

## AUSTRALIAN SUPPLIER PAYMENT CODE

### Frequently Asked Questions

#### **Why do we need the Australian supplier payment code?**

Paying business suppliers promptly and on time is critical to supporting healthy cash flows and working capital, and ultimately supports a business's viability and ability to expand.

Although average payment times have fallen across the economy, many small businesses still report that they are facing unsatisfactory delays in payment of up to 120 days or more.

The code addresses this concern by requiring signatories to pay small business suppliers within 30 days of a receipt of a correct invoice, along with a number of other complementary commitments.

Trade between small, medium and large businesses is valued around \$500 billion per year, so the whole country benefits when we work together more productively.

#### **Does the code have legal force?**

The code is a voluntary commitment and relies on self-enforcement by the signatory to the code. It is not a prescribed code and is therefore not enforceable by the ACCC.

The code does require signatories to establish a process for resolving disputes and complaints with their suppliers. It also requires signatories to publish, in an easily accessible location, the policies and practices the company has in place to comply with the code.

#### **How can I find out if a company has signed up to the code?**

Organisations that sign up to the code are recognised on the Australian supplier payment code website - [www.supplierpaymentcode.org.au](http://www.supplierpaymentcode.org.au).

#### **Why is a voluntary approach preferred to regulation?**

A voluntary, industry-led effort to change payment practices can achieve better outcomes while limiting the cost to businesses, customers and taxpayers.

By contrast, a regulatory approach would impose new administration and compliance costs, adding to Australia's already high existing stock of regulation and the growing cumulative regulatory burden on business that diverts from productive activity.

To achieve lasting improvement in payment times we need a culture of cooperation, not compliance, and this is best served by companies working together rather than further government intervention.

#### **What role can governments play?**

The Business Council is encouraging the federal government and all state and territory governments to promote the code across Australia, including requiring their own agencies to sign on. The Business Council worked with the Victorian Government during the development of the code to adopt a single, voluntary and national approach. We look forward to continuing to work with all of Australia's governments to improve payment practices across the economy into the future.

The Business Council is also encouraging the federal government to explore the feasibility of establishing a small business register, which would make it much easier for signatories to identify eligible small business suppliers.

### **Is the 30 day commitment allowed to be varied?**

Signatories to the code are, first and foremost, committing to pay small business suppliers within 30 days of receipt of a correct invoice. Payment terms such as '30 days from the end of the month of receipt of invoice' or 'payment within a 45 day period' are not consistent with this commitment.

The code allows some payment time flexibility for 'mutually agreed terms' and 'standard industry practice', but only in exceptional circumstances.

'Mutually agreed terms' reflect an arrangement where both parties agree it is in their mutual interest to apply payment terms longer than 30 days. Mutually agreed terms should be consistent with the Australian Small Business and Family Enterprise Ombudsman's position that "longer terms could be agreed providing not grossly unfair to one party".

To recognise standard industry practice in the construction sector, if the payment relates to construction work or related goods and services, the relevant payment period is 45 days of receipt of a correct invoice.

Exemptions for 'mutually agreed terms' or a 'standard industry practice' are to be subject to a 'good faith and fair dealings provision' to ensure that suppliers are afforded both fairness of process (good faith) and fairness in outcomes (fair dealings). The Food and Grocery Code, currently before government, is expected to provide a detailed framework for applying the good faith and fair dealings provision. Once finalised, it is anticipated that this framework will be incorporated in this code.

### **Why do signatories have up to six months to comply with the code?**

Some businesses will require up to 6 months to assess current payment practices and make changes to their payment systems and payment policies. This recognises that the change might require capital investment and careful management, which can take time to implement properly.

Although 6 months is the upper limit, many signatories will take a lot less time to comply with the code. Many signatories already have payment policies and practices in place and are ready to comply fully with the code at the time of signing.

Implementation periods longer than 6 months may be permitted if a signatory can demonstrate exceptional circumstances due to the complexity and size of their supply chain or payment systems.

The maximum implementation period was initially set at 18 months when the code was launched in May 2017 and was reduced to 6 months in March 2019 on the recommendation of the Independent Review of the code.

### **How is a small business defined?**

There is no generally agreed definition of a small business - governments themselves apply multiple definitions.

Signatories to the code are permitted to adopt the following criteria:

- an Australian business with annual turnover up to \$10 million, or
- an Australian business that supplies goods and services to the signatory up to a maximum annual level of expenditure. The maximum annual level of expenditure is to be set by the signatory and must be published.

Exceptions may be applied for supplier businesses that are part of a consolidated group of companies.

The definitions of a small business adopted by the signatory company must be consistently applied to all small business suppliers.

The definition of small business that is used by signatories must be published and easily accessible.

Signatory companies commit to apply the code to small business suppliers where it is able to verify their eligibility as a small business.

The Business Council supports the establishment of a small business register, as recommended by the Australian Small Business and Family Enterprise Ombudsman. A register will make it easier for signatories to verify the small business status of suppliers, for example, by reference to their ABN.

When the code was launched in May 2017, signatories could also choose to use a headcount definition of a small business, ie, “companies with fewer than 20 employees”. The headcount definition was removed as an option for new signatories from March 2019, on the recommendation of the Independent Review. The review found that the headcount definition can be an imprecise indicator and difficult to determine when there are part-time employees and contractors.

Code signatories that were using the headcount definition before March 2019 are permitted to continue to use it.

### **What qualifies as ‘industry standard practice’?**

The code allows for an industry standard to apply where there are exceptional circumstances, as occurs in the construction sector. An industry standard is a common practice that is adopted by all participants in an industry.

Signatories should point to evidence to justify the use of the standard industry practice when they publish their payment policies under the code.

Transparency is critical. Anyone should be able to easily see how each signatory is delivering on its commitments under the code and be able to subject those commitments to scrutiny.

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### **What are the reporting requirements under code?**

Signatories are obliged to publish, in plain English, the policies and practices they have in place to meet their commitments under the code. The publication of policies and practices should be in an easily accessible location on the signatory’s website.

This added transparency ensures small businesses and other stakeholders can easily find information about how companies will meet their commitments and what policies and practices are in place to benefit them. It helps to make signatories publicly accountable for meeting their commitments under the code.

The code does not require signatories to report on payment performance. However, companies are free to provide any additional information over and above the commitments in the code, and this may include reporting on their payments performance if they wish to do so.

### **What happens if there is a dispute under the code?**

Each signatory is required to put in place clear, fair and efficient processes for dealing with complaints and disputes about payment times and practices. These processes should be used to resolve complaints and disputes in the first instance.

Should the case arise where a company is regularly breaching its obligations, either deliberately or through negligence, that signatory will be identified (with the assistance of small business suppliers and Small Business Commissioners) and action will be taken to remind them of their obligations and ask them to change their practices. If necessary, certification of a code signatory can be removed.

### **How will the performance of the code be assessed?**

In September 2018, an Independent Review of the performance of the code was overseen by former Chair of the Australian Competition and Consumer Commission, Mr Graeme Samuel AC. Mr Samuel was supported by an expert advisory panel.

The review found that the code is fundamentally well-designed and fit-for-purpose. Individual signatories report that it has led to changed practices and faster payment times to small businesses. As for March 2019, the code had 101 signatories with collective annual revenue of over \$550 billion.

The review made a number of recommendations to address issues raised in the consultation and promote greater adoption of the code. All recommendations were adopted, with minor changes to the code coming into effect in March 2019.

**Will companies have their individual payment performance audited under the code?**

The code is a voluntary undertaking by signatories and is completely self-enforcing. There is no audit requirement.

Publication of the signatory's payment policies and practices on the signatory's website, as required under the code, is a key accountability measure that makes it easy for small business suppliers to see a company's stated commitments and hold them to account for their actual payment performance.

Should the case arise where a company is regularly breaching its obligations, either deliberately or through negligence, that signatory will be identified (potentially with the assistance of small business suppliers and Small Business Commissioners) and action will be taken to remind them of their obligations and ask them to change their practices. If necessary, certification of a code signatory can be removed.

**Does the 'pay on time' principle require code signatories to pay all suppliers on time?**

Yes. While it is essential to pay small businesses on time, it is also a requirement that code signatories will apply the 'pay on time' principle to all suppliers. Paying on time is not only good practice, there are wider benefits for the economy from correct and timely payments.