



Australian Government

Government response to the Statutory Review of the *Payment Times Reporting Act 2020*

December 2023

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Manager
Media Unit
The Treasury
Langton Crescent
Parkes ACT 2600
Email: media@treasury.gov.au

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Contents

- Contents.....iii
- Ministerial Foreword1
- Introduction2
- Australian Government Response3
- Findings of the Review3
- Improving payment times without mandates.....3
- Reducing the regulatory burden of reporting.....3
- Amending the *Payment Times Reporting Act 2020*4
- Putting pressure on big businesses.....4
- Further Government initiatives.....5

Ministerial Foreword

The Albanese Government is committed to ensuring small businesses are paid on time.

Small businesses are the backbone of the Australian economy, employing more than 5 million people and contributing more than \$500 billion to the national GDP every year. When pressure is placed on small businesses, it is felt across the economy and community.

Slow and late payments negatively impact cashflow, financing and productivity, with a disproportionate effect on small businesses. Small business owners have limited means and resources to address unfair or unexpected cashflow pressures and have less access to affordable alternative financing options.

In many cases, small businesses lack the market power to negotiate better payment outcomes, particularly with large businesses customers. Large businesses with bargaining power can operate on 'take it or leave it' payment terms, leaving small business suppliers no option but to lose business or accept long payment terms and late payments.

The Government is committed to taking action that will level the playing field and make sure large businesses treat small business suppliers fairly.

The Government commissioned the Honourable Dr Craig Emerson to undertake an independent review (the Review) of the *Payment Times Reporting Act 2020* (the Act) and provide recommendations on how to improve the payment performance of large businesses to small business suppliers.

I thank Dr Emerson for his comprehensive Review and the Government welcomes his findings and recommendations.

The Government agrees with all recommendations of the Review and is committing \$8.1 million over 4 years to fund a range of initiatives that will deliver better outcomes for small businesses and ensure continuous improvement of payment practices by large businesses operating in Australia.

Government initiatives will include an overhaul of the Payment Times Reporting Scheme, targeted activities to increase pressure on large businesses with poor payment practices and embedding fair payment terms for small businesses in a range of other Government policies and processes.

These changes implement the Albanese Government's commitment to deliver a better deal for small businesses.



Julie Collins MP
Minister for Small Business



Introduction

The Honourable Dr Craig Emerson undertook the Review in accordance with section 57A of the Act and addresses the requirements of section 57B of the Act including:

- whether the Act is meeting its objectives,
- the impact of related government policies on payment times, and
- whether mandating maximum payment periods would be more effective in improving payment times for small business invoices.

In addition to the requirements set out in the Act, the Government asked the Review to consider the efficacy of international approaches and make recommendations on arrangements that would deliver the Government's election commitment to ensure small businesses on paid on time.

The Review found that large businesses have failed to improve payment times to small businesses under the current Scheme but finds there is merit to the continuation of an improved disclosure-based regime with more pressure on large businesses to improve their payment practices.

The Review involved wide-ranging consultation that included meeting with more than 100 organisations and a public consultation paper that received 27 submissions in response.

Australian Government Response

Findings of the Review

The Government has considered all the findings of the Review in its response.

The Review finds that payment times reporting has generated confusing, clunky and cluttered datasets and has not resulted in large businesses materially improving payment times to small businesses.

These, and other findings, highlight the need for an overhaul of the Scheme that includes significant amendments to the Act to ensure reporting is meaningful and useful for identifying and putting pressure on large businesses with poor payment practices.

Improving payment times without mandates

The Review considered whether mandated maximum payment times would be more effective in improving the payment times and practices of large businesses.

The Review found that implementing maximum payment times would do more harm than good for small businesses and could disincentivise large businesses from using small-business suppliers.

The Government agrees with the findings of the Review and its recommendation not to implement a mandated maximum payment period at this time.

Rather than mandating payment times, the Government will ensure small businesses are paid on time by implementing a range of initiatives recommended by the Review that improve payment times reporting, exert pressure on large businesses to improve payment performance and promote payment times as an environmental, social and governance (ESG) obligation of large businesses.

The Government supports reconsideration of whether to mandate maximum payment times in a future review of the Act.

Reducing the regulatory burden of reporting

The Review made several practical recommendations that reduce the regulatory burden of complying with the regime.

The Payment Times Reporting Regulator (the Regulator) has advised the Government that it is able to implement updated policies and guidance as an interim step to address five recommendations, including those relating to reporting of credit card payments and exploring alternative sources of, and prioritising updates to, Small Business Identification Tool (SBI Tool) data.

Where it is within the existing powers of the Regulator, the Government supports steps underway by the Regulator to reduce the regulatory burdens of reporting.

The Regulator has committed to put in place these changes before the end of 2023 so that large businesses, whose reports fall due on or after 31 December 2023, can meet their reporting obligations in a simpler way.

Amending the *Payment Times Reporting Act 2020*

The Government will amend the Act and Payment Times Reporting Rules 2020 (the Rules) to address shortcomings identified by the Review.

Significant amendments will include updating the objects of the Act, simplifying and streamlining reporting, consolidating reporting for corporate groups, the addition of more regulatory powers and other changes to address inefficiencies with current reporting requirements and processes.

Improving the quality and usefulness of reporting is a priority for the Government and it will work to implement amendments as soon as practicable.

Putting pressure on big businesses

The Government agrees with the findings and recommendations of the Review that payment times reporting alone is unlikely to incentivise large businesses. To drive better outcomes for small businesses reporting we must also call out the poor conduct of large businesses and celebrate best practices.

Dedicated education, awareness raising and advocacy for better payment practices is necessary to take full advantage of payment times reporting. In addition to publishing large businesses who are non-compliant, naming and shaming will also provide clarity for large businesses on the expectations for payment practices and promote payment times as a measure of ESG commitment.

The Government will implement initiatives to ensure the use of payment times data to recognise large businesses with good payment times as standard setters for their respective industries and draw attention and focus on large businesses who continue to be slow or late in paying small business suppliers.

Initiatives will include the creation of publicly-available tools to access, interpret and compare the payment performance of large businesses, and the Regulator expanding its functions to publicly identify the best and worst paying large businesses.

The Government will also look to take advantage of existing industry standards and frameworks to promote good payment times as an ESG obligation for large businesses.

Further Government initiatives

The Government will implement a range of initiatives that complement payment times reporting and contribute to better outcomes for small businesses.

Other initiatives include ensuring consideration of payment related conduct in unfair contract term guidance and unfair trade practices reforms, increasing the uptake of eInvoicing by small businesses, strengthening channels of advocacy for small business issues and ensuring Commonwealth agencies continue to demonstrate leadership in payment practices.

Government response to Review recommendations

Recommendation	Government Statement
<p>Recommendation 1: Amend the objects of the <i>Payment Times Reporting Act 2020</i>.</p>	<p>Agree.</p> <p>The Government agrees the current objects of the <i>Payment Times Reporting Act 2020</i> (the Act) do not provide clarity of the purpose for reporting and need updating. Amendment of the Act will better align its stated objects with intended outcomes.</p>
<p>1.1 – Emphasise that the primary purpose of the Payment Times Reporting Scheme is to improve the payment terms, times, and practices of large businesses in respect of their small-business suppliers and clarify that the purpose of making the reported information publicly available is to exert reputational pressure on large businesses.</p>	<p>Agree.</p> <p>The Government agrees that better outcomes for small businesses is at the core of payment times reporting and this should be reflected in the objects of the Act.</p> <p>The Government also agrees with the findings of the Review that the current sub-object 3(b)(i) of the Act is impractical in addressing the power imbalance between large businesses and small business suppliers.</p> <p>The Government will amend the Act to implement this recommendation.</p>
<p>Recommendation 2: Simplify which entities must provide a payment times report.</p>	<p>Agree.</p> <p>The Government agrees that simplifying and consolidating reporting entity obligations will enable better interrogation and analysis of payment practices, reduce regulatory burden, and ensure large corporate businesses are accountable for the payment practices of subsidiary entities.</p>
<p>2.1 – Consistent with standards set by the Australian Accounting Standards Board (or equivalent standards):</p> <ul style="list-style-type: none"> • Require consolidated reporting for corporate groups on the payment performance of all members by the parent entity; • Require reporting on operating segments for Australian operations; and • Reframe the \$100 million threshold to a measure of revenue rather than of income. 	<p>Agree.</p> <p>The Government considers the Australian Accounting Standards (AASBs) to provide a well-established and practical approach for consolidation of reporting and identification of reporting entities.</p> <p>AASBs will overcome the distortion and clunkiness of current reporting by requiring large corporate businesses to report on all transactions with small businesses, including transactions by their small subsidiary entities.</p> <p>Large businesses are familiar with accounting standards and AASB standards will provide the flexibility needed to be applied by both corporate and non-corporate reporting entities.</p> <p>The Government will amend the Act to implement this recommendation.</p>

Recommendation 3: Improve the operation of the Small Business Identification Tool

3.1 – Explore further the use of Commonwealth data to support the Small Business Identification Tool, while upholding privacy protections.

Agree.

The ability for reporting entities to identify small businesses is critical to the operation of the Scheme.

The Government supports the findings of the Review that reporting should continue to include small business payments only. This policy means that reporting entities must identify small-business suppliers to be able to report, facilitated by the SBI Tool.

The Government supports changes to the SBI Tool that would improve the accuracy and consistency of reporting including improving data sources and clarifying relevant definitions.

3.2 – Allow a reporting entity to remove an incorrectly identified small business from its reported data if it:

- Has paid that business more than \$10 million in a single income year;
- Can substantiate this with documentary evidence; and
- Notifies the Regulator prior to submitting its report and provides the documentary evidence.

Agree.

The Government will consider existing Commonwealth data sources that would improve the reliability and consistency of the SBI Tool.

Exploration of potential data sources has already commenced and use of Commonwealth data for the SBI Tool will require consultation with relevant stakeholders and is likely to require amendments to the Act and other legislation.

While evaluating alternative data sources, the Regulator will continue to ensure the maintenance of the SBI Tool data with commercial data and address accuracy, or completeness issues raised by reporting entities as a priority.

Agree.

Existing policies of the Regulator are in general alignment with the recommendation (see the [Regulator’s Information Sheet 6: SBI Tool](#)). The Regulator has advised Government it will update existing policies and guidance to achieve complete alignment with this recommendation in the short-term.

The Government will also amend the Act and the Rules to implement this recommendation.

3.3 – Require the Regulator to prioritise updates to the Small Business Identification Tool following notifications from reporting entities.

Agree.

The Regulator has committed to an operational target of 28 days from receiving a valid update from a reporting entity to reflecting the update in the SBI Tool and will report its response times in the biannual Regulator’s Update publication.

The Government believes this commitment by the Regulator will improve the timeliness of updates and provide greater certainty for reporting entities.

Recommendation 4: Streamline and improve the quality of reported data

Agree.

The Government notes the current reporting requirements have not materially improved payment times and agrees that streamlining and improving these requirements can reduce regulatory burdens for reporting entities while also improving the quality and accessibility of payment times reporting datasets.

Improving the usefulness of the data reported is a priority for the Government as an important step toward putting pressure on large businesses to improve their payment times to small businesses.

<p>4.1 – Expressly allow a reporting entity with an internal policy preventing the use of credit cards for trade credit arrangements to exclude credit card transactions from payment times reports.</p>	<p>Agree. Existing policies of the Regulator align with the recommendation (see the Regulator’s Guidance Note 1: Key concepts at paragraphs 87-89). The Regulator has advised Government it will update existing policies and guidance to give greater clarity on this policy in the short-term. The Government will also amend the Act and the Rules to implement this recommendation.</p>
<p>4.2 – Introduce a value threshold for credit card transactions so that transactions that are below the threshold can be excluded from payment times reports.</p>	<p>Agree. The Regulator has advised Government it will update current guidance to allow reporting entities to exclude credit card transactions below a value of \$100 (incl. GST). Implementation of this policy would occur as an interim measure to address the burden of identifying low-value transactions that are generally point-of-sale transactions and are not a credit arrangement. The Government will also amend the Act and the Rules to implement this recommendation.</p>
<p>4.3 – Remove, amend and add specific content requirements for payment times reports, as detailed in Table 4.</p>	<p>Agree. The Government agrees streamlining and amending reporting content will improve transparency and better motivate large businesses to improve payment practices. The Government also considers updating reporting content can make information reported timelier and more relevant to users of the Payment Times Reports Register and improve transparency of conduct that increases the risk of late and non-payment to small business. The Government will amend the Act to implement this recommendation and consider changes that include, but not limited to, the content recommended in Table 4 of the Review.</p>
<p>4.4 – Consolidate content requirements for payment times reports in the Payment Times Reporting Rules 2020</p>	<p>Agree. The Government agrees that consolidation of reporting content requirements in the Rules will simplify obligations for reporting entities and provide flexibility for the Government and the Regulator to respond to potential issues with reporting content in a timely manner. The Government will amend the Act and Rules to implement the recommendation.</p>
<p>4.5 – Create a more sophisticated submission portal for payment times reports to enable auto-filling, data validation and mandatory reporting fields</p>	<p>Agree. The Government agrees improvements to the submission portal will reduce the regulatory burden and improve the accuracy of reporting. In June 2023, the Regulator implemented 27 additional data validations, which have resulted in a reduction of errors in reporting. The Government will consider making more substantial updates to the submission portal after implementation of amendments that consolidate reporting entities and streamline reporting content requirements. The proposed overhaul of the Act to respond to other recommendations of the Review will inform consideration of the scope and nature of further submission portal enhancements.</p>

Recommendation 5: Enhance the presentation of reported data

5.1 – Revamp the register and dashboard to make them more user-friendly, drawing on relevant Australian and international examples.

Agree.

The Government agrees the effectiveness of reporting requires reporting data to be easy to access, analyse and compare.

Ensuring the presentation of reporting data in a way that supports peer comparison and identifying insights and trends will be critical to increasing pressure on large businesses and the Act delivering improved payment times. Presenting data in an accessible format will assist industry bodies and advocacy groups to develop benchmarks and readily identify outliers with poor payment times.

Agree.

The Government agrees the existing Payment Times Reports Register and dashboard do not provide the functionality required for efficient navigation of the data or the level of analysis needed to draw comparisons and identify trends in payment performance.

The Government will revamp the Register and dashboard and improve the user experience by providing improved context for reports and functionality to compare and rank entities to support the identification of best and worst payment practices.

Recommendation 6: Address constraints that inhibit the full effectiveness of the Payment Times Reporting Regulator

6.1 – Move the position of the Regulator and its functions relating to the administration of the *Payment Times Reporting Act 2020*, including its powers and delegations, to an established regulator of business activity.

Agree.

The Government agrees that the delineation of responsibilities and regulatory powers in the Act can make responding to non-compliance complex and resource intensive.

The Government supports removing operational barriers by taking advantage of synergies with established regulators, eliminating administrative processes that do not enhance the quality of reporting and introducing regulatory powers that reduce the burden on both the Regulator and reporting entities during compliance activities.

Agree in principle.

A strong regulatory posture and the threat of enforcement for non-compliance are important elements of an effective regulatory regime.

The Government agrees that moving the Regulator to an established regulator of business activities would deliver synergies and leverage relevant expertise.

However, it is the Government's immediate priority to make the Scheme more effective and increase pressure on large businesses to improve payment times. The most efficient way to implement the Scheme improvements is for the Regulator to continue to operate in Treasury while they are progressed.

Once Scheme improvements are made, including the passage of relevant legislation, the Government will revisit moving the regulatory functions to an established regulator of business activity.

In the interim, the Regulator will increase its compliance and enforcement activity and use existing powers to hold non-compliant large businesses to account. The Government will ensure the Regulator acts in accordance with the [Statement of Intent](#) given in response to the [Ministerial Statement of Expectation](#).

<p>6.2 – Remove the requirement for the Regulator to scrutinise original and revised payment times reports before publication.</p>	<p>Agree.</p> <p>The Government recognises the Act currently requires the Regulator to undertake administrative steps that add little value to the quality of reporting and creates uncertainty for reporting entities on the timing of report publication.</p> <p>The Government supports entities reporting under the Scheme to have greater control over the timing and publication of their payment times reports. Control over the timing of publication can facilitate coordination with company announcements and other corporate reporting.</p> <p>The Government will amend the Act to implement this recommendation.</p>
<p>6.3 – Introduce powers for the Regulator to:</p> <ul style="list-style-type: none"> • Issue a statutory notice for entities to produce information, with penalties for non-compliance; • Remove or redact information retrospectively from the register in specific circumstances; and • Prescribe the content, format and method of submission for applications for statutory relief. 	<p>Agree.</p> <p>The Government supports inclusion of statutory notices to produce in the suite of regulatory powers available to the Regulator to improve the efficiency of the Scheme.</p> <p>The Regulator is currently responsible for redaction of information that is not in the public interest and making decisions on statutory applications. The recommendations relating to the modification of these powers provide an opportunity to make these processes more efficient.</p> <p>The Government will amend the Act to implement this recommendation.</p>
<p>Recommendation 7: Review the operation of the amended Payment Times Reporting Act 2020</p>	<p>Agree.</p> <p>The Government agrees there should be a future statutory review of the Act following amendments to ensure it is delivering on its updated objectives and operating efficiently.</p>
<p>7.1 – Undertake a further statutory review of the Act within 5 years of implementation of reforms to overhaul the Payment Times Reporting Scheme in order to assess its effectiveness.</p>	<p>Agree.</p> <p>The Government agrees that a review of the Act should occur no sooner than 3 years and no longer than 5 years from the time of potential amendments. The inclusion of a 3-year minimum period is to ensure amendments will have time to take effect before being subject to further review.</p> <p>The Government will amend the Act to implement this recommendation.</p>
<p>Recommendation 8: Leverage the importance of reputation to large businesses to foster a culture of prompt payment</p>	<p>Agree.</p> <p>The Government agrees with recommendations of the Review that driving improvement to payment practices and attaining better outcomes for small business requires strong advocacy for change in addition to the transparency provided by the reporting Scheme.</p> <p>The Government supports increased advocacy and the promotion of payment practices as an indicator of the ESG contribution by large businesses to the Australian economy.</p>
<p>8.1 – Paying small-business suppliers quickly should be part of the environmental, social and governance (ESG) obligations of large businesses.</p>	<p>Agree.</p> <p>The Government agrees prompt payment to small businesses is an ESG matter that large businesses must take seriously.</p> <p>The Government will explore opportunities to include small businesses payment times in existing ESG reporting frameworks</p> <p>In addition to exploring existing ESG frameworks, the Government will support advocacy activities that promote prompt payment as an ESG obligation by providing improved tools to access payment times data and resources on emerging risks to payment times.</p>

<p>8.2 – Report publicly on worst and best payers to small businesses using Payment Times Reporting Scheme data.</p>	<p>Agree.</p> <p>The Government agrees that publicly reporting on worst and best payers will incentivise improved payment times by naming the entities that are outliers compared to their peers.</p> <p>Promotion of good payment practices is also important to ensure continued improvement and setting benchmarks of exemplar performance for specific industries and sectors. The Government will support the Regulator in establishing research and outreach functions in addition to its existing functions. The new functions will seek to partner with other stakeholders and support entities willing to advocate for better payment times. This should also produce more sophisticated insights including sector-specific research and identify existing and emerging barriers and threats to good payment practices.</p> <p>The Government will amend its Ministerial Statement of Expectation to include the Regulator publicly identifying the best and worst paying large businesses. The Regulator will set out how it will deliver on this expectation in an updated Statement of Intent.</p>
<p>Recommendation 9: Do not mandate maximum payment times for large businesses in respect of their small-business suppliers, given the perverse outcomes for small businesses that could be expected from doing so</p>	<p>Agree.</p> <p>The Government agrees with the recommendation of the Review not to mandate maximum payment times.</p> <p>The mandating of maximum payment times will not be part of the proposed amendments to the Act.</p>
<p>Recommendation 10: Support small businesses to recognise and act against unfair payment-related contract terms.</p>	<p>Agree.</p> <p>The Government agrees that small businesses need greater support to recognise and act against unfair payment terms that are also unfair contract terms under Australian Consumer Law.</p>
<p>10.1 – Introduce examples of unfair terms relating to payment of small-business suppliers into updated regulatory guidance on unfair contract terms.</p>	<p>Agree.</p> <p>The Government will request the Australian Competition and Consumer Commission to incorporate specific guidance on payment practices that may constitute unfair contract terms in its regulatory guidance materials.</p>
<p>Recommendation 11: Prohibit unfair payment practices</p>	<p>Agree.</p> <p>The Government is currently consulting on options to address unfair trading practices in Australia.</p> <p>The Government agrees that consideration of unfair payment-related conduct should occur when developing any future reforms to the Australian Consumer Law that prohibit unfair trading practices.</p>
<p>11.1 – Prohibit unfair conduct by large businesses relating to the payment of small-business suppliers in potential new unfair trading practices provisions in the Australian Consumer Law.</p>	<p>Agree.</p> <p>The Government will ensure consideration of unfair payment-related practices in future reforms that introduce a general or specific prohibition of unfair trading practices into the Australian Consumer Law.</p>
<p>Recommendation 12: Facilitate inclusion of a small-business voice in the proposed Designated Complaints function of the Australian Competition and Consumer Commission</p>	<p>Agree.</p> <p>The Government supports the empowerment of small business advocacy bodies and identifies the benefits of implementing accountability measures for regulatory agencies to consider, address and escalate systemic issues impacting small businesses.</p>

<p>12.1 – Enable an advocacy body to escalate systemic complaints in relation to the payment of small-business suppliers to the Australian Competition and Consumer Commission for investigation and response.</p>	<p>Agree.</p> <p>The Government will include a small business advocacy body as a designated complainant under the ACCC’s Designated Complaints function commencing in July 2024.</p> <p>Small business advocates will need to have established relationships, and the trust of, small businesses. This will include consideration of government and non-government advocacy groups and industry bodies.</p>
<p>Recommendation 13: Increase the uptake of eInvoicing in Australia</p>	<p>Agree.</p> <p>The Government recognises its role in leading the uptake of eInvoicing in Australia.</p>
<p>13.1 – Promote the adoption of eInvoicing by all businesses, including by continuing outreach efforts and considering a communications campaign.</p>	<p>Agree.</p> <p>The Government agrees that it is important to promote the adoption of eInvoicing by all businesses – particularly for small businesses where it can enable faster payment times and combat the increasing threat of invoice or payment redirection scams.</p> <p>The Government will develop a strategy to identify the most efficient and effective means to increase the uptake of eInvoicing by small businesses.</p>
<p>13.2 – Adopt the full functionality of eInvoicing across Commonwealth agencies.</p>	<p>Agree.</p> <p>Mandatory adoption of eInvoicing by all Commonwealth agencies was required by July 2022. As noted in the Review, efforts by Commonwealth agencies to date have been to ensure functionality to receive eInvoices.</p> <p>The Government will continue to demonstrate leadership on the adoption of eInvoicing by identifying ways to extend existing policies and procurement processes to include both sending and receiving eInvoices.</p>
<p>Recommendation 14: Elevate the importance of prompt payment in the Commonwealth procurement supply chain</p>	<p>Agree.</p> <p>The Government recognises its role as a leader in demonstrating best practices for procurement including prompt payment. Existing Government procurement rules require non-corporate Commonwealth entities to make all payments to suppliers within 20 days or pay interest (5 days for eInvoices), as set out in the Government’s Supplier Pay On-Time or Pay Interest Policy.</p> <p>Other Government procurement policies seek to extend better procurement practices throughout government supply chains and ensure large businesses make payments to subcontractors within 20 days (see the Payment Times Procurement Connected Policy).</p>
<p>14.1 – Explore the feasibility of enshrining the Commonwealth payment times standard into the proposed Supplier Code of Conduct to facilitate prompt payments from all principal contractors to their suppliers.</p>	<p>Agree.</p> <p>The Government will include prompt payment requirements in the proposed Supplier Code of Conduct in addition to existing payment-related procurement policies.</p>