



171 Collins Street
Melbourne, Victoria 3000
Australia
T +61 3 9606 3333
F +61 3 9609 3015
bhp.com

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To Whom it May Concern
Department of Employment, Skills, Small and Family Business
GPO Box 9880, Canberra ACT 2601

To the Department of Employment, Skills, Small and Family Business,

Payment Times Reporting Framework consultation

Thank you for your invitation to participate in public consultation for the Payment Times Reporting Framework (PTRF). Our operations in Australia engage with over 6,400 vendors. We categorise 3,400 (or 53 per cent) of these vendors as small businesses.

We define a small business as a supplier that:

- employs less than 20 people (excluding contractors); and
- has an annual turnover of less than AUD\$10 million (or equivalent)

We were closely involved with the development, and were one of the first signatories, of the Australian Supplier Payment Code (Code).

In accordance with our commitments under the Code, small businesses, local community suppliers and Indigenous suppliers in Australia are entitled to an exemption from our standard 60 day payment terms. For these suppliers, payment terms of 30 days or less apply. A supplier that does not qualify as a small business, local community supplier or Indigenous supplier, but is experiencing financial hardship, may also be granted an exemption from our standard 60 day payment terms.

We also offer reduced payment terms to approved suppliers of our Local Buying Program. Since this Program was established in 2012, we have spent over \$420 million with more than 1,300 small businesses who have received payment in under 14 days on average.

Additionally, we offer a Supply Chain Financing Program - an arrangement that allows our suppliers to receive early discounted payment of their receivables from BHP at a highly attractive funding rate that would not normally be accessible by small business. The funding allows the suppliers to better manage cash flow by choosing when they will receive payment for the goods or services provided to BHP independently from when payment of the invoice is settled. Importantly, for small businesses, this program is offered in addition to the exemption to 30 day payment terms.

Our prime concerns with the PTRF as it is currently proposed are the additional costs, time and complexity of reporting, and the risk of confusion or potential for submitted information to be misinterpreted. This potential confusion stems from the attempt to standardise reported information in an environment where there is a wide variety of payments practices and policies employed by large businesses.

We believe the intent of improving the transparency and performance of payments to small businesses can be achieved more simply by requiring large companies to disclose greater detail on their standard payment policies and practices, and to then report on their performance against this set of policy and procedures. As an example, we would propose disclosing the following (further detail can be provided upon request):

- BHP Exemption policy for small and local businesses
- BHP Standard terms and conditions regarding payments
- BHP definition of small business

- BHP calculation definition of payment time performance
- Payment time performance for the period (% of payments made in accordance with stated policies and practices for small businesses)

Our feedback on the design and implementation of the PTRF will focus on the following issues:

- how small businesses should be identified;
- approaches to calculating payment times;
- types of expenditure covered by the framework;
- who will report;
- reporting periods; and
- mechanisms to ensure information is reported.

How small businesses should be identified

BHP believes the PTRF should define small businesses in a manner consistent with the Australian Supplier Payment Code. This means a small business would be defined as:

- an Australian business with annual turnover up to \$10 million; or
- an Australian business that supplies goods and services to the reporting entity up to a maximum annual level of expenditure. The maximum annual level of expenditure would be set by the reporting entity and required to be published.

The reporting entity would be required to apply its adopted definition of a small business consistently to all small business suppliers.

This would reduce the administrative burden to large businesses by allowing them to report in line with their internal definitions.

Applying a single definition of small business to all reporting companies would likely result in extensive internal changes to how a small business is defined and may, in some cases, exclude businesses currently considered 'small' by the individual company through application of a more stringent definition by the PTRF.

Additionally, while the PTRF may adopt one definition of a small business, other regimes or government requirements may still define it differently leading to confusion.

How payment times should be calculated

BHP believes the measure of payment times must begin from when the reporting entity determines an invoice from its supplier is valid. This will ensure that the reporting entity will not be penalised or measured against outcomes it has no control over, for example submission of an incorrect, invalid or fraudulent invoice, or late lodgement of an invoice.

Importantly, we do not believe the window for payment should be counted from the date of invoice or date the invoice is just received at the reporting entity, as this discounts the steps required to assess the invoice for payment.

This proposal is in line with the already acknowledged principle that the PTRF will apply only to correct, non-disputed invoices.

BHP have procurement policies and procedures in place to avoid unfair delay before an invoice is determined to be valid.

Types of expenditure covered by the framework

We believe payment data should be reported only for suppliers using the reporting entity's standard purchasing processes. For example we would propose it capture spend under Purchase Order, but not consider credit card payments or non-order invoices which are usually for low-value and non-recurrent spend. Including these additional types of expenditure would add complexity to reporting while adding little to the overview of overall payment performance.

We also believe that when disclosing payment times, we should only do so for small businesses. The current discussion paper proposes reporting on percentage of invoices paid within specific time frames – we believe if this dataset is disclosed it should only include small business.

However, we would prefer we report only on our compliance to the payment terms policies and procedures in place, rather than reporting percentage of invoices paid within specific time frames. This would significantly reduce confusion and complexity for reporting entities.

We also recommend against any requirement to provide information about the maximum contractual payment length agreed during the reporting period. This is unlikely to contribute to a representative view of payment terms and identification of the information could impose an undue administrative burden.

Who will report

Company groups should have the choice to provide a single report at group level or by individual entity, provided all companies that meet the \$100M threshold are covered. This would allow reports to reflect most accurately the practical management and operating structure and minimise the administrative burden.

Furthermore, for reporting on joint ventures, we believe only the operator should be required to report. This will ensure data is reported in a manner consistent with the operating structure, noting that non-operating joint venture participants are not responsible for managing payment of invoices and often do not have access to relevant data.

Reporting periods

We believe that reporting entities should be required to report annually to reduce administrative burden. The choice of whether to report on performance during the calendar year or the entity's own financial year should be left to individual entities based on what aligns best to existing data analysis and/or reporting processes.

Annual reporting is in line with the Australian Small and Family Enterprise Ombudsman's review of payment terms, times and practices (March 2019).

Mechanisms to ensure information is reported

We believe that public identification of entities that fail to report is preferable to penalties, and that in no circumstances are criminal sanctions appropriate for breaches of a disclosure regime. Any civil penalties imposed should be deferred for a sufficient period after the PTRF commences to allow entities to adjust to the reporting requirements.

Kind regards



Phil Jefferys
Head of Partners, Innovation & Community