

The logo for Optus, consisting of the word "OPTUS" in a bold, teal, sans-serif font.

Submission to the Department
of Industry, Science, Energy
and Resources

**RESPONSE TO THE
EXPOSURE DRAFT OF
THE PAYMENT TIMES
REPORTING BILL**

Public Version

March 2020

INTRODUCTION

1. Optus is pleased to provide a submission in response to the Exposure Draft of the Payment Times Reporting Bill (“**the Exposure Draft**”) and associated consultation paper (“**the consultation paper**”) as circulated by the Department of Industry, Science, Energy and Resources (“**the Department**”). Optus notes the proposed legislation will underpin the Payment Times Reporting Framework (“**the framework**”)
2. As outlined in our previous two submissions, provided to the Department of Employment, Skills, Small and Family Business in 2019, Optus appreciates the opportunity to provide feedback on this important issue to ensure the framework established is fit for purpose and achieves the desired outcomes of improving the cashflows for Australia’s small businesses.
3. We reiterate that it is very important that the framework delivers consistency and clearly defined terms, as well as minimising the red tape burden on Australian enterprise.

FEEDBACK AND SUGGESTIONS

4. Optus commends the Government for being responsive to industry feedback on how to most effectively implement the framework and maximise the ease of compliance.
5. We would like to respond to some particular items below, noting that we feel there are still some areas where there may be room for fine-tuning or other minor improvement.

Identification and definition of “small business”

6. Optus is pleased to note that feedback from industry on the introduction of a small business lookup tool has been appropriately considered and will be implemented to underpin the identification of small businesses under the framework.
7. Compliance with the framework is heavily reliant on the lookup tool being streamlined, accurate and simple to use. Glitches, errors or other access issues would impact industry’s ability to comply with the framework.
8. Noting that the definition of a small business will be one with, “*turnover of less than \$10 million that is not part of a larger entity or grouping of entities,*” Optus suggests that the information underpinning the lookup tool data will need to be constantly checked and verified as accurate by the appropriate Government agency.
9. Accordingly, we submit that the tool should be reviewed and updated by the entity responsible for its administration on a monthly basis. This will assist a reporting entity with the sufficient information to update their supplier terms on a regular basis, and to ensure compliance.

Internal administration of the framework compliance

10. Optus notes that the consultation paper has flagged that CEO sign-off and board approval would be required for approval of reports under the framework. We consider this to be an unnecessary administrative hurdle.
11. Instead, Optus suggests that a delegate sign-off should be acceptable – preferably the CFO. The CFO is responsible for numerous other financial reporting matters, and would be the most appropriate person to verify and submit reporting under the framework.

12. Optus also holds concerns over the proposal for each entity of a particular corporate to be required to separately report on their payment times. From an Optus perspective – with a number of legal entities of varying size – the preference is for Optus to accept overall responsibility for reporting as a single entity and submit one report in each reporting cycle.

Powers of the regulator, penalties and compliance

13. Optus holds concerns about the powers available to the regulator to be able to commence a compliance audit. The Exposure Draft indicates that the regulator need only “suspect” the entity to have contravened a provision of the Act. It is unclear what the accompanying reasonable grounds for such a suspicion might be.
14. We submit that an audit should only be triggered where all other avenues and communications made in good faith have been exhausted. Given the onerous nature of such an audit, we submit that audits should not be requested on demand without appropriate precursor attempts at resolution.
15. We are also concerned that the proposed financial penalties are at a maximum of 300 units and listed at \$210 per unit.
 - (a) Thus, some \$63,000 could be charged per day in fines. Optus considers this to be an unreasonable penalty for issues with record keeping.
 - (b) Whilst we note that the consultation paper includes a draft Ministerial rule allowing for an application for an extension of time for reporting, it is unclear how quickly such applications could be processed by the regulator, should issues arise which may prevent timely submission of reports under the framework.
16. Additionally, we would request that the powers of the regulator are made very clear on their ability to issue reminders or warnings – as well as offering reporting entities an opportunity to explain delays.

Leases should be excluded

17. Optus has approximately 8,000 sites in its mobile network, with different leasing arrangements across the network. It is critical for Optus to have guidance about whether lease payments are included in the framework, given that many of Optus’ landlords are small businesses.
18. We suggest that lease type payments are not included in the framework. Lease payments are made on a regular timeframe and are organised immediately. Further, they are facilitated under a contract, which provides parties with an avenue of restitution in the case of late payment. Accordingly, including lease payments under the framework would be likely to distort the overall results.

Impact on Commonwealth procurement opportunities

19. The Government has previously flagged that companies who fail to adhere to the framework may be prevented from bidding for Commonwealth contracts. Optus submits that the framework must be given an appropriate amount of time to be implemented and analysed.
20. This can allow for any teething problems in the framework to be fine-tuned – and for companies to adapt internal processes – prior to restrictions on the ability to bid for procurement contracts are utilised.
21. Optus recommends that Government does not an overly proscriptive approach towards organisations who wish to bid for Commonwealth contracts.

22. For example, we suggest that a company which has acted in good faith and paid the overwhelming majority of its small business vendors within the 20-day timeframe should not be prohibited from Commonwealth procurement opportunities, if a very small number of vendors are not paid on time. Such a proposal fails to appreciate that even the most effective administrative processes are occasionally prone to error.

CONCLUSION

23. Optus is pleased to work with our small business partners around the country. We offer our support for the principles and intent of the framework, to ensure small businesses have greater access to cashflow and can play their vital role in the Australian economy.
24. Optus reiterates that the accuracy, effectiveness and accessibility of the small business lookup tool is the most critical component for ensuring ease of compliance with the framework.
25. We would be happy to work with the Department for any other consultation which may need to occur, prior to the introduction of the legislation underpinning the framework.

(ENDS)