KPMG

Statutory Review of the Payment Times Reporting Act 2020

KPMG submission

KPMG Australia, March 2023

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Contents

Executive summary

As a leading professional services firm, KPMG Australia (KPMG) is committed to meeting the requirements of all our stakeholders – not only the organisations we audit and advise, but also employees, governments, regulators and the wider community. We strive to contribute to the debate that is shaping the Australian economy and welcome the opportunity to provide a submission in response to the Statutory Review of the *Payment Times Reporting Act 2020* (the Review).

KPMG strongly believes that the PTR Scheme has significantly improved the payment terms provided to small business suppliers across Australia's largest reporting entities. The PTR Scheme has driven real cultural change and the prompt payment of small business suppliers is now receiving board and director level attention. However, there is always room for improvement.

KPMG has assisted many reporting groups with the Payment Times Reporting Scheme (PTR Scheme) since late 2020. This submission has been informed by the experiences that our technical experts have gathered through this work with key Australian businesses. For the avoidance of any doubt, KPMG is not advocating on behalf of our client base in this submission, but rather advocating for sensible reforms that seek to lower the cost of compliance and create better policy outcomes for small business.

KPMG strongly believes that the PTR Scheme has significantly improved the payment terms provided to small business suppliers across Australia's largest reporting entities. The PTR Scheme has driven real cultural change and the prompt payment of small business suppliers is now receiving board and director level attention. However, there is always room for improvement.

KPMG has provided 11 recommendations in this submission where we believe the scheme could be improved to address compliance costs and to ensure the PTR Regulator (the Regulator) is more responsive to industry. Several recommendations also consider other measures that the Review could consider putting further downwards pressure on payment periods, including:

- Better usability / comparability functions developed as part of the PTR Scheme website;
- Stabilisation of the Guidance Material to ensure comparability between like-firms and prior reporting periods;
- Recognition of Reporting Entities that sign on to voluntary payment codes;
- Consideration of the development of a government run voluntary 30-day payment code, based on the UK scheme, where entities can be struck off for non-compliance;
- The addition of new mandatory reporting fields in the PTR Scheme i.e. whether an entity is eInvoicing / Peppol enabled; and /or whether the Reporting Entity has signed up to a voluntary payment code; and
- Targeting of industries / entities with poor payment terms through education and awareness campaigns.

Thank you for the opportunity to participate in the Review and we look forward to working with the Government on sensible reforms to ensure the PTR Scheme is functioning efficiently and effectively.

Should you have any questions in relation to this submission, please do not hesitate to contact me directly on 03 8663 8974.

Yours sincerely,

Vince Dimasi

National Lead, Working Capital Advisory & Payment Times Reporting

KPMG Australia

Background

About KPMG

KPMG is a global organisation of independent professional firms, providing a full range of services to organisations across a wide range of industries, governments and not-for-profit sectors. We operate in 146 countries and territories and have more than 227,000 people working in member firms around the world. In Australia, KPMG has a long tradition of professionalism and integrity combined with our dynamic approach to advising clients in a digital-driven world.

Working Capital and Payment Times Reporting Advisory

KPMG's Payment Times Reporting Advisory team specialises in assisting our clients to understand, prepare for and comply with their Payment Times Reporting obligations. Our team of dedicated specialists combines their deep understanding of the Payment Times Reporting Act with a strong data and analytical skill set to bring a range of different solutions to our clients. Since the introduction of the Payment Times Reporting Act, KPMG Payment Times Reporting Advisory has assisted a wide range of clients ranging from large ASX listed, through to Australian subsidiaries of Multi-National Corporations, through to smaller privately owned businesses. Our team has also provided a wide range of feedback and input to the Payment Times Reporting Regulator covering numerous practical suggestions and areas for potential improvement.

Section 1:
KPMG recommendations

RECOMMENDATION 1:

KPMG considers that the benefit of the PTR Scheme to small business could be improved over time with increased educational content, functionality, and usability of the PTR Scheme website.

RECOMMENDATION 2:

Whilst there is no definition that is considered reasonable in the market, we believe that a term of 30 days is generally considered by many of our clients as a reasonable term for paying invoices to small business suppliers. KPMG is a signatory to the BCA's Supplier Payment Code and has committed to pay eligible small business suppliers within 30 days.

RECOMMENDATION 3:

KPMG considers that the regulatory burden of the PTR Scheme would be reduced if future changes to guidance material included "effective date" directives to allow time for system changes. In addition, KPMG suggests that the Regulator hold webinars to increase awareness and understanding of changes to guidance materials.

RECOMMENDATION 4:

KPMG considers that Reporting Entities as well as other external stakeholders would benefit from certainty around when reports will be made publicly available so they can time their own communications with internal and external stakeholders.

RECOMMENDATION 5:

KPMG considers that there are a range of technical amendments that would improve the PTR Scheme's efficiency and effectiveness including:

- Improved guidance material on trusts, partnerships and determining total income;
- A clearer policy on credit card spend;
- An improved communication strategy for updating technical aspects of the guidance material; and
- Clearer guidance around when the SBI tool should be utilised over the reporting period.

RECOMMENDATION 6:

KPMG recommends that a simplified suite of metrics that are narrower in focus be adopted and form the basis of metric reporting – e.g., all payments made within less than 30 days and all payments made over 30 days. Additional metrics could also be captured around eInvoicing adoption, membership of voluntary payment codes and whether the Reporting Entity contracts with government and is therefore covered by various government schemes to further incentivise improved payment terms.

RECOMMENDATION 7:

KPMG recommends that there be a closer working relationship with advisers to industry, potentially through the establishment of formal industry adviser working group so that the Regulator can better understand issues/trends as they arise.

RECOMMENDATION 8:

KPMG requests the Review consider the merits of allowing the Regulator to make private rulings to increase certainly for Reporting Entities in complex scenarios.

RECOMMENDATION 9:

KPMG strongly supports the Government's initiatives to encourage the adoption of eInvoicing but considers it should be up to the individual entities to determine when to adopt, considering the technology, cost, and benefit to the organisation.

RECOMMENDATION 10:

The Government should engage with international peers to obtain further insights on their experience before implementing any mandatory eInvoicing adoption. KPMG notes that the EU Commission has recently commenced its own review of eInvoicing.

RECOMMENDATION 11:

As amendments are considered by the Review, it is essential to consider experiences of other countries globally to identify key strengths and weaknesses of similar schemes now in operation.

Section 2:
KPMG insights

Response to consultation questions

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?

KPMG considers that further messaging and education is required to ensure small businesses fully understand the Payment Time Reporting Scheme and what impact being a small business may have on their payment terms.

Many small businesses may not be aware that they are classified as a small business on the Small Business Identification (SBI) Tool.

Furthermore, improvements to the PTR Scheme website including an improved search function would allow small businesses to see which entities have longer payment times more easily.

RECOMMENDATION 1:

KPMG considers that the benefit of the PTR Scheme to small business could be improved over time with increased educational content, functionality, and usability of the PTR Scheme website.

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?

There are several factors driving payment terms and practices including:

- Structural supply chain impediments within a business, for example industries with long product lead times have a harder time with reduced payment times;
- The COVID-19 pandemic disrupting the supply chains of some business and creating cashflow shortages in others; Reduced headcount in internal finance teams due to the pandemic impacting certain sectors, limiting the ability to monitor payment terms and times with small businesses;
- The adoption of eInvoicing in some sectors (i.e., government and some large retailers) is driving down payment terms, albeit on a smaller scale; and
- Rapidly changing macro-economic conditions including rising cost inflation and successive interest rate rises.

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

In our experience, reasonable payment terms are dependent upon several factors including contract size, the presence of third-party contractors, whether the payment needs to go to third party sub-contractors and industries with long product lead times. A further consideration is industry nuances which often have long established “norms” of what is considered standard within that industry.

In some sectors payment times are subject to mandatory payment terms, for example some state-based construction regulations require 21-day payment terms and some governments have implemented differential payment terms for eInvoicing compliant invoices (i.e., Victorian government – 5 days versus 21 days).

Furthermore, in our experience, we believe that most corporate entities are generally able to pay supplier invoices within 30 days from either the date of validly received invoice or within the end of the transaction month.

KPMG is a signatory to the BCA’s Australian Supplier Payment Code, committing to pay eligible Australian small business suppliers on time and within 30 days of receiving a correct invoice.

RECOMMENDATION 2:

Whilst there is no definition that is considered reasonable in the market, we believe that a term of 30 days is generally considered by many of our clients as a reasonable term for paying invoices to small business suppliers. KPMG is a signatory to the BCA’s Supplier Payment Code and has committed to pay eligible small business suppliers within 30 days.

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?

Principle 1: Incentivises improved payment terms and practices and disincentivises poor behaviour:

KPMG's experience is that the PTR Scheme has successfully motivated many large businesses to improve their payment terms and practices in relation to small business suppliers.

Incentives to improve payment times would be increased if the usability and accessibility of the PTR Scheme website was improved, especially if the ability to directly compare like businesses was improved.

As the legislation was marketed as a tool for transparency, there has not been an incentive for large businesses to reduce terms, unless they sit as outliers in the current highly manual comparison spreadsheets.

Some large businesses are also currently excluded from the PTR Scheme – for example trusts are an example of excluded entities, as these are only currently covered in Australian territories i.e., the Northern Territory and the Australian Capital Territory.

Principle 2: Imposes a proportionate regulatory burden:

KPMG considers that the ongoing level of 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 and more broadly the support it affords to the small business sector of our economy.

In our experience, many of our large business clients have found complying with some requirements of the legislation time consuming. This has largely been due to the guidance material changing several times during the first four submission periods when large businesses have built teams, in house tools and reporting functions. Changes to the guidance material also means that the comparability of data between reporting periods is reduced, further undermining the policy objective of accessibility and usefulness.

To address this, KPMG suggests that guidance material should:

- Only be updated with lead times factored in for compliance i.e. "effective date" should be sometime in the future;
- Hold webinars that aim to explain the proposed changes while also answering any questions from Reporting Entities; and
- Ensure that all communication material on the website is immediately updated to incorporate the new material to prevent confusion, as in our experience there has been a lag.

Further examples of amendments that may improve the usability of the scheme and reduce regulatory burden can be found in Question 5.

RECOMMENDATION 3:

KPMG considers that the regulatory burden of the PTR Scheme would be reduced if future changes to guidance material included "effective date" directives to allow time for system changes. In addition, KPMG suggests that the Regulator hold webinars to increase awareness and understanding of changes to guidance materials.

Principle 3: Is accessible and useful:

As noted previously, for large businesses to be incentivised to reduce payment terms, the PTR Scheme website needs to be easily accessible, and data needs to be easily compared between like businesses. KPMG understands that a more interactive website using Power BI was planned but was set aside late into the PTR Scheme website launch due to data quality issues. We recommend that this approach be revisited. A more interactive approach to comparing data will also encourage media outlets to report on the metrics, further driving change in payment terms and increasing awareness.

KPMG considers that the awareness of the scheme is low in the small business community and an education and training program would increase the benefit to small business.

Lastly, now that we are into the second year of reporting, Reporting Entities as well as other external stakeholders would benefit from certainty around when reports will be made publicly available so they can time their own communications with internal and external stakeholders. The scheme would greatly benefit from the Regulator providing fixed dates for when reports will be uploaded based upon submission deadlines.

RECOMMENDATION 4:

KPMG considers that Reporting Entities as well as other external stakeholders would benefit from certainty around when reports will be made publicly available so they can time their own communications with internal and external stakeholders.

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?

KPMG has been involved in several reviews and requests for feedback from the Regulator since the PTR Scheme was first established. The most recent review was Treasury's consultation on the draft Payment Times Reporting Guidance Material. KPMG's submission provided 42 pages of feedback on the guidance material around the following broad themes:

Trusts and partnerships

- Expanding the description to specifically address the ability of trusts and partnerships to volunteer as a reporting entity.
- Recommending that the guidance material be updated to include common scenarios such as trusts/partnerships in an ownership chain of companies to assist entities in identifying controlling corporations and PTR Groups.

Determining total income

- Providing explicit guidance as to the treatment of transactions occurring between members of a PTR Group for the purposes of determining total income of the PTR Group.
- Given the different grouping rules (income tax, accounting, and PTR), there are likely differences between a PTR Group, income tax consolidation group and accounting consolidation group. In our view, it would be beneficial to provide more specific guidance as to how "total income" is to be quantified for the different common classes/types of entities.

Credit card spend

- We understand that the overriding reason that Reporting Entities do not report on credit card spend appears to be key missing data points gathered when making credit card payments (ABN, invoice date/invoice receipt date). It would be useful if the Regulator could provide practical advice to this problem or provide examples of how Reporting Entities can satisfactorily review credit card spend to comply with any future potential audit.

Guidance material

- We recommend ensuring that the Guidance Notes encompass all relevant information for consistency (including the content on the website), so that Reporting Entities are only required to consider one source of information.
- We recommend the Regulator provide a separate summary of key changes in the guidance notes from the existing guidance available on the PTR Scheme website to raise awareness of the changes made.

Small Business Identification (SBI) tool

- We note that the Regulator has provided further guidance on the frequency of using the SBI tool which may be confusing to Reporting Entities and result in variations in suppliers being considered small or large depending on when the report is generated. To provide consistency amongst Reporting Entities, it may be more helpful to have a set way for Reporting Entities to interact with the tool. Whilst it may be useful to interact with the tool through the period it should be clear whether just one SBI is relied upon for reporting.
- We note that a Reporting Entity can request that a supplier be removed from the SBI tool. We have had instances where non-reporting entities (who do not fulfil the requirements of being a small business supplier i.e., income of greater than A$10 million) do not have the ability to remove themselves from the SBI tool. We recommend that the Regulator consider mechanisms to allow non-reporting entities the ability to remove themselves from the SBI tool (with the appropriate evidence).

RECOMMENDATION 5:

KPMG considers that there are a range of technical amendments that would improve the PTR Scheme's efficiency and effectiveness including:

- Improved guidance material on trusts, partnerships and determining total income;
- A clearer policy on credit card spend;
- An improved communication strategy for updating technical aspects of the guidance material; and
- Clearer guidance around when the SBI tool should be utilised over the reporting period.

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

KPMG considers that the main questions PTR Scheme data should be able to track over time include:

- Improvement over time by industry;
- Improvement over time by company;
- Industries where payment times are higher;
- Portion of payments to small business (percentage and trends); and
- Instances where interest is paid for late payment.

In addition, KPMG recommends the following additional reporting requirements:

- EInvoicing / Peppol enabled;
- Whether the Reporting Entity has signed up to a voluntary payment code; and
- Whether the Reporting Entity is a supplier to Government organisations.

These additional metrics will provide greater information to small businesses and help incentivise large businesses to implement measures that put further downwards pressure on payment terms.

RECOMMENDATION 6:

KPMG recommends that a simplified suite of metrics that are narrower in focus be adopted and form the basis of metric reporting – e.g., all payments made within less than 30 days and all payments made over 30 days. Additional metrics could also be captured around eInvoicing adoption, membership of voluntary payment codes and whether the Reporting Entity contracts with government and is therefore covered by various government schemes to further incentivise improved payment terms.

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

KPMG often reaches out to the Regulator for advice and for assistance in interpretating Guidance Material. There can often be very long turnarounds in receiving responses. In addition, we have also observed many responses where the content shared by the Regulator is not entirely helpful to our clients. KPMG suggests that the Regulator be better resourced to meet the requirements of Reporting Entities.

KPMG also recommends that there be a closer working relationship with advisers to industry, potentially through the establishment of formal industry adviser working group so that the Regulator can better understand issues/trends as they arise.

Where the Regulator is not resourced to respond to industry promptly, we recommend that the scheme should be able to provide entities with protection from penalties where the entities follow the guidance notes and it turns out to be incorrect, or if the entities make a mistake because it was misleading.

Additionally, we would request that the Regulator consider a mechanism by which entities can engage with the Regulator to obtain certainty regarding positions to be adopted in upcoming reports where situations are complex and involve multiple potentially compliant positions. Inspiration should be taken from areas such as the Australian Tax Legislation where entities are able to submit a fact pattern to the ATO for a written determination such as a private ruling.

RECOMMENDATION 7:

KPMG recommends that there be a closer working relationship with advisers to industry, potentially through the establishment of formal industry adviser working group so that the Regulator can better understand issues/trends as they arise.

RECOMMENDATION 8:

KPMG requests the Review consider the merits of allowing the Regulator to make private rulings to increase certainly for Reporting Entities in complex scenarios.

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?

KPMG strongly supports the Government's initiatives to encourage the adoption of eInvoicing, noting that KPMG became eInvoicing enabled in 2022. We agree that eInvoicing is an important digital development and ought to be implemented when possible and where it makes sense to do so.

However, we consider it should be up to the individual entities to determine when to adopt eInvoicing, considering the technology, cost, and benefit to the organisation. Government and business should work in partnership to exchange lessons learnt to build national interoperable standards and systems.

For example, KPMG's own adoption of eInvoicing, while successful, is facing several challenges including:

- Compatibility issues with clients / suppliers where additional 'mandatory' fields are added in addition to the 'standard', meaning that invoices bounce; and
- The requirement of some clients for 'pre-approval codes' to be included on eInvoices for payments to be made, effectively requiring a dual invoice process 1) to obtain the 'pre-approval code' and 2) to process the eInvoice.

As policymakers consider mandatory adoption of eInvoicing, it's important that they take stock of international developments. The EU Commission launched a consultation process last year[1] into eInvoicing and digital reporting. It would be reasonable to conclude that one of the reasons for the consultation is that while there is a set of minimum standards in the EU for eInvoicing, the actual systems in each member state are radically different.

For example, the EU Commission has published several country fact sheets on the unique eInvoicing models in place in each member country. One fact sheet notes that the Danish Business Authority is working on extending the implementation and support for Peppol in Denmark so that it works alongside its own e-invoicing system called the NemHandelRegistry (NHR).[2]

Consequently, we recommend that the Department of Treasury and the Australian Taxation Office should be at the forefront of working with other countries (and the OECD) to harmonise eInvoicing before Australia takes any further steps towards mandatory adoption.

In addition, there are a range of non-regulatory options available to Government to increase eInvoicing adoption which we believe are worth considering, including:

- Education programs or free training modules that could better prepare business;
- Mandatory training programs tied to government assistance;
- Changes to the Commonwealth Procurement Rules to incentivise adoption;
- Encouraging the establishment of a voluntary industry code;
- Initiating trials of eInvoicing across key market segments; and
- Financial incentives to cover the costs of implementation.

Lastly, should eInvoicing become mandatory, the phase in period should be realistic and practicable. KPMG considers that this should be no less than five years.

RECOMMENDATION 9:

KPMG strongly supports the Government's initiatives to encourage the adoption of eInvoicing but considers it should be up to the individual entities to determine when to adopt, considering the technology, cost, and benefit to the organisation.

RECOMMENDATION 10:

The Government should engage with international peers to obtain further insights on their experience before implementing any mandatory eInvoicing adoption. KPMG notes that the EU Commission has recently commenced its own review of eInvoicing.

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?

In KPMG's experience with large clients, disincentives for large businesses to offer improved payment terms can include:

- Reporting Entity systems not being flexible or sophisticated enough to distinguish between large and small suppliers;
- Regulatory costs involved with constantly monitoring Small Business Identification Tool, which can change daily;
- The requirement for a dedicated team to renegotiate terms with small business;

[1] VAT in the digital age (europa.eu)

[2] eInvoicing in Denmark (europa.eu)

- General levels of competing demands on finance teams which have generally increased because of COVID-19; and
- Cashflow impacts of shorter terms to small business supplier base.

As noted in the responses previously, there are a number of options for incentivising improved payment terms including:

- Better usability / comparability of the PTR Scheme website;
- Stabilisation of the Guidance Material to ensure comparability between like-firms and prior reporting periods;
- Recognition of Reporting Entities that sign-on to voluntary codes payment codes (i.e. BCA's 30-day payment code);
- Development of a government run voluntary 30-day payment code, based on the UK scheme, where entities can be struck off for non-compliance; and
- Targeting of industries / entities with poor payment terms through education and awareness campaigns.

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?

There are several factors that need to be carefully considered when looking at implementing mandatory maximum payment periods. Any final decision would need to be subject to a robust regulatory impact statement to ensure benefits exceed costs.

If the Review were to consider implementing a mandatory maximum payment period at a future date in the PTR journey, several factors would need to be present including:

- The ability for the scheme to be monitored effectively by a well-resourced regulator;
- Simplified guidance material for reporting;
- Transparency around fines/penalties; and
- Allowances for different industries that may have structural impediments that make shorter payment terms more difficult to achieve.

We also encourage the Regulator to consider the experience of other countries globally (including France) which have introduced mandated payment terms.

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

Please see our responses to previous questions in relation to the adoption of eInvoicing and the improvements suggested to the current PTR Scheme.

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

We believe that the PTR Scheme is an incredibly ambitious policy reform, and the Government should be commended on embarking upon such a challenge in what is often a complex area within any business.

Considering this, we believe that as further changes are now contemplated, it is essential for the Review to consider the experiences of other countries globally and identify key strengths and weaknesses of similar schemes now in operation.

For ease of reference, we have provided a high-level summary of PTR Schemes in place in KPMG member firm jurisdictions and we recommend that these are examined in further detail (at a minimum) before the Review considers amendments to the PTR Scheme.

In our experience, payment practices are often a complex area within any business, and it is important to adopt a global mindset when determining the best way forward for Australia.

United Kingdom

- The Late Payment of Commercial Debts (Interest) Act 1998 entitles businesses to claim interest and recovery costs for late payments.
- The UK scheme Reporting on Payment Practices and Performance Regulations was introduced in February 2017 and requires large businesses to report statistics on payment times (to all suppliers, not just small).
- In 2021 there was an update made to the prompt payment code (not mandatory) and large businesses that sign up commit to pay

95 percent of all small business supplier payments within 30 days. Large businesses are struck off the code if found to have not paid in line with the code noting that 2,800 businesses have signed up.

European Union

- The EU introduced its Late Payment Directive in July 2011 enforcing a maximum payment term of 30 days and 60 days for public entities and enterprises respectively, also giving SMEs automatic entitlement to claim interest for late payment.

Thailand

- Thai regulators introduced new guidelines governing unfair payment practices in December 2021. Under the guidelines a maximum payment term of 45 days has been set (30 days for agricultural products).

France

- French legislation on payment terms is essentially based on EU Regulation on combating late payment in commercial transactions but goes further by providing ceilings on payment terms and mandatory payment terms for certain products and services.
- If no contractual payment term has been agreed between the parties, the standard payment term is 30 days following the date of receipt of the goods or performance of the service. French law also provides mandatory payment terms for certain sectors/type of products.[3]

RECOMMENDATION 11:

As amendments are considered by the Review, it is essential to consider experiences of other countries globally to identify key strengths and weaknesses of similar schemes now in operation.

[3] Legal terms for payments in France | CMS Expert Guides

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