

**OPTUS**

Submission to the Department  
of Employment, Skills, Small  
and Family Business

**RESPONSE TO 'PAYMENT  
TIMES REPORTING  
FRAMEWORK' (STAGE 2)  
CONSULTATION PAPER**

**Public version**

December 2019

## Section 1. INTRODUCTION

- 1.1 Optus is pleased to provide a submission in response to Stage 2 of the Department of Employment, Skills, Small and Family Business' 'Payment Times Reporting Framework' ("**the framework**") Consultation Paper ("**the consultation paper**").
- 1.2 As outlined in our first submission, provided to the Department in March 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.
- 1.3 Optus supports the intent of the framework and intends to work constructively with the Government in order to ensure all possible success.
- 1.4 Optus would like to reiterate two key issues, first identified in our submission from March 2019, which we wish to highlight again:
  - **Consistency and defined terms:** it is critically important that there is a simple, workable and comparable definition of "small business" in order to ensure productive engagement with large businesses. Certain calculations, preparations or projections cannot be progressed until we know what the size of the FTE or other metrics used will be.
  - **Reporting burden:** it is critical that any additional layers of regulation or red tape on Australian businesses are fit for purpose and not overly onerous or expensive to implement.
- 1.5 We would like to offer the following, more detailed feedback on the issues and aims outlined in the Stage 2 discussion paper, and which we have endeavoured to provide in direct response to the questions posed in the consultation paper, in sections 3 and 4.

## Section 2. GENERAL FEEDBACK

### Government leadership

- 2.1 As outlined in our first submission, Optus believes there is a critical role for Government in ensuring the operating success of the Framework. Optus believes that it is reasonable and appropriate for Commonwealth Agencies to share information across Government, as it will assist the timely, streamlined and successful delivery of the Framework.
- 2.2 Optus suggests the success of the framework can be assisted by a simple three stage process:
  - a) The Government sets a clear definition of a small business;
  - b) Small businesses self-identify to the relevant Government Agency, or the Government identifies small businesses using the information they have available; and
  - c) The Government provides a simple fact-check tool or mechanism to larger businesses, to ensure that success of the framework is possible.

## **Red tape considerations**

- 2.3 The Government has, on countless occasions, spoken of its commitment to reducing the red tape burden on Australian business. Optus notes that in addition to overseeing the framework, the Department of Employment, Skills, Small and Family Business is also responsible for reducing the burden of government regulation.
- 2.4 Optus is fully supportive of the Government's efforts to reduce the administrative and bureaucratic hurdles which can stand in the way of core business operations or which can hinder the growth of the Australian economy.
- 2.5 The reality is, however, that the framework will be another item of compliance which large businesses will have to adhere to. Optus is fully supportive of the principles and aims of the framework, but does consider it vital that compliance is easily achievable without necessitating significant outlays in working capital just to continue daily operations.
- 2.6 For example, if the framework is overly complex or not complementary to existing IT systems, significant working capital will need to be spent to ensure compliance. This will transfer capital and resources from more productive purposes and add to the cost of doing business.
- 2.7 Accordingly, Optus submits that in the interest of balancing the equally important aims of reducing the burden of carrying our business, and improving the cashflows for Australian small business, the framework is delivered with the aim of making compliance as simple and straight-forward as possible.

## **Penalty framework**

- 2.8 Optus hopes larger businesses will make all appropriate effort to comply with the framework. We are, however, surprised that the penalty regime outlined in section 4.5 of the consultation paper seems reminiscent of measures which would be taken against organisations which wilfully avoid or obstruct payment, or commit fraudulent acts.
- 2.9 The proposed penalty regime is completely disproportionate to the offences most likely to occur. The penalties listed indicate they will exist to ensure data is reported "on time." We trust that the consequences of minor delays or rounding errors will not be a criminal sanction.
- 2.10 The consequences of a breach would need to be relative to their impact, and the proportionality of the penalty regime does not appear to strike the right balance, at least on the preliminary outline provided.
- 2.11 Optus suggests that the online publication of a "league table" of payment times is a more proportionate response and is likely to do more to ensure compliance among larger businesses. Optus would highlight that the ACCC regularly publishes reports on broadband speeds delivered by different providers on the NBN. This initiative encourages retail service providers to improve their performance, and some even use the results to market their success.
- 2.12 Optus suggests that any criminal sanctions, as outlined, would have to be in response to an egregious breach, given that this could potentially result in a prosecution for what is ultimately a dispute on commercial matters between businesses.

- 2.13 Further, it is equally important that any business which misrepresents itself as a small business under the framework in order to secure more favourable payment terms also be subject to appropriate penalties.
- 2.14 In addition, Optus believes that the framework needs to include appropriate indemnification for large business if they don't meet the payment terms, should the small business have incorrectly identified that they are a small business, or if there is an error in Government systems or advice.
- 2.15 The framework should also consider dispute resolution mechanisms which are in place for genuine errors or unavoidable delays.
- 2.16 Optus would be concerned if the framework is not appropriately balanced and fit for purpose – particularly if it creates a high risk of entering arrangements with small businesses. Optus recommends a reframing of the penalty system to align with the policy intent: a desire for greater collaboration between small and large businesses.

#### **Possible impact on government procurement**

- 2.17 The Government has previously flagged that companies who fail to adhere to the framework may be prevented from bidding for Commonwealth contracts.
- 2.18 Should this still be a matter under consideration (or for future consideration), Optus submits that the payment framework, once finalised, must be given an appropriate amount of time to be implemented and analysed.
- 2.19 This can allow for any teething problems in the framework to be fine-tuned – and for companies to adapt their usual processes – prior to restrictions on the ability to bid for procurement contracts are utilised.

#### **Allowable exclusions from reporting obligations**

- 2.20 Optus suggests that Recipient Created Tax invoices (RTCI) should be excluded from reporting obligations. We envisage this would apply specifically in relation to leasing obligations where there is no invoice issued by the supplier. In the case of a regular monthly or annual payment being made to the supplier or landlord in direct response to the lease agreement, the payment effectively becomes the tax invoice. Thus, it would be redundant to include in any reporting framework.
- 2.21 Optus suggests that intercompany payments should be excluded from reporting. If Optus were to facilitate payment to a subsidiary (either full or controlling ownership) it seems appropriate that we would be allowed to exclude such payments from the reporting framework.

## **Section 3. APPROACHES TO IDENTIFYING SMALL BUSINESSES**

- 3.1 Optus would reiterate the statement from its previous submission that the framework will be much easier to comply with, should all definitions be clear and unambiguous.

- 3.2 Optus notes that there are four approaches to identifying small business outlined in the consultation paper, and we would like to provide the following feedback on each one.

**(A) Large businesses identify their small business suppliers**

- 3.3 Optus believes that this would be an extremely burdensome process, which should be redundant seeing as all the information required is already held by Australian Government Agencies.
- 3.4 We propose that this approach would also be burdensome on small businesses, as they would have to provide a formal notice to multiple larger business customers clarifying that they are, in fact, a small business, as outlined in the consultation paper.
- 3.5 Additionally, there is no suggestion in the consultation paper that this method would be complemented by any form of Government-endorsed verification tools, creating risk for both small and large business alike.
- 3.6 We note that the Review of Australian Government Data Activities 2018 noted that the efficient collection, use and re-use of data is key to improving the efficiency of government spending and delivering more effective and better targeted — evidence-based - government policies, programs and services. Accordingly, the Government, as a champion of this policy measure, may wish to take the opportunity to utilise Government data in order to deliver an efficient outcome in the development and operation of the framework.

**(B) Creating a small business look-up tool**

- 3.7 Optus believes this is the most workable of the four solutions put forward. We further note that this proposal was clearly favoured by other industry participants in the recent consultation session held with large businesses on 27 November 2019 in Sydney.
- 3.8 Placing an identifier in the ABN of a business who meets the definition of a small business would assist a larger business in their identification and facilitation of prompt payment, where an invoice has been received from a business which yields a positive response on the look-up tool. This would also ensure consistent and auditable reporting between organisations.
- 3.9 Between them, various Australian Government Agencies have all of the information and data required to make this model workable. Accordingly, Optus does not believe that any fee-for-service model is required.
- 3.10 For instance, the information collected by the Australian Tax Office would provide all of the details required for the successful and timely identification of small businesses.
- 3.11 Optus appreciates that this model requires a greater level of coordination across Commonwealth Agencies, as well as possible legislative changes.
- 3.12 Nevertheless, we note the Government's commitment to reducing red tape, and suggest that small business payment times are likely to more so improve if compliance with the framework is as simple as possible. Accordingly, Optus believes the Government should lead from the front, adopt this approach, and facilitate any required cross-agency cooperation.

### **(C) Using an expenditure threshold**

- 3.13 This is a very inaccurate way of defining “small business.” Optus has some large business vendors with low annual values of contracts; similarly, Optus has some vendors which would meet any definition of small business and which have high annual contract values.
- 3.14 Furthermore, payment systems in Optus’ are not currently configured to enable payment or timely reporting based on invoice or contract value, an issue we suspect will be present in many larger businesses around the country.

### **(D) Using a confidential small business reporting tool**

- 3.15 Whilst Optus appreciates that this method ensures that the privacy of the small businesses in question is protected from being publicly accessible, the data provided would not allow for larger businesses to discern the nature of individual vendors, thus making it almost impossible to offer small businesses more favourable payment terms.
- 3.16 Optus also notes the consultation paper’s advice that establishment of this system would likely to be costly; these costs would have to borne by the taxpayer, small businesses, or the larger businesses considering their services.

## **Section 4. OTHER REPORTING CONSIDERATIONS**

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

- 4.1 Optus notes that a portion of the consultation paper has been dedicated to considering possible negative outcomes of identifying small businesses. Whilst Optus appreciates that this may present some concerns for a small cohort of small businesses, the benefit of being readily identified as a small business quickly and openly will improve the likelihood of the framework’s success.
- 4.2 These businesses are already identified as being small businesses in a variety of Government data sets. In order to deliver on intent behind this policy measure – namely the provision of favourable payment terms to small businesses to improve their cash flow and ability to deal with large businesses – there must be an identification of the small businesses being dealt with. Otherwise, a framework would be delivered where the intent is permanently frustrated.
- 4.3 If it becomes apparent that a significant number of small businesses do not wish to be identified, Optus suggests that an “opt-out” mechanism be included in the framework, so that small business can include not to participate, if they so choose.

### **What are the advantages and disadvantages of reporting at a group or entity level (or providing large businesses with a choice)?**

- 4.4 Optus suggests that the framework should allow companies to report at either the group or entity level. This provides them with the flexibility to report in the manner which best reflects their existing reporting frameworks, and their internal structures.

- 4.5 This approach would recognise the vast differences in composition across larger companies, as well as being the most consistent approach with the minimisation of any regulatory or red tape burden.

## Section 5. IMPLEMENTATION CONSIDERATIONS

- 5.1 Optus would like to directly respond to a number of the questions posed in Section 4 of the consultation paper, the answers to which are included below.

### **What types of information should be collected by the PTRF on supply chain finance?**

- 5.2 Supply chain financing is a choice made by the supplier to ensure payment is made ahead of terms, in return for a discount.
- 5.3 As noted in the consultation paper, including payments that are part of supply chain financing could distort the overall payment term calculation.
- 5.4 As such a payment made under a supply chain financing should be excluded from any calculations.
- 5.5 Optus believes no further information would need to be collected under the framework. Payment terms and timeframes which are reported should not include supply chain financing.

### **What timeframes would be required for your business to implement a CSV format based or automated reporting system?**

- 5.6 Without being able to review the final definition of “small business”, the final scope of the framework, or any special IT system requirements, it is extremely difficult to provide any reasonable assessment of the timeframes.

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

- 5.7 Optus asks that the final results (and only the final results) are those which are uploaded to be publicly viewable, and that there are no working files or raw data.
- 5.8 Further, it would be helpful if static data could be rolled forward into the next reporting period, to avoid the necessity of re-keying the same data.
- 5.9 It would be beneficial for the platform to be able to report on data which has been entered prior to the current reporting period, which would be helpful from an audit trail perspective.
- 5.10 Equally, it would be helpful if there is a mechanism to correct data entered in prior periods. This is especially important in the early periods, as whilst the systems are being developed, and initial data is being analysed and calculated, errors may occur. A process or mechanism to retrospectively correct submissions (for either the current or prior periods) is required.

**Should the PTRF allow companies to use their financial year as a basis for reporting or should it be based on a calendar year?**

5.11 Optus would also prefer that the framework allows for self-selection of the financial year of the reporting period. This allows for reporting to mirror existing internal processes and systems.

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

5.12 **REDACTED**

5.13 As outlined in our first submission from March 2019, Optus suggests it would be unworkable if the framework were to include disputed invoices in the process as it would create an unreasonable timeframe for resolution of issues. As such, disputed invoices should be excluded from the reporting model.

## **Section 6. CONCLUSION**

- 6.1 Optus is proud to work with our small business partners around the country. We would like to reiterate 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.
- 6.2 The framework must be pragmatic, effective and developed with outcomes in mind, otherwise it will not be fit for purpose.
- 6.3 Failure to get the balance right may hinder the ability of small businesses to work effectively with larger business.
- 6.4 Optus looks forward to actively participating in any subsequent consultation stages of the framework, and will be pleased to offer any appropriate assistance to the Government, if required.

**[ENDS]**