



Australian Banking  
Association

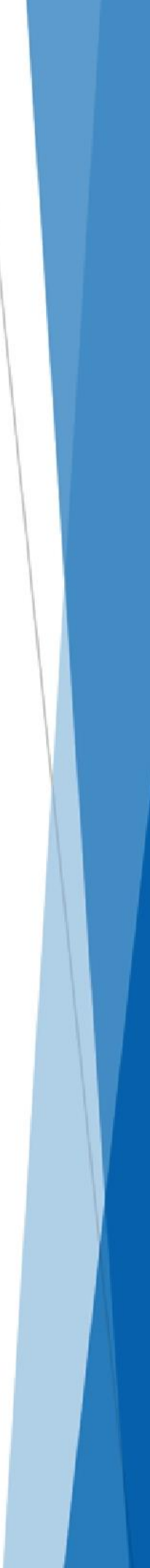


ABA Submission

Payment Times Reporting Rules 2024

Treasury

21 August 2024





## Table of Contents

ABA Submission.....	0
Payment Times Reporting Rules 2024 .....	0
Treasury.....	0
Key Recommendations .....	2
ABA submission to Treasury on <i>Payment Times Reporting Rules 2024</i> .....	3
1. Clarifying Definitions.....	3
1.1 Controlled Entity .....	3
1.2 Standard Receivable .....	3
1.3 Consolidated Reporting .....	3
1.4 Definition of trade credit arrangement.....	4
2. Data that is not currently collected .....	5
3. Payment Times.....	6
3.1 Where a Supplier does not have an e-invoicing system.....	6
3.2 Disputed or incomplete invoices.....	6
3.3 Change of ownership.....	6
4. Slow small business players .....	7
5. Subsidiaries of large foreign suppliers in Small Business data set .....	7

## Key Recommendations

The ABA makes the following recommendations:

1. The Proposed Rules clarify the definitions of
  - Controlled Entities, so that foreign entities are excluded
  - Standard Receivables, so that the definition matches the Explanatory Statement
  - Consolidated Reporting, including the scope of consolidated reporting, and
  - Trade credit arrangements.
2. Treasury reconsider some of the data the Proposed Rules require to be collected. Noting that some of the proposed data to be collected is irrelevant and/or will provide limited benefit whilst being a burden on small business to provide. For example, where an invoice is discharged in part or in full.
3. The reporting requirements for 'payment times' be reconsidered. The Proposed Rules currently do not adequately address,
  - Suppliers not e-invoicing,
  - Disputed invoices and payments, and
  - Changes in ownership.
4. Further guidance be provided around the required action from Reporting Entities in respect of the slowest 20% of entities within an ANZSIC Division. The slowest 20% should only be calculated if there is a big enough population.
5. That subsidiaries of large foreign suppliers be excluded from Small Business data sets.

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### About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers. We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.

## ABA submission to Treasury on *Payment Times Reporting Rules 2024*

The Australian Banking Association (ABA) welcomes the opportunity to make a submission regarding the Payment Times Reporting Rules amendments<sup>1</sup> (the Proposed Rules).

The ABA supports the policy objective that large businesses pay small business on time. We also appreciate the improvements made through the recent *Payment Times Reporting Amendment Act 2024* (the Act).

However, the ABA considers that there is room for improving the Proposed Rules to ensure the scheme meets its objectives in supporting small businesses and collecting relevant accurate data.

### 1. Clarifying Definitions

#### 1.1 Controlled Entity

The ABA notes the following definition of controlled entity,

*an entity is a controlled entity of another entity if the other entity controls the entity.*

In the ABA's view including foreign entities would add significant administrative burden collecting all the offshore entities payments data when the reality is there would be minimal if any payments to Australian small businesses. This will also skew the reported statistics of the percentage payments made to small businesses.

**ABA recommendation:** The Proposed Rules clarify that this definition excludes foreign entities.

#### 1.2 Standard Receivable

The ABA notes the new reporting element of "*Standard Receivable terms longer than standard payment*" in the Explanatory Statement. We also note that the term 'Standard Receivable' is not defined in the Proposed Rules. In the ABA's view the term 'Standard Receivable' is unclear.

**ABA recommendation:** The Proposed Rules should include a clear definition of '*Standard Receivable*', and the Explanatory Statement should provide guidance on the purpose and relevance of this new reporting element. The ABA recommends that the definition in the Proposed Rules should remain, and the Explanatory Statement be updated to reflect this.

#### 1.3 Consolidated Reporting

The ABA understands that one of the purposes of the Act is to simplify the definition of a reporting entity and subsidiary reporting entity, to allow for consolidated reporting. As stated in the Explanatory Memorandum of the Act, one of the key amendments was previously stated to be "*Using AASB standards to recognise consolidated business structures*"<sup>2</sup>.

In the ABA's view this has not been articulated clearly in the Proposed Rules in relation to the reporting entity. There is an additional requirement in the Proposed Rules, under *Section 14*

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<sup>1</sup> See, [Treasury Consultation - Payment Times Reporting Rules amendments](#)

<sup>2</sup> See, [Payment Times Reporting Amendment Bill 2024](#), Explanatory Memorandum, Summary of New Law, p. 5.

*Content of report – special rules for certain entities*, that will require banks to produce payment times statistics for each of our reporting segments under AASB 8 but this over and above the reporting entity requirements.

Therefore, in the ABA's view, it is unclear how, and if, consolidated reporting is enabled by the Proposed Rules, as was foreshadowed.

Reporting Entities should have the option to report as a consolidated entity or as subsidiaries. The ABA notes that forcing Reporting Entities report one way or the other will add a lot of complexity to the process.

For some banks accounts payable are managed at the consolidated group level, while for other banks subsidiaries manage their accounts payable separately. For these bank's Maintenance and tagging of small business vendors will need to be done by the subsidiary and then they would need to pass through their spend data to the parent company for consolidation. In these circumstances there will be more overhead and increased risk of errors as these entities do not have access to each others' systems. For bank's managing payments at the consolidated group level a requirement to separate payments into sub-consolidated groups will increase the costs and risks of errors.

**ABA recommendation:** the Proposed Rules to provide a clear definition of Reporting Entity and Subsidiary Reporting entity, stating that it can be both a sub-consolidated group and a consolidated group entity, as appears to be the intent of the Act.

In the ABA's view both consolidated reporting and subsidiary reporting should be allowed from Reporting Entities, to allow entities to report in the method that best reflects their organisational structure. The ABA seeks additional guidance on the format and form on how the segmental information should be reported and populated, should banks choose this form of reporting.

#### 1.4 Definition of trade credit arrangement

The Proposed Rules define a trade credit arrangement, as an *“arrangement under which payment, for the supply of a good or service by a small business supplier, can be made, or is made, at least one calendar day after the supply of the good or service.”*

This definition appears to be more catered to the construction industry or certain industries where the categories of 'prepayment or deposit' are relevant.

In the case of service industries, and in particular for financial services, these distinctions are rarely relevant. Banks rely on payment terms and obligations agreed with a supplier to determine when a supplier may invoice the bank (i.e. a 'pre-payment for services' will be an agreed payment obligation that will be invoiced for the pre-payment amount). Very often, invoices for services are provided after the service has been finalised.

Under the existing and Proposed Rules bank's payment terms and obligations that banks have agreed with small business suppliers fall under the definition of 'trade credit arrangement', however these arrangements do not meet the ordinary understanding of a trade credit arrangement, and how the Proposed Rules dataset is explained. Rather, the banks' agreements with their suppliers

(that is, their small business supplier agreements) are more appropriately categorised as small business payments.

Following from this distinction between ‘trade credit arrangement’ and ‘supplier agreements’, the dataset requirements and definition for ‘trade credit arrangements’ currently in the Proposed Rules are not sufficiently clear as to enable the creation of a separate small business payments dataset and a small business trade credit payments dataset which is required under the new rules.

**ABA recommendation:**

1. that Proposed Rules allow for ‘small business trade credit payments dataset’ and statistics under Section 13 of the Proposed Rules to be removed *if not applicable or the data unable to be reported*.
2. The definition of a ‘trade credit arrangements’ should be amended to cater for circumstances where a small business is invoiced for a full payment, but there is an option/requirement for partial payment up front as part of the payment terms.

Broadly, the required statistical information under Section 13 of the Proposed Rules should be reviewed for its applicability to the ‘small business payment times data-set’ rather than only to the trade credit payments data set. The Explanatory Statement indicates that the statistics and calculations required under section 13 (trade credit payment times and terms statistics) apply to payments to small businesses as a general definition rather than just ‘trade credit payments’ as per the Proposed Rules document.

## 2. Data that is not currently collected

The ABA understands that not all the data that is to be collected per the Proposed Rules is currently collected by banks, often because these datasets are not relevant to the transaction or arrangement. Further, some of the elements reported on do not form part of the contractual terms or invoices issued to banks, therefore many contracts and invoicing processes would need to be redesigned by the supplier (often small business) for the reporting purposes. For example,

- The date of supply of goods,
- Whether an invoice is discharged in part or full, and
- Whether the payment is discharged in part or full.

The above data points are not relevant to many of the arrangements in financial services and therefore, in the ABA’s view this data does not need to be collected.

We note that the redrafting of contracts and invoices would be a burden on small business suppliers without providing additional useful data in the context of financial services.

**ABA recommendation:** that the data collection requirements in the Proposed Rules be reconsidered with a view to the usefulness of the data collected in the context of financial services. Unnecessary data collections should be removed from the Proposed Rules.

### 3. Payment Times

The ABA understands that in some circumstances the invoice date and payment date are not the same as the date the invoices is received and the date a payment is actually made.

#### 3.1 Where a Supplier does not have an e-invoicing system

The ABA understands that some suppliers do not have an e-invoicing system.

**ABA recommendation:** Guidance be provided that addresses the timing of invoice submissions in circumstances where the supplier does not have an e-invoicing system.

#### 3.2 Disputed or incomplete invoices

In the Proposed Rules, there is no provision for disputed invoices where suppliers have not provided required documentation or met obligations.

In a number of standard processes small businesses are required to provide supplemental information evidence or other information for re-imbusement payment or reconciliation payments which are made annually as part of a supplier's reconciliation of recurring payments in order to meet payment obligations. For example, similar to the early invoicing, as discussed above, in real-estate leasing and management the paying entity requires supplemental information, evidence or other information for re-imbusement payments, in order to meet payment obligations, these may include receipts, third party supplier invoices (utilities, etc).

In these circumstances, the invoice payment is disputed until the invoices are appropriately investigated and all required documentation provided. This results in delay to payments and the risk of loss or incorrect payments if the investigation is not undertaken. Under the Proposed Rules it is likely that banks would have no option but to reject invoices as standard practice in the circumstances where they have a dispute. Banks would then need to ask suppliers to resubmit once solutioned with a new date on the invoice.

In the ABA's view, a potential resolution of this issue in the case of leasing, or other corporate real-estate category suppliers, will rely upon bank's requesting suppliers to resubmit invoices when all invoice requirements have been met. However, this will place an administrative burden on suppliers and potentially create further delays.

**ABA recommendation:** noting the Proposed Rules provision for calculating the 95% percentile in order to account for payment/invoice disputes, we suggest that re-imbusement and automated recurring payment annual reconciliation for leasing arrangements are removed from the payment's dataset. This will ensure that the 5% calculation of disputed invoices is a true reflection of disputed invoices.

Additionally, the ABA recommends that the Proposed Rules specifically quarantine disputed and incomplete invoices.

#### 3.3 Change of ownership

In the event that a property changes ownership or managing agent all recurring payments need to be stalled until details of new agents or owners are provided by property managers and verified for validity of supplier. This results in delays to 'recurring' payments but as they are a recurring payment under an invoice the invoice date does not change. The facilitation of data required for

verification checks sits with the supplier and therefore influence on speed of validation is limited, and changes in process may increase risk of fraudulent payments or breaches of APRA regulations regarding third party suppliers.

**ABA recommendation:** The Proposed Rules be amended to allow for delays in circumstances where there has been a change in ownership or managing agent and there are recurring payments. This will prevent payments being reported as delayed during such changes.

#### 4. Slow small business payers

In the ABA's view, the Proposed Rules are unclear regarding the required action from Reporting Entities in respect of the slowest 20% of entities within an ANZSIC Division.

The ABA seeks clarity on the following,

- Where do we find what entities are included within each relevant division, (i.e. is it the category or subcategory)? Are Reporting Entities expected to conduct the analysis?
- Is there any consideration of the size of the ANZSIC division?

In the ABA's view, to calculate the slowest 20% only makes sense if there is a big enough population. We are concerned that reporting the slowest 20% of a small group (for example, 10) is extremely punitive and not the intention of the Act.

#### 5. Subsidiaries of large foreign suppliers in the Small Business dataset

In respect of suppliers with ABN, ARBN or ACN that are not identified as a large or medium sized business with an annual income greater than A\$10 million through the Payment Times Small Business Identification Tool but are the Australian subsidiary of a large on global business.

The ABA is concerned that these suppliers are not genuine Australian small businesses and to date it has been unclear how to confirm whether such entities should be included or how to have other suppliers suspected of meeting the conditions of a medium or large business investigated and identified as a large or medium business through the Small Business Identification Tool (ie: the supplier meets the conditions across a number of customers).

The ABA seeks clarity on the following,

- Are Australian subsidiaries of large foreign businesses excluded from being classified as a small business, and therefore are they able to be identified through the SBI Tool?
- How can banks confirm investigation of suppliers suspected to be a medium or large business, and consequently identified through the SBI Tool?