



22 November 2024

Ms Robyn Beutel
Regulator
Regulation and Payment Performance Branch
Small and Family Business Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: PaymentTimesReformSMB@treasury.gov.au

Dear Ms Beutel,

Payment Times Reporting Exposure Draft Guidance

The Corporate Tax Association (**CTA**) and Business Council of Australia (**BCA**) collectively represent over 200 large corporates that operate in a range of industries across the economy. The CTA and BCA (**Joint Bodies**) welcome the opportunity to respond to the *Payment Times Reporting Exposure Draft Guidance (Draft Guidance)*.

The major reforms to the Payment Times Reporting Scheme (**PTRS**) will involve significant and costly changes to systems for companies to comply with. It will be critical that both the Rules and related guidance material allow companies the flexibility to continue to rely on existing systems and processes as much as possible, where they produce the required outcomes. Payment Times Reporting is ultimately the mechanism through which the objectives of faster payment terms and better times and practices for large businesses paying small business suppliers are to be achieved.

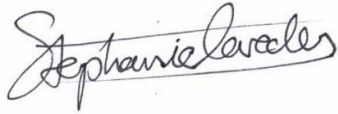
The timing of these proposals is problematic. Some changes will be challenging for reporting entities to comply with in practice given that the new rules were finalised halfway through a reporting period and this guidance will not be finalised until the end of the first new reporting period – at the earliest. In addition, this is still a subset of the necessary guidance needed for companies to comply with the revised scheme.

We consider that companies should be provided a blanket extension to lodge by 30 September 2025. Streamlining and improving the quality of reported data was a key reform priority identified as part of the *Statutory Review of the Payment Times Reporting Act 2020*. A broad extension will better support all reporting entities in achieving this priority.

Our detailed comments are contained in the attached Appendix.

We would welcome the opportunity to discuss this matter with you further. Should you have any questions or if you wish to arrange a meeting to discuss this matter, please do not hesitate to contact Stephanie Caredes (for the CTA) on 0408 028 196 or Pero Stojanovski (for the BCA) on 0402 833 124.

Yours sincerely

Handwritten signature of Stephanie Caredes in black ink.

Stephanie Caredes
Senior Tax & Policy Adviser
Corporate Tax Association

Handwritten signature of Stephen Walters in black ink.

Stephen Walters
Chief Economist
Business Council of Australia

Appendix

1. General

a) Ability to comply with new rules

Members have expressed concerns with being able to comply with the new reporting requirements in the *Payment Times Reporting Act 2020* (Cth), *Payment Times Reporting Rules 2024* (Cth) and the Draft Guidance by the time the first reports are due to be lodged by 30 June 2025. This is because the proposed changes are a dramatic and unexpected change to the Payment Times Reporting Scheme, with existing systems having to be rebuilt in many circumstances.

While it is appreciated that the Draft Guidance has been issued and is due to be finalised by the end of November 2024 – this is close to the end of the current reporting period. When combined with the new Rules not being finalised until mid-September (i.e. halfway through the first reporting period), this will make it difficult for many companies to be fully compliant with the revised scheme. By comparison, the Rules for the first iteration of the Payment Times Reporting Scheme were finalised in December 2020 – *before* the scheme first came into effect.

In addition, the template used for the new style of reporting has not yet been made public. Updates to numerous existing Guidance Notes and Information Sheets have also not yet been updated. This makes it difficult to appropriately comment on the Draft Guidance while so much other guidance is yet to be updated. These may fill in perceived gaps or answer issues identified with the Draft Guidance and limits our ability to appropriately comment on the Draft Guidance. Please advise when the rest of the updated guidance will be available.

Our members also need sufficient time to update systems for the new – and more complex – style of reporting under the revised Act and Rules. Companies will have to retrospectively comply with the revised scheme, for example retrospectively collecting invoice data from the current reporting period that may be redundant to final reporting outcomes but that is required under the new Rules.

The three-month extension for reporting (i.e. to 30 June 2025) may also be inadequate in the context of complying and lodging the first set of reports. There is a risk this will impact the quality of the reported data as reporting entities must undertake sweeping changes to their systems with limited time. To illustrate, the process of compliance with the new scheme will depend on the updated Draft Guidance due by the end of this month. The changes required to be compliant include:

- **Documenting and understanding business requirements** – this will take several weeks, including internal and external advice and clarification. In practice, many new issues are likely to be discovered during this process that were not considered during the current consultation process. This process could take over a month – and likely longer with external advice/assurance.

- **Documenting and reporting technical reporting requirements** – this will also take several weeks, including internal and external advice, and clarification.
- **Build, test, deploy and audit the new report** – this will take at least several months as there may be many iterations of testing and retesting. This is critical to the production of accurate reporting and meeting the scheme’s statutory obligations.
- **Seek internal approval for submission** – internal processes mean this will typically need to be prepared a few weeks in advance of Board meetings to ensure appropriate scrutiny and consideration. The dates of Board meetings may also not closely align with the 30 June 2025 reporting date – further compressing timelines.

This is a large-scale, complex and costly IT project – with limited time for compliance. Staff availability over the several weeks that represent the upcoming December-January holiday period will also impact the ability to prepare reports by 30 June 2025. At the same time, the comprehensive changes to reporting mean many companies will rely on external partners to help provide assurance and compliance with the revised scheme.

When all these factors are combined, meeting the 30 June 2025 deadline will be a difficult and costly exercise, and there is a risk this will impact the quality of reporting. This will subsequently require reporting entities to promptly address these matters under the revised scheme, with the risk of significant penalties for not doing so. Taken together, all companies should be provided a blanket extension to 30 September 2025 for lodging their first reports under the new scheme. While the Regulator can provide extensions of time to report, there is uncertainty around its application in practice – particularly around the lodgement of the first set of revised reports.

b) Practical matters

- i) Use of Excel - in the absence of developing an IT solution, it will be difficult for reporting entities to manage all data across all their entities in Excel given the line limitations in Excel.
- ii) Template - it would be useful if detailed guidance for each field is included in the template and the Draft Guidance.

c) Important notice about this guidance

Page 6 of the Draft Guidance contains an ‘important notice’ about the Draft Guidance extracted below:

This guidance material provides a summary of the relevant law. As this document tries to avoid legal language wherever possible, it may include some generalisations about the law. Some provisions of the law referred to have exceptions or important qualifications, not all of which may be described here. **The Commonwealth does not guarantee the accuracy, currency or completeness of any information contained in this document and will not accept responsibility for any loss caused by reliance on**

it. Your particular circumstances must be taken into account when determining how the law applies to you. This guidance material is therefore not a substitute for obtaining your own legal advice.

In this guidance, unless otherwise indicated, references to reporting entities includes reporting entities that meet the definition of reporting entity under section 7 of the *Payment Times Reporting Act 2020* and volunteering entities, subsidiary reporting entities and reporting nominees, as determined by the Regulator. **[Emphasis added]**

It is highly unusual, unconventional and unhelpful to see comments of this nature included in guidance published by a regulator. The first paragraph essentially says the Draft Guidance cannot be relied upon (refer to the text in bold in particular). It is unclear why the Regulator would choose to issue guidance on rules and laws that it is responsible for administering that cannot be relied upon. It is unclear what avenues a reporting entity has in this circumstance where it cannot rely on guidance issued by the Regulator.

This creates inherent uncertainty not only in how the new laws and rules apply, but also in the Regulator's ability to suitably meet its requirements in administering the laws and rules. For example, the guidance provides welcome flexibility on some aspects of compliance despite requirements within the Act/Rules – but the notice creates uncertainty for companies.

However, at the November consultation meetings for this Draft Guidance, we understand that the Regulator simply seeks to state that the Draft Guidance is the Regulator's interpretation of the law.

The Australian Taxation Office issues both binding guidance in the form of [Public Rulings](#) (Taxation Rulings and Law Companion Rulings) containing its interpretation of the tax law and law administration guidance (in the form of [Practical Compliance Guidelines](#)) addressing the practical implications of tax laws and outlining the ATO's administrative approach.

An example of the disclaimer in the binding guidance¹ is:

This publication is a public ruling for the purposes of the Taxation Administration Act 1953.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

An example of the disclaimer in the administrative guidance² is:

¹ Refer to [LCR 2024/1](#) and [TR 2024/1](#) as recent examples.

² Refer to [PCG 2024/1](#) as a recent example.

This Practical Compliance Guideline sets out a practical administration approach to assist taxpayers in complying with relevant tax laws. Provided you follow this Guideline in good faith, the Commissioner will administer the law in accordance with this approach.

Given the Draft Guidance appears to be a combination of law interpretation and administration, we suggest the following wording for the Important Notice using the example disclaimers as a guide:

This [Guidance document] sets out the Regulator’s interpretation of the relevant law and its practical administration approach to assist reporting entities in complying with the relevant laws.

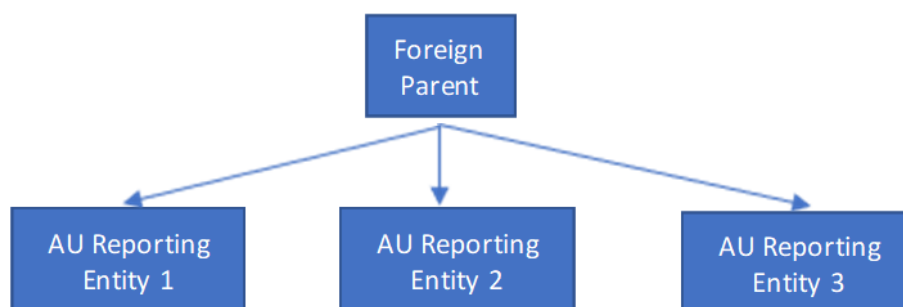
If this [Guidance document] applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this [Guidance document]. Provided you follow this [Guidance document] in good faith, the Regulator will administer the law in accordance with this approach.

2. Specific issues

a) Becoming a nominee reporting entity (paragraphs 63 and 64)

The four conditions in paragraph 63 must all be satisfied before an entity can apply to be a nominee reporting entity due to the use of the word ‘and’ in the conditions. There is a requirement that the nominee reporting entity controls at least one other reporting entity. Please advise what Multiple Entry Consolidated (MEC) groups are to do to determine a ‘nominee reporting entity’.

Below is a typical example of a MEC group where there are three reporting entities each owned directly by the foreign parent entity:



It would be helpful if, at the option of the reporting group, that one of the AU Reporting entities could be nominated as the nominee reporting entity for the purpose of the Payment Times Reporting Rules, in the same way that a MEC group is able to nominate a “head entity” under the income tax and GST consolidation rules, instead of the foreign parent entity that has common ownership of all the Australian entities.

b) Reporting periods – when to report (paragraph 78)

The reporting periods for entities with financial years ending on 30 June and 30 September have been specified in the Draft Guidance. Please revise the Draft Guidance to indicate they are examples illustrating how the approach set out in paragraph 78 applies to a 12-month reporting period. The way the information for financial years ending on 30 June and 30 September is currently expressed has raised questions about the reporting periods for reporting entities with year ends other than 30 June or 30 September. Emphasising the general rule already included and specifying the information for 30 June and 30 September are simply examples would resolve this.

c) Consolidated reporting

The Draft Guidance refers to ‘consolidated reporting’ in a few places (paragraphs 98, 249 and 252) and mentions that intragroup payments are excluded payments for reporting purposes (paragraphs 146 to 148). However, there is no section in the Draft Guidance that sets out how an entity is meant to prepare their consolidated report and brings all the relevant elements of a consolidated reporting together. Please advise if separate guidance will be issued for this purpose. If not, please update the Draft Guidance to set out the practicalities of what a reporting entity needs to do to prepare a consolidated report.

d) Datasets: In Practice (paragraph 162)

Paragraph 162 notes the dataset “should include payments by the reporting entity and **any** entities it controls”. Please confirm whether this includes all foreign controlled entities of the reporting entity. If so, it would be useful if an express statement confirming this was included in the Draft Guidance at paragraphs 37 to 40 about entities controlled by reporting entities.

e) Identifying payments to Government entities

It is unlikely that any reporting entity’s accounting and payments system will identify payments to Government entities. These can be identified by a search of the relevant ABN in the [ABN Lookup](#) function on the Australian Business Register. This is a practical solution for reporting entities to make this determination.

Please confirm that the Regulator will accept that reporting entities can rely on information obtained from ABN Lookup to determine the nature of the supplier entity based on the ABN provided by that supplier entity and no further investigation or verification by the reporting entity is required.

Please also confirm that the SBI Tool will also not flag any government entities as small businesses such that reporting entities are also able to rely on the information in the SBI Tool as well for this purpose.

f) Payment Terms and Times (paragraphs 166 to 185)

There are some inconsistencies in the wording used in the Draft Guidance creating some confusion. For example, paragraph 166 refers to “the mode of the payment term from the SBTCP dataset”. However, the reference to the “SBTCP dataset” is not replicated in paragraph 168 (range), paragraph 169 (mode for the next reporting period) or paragraph 170 (mode payment term for credit sales). The “SBTCP dataset” was referred to again in paragraph 178 (average), but not in paragraph 180 (median) or paragraph 182 (80th and 95th percentile).

In particular:

- Paragraphs 166 to 168 refer to the mode of the payment term, yet the calculation refers to the payment time calculated as the number of days taken to make payments. Please clarify that the purpose of these paragraphs is to just report on the payment terms and not the payment time. In addition, clarity is needed around the precise form/nature of the range that must be reported.
- Paragraph 170 initially refers to the credit terms for sales, i.e. the payment terms requested, but then describes this by using the term “how quickly the entity gets paid” which would indicate the payment time for sales, not the terms applied. Based on the heading it should be the standard credit terms applied to the invoices issued by the reporting entity.
- Paragraphs 180 to 184 – please confirm that this is required to be calculated just for the SBTCP dataset.

Paragraph 184 doesn’t make clear in the calculation which dataset is being used, whether both are SBTCP or neither. It is inconsistent with other calculation examples in the document. Based on the heading, we would expect the calculation to be described as follows:

“Number of payments in SBTCP dataset where Payment Time \leq Payment Term \div Number of payments in the SBTCP dataset”.

- Paragraph 185 – for both this paragraph and throughout the document, clarity this refers to calculations based on the number of invoices would be helpful as part of transitioning to the revised PTRS.

g) Contractual terms for payments

Paragraphs 136 and 137 recognise that the contract terms should be used to determine the payment time. Paragraph 158 then calculates the method to calculate the payment time which references the ‘invoice issue date’ or ‘invoice receipt date’.

However, the contract might have some reference point to calculate the payment time e.g. goods receipt date. Paragraph 158 should be updated to state “or the payment time stated in the contractual arrangement with the supplier.”

h) Fees (paragraphs 223 to 225)

The Draft Guidance notes fees will apply for certain applications (for example nominee and subsidiary reporting entities). It would not be appropriate for the Regulator to apply these fees upon reporting entities transitioning into the new scheme as they may need to establish their nominee and subsidiary reporting entities and if extensions of time are required to initially comply.

We seek confirmation from the Regulator that no fees will be applied to reporting entities upon their initial transition into the new reporting regime.

i) Slow small business payer

Guidance is required (based on previous submitted reports) on what constitutes a slow small business payer either as part of all small business payers in a reporting period or within its ANZSIC Division. This information is not able to be ascertained based on the published reports to date, and it would be helpful if the Regulator was able to provide guidance on the 80th and 95th percentile of small business payment times as a whole and by ANZSIC code.

Being classified as a slow small business payer has potentially adverse consequences for a reporting entity’s reputation. Currently, reporting entities are unable to determine who is a slow small business payer in their respective industry. Therefore, reporting entities are unable to address this issue ahead of the new reporting rules applying. To illustrate, the first reports under the revised scheme are due at the end of the second reporting period at the earliest. An entity that is identified as a slow small business payer in the first period will be unaware until after the next reporting period. By that point, it would be unable to address this but still be at risk of being designated a slow small business payer. By extension, it would also be unaware until halfway through the third reporting period which would be difficult and/or require a significant level of resources (such as working capital, updates to systems/processes etc) to substantially change payment practices for the third period. A company may demonstrate an improvement across those periods, but remain in the slowest 20 per cent, and still be identified a slow small business payer under the wide discretion in the powers given to the Minister (and potentially the Regulator).

Please advise whether there will be opportunity for reporting entities to address this after the new rules apply and well before the Minister starts issuing slow small business payer directions.

Paragraph 311 notes a slow small business payer direction made by the Small Business Minister is reviewable by the Administrative Review Tribunal. However, where the direction is made by the Regulator as a delegate of the Small Business Minister, it appears that this decision can only be reviewed by a delegate of the Regulator (paragraphs 284 to 290). This

creates a perverse set of incentives around how the direction is applied and may inappropriately deny procedural fairness or recourse to those affected.

This section would also help with clarity around when a slow small business payer direction ends e.g. the entity reporting a payment time of 30 days or less in a subsequent period.

j) Payment terms and times - Most common standard payment term (range)

The inclusion of this metric should be reconsidered as it only adds to confusion around reporting and presentation and is of limited value to stakeholders – contrary to the purpose of the reforms to the PTRS.

k) Payment terms and times - Comparison of receivable terms to payment terms

We note this is a new field requiring a different dataset and query whether it is necessary. It is unclear how reporting of payment terms relative to receivable terms would support the objectives of the Act. Despite the flexibility in approaches outlined, the costs of complying with this proposed data field would likely outweigh any potential benefits. For example, as part of consolidated reporting some companies will have over 100 entities in its group now captured by the scheme – many of whom do not make payments to small businesses.

If it is retained, it would be useful if the Draft Guidance could confirm that in calculating the payment time for receivables in the mining industry for example, the provisional payment should be ignored. That is, the payment time is from the date the provisional invoice is issued to the date the final payment is received or refunded.

Sales contracts in certain industries, such as mining, often incorporate provisional pricing – at the date of delivery of the mineral ore, a provisional price may be charged, with a final payment on settlement. There is often a significant time lag between the provisional invoice date to the receipt of the final payment date.

For example:

- Incoterm: CIF
- Goods delivered on ship: 31 March 2024
- Provisional invoice date: 31 March 2024, based on estimated value
- Payment of provisional invoice: within 2 business days of receipt of the shipping document
- Final invoice date: 24 July 2024, based on the final price as quoted on for example, on the London Metal Exchange
- Payment of final invoice: within 3 business days after the seller sends the invoice
- Where the provisional payment exceeds the final invoice, the seller must refund the buyer within 3 business days of the final invoice date

From a transaction cycle perspective, the “payment time” should be calculated from the provisional invoice date to the receipt of the final payment based on the final invoice (or where the provisional payment exceeds the final invoice, then when the refund is issued). The

above is similar to the concept of “partial payments”, where paragraph 129 of the Draft Guidance provides that partial payments should be excluded from payment times calculations.

There may be similar issues in other industries – for example where fees are charged without an invoice per se. Treasury should ensure the Partial Payments section of the Draft Guidance is broad enough to cater for this.

The examples above demonstrate the significant and unnecessary complexity and compliance considerations imposed by this new requirement. The costs of compliance will be unnecessarily large – particularly in the context of the questionable value of this data point.

l) Agency

Can guidance be included on who has an obligation to report, where a third party pays on behalf of a reporting entity. Does the agent or principal need to report?

m) Recipient-created tax invoices

Please confirm the rationale for needing to separately identify RCTIs per paragraph 134. Systems do not always capture what is a RCTI and what is not. The payment time determined will be based on the contractual terms.

n) Supply Chain Finance

Please confirm that the supply chain finance payment time referred to in paragraph 188 is required to be calculated consistently with the current rules.

o) Report approval

Example Scenario 1 states board members that approve the report must be named where this is approved by a board. Please clarify whether the intention is for each board member to be individually named under this approach?

p) Fast small business payers

The Draft Guidance states an entity cannot make a fast small business payer declaration unless it appears on the Fast Small Business Payer List. In contrast, s22J of the Act states an entity is a fast small business payer if its report meets the requirements and does not strictly require appearance on this list for the designation to apply.

Paragraph 316 also notes that a “fast small business payer designation automatically expires after the end of the reporting period in which the entity qualified.” The following paragraph also notes that the submission of a report with payment times of 20 days or less will ensure this designation continues. Clarity is needed around when the Fast Small Business Payer List will be updated (i.e. will this be updated in real time?) if the Regulator chooses to apply this as a requirement for using the designation.