



Australian Government



Australian  
**Small Business and  
Family Enterprise**  
Ombudsman

29 June 2020

Committee Secretary  
Senate Education and Employment Committees  
PO Box 6100  
Parliament House  
Canberra ACT 2600

*via email: eec.sen@aph.gov.au*

Dear Sir/Madam

**Payment Times Reporting Bill 2020 [Provisions] and Payment Times Reporting (Consequential Amendments) Bill 2020 [Provisions]**

We have consistently advocated for the introduction of the Payment Times Reporting Scheme (the Scheme) and welcome the opportunity to comment on these Bills.

**1. Implementation of the Scheme must commence from 1 January 2021 as planned.**

Normalising 30 day payment times from large to small business is an economic imperative that will bring an estimated net benefit to the economy of \$313 million per year and improve small business viability<sup>1</sup>. Poor cash flow is a major cause of small businesses failure and long payment times exacerbate this issue. Given 2020 has been the hardest year many small businesses have ever seen, this change is more critical now than ever.

We note calls for the Scheme to be delayed or weakened because of the impact of COVID-19. This legislation has been well signposted and affected businesses have had significant time to prepare. Further, reporting entities are not required to give their first report until September 2021 and can seek an extension if required, and the compliance and enforcement provisions of the Act will not apply initially. The Small Business Identification Tool (the Tool) will also ensure that the Scheme is minimally burdensome for reporting entities. As such, we strongly urge implementation on the planned timeline.

**2. The transition period should be reduced from 18 months to 12 months.**

Given the considerable notice already provided to large businesses and other allowances to help reporting entities manage the transition, these entities should not be given an additional 18 months' grace before they are subject to any penalties. The Bill should be amended so that application of compliance and enforcement powers under the Act is delayed for no more than 12 months. In addition, clarity should be provided in the Bill that penalties for reporting entities accumulate daily.

**3. Clarity on the Tool's design and operation is needed urgently.**

The Tool is fundamental to the operation of the Scheme and yet there is little information available on how the Tool will operate. In order to resist pressure from large business to delay implementation or encourage weakening of the Scheme, government must provide clarity urgently on the Tool, particularly on how it will integrate with accounting and other systems.

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<sup>1</sup> Payment Times Reporting Scheme Regulation Impact Statement, p5.

#### **4. The Scheme needs to withstand efforts to weaken or manipulate it**

We expect that there will be continuing pressure from reporting entities over coming months to weaken the Scheme, for example by granting more flexibility around 'when the clock starts ticking' on an invoice, excluding payments to small businesses that are related to larger businesses, or by excluding reporting on procurement from small business. Government needs to resist this pressure.

Similarly, government should ensure that the Scheme, once in operation, cannot be readily weakened or manipulated. In my office's earlier submissions (enclosed) on the draft legislation and rules, we have identified a number of areas where we believe the Scheme could be strengthened to this end. In particular, all essential provisions should be set out in the Bill and not relegated to the Rules, where they can be more easily changed.

#### **5. The legislation should require reviews of the Scheme.**

The Scheme has a clear objective - "to improve payment outcomes for small business by creating transparency around the payment practices of large business entities"<sup>2</sup>. Whether it will achieve this objective is unclear. As such, the Bill should require reviews of the Scheme to assess whether it is achieving its objective and whether other measures are needed. Indeed, our view is that mandated maximum 30 day payment terms are required to achieve the desired change.

A review should be held prior to the application of the compliance and enforcement powers, and then a subsequent review should be held 12-18 months later. This would provide additional evidence on the importance of penalties and effective enforcement in changing behaviour.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Mr Alex Maskiell

Yours sincerely

**Kate Carnell AO**  
Australian Small Business and Family Enterprise Ombudsman

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<sup>2</sup> Payment Times Reporting Bill 2020 Explanatory Memorandum



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**Small Business and  
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2 March 2020

Mr Peter Cully  
Head of Division  
Small and Family Business  
Department of Industry, Innovation and Science  
10 Binara Street  
Canberra ACT 2600

*Peter*  
Dear Mr Cully

**Payment Times Reporting Bill – Exposure Draft**

The Australian Small Business and Family Enterprise Ombudsman welcomes the draft legislation to establish a Payment Times Reporting Framework (PTRF) in Australia. This is a real opportunity for large business to show corporate leadership in its treatment of small business. This Office's April 2017 Inquiry<sup>1</sup> and April 2019 Review<sup>2</sup> of Payment Times and Practices both recommended the establishment of a PTRF and we are pleased to see this move to implementation.

We were grateful for the opportunity to engage with your team around the legislation at the roundtable on 28 February 2020. Further to the detailed comments we provided at that time, we note the following:

1. 'Approved Invoice' must be a defined term to give certainty to small businesses and also prevent large businesses from manipulating their payment performance by changing dates on which they permit an invoice to be submitted or consider it approved.
2. The legislation should be the 'source of truth' as opposed to moving definitions to the Rules. As such, the definition of 'small business' and the broad reporting requirements, including how to report supply chain financing arrangements, should be clearly set out in the legislation. Further detail, if required, could be set out in additional rules.
3. The legislation currently excludes co-operatives, associations, government departments, and partnerships. This should be amended to include coverage of all entities (with over \$100 million annual turnover) that either are themselves a constitutional company or procure from a constitutional company that is a small business.
4. Clarity should be provided that penalties accumulate daily, rather than for each offence.
5. The 18 month transition period is too long, and should be shortened to 12 months.
6. Clause 19(1)(a) should conclude with 'and' not 'or'.
7. We strongly support the 6-monthly reporting requirement.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Miss Alexandra Hordern

Yours sincerely

**Kate Carnell AO**

Australian Small Business and Family Enterprise Ombudsman

<sup>1</sup> [https://www.asbfeo.gov.au/sites/default/files/ASBFEO\\_Payment\\_Times\\_and\\_Practices%20Inquiry\\_Report.pdf](https://www.asbfeo.gov.au/sites/default/files/ASBFEO_Payment_Times_and_Practices%20Inquiry_Report.pdf)


<sup>2</sup> <https://www.asbfeo.gov.au/sites/default/files/documents/ASBFEO-payment-times-report-2019.pdf>



21 May 2020

Mr Peter Cully  
Head of Division  
Small and Family Business  
Department of Industry, Science, Energy and Resources  
10 Binara Street  
Canberra ACT 2600

*via online submission*

  
Dear Mr Cully

**Payment Times Reporting - Rules**

While we are very supportive of the Payment Times Reporting Scheme, we remain concerned that the Rules contain necessary and critical detail that should be in the Bill, particularly:

- 1. Definitions of *small business* (clause 5) and *standard payment period* (clause 6)**  
These definitions are fundamental to the scope of the Bill and are unlikely to require change even in the longer term.
- 2. Information required for inclusion in reports (clause 8)**  
The Bill includes reporting requirements (clause 14) and the Rules then require further information. It is hard to discern the difference in the type of information required by the Bill (like reporting period and governing body) and the Rules (like ABN, main business activity and supply chain finance). This information should all be included in clause 14 of the Bill, which we note also provides an ability to add items should it be needed in the future.
- 3. When an invoice is issued and paid (clause 9)**  
The timing of invoice issue and payment is also fundamental to the operation of the Bill. However, we note that subclause 9(a) should be amended to include two additional words as follows "...all requirements of the relevant written or oral contract regarding invoicing..."  
This makes it clear that a valid invoice does not require absolutely every unrelated clause of an agreement to first be satisfied before the invoice is considered "received".

The problem in relegating fundamental matters to the Rules is that they go to the scope and critical operation of the Bill. Inclusion in the Rules also acts as an encouragement for reporting entities to seek to have items removed (eg. supply chain finance) or otherwise limit the operation of the Bill (eg. restricting businesses covered or seeking more lenient approaches to matters like timing).

Thank you for the opportunity to comment. If you require further information, please contact Mr Alex Maskiell

Yours sincerely,

**Kate Carnell AO**  
Australian Small Business and Family Enterprise Ombudsman