

27 November 2019

By email only: Paymenttimes@employment.gov.au

**Submission to the Department of Employment, Skills, Small and Family Business:
Payment Times Reporting Framework (Stage 2)**

Introduction

The Australian Credit Forum (**ACF**) welcomes the opportunity to make a submission to the Department of Employment, Skills, Small and Family Business (**the Department**) in respect of the Consultation Paper *Payment Times Reporting Framework (Stage 2)* (**Consultation Paper**).

The ACF was established in the early 1970's by a group of senior credit professionals. The group recognised the need to develop an association where members could meet on a regular basis to exchange thoughts and ideas to strengthen their own knowledge but also the standards of the industry.

The association meets on a regular basis to discuss and review existing and proposed changes to the Federal and State Governments legislation that might have an impact on their company's credit policies and practices in their day to day role as credit professionals.

The members of ACF are drawn from all areas of the credit profession across a range of industry groups including but not limited to senior credit managers, members of the legal profession, insolvency practitioners, credit insurance underwriters and brokers, mercantile agents and credit reporting agencies. The depth and diversity in experience of the members ensures that a broad cross section of the credit industry considers the impact of all relevant legislation.

Payment Times Reporting Framework

The Consultation Paper proposes that large businesses and Commonwealth Government agencies with over \$100 million in annual turnover (**Large Businesses**) should be required to publicly report on their payment times and practices in respect of small business suppliers. The implementation of a Payment Times Reporting Framework (**PTRF**), as foreshadowed by the Australian Government on 21 November 2018, will impose this requirement.

The Government cite a commitment to encouraging fairer and faster payment times and terms for small business as basis for the necessity of the PTRF, and the Department specifically state an intention to:

- improve the collection of information about the payment practices of large businesses and government agencies towards small business;
- make information about payment practices visible and easily accessible to small businesses and others; and

- minimise the compliance and administrative burden associated with the reporting framework for small and large businesses and government agencies (together, **Objectives**).

Scope of submissions

The ACF advocate for fairer terms and faster payment times for small business, and any measure which delivers transparency, and provides credit providers greater knowledge and insight into the trade practices of potential customers.

Notwithstanding, we hold some concerns about the efficacy and implications of a regime such as the PTRF.

Helpfully, the Consultation Paper poses a number of questions to stakeholders who wish to make submissions. The submissions of the ACF can be framed as answers to a number of relevant questions.

Relevant focus questions

1. **Are these the correct reporting areas for the PTRF to provide transparency of practices while minimising the reporting burden?**¹

Excessive information subdivided into many brackets (i.e. invoices paid in 1 – 20 days, 21 – 30 days, 31 – 60 days) may overwhelm or confuse small businesses, needlessly complicate the process and intensify the regulatory burden for Large Businesses.

The Australian Small Business and Family Enterprise Ombudsman (**Ombudsman**) have previously submitted that the information should not be too broad as the primary aim is to provide meaningful information to small businesses.² They too consider that grouping multiple payment options into brackets may cause performance data to be lost in the sheer volume or complexity of offered terms.³

While the collection of broader data may mitigate anomalies (i.e. whether the payment terms offered a discount for paying on time), to achieve the accessibility outlined in the Objectives, reporting should be limited to key information that identifies whether invoices were paid on time. This means agreed terms and payment performance against those terms. This should be pass-fail.

Imposing more expansive reporting obligations on Large Businesses is inconsistent with the Objectives, as it fails to minimise the regulatory burden and complicates information that should be easy for small businesses to read. Practically, it is difficult to see how broader reporting would inform small businesses whether they should trade with particular Large Businesses, or advance the cause of small businesses receiving faster pay or fairer terms. It would serve mostly collateral research and analytical purposes.

¹ Page 8 of the Consultation Paper.

² Australian Small Business and Family Enterprise Ombudsman, *Payment Times Reporting Framework* (1 March 2019), [3].

³ Ibid.

2. **What are the positive and negative effects of identifying small businesses? If there are negative effects, how could they be mitigated?**⁴

In the public space, a “small business” is simultaneously defined as a business with less than \$2 million annual turnover,⁵ one that employs less than 15 people,⁶ or one that employs less than 20 people.⁷

While the Consultation Paper foreshadows a standard definition of “small business”, it is unclear whether the Department intends for the PTRF to categorise any business that does not fit the Large Business definition as a small business.

The ACF requires more information to consider its position, and awaits the proposed small business definition to assess the gap between it and the Large Businesses definition.

3. **Which approach/es do you favour for small business identification, and why?**⁸

(a) **Large businesses identifying their small business suppliers**

On balance, Large Businesses will likely be better resourced to withstand the regulatory burden and costs of identifying their small business suppliers than small businesses will be to verify their status. However, it may be difficult for Large Businesses to determine the size of all businesses they are engaging without specific knowledge that may not always be available. This difficulty could be overcome by the proposed small business look-up tool.

(b) **Developing a public small business register**

A recent review of the Business Council of Australia’s Australian Supplier Payment Code called for an initiative like a small business look-up tool.⁹ The ACF support such an initiative and believe it will simplify the process for Large Businesses to identify their small business suppliers, mitigating the regulatory burden.

It is recommended the look-up tool be supported by the government sector, as potential security and accuracy issues may arise if it is supported by the private sector.

(c) **Using an expenditure threshold**

As identified in the Consultation Paper, this approach is only a proxy for small businesses, and could compromise the data by including information about medium and other large business suppliers inadvertently. This is inconsistent with the first of the Department’s Objectives.

Moreover, contracts of supply procured by Large Businesses may span several years, and assessing them against a total annual spend criteria may be unhelpful.

⁴ Page 9 of the Consultation Paper.

⁵ Definition of “small business” as adopted by the Australian Taxation Office.

⁶ Definition of “small business” as adopted by Fair Work Australia.

⁷ Definition of “small business” as adopted by the Australian Bureau of Statistics.

⁸ Page 13 of the Consultation Paper.

⁹ Business Council of Australia, *Review of the Australian Supplier Payment Code* (January 2019), p 2.

(d) **Confidentially identifying small business suppliers using government or third party data**

The Consultation Paper considers potential discrimination that publicly-identified small businesses may face if Large Businesses can search their status. It is suggested that Large Businesses may then consider certain businesses deemed “small” a risk, and may perceive the business as being unable to meet variable demands.

Ideally, Large Businesses should only be able to search for a small business on the look-up tool once they have entered an agreement with them for supply. This would prevent an abuse of the tool for collateral purposes and is consistent with the Objectives.

Admittedly, this may be unrealistic, and the ACF supports the Department’s suggestion that the look-up tool only provide a yes or no answer on whether a business has met the PTRF small business definition.

4. **If we were to use an expenditure threshold would a \$1 million annual spend with a supplier be a reasonable value for the expenditure threshold?**¹⁰

It is possible that experienced or specialist small businesses will be engaged by Large Businesses for contracts worth more than \$1 million. For this reason and the reasons in our answer to question 5(c) above, we do not support the use of an expenditure threshold.

5. **Are there other issues the Department will need to consider in the implementation phase of the PTRF?**¹¹

The proposed data to be collected will be varied and complex (as illustrated by Figure 1 of the Consultation Paper). We consider it will be difficult to present this data in a clear way that accurately demonstrates to small businesses the habits of Large Businesses, given the various figures.

In determining how to publish the collected data, the Department should keep simplicity front of mind to enable user-friendliness for small businesses.

6. **Should the PTRF central publication portal include information on trends over time or provide information to allow comparisons by industry and location?**¹²

Only insofar as it can be demonstrated that the inclusion of the trends will incentivise Large Businesses to pay their small business suppliers on time.

Practically, will trends rationally affect a small business’ assessment of whether they should trade with particular Large Businesses? Their inclusion will not further the Objectives if this cannot be demonstrated.

7. **Are there other issues the Department needs to be aware of in developing the reporting IT interface for the PTRF?**¹³

¹⁰ Page 13 of the Consultation Paper.

¹¹ Page 16 of the Consultation Paper.

¹² Page 16 of the Consultation Paper.

¹³ Page 16 of the Consultation Paper.

Whichever interface the Department proceeds with, businesses at the smaller end of the Large Businesses category may need time to design and implement IT processes to document and supply the required information. The same may be said for businesses at the larger end of the category.

For efficacy, prototype and beta versions of the PTRF IT interface should be demonstrated to businesses likely to be caught by the regime as soon as possible. This may mitigate technical issues which could delay the commencement of the regime.

8. What are your views on the two options to determine the start of the payment period? Are there others?¹⁴

The approach taken under the UK scheme where the 'clock starts ticking' on payment times the day after the invoice is received is problematic. It may allow Large Businesses to shift blame or claim that an invoice was received later than it was. The ACF would prefer the second option and recommend that the payment period commences on the date of the invoice.

Other considerations

Good faith and enforcement

The Business Council of Australia already provides the voluntary Australian Supplier Payment Code. Businesses large and small can opt into the code, and it provides a mechanism by which Large Business signatories report on payments to their small business suppliers.

Recent data shows that approximately 101 of a potential 3,000 business are signatories.¹⁵ Arguably, if this voluntary regime was sufficiently achieving the Department's Objectives, the Government may not have felt it necessary to propose the PTRF. Considering the reputational consequences Large Businesses may face if they pay outside of terms, it may be unrealistic to rely on honesty, good faith or any voluntary compliance when finalising the design of the PTRF regime.

The ACF endorse the submissions of the Ombudsman in respect of penalties to enforce the PTRF,¹⁶ namely that:

- penalties should be applied for non-compliance;
- penalties should apply at the corporate and director level, keeping senior officers accountable; and
- Large Businesses who do not report or are proven to have provided misleading information should be ineligible for government contracts.

¹⁴ Page 18 of the Consultation Paper.


¹⁵ Australian Small Business and Family Enterprise Ombudsman, *Payment Times Reporting Framework* (1 March 2019), 1.

¹⁶ *Ibid*, [5].

We agree that monitoring and compliance checks will need to be undertaken by a regulatory authority,¹⁷ and the Ombudsman may be the appropriate entity.

Disputed invoices

Excluding disputed invoices from payment reporting is problematic. It may compromise the accuracy of the data, or give companies a mechanism to strategically mask their late payment by disputing an invoice. If disputed invoices must be excluded from reporting obligations, a formal process should be followed by Large Businesses to identify the disputed invoice, and the published data should state the amount of invoices Large Businesses have disputed that reporting period.

A handwritten signature in dark ink, appearing to be 'David J Hunt', is written over a horizontal line.

David J Hunt
Chairman
Australian Credit Forum

¹⁷ Ibid.