3 March 2023

Payment Times Reporting Act Review Secretariat
Small and Family Business Division
The Treasury
Langton Crescent
PARKES ACT 2600

PaymentTimesReview@treasury.gov.au

Dear Secretariat

RE: Statutory Review of the *Payment Times Reporting Act 2020 Consultation Paper*

The Australian Chamber of Commerce and Industry (ACCI) appreciates this opportunity to provide comment to the statutory review of the *Payment Times Reporting Act 2020*.

ACCI, as the largest representative organisation for small business, supports the federal government's aim of getting large business to pay small businesses within 30 days of receipt of a correct invoice. The Payment Times Reporting Scheme requires large businesses with a turnover of more than $100 million to report every six months on their payment times and terms to small businesses. The aim is to give small businesses (and members of the public) access to information on large businesses' payment performance.

We believe that there are a range of measures that can be introduced to improve the efficiency and effectiveness of the payment times register. The register needs to be simplified to make the payment performance of a large business immediately apparent to the user. Greater promotion of the register is required to create awareness of its existence. In addition, more assistance should be provided to small businesses facing difficulties obtaining payments for outstanding invoices. That said, we also emphasise the need to balance the compliance burden associated with the mandatory reporting obligations.

Appendix A provides responses to the questions posed in the consultation paper.

Yours sincerely,

[redacted]

David Alexander
Chief of Policy and Advocacy

Appendix A

Question 1: How important are payment terms and practices to small businesses when considering a supply contract with a large business or government enterprise? Has their relative importance changed over time?

Payment terms and practices, such as the payment schedule, method of payment, and dispute resolution mechanisms, can greatly impact a small business' cash flow and overall financial stability. The relative importance of these factors has increased in recent years as small businesses have become more reliant on larger organisations as customers, and often have less leverage to negotiate favourable terms. The increase in digital technology has made the timely payment of invoices easier than ever before.

Late payment for goods and services supplied to large businesses are a significant challenge for small businesses. It can have a major budget implications for 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.

Late payments affect cash flow for the business owed the debt, which in turn forces it to seek alternative (more expensive) ways to finance the resulting shortfall in working capital (loans etc.). A large unpaid account can also hamper any expansion plans a small business might have or prevent an expansion in their staff.

The impacts of COVID-19, supply chain challenges, and increased interest rates also impact on small businesses and their cash flow, making on time payments a priority.

Question 2: What factors are driving current and emerging trends in payment terms and practices? How do they affect large businesses, small businesses, and the economy?

The decrease in the use of cash is driving the use of digital payment methods, coupled with more companies moving online, this has allowed for payments to made rapidly.

Large businesses have the resources to quickly adapt to new payment technologies and trends. The use of digital payments for small businesses can be positive as it allows them to access a wider customer base and streamline their operations. However, small businesses may have more difficulty adapting to new payment technologies and trends, and may also face more competition from larger businesses.

The shift towards a cashless economy is also positively impacting payment practices, as more consumers and businesses prefer to use digital payment methods.

Question 3: What is a ‘reasonable’ timeframe in which small businesses should be paid? Should ‘reasonable’ vary between different industries or sectors?

In general, small businesses should be paid as soon as possible. A reasonable payment timeframe of 30 days for small businesses would be considered standard for most industries.

However, for some industries such as construction, it is common for payment to be made in stages, as work is completed. In these cases, the timeframe for payment may be longer than 30 days, but should be agreed upon and clearly outlined in contractual terms. It is important for small businesses to be aware of, and to be able to consider the payment terms and practices, when entering into a supply contract. This will enable them to have the opportunity to negotiate terms that are favourable for their financial stability. Introducing compulsory time frames that differ between industries will add another layer of red tape that is unnecessary. As such, timeframes should be left to contract negotiations.

Large businesses should be encouraged to pay their invoices sooner, where possible, and all federal and state agencies should implement minimum standards to pay invoices to small business as soon as possible.

Question 4: Having regard to the goal of the Review and the three principles, how effectively is the operation of the Act meeting the objects set out in Box 2?

Object (a) to provide for large businesses, certain government entities and volunteering entities to report information on their payment terms and practices in relation to their small business suppliers; and

The register requires large businesses, certain government entities and volunteering entities to report information on their payment terms and practices in relation to their small business suppliers. The reporting requirements of the register are very complex and cumbersome for large business, and the repercussions of making an error have considerable financial implications for businesses. Many businesses may not be equipped with a quick and efficient method of collating the information that is required, and may need to implement business improvements to meet their ongoing compliance obligations.

Object (b) to make that information publicly available in order to:

> (i) *enable small businesses to make more informed decisions about potential customers; and*

The information about payment terms and practices is difficult for a busy small business owner to find. The register is meant to be easy for small business owners to use — a key factor for time poor small business owners. In order to use the register, the small business owner needs to be aware the register exists in the first instance. In discussion with ACCI members, there is a broad lack of awareness of the payment times reporting register and is difficult to find and access. For example, the business.gov.au website's page on standard payment terms for businesses makes no mention of the payment times reporting register. Greater promotion of the register is needed to raise awareness among small businesses. The government should be advertising the register on its own websites, along with a wider general awareness rising campaign. Priority should be given to also linking the register to business.gov.au and other government websites.

There is a large amount of data collected and displayed on the payment times register, most of it redundant to small business owners. The register is accessible on a dedicated website with two different options to obtain payment time information, either via the dashboard or an excel spreadsheet. For a small business owner accessing the dashboard much of the information is redundant, with the payment terms of the organisation that is being reviewed not immediately apparent. Detailing all the information from the previous periods makes it clunky — for example if the business' information has not changed, such as name or ABN, it should not be repetitively listed. ACCI recommends the payment times should be made immediately apparent in the register.   If the user downloads the Excel spreadsheet they will be presented with over 23,000 lines of information containing the payment details across some 54 columns of every businesses who has been required to input data since the register began. It has too much information and is very difficult to navigate.

(ii) create incentives for reporting entities to improve their payment terms and practices.

The data collected on the register lists provides an incentive for reporting entities to improve their payment terms and practices, as it's publicly available. The businesses who are poor payers are clearly identified by any user, from small and large businesses, members of the public, or media. In making payment times information transparent through the register large businesses should be forced to improve their payment time performance or risk being unable to secure suppliers.

Question 5: What, if any, changes should be made to the existing Scheme to improve its efficiency and effectiveness in meeting the objects set out in Box 2?

The Scheme should be extended to include all governments who meet the same criteria as the large organisations, allowing small businesses to have an accurate picture of payment times.

The reporting requirements are complex and cumbersome for large businesses as the level of detail required is very high, while the repercussions of compliance failures have expensive implications for large businesses.

ACCI recommends simplifying and narrowing the mandatory reporting requirements to payment times exclusively, i.e., removing the need to report on supply chain finance and associated details. Reporting detailed information related to payment practices, such as supply chain financing, should be made an optional feature and interest should be registered on a voluntary basis. There are potentially 54 items of information that need to be entered just for the outward facing register making it overly cumbersome.

A large business should report annually rather than every six months, there are no clear benefits in requiring the reporting more frequently. Further, the biannual requirement does not meet the annual turnover threshold qualifier used to identify small businesses using the small business identification tool.

A large business should have access to a special consideration process, whereby entities in unique situations such as in voluntary administration, merger, corporate takeover, and alike are provided adequate amnesty on their reporting requirements to the register, noting that these transition periods can extend longer than three months.

Question 6: What are the main questions the Scheme's data should be able to answer about payment terms and practices?

The purpose of the scheme is to inform small businesses owners or other interested stakeholders of the payment times of large enterprises. The data should be easily accessible and the payment terms and practices of an entity should be immediately obvious to the user. Much of the information published in the register is redundant to the end user. For example, the three times the organisation has reported is listed side by side, this volume will only grow over the life of the register. Is it reasonable to expect a small business owner to view five or ten years' worth of data to find the most recent payment terms. The current invoice payment times data is the most important, so should be placed in a higher position, not last.

The excel spreadsheet lists all data since the register commenced, but would be more accessible if it was restricted to the payment terms and practices for the relevant time period. Data should be presented in one document with different time periods separately tabulated to allow for easier accessibility. The data should be easily downloadable and editable, it should not be a protected excel spreadsheet which makes it difficult to easily obtain comparative information for those who would like to do a wider range or in-depth analyses of the data

Question 7: Are the Regulator's powers and approach to compliance and enforcement effective and fit-for-purpose?

The regulator has yet to publicly disclose if it has used its compliance and enforcement powers. In the regulators first reporting period, between 1 January 2022 and June 2022, it did not use its compliance and enforcement powers. As a result, the effectiveness of relevance of this mechanism cannot be determined. However, the regulator should have been educating reporting entities during the transition period to ensure understanding of how the scheme operates. Penalty waivers for minor error reporting and first-time offenders should be explored.

Question 8: Excluding the Payment Times Reporting Scheme, to what extent have, or will, related Government policies improve payment terms and practices for small businesses? Would a substantial increase in e-Invoicing materially help reduce payment times?

The adoption of e-invoicing by government agencies with a mandated five-day payment time period of correct invoices is welcomed by ACCI, while standard invoices are still 20 calendar days.

We are aware of an example from one of our members, where a Consult Australia member business submitted a tax invoice for completed works for less than $5,000 to the government client. The government client refused to accept the invoice instead required a particular form of 'Claim for Payment' accompanied by a Statutory Declaration and other supporting documentation. The government needs to adopt clear, simple processes when engaging with small business suppliers.

At this stage businesses are, however, somewhat reluctant to adopt e-invoicing as they are concerned this is another avenue for the ATO to collect their data. While the ATO may not currently be allowed to access this data, there are no guarantees that the policy will not change in the future. A better education program about the information the ATO can obtain is needed to ensure further awareness of the benefits of e-invoicing.

Question 9: What are the disincentives for large business to offer improved payment terms and practices to small business suppliers? Are there other ways to more effectively incentivise improved payment terms and practices?

The payment terms and practices of large businesses are often very complex with internal systems that need to be adhered to when processing payments regardless of the size of the supplier issuing the invoice. It is important to note that within different sectors of business that what is considered a reasonable payment time can be quite different, for example for the construction industry.

The Payment Times Register should act as an incentive in assisting large businesses to improve their payment times, particularly when publicly publishing their data. There is a reputation component that is inherent to the register, being able to proclaim a business as having best practice payment time to small business suppliers is an advantage for marketing purposes. Large businesses want to cultivate good relationships with its small business suppliers.

Question 10: Would mandating one or more maximum payment periods for the payment of small business invoices by reporting entities be more effective in improving payment terms and practices? How should a mandatory maximum payment period(s) best be designed and implemented?

As previously mentioned in this submission a blanket mandated payment time would be difficult to implement due to the different structure of invoicing dependent on industry. A

30-day standard runs the risk of those companies that are already paying in less than 30 days falling back out to a 30-day time period.

The average payment time for invoices to small business owners in Australia is currently 35.66 days. This figure demonstrates that many businesses are already doing the right thing and paying close to the 30-day term period.

If 30-day payment terms became mandated this would place a considerable regulatory burden and compliance costs on organisations. It would also require sufficient investment from the government given there are millions of businesses in Australia to ensure both regulatory compliance and to enforce it. Dealing with the issue through voluntary codes allows for a degree of good faith and reasonableness to be acceptable. In a regulatory environment, there will be many issues that will become much more onerous such as codifying issues such as proof of business size.

A potential solution could be to extend the role of the Small Business Ombudsman, rather than the introduction of an additional layer of regulatory compliance for businesses. The Small Business Ombudsman would assist small business seeking payment of invoices. Additionally focus should be given to assisting small businesses to improve their rate of digitalisation.

If there are any proposed changes to the Act, they should be widely consulted on prior to implementation and must be phased in over a number of years.

Question 11: What other measures could be considered to improve payment terms and practices of reporting entities in relation to their small business suppliers?

There is a need to assist small businesses to improve their rate of digitalisation. It is estimated that close to half a million Australian SMEs have no or little engagements with digital tools.[1] Comparatively, larger businesses with greater capacity and resources for technology adoption and training have been able to adapt more rapidly.

The *Technology Investment Boost* and *Skills and Training Boost* Measures announced in the 2022-23 federal budget, provide an additional tax deduction of 20 per cent for small businesses, with an annual turnover of less than $50 million, to invest in external training of staff and business expenses and depreciating assets that support digital uptake. These measures were strongly supported by the business community, however the legislation to enact them are yet to pass the Senate.

The backdating of the measures to the 29 March, 2022 is welcome, however ACCI is concerned that small businesses do not have enough time to take advantage of this opportunity prior to their expiry. Indeed, the *Technology Investment Boost* is set to culminate on 30 June 2023 while the *Skills and Training Boost* finishes on the 30 June 2024. ACCI recommends both these incentives are extended to 30 June 2025. This will

[1] Myob, Australia's SMEs: A Snapshot, 2022

allow more small business to take advantage, encouraging a far greater uptake, enabling a greater number of small businesses to digitalise and grow.

Question 12: What international approaches to improving payment terms and practices for small businesses, including lessons learnt, should be considered in the Australian context?

In the UK, legislation has been introduced to improve payment terms, *the Late Payment of Commercial Debts (Interest) Act 1998* which was amended in 2004 to include small businesses.

The law enacts a maximum term of 30 days for public authority payments and 60 days for commercial terms, unless expressly agreed by both parties 'and not grossly unfair'. Where no terms are specified in the contract term of 30 days applies. If payment is made late, businesses can claim interest on the debt. Additional compensation for recovery costs may also be provided. If the contract states an interest rate for late payment that rate applies. If no rate is specified, the interest rate applied is the Bank of England's Bank Rate plus eight per cent.

Notwithstanding the legislation in the UK, payments times to small businesses still remain higher than that of Australia. In September 2022, payments where on average 8.2 days late, even with the mandate legislation, in fact Australia is highlighted as a better payer of invoices with an average 6.5 days of late payment[2]. This highlights that even creating the regulatory framework for penalties for late payment may not necessarily deliver the intended results. In November 2022, the UK Small Business Commissioner raised concerns with increasing the legislative burden, suggesting that the current remedy adds to the burden for businesses and instead supports creating a culture of prompt payment to create better payment performance[3]. Australia should consider the experience of the UK's late payments legislation and look at ways to develop a culture of payment on time, noting the costs of creating regulatory burden for businesses both large and small.

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[2] The Institute of Chartered Accountants in England and Wales, Late payments for small businesses hit two year high, 2022

[3] Small Business Commissioner, It's never better late, 2022