

Payment Times Reporting Rules 2024: exposure draft

Submission to the Treasury
August 2024

Introduction

The Australian Chamber of Commerce and Industry (ACCI) welcomes the opportunity to comment on the exposure draft materials of the Payment Times Reporting Rules 2024 (the draft Rules).

ACCI is Australia's largest and most representative business network. Our members are state and territory chambers of commerce, national industry associations and a council of business leaders from individual enterprises. Together, we represent Australian businesses of all shapes and sizes, across all sectors of the economy, and from every corner of our country.

As a peak industry association representing businesses of all sizes, we are in a unique position to provide insights on the proposed reforms to the Payment Times Reporting Scheme (the Scheme). We can acknowledge the impacts these changes will have on the businesses the Scheme is designed to protect and those it imposes obligations upon. In considering the draft Rules, ACCI has sought to balance the reporting burden for large businesses with the information small businesses refer to when considering whether to engage with a large business.

ACCI made a submission to the Statutory Review of the *Payment Times Reporting Act 2020* conducted by Hon Dr Craig Emerson (the Review) and welcomed its findings and recommendations, which we note were accepted by government. We also made a submission on the exposure draft of the Payment Times Reporting Amendment Bill 2024 (the amending legislation), in which we broadly supported the changes while making some important recommendations to improve the Scheme's effectiveness. We note that some of these recommendations were adopted, including requiring the Payment Times Regulator (the Regulator) to list where a reporting entity or nominee is subject to a 'slow small business payer direction' on the Register. This increased transparency will be important for small businesses using the Register and will increase the success of the amendments made.

Payment terms and practices, such as the payment schedule, method of payment, and dispute resolution mechanisms, can greatly impact a small business's cash flow and overall financial stability. Late payment for goods and services supplied to large businesses are a significant challenge for small businesses, often having major budget implications for small business owners as they try to keep on top of their day-to-day running expenses.

As demonstrated by a recent ACCI survey, the greatest pressures Australian small businesses are currently facing are centred on financial viability.¹ Any efforts to improve this by hastening payment times is welcomed.

It is crucial that the Scheme works as efficiently as possible to maximise compliance and give small suppliers greater certainty, and we welcome recent measures to achieve this.

While we are broadly supportive of the draft Rules, we have some concerns which should be addressed. We have outlined these concerns, noting that their rectification will make the Scheme more accessible for small businesses, but also for larger businesses so they are not overburdened with superfluous reporting requirements.

Reporting requirements

ACCI has canvassed the issues faced by both small and larger businesses in terms of reporting requirements in our previous comments to the Review and consultation on the amending legislation. In summary, the relevant information small businesses need to inform whether they should engage with a larger business is difficult to locate in amongst the plethora of data available – and the display of this data is difficult to navigate. For reporting entities, the reporting required is cumbersome and complex, with any errors in reporting being followed by substantial financial penalties.

We welcome recognition of this in the Review findings and note that changes have been implemented in the draft Rules to follow this.

However, while we note that the data to be included on the Register itself has been reduced, we are concerned that reporting entities or reporting nominees will still have to prepare and hold the same amount of information to meet the revised reporting requirements. The current exposure draft requires businesses to report on the percentage of number of invoices, unlike the previous reporting requirement where they were required to report on the value of the transaction as well. However, despite this information not being required for the Register itself, we are concerned that under the current exposure draft, businesses will still need to collate this information to create a “complete payments dataset”.

What we need is a simple and streamlined approach to payment times reporting. A clear, simple methodology for calculating the proportion of payments made to small business suppliers is required. The current approach outlined in the draft remains onerous and will be burdensome for businesses to comply with.

¹ ACCI (2024), [2024 Small Business Conditions Survey](#), 21 July 2024, pg.9.

We note that reporting entities and nominees will no longer be required to report on their shortest and longest standard payment times. We understand that these fields are essentially being replaced by requirements to report on average, median, and 80th and 95th percentile payment times. While we welcome the additional detail for small businesses who seek it and note the 95th percentile information is required for the Regulator to determine whether an entity is a fast or slow small business payer, we are concerned that this may be too much information for small businesses to digest, and subsequently requires irrelevant reporting from larger businesses.

Specifically, we do not believe the requirement for the 80th percentile payment times is necessary. It is unlikely that small businesses will refer to it, and it is another reporting requirement larger business must meet. The information provided by the average, median and 95th percentile fields should be sufficient for a small business to determine whether to engage with a larger business. Furthermore, the Regulator does not require this information to carry out their powers and responsibilities under the overarching legislation.

Further, we recommend simplifying and narrowing the mandatory reporting requirements to focus exclusively on payment times. This would involve removing the obligation to report on supply chain finance and related details. Instead, reporting on payment practices like supply chain financing should be made optional.

Method statements

We note and welcome the inclusion of method statements to calculate relevant reporting information. This approach provides a clear outline for reporting entities and nominees to collate the details required, which should help ensure uniformity and consistency in the information reported.

However, neither the draft Rules nor the explanatory materials specify a method for calculating the 80th and 95th percentiles of all payment times, instead noting that it is “intended” that the Regulator will publish guidelines to assist entities to calculate this information.²

Instead of leaving entities to determine these percentiles on their own, the Rules should include the method statements similarly to how it has other calculation methods set out. Providing this information in the Rules as opposed to in guidelines as currently stipulated will simplify this process for reporting entities and nominees and will provide a level baseline for the Regulator to assess those businesses who qualify as fast and slow small business payers. This should occur regardless of whether the 80th percentile reporting requirement is removed, as recommended above.

Differentiation by industry

We welcome the ability for the Regulator to differentiate and take into consideration industry standards when determining whether a reporting entity or nominee is a slow payer.

² Exposure Draft Explanatory Statement, pg.18.

However, there should be further clarity within the Rules or the explanatory materials about the interaction between the slowest 20% of small business payers overall and of those in an ANZSIC Division – specifically whether inclusion within one class excludes the reporting entity or nominee from inclusion within the other, and whether there will be any differentiation on the Register.

There may be some circumstances where the 95th percentile of payments fall into the bottom 20% of payments overall but are still well within the standard payment times and practice for some industries. In these instances, it is unclear whether the Register would note that a reporting entity or nominee was above or in line with standard payment times for their own industry or whether they would be considered a ‘slow small business payer’ overall. Further, where a reporting entity or nominee does not fall within the bottom 20% overall but are in the bottom 20% for their industry, this will be useful information for small businesses engaging with the Register to see.

We recommend that these classifications be noted on the Register, including where a reporting entity or nominee is identified as both a slow payer overall and for their industry. Doing so will help small businesses using the Register to more clearly determine whether their engagement with the larger business is appropriate or whether they should reconsider.

This may be crucial for some industries, such as construction, where it is common for payment to be made in stages as work is completed. In these cases, the timeframe for payment may be longer than 30 days – but of course this should be agreed upon and clearly outlined in contractual terms upon entering a supply arrangement.

ACCI notes that the dashboard is currently being refurbished to complement the legislative changes, to ensure it is more functional for small businesses. When considering these improvements, there should be a section that notes the standard or average payment times for the industry the business operates in. This could be easily calculated for each ANZSIC division, noting that reporting entities and nominees are required to provide this information when providing their report.³ Making this information easily available to small businesses using the dashboard will enable small businesses to assess whether the reporting entity or nominee pays within an acceptable timeframe for their operational purposes or not.

Unintended consequences for small businesses

The draft Rules note that reporting entities or reporting nominees can submit reports on behalf of other specific entities in a single report. However, the nominated entity is still required to submit its own reports to maintain continuity. This is concerning, particularly for small businesses that are subsidiaries of a large, consolidated group where the parent entity is a reporting entity.

We are concerned that small businesses may end up reporting on payment times to other small businesses, which would add an unnecessary regulatory burden instead of providing meaningful assistance.

³ s8(1)(f).

Next steps

We welcome the steps taken to simplify the Scheme overall, including reducing the complexity of reporting for larger businesses and the display of relevant data for small businesses. However, it will be important to ensure that the measures implemented through this reform process are effective.

While the changes to the Register and the Scheme itself are important, their success will be limited if small businesses and the public more broadly are not aware of their existence. Further promotion of the Register, the Regulator and its increased powers, will be essential to the success of the measures and the reduction of payment times for small businesses.

Should you require any additional information or clarification of any points contained within, please contact David Alexander, Chief of Policy and Advocacy at David.Alexander@acci.com.au.

About the Australian Chamber of Commerce and Industry

The Australian Chamber of Commerce and Industry (ACCI) is Australia's largest and most representative business network. We facilitate meaningful conversations between our members and federal government – combining the benefits of our expansive network with deep policy and advocacy knowledge. It's our aim to make Australia the best place in the world to do business. ACCI membership list can be viewed at www.australianchamber.com.au/membership/current-members/

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