

# AUSTRALIAN SMALL BUSINESS PAYMENT TIMES REPORTING BILL - WHAT YOU NEED TO KNOW

30 June 2020 | Australia

Legal Briefings - By **Sian Newnham and John Slater**

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## IN BRIEF

- The *Payment Times Reporting Bill 2020*, currently before the Senate, establishes new reporting obligations on the payment practices of large businesses in relation to their small business suppliers.
- Businesses with annual incomes of more than \$100 million will need to report twice-yearly on:
  - the proportion (in terms of number and value) of small business invoices paid within 21 days, between 21 and 30 days, between 31 and 60 days and more than 60 days after the invoice was issued;
  - the details of their shortest and longest standard payment periods (and any changes from six months prior); and
  - other information prescribed by regulation following the Bill's enactment, which the Federal Government has indicated will include supply chain financing arrangements.
- Reports on the payment practices of applicable businesses will be disclosed on a publicly available register.

- The Regulator will have wide-ranging powers to monitor and investigate compliance with reporting rules. Penalties of up to 0.6% of a business's annual income will apply for non-compliance.

## HOW WILL THIS AFFECT ME?

- Businesses covered by the proposed laws **will not** be subject to time limits for paying small businesses. However, they will need to report to the Regulator within 3 months of the end of each 6 month reporting period and maintain records of their compliance for 7 years.
- The definition of 'small business suppliers' for reporting purposes will be prescribed by Regulation and is proposed to cover businesses with an annual turnover of less than \$10 million per annum.<sup>1</sup>
- The proposed commencement date for the Bill is **1 January 2021**, meaning that businesses **do not** need to maintain records of their small business payment practices for the remainder of 2020.
- The Bill has been referred to the Senate Education and Employment Legislation Committee, which is due to report on 30 July 2020. At present, it is **not known**:
  - what reporting requirements will apply to supply chain financing arrangements used by large businesses; and
  - whether the bill has the support to pass Parliament in its current form.

## OVERVIEW

Large businesses are set to face new obligations to publicly report how long they take to pay small businesses under legislation recently introduced to Federal Parliament. The *Payment Times Reporting Bill 2020 (the Bill)* seeks to address concerns about the impact of delayed payments on small business cash flow by providing greater transparency over the payment practices employed by large businesses. In this article, we provide an overview of the proposed changes and what they mean for large businesses who use small business suppliers.

## WHICH BUSINESSES ARE COVERED?

The Bill's reporting obligations will apply to approximately 3,000 businesses that satisfy the following:

- are constitutionally covered entities (a term which covers the vast majority of private sector businesses and government owned corporations);<sup>2</sup> and
- either:
  - generated income of more than \$100 million in their most recent income year (which includes the income of subsidiaries in the case of holding companies); or
  - in the case of subsidiaries of holding companies with an annual income of more than \$100 million, generated income of at least \$10 million; and
- are not registered under the *Australian Charities and Not-for-profits Commission Act 2012 (Reporting Entities)*.<sup>3</sup>

## WHAT DO BUSINESSES NEED TO REPORT ON?

In short, the Bill requires Reporting Entities to report twice yearly on the length of time it has taken to pay its small business suppliers over the previous six months. What is considered a 'small business' for reporting purposes will be prescribed regulation.<sup>4</sup> Notably, the Bill **does not** adopt the Small Business Ombudsman's proposal of imposing limits on payment times for small business suppliers.

Reporting Entities will need to report a range of details to the Payment Times Reporting Regulator, which will be a designated senior officer position in the Department of Industry, Science, Energy and Resources appointed by the Department's Secretary (**the Regulator**).<sup>5</sup> Specifically, Reporting Entities will need to report:

- the shortest and longest standard payment periods for the entity at the start of the reporting period;
- the details of any changes to the shortest or longest standard payment periods for the entity during the reporting period;
- the proportion, determined by total number and total value, of small business invoices paid by the entity during the reporting period in accordance with each of the following:
  - less than 21 days after the invoice was issued;
  - between 21 and 30 days after the invoice was issued;
  - between 31 and 60 days after the invoice was issued;
  - more than 60 days after the invoice was issued; and
- the details of the principal governing body of the entity;
- the identity of entity's holding company (if applicable);
- a declaration by a responsible member of the entity that the report will be provided to the principal governing body of the entity;
- if a notifiable event (such as a change to the entity's accounting period or business name) has occurred since the last payment times report for the entity was given to the Regulator—the details of the notifiable event; and
- any other information or documents prescribed by regulation.<sup>6</sup>

Businesses will be required to report to the Regulator within 3 months of the end of each reporting period, being each six month half of an income year as defined by the *Income Tax Assessment Act 1936*.<sup>7</sup>

Reporting Entities must keep all information used in the preparation of their reports for at least 7 years.<sup>8</sup>

### **Disclosure of supply chain financing is expected**

Supply chain financing has been singled out by the Federal Government as one area where reporting requirements will be prescribed by regulation following the Bill's enactment.<sup>9</sup> Also known as 'reverse factoring', these arrangements typically involve a supplier of goods agreeing to enter into a financing arrangement where a third party (e.g. a bank or fintech company) pays the outstanding invoice promptly in exchange for a discount to the goods supplied. According to reports, the issue has been deferred to regulation due to the rapidly evolving nature of the supply chain financing market and the products on offer.<sup>10</sup>

The Bill follows the ACCC's confirmation in March that it is working with ASIC to investigate the increasing use of supply chain financing by large business amid growing media scrutiny of such arrangements.<sup>11</sup>

### **What information will be published?**

Information provided by Reporting Entities will be publicly available on the Payment Times Reports Register, giving small businesses visibility over the typical payment times for similar value transactions across the market.<sup>12</sup>

According to the Federal Government, the purpose of publishing this information is to provide small businesses with transparency when it comes to the payment practices of their prospective customers and, in doing so, incentivise larger businesses to pay their suppliers more promptly. It is hoped this will ease cash flow pressures on small businesses navigating the fallout of the COVID-19 pandemic.

### **Enforcement measures**

The Bill grants the Regulator expansive powers to monitor and enforce compliance, including

- monitoring powers, including the ability to obtain monitoring warrants and enter premises;<sup>13</sup>
- investigation powers, including the ability to enter a premises on the grounds of reasonable suspicion that it may contain material relating to the contravention of an office or civil penalty provision;<sup>14</sup> and

- the ability to direct Reporting Entities to undertake an audit of their payment practices if it reasonably suspects a contravention of the Bill.<sup>15</sup>

Following a penalty free 18-month transition period, significant civil penalties will apply for non-compliance, including:

- up to 60 penalty units for failing to provide a report as required by the Bill;<sup>16</sup>
- up to 0.2% of a Reporting Entity's annual income for failing to keep records of payment times as required by the Bill;<sup>17</sup>
- up to 0.2% of a Reporting Entity's annual income for failing to comply with an auditor appointed by the Regulator;<sup>18</sup> and
- up to 0.6% of a Reporting Entity's annual income for providing misleading information.<sup>19</sup>

### **When will the changes take effect?**

The Bill is set to commence on 1 January 2021, provided it receives royal assent before this date. The commencement will be delayed to 1 July 2021 if the Bill receives assent after 1 January 2021.<sup>20</sup>

At the time of writing, the Bill has passed the House and has been referred to the Senate Education and Employment Legislation Committee, which is due to report on 30 July 2020.<sup>21</sup> It is not clear whether the Bill has the support to pass Parliament in its current form. Despite agreeing in principle on the need for tighter regulation of small business payment practices, the Opposition has criticised the Bill's approach of leaving requirements to report supply chain financing arrangements to regulation. It has called on the Government to hold a roundtable of key stakeholders to address concerns held by small business before proceeding with the Bill.<sup>22</sup> Similarly, the positions of the Senate crossbenchers on the Bill are not yet known.

## **ENDNOTES**

1. Explanatory Memorandum, page 1.
2. *Payment Times Reporting Bill 2020* s 6.

3. *Payment Times Reporting Bill 2020* s 7.
4. *Payment Times Reporting Bill 2020* s 5.
5. Explanatory Memorandum, page 24..
6. *Payment Times Reporting Bill 2020* s 14.
7. *Payment Times Reporting Bill 2020* s 12 and 13.
8. *Payment Times Reporting Bill 2020* s 5, 7 and 8.
9. Refer to *Payment Times Reporting Bill 2020* s 15(3) and the Minister's Second Reading speech.
10. Labor cautious as legislation dodges key issue of supply-chain financing' *The Australian* 18 May 2020.
11. 'ACCC, ASIC join forces to target supplier payment schemes' *The Australian* 4 March 2020.
12. *Payment Times Reporting Bill 2020* Part 3.
13. *Payment Times Reporting Bill 2020* s 31.
14. *Payment Times Reporting Bill 2020* s 32.
15. *Payment Times Reporting Bill 2020* s 30.
16. *Payment Times Reporting Bill 2020* s 15.
17. *Payment Times Reporting Bill 2020* s 29.
18. *Payment Times Reporting Bill 2020* s 30.
19. *Payment Times Reporting Bill 2020* s 16.
20. *Payment Times Reporting Bill 2020* s 2.
21. Senate Hansard, 12 June 2020, p. 25.
22. Labor cautious as legislation dodges key issue of supply-chain financing' *The Australian* 18 May 2020.

## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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