SUBMISSION

Submission to the Department of Industry, Science, Energy and Resources on the Payment Times Reporting Rules

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Business Council of Australia ABN 75 008 483 216

ABOUT THIS SUBMISSION

This is the Business Council of Australia's submission to the Department of Industry, Science, Energy and Resources on the Exposure Draft of the Payment Times Reporting Rules. The Rules are subordinate legislation to the Payment Times Reporting Bill which is currently before the parliament

This submission complements the recommendations made in the Business Council's earlier submission on the Payment Times Reporting Bill.

INTRODUCTION

Background

The payment times reporting framework will enhance transparency of payment times to small business and complement voluntary commitments to fast payment and on-time by large businesses that are signatories to the Australian Supplier Payment Code.

Small businesses are the lifeblood of communities and supply chains. Cashflow is critical to their viability and success and it is important that they are paid the full amount of their invoices quickly and on-time, especially during the COVID-19 era.

In 2017, the Business Council, in collaboration with COSBOA and the State Government of Victoria, took steps to encourage faster payment of small business suppliers by launching the voluntary Australian Supplier Payment Code (see www.supplierpaymentcode.org.au). The Code now has 133 signatories with combined revenue of over $680 billion. It commits signatories to pay their eligible small business suppliers within 30 days and on time, and to work with small suppliers to adopt electronic trading and improve invoicing and payment practices.

The payment times reporting framework will shine a positive light on large businesses that are paying small businesses promptly. It will put companies that are unfairly extending payment times to small business suppliers under the spotlight, and put pressure on those businesses to change their practices, including through exposure in the media.

The Department is to be commended for consulting extensively with industry to reduce unnecessary costs in the design of the payment times reporting framework. The reporting requirements must be carefully designed in accordance with best practice regulatory principles and must be able to be implemented on time and at least cost.

There is a misconception that reporting on payment times will be simple for large businesses. On the contrary, the complexity and cost of reporting payment times will be considerable for many entities.

The remainder of this submission comments on the proposed elements of the exposure draft Payment Times Reporting Rules. It follows the numbering of the draft Rules from one to six in the consultation paper.

COMMENT AND RECOMMENDATIONS

General issues

Prioritise e-invoicing and the small business identification tool

Technology is absolutely crucial for speeding up payment times to small business and needs to be a primary focus for government. Regulation is a blunt tool and needs to be accompanied by greater take-up of new technologies that enable faster and more reliable payment if the desired outcomes of government policy are to be achieved.

E-invoicing reduces costs and errors and facilitates faster payment for suppliers when compared to paper invoices or PDF invoices sent by email. It is estimated that processing costs for e-invoices are one-third of the cost for traditional paper invoices. [1]

Use of e-invoicing is becoming more widespread in Australia and will be further enabled by the adoption of the common e-invoicing standard, Peppol, which will allow the exchange of invoices across different accounting systems.

Many small businesses in Australia are yet to adopt e-invoicing. The government's policy to pay suppliers of contracts up to $1 million small businesses within five days, where both the buyer and supplier use Peppol e-invoicing systems, will encourage more use of e-invoicing. Further introduction of policies and programs to lift the use of e-invoicing by small business should be considered.

The other key area that technology can make a big difference is by identifying and verifying the small business status of a supplier. The small business identification tool being developed to support this framework will ensure all small businesses benefit from the reporting framework and other small business friendly policies and programs.

The Business Council in 2017 set a definition of small business at turnover up to $10 million and is pleased that this is being adopted as the definition under this reporting framework. With the support of the look up tool this can become a common definition across all small business policies and improve their take-up and effectiveness.

The look up tool will overcome the challenge of verifying a small business's status by removing the need for lengthy and costly background checks. The look up tool will provide instantaneous confirmation of a business's status, or for a group of small businesses. For a large business with many thousands of small suppliers it will deliver significant benefits throughout the supply chain. The development of a credible look-up tool must be prioritised. In addition to supporting the reporting framework it should be made available to all businesses and governments wanting to provide tailored services or support to small businesses across Australia.

Large companies in distress

Some large businesses are facing extreme challenges due to COVID-19 and the restrictions on business and social distancing requirements, in particular in the tourism, transport and entertainment sectors. It will simply not be possible for some companies with staff currently

1. https://www.ato.gov.au/business/e-invoicing/benefits-of-e-invoicing/#Benefitsforbusinesses

stood down or working reduced hours and receiving JobKeeper payments to put in place the required upgrades to systems and processes needed to file the first set of reports.

These companies should not face any adverse consequences if they fall short of the reporting standard in the first two reporting periods. It is critically important that the 18 month exemption period from penalties in the Bill is retained – otherwise distressed businesses will be hit with penalties that will delay their recovery, which would in turn be harmful for their small business suppliers.

Businesses in a stronger position to comply with the legislation 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. The Small Business Identification Tool will be an excellent mechanism and critical to the operation of the scheme, but it needs to be available for testing and use well before the first set of payments data is required to be collected from 1 January 2021 (a little over 6 months from now).

Group vs Entity reporting

Large companies are concerned that there will be considerable costs and bureaucratic requirements to report by entity rather than by group. The legislation requires reporting by each entity within a consolidated group that meets the reporting threshold (i.e. $10m threshold applies on an entity by entity basis). This will significantly increase the compliance burden for reporting businesses, and it is unclear what benefit will be achieved when most groups will have largely aligned payment policies across their business.

Clarification is sought with regard to the treatment of international corporate groups with multiple entry points into Australia. The explanatory material and the definition of an "entity" and "controlling corporation" appears to focus on distinct corporate groups within Australia.

Consider a situation where Company A and Company B are both incorporated in Australia. They have the same immediate shareholder but that company is incorporated overseas and not required to be registered with ASIC as carrying on a business in Australia. Company A has turnover of greater than $100 million but Company B has turnover of less than $100 million. In this situation, the understanding is that only Company A will be a reporting entity. Company A is also not considered a "controlling corporation" in relation to Company B.

Reporting is preferred to mandated payment time regulation

The BCA supports the reporting framework as it will provide key data on payment performance which is currently unavailable and which can be used to promote faster payment and guide future policy decisions.

We are not in favour of the Australian Small Business and Family Enterprise Ombudsman's proposal for regulating 30-day payment times.

Payment times regulation of that nature would add considerable cost to businesses working hard to recover from COVID-19 and should not be introduced lightly.

Such regulation would create compliance costs and risks for business of all sizes, and there would be a considerable cost to government in terms of administration and enforcement.

There would be considerable complexity in carving out instances where longer terms are mutually agreed, for example, for some retail goods.

There is a risk that regulation would lead to a compliance mindset where some businesses move to pay on the maximum permissible payment terms. For instance, some businesses paying on shorter terms today (eg 14 days) might extend their payment terms to a regulated maximum timeframe (eg 30 days).

Regulation could be costly to small business if it risks deterring larger businesses from trading with small businesses, or if the regulation is also applied to small and medium businesses and the time in which they pay their small business suppliers.

The Business Council proposes that all qualifying reporting entities should be strongly encouraged to sign up to the Code. The voluntary approach outlined in the Code is the preferred mechanism for reducing payment times because, instead of a compliance mindset, signatories adopt a culture of genuinely acting to reduce payment times and working with their small business suppliers to improve invoicing and payment practices. Signatories take on these commitments in good faith.

If, once bedded own, the reporting framework demonstrates there is an intractable problem, then stronger measures may be required. But we should avoid rushing to add more red tape and compliance costs, especially at a time when businesses need to devote all their attention to creating and sustaining jobs.

We would be especially concerned if any proposals to mandate payment times or penalties were linked to payment times outcomes reported under the framework. Companies should not be penalised for payment times outcomes they report, particularly given the look up tool, as far as we are aware, will not be able to separate out small business entities that are part of a larger group, and that disputed invoices are currently intended to be included in reporting.

A further consideration is that there is a lack of sufficiently robust data on payment times available to justify payment times regulation. One of the benefits of the reporting framework is that it will help to fill the information gap and support sound policy decisions in the future. [2]

Rule 1: Defining a small business

Definition of small business and the Small Business Identification Tool

The Rule defines a small supplier as any supplier with revenue of less than $10 million. The Rule goes on to establish that small suppliers will be identified by the government's Payment Time Small Business Identification Tool.

The Small Business Identification Tool is therefore key to the reporting process. Companies need to understand the timing of delivery and technical specification for the tool (login method, API connecting etc).

The Tool needs to be in place long before the legislation commences so companies can commence testing and be able to evaluate performance.

2. The government and Ombudsman mainly refer to a report by Alphabeta and Xero that itself relies on a set of assumptions and includes this admission: "the anonymised nature of the Xero data *precludes observing big businesses' payment practices directly*" [emphasis added]. Other concerns with the report are that it measures payment times in accordance with the date of invoice, not the date of receipt by the customer, which is the more reasonable starting point and is proposed under the Rules for this scheme. The report does not allow for disputed invoices, which tend to prolong payment times.

Currently there is less than 7 months for this to occur but the tool is still unable to be shared. There is growing concern about the ability of business to be able to comply with an initial reporting period date commencing 1 January 2021.

Confirmation is also needed that the look up tool will exclude entities that have turnover in Australia of under $10 million (technically 'small businesses'), but which are actually subsidiaries of larger corporate groups. Those entities should not be considered small businesses and their inclusion may prejudice the payment times reporting for some large businesses. For instance, some industry segments may have significant dealings with a large number of Australian import businesses that locally represent larger foreign entities. If these so-called ‘small’ businesses are not removed by the look-up tool, there is a risk that reporting entities will report longer payment times that are skewed by payments to multinationals. This is not in keeping with the intended spirit of the reporting times framework.

Definition is in the Rules

There is concern the definition of a small business is contained in the Rules rather than the Payment Times Reporting Bill. This increases the risk of a sudden change in the definition in the future at the Minister’s discretion and without consultation, which would be highly disruptive. It would be preferable to safeguard the definition of a small business in the legislation.

Rule 2: Defining a standard payment period

(Also discussed under Rule 4).

Companies are seeking greater guidance on the definition of a standard payment period to small businesses, and how they are expected to identify the ‘supply payment period on offer for inclusion in the entity’s contracts’ or the ‘supply payment period most commonly included in the entity’s contracts’?

Many companies have multiple standard payment periods depending on the supplier classification, e.g. indigenous, small business and various standard contractual terms depending on the subsidiary business.

Companies also seek clarification as to how businesses report when/if a supplier agrees on a change to standard payment terms within a reporting period.

Rule 3: Content for an application to cease reporting

Revenue falls below $100 million

The Rules state that two periods (years) of revenue below $100 million must be completed before a company can apply to cease reporting. To reduce unnecessary compliance costs this should be set at one year.

Entities that rise above $100 million

Greater clarification is required for companies that grow revenues above $100 million and find themselves with an obligation to report. To start with, there should be a process to notify these companies that may not be aware of the payment times reporting legislation. Clarification is then needed on whether they automatically become a reporting entity in the first year they exceed the threshold, or similar, to the ceasing reporting rules, whether there may be a requirement that they have two consecutive years above the threshold before they become a reporting entity.

The 18-month penalty-free period should apply for companies that find themselves rising above $100 million so that they can iron out any problems in reporting. Companies of this size won't necessarily have the resources to be able to fully comply with complex reporting requirements in their first two reporting periods.

Rule 4: Additional information for report

Contact details

The contact details of the submitter and approver of the payment times report should remain confidential to the government and not be published. Companies do not want small businesses mistakenly contacting senior Finance/Executives regarding payments when they should be using the correct contact points in Accounts Payable.

Total value of business procurement from small business

The requirement to provide 'the total proportion (by value) of a business's procurement during the reporting period that was from small business suppliers' should be removed from the Rules.

The information is not required to meet the intent of the policy for faster payment times. It will unduly add to the regulatory cost burden. Concentration of supplier by size, and risk, is confidential and sensitive information.

Standard payment period

As discussed under Rule 2, the requirement to report on 'standard payment period', including the shortest and longest payment terms the entity offers and any changes made to these terms during the reporting period, will be highly complex for many businesses. Some entities will have upwards of 50 payment terms.

Companies should have greater flexibility to report standard payment terms and should be able to provide a copy of their payment policy in order to comply with the requirement.

The shortest terms will always be immediate terms (as that is used for urgent payments for council fees for roadworks, or penalties etc). Reporting on immediate terms may give a false impression to subcontractors/ the market that these terms are offered generally. These payment terms should be able to be removed.

Supply Chain Finance

Greater clarification is needed around defining supply chain finance. At the moment a number of early payment mechanisms are incorporated under that definition, while there is a number of different approaches available (i.e. accelerated discounted payments).

It would be helpful to clarify what would be acceptable to assist suppliers with managing their cash flow under the Bill. It would also be helpful to understand how suppliers using supply chain financing are to be included in reporting requirements given they will be paid earlier than their contracted terms.

The Business Council has a clear position that supply chain finance must not be used to push out payment *terms* to small business suppliers beyond 30 days. This position was recently also adopted by the Australian Small Business and Family Enterprise Ombudsman in the report on supply chain financing. Like the Ombudsman, we accept that supply chain finance can be beneficial to small businesses when payment terms are 30 days or less.

Rule 5: Calculating information for the report

Disputed invoices

The Rules state that for reporting payment times it is 'irrelevant whether the invoice is in dispute'.

Disputed invoices obviously take longer to process and the reason for the dispute could range anywhere from incorrect invoice information to discrepancies between what's invoiced or stated on contract. It can take more than 30 days to resolve a dispute. It will be potentially misleading to report long payment times for invoices that have not been properly issued and substantiated.

Companies should have the option to remove disputed invoices from reporting and avoid reporting excessive reporting times that do not properly reflect their real performance. If the Regulator has a reasonable suspicion that companies are abusing this concession then the company can be investigated via the audit function.

Alternatively, there should be an allowance in the reporting for an entity to note payments greater than 30 days that had been under dispute and subsequently resolved.

Starting the clock

There are discrepancies between the Bill and the Rules on language related to when the clock starts ticking on the timing of the invoice payment.[3] The Business Council supports the approach in the Rules, which state that payment timing 'commencement' should be from the date a valid invoice is received by the procuring business that meets all the relevant requirements of the written or oral contract.

A large business that does not record the date it receives invoices may wish to report the 'date received' by using the invoice date – even if this overstates the large business's payment times. This approach may be preferred to avoid the burden of significant process or system change. Confirmation is sought that an overstatement in payment times by reporting the date received by using the invoice date would not be a contravention of the Rules that attracts penalties.

3. See section 14, (1) (d) of the Payment Times Reporting Bill 2020. The draft legislation talks about the timing of when the invoice was "issued", which if applied would give rise to concern about creating a set of unknowns in terms of accuracy of information, validity, sending and receipt date etc.

Bandings

Companies are required to report on the total proportion (number and value) of invoices paid in the calendar day periods of 1-20 days, 21-30 days, 31-60 days and 60 + days. The bandings will require companies to make substantive system changes to financial platforms to report in this way. Any bandings that are not essential for achieving the policy intent of paying small businesses quickly and on time should be reviewed. It is not clear that the 1-20 day payment period should be reported against, for example, given the maximum standard requested by the Australian Small Business and Family Enterprise Ombudsman and established by the Australian Supplier Payment Code is for 30 day payment terms. The 1-20 days band could be removed to reduce costs on business.

Rule 6: Report information not published

No comments

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