AUSTRALIAN TRUCKING ASSOCIATION

SENATE EDUCATION AND EMPLOYMENT LEGISLATION COMMITTEE

PAYMENT TIMES REPORTING BILL 2020
PAYMENT TIMES REPORTING (CONSEQUENTIAL AMENDMENTS) BILL 2020

AUSTRALIAN TRUCKING ASSOCIATION SUBMISSION
3 JULY 2020

1. About the Australian Trucking Association

The Australian Trucking Association and its member associations collectively represent the businesses and people of the Australian trucking industry. Together we are committed to safety, professionalism and viability.

2. Introduction

The ATA welcomes the decision of the Senate to refer the provisions of the Payment Times Reporting Bill 2020 and the Payment Times Reporting (Consequential Amendments) Bill 2020 to the Education and Employment Legislation Committee.

The bills would establish a new Payment Times Reporting Framework for large businesses with more than $100 million in annual income,[1] who would be required to report twice a year on their payment times and practices with respect to small businesses.

3. Impact of extended payment times on trucking businesses

The trucking industry is an industry of small and family businesses. More than 98 per cent of trucking operators are owner operators or small businesses with 19 employees or fewer.[2]

The industry works on tight margins. Research by ANZ has previously put the industry's median profit margin at just over two per cent, with the bottom quartile of the industry either experiencing negative, flat, or very tight profit margins.[3]

Most of the costs incurred by trucking businesses must be met before they can bill their customers. These include wages or personal living costs, fuel, tyres, insurance, finance costs, registration and maintenance.

As a result, extended payment times are a significant issue for all trucking businesses.

[1] Payment Times Reporting Bill 2020, s 7(2).
[2] ABS, Counts of Australian Businesses. ABS Cat 8165.0. June 2018.
[3] ANZ Bank, Research provided to ATA, 2017 and 2018.

Payment times in the trucking industry

Small businesses in the transport, postal and warehousing sector are, on average, paid in 26 days[4] – but that average smooths out large variances in payment times. A furniture removalist carrying out a house move would most likely be paid upfront or on the day of the move. Other trucking businesses face long payment times, as case study 1 shows.

Case study 1: long payment times in the trucking industry

> One RFP issued by a multinational business to trucking companies advised that payment would be made up to 97 days after the end of the month they received a compliant electronic tax invoice.

Sudden adverse changes in payment times

Trucking businesses, and particularly small businesses, are vulnerable to adverse and sudden changes in their payment times. Case study 2 is an example.

Case study 2: impact of extending payment times

> In 2019, a regional NSW trucking business with fewer than 10 trucks experienced the impact of a long extension to its payment terms. An international corporate customer extended its payment terms from 30 to more than 60 days without notice.
>
> Due to the lack of notice, the trucking business struggled to meet its immediate financial commitments and its credit rating was affected. The business had to source an additional $200,000 in working capital at the same time as its other customers were affected by the drought.

Supply chain financing

Some large industry customers have extended their payment times and then asked for discounts for early payment or offered supply chain financing. Case study 3 summarises how extending payment terms and offering finance can work to disadvantage suppliers.

The ASBFEO's supply chain financing review found that using supply chain financing to offset extended payment terms was not an acceptable commercial practice.[5]

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[4] Xero, Paying the price: the economic impact of big businesses paying Australian small businesses late. Report produced by AlphaBeta Advisors, June 2019. 9.

[5] ASBFEO, Supply chain finance review: final report. March 2020. 15.

Case study 3: supply chain financing

In association with a global bank, a major corporation offered supply chain financing to trucking businesses and other suppliers affected by its decision to move from 30 to 90 day payment terms.

For a representative $100,000 invoice, it was said the financing program would save a supplier almost $900 in financing costs compared to funding the payment terms extension itself.

The corporation could, instead, have supported its suppliers by retaining its original payment policy.

4. How the bills would help

The stated aim of the bills is to improve payment outcomes for small businesses by creating transparency around the payment practices of large business entities. Small businesses would be able to make more informed decisions about their potential customers; directors and executives would come under cultural pressure to match their peers.[6]

The RIS estimates that up to 60 per cent of reporting entities would improve their payment practices as a result of the bills, using the improvement reported under the UK payments and practices reporting requirements as a starting point. It estimates the bills would deliver a net economic benefit of between $447 million and $1,107 million over 10 years in NPV terms. [7]

Accordingly, the ATA recommends—

Recommendation 1

The Payment Times Reporting Bill and the Payment Times Reporting (Consequential Amendments) Bill should be passed, subject to ATA recommendations 2 and 3.

5. Proposed amendments to the bills

Content requirements for entity reports

Section 14 of the Payment Times Reporting Bill sets out the content requirements for entity reports. Reporting entities would be required to disclose:

- the shortest and longest standard payment periods for the entity at the start of the reporting period
- details of any changes to the shortest or longest standard payment periods for the entity during the reporting period
- The total proportion (number and value) of small business invoices paid in the calendar day periods of 1-20 days, 21-30 days, 31-60 days and more than 60 days.

The responsible minister would be able to make rules to prescribe the detail of these reporting requirements.

[6] Payment Times Reporting Bill 2020 and Payment Times Reporting (Consequential Amendments) Bill 2020: Explanatory memorandum. 2.
[7] DISER, Payment times reporting scheme regulatory impact statement. 28.

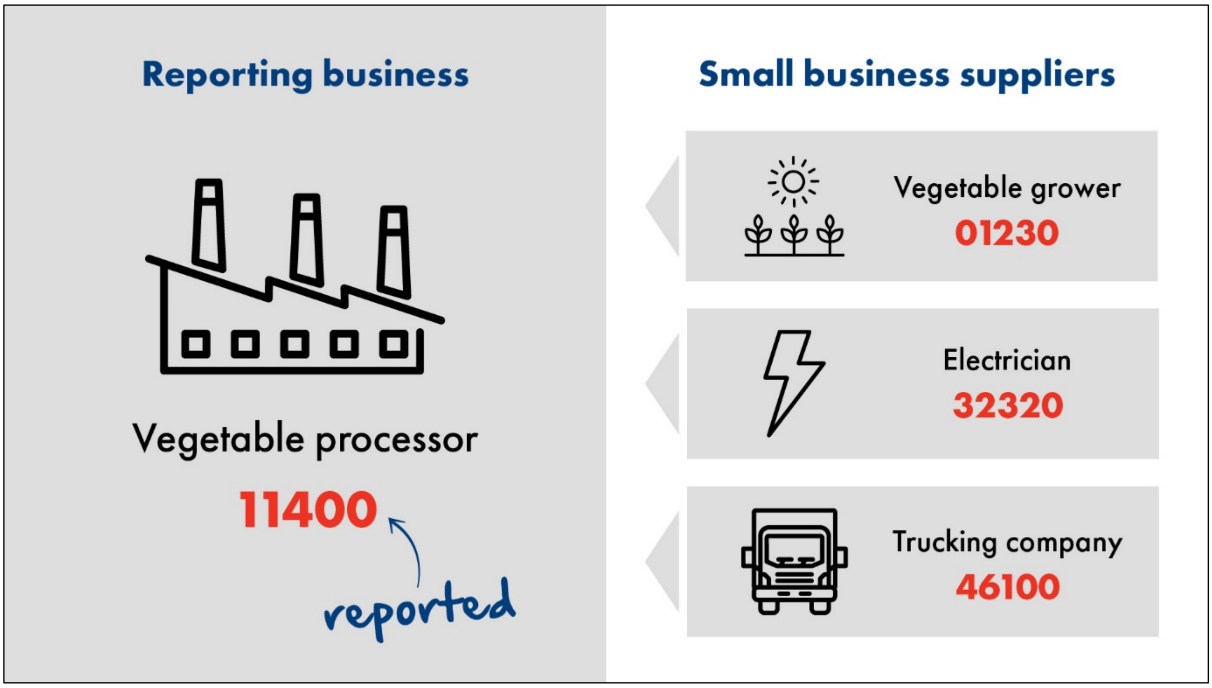
Under the exposure draft rules, reporting entities would be required to disclose their main business activity in accordance with the ATO's business industry code (BIC) system.[8,9]

In figure 1, the large reporting business – a hypothetical vegetable processor – would report its business industry code as 11400.

Its performance against the disclosure requirements in the Payment Times Reporting Bill could then be compared to other businesses in the vegetable processing industry.

Its results could be aggregated with other manufacturers and compared to other industry divisions such as wholesale trade or agriculture, fisheries and forestry.

Figure 1: business industry codes of a hypothetical large business and its suppliers



But the statistics would not provide industry-level insights into the experience of small business suppliers. It would not be possible to determine, for example:

- the longest standard payment period experienced by small business vegetable growers or
- the proportion of invoices issued by small trucking businesses and paid after more than 60 days.

In our view, legislators, policy makers and policy advocates need this information. It would enable the industry sectors where tailored action is needed to be identified.

Accordingly, the ATA considers that s 14 of the Payment Times Reporting Bill should be amended to require entities to break down their reporting based on the business industry codes of their small business suppliers.

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[8] Payment Times Reporting Rules 2020. Exposure draft, 12 May 2020. s 8(b).
[9] ATO, Business industry codes. Fact sheet, 2017.

In figure 1, for example, the vegetable processor would be required to disclose its payment terms and performance in relation to small businesses in code 01230 (vegetable growers), 32320 (electrical services suppliers) and 46100 (trucking providers) as well as its overall results.

There would need to be a consequential amendment to s 20 of the Bill to enable the regulator to decide not to publish information that would cause competitive detriment to a small business.

The amendment would address the possibility that these more detailed reporting requirements could reveal commercial information about a small business if it was the only small business in a BIC category supplying a reporting entity.

To minimise the regulatory burden of the amendment, the Payment Times Small Business Identification Tool could return the BIC of each small business supplier.[10]

Recommendation 2

The Payment Times Reporting Bill should be amended to:

- require reporting entities to provide disaggregated information based on the business industry codes of their small business suppliers
- enable the regulator to decide not to publish information that would cause competitive detriment to a small business.

Switching from biannual to annual reports

The ATA recognises that the extra detail required in each report would involve increased processing times.

For that reason, we recommend that entities be required to report once a year rather than every six months.

We do not believe the switch would have any impact on the effectiveness of the framework or the transparency of reporting. Payment times could be expected to respond slowly to the new reporting requirements: the half year on half year changes in the results would be small.

Recommendation 3

Section 8 of the Payment Times Reporting Bill should be amended to provide that reports be made once a year rather than every six months.

[10] Explanatory memorandum. 3.

6. Stronger action is needed

A monitoring framework is not enough

The ASBFEO payment times report concluded that public reporting and monitoring alone would not compel the worst offenders to adopt shorter payment times, nor necessarily improve their payment practices. Where law does not exist there will be exploitation of the gap, the report found.[11]

The lived experience of the trucking industry confirms the ASBFEO's findings.

Landside port charges are monitored by the ACCC, which produces an annual monitoring report.[12]

On the same day the 2018-19 report was released, DP World at Fremantle announced a 447 per cent fee increase[13] and Qube, who co-own Patrick, dismissed the report as the annual 'kick a stevedore' day.[14]

Adding legislated payment times

The ASBFEO recommended that Parliament should legislate a maximum acceptable payment time for business conducted in Australia. Longer terms could be agreed providing they were not grossly unfair.[15]

The recommendation mirrors the European Union's 2011 late payment directive, which was implemented in the UK as a regulation under its late payments of commercial debts law.

The directive requires EU member states to put in place, as a minimum:

- 60 day payment times for business to business contracts. Longer payment times remain possible if they are expressly agreed and not grossly unfair to the creditor[16]
- the right to interest charges for non-performance, without the need for the creditor to give prior notice[17] and
- the right to a fixed sum for recovery costs, as well as the reimbursement of external recovery costs such as legal fees.[18]

Germany has gone further than the directive and imposed 30 day payment terms on all B2B transactions. France has imposed fines of up to EUR 15,000 (AUD 24,300) for payments in the road freight transport sector that fail to comply with 30 day terms.[19]

[11] ASBFEO, Payment times and practices inquiry - final report, April 2017. 14.
[12] ACCC, Container stevedoring monitoring report 2018-19. 6 November 2019.
[13] McKay, R. 'DP World in 447 per cent hike for land transporters,' in *ATN*, 6 November 2019.
[14] Wiggins, J, 'ACCC warns ports on fee increases,' in *Australian Financial Review*, 6 November 2019.
[15] ASBFEO, 2017, 13.
[16] Directive 2011/7/EU. Art 3(5).
[17] Art 3(1).
[18] Art 6.
[19] European Commission, Evaluation of the late payment directive/ REFIT evaluation, Commission staff working document SWD (2016) 278. August 2016. 14,16.

The post-implementation evaluation of the directive found that average B2B payment times had fallen from 56 days in 2011 to 47 days in 2014.[20]

The review found, however, that SMEs were much less likely to exercise their rights to interest and compensation than larger companies because of the need to maintain good commercial relationships with their customers.[21]

The EU experience shows the value of legislated payment times, but also shows that a more robust approach to enforcement is needed than an entitlement to interest and compensation.

The ATA recommends—

Recommendation 4

Parliament should legislate to:

- ban payment times longer than the Australian 30 day standard, unless a longer time is agreed in writing and is not grossly unfair to the creditor
- provide creditors with the immediate right to claim interest and recovery costs
- impose penalties for serious non-compliance.

[20] European Commission, 2016, 18.
[21] European Commission, 2016, 24.