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The Payment Times Reporting Scheme

A short guide to compliance - November 2021

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Economic effects of slow payment



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Slow and late payments are a significant problem for Australia's 3.5 million small businesses. This has negative impacts on the economy. In 2019, AlphaBeta analysed more than 10 million invoices issued by more 76,000 small businesses. On average, those invoices were paid 63 days after invoice. More than \$77 billion per year was paid more than 30 days after invoice.

Effectively, \$7 billion in working capital was transferred annually from small to big business.

Long and late payments affect the cash flow of trade creditors. Small businesses lacking working capital cannot pay their creditors until they are paid. The inability to fund the shortfall in cash flow is a contributing factor in insolvency.

Normalising a 30-day payment cycle is estimated to have an estimated net annual benefit to the economy of \$313 million per year.

The Act



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To address these issues, the Commonwealth Parliament passed the Payment Times Reporting Act 2020. It commenced on 1 January 2021. The purposes of the Act are to require large businesses to report their payment terms and practices and to make that information publicly available.

It is hoped that the information will assist small businesses to make informed decisions about customers and encourage large businesses to improve their payment terms and practices.

Reporting Entities

Reporting is mandatory for companies with consolidated group revenues of more than \$100 million in the most recent income year. In the case of a subsidiary company in a corporate group, the threshold is \$10 million.

Entities registered under the Australian Charities and Not-for-profits Commission Act 2012 are not required to report.

Other entities may choose whether or not to lodge reports about their payment cycles.

Small Business Suppliers

A small business is defined for the purposes of the Act as an “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”.

The Department of Industry, Science, Energy and Resources has developed a tool to help reporting entities identify small business suppliers. It allows a reporting entity to upload a spreadsheet containing all its suppliers’ Australian Business Numbers. The tool returns a list of business that may be treated small business supplier that for the reporting obligation.

A small business can opt out of being identified by the SBI tool. In that case, large businesses are not obliged to report on their payment times and terms to that business.

The Report



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Reporting entities must lodge reports with the Payment Times Reporting Regulator at 6 month intervals. The first report was due 30 September 2021. The next report will be due 31 March 2022. The Regulator may allow an extension of time.

The report **MUST**:

- Describe the practices or arrangements for receiving or paying small business invoices
- Include aggregated data about payment terms and practices;
- Detail any procurement costs imposed on small business suppliers (such as procurement system subscriptions or membership fees or tender lodgement fees);
- Detail supply chain finance arrangements;
- State when the report will be provided to the Board;
- Provide other information that gives context or explanation to the details of the report.

The report **SHOULD NOT** contain:

- any personal information which may identify any individual (such as name, address or phone number);
- commercial-in-confidence information about other businesses or suppliers or
- information which does not assist the objectives of the Act

Additional Requirements

The report must be approved by a responsible officer of the entity or its controlling corporation and must be provided to the Board.

A reporting entity is required to keep records of all information used to prepare a report for 7 years.

The Public Register

Reports are being uploaded to a Payment Times Reports Register. The register will be publicly available after 30 November 2021. There will be no fee to search the register.

Enforcement



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There is a transitional period until 31 December 2021, during which the regulators compliance and enforcement powers are suspended. During that period, the regulator will seek to raise awareness of the reporting requirements through outreach and education activities. Reporting entities should use that period to familiarise themselves with the reporting requirements and establish compliant procedures and systems.

From 2022, the Regulator will adopt a graduated approach to compliance and enforcement. It will seek to work with reporting entities to address compliance issues in the first instance. It will use more coercive compliance and enforcement methods in the case of egregious or repeated failures to comply with the Act.

The Regulator will have powers to:

- monitor compliance;
- investigate suspected non-compliance;
- require compliance audits;
- appoint authorised officers and infringement officers under the Regulatory Powers Act;
- issue infringement notices;
- publish details of non-compliance;
- apply to a court for civil penalty orders

New South Wales



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Large businesses who supply goods and services worth more than \$7.5 million to NSW Government agencies are contractually required to pay small business subcontractors within 20 business days.

The Small Business Shorter Payment Terms Policy aims to support small businesses in the NSW economy by promoting the faster payment of small businesses under NSW Government contracts.

The Policy requires those head contractors to:

- ① identify direct subcontractors listed in the NSW government website at buy.nsw.gov.au.
- ② inform them of this Policy
- ③ include in all subcontracts an obligation to pay invoices within 20 business days

About the Authors



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Kreisson is a specialist construction and engineering firm with vast experienced with security of payment claims and adjudications. If you need help with preparing or administering a construction contract or dealing with disputes about contract works, time or cost in any Australian State, phone us on **(02) 8239 6500**.

*This publication was prepared by Kreisson Legal Pty
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