

Preparing to report under the *Payment Times Reporting Act 2020 (Cth)*

The new *Payment Times Reporting Act* laws have largely taken industry by surprise and require a new process of compliance to be implemented in large businesses.

With the end of the first reporting period for large businesses fast approaching, now is the time for large businesses to ensure they are in a position to prepare and submit reports under the *Payment Times Reporting Act 2020* disclosing payment performance metrics in paying small business suppliers.

In 2020, the Federal Government proposed and implemented new laws in the form of the *Payment Times Reporting Act 2020*, which will attempt to improve the payment practices of large businesses in Australia.

These new laws have so far proven to be more challenging than first expected to comply with for large businesses, due to the requirement to extract the necessary raw data from accounting systems, ensure the integrity of that data, and develop a new business process for reporting to be prepared for the new laws and signed off on by a director of the company.

We are currently working with large businesses, deploying multi-disciplinary teams of both legal and finance/accounting expertise to assist develop and implement compliance programs tailored to each client's business and existing financial reporting systems. **For more detail on the new laws, or for assistance with developing your compliance program, read further below and feel free to contact our office.**

From 30 June 2021 large businesses will need to publicly report on their small business payment practices

The *Payment Times Reporting Act 2020 (Cth)* requires all large businesses with annual turnover greater than \$100m (including businesses in a corporate group which exceed that turnover), to submit a *payment times report* twice each reporting year, to a newly created *payment times reporting regulator*.

Since our last publication, the Federal Government has released the *Payment Times Reporting Rules 2020*, which implements additional reporting requirements that businesses will now need to prepare to report on.

The *payment times report* will be in a standard form (not yet released) and be required to include specific information about the payment terms and practices of the submitting business and will include, amongst other requirements, reporting on:

1. The *standard payment periods* for the entity at the start of the *reporting period*, including the shortest and longest *standard payment periods*.
2. Details and an explanation of any changes to the *standard payment periods* for the entity during the *reporting period*, including in relation to the shortest and longest payment periods for the entity.
3. The proportion, by total number and by total value, of *small business* invoices paid by the entity during the *reporting period* which were paid:
 - a. within 20 days after the invoice was issued;
 - b. between 21 and 30 days after the date of issue;
 - c. between 31 and 60 days after the date of issue;

- d. between 61 and 90 days after the date of issue;
 - e. between 91 and 120 days after the date of issue; and
 - f. more than 120 days after the date of issue.
4. The proportion, determined by total value, of all goods and services procured by the *reporting entity* from *small businesses* in the *reporting period*.
 5. Details of any subscription or membership fees charged to *small businesses* to allow them to submit a tender or an invoice.
 6. A description of any *small business supply chain finance arrangements*, including:
 - a. the proportion of *small businesses* paid under the arrangements;
 - b. details of any benefits received from providers of the arrangements; and
 - c. details on requirements for *small businesses* to use *small business supply chain finance agreements*.

This information will then be uploaded onto an online free and publicly accessible *payment times register*.

Large businesses will be required to keep records of information used to prepare these *payment times reports* for at least 7 years after the report is submitted.

The laws are aimed at improving large business payment practices in Australia by exposing large businesses to greater public scrutiny and allowing small businesses access to reliable information on payment practices of their potential customers

The theory behind the new laws is that long and late payment times adversely affect the cash flow of small businesses, leading to higher bankruptcy and exits rates, and small businesses lack the market power to correct this issue. The Federal Government has concluded that new laws are required to cultural change to payment practices of large Australian businesses, which will in turn deliver economic benefit to the Australian economy.

The *payment times register* will allow *small businesses*, members of the public, and press to freely interrogate the payment practices of large businesses and, in the case of *small businesses*, make better informed decisions about who to do business with.

The goal of the new laws is to see large businesses in Australia adopt more reasonable payment terms, of shorter duration, when paying *small businesses*.

The Federal Government estimates that the net benefit to *small businesses* from normalising *small business* payment times to 30 days would be \$522 million per year, with an estimated net benefit to the Australian economy of \$313 million per year.

Civil penalties and enforcement powers will apply to compel compliance by large businesses with these new laws

The *payment times reporting regulator* may publish the identity of entities who fail to comply with the Act to publicise that misconduct.

Additionally, after a grace period of 12 months from commencement of these new laws, civil penalties of up to **0.6% of a large business' annual turnover** may apply to large businesses who fail to comply with these new laws.

The *Regulator* will also be given broad audit, monitoring and investigation powers under the Act including rights of entry, inspection, search and seizure of evidence to investigate and prosecute non-compliance with these new laws.

Where the *payment times reporting regulator* reasonably suspects that a reporting entity has breached these new laws, the *payment times reporting regulator* will also be able to force large business to engage, at the large business' expense, an independent auditor to audit compliance with these laws and provide a report of the auditor's findings to the *regulator*.

The new laws commenced 1 January 2021*

The commencement date for the new laws was 1 January 2021*.

*However, if a *reporting entity's income year* started in the 6 months prior to 1 January 2021 (as would be the case for *reporting entities* with *income years* aligned with the financial year), the first 6 months of that *income year* is excluded as a *reporting period* under the Act, and the entity is only required to submit its first *payment times report* within 3 months from the end of that *reporting entity's* first full *reporting period* after 1 January 2021 (being the second half of their income year).¹

Key takeaways – develop a compliance program now

Large businesses in Australia should begin preparing amendments to their corporate compliance programs and finance functions now in readiness to comply with these new laws.

Given the risk of substantial penalties under the new legislation, detailed work should be done to understand which entities in a company group may need to report, how the data necessary to prepare a *payment times report* can and will be extracted from the business' accounting software and produced in the format required for each *report*, as well as correcting any data integrity issues that might arise from any existing data entry practices (that may now need modifying) before reports are routinely required to be prepared (minimising re-work).

We also recommend C-suite consideration be given to how current payment practices are likely to compare with industry and competitors when they are published on the new public register. This should be done to determine whether a reputational risk to the business' brand could arise as a consequence of these new laws and the public scrutiny they will facilitate, and conversely, whether any opportunity can be seized by drawing upon data to be published on the *payment times reporting register* to highlight comparatively excellent payment practices, improving brand and reputation in the process.

Our support

We are currently supporting large businesses to navigate and implement compliance programs to comply with these new laws through fused legal and financial analytics/accounting expertise, delivering **end to end solutions** for clients to ensure the laws are understood those tasked with complying with them, and that practical compliance programs (responsive to the each business software and reporting systems) are developed and implemented.

For support with complying with these new laws, contact us on the below details to book a session with our team.

Frequently asked questions

Some of the finer details of how these new laws will apply, and the questions they are likely to raise for business executives tasked with implementing them in the more than 3,000 large businesses and government owned enterprises affected by these new laws are addressed in Q&A format below.

¹ s54A

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Payment Times Reporting Act 2020: Frequently Asked Questions

What is required to be included in each *payment times report*?

The *payment times report* must include:²

1. The entity's name.
2. The entity's ABN.
3. The entity's main business activity.
4. The *reporting period*.
5. The *standard payment periods* for the entity at the start of the *reporting period*, including the shortest and longest *standard payment periods*.
6. Details and an explanation of any changes to the *standard payment periods* for the entity during the *reporting period*, including in relation to the shortest and longest payment periods for the entity.
7. The proportion, by total number and by total value, of *small business* invoices paid by the entity during the *reporting period* which were paid:
 - a. within 20 days after the invoice was issued;
 - b. between 21 and 30 days after the date of issue;
 - c. between 31 and 60 days after the date of issue;
 - d. between 61 and 90 days after the date of issue;
 - e. between 91 and 120 days after the date of issue;
 - f. more than 120 days after the date of issue.
8. The proportion, determined by total value, of all goods and services procured by the *reporting entity* from *small businesses* in the *reporting period*.
9. Details of board of directors or governing persons of the *reporting entity*.
10. If the *reporting entity* is a subsidiary, the parent company of the group.
11. A declaration that the report will be provided to the board or governing persons of the *reporting entity* by the person responsible for creating it.
12. The name and signature of the responsible person who prepared the report and date of signature.
13. The name and contact details of the person submitting the report to the *regulator*.
14. Whether the *reporting entity's* accounting period or business name has changed since the last time a *payment times report* was lodged with the *regulator*.
15. Any other information prescribed by regulation as required to be produced with the report, including:
 - a. details of the practices or arrangements for receiving or paying *small business* invoices;
 - b. details of any practices or arrangements through which a *small business* is required to pay an amount, including a subscription or membership fee to participate in the entity's procurement processes, including to lodge a tender or submit an invoice;
 - c. a description of any *small business supply chain finance arrangements* used, a statement of the proportion of *small business* invoices paid using those arrangements and details of any benefits received by the entity from the providers of those arrangements;
 - d. a statement on whether *small businesses* were required to agree to use *small business supply chain finance arrangements* to participate in the entity's procurement processes or to receive payments in relation to *small business* invoices;
 - e. a statement on when the report will be provided to the principal governing body of the entity;
 - f. if the entity is a member of a group of related entities that has a head entity, and the head entity is not a *controlling corporation*—information identifying the head entity; and
 - g. any additional information providing context or explanation in relation to other information included in the *payment times report*.³

² s14(1)

³ rule 9

Payment Times Reporting Act 2020: Frequently Asked Questions

Will large businesses be given guidance about the methods of calculating information for inclusion in the report and addressing issues like partial payments or disputed small business invoices?

The legislation allows the Minister by regulation to publish rules include methods of working out the payment timeframe data to be provided in the *payment times reports*.⁴

Large businesses will be required to use the *Payment Times Small Business Identification Tool* to identify *small businesses* for reporting purposes.⁵

These rules also address practical issues encountered or flagged by industry about collating and accurately calculating this payment data. For example:

- an invoice will be deemed to have been issued on the date it was received, not when it was entered into any accounting software;
- invoices paid under a *small business supply chain finance agreement* will be deemed to have been paid at the end of the relevant supply payment period (effectively disregarding any supply chain finance shortening of the otherwise applicable payment period); and
- when calculating the time within which an invoice is paid, it is irrelevant whether the invoice is in dispute.⁶

When is a *payment times report* required to be submitted?

The report must be submitted twice annually. Specifically, it must be provided within 3 months of the end of:

- the first 6 months of each *income year*; and
- the remainder of the *income year*.⁷

In short, large businesses will need to begin to prepare a *payment times report* halfway through its *income year* (for most large businesses that is likely to be at the end of the first half of the financial year) and at the conclusion of its *income year* (for most business, that will be the end of the financial year), and lodge this within 3 months of those milestones with the new *payment times regulator*.

Can an extension to the time for filing a *payment times report* be given?

Yes, an application can be made to the *payment times reporting regulator* for an extension of time to the date for submission of a report. It must be made within 3 months of the end of the relevant *reporting period*, state the circumstances resulting in the need for further time, enclose evidence of those circumstances and any other information the regulations require be included with the application.⁸

The *payment times reporting regulator* can grant a limited extension of time where it is satisfied the circumstances resulting in the need for the extension were **exceptional** and **outside of the control of the reporting entity**, and after considering any other requirements the regulations require the *payment times reporting regulator* to consider when assessing the application.⁹

⁴ s14(2)

⁵ rule 5

⁶ rule 10

⁷ s13(1)

⁸ s13(2), rule 8

⁹ s13(4)

Payment Times Reporting Act 2020: Frequently Asked Questions

Who is a reporting entity?

In short, large businesses or large company groups in Australia who turnover more than \$100m annually.

Specifically, a *reporting entity* is any entity that:

1. carries on an enterprise in Australia; and
2. either alone, or as a group, in combination with other entities in a group of companies, the total income for the entity (or group) exceeds \$100 million for the most recent *income year*.¹⁰

An entity that is a member of a group of companies, it is not a *reporting entity* where its income was less than \$10m in the most recent *income year*.¹¹

This is illustrated by example in the explanatory memorandum for the bill:

Example: Corporation X is a controlling corporation. Its total income was \$80 million. It has three members: Member A's total income was \$50 million, Member B's total income is \$40 million, and Member C's total income was \$5 million. The total of the group's income was \$175 million. Corporation X, Members A, B and C all carry on an enterprise within Australia. Each of Corporation X, Members A and B is a reporting entity, because the combined total income of their group is \$175 million and each entity has total income above \$10 million. They will all have to submit their own separate Payment Times Report. Member C has total income of less than \$10 million and is therefore not a reporting entity and does not need to submit a Payment Times Report.

In short, for company groups where the group's turnover exceeds \$100m annually, the parent company and every entity within the group of companies whose income exceeds \$10m in the most recent *income year* must lodge separate *payment times reports* under the *Payment Times Reporting Act 2020 (Cth)*.

What is an income year?

The *income year* is the income year for the *reporting entity* as defined under the *Income Tax Assessment Act 1997 (Cth)*, or where no income tax is payable by the entity under that Act, it means the financial year.¹²

Will penalties apply for not complying with the Act?

Yes. The following are civil penalties under these new laws:

- **fail to submit a *payment times report* when required to do so**, punishable by up to 60 penalty units.¹³
- **lodging a false or misleading *payment times report***, punishable by civil penalty of up to 350 penalty units, and where the *reporting entity* is a corporation, the maximum penalty increases to up to **0.6% of its total income** in the *income year* in which the contravention occurred.¹⁴
- **failing to keep records of any information** used in the preparation of a *payment times report* for at least 7 years after the *reporting period* ends, punishable by a maximum of 200 penalty units and where the *reporting entity* is a corporation, the maximum penalty increases to up to **0.2% of its total income** in the *income year* in which the contravention occurred.¹⁵
- **failing to comply with the *regulator's* notice to appoint an auditor** to audit and produce a report to the *regulator* about the entity's compliance with these laws, punishable by a maximum of 60 penalty units.¹⁶
- **failing to provide an appointed auditor withal reasonable facilities and assistance for the effective exercise of the auditor's duties**, punishable by a maximum of 200 penalty units and where the *reporting entity* is a corporation, the maximum penalty increases to up to **0.2% of its total income** in the *income year* in which the contravention occurred.¹⁷

¹⁰ s7

¹¹ s7(2)(iii)

¹² s5

¹³ s15

¹⁴ s16

¹⁵ s29

¹⁶ s30(7)

¹⁷ s30(8)

Payment Times Reporting Act 2020: Frequently Asked Questions

What about innocent mistakes that lead to non-compliance with the Act?

Where in attempting to comply with the law an employee, agent or officer of a *reporting entity* contravenes the law but does so under a mistaken but reasonable belief about the existence of a fact, that had it existed, would have meant the conduct would not have been a breach of the Act, a valid defence to civil penalty proceedings may exist in certain circumstances, provided that the corporation can show it otherwise exercised due diligence to prevent the contravention from occurring.¹⁸

Ignorance of the law will not be a valid excuse, and inadequate management, control or supervision of its employees, agents or officers involved in preparing the report or guiding its compliance or inadequate corporate systems for ensuring relevant information reached the relevant persons in the organisation are examples of a lack of due diligence that will undermine any such defence.¹⁹

In short, genuine, innocent but reasonable mistakes of fact may be excusable in certain limited circumstances, but only where a robust due diligence process is first put in place by large businesses to ensure compliance with these new laws.

A company seeking to rely on a mistake of fact defence to civil penalties bears the onus of proof.

Well advised large businesses will take these new laws seriously and develop a robust compliance regime now to ensure compliance is assured.

Does the new *payment times reporting regulator* have the power to force large businesses to shorten their payment terms for *small businesses*?

No. The new *regulator* has no power to force large businesses to amend their payment practices.

Instead it is hoped that public pressure from public reporting of payment practices, as well as market forces will force prompt payment of *small businesses*. Whether that is the outcome of this legislation is yet to be seen.

Notably, the Federal Opposition and Senator Lambie sought to amend the bill during debate in the Senate to compel shorter payment terms:

- in the case of the Opposition: after 3 years of these new laws being in place, if median *small business* payment timeframes exceeds 30 days, the *payment times reporting regulator* be required to declare each *reporting entity* whose median payment time exceeds 30 days as a recalcitrant *reporting entity*, with that entity then required to pay all *small business* invoices within 30 days or face a civil penalty for failing to do so.
- in the case of Senator Lambie: to make it law that all *small business* invoices must be paid within 21 days by all large businesses or face a civil penalty for failing to do so.

However, their amendments were not successful, with the Federal Government supporting an amendment proposed by Senator Hanson which will require the concept of setting maximum payment terms to be considered when these new laws are reviewed 2 years after they commence. These amendments demonstrate some political desire to explore mandatory maximum payment timeframes and tougher penalties against large businesses in the future, if this legislation fails in its stated goal of improving payment timeframes for *small businesses* in Australia.

Who is a *small business* and how are large businesses to know which of their customers meet the definition of a *small business* when preparing the payment times report?

An online *Payment Times Small Business Identification Tool* will be setup by the ATO to allow large business to search their suppliers online and immediately identify whether they are a 'small business' for the purposes of these laws.²⁰

A business will be added to the *Payment Times Small Business Identification Tool* and qualify as a *small business* if its *income year* annual taxable turnover was less than \$10m, however they can opt out of being included in the tool.

¹⁸ s33(5)

¹⁹ s33(6)

²⁰ s5

Payment Times Reporting Act 2020: Frequently Asked Questions

These new laws will take some time to come to grips with, is there a grace period against enforcement of penalties?

Yes, there is a 12-month grace period from commencement of these laws during which time the regulatory audit, monitoring, investigation powers, publishing of information regarding non-compliance and civil penalty provisions under the Act will not apply.²¹

This will give large businesses in Australia a 12-month window to ensure their compliance programs are in place to ensure compliance with the new laws and to weed out any teething issues with those programs.

What if information in the *payment times report* contains personal information or commercially sensitive information that would cause determinant if made public?

The *payment times reporting regulator* has the power to decide not to publicise certain information contained in a *payment times report* on the public register if it considers making the information publicly available would be contrary to public interest.²²

In arriving at that decision, the *payment time reporting regulator* must consider:²³

1. Whether the information is personal information;
2. Whether the information is commercial-in-confidence in that it is not in the public domain, not required to be disclosed by other Australian law, not readily discoverable and the release of the information would cause competitive determinant to the *reporting entity*;
3. Whether the information is irrelevant for the purposes of achieving the objects of the Act; and
4. Any else prescribed by regulations.

Given the stated objects of the legislation, we consider it will be a rare occurrence where payment timeframe data is not published on the register.

For further information or assistance, please contact:



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²¹ s37

²² s20

²³ s20(2), rule 13