



Australian Government



Australian  
**Small Business and  
Family Enterprise**  
Ombudsman

6 December 2019

Mr Sean Macintyre  
Small Business and Entrepreneurship Branch  
Department of Employment, Skills, Small and Family Business  
Canberra City ACT 2601

*via email:* PaymentTimes@employment.gov.au

*Sean*

Dear Mr ~~Macintyre~~

### IMPROVING SMALL BUSINESS PAYMENT TIMES

Late payments are the biggest risk to cash flow for small businesses. Close to 40% of small businesses report significant cash flow pressures where customers are paying late. To compound this issue, approximately half of all invoices issued by small business to large businesses are paid late, totalling \$115 billion per year.<sup>1</sup>

Due to the significant toll late payments take on small businesses and family enterprises, this Office has undertaken comprehensive research on how to improve payment times to small businesses. Our 2017 and 2019 Reviews of Payment Terms, Times and Practices, referred to our Office by the Minister, strongly recommend the introduction of an annual reporting framework. We have contributed our expertise to the Working Group for Stage 1 of the Payment Times Reporting Framework (PTRF) and welcome the advancement of this important initiative.

To improve payment terms, times and practices, appropriate accountability and enforcement measures must be in place to ensure compliance by entities holding the most bargaining power.

#### Reporting

- **Payment terms:** The PTRF must ensure that all payment terms are reported on. If there are specific small business terms provided, such as the Business Council of Australia's Supplier Payment Code (the Code), these terms also need to be reported on.
- **Payment Performance:** Capturing the percentage of invoices paid within specific timeframes and those paid late are appropriate metrics to measure performance against stated terms.

#### Identifying small business suppliers

- Identifying a small business is only an issue when they require different terms and conditions. COAG's commitment to faster payment terms for small business indicates the need for a small business identifier. Without this, updated registers will not provide the data required to support payment terms policies. The new single business register as well as a proposed Small Business Indicator<sup>2</sup> that aims to facilitate faster payment to small business is a good opportunity to identify small business.
- Prior to these initiatives being introduced small businesses should be able to self-identify. A number of large organisations, through the Code, identify a cohort of small business suppliers using two methods, an Australian business with annual turnover up to \$10m or an Australian business that supplies goods or services up to a maximum annual level of

<sup>1</sup> SME Growth Index, Scottish Pacific Business Finance, September 2019

<sup>2</sup> Small Business Indicator, NSW Small Business Commissioner

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expenditure. This reflects several Government recognised small business definitions and government contracting requirements.

#### **Who will report? Group vs entities**

- Entity-specific reporting should be adopted as it will provide a more transparent picture of performance. Large groups can have multiple entities operating within different industries. Group-level reporting may allow groups to hide poorly performing entities within averages. This would lead to scepticism and lack of trust in the framework by small businesses.

#### **How to Capture Supply Chain Financing**

- This Office is currently reviewing the impacts of supply chain finance on small and family business, including considering the potential impacts use of the product has on meeting agreed payment terms. The initial view of this Office is that the contractual terms should be recorded. Any additional offerings to reduce payment times at a cost to the supplier should not be considered as they artificially reduce payment terms.

#### **Implementation**

- We agree that the reporting periods should be every six months so that data provided is timely. There should be no types of expenditure type or value excluded reporting.
- The number of days calculated for meeting a payment term should begin from the date of receipt of a correct invoice. With the Government moving to adopt the PEPPOL e-invoicing framework, there should be fewer discrepancies in the receiving of due to standardisation across government and the business sector in Australia and New Zealand.

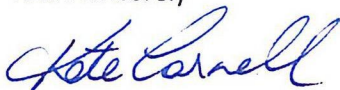
#### **Compliance**

- Publication of results on a central portal, where businesses can search individual companies is essential for the PTRF to meet its intended purpose. The PTRF should be used as the tool for compliance monitoring and as an evidence base for enforcement provisions.
- While avenues to make complaints currently exist, this process is often not effective as the fear of potential reprisals discourage small business owners from complaining. As detailed in our 2019 Review of Payment Terms, Times and Practices, improvements are most likely where a penalty for non-compliance exists.
- A separate complaints and audit mechanism is required to show that Government takes this issue seriously. This Office would be an appropriate entity to carry out this function, as it has the ability to use existing powers to compel production of documents. This allows a whistleblower to remain anonymous whilst our Office directly gather the source documents.
- The Government must impose clear and strong penalties for non-compliance. These penalties could be around transparency (adverse publication) or an inability to tender for government contracts. An independent arbiter should be appointed. Either the Australian Competition and Consumer Commission or this Office are best placed to enforce compliance.

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Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Mr Ben Holland on 02 6121 5404 or at [ben.holland@asbfeo.gov.au](mailto:ben.holland@asbfeo.gov.au).

Yours sincerely



**Kate Carnell AO**

Australian Small Business and Family Enterprise Ombudsman