



**Small Business
Development Corporation**
Office of the **Commissioner**

Our ref: D23/1871

Hon Dr Craig Emerson
Independent Reviewer
Payment Times Reporting Act Review
Small and Family Business Division
Treasury
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Dear Dr Emerson

STATUTORY REVIEW OF THE *PAYMENT TIMES REPORTING ACT 2020* – CONSULTATION PAPER

Further to our correspondence in December 2022 and the subsequent release of the Consultation Paper on 3 February 2023, the Small Business Development Corporation (**SBDC**) welcomes the independent review of the *Payment Times Reporting Act 2020* (**the Act**).

The SBDC is an independent statutory authority of the Government of Western Australia established to support and facilitate the growth and development of small businesses in the State¹.

One of the agency's key strategic objectives is to influence the policy and regulatory environment affecting the small business sector in Western Australia. In this regard, the SBDC regularly contributes to Federal Government reviews and consultations, and collaborates with Commonwealth regulators and the Australian Small Business and Family Enterprise Ombudsman (**ASBFEO**) to address national policy issues impacting small business.

The SBDC has long advocated for improved payment performance from big business to small business. Cashflow is critical to small business and is the single leading cause of business failure. Late payment impacts income and creates cashflow instability leading to a wide range of issues for not just the small business but its whole supply chain and more broadly negatively impacts the economy.

¹ This submission outlines the views of the SBDC and does not necessarily represent the views of the Western Australian Government.

During the height of the COVID-19 pandemic, we saw many large corporations and government agencies improve their payment performance dramatically demonstrating that big business is capable and has the capacity to improve their payment performance.

Undoubtedly the operation of the Act including the introduction of the Payment Times Reporting Register (**the Register**) has increased the transparency of payment times in Australia; what it reinforces however is that current payment performance is not only unacceptable but, of greater concern, not improving.

Whilst I believe that there are many underlying issues fostering late payments, the most significant at play is the imbalance of power between big business buyers and small business suppliers. Longer payment terms work in the big business's favour; without any penalty for paying late, the buyer is not disincentivised to delay payments and can often use its significant purchasing power to pressure smaller suppliers to discount their prices in return for "prompt" payment using supply chain finance or reverse factoring.

The effectiveness of the Act relies heavily on enabling small businesses to make informed decisions about potential big business customers. This assumes that small businesses:

- are aware of the Register;
- are able to interpret and make sense of the data;
- have the luxury of being able to pick and choose their customers; and
- have better options available in the marketplace.

Australia's market size is relatively small and for some industries small businesses have just a handful of very large businesses as potential customers (with virtual monopolies/duopolies dominating the grocery, hardware and other industries). As a result, small businesses are experiencing market failure and a case can be mounted that further government intervention is justified.

The Register has to date highlighted that transparency or the "name and shame" approach has provided little incentive for improvement because **poor practice is common practice**. If small business has no real option but to deal with big business, and no better options available in the marketplace for customers, decision making is limited. This conclusion undermines the effectiveness of the Act in meeting its stated objectives and corroborates arguments for stronger interventionist measures to be introduced.

International codes and policies have had varying levels of success and provide important lessons for the Australian setting. Voluntary codes of practice or schemes have proved largely ineffective. It generally costs money to pay early and places those that do at a significant competitive disadvantage, disincentivising big businesses to voluntarily join such codes. There is also little evidence that voluntary codes result in improved payment times because those voluntarily signing the code typically already have better payment practices in place.

By way of example, a review of the Payment Practices and Performance Regulations 2017 from the United Kingdom found that it had met its objectives; being the provision of greater transparency and highlighting businesses with poor performance. However, it is unclear if payment performance to small suppliers has improved in response to its introduction.

The data available on the Register confirms that big business payment performance in Australia remains poor, with little indication of it improving under the current operation of the Act. The SBDC believes addressing the imbalance of power between big business and small business is key to incentivising better practice and improving payment performance.

I welcome the opportunity to meet with you to expand on the issues raised above and share my views on the operation of the Act and discuss potential improvements and other options to influence the market for the benefit of small businesses in Australia.

Yours sincerely



David Eaton
SMALL BUSINESS COMMISSIONER

28 February 2023