Queensland
Small Business
Commissioner

Level 18, 53 Albert Street
Brisbane, Qld. 4000
07 3334 2300
commissioner@qsbc.qld.gov.au

Our reference: QSBC-6121

28 February 2023

The Hon Dr Craig Emerson
Independent Reviewer
C/- Payment Times Reporting Act Review Secretariat
Small and Family Business Division
The Treasury
via email: PaymentTimesReview@treasury.gov.au

Dear Dr Emerson

Re: Statutory Review of the *Payment Times Reporting Act 2020*

The Queensland Small Business Commissioner (QSBC) welcomes the opportunity to provide feedback on the consultation paper of the Statutory Review of the *Payment Times Reporting Act 2020* (the Act).

It is my aim as the Small Business Commissioner, together with my supporting office (collectively referred to as the QSBC), to enhance the operating environment for small businesses through practical information, fast and fair assistance, and collaborative advocacy.

There are approximately 473,000 small businesses in Queensland who represent more than 97% of Queensland businesses[1]. Small businesses have consistently emphasised the impact that cash flow has on the success of their business. For example, managing cash flow was identified as one of the top three challenges for business growth, in a recent survey of Queensland small businesses[2]. Extended payment terms and late payment times from large business place pressure on small business cash flow.

Alongside the economic impacts of late payments on small businesses, there is increasing evidence that late payments also impact the mental health of small business owners. A recent report from the Bankwest Curtain Economics Centre found that small businesses that face payment delays of more than 30 days are more likely to suffer high stress than businesses who are paid on time[3].

While the introduction of the Payment Times Reporting Scheme (the scheme) has been a positive step in *recognising* the impact extended payment terms and late payment times have on small business, there is still much room for improvement. This is evidenced in that the *“register data indicates payment terms and payment performance have not materially improved since the commencement of the scheme”*[4].

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[1] ABS 8165 Counts of Australian Business, including entries and exits as of 30 June 2022. Australian Bureau of Statistics, Canberra.
[2] ‘Big Plans for Small Business Strategy 2021-2023’ (page 6). The State of Queensland (Department of Employment, Small Business and Training) 2021.
[3] Cassells R., Duncan A., and Kiely D., (2021), ‘Back in Business?: WA small businesses and the impact of COVID-19’, Bankwest Curtin Economics Centre Focus on Western Australia Report Series, No. 14, February 2021 (page 72).
[4] ‘Regulator’s update – January 2023’ (page 4). The Australian Government the Treasury, Payment Times Reporting Regulator data.

As such, the QSBC recommends that the scheme and the underpinning Act be strengthened to improve the payment terms and practices of reporting entities, and to help enhance the operating environment for small businesses in Queensland and across Australia.

In relation to the consultation questions, the QSBC provides the following feedback:

Question 5:
What, if any, changes should be made to the existing scheme to improve its efficiency and effectiveness in meeting the objects of the Act?

The introduction of the scheme has seen 25,353 payment times reports submitted by 9,487 reporting entities[5], but has not led to any material improvements in the payment terms and practices of those reporting entities. Therefore, it is apparent that the scheme is neither operating efficiently nor effectively – as it is placing a large regulatory burden on reporting entities with no commensurate benefit.

To improve the efficiency and effectiveness of the scheme in the meeting the objects of Act, the QSBC recommends that:

- a mandated maximum payment term be implemented (see Question 3/10);
- the Payment Times Reporting Regulator's powers be expanded (see Question 7);
- the Payment Times Reports Register be expanded and improved (see Question 6); and
- incentives and support be provided to transition small businesses to eInvoicing (see Question 8).

Question 3 and Question 10:
What is a 'reasonable' timeframe in which small businesses should be paid? Should 'reasonable' vary between different industries or sectors?

Would mandating one or more maximum payment periods for the payment of small business invoices by reporting entities be more effective in improving payment terms and practices? How should a mandatory maximum payment period(s) best be designed and implemented?

The QSBC notes that under the scheme more than 45% of small business invoices were paid within 20-days, and a further almost 20% were paid between 21-days and 30-days[6], indicating that it is more than *feasible* for a reporting entity to pay their small business suppliers promptly. Therefore, the QSBC believes that 20 calendar days is a 'reasonable' timeframe for reporting entities to pay small business suppliers.

However, as the Act does not currently set a mandatory payment term, the payment practices of the individual reporting entities vary wildly. In analysing data from the Payment Times Reports Register (the register), the Australian Small Business and Family Enterprise Ombudsman has found that, although 45% of small business invoices are paid within 20-days, only 13% of the reporting entities are meeting this payment time[7]. Concerningly, 24% of reporting entities take more than 120 days to pay[7]. As there has been no significant improvement on the payment times and practices of reporting entities under the scheme, in particular those with extended payment terms over 30-days[8], it is therefore apparent that the non-mandated approach is not an effective approach.

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[5] 'Regulator's update – January 2023' (page 5). The Australian Government the Treasury, Payment Times Reporting Regulator data.
[6] 'Statutory Review of the *Payment Times Report Act 2020* – Consultation Paper - February 2023', Figure 1 - Average percentage of small business invoices paid within day ranges, Reporting cycle 3 (page 12). The Australian Government the Treasury, Canberra.
[7] 'Big businesses urged to "lift their game" on payment times', Media release, 1 February 2023. Australian Small Business and Family Enterprise Ombudsman.
[8] 'Regulator's update – January 2023' (page 7). The Australian Government the Treasury, Payment Times Reporting Regulator data.

To improve the payment practices of reporting entities, the QSBC recommends that:

- A mandated maximum payment period of 20 calendar days be implemented under the Act, and that:
    - the maximum payment term should not vary between different industries or sectors as multiple definitions could cause confusion for small business suppliers and reporting entities alike;
    - the mandated maximum payment term should be phased-in over an appropriate period to allow reporting entities to update contracts and make any necessary changes to payment systems; and
    - economic modelling and education material should be provided to reporting entities on the benefits of buying from small business, to encourage them to continue engaging with small business suppliers. In addition, the percentage of reporting entities showing payments to small businesses should be closely monitored by the regulator, to ensure there is no unintended consequence of reporting entities disengaging from small business suppliers as a result of the mandate.

Question 7:
Are the Regulator's powers and approach to compliance and enforcement effective and fit-for-purpose?

The QSBC notes that, while the regulator has several powers under the Act including to issue infringement notices and seek civil penalties, the regulator has not used its enforcement powers to date[9]. Instead, the regulator has taken an education and guidance first approach to help reporting entities understand their reporting obligations and rectify non-compliance voluntarily. While the QSBC supports this regulatory approach in principle, as there has been no improvement in payment terms and practices, the QSBC therefore considers the Act and the regulator's powers to be ineffective.

In line with the recommendation to introduce a maximum mandatory payment term (Question 3 and 10), and to improve the payment practices of reporting entities, the QSBC recommends that:

- the regulator's powers be expanded to allow the regulator to enforce the maximum mandatory payment term and to issue infringement notices for non-compliance; and
- the regulator publishes non-complying reporting entities on the register (in a clear and transparent way so small business suppliers can make informed decisions).

Question 6:
What are the main questions the Scheme's data should be able to answer about payment terms and practices?

It is an object of the Act (section 3) to make the payment terms and practices of reporting entities publicly available to both enable small businesses to make more informed decisions about potential customers, and to create incentives for reporting entities to improve their payment terms and practices. While the register does publish this data, it is not as accessible and useful as it could be. For example, it is difficult for a small business to identify who is actually a 'best practice' reporting entity. In addition, as there has been no material improvement in payment terms and practices, the current publishing format is not acting as an incentive for reporting entities to improve.

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[9] 'Statutory Review of the *Payment Times Report Act 2020* – Consultation Paper - February 2023', (page 15). The Australian Government the Treasury, Canberra.

To help meet the object of the Act, the QSBC recommends that:

- the register's dashboard be expanded and improved to, at a minimum:
  - include average actual payment times (rather than just the average shortest, standard and longest payment terms);
  - allow users to filter average payment terms and times by industry and state, to make it easier to identify trends such as best performing industries etc; and
  - clearly identify 'best practice' reporting entities (e.g with a 'green tick' icon) who are consistently meeting their payment terms (ideally those meeting the mandated maximum payment term, as per recommendation in Question 3 and 10).

Question 8:
Excluding the Payment Times Reporting Scheme, to what extent have, or will, related Government policies improve payment terms and practices for small businesses?

Would a substantial increase in eInvoicing materially help reduce payment times?

Supplying to government represents a substantial market opportunity for many small businesses. However, as with supplying to large business, there can be impediments to procuring with government – including the complexity of procurement systems and processes, and payment terms and practices.

Commencing on 1 July 2020, the Queensland Government introduced the On-time Payment Policy, to ensure small business suppliers are paid within 20 calendar days (down from the previous 30 calendar days)[10]. The policy also allows for small business to submit a claim for penalty interest should they not receive payment within 20 calendar days – however this only applies to correctly rendered, undisputed invoices. It is therefore important that small businesses issue correctly rendered invoices in the first instance, to not only improve payment times but to allow them access to penalty interest should the invoice not be paid on time.

The QSBC notes that electronic invoicing (eInvoicing) can help reduce the time involved in processing invoices, as it removes the need to send and receive invoices manually by exchanging invoices directly between accounting software. This will not only reduce the risk of incorrectly rendered invoices from the small business, but can speed up payment times from the reporting entity and reduce the regulatory burden on the reporting entity by reducing the administration.

While there are many benefits to eInvoicing, the adoption rate by small business is still very low. This appears to be due to a variety of reasons including a lack of understanding of what eInvoicing is, the cost of implementing, and the time and skills required to implement. For example, 47% of small businesses incorrectly defined eInvoicing as sending a PDF of the invoice or sending a link to the invoice via email, in a recent survey by Xero[11].

To increase the adoption of eInvoicing by small businesses, the QSBC recommends that:

- incentives and support be provided to small businesses to implement eInvoicing in their business. This could include:
  - grants / tax incentives to help offset the cost of implementation;
  - awareness campaigns on what eInvoicing is, and the benefits of implementing including reduction in administration and errors and accelerating payment; and

[10] 'On-time Payment Policy'. The State of Queensland (Department of Employment, Small Business and Training).
[11] 'The top myths about eInvoicing, busted', 15 March 2022. Xero.

- education programs to support small businesses (and their accountants and bookkeepers) to transition their systems to eInvoicing and address any cyber security concerns.

Thank you once again for the opportunity to provide feedback on the review of the *Payment Times Reporting Act 2020*. If you have any questions, please contact Rebekah Godbold, Principal Policy Officer on 07 3334 2300 or via email at advocacy@qsbc.qld.gov.au.

Yours sincerely

Dominique Lamb
Small Business Commissioner