
SUBMISSION

Submission to the Department of
Industry, Science, Energy and
Resources on the Payment Times
Reporting Framework Exposure
Draft Legislation

March 2020

ABOUT THIS SUBMISSION

This is the Business Council of Australia's submission on the Payment Times Reporting Framework Exposure Draft Legislation.

INTRODUCTION

Successful small businesses are the lifeblood of communities and supply chains. It is critical for their cashflow that they are paid the full amount of their invoices quickly and on-time.

Payment times in Australia have improved in recent years¹ but concerns remain that some small businesses are being paid late or on extended terms.

The payment times reporting framework, announced by the Prime Minister in 2018, will enhance transparency around payment times and complement commitments made under the Australian Supplier Payment Code.

The Business Council created and manages the Australian Supplier Payment Code, an industry-led voluntary commitment to improve payment times to small businesses across Australia (see www.supplierpaymentcode.org.au). The Code, which has 125 signatories with combined revenue of \$680 billion, commits signatories to pay their small business suppliers within 30 days and on time, and is contributing to improved payment performance.²

The complexity and cost of reporting payment times will be considerable for many entities. In this challenging economic environment, the reporting requirements must be designed in accordance with best practice regulatory principles and able to be implemented by business on time and at least cost.

This means being clear about the problem to be addressed and designing a solution that works in consultation with key affected stakeholders.

Mandated reporting demands a high level of accuracy and can require substantial redesign of systems and processes. These compliance costs need to be fully accounted for in the policy design and regulation impact assessment process with every dollar counted. Any requirements that create costs that cannot be matched to a clear benefit should be removed as this is money that cannot be reinvested in growing the business, creating jobs or expanding opportunities for small suppliers.³

Reporting businesses must be provided with a clear set of requirements and given sufficient time to make the required investments in their systems and processes to be able to fully comply with this new law.

¹ Late payments averaged 9.9 days in the December 2019 quarter, which was 7.3 per cent lower than the December quarter in 2018. Prompt payments were 73 per cent in the December 2019 quarter (compared to 71 per cent in 2018). (illion).

² The 125 signatories include Australia's largest companies with the country's largest supply chains which means thousands of suppliers are benefiting from the operation of the Code (see all current signatories at https://www.supplierpaymentcode.org.au/view_the_signatories).

³ This approach is consistent with the government's Deregulation Taskforce which has a role to "develop and recommend solutions to lower the costs of regulation while retaining the benefits, making it easier for businesses to invest, create jobs and grow the economy."

The Business Council commends the government for consulting extensively with industry on the design of the reporting framework to date and we encourage further consultation as more detailed aspects of the policy are rolled out.

The department's proposed small business look-up tool will significantly reduce costs and is fully supported by the Business Council.

The remainder of this submission considers the proposed elements of the reporting framework in more detail.

COMMENT AND RECOMMENDATIONS

Payment Times Regulator

The Business Council supports the establishment of a Payment Times Regulator to administer the framework and for the Regulator to be located within the Department of Industry, Science, Energy and Resources (which now handles small business matters), as is proposed. The Regulator will need to be adequately resourced to administer the scheme (i.e. to monitor and enforce compliance with the Framework), provide guidance to entities and respond to queries from the approximately 2,500 reporting businesses. The Regulator should be issued with a Statement of Expectations and be required to implement the Regulator Performance Framework.

Finalising the Minister's Rules

Key questions regarding the application of the Payment Times Reporting Framework will be determined subsequently in Rules made by the Minister, such as the definition of a small business supplier and the content requirements of the proposed mandatory reports.

The Consultation Paper contains an outline indication of what is intended to be included in the Rules, however the "devil is in the detail" of the drafting. Potentially regulated businesses should have the opportunity to comment on the final Rules in case it is necessary to propose amendments, for example, in order to avoid unintended consequences and/or undue regulatory burden that is inconsistent with the government's deregulation agenda.

Start time

It is recommended that the start time of the proposed mandatory reporting period be determined in relation to the date that the Minister's Rules are finalised and when a look-up tool is in place, so as to allow enough time for businesses to design systems and processes to comply with the Rules.

The Consultation paper says that "Reporting will commence from January 2021 assuming the Bill passes through Parliament in time". The key issue is the timing of the completion of the Ministers Rules, as systems design cannot commence in reporting businesses until then.

The time required will vary by business but is likely to be six months or more. Entities will not be able to properly report in the first period without these system designs in place.

The experience with the Open Banking reforms demonstrates the need for sufficient time for processes and systems to be redesigned. The implementation of the consumer data right in

banking was recently deferred from February to July 2020 owing to the complexity of the changes.

The small business look-up tool will also need to be working and effective before reporting commences. For larger businesses, this will entail significant systems integration work before reporting can be accurately completed.

Reporting entities

Reporting entities are proposed to be those entities (individually) that had annual turnover (defined as assessable income) of at least \$100 million for each of the two most recent income years.

The Business Council would like to see section 6 of the exposure draft Bill amended to allow reporting by corporate group or reportable segments within the group's annual accounts.

Some large businesses have "shared suppliers", for which there is one supplier account that covers all trade with subsidiaries in the business and one consolidated payment to the supplier. There would be significant costs (eg software costs) involved in determining and apportioning invoices within a supplier's account to different entities within the large business.

Many corporate groups (including each of its reportable segments) will typically use substantially the same systems and processes and be governed by the same policies for all entities within the group. Where this is the case it should be unnecessary to require separate reports by individual "reporting entities". This burdens a corporate group with costs that are unnecessary and disproportionate to the potential benefit to small suppliers.

For large-sized corporations, the proposed requirement to report at the entity level will capture trusts and joint ventures. The administration of different systems and Boards for subsidiaries, Trusts and JVs will make reporting challenging. This is another reason why consolidated level reporting should be permitted as an option.

Reporting periods

The Consultation paper states that 'entities will be required to submit two six monthly reports each year'.

A less costly approach would be to require entities to submit a single, 12-month report each year.

It is not clear that there will be additional transparency benefits to small businesses from entities reporting twice a year compared to reporting once year, nor that those benefits will offset the additional compliance costs to business and the economy.

Consistent with the Deregulation Taskforce's approach 'to lower the costs of regulation while retaining the benefits', the scheme should start with requiring a single, 12-month report each year.

After the framework has been implemented, if annual reporting is not found to be effective then reporting twice a year should be considered.

For construction sector businesses covered by the Building Code 2016, payment reporting is already completed on a monthly basis. Where possible the Federal Government should

harmonise the collation of payment performance-related data to reduce administrative burden.

Enforcement

The Business Council agrees with the government's proposal that compliance and enforcement arrangements should not come into effect until 18 months after the framework begins. This will allow for initial teething problems to be addressed and system changes made to ensure compliance.

The Business Council's experience with the Supplier Payment Code is that payment systems are often not set up to provide the sort of information that is required under the reporting framework. Substantial system upgrades are often needed which require considerable time and expense to work through and become reliable.

For these reasons, the 18-month exemption period should also apply in future for any medium-sized companies that grow to the point where they reach the threshold of \$100 million and are required to start reporting.

Proposed penalties

The exposure draft Bill provides that civil penalties will apply for failure to report, failure to assist an auditor and the provision of false or misleading reports. Maximum penalties are expressed as a proportion of turnover (defined as "assessable income") of the reporting entity:

- up to 0.2% of annual turnover for failure to provide an auditor with reasonable assistance to carry out an audit, or to keep appropriate records for at least seven years after the end of a reporting period; and
- up to 0.6% of annual turnover for providing a report that is false or misleading in a material particular.

The proposed maximum penalties would be much higher for some large businesses than others, based on turnover alone (rather than profit or any other determinant), and may be completely out of proportion to the potential harm to small businesses from the non-compliance (or any benefit to a reporting entity).

The Business Council recommends that:

- there be a cap on the total penalty applicable to any one corporate group, should there be non-compliance by multiple reporting entities within the group
- that the maximum penalties be capped in line with paragraph 82(5)(a) of the Regulatory Powers (Standard Provisions) Act 2014, which sets a maximum fine at 5 times the specified pecuniary penalty. (Sections 15(2), 28(2) and 30(6) of the exposure draft Bill should therefore be removed)
- the penalty in relation to false or misleading reporting should only apply where false or misleading information has been reported intentionally, knowingly or recklessly by the reporting entity. A penalty should not be applied for an inadvertent error where reasonable care was taken in the preparation of a report.

Sign-off and governance

The Consultation paper proposes that reports will need to be signed off by a responsible member of an entity such as the CEO and also the principal governing body (eg the Board).

The Business Council recommends that sign-off should be by the responsible member only and not the Board, which would add a costly step due to assurance and other internal governance processes. Board sign-off will cause problems with the timing and cause delays in reporting. A better requirement would be for the report to be approved by the responsible officer and the Board notified.

Definition of a small business

The Business Council agrees with the proposed definition of a small business supplier under the outline indication of Rule 1 in the Consultation paper, namely a business with a turnover of less than \$10 million that is not part of a larger entity or grouping of entities, to be identified through the Payment Times Reporting Small Business Identification Tool. A relevant small business supplier should be an Australian small business.

Proposed small business look-up tool

The Business Council strongly supports the development of a functional look-up tool to assist reporting entities identify and verify their small business suppliers. The tool should be made available to support other small business policies and programs, eg signatories to the Australian Supplier Payment Code.

The tool should be updated regularly and should have an Application Programming Interface (API) so that large businesses can match the ABN records of small businesses with their payment systems. The tool should facilitate major data downloads and be able to be integrated into core systems to enable identification of small businesses across supplier bases that can be as large as 20,000 suppliers. The reporting timeframes should only commence once the Tool is available and performing satisfactorily for large companies to integrate with its systems.

Template for content

The Regulator should issue a template for reporting entities to use to provide the required content as mentioned in the outline indication of Rule 4 in the Consultation Paper. This will provide certainty, reduce costs and promote consistency of information provision.

The template should include a free field for reporting entities to include any additional information they regard as helpful for interpreting the reported data. For example, the entity may wish to provide information and explain the impact of invoicing errors by suppliers on actual payment times.

There is no detail in the legislation that outlines the calculation of payment performance. Different organisations will use different metrics which could make comparisons invalid. For instance, the metric options for payment 'time' could be the payment date less:

- a) invoice date, or
- b) receipt date of a correct invoice, or

c) receipt date of a correct invoice to a payment function/shared service.

Instantaneous payments

The content requirements, as envisaged by the outline indication of Rule 4 in the Consultation Paper, should allow for the recording of payments that are instantaneous (ie zero days), for instance, payments by corporate credit card or cash.

Notification requirements

The notification requirements, as envisaged by the outline indication of Rule 5 in the Consultation Paper, should ensure that any required notifications are made at the time of the next Payment Times report to the Regulator, and not within 28 days of the occurrence.

Reporting entities should only be required to notify the Regulator of a change in the entity's business name or accounting period. Reporting entities should not be required to notify the Regulator of the other events listed in the Consultation Paper: if it becomes insolvent; if it becomes a Chapter 5 body corporate or, if a creditor's petition or debtor's position is presented against the entity.

These changes would remove unnecessary regulatory costs.

Audit

The Consultation Paper says that 'the Regulator can require an entity to undertake an audit if they suspect it has contravened a provision of the Bill'. The entity will be required to pay for the audit.

To ensure this power is used responsibly, and avoid unnecessary costs on business, it is proposed that a threshold be introduced that the Regulator has a 'reasonable suspicion' of a contravention before ordering an audit.

Government reporting on its payment performance

Governments are among the largest procuring entities in Australia and should be required to file the same payments reports as large businesses and have their performance published under this framework.

Any pre-existing payment reporting by governments should be brought into line with the requirements of this scheme. An added benefit of requiring governments to report under this framework is that small business will be able to access payment performance data for all their large customers, public and private, in the one place. This will lower the costs of sourcing payment information for small business suppliers.

Promotion of the code via the reporting website

The government's payment time reporting website should encourage reporting entities to sign up to the Australian Supplier Payment Code and provide links to the Code website at www.supplierpaymentcode.org.au

The voluntary Code and the reporting framework are complementary. Signatories to the Code make public commitments to pay small businesses within 30 days and on time, and to work with small business suppliers to improve invoicing and payment performance, for

example, through greater use of electronic trading. The reporting framework will create greater transparency however, unlike the Code, it is not a tool that sets the payment policies of large procuring entities.

Review of payment times reporting framework

The payment times reporting framework should be reviewed after three years to assess its effectiveness, the costs and benefits of the laws and any needed improvements or deregulation opportunities.

BUSINESS COUNCIL OF AUSTRALIA

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