



Australian Finance Industry Association Limited
ABN 13 000 493 907
L11, 130 Pitt Street Sydney NSW 2000
T: 02 9231 5877
www.afia.asn.au

Department of Industry Science, Energy and Resources
Industry House
10 Binara Street
Canberra ACT 2601
paymenttimes@industry.gov.au

12 June 2020

Dear Department of Industry, Science, Energy and Resources

CONSULTATION ON PAYMENT TIMES REPORTING RULES

The Australian Finance Industry Association (AFIA) appreciates the opportunity to respond to the Payment Times Reporting Scheme Rules Consultation Paper (**Consultation Paper**).

AFIA represents over 100 providers of consumer, commercial and wholesale finance in Australia including retail banks, finance companies and fintechs, which provide innovative consumer products and specialised finance to meet small to medium enterprises (SMEs) working capital, cashflow and investment needs. For more information about AFIA, please see **Attachment A**.

AFIA's role as an industry body is to drive industry leadership and represent members' views, facilitate self-regulation through industry codes, and to work with the Federal Government, financial regulators, and other stakeholders to promote a supportive environment for the financial services industry.

Our guiding principles seek to build the settings to:

- Promote simple, convenient, innovative, and affordable credit to finance Australia's future, including maximising access to credit for customers able and willing to service their commitments and minimising the likelihood or incidence of customers entering unsuitable credit contracts;
- Foster competition and innovation in Australia's financial services industry, which enables our members to grow, expand and thrive as key participants in lending and other markets; and
- Generate greater financial and economic participation by consumers and small businesses in Australia's financial system and economy and improve social participation to create financial wellbeing.

To do so, we focus on the key drivers that provide positive customer outcomes, foster competition, and innovation within industry, and facilitate financial, economic and social engagement by both customers and industry.

We note that while members have contributed to our submission, the position being put by AFIA may not reflect a particular member's organisationally-specific position on all of the issues. These will get captured through a submission from that organisation.

OUR SUBMISSION

The Australian Government has proposed legislation that would establish a new Payment Times Reporting Framework (**the Framework**) for large businesses with over \$100 million in annual turnover. The Framework is composed of the *Payment Times Reporting Bill 2020* (**the Bill**) which is currently before Parliament, and the Payment Times Reporting Rules 2020 (**the Rules**) which is the subject of the Consultation Paper.

The Government has stated that the Framework would address the issue of late payments from large to small business, and cover approximately 2,500 of Australia's largest businesses, including foreign companies and government corporate entities, with the overall goal of improving payment outcomes for Australian small businesses through improved transparency. We understand from the Consultation Paper that, subject to the passing of the Bill, large businesses with a turnover of over \$100million will be required to:

- Report their small business payment information within 6 months of the intended Scheme commencement date of 1 January 2021 (therefore first report will be 30 June 2021); and
- Report their small business payment information to a central web portal, which will be made available on a public website (this is called the Payment Times Reporting Small Business Identification Tool (**the Tool**), the intent being that the Tool will assist large businesses with the process of identifying their small business suppliers - we note that the Department of Industry, Science, Energy and Resources (**DISER**) is tasked with developing the Tool.

AFIA has previously worked closely with the Australian Small Business and Family Enterprise Ombudsman (**ASBFEO**) to provide protections and support to the small business community¹. We note that the ASBFEO has welcomed the legislation² and AFIA (including our members that provide supply chain financing solutions) are equally as supportive of its introduction and its underlying policy intention of protecting small business in Australia through helping deliver fairer, faster payment times and terms for small businesses.

Our recommendations in response to the Consultation Paper are made with regard to the current environment (i.e. a period of unprecedented disruption caused by the COVID-19 pandemic) and are built on the following principles:

- Continued support for small business as demonstrated in the work that AFIA does with the government, the ASBFEO, with its members and with the community; and

¹ For example, AFIA has helped its Online Small Business Lender members to come together to release a Code of best practise lending principles: <https://www.afia.asn.au/aosbl>

² <https://www.asbfeo.gov.au/news/news-articles/ombudsman-welcomes-payment-times-reporting-bill-2020>

- The Payment Reporting Framework is fit for purpose and should be implemented to ensure that the proposed regime is simple, clear, transparent, balanced (without imposing an unnecessary administrative burden) and is easy to utilise.

Key Recommendations

AFIA recommends DISER:

1. Release the Tool, as well as guidance on how to use the Tool, *as soon as possible* to enable large business to review and implement the necessary changes to processes and procedures to enable the required reporting.
2. Provide guidance:
 - to small business on how to use the reports to make more informed decisions in relation to their businesses and in relation to their customers; and
 - material to reporting entities, for example templates and further help on interpreting the requirements of the legislation.
3. Be mindful of the significant disruption caused by the COVID-19 crisis on businesses as they move to remote working, establish and integrate new technologies and establish new ways of working and workforce planning as a result and then have to transition back to work albeit in a potentially different manner. As a result, include a review or grace period when implementing the new reporting mechanism so as to ensure any solution is right sized and fit for purpose for a post COVID-19 environment for small and large business.

Our detailed responses are at **Annexure B**.

CLOSING COMMENTS

We hope you find our submission helpful and useful in continuing to develop the Tool and the Rules. Should you wish to discuss our feedback further, or require additional information, please contact Naveen Ahluwalia, Director, Policy & Regulatory Affairs at naveen@afia.asn.au or 02 9231 5877.

Kind regards



Karl Turner
Chief Operating Office

ATTACHMENT A: AFIA BACKGROUND

The Australian Finance Industry Association (AFIA) is the voice of a diverse Australian finance industry.

AFIA represents over 100 providers of consumer, commercial and wholesale finance in Australia, which includes:

- Major, regional and mutual/community owned banks
- Providers of consumer finance, including home loans, personal loans, consumer leases, credit cards, buy now pay later services, and debt purchasers
- Providers of land finance, including residential and commercial mortgages and bridging finance
- equipment financiers, including commercial equipment financing ranging from agri-equipment to small ticket equipment financing
- Motor vehicle financiers, including consumer motor finance, novated motor finance, small business motor finance and heavy vehicle finance
- Fleet leasing and car rental providers, and
- Providers of commercial finance, including secured and unsecured loans and working capital finance to businesses, including small businesses.

AFIA's members range from ASX-listed public companies through to small businesses providing finance, which operate via a range of distribution channels, including through 'bricks and mortar' premises (physical branches and other outlets), via intermediaries (including finance brokers, dealerships, retail suppliers), and through online access or platforms (traditional financial institutions and fintechs).

AFIA's members collectively operate across all states and territories in Australia and provide finance to customers of all demographics from high to low-income earners and to commercial entities ranging from sole traders, partnerships and across the corporate sector in Australia.

AFIA's members provide a broad range of products and services across consumer and commercial finance, a snapshot of these include:

- Consumer: home loans, personal unsecured loans, revolving products (including credit cards and interest free products coupled with lines of credit), personal secured loans (secured by land or personal property); consumer leases of household assets (including household goods, electrical/IT devices or cars) and buy-now, pay later services.
- Commercial: land, asset or equipment finance (finance/operating lease, secured loan or hire-purchase agreement or novated leases); business finance and working capital solutions (secured loans, online unsecured loans; debtor and invoice finance; insurance premium funding; trade finance; overdrafts; commercial credit cards), together with more sophisticated and complex finance solutions.

For further information about AFIA, please see [here](#).

ANNEXURE B – OUR SUBMISSION

We acknowledge that a significant amount of work has been undertaken by the Government and by Regulators to this reporting regime. Our recommendations are intended to be helpful to the Department in continuing its work on the Tool and on guidance in using the Tool in relation to the reporting requirements.

Recommendation 1 – Release the Tool and guidance on how to use the Tool *as soon as possible* to provide a reasonable implementation time

Rule 1 states that large businesses will be required to use the Tool in order to prepare their Payment Times Report.

We note that the Tool or any information in relation to the Tool has yet to be released and, therefore, there is still significant uncertainty as to how the Tool is intended to operate. For example, the Explanatory Memorandum notes that a Tool is being developed so that *“a large business will be able to enter identifying information about their suppliers, with the tool returning a negative result for suppliers that are large or medium businesses”*.³ We note also that the Rules state that *“in practise, the tool will operate to allow a large business to look up each of its suppliers quickly and easily to identify whether or not they are a small business and therefore whether they need to be included in their Payment Times Report.”*

It is unclear exactly how the Tool will operate to enable reporting entities to easily select and report on their small business suppliers. There are also outstanding questions around how small business suppliers will be identified through the Tool for example:

- the source of the information that defines small business entities - e.g. would there be a correlation with ATO information, or whether small business will be required to self-identify to be included within the Tool;
- the treatment of entities that move in and out of the \$10million turnover threshold – for example, will those that drop out be removed from the Tool and vice versa;
- if there is an opt in or opt out mechanism for small business entities included in the Tool and how this is intended to work.

Given there are still a significant number of questions around what the Tool looks like, how the Tool is intended to work and what guidance will be provided to reporting entities using the Tool, we recommend that the Tool be released *as soon as possible* to enable large business to review and implement the necessary changes to processes and procedures to enable the required reporting.

³ Payment Times Reporting Bill 2020 Explanatory Memorandum page 5

Recommendation 2 - provide useful guidance to small business consumers and large business reporters

For small business users of reports

The Explanatory Memorandum notes that the purpose of the report is to improve transparency so that small businesses will be able to make more informed decisions about their potential customers. The intent of the Framework is to help, support and educate small businesses in relation to payment times. However, the Rules are not clear about exactly how small businesses should make use of and utilise the reports.

We therefore suggest, to achieve the stipulated objectives of the Framework i.e. to assist, support and educate small businesses around payment times, that it would be very helpful to small business suppliers for the Payment Times Reporting Regulator or another stakeholder, such as the ASBFEO to:

- **Publish Small business guides:** to help small business suppliers decipher and utilise these reports in their business decision-making processes.
- **Run practical workshops:** including virtual or online workshops or videos to give small business access to practical examples of how small business can utilise these reports to manage their supply chain payments.
- **Run an awareness campaign on the reports:** small business can only utilise these reports if they know that these reports are available. It is therefore important for either DISER or the chosen stakeholder to run an awareness campaign to ensure that small business understand this new regime and how to access the reports.

For large business reporters

We understand the Bill has been drafted to take into consideration feedback received through an extensive consultation period. However, in our view, there is still scope and opportunity for DISER to provide further guidance to reporting entities. We have identified the following examples of where DISER can and should provide further guidance:

- **Definition of reporting entity:** The Bill notes that the definition of a reporting entity is one that meets the definition of section 7 of the Act. The Explanatory Memorandum provides examples of where an entity is considered to be a reporting entity (i.e. where the entity is part of a large corporate group) and these examples are helpful. However, we note the definitions do not cover instances where the controlling entity of the organisation is domiciled overseas. As a result, it is potentially unclear whether Australian subsidiaries of overseas controlling entities (where the subsidiary falls below the \$100m threshold but the group meets the \$100m threshold) will be required to be a reporting entity. It would be helpful for the Rules to clarify this situation.
- **Who is considered to be a responsible member:** We note that the Bill requires a responsible member within the reporting entity to approve and sign the Payment Times Report prior to lodgement. We suggest it would be helpful to reporting entities for DISER to provide guidance on who within the organisation may be deemed a responsible member as envisioned within the Bill (i.e. would it be a board member, a member of the executive management team, or duly authorised person).

- **Reporting payment times:** We note that Rule 4 provides the reporting requirements (as determined by both the Bill and the Rules) which are to include the reporting period, the payment periods offered by the reporting entity, the total proportion of invoices paid on varying terms, certain declarations and the use of supply chain financing by the reporting entity. We note also that Rule 5 provides information on how payment times are to be calculated. We suggest that it would be helpful to reporting entities to provide further information on these reports, such as providing a template or examples as guidance for businesses to utilise in preparing their Payment Times Report.

Recommendation 3 – consider the disruption to reporting entities as a consequence of COVID-19 and include a review or grace period when implementing the new reporting mechanism so as to ensure any solution is right sized and fit for purpose for a post COVID-19 environment for small and large business

We note that the Framework is being established and the Tool introduced in a time of unprecedented change for both small and big business due to the unfolding COVID-19 crisis. There has been and will continue to be a significant impact to the Australian economy and to the finance industry with many of our members directing impacted. To be successful, the Framework will require businesses to:

- implement new reporting requirements;
- identify contractual arrangements in relation to payment times to suppliers (which is most likely extensive and significant for big business);
- integrate the Tool into processes and procedures – which maybe particularly complex for large organisations; and
- establish new internal processes to gather data, verify, audit and submit for review.

These requirements are significant and are to be implemented in a time where there is already considerable resource constraint for many reporting entities.

As a result, we recommend a review, grace period or phased approach when implementing the new reporting mechanism so as to ensure any solution is right sized and fit for purpose for a post COVID-19 environment for small and large business.