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Treasury's Public Consultation of Payment Times Reforms

HIA takes this opportunity to respond to the *Payment Times Reporting Amendment Bill 2024* (Bill).

HIA has made a number of submissions in response to the Payment Times Reporting Framework (Framework) in support of moves that facilitate prompt cash flow and the timely payment of progress claims. Simultaneously, HIA has expressed several concerns with the Framework, some of which have been well captured and articulated in the *Statutory Review of the Payment Times Reporting Act 2020 - final report* (Final Report).

HIA notes that the Government has agreed to, or agreed in principle to, all recommendation in the Final Report. The Bill now seeks to implement those recommendations.

The main concern with the Bill, and focus of this correspondence, is the proposal to introduce a new direction making power that empowers the Minister to make a written direction to a reporting entity that it is a 'slow small business payer' (Direction). A Direction will require the entity take certain action.

These Directions will essentially 'name and shame' slow small business payers. While there may be some value in this as a first step, HIA does have concerns with this approach particularly given the penalty regime attached to non-compliance with a Direction.

Who is a slow payer?

The Bill proposes that a slow small business payer is a reporting entity that falls within the 'slowest 20 per cent of small business payers'. This is to be defined by the rules. This definition is clearly critical to ensure that this approach yields information useful to small businesses.

HIA does not support this approach that focuses on slow payers and instead suggests that a model more aligned with that operating in the UK being 'Good Business Pays' be adopted.

Good Business Pays focuses on rewarding ‘fast payers’ that pay suppliers in less than 30 days on average and pay more than 95 per cent of their invoices on time. Further, Good Business Pays reports data to identify:

- Late payers: which pay more than 50 per cent of invoices later than agreed payment terms;
- Slow payers: which have an average payment time of more than 80 days; and
- Late and slow payers: which pay more than 50 per cent of invoices later than agreed terms and have an average payment time of more than 80 days.

The distinction between a ‘late payer’ and a ‘slow payer’ is important and would assist reporting entities in responding where issues have been identified. It may also assist small businesses when making decisions about who they wish to contract with.

To that end, other factors to consider when issuing a Direction include:

- The agreed payment terms.
- The industry specific approach to payment times and terms. Approaching these matters on an industry specific basis would provide greater transparency in payment times and terms and amplify the utility of the data for small businesses.

Further, if a Direction is issued, the Direction may continue until the entity reports a 95 per cent payment time of 30 calendar days or less. This may not be a reasonable or practical benchmark as such, this approach should be reconsidered.

Penalties for non-compliance

Under the Bill failure to comply with a Direction attracts penalties of up to $62,600 but potential penalties appear to be significantly higher than that.

HIA opposes this approach and see it as unnecessarily punitive. The ‘name and shame’ approach may be considered an appropriate first step to influence payment times and terms. Penalties could be considered further once the improvements to the Framework, in line with the Final Report, have been implemented and are operational.

Feel free to contact me if you wish to discuss this further.

Yours sincerely
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