

2 September 2022

Payment Performance Branch
Small and Family Business Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: support@paymenttimes.gov.au

To Whom It May Concern

Payment Times Reporting: Updated guidance material

The Property Council of Australia champions the industry that employs 1.4 million Australians and shapes the future of our communities and cities. Property Council members invest in, design, build and manage places that matter to Australians: our homes, retirement villages, shopping centres, office buildings, industrial areas, education, research and health precincts, tourism and hospitality venues and more.

The Property Council welcomes the opportunity to comment on the updated guidance material to inform Payment Times Reporting as required under the *Payment Times Reporting Act 2020* (the Act) to reduce the regulatory burden while achieving the Act's objective to improve payment times for Australian small businesses.

The Property Council urges the Government and the Regulator to maintain focus on how the legislation, guidance notes and use of the data provided are performing to meet the objective of improved payment times.

In addition to our feedback on the draft guidance materials, the Property Council recommends that the following be considered to improve the operation of the legislation:

1. The use of 'total income' to determine if an entity is a reporting entity

Consistent data reporting over a number of years is required to determine whether a large business is working to improve payment times.

The primary concern raised remains the threshold of total income using Australian accounting standards or another standard that aligns with International Financial Reporting Standards to determine whether the entity is considered a reporting entity.

Guidance published in April 2021 stated that entities should focus on the meaning of 'total income' in with the same meaning as in section 3C of the Taxation Administration Act 1953 with this meaning applied to all individual entities. It is not limited to entities that lodge tax returns.

The use of an accounting standard as opposed to taxable income to determine whether the entity is considered a reporting entity is challenging when used in the context of entities which hold

commercial property assets or any other entities with significant assets recorded at fair value. Revaluation of property assets have the potential to result in significant variances in total income on a year-on-year basis. Entities with significant derivatives may also have a total income under the accounting standards which varies significantly year-on-year as a result of the mark-to-market of these derivative positions.

The result may be that an entity may be considered a reporting entity for a year, and then no longer a reporting entity in a subsequent year, making comparability across multiple reporting periods difficult, and increasing the compliance related administrative burden on businesses.

Taxable income, as a less volatile measure, would be more appropriate to determine if an entity is a reporting entity. This measure is more likely to consistently establish if an entity is a reporting entity, and therefore create a more consistent record of an entity's payment times, to deliver the outcomes intended by the Act.

2. The use of data provided by reporting entities

The Property Council also urges the Regulator to consider how it can support reporting entities to leverage the data provided to improve their payment performance via the *paymenttimes.gov.au* website. For example, allowing reports to be downloaded for Board reports, to validate that reports have been correctly loaded, or to allow like businesses to benchmark their payment times to peers in their sector.

Working with large businesses to improve payment performance through simple data access will be more likely to improve payment time outcomes for small business than compliance activities to provide the data in the first instance.

Please find enclosed comments on the draft guidance in the template format as requested.

We would appreciate the opportunity to discuss these issues in the lead up to the finalisation of the guidance notes. Please contact me on 0400 356 140 or bngo@propertycouncil.com.au.

Yours sincerely



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Executive Director, Capital Markets

Consultation template

Name/Organisation: Property Council of Australia

| Heading | Section # / Paragraph # | Feedback |
|---|-------------------------|----------|
| Guidance note 1 – Key concepts | | |
| Reporting entities – Types of reporting entities | | |
| Entities deemed to be reporting entities | | |
| Volunteering entities | | |
| Constitutionally covered entities | | |
| Identifying constitutionally covered entities | | |
| Constitutional corporations | | |
| Foreign entities | | |
| Entities incorporated or carrying on an enterprise in a territory | | |
| Carrying on an enterprise in Australia | | |
| Carrying on an enterprise in Australia | | |
| Income thresholds | | |

| Heading | Section # / Paragraph # | Feedback |
|--|-------------------------|--|
| Identifying the relevant income threshold | | |
| Applying income thresholds | | |
| Controlling corporations and member entities | | |
| Head entities | 44 | <p>For the purposes of administering the Act, 'head entity' was introduced as another entity type. The Guidance recognises that the term 'head entity' is not defined by the Act, but it refers to the ultimate parent entity of a corporate group.</p> <p>The Guidance would be benefit from a definition for 'head entity'. For example, it is not clear what happens if you have multiple Australian head entities but are subsidiaries of the same foreign parent, should the foreign parent be seen as the head entity or the ultimate Australian head entities which would align to financial reporting and tax reporting requirements from a financial statement preparation perspective.</p> |
| Unincorporated entities | 49/ Table 2 | <p>Under the accounting standard (AASB 10), there are other criteria to be considered and on this fact alone, Entity A might not 'control' Entity B. It needs to be clarified that this is a different requirement under the PTR Act i.e. we could have a scenario where Entity A doesn't consolidate Entity B in its financial statements, but will need to report Entity B's PTR stats as part of Entity A.</p> |
| Total income | | |
| Measurement and recognition | 50 | <p>As noted in the submission cover letter, there should be a greater emphasis on taxable income concepts rather than IFRS accounting concepts.</p> |
| Foreign currency translation | | |
| Use of tax return information | | |

| Heading | Section # / Paragraph # | Feedback |
|---|-------------------------|--|
| Business combinations and control transactions | 59 | Member entities should be able to exclude intercompany revenue from the calculation of the threshold as it can vary substantially from period to period. |
| Reporting period | | |
| Income year | | |
| Determining reporting periods | | |
| Procurement - Small business procurement | | |
| Supply of goods and services | | |
| Trade credit arrangements | 74 | The examples provided seem to be examples of arrangements which are not trade credit arrangements. However, the wording prior to these points talks about what trade credit arrangements are. For the benefit of the Guidance, this should be better clarified. |
| Credits, rebates and discounts | NA | The Guidance would benefit from a reference to how credit notes should be applied against an invoice as this is included on the payment times website , stating that It's up to the reporting entity how and when they apply a credit note to a small business invoice. When they do and it offsets the value of the invoice, they report the net value in their payment times report. It is also important for the Regulator to acknowledge that often entities cannot apply a credit to a specific invoice, and so there needs to be flexibility in this area. |
| Excluded payments | | |
| Credit card payments | | |

| Heading | Section # / Paragraph # | Feedback |
|--|-------------------------|---|
| Procurement - Payment terms | | |
| Arrangements, agreements and contracts | | |
| Standard payment period | | |
| Procurement - Invoices | | |
| Invoices | | |
| Combined invoices | 90 | The Guidance note would benefit from practical considerations as the requirement to count each invoice separately if an invoice covers multiple payments to be made under different arrangements is impractical with most accounting systems. Most systems will not record which agreement/s to which an invoice relates. |
| Invoice date | | |
| Recipient-created tax invoice | | |
| Disputed invoices | | |
| Supply chain finance | | |
| Governance | | |
| Principal governing body | | |
| Responsible member | | |

| Heading | Section # / Paragraph # | Feedback |
|---|-------------------------|---|
| Trusts, partnerships and unincorporated entities | 111 (bullet point 3) | The Guidance note would benefit with clarification that the requirement for trusts, superannuation funds and approved deposit funds with a single trustee, obligations of the trust are imposed on the trustee to report in respect of each trust independently. The trustee must discharge the obligations of the trust only if the relevant individual trusts meet the reporting entity requirements. |
| Other | | |
| Other feedback on Guidance note 1 | | |
| Guidance note 2 – Preparing a payment times report | | |
| When to prepare a report | | |
| Reporting deadline | | |
| Mergers and acquisitions | | |
| Report data | | |
| Information to prepare a report | | |
| Small Business Identification Tool information | | |
| Record keeping | | |
| Payment times report content | | |
| Required content | | |

| Heading | Section # / Paragraph # | Feedback |
|--|-------------------------|---|
| Other content | | |
| Reporting for groups | | |
| Reporting nil values | | |
| Misleading information | | |
| Submitting a payment times report | | |
| The Payment Times Reporting Portal | | |
| Signing reports and declarations | 48 | <p>The responsible member declaration template currently requires the responsible member of the entity to declare that they will provide the report to the principal governing body of the reporting entity. Given:</p> <ul style="list-style-type: none"> - The uncertainty about when a report (as lodged) may be published the Payment Times Report register; and - There is currently no ability to download an ‘as lodged’ version of a report for an entity or multiple entities in a group, <p>It is unclear how a responsible member may comply with this requirement, other than by providing a copy of the data uploaded to the register to the principal governing body. It would be appreciated if the form of the report referred to in the declaration be clarified to confirm that a copy of the data uploaded to the register, in a format readily understandable by the principal governing body, be sufficient to satisfy this requirement.</p> |
| Publication of reports | | |
| Guidance note 2: Appendix 1 – Payment times reporting template instructions | | |

| Heading | Section # / Paragraph # | Feedback |
|---|-------------------------|----------|
| Instructions on how to complete the payment times reporting templates | | |
| Payment Times Reports Register | | |
| How to complete the Payment Times Reporting Template | | |
| Entity information | | |
| Reporting period dates | | |
| Standard payment periods | | |
| Small business payments | | |
| Invoicing arrangements | | |
| Small business procurement | | |
| Supply chain financing | | |
| Notifiable events | | |
| Report comments | | |
| Submission and approval details | | |
| Principal governing body | | |
| How to complete the Responsible Member Declaration Template | | |

| Heading | Section # / Paragraph # | Feedback |
|---|-------------------------|--|
| Responsible member approval | | |
| Provision to the Principal Governing Body | | |
| Other | | |
| Other feedback on Guidance note 2 | | The appendix Guidance would benefit from clarification as whether it is required that responsible member to sign each section, or if it is a single signature as stated in paragraph 48. |
| Guidance note 3 – Applications and notifications | | |
| Applications - Extension of time to lodge a payment times report | | |
| When we can give an extension | | |
| Circumstances that are exceptional or outside an entity's control | | |
| Severity of circumstances | | |
| Length of extension | | |
| Applying for an extension | | |
| Assessing your application | | |
| Review of decision | | |
| Applications - Cease to be a reporting entity | | |

| Heading | Section # / Paragraph # | Feedback |
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| Eligibility for a determination to cease being a reporting entity | Key Point Box | A determination is unlikely to [be] (insert) granted for member entities with income falling below A\$10 million for two consecutive income years and entities that cease to exist or cease to be a constitutionally covered entity. |
| Applying for a determination to cease being a reporting entity | Key Point Box | The Guidance would benefit from stronger language where it states that the regulator “may not” grant a determination as it is understood that an entity ceased to be a reporting entity if it dips below the income threshold for 2 years. This is unlikely to require a determination. As a suggestion, this bullet point categorically rule any determination on this, i.e. The Regulator “ will not ” make a determination. |
| | Table 4 and Table 5 | We would appreciate guidance as to whether an entity whose income exceeds A\$10 million, and is part of a corporate group, but who makes no payments required to be reported under the Act, would be eligible for consideration for a determination to cease to be a reporting entity. An example of such a situation is where an receives intra group income in excess of A\$10 million, and distributes that income to other group entities, but does not itself make any payments to small business suppliers as such payments are made by the Group’s operating companies. |
| Assessing your application | | |
| Effect of determination | | |
| Review of decision | | |
| Applications - Revised payment times reports | | |
| When to give a revised report | | |
| Applying to register a revised report | | |
| Assessing your application | | |

| Heading | Section # / Paragraph # | Feedback |
|---|-------------------------|----------|
| Applications - Redaction of commercial-in-confidence information | | |
| Redaction of commercial-in-confidence information | | |
| Requesting a redaction | | |
| Assessing your request | | |
| Notifications – Volunteering entities | | |
| Volunteering entities | | |
| Notifiable events | | |
| Other | | |
| Other feedback on Guidance note 3 | | |