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 Rules Exposure Draft

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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.

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 design, install and service businesses. Our members work at the frontline of fire protection with an estimated 80 per cent of the commercial fire protection work undertaken in Australia completed by our members. NFIA is the peak national industry association delivering systemic advocacy for fire protection practitioners at both a National and State level.

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 introduced 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. NFIA was pleased to provide comment on the 5 discussion areas contained in the Framework.

The primary legislation to enable the Scheme was introduced to Parliament on 13 May 2020. The Federal Government is now seeking views on an Exposure Draft of the subordinate legislation, known as Rules, which will provide detail on how sections of the legislation work in practice.

NFIA is again pleased to provide comment on the 6 Provisions contained within the Rules.

Rule Provision 1: Defining a small business

As per our submission on the Framework, NFIA is satisfied with the definition of a small business supplier, as any business with an annual turnover of less than $10 million.

Rule Provision 2: Defining a standard payment period

The draft Rule defines a standard payment period as the agreed contractual lengths of time a large business offers to its small business suppliers for payment to be made for goods and services. NFIA would like to take the opportunity to actually define a maximum payment time and suggests a period of 28 business days.

Additionally, 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 progress payments can be just as damaging as a late payment of the final amount.

Rule Provision 3: Content for an application to cease reporting
NFIA is satisfied with the requirements to be able to cease reporting and the information required from the applicant.

Rule Provision 4: Additional information for a report
NFIA agrees that large businesses must be required to report on contractual matters that stipulate payment terms and practices and how these arrangements apply.

Rule Provision 5: Calculating information for a report
NFIA is satisfied with how content of a Payment Times Report should be calculated.

Rule Provision 6: Report information not published
NFIA recognises that while the purpose of the Payment Times Reports Register is to enhance transparency about payment times and practices, there are circumstances where the publication of certain kinds of information provided in a Payment Times Report may not assist in achieving this objective.

INTRODUCTION

In addition to the risk to life safety, there is also a substantial financial cost to the community due to building fires. Fires cost 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

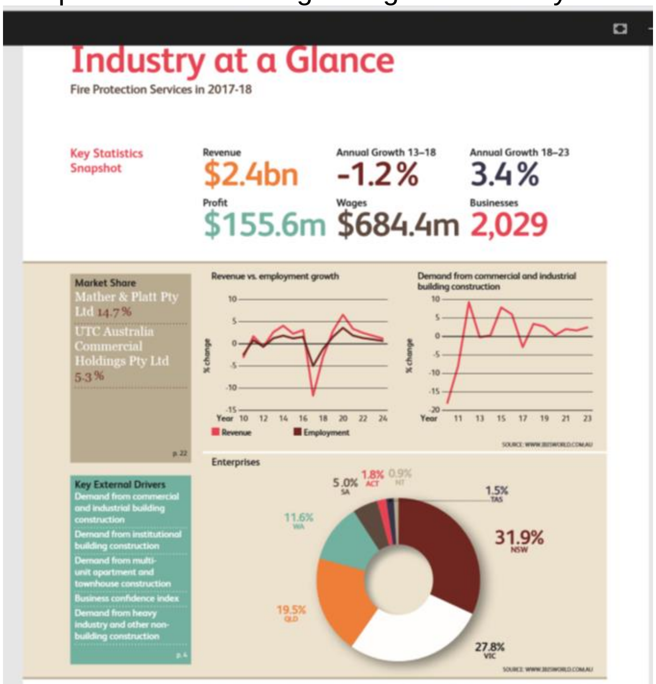
Fire protection in Australia is typically achieved via three means:

- 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..

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 RULES

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 done;
2. If a business goes bankrupt, they shouldn't be able to take other businesses with them;
3. Contractors should be fair as well as reasonable and not include termination for convenience or payment on account;
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.

The primary legislation to enable the Scheme was introduced to Parliament on 13 May 2020. The Federal Government is now seeking views on an Exposure Draft of the subordinate legislation, known as Rules, which will provide detail on how sections of the legislation work in practice.

NFIA is pleased to provide comment on the 6 Provisions contained within the Rules.

Rule Provision 1: Defining a small business

The draft Rule uses a common definition of a small business supplier, by describing a small business as any business with an annual turnover of less than $10 million. As per our submission on the Framework NFIA is satisfied with this definition.

The Rule also establishes that a small business is any business that is identified as such through the Payment Time Small Business Identification Tool (the Tool). The Tool is being developed by the department to make it easy for large businesses to identify which of their suppliers are small businesses, and to avoid small businesses having to comply with potentially onerous requirements to prove they are a small business.

NFIA is pleased that the department intends to continue consulting with small and large business to ensure the design of the Tool is fit for purpose. Importantly, access to the Tool may be restricted to reporting entities. NFIA is also pleased that small business concerned by being identified as a small business by this process will also have the ability to 'opt out' of being identified by the tool.

Rule Provision 2: Defining a standard payment period
Section 5 of the Bill further enables a rule to be made to specify what constitutes a standard payment period or more generally, a business's standard payment terms.

The draft Rule defines a standard payment period as the agreed contractual lengths of time a large business offers to its small business suppliers for payment to be made for goods and services. If there are no contractually agreed payment periods, it is the most common payment period used by the business to pay small business suppliers during the reporting period. This definition aims to provide guidance to large business on what to include in a Payment Times Report in reference to their payment terms.

NFIA understands that the Payment Times Reporting Framework aims to:

- 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; and
- Limit the compliance and administrative burden associated with the reporting framework for government agencies, small and large businesses.

However, by not defining a payment time the market power of the principle might enable it to stretch out payment in its contract to 90 days and again because of that market power situation, the small business supplier will accept these terms.

NFIA would like to take the opportunity to actually define a maximum payment time and suggests a period of 28 business days.

Several State Governments and the Federal Government have already implemented strict payment times as part of their own procurement processes. For example, in addition to the Payment Times Reporting Framework the Federal Government announced that it will require large businesses seeking to tender for government contracts to adhere to a 20 day payment policy.

Likewise, the Queensland Government will pay penalty interest to small business suppliers for all invoices on contracts up to $1 million paid greater than 30 calendar days. From 1 July 2020, payment time frames for small business suppliers will be reduced from 30 calendar days to 20 calendar days for eligible invoices of any value.

NSW small businesses (with less than 20 employees) that supply to participating NSW Government agencies, may be eligible for faster payments under the *Faster Payment Terms Policy*. Participating agencies will pay registered small businesses within 5 business days. Additionally, goods and/or services valued under $10,000, can be paid instantly by credit card.

The Reporting Framework provides the perfect opportunity to define a standard payment term which should be defined as 28 business days.

Additionally, NFIA would also 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 progress payments can be just as damaging as a late payment of the final amount.

Rule Provision 3: Content for an application to cease reporting

A business may cease to be a reporting entity if it no longer meets the reporting threshold of having a total annual income of over $100 million for each of the two most recent income years or if they have voluntarily opted into the reporting scheme and have decided to leave.

In either case, the business must apply in writing to the Payment Times Reporting Regulator for a determination that they are no longer required to report. The draft Rule provides for the following information to be included in the application to cease reporting:

- the business name and ABN (and, if relevant, the name and ABN of the controlling corporation),
- the reason and date on which the business will cease to be a reporting entity, and
- documentation to provide evidence to support the application.

The Regulator will decide whether a large business can cease reporting based on an assessment of their latest lodged tax returns, or advice from an independent and suitably qualified auditor about the business’ turnover.

NFIA is satisfied with the requirements to be able to cease reporting and the information required from the applicant.

Rule Provision 4: Additional information for a report

The Bill lists elements central to a business’s payment terms and practices whereas the Rules includes matters that may require future flexibility to adjust to changes such as changes to business terminology or accounting practices. Under subsection 14(1) of the Bill, the report must include:

- the reporting period to which the report relates;
- the shortest and longest standard payment periods that the business offers including any changes to these periods;
- the total proportion (by number and value) of invoices paid in the calendar day periods of 1-20 days, 21-30 day, 31-60 days and 60 + days;

- details of the principal governing body of the entity and if applicable, the controlling corporation;
- a declaration from a responsible member within the business that the report will be provided to the business' principal governing body; and
- details of any notifiable event including changes to the business name or the accounting period used by the business.

It is proposed that rules would be made to require a report to also include:

- the name and ABN of the business;
- the primary industry of the business (based on ATO's Business Industry Codes);
- the name and contact details of the person who provided the report;
- the name of the responsible member within the business who signed (approved) the report;
- the standard payment periods that the business offers including any changes to these periods;
- details of any arrangements under which small business invoices must be provided to the business, for example, by the end of the month.
- the total proportion (by value) of the business's procurement during the reporting period that was from small business suppliers;
- whether the business offers any form of supply chain finance and if so, details of that arrangement including the total proportion (by number and value) of small business invoices paid under these arrangements in the reporting period;
- any additional information to provide context or explanation in relation to the information provided in the report.

NFIA agrees that the additional information provided for in the Rules is necessary to provide small business suppliers and the public more detailed information on the payment terms and practices of large businesses. It is important that small business have transparency on the contractual matters that stipulate payment terms and practices. Great transparency on the use of supply chain financing, reserve factoring and other discounting practices is also important for small business. Supply chain finance is a problem when it is used by large businesses to extend their payment times, and where a small business is forced to agree to be paid a reduced amount in order to be paid in a reasonable time. NFIA agrees that large businesses must be required to report if they use these practices and if so, how these arrangements apply.

Additionally, information on the primary industry of larger businesses, based on the ATO's Business Industry Codes (BIC), will also provide useful information on how payment performance in one industry compares to other industries.

Rule Provision 5: Calculating information for a report

This Rule will specify how certain content of a Payment Times Report, such as the proportion of small business invoices paid within a certain period, should be calculated. The intent of this Rule is to provide business with clear guidance and a methodology for calculating and reporting their payment times.

Under the Rule, a business must apply the following conditions in order to calculate and report their payment times:

- A payment time ‘commences’ from the date an invoice is received by the procuring business that meets all the relevant requirements of the written or oral contract.
- The payment time ‘ends’ when relevant monies have been debited from the business’ account. For cash transactions, the payment ‘ends’ when the payment has been given to the supplier.
- The calculation of a payment time includes: - weekends and public holidays; - disputed invoices - the payment ‘clock’ will continue while the invoice is in dispute; - only invoices that are paid under a trade credit arrangement*.
- The calculation of a payment time excludes: - payments between entities in the same group.

NFIA is satisfied with how content of a Payment Times Report should be calculated.

Rule Provision 6: Report information not published
The Payment Times Regulator is given discretion to not publish certain information contained in a Payment Times Report where the Regulator considers the publication of the information not to be in the public interest. In making this decision, the Regulator must consider whether the information is personal information, commercial-in-confidence or any other type of information prescribed in the Rules.

NFIA recognises that while the purpose of the Payment Times Reports Register is to enhance transparency about payment times and practices, there are circumstances where the publication of certain kinds of information provided in a Payment Times Report may not assist in achieving this objective. For example, where content has been provided in a report that is irrelevant to a business’s payment terms or practices.

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