

The logo for Optus, consisting of the word "OPTUS" in a bold, teal, sans-serif font.

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

**RESPONSE TO THE  
EXPOSURE DRAFT OF  
THE PAYMENT TIMES  
REPORTING SCHEME  
RULES**

**Public Version**

June 2020

## INTRODUCTION

---

1. Optus is pleased to provide a submission in response to the Exposure Draft and Consultation Paper circulated by the Department of Industry, Science, Energy and Resources (“**the Department**”) on the Payment Times Reporting Scheme Rules (“**the Rules**”).
2. As outlined in our previous submissions, Optus appreciates the opportunity to provide feedback on this important issue to ensure the framework established is fit for purpose and achieves the desired outcomes of improving the cashflows for Australia’s small businesses.
3. We reiterate that it is very important that the framework delivers consistency and clearly defined terms, as well as minimising the red tape burden on Australian enterprise.
4. Optus is also mindful of the potential for “scope creep” which provides rules beyond the originally intended outcome of the Payment Times Reporting Framework (“**the Framework**”).

## FEEDBACK AND SUGGESTIONS

---

5. Optus acknowledges that the Rules are disallowable by the Parliament and appreciates that this is an efficient way of ensuring the finer points of the Framework are responsive to needs of businesses both small and large, and that minor amendments to the administrative process will not require legislative change.
6. We note that the Rules have been drafted with the timeframes to be calculated from the date that the invoice is received by the business captured by the Framework.
7. Optus believes that it is more appropriate for the timeframes to be calculated from the satisfactory delivery of the goods or services, and a correctly rendered invoice has been received. Such a date is also clear and indisputable. Additionally, it ensures that invoice payments are more appropriately aligned to the delivery of what has been pledged.
8. There are some further, specific sub-sections of the Rules which Optus has identified as warranting our direct feedback, and which we have done below.

### Information required for payment times reports

9. Section 8 (f) states that reports submitted must include (among other elements):  
*the proportion, determined by total value, of all procurement by the entity during the reporting period that was procurement from small business suppliers*
10. Sub-section (f) should be completely removed from an otherwise reasonable list. Optus considers this information commercially sensitive, and an unreasonable request.
11. Additionally, such information goes well beyond the scope or the intention of the Framework, which the Government has always stated is focussed on improving the cashflow of Australian small businesses.

### Method for determining certain proportions for payment times reports

12. We note that Section 9 (a) states that:

*a small business invoice is issued when it is received by the entity in accordance with all requirements of the relevant written or oral contract, regardless of any date entered into a software system for the entity;*

13. Optus has noted feedback from the Department that this means that an invoice has to be legitimate and satisfy appropriate requirements.
14. However, Optus is very concerned about 9 (c) (ii) which states:

*for the purposes of calculating the time within which a small business invoice is paid after it is issued... it is irrelevant whether the invoice is in dispute.*
15. We are surprised that the conscious decision has been made to include disputed invoices in the Framework.
16. Given the harsh penalty framework which the Government has introduced to oversee compliance with the Framework, this particular rule offers two particularly unsatisfactory options in the case of a disputed invoice:
  - (a) Pay an invoice in dispute, even if it is not through fault of the payer, to avoid future action taken by the regulator; or
  - (b) Withhold payment until the dispute is resolved and risk future action by the regulator.
17. Optus would appreciate clarification that if a disputed invoice is found to be incorrect on the part of a small business vendor, whether the Framework allows for a supplementary (correct) invoice to be reported upon in place of the original, disputed one.

#### **Leasing arrangements should be excluded**

18. Optus will also appreciate a clearer assurance that invoices payable under leasing arrangements are not captured by the Framework.
19. Optus has approximately 8,000 sites in its mobile network, with different leasing arrangements across the network. It is critical for Optus to have guidance about whether lease payments are included in the framework, given that many of Optus' landlords are small businesses.
20. Lease payments are made on a regular timeframe and are organised immediately. As such there is no invoice issued by the lessor. Further, they are facilitated under a contract, which provides parties with an avenue of restitution in the case of late payment. Accordingly, including lease payments under the framework would be likely to distort the overall results.

#### **Use of the small business lookup tool**

21. Optus is pleased that the Department is progressing the small business lookup tool, to ensure easier identification of small businesses under the framework.
22. We appreciate the Department seeking our feedback on the tool through recent consultation meetings.
23. Optus reiterates that the effectiveness and accessibility of the small business lookup tool is the most critical component for ensuring ease of compliance with the framework.

24. Larger businesses captured by the Framework must be able to rely on the accuracy of the information contained within the lookup tool.
25. Any issues or mistakes on the part of the tool should be factored in by any follow-up by the regulator.

## CONCLUSION

---

26. Optus is pleased to work with our small business partners around the country. We offer our support for the principles and intent of the framework, to ensure small businesses have greater access to cashflow and can play their vital role in the Australian economy.
27. Optus believes that the Rules as circulated are generally workable and appropriate, but that the notable exceptions outlined in this submission require amendment.

**(ENDS)**