6 March 2020

Department of Jobs and Small Business
By email: PaymentTimes@jobs.gov.au

Draft Payment Times Reporting bill and associated Minister's Rules

The Australian Institute of Credit Management (AICM) represents the interests of over 2,600 credit professionals who are custodians of cash flow. They assess and mitigate credit risk in all sectors and manage credit terms for the supply of goods, services and finance.

Without our members, businesses are exposed to reputational damage, poor cash flow management, inefficient processes, breaching regulatory requirements and risk of not getting paid for hard won sales and services delivered.

On behalf of our members, the AICM is a vocal advocate for reform that enables all businesses to manage their credit risk and increase resilience to economic shocks and downturns. A core aspect of this advocacy are measures that improve payment times.

The Payment Times Reporting Framework has potential to change the poor payment culture in Australia and benefit all suppliers regardless of size. The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) has repeatedly stated that *"The minimum standard for all supplier payments (regardless of supplier size) should be 30 days"*[1]. This statement recognises that improving payment practices for all businesses will provide benefits to the broader economy and even greater benefits to small business than just improving payment times to small business.

Improved payment practices will benefit the broader economy by providing resilience during economic shocks and economic down turn. The trauma experienced by businesses in communities impacted by the 2019/20 Australian Bushfires was exacerbated by slow payment times creating severe cash flow issues and slowing their ability to recover. Many government and business leaders called for businesses to accelerate payment times to affected businesses. Additionally, COVID-19 is creating cash flow issues for numerous businesses across a broad range of industries, improved payment times would enable these businesses to better adjust to these shocks, recover quickly and minimise reduction of their workforce.

[1]ASBFEO Supply Chain Finance Review – Position Paper https://www.asbfeo.gov.au/sites/default/files/documents/ASBFEO-SCF-position-paper.pdf

Annual reports by ASIC[2] have identified that the number one cause of business failures for the last 6 reporting years has been inadequate cash flow or high cash use. The prevalence has also increased in recent years as shown by the below table summarising the % of external administrations where inadequate cash flow or high cash use was sighted as the primary cause of failure.

Reporting year	2018–19	2017–18	2016–17	2015–16	2014–15	2013–14	2012–13	2011–12
% of external administrations	51%	49%	47%	46%	44%	43%	41%	40%

In the UK it was recently identified that 23% of insolvencies are caused by late payment issues[3]. While this is a slightly different measure to that above, it is significantly lower than the above rates. Policies and initiatives in the UK such as The Late Payment of Commercial Debts (Interest) Act 1998, successful implementation of a Prompt Payment Code and legislated payment times are key drivers of the improved payment practices in the UK all of which are lacking in Australia and are not addressed by this draft bill.

The AICM strongly recommends that the draft legislation is amended to ensure the maximum improvement in payment practices is achieved as quickly as possible. Our key recommendations are summarised below:

Require reporting on payment times <u>to all businesses</u>.
By reporting on payment times to all suppliers, not only small business suppliers, the following benefits will flow:

- All suppliers will have access to valuable data relevant to the costs of supply and risk of slow payment.
- Ensure that all businesses are paid promptly and able to pay their suppliers promptly.
- Avoids the risk of big businesses further extending payment times to big businesses to compensate for shorter payment times to small businesses.
- Reduce burden on reporting entities as small businesses don't need to be identified.
- Big businesses with large numbers of small business suppliers will be incentivised to prioritise small business payments as the higher number of invoices and lower dollar values will drive lower average payment times.

If businesses are not required to report on payment times to all suppliers, there maybe an unintended consequence of payment times to big business suppliers being further

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[2] REPORT 645: Insolvency statistics: External administrators' reports (July 2018 to June 2019) https://download.asic.gov.au/media/5416956/rep645-published-18-december-2019.pdf
[3] Pbctoday article 21 Nov 2019 https://www.pbctoday.co.uk/news/planning-construction-news/late-payments-construction/67860/

extended threatening the solvency of these businesses and their ability to pay their suppliers promptly.

Mandate maximum payment times of 30 days

We strongly recommend following the UK's lead and calls by the ASBFEO and legislate maximum payment times of 30 days, legislating an interest rate to be applied to undisputed delayed invoices and penalties for repeated breaches of maximum payment times.

This recommendation replicates UK legislation (The Late Payment of Commercial Debts (Interest) Act 1998) which mandated payment of interest when invoices remain unpaid for 30 days or more. The importance of coming into line with the UK is emphasised by the fact that although these measures have achieved significant improvements there is still more to be done. In November 2019 Labour Party leader, Jeremy Corbyn, and Liberal Democrat leader, Jo Swinson, pledged to tackle the issue[3] and in January 2020 amendments to The Late Payment of Commercial Debts (Interest) Act 1998 have been tabled.

It is also the experience of the Chartered Institute of Credit Management, who administer the UK's Prompt Payment Code, that without legislative force poor practices businesses are not incentivised to amend their poor payment practices.

As currently drafted some reporting entities may voluntarily improve their payment practices due to the transparency it provides. However, as the Bill does not mandate a maximum payment time it is very likely that most will enforce extended payment terms.

The urgency for legislating maximum payment times should not be underestimated considering compliance and enforcement requirements of this draft Bill do not come into effect until 18 months after the Framework begins i.e. after 1 July 2022.

On the assumption companies with poor payment practices will only commence reporting towards the end of the transitional period the effectiveness of the measure will not be known until 2023. This could result in 11,523 companies failing due to poor cash flow (based on 3,841 companies failing due to cash flow in 2018-19[2]).

Inclusion of a review mechanism

As improving payment times is essential for the resilience of the Australian economy the AICM also recommends that a review mechanism is included in the draft legislation as was the case with the Whittaker Review commissioned under the Personal Property Securities Act (2009).

This review would ensure a focus on improving payment times is a key focus of government and business.

Reporting information of reporting entities payment, complaints and disputes procedures
Allowing suppliers to easily access this information will be a significant benefit to the many businesses that do strive to pay correct undisputed invoices within terms as suppliers will be able to self-rectify the majority of issues.

AICM members report that while many large businesses do publish this information on websites it is often hard to find, missing or out of date. Incorporating this in the reporting process will ensure this is up to date and accessible.

By requiring reporting entities to supply this information for easy access by suppliers the following benefits are likely to flow:

- Suppliers and reporting entities will save time by reducing the number and frequency of calls to reporting entities.
- Increased compliant invoices submitted by all businesses improving the efficiency of reporting entities accounts payable function.
- Reduces the likelihood of the Payment Times Reporting Regulator receiving complaints from suppliers.
- Reporting entities will more efficiently meet their payment obligations and reduce potential for reputational damage from unintended delayed payments.

We trust our submission assists the implementation of legislation that achieves its intended goals of addressing the systematic problem of poor payment practices in Australia.

Should you have any queries arising from our submission please contact me.

Yours sincerely

Nick Pilavidis
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