Payment Time Reporting Survey Materials

September 2020

DRAFT FOR DISCUSSION

Important Notice

- The materials in the following pages provide proposed guidance on the Payment Times Reporting Scheme (the Scheme).
- **The materials do not represent a form of a recommendation and should not be treated as final or complete. They are merely a summary to generate discussion and further feedback amongst stakeholders, and may be modified following a series of consultations.**
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Project Overview

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Background information

1	**What is the Payment Times Reporting Scheme?**	The Australian Government is implementing a Payment Times Reporting Scheme (the Scheme) requiring large businesses and their related entities, as well as government enterprises with a total annual income of over $100 million to publicly report on their payment terms and practices for their small business suppliers.
2	**What are we trying to achieve?**	The Government will implement an education and awareness program in the lead up to the Scheme's implementation. As part of this, the Government intends to provide technical guidance material to provide advice on requirements under the Scheme. PwC is leading the development of these materials and are currently conducting consultations with a wide range of stakeholders to test items to be included in the guidance document.

Background information

The following information will be important to understand the context behind the Scheme

ASBFEO Report	***Government Commitment***	***Consultations***
In April 2017, the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) issued a final report which examined payment times and practices in Australia. This report identified two issues affecting business of all sizes: late payment times (getting paid beyond the agreed time in the contract) and extended payment times (payment times beyond usual industry standards).	The Government announced on 21 November 2018 its objective to improve payment times from large to small business. The Government committed to requiring large businesses and government agencies to publish their payment information.	To date, the Government has conducted consultations with many stakeholders in the development of the Scheme Framework, the exposure draft of the proposed Payment Times Reporting Bill (the Bill) and the Minister's draft Scheme Rules. These consultations have informed the drafting of the Bill and the draft Minister's Rules for the Scheme. The Bill was passed by the Senate on 3 September 2020 (the Act).

Scheme overview

The Scheme

The Payment Times Reporting Scheme (the Scheme) requires large businesses and their related entities, as well as government enterprises to publicly report on their payment terms and practices for their small business suppliers.

The Act

The Payment Times Reporting Act 2020 (the Act), sets out the key elements of the Scheme (including which businesses need to report; the process and frequency of reporting; reporting requirements and consequences of a failure to comply with the reporting obligations).

The Rules

The Payment Times Reporting Scheme Rules (Rules), set out the more technical and administrative details on how provisions in the Act will work in practice.

The Small Business Identification Tool (SBI Tool)

The Scheme will commence from 1 January 2021. From 1 July 2021, large businesses will be required to report their small business payments to a central web portal. The SBI tool is being developed to assist large businesses in the process of identifying their small business suppliers for the purpose of a payment times report.

The Register

The reports will be due each six months of the business' income year with the information from the reports to be published on a public website called the Payment Times Reporting Register.

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What do you need to do?

Information on how and when a business pays their small business suppliers

- The standard payment periods including the most frequent, shortest and longest, that the business offers to small businesses.
- The proportion, determined by total number and total value, of small business invoices paid by the business during the reporting period within certain payment periods.
- Details of any arrangements under which small business invoices must be provided to the business, e.g. by the end of the month.
- The proportion (by value) of procurement that was from small business suppliers in reference to all procurement during the reporting period.
- Details of any notifiable event that has occurred since the last payment times report such as a change in the entity's accounting period or business name.
- Details of the use of supply chain finance including whether the business offers these arrangements, and if so, the proportion (by value and number) of small business invoices paid under these agreements.

When does it need to be reported?

- Businesses are to provide a Payment Times Report for each Reporting Period.
- A Reporting Period is:
  - the first 6 months of each Income Year for the Reporting Entity;
  - the remainder of each such income year.
- "Income year" is per the *Income Tax Assessment Act 1997* and is based on the financial year used for tax purposes.
- Businesses must lodge a Payment Times Report within three months of the end of each six month reporting period.
- Under the Scheme, businesses will report on the income year they use for tax purposes. This might be a standard income year running from 1 July – 30 June or a non-standard income year such as a calendar year.

Compliance and enforcement

- The Regulator is responsible for administering the Scheme, including monitoring and enforcing a business' compliance with the reporting requirements
- The compliance and enforcement provisions will not be enforced by the Regulator for the first 12 months of the Scheme implementation. This provides time for businesses to familiarise themselves with the Scheme.
- Different penalty amounts are applied to individuals and body corporates based on their capacity to bear the cost. Higher penalties apply to corporations, whereas individuals who are trustees or members of a partnership will face lower penalties.
- The penalties are designed to encourage timely and accurate reporting, and to allow the Regulator to assess the accuracy of that reporting.

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Purpose of the survey

This survey is one of PwC's tools which will be undertaken in developing the guidance material for the Department. The results from this survey will help to consolidate stakeholder views and inform the development of the guidance materials.

The survey seeks to understand stakeholders' views on the draft guidance materials and how it could be improved in order to provide further clarity and guidance on the legislation as it is written.

One-on-one consultations ✔

Focus groups ✔

Surveys

User testing

Guidance Materials

Objective

The objective of this survey is to understand stakeholder concerns that the guidance material need to address and preferences for information to be included in guidance material (e.g. specific examples; flow diagrams; FAQ's; checklists etc.).

Purpose

The survey questions will provide stakeholders with the opportunity to test a set of pre-developed samples of information to be included in the guidance materials to understand what works best for stakeholders.

Implementation of findings

The survey results will be used to inform the design and content of the finalised draft of the guidance materials which will be provided to a small subset of stakeholders for user testing. The user testing will confirm that the guidance materials is clear and ready for publication to be used as part of the Scheme's education and awareness program.

2

Draft Guidance Materials

Guidance document outline

Eligibility criteria

5.1 Who must report?

- The reporting requirement applies to entities that are constitutionally covered, that carry on an enterprise in Australia and have a total income which exceeds a certain threshold (see Section 5.2).
- A constitutionally covered entity is a constitutional corporation, a foreign entity, a trading or financial corporation formed within the limits of the Commonwealth, a Commonwealth corporate entity or Commonwealth company, a body corporate incorporated in a Territory, a body corporate that is taken to be registered in a Territory under section 119A of the *Corporations Act 2001*.
- Constitutionally covered entities could include private/public companies, trusts, partnerships, joint ventures, sole traders, etc.
- Constitutionally covered entities which are not for profit and are registered under the *Australian Charities and Not-for-profits Commission Act 2012* are exempt from the Scheme.
- Constitutionally covered entities that must report are referred to as a “reporting entity” in the Act. Entities are to self-assess if they are a reporting entity.

5.2 Income test

- A constitutionally covered entity becomes a reporting entity at the start of an income year if the entity’s total annual income in its most recent income year (i.e. previous income year) was:
  - more than $100 million; or
  - more than $10 million, if the entity is part of a corporate group with a combined total income more than $100 million.
- These entities are referred to as “large businesses” in this document.
- Total income refers to gross income which is reported on the entity’s tax return, i.e. revenue earned from all sources (both assessable and non-assessable income). If an entity is part of a group where the controlling entity aggregates income for the group for tax purposes, then the gross income of each entity is to be used.
- Figure 1 provides a flowchart to assist businesses whether they meet the income test.

5.3 Volunteering entities

- Constitutionally covered entities, with less than $100 million total annual income, who wish to participate in the Scheme can volunteer to become a reporting entity.
- Other types of businesses (i.e. non constitutionally covered entities) can volunteer to be part of the Scheme by way of agreement with the Commonwealth. They will not be covered by the Act but will be subject to certain compliance and enforcement arrangements, e.g. the reporting of misleading information would result in removal of the business’ Payment Times Report from the public register.

5.4 Group structures

- A subsidiary entity is an entity that is controlled and is majority owned by another entity (referred to as the controlling entity in this document).
- A group structure is a collection of subsidiary entities and the controlling entity. For the purposes of this Scheme, only gross income which is reported on the entity’s tax return (or if part of consolidated reporting, the portion of income that is attributable to the subsidiary) is subject to the income test.
- The Act requires businesses to report at an entity rather than at a group level. However, a single business could submit reports for an entire group.
- These conditions are intended to capture all members of a corporate group who have a total income of at least $10 million where the combined total income of the group is more than $100 million.
- A key objective of the Scheme is to increase transparency around payment times. Reporting at a group level won’t allow small businesses to know the payment performance of a particular business in a large group made up of different businesses.

What is a controlling entity?

- A controlling entity is a body corporate that is incorporated in Australia and is not a subsidiary of another body corporate that is incorporated in Australia.

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

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Is your business a reporting entity?

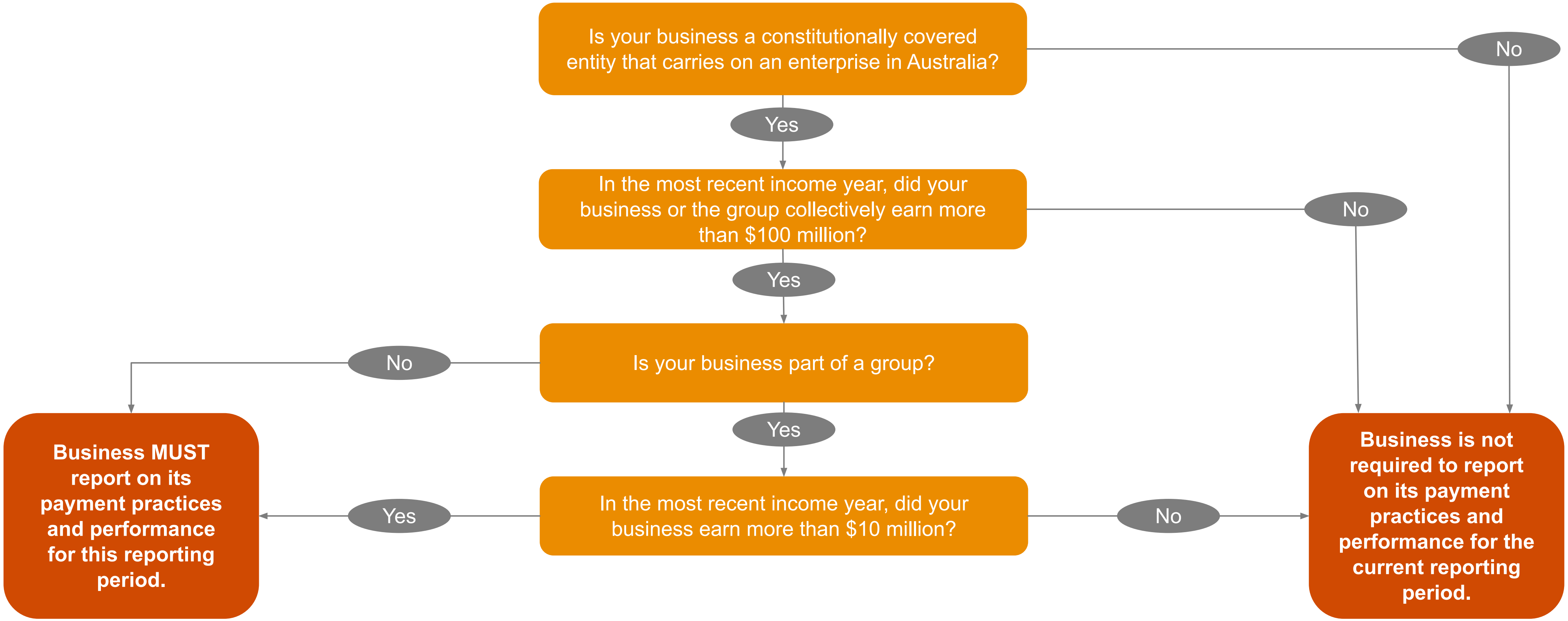

Figure 1: Flowchart to assess whether a business is a reporting entity

Eligibility criteria (cont.)

5.5 Ceasing to be a reporting entity

- Businesses can apply to stop reporting if their total annual income falls below $100 million in each of the two most recent income years, or if their business structure means they no longer meet the entity criteria
- Businesses who wish to cease reporting must apply in writing to the Regulator. In addition to general details about the entity, the application must specify the reason and date on which the entity will cease reporting and include supporting documentation such as the entity's two most recent tax returns.
- The Regulator will decide whether a business can stop reporting based on an assessment of the entity's latest lodged tax returns, or advice from an independent and suitably qualified auditor about the entity's turnover, or evidence of a change in business structure.
- A regulatory decision requiring a business to continue to report under the Scheme can be reconsidered through an internal review process and by application to the Administrative Appeals Tribunal (see review process for more details).
- Volunteers will be required to advise the Regulator if they wish to cease reporting but will not be subject to the requirements above.
- Businesses that are part of a corporate group but have less than $10 million total income for two income years are able to cease reporting without applying for a formal determination from the Regulator. This is designed to reduce the regulatory burden of large numbers of small businesses seeking decisions from the Regulator on their reporting status.

Reporting requirements

- The reporting requirements relate to the information large businesses need to provide to the Regulator on their payment terms and practices for their small business suppliers (defined further in Section 6.3).
- Only small business supplier invoices which are paid under a trade credit arrangement should be included in calculating payment times, i.e. where a large business and a small business supplier agree that payment by the large business for goods and services is to be delayed to a time after the supply.

6.1 What is to be reported?

- The name and ABN of the business.
- The name and ABN of the businesses controlling corporation, if it has one.
- The primary industry of the business (based on ATO's Business Industry Codes).
- The reporting period of the report.
- The name and contact details of the person who provided the report.
- The name of the responsible member within the business who signed (approved) the report including the date the report was signed (approved).
- The name of the principal governing body of the business.
- A declaration by the responsible member in the business that the report will be provided to the principal governing body.
- The standard payment period including the shortest and the longest that the large business offers to small businesses (at the beginning of the reporting period) including any changes to these periods (during the reporting period).
  - The standard payment period is the agreed standard contractual length of time a large business offers to its small business suppliers for payment to be made for goods and services, often included under clauses related to payment terms. If there is no one standard payment period offered to small business suppliers, then it is the most common provided standard payment period.
  - The shortest and longest standard payment periods refer to the shortest and longest standard payment periods, offered to small business suppliers.
  - If there are no standard contractually agreed payment periods, it is the most common payment period used by the business to pay small business suppliers during the reporting period, e.g. the most common number of calendar days from the date of an issued invoice to the date of payment.
- The proportion, determined by total number and total value, of small business invoices paid by the business during the reporting period in each of the following:
  - less than 21 calendar days after the invoice was received;
  - 21-30 calendar days after the invoice was received;
  - 31-60 calendar days after the invoice was received;
  - 61-90 calendar days after the invoice was received;
  - 91-120 calendar days after the invoice was received:
  - more than 120 calendar days after the invoice was received.

  More information around when an invoice is considered received can be found in Section 6.6.
- The total proportion (by value) of business procurement during the reporting period that was from small business suppliers.
- Details of the use of supply chain finance including whether the business offers these arrangements for small business suppliers, and if so, the proportion (by value and number) of small business invoices paid under these arrangements during the reporting period.
- Details of any arrangements under which small business invoices must be provided to the business.
- Details of any notifiable event that has occurred since the last payment times report such as a change in the entity's accounting period or business name.
- Any additional information to provide context or explanation in relation to the information provided in the report.

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Reporting requirements (cont.)

6.2 Reporting periods

- Businesses are to provide a Payment Times Report for each Reporting Period.
- A Reporting Period is:
  - the first 6 months of each income year for the Reporting Entity; and
  - the remainder of each such income year.
- "Income year" is as per the Income Tax Assessment Act 1997 and is based on the financial year used for tax purposes.
  - Where the Commissioner of Taxation allows an entity to adopt an accounting period ending on a day other than 30 June, then that accounting period is considered to be the entity's income year.
- Under the Scheme, businesses will report on the income year they use for tax purposes. This might be a standard income year running from 1 July – 30 June or a non-standard income year such as a calendar year. As per the above, where the Commissioner of Taxation allows an entity to adopt an accounting period ending on a day other than 30 June, then that accounting period is considered to be the entity's income year for the purposes of the Scheme.
- Businesses are required to retain information used to prepare a Payment Times Report for at least seven years after the end of the reporting period.

Example 1: If a business' income year runs from 1 January to 31 december, their reporting periods would be from January to June and July to December.

Example 2: If a business' income year runs from 1 January to 31 december, their reporting periods would be from January to June and July to December.

Beginning reporting at the commencement of the Scheme

- Reporting arrangements at the beginning of the Scheme will be as follows:
  - Entities with standard and calendar income years will have their first reporting period begin on 1 January 2021 and run to 30 June 2021.
  - Entities with income years beginning in the first half of 2021 will have their first reporting period begin with the start of their income year. For example, entities with an income year starting on 1 April 2021 will start their first reporting period on this date and it will run to 30 September 2021.
  - Entities with income years beginning in the second half of 2021 will have their first reporting period begin halfway through their income year. For example, if the income year for an entity begins on 1 November 2021, their first reporting period will start on 1 May 2021.

6.3 Small business definition

- A look-up service, known as the Payment Times Small Business Identification Tool (SBI Tool), is being developed to assist large business to identify which suppliers they need to report on.
- For the purpose of the Scheme, a business is a small business if it is an Australian business that has turnover of less than $10 million which is identified via use of the SBI Tool, i.e. if the ABN lookup a large business conducts on the SBI Tool is determined to be a small business.

6.4 Payment Times Small Business Identification Tool

- The SBI Tool will only include the ABNs of large and medium sized businesses and will not include any information on small businesses. The SBI Tool will therefore work based on a 'negative screen' for small businesses, where large businesses would enter a CSV file of their suppliers' ABNs and obtain an extract in return that would flag which of their suppliers' ABNs were not matched in the SBI Tool and are therefore small business ABNs that are subject to payment times reporting. Large businesses will be able to extract these results as a CSV file.
- The SBI Tool helps large businesses to identify their small business suppliers, defined as having an annual turnover of less than $10 million, which large businesses need to report on in their payment times reporting.
- Businesses will be able to access the SBI Tool via a link on the Payment Times website (currently under development). The SBI Tool data will be updated regularly using commercial data sources.
- Small businesses concerned by their large business customers being able to identify them as a small business, will have the ability to opt-out of association with the SBI Tool by notifying the Regulator. They will also be able to opt back in.

Reporting requirements (cont.)

- Small businesses who have opted out will not be identified as a small business by the SBI Tool, and would therefore not need to be reported on as part of a large business' Payment Times Report.

6.5 Supply chain finance

- Supply chain financing (also known as reverse factoring or dynamic discounting) is defined in the draft Rules as an arrangement in which a business undertakes to pay a small business invoice before the end of the relevant supply payment period (i.e. the period under which a payment under a contract is required to be made) if the small business supplier agrees to accept a discount on the payment or to incur an additional cost.
- Supply chain finance could include the involvement of a third-party financier or broker or occur through a direct negotiation between the large business and the small business supplier.
- The date of payment when supply chain finance is used is the standard payment term applicable to that supplier regardless of when the payment was received by the supplier. For example:
  - if the standard payment term is 30 days and the supplier elects to receive payment in 10 days, the business should use 30 days when calculating its payment times for reporting purposes; or
  - alternatively, businesses could record when they make the payment for those invoices to the supply chain finance provider (if a third-party financier is involved).

6.6 Invoices

When is an invoice received?

- An invoice is 'received' and the payment clock 'commences' when it is received by the entity in accordance with the invoicing requirements of the relevant contract (either written or oral). This could include contractual arrangements such as having a correctly rendered invoice, PO number, ABN, provided to correct inbox etc.

Example: An employee of Entity X receives an invoice from Small Business Y. However, Entity X and Small Business Y have a contractual arrangement that invoices will only be accepted if they are submitted to Entity X's shared inbox. Until that invoice is received in Entity X's shared inbox, the invoice is not deemed to have been received and the payment clock for this invoice has yet to commence.

- Date of receipt is not:
  - the date of the invoice;
  - when the invoice is entered into the entity's accounting or information systems; or
  - when the invoice is authorised.

  Unless these processes happen on the same day as the invoice is received.

Reporting requirements (cont.)

When is an invoice paid?

- An invoice is paid when money has been debited from the procuring business' applicable account. This could include payments which were made by direct debit, credit card and/or cheque. For cash transactions, it is when the money has been given to the supplier.
- Disputed invoices must be included in the calculation of a payment time, i.e. from when the invoice was received until when it was paid.
- Disputed invoices that are paid in a reporting period must be reported in the relevant payment bracket showing when they were paid after they were received, i.e. within less than 20 days, 21-30 days, 31-60 days, 61-90 days, 91-120 days or 120 days plus.
- Invoices which are partially paid without the agreement of the supplier should be reported in the same way as disputed invoices, i.e. from when the invoice was received until when it was paid in full.
- If an invoice is partially paid by mutual agreement, e.g. in monthly instalments, the payments can be reported as having been paid in full providing the instalments are made on time. In this instance, the "receipt of invoice" date would be the day after the latest instalment was due.
- Supply chain financing (also known as reverse factoring or dynamic discounting) is defined in the draft Rules as an arrangement in which a business undertakes to pay a small business invoice before the end of the relevant supply payment period (i.e. the period under which a payment under a contract is required to be made) if the small business supplier agrees to accept a discount on the payment or to incur an additional cost.

Example: Entity X receives an invoice on 1 June 2021 where payments can be made in two monthly instalments on the 30th of each month. Entity X makes a payment on 30 June 2021 and then on 30 July 2021. For the purposes of reporting, Entity X would record both payments as being made within the 21-30 calendar day bands.

What's excluded?

- The following items are excluded from the payment times calculations:
  - payments between related entities in a group;
  - payments which do not have trade credit payments are excluded, e.g. payments for rental leases, travel expenses etc.; and
  - payments related to employees, whether through payroll or through reimbursements.

Payment Times Report

7.1 Where is it reported?

- To submit a Payment Times Report to the Payment Times Regulator, businesses will:
  - download a Payment Times Report Template from the Payment Times website;
  - populate the template with their payment times information; and
  - log into the reporting system to upload their payment times information and submit their report and any other relevant information or documentation.
- The reporting systems will be available via a link on the Payment Times website. To log in, businesses will be required to authenticate who they are by way of MyGovID. To access the ATO's MyGovID authentication process, businesses will need to have an ABN.
- A hyperlink to the template of the Payments Time Report, which includes the formatting and fields of the report, will be made available in the final publication of the guidance materials.

7.2 When must the report be given?

- Businesses must lodge a Payment Times Report within three months of the end of each 6-month reporting period (bi-annual reporting).
- Large businesses that do not receive goods or services from small business suppliers in a reporting period would still need to complete a Payment Times Report, with nil results regarding any requirements with amounts or values.

7.3 When and what is published?

- The Regulator will maintain the Payment Times Reports Register which will be available for public inspection, without cost, on the internet.
- The Regulator will seek to publish all compliant reports received to the reporting system as soon as possible.
- The Regulator has the discretion to not publish certain information contained in a Payment Times Report where the Regulator considers the publication of this material is not in the public interest, particularly personal information such as names and contact details, commercial-in-confidence information or information which is not relevant to the objectives of the Act.
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- For information to be considered commercial-in-confidence, the Regulator must be satisfied that the publication of this information would cause competitive detriment, is not already publicly available or discoverable or already required to be disclosed under other legislation.

7.4 Extension applications

- Reports must be given to the Regulator within the three-month lodgement period following the end of the reporting period.
- This correspondence must set out the reason the extension is required including evidence of the circumstances.
- The Regulator may grant an extension if satisfied the extenuating circumstances were exceptional and/or they were outside the control of the entity.
- Any amount of time granted will depend on the severity of the circumstances and the strength of evidence included in the application.
- If a business is not granted an extension it can ask for this to be reconsidered through an internal review process and by application to the Administrative Appeals Tribunal.

7.5 Revised reports

- Businesses may request the Regulator register a revised version of their Payment Times Report. This is designed to allow the business to correct any errors in its report.

Compliance measures

8.1 Establishing the Regulator

- A Payment Times Reporting Regulator (the Regulator) will be established under the Act. The Regulator is responsible for administration of the Scheme, including monitoring and enforcing a businesses' compliance with the reporting requirements.
- As part of its role, the Regulator will also:
  - engage in education and outreach activities to inform reporting entities of their obligations under the Scheme and provide advice on how they should meet them; and
  - work with reporting entities where there are identified issues with their reporting practices, such as incorrect or incomplete information, to address these problems.

8.2 Publishing non-compliance

- The Regulator can publish the identity of non-compliant reporting entities, including details of their failure to comply with their obligations on the Payment Times Register, a website accessible to the general public, and in another way that the Regulator considers appropriate.
- Before deciding to publish, the Regulator must notify the reporting entity of its proposed decision and reasons for the decision and invite written submissions from the entity—which must be provided within 28 days. The Regulator must consider any submission provided by the entity. If the entity does not agree with the Regulator's decision they can, in the first instance request a reconsideration of the decision. If an entity does not agree with the decision made following a reconsideration they can appeal to the Administrative Appeals Tribunal.

8.3 Audits for non-compliance

- Businesses can be required to undertake audits of their records where the Regulator reasonably suspects that they have not met the requirements of the Scheme.
- The auditor may be appointed by the business and must be approved by the Regulator. In cases where the Regulator does not approve the choice of auditor, the Regulator may appoint its own auditor.
- The Regulator can request the auditor to undertake an audit of the business' compliance with the Act or with aspects of the Act. For example, the auditor could examine whether a business has provided correct and relevant information in a report.
- The Regulator must specify the required qualifications and independence of the auditor, the matters to be covered by the audit and the form and content of the audit report. In turn the business must provide the auditor with all reasonable facilities and assistance for the auditor to carry out their duties.
- The business will be required to pay for the audit services.

8.4 Monitoring and investigations

- The ability to request an audit will support the Regulator's monitoring and investigation powers. Audits will identify if there is an issue, and depending on the outcomes, whether there will need to be further investigation. After investigation, decisions may be made to impose penalties for non-compliance as outlined in Section 8.5.
- The monitoring and investigation powers allow the Regulator or one of its representatives to enter a premises, either with the occupier's consent or in the case of monitoring powers under a monitoring warrant and, in the case of investigation powers, an investigation warrant.
- A monitoring warrant may be issued if it is reasonably necessary to access the premises to determine whether a provision of the Act that is subject to monitoring has been complied with or information subject to monitoring is correct.
- An investigation warrant may be issued if there are reasonable grounds for suspecting that there is evidential material on the premises.
- They can then search the premises, inspect documents, make copies and secure evidence.
- These powers are part of a standard suite of provisions in relation to monitoring, investigation and enforcement powers and are set out in the Regulatory Powers (Standard Provisions) Act 2014.

8.5 Penalties for non-compliance

- Under the Payment Times Reporting Scheme, a court can impose civil penalties for non-compliance if civil penalty proceedings are brought before it.
- Different penalty amounts apply to individuals and body corporates. Higher penalties apply to corporations, whereas individuals who are trustees or members of a partnership will face lower penalties.

Compliance measures (cont.)

- Given that the Scheme focuses on providing small businesses and the general public with information on the payment practices of reporting entities, the penalties are designed to encourage timely and accurate reporting, and to allow the Regulator to assess the accuracy of that reporting. They are also designed to be large enough to provide a deterrent effect for non-compliance with the nature of the penalties proportionate to the size and resourcing of reporting entities covered by the Scheme.
- In addition to civil pecuniary penalties, if the Regulator is satisfied that a reporting entity has failed to comply with the requirements of the Scheme, the Regulator may publish the identity of the entity and details of the entity's non-compliance, on the public register.

Nature of contravention	Maximum penalties for individuals	Maximum penalties for incorporated entities (body corporate)
Failure to report	60 penalty units (can be applied per day of non-compliance)	300 penalty units (can be applied per day of non-compliance)
False or misleading reports	350 penalty units	0.6 per cent of the total income year in which the contravention occurred
Failure to keep records	200 penalty units	0.2 per cent of the total income for the income year in which the contravention occurred
Failure to comply with audit notice	60 penalty units (can be applied per day of non-compliance)	200 penalty units (can be applied per day of non-compliance)
Failure to reasonably assist the auditor	200 penalty units	0.2 per cent of the total income for the income year in which the contravention occurred

- A penalty unit equals $222 as of 1 July 2020.
- These civil penalties do not apply in relation to conduct engaged before the enforcement day, which occurs 12 months after the Act commences.

Failure to report

- Failure to provide a Payment Times Report by the specified time has a maximum penalty of 60 penalty units for an individual or a maximum of 300 penalty units for a body corporate. These penalties can be applied for each day the entity does not comply, from the end of the three-month period they have to submit a report. For example, if an individual was nine days late in submitting a Payment Times Report they could be fined up to a maximum of 540 penalty units while a body corporate could be fined up to a maximum of 2700 penalty units.

Providing a false or misleading report

- Submitting a false or misleading Payment Times Report has a maximum penalty of 350 penalty units for an individual. For a body corporate, the maximum penalty is 0.6 percent of the total income for the income year in which the contravention occurred.
- For example, if a body corporate with a total income of $500 million in 2022-23 provided information which painted a false picture of its payment performance in that same income year, it could be subject to a fine of up to $3 million.

Record keeping requirements

- Businesses are required to retain information used to prepare a Payment Times Report for at least seven years after the end of the reporting period.
- If they fail to do so, they can be subject to a maximum penalty of 200 penalty units for an individual, or 0.2 per cent of total income for the income year that the contravention occurred, for a body corporate.

Failure to comply with a notice to appoint an auditor and provide an audit report

- Failure to appoint an auditor has a maximum penalty of 60 penalty units for an individual and 300 penalty units for a body corporate. These penalties can be applied for each day the entity does not comply with the timeframe set out in the notice from the Regulator. For example, if a body corporate failed to respond for nine days following the expiry of the notified timeframe this would result in a maximum penalty of 2700 penalty units, while an individual would receive a maximum of 540 penalty units.
- The same penalties would apply to a failure to supply the audit report within the time period specified by the Regulator.

Compliance measures (cont.)

Failure to provide the auditor with all reasonable facilities and assistance necessary

- Failure to provide an auditor with all reasonable facilities and assistance necessary has a maximum penalty of 200 penalty units for an individual. For a body corporate, the maximum penalty is 0.2 per cent of the total income for the income year when the offence occurred. For example, if a body corporate with a total income of $500 million in 2022-23 failed to provide assistance to an auditor in that same income year, it could be subject to a fine of up to $1 million.

Infringement notices

- The Regulator is an infringement officer and may also appoint an APS employee as an infringement officer if they hold or perform the duties of an Executive Level 2 position or higher and the Regulator is satisfied they have the knowledge or experience necessary to properly exercise the powers.
- Alternatively, an infringement notice could be issued by the Regulator or their appointee in relation to the offences above. One infringement notice could be issued for each day of a contravention of the Act or a single notice could be issued to cover multiple contraventions over a number of days.
- The amount that can be specified in an infringement notice is:
  - in the case of a single contravention the lesser of ⅕ of the maximum penalty that a court could impose and, for an individual – 12 penalty units / for a body corporate – 60 penalty units;
  - in the case of multiple contraventions the lesser of ⅕ of the sum of maximum penalty that a court could impose for each contravention and, for an individual – the number of penalty units worked out by multiplying the number of contraventions by 12 / for a body corporate – the number of penalty units worked out by multiplying the number of contraventions by 60.

8.6 Review process

- The following decisions made by the Regulator are subject to review:
  - decision regarding an entity ceasing to be a reporting entity;
  - decision to grant additional time to report; and
  - decision to publish the identity of an entity or the entity's non-compliance.
- These decisions can be reviewed if the entity applies for a reconsideration of a decision which explains why the decision should be reconsidered within 14 days of receiving the Regulator's written notice of their decision.
- After receiving the application, the Regulator must:
  - personally reconsider the decision; or
  - assign it to a delegate who was not involved in making the decision for consideration.
- The person that reviews the decision is referred to as the 'internal decision reviewer'.
- An entity may also make an application to the Administrative Appeals Tribunal for a review of a reconsideration decision of an internal decision reviewer, but not the original decision.

8.7 Volunteer entities

- A volunteering entity will not be subject to penalties under the Scheme. If these entities fail to comply with the Scheme's requirements the Regulator can decide not to publish that entity's Payment Times Reports until any non-compliance is addressed.
- The Regulator can also publish the identity of these volunteers and details of their non-compliance on the Payment Times Register as outlined above.
- Volunteering entities will have an obligation to carry out audits when requested by the Regulator to audit the entity's compliance with the Act or one or more aspects of the entity's compliance with the Act. The Regulator will also be able to exercise its monitoring and investigation powers for the same purpose.

3

Proposed Guidance on Common Issues Raised

What common issues have we heard from consultations?

Payment Times Small Business Identification Tool

- How does the SBI Tool work to identify small businesses?
- Will small businesses that are subsidiaries of large businesses be included in the SBI Tool and will our business be required to report on payment times to these small subsidiaries?

Payment Periods

- When is an invoice issued?
- When is an invoice paid?
- What happens if there is a disputed invoice?
- Can I report on why my invoices are in dispute?
- What happens if an invoice is paid before an invoice is received?
- What happens if an invoice is partially paid?
- How should I record invoices which are received just before the end of the reporting period but are paid in the next reporting period?

Invoicing

- How should multiple line invoices be recorded where it includes payments which are not in scope?
- How should we treat Recipient Created Tax Invoices?
- What if there is no written contract?
- How do I report multiple industry codes for my organisations?

Payments

- How should I treat payments made by direct debit, credit notes, credit cards or cheques?
- Do we need to include payments for day to day administrative payments (e.g. travel expenses) purchased on credit cards?
- What about payments for small value immediate payments made on procurement cards (e.g. utility bills, fees for councils, stationery, etc.)?
- What happens if I use a payment portal to pay my invoices which may take a day or two to process?
- How do I record payments where a ‘shared supplier’ model is in place with group structures?
- How should payments split between subsidiaries be treated?

Compliance and Other

- When will the Regulator ask for an audit?
- Is it possible to explain why a report is delayed?
- Does a reporting entity need to report if it does not receive goods or services from small business suppliers in a reporting period?
- How do I report on arrangements of how supply chain finance is used?
- How do I report a payment time under a supply chain finance?
- How do I report on arrangements for how invoices are provided?
- Is there a timeframe for when the report must be provided to the business’ principal governing body, i.e. the Board?

Payment Times Small Business Identification Tool

Payment Times Small Business Identification Tool	
How does the SBI Tool work to identify small businesses?	The SBI Tool is currently under development. It is envisaged that the look-up service will be based on a 'negative screen' of small businesses, where large businesses would enter their supplier's ABNs and automatically see if the entities had a negative match to being a large or medium business. Large businesses can extract the results as a CSV file.
Will small businesses that are subsidiaries of large businesses be included in the SBI Tool and will our business be required to report on payment times to these small subsidiaries?	Large businesses will need to report on their payment times to small businesses that have been identified by the SBI Tool. It is not intended that small business subsidiaries of a larger group are counted as small businesses for the purposes of payment times reporting. The SBI tool will identify which of a large business' suppliers are small businesses (entities with turnover <$10m who are not part of a group with turnover >$10m), and provide ABNs of those entities to the large business. Payment times will need to be reported on these small businesses.

DRAFT FOR DISCUSSION

Payment periods

Payment Periods	
When is an invoice issued?	An invoice is "issued" when it is received by the entity in accordance with the invoicing requirements of the relevant contract (either written or oral). Some examples could include having a correctly rendered invoice, correct rates, correct amount, etc. Date of receipt is not: ● the date of the invoice; ● when the invoice is entered into the entity's accounting or information systems; ● when the invoice is authorised. Unless these processes happen on the same day as the invoice is received.
When is an invoice paid?	An invoice is paid when money has been debited from the procuring business' applicable account. For cash transactions, it is when the money has been given to the supplier. In-scope payments that have been made to small business suppliers during the reporting period need to be reported in a Payment Times Report.
What happens if there is a disputed invoice?	Disputed invoices must be included in the calculation of payment times i.e. from when the invoice was received until when it was paid. The payment 'clock' will continue while the invoice is in dispute.
Can I report on why my invoices are in dispute?	Businesses will have the ability to provide additional information to provide context or explanation to their payment times information in a free text field in the report. It is recommended that any information which is included in here are broad and general in nature. The Regulator can refuse to publish information if it involves personal privacy, is commercial-in-confidence advice or is irrelevant to the objective of the Scheme.
What happens if an invoice is paid before an invoice is received?	The payment time is reported as a zero payment time (and included in the reporting of payments under the bracket of less than 21 days).
What happens if an invoice is partially paid?	Invoices which are partially paid without the agreement of the supplier should be reported in the same way as disputed invoices. If an invoice is partially paid by mutual agreement, i.e. in monthly instalments, the payments can be reported as having been paid in full providing the instalments are made on time. In this instance, the 'receipt of invoice' date would be the day after the latest instalment was due.
How should I record invoices which are received just before the end of the reporting period but are paid in the next reporting period?	Only invoices which are paid within a reporting period should be included in a Payment Times Report. Invoices which are paid in the next reporting period are recorded in the next Payment Times Report.

DRAFT FOR DISCUSSION

Invoicing

Invoicing	
How should multiple line invoices be recorded where it includes payments which are not in scope?	If an invoice covers a number of payments to be made under different contracts, then those payments would be counted separately. If one of the contracts was not in scope of reporting i.e. the payment is to a medium sized supplier, the payment will not need to be included in a report.
How should we treat Recipient Created Tax Invoices?	Recipient Created Tax Invoices (RCTIs) are one of the methods of receiving supplier invoices, which involves the recipient of the invoice generating it. RCTIs are generally generated by the entity (recipient) in accordance with its contractual arrangements with the suppliers, e.g. it specifies the date of invoice issued, credit terms, payment dates, etc. RCTIs would therefore be treated the same under the Scheme as the payment terms and times can be reported.
What if there is no written contract?	A contract can be written, verbal or partly written and partly verbal. A contract may be defined as an agreement between two or more parties that is intended to be legally binding. When a business buys goods or services from another business, both parties generally enter into (or act under) a contract. See response to when is the invoice date for further guidance.
How do I report multiple industry codes for my organisations?	Each reporting entity will need to list their five-digit ATO business industry code (BIC) in a report. Where the business operates in multiple industries, they should report the code that best describes their main business activity. For example, if 60% of employees work in one section of the organisation, the day-to-day duties of this section would be the main activity.

Payments

Payments	
How should I treat payments made by direct debit, credit notes, credit cards or cheques?	For payments made by direct debit, credit card or cheque, the payment date is the date the payment was debited from the procuring business' applicable account, e.g. the date the credit card payment has been approved rather than the date the credit card bill is settled. Invoices for which no payment is required because they are covered completely by a credit note would not count as a payment for the purposes of the Scheme.
Do we need to include payments for instant transactions (e.g. travel expenses) purchased on credit cards?	Instant credit card transactions for payments such as taxi fares are not trade credit payments under an established payment term and as such do not have to be reported on.
What about payments for small value immediate payments made on procurement cards (e.g. utility bills, fees for councils, stationery, etc.)?	Payments where the terms are established by the supplier, e.g. utility bills, would not need to be reported on.
What happens if I use a payment portal to pay my invoices which may take a day or two to process?	For the purposes of the Scheme, an invoice is considered to have been paid once the amount has been debited from the procuring business' applicable account.
How do I record payments where a 'shared supplier' model is in place with group structures?	The entity or entities which make the payment/s would be the responsible entity for recording and reporting in the Payment Times Report.
How should payments split between subsidiaries be treated?	If the contract and payment is made by one entity, this single payment to the small business is reported for the purposes of this Scheme. The self-invoicing or journaling of shared expenses between subsidiaries should not be included.

Compliance and other

Compliance and other	
When will the Regulator ask for an audit?	Reporting entities can be required to undertake audits of their records where the Regulator reasonably suspects that a reporting entity has not met the requirements of the Scheme. The auditor may be appointed by the business and must be approved by the Regulator. The Regulator can request the auditor to undertake an audit of the entity's compliance with the Act or with aspects of the Act.
Is it possible to explain why a report is delayed?	The Regulator may consent if satisfied that the contributing circumstances were exceptional and outside the entity's control. Reporting entities are encouraged to consult early with the Regulator if it is unlikely they will report by the deadline.
Does a reporting entity need to report if it does not receive goods or services from small business suppliers in a reporting period?	A reporting entity that do not receive goods or services from small business suppliers in a reporting period would still need to complete a Payment Times Report, with nil results regarding any requirements with amounts or values.
How do I report on arrangements of how supply chain finance is used?	In a Payment Times Report, businesses will be required to describe any arrangements under which they pay small business invoices through the use of supply chain financing, reverse factoring or dynamic discounting. Businesses will also need to report the proportion (by value and number) of small business invoices paid under these arrangements.
How do I report a payment time under a supply chain finance arrangement?	The date of payment when supply chain finance is used is the standard payment term applicable to that supplier regardless of when the payment was received by the supplier. ● For example, if the standard payment term is 30 days and the supplier elects to receive payment in 10 days, the business should use 30 days when calculating its payment times for reporting purposes. ● Alternatively, businesses could record when they make the payment for those invoices to the supply chain finance provider.

Compliance and other (cont.)

Compliance and other	
How do I report on arrangements for how invoices are provided?	In a payment times report, businesses will be required to describe any arrangements they have for accepting invoices from their small business suppliers. For example, a supplier may only be able to provide an invoice at the end of the month.
Is there a timeframe for when the report must be provided to the business' principal governing body, i.e. the Board?	Businesses must declare in their report that they will provide the report to their principal governing body. The report should be provided to the principal governing body by the time the business submits their next payment times report to the Regulator.

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