



Who must report

INFORMATION SHEET 3

October 2022

This information sheet provides general guidance only and does not amount to legal advice. Entities are encouraged to seek independent legal advice to clarify their rights and obligations under the Act.

Who needs to report

Reporting entities, as defined under the *Payment Times Reporting Act 2020* are required to submit payment times reports. Reporting entities can be:

- large businesses operating in Australia (income over A\$100 million)
- Some entities operating in Australia that are part of a large corporate group (total group income over A\$100 million), or
- entities that volunteer to report.

Entities registered under the *Australian Charities and Not-for-profits Commission Act 2012* (ACNC Act) are exempt from reporting but can volunteer to report. This exemption cannot be relied on by charities and not-for-profits that are **not** registered under the ACNC Act.

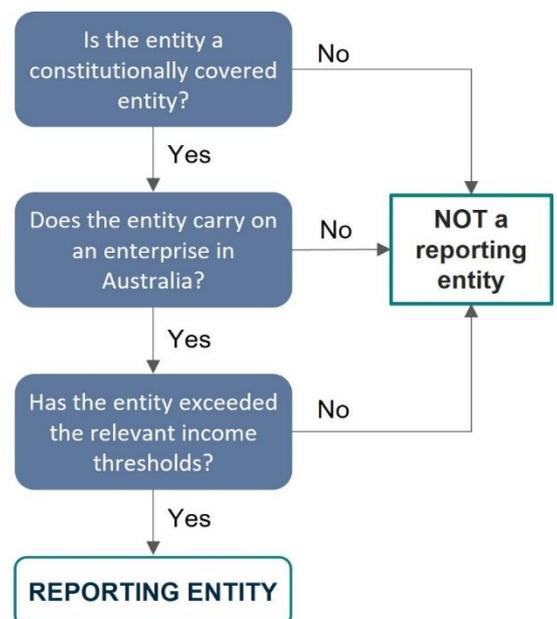
Identifying a reporting entity

To identify if a business is a reporting entity you need to consider the following:

1. Is the entity a **constitutionally covered entity**?
2. Does the entity carry on an enterprise in Australia?
3. Has the entity exceeded the relevant income thresholds?

An entity that answers **yes** to all 3 criteria is generally a reporting entity and required to submit a payment times report.

Whether an entity engages with, or makes payments to, small business suppliers is not a criterion for identifying if an entity is a reporting entity.



Step 1: Is the entity a constitutionally covered entity?

Constitutionally covered entity is a term used in the *Payment Times Reporting Act 2020* to define reporting entities.

Determining whether an entity is a constitutionally covered entity requires assessment of the underlying activities and place of business of the entity.

Set out below are common scenarios where an entity may be a constitutionally covered entity. More information is available in [Guidance Note 1: Key concepts](#).

Entities likely to be constitutionally covered entities

Foreign entities and entities incorporated in Australia that trade or provide financing are generally constitutionally covered entities. This includes:

- entities that are incorporated under the *Corporations Act 2001* (Pty Ltd, Ltd, NL companies)
- joint ventures, trustees, partnerships and government businesses that have been incorporated
- entities incorporated under state-based legislation (Inc)
- government businesses that have been incorporated
- foreign incorporated entities.

Entities that may be constitutionally covered entities

Other types of entities, including partnerships and cooperatives that have not been incorporated, may be constitutionally covered entities if they **carry on an enterprise** in an **Australian territory**.

Examples of carrying on an enterprise are listed in [Step 2: Carrying on an enterprise in Australia](#). If these activities are taking place in an Australian territory, the entity may be a constitutionally covered entity.

Australian territories include the Australian Capital Territory, the Northern Territory, Jervis Bay and external territories.

If you are unsure if your entity is a constitutionally covered entity, we encourage you to seek independent legal advice.

Step 2: Carrying on an enterprise in Australia

Carrying on an enterprise in Australia is a broad term that can include anything in relation to the commencement, running or termination of a business.

Activities that may indicate, but not determine, that an entity is carrying on an enterprise in Australia include:

- having an office, retail or other premise in Australia from which business is conducted
- marketing and providing goods or services to Australian consumers
- having an Australian Business Number (ABN)
- being required to submit an income tax return or business activity statement to the Australian Taxation Office (ATO)
- employing staff members that are permanently based in Australia.

Although having a physical presence in Australia may indicate an entity is carrying on an enterprise in Australia, it is not a requirement. An entity with no physical presence in Australia can be carrying on an enterprise in Australia depending on its activities in Australia.

If you are unsure if your entity is carrying on an enterprise in Australia, we encourage you to seek independent legal advice.

Step 3: Income thresholds

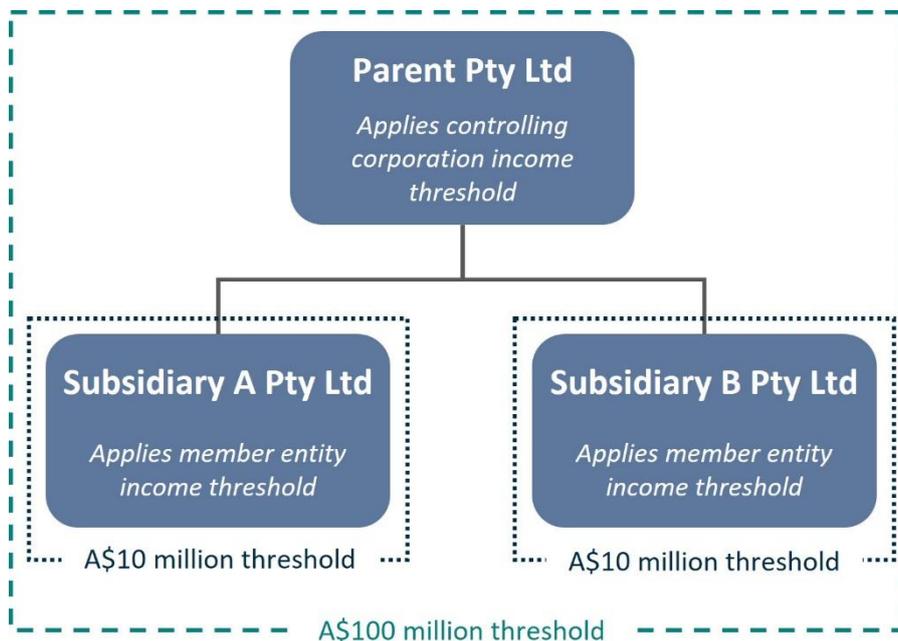
The general income threshold applicable is A\$100 million in an entity’s most recent income year. The only exception to the general income threshold is for entities that are part of a corporate group.

Where an entity is part of a corporate group, it may need to apply two income thresholds to determine whether it is a reporting entity.

Threshold	Determination
Threshold 1	<p>If the entity:</p> <ul style="list-style-type: none"> • is incorporated in Australia and has subsidiary entities • is not a subsidiary of an Australian incorporated entity, and • the total aggregate income of the entity and its subsidiaries is greater than A\$100 million <p>it is a controlling corporation and a reporting entity.</p>
Threshold 2	<p>If the entity is a subsidiary of a controlling corporation and has income greater than A\$10 million it is a member entity and a reporting entity.</p>

A controlling corporation that is a reporting entity must report even if they do not earn income. In these cases, the entity will submit a ‘nil’ report: see [Guidance Note 2: Preparing a payment times report](#).

More information about corporate groups is available in [Information sheet 4: Corporate groups](#).



Calculating total income

To determine total income:

- If the entity is not part of a tax consolidated group, it can use the amount reported in its income tax return provided to the Australian Taxation Office (item 6S in company tax returns).
- If the entity does not prepare an income tax return or, cannot use its tax return information because it is part of a tax consolidated group, it may:
 - > use the total revenue recognised under [AASB standards](#) (or another [International Financial Reporting Standards](#) equivalent), if the entity prepares financial statements in accordance with those standards, or
 - > prepare a notional total income calculation as though it was preparing an income tax return individually, or preparing a financial statement under Australian accounting standards.

More information about applicable thresholds and calculation of total income is available in [Guidance Note 1: Key concepts](#).

Volunteering entities

Entities that volunteer to report, continue to be reporting entities until they apply for, and are granted, a determination to cease to be a reporting entity.

For information about volunteering and applying for a determination to cease to be a reporting entity, see [Guidance Note 3: Applications and notifications](#).

Further information

For more information, please refer to the additional guidance notes and information sheets available in the [Regulatory resources](#) section of the Payment Times Reporting Regulator's [website](#).