of a foreign jurisdiction, in the preparation of their financial reports.

An entity of a kind listed above must only report the information prescribed by this section. In other words, the requirements in this section displace the general reporting content requirements set out in sections 10 to 13.

Entities in external administration

Subsection 14(1) provides that an entity in external administration is only to include the following information in the entity's payment times report for a reporting period:

- the start and end date of the reporting period;
- the name of the responsible member who approved the report and the date of this approval;
- the name of the entity's external administrator (within the meaning of section 5-20 of Schedule 2 to the *Corporations Act 2001*);
- the capacity in which the external administrator has been appointed (for example, as an administrator of the entity or as a liquidator of the entity); and
- the date the external administrator was appointed.

For this subsection to apply, an entity must be in external administration (within the meaning of section 5-15 of Schedule 2 to the *Corporations Act 2001*) at any time during the reporting period that relates to the report, or after the reporting period ends but before an entity is required to give the Regulator the report.

Entities that do not make payments to small business suppliers

Subsection 14(2) provides that where there are no payments in the small business payments dataset for a reporting period, the entity's payment times report for that reporting period is only to include:

- the start and end date of the reporting period;
- the name of the responsible member who approved the report and the date of this approval; and
- the proportion of payments made to small business suppliers for the reporting period mentioned in subsection 11(1) (as explained in the note to subsection 14(2), this proportion is 0 per cent where there are no payments in a small business payments dataset for a reporting period).

An entity will have no payments in the small business payments dataset for a reporting period where the entity, and any entity it is required to report on behalf of, has made no relevant payment to a small business supplier in that reporting period.

Entities for which another entity is a reporting nominee

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Subsection 14(3) provides that a nominated entity is only to include the following information in the nominated entity's payment times report for a reporting period:

- the start and end date of the reporting period;
- the name of the responsible member who approved the report and the date of this approval;
- the name of the reporting nominee;
- the ABN of the reporting nominee (if the reporting nominee has an ABN); and
- the ACN or ARBN of the reporting nominee (if the reporting nominee does not have an ABN).

This subsection applies to any reporting entity that is also a nominated entity. The Amending Act introduced a reporting nominee framework into the Scheme, whereby the Regulator may determine under subsection 10L(1) of the Act that an entity is a reporting nominee for nominated entities. While Part 3 requires the reporting nominee to include information on behalf of those entities (the nominated entities) in the reporting nominee's payment times report, the nominated entity must still give reports (reporting on a subset of information, as outlined in the bullet points above) to ensure continuity of reporting. For clarity, the nominated entity does not have to report the general information prescribed in Part 3 (which the reporting nominee reports on their behalf) to avoid duplication of information on the Register.

Entities adopting AASB 8 in the preparation of financial reports

Subsection 14(4) applies where an entity's financial reports, for the financial year immediately preceding a reporting period for the entity, are required to comply with AASB 8 (or an equivalent financial reporting standard of a foreign jurisdiction). Where this subsection applies, the entity's payment times report must include information on segment performance.

In addition to the information prescribed by Part 3, subsection 14(4) provides that the entity's payment times report for the reporting period must also include information covered by section 13 (small business trade credit payment times and terms statistics) in relation to each operating segment of the entity (within the meaning of AASB 8, or the equivalent financial reporting standard of a foreign jurisdiction).

For example, under AASB 8 (F2015L01606, as in force at the time the Instrument commences) an operating segment is a component of an entity:

- that engages in business activities from which it may earn revenues and incur expenses (including revenues and expenses relating to transactions with other components of the same entity);
- whose operating results are regularly reviewed by the entity's chief operating decision maker to make decisions about resources to be allocated to the segment and assess its performance; and
- for which discrete financial information is available.

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The purpose of reporting separately on small business payment times and terms for each operating segment is to provide visibility of differences in payment performances for small business suppliers across different business activities within an entity. This allows users of an entity's payment times report to understand the entity's payment performance in relation to small business suppliers under the entity's main activities and operating environments. Reporting by operating segment aims to balance providing visibility of differences in payment performance within a corporate group while streamlining the number of reporting entities to deliver more useful and accessible data. Reporting in this way ensures that poor payment performance of individual operating segments within a corporate group is highlighted. For example, an entity with diversified mining business activities, separated into three operating segments (coal, gold and iron ore) will provide reporting by each of these segments, allowing users to understand payment performance in relation to small business suppliers for each operating segment.

Additional information

Subsection 14(5) provides that an entity to which this section applies may include in the entity's payment times report any additional information that the entity considers useful for providing additional context for any matter covered in the report.

Section 15 – Access to information of controlled entities

Section 15 provides that Part 3 is taken to not require particular information related to controlled entities to be so included or used in an entity's payment times report for a reporting period where the entity (reporting entity or reporting nominee) is unable to access this information (which would otherwise be required under Part 3) due to limits in its capacity to exercise control over a controlled entity.

Specifically, the inclusion or use of the following information is taken to not be required if the entity is unable to access that information as a result of limitations in its capacity to exercise control over the controlled entity:

- information related to a controlled entity that is required to be included in the entity's payment times report for a reporting period;
- information related to the controlled entity that must be used to work out a matter that is required to be included in a payment times report.

To avoid doubt, controlled entities refers to controlled entities of the reporting entity or the reporting nominee, as well as controlled entities of a nominated entity that is also a reporting entity.

The note below the section clarifies that reporting entities and reporting nominees are required to retain records of any information used in the preparation of a payment times report under sections 29 and 29A of the Act. This includes records of the inability of the reporting entity or reporting nominee to access information of controlled entities.

The provision reduces the reporting burden imposed on reporting entities and reporting nominees by ensuring they are only required to report on information that can be accessed by them on the controlled entities (within their capacity of exercising control over controlled entities).

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Part 4 – Slow small business payers

The Amending Act introduced a new direction-making power into Division 4 of Part 2 to the Act. This power enables the Minister in certain circumstances to give a slow small business payer direction to a reporting entity or reporting nominee, requiring that entity to take specified action. The Minister may delegate this power to the Regulator under subsection 55B(1) of the Act. Failure to follow a direction attracts a civil penalty under subsection 22G(1) of the Act.

Section 22B of the Act provides that the Minister may give such a direction to a reporting entity or reporting nominee if the Minister is satisfied of any of the following:

- the entity was a slow small business payer in two consecutive reporting cycles;
- the entity was a slow small business payer in a reporting cycle, and did not comply with a requirement to give a payment times report in the preceding reporting cycle;
- the entity was a slow small business payer in a reporting cycle, and did not comply with a requirement to give a payment times report in the following reporting cycle.

Section 22D of the Act provides that the entity is a slow small business payer for a reporting cycle if the entity in that reporting cycle was within:

- the slowest 20 per cent of small business payers (within the meaning prescribed by section 17); or
- the slowest 20 per cent of small business payers in an ANZSIC Division (within the meaning prescribed by section 18).

This Part (including sections 17 and 18) prescribes the method to determine whether an entity is a slow small business payer for the purposes of section 22D of the Act.

Section 16 – Meaning of 95th percentile payment time for a reporting cycle

A slow small business payer is determined by reference to reporting cycles as defined in the Act and report content provided to the Regulator as set out in the Instrument. It requires calculating the 95th percentile payment time for a reporting cycle for an entity, as defined in this section.

A reporting cycle is defined in section 5 of the Act to mean a period of six months starting on 1 January and 1 July respectively each year. Payment times reports are assigned to a reporting cycle based on the end date of the reporting period for which they are given. Section 8 of the Act sets out the reporting periods for reporting entities and reporting nominees, with such entities required under section 12 of the Act to provide a payment times report to the Regulator for each reporting period.

The end date of a reporting entity or reporting nominee's reporting period is not the same date as the date that a payment times report is given to the Regulator. Under section 13 of the Act, an entity has up to three months after the end date for a reporting period to give a report to the Regulator. An extension of this time is available in certain circumstances.

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Section 16 provides that the 95th percentile payment time, for a reporting cycle for an entity, means:

- the 95th percentile payment time for the reporting period where only one reporting period ended within or at the end of the reporting cycle (for example, the 95th percentile payment time for a reporting period that ended on 31 December, which ended in the 1 July to 31 December reporting cycle); or
- the 95th percentile payment time for the reporting period that last ended within or at the end of the reporting cycle where multiple reporting periods ended within or at the end of the reporting cycle (for example, if an entity has a reporting period that ended on 7 January and a subsequent reporting period that ended on 30 June, then the 95th percentile payment for the reporting period which ended on 30 June, which ended in the 1 January to 30 June reporting cycle); or
- the 95th percentile payment time for the first reporting period that ended after the reporting cycle where no reporting period ended within or at the end of the reporting cycle (for example, no reporting period ended in the 1 January to 30 June reporting cycle but the first reporting period (after that reporting cycle) ended on 7 July. The 95th percentile payment time for this reporting period is the 95th percentile payment time for the reporting cycle).

Section 17 – Slowest 20 per cent of small business payers

In accordance with subsection 22D(2) of the Act, subsection 17(1) provides that the slowest 20 per cent of small business payers for a reporting cycle refers to the reporting entities and reporting nominees whose 95th percentile payment times for the reporting cycle were ranked in the slowest 20 per cent of the 95th percentile payment times for the reporting cycle of all reporting entities and reporting nominees collectively.

In other words, the slowest 20 per cent of small business payers is determined by ranking the reporting entities and reporting nominees in a reporting cycle based on their 95th percentile payment time (the payment time, expressed as a number of calendar days, that is the 95th percentile of all payment times for all payments included in the small business trade credit payments dataset for the entity's relevant reporting period – per paragraph 13(1)(e) and section 16). The lower the number of calendar days, the faster a reporting entity or reporting nominee has paid its small business suppliers, and vice versa. The reporting entities and reporting nominees that fall within the slowest 20 per cent of ranked entities for the reporting cycle (as represented by their 95th percentile payment time) constitute the 'slowest 20 per cent of small business payers'.

The 95th percentile payment time is used to determine the slowest 20 per cent of small business payers because it removes a small percentage of outlier payments (to ensure those payments do not adversely impact the overall assessment of the payment times of an entity. These outlier payments may be caused by reasons outside the entity's control (for example, because of a dispute about the good or service supplied) or otherwise do not reflect the normal payment times of an entity. The 95th percentile payment time is defined in the Instrument both because it forms part of the prescribed content of a payment times report (which are contained in the Instrument as per paragraph 13(1)(e)) and it allows for greater flexibility to make future adjustments if this threshold is not working as intended.

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Subsection 17(2) provides that an entity and their 95th percentile payment time is disregarded in determining the slowest 20 per cent of small business payers if:

- that entity's payment times report for the reporting period that last ended within, or at the end of, the reporting cycle did *not* need to include information prescribed in subsection 13(1) (the small business trade credit payment times and terms statistics including the 95th percentile payment time); or
- the entity was a volunteering entity for the reporting period that last ended within, or at the end of, the reporting cycle.

This subsection essentially excludes entities that are not required to report the 95th percentile payment time (entities that do not report the data necessary to calculate the 95th percentile payment time, and entities that have special reporting content requirements under subsections 14(1) to 14(3) and are not required to report the 95th percentile payment time information) and volunteering entities (because such entities are only voluntarily subject to the Scheme) from the ranking of the 95th percentile payment times for a reporting cycle.

Section 18 – Slowest 20 per cent of small business payers in an ANZSIC Division

In accordance with subsection 22D(2) of the Act, section 18 provides that the slowest 20 per cent small business payers in a Division of the ANZSIC for a reporting cycle means those entities worked out using the method prescribed by this section.

Method to determine the slowest 20 per cent of small business payers in an ANZSIC Division

Section 18 sets out five steps to determine which entities are within the slowest 20 per cent of small business payers in an ANZSIC Division for a reporting cycle.

The first step is to identify each reporting entity or reporting nominee, and the 95th percentile payment times for the reporting cycle for each of those entities.

The second step is to remove any entity, and that entity's 95th percentile payment times, for the reporting cycle for the entity, if:

- the payment times report for the reporting period that last ended within, or ended at the end of, the reporting cycle for the entity did *not* need to include the information mentioned in subsection 13(1) (as such entities do not report the data necessary to calculate the 95th percentile payment time, or are entities that have special reporting content requirements under subsections 14(1) to 14(3) and are not required to report the 95th percentile payment time); or
- the entity was a volunteering entity for the reporting period that last ended within, or ended at the end of, the reporting cycle (as such an entity is only voluntarily subject to the Scheme).

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The third step is to assign each remaining reporting entity or reporting nominee to their relevant ANZSIC Division (based on entity information given to the Regulator in accordance with section 8).

The fourth step is to determine which entities' 95th percentile payment times for the reporting cycle were in the slowest 20 per cent of the 95th percentile payment times ranked among all entities allocated to that Division for the reporting cycle.

The fifth step provides that the entities worked out under the previous step for each ANZSIC Division are the slowest 20 per cent of small business payers in an ANZSIC Division for the reporting cycle concerned.

Section 19 – Qualifying payment time of 30 days or less

Subsection 22D(4) of the Act provides an entity that would otherwise be a slow small business payer with a safe harbour. It states that an entity is not a slow small business payer if the entity has given the Regulator a payment times report for a reporting period that ended within that reporting cycle and the report has a qualifying payment time of 30 days or less.

In accordance with subsection 22D(5) of the Act, section 19 prescribes the meaning of qualifying payment time of 30 days or less.

This section provides that a payment times report has a qualifying payment time of 30 days or less for a reporting period if the entity's 95th percentile payment time for that reporting period is 30 days or less.

The qualifying payment time gives an entity certainty on how to avoid being recognised as a slow small business payer.

Part 5 – Fast small business payers

The Amending Act introduced a fast small business entity framework into the Act. Under this framework, an entity meeting certain requirements may, at a particular time, be a fast small business payer.

Subsection 22K(1) of the Act provides that the Regulator must maintain and publish on the Register a list of entities that are fast small business payers. However, the Regulator may decide to exclude entities from the list in certain circumstances as set out in subsection 22K(3) of the Act.

A fast small business payer is defined in subsection 22J(1) of the Act. Central to this definition is that the reporting entity or reporting nominee has payment times reports with qualifying payment times of 20 days or less.

Part 5 prescribes the meaning of qualifying payment time of 20 days or less.

Section 20 – Qualifying payment time of 20 days or less

In accordance with subsection 22J(2) of the Act, section 20 sets out the meaning of qualifying payment time of 20 days or less.

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A payment times report has a qualifying payment time of 20 days or less for a reporting period if the entity's 95th percentile payment time for the reporting period is 20 days or less.

Part 6 – Publication of information on the Register

Section 17 of the Act requires the Regulator to maintain a Register of payment times reports, known as the Payment Times Reports Register, which must be made publicly available without charge on the internet. In addition to containing reports:

- section 22 of the Act permits the Regulator to publish information about an entity's non-compliance with the Scheme on the Register; and
- subsection 22K(1) of the Act requires the Regulator to maintain and publish a list of entities that are fast small business payers, introduced by the Amending Act.

The Register is the public facing platform for the Scheme. Prior to the Amending Act, the Register was limited to containing payment times reports and notices of non-compliance published by the Regulator. This limited the public's visibility of an entity's engagement with the Scheme, since reported data may be fragmented or incomplete without explanation where an entity has ceased to be subject to the Scheme or has received an extension of time to give a report.

The Amending Act inserts section 22A into the Act, which provides for the rules to prescribe information the Regulator has the ability to publish on the Register, information the Regulator must publish on the Register and procedures relating to the publication of information on the Register. This allows for information to be published on the Register beyond payment times reports and notices of non-compliance.

Broadly, Part 6 ensures the Register contains information to provide users of the Register a more complete narrative of an entity's engagement with the Scheme and understanding of an entity's reporting obligations under the Act.

Specifically, this Part prescribes the information the Regulator is required, or otherwise has the ability, to publish on the Register. This information is largely intended to inform users of the Register of an entity's status under the Scheme or of any approved application made by an entity for an extension to give a report. Publishing this information provides clarity about entities' obligations under the Act to provide context for the reported data or absence of reported data.

This Part also prescribes the information that the Regulator must take reasonable steps to remove information contained in a payment times report from the Register as provided for by subsection 18(3) of the Act, as well as matters that the Regulator may have regard to when deciding to remove such information, in accordance with section 20 of the Act.

Section 21 – Information that may or must be published on the Register

Information that may be published

The Amending Act reforms the reporting entity framework by empowering the Regulator to determine an entity to be a volunteering entity, subsidiary reporting entity or reporting nominee under sections 10B, 10E and 10L of the Act, respectively. These determinations

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have the effect of making an entity that does not satisfy the reporting entity definition in section 7 of the Act subject to the Scheme and consequently required to give the Regulator payment times reports. The Amending Act also empowers the Regulator to determine that an entity is to cease to be a reporting entity under section 10K of the Act and permits an entity to notify the Regulator that it ceases to be a reporting entity in accordance with section 10H of the Act.

In accordance with paragraph 22A(a) of the Act, paragraphs 21(1)(a) to (d) and (f) to (h) provide the Regulator with the ability to publish on the Register information about these determinations. This includes that the Regulator has made a determination, when the determination takes or took effect and whether the determination will be, has been, or is taken to have been revoked. This provides transparency regarding the nature of an entity's reporting obligations under the Scheme. Paragraph 21(1)(e), pursuant to paragraph 22A(a) of the Act, also provides the Regulator with the ability to publish on the Register that an entity has ceased to be a reporting entity from the beginning of a particular reporting period, having notified the Regulator to that effect under subsection 10H(2) of the Act.

In accordance with paragraph 22A(a) of the Act, paragraph 21(1)(i) further provides that the Regulator may publish entity information that is not personal information within the meaning of the *Privacy Act 1988* on the Register. For example, the Regulator may decide to publish entity information to provide users of the Register with information about the entity's ANZSIC class or division.

Information that must be published

Under subsections 12(2) and (4) of the Act, a reporting entity or reporting nominee is not required to give a payment times report for a reporting period in which the entity is an exempt entity for any part of that reporting period. The Regulator may determine that a reporting entity or reporting nominee is an exempt entity under section 10P of the Act (exempt entity determination).

In accordance with paragraph 22A(b) of the Act, subsection 21(2) requires the Regulator to publish on the Register that the Regulator has determined an entity is an exempt entity under section 10P of the Act and when that determination takes effect. The subsection further requires the Regulator to publish when an exempt entity determination has been revoked under section 10R of the Act and when the revocation takes effect.

The subsection also requires the Regulator to publish information that the Regulator has approved an extension for an entity to give a report under section 13A or 13B of the Act.

Information in relation to exempt entities and extensions must be published on the Register because it informs users as to the reason why an entity's payment times report for a particular reporting period is not on the Register at the time that report becomes due.

Section 22 – Matters relevant to the removal of information from the Register

Section 20 of the Act provides that the Regulator may remove information contained in a payment times report from the Register, if the Regulator considers that it would be contrary to the public interest in continuing to make that information publicly available. Paragraph 20(2)(c) of the Act provides that in making a decision to remove information,

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the Regulator may have regard to any other matters, including matters prescribed by the rules.

In accordance with paragraph 20(2)(c) of the Act, section 22 provides that the Regulator may have regard to whether the removal of the information would advance or impede the achievement of the objects of the Act (as contained in section 3 of the Act).

Part 20 – Application and transitional provisions

Transitional – reporting periods beginning before 1 July 2024

The *Payment Times Reporting Rules 2020* (the 2020 Rules) continue to apply, on and after 1 July 2024, in respect to payment times reports for reporting periods beginning *before* 1 July 2024. This is despite the repeal of the 2020 Rules, as in force immediately before the commencement of Schedule 1 to the Instrument.

To avoid doubt, the Instrument will apply in relation to payment times reports for reporting periods beginning *on or after* 1 July 2024.

Schedule 1 – Repeals

Schedule 1 to the Instrument repeals the 2020 Rules. This is because the Instrument replaces the 2020 Rules, subject to the transitional provisions to ensure continuity of reporting to the Regulator (as described above).

Entity information & Payment Times Report content**Entity information**

Entities that are reporting entities or reporting nominees will provide this information on registration with the Scheme and update details with each report submission. Entity information include approximately 13 data fields, which is similar to what is currently collected on registration for the Scheme. Many fields will be validated and prepopulated from external data sources.

Entity Information Content	Element	Rules Reference	Description
Identifying Information	Entity name & Business name (if applicable)	s8(1)(a)-(b)	Identifying information may be prepopulated and validated with external data sources where possible (e.g., from the Australian Business Register). Business name registered on the Business Names Register.
	ABN (or ACN/ARBN)	s8(1)(c)-(d)	ABN is the key unique identifier for Australian businesses. ARBN has been added as a unique identifier for businesses registered in Australian but that operate without an ABN or ACN.
	Service Delivery – email and physical address	s8(1)(e)(i) – (ii)	The service delivery email and physical address will be used by the Regulator to send official notices and correspondence to the entity.
Financial & Classifying Information	ANZSIC Code (Class level)	s8(1)(f)	An entity engaging in several activities would provide the ANZSIC Code for its primary activity.
	Ordinary Financial Year End Date	s8(1)(g)	The financial year is the same as the financial statements of the entity. If the entity does not prepare financial

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Entity Information Content	Element	Rules Reference	Description
			statements it can use its income year for tax purposes.
	Financial Reporting Operating Segments requirement	s8(1)(h)	Entities identify via a Yes/No question if they are required to prepare financial statements in accordance with AASB 8 Operating segments. Where an entity is required to prepare financial statements in accordance with AASB 8 their payment times report must include payment times information for operating segments.
Governance & Contact Information	Type of Principal Governing Body	s8(1)(i)	A description of the type of governing body for the entity (e.g., Board of Directors, Trustee).
	Contact Information – Responsible member & Authorised contacts	s8(1)(j)(i)-(ii)	<p>Governance and contact information to ensure efficient communications with entities.</p> <p>Authorised contacts are a person or legal entity authorised by the entity to communicate with the Regulator regarding the entity’s obligations under the Act, which may include advisory firms.</p>
Consolidated Group Structure	Reporting Entity - Controlled Entities information (if applicable)	s8(1)(k)	Information on controlled entities provides transparency for corporate groups as it identifies the entities within the broader corporate group and the entities that are included in its consolidated reporting.
	Reporting Entity - Subsidiary Reporting Entity	s8(1)(l)	An entity that has subsidiary reporting entities (s10E of the Act) must include information on those entities.

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Entity Information Content	Element	Rules Reference	Description
	information (if applicable)		
	Ultimate Parent Entity information (if applicable)	s8(1)(m)	The identify of a global parent will identify a reporting entity as a member of a larger corporate group.
	Reporting Nominee - nominated entity information (if applicable)	s8(1)(n)	An entity that has received a determination under s10L of the Act provides information on the entities specified in the determination (nominated entities). This information can be prepopulated from the application.
	Subsidiary Reporting Entity – controlling entity information (if applicable)	s8(1)(o)	An entity that has received a determination under s10E of the Act provides information on the reporting entity that the subsidiary entity is controlled by. This information can be prepopulated from the application.

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Information required for payment times reports

Entities that are reporting entities or reporting nominees will provide the following information for each payment times report and this information will be contained in the Rules. Payment times reports would have approximately 22 fields compared to over 60 fields in current reports.

Reporting Content	Element	Rules Reference	Description
General requirements	Reporting Period start and end date	s10(1)(a)	The start and end dates of the period covered in the report.
Approval information	Approving Responsible Member name	s10(1)(b)	The name of the responsible member that approved the report. This field is not intended to be published.
	Confirmation statement	s10(4)	Confirm information provided in Entity information to be correct. No requirement to submit a signed declaration. This field is not intended to be published.
Payment Practices	Offers supply chain finance arrangements	s10(2)(a), s10(3)(a)	This field asks entities if they offer supply chain financing arrangements to their small business suppliers.
	Practices and arrangements to accept invoices	s10(2)(b), s10(3)(b)	This field asks entities if they charge small businesses fees during the procurement process.
	Payment practices to small business – legal or voluntary obligations	s10(2)(c), s10(3)(c)	State whether the entity has payment commitments to small businesses. Payment commitments imposed by law (e.g. Security of payment laws) or adopted by agreement to an industry code.
	Most common standard payment term/s (statistical mode)	s13(2)(a),(c),(d)	Entities to provide the most common payment term for small business suppliers. Groups with more than one entity can provide

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Reporting Content	Element	Rules Reference	Description
			a range based the most common terms for each entity in the group.
	Most common standard payment term for the next reporting period (estimate)	s13(2)(e)	Entities to indicate whether they expect a change to the most common payment terms (or range for groups) in the next reporting period.
	Percentage of small business procurement that was Peppol enabled	s12(1)	Number of small business payments made via a system that was Peppol enabled. Invoices need not be transmitted via a Peppol network, only that the system used was Peppol enabled.
	Percentage of small business procurement made under a trade credit arrangement	s13(1)(a)	Number of small business payments that were made under a trade credit arrangement compared to all small business payments.
Contextual Information	Report comments	s10(5)(a)-(c)	Ability for the entity to provide information and explanation for a report. Entities will be required to provide information for matters material to payments times and practices for small business suppliers, material changes to report preparation methodologies and any details necessary to prevent a report from being misleading.
Small Business Procurement	Percentage of total value of small business procurement	s11(1)	The total value of small business procurement compared to total procurement for the entity.

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Reporting Content	Element	Rules Reference	Description
Payment Times Information	Average Payment Time	s13(1)(b)	The statistical mean of all payments to small businesses made under a trade credit arrangement.
	Median Payment Time	s13(1)(c)	Collection of median, 80 th and 95 th percentile payment times (the calendar days within which 50%, 80% and 95% of small business invoices are paid). This information provides a precise point of comparison not available through sole use of the payment times calendar day intervals.
	80 th Percentile Payment Time	s13(1)(d)	
	95 th Percentile Payment Time	s13(1)(e)	
	Percentage of small business trade credit arrangements paid within payment terms	s13(1)(f)(i)	
	Percentage of Number of Invoices paid between 0-30 day	s13(1)(f)(ii)	The proportion (by number) of small business invoices paid between specified intervals of 0-30 days, 31-60 days and more than 60 days.
	Percentage of Number of Invoices paid between 31-60 days	s13(1)(f)(iii)	
	Percentage of number of Invoices paid over 60 days	s13(1)(f)(iv)	
Standard Receivable terms longer than standard payment	s13(2)(b)	A comparison of payment terms to receivable terms which would require the selection of one of the following options, 'longer',	

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Reporting Content	Element	Rules Reference	Description
	terms to small business		‘shorter’, or ‘same’. This data will enable analysis of an entity’s approach to working capital funding and procurement from small business suppliers.

Information required for modified payment times reports – special rules for certain entities

Entities that meet certain prescribed circumstances can provide modified reporting content requirements.

Reporting Content	Element	Rules Reference	Description
Entity in external administration	Information required under s10(1)	s14(1)(a)	Entities that have entered into external administration will have reduced reporting requirements but are required to provide the report period start and end date and name of the responsible member who approved the report.
	Name of external administrator	s14(1)(b)	Details pertaining to the appointment of an insolvency practitioner.
	External administrator appointment details	s14(1)(c)	Details of the capacity in which the external administration was appointed. (e.g. liquidator voluntary administer, deed administration, or a

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			restructuring practitioner that has been appointed in order to restructure/sell/wind up the entity or to restructure finances in order to repay debts).
	External administrator appointment date	s14(1)(d)	Date the external administrator was appointed.
Entities with no small business procurement	Information required under s10(1)	s14(2)(a)	Entities that have no small business procurement will have reduced reporting requirements but are required to provide the report period start and end date and name of the responsible member who approved the report.
	Percentage of total value of small business procurement (s11(1))	s14(2)(b)	Entities that have no small business procurement are still required to provide the percentage of total value of small business procurement (i.e. 0%).
Entities who have a reporting nominee	Information required under s10(1)	s14(3)(a)	Entities that have a reporting nominee will have reduced reporting requirements but are required to provide

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			the report period start and end date and name of the responsible member who approved the report.
	Details of Reporting Nominee name, ABN, ACN or ARBN	s14(3)(b)-(d)	Entities that have a reporting nominee will have reduced reporting requirements but are required to provide details on the reporting nominee.
Entities using AASB 8 in the preparation of financial reports	Operating segment Information	s14(4)	Information covered by section 13 in relation to each operating segment of the entity.