National Fire Industry Association
Australia
Contractors at the Frontline of Fire Protection

Submission to the Department of Industry, Science, Energy and Resources

Payment Times Reporting Framework

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EXECUTIVE SUMMARY

The Australian Government is introducing a new Payment Times Reporting Framework for large businesses with over $100 million in annual turnover. These businesses will be required to report information on how and when they pay their small business suppliers.

The Framework aims to:
- increase transparency of the payment performance of large businesses so small businesses can make more informed decisions about their potential customers; and
- drive cultural change to improve payment times.

The National Fire Industry Association is an Australia-wide community of commercial fire protection contractors, their people, suppliers and industry stakeholders representing a wide and varied membership from the smallest sub-contractor through to large Australia-wide design, install and service businesses. Our members work at the frontline of fire protection with an estimated 80 per cent of the fire protection work undertaken in Australia completed by members of NFIA.

Late payments are a systematic problem for Australia's 3.4 million small businesses. Because of the pyramidal structure within the construction industry, the effects of late payments between the parties becomes more imbalanced and further pronounced the further one goes down the contractual chain. This can have a devastating impact on the most vulnerable parties but also more broadly across the economy as small businesses that are paid slowly pay their suppliers more slowly in turn.

To address this issue, the Federal Government intends to introduce a Payment Times Reporting Framework (the Framework) requiring large businesses with over $100 million in annual turnover to publish information on their small business payment times and practices.

Subject to passage of legislation, the Framework will commence on 1 January 2021. NFIA is pleased to provide comment on the 4 discussion areas and Minister's Rules contained within the Payment Times Reporting Framework Exposure Draft.

On balance these reforms would be a step in the right direction that ideally would be further built upon to address a significant issue within the Australian business landscape.

Discussion Area 1: Who will report under the scheme?

- NFIA is satisfied that entities with at least $100 million annual turnover will be required to report but also suggests that once the scheme is operational that the Government consider extending it to entities that fall under a lower threshold.
- NFIA suggests that the definition of entities that should report be changed to cover all public, private and foreign-owned companies, partnerships, trusts

and super funds. This is in line with the Australian Tax Office's definition of large businesses.

Discussion Area 2: How will entities report under the scheme?

- Even if the reporting is to commence from January 2021, NFIA is satisfied that this is ample time for time for businesses to adapt their financial and other systems to comply with the new reporting requirements.
- NFIA congratulates the government for requiring entities to report on performance as well as their payment terms and applauds the Government's attempt to make cultural change. NFIA would like to confirm that 'payments' refers to all payments agreed upon as part of a payment schedule not just the final contractual amount.

Discussion Area 3: What are the compliance arrangements for the scheme?

- Considering only large entities with turnover of at least $100 million a year are subject to the reporting framework NFIA asserts that these penalties should be increased to provide an obvious incentive for compliance.

Discussion Area 4: What constitutes a small business provider?

- NFIA is satisfied with the definition of a small business provider.

Discussion Area 5: Minister's Rules

- NFIA is satisfied with the proposed Application to cease being a reporting entity and Notification requirements for reporting entities.

INTRODUCTION

Besides the human risk, there is also a substantial financial cost to the community due to building fires. Fire costs Australian business millions of dollars due to property damage, fines, compensation, and insurance premiums. Many businesses find that they are not able to recover from the effects of a fire.

The Australian Fire Protection Industry

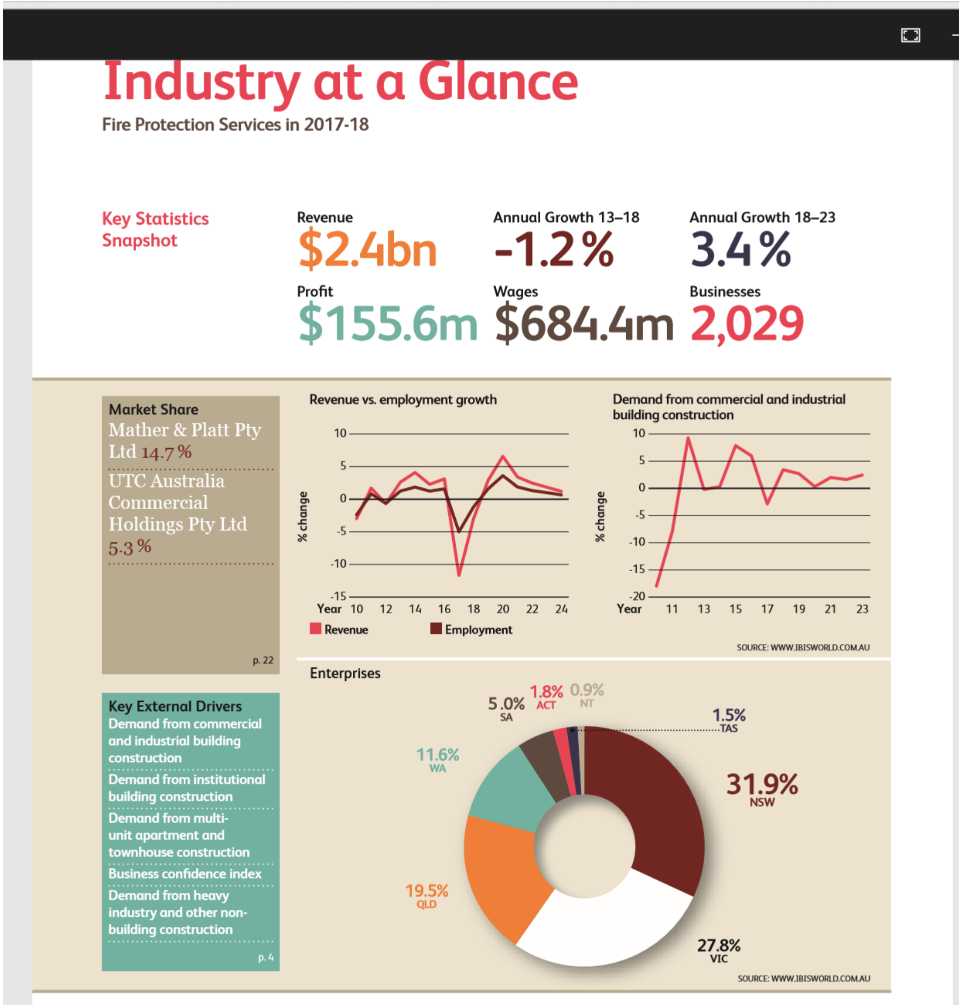
Fire protection in Australia is typically achieved via three means:

- Active fire protection (fire sprinklers, fire hydrants and fire alarm systems);
- Passive fire protection (fire rated walls, floors and ceilings and fire sealing); and
- Education.

The Fire Protection Services industry contributes over $2.4 billion to the Australian economy every year. Over 2000 businesses pay nearly $700 million in wages each year and industry revenue is projected to increase at a compound annual growth rate of 3.4% over the five years through 2022-23, to reach $2.8 billion.

The IBISWorld Industry Report OD5424 Fire Protection Services in Australia (February 2018), claims that despite the presence of vertically integrated multinational giants, the industry has a low level of market share concentration as the top four players are estimated to account for about 27.4% of industry revenue. The two major companies have a combined market share of only 20% and are both part of large multinational companies operating globally across several related industries. Twenty years ago, the two major companies are estimated to have had 80% of the market.

There are now a large number of State, regional and local players that construct, install and service fire protection systems to small, medium and major buildings across the full scope of class 2 to 9 buildings as well as higher risk facilities such as fuel depots, harbours and similar developments. Over half the industry enterprises employ between one and 19 people (53.1% in 2014-15) and a further 44.4% have no directly employed labour. As the minor players have increased their share of the total market, the industry has become more diverse and competitive while also growing substantially.



Where twenty years ago, the two major companies offered a form of institutionalised but limited "industry" training to their people, it could be argued that the industry was less in need of regulation. However, as the industry has grown substantially and its make-up evolved it is now predominately made up of many more, smaller independent contracting companies. That market growth and diversification has provided customers with better contractor choices, better outcomes and better pricing but, at the same time, raised the need for more over-arching regulation.

The National Fire Industry Association (NFIA)

The National Fire Industry Association (NFIA) is an Australia-wide community of commercial fire protection contractors, their people, suppliers and industry stakeholders representing a wide and varied membership from the smallest sub-contractor through to large Australia-wide construction and service businesses. Our members work at the frontline of fire protection with an estimated 80 per cent of the fire protection work undertaken in Australia is completed by members of NFIA.

NFIA utilises the resources of other Australian and International industry organisations and associations.

NFIA is committed to the delivery of quality fire protection practitioners across all aspects of fire protection safety. To this end, NFIA has sponsored and supported the growth of the world leading fire industry Registered Training Organisation, Fire Industry Training (FiT), which now delivers fire industry required training for all of Australia at its campuses in Brisbane, Melbourne and Sydney.

NFIA believes that an appropriate regulatory framework should be one that protects the safety of the community and property, provides adequate consumer protection, recognises and accommodates industry practice and standards, requires registration of practitioners and is linked to the national training package framework.

The Problem

The construction industry operates on a pyramid structure, with the client at the top who enters into a head contract with the head contractor, and with the head contractor subsequently entering into a series of subcontracts with subcontractors. Payment delays from head contractor to subcontractor are a regular occurrence in the building and construction industry. Although contracts often hold specific payment dates these are regularly not adhered to despite head contractors receiving payment from the principal on time.

Like all small business late payments are a systematic problem for Australia's fire protection businesses. Delay timeframes vary from project to project however any delay can have a catastrophic effect on the subcontractor's cash flow when they often have little or no cash reserves or credit to rely on. The effects of poor cash flow go beyond just not being able to pay staff, pay for resources and expand operations but it can also threaten the very existence of a business. Poor cash flow is one of the main reasons why 60% of small- to medium-sized businesses in Australia cease operations within their first few years.

Late payments can also lead to massive amounts of resources being eaten up to pursue debts. They also often result in subcontractors taking on further debt which attracts additional expenses. Late payments can also lead to poor mental health outcomes for small business owners who often report heightened stress and anxiety levels over payment delays. More broadly, late payments can also have devastating impact across the economy as small businesses that are paid slowly pay their suppliers more slowly in turn.

PAYMENT TIMES REPORTING FRAMEWORK

The Federal Government intends to introduce a Payment Times Reporting Framework (the Framework) requiring large businesses with over $100 million in annual turnover to publish information on their small business payment times and practices. The Framework will cover Australia's approximately 2,500 largest businesses including foreign companies and government corporate entities.

The Framework's overall goal is to improve payment outcomes for Australian small businesses. To achieve this, it has three objectives:

- 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.

Subject to passage of legislation, the Framework will commence on 1 January 2021. Once the scheme commences, large businesses will be required to report their small business payment information to a central web portal. A Payment Times Reporting Small Business Identification Tool will be developed to assist large businesses in the process of identifying their small business suppliers. The payment times reporting information will be made available on a public website for small business and other interested stakeholders.

NFIA has been an active participant all security of payment reforms which we believe should achieve 5 key principles:

1. People who actually do the work should get paid for the work they have performed;
2. If a business goes bankrupt they shouldn't be able to take other businesses with them;
3. Contractors should be fair and reasonable;
4. Trade Professional contractors should get paid at the same time as builders; and
5. One small aspect of work, which is the responsibility of another contractor, should not hold up payment for the overwhelming amount of work that has been properly completed on time.

Therefore, NFIA strongly supports the Federal Government's Payment Times Reporting Framework which we hope will lead to a significant improvement to the status quo. NFIA has specific areas in which we would like to comment.

Discussion Area 1: Who will report under the scheme?

Entity types required to report under the Framework will include:

- constitutional corporations;
- entities that carry on business in a territory; and
- foreign entities.

The Framework is designed to cover commercial entities in the private and public sector.

Entities with at least $100 million annual turnover (defined as assessable income) will be required to report. Entities may volunteer to report if they are an entity type covered by the legislation and their annual turnover is less than $100 million. These entities will be subject to compliance and enforcement arrangements under the Framework. The Bill requires individual entities to report at an entity rather than at a group level.

The Australian Tax Office defines a small business as a business with an annual turnover (excluding GST) less than $2 million and large business as those entities that are part of an economic group with combined turnover greater than $250 million. NFIA is satisfied that entities with at least $100 million annual turnover (defined as assessable income) will be required to report. NFIA also suggests that once the scheme is operational that the Government consider extending it to entities that fall under a lower threshold. It is not just the very large businesses that delay payments to small businesses.

While NFIA is satisfied that constitutional corporations, entities that carry on business in a territory; and foreign entities are required to report NFIA suggests that the definition of entities that should report be changed to cover all public, private and foreign-owned companies, partnerships, trusts and super funds. This is in line with the Australian Tax Office's definition of large businesses.

Discussion Area 2: How will entities report under the scheme?

Reporting will commence from January 2021, assuming that the Bill passes through Parliament in time. If not, it will begin on 1 January or 1 July following the passage of the Bill through Parliament. Entities will report both on their standard payment terms for their small business suppliers (i.e. how quickly they say they will pay) and their performance (i.e. how quickly they actually pay).

Entities will be required to submit two six monthly reports each year to the Regulator. The report will need to be signed off by a responsible member of an entity such as the CEO. It will then need to be approved by the principal governing body of the entity such as a company's board of directors. All reports will be displayed on a public website to provide a transparent view of how entities pay their small business suppliers.

Even if the reporting is to commence from January 2021, NFIA is satisfied that this is ample time for time for businesses to adapt their financial and other systems to comply with the new reporting requirements. NFIA congratulates the government for the requirement that entities are being asked to report on performance as well as their payment terms.

NFIA applauds the Government's attempt to make cultural change. Involving company decision makers and publishing results will go a long way to improve transparency and accountability.

NFIA would like to confirm that 'payments' refer to all payments agreed upon as part of a payment schedule not just the final contractual amount. Late payments of incremental payments can be just as damaging as a late payment of the final amount.

Discussion Area 3: What are the compliance arrangements for the scheme?

Penalties will be applied for failure to comply with arrangements under the Framework. The resulting penalty will be a daily penalty of 60 penalty units for an individual and 300 penalty units for a body corporate (a penalty unit = $210). Penalties can be applied on a daily basis. Considering only large entities with turnover of at least $100 million a year will be subject to Payment Times Reporting Framework, the NFIA asserts that these penalties should be increased to provide an obvious incentive for compliance.

Discussion Area 4: What constitutes a small business provider?

A small business supplier will be as identified through the Payment Times Reporting Small Business Identification Tool. A Small business will be a business with turnover of less than $10 million that is not part of a larger entity or grouping of entities. NFIA is satisfied with this definition.

Discussion Area 5: Minister's Rules

NFIA is satisfied with the proposed Application to cease being a reporting entity and Notification requirements for reporting entities

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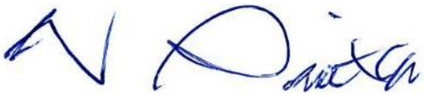

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