

**Submission to the
Senate Education and Employment Legislation Committee**
Concerning the
Payment Times Reporting Bill 2020, and the Payment Times Reporting
(Consequential Amendments) Bill 2020

**It's Not Your Money
You Owe It
Pay It**

1. Overview

a) This Bill

Self-Employed Australia supports the Pay on Time Reporting Bill 2020:

- this being the second phase of the Morrison government's election commitment to support self-employed and small business people on payment time issues;
- but subject to that, we urge that the third election commitment phase be enacted and implemented within this parliamentary term—that is, before the next election. This third election commitment is that businesses that supply to government or have government contracts must pay their small business suppliers within 20 days or they will be denied the ability to trade with government or have government contracts.

b) Phase one commitment

The Morrison government has already implemented the first phase of its small business pay-on-time election promise—namely, that Commonwealth entities are required to pay small business suppliers within 20 days. We congratulate the government on this.

c) Mandating payment terms

There is currently debate as to whether payment terms for small business should be mandated. That is, that large firms be required by law to pay small business suppliers within (say) 30 days. However, we see this issue as a debate for another day. The first priority needs to be the implementation of the Morrison government's phase three election promise as described above. Then once this is in place consider the payment time mandating issue in light of the experience of the new pay on time requirements. If the current policy doesn't bring about change then we would in principle support mandating.

The mandating issue should *not* distract from the current legislative initiative.

2. The practical

In all our dealings with self-employed, small business people, the number one issue which affects business survival and success is cash flow. Cash flow is king!

For any small business a 'client' that does not pay on time is not a client but a liability, a risk, a threat to the viability of the business. This applies, in particular, for small businesses and self-employed people.

Payment should be made within sensible administrative time limits. With modern technology this should be a maximum of 20 days. The Commonwealth government has demonstrated that 20-day payment is administratively sensible and achievable.

We rate the full implementation of the government's three phase small business pay-on-time commitment as of the highest priority in relation to small business policy.

3. The principle—It's about the economy

A market economy:

- is not a Wild West, anything goes, 'might is right' economy.
- is dependent on trust as the moral and practical foundation of transactions.
- is an economy where rules—either through contract or government fiat or both—solidify and embed trust.
- is one where payment and timely payment is a core part of trust. Where payment times are delayed, trust breaks down, risk escalates, 'might is right' rules, fewer transactions are entered into and economic activity and communal wealth are diminished. These consequences are, however unrecorded but nonetheless damaging.

The evidence is that too many large businesses in Australia are not paying their small business suppliers within sensible timeframes. It is imperative for the health of the economy that government moves to ensure timely payments.

4. Covid-19

The Covid-19 crisis demonstrates the need for pay-on-time laws.

We know that large numbers of big businesses have been paying their small business suppliers on 60, 90 or even 120-day terms. This means that since entering the Covid-19 crisis very many small businesses have been carrying major credit risk. Where the large businesses have not made payments promptly, and some businesses have declared that they will not make such payments, then the small business is in a dire situation. The scenario is grim. Small businesses with such large amounts owed to them are highly likely to fail and not recover from the Covid-19 crisis.

There is a stark lesson here for the future. The Australian economy needs to look to an era when payment times are rapid and efficient. When all businesses are paying and being paid on time, each business is better positioned to withstand economic shocks and the economy overall is better positioned to withstand and recover from external shocks. At the moment, we have a weakened economy where payment times are dragged out.

5. Supply-chain financing

Supply-chain financing is of itself legitimate. If payment terms are (say) 20 days and a small business uses supply-chain financing to receive payment almost immediately, then that is for them to decide.

But where supply chain financing is being used by some large businesses to push payment terms to 60, 90 or to 120 days and beyond, the process is a manipulation of a properly functioning market economy. It is financial intimidation. It turns a market economy into a Wild West economy where money-drunk financiers take delight in being the biggest financial gun-slingers in town, lauding themselves over the weak. Supply-chain financing as it has been used in some well-publicised examples is a blight on the Australian economy.

6. The Australian Building and Construction Commission—Security of Payment

The ABCC has been operating in its current form since around early 2017. One of its operating briefs is to monitor the construction sector for on-time payments (Security of Payments). If a construction contractor does not pay subcontractors on time as required under the Act, the Minister can impose a ban on the contractor from doing future government-funded work.

The construction sector is one area where non-payment and late payment of subcontractors has been historically bad. It is also a sector where the contracts, the work being done and the complexity of complying with contracts is arguably the most difficult of all economic sectors.

The evidence is that the efforts of the ABCC have made for a marked improvement in payment terms in the construction sector. In fact, large contractors are so concerned about breaching the provisions that they tend to over-report to the ABCC. This is only occurring because the possibility of losing access to government contracts creates a strong financial incentive to comply and pay on time.

The operations of the ABCC on Security of Payment provide an outstanding example of where government can use its financial leverage to induce pay-on-time compliance. The third phase of the Morrison government's commitment to pay on time for small businesses across the community is effectively an extension of what is being done through the ABCC.

We strongly suggest to the Senate Committee that it seeks information from the ABCC about its Security of Payment processes and outcomes. There is an example and template here that can assist understanding.

7. Large Business has brought regulation upon themselves

Large businesses that complain about and/or lobby against laws that require fair treatment of small businesses have only themselves to blame for such laws. Too many large firms have chosen to ignore either voluntary or 'light touch' regulations in this area.

Examples:

- The Business Council of Australia has had for some years a [voluntary code](#) for its members to pay small businesses on time. The code has been an embarrassment for

the BCA. It was/is designed in such a way that a large firm can sign up to the code yet not be held accountable for non-compliance. And it has been ignored by many (though not all) BCA members. The code was and is a piece of public relations 'spin' now well exposed as such.

- The unfair contract laws for small business were introduced in early 2016. These were relatively 'light touch'. The belief and hope at the time was that large firms would take on board both the specifics and the intent of the legislation and ensure that their contracts with small businesses complied with the law. This has not occurred. The Australian Consumer and Competition Commission has reported extreme frustration at the continuing breach of the laws by large businesses. Those laws are now in the final stages of being legislatively 'beefed up' so that sanctions apply for non-compliance. We urge the government and parliament to proceed with these laws quickly.

Both of these examples demonstrate that (unfortunately) too many large Australian firms have no intention of trading with small businesses in a fair manner. The lesson to be drawn is that robust laws with sanctions must be implemented.

8. The Morrison Government's Election Promise

Prime Minister Morrison gave the following undertaking in November 2018. He said:

...Cash flow always starts with getting paid. If the invoices you issue are not being paid, that hurts your business, that makes it harder for your business. Businesses, small businesses should never be treated as a bank by governments or large businesses. We should all pay on time.

I am pleased to say that our Government has been working to do just that. 97 per cent of Australian Government bills under \$1 million are being paid within 30 days and we are taking this down to 20 days by the 1st of July 2019.

I'm also taking payment times to COAG in just under a month, to encourage all states to catch NSW where they've gone to 20 days for those payments, where we are also going. I want State Government and Commonwealth Government to pay small businesses on time ...

...recently when I spoke at the BCA dinner, I talked about their supply code. Qantas is here tonight, Trent is here, they are part of that. They've got 13,000 small businesses that are part of Qantas' supply chain. They have signed up. That's at 30 days, I'm hoping not just Qantas, but the whole lot will go **down to 20 days as well. What we have said is that anyone who wants to work with the Commonwealth Government, you've got to agree to those terms as well.**

You've got to pay businesses on time, because the quicker the money moves around, the better the economy does, it's just common sense. So we are working to deliver that....

([Australian Chamber of Commerce and Industry Annual Dinner](#) 28 November 2018)