

2 Market Street  
Sydney NSW 2000  
Tel: (02) 9250 5000

GPO Box 3916  
Sydney NSW 2001  
[www.caltex.com.au](http://www.caltex.com.au)

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Department of Industry, Science,  
Energy and Resources  
GPO 2013  
Canberra, ACT, 2601

Submitted via web portal

To whom it may concern,

**RE: Caltex Australia Limited submission on Payment Times Reporting Framework Consultation Paper, *Draft Payment Times Reporting Bill* and associated Minister's Rules**

Caltex Australia Limited ('Caltex') welcomes the opportunity to provide feedback to the Department of Industry, Science, Energy and Resources ('the Department') on their consultation paper titled *Payment Times Reporting Framework Consultation Paper*.

Through Caltex's role in the Australian economy as the largest supplier of liquid transport fuels, accounting for one-third of all liquid transport fuels in Australia, Caltex recognises the importance of small businesses to the Australian economy and values the contribution they make to Caltex's operations around Australia.

Caltex is supportive of the Government's objectives to improve instances of on time payments to small businesses, and their desire ultimately to see the timely payment of invoices to small businesses, which was part of their 2019 Election commitments.

Caltex has included comments and feedback through the following sections:

1. About Caltex Australia Limited
2. Current payment practices
3. Comments on the *Payment Time Reporting Bill 2020*
4. Conclusions

Should you wish to discuss this further please do not hesitate to contact Philip Skinner, Advisor – Government and Industry Affairs, on 02 9250 5532 or via email at [philip.skinner@caltex.com.au](mailto:philip.skinner@caltex.com.au).

Kind Regards



**Lee Holland**  
General Manager Ampol REIT & Head of Procurement

## **1. About Caltex Australia Limited**

Caltex has been operating in Australia since 1900, through various antecedent firms, to safely and reliably supply liquid transport fuels to Australia and our operations in the South-East Asian region.

As the largest Australian transport fuel and convenience company listed on the Australian Securities Exchange, Caltex has developed a reliable and adaptable supply chain extending from the regional hub of Singapore, where we operate our Ampol trading office, to the Australian end consumer, serving the needs of customers from the defence force, mining companies, and airlines, as well as everyday consumers.

Caltex supplies 16.3 Billion litres of liquid transport fuels through our infrastructure network of 19 terminals, 5 major pipelines, 89 depots, ~800 controlled retail sites and our one refinery located in Lytton, Queensland. We directly employ a dedicated staff of over 7,600 people across Australia.

## **2. Current payment practices**

Given our diverse, and expansive, vendor base of more than 4,000 individual vendors Caltex offers a broad range of payment terms.

Through this system more than 97% of all invoiced spend with Caltex's vendors in 2019 are on payment terms of 30 days from invoice, or better, translating into almost \$24 Billion.

Recognising that Caltex is a significant procurer of goods and services throughout Australia we are taking steps to implement standard small business payment terms as a blanket policy for small businesses.

It is Caltex's intent that the introduction of these standard terms will assist in raising awareness among existing small businesses vendors with Caltex and contribute towards stimulating economic investment through our current, and future, vendors.

## **3. Comments on the *Payment Time Reporting Bill 2020***

Caltex is supportive of the Government's objectives to improve instances of on time payments to small businesses, and their desire ultimately to see the timely payment of invoices to small businesses, which was part of their 2019 Election commitments.

Reforms, such as these, can improve transparency and cash flow which are both beneficial to the broader economy, however they should be balanced against what the regulatory compliance costs associated with the reforms are to ensure that they do not impose undue regulatory burdens and costs on any party concerned, be they a small or large business.

In that vein Caltex is supportive of the *Payment Times Reporting Bill 2020* ('the Bill') however we have some comments and concerns which we have detailed below.

### ***Reporting as an Entity***

Noting the Government's intent to require reporting through an entity level, as opposed to a group level, Caltex believes that this introduces a layer of complexity and regulatory burden which will likely increase costs associated with compliance without any tangible benefit.

While Caltex understands that the intent of this feature is to allow Small Businesses to understand the timeliness of payments by entities with whom they would likely be directly engaged, we would contend that due to a significant number of corporations utilising centralised payment processing systems for all entities within a group, there is likely to be many instances where timeliness of payment, relative to agreed terms, would be consistent across all groups.

Indeed, the likely factor which would differentiate entities within a group would be the quantity and scale of vendors engaged which could impact the breakdown of terms offered, but not necessarily the payment timeliness.

Caltex would recommend that reporting be allowable at a group level, as opposed to entity level, to facilitate efficiencies in reporting and reduce compliance burdens. Additionally, we would foresee that in the event the Government legislates standard payment terms for small businesses, in line with their election

commitments, any potential benefits of reporting payment terms at an entity vs. group level would likely cease to exist.

#### Audit Functions

Caltex is concerned by the way in which compliance audits have been structured under Part 4, Division 3 of *the Bill*

Primarily Caltex is concerned by the draft structure requiring an entity to pay all fees and expenses of the auditors for preparing the report (ref. Part 4, Division 3, Clause 30(7)) which we interpret could leave entities exposed to significant costs if appropriate scopes are not established.

Understanding that Compliance Audits are clearly defined as a tool to be utilised in instances where the Regulator suspects that a reporting entity has contravened a provision of the Act, Caltex is of the view that these costs should be borne by the Regulator much in the same way that the Australian Taxation Office undertake and fund their own audit practices.

This amendment would not diminish the compliance powers of the Regulator and would mitigate risks of high compliance costs potentially being incurred by entities in circumstances where they may not have contravened the Act and have no control over the scope of the review.

#### Clarity around the definition of Contract Terms

Caltex would appreciate greater clarity around the definition of contract terms, as represented in the draft Rule 4 included in the consultation period.

Specifically, Caltex would seek clarification on how the Department would interpret contract terms in instances where a formal contract for the provision of goods and/or services does not exist.

Currently Caltex would interpret payment within contract terms to be a reference to the agreed payment terms established through a formal contract, establishment of a Purchase Order, or receipt of a 'once off invoice', however clarity would assist to remove ambiguity which could hamper compliance with *the Bill*.

Further, Caltex would appreciate clarity on how the Regulator will interpret the period in which invoices are paid. For example, does the payment period commence from the date on the invoice, the date of receipt of the invoice or when the invoice has been approved for payment by the relevant persons within the organisation.

#### Definition of a Small Business Supplier

Caltex is broadly supportive of the definition identified within the consultation paper, to establish a small business as *a business with turnover of less than \$10 million that is not part of a larger entity of grouping of entities*.

This definition broadly aligns with the Australian Tax Office definition of a Small Business for fringe benefits tax concessions and is commonly seen as an appropriate marker compared to definitions which rely on staffing numbers which can be misleading as to the actual scale of a business.

Caltex does however hold the view that more work needs to be undertaken to clarify and design the 'Payment Times Reporting Small Business Identification Tool' identified within the consultation paper well before the implementation of *the Bill*.

Caltex's primary concern is around how the tool will be established, and what framework will be designed to make the tool searchable and easy to navigate as a means for entities to assess whether a vendor satisfies the definition of a small business or not.

Ideally, linking in with the existing services provided by the Australian Business Register could provide for an efficient service to allow for companies to be identified utilising their ABN or ACN.

Leveraging off of existing Government services would likely provide efficiencies for entities required to comply with *the Bill*, through already being familiar with the system, while decreasing implementation costs for Government through the utilisation of existing IT infrastructure.

It is imperative that in designing the tool that the Government also implement requirements for small businesses to maintain their records/profiles to ensure the integrity of the system and the data contained within it.

The requirement for small businesses to update, or confirm, their information every 6-12 months would ensure that entities are utilising accurate data when determining which small businesses need to be included in their reports.

In the absence of the tool being available from the commencement date of the legislation, Caltex foresees that all entities would need to contact each supplier that derives less than \$10m of revenue from it.

This would represent a significant regulatory impost through the commitment of resources not only for those entities who would need to contact thousands of suppliers, but also for the suppliers themselves who would need to respond with potentially sensitive financial data to prove their turnover figures to a number of different customers.

The integrity of the outcomes of such a process would also be questionable without Regulator oversight.

Caltex would be happy to provide input into the design and implementation of the tool.

#### **4. Conclusions**

Caltex supports increased transparency around payment terms, and the timeliness of payment to small businesses, and believes that *the Bill* presents a reasonable first step towards the implementation of the Government's election commitments to see standard payment terms for all small businesses.

Mindful of that, we support the amendment and clarification of several aspects of *the Bill* to provide greater certainty to entities captured under *the Bill* and to manage undue regulatory burdens and costs.

Caltex is happy to provide access to appropriate staff should the Government, or the Department, wish to consult on this matter further.