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Statutory Review of the *Payment Times Reporting Act 2020*

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The Statutory Review of the *Payment Times Reporting Act 2020* acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respects to their Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples today.

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Letter of transmittal

29 June 2023

The Hon Julie Collins MP
Minister for Small Business
Parliament House
CANBERRA ACT 2600

Dear Minister

I am pleased to present the report of the Statutory Review of the *Payment Times Reporting Act 2020* (the Act).

In accordance with the review's terms of reference set out in the Act, I have assessed the effectiveness of the Act, and by extension the Payment Times Reporting Scheme (the PTRS), against its objects. I have also examined policy options beyond the PTRS to improve the payment terms, times and practices of large businesses in respect of their small-business suppliers, drawing on domestic and international experience.

A well-functioning reporting scheme that reveals the payment performance of large businesses has obvious merit. It would increase government and community awareness of the payment performance of large businesses. However, the existing PTRS is not a well-functioning reporting scheme.

I find that one of the objects of the Act – to make payment times information publicly available in order to "enable small businesses to make more informed decisions about potential customers" – has not been met and is fundamentally unrealistic.

I have made this finding for 2 main reasons.

First, awareness of the PTRS by small businesses is extremely low. Based on usage data since the inception of the PTRS, even if a different small business had accessed the register or its accompanying dashboard each time, this would account for less than 1 per cent of Australia's 2.5 million small businesses.

Second, and more fundamentally, the object is based on the flawed assumption that small businesses are in a position of market strength to pick and choose among prospective large-business customers. The object fails to recognise the inherent power imbalance between large and small businesses.

I recommend amending this object to clarify that the purpose of the reported information should, instead, be to put reputational pressure on large businesses to improve their payment terms, times and practices.

Another object of the Act is to make payment times information publicly available in order to "create incentives for reporting entities to improve their payment terms and practices". I conclude that this object, though worthy, also has not been met.

Notwithstanding that the Act and the PTRS have been in operation through highly disrupted economic times brought on by the COVID-19 pandemic, and for only 4 six-monthly reporting periods, there is no empirical evidence of a significant improvement in the payment terms and times of large businesses in respect of their small-business suppliers.

Specifically, since the commencement of the Act, there has been only a small increase in the proportion of small-business invoices paid within 30 days. The most recent reporting cycle indicates that around one-third of invoices are still paid in more than 30 days and the proportion of invoices paid beyond 60 days has shown little improvement.

Of course, this does not suggest that there have been no instances of large businesses improving their payment performance in respect of their small-business suppliers. But the data indicate that the actions of those relatively few large businesses have not shifted the dial for the payments relationship between Australian large and small businesses as a whole. Large businesses that do not pay their small-business suppliers quickly are using their market power to obtain a cashflow advantage over small-business suppliers, regarding them as a cheap source of finance.

I have determined that the PTRS has the potential to be a useful tool to support improvements in payment outcomes for small businesses. But, in practice, despite the diligence of the Payment Times Reporting Regulator, the unwieldy legislation setting out the data-collection requirements and procedures has made the information gathered almost useless. I therefore recommend a comprehensive overhaul of the operation of the Act and the administration of the PTRS.

My recommended streamlining of the data required under the PTRS would make it more user-friendly while reducing the administrative burden on large businesses and the Regulator.

Using this streamlined data, I recommend that an explicit responsibility to name and shame poor payers and praise fast payers publicly be given to a government or non-government entity.

I also recommend the Regulator be relocated to an established regulator of business activity with a strong reputation for enforcement in order to motivate high rates of compliance with the PTRS and further demonstrate the strength of the Government's commitment to improve payment times for small businesses.

An overhauled Act and reporting scheme, coupled with a worst and best payers list using the PTRS data, could be expected to lead to improved payment performance of large businesses in respect of their small-business suppliers.

In further support of small businesses, I recommend: better protecting the rights of small businesses regarding unfair trading practices and unfair contract terms; facilitating the inclusion of a small business voice in the Government's Designated Complaints function; increasing the adoption of eInvoicing; elevating the importance of prompt payment of suppliers in Commonwealth procurement practices; and reviewing the operation of the Act again in a few years' time.

In total, I am recommending 13 reforms to deliver better payment outcomes for small businesses which, if implemented, would be good for small businesses and good for the economy. A further recommendation – not to mandate maximum payment times (see below) – brings the total to 14 recommendations.

I am concerned about the potential for some large businesses to coerce small-business suppliers into accepting payment via supply chain finance. My proposed reforms to unfair contract terms and unfair trading practices are intended to guard against such egregious behaviour. Since less than 3 per cent of reporting entities currently use supply chain finance, I do not consider that additional measures are warranted at this time, but the use of supply chain finance should be closely monitored.

Several stakeholders proposed mandating maximum payment times to small businesses. Initially, I considered mandating payment times might be an effective approach. But following deeper analysis and consideration of various models, including those in comparable international jurisdictions and the proposed Failsafe Mechanism, I found mandating would create problems that would overwhelm its usefulness and do more harm than good for small businesses.

These problems include complexity in trying to identify optimal payment times; creating the perverse incentive for existing fast payers to slow their payment of invoices towards the mandated time; the unwillingness of most small-business owners to identify themselves in raising a breach of the mandate by a large-business customer; and large businesses reducing their procurement from small-business suppliers in favour of businesses that are not covered by the mandate.

This last risk could be mitigated by following the approaches taken in the United Kingdom and most European Union member states, which set a mandated maximum payment time for all business-to-business transactions, regardless of business size. However, I consider that adopting this approach in Australia would involve an unwarranted government intrusion into contracts among large businesses.

In total, the review received 27 submissions and met with more than 100 small-business representatives, reporting entities, industry associations, business services organisations and Australian and international government agencies. The information gathered and insights gained from these submissions and engagements were extremely valuable in forming the content and recommendations of this report.

I also thank the members of the secretariat to the review for their support. They are a talented, hardworking group of young Treasury officials with big futures.

Yours sincerely

The Hon Dr Craig Emerson
Independent Reviewer

Background to the review

On 6 December 2022, the Minister for Small Business, the Hon Julie Collins MP, announced the Government had commissioned an independent, statutory review of the operation of the *Payment Times Reporting Act 2020* (the Act) and appointed an Independent Reviewer to undertake this task.

The review is prescribed under section 57A of the Act. Unusually, detailed terms of reference are included in section 57B of the Act (see *Box 1*).

Terms of reference

Box 1: Terms of reference for the review of the *Payment Times Reporting Act 2020*

The Review must consider the matters prescribed in section 57B of the Act.

These are whether:

(a) The operation of the Act is meeting the objects set out in section 3:

- (i) to provide for large businesses, certain government entities and volunteering entities to report information on their payment terms and practices in relation to their small business suppliers.
- (ii) to make that information publicly available in order to: enable small businesses to make more informed decisions about potential customers; and create incentives for reporting entities to improve their payment terms and practices.

(b) Related government policies, including policies relating to electronic invoicing, have improved the payment terms and performance of reporting entities in relation to their small business suppliers.

(c) Other measures, such as mandating one or more maximum payment periods (the *mandated maximum payment periods*) for the payment of small business invoices by reporting entities would be more effective in improving those payment terms and practices.

Further, in considering mandated maximum payment periods, section 57B of the Act requires the review must consider:

(a) How mandated maximum payment periods could best be implemented, taking into account potential regulatory burdens on reporting entities and the need to avoid unintended consequences for small businesses.

(b) The mandated maximum payment periods that would be appropriate to improve payment terms and practices, including whether mandated maximum payment periods of 30 days, 20 days, or 10 days or less would be appropriate, and whether mandated maximum payment periods of 5 days would be appropriate if electronic invoicing were used.

Box 1: Terms of reference for the review of the Payment Times Reporting Act 2020 (continued)

(c) The impact of sector or industry-specific differences, including how mandated maximum payment periods could be imposed on sectors and industries with differing payment terms and practices.

(d) The compliance or enforcement arrangements that would be appropriate to support mandated maximum payment periods, including whether a penalty regime should be established for the following purposes:

  (i) To require a reporting entity to pay small business invoices issued to the entity within a specified period, if the entity has a median payment period for small business invoices issued to the entity that is longer than the mandated maximum payment period.

  (ii) To require a reporting entity that has failed to pay a small business invoice issued to the entity within the period specified in the terms of the relevant contract to pay interest on that payment.

Beyond the matters set out in section 57B of the Act, the Review should consider the efficacy of international approaches, including the model adopted in the United Kingdom, and make recommendations on arrangements that will ensure small businesses are paid on time.

The Review will include a public consultation period.

Independent Reviewer

The Hon Dr Craig Emerson was appointed to lead the review.

Dr Emerson is an eminent economist with 40 years' experience in public policy, politics and public service. Dr Emerson is a former Australian Trade Minister and Minister for Small Business, Consumer Affairs and Competition Policy. He was also Minister Assisting the Finance Minister on Deregulation where he developed a program of reform in 27 areas of business regulation and successfully chaired the regulatory reform group of the Council of Australian Governments.

Dr Emerson is also Director of the Australian APEC Study Centre at RMIT University, a Visiting Fellow at the Australian National University and an Adjunct Professor at Victoria University's College of Business.

Secretariat

To support Dr Emerson, a small secretariat was established within the Treasury, comprising:
Kylie Bourke (Head of Secretariat), Heather McGowan, Rosie Collard and Nicholas De Wan.

Summary

The Payment Times Reporting Scheme (PTRS) was introduced to improve payment outcomes for Australia's 2.5 million small businesses.

The commencement of the PTRS on 1 January 2021 coincided with the COVID-19 pandemic. The economic fallout from the pandemic heightened the importance of fast payments of invoices to the cashflow and viability of small businesses. Large businesses that do not pay quickly in order to preserve their working capital are effectively using small businesses as a cheap source of finance. In turn, small businesses that are paid slowly are likely to pay their own suppliers more slowly.

A review of the operation of the Act was provided for in the legislation. The terms of reference require an assessment of the operation of the PTRS against the Act's objects and the effect of other policies on improving payment terms, times and practices in relation to small-business suppliers.

The terms of reference also require consideration of the efficacy of international approaches to regulating payment times. Most comparable international jurisdictions cover payments of all invoices, regardless of business size. In contrast, Australia's legislation targets the power imbalance between large and small businesses. The review considers this focus on small-business payment times in Australia is a measured and proportionate response and that government has no legitimate role in intervening in the payment performance of large businesses in their dealings with each other.

In its current form, the PTRS is a poorly functioning reporting scheme. Unwieldy legislative requirements have compromised the effectiveness of both the PTRS and the Payment Times Reporting Regulator (the Regulator).

The Regulator has worked professionally and assiduously in trying to make the PTRS effective, but design features in the Act and the supporting Payment Times Reporting Rules 2020 (the Rules) have made this task exceedingly difficult.

To date, the Regulator has prioritised developing the regulatory settings and providing education and guidance to reporting entities, rather than using its enforcement powers. Meanwhile, many reporting entities have focused on building compliant systems and submitting payment times reports. More than 10,000 entities have submitted payment times reports since the PTRS commenced. However, analysis of the data reveals a fall-off in the number of reports being submitted, indicating a possible decline in compliance.

The reporting requirements are onerous for reporting entities and create a confusing, clunky and cluttered dataset. The Payment Times Reports Register (the register) publicly displays 54 reporting fields for each of the more than 35,000 reports, which totals almost 2 million reporting fields across the 4 reporting cycles. Despite this volume of data, the register cannot even reveal a reporting entity's average payment time to small-business suppliers and how often it pays on time.

Based on the information the register can display, at an aggregate level, the PTRS does not appear to have materially reduced the payment terms or times of large businesses to their small-business suppliers. Since the commencement of the Act, the average payment term – the contractual time in which a large business agrees to pay a small-business supplier – has fallen by less than 2 days, from 37.5 days to 35.8 days. And while the proportion of invoices paid within 30 days has increased slightly, from 62.9 per cent to 67.6 per cent, the proportion of invoices paid in more than 60 days has shown little improvement.

The impenetrability of the data has also limited media coverage and any associated reputational pressure on large businesses to improve their payment performance. The review concludes that the object of the Act – to make payment times information publicly available in order to "create incentives for reporting entities to improve their payment terms and practices" – is a worthwhile goal but has not been met.

Engagement with the PTRS has also been extremely low from small businesses – the very cohort the Act envisaged would use this information. Together, the register and its accompanying dashboard have been accessed less than 20,000 times since the PTRS commenced. Even if a different small business had accessed the register or dashboard each time, this would account for less than 1 per cent of Australia's 2.5 million small businesses.

Furthermore, the review has received no persuasive evidence that small businesses reject a potential large-business customer because of its payment performance. Inherent power imbalances between large and small businesses prevent small businesses picking and choosing their large-business customers.

It follows that the object of the Act – to make information publicly available in order to "enable small businesses to make more informed decisions about potential customers" – is fundamentally unrealistic and has also not been met.

Nevertheless, there is scope for the PTRS to deliver more accessible, accurate and useful information that will better incentivise improved payment performance of large businesses for the benefit of small businesses and the wider economy, while also reducing the administrative burden on reporting entities and the Regulator.

The review considered a large array of options for reform, acknowledging that improving payment performance will require actions beyond the scope of the Act.

The review recommends an integrated set of 13 reforms. These reforms are designed to deliver improved payment outcomes for small businesses and increased productivity, which would be good for small businesses and good for the economy.

As a priority, the review recommends a comprehensive overhaul of the PTRS to make the scheme simpler and more useful. These changes are set out below.

- **Amend the objects of the Act.** The review recommends that amendments emphasise that the primary purpose of the PTRS 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.
- **Simplify which entities must provide a payment times report.** The review recommends consolidating reporting at the corporate-group level to remove an unnecessary regulatory burden and improve the accessibility and useability of the register.
- **Improve the operation of the Small Business Identification Tool.** The review recommends exploring the use of Commonwealth data sources and allowing manual corrections by reporting entities to improve the accuracy of the Small Business Identification Tool.
- **Streamline and improve the quality of reported data.** The review recommends simplifying reporting requirements and making the process of submitting reports more sophisticated so as to improve consistency and make reported data clear, relevant and easy to analyse.
- **Enhance how the data is presented.** The review recommends that changes be made to the register and dashboard to make them more user-friendly.
- **Address constraints that inhibit the full effectiveness of the Regulator.** The review recommends removing unnecessary obligations on the Regulator, improving its powers and relocating its function to an established regulator of business activity.

The review recommends that the overhaul of the PTRS be combined with **leveraging the importance of reputation to large businesses to foster a culture of prompt payment**. An explicit responsibility to publicise the worst and best payers to small businesses in an engaging way, based on the reported data, should be given to a government or non-government entity other than the Regulator. This approach is being used successfully in the United Kingdom (UK). It would exert reputational pressure on large businesses with poor payment times to improve their performance while also celebrating fast payers. This approach aims to attract the attention of the media and the general public and to encourage large businesses to make paying small-business suppliers quickly an integral part of their environmental, social and governance (ESG) obligations.

Having better data and making better use of it will unlock the full potential of the PTRS. To further support a culture of prompt payment, the review makes the recommendations set out below.

- **Prohibit unfair payment practices.** In the proposed new provisions on unfair trading practices in the Australian Consumer Law, the review recommends that the Government seeks to prohibit unfair conduct by a large business in relation to the payment of its small-business suppliers. Unfair conduct could include very late payment times, deliberate withholding of payments, predatory use of supply chain finance and other undesirable practices adversely affecting payments to small businesses.
- **Support small businesses to recognise and act against unfair payment-related contract terms.** The review recommends that in updated guidance on unfair contract terms the Australian Competition and Consumer Commission (ACCC) introduces examples of unfair terms relating to payments to small-business suppliers. Unfair contract terms could include very long payment terms and mandatory use of supply chain finance and supplier portals which charge fees or carry onerous administration requirements. Updated guidance would also assist large businesses to understand their obligations.
- **Facilitate inclusion of a small business voice in the proposed Designated Complaints function.** The review recommends that the Government enables an advocacy body to escalate to the ACCC systemic complaints in relation to the payment of small-business suppliers for investigation and response.
- **Increase the uptake of eInvoicing in Australia.** The review recommends that the Government continues its educational and outreach efforts over a sustained period of time to promote the adoption of eInvoicing by all businesses and to adopt the full functionality of eInvoicing in its own procurement practices. This would help small businesses get paid faster and deliver economy-wide productivity benefits.
- **Elevate the importance of prompt payment in the Commonwealth procurement supply chain.** The Government has set the standard for prompt payment of its direct suppliers. The review recommends that the Government explores the feasibility of enshrining this standard in the proposed Supplier Code of Conduct. This would oblige all businesses that directly benefit from the Government's commitment to timely payments to pay their own suppliers promptly.

The review thoroughly investigated the option of mandating maximum payment times to small businesses, including the proposed Failsafe Mechanism. The review ultimately determined that the risk of perverse outcomes was prohibitively high. Problems associated with mandating include:

- Disincentivising the procurement by large businesses of goods and services from small businesses;
- Slowing down payments by current fast payers towards the mandated maximum payment time;
- Overall enforcement would be ineffective, especially where it relied on a small-business owner to identify itself in raising a breach of the mandate, at the risk of damaging its relationships with actual and potential large-business customers;

- A single mandated maximum payment time could damage the viability of some industries where it is inconsistent with the commercial structure of that industry;
- Multiple mandated maximum payment times would be complex for diversified businesses and the Regulator to navigate;
- Incentivising the deployment by large businesses of supply chain finance to the detriment of small-business suppliers; and
- Disincentivising the adoption of eInvoicing by large businesses if for eInvoicing there is a shorter mandated payment time.

For these reasons, and since comparable overseas jurisdictions have not implemented a mandate model that has been enforced effectively, the review **recommends against mandating maximum payment times to small businesses**.

The review recommends that **the operation of the Act should be reviewed again within 5 years** of the implementation of reforms to overhaul the PTRS, to evaluate its effectiveness. The future review could also consider the effectiveness of the other recommended reforms in driving down payment times to small businesses.

Findings

Finding 1

Object 3(a) of the Act – to provide for large businesses, certain government entities and volunteering entities to report information on their payment terms and practices in relation to their small-business suppliers – has merit but has not been achieved efficiently or effectively.

Finding 2

Reporting by individual entities of a corporate group has created an unnecessary administrative and compliance burden on corporate groups, while also creating enforcement difficulties for the Regulator, without delivering a commensurate benefit.

Finding 3

Using total income to determine whether an entity is a reporting entity creates complexity and inconsistencies for large businesses and reduces the Regulator's efficiency and effectiveness in targeting non-compliance.

Finding 4

The large number of nil reports in the register hinders the accessibility and useability of the register.

Finding 5

It is administratively burdensome for reporting entities to determine which credit card transactions must be included in a payment times report and which are to be excluded.

Finding 6

The accuracy of the Small Business Identification Tool is vital to the effectiveness of the Payment Times Reporting Scheme and needs improvement.

Finding 7

The Regulator has worked diligently to establish the Payment Times Reporting Scheme and has engaged genuinely and regularly with stakeholders.

Finding 8

The Regulator lacks proportionate information-gathering powers and the power to prescribe the content, format and method for submitting statutory relief applications. This results in compliance and administrative inefficiencies for both the Regulator and the entities it regulates.

Finding 9

The legislative requirement for the Regulator to scrutinise the contents of payment times reports before publication unjustifiably shifts risk and compliance burden onto the Regulator.

Finding 10

There is scope to strengthen the compliance and enforcement culture of the Regulator given that a significant number of entities that had previously submitted payment times reports appear to have since stopped reporting and the Regulator has not yet used its enforcement powers.

Finding 11

The reporting requirements are onerous and create a confusing, clunky and cluttered dataset that has little utility. The register cannot even reveal a reporting entity's average payment time to small-business suppliers and how often it pays on time. There is scope to streamline reporting requirements and increase the accuracy and usefulness of the data.

Finding 12

Sub-object 3(b)(i) of the Act – to make information publicly available in order to enable small businesses to make more informed decisions about potential customers – is unrealistic and has not been met. Owing to power imbalances with large businesses, small businesses do not have the luxury of picking and choosing with whom to do business.

Finding 13

Since the commencement of the Payment Times Reporting Scheme, the proportion of small-business invoices paid within 30 days has increased by less than 5 percentage points from 62.9 per cent to 67.6 per cent, and the proportion of invoices paid beyond 60 days has fallen by 1 percentage point from 8.7 per cent to 7.7 per cent.

Finding 14

Sub-object 3(b)(ii) of the Act – to make information publicly available in order to create incentives for reporting entities to improve their payment terms and practices – has not been met. Without serious reform, the Payment Times Reporting Scheme will not be effective in meeting this sub-object.

Finding 15

Increased public scrutiny of Payment Times Reporting Scheme data is needed to drive a culture of prompt payment.

Finding 16

None of the comparable international jurisdictions considered by the review has implemented a mandated maximum payment times model that has been enforced effectively. International evidence points to the unintended consequence of fast payers slowing down their payments towards the mandated time.

Mandating maximum payment times to Australian small businesses, including through the proposed Failsafe Mechanism, could be expected to suffer these same flaws. A mandate would disincentivise large businesses from procuring goods and services from small businesses and would damage the viability of industries that necessarily have longer payment times, doing more harm than good for small businesses.

Finding 17

Small businesses often lack the resources and bargaining power to review and genuinely negotiate terms in standard-form contracts.

Finding 18

Gaps in the Australian Consumer Law result in small businesses not clearly being protected from unfair payment-related practices.

Finding 19

Greater uptake of eInvoicing by all businesses and government agencies would facilitate small businesses getting paid faster and deliver economy-wide productivity benefits, but would not address wilful late payment of invoices.

Finding 20

In the 2021-22 financial year, Commonwealth agencies paid 96.4 per cent of eligible invoices within 20 days and 67.7 per cent of eligible eInvoices within 5 days.

Recommendations

Recommendation 1: Amend the objects of the *Payment Times Reporting Act 2020*

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.

Recommendation 2: Simplify which entities must provide a payment times report

2.1 Consistent with standards set by the Australian Accounting Standards Board (or equivalent standards):

- 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.

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.

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.

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

Recommendation 4: Streamline and improve the quality of reported data

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.

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.

4.3 Remove, amend and add specific content requirements for payment times reports, as detailed in Table 4.

4.4 Consolidate content requirements for payment times reports in the Payment Times Reporting Rules 2020.

4.5 Create a more sophisticated submission portal for payment times reports to enable auto-filling, data validation and mandatory reporting fields.

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.

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.

6.2 Remove the requirement for the Regulator to scrutinise original and revised payment times reports before publication.

6.3 Introduce powers for the Regulator to:

- 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.

Recommendation 7: Review the operation of the amended *Payment Times Reporting Act 2020*

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.

Recommendation 8: Leverage the importance of reputation to large businesses to foster a culture of prompt payment

8.1 Paying small-business suppliers quickly should be part of the environmental, social and governance (ESG) obligations of large businesses.

8.2 Report publicly on worst and best payers to small businesses using Payment Times Reporting Scheme data.

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.

Recommendation 10: Support small businesses to recognise and act against unfair payment-related contract terms

10.1 Introduce examples of unfair terms relating to payment of small-business suppliers into updated regulatory guidance on unfair contract terms.

Recommendation 11: Prohibit unfair payment practices

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.

Recommendation 12: Facilitate inclusion of a small-business voice in the proposed Designated Complaints function of the Australian Competition and Consumer Commission

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.

Recommendation 13: Increase the uptake of eInvoicing in Australia

13.1 Promote the adoption of eInvoicing by all businesses, including by continuing outreach efforts and considering a communications campaign.

13.2 Adopt the full functionality of eInvoicing across Commonwealth agencies.

Recommendation 14: Elevate the importance of prompt payment in the Commonwealth procurement supply chain

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.

Chapter 1: Overview

This chapter introduces key concepts relied on in this report. It considers the dynamic business environment and how long payment terms and late payment times affect small businesses. The chapter also identifies the case for government intervention in payment times policy, and the review's philosophy and principles to guide its assessment of the operation of the Act and any proposed changes.

Defining payment terms and practices

In this review:

- ***Trade credit arrangement*** means an agreement between a large business and a small-business supplier that allows the large business to delay payment for goods or services to a time after the supply.
  - If the payment occurs at the point-of-sale, this is not a trade credit arrangement.
- ***Payment term*** means the contractually agreed period for a large business or government business enterprise to pay a small-business supplier under a trade credit arrangement.
  - The Act describes this as a *payment period* but this is not common terminology among businesses.
- ***Payment time*** or ***payment performance*** means the actual time a large business takes to pay a small-business supplier under a trade credit arrangement.
- ***Paid on time*** means the large business paid a small-business supplier within the payment term.
- ***Payment practice*** means a large business's payment procedures for trade credit arrangements with small-business suppliers, which incorporate payment times and the use of payment mechanisms such as electronic invoicing (eInvoicing) and supply chain finance.

The review also discusses 2 main concepts:

1. ***Long payment*** – or extended payment terms, where the payment term is beyond that which an ordinary person would deem to be reasonable; and
2. ***Late payment*** – where a payment is made beyond the payment term.

The review has considered ways to ensure small businesses are paid on time, together with ways to improve the payment terms and other payment practices of reporting entities in relation to their small-business suppliers. The reason for this is that being paid on time might not deliver the best overall outcome for small businesses if it is achieved through longer payment terms and/or through inappropriate use of supply chain finance. Conversely, shorter payment terms are meaningless if they are not usually achieved.

The ideal scenario for small businesses is short payment terms coupled with on-time payment. This provides certainty of payment, allowing small businesses to plan and manage cashflow. It also means they do not have to divert resources to follow up outstanding invoices.

The changing business environment

The small-business sector is an integral part of the Australian economy. In 2021-22, small businesses accounted for more than 98 per cent of the 2.6 million Australian businesses (Australian Bureau of Statistics, 2022). In 2021-22, they employed more than 5 million people and contributed more than $500 billion to the economy, which is around one-third of private sector output (Australian Bureau of Statistics, 2023).

The commencement of the PTRS on 1 January 2021 coincided with the worst pandemic in more than a century. Australian businesses were affected by devasting bushfires and floods, waves of COVID-19 lockdowns and border closures, supply chain disruptions, and subsequent skills and worker shortages, increasing energy and other input costs and rising interest rates. Although these challenges have been common among businesses, they tend to affect small businesses more (McCowage & Nunn, 2022, p. 13).

The importance of reasonable payment times for small-business invoices, especially in challenging economic times, was highlighted in several submissions. The Australian Chamber of Commerce and Industry (ACCI) noted:

> *The impacts of COVID-19, supply chain challenges, and increased interest rates also impact on small businesses and their cash flow, making on time payments a priority.* (ACCI, 2023, p. 2)

The Australian Small Business and Family Enterprise Ombudsman (herein, the Small Business Ombudsman) commented:

> *As small businesses struggle with the compounding challenges of accelerating inflation, increasing costs of borrowing, rising energy prices, higher rents, and acute shortages of talent and skills, policy action to improve payment times is vital.* (Small Business Ombudsman, 2023a, p. 1)

Another emerging trend is the focus by many large businesses, in Australia and globally, on their ESG value propositions. ESG considerations can influence how large businesses do business with smaller suppliers. As SA Power Networks pointed out:

> *Large businesses are now more focussed on ESG initiatives.*
>
> *A lot of large business recognise the impact of their expenditure on the economy and have initiatives in place to encourage greater use of local and/or small suppliers.*
>
> *This flows on to changes in thinking around payment terms and practices that organisations have in place to support their engagement with local and/or small business.* (SA Power Networks, 2023, p. 1)

Effect of long payment terms and late payment times on Australian small businesses

Under trade credit arrangements, long payment terms and late payment times extend the period between when a business incurs the costs of producing a good or service and is paid for it. Long and late payments disproportionately affect small businesses. Compared with large businesses, small businesses:

- Are less able to cover financial shortfalls;
- Have less robust credit management systems;

- Have fewer resources to collect and chase payments; and
- Find it more difficult to secure finance (Small Business Ombudsman, 2019, pp. 6, 22, 23).

Long payment terms and late payment times place pressure on small-business cashflow, financing and productivity. Late payment times are also a major source of stress for small-business owners. In the December quarter 2022, around 40 per cent of requests for assistance from the Small Business Ombudsman related to payment times (Small Business Ombudsman, 2023a, p. 3). This is supported by a 2021 report from accounting software provider Xero which found that being paid late contributed to greater cashflow stress for small businesses (Xero, 2022a, p. 4).[1]

Late payment times add to the cost of doing business, since small-business suppliers need to divert time and money to follow up on outstanding payments. As the NSW Small Business Commissioner explained:

> *(…) it is important to also consider the time cost and productivity loss in chasing late payments as well as difficulties associated with planning cash flow.* (NSW Small Business Commissioner, 2023, p. 2)

Long payment terms and late payment times to small businesses produce flow-on effects throughout the economy. Smaller businesses that are paid slowly, in turn, pay their own suppliers more slowly. The Australian Institute of Credit Management (AICM) told the review:

> *Poor payment practices are a hand brake on the growth and prosperity of all Australian business as the lifeblood of trade, cashflow, is slowed down.* (AICM, 2023, p. 2)

As pointed out by the Business Council of Australia (BCA):

> *Small businesses play a critical role in their communities and across supply chains. That success relies on invoices being paid quickly, in full and on time.* (BCA, 2023b, p. 2)

Cashflow and financing pressures that arise from long payment terms and late payment times also constrain the ability of small businesses to hire, invest and grow. Consult Australia noted:

> *Payment times is a critical issue to our member businesses, especially small businesses that rely on timely payments to pay their people and keep the business operating.* (Consult Australia, 2023, p. 1)

Predictable and consistent cashflow is fundamental to the continued viability of small businesses. According to insolvency statistics from the Australian Securities and Investments Commission (ASIC), inadequate cashflow or high cash use is consistently the highest nominated cause of company failure in external administrators' reports (ASIC, 2019, p. 18). AICM specifically raised this concern:

> *It is relevant to note that inadequate cash flow is the top cause of corporate insolvency.* (AICM, 2023, p. 6)

The National Fire Industry Association Australia (NFIA) explained:

> *The potential impact of delayed and incomplete payment of invoices on the cashflow and viability of all businesses is well-known. Poor payment practices can lead to significant lost opportunity costs through a lack of working capital and are a known cause of business insolvency in Australia.* (NFIA, 2023, p. 4)

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1 Late payments were measured by the average days an invoice was paid relative to its invoice due date.

When small businesses are unable to manage cashflow they are often forced to rely on expensive forms of credit. The most common types of debt financing used by small businesses are high-cost, short-term loans and equity-secured loans such as credit cards, overdrafts and property mortgages (Productivity Commission, 2018, p. 436).

According to the Reserve Bank of Australia's September 2022 Bulletin, *The Current Climate for Small Business Finance*, in general, small businesses face higher borrowing costs than large businesses because they are typically more risky and are around twice as likely to default on their loans (McCowage & Nunn, 2022, p. 15). Some lenders require small-business owners to use personal assets, such as their homes, as collateral. This continues to be the main constraint on access to finance for some small-business owners (McCowage & Nunn, 2022, p. 17).

Long payment terms and late payment times can also contribute to poor mental health of small-business owners. The Queensland Small Business Commissioner told the review:

> *(…) there is increasing evidence that late payments also impact the mental health of small business owners.* (Queensland Small Business Commissioner, 2023, p. 1)

This is supported by research undertaken in 2021 by Bankwest Curtin Economics Centre. It found that Western Australian small business owners who are paid more than 30 days late are up to 11 percentage points more likely to suffer high stress than business owners who are paid on time (Cassells, et al., 2021, p. 72).

The case for government intervention

Reducing payment times from large to small businesses and ensuring small businesses are paid on time can generate benefits for small-business owners and the broader economy. The Regulatory Impact Statement for the PTRS estimated that a 30-day payment time from large businesses to small businesses would deliver an annual net benefit of $522 million to small businesses and $313 million to the Australian economy (2020, p. 22).

The policy dilemma in relation to small-business payment times is:

- Large businesses have little inherent incentive to improve payment terms, times and practices; and
- Small businesses usually lack the market power to negotiate better payment terms, times and practices with large businesses.

Long payment terms and late payment times indicate that large businesses are effectively using small businesses as a cheap form of finance to preserve their working capital.

There is a case for government intervention to address these problems. The Regulatory Impact Statement for the PTRS summed this up:

> *Marked improvement in payment times without government action is unlikely because small businesses lack the market power to negotiate better payment terms and times, large businesses have little incentive for improvement, and voluntary efforts to date have had limited take-up by large businesses.* (2020, p. 15)

This point is affirmed by several submissions. For example, Xero stated:

> *Without government intervention to change behaviour from big business, small business will not have the power required to effect change without damaging the relationship (perceived or real) with big business customers. Government efforts are best spent developing a policy framework to address late payments, which is a problem that small businesses have had to suffer for far too long.* (Xero, 2023, pp. 6-7)

The Western Australia Small Business Commissioner argued:

> *Australia's market size is relatively small and for some industries small businesses have just a handful of very large businesses as potential customers (with virtual monopolies/duopolies dominating the grocery, hardware and other industries). As a result, small businesses are experiencing market failure and a case can be mounted that further government intervention is justified.* (Western Australia Small Business Commissioner, 2023, p. 2)

Comparable international jurisdictions have also recognised that government action is necessary. Policy interventions to improve payment times include payment performance reporting schemes, voluntary industry codes and mandated maximum payment times (see *Appendix C: Approaches in comparable international jurisdictions*).

Approach and principles for the review

The review's philosophy is that any policy intervention should deliver a net benefit to small businesses and to the general public. The review has sought to understand the payment practices of large businesses towards their small-business suppliers and to weigh up the costs and benefits of proposed policy interventions. This has involved taking into consideration how best to design and implement any changes to avoid costly unintended consequences.

However, the assessment of future costs and benefits is not straightforward, such that recommendations to change policy ultimately require a degree of judgement.

The review has used the principles set out in Box 2 to guide its assessment of, and any proposed changes to, the operation of the Act.

Box 2: Guiding principles for assessing the operation of the Act

- ***Incentivises improved payment terms, times and practices and disincentivises poor behaviour***: Large businesses and government enterprises are motivated to improve their payment terms, times and practices in relation to small-business suppliers.
- ***Imposes a proportionate regulatory burden***: The compliance and administrative burden on large businesses and particular government enterprises is not unnecessarily heavy but rather is commensurate with the benefits to small-business suppliers and the general public.
- ***Is accessible and useful***: Information about payment terms, times and practices is transparent, comparable, practical and easy to use for small businesses and other interested stakeholders.

Chapter 2: How effective is the Act?

This chapter provides an overview of the PTRS statutory framework and assesses whether the operation of the Act is meeting its objects. The chapter considers features that are central to the operation of the Act including: which entities must report and what must be reported; the role, powers and obligations of the Regulator; and making data publicly available through the register and its accompanying dashboard.

Statutory framework

The PTRS is enabled by the Act, which sets out the objects, reporting requirements and processes for the PTRS. It also establishes the position of the Regulator and its functions and powers. The Act is supported by subordinate legislation, including the Rules.

To assist the community in understanding the Act, the Regulator has issued:

- ***Guidance notes**,* which set out key concepts of the Act and practical examples to explain how the Act operates generally and outline the Regulator's approach to administering the Act; and
- ***Information sheets**,* which provide short guidance on specific processes and functions, to address stakeholder enquiries.

For more information see *Appendix A: Background of the Payment Times Reporting Scheme*.

Objects of the Act

Section 3 of the Act sets out its objects (see *Box 3*).

Box 3: Objects of the Act

The objects are:

3(a) to provide for large businesses, certain government entities and volunteering entities to report information on their payment terms and practices in relation to their small business suppliers; and

3(b) to make that information publicly available in order to:

(i) enable small businesses to make more informed decisions about potential customers; and

(ii) create incentives for reporting entities to improve their payment terms and practices.

The terms of reference prescribed in section 57B of the Act require the review to consider whether the operation of the Act is meeting its objects. The review has conducted its assessment on the basis that the objects of the Act define the scope and purpose of the PTRS.

A well-functioning reporting scheme

In principle, a well-designed and well-functioning reporting scheme could improve understanding and awareness of the payment performance of large businesses in respect of their small-business suppliers. Improved disclosure is also vital to holding large businesses to account for driving a culture of prompt payment and making payment times to small businesses part of their ESG considerations.

The benefits of greater transparency and reporting on payment times are recognised internationally. The UK has had a reporting scheme in place since 2017 and the European Union (EU) and New Zealand are working to implement measures to improve visibility of business payment performance (see *Appendix C: Approaches in comparable international jurisdictions*).

However, the PTRS, in its current form, is not a well-functioning reporting scheme and its potential benefits have not yet been realised.

The Act in operation

Given that the Act commenced on 1 January 2021, the review can examine only 2 years of PTRS data. These 2 years coincided with unprecedented economic disruptions associated with the COVID-19 pandemic (see *Chapter 1: Overview*). This adds complexity to the task of assessing whether the PTRS is working effectively to meet its objects.

Early implementation issues are expected of any new regulatory process, as participants and the Regulator adjust to the new regulatory regime and bed down their processes. The assessment below should therefore be considered in this context.

The assessment focuses on those elements that the review considers to be central to the operation of the Act and, by extension, the PTRS. This chapter does not discuss all minor and technical issues raised by stakeholders regarding the operation of the Act.

Object 3(a): Provide for reporting entities to report

The object in section 3(a) of the Act provides for large businesses, certain government entities and volunteering entities to report information on their payment terms and practices in relation to their small-business suppliers. On the face of it, this object is procedural and has been achieved; however, not efficiently or effectively, as explained below.

Finding 1

Object 3(a) of the Act – to provide for large businesses, certain government entities and volunteering entities to report information on their payment terms and practices in relation to their small-business suppliers – has merit but has not been achieved efficiently or effectively.

Which entities must report?

Sections 6 and 7 of the Act establish a reporting requirement for eligible large businesses, certain government entities and volunteering entities, collectively known as "reporting entities". Under the Act, generally a large business is a reporting entity if it is constitutionally covered, carries on an enterprise in Australia and its total income for the most recent income year was more than $100 million.

Controlling corporations are also captured where the combined total income of all members of the controlling corporation's group was more than $100 million. A member of a controlling corporation's group must also report in its own right, known as entity-level reporting, where its total income was at least $10 million. Entities that are registered under the *Australian Charities and Not-for-profits Commission Act 2012* are not required to report (see *Appendix A: Background of the Payment Times Reporting Scheme*).

The Explanatory Memorandum to the Payment Times Reporting Bill 2020 explained that this approach to defining reporting entities recognised that these businesses:

> *(…) have the capacity to meaningfully comply with the reporting requirements and have the market influence to effect change in their supply chains.* (2020, p. 14)

The secondary $10 million threshold for members of controlling corporations was intended to provide some regulatory relief, as the Explanatory Memorandum noted:

> *Removing smaller entities who operate within larger groups but have a total income of less than $10 million is designed to reduce the regulatory burden on reporting entities. There are a large number of small entities which are members of groups and many do not actively trade externally.* (2020, p. 14)

Reporting at the entity level is unique to the Act and has created some challenges for large businesses and the Regulator.

Breaking down corporate group structures

Sections 7 and 12 of the Act require entities to submit payment times reports when they meet prescribed financial thresholds in their most recent income year. For standalone entities, determining whether they have an obligation to report is relatively straightforward – their total income needs to exceed $100 million. In contrast, determining whether member entities of a corporate group must report is more difficult, both for reporting entities and for the Regulator. This affects the majority of reporting entities, since around 70 per cent of reporting entities report as part of a corporate group.[2]

Unlike the *Income Tax Assessment Act 1997* and the *Corporations Act 2001*, where tax and financial reporting can be aggregated to the group level, the Act requires deconstructing corporate structures, operations and revenue streams to identify which individual entities within the corporate group must submit their own report.

Although the Regulator has provided guidance to assist reporting entities with this identification, this requirement places a significant administrative and compliance burden on corporate groups. The BCA told the review:

> *Many corporate groups will typically use substantially the same systems and processes, and be governed by the same payment policies, for all entities within the group. The requirement to lodge separate reports for each entity makes the PTRS unnecessarily complex and significantly – and unnecessarily – increases compliance and administration costs. Similarly, the benefits of this approach are unclear where companies have largely aligned payment policies across their business.* (BCA, 2023b, p. 9)

2 Data provided by the Regulator for the review. All data from the Regulator are as at 18 May 2023 unless otherwise specified. All data provided are point-in-time and are subject to change as additional reports are received by the Regulator or revised by reporting entities. Reports are received by the Regulator continuously, including for historical reporting cycles. Previous reports can also be modified by submissions of revised reports.

The Australian Banking Association (ABA) commented:

> *The burden of reporting at an entity level is often not beneficial for reporting outcomes as within large businesses while the group may have several reports only a select few of the entities are actually invoice paying entities and the rest of the entities have to enter a null report.* (ABA, 2023, p. 2)

Identifying individual reporting entities within a corporate group requires knowledge of how income is allocated across the group. The reason is that only those subsidiaries whose total income for the most recent income year was at least $10 million must report. Intercompany transactions can further complicate this task. Corporate groups must also reassess which member entities are reporting entities at the end of each income year. This can give rise to difficult compliance issues, where entities might inadvertently contravene the Act by incorrectly or inconsistently calculating their income.

Entity-level reporting requirements introduce added complexity for the Regulator from a compliance and enforcement perspective. Understanding company structures requires detailed analysis but there is no public dataset on how income is distributed within every corporate group structure in Australia. Controlling corporations might also regularly redistribute total income among member entities for operational purposes, creating variability in reporting requirements. This makes it more difficult to know with certainty which member entities have an obligation to report under the Act.

Inclusion of individual member entities also proliferates the number of entities that are obliged to report. For example, in reporting cycle 4 (1 July to 31 December 2022), 103 corporate groups had more than 10 member entities which submitted separate payment times reports.[3] Of these, one corporate group comprised 78 individual reporting entities.[4] This increases the size of the potential regulated population and therefore the Regulator's scope. Requiring smaller, often obscure, member entities to submit individual payment times reports clutters the register data and reduces the visibility of reporting entity payment performance.

It is appropriate to capture the performance of members of a corporate group where the combined total income of the group is more than $100 million. However, the review considers the way the Act requires member entity performance to be reported is unnecessarily complex and reduces the useability of the data.

Finding 2

Reporting by individual entities of a corporate group has created an unnecessary administrative and compliance burden on corporate groups, while also creating enforcement difficulties for the Regulator, without delivering a commensurate benefit.

Calculating total income

As discussed above, the financial thresholds to determine reporting entities are based on the concept of total income. Total income under section 5 of the Act has the same meaning as under section 3C of the *Taxation Administration Act 1953* (TAA). This section of the TAA provides for entities to have their income published by the Australian Taxation Office (ATO) for tax transparency where their income exceeds a prescribed threshold.

3 Data provided by the Regulator for the review.
4 Data provided by the Regulator for the review.

However, total income is not defined in the TAA. This has created uncertainty for entities in determining whether they are subject to PTRS reporting requirements, particularly for those reporting at the entity level. To assist in determining whether entities exceed the relevant total income threshold the Regulator has provided guidance. This allows flexibility for reporting entities to:

- Use total income reported to the ATO, for those that submit a tax return; or
- Use total income reported in their financial statements; or
- Undertake a nominal calculation as if they were required to prepare a tax return or financial statement (Payment Times Reporting Regulator, 2022a, pp. 12-13).

However, stakeholders have advised the review that the flexibility provided to calculate total income creates further issues. It can give rise to inconsistent interpretations of which entities are required to report and can reduce the comparability of the information provided to the Regulator. As KPMG noted:

> *Given the different grouping rules (income tax, accounting, and PTR), there are likely differences between a PTR Group, income tax consolidation group and accounting consolidation group.* (KPMG, 2023, p. 11)

This, coupled with the absence of a database that identifies the total income of entities, increases the burden on the Regulator. To determine non-compliance, the Regulator needs to gather extensive information on individual reporting entities, reducing regulatory efficiency.

Finding 3

Using total income to determine whether an entity is a reporting entity creates complexity and inconsistencies for large businesses and reduces the Regulator's efficiency and effectiveness in targeting non-compliance.

Nil small-business procurement

Sections 6 and 7 of the Act confer a reporting obligation on a large business based on its total income, having no regard for whether it procures from small businesses. In reporting cycle 4, more than one-quarter of reports contained nil values, which suggests these entities did not procure from small businesses under trade credit arrangements in the reporting period.[5]

The review considers that nil reports are useful for compliance purposes. Nevertheless, it is not clear why reporting entities could not simply indicate to the Regulator that they did not procure from small businesses in the reporting period, rather than having to complete a payment times report with nil values. The large number of nil reports clutters the register and makes it difficult to use.

Finding 4

The large number of nil reports in the register hinders the accessibility and useability of the register.

5 Data provided by the Regulator for the review. A report is classified as a nil report if the reporting entity entered zero for the standard payment term or the percentage of total small business procurement, or if the sum of the proportion of invoices paid within set time intervals is equal to zero.

What must be reported?

Division 2 of part 2 of the Act requires reporting entities to give the Regulator a payment times report for each reporting period and specifies the content, approval requirements and form and manner of the report. Many stakeholders noted there was, at least initially, a heavy regulatory burden on reporting entities to comply with their reporting obligations. There are mixed stakeholder views on the burden of ongoing compliance. Nonetheless, some unnecessary complexities arise from current reporting requirements. These complexities impose a regulatory burden without a commensurate benefit to transparency and are discussed further below.

Identifying reportable payments

Guidance note 1: Key concepts explains that a reporting entity must report invoice payments if it meets the following 3 criteria:

- The invoice relates to the supply of a good or service from a small-business supplier; and
- It procured the good or service from the small-business supplier under a trade credit arrangement; and
- It is contractually obliged to pay the invoice (Payment Times Reporting Regulator, 2022a, p. 19).

Section 14 of the Act and section 9 of the Rules set out the information that must be reported and section 10 of the Rules prescribes the calculation requirements. Many stakeholders have advised the review that preparing payment times reports is a complex and resource-intensive process. ACCI explained:

> *The reporting requirements of the register are very complex and cumbersome for large business, and the repercussions of making an error have considerable financial implications for businesses. Many businesses may not be equipped with a quick and efficient method of collating the information that is required, and may need to implement business improvements to meet their ongoing compliance obligations.* (ACCI, 2023, p. 3)

Reporting requirements are extensive and can capture a wide array of payment arrangements. These might include prepayments, deposits, progress payments, credit notes and other payment arrangements. Reporting entities are required to deconstruct these payment arrangements into separate obligations when calculating their payment performance.

The review acknowledges stakeholder concerns about the complexity of identifying reportable invoices. However, the resourcing impost on reporting entities is likely to fall over time as they bed down systems for efficient reporting, supported by guidance published by the Regulator.

Credit card transactions

Some stakeholders have advised the review that collating payment times reporting information can be onerous owing to the requirement to consider credit card transactions. These transactions can be numerous and lower in value than other reportable payments. It can be difficult for reporting entities to determine which payments in a credit card transaction record were point-of-sale transactions and which were made on trade credit arrangements.

The ABA explained the problem with reporting credit card payments:

> *While a small proportion, reporting for these payments under the payment times reporting regime is highly inefficient and manual, as Australian Business Numbers (ABNs) are not captured at the point of sale. (…) there is considerable "guess work" as to whether the payment is reportable for the purposes of the Act.* (ABA, 2023, pp. 1-2)

The Regulator has issued regulatory guidance which provides an option for reporting entities to exclude credit card payments based on the existence of an internal policy that credit cards are not used for trade credit arrangements (Payment Times Reporting Regulator, 2022a, p. 18). However, not all reporting entities have such a policy.

Finding 5

It is administratively burdensome for reporting entities to determine which credit card transactions must be included in a payment times report and which are to be excluded.

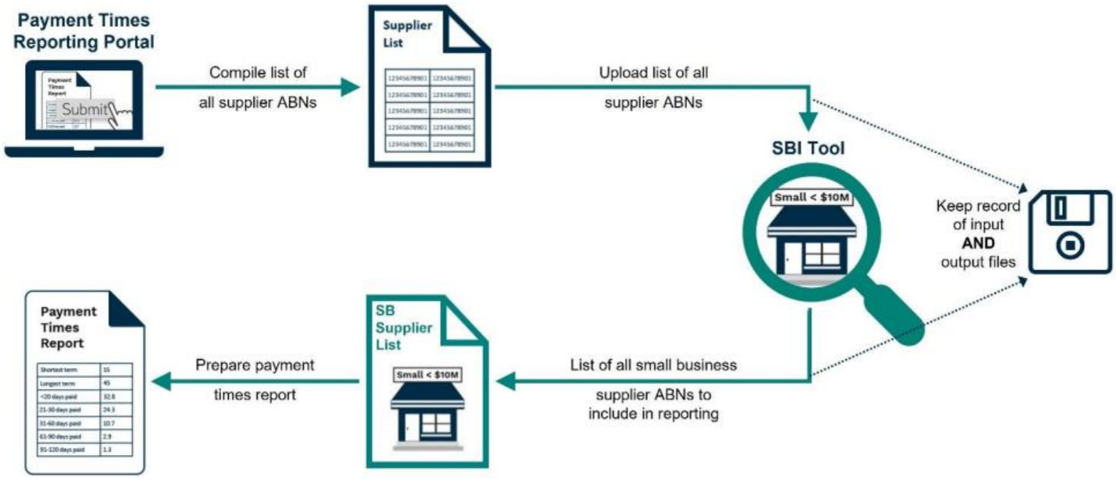
Identifying small businesses

To support reporting entities in identifying their small-business suppliers and to reduce their regulatory burden, section 5 of the Act and the Rules provide for the Small Business Identification Tool (SBI Tool). Section 5 of the Act explains how the SBI Tool identifies small businesses for the purpose of payment times reporting:

> *An entity will be described as a small business in the Payment Times Small Business Identification Tool during an income year for the entity if it carries on an enterprise in Australia and its annual turnover (within the meaning of the Income Tax Assessment Act 1997) was less than $10 million for the most recent income year.*

Section 5 of the Rules provides for the SBI Tool to be made available "(…) in any form the Regulator considers appropriate (…)". Since there is no readily accessible database of Australian small businesses to rely upon, the Regulator has created the SBI Tool using a third-party data source and a process of elimination (see *Figure 1*).[6] The SBI Tool is available for use by registered reporting entities only, for the purpose of fulfilling their obligations under the PTRS.

Figure 1: How the Small Business Identification Tool works



Source: (Payment Times Reporting Regulator, 2022b).

6 The SBI Tool has a database of ABNs for large and medium-sized businesses with incomes exceeding $10 million in the most recent income year. Entities on a supplier list that do not have a match in the SBI Tool's database are deemed to be small businesses for reporting purposes (see *Appendix A: Background of the Payment Times Reporting Scheme*).

Targeting reporting of payment times to small businesses only is unique to the Australian payment times reporting framework. In the existing UK scheme, and the proposed New Zealand scheme, while the intent is to support small-business cashflow, reports capture all transactions of a large business. The review understands this reflects the difficulties in those jurisdictions of accurately identifying small businesses.

The accuracy of the SBI Tool is vital to the effective operation of the PTRS. The reason is that reporting in Australia is limited to the payment of small-business suppliers and, under the Act, reporting entities must use only the SBI Tool to identify small-business suppliers; no other method for identifying small-business suppliers is permitted.

Even if a reporting entity believes the SBI Tool incorrectly categorises a supplier as a small business, it cannot manually correct the output to remove suppliers identified by the SBI Tool. To correct the SBI Tool, a reporting entity may provide evidence or a statutory declaration citing it paid more than $10 million to the supplier in a single income year and request the Regulator to update the SBI Tool. But there can be time lags in the SBI Tool being updated since the Regulator needs to investigate each matter raised.

The consequence is that although the Act enforces consistency by requiring all reporting entities to use the SBI Tool, it might also be enforcing inaccuracies in reporting. Incorrect classification of even a few suppliers can skew payment times, especially where for a large business the proportion of total procurement from small businesses is low. Consequently, while reporting entities might be compliant with their reporting obligations because they report on small businesses identified by the SBI Tool, there is a risk that the register does not accurately reflect payment times to small businesses.

Several stakeholders emphasised the importance of the SBI Tool but have raised concerns about its accuracy. The BCA noted the SBI Tool is:

> *(…) critical to the success of the PTRS in improving payment terms and practices. The success and potential of the SBI Tool is demonstrated by businesses reporting updated faster payment terms and practices for small businesses having been able to better identify them.*
>
> *However, BCA member companies continue to raise issues around the integrity, quality and timeliness of the data informing the SBI Tool, with the potential to skew and misrepresent payment times data.* (BCA, 2023b, p. 7)

Woolworths Group cautioned:

> *The Small Business Identification Tool's underlying data is not as reliable as it could be. We are aware of multiple businesses listed on the register that turnover more than $10 million in trade with our business alone. This has the potential to distort the data as it is not a true representation of small businesses as intended under the Act.* (Woolworths Group, 2023, p. 3)

BHP pointed out:

> *This regulatory burden has been magnified by: (…) misclassifications in the Small Business Identification Tool, which largely fall on reporting entities to correct.* (BHP, 2023, p. 2)

The Regulator has issued guidance in *Information sheet 6: Small Business Identification (SBI) Tool* that noted:

> *Although we update the tool as new data becomes available, it may not always accurately reflect the correct status of a supplier.*
>
> *The accuracy and reliability of the SBI Tool data can be impacted by several factors including businesses delaying or being non-compliant with statutory reporting, an absence of available data (particularly for newly established entities) and lack of readily available data sources for some organisation structures.* (Payment Times Reporting Regulator, 2022b, p. 3)

Small businesses opting out

Businesses can ask the Regulator to remove them from, or opt out of, the SBI Tool. Businesses can also ask to opt in if they have previously opted out.

The latest data reveal:

- 241 businesses were recorded as currently opted out of the SBI Tool; and
- 251 businesses had previously opted out but subsequently opted back in.

Businesses are not required to provide a reason for opting out of the SBI Tool. Only 138 businesses provided reasons for opting out, comprising:

- "I do not want to be identified as a small business for commercial reasons" (88);
- "I don't supply goods or services to large businesses" (38);
- "I was asked by a customer to opt out my business" (4); and
- "Other reasons", explained in a free-text field (8).[7]

The Regulator monitors the use of the opt-out function to ensure it is not being abused. In view of the small number of opt-out requests, this does not appear to be the case. The review supports the continuation and monitoring of the opt-out and opt-in function.

Finding 6

The accuracy of the Small Business Identification Tool is vital to the effectiveness of the Payment Times Reporting Scheme and needs improvement.

7 Data provided by the Regulator for the review.

The Regulator

The role of the Regulator

The task of a regulator can be exceedingly complex. As Professor Malcolm Sparrow argued:

> *Regulators, under unprecedented pressure, face a range of demands, often contradictory in nature: be less intrusive – but be more effective; be kinder and gentler – but don't let the bastards get away with anything; focus your efforts – but be consistent; process things quicker – and be more careful next time; deal with important issues – but do not stray outside your statutory authority; be more responsive to the regulated community – but do not get captured by industry.* (Sparrow, 2000, p. 17)

Section 25 of the Act specifies that the functions of the Regulator include, but are not limited to, administering the Act, monitoring and enforcing compliance with the Act and advising the Minister about matters relating to its functions. Regulatory guidance expands on this, noting that the Regulator's role is:

> *(…) to provide a reliable and transparent source of information about payment terms and performance of large businesses to their small-business suppliers operating in Australia.* (Payment Times Reporting Regulator, 2022c, p. 1)

The Regulator's core functions are to receive payment times reports from reporting entities and to publish those reports on the register.

Since the commencement of the Act on 1 January 2021, the Regulator has supported reporting entities to meet their reporting requirements. Actions taken by the Regulator have included:

- Responding to reporting entity queries and hosting stakeholder liaison forums;
- Publishing tranches of guidance material and 2 Regulator's updates;
- Reviewing statutory relief notifications;
- Registering submitted payment times reports; and
- Commencing compliance activities to identify entities that have failed to report.[8]

This approach broadly aligns with the Commonwealth's Resource Management Guide on Regulator Performance (RMG 128) relating to the *Public Governance, Performance and Accountability Act 2013*, particularly the principle of collaboration and engagement (Department of Finance, 2023a).

In administering the Act, the Regulator has dealt with a broad array of highly technical enquiries by entities seeking to clarify reporting requirements. The January 2023 *Regulator's update* noted that the Regulator responded to 1,827 enquiries between 1 July and 31 December 2022 (Payment Times Reporting Regulator, 2023a, p. 7). The Regulator provides guidance through:

- Guidance notes and information sheets;
- PTRS webpages, which provide a high-level overview of reporting requirements across various provisions of the Act; and
- Regulator's updates, which provide information about the PTRS and the Regulator's current and planned activities.

8 Data provided by the Regulator for the review.

Some stakeholders expressed concern with the highly iterative nature of the guidance to date. For example, KPMG submitted:

> *(…) many of our large business clients have found complying with some requirements of the legislation time consuming. This has largely been due to the guidance material changing several times during the first four submission periods when large businesses have built teams, in house tools and reporting functions.* (KPMG, 2023, p. 10)

BHP argued:

> *This regulatory burden has been magnified by: a lack of clarity in early PTRS guidance and continuing changes to reporting guidelines (…).* (BHP, 2023, p. 2)

While the review is sympathetic to the need for reporting entities to be provided early notification of operational changes, the review also acknowledges that timely iterations to guidance material are necessary to address stakeholder concerns and confusion relating to specific, complex reporting requirements. Such an iterative approach is to be expected of a new regulatory regime.

The review anticipates that the Regulator will be better placed in the future to provide longer lead-in periods before the guidance material takes effect. This should address these stakeholder concerns and better support reporting entities to reflect any changes in their administrative practices.

Finding 7

The Regulator has worked diligently to establish the Payment Times Reporting Scheme and has engaged genuinely and regularly with stakeholders.

Powers of the Regulator

The Act provides the Regulator with powers to administer the PTRS (see *Appendix A: Background of the Payment Times Reporting Scheme*). In some circumstances the powers available to the Regulator constrain its efficiency and effectiveness.

Information-gathering powers

Sections 30 to 32 of the Act provide the Regulator with powers to gather information by:

- Undertaking a compliance audit, by requiring the entity to appoint an auditor to carry out an audit and provide the results of the audit in a written report to the Regulator; or
- Conducting on-site monitoring or investigation activities.

These actions can be effective but are also resource intensive for both the Regulator and the entity being regulated.

When the Regulator undertakes early compliance activities, the most useful type of information would generally be financial statements, annual reports, working papers and other documents used in the preparation of a payment times report.

However, the Act does not allow the Regulator to compel the production of these types of documents without attending a business's premises. As such, the Regulator's information-gathering powers appear to be disproportionate in the early stages of investigating suspected non-compliance. They do not allow for a more graduated approach to compliance and enforcement or strike an appropriate balance between managing risks proportionately and minimising the regulatory burden on reporting entities, which appears to be inconsistent with RMG 128.

Applications for statutory relief

Sections 7, 13 and 19 of the Act provide the Regulator with powers to grant statutory relief in particular circumstances. Reporting entities can request:

- A determination to cease being a reporting entity;
- An extension of time to provide a payment times report; and
- Revisions to the contents of a previously-registered payment times report.

According to the January 2023 *Regulator's update*, between 1 July and 31 December 2022 the Regulator received 32 applications to cease to be a reporting entity, 503 applications for an extension of time and 283 applications to revise payment times reports (Payment Times Reporting Regulator, 2023a, p. 7). The *Regulator's update* also noted that for many of these applications a decision could not be made in a timely manner because the application did not include sufficient details or supporting evidence (Payment Times Reporting Regulator, 2023a, p. 11).

Content requirements for statutory relief applications contained in the Act and Rules lack adequate detail. For example, in seeking an extension of time to submit a report, the Act only requires reporting entities to:

- State the circumstances that have resulted in the need for further time;
- Include evidence of those circumstances; and
- Include any other information prescribed by the Rules.

No other requirements are set out in the Rules, except that the application must be made within the relevant three-month reporting window.

For payment times reports, the content requirements are detailed in the law. In addition, under section 14 of the Act, the Regulator has the power to prescribe the format of payment times reports and how they must be submitted. The Regulator does not have a similar power for statutory relief applications. The absence of such a power, coupled with a lack of detail on content requirements in the law, mean that the Regulator is obliged to consider every application for statutory relief that meets the basic requirements set by the legislation, apply standard administrative decision-making principles and provide natural justice.

Back-and-forth communication with the reporting entity is often required to obtain the necessary information. This affects the efficiency of the Regulator and crowds out its capacity to invest in other education, compliance and enforcement activities.

Finding 8

The Regulator lacks proportionate information-gathering powers and the power to prescribe the content, format and method for submitting statutory relief applications. This results in compliance and administrative inefficiencies for both the Regulator and the entities it regulates.

Obligations of the Regulator

Prior to publishing reports, the legislation requires the Regulator to:

- Register payment times reports and revised reports (sections 18 and 19 of the Act); and
- Before deciding whether or not to publish certain information contained in a payment times report, have regard to whether the information is personal information (in accordance with the *Privacy Act 1988*), commercial-in-confidence or irrelevant to achieve the objects of the Act (section 20 of the Act and section 13 of the Rules).

In effect, the requirement to "register" reports obliges the Regulator to scrutinise the contents of each payment times report prior to publication – around 8,300 reports for the most recent six-monthly reporting cycle.[9] This is an exceptionally onerous and inefficient process for the Regulator. It also increases the risk that the Regulator is unable to publish updated register data on a consistent timeline during peak submission periods.

In a payment times report, the free-text comment fields present the greatest risk of containing information that should not be published. There are currently 14 free-text fields which are intended to enable reporting entities to provide descriptions or comments about their reported information (see *Box 4*). As the BCA pointed out:

> *(…) reliance on comments will increase the administration costs and potentially delay publication of the data.* (BCA, 2023b, p. 11)

These free-text fields are optional, are used sporadically by reporting entities and usually offer little value to an external user seeking payment times information.

The review considers the burden on the Regulator to ensure that reports are registered and that information contrary to the public interest is not published is disproportionate to the benefits of the approval process. It does not improve the quality or accuracy of the information on the register.

This publishing requirement also inappropriately shifts the risk of publishing sensitive information from the reporting entity to the Regulator, despite the reporting entity having full control over the information it chooses to send to the Regulator in the first place.

Finding 9

The legislative requirement for the Regulator to scrutinise the contents of payment times reports before publication unjustifiably shifts risk and compliance burden onto the Regulator.

Compliance and enforcement activities

Section 24 of the Act requires the relevant departmental secretary to designate a position of Payment Times Reporting Regulator in their department. The Regulator is defined as the Senior Executive Service (SES) employee who occupies that position. This regulatory function has always been attached to the small-business policy function. The policy and regulatory functions were originally in the Department of Industry, Science, Energy and Resources and then moved to the Department of the Treasury under machinery of government changes.

9 Data provided by the Regulator for the review.

The creation of a dedicated Regulator with strong enforcement powers at its disposal was intended to elevate the importance of payment times performance. As the Explanatory Memorandum noted:

> *The penalty arrangements in the Bill reflect the serious economic impacts of late payments and the Government's commitment to address this issue through the scheme.* (2020, p. 4)

The Regulator's ability to use most of its compliance and enforcement powers was deferred until 1 January 2022, to allow reporting entities time to adjust to the requirements of the PTRS.[10] The Regulator has not yet used its enforcement powers.[11]

Civil penalties that are set high enough and enforced consistently are designed to incentivise compliance from reporting entities. Under the Act, failure to report can result in a fine of $16,500 for an individual or $82,500 for a body corporate per day of non-compliance (Payment Times Reporting Regulator, 2022d).[12]

Despite the risk of these financial penalties, it appears that some large businesses are not complying with their obligations under the Act. The January 2023 *Regulator's update* noted:

> *(…) a potential failure to report by some entities that previously submitted reports.* (Payment Times Reporting Regulator, 2023a, p. 5)

In reporting cycle 4, 8,337 entities submitted payment times reports, compared with 9,120 entities in reporting cycle 3.[13] Although a business can cease to be a reporting entity if it no longer meets the definition in the Act, it must either apply for and be granted a determination from the Regulator or, if it is a member entity, it must have 2 consecutive income years with turnover below $10 million and notify the Regulator in its payment times report. The January 2023 *Regulator's update* noted that 32 applications to cease reporting were received between 1 July and 31 December 2022 (Payment Times Reporting Regulator, 2023a, p. 7). Further, in reporting cycle 4, 117 reports included information in the relevant field to notify the Regulator about member entities meeting the test to cease reporting. This suggests there is an unexplained discrepancy of up to 634 reporting entities between reporting cycles 3 and 4.[14]

Some stakeholders commented on the lack of transparency in the Regulator's use of its enforcement powers. Chartered Accountants Australia and New Zealand (CA ANZ) and CPA Australia noted:

> *(…) the Regulator has taken an educative approach to the introduction of the Act and has not used its enforcement powers. This is best practice in introducing new compliance obligations. It can, however, lead to a continuation of poor behaviour by some. (…) As the Regulator has not used its enforcement powers to date, we cannot comment on the effectiveness or otherwise of those powers.* (CA ANZ & CPA Australia, 2023, p. 2)

10 This deferral did not apply to powers to appoint authorised officers and infringement officers.

11 Data provided by the Regulator for the review, as at 19 June 2023. The Act does not distinguish between compliance powers and enforcement powers. For the purpose of this review, the following are enforcement powers: publishing the identity of an entity that has failed to comply with the Act and details of its non-compliance (section 22); issuing infringement notices (section 34); and pursuing civil penalties (section 33).

12 From 1 July 2023, these fines will increase to $18,780 and $93,900 respectively, per day of non-compliance.

13 Data provided by the Regulator for the review.

14 This calculation assumes that the 117 reports which included information in the relevant field to notify the Regulator about member entities meeting the test to cease reporting were all valid notifications.

The Queensland Small Business Commissioner commented:

> *(…) while the regulator has several powers under the Act including to issue infringement notices and seek civil penalties, the regulator has not used its enforcement powers to date. (…) as there has been no improvement in payment terms and practices, the QSBC therefore considers the Act and the regulator's powers to be ineffective.* (Queensland Small Business Commissioner, 2023, p. 3)

Given that the Regulator is a relatively new body that is yet to demonstrate publicly its enforcement credentials, this may create a perception that it does not have a strong compliance and enforcement culture. It is therefore possible that some entities that should be providing payment times reports do not perceive the Regulator's approach as providing a deterrent against non-compliance.

Finding 10

There is scope to strengthen the compliance and enforcement culture of the Regulator given that a significant number of entities that had previously submitted payment times reports appear to have since stopped reporting and the Regulator has not yet used its enforcement powers.

Object 3(b): Making information publicly available

The object in section 3(b) of the Act provides that payment times reports are made publicly available. It has 2 sub-objects:

- To enable small businesses to make more informed decisions about potential customers; and
- To create incentives for reporting entities to improve their payment terms and practices.

Making reports publicly available

In some respects, the first part of the object, to make reported information publicly available, has been achieved. Payment times reports are available online, published collectively through the register in an Excel spreadsheet. However, this is not being achieved efficiently or effectively, as explained below.

Data quality issues

Section 14 of the Act lists information that must be contained in a payment times report. Further detailed content requirements are prescribed in section 9 of the Rules. The size and complexity of these requirements are demonstrated in Box 4, below.

The quality of data will always be an issue under any self-reporting scheme. Complete accuracy could be assured only if the Regulator were to investigate each reporting entity and collect the data itself.

The large number of reporting fields and data quality issues are resulting in payment times reports not being as accessible or as useful as they could be. This hinders achievement of both of the sub-objects of the Act.

Box 4: Content requirements of reports

Section 14 of the Act

(1) The report must:

(a) state the entity's name; and

(b) if the entity has an ABN—state the ABN; and

(c) include a description of the entity's main business activity in accordance with the Business Industry Codes; and

(d) state the reporting period to which the report relates; and

(e) include a statement on the standard payment periods for the entity at the start of the reporting period, including in relation to the shortest and longest standard payment periods for the entity; and

(f) include 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; and

(g) state the proportion, determined by total number and total value, of small business invoices paid by the entity during the reporting period that were paid in accordance with each of the following subparagraphs:

(i) within 20 days after the day (the *issue day*) the relevant small business invoice was issued;

(ii) between 21 and 30 days after the issue day;

(iii) between 31 and 60 days after the issue day;

(iv) between 61 and 90 days after the issue day;

(v) between 91 and 120 days after the issue day;

(vi) more than 120 days after the issue day; and

(h) state the proportion, determined by total value, of all invoices paid by the entity during the reporting period that were small business invoices; and

(i) include the details of the principal governing body of the entity; and

(j) if the entity is a member of a controlling corporation's group—identify the controlling corporation; and

(k) include a declaration by a responsible member of the entity that the report will be provided to the principal governing body of the entity; and

(l) state the name of the responsible member who signed the report under subsection (5) and the date it was signed; and

(m) state the name and contact details of the individual giving the report to the Regulator; and

(n) if a notifiable event has occurred since the last payment times report (if any) for the entity was given to the Regulator—include details of the notifiable event; and

Box 4: Content requirements of reports (continued)

(o) include any other information or documents prescribed by the rules.

Section 9 of the Rules

For the purposes of paragraph 14(1)(o) of the Act, a payment times report for a reporting period for a reporting entity must include all of the following:

(a) details of the practices or arrangements used by the entity during the reporting period for receiving or paying small business invoices;

(b) details of any practices or arrangements used by the entity during the reporting period through which a small business is required to pay an amount, including a subscription or membership fee:

(i) to participate in the entity's procurement processes, including to lodge a tender; or

(ii) for the entity to accept a small business invoice issued by the small business;

(c) if the entity used small business supply chain finance arrangements during the reporting period:

(i) a description of the arrangements used; and

(ii) a statement of the proportion, determined by total number and total value, of small business invoices paid by the entity during the reporting period that were paid using those arrangements; and

(iii) details of any benefits, including commissions or other payments, received by the entity during the reporting period from the providers of those arrangements;

(d) a statement on whether, during the reporting period, 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 identified in the report under paragraph 14(1)(j) of the Act—information identifying the head entity;

(g) any additional information providing context or explanation in relation to other information included in the payment times report.

Excessive number of reporting fields

The register publicly displays 54 reporting fields for each of the 35,190 reports, which totals almost 2 million reporting fields across the 4 reporting cycles.[15] Many of these reporting fields contain information which is superfluous. On top of this, redacted and revised reports are also included in the same location. Many submissions commented on this complexity. ACCI noted:

> *There is a large amount of data collected and displayed on the payment times register, most of it redundant (…) Detailing all the information from the previous periods makes it clunky (…) It has too much information and is very difficult to navigate.* (ACCI, 2023, p. 4)

The BCA commented:

> *Reporting entities must report in up to 60 fields with published reports stretching to 54 columns. (…) This makes for a complex and burdensome compliance regime and that is difficult for users to access and analyse.* (BCA, 2023b, p. 11)

Free-text fields further crowd the register with inconsistent and sometimes illogical information so that the most valuable data in the register for the purpose of comparisons are not obvious. It is difficult to decipher the data and draw meaningful insights. An example of this is the 'Principal governing body description' column. Some reporting entities provide a dictionary definition of the body, some list the functions of the body, some duplicate the previous column 'Principal governing body name' and some list the names of individual board members. The regulatory guidance is open to interpretation, stating this column should contain:

> *A description of the role of the reporting entity's principal governing body within the business. This should include the names of the individuals in the principal governing body.* (Payment Times Reporting Regulator, 2022e, p. 22)

Limited utility of some reporting metrics

Despite the register containing 54 public reporting fields, it cannot answer 2 questions fundamental to assessing the effectiveness of the PTRS in driving down payment times:

- What is the typical (average or median) number of days a large business takes to pay its small-business suppliers?
- How often does a large business pay its small-business suppliers on time?

Instead, under section 14(1)(g), the Act requires reporting entities to provide the proportion of invoices paid within 6 time intervals. Reporting entities must record this information based on the percentage – by both number and value – of invoices paid within the time intervals, resulting in 12 data points. Interval data in isolation provide limited useful insights. To illustrate this, if a reporting entity states its standard payment term is 45 days and it paid 100 per cent of its invoices within the prescribed interval of 31 to 60 days, a conclusion that it paid early, on time or late cannot be reached.

Missing and inconsistent information

Section 14 of the Act and section 9(f) of the Rules require reporting entities to provide a range of business identification information: the ABN of the reporting entity, its controlling corporation and its head entity, where applicable. Reporting entities submit reports by completing an Excel spreadsheet template and uploading it through the Payment Times Reporting Portal (the portal). The unsophisticated nature of this process allows for inconsistencies and errors in reports.

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15 Data provided by the Regulator for the review. Calculation undertaken by the review.

Reporting fields must be entered manually by the reporting entity. The portal automatically checks – or 'validates' – the quantitative fields to ensure only numbers have been included and that percentage fields add up to zero (for nil procurement) or 100. However, the validation process does not assess whether every field has been accurately populated, nor does it enforce consistency with a reporting entity's previous reports or leverage information from other databases, such as the Australian Business Register (ABR). As a result, some reporting entities leave reporting fields blank, include erroneous business names or inconsistently input information between members in a corporate group and/or across reports. An example is interchanging Pty Ltd, P/L and Proprietary Limited in the entity name between reports.

This makes it difficult to interrogate data, to accurately link member entities to their corporate group and to monitor changes in payment times performance of particular entities. It can also make the Regulator's compliance activities more challenging.

Another inconsistency in reporting arises in relation to reporting periods. For many reporting entities, their reporting period follows the standard Australian financial year. However, section 8 of the Act requires entities to report based on their income year, which can differ from the Australian financial year. Analysis of data from the most recent reporting cycle indicated more than 1,300 reporting entities submitted reports outside the standard Australian financial and/or calendar year.[16]

To account for this variation, when making comparisons between entity payment performance over time, the Regulator initially relied on the reporting entity's report number; for example, whether it was their first, second or third report. However, this resulted in some differences in time periods between entities and it was therefore difficult to compare the performance of entities contemporaneously. For example, if a business did not become a reporting entity until late 2022, its first report was compared to a first report from a business that reported at the commencement of the PTRS in 2021, under different economic circumstances. This did not permit like-for-like comparisons.

In view of this, in its January 2023 *Regulator's update*, the Regulator moved to a reporting cycle approach which uses defined date ranges on a rolling basis from the commencement of the PTRS, with reporting cycle 1 being the 6 months from 1 January 2021, and so on (Payment Times Reporting Regulator, 2023a, p. 12).

The review considers this to be a marked improvement that will lead to more sustainable organisation of data for analysis in the future. However, the information presented in the register is not displayed according to the reporting cycle approach, making it difficult to compare the payment performance of reporting entities over time.

Confusing data field labels

Confusion regarding the interpretation of some data field labels in the register is contributing to data quality issues and is limiting the reliability of data for analysis.

The biggest data quality issue relates to fields asking for changes to payment terms. Section 14(1)(f) of the Act requires a payment times report to "include details and an explanation of any changes to the standard payment periods (…) including in relation to the shortest and longest payment periods for the entity". Figure 2 displays the relevant fields from the register.

16 Data provided by the Regulator for the review.

Figure 2: Payment terms data field labels in the register

Standard Payment Terms	Changes to Standard Payment Terms	Details of Changes to Standard Payment Terms	Shortest Standard Payment Terms	Change to Shortest Standard Payment Terms	Details of Changes to Shortest Payment Terms	Longest Standard Payment Terms	Changes to Longest Payment Terms	Details of Changes to Longest Payment Terms

Source: (Payment Times Reporting Regulator, 2023b).

A plain reading of 'Changes to Standard Payment Terms' suggests that the entity should report the magnitude of the change in payment terms between the start and the end of the reporting period. Based on this interpretation, 'zero' would mean no change. However, in the register the descriptor for this variable notes:

> *If no change to the standard payment terms, the same number is repeated.* (Payment Times Reporting Regulator, 2023b)

That is, if the standard payment term at the start of the period was, say, 30 days, then '30' should be inputted into the 'Changes to Standard Payment Terms' field. Strangely, this guidance is not repeated for the other 2 'Changes to' fields (Payment Times Reporting Regulator, 2023b).

These confusing and inconsistent data field labels and descriptors might explain why, across the 3 'Changes to' fields, there are around 9,600 instances (across more than 35,000 reports) where a zero has been recorded by reporting entities.[17] It is highly probable that these reporting entities mean 'no change' in payment terms but that is not certain. 'Change' can also be positive or negative, which might explain some negative numbers in the data.

Adding to this confusion is a lack of consistency in the data field labels, many of which appear to contain typographical errors; for example, the term 'standard' is not consistently included in these labels. Relating to this, it is unclear why the Act prescribes 3 different 'standard' payment terms, particularly given the guidance says that the reporting entity's standard means 'default' payment terms.

This ambiguity and confusion reduces the reliability of the data and makes interpretation and analysis of the data extremely difficult.

The limited utility of data, coupled with the quality issues outlined above, have resulted in little media and public commentary on payment times based on the information contained in the register. Where commentary is made, it is based on assumptions and caveats in drawing insights from the data, which can result in conflicting conclusions among commentators.

Register format not user-friendly

Section 17 of the Act requires the Regulator to maintain a register of payment times reports and to make this publicly available, without charge, on the internet, but the legislation does not specify the format in which it must be published.

17 Data provided by the Regulator for the review.

The benefit of the payment times reporting data being made publicly available in a spreadsheet is that it is widely accessible. However, the use of a basic spreadsheet format and recording more than 35,000 reports in a single sheet hinders those who want to draw insights from the register. In particular, there are no customised filters or tools to:

- Exclude entities with no small-business procurement;
- View reports only from a single reporting cycle;
- Analyse a reporting entity's performance over time; and
- Compare reporting entities within an industry classification.

The very large number of reporting entities and the volume of reports exacerbate the difficulties in analysing the data. Current entity-level reporting requirements mean many member entities with less familiar trading names to the general public and no small-business procurement are crowding the register.

Further, as the Small Business Ombudsman pointed out:

> *The fundamental data structure has also changed over the different reporting periods. As the register now includes original and revised data, it is becoming increasingly cluttered. These discrepancies result in challenges for users of the scheme to draw out the data critical to their business and masks the performance of reporting entities.* (Small Business Ombudsman, 2023a, p. 3)

This makes it difficult for the Regulator to rely on reported data to report on trends in order to advance the objects of the Act. Other commentators might be more inclined to report on comparative performance and trends if the data were more reliable.

The dashboard

The dashboard was introduced by the Regulator to sit alongside the register. It provides a summary of information on payment performance and offers a more user-friendly display.

The dashboard has 2 pages – a home page and a reports page. The home page displays overall averages for the standard, shortest and longest payment terms that large businesses offer their small-business suppliers. The home page also allows the user to search for reports by business name, ABN and Australian Company Number (ACN). The reports page for each reporting entity displays the data contained in its payment times reports in a clearer and simpler format than the register. Users can select multiple reporting entities and filter results by date ranges to enable comparisons.

Despite the visual benefits of the dashboard, it is still reliant on the same underlying reported data as the register and suffers from the same limitations described earlier in this chapter. It is therefore an imperfect solution to the more fundamental problem of data quality.

Finding 11

The reporting requirements are onerous and create a confusing, clunky and cluttered dataset that has little utility. The register cannot even reveal a reporting entity's average payment time to small-business suppliers and how often it pays on time. There is scope to streamline reporting requirements and increase the accuracy and usefulness of the data.

Sub-object 3(b)(i): Making information publicly available to enable small business decision-making about potential customers

In assessing whether the operation of the Act has met this sub-object, the Western Australia Small Business Commissioner neatly summed up the key considerations:

> *The effectiveness of the Act relies heavily on enabling small businesses to make informed decisions about potential big business customers. This assumes that small businesses:*
>
> - *are aware of the Register;*
> - *are able to interpret and make sense of the data;*
> - *have the luxury of being able to pick and choose their customers; and*
> - *have better options available in the marketplace.* (Western Australia Small Business Commissioner, 2023, p. 2)

Awareness of the register

Many stakeholders told the review that most small businesses do not know that the register exists. KPMG suggested:

> *(…) awareness of the scheme is low in the small business community (…).* (KPMG, 2023, p. 10)

ACCI pointed out:

> *In order to use the register, the small business owner needs to be aware the register exists in the first instance. In discussion with ACCI members, there is a broad lack of awareness of the payment times reporting register and [it] is difficult to find and access.* (ACCI, 2023, pp. 3-4)

This view is supported by PTRS website traffic data. The register has been downloaded around 7,000 times and the dashboard has been accessed around 12,500 times since they were first published in late 2021.[18] Even if a different small business accessed the register or dashboard each time, this would account for only 0.8 per cent of Australia's 2.5 million small businesses.

In addition, the register is not linked on www.business.gov.au which might have further hindered small-business awareness of the PTRS.

Ability to interpret and make sense of the data

Numerous issues associated with the accessibility, accuracy and usefulness of the data published through the register and dashboard have been discussed earlier in this chapter. Some stakeholders consider these limitations have also prevented small businesses from understanding and making use of the data. CA ANZ and CPA Australia jointly explained:

> *Small businesses are highly unlikely to refer to payment times data that they must look for, and further interpret (…).* (CA ANZ & CPA Australia, 2023, p. 3)

The Queensland Small Business Commissioner noted:

> *While the register does publish this data, it is not as accessible and useful as it could be. For example, it is difficult for a small business to identify who is actually a 'best practice' reporting entity.* (Queensland Small Business Commissioner, 2023, p. 3)

18 Data provided by the Regulator for the review.

ACCI summed up:

> *The information about payment terms and practices is difficult for a busy small business owner to find. The register is meant to be easy for small business owners to use — a key factor for time poor small business owners. (…) Detailing all the information from the previous periods makes it clunky — for example if the business' information has not changed, such as name or ABN, it should not be repetitively listed. (…) It has too much information and is very difficult to navigate.* (ACCI, 2023, pp. 3-4)

Ability to pick and choose customers from the marketplace

Even if the data were easy to interpret, the sub-object of the Act assumes that small businesses can pick and choose with whom they do business. Stakeholders resoundingly told the review that small businesses do not have the luxury of voting with their feet, as envisaged by the Act. This is largely due to the concentration of a few large businesses in particular industries and ongoing, inherent power imbalances between small and large businesses, which the legislation was designed to address. Small businesses fear retribution if they raise concerns about payment practices with their large-business customers.

The Western Australia Small Business Commissioner stated:

> *If small business has no real option but to deal with big business, and no better options available in the marketplace for customers, decision making is limited. This conclusion undermines the effectiveness of the Act in meeting its stated objectives (…).* (Western Australia Small Business Commissioner, 2023, p. 2)

The NSW Small Business Commissioner observed:

> *Small businesses are less likely to speak up under a self-enforcing framework if they fear they will risk losing future work.* (NSW Small Business Commissioner, 2023, p. 1)

The Housing Industry Association (HIA) explained that:

> *(…) whilst important, businesses are unlikely to reject an opportunity to do business based upon payment terms and practices.* (HIA, 2023, p. 6)

Consult Australia noted:

> *Currently, Consult Australia members do not regularly access the reporting scheme to make decisions on contracting with suppliers because of the information available and the lack of enforcement. Our small business members more likely rely on past experience with a client to decide whether to do business with them.* (Consult Australia, 2023, p. 2)

Overall, the review concludes that even if small businesses knew about the register and the data were easy to interpret, the persistence of intractable power imbalances means it is highly improbable that small businesses would use the register data to inform decisions about potential large-business customers.

Finding 12

Sub-object 3(b)(i) of the Act – to make information publicly available in order to enable small businesses to make more informed decisions about potential customers – is unrealistic and has not been met. Owing to power imbalances with large businesses, small businesses do not have the luxury of picking and choosing with whom to do business.

Sub-object 3(b)(ii): Making information publicly available to incentivise improved payment performance

The review has assessed whether the PTRS has incentivised better payment performance by large businesses across the 4 reporting cycles. This assessment has been limited by the absence of data on average or median payment times of a reporting entity and how frequently it pays on time, as well as the quality of the reported data.

Payment performance results

Payment terms

Table 1 shows data relating to the standard payment terms for reporting entities at the start of each reporting period. Table 2 shows these data at the end of each reporting period. There has been no change in the median payment term since the PTRS commenced. The change in the average payment term between reporting cycle 1 and cycle 4 has been minimal.

Table 1: Standard payment terms at start of reporting period

	Reporting cycle 1 1 Jan–30 Jun 2021	Reporting cycle 2 1 Jul–31 Dec 2021	Reporting cycle 3 1 Jan–30 Jun 2022	Reporting cycle 4 1 Jul–31 Dec 2022
Median (days)	30	30	30	30
Average (days)	37.54	36.59	36.48	35.91

Note: Data as at 18 May 2023. Reporting cycles are fixed periods based on the commencement of the Act. Payment times reports are assigned to a reporting cycle based on the reporting period start date. Nil reports are excluded from calculations. The register is a dynamic dataset and these figures may differ from previously published figures due to revisions of submitted reports or late reporting.

Source: Data provided by the Regulator for the review.

Table 2: Standard payment terms at end of reporting period

	Reporting cycle 1 1 Jan–30 Jun 2021	Reporting cycle 2 1 Jul–31 Dec 2021	Reporting cycle 3 1 Jan–30 Jun 2022	Reporting cycle 4 1 Jul–31 Dec 2022
Median (days)	30	30	30	30
Average (days)	36.89	36.12	36.12	35.81

Note: Data as at 18 May 2023. Reporting cycles are fixed periods based on the commencement of the Act. Payment times reports are assigned to a reporting cycle based on the reporting period start date. Nil reports are excluded from calculations. The register is a dynamic dataset and these figures may differ from previously published figures due to revisions of submitted reports or late reporting.

Source: Data provided by the Regulator for the review.

Payment times

Since the commencement of the Act, there has been a small increase in the average percentage of invoices from small businesses being paid within 20 days and between 21 and 30 days in each of the subsequent reporting cycles. There has been a small reduction in the average percentage of invoices from small businesses being paid between 31 and 60 days. The average percentage of invoices paid between 61 and 90 days and more than 90 days has largely remained unchanged. In the most recent reporting cycle, around one-third of invoices were paid after 30 days (see *Table 3*).

Table 3: Average percentage of small-business invoices, by number, paid in day ranges

Days	Reporting cycle 1 1 Jan–30 Jun 2021		Reporting cycle 2 1 Jul–31 Dec 2021		Reporting cycle 3 1 Jan–30 Jun 2022		Reporting cycle 4 1 Jul–31 Dec 2021	
	Per cent	Change	Per cent	Change	Per cent	Change	Per cent	Change
Within 20	43.64	-	46.15	2.52	46.17	0.02	47.72	1.55
21–30	19.26	-	19.64	0.38	19.82	0.18	19.86	0.04
31–60	28.40	-	26.34	-2.06	25.86	-0.47	24.69	-1.18
61–90	5.90	-	5.45	-0.45	5.47	0.02	5.22	-0.25
91–120	1.33	-	1.18	-0.14	1.31	0.13	1.20	-0.11
More than 120	1.47	-	1.23	-0.24	1.37	0.13	1.31	-0.06

Note: Data as at 18 May 2023. Reporting cycles are fixed periods based on the commencement of the Act. Payment times reports are assigned to a reporting cycle based on the reporting period start date. Nil reports are excluded from calculations. The register is a dynamic dataset and these figures may differ from previously published figures due to revisions of submitted reports or late reporting.

Source: Data provided by the Regulator for the review.

Finding 13

Since the commencement of the Payment Times Reporting Scheme, the proportion of small-business invoices paid within 30 days has increased by less than 5 percentage points from 62.9 per cent to 67.6 per cent, and the proportion of invoices paid beyond 60 days has fallen by 1 percentage point from 8.7 per cent to 7.7 per cent.

Effectiveness in incentivising performance improvements

The review acknowledges that COVID-19-related economic conditions might have inhibited the effectiveness of the PTRS in incentivising reporting entities to improve their payment performance to some degree (see *Chapter 1: Overview*). HIA submitted:

> *Noting that the Scheme was introduced during COVID-19, at which time businesses in Australia were arguably not operating to normal or expected levels, it is difficult to provide substantive comments around the effectiveness or otherwise of the Scheme.* (HIA, 2023, p. 4)

The review heard from stakeholders that some reporting entities individually improved their payment terms, times and practices to small businesses in anticipation of the PTRS commencing or during the life of the PTRS to date. Woolworths Group shared its analysis that:

> *(…) 94% of the ASX50 companies that have reported under the PTRS have materially improved their performance since the first reports were released in 2021.* (Woolworths Group, 2023, p. 2)

The review does not dispute that individual reporting entities might have improved their payment performance. However, material improvement at a collective level is not yet observable.

Some stakeholders expressed scepticism that a reporting scheme would ever be able to meet this object of improving payment performance. In its submission, Xero included comments from its Partner Advisory Council, a consultative panel of small-business industry experts, which indicated that the few small businesses aware of the PTRS:

> *(…) don't see the value of a transparency register. To the contrary, they see it as a toothless tiger, providing no real advantages or benefits.* (Xero, 2023, p. 6)

Conversely, other stakeholders believe transparency can drive improvements in the payment times of large businesses. ACCI asserted:

> *The data collected on the register lists provides an incentive for reporting entities to improve their payment terms and practices, as it's publicly available. The businesses who are poor payers are clearly identified by any user, from small and large businesses, members of the public, or media. In making payment times information transparent through the register large businesses should be forced to improve their payment time performance or risk being unable to secure suppliers.* (ACCI, 2023, p. 4)

The review does not agree that poor performers are easily identified in the register. Moreover, the review considers large businesses are unlikely to be incentivised to improve their payment performance if there are no clear metrics against which their performance can be assessed and there is limited public commentary on an individual reporting entity's results, particularly in comparison with its competitors.

The Queensland Small Business Commissioner told the review:

> *(…) as there has been no material improvement in payment terms and practices, the current publishing format is not acting as an incentive for reporting entities to improve.* (Queensland Small Business Commissioner, 2023, p. 3)

The BCA noted:

> *The visibility of a businesses' [sic] payment terms and practices enables supply chain partners and competitors to make key decisions on who they do business with. This creates an incentive for businesses to review and improve their payment practices to ensure they remain attractive to potential suppliers. While the PTRS is working in this regard, its ultimate success is contingent on delivering accurate and readily accessible data, including through its website.* (BCA, 2023b, p. 5)

The problems with the register and dashboard described earlier in this chapter have limited the scope and clarity of insights provided by the Small Business Ombudsman, the Regulator and other commentators, which might otherwise have been useful for applying public pressure to poor-performing large businesses.

The review assesses that, in its current form, the PTRS does not provide a strong incentive for large businesses to improve their payment terms, times and practices. Fundamental reform to the PTRS is needed to better incentivise faster payments to small businesses.

Finding 14

Sub-object 3(b)(ii) of the Act – to make information publicly available in order to create incentives for reporting entities to improve their payment terms and practices – has not been met. Without serious reform, the Payment Times Reporting Scheme will not be effective in meeting this sub-object.

Overall assessment

In its two and a half years of operation, notwithstanding extraordinary economic circumstances, the PTRS has not materially reduced the payment times of large businesses to small businesses at an aggregate level. The PTRS cannot answer basic questions and the register is confusing, clunky and cluttered.

Despite the best efforts of the Regulator and the Small Business Ombudsman, media coverage of payment times has been limited. The impenetrability of the data has made the task of drawing definitive conclusions from any reporting period extremely difficult. This has also hindered engagement from small businesses, large businesses and the broader community.

The effectiveness of the PTRS has been hampered by unwieldy legislative requirements. Understanding, and then complying with, obligations under the Act can be complex and resource intensive for reporting entities without delivering a commensurate benefit to small businesses. The Regulator has worked within its legislative constraints to try to provide greater clarity to reporting entities, but large gaps remain.

The PTRS has untapped potential. But without reform, the review has strong reservations about whether the PTRS will deliver substantial improvements in payment times to justify this policy intervention. There is scope for the PTRS to deliver more accessible, accurate and useful information that will better incentivise improved payment terms, times and practices to the benefit of small businesses while also reducing the regulatory burden on reporting entities.

Chapter 3: Overhaul the Payment Times Reporting Scheme

This chapter provides recommendations designed to enhance the effectiveness of the PTRS in view of the issues raised in *Chapter 2: How effective is the Act?*. These recommendations relate to:

- The definition of a reporting entity;
- The scope of reporting requirements;
- The collection and presentation of data;
- The role, powers and obligations of the Regulator; and
- A future statutory review.

Improving the effectiveness of the Act

The previous chapter, *Chapter 2: How effective is the Act?*, detailed problems associated with the operation of the Act and, by extension, the PTRS. This chapter does not re-prosecute these problems; rather, it presents solutions.

The objects of the Act

Sub-object 3(b)(i) – to make information publicly available in order to enable small businesses to make more informed decisions about potential customers – is an aspirational goal. But it is not one that has been met in the existing PTRS; nor would it be met in a revamped PTRS, owing to intractable power imbalances. While the PTRS uses transparency to seek to address information asymmetry about a reporting entity's payment performance, this has proven insufficient to challenge the fundamental position of power that large businesses typically have over small businesses. Weak bargaining power precludes small businesses picking and choosing between large-business customers on the basis of their payment terms, times and practices. Maintaining this sub-object in the Act as it is written is setting the PTRS up for ongoing failure.

The objects of the Act should be recalibrated to recognise that sub-object 3(b)(i) is an unrealistic goal but that reported information is likely to be of value to other stakeholders, such as the media and small-business advocates, in exerting reputational pressure on large businesses. In addition to clarifying the purpose of the information made publicly available through the PTRS, the objects of the Act should be reframed to better emphasise the primary purpose of the PTRS: to improve the payment terms, times and practices of reporting entities in relation to their small-business suppliers.

Recommendation 1: Amend the objects of the *Payment Times Reporting Act 2020*

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.

Which entities must report?

Definition of a reporting entity

Entity-level reporting should be replaced with consolidated, group-level reporting by the relevant parent entity. To support this, the approach to consolidation of corporate groups should align with standards made by the Australian Accounting Standards Board (AASB Standards), or equivalent standards, rather than the taxation reporting framework. These standards provide a common, consistent and well-understood framework for consolidation that can be leveraged for the purpose of the PTRS. The $100 million threshold for determining whether an entity or corporate group must report should be retained but be reframed as a measure of revenue, rather than of income, consistent with the AASB Standards.

The removal of entity-level reporting and the consolidation of corporate group reporting would address:

- An unnecessary administrative and compliance burden on corporate groups;
- Challenges for reporting entities and the Regulator created by using total income to determine whether an entity is a reporting entity; and
- The clutter and lack of utility of the data in the register with multiple reports from one corporate group, obscurely named reporting entities and reports from member entities with nil procurement from small businesses.

Under this proposed approach, the obligation to report would be on the parent entity of a corporate group. Members of a corporate group would no longer report in their own right. Payment performance across the corporate group would be consolidated into a single report made by the parent entity, reflecting the aggregate performance of all members of the reporting group.

Unlike the current reporting requirements, group-level reporting would also capture the payment performance of businesses within the corporate group that do not meet the $10 million threshold for the most recent income year. The review considers that if an entity is a member of a corporate group that meets the $100 million threshold, its payment performance should be captured, regardless of its turnover. This aligns with the rationale in the Explanatory Memorandum which asserted that large businesses "(…) have the capacity to meaningfully comply with the reporting requirements and have the market influence to effect change in their supply chains" (2020, p. 14). Including these entities in reportable data might also better reflect actual procurement from small businesses, where this procurement is undertaken by member entities not previously captured because they did not meet the $10 million threshold.

Group-level reporting would also benefit users of data from the PTRS register. It would reduce the number of individual reports and, in doing so, remove clutter from the register. The parent entity is also more likely to have a business name that is recognisable to the general public. This would support complementary reforms to put reputational pressure on large businesses using their reported PTRS data (see *Chapter 4: Publicise worst and best payers*).

The streamlining of reports would also make it easier for the Regulator to identify non-compliant reporting entities. The reason is that the reporting obligations would apply to the parent entity of a corporate group and not require a forensic breakdown of a group's structure and finances. Reliable information sources to identify businesses that exceed the $100 million threshold are more readily available than those to identify businesses that exceed the lower $10 million threshold.

A transition period should accompany this change to reporting requirements to allow corporate groups time to implement procedures across member entities to meet the revised reporting obligations, where they do not already do this for financial reporting.

Where a reporting entity is required to report on operating segments under the AASB Standards for its Australian operations, this obligation should also apply to its payment times reports. An operating segment is a component of an entity:

- That engages in business activities that generate revenue and incur expenses;
- Whose performance is regularly reviewed and assessed by decision-makers; and
- For which specific financial information is available (Australian Accounting Standards Board, 2021).

The purpose of separating by operating segments is to allow those outside the entity to understand the entity's main activities, how well it performs those activities and the different business environments in which it operates (Australian Accounting Standards Board, 2021). In the context of the PTRS, reporting by operating segment aims to balance providing visibility of differences in payment performance within a corporate group with streamlining the number of reporting entities to deliver more useful and accessible data.

Design and implementation of this reform should also ensure poor performance of individual entities within a corporate group cannot be hidden.

Recommendation 2: Simplify which entities must provide a payment times report

2.1 Consistent with standards set by the Australian Accounting Standards Board (or equivalent standards):

- 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.

What must be reported?

Better small-business identification

Improving the Small Business Identification Tool

The review explored 2 main options to address concerns about small-business identification:

1. Remove the SBI Tool and require reporting on large-business payments to all suppliers; or
2. Use existing government data to support the SBI Tool.

The review considers that Australia should not adopt the approach used in the UK and proposed in New Zealand, where large businesses must report on their payment times to all suppliers. Government intervention in payment times is warranted owing to the power imbalance between small and large businesses (see *Chapter 1: Overview*). It follows that reporting should be similarly targeted to small-business supplier invoices. Further, having data that is focused on small businesses is valuable in understanding their specific payment experience, which might be markedly different from the experience of large-business suppliers. Including all supplier invoices in reporting would make it impossible to discern how small businesses are being treated by large businesses.

The review explored the availability of existing government data sources to assist with identifying small businesses. No existing data source is perfectly aligned with the intent and needs of the PTRS. The review concedes that any alternative data sources to underpin the SBI Tool are likely to be imperfect. Nevertheless, the review considers the Government should further explore whether its own data sources could be adapted for the purpose of the SBI Tool, while upholding privacy protections.

Making manual corrections to the SBI Tool easier

Although there is no simple way to improve the accuracy of the SBI Tool, the ability for reporting entities to make manual corrections should be introduced. Where the SBI Tool incorrectly identifies a supplier as a small business when it is actually a larger business, a reporting entity should be able to remove that supplier from its calculations for reporting if it:

- Has paid more than $10 million to the supplier 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.

The Regulator should prioritise making timely updates to the SBI Tool to ensure a supplier does not continue to be incorrectly identified as a small business for that income year and, in doing so, help improve the accuracy of the SBI Tool.

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.

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.

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

Credit card transactions

The review recognises the administrative effort involved in assessing individual credit card transactions that are for trade credit arrangements, rather than point-of-sale transactions, and therefore must be included in payment times reports.

Several stakeholders proposed solutions to this issue. ABA suggested:

> *(…) these credit card payments are excluded where they constitute a very small proportion of the supplier payments (potentially less than 1%) particularly as these are often inaccurate best guesses. A de minimis threshold for payment values could also be introduced, particularly as many of the payments made through credit cards are of low value.* (ABA, 2023, p. 2)

MUFG Bank recommended:

> *Excluding credit card transactions to reduce the additional process of having to identify any credit card payments for trade purposes.* (MUFG Bank, 2023, p. 1)

The review does not support wholly excluding credit card transactions from the scope of payment times that must be reported under the PTRS. A potential unintended consequence of this would be incentivising reporting entities to direct many, if not all, small-business invoice payments through credit cards to avoid reporting requirements. This would undermine transparency.

The Regulator has issued guidance that reporting entities are not obliged to consider credit card payments if they have a company policy that credit cards are not used in trade credit arrangements (Payment Times Reporting Regulator, 2022a, p. 18). This safe harbour is an appropriate accommodation and should be formalised in the law. The Regulator should also undertake periodic spot checks of the compliance of reporting entities with their internal policies to ensure no trade credit arrangements with small businesses have been omitted from reporting, either through deliberate or inadvertent breaches of the internal policy.

A more proportionate regulatory burden should be placed on large businesses that do not have an internal policy on credit cards and trade credit arrangements. Credit cards might be the quickest and easiest way for some small businesses to be paid so it is important not to deter large businesses from using credit cards to pay small-business invoices under trade credit arrangements.

The review accepts credit cards are used for a range of frequent, low-value transactions that are unlikely to represent trade credit arrangements. In view of this, a value threshold should be introduced. Credit card transactions that are below the threshold would be automatically exempt from reporting. The splitting of payments should also be expressly prohibited so that reporting entities cannot game the value threshold.

Simpler and more useful payment times data

Streamline reporting requirements

Clear, relevant and easy-to-analyse data is essential for the PTRS to operate as intended. The reporting requirements should be simplified and streamlined. Table 4 details the review's proposed content requirements for payment times reports for each reporting entity and reasons for their selection. The review considers these reporting fields will provide a streamlined register with valuable data points. With the exception of the single proposed free-text field, a response to all fields should be mandatory to improve the consistency and comparability of reported data.

Table 4: Proposed content requirements for public reporting

Reporting entity and report information	Reasons for selection
• Entity name • ABN (if applicable, otherwise N/A) • Business Industry Code • Percentage of small-business procurement under trade credit arrangements, by total value of all invoices paid • Reporting period to which the report relates	Required business information would be substantially reduced as a result of proposed changes to consolidate corporate group reporting. Reporting of Business Industry Code would be retained to allow for industry-based comparisons of the main business activity. Percentage of small-business procurement would be retained to allow for monitoring of changes over time which may point to unintended consequences of regulation, such as a marked decrease in small-business procurement. Responses to this field could also inform public discussion, where commentators might query why a reporting entity does not procure from any small businesses.
Payment terms information	**Reasons for selection**
• Standard (default) payment term offered to small businesses at the start of the reporting period • Standard (default) payment term offered to small businesses at the end of the reporting period	Required payment terms information would be substantially reduced and simplified. Shortest and longest standard payment terms fields would be removed as they cause confusion and add little value. 'Changes to standard payment terms' field would also be removed to improve the quality of reported information as this field causes significant confusion for reporting entities. Changes in payment terms would be calculated by comparing these 2 new fields.

Table 4: Proposed content requirements for public reporting (continued)

Payment times information (by total number of small-business invoices)	Reasons for selection
• Average (mean) payment time • Median payment time • Percentage of invoices paid on time (in accordance with agreed contract terms) • Percentage of invoices paid within 30 days • Percentage of invoices paid between 31 and 60 days • Percentage of invoices paid in more than 60 days	Average and median payment times would be added as new reporting fields. Both measures would be included because payment times to small businesses do not necessarily follow a symmetrical distribution. Percentage of invoices paid on time would be added as a new reporting field. Noting the legitimate variation in payment time norms between some industries, this would allow reporting entities to indicate how often they meet their agreed payment terms and would provide additional context for average payment times and interval data. Interval fields for the proportion of small-business invoices paid, determined by the *total number* of invoices, would be reduced from 6 to 3. The requirement for this information to be provided for the percentage of invoices paid by the *total value* of invoices would be removed. Analysis has indicated that the proportion of invoices paid in intervals by number and value of invoices are generally consistent so there would be minimal benefit from retaining both metrics. Consolidating interval reporting aims to bring greater attention to the quantum of invoices paid after 60 days, rather than just extreme outliers beyond 90 days or 120 days. This would bring long payments into clearer focus for users of the data and the senior staff in reporting entities who must sign off on payment times reports. Consolidating interval reporting combined with measures of average and median payment times would allow for easier interpretation of a reporting entity's typical performance. Retaining interval fields would allow validation of the accuracy of average and median payment times data.

Table 4: Proposed content requirements for public reporting (continued)

Payment practices information	Reasons for selection
• Offers Peppol eInvoicing to small businesses • Offers supply chain finance to small businesses – If yes, proportion of total number of small-business invoices paid via supply chain finance • Charges fees during procurement processes • Free-text field	Binary 'yes/no' fields would be introduced to consolidate fields that capture details on payment practices. Binary fields, rather than free-text fields, would reduce errors and make analysis easier, particularly when coupled with data validation and mandatory fields. A new field on Peppol eInvoicing would be introduced to allow end-users to see if reporting entities have adopted this technology and to encourage greater uptake (see *Chapter 8: eInvoicing*). A single free-text field would be retained for reporting entities to explain, clarify or supplement reported data. This could also include reference to the internal policies and processes a reporting entity has in place to assist small-business suppliers, and whether a "notifiable event" (as defined by the Act) has occurred since the previous payment times report.

Note: This table describes public-facing fields only. Other non-public data, such as the name of the responsible member signing off the report and the name of the individual submitting the report, should continue to be collected.

Reducing missing and inconsistent information

The potential for manual errors would be reduced by the proposed streamlining of reporting requirements. Fewer data fields that are simpler and easier to understand would allow reporting entities to more easily and accurately record their payment performance. But more can be done to ensure data are of high quality.

A more sophisticated portal for submitting payment times reports should be developed, rather than requiring reporting entities to upload a completed Excel template. The enhanced portal should auto-fill information where this is available – such as linking ABNs and business names from the ABR – and validate data where appropriate. Greater use of validation would allow the Regulator to set stricter rules for what type of information can and cannot be entered into specific fields. This could prevent the submission of inaccurate information, such as negative numbers. The enhanced portal should also make all fields mandatory to prevent entities from submitting incomplete reports.

These enhancements would reduce the potential for user error, increase consistency and accuracy between reports and simplify administration for reporting entities.

Legislative design

It is unusual for primary legislation to include detail of specific content requirements. And having half the content requirements in subordinate legislation (the Rules) is unnecessarily confusing.

Proposed changes to reporting requirements necessitate amendments to the Act and the Rules. The review considers that all content requirements for payment times reports should be consolidated in a single location.

Content requirements for payment times reports are technical matters. It is logical that the Act should indicate the principles and intentions of reporting, including which entities should report, and the Rules should include the substantive and more detailed requirements of what should be reported.

Recommendation 4: Streamline and improve the quality of reported data

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.

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.

4.3 Remove, amend and add specific content requirements for payment times reports, as detailed in Table 4.

4.4 Consolidate content requirements for payment times reports in the Payment Times Reporting Rules 2020.

4.5 Create a more sophisticated submission portal for payment times reports to enable auto-filling, data validation and mandatory reporting fields.

Making information publicly available

More user-friendly register and dashboard

Changes recommended above to streamline reporting requirements and reduce input errors would improve the quality of future reports. The presentation of the data could also be improved to allow greater useability for stakeholders. Many stakeholders indicated support for such improvements. Specifically, superannuation trustee Rest noted:

> *While the Payment Times Reporting scheme currently publishes all respondents' data, it is difficult and time consuming to navigate. We feel that small business would benefit more from having access to reported trends and/or being able to more quickly identify repeat offenders.* (Rest, 2023, p. 2)

The Small Business Ombudsman added:

> *(…) to support the extraction of critical data, we suggest the scheme consider improving the filter capabilities to effectively compare payment performance. (…) The effectiveness of the Payment Time Reporting Register will be greatly enhanced by greater visibility and utilisation of data.* (Small Business Ombudsman, 2023a, p. 3)

The review considers the presentation of PTRS data in the register and dashboard should be enhanced by:

- Clearly delineating reporting cycles;
- Controlling for original, revised and redacted reports so that the latest information is most visible; and
- Allowing the user to undertake analysis through:
  - Filtering by reporting fields; and
  - Comparing the performance of selected reporting entities.

The Australian Financial Complaints Authority's 'Datacube'[19] and the Workplace Gender Equality Agency's 'Data Explorer'[20] visualise data and allow users to undertake analysis without requiring specialised tools or expertise. Good Business Pays – a social enterprise that reports on payment times in the UK – also presents data in an engaging and easy-to-understand manner on its website (see *Chapter 4: Publicise worst and best payers*). These examples should be considered to inform an enhanced presentation of data through the register and dashboard.

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.

The Regulator

Governance of the Regulator

The recommendations outlined earlier in this chapter will help make the PTRS a well-functioning scheme. However, even the best-designed payment times reporting scheme will be redundant without trust and public confidence in the Regulator's compliance and enforcement activities.

The review recommends moving the regulatory function to an established regulator with the profile and track record of holding businesses to account. The review considers this would give the PTRS the best chance of success at increasing stakeholder confidence in its administration, strengthening compliance among reporting entities and driving down payment times to small-business suppliers.

Moving the regulatory function would allow the Regulator to leverage the established regulator's compliance and enforcement culture, regulatory expertise and institutional architecture. Since established regulators have mature systems and processes, co-locating regulatory functions would enable the Regulator to progress its compliance and enforcement activities against reporting entities more expeditiously.

In view of limited regulatory resources across government, co-locating the Regulator with an established regulator of business activity would deliver additional efficiencies that align with the Commonwealth's approach to regulator best practice, as detailed in RMG 128.

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19 Available at: https://data.afca.org.au/.
20 Available at: https://www.wgea.gov.au/data-statistics/data-explorer.

Moving the Regulator would also provide an opportunity to harness the existing regulator's wider regulatory toolkit. In addition, depending on the regulator, co-location might reinforce links between payment times reporting and other complementary regulatory interventions that benefit small businesses (see *Chapter 6: Unfair contract terms, Chapter 7: Unfair trading practices* and *Chapter 8*: eInvoicing).

Further, moving the Regulator to an existing regulator of business activity is expected to assist the Regulator to build staff capability and a strong regulatory culture.

Powers and obligations of the Regulator

Notwithstanding the discussion above on the appropriate location of the Regulator and potential to leverage an established regulator's existing powers, the legislation should be amended to make the Regulator's powers more proportionate to the regulatory risk being managed and to remove unnecessary and inefficient obligations on the Regulator.

To complement the Regulator's more extreme information gathering powers – being able to undertake a compliance audit or conduct on-site monitoring or investigation activities – the Regulator should be given the lower-level power to issue a statutory notice to request that a business produce information. This should apply both to known reporting entities and to suspected reporting entities. These entities would be required to provide the information requested, within the period specified, or face a penalty.

Similar powers exist for ASIC, the ACCC and the ATO and are consistent with a proportionate and escalating approach to compliance and enforcement.

The obligation on the Regulator to "register" – that is, to scrutinise the contents of – a payment times report prior to publishing the information should also be removed. Proposed changes to the businesses that must report will significantly reduce the number of payment times reports submitted every 6 months. Streamlining content requirements of reports, in particular reducing free-text fields as well as auto-completing and validating data during the submission process, would also reduce the risk of inappropriate or irrelevant information being included in submitted payment times reports.

Removing this low-value administrative obligation would allow the Regulator to direct its efforts towards more productive regulatory activities.

Regarding revised reports, reporting entities should continue to be allowed to revise previously submitted information, as long as the Regulator maintains a public record of such actions for compliance and enforcement purposes.

In this context, the Regulator should have the power to review and remove submitted payment times reports retrospectively that are contrary to the public interest. This is consistent with the approach taken by the Franchise Disclosure Register,[21] under the Franchising Code of Conduct, whereby personal or sensitive information can be removed from the register after publication.

The Act should also be amended to give the Regulator the power to prescribe the content, format and method of submission for applications for statutory relief to improve the process for both the Regulator and reporting entities. Consideration should also be given to introducing a cost-recovery fee for such applications, consistent with the Australian Government Charging Framework (RMG 302) (Department of Finance, 2022a).

21 Available at: https://franchisedisclosure.gov.au/.

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.

6.2 Remove the requirement for the Regulator to scrutinise original and revised payment times reports before publication.

6.3 Introduce powers for the Regulator to:

- 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.

A future statutory review

The PTRS has not yet reached its potential. This review has proposed a range of short- to medium-term changes to the statutory framework to support the maturation of the PTRS. There should be ongoing provisions for statutory reviews to ensure the PTRS remains fit-for-purpose.

A further statutory review should take place within 5 years post-implementation to assess whether the overhauled PTRS is meeting the objects of the Act. This will allow time for recommendations from this review to be put in place and to take effect.

Recommendation 7: Review the operation of the amended *Payment Times Reporting Act 2020*

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.

The following chapters consider a range of alternative policy options outside the PTRS to reduce payment times from large businesses to their small-business suppliers.

Chapter 4: Publicise worst and best payers

This chapter explores how to foster a culture of prompt payment by drawing on data from the PTRS register to name and shame or praise large businesses, harnessing reputational motives and driving competition among entities. The chapter also considers how the data from the register could be made more relevant and engaging to the public.

Description

Data from the PTRS register show the payment terms, times and practices of individual reporting entities. This data would be used to highlight publicly the relative payment terms and times of reporting entities in an easily understood way. The slowest payers would be named and shamed, while the fastest payers would be named and praised. Publicising the worst and best payers uses both reputational sanction and reward to influence the payment practices of businesses, since the reputation of a business matters.

Objective

- Create a norm of large businesses paying their small-business suppliers quickly.

Evaluation

Problem to be addressed

Since the PTRS was established, there has been only marginal improvement in payment terms and times (see *Chapter 2: How effective is the Act?*). The Western Australia Small Business Commissioner explained:

> *(…) poor practice is common practice.* (Western Australia Small Business Commissioner, 2023, p. 2)

CA ANZ and CPA Australia jointly commented:

> *(…) the benefits of the scheme do not yet appear commensurate with the increased resourcing needed to report. Concerns have been raised that the PTR scheme has turned into another compliance 'tick box' exercise.* (CA ANZ & CPA Australia, 2023, p. 2)

Large businesses can have long payment terms and pay late for many reasons, one of which is not making on-time payments to small-business suppliers a business priority. Consult Australia noted:

> *Our small member businesses advise that they are often pressured to accept extensive payment time in contracts and that contract payment times are frequently ignored, or inflated due to internal processes by [their] clients.* (Consult Australia, 2023, p. 1)

The PTRS has provided little incentive for individual reporting entities to improve their payment terms and times since there have been no consequences from the reported data. Reporting entities have submitted their homework but have not been graded on it.

Public commentary on large-business payment times using the data from the PTRS register has been limited. The Regulator, the Small Business Ombudsman and a handful of media outlets have reported on overall trends but not on the payment terms and times of individual large businesses. A spotlight has not been shone on which large businesses are the worst and the best at paying small businesses quickly and in accordance with their payment terms. This is likely due, in part, to the impenetrability of the data in the register and low public awareness of the PTRS.

A related problem is that no entity in Australia has been given responsibility for publicising the worst and best payers using the PTRS data. The Regulator's role is to administer and enforce compliance with the Act. To comply with the Act, reporting entities are required only to submit reports of their payment performance. The Regulator's remit does not extend to making judgements on the payment terms, times and practices of reporting entities.

The need for cultural change

Large-business payment culture needs to improve. This was a key rationale for introducing the PTRS. The Explanatory Memorandum asserted:

> *Greater transparency on payment practices and performance will also create pressure for cultural change to improve payment times.* (2020, p. 2)

Following 2 years of operation, large businesses are more familiar with their reporting obligations under the PTRS. Now is the time to transition to the next phase of transparency to drive a culture of prompt payment.

Encouragingly, it appears that large businesses have the wherewithal to drive down payment times. The Western Australia Small Business Commissioner advised:

> *During the height of the COVID-19 pandemic, we saw many large corporations and government agencies improve their payment performance dramatically demonstrating that big business is capable and has the capacity to improve their payment performance.* (Western Australia Small Business Commissioner, 2023, p. 2)

Recent trends in corporate governance provide further impetus to improve small-business payment times. Businesses are increasingly focused on their reputations from an ESG perspective (see *Chapter* 1*:* Overview). In particular, Woolworths Group suggested:

> *(…) the growing importance of reputation and social licence is a big part of the progress. There is a reasonable expectation among customers, investors, policymakers, industry groups and other stakeholders that large companies will treat small suppliers fairly.* (Woolworths Group, 2023, p. 2)

The review considers that large businesses, all levels of government, shareholders and investors have an obligation to support small businesses by making payment times a central pillar of their ESG considerations. Large businesses and governments should have internal policies in place to support small businesses through their procurement processes. Shareholders and investors should hold companies to account for their payment performance as part of their ESG practices.

Driving this cultural change in payment times should start with business leaders valuing paying their small-business suppliers quickly and making this part of their business strategies. To do this, payment times need to be a reputational issue for business leaders. Using data from the PTRS register, this reputational motive can be harnessed through clear comparisons among reporting entities and assigning responsibility to an entity for publicising the worst and best payers.

Reputational motives

Without clear direction from the senior leaders of an organisation, it is unlikely that staff will make systemic improvements to small-business payment times. As Good Business Pays noted:

> *How suppliers are treated (as well as customers and employees) is a tone set by leadership. In companies, the Chief Executive Officer (CEO) sets the tone, vision and values for the company they lead. In turn, the Board Executives set the rules for their areas of responsibility that align with the vision and values set by the CEO. In terms of payment culture, the Chief Financial Officer (CFO) usually sets the rules that determine the payment outcomes for suppliers.* (Corby, 2022, p. 13)

The Act seeks to account for this by requiring a responsible member – often a member of the board – to sign off on payment times reports before they are submitted to the Regulator. The Explanatory Memorandum further explained:

> *Visibility of reports at this level of seniority recognises the importance of ensuring that reporting accurately on payments time and practices is given sufficient regard in the organisation but balances this by reducing the regulatory burden associated with full approval by the entire principal governing body.* (2020, p. 18)

Although payment times reports must be presented to the board or another principal governing body, organisations have discretion over whether the board sees the report *before or after* it goes to the Regulator. Coupled with the complexity of the reported data, this means many boards will not focus intently on their organisation's payment times to small businesses or make it a key performance indicator for their executive leaders.

The review considers that increased public scrutiny of the payment times of individual reporting entities is needed to make payment times front-of-mind for boards, CEOs and CFOs. This approach is expected to be effective because it affects business reputations. Ultimately, business reputations are crucial to business success and longevity. Executive Professor Richard Macrory, in his report to the UK Government, affirmed this point:

> *The consequences of damaging a firm's reputation can potentially exceed the effect of a maximum fine that a court could impose. A company that loses its reputation even for a short time can suffer significant damages to consumer confidence, market share and equity value. (…) The threat of this type of sanction may encourage firms contemplating not complying with regulatory objectives to re-consider, even if the non-compliance would generate significant financial benefit.* (Macrory, 2006, p. 83)

This is further supported by a 2021 Global Risk Management Survey by Aon, of more than 2,300 respondents across 60 countries. It found that damage to reputation and brand was rated by Australian businesses as their second-highest risk (Aon, 2021, p. 5).

The importance of business reputation to the general public was also explored in a 2022 KPMG survey of 500 Australian consumers. Eighty-five per cent of surveyed consumers considered business reputation to be an important factor in their purchasing decisions and 50 per cent said they had not bought from a business that they believed had a poor reputation. Eighty-two per cent of respondents cared whether Australian businesses behave in a fair and reputable manner (KPMG, 2022, p. 3).

In Australia, consumer advocacy bodies such as CHOICE successfully leverage public pressure on business reputations to effect positive changes in policies and practices. For example, in 2021 CHOICE rated the quality of fire cover offered by 27 insurers as ‘good,’ ‘borderline’ or ‘bad’. When approached by CHOICE prior to publication of the ratings, insurers that were initially rated ‘bad’ committed to improving their insurance policies while other insurers made changes to improve their ratings to ‘good’ (CHOICE, 2021).

Several stakeholders highlighted the potential reputational effects of naming the worst and best payers using data from the PTRS register. In particular, the Small Business Ombudsman noted:

> *Transparency of these data is key to driving better payment performance. For example, poor-performing entities may face reputational damage and forgo suppliers, investors, joint-venture partners or customers, while the best-performing entities can be acknowledged as industry leaders and exemplars of good environmental, social and governance practice.* (Small Business Ombudsman, 2023a, p. 3)

ACCI commented:

> *There is a reputation component that is inherent to the register, being able to proclaim a business as having best practice payment time to small business suppliers is an advantage for marketing purposes. Large businesses want to cultivate good relationships with their small business suppliers.* (ACCI, 2023, p. 6)

Finding 15

Increased public scrutiny of Payment Times Reporting Scheme data is needed to drive a culture of prompt payment.

Driving competition

Fostering competition between large businesses in relation to small-business payment times will also help improve payment outcomes for small businesses.

These competitive dynamics are already in play at the margins. Some stakeholders told the review they have used data from the PTRS register to determine whether their payment performance was better than that of their competitors. Some stakeholders also stated they had reduced payment terms to their small-business suppliers to set themselves apart from other large businesses. Woolworths Group explained:

> *Beyond social licence, there is also a growing commercial incentive for more businesses to act. As Australia’s largest businesses – collectively paying billions of dollars to small suppliers each year – continue to improve payment terms and payment practices, they naturally become more attractive trading partners. This drives competition in the marketplace, which should help small suppliers, particularly in highly specialised and in-demand sectors, to negotiate better payment terms with an even larger cohort of companies.* (Woolworths Group, 2023, p. 2)

However, several stakeholders expressed difficulty in judging relative payment performance using the data in the PTRS register (*see Chapter 2: How effective is the Act?*). For example, KPMG noted:

> *Incentives to improve payment times would be increased if the usability and accessibility of the PTR Scheme website was improved, especially if the ability to directly compare like businesses was improved.* (KPMG, 2023, p. 10)

Simplifying the data in the register, as recommended in *Chapter 3: Overhaul the Payment Times Reporting Scheme*, is likely to prompt some increase in business-led competition on payment times.

However, more can be done to exert strong reputational pressure on the payment performance of large businesses.

Publishing a list of the worst and best payers to small-business suppliers would distil the data in the register and heighten competitive dynamics between large businesses. Businesses that are poorer performers would be motivated to change their business practices to avoid further negative publicity. And the best performers would be incentivised to continue to improve their payment times to remain industry leaders and benefit from good publicity.

In the UK, at least one industry association has been using data from UK payment practices reports to develop league tables to encourage competition on payment performance amongst industry participants (Build UK, 2023a) (see *Box 5*).

Box 5: Case study – Build UK

The UK's construction industry association, Build UK, has been benchmarking its members since 2018 and has reported a strong improvement in payment times over that period. In February 2023, Build UK reported that since 2018 its tier-one contractor members have reduced their average payment times from 45 days to 30 days and increased the proportion of invoices paid on time from 63 per cent to 80 per cent.

Source: (Build UK, 2023a; Build UK, 2023b).

Making measurement matter

Publicising the worst and best payers would give the PTRS data a greater purpose.

Determining the worst and best payers does not require setting a benchmark or a *de facto* mandate. Rather, this approach would rely on relative payment time comparisons by highlighting the outliers (worst and best) on the payment times spectrum. This avoids the problems associated with a mandate (see *Chapter 5: Mandate maximum payment times to small businesses*) while still allowing clear and meaningful comparisons among reporting entities. Measuring outcomes using relative performance, rather than static comparisons, would also help drive competition on payment times among businesses and motivate continued improvement.

Worst and best performance comparisons should also be made within industries to the extent possible, to compare like with like. This approach would account for sectoral differences in payment time norms and create competition among direct business competitors (see *Chapter 5: Mandate maximum payment times to small businesses*).

Many stakeholders supported greater recognition of variations in payment times among industries, with the Australian Industry Group (Ai Group) suggesting:

> *(…) performance benchmarking data presented in the PTRS Register and Regulator's Update should in future be presented on an industry basis. This would provide small businesses more relevant information regarding payment time benchmarks appropriate to their industry.* (Ai Group, 2023, p. 3)

Making it relevant and engaging

Publicising the worst and best payers in an easy-to-understand and engaging way would also attract the attention of the media and the general public. In doing so, this would increase the salience of payment performance as a reputational issue for business leaders. As KPMG noted:

> *A more interactive approach to comparing data will also encourage media outlets to report on the metrics, further driving change in payment terms and increasing awareness.* (KPMG, 2023, p. 10)

Woolworths Group recommended:

> *Improve the useability and accessibility of the PTRS dashboard to make it easier for small suppliers, researchers, investors and media outlets to compare and scrutinise payment times performance.* (Woolworths Group, 2023, p. 3)

Commentary from an authoritative body on the worst and best payers would also help interpret the data and shine a spotlight on payment times issues. As discussed by Associate Professor of Law and Regulation, Sharon Yadin, from the Yezreel Valley College School of Public Administration and Public Policy:

> *(…) disclosure regulation leaves the decision making entirely to the consumer, and the regulator takes a fairly passive normative stance regarding the company, product, or service. Its emphasis is on providing the public with detailed information to support an informed decision. However, regulatory shaming aims to convey a message that carries not only factual information, but also a negative judgment. The message may express dissatisfaction, scolding, or condemnation, and it will highlight the shamed entity's unacceptable behavior, character, set of values, and/or beliefs.* (Yadin, 2019, pp. 429-430)

Assigning responsibility for relative performance assessments

It is possible that, as in the UK, a third party will decide to use data from the PTRS register to highlight the entities with the worst and best payment times (see *Box 6*). However, rather than hope that a third party takes on this role, the review recommends that the Government make publishing the worst and best payers the explicit responsibility of a government or non-government entity, separate from the Regulator.

It will be important for the entity to be a respected source, with an ability to generate media coverage and facilitate public engagement. As discussed by Executive Professor Richard Macrory, the effectiveness of naming and shaming is contingent on whether the public is aware of and values what the relevant authority produces (Macrory, 2006, p. 4). This means that, as part of this role, the entity should communicate and educate the public on the effects of long payment terms and late payment times for small businesses.

The review considers the Small Business Ombudsman a possible option, as this type of advocacy aligns with the Ombudsman's remit.

Alternative remedy: Disclosing payment performance in annual reports

Some stakeholders suggested a different approach to drive a culture of prompt payment to small businesses; namely, to require reporting entities to disclose their payment performance in annual reports. Although this idea has merit, on balance, the review does not recommend it at this time. It would apply only to the subset of reporting entities that are publicly listed and, unlike the register, it would not provide a single source of truth to compare payment times among large businesses.

As discussed above, the review recommends that large businesses treat the prompt payment of small-business suppliers as a corporate social responsibility. Large businesses should use their PTRS data in their annual reports to demonstrate their ESG commitment and performance in relation to fast payment of small-business suppliers, without this needing to be prescribed by the Government. This matter could be revisited if there is insufficient progress on payment times of large businesses in light of the data in the PTRS register.

Implementation considerations

Complementary remedy: Overhaul the PTRS

The shaming and praising policy option could be implemented without – or before – the changes recommended in *Chapter 3: Overhaul the Payment Times Reporting Scheme*. However, the review considers publicising the worst and best payers would be most effective when based on a more targeted set of data. The proposed changes to the register would increase user confidence in the accuracy of the information and make it easier to distinguish worst and best performance without requiring complex analytical techniques.

Design of the process

Designing a robust methodology for a worst and best payers list would require careful thought and consultation. The approach taken in the UK by social enterprise Good Business Pays should be closely examined since the Good Business Pays model has features that would be of benefit in the Australian context (see *Box 6*). Several stakeholders agreed. For example, AICM noted:

> *(…) initiatives like the Good Business Pays could be a model [sic] government to support in Australia to further shift the dial on payment culture in Australia.* (AICM, 2023, p. 7)

Leveraging the UK experience, the worst and best payment performance could be determined by examining an entity's average payment time and the proportion of its invoices that are paid on time. This would highlight the speed *and* punctuality of payments, which are both important factors for small-businesses operations.

Consideration should also be given to affording large businesses natural justice by contacting them in advance of publishing their identities as worst payers. The hands-on approach by Good Business Pays of working with large businesses at risk of being identified as the worst payers is one possible method. The CHOICE approach of engaging with poor-performing businesses prior to public shaming in order to prompt remediation efforts should also be considered. These approaches provide discretion as to whether to proceed with naming and shaming an entity. A similar approach might be appropriate in the Australian context if the Government wished to demonstrate that the ultimate policy intent is not to shame long or late payers, but rather to work with them to improve their payment culture and drive down payment times to small-business suppliers.

It will also be important to ensure that public reporting of the worst and best payers is relevant to the general public. Since proposed changes to consolidate PTRS reporting requirements mean that members of a corporate group will no longer report in their own right, performance will be aggregated at the parent-entity level with breakdowns by operating segment where required (see *Chapter 3: Overhaul the Payment Times Reporting Scheme*). Reporting of the worst and best payers should therefore draw attention to members of a corporate group where their brand names or trading names are well-known to the public. This would support effective media and community engagement and motivate improvement in payment times throughout corporate groups.

Box 6: Case study – Good Business Pays (UK)

Good Business Pays was launched in May 2021 after CEO and Founder, Terry Corby, became concerned about the effect of late payments on businesses during the COVID-19 pandemic. Its purpose is to encourage the UK's largest companies to fast-track payments to small-business suppliers.

In its 2022 statutory review of the UK's payment reporting regulations, the UK Department for Business, Energy and Industrial Strategy recognised Good Business Pays, among others, for incentivising businesses to improve payment practices:

> *It has been particularly encouraging to see how the payment practices reporting data is being utilised by private business to raise awareness of the need to pay promptly and drive improvements [in] payment behaviour, as evidenced by the Good Business Pays campaign and Build UK league tables.* (UK Department for Business, Energy and Industrial Strategy, 2022a, p. 28)

Fast Payer Awards

Good Business Pays examines the UK payment times data, reported under the UK Payment Practices and Performance Regulations 2017[22] and the Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017,[23] and identifies fast payers – large businesses that pay suppliers in less than 30 days on average and pay more than 95 per cent of their invoices on time. These businesses receive a Fast Payer Award and are named on the Good Business Pays website.

The website also displays the payment times data in attractive and easy-to-understand tables, charts and diagrams to draw attention to the issue and to enable comparisons to be made between large businesses.

In 2021, Good Business Pays identified 107 fast payers out of around 8,000 qualifying companies. In 2022, the number of fast payers more than doubled, to 270, and the very best performers were recognised as the top 7. These businesses received their awards in the House of Lords.

The awards have been well-received by large businesses and often feature in the media. Promotional materials are also provided to recipients of Fast Payer Awards to use the Good Business Pays branding on their own communications as a marketing tool.

22 Available at: https://www.legislation.gov.uk/ukdsi/2017/9780111153598/contents.
23 Available at: https://www.legislation.gov.uk/ukdsi/2017/9780111153604/contents.

Box 6: Case study – Good Business Pays (UK) (continued)

Late and slow payers lists

Good Business Pays also uses reported data to identify:

- *Late payers* – which pay more than 50 per cent of invoices later than agreed payment terms;
- *Slow payers* – which have an average payment time of more than 80 days; and
- *Late and slow payers* – which pay more than 50 per cent of invoices later than agreed terms and have an average payment time of more than 80 days.

The Good Business Pays CEO is committed to working with leaders in large businesses that have poor payment times to help change their payment culture.

Around 4 months prior to publishing the late and slow payers lists, Good Business Pays contacts the relevant large businesses to provide them a right of reply and an opportunity to avoid being named and shamed if they improve their payment practices. This hands-on approach has produced positive results.

So, too, have the late and slow payers lists, which have attracted media attention and led to improvements in payment times of businesses named.

Recognising 'brand name' businesses

Some businesses, often those that are part of a larger group, use legal or trading names that are not immediately recognisable to the public. Good Business Pays ensures its communications link the fast and slow/late paying businesses to the well-known parent companies or brands so the public can hold these businesses to account.

Source: Data provided by Good Business Pays for the review; (Good Business Pays, 2023).

Recommendation 8: Leverage the importance of reputation to large businesses to foster a culture of prompt payment

8.1 Paying small-business suppliers quickly should be part of the environmental, social and governance (ESG) obligations of large businesses.

8.2 Report publicly on worst and best payers to small businesses using Payment Times Reporting Scheme data.

Chapter 5: Mandate maximum payment times to small businesses

This chapter explores whether one or more mandated maximum payment times for the payment of small-business invoices by reporting entities would improve payment performance. It considers the effectiveness of different implementation models, including international approaches in comparable jurisdictions and the proposed Failsafe Mechanism. The chapter examines design issues such as setting the optimal maximum payment time(s) and accounting for industry-specific differences in payment times, the likely effectiveness of compliance and enforcement arrangements, and any possible unintended consequences.

Description

The terms of reference require the review to consider in detail whether mandating one or more maximum payment times for the payment of small-business invoices by reporting entities would be effective in improving payment performance.

Under a mandate, the Government would prescribe one or more maximum times by which a large business must pay its small-business suppliers. This would effectively define in the law what constitutes an acceptable payment time, or times, to small businesses. A financial penalty would be introduced for businesses that fail to pay within the mandated timeframe.

The terms of reference also require the review to consider how a mandate:

> *(…) could best be implemented, taking into account potential regulatory burdens on reporting entities and the need to avoid unintended consequences for small businesses.*

The terms of reference further require the review to consider the efficacy of international approaches to payment times.

Objective

- Discourage large businesses from delaying payments to their small-business suppliers and provide greater certainty of cashflow for those small businesses.

Evaluation

Problem to be addressed

The inherent imbalances in market power between large businesses and small businesses can contribute to long payment terms and late payment times for small-business suppliers (see *Chapter 1: Overview*). Large businesses have little incentive to pay small-business suppliers quickly since there are no consequences for long payment terms and late payment times.

Types of mandates

The review considered 3 approaches to mandating one or more maximum payment times:

- ***Creditor entitlement to claim interest.*** Under this interest-penalty model, a small business can claim interest on a late payment by issuing an updated invoice to the large-business customer.
- ***Fines for late payment of individual invoices*.** This is a civil-penalty model, where a large business is liable for a fine each time it fails to pay a small-business invoice within the mandated timeframe.
- ***Fines for systemic non-compliance.*** This is also a civil-penalty model, where a large business is liable for a fine when its total average or median payment time over a prescribed period exceeds the mandated payment time.

Why mandate payment times?

On the face of it, mandating a maximum payment time for large businesses appears to be a fair and effective option to reduce payment times to small-business suppliers.

A mandate would set clear expectations by the Government of what is acceptable payment behaviour for large businesses. A mandate could also provide greater certainty of cashflow for small businesses, depending on how the mandate was designed. Through interest payments or a civil penalty, a mandate would introduce financial sanctions for large businesses that paid small-business suppliers late to gain a cashflow advantage or because of internal administrative inefficiencies. If the cost of the financial penalty were sufficiently high and the mandate were enforced effectively, a mandate could remove the incentive for large businesses to delay payments to small-business suppliers.

Around one-quarter of submissions to the review expressed support for a mandated maximum payment time for small-business invoices. The Queensland Small Business Commissioner noted:

> *As there has been no significant improvement on the payment times and practices of reporting entities under the scheme, in particular those with extended payment terms over 30-days, it is therefore apparent that the non-mandated approach is not an effective approach.* (Queensland Small Business Commissioner, 2023, p. 2)

NFIA commented:

> *Mandating one or more maximum payment periods for the payment of small business invoices by reporting entities could have the effect of improving payment terms and practices across entities who previously did not meet an equal or shorter self-imposed period. It is inherent in mandating behaviour that widespread compliance is likely.* (NFIA, 2023, p. 7)

The Finance Brokers Association of Australia (FBAA) submitted:

> *We support the introduction of statutorily mandated timeframes. (…) we support 30 days being a reasonable timeframe in which small business in our industry services sector should be paid.* (FBAA, 2023, p. 3)

International approaches to a mandate

The review examined several comparable international jurisdictions that have implemented mandated maximum payment times to understand the effectiveness of these models and lessons for Australia. Specifically, the review considered the mandates in place in the EU, France and the UK.

The EU and the UK enshrine a right for creditors to claim interest and compensation for late payments. France also applies civil penalties for breaches of its stricter mandated maximum payment times.

European Union

A creditor entitlement to claim interest operates in the EU under Directive 2011/7/EU on combating late payment in commercial transactions (the Late Payment Directive).[24] The Late Payment Directive sets a maximum payment time of 60 days for business-to-business transactions. An exception allowing for a longer payment time applies where it is agreed by both parties and is not "grossly unfair" to the creditor.[25] The Late Payment Directive provides a right for suppliers to claim interest of at least 8 percentage points above the European Central Bank's reference rate and a minimum of €40 as compensation for the recovery of costs.

The EU's regulatory approach to late payments covers *all* commercial transactions, not just those involving large-business customers and small-businesses suppliers. Consequently, small businesses can also be liable to pay interest to creditors if they fail to pay invoices within 60 days and large businesses can be liable for late payments to other large businesses.

Effectiveness of the EU mandate

In 2015, the EU evaluated the Late Payment Directive and concluded there was:

> *(…) little evidence that the Directive has had an impact on payment behaviour and late payment practice.* (European Commission, 2015, p. 8)

Subsequent EU studies in 2018 and 2022 further explored the Late Payment Directive and found that its effectiveness had remained low.

A survey of 2,677 businesses conducted as part of the EU's 2015 evaluation found that while awareness of rights under the Late Payment Directive was high (86 per cent of respondents), 60 per cent of respondents never exercised their rights to claim interest and/or compensation (European Commission, 2015, pp. 35-37). The likelihood of a business exercising its rights was strongly correlated with business size; regression analysis found that small and medium-sized businesses were about half as likely to claim interest and/or compensation as their large-business counterparts (European Commission, 2015, p. 38).

Survey respondents indicated the 2 main reasons for not exercising their rights were:

- To maintain good commercial relationships; and
- It is not cost-effective (European Commission, 2015, p. 38).

Businesses feared losing clients after requesting rightful contract terms, claiming interest on late payment or claiming compensation for recovery costs (European Commission, 2015, p. 38). In addition, stakeholders interviewed by the EU indicated the penalties were too limited and not proportional to the damages suffered due to late payment, especially given the risk of harming commercial relationships (European Commission, 2015, p. 58).

These findings were reinforced in the subsequent 2018 analysis of the Late Payment Directive. This analysis found that larger businesses were still using their market power to impose longer payment

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24 Available at: https://single-market-economy.ec.europa.eu/smes/sme-strategy/late-payment-directive_en.

25 No definition of "grossly unfair" is given, although the Late Payment Directive provides general considerations for making this determination. The EU is currently reviewing how the lack of clarity around what is considered grossly unfair could be addressed.

terms on smaller creditors using the exception to the maximum payment time (European Commission, 2018, p. 17). In addition, because the EU approach generally requires creditors to assert their rights, fear of damaging business relationships prevented consistent and effective enforcement (European Commission, 2018, p. 76).

In contrast, a 2021 EU survey of mostly micro-businesses (1 to 9 employees) and small businesses (10 to 49 employees) found that some small and medium enterprises (SMEs) were willing to act on payment delays. More than 40 per cent of the 715 respondents indicated that they had tried to resolve formally a dispute about delayed payment (European Commission, 2021). However, these findings do not necessarily reflect broad SME sentiment, with the EU noting that:

> *(…) the consultation was not expected to yield 'statistically significant' results, comparable with those of other surveys on payment behaviour conducted by various entities. (…) because of the voluntary nature of participation in the exercise, results cannot be regarded as 'representative', irrespective of the number of participants.* (European Commission, 2022, p. 61)

Some EU member states have also implemented stricter maximum payment times or more favourable provisions for creditors than the Late Payment Directive, such as compensation proportionate to the amount of the debt. The 2018 EU analysis showed no strong relationship between these stronger measures and improved payment performance. For example, in Spain and France – which both set maximum payment terms that cannot legally be exceeded – survey data showed that payment times were longer than the EU average (European Commission, 2018, p. 29). The 2018 EU analysis concluded:

> *(…) the effectiveness of these measures depends on the level of enforcement and other influencing factors, such as the national payment culture, the structure of the market and the persistence of imbalances of power.* (European Commission, 2018, p. 30)

Unintended consequences of the EU mandate

Although evidence is limited, the 2015 EU evaluation and subsequent analysis in 2018 of the Late Payment Directive point to an unintended consequence; namely fast payers slowing down payments to the mandated maximum payment time. In the 2015 evaluation, stakeholders in Finland and Slovenia – countries with historically good payment cultures – argued the Late Payment Directive had made longer payment times more culturally acceptable and may have given larger companies more leverage to demand longer payment periods (European Commission, 2015, p. 54). The 2018 EU analysis presented evidence from Sweden, where government tracking found that:

> *(…) average payment terms have increased in all sectors, circulating around the EU average.* (European Commission, 2018, p. 16)

Under review

The EU is currently revising the Late Payment Directive. Because it was in the process of revising the Directive, the EU was not available to meet with the review. However, it provided publicly available material to assist the review. The EU is expected to deliver its proposal for the revision of the Late Payment Directive later in 2023 (European Commission, 2023).

France

In addition to a creditor entitlement to claim interest as provided for in the EU's Late Payment Directive, France imposes a civil penalty for late payment of individual invoices under the Code de commerce (French Commercial Code).[26] The French Commercial Code sets a maximum payment time for all business-to-business transactions, regardless of size, of 60 days from the date of invoice or 45 days from the end of the month.[27] Businesses that breach the mandated maximum are liable for fines of up to €2 million – up from €375,000 in 2016 (European Commission, 2018, p. 147). The Directorate General for Competition, Consumer Affairs and Fraud Prevention is responsible for investigating non-compliance and imposing fines.

Effectiveness of the French mandate

The effectiveness of compliance and enforcement with the mandate appears to be limited. France has more than 4 million businesses (INSEE, 2022). In 2022, the Directorate General issued only 170 fines totalling almost €18 million (Rubypayeur, 2023). The Directorate General's compliance target is limited to 20 per cent of payment delays because of the sheer volume of business invoices (European Commission, 2018, p. 40). It focuses its compliance activity on larger businesses and industries with longer payment delays (for example, road transport) (European Commission, 2018, p. 40). This means that fines are not applied broadly across the economy, reducing the deterrent effect. The 2018 EU analysis warned:

> *(…) without enforcement of the legislation, sanctions alone will have a small impact on payment culture.* (European Commission, 2018, p. 81)

In a 2017 survey of French businesses, 68 per cent of respondents said the application and publication of civil penalties had no effect on their payment behaviour, although it is unclear whether this data is statistically significant (Teresa Monroe, 2017, p. 5). Conversely, according to the 2018 EU analysis of its Late Payment Directive, several French suppliers reported that businesses that incurred civil penalties for late payment subsequently improved their payment times performance (European Commission, 2018, p. 39).

It remains unclear whether the French model of mandating maximum payment times has been effective in improving payment times at a system-wide level. The absence of mandatory reporting on payment times makes it difficult to ascertain aggregate improvements in payment times in France.[28]

United Kingdom

Since 1998, a creditor entitlement to claim interest has operated in the UK under the Late Payment of Commercial Debts (Interest) Act 1998.[29] Aligned with the EU's Late Payment Directive, this Act sets a maximum payment time of 60 days for all business-to-businesses transactions, regardless of size, unless parties expressly agree otherwise. The Late Payment of Commercial Debts Act enshrines a right for suppliers to be automatically entitled to claim interest on late payments of at least 8 percentage points above the Bank of England's reference rate and compensation for recovery costs ranging from £40 to £100.

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26 Available at: https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000005634379/.

27 Shorter maximum payment times are in place for specified products, such as agricultural and food products.

28 In the absence of mandatory reporting, other sources are used in France to estimate payment times. For example, the Bank of France uses accounting databases, data from the National Institute of Statistics and Economic Studies and survey data from commercial providers to estimate business-to-business payment times across the economy. Each source has its own limitations, including absence of information on payment terms, time lags and representativeness of the sample size.

29 Available at: https://www.legislation.gov.uk/ukpga/1998/20/contents.

In addition, in 2017, the UK Government introduced mandatory reporting of payment times for large companies and limited liability partnerships.[30] The review has been advised that Australia's PTRS was loosely based on the UK scheme. The UK reporting scheme is not used to enforce the mandated maximum payment times set out in the Late Payment of Commercial Debts Act; rather, it is used to monitor compliance with the UK's voluntary code of practice – the Prompt Payment Code (UK Small Business Commissioner, 2022a) (see below and *Appendix C: Approaches in comparable international jurisdictions*).

Effectiveness of the UK mandate

In 2013, the UK Government consulted on how to improve payment practices beyond the creditor entitlement to claim interest. The public discussion paper cited the problem with the existing mandate:

> *(…) few companies utilise their rights, particularly against corporate late payers. Just 10% of businesses have considered using late payment legislation despite 22% of businesses having ended a business relationship with a customer because of continued late payment.* (UK Department for Business, Innovation and Skills, 2013, p. 10)

After considering stakeholder feedback, the UK Government noted that there was no strong stakeholder support for a government body to play a role in collecting penalties for late payments. It acknowledged stakeholder views about the challenge for such a body:

> *(…) a supplier's concern regarding impact on future relationships would still need to be overcome in order for any complaint to be made.* (UK Department for Business, Innovation and Skills, 2014, p. 18)

The infrequent use by creditors of the entitlement to interest for late payment was a recurring finding in subsequent investigations. The 2018 EU analysis cited interviews conducted with UK businesses in the food and beverage and utilities and transport industries, which suggested these businesses:

> *(…) never claim interest for late payment or compensation for recovery costs for fear of losing the client.* (European Commission, 2018, p. 54)

In 2018, only 11 per cent of business respondents to another UK Government consultation said they exercised their right to claim interest. Business representative groups noted their members:

> *(…) feared it would damage the relationship with their customers and result in lost business in the future.* (UK Department for Business, Energy and Industrial Strategy, 2019, p. 8)

A 2022 evaluation by the UK Government pointed again to the right for creditors to claim interest and compensation for late payments not being widely used:

> *Awareness and confidence in using this existing power needs to be increased and is where efforts should be targeted.* (UK Department for Business, Energy and Industrial Strategy, 2022a, p. 27)

This 2022 evaluation also considered that "absolute limits" – beyond which parties to a contract cannot agree a different payment term – might reduce long payment times in some circumstances, but a "one size fits all" approach would not account for industry variation, while a sector-specific

30 See the Reporting on Payment Practices and Performance Regulations 2017 (UK) and the Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017 (UK), available at: https://www.legislation.gov.uk/ukdsi/2017/9780111153598/contents and https://www.legislation.gov.uk/ukdsi/2017/9780111153604/contents.

approach would be complicated. This evaluation also expressed concern that under an “absolute limits” approach the UK Government:

> *(…) would be restricting businesses’ ability to negotiate business to business contracts, which carries a risk of a negative impact on the UK economy of making business more difficult to do.* (UK Department for Business, Energy and Industrial Strategy, 2022a, p. 27)

The evaluation did not recommend pursuing such a change (UK Department for Business, Energy and Industrial Strategy, 2022a, p. 31).

Under review

The UK is currently reviewing its payment practices, measures and progress in combatting late payment under its Payment and Cash Flow review, which is expected to be delivered later in 2023.

For more information on approaches in these international jurisdictions, see *Appendix C: Approaches in comparable international jurisdictions*.

Lessons for Australia from comparable international jurisdictions

In summary, international evidence suggests the 2 types of mandates applied in comparable jurisdictions – a creditor entitlement to claim interest and a civil penalty for late payment of individual invoices – are difficult to enforce consistently:

- A mandate that relies on businesses to claim interest and/or compensation for late payment is not effective since businesses, particularly small and medium-sized businesses, do not exercise their rights owing to fear of damaging business relationships; and
- A mandate that relies on a regulatory body to administer civil penalties for individual breaches is resource intensive and therefore cannot be enforced economy-wide, limiting its reach.

Further, evidence from these mandate models suggests they have had the unintended consequence of making fast payers slow down payments to match the mandated time.

Implementing a mandate in Australia: risks and unintended consequences

Disincentivising small-business procurement

The international jurisdictions examined by the review regulate business-to-business payment times, regardless of business size. In contrast, in Australia the regulatory architecture for payment times targets the power imbalance between large-business customers and small-business suppliers.

If this focus on small-business suppliers were maintained, mandating maximum payment times to Australian large businesses would introduce a risk that is not present in those international jurisdictions; namely the risk of disincentivising large businesses buying from small businesses.

A mandated maximum payment time for small-business invoices would increase the cost and complexity for large businesses of buying from small businesses. Large businesses would be wary of contingent liabilities from interest charges or fines for late payment to small businesses, which would not apply to contracts with larger businesses.

Many stakeholders cautioned that a mandate might result in large businesses deciding to stop doing business with small businesses. CA ANZ and CPA Australia warned:

> *Mandating a maximum payment time could also have the unintended consequence of discouraging large businesses buying from smaller Australian businesses, given that they can get more favourable payment terms from other businesses*. (CA ANZ & CPA Australia, 2023, p. 3)

Similarly, the BCA cautioned:

> *Regulation could deter larger business from trading with small businesses (…).* (BCA, 2023b, p. 13)

Woolworths Group suggested:

> *(…) it is worth carefully assessing whether mandated maximum payment requirements might inadvertently disadvantage smaller suppliers over larger suppliers in procurement processes (...).* (Woolworths Group, 2023, p. 4)

More generally, the NSW Small Business Commissioner noted:

> *Mandating new requirements could potentially lead to unintended consequences with larger businesses deciding to avoid purchasing from smaller businesses.* (NSW Small Business Commissioner, 2023, p. 1)

Any intervention that makes it relatively more complex, more onerous and more expensive to buy from small businesses will reduce their attractiveness to large-business customers. It would be a perverse outcome if payment times fell, but so did the number of large businesses buying from small businesses. Such an outcome would not be consistent with the review's philosophy that policy intervention should deliver a net benefit to small businesses.

The risk of disincentivising small-business procurement might be lower under a model that relied on a small-business supplier to pursue an entitlement to interest, since interest payable for breaches would usually be less than a civil penalty.[31] However, it is anticipated that, consistent with the international evidence, this type of mandate is unlikely to be widely enforced in Australia. As the NSW Small Business Commissioner noted:

> *Small businesses are less likely to speak up under a self-enforcing framework if they fear they will risk losing future work.* (NSW Small Business Commissioner, 2023, p. 1)

Fears held by small businesses of retribution from large-business customers is also discussed in *Chapter 2: How effective is the Act?*.

On this basis, the review considers any intervention that requires a small business to identify itself and challenge a powerful large-business customer is unlikely to be effective.

The simplest way to mitigate the risk of disincentivising small-business procurement would be to apply a mandated maximum payment time to *all* business-to-business transactions, consistent with international approaches. This would require businesses of all sizes to pay any suppliers by the mandated maximum time or face penalties for failing to do so.

31 The review is aware that the Netherlands sets a maximum payment term of 30 days for large businesses to pay small and medium businesses, with no exception. The review was unable to access sufficient information to assess the operation and effectiveness of this measure. As this type of mandate is a creditor entitlement to claim interest, the review anticipates it would be subject to low rates of small and medium businesses enforcing their rights, as experienced in other EU jurisdictions.

However, the review considers that broadening the scope to cover all business-to-business payment times is not an appropriate regulatory response in Australia, for 2 main reasons:

- First, government intervention in payment times policy is warranted because small businesses tend to lack market power to negotiate better payment terms and times with large businesses (see *Chapter 1: Overview*). It would be regulatory over-reach for government to dictate commercial terms between parties where this power imbalance does not exist. Similarly sized businesses can effectively negotiate contract terms and practices without government involvement through a taxpayer-funded scheme involving substantial compliance costs.
- Second, small businesses would be subject to the same maximum payment times and penalties as large businesses. This would generate a perverse outcome whereby small businesses were being penalised by a system that was conceived to help them improve their cashflow positions.

Incentivising the use of supply chain finance

Another risk of mandating payment times in Australia is large businesses increasing the use of supply chain finance to artificially meet a mandated payment time. Section 4 of the Rules defines a small-business supply chain finance arrangement as:

> *(…) an arrangement under which an entity undertakes or agrees to pay small business invoices, or arranges for a third party to pay small business invoices, earlier than the end of the relevant supply payment period in exchange for the small business supplier accepting discounts on the payments.*

Supply chain finance can take 2 main forms:

- ***Reverse factoring***, where a small-business supplier sells the invoice debt to a third party at a discount, which then claims the full amount of the debt from the large-business customer at the end of the original contract term; and
- ***Dynamic discounting***, where a large-business customer pays a small-business supplier earlier than the initial contract payment term in exchange for a discount on the price of goods and/or services purchased.

The review is concerned about instances where small businesses are coerced by large businesses into using supply chain finance (see *Chapter 6: Unfair contract terms* and *Chapter 7: Unfair trading practices*). This would likely become an even bigger problem under a mandated maximum payment time. In order to pay within the mandated payment time for goods or services rendered, a large business would be incentivised to pressure its small-business suppliers to accept payment via supply chain finance, thus avoiding an interest or civil penalty.

It would be a perverse outcome if small businesses were obliged to bear a cost in order to be paid within a mandated timeframe. To mitigate this, penalties would need to apply for inappropriate use of supply chain finance.

Disincentivising the adoption of eInvoicing

The terms of reference require the review to examine whether a maximum payment time of 5 days should apply to eInvoices. A five-day payment time would align with the Commonwealth's approach of paying its suppliers faster if they send an eInvoice rather than a PDF or paper-based invoice.

While a shorter mandated payment time for eInvoicing might encourage small-business suppliers to send eInvoices, it could have the perverse effect of slowing down the uptake of eInvoicing by large businesses – the very cohort the Government is encouraging to lead in this technology. Large businesses might choose to avoid becoming eInvoicing-enabled so as to bypass the requirement to pay small-business suppliers in a short mandated timeframe (see *Chapter 8: eInvoicing*).

Incentivising current fast payers to slow down

The number of days at which a mandate is set would be interpreted as an endorsement by government of what it considers a reasonable payment time. If the mandate were set too long, this could be interpreted as government condoning long payment times to small businesses.

Bolstering the international evidence that suggests a mandate could create a perverse incentive for current fast payers to slow down payments towards the mandated time, some stakeholders identified this risk in the Australian context too. Woolworths Group cautioned that a mandated maximum payment time might:

> *(…) in some cases, actually worsen outcomes for small suppliers if entities lengthen terms to match the mandated levels.* (Woolworths Group, 2023, p. 4)

ACCI commented:

> *A 30-day standard runs the risk of those companies that are already paying in less than 30 days falling back out to a 30-day time period.* (ACCI, 2023, p. 6)

The BCA noted:

> *This could lead to a compliance mindset where some businesses move to pay on the maximum permissible payment terms. For instance, some businesses paying on shorter terms today might extend their payment terms to a regulated maximum timeframe.* (BCA, 2023b, p. 13)

Implementing a mandate in Australia: complexities

Setting a single economy-wide mandated maximum payment time

The terms of reference require the review to consider whether 30 days, 20 days, 10 days or less would be an appropriate maximum payment time.

The review asked stakeholders what they considered a reasonable timeframe for small-business payments. Around one-third of submissions responded to this question. Responses ranged from 10 days to 30 days but not all submissions supported these timeframes being mandated.

Of those stakeholders that did not express a view on what they considered to be a reasonable payment time, several called for flexibility to meet different business needs.

Standard supplier payment terms and times can differ between industries. CA ANZ and CPA Australia noted in their joint submission:

> *(…) payment periods may be different for long-term project-based industries compared with industries focused on transactional trade*. (CA ANZ & CPA Australia, 2023, p. 3)

In the food and grocery industry, for example, standard supplier payment terms tend to align with the shelf life or sale period of goods; payment terms are shorter for perishable goods and longer for non-perishables. In comparison, in the construction industry, projects are often structured around progress payments upon the achievement of milestones. The review heard evidence that longer standard payment terms and times can reflect complex supply-chain relationships, low profit margins and delays in approval processes before payments are made. These delays can be due to liability periods for defects and certification of works by financial institutions and valuers before funds are released.

HIA further explained:

> *(…) in the residential building industry, there are often disputes over the quality of work and the liability to pay, delaying payment.* (HIA, 2023, p. 7)

Given these inherent industry differences, several stakeholders expressed concern about the feasibility and consequences of a single maximum payment time. Ai Group told the review:

> *Differences in the commercial structure of an industry necessitate differences in standard payment terms. In industries with greater project interdependencies – such as manufacturing, mining and construction – longer payment terms reflect the nested contractual relationships between participants in the supply chain. In more 'transactional' industries such as consumer services, invoice payment has fewer dependencies, and payment times are usually faster.* (Ai Group, 2023, p. 2)

KPMG noted:

> *In our experience, reasonable payment terms are dependent upon several factors including contract size, the presence of third-party contractors, whether the payment needs to go to third party sub-contractors and industries with long product lead times*. (KPMG, 2023, p. 9)

ACCI commented:

> *(…) a blanket mandated payment time would be difficult to implement due to the different structure of invoicing dependent on industry*. (ACCI, 2023, p. 6)

The BCA added:

> *There would also be considerable complexity in carving out instances where longer terms are mutually agreed (e.g. some retail goods) or complex/extended supply chains where the impact of delays can reverberate and payment times tend to be longer. These issues give rise to divergent payment terms and practices across industries, presenting challenges with a one-size-fits-all approach.* (BCA, 2023b, p. 13)

Related to this, the BCA's voluntary, industry-led code – the Australian Supplier Payment Code – sets a longer payment time if the payment is for construction work or related goods and services, to:

> *(…) recognise standard industry practice in the construction sector.* (BCA, 2021, p. 3)

The review concludes that a single, economy-wide mandate could fundamentally change the structure and viability of industries where the maximum payment time is not consistent with industry norms.

Setting multiple industry-level mandated maximum payment times

In view of the challenges of setting an economy-wide mandate and in accordance with the terms of reference, the review considered the viability of setting multiple industry-level mandates.

Given legitimate variations in standard payment time norms between industries, different mandates might need to be set with reference to an industry classification, such as the Australia and New Zealand Standard Industrial Classification (ANZSIC).

Existing industry-specific regulations increase the complexity of setting industry-level mandates. One example is state and territory laws on security of payments in the building and construction industry. Under these laws, head contractors are required to hold project funds in trust and pay progress payments where other parties make payment claims. The timeframe for head contractors to make progress payments differs among jurisdictions, subject to specified value thresholds and adjudication requirements (Murray, 2018, pp. 128-139).

In addition, there is limited data to inform where to set industry-level mandates. This is noted by the Law Society of NSW:

> *Sufficient relevant information should be collected on, and consideration given to, the characteristics of different sectors and sub-sectors of the economy before introducing rules to ensure that they are appropriate in a particular sector.* (Law Society of NSW, 2023, p. 2)

Industry-level mandated maximum payment times would also be extremely complex for small and large businesses to navigate and for the Regulator to enforce. CA ANZ and CPA Australia recognised these challenges:

> *We don't believe it is practical for the Regulator to decide what the maximum payment period is for every industry. To do so would add significant complexity to the scheme. It would also raise questions for reporting entities operating in multiple industries with different mandated payment terms.* (CA ANZ & CPA Australia, 2023, p. 3)

Additional complexity would arise depending on whether each industry-level mandate applied based on the classification of the large-business customer or of the small-business supplier.

To illustrate, if a mandate were based on the large business's classification, a small business might be paid at different times, depending on the industry of its large-business customer. For example, a large construction business would be required to pay its small-business suppliers in accordance with the construction maximum payment time, although its small-business suppliers might operate in the manufacturing or transport industries. This would not necessarily assist small businesses to manage their cashflow.

Conversely, if a mandate were based on the small business's industry classification, a large business would be required to determine for *each* small-business invoice the industry in which that supplier operated and pay them according to that industry's maximum payment time. This would increase the administrative burden on large businesses, particularly since not all businesses identify their small-business suppliers at the point of transaction.

In addition, enforcement would be complex. Enforcement that relied on the Regulator investigating individual small-business invoices for a breach would be impractical – a matter that is explored further below in the context of the Failsafe Mechanism. Alternatively, if a breach of the industry-level payment time were based on aggregate payment times (systemic non-compliance), reporting entities would need to report average or median payment times against each industry classification. If based on the ANZSIC division level, this would add 19 reporting fields to the PTRS register. This would run counter to the recommendation in *Chapter 3: Overhaul the Payment Times Reporting Scheme* to streamline the number of reporting fields to make the data more accessible and useful.

Failsafe Mechanism

The review examined another method of implementing a civil penalty in the Australian context – the Failsafe Mechanism. This approach to a mandate was proposed by the Labor Opposition during parliamentary consideration of the Payment Times Reporting Bill 2020 but was not adopted. The Failsafe Mechanism was intended to provide a future threat to large businesses of a mandate if they did not collectively improve their payment times to small-business suppliers.

How the Failsafe Mechanism was proposed to work

The draft amendment to the Payment Times Reporting Bill 2020 explained how the proposed Failsafe Mechanism would work.

Under the Failsafe Mechanism, reporting entities would be required to disclose to the Regulator their median payment times to small businesses.

After 6 reporting periods, the Regulator would assess the overall median payment time for all reporting entities collectively. If that overall median payment time (the median of the median) exceeded 30 days, the Failsafe Mechanism would be triggered.

Once the Failsafe Mechanism was triggered, the Regulator would then assess each reporting entity individually to determine whether its median payment time was more than 30 days. If so, the Regulator would then classify each of those reporting entities as a “recalcitrant reporting entity” (Farrell, 2020).

The draft amendment stated:

> *A recalcitrant reporting entity is required to pay all small business invoices within 30 days and is liable to a civil penalty if it fails to do so.* (Farrell, 2020)

Effectiveness of the proposed Failsafe Mechanism

Since median payment times are not currently collected under the PTRS, implementation of the Failsafe Mechanism would be contingent on the adoption of changes to reporting requirements recommended in *Chapter 3: Overhaul the Payment Times Reporting Scheme*.

The draft amendment did not specify who would be responsible for identifying whether a recalcitrant reporting entity is paying *all* small business invoices within 30 days. Responsibility for identifying breaches of the mandate could be given to the Regulator, the Small Business Ombudsman or small-business suppliers.

The draft amendment outlined a role for the Small Business Ombudsman to inform the Regulator of an alleged contravention of the Act. Breaches could be discovered if a small business raised with the Ombudsman the alleged failure of a recalcitrant reporting entity to pay an invoice within 30 days. The draft amendment required the Regulator to respond to the Small Business Ombudsman within 30 days, advising what, if any, action would be taken.

The review considers this approach to be overly complicated. In most cases it would be simpler to rely on the small business reporting directly to the Regulator an alleged contravention by a large business. However, as seen in comparable international jurisdictions, any approach that relies on a small business to raise an alleged breach of the mandated payment time is unlikely to be effective. The review considers a small business would likely still fear retribution from a large-business customer if it raised an alleged breach with the Small Business Ombudsman or the Regulator.

Even if an alleged breach could be raised anonymously by a small business, the review considers most small businesses would not use this complaints avenue. Similar to the EU experience, since they would not receive direct compensation from any penalty applied to the large business, it would be unlikely to be worth their time or effort to raise anonymously an alleged breach of the Failsafe Mechanism.

Alternatively, enforcement could rely on the Regulator investigating each individual small-business invoice of a recalcitrant entity to determine whether it was paid within 30 days. However, this task would be almost impossible to deliver owing to the potential number of recalcitrant reporting entities and invoices in scope.

Although the review cannot determine definitively how many reporting entities would be classified as recalcitrant under the Failsafe Mechanism, owing to an absence of PTRS data on median payment times, the review has made a rough estimate based on available data. In reporting cycle 4, more than 1,600 reporting entities paid more than 50 per cent of their small-business invoices (by number) after

30 days.[32] Even if only a fraction of these large businesses were declared recalcitrant reporting entities, the Regulator would need to examine *each* of their small-business invoices as part of its compliance activity. Estimates that around 1.2 billion invoices are exchanged each year in Australia, and that some companies have over 10 million SME invoices, highlight the sheer scale of this task (Deloitte, 2021, p. 1; BCA, 2023b, p. 13).

Effective and consistent enforcement of the mandated 30-day payment time would therefore not be possible, regardless of whether it relied on a small business or the Small Business Ombudsman to identify breaches or the Regulator to examine each invoice of a recalcitrant reporting entity.

Alternative design of the Failsafe Mechanism

The review considers that a potentially more workable variation of the Failsafe Mechanism would be to impose penalties for systemic late payment rather than for late payment of individual invoices. For example, once the Failsafe Mechanism was triggered, any reporting entity with an average or median payment time of more than 30 days, reported through the PTRS, would be liable for a civil penalty. This would remove the need for the complex enforcement arrangements discussed above.

There is no international evidence to draw on in assessing the likely effectiveness of this type of mandate. The review is not aware of a civil penalty for systemic non-compliance of payment times operating in any comparable international jurisdiction. While France applies civil penalties, it does not maintain a reporting scheme to identify the average or median payment times of businesses. Conversely, while the UK has a reporting scheme, it does not apply civil penalties.

While it might be easier to enforce, this variation of the Failsafe Mechanism would still be subject to the unintended consequences and design issues discussed above, in particular:

- Disincentivising large businesses from buying from small businesses;
- Incentivising the use of supply chain finance to artificially meet the maximum payment time;
- Introducing complexity and cashflow uncertainty for small businesses if multiple maximum payment times were implemented; and
- Fundamentally changing the structure and viability of industries if a single maximum payment time were implemented.

Overall assessment

Given the Australian focus on payment times to small-business suppliers only, mandating maximum payment times to Australian small businesses would create a major risk of disincentivising large businesses from procuring goods and services from small businesses. International evidence also suggests a mandate would create a substantial risk of current fast payers slowing down their payment times towards the mandated time or times.

There is no consensus on appropriate mandated payment times. A single mandated payment time would damage the viability of some industries, while multiple mandated payment times would be complex to implement for small and large businesses operating across multiple industries.

In addition, enforcement of the mandate would be impractical and ineffective where it relies on enforcement of individual breaches by a small business, the Regulator or the Small Business Ombudsman.

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32 Data provided by the Regulator for the review.

A mandate also risks incentivising supply chain finance and if a short mandated payment time were applied to eInvoices it could possibly further hinder the currently slow uptake of eInvoicing.

For these reasons, the review does not recommend mandating one or more maximum payment times for the payment of small business invoices by reporting entities.

Instead, to incentivise large businesses to pay small-business suppliers quickly and on time, and to provide consequences for long payment terms and late payment times, the review recommends improving data collection through the PTRS and publicising the worst and best payers (see *Chapter 3: Overhaul the Payment Times Reporting Scheme* and *Chapter 4: Publicise worst and best payers*).

Finding 16

None of the comparable international jurisdictions considered by the review has implemented a mandated maximum payment times model that has been enforced effectively. International evidence points to the unintended consequence of fast payers slowing down their payments towards the mandated time.

Mandating maximum payment times to Australian small businesses, including through the proposed Failsafe Mechanism, could be expected to suffer these same flaws. A mandate would disincentivise large businesses from procuring goods and services from small businesses and would damage the viability of industries that necessarily have longer payment times, doing more harm than good for small businesses.

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.

Alternative remedy: Code of conduct

Around one-quarter of submissions advocated either a new government-prescribed payment times code of conduct or for the Government to endorse an existing voluntary code. For example, the Small Business Ombudsman called on the Government to:

> *(…) in collaboration with relevant stakeholders, develop and implement a mandatory code of conduct (the code) similar to the Business Council of Australia's (BCA) voluntary Australian supplier payment code.* (Small Business Ombudsman, 2023a, p. 4)

A code of conduct aims to regulate market behaviour by establishing rules or standards, usually within a specific industry. Codes can be prescribed by law or led by industry. Under the *Competition and Consumer Act 2010*, the ACCC administers and enforces prescribed codes, which can be voluntary or mandatory. Mandatory codes apply automatically to all parties that meet the code's criteria, while voluntary codes apply only to those who sign up. Industry-led codes are a form of self-regulation. They are voluntary, apply only to signatories and are not enforceable under legislation.

A voluntary, industry-led payment practices code already operates in Australia. The Australian Supplier Payment Code was introduced by the BCA in 2017 (BCA, 2017). As at June 2023, there were 155 signatories to the code, including small, medium and large businesses (BCA, 2023a).

The BCA is to be commended for initiating a payment times code. This is a step in the right direction to drive down payment times. However, voluntary codes have limitations. The Western Australia Small Business Commissioner expressed scepticism about their benefits:

> *Voluntary codes of practice or schemes have proved largely ineffective. It generally costs money to pay early and places those that do at a significant competitive disadvantage, disincentivising big businesses to voluntarily join such codes. There is also little evidence that voluntary codes result in improved payment times because those voluntarily signing the code typically already have better payment practices in place.* (Western Australia Small Business Commissioner, 2023, p. 2)

The review agrees with this assessment. In view of the low uptake of the Australian Supplier Payment Code (155 signatories out of 2.6 million businesses in Australia including around 10,000 PTRS reporting entities), the review considers a payment times code of conduct would need to be mandatory.

The ACCC provides guidance for developing effective industry-led codes of conduct. To be effective, these codes should have:

- A clear purpose;
- Clear consequences for non-compliance; and
- Measurable outcomes that are monitored (ACCC, 2011, pp. 6-13).

The review considers these guidelines would equally apply to developing an effective mandatory code of conduct. This means, to be effective, a mandatory code would need to establish clear and measurable payment times outcomes and enforceable penalties for breaches. This is effectively a mandate, which carries the design complexities and risk of perverse outcomes described earlier in this chapter. For this reason, the review does not recommend the development of a mandatory payment times code of conduct.

Chapter 6: Unfair contract terms

This chapter explores how existing unfair contract terms provisions might help protect small businesses from unfair payment-related terms. It considers the opportunity presented by recent reforms to unfair contract terms in the Australian Consumer Law, the types of terms that might be considered unfair and the potential to expand regulatory guidance to provide greater certainty to small and large businesses.

Description

The Australian Consumer Law (ACL) (Schedule 2 of the *Competition and Consumer Act 2010*) includes provisions designed to protect small businesses from unfair terms in standard-form contracts for goods, services and land.

A standard-form contract is prepared by one party to a contract with the other party having little or no opportunity to negotiate terms. The contract is also used repeatedly with the same or similar terms.

To be unfair a term must:

- Cause a significant imbalance in the parties' rights and obligations under the contract;
- Not be reasonably necessary to protect the legitimate interests of the party that would benefit from the term; and
- Cause detriment (financial or otherwise) to a party if it were to be applied or relied upon (section 24).

The ACL does not expressly prohibit particular contract terms but provides examples of terms that might be unfair. It includes terms that allow one party but not the other to avoid or limit its responsibilities under the contract, that penalise only one party for breaking or ending the contract and that allow only one party to end or change the terms of a contract (section 25).

Unfair contract terms under the ACL are co-regulated by the ACCC and state and territory consumer protection agencies.

On 10 November 2023, enhanced protections for small businesses from unfair contract terms will commence. Currently, if a term is found to be unfair, it will be automatically voided, but there are no other consequences. The reforms introduce civil penalties for using or relying on a standard-form contract that contains unfair terms. Protections will be extended to more small businesses because these reforms:

- Expand the small-business eligibility threshold from less than 20 employees to less than 100 employees and introduce an annual turnover threshold of less than $10 million as an alternative way of determining eligibility; and
- Remove the contract value threshold of $300,000 – or $1 million if the contract runs for more than 12 months – which means a small business contract will be covered regardless of its value.[33]

33 See *Treasury Laws Amendment (More Competition, Better Prices) Act 2022*.

Objective

- Protect small businesses from unfair contract terms relating to payments of invoices by large businesses.

Evaluation

Problem to be addressed

Standard-form contracts are commonly used since they reduce the costs associated with negotiated contracts. Large businesses tend to offer these contracts to small businesses on a take-it-or-leave-it basis. Small businesses often lack the resources and bargaining power to review and genuinely negotiate terms. Contract terms can advantage the large business over the small business and push contract risks onto the small business – the party least able to manage those risks.

These challenges were acknowledged in several submissions. The NSW Small Business Commissioner noted:

> *(…) many small businesses believe they are at a disadvantage when dealing with larger businesses who may design contracts biased to their own interests or otherwise be unresponsive to requests for payment. Small businesses perceive they are unable to negotiate payment times as larger businesses either provide a standard contract or there is otherwise an expectation that terms are accepted without amendment.* (NSW Small Business Commissioner, 2023, p. 2)

NFIA advised:

> *This imbalance of bargaining power within the BCI [building and construction industry] has had a devastating impact on the most vulnerable parties. Contract terms containing unfair risk allocation between principal contractors and subcontractors has undoubtedly contributed to the high levels of insolvency within the Australian BCI. Payment terms and conditions are one area in which a principal contractor can hold a significant degree of control and pressure over the subcontractor.* (NFIA, 2023, p. 4)

Finding 17

Small businesses often lack the resources and bargaining power to review and genuinely negotiate terms in standard-form contracts.

Links between small-business payment terms and unfair contract terms

Long payment terms disproportionately affect small businesses. While only a court or tribunal can ultimately decide that a term is unfair, the review considers there are examples of small-business payment terms that could amount to unfair contract terms.

The review considers a long payment term could be deemed an unfair contract term, particularly where a large business is permitted unilaterally to extend the payment term under the contract.

The review also considers a contract that imposes a requirement for a small business to sign up to supply chain finance could be an example of an unfair contract term, especially when coupled with long payment terms (see *Chapter 5: Mandate maximum payment times to small businesses*).

The data from the PTRS register for reporting cycle 4 show that less than 3 per cent of reporting entities used supply chain finance to pay their small-business suppliers.[34] However, it is unclear to how many small-business suppliers this applies.

The review agrees with the finding of the *Supply Chain Finance Review*, by former Small Business Ombudsman Kate Carnell, that:

> *Supply chain financing products, where used appropriately to offer faster payments than 30 days, can be a good option for small businesses wishing to speed up their cash conversion cycle. It is important, however, that these products are offered as a true choice, and always in addition to appropriate payment times (…).* (Small Business Ombudsman, 2020, p. 3)

Supply chain finance allows small-business suppliers to access working capital without the time and cost of applying for finance. However, the review considers that supply chain finance should not be used to offset extended payment terms. The Western Australia Small Business Commissioner noted that a large business:

> *(…) can often use its significant purchasing power to pressure smaller suppliers to discount their prices in return for "prompt" payment using supply chain finance or reverse factoring.* (Western Australia Small Business Commissioner, 2023, p. 2)

A further unfair contract term could arise from the mandatory use of supplier portals which charge usage fees or carry onerous administrative requirements for small businesses. As Xero noted:

> *Suppliers are often required to log into clients' systems to upload invoices with specific information in a specific format. These systems allow big businesses to demand supporting information with the impost being entirely the responsibility of the supplier. If the small business supplier does not follow the big business accounts payable process, the big business may delay payment.* (Xero, 2023, p. 5)

Introducing specific prohibited contract terms

The Regulation Impact Statement for Decision prepared by the Treasury in the context of implementing the recent changes to unfair contract terms law considered the likely impact of including a list of prohibited terms in the law. It concluded this approach would:

- Incentivise gaming through the use of terms with the same effect but different wording to the law;
- Not allow flexibility for a term to be considered in context, such as where a seemingly unfair term is counter-balanced in a particular contract by an additional term; and
- Be impracticable in identifying and updating a comprehensive list (2020b, p. 45).

The review expects these unintended consequences would apply equally if specific prohibitions on payment-related contract terms were introduced. Expanding regulatory guidance might therefore be a better approach to highlight how unfair contract terms could apply to payment-related contract terms.

34 Data provided by the Regulator for the review.

Expanding regulatory guidance to payment-related terms

Unfair contract terms provisions are broad in scope and allow small businesses to pursue court action to challenge terms in standard-form contracts that they believe are unfair. However, regulatory guidance does not explicitly identify predatory payment-related terms as examples of unfair contract terms.

The review considers there is an opportunity to include examples of payment-related terms that might be considered unfair to one party in updated regulatory guidance, prior to the reforms to unfair contract terms coming into effect in November 2023. This would assist small businesses to understand their rights and whether to enforce them, and help large businesses understand their obligations under the law.

Expanded regulatory guidance could include an example of a business-to-business contract which allowed one party to extend its payment term at any time. It might also include an example of a term which forced or coerced one party to use supply chain finance to mitigate unfairly long payment terms or use a supplier portal which imposes additional costs on the supplier.

The review acknowledges that only a minority of small businesses are likely to take legal action against large businesses for using unfair contract terms, owing to the costs, capacity and reputational risks to a small business (see *Chapter 5: Mandate maximum payment times to small businesses*). However, the deterrent effect that would be achieved by the threat of significant penalties for unfair contract terms should help reduce the prevalence of particularly egregious payment-related terms relied upon by large businesses and, in doing so, benefit other small businesses.

Implementation considerations

Statutory review of changes to unfair contract terms provisions

The legislation supporting the reforms to unfair contract terms requires a review of the reforms 2 years after their commencement. If unfair payment-related terms are included in regulatory guidance, the statutory review provides an opportunity to assess the effectiveness of the reforms in reducing the prevalence of these types of terms in standard-form contracts.

Recommendation 10: Support small businesses to recognise and act against unfair payment-related contract terms

10.1 Introduce examples of unfair terms relating to payment of small-business suppliers into updated regulatory guidance on unfair contract terms.

Chapter 7: Unfair trading practices

This chapter explores how potential reforms to the regulation of unfair trading practices might help protect small businesses from unfair practices relating to the payment of invoices by large businesses. It considers the limitations of existing legal protections, the types of practices that might be considered to be unfair and how systemic issues relating to unfair practices might be raised with the ACCC.

Description

Unfair trading practices, otherwise known as unfair business or commercial practices, relate to business conduct that can harm small businesses or consumers.

The ACL includes 2 types of provisions to regulate business-to-business and business-to-consumer conduct:

- ***Standards-based protections***, which apply principles to standards of business conduct across circumstances and industries; for example, prohibiting misleading, deceptive or unconscionable conduct or unfair contract terms.
- ***Specific protections***, which set clear prohibitions on identified business conduct; for example, bans on false or misleading representations about goods, services and specified business activities or on harassment and coercion.

Unfair trading practices are not expressly prohibited under the ACL.

Unfair trading practices are prohibited in other international jurisdictions, but the focus tends to be on business-to-consumer conduct. However, some jurisdictions such as the US and, to a limited extent, the EU, include business-to-business transactions in the regulation of unfair trading practices.[35]

In September 2022, Commonwealth, State and Territory Consumer Affairs Ministers agreed that the Commonwealth would lead an assessment and public consultation on proposed reforms to address unfair trading practices. The review understands public consultation will commence later in 2023.

Objective

- Protect small businesses from unfair trading practices relating to payments of invoices by large businesses.

35 For example, see the United States Federal Trade Commission Act, available at: https://www.ftc.gov/legal-library/browse/statutes/federal-trade-commission-act and the EU Directive 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0633.

Evaluation

Problem to be addressed

While in the law there are specific protections for small businesses from unfair terms in standard-form contracts, these protections do not extend to broader business-to-business conduct (see *Chapter 6: Unfair contract terms*). For example, the law does not cover unfair business conduct that occurs when entering into a contract or during the contractual period.

Unfair conduct by large businesses relating to the payment of their small-business suppliers could result in financial and non-financial costs to small businesses. This can affect their viability. The ACCC and other commentators have raised concerns that the existing legislative provisions might not be sufficiently broad to protect small businesses and consumers from current and emerging unfair trading practices (ACCC, 2019). For example, outcomes of court action have demonstrated that the threshold to meet unconscionable conduct is high, even when the conduct is considered unfair.[36]

Small businesses have few avenues for recourse. The Small Business Ombudsman and state Small Business Commissioners can assist small businesses with dispute resolution or facilitate access to such services. However, unlike the court system, dispute resolution processes require both parties to participate voluntarily, which might not occur.

The review considers that the ACL should better protect small-business suppliers from unfair payment-related practices that deny small businesses effective choice and cause them harm.

Link between payments to small-business suppliers and unfair trading practices

Some stakeholders raised examples of unfair trading practices relating to small-business payments. For example, NFIA noted:

> *(…) principal contractors may attempt to use held funds as leverage or to coerce the subcontractor into accepting payment of a smaller fee, within a shorter timeframe. The imbalance of power between contracting and subcontracting parties largely facilitates these behaviours.* (NFIA, 2023, p. 7)

Xero explained:

> *Through XPAC [Xero Partner Advisory Council], we learn of increasing obligations and controls big businesses apply to small suppliers. Some examples of obligations and controls include a requirement to upload invoices to a specific portal (possibly in a specified font and colour), outsourcing data entry workload to suppliers by requiring granular information on invoices and withholding payments to suppliers until the client pays the big business, or paying at a discount within 30 days. These activities are egregious and unfair, and don't guarantee payment within invoice terms. It is critical more is done to address this problem which can mean the difference between small businesses staying in business or becoming insolvent.* (Xero, 2023, p. 3)

36 For example, see *Australian Competition and Consumer Commission v Medibank Private Limited* [2017] FCA 1006.

Consult Australia explained:

> *How withholding payment is used to pressure business to accept new contract terms. (…)*
>
> *Consult Australia members have cited instances where government clients have withheld payment of fees until the small business has signed a new contract – even though the work has been completed and a contract was signed at the start of the work.* (Consult Australia, 2023, pp. 1-2)

The Small Business Ombudsman recommended:

> *The government should empower the ACCC to: (…) Investigate (or consider via referral) serial or recurrent late payments under an 'unfair business practice' regime that would take account of any legitimate business justification for the conduct.* (Small Business Ombudsman, 2023a, p. 5)

The review considers practices relating to payments to small-business suppliers that might be deemed unfair could include, but not be limited to:

- Coercing suppliers to opt out of the SBI Tool (*see Chapter 2: How effective is the Act?*);
- Systemic late payments (that is, payments that exceed contractually agreed payment terms);
- Deliberate withholding of payments (for example, until the head contractor has been paid by its client);
- Predatory use of supply chain finance; and
- Mandatory use of supplier portals that charge usage fees or carry onerous administrative requirements.

Finding 18

Gaps in the Australian Consumer Law result in small businesses not clearly being protected from unfair payment-related practices.

Introducing stronger protections against unfair payment-related trading practices

These payment-related unfair trading practices should be prohibited as part of proposed reforms to the ACL.

If the law on unfair trading practices were strengthened in relation to payment practices, this could empower small businesses to pursue legal action against large businesses that behave unfairly and provide a stronger and clearer legal framework for the responsible regulator to investigate and sanction unfair payment practices.

Strengthening the law on unfair trading practices would also send a strong deterrent message to large businesses that they must comply with their obligations to act fairly in relation to payment practices towards their small-business suppliers.

A prohibition on unfair trading practices would, subject to its design, address the types of behaviour that some stakeholders have urged be included in a code of conduct for the payment of small-business suppliers.

Implementation considerations

The review encourages consideration of a sizeable civil penalty for large businesses found to be using unfair trading practices relating to payments of invoices, in order to act as an effective deterrent against unfair business practices.

The review also considers there is an opportunity to include payment practices to small-business suppliers in any regulatory guidance that might accompany future legislation to prohibit unfair trading practices (as recommended in *Chapter 6: Unfair contract terms*).

Recommendation 11: Prohibit unfair payment practices

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.

Complementary remedy: Designated Complaints function

The Government has announced it will establish a Designated Complaints function within the ACCC. At present, there is no formal mechanism by which the ACCC is obliged to respond to complaints lodged by small business and consumer advocacy groups.

Under this function, designated advocacy bodies would be able to present to the ACCC strong evidence-based claims of systemic market issues relating to the ACL. The ACCC would then be compelled to consider the claims and evidence and respond publicly, within a set timeframe, indicating what enforcement action, if any, it will take.

Pending final policy design, the Government should consider how the Designated Complaints function could provide an avenue for an advocacy body to escalate widespread payment-related complaints by small businesses to the ACCC. This should include issues associated with the payment of small-business suppliers under the expanded unfair contract terms and proposed unfair trading practices provisions (see *Chapter 6: Unfair contract terms*).

Recommendation 12: Facilitate inclusion of a small-business voice in the proposed Designated Complaints function of the Australian Competition and Consumer Commission

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.

Chapter 8: eInvoicing

This chapter explores the potential for eInvoicing to improve payment outcomes for small businesses. It considers the benefits of eInvoicing, barriers to adoption and opportunities to encourage greater uptake by all businesses and governments.

Description

eInvoicing is the digital exchange of invoices directly between the software of a supplier and a business customer, using standardised information.

eInvoicing is not the same as sending and receiving paper, email or PDF invoices. With eInvoicing, suppliers do not need to create, print and post a paper invoice or email a PDF invoice. Similarly, business customers do not need to scan and manually enter invoices into their software. Businesses can connect once to the eInvoicing network and immediately transact with everyone in the network, regardless of the eInvoicing-enabled software they use.

Some businesses use the term 'eInvoicing' to refer generally to digital invoicing systems or online supplier portals. When this review uses the term 'eInvoicing' it is referring to the international framework – Peppol. Australia adopted Peppol in 2019 and the ATO is Australia's Peppol Authority. Its role is to ensure the eInvoicing standard is implemented consistently by all digital service providers in the eInvoicing network and to educate, promote and support adoption of these standards by businesses and government entities across Australia.

Objective

- Improve the accuracy and efficiency of invoicing processes to speed up payment times to small businesses.

Evaluation

Problem to be addressed

It is estimated that Australian businesses exchange more than 1.2 billion invoices each year and 89 per cent of small and medium-sized businesses still use paper-based or PDF invoices (Deloitte, 2021, p. 1).

Inefficiencies in invoicing processes, including human error, can slow down payment times to small-business suppliers. Xero suggested:

> *(…) the predominant reason for late payments is complicated internal processes.* (Xero, 2023, p. 10)

HIA pointed out:

> *Payment times can also be influenced by a range of factors, such as administration errors, which often make up a significant proportion of late payments.* (HIA, 2023, p. 7)

Benefits of eInvoicing

eInvoicing can help businesses of all sizes get paid faster. It standardises information and removes the need for manual data entry for receivers and the need for senders to produce email invoices. This reduces processing time. It also reduces payment delays caused by invoice errors or lost or misplaced invoices, which often require exchanges back and forth between the supplier and business customer to resolve. Deloitte estimated that business customers using eInvoicing are paying on average up to 7 days faster compared with those using PDF or paper-based invoice processing (Deloitte, 2021, p. 5).

Around half the submissions to this review considered the use of eInvoicing would result in faster payment times to varying degrees. The NSW Small Business Commissioner noted:

> *Technology such as e-invoicing has the potential to facilitate faster payments and may in the future support more ambitious targets.* (NSW Small Business Commissioner, 2023, p. 3)

Australian Payments Plus (AP+) explained:

> *The implementation of the e-invoice and PEPPOL framework is intended to introduce efficiencies in the processing of invoices and as a result improve payment timeframes.* (AP+, 2023, p. 1)

Ai Group noted:

> *E-invoicing not only makes payment times faster, it also offers improved business administration practices in the form of reduced transaction costs and better cashflow management.* (Ai Group, 2023, p. 3)

The Queensland Small Business Commissioner suggested that eInvoicing:

> *(…) will not only reduce the risk of incorrectly rendered invoices from the small business, but can speed up payment times from the reporting entity and reduce the regulatory burden on the reporting entity by reducing the administration.* (Queensland Small Business Commissioner, 2023, p. 4)

eInvoicing does not remove the need for business customers to undertake their own internal checks and approvals for payments; businesses still have full control over when they choose to pay an invoice. The use of eInvoicing therefore does not guarantee faster payment times and does not prevent business customers from intentionally delaying payments to small-business suppliers. As CA ANZ and CPA Australia jointly cautioned:

> *eInvoicing may improve payment times, however, it is difficult to see it having a material impact across the board. Businesses will continue to pay invoices based on their current payment policies (…) These are unlikely to change for eInvoicing.* (CA ANZ & CPA Australia, 2023, pp. 3-4)

However, Xero suggested it would nevertheless provide substantial benefit:

> *Driving adoption of eInvoicing to Government and big business will remove all excuses for late payments to small business suppliers. (…) Increased eInvoicing adoption will also shine a light on the truly unscrupulous big businesses.* (Xero, 2023, p. 3)

Other benefits of eInvoicing are that it provides greater protection against fraud and scams (as invoices are sent via a secure network), improves data quality and record keeping and reduces overall administration costs for businesses. It is estimated that a paper or PDF invoice generally costs a business between $27 and $30 to process, whereas an eInvoice costs less than $10 to process (ATO, 2022a). Deloitte Access Economics estimated that eInvoicing could deliver benefits of up to $28 billion to GDP over 10 years if it were widely adopted by businesses in Australia (Deloitte Access Economics, 2016, p. 45).

Finding 19

Greater uptake of eInvoicing by all businesses and government agencies would facilitate small businesses getting paid faster and deliver economy-wide productivity benefits, but would not address wilful late payment of invoices.

eInvoicing adoption rates

The number of businesses using eInvoicing and opting into the Peppol network will determine whether the full benefits, including improved payment times, can be realised. This is called the 'network effect', where the increased use of eInvoicing increases the benefits for all who use it.

In Australia, adoption of eInvoicing is low. This is to be expected given the early stage of rollout of eInvoicing technology. Latest available data indicate that around 30,000 of Australia's 2.6 million businesses, of all sizes, are registered for Peppol eInvoicing.[37]

As the Peppol Authority, the ATO has led promotional activities to raise awareness and encourage the adoption of eInvoicing by businesses. This includes an 'eInvoicing Week' held in August 2022. This resulted in only a modest increase in eInvoicing adoption with 3,848 Peppol registrations that month – up from an average of 1,300 registrations per month for the preceding 3 months. This rate of uptake has not been maintained. New Peppol registrations have averaged less than 900 per month in subsequent months.[38]

The challenge of accelerating the adoption of eInvoicing is not specific to small or large businesses, as Rest explained:

> *(…) experience tells us that regardless of business size, implementing new processes or systems is often challenging.* (Rest, 2023, p. 3)

The ATO told the review that in Australia there are more than 2 million users of small-business accounting software packages such as Xero and MYOB. Most of the major small-business accounting software providers have built-in eInvoicing functionality which is usually offered as a standard package inclusion. As a result, the ATO estimated that 1.5 million small businesses now have access to eInvoicing functionality.[39] Software providers told the review that registering for eInvoicing is simple and could be done in less than one minute. Small businesses that have the software, but are not eInvoicing-enabled, simply have not activated the eInvoicing capability.

Full eInvoicing functionality in these software products is relatively new. The adoption of eInvoicing is likely to increase over time as more small businesses become aware of the functionality. However, the

37 Data provided by the ATO for the review. All data from the ATO are as at 24 May 2023 unless otherwise specified.
38 Data provided by the ATO for the review.
39 Data provided by the ATO for the review, as at 31 May 2023.

review is not convinced that time alone will address the root cause of low rates of adoption of eInvoicing by small businesses.

Barriers to the adoption of eInvoicing

Barriers to the adoption of eInvoicing are different between small businesses and large businesses. For small businesses, the main barriers are digital capability, including knowing what eInvoicing is and capacity to adopt a new business process (Xero, 2022b).

A number of stakeholders cited these obstacles. For example, Woolworths Group suggested:

> *(…) there are challenges with the mass adoption of eInvoicing among small suppliers, who are often very busy running their businesses and are apprehensive about the risk of disruption in changing systems.* (Woolworths Group, 2023, p. 4)

ABA commented:

> *We observe that small business take-up remains very low, and this could be a result of a lack of time and a lack of awareness.* (ABA, 2023, p. 2)

Many small businesses use electronic methods to send invoices and might believe they are already using eInvoicing. In a 2021 survey conducted by Lonergan Research on behalf of Xero, almost half the respondents incorrectly defined eInvoicing as sending a PDF of the invoice or sending a link to the invoice via email (Xero, 2021, p. 2). This highlights the need for greater awareness-raising on what is eInvoicing.

Research by YouGov in 2021, commissioned by software provider SAP, also explored the impediments to small-business eInvoicing adoption. The survey found that major challenges are knowing what technology to use, integrating it into existing processes and the perceived effort of transition (SAP, 2021).

These points were affirmed by a 2022 survey, undertaken by Pureprofile on behalf of Xero. It found the main barriers to small-business eInvoicing uptake are:

- Not knowing enough about it (41 per cent);
- Feeling as though their existing processes are fine (28 per cent); and
- Not enough of their suppliers are using it (27 per cent) (Xero, 2022b).

Encouragingly, it was also found that these barriers can be overcome. The 2021 YouGov research showed that 88 per cent of small businesses surveyed that had already enabled eInvoicing found the switch to eInvoicing easy. Most eInvoicing-enabled businesses surveyed (75 per cent) were also more likely to digitise their business processes further (SAP, 2021). This has flow-on benefits for economic productivity.

Similarly, of the 2022 Xero and Pureprofile small-business survey respondents, almost half indicated they would take up eInvoicing if they began to receive eInvoices from telecommunications companies, office suppliers and government bodies (Xero, 2022b). The review considers this strengthens the case for large businesses to lead on the adoption of eInvoicing.

The review recognises that many large businesses have invested in bespoke systems to manage accounts payable processes. Adopting eInvoicing functionality will likely be more complex and expensive for these entities than for small businesses. Low rates of adoption of eInvoicing by large businesses also result in these entities not being proactive in onboarding their small-business suppliers.

Woodside Energy told the review:

> *Given many operators already have online systems in place to manage payments, the cost of moving platform and re-enrolling all our suppliers would be substantial.* (Woodside Energy, 2023, p. 1)

Despite this, the review agrees with the ATO that onboarding suppliers is essential for businesses to achieve a more rapid return on their eInvoicing investment (ATO, 2022b).

Another barrier to the uptake of eInvoicing by all businesses is perceptions of the reach of the Peppol Authority. Several stakeholders expressed some discomfort with the Peppol Authority being located within the ATO. They raised concerns about the potential (mis)use of eInvoicing transaction information for tax compliance purposes. In particular, ACCI noted:

> *At this stage businesses are, however, somewhat reluctant to adopt e-invoicing as they are concerned this is another avenue for the ATO to collect their data.* (ACCI, 2023, p. 6)

These are misconceptions. The ATO has no legislative power to use eInvoicing for any compliance activity. Although it administers the Peppol network, the ATO cannot view the contents of any eInvoices transmitted across the network (ATO, 2022c). This separation of function is fundamental to preserving Australia's high rate of voluntary tax compliance.

Even so, the Government should consider how best to address these stakeholder misconceptions. This might include further outreach with industry to allay their concerns, exploring how to make the Peppol Authority's identity distinct from the ATO, or examining whether there are alternative locations for the Peppol Authority.

Encouraging the adoption of eInvoicing

At the state and territory government level, most entities are in the planning and implementation phase of eInvoicing and are yet to become fully enabled or active users. Of 671 state and territory government entities tracked by the ATO, only 201 are registered for Peppol. The adoption rate is even lower at the local government level, with only 11 entities registered out of 537 tracked by the ATO.[40]

At the Commonwealth level, the ATO is responsible for eInvoicing promotional activities, including videos and webinars. In the 2021-22 Budget, the ATO received $15.3 million over 3 years to promote and accelerate the adoption of eInvoicing (Department of the Treasury, 2021a, p. 75).

The ATO is also engaging with businesses on eInvoicing through the Champions Adoption Network Communication Community. They have jointly produced a fact sheet to assist businesses to onboard their clients and trading partners to the Peppol network (ATO, 2022d).

Challenges with the uptake of eInvoicing in Australia will continue without concerted action from governments to help create a network effect. Attempts by the ATO to drive widespread adoption of eInvoicing have not yet made significant headway. Around half the submissions to this review argued that governments need to do more to encourage eInvoicing uptake in the wider market.

Ai Group noted:

> *Governmental support for the adoption of e-invoicing could be accelerated by state and local governments adopting similar practices to the Commonwealth. While many state governments have begun developing e-invoicing practices, accelerating these efforts through collaboration with the Commonwealth will aid improvements in payment times.* (Ai Group, 2023, p. 3)

40 Data provided by the ATO for the review.

The Queensland Small Business Commissioner suggested a range of initiatives:

> *(…) grants / tax incentives to help offset the cost of implementation; awareness campaigns on what eInvoicing is, and the benefits of implementing including reduction in administration and errors and accelerating payment; and education programs to support small businesses (and their accountants and bookkeepers) to transition their systems to eInvoicing and address any cyber security concerns.* (Queensland Small Business Commissioner, 2023, pp. 4-5)

The Government is incentivising small-business digitisation by implementing 2 related measures for businesses with aggregated annual turnover of less than $50 million:

- The *Technology Investment Boost* allows businesses to claim an additional 20 per cent tax deduction for eligible expenditure of up to $100,000 per annum to support digital operations from 29 March 2022 until 30 June 2023; and
- The *Skills and Training Boost* allows businesses to claim an additional 20 per cent tax deduction for the cost of eligible external training delivered to their employees by providers registered in Australia – including digital training to learn new business technologies – from 29 March 2022 until 30 June 2024.

In addition, the Australian and New Zealand Governments work together through the Australia and New Zealand Electronic Invoicing Board to maintain a common approach to eInvoicing. This aims to improve productivity and reduce Trans-Tasman business costs.

The previous government consulted on policy options to increase the adoption of eInvoicing. This included consultation in 2020 on options for an eInvoicing mandate and in 2022 on a Business eInvoicing Right model that would provide a right for some businesses to receive eInvoices from other businesses with whom they trade. Stakeholder feedback was mixed, with many stakeholders not supporting either of these options. Stakeholders wanted freedom to decide how and when they adopt eInvoicing (Department of the Treasury, 2022a).

Increasing the uptake of eInvoicing by all businesses will take considerable time. In March 2023, the ATO engaged Deloitte to undertake a market review of strategies that could increase the adoption of eInvoicing, which is due to report by 30 June 2023. Subject to the findings of the market review, the Government should continue its educational and promotional/outreach efforts over a sustained period to help overcome the barriers to the uptake of eInvoicing. The Government should consider a communications campaign to:

- Make businesses aware of the benefits of eInvoicing;
- Leverage trusted small-business advisers such as accountants and bookkeepers;
- Combat fears around technology adoption and integration; and
- Motivate large businesses to become eInvoicing-enabled and onboard their small-business suppliers.

The review agrees with stakeholders that suggested the PTRS register should be expanded to identify reporting entities that are Peppol-enabled. This could help shine a spotlight on eInvoicing and encourage greater uptake of eInvoicing (see *Chapter 3: Overhaul the Payment Times Reporting Scheme*).

Commonwealth adoption of eInvoicing

The Commonwealth is supporting increased eInvoicing adoption through its own procurement practices.

The Supplier Pay On-Time or Pay Interest Policy requires all Commonwealth agencies to pay eInvoices within 5 days or pay interest on any late payments. In the 2021-22 financial year, the Australian Government paid 67.7 per cent of eInvoices within 5 days; up from 62 per cent in the previous financial year (Department of the Treasury, 2023, p. 7).

In the 2021-22 financial year, 71 Commonwealth agencies were eInvoicing-enabled compared with 29 in the 2020-21 financial year (Department of the Treasury, 2023, p. 3). Since 1 July 2022, all Commonwealth agencies are required to be eInvoicing-enabled (Department of the Treasury, 2023, p. 3).

Many stakeholders expressed support for the Government leading by example in both eInvoicing uptake and paying eInvoices within 5 days. Given that the eInvoicing mandate on Commonwealth agencies is relatively new, its effect is yet to be seen. But it is likely to improve the network effect of eInvoicing uptake and reduce government payment times more broadly. The review understands that, to date, Commonwealth agencies have largely focused their efforts on being able to receive eInvoices. The Government should continue to be an exemplar by now ensuring it is both sending and receiving eInvoices and paying these on time in accordance with its own policies (see *Chapter 9: Government procurement policies*).

Recommendation 13: Increase the uptake of eInvoicing in Australia

13.1 Promote the adoption of eInvoicing by all businesses, including by continuing outreach efforts and considering a communications campaign.

13.2 Adopt the full functionality of eInvoicing across Commonwealth agencies.

Chapter 9: Government procurement policies

This chapter explores the role of government procurement policies in improving payment outcomes for small businesses. It considers existing policies at the federal, state and territory levels, Commonwealth performance on payment times and opportunities to elevate the importance of prompt payment in the Commonwealth supply chain.

Description

The Commonwealth is among the largest buyers of goods and services in Australia. Data from AusTender (the Government's procurement information system) show in the 2021-22 financial year 92,303 contracts were recorded with a combined value of more than $80 billion (Department of Finance, 2022b).

The Australian Government has 2 procurement policies to facilitate timely payment to its suppliers (large and small businesses):

- The Supplier Pay On-Time or Pay Interest Policy; and
- The Payment Times Procurement Connected Policy (PT PCP).

Most state and territory governments have their own supplier-payment policies. These policies are broadly consistent; all set a mandated maximum payment time and the majority allow or require the payment of interest on late invoices.

Supplier Pay On-Time or Pay Interest Policy

For more than 2 decades, the Commonwealth has had policies that require it to pay small-business suppliers on time. The current policy came into effect on 1 January 2020 and was updated on 1 July 2022 to remove the contract value threshold. Prior to this, the policy applied only to contracts of up to $1 million, as a proxy for small-business procurement. The policy requires non-corporate Commonwealth entities to make all payments to suppliers within the maximum payment terms – 5 calendar days for eInvoicing and 20 calendar days for all other invoices, regardless of value.[41]

The maximum payment terms apply from the start of the calendar day following acknowledgement by the Commonwealth agency of the satisfactory delivery of the goods or services and the receipt of a correctly rendered invoice.[42] If payment is not made in full within the maximum payment term, the Commonwealth agency must calculate and automatically pay interest to the supplier on the outstanding amount where the interest accrued is more than $100 (GST inclusive) (Department of Finance, 2022c).[43]

41 The exception is where shorter payment terms have been agreed between the Commonwealth agency and a supplier.
42 If the maximum payment terms fall on a non-business day, payment is due the following business day.
43 Interest is payable at the general interest charge rate.

Payment Times Procurement Connected Policy

The PT PCP has applied since 1 October 2021. It requires PTRS reporting entities that are awarded Commonwealth contracts of more than $4 million (GST inclusive) to match the Commonwealth's payment times by:

- Paying their direct supplier contracts (of up to $1 million, GST inclusive) within 20 calendar days or paying interest if payment is made late; and
- Using "reasonable endeavours" to reflect these requirements in sub-contracts, so that reporting entity sub-contractors through the supply chain adhere to these payment terms (Department of the Treasury, 2021b, p. 4).

Objective

- Improve payment times to small businesses through the supply chain of Commonwealth procurement.

Evaluation

Problem to be addressed

Several stakeholders contended that governments – state, territory and the Commonwealth – should be doing more to improve payment times to small businesses. ACCI commented:

> *(…) all federal and state agencies should implement minimum standards to pay invoices to small business as soon as possible.* (ACCI, 2023, p. 3)

The BCA noted:

> *Governments are among the largest procuring entities in Australia and the original payer for many supply chains. There is merit in requiring governments to file the same payment times reports as large businesses under the PTRS.* (BCA, 2023b, p. 13)

Consult Australia added:

> *The Federal government needs to lead and encourage all government clients to buy-in to the scheme and pay suppliers on time (…).* (Consult Australia, 2023, p. 2)

Payment times performance of the Commonwealth

Supplier Pay On-Time or Pay Interest Policy

The Supplier Pay On-Time or Pay Interest Policy aims to facilitate timely payment to suppliers, assist with their cashflow and reduce the costs of supplying to the Commonwealth. Performance of Commonwealth agencies against the Supplier Pay On-Time or Pay Interest Policy is assessed each financial year through the Pay On-Time Survey (Department of the Treasury, 2023). The public reporting of the Government's performance in respect of payment times has been undertaken since 2002, which is much longer than the PTRS has existed.

Since the payment terms of 5 calendar days for eInvoicing and 20 calendar days for all other invoices were introduced on 1 January 2020, Commonwealth agencies have demonstrated continued improvement in the timeliness of their payments to suppliers, but eInvoicing payment times are lagging (see *Table 5*).

Table 5: Eligible Commonwealth invoices paid on time, by number and percentage of total

	FY2019-20[44]		FY2020-21		FY2021-22	
	Number	Per cent	Number	Per cent	Number	Per cent
Invoices paid within 20 days	934,982	90.6	869,774	93.2	1,420,408	96.4
eInvoices paid within 5 days	N/A	N/A	57	62.0	1,195	67.7

Source: (Department of the Treasury, 2020a; 2021c; 2023)

Table 5 covers only contracts valued up to $1 million, since the data that were collected pre-date the removal of the contract value threshold on 1 July 2022. Data are not yet available to determine the effect of removing this threshold on the timeliness of payments.

In line with the Government's commitment to adopt eInvoicing, the number of eInvoicing-enabled agencies more than doubled between 2020-21 and 2021-22, from 29 to 71. This is reflected in the sizeable increase in the number of eInvoices paid within 5 days (see *Chapter 8: eInvoicing*).

The Government should continue to maintain a high standard of timely payments now that all supplier invoices are in scope and to report on its payment times performance through the Pay On-Time Survey.

Finding 20

In the 2021-22 financial year, Commonwealth agencies paid 96.4 per cent of eligible invoices within 20 days and 67.7 per cent of eligible eInvoices within 5 days.

Payment Times Procurement Connected Policy

The PT PCP aims for the Commonwealth's standard for prompt payment of suppliers to flow through the supply chain to support timely payment to small businesses (Department of Finance, 2022c). Limited data are available to assess the effectiveness of this policy. Anecdotal evidence provided to the review is that the majority of 'tier-one' contracts between the principal contractor and its direct sub-contractor comply with the PT PCP maximum payment times but the degree of pass-through further down the supply chain is unknown. The review has reservations about the efficacy of the pass-through obligation since the Commonwealth has no real control or visibility of commercial contracts beyond the principal-contractor level. The Government will evaluate the PT PCP later in 2023.

State and territory government procurement policies on payment times

Table 6 sets out the current procurement laws and policies of state and territory governments that stipulate payment times.

44 The 20 calendar day payment term was introduced mid-way through the 2019-20 financial year. Previously, the payment term was 30 calendar days.

Table 6: State and territory government procurement laws and policies on payment times

Jurisdiction	Law/Policy	Scope	Payment term	Consequence of late payment
New South Wales	Faster Payment Terms Policy	In-scope agencies, registered small businesses, invoices up to $1 million	5 business days	Agencies can pay interest, if included in supplier payment policy
Victoria	Fair Payments Policy	Government agencies, invoices up to $3 million	10 business days	Businesses can submit claims for penalty interest on late payments
Queensland	On-time Payment Policy	Government agencies (unless exempt), registered small businesses	20 calendar days	Small businesses can submit claims for penalty interest on late payments
Western Australia	Treasurer's Instruction 323 Timely Payment of Accounts	Government agencies, invoices up to $1 million	20 calendar days	Adherence to the policy auditable and published by the Office of the Auditor General
South Australia	*Late Payment of Government Debts (Interest) Act 2013*	Government agencies, invoices up to $1 million	30 calendar days (unless contract specifies otherwise)	Automatic payment of interest for undisputed invoices
Tasmania	Treasurer's Instruction – Financial Control 7 – Managing Receipts, Payments and Bank Accounts	Government agencies, invoices up to $50,000	14 days (unless a shorter term is agreed)	Automatic payment of interest of $50 or the amount calculated on a set daily rate, whichever is greater
Northern Territory	Treasurer's Directions Cash Management – Transaction Management Section C3.2: Payments	Government agencies	20 days (invoices under $1 million) 30 days (invoices over $1 million)	Businesses can submit claims for penalty interest on late payments

Source: Analysis of policy details published online on state and territory government websites, as at 13 June 2023.

Note: The Australian Capital Territory does not have a procurement policy or law relating to payment times.

These policies, and the Commonwealth's Pay On-Time or Pay Interest Policy, effectively mandate maximum payment times from governments to businesses. Governments are driven by different imperatives than businesses and therefore the review's recommendation against a mandated maximum payment time is not relevant to government agencies. The unintended consequences of mandating, including disincentivising small-business procurement, do not apply in the same way (see *Chapter 5: Mandate maximum payment times to small businesses*).

The review received evidence from several stakeholders that the procurement policies of many state and territory governments have been successful in reducing payment times from government agencies to small businesses. But some stakeholders also noted that government policies that shift the onus onto a small business to identify a breach of the payment terms – such as by requiring a small business to initiate interest claims for late payment – could be less effective than policies that automatically pay interest on late payment.

The review has heard that small businesses are often reluctant to assert their rights out of fear of damaging business relationships and losing future work, even with government clients (see *Chapter 5: Mandate maximum payment times to small businesses*).

There is merit in state and territory governments assessing the effectiveness of their procurement policies to ensure small businesses are paid promptly.[45]

Independent review of Commonwealth procurement rules

The review heard from some stakeholders that government procurement processes can be burdensome for small businesses. The Queensland Small Business Commissioner noted:

> *Supplying to government represents a substantial market opportunity for many small businesses. However, as with supplying to large business, there can be impediments to procuring with government – including the complexity of procurement systems and processes, and payment terms and practices.* (Queensland Small Business Commissioner, 2023, p. 4)

At the Commonwealth level, these issues are being dealt with by a separate review of the impact on small businesses of reforms to Commonwealth Procurement Rules. This review is being led by the Small Business Ombudsman who will provide a report to the Minister for Finance by 15 December 2023 (Small Business Ombudsman, 2023b).

Supplier Code of Conduct for Commonwealth procurement

The Department of Finance is developing a Supplier Code of Conduct to outline the behavioural standards expected of suppliers to the Commonwealth and their sub-contractors (Department of Finance, 2023b). This Code presents an opportunity to elevate the importance of prompt payment through the supply chain of Commonwealth procurement. Prompt payment to suppliers is an ESG consideration and this framing should extend to principal and sub-contractors in Commonwealth contracts (see *Chapter 4: Publicise worst and best payers*).

45 The NSW Government is reviewing its Faster Payment Terms Policy to assess whether it remains effective.

In developing the Supplier Code of Conduct, the Government should explore the interaction with the payment times standard set by its own Pay On-Time or Pay Interest Policy. While the PT PCP aims to promote the payment times standard through supply chains, responsibility for ensuring this standard is met is placed on PTRS reporting entities only. The Supplier Code of Conduct should explore how best to incorporate the intent of the PT PCP and extend its coverage to all businesses engaged under Commonwealth contracts. The review considers that all businesses that directly benefit from the Government's commitment to pay suppliers on time should, in turn, be obligated to pay their own suppliers promptly.

Recommendation 14: Elevate the importance of prompt payment in the Commonwealth procurement supply chain

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.

Appendix A: Background of the Payment Times Reporting Scheme

Statutory framework

The Payment Times Reporting Scheme (the PTRS) commenced on 1 January 2021. It is enabled by the *Payment Times Reporting Act 2020* (the Act), which received Royal Assent on 14 October 2020. The operation of the Act is supported by the following subordinate legislation:

- Payment Times Reporting Rules 2020 (the Rules);
- Payment Times Reporting (Form and Manner for Giving Reporting) Instrument 2021;
- Payment Times Reporting (Treasury) Delegation 2021; and
- Payment Times Reporting (Regulator) Designation (No. 2) 2021.

The *Payment Times Reporting (Consequential Amendments) Act 2020* amended the *Taxation Administration Act 1953* to enable the Commissioner of Taxation to disclose certain tax information to the Regulator for the purposes of administering the Act.

On 10 February 2022, technical amendments to the Act were passed by the Parliament through the *Corporate Collective Investment Vehicle Framework and Other Measures Act 2022*. These amendments addressed operational issues such as the Regulator's power to delegate.

Which entities must report?

The Act requires large businesses that meet standard criteria to report to the Payment Times Reporting Regulator (the Regulator) on their small-business payment terms, times and practices.

Eligible large businesses are generally constitutionally-covered entities that carry on an enterprise in Australia and, in their most recent income year:

- Had a total income of more than $100 million; or
- Are a controlling corporation and the combined total income of the members of the controlling corporation's group was more than $100 million; or
- Are a member entity whose controlling corporation's group had a combined total income of more than $100 million and the total income for the member entity was at least $10 million.

The PTRS also requires reporting by corporate Commonwealth entities or Commonwealth companies which carry on an enterprise in Australia and meet the relevant income threshold.

Collectively, these large businesses and government enterprises are known as 'reporting entities'.

Businesses that are constitutionally-covered entities but do not meet other requirements, as well as charities and not-for-profit entities that are exempt from reporting requirements regardless of income, can volunteer to become reporting entities.

What must be reported?

The Act provides that all reporting entities must submit a payment times report every 6 months of each income year. Payment times reports must be submitted no later than 3 months after the end of the reporting period. Even if a reporting entity does not transact with small-business suppliers, it must submit a report and include nil values where applicable.

A reporting entity must report on an invoice payment where:

- The invoice relates to the supply of a good or service from a small-business supplier;
- The entity procured the good or service from the small-business supplier under a trade credit arrangement; and
- The reporting entity is contractually obliged to pay the invoice.

Section 14 of the Act and section 9 of the Rules set out the information that must be reported (see *Chapter 2: How effective is the Act?*). Reporting entities must also submit a responsible member declaration approving the report and confirming the date that the report will be provided to the reporting entity's principal governing body.

Small Business Identification Tool

The Small Business Identification Tool (SBI Tool) is accessible to reporting entities and was specifically developed for the PTRS. Reporting entities must use the SBI Tool to determine which of their suppliers meet the PTRS's small-business reporting criteria.

The SBI Tool searches a database of Australian Business Numbers (ABNs) for businesses with turnover above $10 million in the most recent income year. Through exclusion from this database, the SBI Tool identifies a business as small if it carries on an enterprise in Australia, has an ABN and its annual turnover was less than $10 million in the most recent income year.

The data for the SBI Tool are sourced commercially from illion Australia Pty Ltd and supplemented with publicly available ATO corporate tax transparency data. The data in the SBI Tool are updated every 6 months.

The SBI Tool can be used by reporting entities only for reporting purposes. The Regulator provides guidance for 2 methods for using the SBI Tool. Reporting entities can use the SBI Tool after the end of a reporting period or at regular intervals to classify small-business payments closer to the time of a transaction. Reporting entities cannot modify or override their results to classify suppliers differently or exclude these suppliers from reporting. If a reporting entity believes the SBI Tool incorrectly identifies a supplier as a small business, it can:

- Request the supplier to contact the Regulator to have its classification updated in the SBI Tool; or
- Provide evidence or a statutory declaration to the Regulator that shows the entity paid more than $10 million to the supplier in a single income year.

If the SBI Tool cannot be updated or updated in time to prepare a payment times report, the reporting entity must report on the suppliers that are identified by the SBI Tool as small businesses. The reporting entity can note the discrepancy in its payment times report comments.

The portal

Reporting entities must use the Payment Times Reports Portal (the portal) to submit payment times reports to the Regulator. To access the portal, users log in using a myGovID account and request authorisation to act on behalf of the reporting entity.

Reporting entities must create a profile in the portal. During the profile creation process, the portal asks questions to determine the reporting status of the entity.

- If the business is identified as a reporting entity, a user may submit payment times reports to the Regulator and access the SBI Tool.
- If the business is not identified as a reporting entity, a user can submit a notice to volunteer to report, or request not to be identified as a small business by the SBI Tool.

To submit a report, the user must upload an Excel spreadsheet with its payment times information for the relevant reporting period and a responsible member declaration by an individual within the entity authorised to approve the report.

The register and dashboard

The Payment Times Reports Register (the register) is intended to provide greater transparency in respect of payment performance of large businesses in relation to their small-business suppliers by making that information publicly available.

The latest available data reveal 35,190 reports have been published on the register.[46] These reports represent 10,081 reporting entities, of which 7,126 reported as part of a group and 2,955 reported individually.[47]

The register has a downloadable Excel file and an interactive dashboard to search and view payment times information. Since its launch in November 2021, the register has been updated in December 2021, April 2022, July 2022, November 2022, January 2023, February 2023, March 2023, May 2023 and June 2023.

The Regulator analyses the register biannually for insights and trends. These insights and trends are published in the Regulator's updates, the first of which was published in July 2022 and the most recent in January 2023.

The dashboard is an interactive version of the register which uses Microsoft Power BI. It was launched in December 2021 and is managed by the Regulator. The dashboard provides a summary of the payment performance of reporting entities in a more user-friendly display and has 2 pages:

- The home page allows users to search for the payment times reports of a particular reporting entity and to view average payment terms of all reports; and
- The payment times reports page shows users the information in a report and enables comparisons between reports from different reporting entities.

46 Data provided by the Regulator for the review.
47 Data provided by the Regulator for the review.

Role of the Regulator

The Regulator is a statutory appointment. Under the Act, the head of the department that is responsible for administering the Act (currently, the Treasury) must designate a Senior Executive Service (SES) employee as the Regulator.

The role of the Regulator is to provide a reliable and transparent source of information about the payment performance of large businesses and government enterprises that is readily accessible to small-business suppliers and to the public.

The Regulator's core functions are to review payment times reports received from reporting entities every 6 months and to publish those reports on the public register. The Regulator must consider whether publishing the information disclosed in payment times reports is contrary to the public interest. If a payment times report includes personal information, commercial-in-confidence information or information that is not in the public interest to publish, this may be redacted.

The Regulator is also required to assess reporting entity applications, including:

- To submit revised reports;
- For extensions of time to provide a report; and
- For certain reporting entities to cease reporting for the purposes of the Act.

In addition, the Regulator must assist reporting entities to identify relevant small businesses and publish an annual report on the operation of the Act. The Regulator assists reporting entities in determining which of their suppliers are small businesses through the SBI Tool.

Compliance and enforcement

The Act provides powers to the Regulator to gather information from reporting entities. It also provides the Regulator enforcement powers where reporting entities do not submit payment times reports or they provide false or misleading information. These powers are:

- Appointing authorised officers and infringement officers;
- Undertaking monitoring activities under the *Regulatory Powers (Standard Provisions) Act 2014;*
- Undertaking investigation activities under the *Regulatory Powers (Standard Provisions) Act 2014;*
- Requiring a reporting entity to undergo a compliance audit;
- Publishing information regarding non-compliance on the register and in any other way the Regulator considers appropriate;
- Issuing infringement notices; and
- Pursuing civil penalties.

The ability of the Regulator to use most of its enforcement powers commenced 12 months after the commencement of the Act on 1 January 2021.[48] Prior to the commencement of enforcement powers, the Regulator relied on reporting entities voluntarily complying with their obligations and the Regulator's approach to non-compliance was focused on education and assistance.

48 Excluding powers to appoint authorised officers and infringement officers.

The Regulator also provides principles-based guidance material to assist reporting entities to comply with their obligations and understand the expectations of the Regulator when administering the Act. These are guidance notes and information sheets.

Information sheet 1: Our approach to regulation, published by the Regulator on 21 January 2022 and updated on 15 June 2022, noted that the Regulator takes an escalating approach to compliance and enforcement that is risk based and data driven. The Regulator will facilitate compliance and remediation for reporting entities that act in good faith and demonstrate a willingness to comply. The Regulator may use compliance and enforcement powers where non-compliance is repeated, is not remediated in a timely manner, is the result of indifference or carelessness or is intentional (Payment Times Reporting Regulator, 2022c).

Stakeholder engagement

The Regulator engages with stakeholders through a variety of channels to raise the profile of the PTRS. The Regulator provides stakeholder updates and notification of key events through news articles on its website and direct emails to registered reporting entities. Interested parties can access information and assistance through a dedicated enquiries mailbox, an online contact form and a call centre that operates from 8 am to 8 pm, Monday to Friday.

The January 2023 *Regulator's update* noted that the Regulator responded to 1,827 enquiries between 1 July and 31 December 2022 (Payment Times Reporting Regulator, 2023a, p. 7). Every 6 months, the Regulator holds a Regulator's Liaison Forum. This forum provides stakeholders the opportunity to interact with the Regulator and leadership team as they outline the latest payment times data and compliance activities.

Regulator performance measures and reporting

The Commonwealth's Resource Management Guide on Regulator Performance (RMG 128) provides guidance on performing regulatory functions. The principles for regulator best practice are:

- Continuous improvement and building trust;
- Risk based and data driven; and
- Collaboration and engagement (Department of Finance, 2023a).

In accordance with these principles, performance measures for the Regulator are incorporated in the Treasury Corporate Plan.

Performance outcomes are informed by a stakeholder survey and published in the Treasury Annual Report. In the 2021-22 Annual Report, 71 per cent of key stakeholders had a high level of satisfaction with the Regulator's services, engagement and consultation. However, only 25 per cent agreed or strongly agreed that the Regulator's activities are risk based and data driven, and 42 per cent agreed that the Regulator's activities are responsive to the environment and build trust (Department of the Treasury, 2022b, pp. 49-57).[49]

49 A total of 9 stakeholders of the PTRS were asked to participate in the survey. The survey received a response rate of 56 per cent and an effectiveness result of 25 per cent.

Appendix B: Consultation process

Approach to the review

A consultation paper was released on 3 February 2023, inviting public submissions. The review received 27 submissions (including 3 confidential submissions) in response to the consultation paper.

In addition to submissions, the Independent Reviewer held bilateral meetings and engaged in roundtable discussions over the course of the review. In total, the review met with more than 100 organisations.

Consultation

Stakeholder meetings

Roundtable events

The Independent Reviewer invited 4 industry bodies to facilitate roundtables with their stakeholders or members, held in February 2023. The Australian Small Business and Family Enterprise Ombudsman (the Small Business Ombudsman) also invited the Independent Reviewer to attend a roundtable with state Small Business Commissioners in June 2023 (see *Table 7*).

More than 86 organisations attended these roundtable events. This included representatives of small and large businesses, reporting entities, industry associations, business services organisations and Commonwealth agencies.

Table 7: Roundtable events

Host	Date	Location
COSBOA	10 February 2023	Virtual
Small Business Ombudsman	14 February 2023	Virtual and Small Business Ombudsman's office
ACCI	15 February 2023	Virtual
BCA	16 February 2023	Virtual
Small Business Ombudsman	7 June 2023	Virtual and Small Business Ombudsman's office

Bilateral meetings

More than 40 bilateral meetings were conducted over the course of the review. These meetings were held with representatives of small and large businesses, reporting entities, industry associations, business services organisations and Australian and international government agencies.

Submissions

Submissions to the public consultation paper are available on the statutory review website (https://treasury.gov.au/review/statutory-review-payment-times-reporting-act-2020), except where authors requested confidentiality. Table 8 lists the organisations that made non-confidential submissions.

Table 8: Non-confidential submissions

Submitters	
ABA	Law Society of NSW
ACCI	MUFG Bank
Ai Group	NFIA
AICM	NSW Small Business Commissioner
AP+	Queensland Small Business Commissioner
BCA	Rest
BHP	SA Power Networks
CA ANZ and CPA Australia (joint submission)	Small Business Ombudsman
Consult Australia	Western Australia Small Business Commissioner
FBAA	Woodside Energy
HIA	Woolworths Group
KPMG	Xero

Appendix C: Approaches in comparable international jurisdictions

Governments in several international jurisdictions have implemented, or are in the process of introducing, policy responses to address long payment terms and late payment times. This appendix reports on 4 jurisdictions that are broadly comparable to Australia: the European Union (EU), the United Kingdom (UK), the United States (US) and New Zealand (see *Table 9*). Policy responses adopted in these jurisdictions relate to:

- Mandatory reporting of payment terms and practices (reporting scheme);
- Legislated maximum payment times with an automatic right for creditors to claim interest and compensation for late payments;
- Legislated maximum payment times with civil penalties for late payments;
- A government-endorsed voluntary code; and
- Government procurement policy or legislation.

Table 9: Payment times policy responses by international jurisdiction

	Reporting scheme	Right to claim interest for late payments	Civil penalties for late payments	Voluntary code	Government procurement policy or legislation
Australia	✓				✓
EU		✓	✓ (Some member states)		✓
UK	✓	✓		✓	✓
US					✓
New Zealand	… (Not yet commenced)				✓

Source: Analysis of policy details published online on international authorities' websites, as at 23 May 2023.

European Union

Late Payment Directive

In 2011, the EU issued Directive 2011/7/EU on combating late payment in commercial transactions (the Late Payment Directive)[50] which is a model of a mandated payment time that allows creditors to claim interest on late payments in commercial transactions. The Late Payment Directive requires member countries of the EU to implement domestic laws which, at a minimum, prescribe that:

- Public authorities pay for goods and services within 30 days (or in very exceptional circumstances, within 60 days) (Article 4);[51]
- All businesses pay their invoices within 60 days, unless longer terms are expressly agreed with the supplier and the terms are not "grossly unfair" (Article 3); and
- Creditors are automatically entitled to claim interest of at least 8 percentage points above the European Central Bank's reference rate and a fee for compensation for recovery costs (Article 6).

The EU encourages its member states to implement policies that are stricter than the minimum requirements of the Late Payment Directive (Article 12). Examples of stricter policies are:

- A maximum payment time that cannot be exceeded in negotiations (for example, 60 days in Belgium, Spain and France);
- A default payment term of 30 days where no other term is specified in the contract (for example, in Belgium and the Netherlands);
- A shorter mandated maximum payment term for particular industries (for example, in Ireland, Latvia and Czechia);
- A shorter mandated maximum payment term for large businesses to small and medium businesses (for example, in the Netherlands); and
- Fines for paying late (for example, in Croatia and France).

More information on the Late Payment Directive can be found in *Chapter 5: Mandate maximum payment times to small businesses*.

United Kingdom

Late Payment of Commercial Debts (Interest) Act

The Late Payment of Commercial Debts (Interest) Act 1998 (UK)[52] enshrines a mandated maximum payment time that allows creditors to claim interest on late payments in commercial transactions. The UK has aligned its conditions with the EU's Late Payment Directive, by requiring:

- Public authorities to pay for goods and services within 30 days, or in very exceptional circumstances within 60 days (section 4(2D));

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50 Available at: https://single-market-economy.ec.europa.eu/smes/sme-strategy/late-payment-directive_en.

51 The Late Payment Directive does not prescribe specific circumstances to justify payment after 30 days but provides they might be appropriate if objectively justified based on the nature or features of the contract, including particular consideration for public authorities that operate in an industrial or commercial way.

52 Available at: https://www.legislation.gov.uk/ukpga/1998/20/contents.

- All businesses to pay invoices within 60 days, unless parties expressly agree otherwise (section 4(2E)); and
- Suppliers to be automatically entitled to claim interest on late payments of at least 8 percentage points above the Bank of England's reference rate (section 6) and a fee for compensation for recovery costs (section 5(5A)).

More information on the Late Payment of Commercial Debts (Interest) Act can be found in *Chapter 5: Mandate maximum payment times to small businesses.*

Reporting on payment practices and performance

In addition to a mandated maximum payment time, the UK introduced mandatory reporting of payment times for large companies and limited liability partnerships in 2017 under the Reporting on Payment Practices and Performance Regulations 2017 (UK)[53] and the Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017 (UK).[54] The reporting scheme is administered by the UK Department for Business and Trade. While the reporting scheme is not used to enforce the mandated maximum payment time, it is used to monitor compliance with the UK's voluntary code of practice – the Prompt Payment Code (see below) (UK Small Business Commissioner, 2022a).

Companies and limited liability partnerships must report if they exceed 2 of the following criteria in section 465 of the Companies Act 2006 (UK):

- £36 million in turnover; and/or
- £18 million on its balance sheet; and/or
- 250 employees.[55]

Qualifying companies and limited liability partnerships are required to report twice yearly on payment metrics. Information is published online and is accessible on the UK Government's Payment Practices Reporting Portal. More than 70,000 reports are available from almost 9,000 large businesses. The average time to pay invoices has gradually declined from more than 39 days at the start of the scheme in 2017 to less than 36 days in 2022.[56]

Data from the reporting scheme has been used by third parties, such as Good Business Pays and Build UK, to promote payment times amongst industry by way of leader boards, worst and best payers lists and awards for fast payment times (see *Chapter 4: Publicise worst and best payers*).

A 2022 statutory review of the UK's business payment practices and performance reporting regulations found that more could be done to increase public awareness of the reporting obligation on large businesses and to improve the accessibility of reported information for small businesses (UK Department for Business, Energy and Industrial Strategy, 2022a, p. 28).

Prompt Payment Code

The UK's Prompt Payment Code is a government-endorsed, voluntary code of practice that was established in 2008. It sets the standard for payment practices between businesses of all sizes and their suppliers. Generally, it requires businesses to pay 95 per cent of invoices within 60 days. As at

53 Available at: https://www.legislation.gov.uk/ukdsi/2017/9780111153598/contents.
54 Available at: https://www.legislation.gov.uk/ukdsi/2017/9780111153604/contents.
55 Available at: https://www.legislation.gov.uk/ukpga/2006/46/section/465.
56 Analysis of UK payment practices reports undertaken by the review. Data as at 19 June 2023.

13 June 2023, there were more than 4,300 signatories to the Prompt Payment Code (UK Small Business Commissioner, 2022b).

In 2021, the UK Government added a condition to the Prompt Payment Code that 95 per cent of invoices from small businesses (with less than 50 employees) must be paid within 30 days (UK Small Business Commissioner, 2022a). For large businesses, compliance with the Prompt Payment Code is monitored through the data submitted via the Payment Practices Reporting Portal. This new condition aligns with the UK Government's procurement standard expected of its suppliers, discussed below.

Since 2020, the UK Small Business Commissioner has administered the Prompt Payment Code (Tolhurst, 2019). Although the Prompt Payment Code is voluntary, the Commissioner can suspend or permanently remove signatories for failure to improve performance (UK Small Business Commissioner, 2022a). Membership suspensions and removals are published on the Commissioner's website (UK Small Business Commissioner, 2022c).

Government procurement

Since 2019, the UK Government has required any business that bids for a central government contract valued at more than £5 million per annum to demonstrate it has effective payment systems in place (UK Government, 2018). In effect, the UK Government expects that a government supplier complies with the Prompt Payment Code, regardless of whether it is a signatory.

As the Prompt Payment Code has become stricter over time, so has the Government's expectations of its suppliers. Since 2021, the expectation is that government suppliers should be paying 95 per cent of their supplier invoices within 60 days (UK Cabinet Office, 2021, p. 2). If a business does not comply with this standard, it can be prevented from being awarded future government contracts (UK Cabinet Office, 2021, p. 1). The UK Government has not assessed the effectiveness of this policy.

The Public Procurement Review Service is a government body that accepts anonymous complaints about government procurement practices, with a specific focus on late payments. In 2021-22, the Public Procurement Review Service facilitated the release of £1.1 million in overdue payments owed to suppliers to government (UK Government, 2022, p. 2).

The UK Government also commits to paying 90 per cent of undisputed and valid invoices from small- and medium-business suppliers in 5 days and 100 per cent of all undisputed and valid invoices within 30 days. UK Government departments must publish their payment times statistics quarterly against these targets, although reports are not consolidated in a single location (UK Government, 2018).

Review underway of payment policies

The UK Government is undertaking its Payment and Cash Flow review, announced in December 2022, to draw conclusions on:

- Transparency and advocacy: including the role of the Small Business Commissioner, the Small Business Minister and UK Department for Business and Trade in holding businesses to account for payment practice and how to make better use of the data to improve transparency and payment performance;
- Progress on payment times across sectors: including identifying sectors with poorer payment cultures, identifying reasons and exploring barriers to and solutions behind the different performance of different sectors;
- The culture and impact of late payments: including examining business behaviours and how to increase awareness of the effect of late payments on small businesses;

- The effectiveness of existing government policies including those discussed above;
- Small business finance options and the barriers small businesses face in accessing finance;
- How technology can assist in improving payment times; and
- How to increase awareness and uptake of different support and tools required at different stages of businesses (UK Department for Business, Energy and Industrial Strategy, 2022b).

The Payment and Cash Flow review also includes a statutory review of the Small Business Commissioner including assessing its effectiveness in improving payment times. The terms of reference indicate that further consideration will be given to the Small Business Commissioner's powers following the conclusion of the review (UK Department for Business, Energy and Industrial Strategy, 2022b).

The Payment and Cash Flow review is also exploring whether the reporting scheme should be extended beyond its current expiry date of 6 April 2024, as well as other amendments that could improve the scheme such as additional reporting fields and requiring payment times to be included in a company director's report (UK Department for Business, Energy and Industrial Strategy, 2023, pp. 12-16).

A report is expected to be delivered later in 2023 (UK Department for Business, Energy and Industrial Strategy, 2022b).

United States

Government procurement

In 1982, the US Congress enacted the Prompt Payment Act (US)[57] which requires federal agencies to pay bills in a timely way and to pay interest where payments are made late. The Prompt Payment Act is supported by the Federal Acquisition Regulation (sub-part 32.9)[58] which prescribes the relevant policies, procedures and clauses for prompt payment by government agencies.

Under the regulation, the US Government must pay invoices within 30 days after the relevant agency receives a proper invoice or acceptance of supplies delivered or services performed. Invoices for particular perishable food products must be paid within 7 to 10 days after product delivery and construction progress payments must be paid within 14 days of the receipt of invoice. Government agencies are required to pay interest penalties without the request of the supplier where payments are made late.

New Zealand

Business Payment Practices

On 26 October 2022, the New Zealand Government introduced the Business Payment Practices Bill 2022[59] to improve transparency of particular business-to-business payment practices and enable the

57 Available at: https://www.fiscal.treasury.gov/files/prompt-payment/5cfr1315.pdf.
58 Available at: https://www.acquisition.gov/far/subpart-32.9.
59 Available at: https://legislation.govt.nz/bill/government/2022/0179/latest/whole.html#LMS719846.

public and other businesses to make informed choices about whether to engage with particular large entities.

Once enacted, the Business Payment Practices Bill would:

- Introduce mandatory reporting of payment terms and times by large businesses for all suppliers every 6 months;
- Establish a Registrar with compliance, investigation and enforcement powers; and
- Establish infringement offences, pecuniary penalties and offences relating to breaches of reporting requirements.

The reporting obligations are proposed to commence in 2024; however, as at 27 June 2023, this Bill had not yet been made law.

Government procurement

Since 2013, New Zealand government agencies are required to pay their suppliers within the terms set out in the contract, at a minimum and, if possible, earlier. The procurement policy does not set a mandatory payment term or require agencies to pay interest on late payments. Agencies must encourage their suppliers to pay sub-contractors in no less favourable terms than in the government contract (New Zealand Government Procurement, 2019, p. 62).

Appendix D: Glossary

Australian Accounting Standards Board (AASB)	The accounting standards agency of the Australian Government. The AASB is responsible for developing and maintaining principles-based Australian accounting and external reporting standards.
Australian Bureau of Statistics (ABS)	The national statistical agency of the Australian Government.
Australian Business Number (ABN)	A unique, 11-digit number used to identify business names and companies, available on the Australian Business Register.
Australian Company Number (ACN)	A unique, 9-digit number allocated to each company in Australia when registered. Must be displayed on all company documents.
Australian Competition and Consumer Commission (ACCC)	The competition and consumer protection agency of the Australian Government.
Australian Consumer Law (ACL)	Set out in Schedule 2 of the *Competition and Consumer Act 2010*, the ACL is a national law which provides protections to small businesses and consumers from certain types of business conduct. The ACL is jointly administered by the ACCC and state and territory consumer protection agencies.
Australian Peppol Authority	The organisation in Australia responsible for managing the Peppol framework. The Peppol Authority: • Defines Australian requirements for use of the Peppol standards; • Administers accreditation of access points for Australia; • Educates, promotes and supports the adoption of Peppol standards across government and the business community; and • Works with the digital service providers and the business community to ensure the Peppol framework is suitable and implemented consistently across Australia. The Australian Taxation Office is the Australian Peppol Authority.
Australian Securities and Investments Commission (ASIC)	The corporate, markets, financial services and consumer credit regulator of the Australian Government.

Australian Taxation Office (ATO)	The principal revenue collection agency of the Australian Government.
Business Industry Code	A five-digit code used to identify the main business activity.
Constitutionally covered entity	As defined in section 6 of the *Payment Times Reporting Act 2020*, each of the following is a constitutionally covered entity: (a) A constitutional corporation; (b) A foreign entity; (c) An entity, other than a body politic, that carries on an enterprise in a Territory; (d) A body corporate that is incorporated in a Territory; (e) A body corporate that is taken to be registered in a Territory under section 119A of the *Corporations Act 2001*; and (f) A corporate Commonwealth entity, or a Commonwealth company, within the meaning of the *Public Governance and Accountability Act 2013*.
Controlling corporation	As defined in section 5 of the *Payment Times Reporting Act 2020*, an entity that is a body corporate incorporated in Australia and is not a subsidiary of another body corporate that is incorporated in Australia.
Dashboard	An interactive version of the register which is managed by the Payment Times Reporting Regulator. The dashboard provides a summary of the payment performance of reporting entities in a more user-friendly display, and has 2 pages: • The home page allows users to search for the payment times reports of a particular reporting entity and to view average payment terms of all reports; and • The payment times reports page displays the information contained in a reporting entity's payment times report and enables comparisons between reports from different reporting entities.
Electronic invoicing (eInvoicing)	The digital exchange of standardised invoice information between the software of suppliers and buyers through the secure Peppol network.
ESG	Environmental, social and governance.
Explanatory Memorandum	A publication that explains the content of a bill or regulation.

Guidance note	A publication that sets out key concepts of the *Payment Times Reporting Act 2020* and practical examples to explain how the Act operates generally and outlines the Payment Times Reporting Regulator's approach to administering the Act.
Information sheet	A publication that provides short guidance on specific processes and functions of the Payment Times Reporting Scheme, to address stakeholder enquiries.
Late payment	A payment made beyond the payment term.
Long payment	An extended payment term; a payment term that is longer than an ordinary person would deem to be reasonable.
Member entity	As defined in section 5 of the *Payment Times Reporting Act 2020*, a subsidiary of a controlling corporation and a member of the controlling corporation's group, unless: (a) The subsidiary is also a subsidiary of another body corporate because the other body corporate meets the requirement in subparagraph 46(a)(i) or (ii) of the *Corporations Act 2001* in relation to the subsidiary; and (b) The other body corporate is not a member of the group (including by reason of a previous operation of paragraph (a) of this definition).
Notifiable event	As defined in section 14 of the *Payment Times Reporting Act 2020*, each of the following is a notifiable event: (a) The entity's applicable accounting period changes under section 18 or 18A of the *Income Tax Assessment Act 1936;* (b) The entity is notified that a business name, or a different business name, has become registered to the entity on the Business Names Register established and maintained under section 22 of the *Business Names Registration Act 2011*; and (c) Any other event prescribed by the Payment Times Reporting Rules.
Operating segment	As defined by the AASB under *AASB 8: Operating Segments*. An operating segment is a component of an entity: • That engages in business activities that generate revenue and incur expenses; • Whose performance is regularly reviewed and assessed by decision-makers; and • For which specific financial information is available.
Paid on time	A payment made within the payment term.
Parent entity	As defined by the AASB under *AASB 10: Consolidated Financial Statements.* An entity which controls one or more other entities (subsidiaries).

Payment practice	A large business's payment procedures for trade credit arrangements with small-business suppliers, which incorporate payment times and the use of payment mechanisms such as eInvoicing and supply chain finance.
Payment term	The contractually-agreed period within which payment is required to be made for the supply of goods or services.
Payment time or payment performance	The actual time in which a business pays a supplier for goods or services.
Payment times report	As defined in section 5 of the *Payment Times Reporting Act 2020*, a report prepared by a reporting entity which discloses their payment terms, times and practices in relation to their small-business suppliers. Reporting entities must provide a payment times report to the Payment Times Reporting Regulator within 3 months of the end of each reporting period.
Payment Times Reporting Act (the Act)	The *Payment Times Reporting Act 2020*, which aims to improve payment times for small businesses by creating transparency around the payment performance of large entities in relation to their small-business suppliers.
Payment Times Reporting Rules (the Rules)	The Payment Times Reporting Rules 2020 are subordinate legislation to the *Payment Times Reporting Act 2020.* The Rules set out the technical and administrative details on how certain provisions of the *Payment Times Reporting Act 2020* operate in practice.
Payment Times Reporting Scheme (the PTRS)	Enabled by the *Payment Times Reporting Act 2020*, the PTRS requires large businesses and certain government enterprises to report their payment performance in relation to their small-business suppliers every 6 months.
Payment Times Reporting Portal (the portal)	A website maintained by the Payment Times Reporting Regulator where: • Entities register as reporting entities or volunteer to report; • Reporting entities submit payment times reports; and • Reporting entities and small businesses use the Small Business Identification Tool.
Payment Times Reporting Regulator (the Regulator)	As defined in part 3 of the *Payment Times Reporting Act 2020*, the Regulator is a position designated by the Secretary of the Department that can only be occupied by a Senior Executive Service employee. The Regulator has functions relating to the administration of the *Payment Times Reporting Act 2020*, including monitoring and enforcing compliance. The Regulator may also delegate certain functions or powers to Executive Level employees within the Department.

Payment Times Reports Register (the register)	As defined in section 17 of the *Payment Times Reporting Act 2020*, a register of payment times reports maintained by the Regulator. The Act requires that it must be made available for public inspection, without charge, on the internet.
Peppol network	The Peppol network enables businesses to exchange standardised electronic invoices.
Principal governing body	As defined in section 5 of the *Payment Times Reporting Act 2020*, this means: (a) The body, or group of members of the entity, with primary responsibility for the governance of the entity; or (b) If the entity is of a kind prescribed by the Rules—a prescribed body within the entity, or a prescribed member or members of the entity.
Productivity Commission	The independent research and advisory body of the Australian Government on a range of economic, social and environmental issues affecting the welfare of Australians.
Reporting cycle	Fixed, six-monthly periods based on the commencement of the *Payment Times Reporting Act 2020* on 1 January 2021: • Reporting cycle 1: 1 January to 30 June 2021; • Reporting cycle 2: 1 July to 31 December 2021; • Reporting cycle 3: 1 January to 30 June 2022; • Reporting cycle 4: 1 July to 31 December 2022; • And so on. Payment times reports are assigned to a reporting cycle based on the reporting period start date. For example, a report with a reporting period start date of 15 March 2022 will be categorised as Reporting cycle 3 for the purpose of reporting.
Reporting entity	As defined in section 7 of the *Payment Times Reporting Act 2020*, a business that is a constitutionally covered entity, carries on an enterprise in Australia, is not registered under the *Australian Charities and Not-for-profits Commission Act 2012* and in its most recent income year has: • Total yearly income of more than $100 million; or • Is a controlling corporation with a combined total yearly income for all members of the group of more than $100 million; or • Is a member of a controlling corporation with a combined total yearly income for all members of the group with a total yearly income of at least $10 million. Alternatively, a business that is a constitutionally covered entity and gives notice in writing that the entity elects to become a reporting entity.

Reporting period	As defined in section 8 of the *Payment Times Reporting Act 2020*, the first 6 months of each income year for the entity in which the entity is a reporting entity, and the remainder of each such income year. If a volunteering entity becomes a reporting entity within the first 6 months of an income year for the entity, the first 6 months of that income year is not a reporting period for the entity. If they become a reporting entity after the first 6 months of that income year, no period in that income year is a reporting period for the entity.
Responsible member	As defined in section 5 of the *Payment Times Reporting Act 2020*, a responsible member of an entity is: • An individual member of the entity's principal governing body who is authorised to sign payment times reports; or • If the entity is a trust administered by a sole trustee—that trustee; or • If the entity is a corporation sole—the individual constituting the corporation; or • If the entity is under administration within the meaning of the *Corporations Act 2001*—the administrator; or • If the entity is of a kind prescribed by the Payment Times Reporting Rules 2020 —a prescribed member of the entity.
Small business	As defined in section 5 of the *Payment Times Reporting Act 2020*, a small business is an entity described as a small business in the Small Business Identification Tool. A legislative note in section 5 explains that an entity will be described as a small business in the Small Business Identification Tool during an income year for the entity if it carries on an enterprise in Australia with annual turnover (within the meaning of the *Income Tax Assessment Act 1997*) was less than $10 million in its most recent income year.
Small Business Identification Tool (SBI Tool)	As defined by section 5 of the Payment Times Reporting Rules 2020, a tool provided by the Regulator. The SBI Tool assists reporting entities to identify which suppliers are small businesses for the purposes of payment times reporting. The SBI Tool is available through the Payment Times Reporting Portal and can only be used to identify small-business suppliers for the purpose of payment times reporting. The SBI Tool works by elimination. It contains a database of ABNs that are: • Large and medium-sized businesses (income greater than $10 million); and • Small businesses that have opted out of the tool. To use the SBI Tool, reporting entities must provide a list of their suppliers' ABNs. The SBI Tool compares this list to the businesses on its database. ABNs that do not have a match in the SBI Tool's database are small businesses for reporting purposes under the *Payment Times Reporting Act 2020*.

Standalone entity	A reporting entity which has a total annual income of more than $100 million and is not a controlling corporation or a member of a controlling corporation's group.
Supply chain finance	As defined in section 4 of the Payment Times Reporting Rules 2020, supply chain finance is an arrangement under which a reporting entity undertakes or agrees to pay small-business invoices or arranges for a third party to pay small-business invoices, earlier than the payment terms in exchange for the small-business supplier accepting discounts on the payments.
Trade credit arrangement	An agreement between a large business and a small business that allows the large business to delay payment for goods or services to a time after the supply.
Total income	As defined in section 5 of the *Payment Times Reporting Act 2020*, this has the same meaning as section 3C of the *Taxation Administration Act 1953*. It generally corresponds to the total income reported to the ATO in an entity's tax return before claiming deductions to calculate taxable income.
Total revenue	As defined by the AASB under *AASB 118: Revenue*. Revenue is recognised when it is probable that future economic benefits will flow to the entity and these benefits can be measured reliably. AASB 118 identifies the circumstances in which these criteria will be met, and therefore, revenue will be recognised.

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