



Payment Times Reporting Act Review Secretariat
Small and Family Business Division
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Via email: PaymentTimesReview@treasury.gov.au

The Hon Dr Craig Emerson

Thank you for the opportunity to provide feedback to the *Statutory Review of the Payment Times Reporting Act 2020* (the Review).

The NSW Small Business Commission (the Commission) is an independent statutory office of the NSW Government. It provides strategic advice, advocacy and affordable dispute resolution services across NSW.

Late or slow payments can hinder a small business' ability to run their business, manage cashflow and meet financial obligations. While some small businesses are able to negotiate and agree to payment times which satisfy their commercial needs, many feel they have limited ability to negotiate in circumstances where payment terms are offered on a take it or leave it basis. Further, many small businesses feel powerless to enforce their rights when late payments occur. Small businesses are less likely to speak up under a self-enforcing framework if they fear they will risk losing future work.

For this reason, many small businesses welcome government initiatives that encourage fairer payment practices that meet the needs of both buyers and suppliers. This includes the payment times reporting scheme (PTRS) which provides greater transparency of the payment practices of large businesses and government enterprises. The statutory review provides an opportunity to consider the efficacy of the PTRS as well as whether further policy responses could be adopted to complement or improve the scheme.

While there is merit in considering other measures, any new policy responses must be carefully designed. Mandating new requirements could potentially lead to unintended consequences with larger businesses deciding to avoid purchasing from smaller businesses. Small businesses frequently encounter difficulties in supplying their products and services to larger buyers. Any requirements that larger businesses perceive to be onerous, costly or complex may exacerbate existing challenges. The Commission encourages consideration of the broader impacts of potential policy options on small businesses, including both the benefits associated with faster payment times as well as any indirect costs to small business.

Issues for small business

Payment times is a significant issue for small businesses with many paid late or not at all and forced to undertake additional actions to chase payments. The Commission's September 2022 Small Business Survey revealed one in three (37 per cent) businesses have noticed changes in payment times practices. Of those businesses who noticed changes, one in two (46 per cent) indicated that customers are paying invoices one month or more past the nominated due date.

In response to late payments, typical actions taken include sending a reminder notice (indicated by 79 per cent of respondents), sending an overdue invoice (55 per cent) and/or cutting off products and services until outstanding invoices are paid (34 per cent).

While these actions can assist in encouraging timely payments, many small businesses believe they are at a disadvantage when dealing with larger businesses who may design contracts biased to their own interests or otherwise be unresponsive to requests for payment. Small businesses perceive they are unable to negotiate payment times as larger businesses either provide a standard contract or there is otherwise an expectation that terms are accepted without amendment.

Barriers to negotiating suitable payment terms, whether real or perceived, may discourage small businesses from requesting terms which support sound business practices. For example, being paid in a timely manner can impact the ability of a small business to pay their own invoices on time, particularly where they are awaiting payment for a significant piece of work. The benefits of timely payments to small businesses may therefore be higher than any associated financial or administrative costs incurred by a buyer. A more favourable environment to negotiate payment terms may therefore facilitate more efficient outcomes.

In circumstances of late payment, small businesses are often either reluctant to pursue actions to seek payment due to perceptions they may lose future work or may experience difficulties engaging payment centres or teams that are responsible for actioning invoice payments. If errors or underpayments occur, businesses are further hindered by having to navigate time-consuming, complex processes to chase payments.

Challenges with mandating maximum payment periods

The Commission is supportive of further initiatives to address the aforementioned issues particularly to the extent to which they can negate situations where small businesses are essentially providing no interest finance to large corporates or even governments. However, we also note that poorly designed policy responses could potentially push large businesses and governments to favour purchasing arrangements with those businesses not included in any new requirements (for example, other large business). Large businesses and governments may avoid buying from or doing business with small businesses if they consider the requirements too difficult or arduous to navigate.

The Review specifically considers whether there should be mandated maximum payment periods. While there would be benefits associated with this approach, there may also be costs and these need to be carefully weighed and considered.

The Review should consider the relative cost versus benefit of mandated maximum payment periods. Page 9 of the Review's Consultation Paper (the Paper) gives an example of the potential trade-offs between shorter and longer payment times, particularly where a longer payment time period may result in more compliance but longer payment times overall. While the Paper raises that a superficial analysis may preference shorter payment times, it is important to also consider the time cost and productivity loss in chasing late payments as well as difficulties associated with planning cash flow. Some businesses may therefore prefer the certainty of an agreed payment time even if it results in longer payment times compared to the counterfactual.

The Commission would also welcome further consideration of how any mandated maximum payment period would be implemented, including any exclusions or ability to opt out of the requirement.

Overall, there should be sufficient confidence that any new requirements would not result in unintended consequences such that any benefits to small businesses are negated by other impacts or perceptions that discourage large entities from buying from small businesses.

The NSW Government has some experience in implementing mandatory maximum payment periods for small business. The NSW Government implemented its Faster Payment Terms policy for registered small businesses in 2018. In January 2020, payment times for registered small business suppliers shortened from 20-calendar days to five business days. The commitment applies to invoices up to \$1 million.

While the NSW Government is exceeding its faster payment commitments of more than 80 per cent of payments to registered small business providers within five days, the requirement has presented practical challenges for participating agencies to meet the commitment in some specific circumstances. A review into the Faster Payment Terms policy in NSW is currently being finalised with the objective to identify any opportunities to improve the policy parameters to ease challenges in agency implementation and avoid any potential unintended consequences for small businesses. Overall, the Commission observes that any maximum payment period must be supported by the underlying systems and processes of buyers. Technology such as e-invoicing has the potential to facilitate faster payments and may in the future support more ambitious targets.

Faster Payments to small business linked to government work

A recommendation that should be considered is the capacity for the Australian Government to obligate prime and sub-prime contractors engaged through government contracts to meet defined faster payment commitments to small and medium businesses. Monitoring the performance and collating the experience on a national basis of such an obligation would provide valuable insight as to the benefits and challenges of such a requirement.

Thank you for the opportunity to make a submission. If you require further information, please contact Megan Bennett at either megan.bennett@smallbusiness.nsw.gov.au or (02) 9372 8767.

Yours sincerely

Chris Lamont
Commissioner
NSW Small Business Commission

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