Australian Chamber of Commerce and Industry

Payment Times Reporting Framework

Submission to the Department of Jobs and Small Business March 2019

Introduction

The Australian Chamber of Commerce and Industry (Australian Chamber) welcomes the opportunity to make a submission to the Department of Jobs and Small Business in responding to its Payment Times Reporting Framework discussion paper February 2019.

The Australian Chamber, as the largest representative organisation for small business, supports the Federal Government's aim of getting big business to pay small business as quickly as possible and welcomes its commitment under Government procurement policies to pay invoices/contracts under $1 million within 20 days by 1 July 2019, compared to 30 days now.

However, we do have concerns about how a payment times reporting framework for B2B transactions can be effectively and efficiently achieved. These concerns stem from:

- the burdensome red tape impost that risks diluting the benefits for the economy as a whole;
- the likelihood (as other paths are even more difficult) that contract amount will need to be used as an imperfect proxy for small business which will dilute the focus of framework; and,
- the capture of a much larger number of businesses (turnover $100m plus) in what was to begin with a focus on big business.

Payment Times important for Small Business

Late payment for goods and services supplied to large businesses is a major bug bear for small business. It can have a major influence on the budget and cash flow of a small business owner as they try to keep on top of their day-to-day running expenses. In the more serious cases, it can put undue stress on both the business and the individual.

A large unpaid account may hamper any expansion plans a small business might have or prevent an expansion in their staff. Furthermore, it can put a greater strain on their finances should a supply chain be involved.

An online workshop[1] on the proposal found some big businesses can take up to 60 days to pay a small business. Feedback from our members indicates that at times this wait can be much worse. It is not unheard of when a big contract is involved that a small business owner may need to take out a second mortgage or bridging finance to keep their head above water waiting for payment.

[1] Dept of Jobs and Small Business/Alphabeta Online Workshop 21 February, 2019.

And it is not just big business that is dragging its heels. Government agencies have been known to be up to three months late making a payment which demonstrates the need for the Government to act in the way it has done to reduce payment times.

We acknowledge the efforts of the Business Council of Australia in its voluntary code to shorten the time its members take to pay small business.

We also recognise the Australian Small Business and Family Enterprise Ombudsman's (ASBEFO) diligence in promoting its own National Payment Transparency Register.

These steps are taking the right direction and have in themselves put an increased focus on the issue of payment times to small business, which should be applauded.

Complexity and Phasing In

What has also become clear in our discussions with stakeholders is attempts to regulate payment times demonstrates significant complexity, with many questions still to be resolved. Dealing with the issue through voluntary codes allows for a degree of good faith and reasonableness to be acceptable. In a regulatory environment, codifying issues such as proof of business size become much more onerous.

As such, whatever framework design is finally implemented, we believe this new payment time regime must be phased in over a number of years.

Options for defining and recognising a small business

Defining and identifying a small business for the purposes of regulating payment times, and even more so, having business accounting systems recognise one, is problematic.

The Australian Bureau of Statistics defines a small business as one employing less than 20 people. However, the Australian Taxation Office uses a turnover benchmark of less than $2 million and Fair Work Australia defines a small business as one less than 15 employees.

Regardless of whether it is based on turnover or employee numbers, the accounts departments of a big business are often unlikely to know the size of a business they are dealing with. The only mechanism existing now to do this is for each supplier to self-identify by business size.

A small business should not have to prove its size when dealing with a large entity and neither should a big business have to spend time deciphering whether they are doing business with a small firm. It becomes more complex when supply chains are involved. It is simply impractical to have a framework based on a small business being defined in a B2B supplier. This statement is made with the knowledge that some businesses operating within the BCA code are operating on the basis of suppliers identifying themselves as small business. However, it is difficult to shift this trust and good faith arrangement to a regulatory environment.

In the consultation, we understand it has been raised as to whether the proposed scheme should cover all suppliers. This approach is not supported. It is not clear if businesses who have expressed support for this approach have done so for completeness or comparison reasons, or (far more likely) they have suggested it as it would be easier to report on payment times without dissecting the information according to business size.

Implementing a red-tape heavy scheme which merely captured payment times of all suppliers without information about payments based on size would fundamentally fail the objective of the scheme. Seeking information on all suppliers dissected according to size inherits the same problems of identifying size of supplier than only reporting payment times for small businesses.

Given this, the only workable approach is to use as a basis of the scheme the contract value as a proxy for size of supplier. But even in this approach, payment size is an inadequate proxy for smaller business as many contracts with larger sized entities would fall under the contract threshold.

This approach, then, raises further questions:

(i) Should the contract size be defined by its annual value or its full value if it covers a number of years?
(ii) Should there be an option to phase in the contract size – starting out by only capturing contracts of a lower value, and then capturing larger contracts if there is evidence that a significant number of small business payments are being excluded?
(iii) Should it matter that larger businesses will benefit from a reporting framework that seeks to improve the payments times for contracts less than a threshold, given that many contracts valued under the threshold will be to large businesses?

In relation to the last point that all contracts under an agreed threshold will benefit, there is no doubt that given the policy objective is to improve payment times to small business – achieving this would be diluted by an inadequate proxy. Is the benefit worth the cost?

As a variation on the option of using only contract value as the captured transaction for the purposes of the scheme, one solution for the new system would be to allow a large business the option of how it defines a small business, whether it be on the number of people or turnover. Given the Business Council's voluntary code and ASBFEO transparency register are already up and running, albeit on a smaller scale, some businesses already have practical history in reporting their payment times. This option comes at a disadvantage that the regulation would have to accept the good faith nature of the code and that there would be parallel systems. The advantage is that it would provide a control group to test the veracity of the approaches, and assist in testing the adequacy of the proxy of contract size.

Defining a big business

The Australian Bureau of Statistics defines large business as any business with over 200 employees. The Australian Taxation Office defines it as entities that are part of an economic group with a combined turnover greater than $250 million.

The ATO figures indicate that there are 1,470 corporate groups with a turnover above $250 million in 2016/17[2], which is less than half of 3,000 businesses the framework is intended to capture.

Therefore, the proposed definition of a $100 million turnover will capture a substantial number of medium-sized businesses, extending the economic drag of red tape burden.

If this framework is implemented, the number of businesses it seeks to include should be minimised to the largest businesses or at least phased in for other company sizes over a number of years.

For example, in its 2016 Businesses in Australia report[3] , researcher IBISWorld said there were 312 enterprises with revenues over $1 billion in 2015.

[2] https://www.ato.gov.au/General/Tax-and-Corporate-Australia/In-detail/Demographics-of-large-corporate-groups/
[3] https://www.ibisworld.com.au/media/2016/07/07/businesses-in-australia-2/

This could be an initial starting point and would be more than three times the number of businesses involved in the present Business Council's voluntary code. This brings another way that the reporting framework can be phased in – capture the larger ones first to prove the model before attempting to bring all businesses above $100m turnover into the framework.

One of the questions that will need to be addressed in defining the businesses captured by the scheme is whether large company groups report to the framework as groups or as separate entities. For example, the community probably recognises Bunnings, Kmart, Officeworks and Coles rather than the group head Wesfarmers.

Information Fields

From the Australian Chamber's perspective "less is best" in terms of information for the framework in order to reduce the regulatory burden.   The company should provide its name, ABN number and a brief description of its business – retailer, banking & finance, etc.

Essential would be the standard payment time set for the transactions to be captured, the average payment time and the percentage that the standard payment time is met.

In terms of when a payment time begins to be measured, this should be when the correct (as agreed between the parties) invoice is sent, which would remove from the reporting framework time delays when a payment is in dispute.

Reporting Mechanism

The public reporting of information is an area open for further discussion. Whatever shape the reporting system takes, it must be implemented over time given the number of companies the government wants to include.

This would give the less-than-large companies, if they are to be included, additional time to set up systems to supply the payment time information.

A centralised publishing arrangement will provide an easier way to find information of a company a small business is dealing with so it can adjust its budget accordingly or not take up the contract at all. Similarly a big business can compare how it is performing against its peers. However, this approach leads to a "name and shame" outcome, which comes with its own costs.

While a decentralised mechanism where businesses enter their information on their own website would require less technical infrastructure and potentially cost the government less to implement, it could prove to be a time consuming exercise to aggregate the information for analysis.

Payment time information could be updated every six or 12 months to not be too onerous.

Summary

The Australian Chamber supports the policy intent to ensure small business is paid more quickly by its larger counterparts but is sceptical that an effective policy framework can be put in place without the cost of the red tape burden outweighing the benefits, particularly as the need to use a proxy for small business dilutes the focus of the policy.

If the Government maintains an intention to implement the policy, it should focus the obligation only on the very large businesses (at the minimum turnover above $250m), and use contract size as the only practical option despite it being an imperfect proxy for small business. However, should the Government insist the scope of the framework must take in all companies with a turnover of over $100 million, it is essential that this must be conducted through a phased implementation over a number of years.

Telephone | 02 6270 8000 Email | info@australianchamber.com.au
Website | www.australianchamber.com.au