Australian Government

Statutory Review of the *Payment Times Reporting Act 2020*

Consultation Paper

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Consultation Process

Request for feedback and comments

Interested parties are invited to comment on the issues raised in this consultation paper.

While submissions may be lodged electronically or by post, electronic lodgement is preferred. All information (including name and address details) contained in formal submissions will be made available to the public on the Australian Treasury website, unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment.

Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect confidentiality of your submission.

View Treasury's Submission Guidelines for further information.

Closing date for submissions: 01 March 2023

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The principles outlined in this paper have not received Government approval and are not yet law. The Independent Reviewer will consider views submitted in response to this consultation paper to inform a written report with findings and recommendations to the Minister for Small Business, the Hon Julie Collins MP.

Foreword from the Independent Reviewer

I have been asked to review the operation of the *Payment Times Reporting Act 2020* (the Act) and make recommendations about whether the regulatory settings are fit for purpose or should be adjusted to improve payment terms and practices for Australia's 2.5 million small businesses.

Late payments for goods and services rendered can adversely affect small business cashflow and can create substantial uncertainty for business planning. As a former Minister for Small Business and Competition Policy and a current small business owner, I understand the importance of small businesses being paid within a reasonable timeframe.

The Act aims to increase transparency to create an incentive for large businesses and government enterprises to improve their payment terms and practices in relation to small businesses and to help those small businesses decide with whom to do business.

The Review will consider the efficacy of the Act in meeting its legislated objectives, the impact of related government policies on payment terms and performance, and whether there are other measures that could help improve payment outcomes for small businesses. The Review will draw on insights from relevant international jurisdictions to inform recommendations to the Government to help ensure small businesses are paid on time and within a reasonable timeframe.

This consultation paper proposes guiding principles for the Review and outlines some of the issues I will be considering. The questions posed are a guide only and not all questions need to be answered in submissions. I invite submissions on any issues considered relevant to the Review.

As the Independent Reviewer, I am eager to hear views and evidence from a wide range of interested stakeholders and I welcome your engagement throughout the Review process.

The Hon Dr Craig Emerson

Independent Reviewer

Statutory Review of the *Payment Times Reporting Act 2020*

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Background to the Review

On 6 December 2022, the Minister for Small Business, the Hon Julie Collins MP, announced that the Government had commissioned an independent review of the operation of the *Payment Times Reporting Act 2020* (referred to as 'the Act' and 'the Review' in this paper) and appointed the Hon Dr Craig Emerson to lead the Review. To support Dr Emerson, a small Secretariat has been established within the Treasury.

The Review is prescribed under section 57A of the Act. The Independent Reviewer is required to prepare a written report and provide a copy to the Minister for Small Business by 30 June 2023. The Minister must table the report in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

Terms of Reference

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 that 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.

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.

Overview of payment times reporting

Effect of payment times on Australian small businesses

Long payment times and late payment times from large to small businesses place pressure on small businesses' cashflow and financing as they extend the period between a small business incurring the costs of producing a good or service and being paid for it. Longer payment times to small businesses produce flow-on effects throughout the economy as smaller firms that are paid slowly, in turn, pay their own suppliers more slowly. Late payment times add to the cost of doing business as businesses need to spend time and money following up on outstanding payments.

Cashflow and financing pressures that arise from long and late payment times constrain small businesses' ability to hire, invest and grow and can lead to business insolvency. They can also contribute to poor mental health for small business owners. During economic downturns and global uncertainty, small businesses are often the first to have their payment times extended.[1]

Reducing payment times from large to small businesses and ensuring small businesses are paid on time can generate benefits for individual small businesses and the broader economy. In 2019, economic consulting firm AlphaBeta estimated that a 30-day payment time from large businesses to

[1] Australian Small Business and Family Enterprise Ombudsman, *Supply Chain Finance Review: Final Report*, March 2020, www.asbfeo.gov.au/sites/default/files/2021-11/Final%20Report%202.pdf.

small businesses would deliver a net benefit to small businesses of $522 million per annum and to the economy of $313 million per annum.[2]

Increasing the adoption and use of digital technologies – in particular, digital payment solutions – can also help small businesses get paid faster, and in turn to pay their suppliers more quickly. However, it is estimated that around 90 per cent of the more than 1.2 billion invoices that Australian businesses exchange each year are processed manually.[3]

The main policy dilemma in relation to payment times is that large businesses have little inherent incentive to improve payment terms and performance, and small businesses usually lack the market power to negotiate better payment times and terms with large businesses.

Question 1

How important are payment terms and practices to small businesses when considering a supply contract with a large business or government enterprise? Has their relative importance changed over time?

Question 2

What factors are driving current and emerging trends in payment terms and practices? How do they affect large businesses, small businesses, and the economy?

Background on the Payment Times Reporting Scheme

Payment Times Reporting Scheme

The Payment Times Reporting Scheme (the Scheme) aims to improve payment times for small businesses by creating transparency around the payment terms and practices of large businesses and government enterprises (known as reporting entities) operating in Australia in relation to their small business suppliers.

Under the Scheme, reporting entities must submit payment times reports to the Payment Times Reporting Regulator (the Regulator) every six months. The Regulator publishes these reports on the Payment Times Reports Register (the Register), which was launched on 30 November 2021 and is freely accessible on the Scheme's website.

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[2] AlphaBeta Advisors and Xero Small Business Insights, *Paying the price: The economic impact of big businesses paying Australian small businesses late*, June 2019.

[3] Australian Taxation Office, *'Save time and money': more and more businesses making the switch to eInvoicing* [media release], August 2022, www.ato.gov.au/Media-centre/Media-releases/-Save-time-and-money---more-and-more-businesses-making-the-switch-to-eInvoicing/.

Statutory framework

The Scheme commenced on 1 January 2021. It is enabled by the *Payment Times Reporting Act 2020*, 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;
- 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.

Role of the Regulator

The role of the Regulator is to provide a reliable and transparent source of information about payment terms and performance of large businesses and government enterprises that is readily accessible to their small business suppliers. The Regulator does not have a role to mandate payment times for large businesses or to impose penalties on late payments.

The Regulator's core functions are to receive payment times reports from reporting entities every six months and to publish those reports on the Register. Where reporting entities do not submit payment times reports, or they provide false or misleading information, enforcement tools are available to the Regulator, ranging from publishing non-compliance on the Register to taking civil penalty action (see *Compliance and enforcement arrangements* section below).

In addition to these functions, 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 Small Business Identification (SBI) Tool (see *Operation of the Act* section below).

Principles for the Review

The Review has been tasked with assessing how the Act is operating and other measures to improve payment terms and practices of reporting entities in relation to their small business suppliers. The goal of the Review is to recommend a scheme that is both efficient and effective. The Review has identified three principles to guide its assessment.

Box 1 – Guiding principles

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

Feedback received through consultation on the Scheme and opportunities to improve it will be considered against these principles when developing recommendations to the Government. Having regard to these principles, the Review will consider the costs and benefits of changes, how best to design and implement any changes, including to avoid unintended consequences, and how to ensure compliance.

It will also be important that ways to ensure small businesses are paid on time are considered alongside 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, in and of itself, may 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 products.

To illustrate this further, consider Business A and Business B, which both use the same small business supplier. Business A has payment terms of 60 days and pays on time more often. In comparison, Business B has payment terms of 30 days that it meets less often but on average pays small business suppliers more quickly than Business A. A superficial comparison would suggest Business A is better performing than Business B, but a proper examination would favour Business B.

This consultation paper uses '**payment term**' to mean the contractually agreed period for a large business to pay a small business supplier. It uses '**payment practice**' to mean the actual payment time, or payment performance, from a large business to a small business supplier, as well as the use of other payment mechanisms such as electronic invoicing and supply chain financing.

Question 3

What is a ‘reasonable’ timeframe in which small businesses should be paid? Should ‘reasonable’ vary between different industries or sectors?

Operation of the Act

Section 3 of the Act sets out the objects of the Act. See Box 2 below.

Box 2 – Objects of Section 3 of the Act

The objects of this Act are:

(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

(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.

Reporting requirements

The Act establishes a payment times reporting requirement for eligible large businesses to report to the Regulator on their small business payment terms and practices every six months.

Large businesses are required to submit a report on their payment terms and practices where they are constitutionally covered entities, 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 has a combined total income of more than $100 million and the total income for the member entity was at least $10 million.

The Scheme also requires reporting by Commonwealth Government corporate entities that meet the income threshold. 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, may choose to submit a report voluntarily.

The Act requires that all reporting entities must submit a payment times report during the first six months of each income year and the remainder of each such income year. Payment times reports must be submitted no later than three months after the end of the reporting period. Even if a reporting entity does not transact with small business suppliers, they 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 sets out the information that must be reported and section 8, part 4 of the Rules prescribes further information requirements. In short, reporting entities are required to disclose the percentage of procurement from small businesses, average time taken to pay small business suppliers by number and value (actual payment performance), standard payment terms offered to small businesses, and details of the practices and arrangements used by the reporting entity, including supply chain finance arrangements, during the reporting period.

Small Business Identification (SBI) Tool

The SBI Tool is accessible to reporting entities on the Scheme website and indicates which suppliers meet the Scheme's small business reporting criteria. The SBI Tool operates as a negative lookup tool that searches a database of Australian Business Numbers (ABNs) for large and medium-sized businesses (with incomes over $10 million in the most recent income year). Through exclusion from this database, the SBI Tool identifies a business as small if they carry on an enterprise in Australia, have an ABN and their annual turnover was less than $10 million for the most recent income year. The data for the SBI Tool are sourced commercially and supplemented with publicly available Australian Taxation Office (ATO) corporate tax transparency data.

The Register

The Register has a downloadable Excel file and an interactive dashboard to search and view payment times information. Since its launch, the Register has been updated in November 2021, December 2021, April 2022, July 2022, November 2022 and January 2023. The Regulator analyses the Register biannually for insights and trends. These insights and trends are published in the *Regulator's Update*; the first of which was published in July 2022 and the most recent update was published in January 2023. It can be found at: www.paymenttimes.gov.au/publications/report/regulators-update-january-2023.

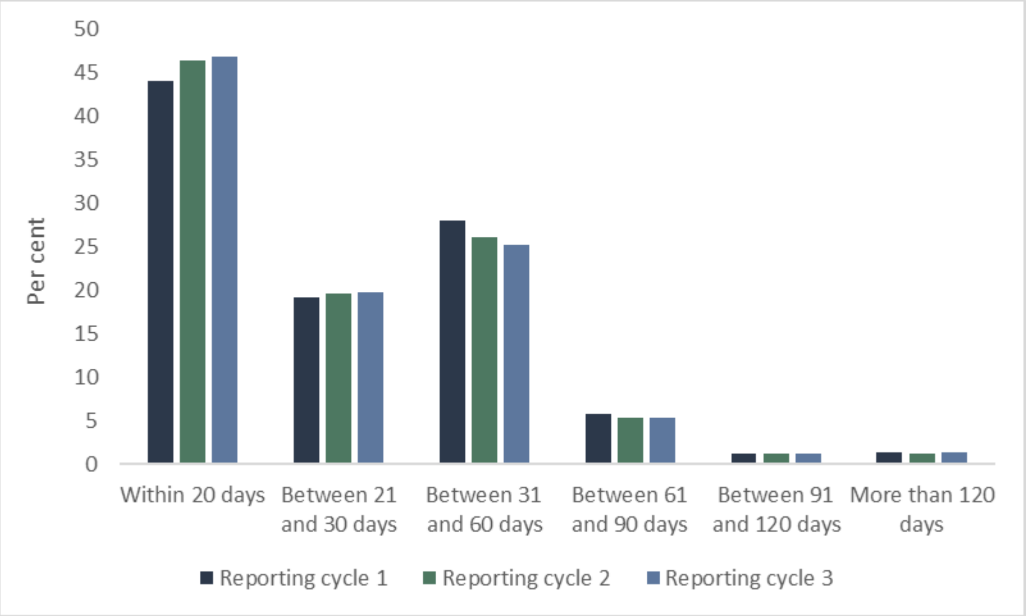
As of 31 December 2022, 25,353 reports have been published to the Register, representing input from 9,487 unique reporting entities. **Table 1** summarises data relating to payment terms across all applicable reporting entities by reporting cycle.[4] The latest version of the *Regulator's Update* provides additional data and analysis.

Table 1 – Median and average payment terms

	Reporting cycle 1 1 Jan 2021 – 30 Jun 2021	Reporting cycle 2 1 Jul 2021 – 31 Dec 2021	Reporting cycle 3 1 Jan 2022 – 30 Jun 2022
Median payment term (days)	30	30	30
Average payment term (days)	36.29	35.61	35.66

Figure 1 compares the average percentage of small business invoices paid within day ranges for the first three reporting cycles. Since commencement of the Act on 1 January 2021, 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 decrease 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 over 91 days has largely remained unchanged. In the most recent reporting cycle, around 66 per cent of invoices were paid within 30 days. Less than 8 per cent of invoices were paid after 60 days.

Figure 1 – Average percentage of small business invoices paid within day ranges



[4] 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. The analysis presented here represents point-in-time insights, as the Regulator updates the Register continuously, including for historical reporting cycles. Nil reports are excluded from calculations regarding standard payment terms and payment times. Nil reports are reports that have zero payment terms and payment times because the entity does not procure from small business.

Table 2 provides a summary of the number of payment times reports received by Australian and New Zealand Standard Industrial Classification division code since commencement of the Act. The greatest number of payment times reports have been submitted by the financial and insurance services industry, with 4,462 reports. The agriculture, forestry and fishing industry has reported the highest average proportion of small business procurement (by value) at around 44 per cent.

Table 2 – Payment times reports by industry

Industry	Number of reporting entities	Percentage of reporting entities (per cent)	Total number of reports submitted	Percentage of reports with payments to small businesses (per cent)	Percentage average total small business procurement[5] (per cent)
Accommodation and Food Services	117	1.23	317	84.54	34.24
Administrative and Support Services	247	2.60	678	77.58	39.57
Agriculture, Forestry and Fishing	173	1.82	451	80.04	44.29
Arts and Recreation Services	106	1.12	291	57.39	33.90
Construction	903	9.52	2174	83.99	41.81
Education and Training	37	0.39	90	71.11	34.51
Electricity, Gas, Water and Waste Services	432	4.55	1214	73.31	27.35
Financial and Insurance Services	1667	17.57	4462	52.35	29.66
Health Care and Social Assistance	368	3.88	948	83.54	37.39
Information Media and Telecommunications	274	2.89	727	76.34	31.41
Manufacturing	999	10.53	2728	79.21	26.36
Mining	778	8.2	2161	65.43	21.85
Other Services	91	0.96	244	88.93	39.79
Professional, Scientific and Technical Services	791	8.34	2118	80.17	34.94

[5] Based on reports with procurement from small business. Reports with nil small business procurement are excluded from calculation.

Public Administration and Safety	56	0.59	157	80.25	29.88
Rental, Hiring and Real Estate Services	291	3.07	762	75.33	35.83
Retail Trade	749	7.9	2020	83.66	25.10
Transport, Postal and Warehousing	505	5.32	1425	79.37	28.85
Wholesale Trade	903	9.52	2386	84.49	23.75
Total	**9487**	**100**	**25,353**	**74.19**	**30.51**

In assessing how effectively the operation of the Act is meeting its legislated objects, some important considerations include whether:

- The right kind of information is being collected and published;
- Small businesses are able to use the information effectively;
- Reporting entities have changed their behaviour as a result of the Scheme; and
- The legislation is flexible enough to deal with economic, digital and other changes without compromising its ability to deliver the required outcomes.

Question 4

Having regard to the goal of the Review and the three principles, how effectively is the operation of the Act meeting the objects set out in Box 2?

Question 5

What, if any, changes should be made to the existing Scheme to improve its efficiency and effectiveness in meeting the objects set out in Box 2?

Question 6

What are the main questions the Scheme's data should be able to answer about payment terms and practices?

Compliance and enforcement arrangements

A key function of the Regulator is to ensure that reporting entities are meeting their regulatory obligations under the Act. The Act provides powers to the Regulator to gather information from reporting entities and to use a range of enforcement tools to ensure accurate payment times reporting and to address non-compliance. These powers include:

- Publishing non-compliance on the Payment Times Reports Register;
- Requiring a reporting entity to undergo a compliance audit;

- Undertaking monitoring or investigation activities under the *Regulatory Powers (Standard Provisions) Act 2014;*
- Issuing an infringement notice; and
- Commencing court action for civil penalties.

The ability of the Regulator to use enforcement powers commenced 12 months after the commencement of the Act on 1 January 2021. 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 facilitation and providing assistance. The Regulator has not used its enforcement powers to date. 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 include:

- Guidance Notes, which provide detailed guidance and practical examples to assist reporting entities to comply with their obligations and the way that the Regulator has interpreted the law; and
- Information Sheets, which are succinct guidance documents on a specific process or function.

The Regulator's *Information Sheet 1: Our approach to regulation*, published on 21 January 2022 and updated on 15 June 2022, notes that the Regulator takes an escalating approach to compliance and enforcement that is risk-based and data-driven.

Question 7

Are the Regulator's powers and approach to compliance and enforcement effective and fit-for-purpose?

Effect of related Government policies

In addition to the Scheme, a range of other Government policies aim to improve payment time outcomes for small businesses. The Review has been asked to consider whether these policies have improved the payment terms and performance of reporting entities in relation to their small business suppliers.

Commonwealth procurement rules

Supplier Pay On-Time or Pay Interest Policy

The Supplier Pay On-Time or Pay Interest Policy came into effect on 1 January 2020 and was updated on 1 July 2022. It requires non-corporate Commonwealth entities (NCEs) to make all payments to suppliers within the maximum payment terms – five calendar days for electronic invoicing and 20 calendar days for all other invoices.

Where payment is not made in full within the maximum payment terms, agencies are required to pay interest to the supplier on the outstanding amount where the amount of interest accrued is more than $100 (GST inclusive).

The aim of this policy is to facilitate timely payment to suppliers, assist with their cashflow, and reduce the costs of supplying to the Commonwealth.

The Australian Government Pay On-Time Survey Performance Report 2020-21 provides the most recent results of the Australian Government Pay On-Time Survey for the 2020-21 financial year. It indicates 93.2 per cent of invoices from small businesses were paid on time (within 20 calendar days) in 2020-21, compared with 90.6 per cent in 2019-20.

Payment Times Procurement Connected Policy

The Payment Times Procurement Connected Policy (PT PCP) commenced 1 October 2021 and leverages Commonwealth Government procurement to help improve payment times for small businesses in the supply chain of Government contracts. The PT PCP requires large businesses that are awarded Commonwealth Government contracts of over $4 million (GST inclusive) to:

- Pay their supplier contracts (of up to $1 million) within 20 calendar days or pay interest if payment is made late; and
- Use reasonable endeavours to ensure small businesses through the supply chain of their contracts are similarly paid by other sub-contractors within 20 calendar days.

Electronic invoicing (eInvoicing)

A 2017 report by the Australian Small Business and Family Enterprise Ombudsman found that late and incorrect invoicing is a leading reason for businesses not being paid on time.[6]

eInvoicing is the automated digital exchange of invoice information between suppliers' and buyers' software through a secure network. In Australia this is the Pan-European Public Procurement On-Line or 'Peppol' network. The use of eInvoicing can help reduce the time involved in processing invoices by removing the need to send and receive invoices manually and enter them into accounting software. This has flow-on benefits to payment times for businesses, particularly small- and medium-sized businesses.

The Government is supporting the uptake of eInvoicing and ensuring Commonwealth agencies actively use eInvoicing with suppliers. From 1 July 2022, under the Supplier Pay On-Time or Pay Interest Policy (see above) Commonwealth Government agencies which receive eInvoices are obliged to pay them within 5 calendar days or incur interest, regardless of value of the contract.

In general, adoption of eInvoicing in Australia is low. As of 31 December 2022, 25,419 Australian entities have registered for Peppol. In August 2022, the ATO, Australia's Peppol authority, held an 'eInvoicing Week' to encourage businesses to make the transition to eInvoicing. In promoting

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[6] Australian Small Business and Family Enterprise Ombudsman, *Payment Times and Practices Inquiry – Final Report*, April 2017, www.asbfeo.gov.au/sites/default/files/2021-11/ASBFEO_Payment_Times_and_Practices%20Inquiry_Report.pdf.

eInvoicing Week, the ATO noted that it expected to see 'significant growth in the use of eInvoicing over the next 12 months'.[7]

Unfair contract terms

The *Competition and Consumer Act 2010* and the *Australian Securities and Investments Commission Act 2001* protect small businesses, subject to specified criteria, from unfair terms in standard form contracts for products, services and land transactions. A term is considered unfair if it:

- Would cause a significant imbalance in the parties' rights and obligations arising under the contract;
- Is not reasonably necessary to protect the legitimate interests of the party that would benefit from the term; or
- Would cause detriment (financial or otherwise) to a small business if it were to be applied or relied on.

Examples of terms that might be unfair are:

- Terms that allow one party (but not the other) to avoid or limit their responsibilities under the contract;
- Terms that allow one party (but not the other) to end the contract;
- Terms that penalise one party (but not the other) for breaking or ending the contract; and
- Terms that allow one party (but not the other) to change the terms of the contract.

The law gives courts a power to find that a term is unfair. If a term is found to be unfair, it will be void and not binding. If the contract can operate without the unfair term, it will still be binding on all parties.

Legislation to strengthen unfair contract terms protections for small businesses received Royal Assent on 9 November 2022. Among other changes, the amendments introduce a civil penalty regime prohibiting the use of and reliance on unfair contract terms in standard form contracts. In addition, the reforms increase 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 threshold for determining eligibility. This will ensure a greater number of small businesses are afforded the protections. The new provisions will commence from 10 November 2023 to give businesses a 12 -month transition period.

Question 8

Excluding the Payment Times Reporting Scheme, to what extent have, or will, related Government policies improve payment terms and practices for small businesses? Would a substantial increase in eInvoicing materially help reduce payment times?

[7] Australian Taxation Office, *'Save time and money': more and more businesses making the switch to eInvoicing* [media release], August 2022, www.ato.gov.au/Media-centre/Media-releases/-Save-time-and-money---more-and-more-businesses-making-the-switch-to-eInvoicing/.

Other opportunities to improve payment terms and practices

The Review has been asked to consider what other measures might be more effective in improving payment terms and practices to ensure small businesses are paid on time. These measures could sit alongside the current framework to further support it or could replace aspects of the current framework to strengthen it. Consideration should be given to the Review's principles, the costs and benefits of different options, and how to design implementation to avoid unintended consequences.

Alternative ways to incentivise performance improvements

One of the sub-objects of the Scheme is to 'create incentives for reporting entities to improve their payment terms and practices'. The Scheme aims to do this by making reporting entities' payment data available for public scrutiny through the Register. This transparency is intended to address the inherent market power dynamics between large businesses and small businesses that can contribute to long and late payments.

Views are sought on what additional methods could be considered to incentivise payment term and performance improvements for reporting entities, both collectively and individually. This might include explicitly identifying 'best practice' reporting entities. In exploring options, consideration might need to be given to how to set a best practice performance benchmark in a fair and effective way and whether current reporting metrics can be leveraged, as well as the role of supply chain financing.

Question 9

What are the disincentives for large business to offer improved payment terms and practices to small business suppliers? Are there other ways to more effectively incentivise improved payment terms and practices?

Mandated maximum payment periods

The Review's Terms of Reference specifically ask whether the mandating of one or more maximum payment periods would be more effective in improving payment terms and practices of reporting entities in relation to their small business suppliers. It also asks that the Review examines a range of related implementation issues. This includes consideration of:

- The appropriate threshold for the mandated period (for example, five, 10, 20, 30 days from receipt of invoice) and how this would be enforced (for example, penalties for non-compliance);
- The effect of eInvoicing and upcoming changes to unfair contract term laws on setting a maximum payment period;
- Whether different maximum payment periods would need to be set for different industries or sectors; and

- The potential for unintended consequences on actual payment practices (for example, creating a perverse incentive for some large businesses to extend their current, shorter invoice payment times in line with a longer mandated maximum timeframe).

Question 10

Would mandating one or more maximum payment periods for the payment of small business invoices by reporting entities be more effective in improving payment terms and practices? How should a mandatory maximum payment period(s) best be designed and implemented?

Any other measures

Question 11

What other measures could be considered to improve payment terms and practices of reporting entities in relation to their small business suppliers?

International approaches to small business payment times

A number of countries have made, or are progressing, policy interventions to address the issue of long and late payment times. They include the United States, New Zealand, the United Kingdom and the European Union. Policy responses include:

- Mandatory reporting of payment terms and practices (transparency schemes);
- Legislated payment timeframes with an automatic (civil) entitlement for interest on late payments;
- Legislated payment timeframes with regulatory penalties applied to late payments;
- Government-endorsed 'prompt payment' voluntary codes; and
- Government procurement 'prompt payment' policies or legislation.

Question 12

What international approaches to improving payment terms and practices for small businesses, including lessons learnt, should be considered in the Australian context?

Appendix: Glossary of key terms

Term	Definition
Constitutionally covered entities	As defined in section 6 of the Act, 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*; (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 Act, an entity that is a body corporate incorporated in Australia and is not a subsidiary of another body corporate that is incorporated in Australia.
Member entity	As defined in section 5 of the Act, 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).
Payment practice	The actual time in which a business pays a supplier for goods or services, in addition to the use of other practices relating to the payment of suppliers for goods or services, such as the use of electronic invoicing or supply chain financing arrangements.
Payment term	The agreed period in which payment is made after supply of goods or services.
Reporting entity	As defined in section 7 of the Act, 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, is 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 Act, the first six 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 six months of an income year for the entity, the first six months of that income year is not a reporting period for the entity. If they become a reporting entity after the first

	six months of that income year, no period in that income year is a reporting period for the entity.
Small business	As defined in section 5 of the Act, a business that carries on an enterprise in Australia with annual turnover (within the meaning of the *Income Tax Assessment Act 1997*) of less than $10 million for the most recent income year. This entity is described as a small business in the Small Business Identification Tool.
Supply chain financing	For the purposes of the Act, supply chain financing arrangements are arrangements under which a reporting entity agrees to pay a small business supplier, or arranges for a third party to pay a small business supplier, earlier than the payment terms in exchange for the small business supplier accepting a discount on the payment.
Trade credit	An agreement between the supplier and buyer that allows the buyer to delay payment for goods or services already delivered.