PAYMENT TIMES REPORTING FRAMEWORK CONSULTATION PAPER
DEPARTMENT OF INDUSTRY, SCIENCE, ENERGY AND RESOURCES

AUSTRALIAN TRUCKING ASSOCIATION SUBMISSION
6 MARCH 2020

1. About the Australian Trucking Association

The Australian Trucking Association and its member associations collectively represent 50,000 businesses and 200,000 people in the Australian trucking industry. Together we are committed to safety, professionalism and viability.

2. Summary of recommendations

Recommendation 1

In addition to the reporting framework, the Australian Government should develop a mandatory code for the trucking industry under Part IVB of the Competition and Consumer Act (CCA) to address the payment terms issues facing trucking businesses, in particular small business.

Recommendation 2

The Australian Government should commit to targets for improvements in payment times to be achieved under the proposed Payment Times Reporting Framework.

Recommendation 3

If the achievement targets under the proposed Payment Times Reporting Framework (recommendation 2) are not achieved, the Australian Government should legislate for 20 day maximum payment terms for all businesses, in particular small business.

Recommendation 4

The content of the draft rules should be amended to:

a. use the ATO's main activity terminology to describe how entities are to report their industry sector

b. specify that reporting entities are to disaggregate their invoicing information based on the ANZSIC subdivisions of their small business suppliers.

Recommendation 5

Section 7 of the draft Payment Times Reporting Bill 2020 should be amended to provide that reports are to be made once a year rather than every six months.

3. Introduction

The Australian Government has proposed legislation that would establish a new Payment Times Reporting Framework for large businesses with over $100 million in annual turnover.[1] Subject to the passage of the proposed legislation, the framework would commence on 1 January 2021.[2]

The Government has stated that the framework would address the issue of late payments from large to small business. It would cover approximately 2,500 of Australia's largest businesses, including foreign companies and government corporate entities.

The overall goal is to improve payment outcomes for Australian small businesses. To contribute to this goal, the paper argues that the bill would:

- improve the collection of information about the payment practices of large businesses and government agencies towards small business
- make information about payment practices visible and easily accessible to small businesses and other interested stakeholders
- limit the compliance and administrative burden associated with the reporting framework for government agencies, small and large businesses.[3]

4. Impact of extended payment terms

The trucking industry is a small and family business industry. Over 98 per cent of trucking operators are owner operators or small businesses.[4]

The trucking industry is characterised by tight margins. Research by ANZ has previously put the industry's median profit margin at just over two per cent, with the bottom quartile of the industry either experiencing negative, flat, or very tight profit margins.[5]

Most of the costs incurred by trucking businesses must be met before they can bill their customers. These include wages or personal living costs, fuel, tyres, insurance, finance costs, registration and maintenance. Trucking businesses, and in particular small businesses, are vulnerable to adverse changes in their payment terms, and often have little capacity to negotiate them with large customers.

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[1] Department of Industry, Science, Energy and Resources. Payment Times Reporting Bill – Exposure Draft. Accessed 28 February 2020.
[2] Department of Industry, Science, Energy and Resources. Payment Times Reporting Framework Consultation Paper. February 2020. 3.
[3] Department of Industry, Science, Energy and Resources. Payment Times Reporting Framework Consultation Paper. February 2020. 3.
[4] ABS, 8165.0 Counts of Australian Businesses, June 2018.
[5] Research by ANZ, provided to ATA, 2017 and 2018.

The reporting framework consultation paper references a recent study by Xero, which estimated that the value of late payments to small and medium businesses was $115 billion in 2017-18. If these payments had been made on time, it would be the equivalent of transferring $7 billion in working capital from large to small and medium business.[6]

Additionally, the Small Business Ombudsman has reported that a Harvard Business School study found that when the United States administration moved to 15 day payment times, that it created 75,000 jobs and delivered an additional $6 billion to US workers' pay packets.[7]

Case study: impact of extending payment terms

The impact of large customers extending payment terms for small trucking businesses are significant. In 2019, a regional NSW based trucking business, which operates under 10 trucks, experienced the impact of a large extension to payment terms. An international corporate customer extended their payment terms from 30 to over 60 days, without notice.

Due to the lack of notice, the trucking business struggled to meet its immediate financial commitments and ultimately their credit rating was affected. The business had to source an additional $200,000 in working capital. These conditions were experienced at the same time as the impact of the drought.[8]

5. Findings of the Australian Small Business and Family Enterprise Ombudsman

The preliminary findings of the ASBFEO's Supply Chain Financing Review found that too many big businesses have extended payment times and then offered supply chain finance. The Ombudsman, Kate Carnell, commented that this practice severely impacted small business suppliers and was totally unacceptable.[9] The ATA supports the Ombudsman's findings.

6. Need for stronger action and mandatory fair payment terms

The Payment Times Reporting Framework Consultation Paper does not establish that the bill would achieve the overall goal of improving payment outcomes for Australian small business.

It seeks to change big business behaviour by making payment times more visible, without providing evidence that this strategy would make a difference. The proposal has no targets or estimates for what improvements would be achieved.

The lived experience of the trucking industry is that monitoring schemes have limited effect, and in some cases, are ignored.

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[6] Department of Industry, Science, Energy and Resources. Payment Times Reporting Framework Consultation Paper. February 2020. 3.
[7] Australian Small Business and Family Enterprise Ombudsman. Legislation may be the only way to fix payment times: Ombudsman. 12 February 2020.
[8] Information provided to the ATA, February 2020.
[9] Australian Small Business and Family Enterprise Ombudsman. Ombudsman releases Supply Chain Financing Review position paper. 7 February 2020.

For example, landside port charges are monitored by the ACCC, which produces an annual monitoring report.

In late 2019 – on the same day that this report was released – DP World at Fremantle announced a 447 per cent fee increase and Qube, who co-own Patrick, dismissed the report as the annual 'kick a stevedore' day.

The monitoring framework has failed to prevent excessive price increases and is held in open contempt by the monitored entities.

No evidence has been provided that a payment times reporting framework would be any different.

The ATA has advocated developing a **mandatory code for the trucking industry under Part IVB of the Competition and Consumer Act** (CCA) to address the payment terms issues facing trucking businesses.

The provisions of existing industry codes show it would be possible to construct a code covering payment terms for these businesses, which could for example include payment times – recommended as no more than five days from the date an electronic invoice is issued, or 20 days where e-invoicing is not used – a prohibition on set offs and pay when paid arrangements, and alternative dispute resolution.

It would also be necessary to include special rules covering recipient created tax invoices (RCTIs), to prevent customers from delaying the creation of these invoices to avoid triggering the five or 20 day period.

Recommendation 1

In addition to the reporting framework, the Australian Government should develop a mandatory code for the trucking industry under Part IVB of the Competition and Consumer Act (CCA) to address the payment terms issues facing trucking businesses, in particular small business.

7. Backing the reporting framework with targets

If the proposed Payment Times Reporting Framework is going to be successful in achieving the goal of improved payment times, it should be backed with a commitment to further reform.

Late payments by large businesses to small businesses is reported to account for 53 per cent of all invoices.[10] The Government should announce a policy decision that sets out targets for improvements in payment times by large business to small businesses. If these targets are not achieved, the Government should commit to legislate 20 day payment terms.

This would create strong incentives for big business to achieve the objectives of the framework and improve payment outcomes.

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[10] Australian Small Business and Family Enterprise Ombudsman. Legislation may be the only way to fix payment times: Ombudsman. 12 February 2020.

Recommendation 2

The Australian Government should commit to targets for improvements in payment times to be achieved under the proposed Payment Times Reporting Framework.

Recommendation 3

If the targets under the proposed Payment Times Reporting Framework (recommendation 2) are not achieved, the Australian Government should legislate for 20 day maximum payment terms for all businesses, in particular small business.

8. Content requirements for entity reports

The consultation paper outlines what is intended to be included in the rules that would support the bill. The rules would be formally drafted after the primary legislation was passed.[11]

Rule 4 would set out the content requirements for entity reports.

The paper proposes that entity reports would include the primary industry of the reporting entity (based on ANZSIC codes).

DISER has clarified to the ATA that businesses would be asked to report their main activity using the ATO business industry code (BIC) system.[12]

The ATA agrees with this approach but considers that the explanatory material about the reporting regime should, for clarity, be amended to use the ATO’s main activity terminology.

Reporting entities would also have to provide the following information:

- The total proportion (number and value) of invoices paid in the calendar day periods of 1-20 days, 21-30 days, 31-60 days and 60+ days
- The total proportion (number and value) of invoices paid within the contract terms
- Whether the entity offers any form of supply chain finance, reverse factoring or discounting and, if so, details of that arrangement and the total proportion (number and value) of invoices where those arrangements were utilised.

Although this information would be useful, it would not be sufficiently detailed to enable legislators, public service advisers or the community to consider whether further measures might be needed to support businesses in specific industry sectors.

The industry sectors of reporting entities would be reported: the sectors of their small business suppliers would not be identifiable.

[11] Department of Industry, Science, Energy and Resources. Payment Times Reporting Framework Consultation Paper. February 2020. 9.
[12] Australian Taxation Office, Business industry codes. Fact sheet, 2017.

To address this information gap, the ATA considers that reporting entities should be required to disaggregate their invoicing information based on the ANZSIC subdivisions[13] of their small business suppliers.

We consider that subdivisional reporting is an appropriate level of disaggregation. The ANZSIC divisions are too broad to be useful in this context, but group level (ie: three digit) reporting would be too resource intensive for the benefits that would be gained.

The ATA recognises that the extra detail required in each report would involve increased compliance costs.

For that reason, we recommend that entities be required to report once a year rather than every six months. In our view, this would not reduce the effectiveness of the framework.

Section 7 of the draft Payment Times Reporting Bill 2020 should be amended accordingly.

Recommendation 4

The content of the draft rules should be amended to:

a. use the ATO's main activity terminology to describe how entities are to report their industry sector

b. specify that reporting entities are to disaggregate their invoicing information based on the ANZSIC subdivisions of their small business suppliers.

Recommendation 5

Section 7 of the draft Payment Times Reporting Bill 2020 should be amended to provide that reports are to be made once a year rather than every six months.

[13] Australian Bureau of Statistics, Australian and New Zealand Standard Industrial Classification (ANZSIC) 2006 - Codes and Titles. ABS cat 1292.0.55.002.