

1 May 2024

GPO Box 4509  
Melbourne Victoria 3001  
T 1800 878 964  
W [www.vsbic.vic.gov.au](http://www.vsbic.vic.gov.au)  
E [enquiries@vsbc.vic.gov.au](mailto:enquiries@vsbc.vic.gov.au)

## ***Payment Times Reporting Act 2020* – Exposure draft Bill and Explanatory Memorandum**

Payment Times Reporting Act Review Secretariat  
Small and Family Business Division  
Payment Performance Branch  
The Treasury  
Langton Crescent  
Parkes ACT 2600

Thank you for the invitation to consider the exposure draft Bill to amend the *Payment Times Reporting Act 2020* (the Act) and supporting explanatory materials.

I note that the Bill proposes changes aimed at enhancing the effectiveness of the Payment Times Reporting Scheme (the Scheme) which was initially established to improve payment outcomes for Australian small businesses.

Following the Statutory Review of the Act conducted by The Hon Dr Craig Emerson, it is apparent that there is broad agreement amongst stakeholders that the Scheme, while well intentioned, requires enhancements to strengthen its operation and deliver on its intended outcome.

### **The proposed amendments**

The expanded role of the Regulator, including new powers to undertake research, publish analysis, and provide data and tools to assist users of the register, is noted. These enhancements (if effectively implemented) may encourage better oversight and understanding of payment practices, aiding in the identification and correction of poor payment behaviours by large businesses.

I emphasise that any regulatory interventions by the Commonwealth should be tied to, and proportionate, to the harm which it is seeking to minimise or remove. In providing an expanded regulatory regime, it is critical that extreme care is taken not to create perverse outcomes – namely that large businesses are discouraged from contracting with small businesses because of the accompanying reporting and regulatory burden.

The introduction of penalties for non-compliance and the use of a Ministerial Direction as a regulatory lever to encourage compliance with the reporting scheme and payment times obligations are welcomed. The substance of any Ministerial Directions issued to 'slow small

business payers' will vital. It will not be difficult for large entities to purport to comply with the technical requirements of any Direction while stymieing the intent and purpose of the Direction (burying notifications/content that they are a 'slow small business payer' deep within websites or in the fine print of tender documents).

I offer that the greatest value in publication of slow payers to small businesses is in the activation of consumer/community sentiment to the detriment of slow small business payers. The Regulator must be forward thinking and willing to engage courageously with risk when being innovative about how to bring consumer power to bear on uplifting the payment time performance of large entities to small businesses. This does not require additional legislative amendment but a commitment from the Regulator and tolerance from its authorising environment.

As noted in the Review, there is an opportunity to harness ESG compliance obligations and increasing community expectations to fold in timely payment of small business suppliers for large entities. Put bluntly, large entities will be motivated to care about timely payment of their small business suppliers when their customers/shareholders care when they do not.

Further incentives for large businesses that consistently demonstrate good payment practices could also be considered. Rewards such as public recognition or benefits related to other compliance areas might encourage businesses to maintain or improve their payment processes. This requires a willingness for the Regulator to be enabled to experiment and try new approaches – including some which may not work.

The inequity in market power and bargaining power between small businesses and large businesses – and the time and resource constrained nature of small businesses – means I remain sceptical that small businesses will have the time or energy to review the register prior to accepting what may enticingly appear on the face of it to be transformational contracts for that small business with large businesses.

Although increased transparency will help those small businesses who are able to make informed and selective decisions about engaging with larger entities.

### **Increase support and resources for small businesses**

While the Act rightly focuses on regulating the behaviour of large businesses, additional resources and support mechanisms for small businesses to navigate and utilize the reporting scheme could enhance its impact. Providing virtual workshops, detailed guides, and one-on-one support sessions could help small businesses effectively use the provided data for their benefit. The impact of these assistance efforts could be enhanced if they were also used to promote the benefits of eInvoicing.

### **Low cost and quick dispute resolution**

There will be a small minority of small businesses suppliers who are being paid late by large entities who are in a commercial position or willing to challenge an important customer. For those small businesses who are able, promotion of existing small business dispute resolution mechanisms can be used to provide small businesses with a quick, cost-effective

## OFFICIAL

way to resolve payment delays. This does not require setting up a dedicated ombudsman or additional mediation service specifically for payment disputes under this Act when organisations such as the Victorian Small Business Commission already exist in all states (except Tasmania) and federally.

Thank you for the invitation to consider the draft Bill and supporting explanatory materials.

If you have any questions, please contact my Executive Officer, Cate Pratt  
[cate.pratt@vsbc.vic.gov.au](mailto:cate.pratt@vsbc.vic.gov.au).

Yours sincerely



**Lynda McAlary-Smith**  
Victorian Small Business Commissioner