



HOUSING INDUSTRY ASSOCIATION



# Housing Australians



Submission to the  
Department of Jobs and Small Business

## Payment Times Reporting Framework – Discussion Paper

4 March 2019



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## ABOUT THE HOUSING INDUSTRY ASSOCIATION

The Housing Industry Association (HIA) is Australia's only national industry association representing the interests of the residential building industry, including new home builders, renovators, trade contractors, land developers, related building professionals, and suppliers and manufacturers of building products.

HIA members comprise a diversity of residential builders, including the Housing 100 volume builders, small to medium builders and renovators, residential developers, trade contractors, major building product manufacturers and suppliers and consultants to the industry. HIA members construct over 85 per cent of the nation's new housing stock.

HIA exists to service the businesses it represents, lobby for the best possible business environment for the building industry and to encourage a responsible and quality driven, affordable residential building development industry. HIA's mission is to:

*“promote policies and provide services which enhance our members’ business practices, products and profitability, consistent with the highest standards of professional and commercial conduct.”*

The residential building industry is one of Australia's most dynamic, innovative and efficient service industries and is a key driver of the Australian economy. The residential building industry has a wide reach into manufacturing, supply, and retail sectors.

The aggregate residential industry contribution to the Australian economy is over \$150 billion per annum, with over one million employees in building and construction, tens of thousands of small businesses, and over 200,000 sub-contractors reliant on the industry for their livelihood.

HIA develops and advocates policy on behalf of members to further advance new residential construction and renovating, enabling members to provide affordable and appropriate housing to the growing Australian population. New policy is generated through a grassroots process that starts with local and regional member committees before progressing to the Association's National Policy Congress by which time it has passed through almost 1,000 sets of hands.

Policy development is supported by an ongoing process of collecting and analysing data, forecasting, and providing industry data and insights for members, the general public and on a contract basis.

The Association operates offices in 23 centres around the nation providing a wide range of advocacy and business support.



## 1. INTRODUCTION

HIA takes this opportunity to respond to the Department of Jobs and Small Business discussion paper on a proposed payment times reporting framework (Discussion Paper). The proposed framework (Reporting Framework) is intended to implement the announcement made by the Commonwealth Government on 21 November 2018 that it would introduce a new national large business reporting framework with the overall goal of improving payment outcomes for Australian small businesses.

Moves that facilitate prompt cash flow and the timely payment of progress claims are worthwhile and greater transparency of payment arrangements between contractors is one way of achieving this outcome.

The objectives of the Reporting Framework are essentially to improve the collection of payment practice information, make this information visible and easily accessible to small businesses and stakeholders, and minimise the compliance and administrative burden (red tape) associated with the framework. Yet there are major inconsistencies between these objectives and it is not clear that the Reporting Framework will achieve these at times competing policy goals.

There is an inherent implication that some payment terms will be 'good' and some will be 'bad' which has the potential to oversimplify commercial arrangements. Commercial parties should be free to contract and agree upon their own terms and conditions, including the terms and conditions of payment free of uninformed scrutiny.

In a number of respects the Discussion Paper looks to 'standardise' reportable metrics in relation to payment arrangements in order to ensure that the information collected and published is comparable. While understandable, this approach indicates a desire to use the Reporting Framework as a way of imposing mandatory payment arrangements. Interference in commercial arrangements in this way is strongly opposed.

The Discussion Paper fails to consider industry specific factors that would not support the adoption of the Reporting Framework. The residential building industry is unique and the sector should be excluded from the operation of the Reporting Framework. Payment practices are already heavily influenced by existing consumer protection and security of payments laws in each jurisdiction.

In addition to these existing regulatory arrangements the unfair contracts provisions of the Australian Consumer Laws (ACL) also provide recourse for subcontractors. These laws have the potential to apply to unfair payment terms. The *Code for the Tendering and Performance of Building Work 2016* also requires that the Australian Building and Construction Commission (ABCC) monitor payment practices.

HIA sees the Reporting Framework as unnecessary duplication for the residential building industry. It is also likely that the Reporting Framework will increase regulatory burden for all parties involved in supply chains which is an undesirable outcome.



## 2. THE RESIDENTIAL BUILDING INDUSTRY

The residential building industry, including the home improvements and alterations market, is a key component of the Australian economy. The residential building industry is also the dominant sector in the building and construction industry.

While often overlooked, in reality the practice and paradigm in the residential building industry differs significantly from those businesses operating in commercial and civil construction and a range of other sectors of the economy to which the Reporting Framework would apply.

The terms and conditions for commercial builders and those engaging in government contracts are significantly different from the terms and conditions for a builder working on a residential building project.

Commercial projects and government works are generally characterised by:

- a tendering process that often forces negative margins with the hope that future variations will cover the shortfall;
- the use of retentions;
- longer payments terms (up to between 45 and 60 days compared to 21 days in residential);
- limitations on a builders ability to select subcontractors;
- contract administration by a superintendent/ architect;
- significant amounts for liquidated damages; and
- long defects liability periods.

Such elements are not present in the residential building environment, which faces equally as challenging yet different factors such as:

- the homeowner, whose significant emotional and financial investment places additional pressures on the builder and trade contractors;
- prescriptive statutory contractual arrangements;
- quasi regulation of payment terms through the involvement of financial institutions;
- ineffective, time consuming and often litigious methods of recouping late payments;
- demanding terms of trade from suppliers; and
- significant exposure to uncontrollable events such as inclement weather and fluctuations in the supply of building materials.

The residential building industry is heavily regulated when compared to other building sectors and other sectors of the economy.

Home builders must manage a complex web of national, state and local laws, regulations and codes. These range from planning, design, environment, health and safety, to local authority inspection and certification and a multitude of building, electrical, mechanical and plumbing processes.

The businesses must also comply with a legislative framework that spans licencing, ATO contractor reporting requirements, dispute resolution, builders warranty obligations and contractual requirements.



## 2.1 RISK ALLOCATION

HIA supports the Abrahamson Principle, namely that *‘a party to a contract should bear the risk where that risk is within that party’s control’*.

However the statutory consumer protection frameworks established around the country distort the usual allocation of risk in favour of home owners, influencing the payment arrangements that home builders enter into with their subcontractors.

While residential home building laws differ around the country residential builders are generally required to incorporate a number of mandatory terms and conditions into their contracts for the benefit of home owners. For example a contract with a home owner must include:

- mandatory terms and conditions such as the name of the parties, a description of the building works, the contract price and any plans and specifications;
- variations must be in writing;
- implied warranties of materials and workmanship;
- limits on deposits and bans on up front progress payment;
- limits on the estimated amounts of prime costs and provisional sums;
- requirements that builders take out warranty insurance; and
- outlawing and/or voiding unconscionable contractual provisions.

It is generally accepted practice in the residential building industry for the builder to claim upon defined progress stages being completed. With the exception of the deposit, it is uncommon for builders to claim in advance of work being undertaken. In fact, draw downs on project finance is normally only available upon lenders being satisfied with completion of certain recognised building stages.

In addition, a residential builder is required to obtain all variations in writing and is required to have these signed by the parties. If these requirements are not strictly complied with a builder may not be paid for the variation.

There are significant cost implications associated with these regulations.

The cyclical nature of the residential building industry is relevant to the relationships between contracting parties.

The high cost and highly regulated nature of the industry together with the small business profile of firms also means that they are especially susceptible to economic cycles and changes in government policies and regulation.

There are also inherent uncertainties in contract prices which arise from the fact that works are required to be priced before construction commences and are based on technical, financial and workforce assumptions, together with material costs/availability, access to site, timeframes, weather and statutory approvals/ delays.

Finally, a consistent challenge for builders is maintaining cashflow under a negative cash flow model. Whilst a trade contractor is typically paid for work in arrears and must finance this cost, the same holds true for builders who must ‘finance’ an owner’s costs.

Subcontractors and suppliers will naturally not wait for the substantial client to builder payment late in the duration of the job and often builders must source other financing arrangements to keep cash ‘flowing’.



Builders in the residential building industry ordinarily fund their works by way of debt financing. Revenue on the other hand is derived from client payments which are highly regulated and paid after completion of work and after the building costs are incurred.

The builder's reliance on cashflow to manage operations and cyclical conditions exposes them to an even greater extent in the event of non-payment by a client.

The publication of information relating to payment arrangements ignores these regulatory requirements and administrative and financial complexities to the potential detriment of all participants in the residential building industry.

### 3. EXISTING REGULATORY ARRANGEMENTS

#### 3.1 UNFAIR CONTRACTS LAWS

On 16 November 2016, the unfair contract term protections in the ACL were extended to small business. Of note, these laws are currently under review.

These provisions are aimed at remedying an imbalance between parties, based on the perceived strength of the bargaining power between large and small businesses. Under the ACL an unfair term is defined as one that causes an imbalance in the parties' rights and obligations that goes beyond what is reasonably necessary to protect the legitimate interests of the party relying on the clause.

In the Government's response to the Australian Small Business and Family Enterprise Ombudsman Inquiry into Small Business Payment Times and Practices it was noted that:

*'...the ACCC is monitoring complaints about payment terms and unfair commercial practices that delay payment times for suppliers. This includes terms allowing large businesses to unilaterally alter their payment terms and unfairly delay payment times for their suppliers.'*<sup>1</sup>

HIA sees actions by the ACCC through existing unfair contracts laws as serving more utility than the proposed Reporting Framework. Further, the ACCC may be collecting information relevant to the Reporting Framework. HIA submits that this is worthy of investigation prior to the implementation of any further reforms.

#### 3.2 SECURITY OF PAYMENT LAWS

Since 1999, security of payment (SOP) legislation for the construction industry has been progressively introduced into all Australian jurisdictions.

The common objective of this legislation has been to improve cashflow down the contractual chain. It effectively establishes a default entitlement to payment.

Under these laws:

- the subcontractor has a statutory right to a progress payment;
- the builder/principal is liable for claimed amounts irrespective of what the contract provides;

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<sup>1</sup> See pg.9



- the subcontractor may suspend work or supply without liability, and, if the principal removes any part of the work or supply from the contract as a result of the suspension, the principal is liable for any loss or expense the contractor suffers;
- the subcontractor can exercise a lien in relation to the unpaid amount over any unfixed plant or materials supplied;
- there is an expedited dispute resolution procedure (adjudication) by which disputes concerning payment are resolved, usually by way of written submission, within a very short period of time;
- if a principal becomes liable for an amount under SOP laws, then, in addition to recovering the amount as a debt due to the contractor, the adjudication determination may be enforced as if it were a court judgment; and
- there are very limited appeal rights or rights of judicial review in respect of an adjudication decision materials supplied by the contractor for use in connection with carrying out construction work.

Clauses in building contracts that offend the SOP legislation are void – contracting out is prohibited.

The remedy of rapid adjudication is also not available for a residential builder in dispute with a client.<sup>2</sup> This has potentially undesirable implications for payment arrangements throughout a residential builders contacting chain.

SOP legislation makes certain ‘unfair’ provisions void. There are time limits for payments to subcontractors and a principal contractor/builder cannot require that payment to a subcontractor be withheld or delayed due to payment from the client not yet being received. This has codified the common law position that ‘pay when paid’ and ‘pay if paid’ clauses are void in respect of contracts for construction works performed or related goods and services supplied in Australia.<sup>3</sup>

In HIA’s experience SOP legislation has provided an effective mechanism for payment for those subcontractors who have availed themselves of the laws. However and notwithstanding the existence of SOP laws some subcontractors continue to work for builders and principals when they have not been paid for a number of outstanding progress claims. This choice to continue to work even when substantial sums are already outstanding and when there is therefore an increased exposure to greater losses in the event of insolvency, is often based on a balanced assessment of risk and essentially is a commercial decision of these firms.

There also are a number of building firms who continue to undertake work for a consumer or home owner notwithstanding a failure to pay current or previous progress claims by that owner. As noted above, unlike subcontractors they do not have access to SOP or rapid adjudication to remedy cashflow issues in this regard.

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<sup>2</sup> Except in Tasmania  
<sup>3</sup> See eg *Ward v Eltherington* [1982] QdR 561; *Sabemo (WA) Pty Limited v O'Donnell Griffin Pty Limited* (1983) (unreported, Court of Western Australia); *Crestlite Glass & Aluminium Pty Ltd. v. White Industries (QLD) Pty Ltd* (Unreported, Federal Court of Australia).





Below is a table setting out the security of payment protections:

State	Legislation	Maximum time period for payment of progress claims	Paid when paid clauses
ACT	<i>Building and Construction Industry (Security of Payment) Act 2009 (ACT)</i>	10 days after a payment claim	Void
NSW	<i>Building and Construction Industry Security of Payment Act 1999 (NSW) (NSW SOPA)</i>	30 days to a subcontractor <sup>4</sup> , 15 days by a principal to a head contractor.	Void
SA	<i>Building and Construction Industry Security of Payment Act 2009 (SA)</i>	15 days after a payment claim	Void
NT	<i>Construction Contracts (Security of Payments) Act 2004 (NT)</i>	28 days	Void
Qld	<i>Building Industry Fairness (Security of Payment) Act 2017</i> <i>Queensland Building and Construction Commission Act 1991 (QLD)</i>	25 business days after submission of a payment claim for construction management trade contract or subcontracts.  <i>For commercial building contracts, 15 business days after submission of a payment claim.</i>	Void
Tas	<i>Building and Construction Industry Security of Payment Act 2009 (Tas)</i>	10 days	Void
Vic	<i>Building and Construction Industry Security of Payment Act 2002 (Vic)</i>	20 days	Void
WA	<i>Constructions Contracts Act 2004</i>	42 days	Void

Recent changes in Queensland also mean that a failure to respond to a claim for payment can result in the imposition of penalties and/or disciplinary action and may have consequences for a contractor's builders license. Further, compliance with minimum financial requirements in Queensland are a license condition and require that:

*'a Licensee must at all times pay all undisputed debts as and when the debts fall due and within industry trading terms'.*

In NSW under the *Contractors Debts Act 1997* subcontractors (or supplier of building materials) who have not been paid by a contractor can sometimes obtain payment directly from the principal. The rights under this legislation are expansive. For instance, the subcontractor is able to freeze monies in the hands of the principal (client) so that the principal does not pay the money to the contractor (builder) until the subcontractor has had the opportunity to obtain judgment of the amount owed by the contractor to the subcontractor.

The laws in NSW also enable subcontractors to earmark money which may become payable by the principal contractor to the subcontractor through rapid adjudication under the security of payment legislation<sup>5</sup> and require a head contractor to submit a supporting statement with a payment claim to a principal. A supporting statement requires that a head contractor declare that all payments due and

<sup>4</sup> Under the *Building and Construction Industry Security of Payment Amendment Act 2018* this will be amended to 20 days. This Act is yet to commence.

<sup>5</sup> See Division 2A NSW SOPA



owing to subcontractors have been paid and identifies any disputed amounts that have not been paid.<sup>6</sup> Penalties apply for failing to provide a supporting statement and making a false declaration.<sup>7</sup>

### 3.3 THE BUILDING CODE

In 2015 the *Code for the Tendering and Performance of Building Work 2016* (Code) was amended and expanded the role of the Australian Building and Construction Commission (ABCC) in monitoring security of payment requirements.

Under section 11C contractors and subcontractors that are covered by the Code must:

- comply with state and territory security of payment laws;
- not coerce or unduly pressure or influence a contractor, subcontractor or consultant not to exercise rights under state or territory security of payment laws or to exercise such rights in a particular way;
- report disputed or delayed progress payments to the ABC Commissioner .An obligation to report a disputed or delayed payment may arise where:
  - An amount is certified by a Principal (or Superintendent) under a contract and not paid within the contractual timeframe.
  - An amount is specified in a payment schedule/notice of dispute issued under the security of payment laws and not paid by the date prescribed by those laws.
  - Other than in Western Australia and the Northern Territory, no payment schedule/notice of dispute is issued in response to a valid payment claim and the full amount of the payment claim is not paid by the date prescribed by the security of payment laws.
  - An adjudicator makes a determination under the relevant state and territory security of payment legislation and the adjudicated amount is not paid by the date prescribed by the security of payment laws.
  - A third party such as a court, arbitrator, or expert issues a binding determination and the amount determined is not paid in accordance with the determination.
- ensure payments that are due and payable are made in a timely way and not unreasonably withheld;
- have documented dispute settlement processes detailing how disputes about payments to subcontractors will be resolved;
- comply with the dispute settlement process and any determination made under such a process;
- ensure disputes about payments are resolved in a reasonable, timely and co-operative way; and
- comply with any project bank account or trust arrangement that may apply on a Commonwealth funded project.

While the powers of the ABCC in relation to security of payments laws is limited to Code covered entities (being those contractors and subcontractors who have expressed interest in or tendered for Commonwealth funded building work) the ABCC is collecting useful and powerful information about payment practices.

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<sup>6</sup> See section 13(7) NSW SOPA and Schedule 1 *Building and Construction Industry Security of Payment Regulation 2008*

<sup>7</sup> See sections 13(7) and (8) NSW SOPA



HIA submits that prior to the implementation of any further reforms it would be useful to investigate the work of the ABCC in this space.

Further a number of entities potentially captured by the Reporting Framework have existing obligations under the Code. Such duplication should be avoided.

## 4. RESPONSE TO THE DISCUSSION PAPER

### 4.1 SCOPE OF THE FRAMEWORK

A key issue identified in the Discussion Paper is whether the Reporting Framework should require collection of payment information for small business suppliers only or all suppliers.

It is HIA's view that the scope of the Reporting Framework should be limited to small businesses. This approach aligns with the objectives of the regime and limits the regulatory impact. Requiring the reporting of payments to all suppliers would undermine the policy goal of improving payment practices to small businesses.

#### ***Definition of a small business***

The definition of a 'small business' for the purposes of the operation of the Reporting Framework is critical. This issue also raises the question as to how a small business is to be identified by the business who is required to report.

HIA does not support an approach based on headcount. This approach would not target the objective of the Reporting Framework to get better information about payment practices between 'big' and 'small' business. In fact there may be many businesses with small numbers of employees that are not and should not be considered 'small businesses'.

For instance, in the residential building industry, it is not unusual for a relatively large building company to have relatively few employees as the majority of on-site construction activity is performed by independent trade subcontractors.

Further it is clearly difficult, if not impracticable, for any business to know whether or not the business they are contracting with is a 'small business' for the purpose of the regime. The number of employees a firm has is rarely common knowledge.

Giving reporting entities a choice of how to define a small business is equally unappealing, open to manipulation and dilutes the utility of any data collected.

HIA suggests that a multi-factor test be applied in order to determine a small business. Similar to the approach adopted under the unfair contracts provisions of the ACL a small business would be defined by:

- The upfront price payable under the contract; and
- The turnover of the small business.

This ensures that those entities captured most accurately reflect the intended beneficiaries of the Reporting Framework.

HIA also submit that small businesses be required to disclose that they are small businesses and therefore covered by the Reporting Framework.



## ***Reporting on international suppliers***

It is HIA's view that the reporting obligations apply to Australian suppliers only. Reporting entities with international suppliers may choose to voluntarily report to ease administrative burden and complexity.

## **4.2 WHICH ENTITIES TO REPORT**

Differing corporate and legal structures used by business make this a complex issue. For example, a business may choose to operate as one company or choose to operate as a group of companies. It is easy to imagine a scenario where one business is compelled to report under the Reporting Framework but another business of a similar size and nature is not if it was limited to single entities.

The same issue applies with respect to incorporated and unincorporated entities. It is logical to require that similar businesses – regardless of their legal structure - are subject to the same requirements. If the reform is to have any value it would seem necessary to ensure that the choice of legal structure does not exclude reporting.

### ***Foreign businesses***

HIA supports the capturing of entities that pass the 'carrying on a business in Australia' test under the *Corporations Act 2001*.

### ***Financial threshold***

With respect to the definition of financial threshold, it would seem logical to use the consolidated revenue definition for the reasons identified in the Discussion Paper. Consistency with the *Modern Slavery Act 2018* (MS Act) which also imposes reporting requirements is desirable.

## **4.3 WHAT INFORMATION TO REPORT**

If the reported information is to be of any use it needs to be easy to understand and interpret but also be comprehensive and not subject to manipulation. Information such as usual payment terms, time of actual payment and percentage of disputed transactions may be of some assistance to small business in deciding whether to do business with a reporting entity.

However the utility of such information must be balanced against anti-competitive outcomes and preventing the disclosure of commercially sensitive information.

### ***Descriptive information***

Descriptive information is useful in order to provide appropriate context for the actions and activities of a business. Information that is already available, such as the basic entry-level information outlined in the Discussion Paper should be provided.

The utility of information about the characteristics of the business's supply chain, such as the number of suppliers or contracts they have or the total contract value or proportion of suppliers considered small business is unclear and without more HIA would oppose the mandatory disclosure of such information.

As noted in the Discussion Paper this information is not publically available and is likely to be commercially sensitive.

### ***Payment term information***

HIA opposes the mandatory reporting of key contractual terms. Such matters are determined by commercial negotiations between the parties, may be a result of competitive market forces and be commercially sensitive. For example, if discounts for on time payments have been negotiated, those offering such arrangements may not want competitors to be aware of them.



The payment term arrangements in place for a business can vary significantly. While it may be possible for a large business to broadly specify its payment terms it is likely that when the terms for all suppliers are considered there will be significant variations. For example, normal trade suppliers may be subject to very different payment terms than consultants, one-off suppliers, professionals and government agencies. It is therefore unlikely that a single standard payment term would apply for a reporting entity and it may be difficult to clearly apply differing payment terms.

A relevant consideration is the use of standard form contracts.

There is little utility in the publication of payment terms set by standard form contracts which are a long standing feature of the residential building industry. Many are developed through a process of negotiation and discussion. They are usually well understood by the parties and are often amended to reflect competing interests of the parties involved in the project type and the contractual value.

HIA drafts and publishes a number of standard form building contracts and trade contract (sub contract) documents. The terms of these contracts reflect the unique needs of the residential building industry and in HIA's view represent fair, reasonable and balanced conditions.

### ***Payment performance information***

HIA opposes the mandatory reporting of 'performance data'.

The payment of invoices can be influenced by many factors, for example administration errors often make up a significant proportion of late payments. Further in the residential building industry, there are often disputes over the quality of work and the liability to pay, delaying payment.

As such requiring reporting entities to determine and disclose the proportion of contracts for which invoices have or have not been paid within agreed-upon terms says little about a company's payment practices.

If such information is to be collected then it should be limited to the disclosure of the median or average number of days a reporting entity takes to pay suppliers. The provision of this information satisfies the objectives of the regime and provides small businesses with insights into the payment practices of reporting entities, while also limiting the regulatory and commercial impact on those entities.

### ***Other contextual information***

HIA opposes the imposition of a mandatory requirement that reporting entities disclose information about disputed invoices. Again, this information says little about a business's payment practices.

Equally and as outlined above there are already measures in place to capture and respond to disputed payments.

### ***Definitional questions for reporting***

As indicated above, it is HIA's view that:

- Disputed, lost or incorrect invoices should not be reported.
- Invoices included in the regime would be based on the definition of 'small business'. This would avoid reporting entities making a decision on each and every invoice they receive as to whether it is reportable or not.



In terms of calculating 'reportable days' HIA opposes imposing a standard definition of 'days to pay'. This is clearly a contractual matter and heavily influenced by a business's internal processes. If these metrics are to be published, as long as the context is provided (i.e. how those days have been counted) nothing further is required.

## 4.4 HOW TO REPORT

### ***Reporting mechanism***

A centralised portal for the reporting of the payment information would be easier for small business to access and use. However, at the outset publication on a company's website is preferable. Small businesses can then easily investigate the company they are looking to contract with.

### ***Reporting frequency***

In order to reduce the administrative burden, reporting should align with existing reporting requirements. For example, under the MS Act a company is required to lodge a Modern Slavery Statement within 6 months after the end of the companies reporting period.<sup>8</sup> HIA sees this approach as appropriate.

## 4.5 HOW TO ADMINISTER

### ***Legal basis of the framework***

The value of imposing the Reporting Framework is unproven. As such, it would make sense to minimise the regulatory burden and avoid introducing onerous legal requirements, enforcement powers and sanctions. Instead the approach of enabling legislation with industry codes may be a better way to introduce this reform so that its operation, integrity and value can be tested.

### ***Powers and functions of the framework***

In HIA's view the approach adopted under the MS Act is relevant and appropriate.<sup>9</sup> It would be premature to introduce enforcement powers or sanctions.

The MS Act does not currently contain enforcement and compliance powers; but provides authority to request an explanation where the requirements imposed by the MS Act have not been complied with and if a company fails to comply with this request, information about that entity can be made publically available.

The focus of the MS Act is on changing attitudes and culture<sup>10</sup>not imposing pecuniary penalties. HIA sees the Reporting Framework as having a similar goal.

HIA opposes giving the administrator power to accept complaints or instigate investigations. As outlined in this submission there are a range of measures through which poor payment practices and non-payment can be addressed, this, of course also includes legal actions. To add a further regulatory layer is unnecessary, unjustified and will simply create duplication and overlap.

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<sup>8</sup> See section 13(e) NSW SOPA

<sup>9</sup> See section 16A NSW SOPA

<sup>10</sup> See generally Explanatory Memorandum *Modern Slavery Bill 2018*



### ***Role and identity of the frameworks administrator***

At this early stage consideration of this matter seems somewhat premature. However consideration could be given to the approach taken under the MS Act. Establishment of a unit with the appropriate government department would be preferred.

## **4.6 GOVERNMENT OBLIGATIONS**

HIA does not have a view on this matter but notes that the Pay-on-Time survey has already been implemented and it would seem logical to continue with that process. If however a government agency, such as Australia Post, is operating as a business and/or competing with the private sector then it should be covered by the framework.

