



SUBMISSION

Submission to the Senate Committee on Education and Employment on the Payment Times Reporting Bill 2020 [Provisions] and Payment Times Reporting (Consequential Amendments) Bill 2020 [Provisions]

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ABOUT THIS SUBMISSION

This is the Business Council of Australia's Submission to the Senate Committee on Education and Employment on the Payment Times Reporting Bill 2020 [Provisions] and Payment Times Reporting (Consequential Amendments) Bill 2020 [Provisions].

The Business Council has also previously made submissions to the Department of Industry, Science, Energy and Resources on the Bill and the exposure draft of the Minister's Rules. See:

<https://www.bca.com.au/submission-to-the-department-of-industry-science-energy-and-resources-on-draft-payment-times-reporting-framework>

<https://www.bca.com.au/submission-to-the-department-of-industry-on-the-payment-times-reporting-rules>

INTRODUCTION

Introduction

The Business Council fully supports government policy to ensure Australia's small businesses are paid within 30 days of receipt of a correct invoice and supports legislating for a payment times reporting framework to help achieve this outcome.

Small businesses are the lifeblood of the Australian economy and critical to our supply chains. Cashflow is critical to the viability and success of small business. It is essential that small businesses are paid the full amount of their invoices quickly and on-time, especially during the COVID-19 crisis.

The relationship between small, medium and large business is worth about \$500 billion a year to the Australian economy. Business is an ecosystem where small, medium and large businesses rely on each other.

The Business Council has, since 2017, adopted and promoted a 30-day maximum payment time to small business. We partnered with CoSBoA and the State Government of Victoria to develop and launch the Australian Supplier Payment Code in May 2017, which is available at www.supplierpaymentcode.org.au

There are now 133 signatories to the code and the annual turnover of all signatories is over \$680 billion. Signatories include the largest businesses in Australia at the head of the nation's biggest supply chains – including the two major supermarkets, the big four banks, Australia's major energy and mining companies and other leading businesses.

Since the introduction of the code, Illion's Late Payments Reports show a decline in late payments by large businesses of 23 per cent over the two years to December 2019. There is more to do, but the results are heading in the right direction.

The code was reviewed independently and found to be well-designed and working to speed up payment times for small business by Professor Graeme Samuel AC in early 2019. Following this a number of improvements were made including removing the headcount definition of a small business, making an unequivocal statement that supply chain financing

cannot be used to extend payment terms beyond 30 days and setting out a clear process for dealing with signatories who are non-compliant – which has not yet needed to be applied to any signatory.

We support this legislation for a payment times reporting framework because it will provide real time data and an accurate assessment of payment times by every large business. As the Bill argues, the data will give small business the information it needs about the paying performance of its large customers. It will shine a light on the good payers and will expose those that need to change their practices to pay their small business suppliers fairly.

We strongly believe in fast payment times to small business, but three things need to be in place:

- A workable and accurate small business identification tool that will massively speed up the process for verifying small businesses and ensure all small businesses benefit from faster payment. The tool should exclude small businesses that are part of a larger group of companies. The development of this tool needs to be expedited so that businesses can access it and prepare for the start date of 1 January 2021.
- Policies to support rapid digitisation of the small business community, so that small businesses can implement e-invoicing, which will reduce processing costs and errors and enable much faster payment times. According to MYOB, forty-one per cent of small businesses do not currently use an online accounting solution.
- The government leading by example, by paying businesses promptly and on time, which feeds down the supply chain and enables better payment practices across the economy

The reporting requirements must be carefully designed to achieve the objectives of faster payment to small business without unnecessarily adding to the regulatory burden. The Business Council recognises the extensive consultation with stakeholders on the design of the Bill to date.

We make these points and suggest some further changes that will reduce administration and compliance costs, which is an important consideration as businesses deal with the ongoing impacts of the coronavirus pandemic.

- It is essential that the 18-month penalty free period in the Bill is not reduced. Some large businesses with operations and workforces adversely affected by the coronavirus will not be able to properly file the first sets of reports. Penalties will make their situation worse and will not benefit suppliers.
- All business must be given sufficient time to make the required investments in their systems and processes to fully comply with the complexities of reporting requirements. The 18-month period will allow for initial teething problems to be addressed and system changes as required.
- Companies should have the flexibility to report by group or reportable segment rather than by entity, particularly where they have common payment systems and policies for small business payment across all their reporting entities. This will reduce the estimated 9,100 reports under the scheme, simplify information provision for small business, and reduce cost to business and government.

- Another change that will reduce unnecessary costs would be to require reporting every 12 months instead of every 6 months. This will align company reporting with the government's own 12-month reporting period for its Pay on Time Survey. Alternatively, the Pay on Time Survey should be published every six months. Government is the originating payer for many supply chains so its performance reporting timeframes should be consistent with company reporting timeframes.

The review timeframe of three years is supported as it will allow time for the data and the impacts of the reporting framework to be assessed.

The Business Council wants to see much faster payment times to small business. Transparency under the reporting framework will help, but it also needs to be facilitated by government delivering an effective small business identification tool and supporting the digitisation of small businesses.

Recommendations

- ▶ The government should introduce a digital payments strategy and expedite the development of the Small Business Identification Tool.
- ▶ The government's payment time reporting website should encourage reporting entities to sign up to the Australian Supplier Payment Code and provide links to the Code website.
- ▶ With respect to the legislation:
 - Retain the 18-month exemption from penalties for any medium-sized companies that grow to reach the threshold of \$100 million and are required to start reporting.
 - Section 6 of the exposure draft Bill amended to allow reporting by corporate group, or by reportable segments within the group's annual accounts.
 - The government's Payment Time Small Business Identification Tool should exclude entities that have turnover in Australia of under \$10 million, but which are subsidiaries of larger corporate groups.
 - Require entities to submit a single, annual report to align with the Australian Government's annual reporting on payment performance in its Pay On-Time Survey.
 - The Business Council has a clear position that supply chain finance must not be used to push out payment *terms* to small business suppliers beyond 30 days. Greater clarification is needed around defining supply chain finance for the purpose of the legislation and what would be acceptable to assist suppliers with managing their cash flow under the Bill.
 - The Payment Times Regulator should be adequately resourced to administer the framework, issued with a Statement of Expectations and be required to comply with the Regulator Performance Framework.
 - Governments should be required to file the same payments reports as large businesses and have their performance published under this framework. This will provide small businesses with payment times information in the one place.

- The Business Council supports a review of the framework after three years to assess its effectiveness, the costs and benefits of the laws and any needed improvements or deregulation opportunities.

Digital payment strategy needed

To achieve the desired outcomes, the reporting framework needs to be accompanied by greater take-up of new technologies that enable faster and more reliable payment.

Technology is crucial for speeding up payment times to small business. We recommend the government introduces an electronic payments strategy and expedites the development of the Small Business Identification Tool.

E-invoicing and payments

According to MYOB, 41 per cent of SMEs do not have an online accounting solution, and 24 per cent have no accounting solution at all. MYOB also finds a 27 per cent reduction in compliance costs and benefits from reduced time spent from digitalisation for SMEs through automating repetitive tasks, such as multiple data entry, and improving accuracy.

E-invoicing reduces costs and errors and facilitates faster payment for suppliers when compared to paper invoices or PDF invoices sent by email. It is estimated that processing costs for e-invoices are one-third of the cost for traditional paper invoices.¹

Wider take-up of e-invoicing is estimated to provide benefits to the Australian economy of \$28 billion over ten years.²

The Business Council proposes that the legislation be accompanied by an e-invoicing and digital payments package for small business, with the following initiatives:

- A working group should be established by the Australian Tax Office to oversee the transition towards e-invoicing and cashless economy
- Greater education awareness of benefits of e-invoicing and new payment options, materials, webinars etc
- Financial incentives such as:
 - Rebates for SMEs that lodge their Business Activity Statements and other tax forms through official digital channels
 - Extend the instant asset write-off for digital investments.

The package would complement initiatives already underway by the Commonwealth:

- 20 day payment terms for contracts up to \$1 million, reduced to 5 days for suppliers using e-invoicing
- Single Touch Payroll
- Adoption of the PEPPOL standard for e-Invoicing

1. <https://www.ato.gov.au/business/e-invoicing/benefits-of-e-invoicing/#Benefitsforbusinesses>

2. <https://treasury.gov.au/consultation/e-invoicing>

- New payments platform
- MyGov ID (replacing Auskey)
- Electronic signatures and virtual AGMs.

Small business identification tool

A small business identification tool will be made available to reporting entities to identify the small businesses in their supply chain.

The tool will significantly reduce costs and overcome the challenge of verifying a small business's status by removing the need for lengthy and costly background checks. It will ensure all small businesses benefit from the reporting framework, as well as other small business friendly policies and programs.

The delivery of the tool needs to be prioritised and expedited. The tool needs to be in place long before the legislation commences so companies can commence testing and be able to evaluate performance.

Ahead of the commencement of the scheme, companies need to understand the timing of delivery and technical specification for the tool (login method, API connecting etc).

The tool is still in development and not yet able to be shared with reporting entities. This is creating a growing concern about the ability of business to be able to comply with an initial reporting period date commencing 1 January 2021.

Further comments about the Tool are made below under 'definition of a small business'.

Keep pushing for voluntary action

The Australian Supplier Payment Code

The government's payment time reporting website should encourage reporting entities to sign up to the Australian Supplier Payment Code and provide links to the Code website at www.supplierpaymentcode.org.au

In 2017, the Business Council, in collaboration with COSBOA and the State Government of Victoria, took steps to encourage faster payment of small business suppliers by launching the voluntary Australian Supplier Payment Code (see www.supplierpaymentcode.org.au).

The Code now has 133 signatories with combined revenue of over \$680 billion. It commits signatories to pay their eligible small business suppliers within 30 days and on time, and to work with small suppliers to adopt electronic trading and improve invoicing and payment practices.

Appendix 1 lists additional COVID-19 related initiatives by Business Council members and code signatories to pay small business on faster terms.

Mandated payment time regulation is not supported

There is no comprehensive or robust set of data available on payment times to small businesses by large entities.³ The reporting framework will provide data on payment performance which can be used to promote faster payment and guide future policy decisions.

We are not in favour of the Australian Small Business and Family Enterprise Ombudsman's proposal for regulating 30-day payment times.

Payment times regulation of that nature would add considerable cost to businesses working hard to recover from COVID-19. Such regulation would create compliance costs and risks for business of all sizes, and there would be a considerable cost to government in terms of administration and enforcement.

Regulation would lead to a compliance mindset where some businesses move to pay on the maximum permissible payment terms. For instance, some businesses paying on shorter terms today (eg 14 days) might extend their payment terms to a regulated maximum timeframe (eg 30 days).

Instead, the Business Council encourages the government to focus in incentivising and accelerating small businesses transitioning to digital payments and e-invoicing. This is a significant precursor to making it easier for large businesses to pay small businesses faster.

Comments on the legislation

Enforcement and consideration of large companies in distress due to COVID-19

Some large businesses are facing extreme challenges due to COVID-19, in particular in the tourism, transport and entertainment sectors.

It is critically important that the 18 month exemption period from penalties in the Bill is retained – otherwise distressed businesses will be hit with penalties that will delay their recovery, which would in turn be harmful for their small business suppliers.

It will simply not be possible for some companies with staff currently stood down or working reduced hours and receiving JobKeeper payments to put in place the required upgrades to systems and processes needed to file the first set of reports. These companies should not face any adverse consequences if they fall short of the reporting standard in the first two reporting periods.

All business must be provided with a clear set of requirements and given sufficient time to make the required investments in their systems and processes to fully comply with this new law. The 18-month period will allow for initial teething problems to be addressed and system changes made to ensure compliance.

3. The government and Ombudsman mainly refer to a report by Xero that itself relies on a set of assumptions and includes this admission: “the anonymised nature of the Xero data *precludes observing big businesses’ payment practices directly*” [emphasis added]. Other issues with the report are that it measures payment times in accordance with the date of invoice, not the date of receipt by the customer, which is the more reasonable starting point and is proposed under the Rules for this scheme. The report does not allow for disputed invoices, which tend to prolong payment times.

For these reasons, the 18-month exemption period should also apply in future for any medium-sized companies that grow to the point where they reach the threshold of \$100 million and are required to start reporting.

Group (or reportable segment) vs Entity reporting

Reporting entities are proposed to include those entities (individually) that had annual income of at least \$10m, where they are a member of a group with combined total income of over \$100 million for the most recent income year.

To reduce cost, the Business Council would like section 7 of the Bill amended to allow reporting by corporate group, or by reportable segments within the group's annual accounts.

Many corporate groups (including each of its reportable segments) will typically use substantially the same systems and processes and be governed by the same policies for all entities within the group. Where this is the case it should be unnecessary to require separate reports by individual "reporting entities". This burdens a corporate group with costs that are unnecessary and disproportionate to the potential benefit to small suppliers.

The Regulation Impact Statement estimates that approximately 3,400 individual and group entities will meet the revenue threshold requiring a report on payment times. There are a further 5,700 associated entities that will also need to report under the current approach in the Bill, leading to a total of 9,100 reports filed. Allowing reporting by group will reduce the number of reports that need to be filed by business and administered by the Regulator and will simplify the provision of information to small business.

Definition of small business

The Rules define a small supplier as any supplier with revenue of less than \$10 million. The Rule goes on to establish that small suppliers will be identified by the government's Payment Time Small Business Identification Tool.

The Tool should exclude entities that have turnover in Australia of under \$10 million (technically 'small businesses'), but which are subsidiaries of larger corporate groups.

Those entities should not be considered small businesses and their inclusion may prejudice the payment times reporting for some large businesses. For instance, some industry segments may have significant dealings with a large number of Australian import businesses that represent larger foreign entities.

If these so-called 'small' businesses are not removed by the look-up tool, there is a risk that reporting entities will report longer payment times that are skewed by payments to multinationals and other large businesses. This is not in keeping with the intended spirit of the reporting times framework.

The definition of a small business is contained in the Rules rather than the Payment Times Reporting Bill. The explanatory memorandum (p42) argues that the rule-making power is necessary to 'respond promptly and flexibly to changes in circumstances' but it is not clear why this should relate to the meaning of a small business. It increases the risk of a sudden change in the turnover definition in the future at the Minister's discretion and without consultation, which would be highly disruptive. It would be preferable to safeguard the turnover definition of a small business in the legislation.

Reporting periods

The legislation requires entities to submit two six monthly reports each year. To reduce costs, consideration should be given to requiring entities to submit a single, annual report. This timeframe would align with the Australian Government's own annual reporting on payment performance in its Pay On-Time Survey.

It is not clear that there will be additional transparency benefits to small businesses from entities reporting twice a year compared to reporting once year, nor that those benefits will offset the additional compliance costs to business and the economy.

Supply Chain Finance

The Business Council has a clear position that supply chain finance must not be used to push out payment *terms* to small business suppliers beyond 30 days. This position was recently also adopted by the Australian Small Business and Family Enterprise Ombudsman in the report on supply chain financing. Like the Ombudsman, we accept that supply chain finance can be beneficial to small businesses when payment terms are 30 days or less.

Greater clarification is needed around defining supply chain finance for the purpose of the legislation and what would be acceptable to assist suppliers with managing their cash flow under the Bill. It would also be helpful to understand how suppliers using supply chain financing are to be included in reporting requirements, given they will be paid earlier than their contracted terms.

Payment Times Regulator

The Business Council supports the establishment of a Payment Times Regulator to administer the framework and for the Regulator to be located within the Department of Industry, Science, Energy and Resources (which now handles small business matters), as is proposed.

The Regulator will need to be adequately resourced to administer the scheme (i.e. to monitor and enforce compliance with the Framework), provide guidance to entities and respond to queries from the approximately 2,500 reporting businesses. The need for guidance and support will be heightened in the first few reporting periods. The Regulator should be issued with a Statement of Expectations and be required to comply with the Regulator Performance Framework.

Government reporting on its payment performance

Governments are among the largest procuring entities in Australia and should be required to file the same payments reports as large businesses and have their performance published under this framework.

Any pre-existing payment reporting by governments should be brought into line with the requirements of this scheme. An added benefit of requiring governments to report under this framework is that small business will be able to access payment performance data for all their large customers, public and private, in the one place. This will lower the costs of sourcing payment information for small business suppliers.

Review of payment times reporting framework

The Business Council supports a review of the framework after three years to assess its effectiveness, the costs and benefits of the laws and any needed improvements or deregulation opportunities.

APPENDIX 1

What business is doing to help small business suppliers during the coronavirus pandemic

AGL

- Small business suppliers to AGL further assisted by reducing payment terms to **14 days**. <https://www.agl.com.au/about-agl/media-centre/asx-and-media-releases/2020/march/agl-pledges-to-support-small-business-suppliers-during-coronavirus-outbreak>

BHP

- BHP is making accelerated payments to small, local and Indigenous suppliers in Australia to deliver \$100 million (AUD) more quickly to those businesses. Small business payment terms have been reduced to **7 days** (from 30 days) for a minimum of 6 months (to September 2020). To date these changes have been applied to 1500 vendors: 42 indigenous businesses; 923 small businesses across Australia, and 535 medium and large businesses that operation in communities close to BHP operations. <https://www.bhp.com/media-and-insights/news-releases/2020/03/bhp-increases-support-for-local-business-and-contract-labour-hire-during-covid-19-pandemic/>

Fortescue

- FMG is supporting their suppliers by extending **14-day** payment terms to all small businesses and is working collaboratively with its suppliers to address any cashflow changes. [https://www.fmgl.com.au/docs/default-source/coronavirus/coronavirus-\(covid-19\)-update-supplier-terms.pdf?sfvrsn=2ffc66e8_4](https://www.fmgl.com.au/docs/default-source/coronavirus/coronavirus-(covid-19)-update-supplier-terms.pdf?sfvrsn=2ffc66e8_4)

Mirvac

- Mirvac has made a commitment to pay its small business suppliers within **5 days** to help their small business suppliers and partners weather this storm. <https://www.mirvac.com/About/Procurement/Small-Businesses>

Origin

- For the next 6 months, Origin will accelerate standard payment terms for small business suppliers from 30 to **14 days** from receipt of a valid tax invoice. This is expected to benefit approximately 1,400 Australian small businesses that supply goods and services to Origin. https://www.originenergy.com.au/about/investors-media-centre/faster_payments_for_small_business_suppliers.html

Rio Tinto

- In February, Rio Tinto announced it will transition small business suppliers to **20-day** payment terms. Rio Tinto also expanded its definition of a small business from those businesses that supply it with up to \$1 million of good and services, to also include suppliers with turnover up to \$10 million.

<https://www.riotinto.com/news/releases/2020/Rio-Tinto-launches-new-Australian-payment-terms>

Telstra

- Small business customers and Telstra suppliers will have their invoices paid as quickly as possible. Telstra announced they're moving to **20-day** payment terms by 30 June. <https://exchange.telstra.com.au/were-improving-our-payment-terms-to-make-doing-business-better/>

Transurban

- Transurban will reduce payment terms for new invoices received from small Australian businesses, expediting payment from 30 days to **14 days**. <https://www.transurban.com/news/coronavirus-supporting-customers-employees>

Woodside

- Woodside will take steps to expedite payments of all outstanding invoices for small, local and Indigenous businesses, defined as a business generating less than AUD \$10 million in annual revenue.
- Will reduce payment terms for new invoices received from small Australian businesses, expediting payment from 30 days to **14 days**. Where possible, will also expedite pending invoices for other work completed. https://files.woodside/docs/default-source/media-releases/support-for-community-suppliers-and-contractors-in-response-to-covid-19.pdf?sfvrsn=5efcc024_2

Woolworths

- Woolworths has announced that in recognition of the economic uncertainty many of its small business supplier partners are facing, it will temporarily change its payment policy to pay small suppliers across the group within **14 days** for their goods and services. https://www.woolworthsgroup.com.au/page/media/Press_Releases/woolworths-group-reduces-payment-terms-to-support-small-businesses/