



Australian Government

Department of Jobs and Small Business

Payment Times Reporting Framework

Discussion Paper
February 2019

Introduction

The Commonwealth Government announced on 21 November 2018 that it would introduce a new [national large business reporting framework](#) to encourage fairer, faster payment times and terms for small businesses.

The Payment Times Reporting Framework will require large businesses with over \$100 million in annual turnover to publish payment information. It will cover up to 3,000 of the largest businesses in Australia, including foreign companies and government entities.

The framework's overall goal is to improve payment outcomes for Australian small businesses. To achieve this, it has three objectives:

1. **Improve the collection of information** about the payment practices of large businesses and government agencies towards small business.
2. **Make information about payment practices visible and easily accessible** to small businesses and other interested stakeholders.
3. **Minimise the compliance and administrative burden** associated with the reporting framework for government agencies, large and small businesses.

This discussion paper provides a detailed overview of the six design issues central to the framework's development:

1. What is the preferred scope of reporting; in particular, should reporting be limited to payment practices for small business? If so, how should small business be defined?
2. Who should be obligated to report under the framework? What reporting approach for related entities is going to be most useful for small business?
3. What payment information should be reported under the framework? What information is going to be most useful for small business (e.g. standard terms, payment times)?
4. How should information be reported? In what situations will small business access the information?
5. How should the framework be administered? What is the preferred balance between regulatory certainty (through legislation and administrator powers) and flexibility (through standards and self-regulation)?
6. Should government agencies be subject to the framework and / or comparable obligations?

The review is interested in stakeholders' views on these options, as well as any alternative approaches that would meet the framework's objectives.

Responses to any or all of the issues raised in the discussion paper can be made by completing the survey at www.jobs.gov.au/PaymentTimes or submitting a written submission to PaymentTimes@jobs.gov.au by 28 February 2019. Submissions will not be published; however a summary table (potentially including anonymous quotes) will be published.

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Key design questions for the Framework

1. What should be the scope of the Payment Times Reporting Framework

A threshold question for the review is whether reporting should be limited to large organisations' treatment of small business or encompass all suppliers.

Limiting the scope of reporting to the treatment of small suppliers will give more precise insight into small businesses' rights and experiences when dealing with large organisations. It will explain any special terms available to small businesses. It will give more accurate data on how they are treated, as some companies and government agencies offer preferential terms to small suppliers. For example, active signatories to the Business Council of Australia's Australian Supplier Payment Code, such as Woolworths, Rio Tinto and Qantas offer 30-day payment terms to small businesses.

However, reporting only on the treatment of small suppliers may add to the reporting burden, or be impossible, if large organisations do not have a way of identifying small suppliers in their financial systems. Understanding the treatment of all suppliers could provide a more comprehensive perspective on the experience of small suppliers. Many small businesses operate as part of the supply chain of medium and larger firms that would not meet the turnover threshold to report under the framework. For example, a small builder in the construction industry might be engaged by a sub-contractor, who in turn is engaged by a large property development firm. Reporting on the treatment of all suppliers would provide some insight into these supply chain payment practices.

The review is therefore interested in stakeholder feedback on the most useful and practical scope for reporting.

Defining small business

If the framework is limited to reporting on the treatment of small businesses, it will need to clarify how a small business is defined by the reporting entity.

Currently, there is no single definition of a small business in use in Australia. The Business Council of Australia's Australian Supplier Payment Code, a voluntary code for prompt payment of small business by large businesses, allows signatories to use one of three definitions of a small business: turnover, employee numbers or expenditure. The Commonwealth Government's Pay On-Time Policy uses an expenditure threshold to determine which suppliers are eligible for 30-day payment terms. The threshold is currently set at contracts valued up to and including A\$1 million.

Options for defining small businesses in the Payment Times Reporting Framework include:

- Specifying a turnover and / or employee-based definition and require large businesses to adopt it when reporting.
- Using the expenditure value of contracts or invoices as a proxy for small suppliers.
- Asking reporting entities to nominate the definition they use rather than specifying a standard definition.

Setting a common definition of small business ensures results reported by entities are comparable. However, such requirements could place a significant regulatory burden on small businesses. Both turnover- and employee-based definitions are difficult to verify externally as they are not publicly reported. Small businesses are therefore usually asked to prove they qualify, such as by providing audited financial statements or certified declarations. This can be onerous for them. Turnover and employee measures are also variable. That means qualification needs to be regularly checked.

If large businesses do not capture supplier data like turnover and employee number size of suppliers it may be hard for them to generate reports segmenting small suppliers on the basis of their turnover or employee numbers. If the qualification and / or reporting process is onerous for large businesses, it risks creating a disincentive to work with small businesses.

Using an expenditure threshold as a proxy for small suppliers is simpler to verify and report against. It is likely to require less manual verification by large or small businesses, and be easier to generate from existing financial systems, minimising the administrative burden associated with the framework. It would also harmonise with the approach currently used for Commonwealth Government reporting.

The disadvantage of using an expenditure threshold is that it is a less accurate way to detect small suppliers. Some small suppliers may have large contracts with a bigger business, which would be excluded from reporting. Alternatively, medium and larger businesses can have small contracts, and therefore their results may be included in the reporting.

Allowing companies to nominate the definition they use is the simplest approach. However, it means data collected in reporting would not be comparable as the definition of small business will vary. It may be harder for small business to use the data as they would have to work out for each company whether they qualify. It could also make reporting less accurate if entities choose a definition more likely to produce favourable results.

One option is to introduce the framework with an initial definition of small businesses that is simple to measure and limits the administrative burden of the framework, such as an expenditure threshold, or to report for all suppliers. The approach to defining small business could be reviewed and updated after a specified period. This would allow the framework to later harness new innovations that make identification of small businesses simpler, such as a register or e-invoicing.

The review is interested in stakeholder feedback on whether a definition or independent measure to verify small businesses is necessary, if so, which definition/s are preferred, and if defining or reporting on small businesses is best staged over time.

Reporting on international suppliers

The framework needs to clarify whether large businesses should report only on their treatment of small Australian suppliers, or if overseas suppliers are in scope. The review's starting point is that reporting is only intended to cover treatment of Australian suppliers. However, the review is interested in stakeholder feedback about whether large businesses can readily distinguish Australian and overseas suppliers in their financial reporting.

2. Which entities will be obligated to report?

The reporting framework needs to specify which entities will be obligated to report under it. The government has stated the framework will apply to large organisations, including foreign businesses, with an annual turnover exceeding \$100 million. The framework must now clarify:

- The types of corporate entities subject to the reporting framework and relevant requirements, particularly for corporate groups and related entities where more than one entity in a group may trigger the reporting threshold.
- Which foreign entities will be subject to the framework.
- How to measure the annual financial threshold that triggers the reporting obligation.

A related question is whether government agencies should also be obligated to report under the framework. This is discussed in question six.

Defining the type of entity required to report

To provide regulatory certainty, the framework must specify which entities are covered by the framework. This is important as large businesses use a range of corporate structures. The two main categories of corporate structure are:

- **Incorporated entities**, meaning organisations that exist as a separate legal entity, including public and private companies. Incorporated entities are defined under the *Corporations Act 2001* and are relatively easy to identify and regulate.
- **Unincorporated entities**, such as partnerships and trusts. Such entities are generally defined in the *Tax Allowance Acts*. They are more difficult to identify and regulate.

Businesses may also have a range of related entity structures in which they own or control part or all of another entity, such as subsidiaries or joint ventures. For example, the Wesfarmers company group includes multiple large entities, such as Kmart, Bunnings and Officeworks.

A key question in developing the framework is the breadth of entity types that should be obligated to report. Setting a broader definition, for example by including both incorporated and unincorporated entities, will maximise coverage of the framework and create a more level playing field amongst large entities.

However, as unincorporated businesses are harder to identify, it may be practically challenging to find and notify them of their obligation, and ensure they are complying with the framework.

In the case of related entities, setting a broad definition of the related entities a business must report on could help ensure comprehensive and accurate data. For example, businesses should not avoid reporting on poorer practices in one related entity.

Determining relationships between businesses is complex. It also raises materiality questions, such as whether large businesses need to report on the payment practices of all their related entities, regardless of how much of each entity they own or control. Using a broader definition of related entities under the framework could increase the reporting burden for large businesses.

A final question is how a group of companies should be required to report. Related companies could be required to provide a consolidated report for a group; they could be required to report at the entity level for any entity above the threshold; or, to report at both the consolidated level and at the entity level for any entities above the threshold. The latter approach would provide the most granular information, and is the approach used by the UK's Payment Practices and Performance reporting framework. It may also impose the highest workload.

The review is therefore seeking views from stakeholders about the type of entities that should be covered by the framework; how related entities should be treated; and how entities within a group should be required to report.

Regulating foreign businesses

The Australian government has announced that the reporting framework will apply to foreign as well as Australian businesses. There are broadly two types of foreign entities that could be included by the framework:

- Foreign entities that pass the carrying on business in Australia test under the *Corporations Act*
- Foreign entities not carrying on business in Australia, but which deal with small Australian suppliers

Using the carrying on business test to determine which foreign businesses must report is simple to apply, focuses on foreign businesses that have a material presence in Australia and are more likely to interact with Australian suppliers, and is consistent with the definition of foreign businesses in other large business reporting frameworks, such as the *Modern Slavery Act 2018*. However, it does not cover all foreign businesses interacting with small Australian suppliers.

Extending the framework to cover foreign businesses that are not carrying on business in Australia but deal with small Australian suppliers (such as exporters) would provide more comprehensive coverage. However, it is likely to be difficult to identify and regulate such businesses.

The review is therefore seeking feedback on which definition of foreign businesses is most useful and practical to implement.

Defining the financial threshold

The Australian Government has stated that the reporting framework will apply to businesses with an annual turnover exceeding \$100 million. As businesses use multiple accounting definitions to report turnover depending on the context of the reporting, the financial reporting trigger threshold needs to be clarified. The two main options are:

- **Consolidated turnover:** This is used by the Australian Taxation Office (ATO) in determining tax liability for an economic group.
- **Consolidated revenue:** This is defined in the Australian accounting standards and used for corporate regulatory reporting.

The results calculated under both definitions are similar. Consolidated revenue has the advantage of being more widely used and being calculated iteratively for subsidiaries and not just for economic groups, and has also been adopted in the *Modern Slavery Act 2018*. However, the review is interested in stakeholder feedback on which threshold is most practical to use.

3. What information should be reported

Determining the information fields to be reported on

Determining the information reported under the framework is one of the most important questions in the framework's design.

In deciding what is reported, the framework needs to balance collecting insightful and useful information that help improve payment outcomes for small business, with minimising the regulatory burden associated with the framework.

There are four categories of information that could be reported under the framework:

- Descriptive information
- Payment term information
- Payment performance information
- Other contextual information

These categories are discussed in turn.

Descriptive information

Descriptive information is information that helps describe the firm and reporting dataset. It can take the form of an optional narrative field for reporting entities to describe their company and contextualise reported information. It may also include simple, standardised data fields that helps to describe and segment companies (such as the location or industry of the reporting entity), which are often very simple to collect and highly valuable for analysing data.

Potential descriptive information could include entity-level information, supply chain information and information about the data reported.

Basic entity-level data helps describe and contextualise the reporting entity. It includes data such as ABN, company name, and relationship to any other reporting entities. It can also include basic characteristics of the business, such as primary industry, annual turnover, and primary location of operations. Collecting richer entity data can be very helpful for data analysis, as it enables segmentation. This information would be simple to collect and is generally already publicly available and not sensitive.

Supply chain descriptive information could include information about the characteristics of the business's supply chain, such as the number of suppliers or contracts they have, total contract value or proportion of suppliers considered small businesses. This data would be valuable in contextualising reported data and in performing more complex analysis of payment trends. This information is generally not publicly available. It would potentially be commercially sensitive information and could increase the burden of reporting.

The reporting could also include fields that describe the dataset, such as date published, reporting period, date assured, and by whom it was assured. This information should be simple to collect, and would enhance the quality of, and confidence in, reported information.

The review is interested in which, if any, of these fields should be collected, and if reporting businesses would like an optional, narrative field to contextualise their results.

Standard terms

The framework could ask entities to describe key terms in contracts that materially impact payment times or amounts. Terms reported on in other payment practice frameworks include:

- **Standard payment times:** this refers to the payment times specified in an entity's standard contract or policy for small business. Reporting standard payment times is a relatively simple measure. It can help small businesses, regulators and policy-makers understand the terms of large suppliers, and small businesses' rights in dealing with them.
- **End of month (EOM) or Net:** this refers to whether a business calculates days to pay from when the invoice is received (Net), or monthly (end-of-month, or EOM). This can have a substantial impact on actual time to pay, by adding 20 – 30 days to the payment time for an invoice received at the beginning of the month if the large entity has an EOM policy.
- **Discounting for on-time payment:** some businesses have a practice of applying a discount to the value of an invoice if the invoice is paid on time. This can be a mandatory term. It can also be an option extended to small businesses who wish to be paid early.
- **Supply chain and /or loan financing:** this refers to financing practices where a large business offers a small supplier temporary financing to cover the period between supplying a good or service under a contract and being paid for the work. These practices can help small suppliers better manage their cashflow. However, as the financing typically has a cost (such as interest repayments) it can effectively reduce the amount the small business earns from a contract.

Reporting on standard payment terms helps small businesses, regulators and policy-makers understand the terms of large suppliers, and small businesses' rights in dealing with them. Standard payment terms are also useful to benchmark reporting entities' performance.

The main complexity in reporting standard terms is when a reporting entity does not have standard terms for small business or the same terms for all procurement categories. This is particularly complex where an entity is part of a group, or the entity has multiple product divisions.

While standard term information is helpful to understand a reporting entity's intended payment practices, it does not reveal how often they adhere to them. For this reason, standard term reporting is most insightful if used in combination with performance payment data.

The review is seeking feedback from stakeholders on whether it would be valuable for the framework to collect information on these practices and the level of regulatory burden associated with asking them.

Performance data

Performance data requires an entity to report on its actual performance, either in absolute terms or against a benchmark.

A common form of reporting in payment schemes is the average or median number of days a large organisation takes to pay suppliers, or the number and / or value of invoices paid within designated time brackets, for example, within 30 days or within 60 days. This data is required by the UK's Payment Practices and Performance scheme and the Commonwealth Government's Pay-on-Time survey.

Performance payment data can also include reporting against a company or industry benchmark, such as:

- The proportion of contracts for which invoices were paid within agreed-upon terms (as the terms vary by contract);
- The proportion of invoices paid within the company's standard policy terms; and / or
- The proportion of invoices paid within a standard timeframe specified in an industry standard or code.

Reporting performance of payment times can be a valuable indicator as it shows the extent to which the terms offered by a large business are honoured, and / or the extent of adherence to an industry standard. This may be very helpful for small businesses who are assessing whether to supply to a large business, and helpful for policy-makers and regulators seeking to understand the extent of compliance with a common, voluntary standard. Performance data is reported in the UK's Payment Practices and Performance scheme.

The disadvantage of performance reporting is that it may require more effort from reporting entities. Unless the approach to reporting actual times is carefully specified, such as which invoices are included and how "days to pay" is defined, the data can be subject to skews. Used in isolation, actual time data does not provide any context to performance, for example, if a reporting entity is a prompt payer but specifies longer payment terms.

Performance payments against a company benchmark also need to be thoughtfully collected and analysed when comparing datasets. A company with longer payment terms (such as 60 days) may meet them more often, achieving a very high performance score, while a company with shorter payment time terms (such as 30 days) may meet them less frequently but in aggregate still be paying small suppliers faster overall.

Calculating performance data could also impose a higher regulatory burden on businesses depending on what they are asked to report upon. For example, it may be onerous to assess the terms specified in individual contracts if terms vary by contract, and then estimate the frequency with which these terms were met.

The review is interested in the value of including performance fields in the reporting, and which fields would be most insightful in catalysing better payment outcomes for small business.

Other terms

Finally, the framework could also collect data on practices that sit outside procurement contracts but affect small business rights or treatment under them. The includes:

- **Code signatories:** This could include data on whether the large entity is a signatory to an industry code or standard, and if so, which one and when they became compliant.
- **Dispute resolution:** The framework could ask large entities to report on the number or percentage of disputed invoices, and / or disputes with small suppliers. It could also ask the entity to provide a link to its policy or terms describing its dispute resolution process.
- **E-invoicing:** The framework could ask large entities to indicate if they pay electronically, or ask small suppliers to invoice electronically, or whether they use an e-invoicing system.

The review is interested in the value of including additional reporting fields that contextualise the treatment of small business suppliers, and the additional burden including such fields may impose.

Definitional questions for reporting

In addition to deciding what information is reported, there are important definitional questions about how answers are calculated. Two critical definition choices are:

- Which invoices are in scope for the framework?
- How should days to pay be defined?

Reportable invoices

The reporting framework needs to specify which invoices should be included in the scope.

Most payment time reporting schemes exclude disputed, incorrect or lost invoices from the reporting calculation because they extend payment times for reasons that may be legitimate or beyond the control of the large business. The counter argument is that disputed or incorrect invoices can be an important reason for longer payment times, and in some extreme cases a risk indicator of a large business seeking to extend payment times. Excluding them from the framework could mask their extent and impact.

The review is seeking feedback on whether disputed, incorrect and lost invoices should be excluded from reporting in the Payment Times Reporting Framework. If these invoices are excluded, the review is interested in whether a metric should be included to indicate the number or proportion of incorrect or disputed invoices related to small suppliers.

A second question is whether all invoices paid to small suppliers should be deemed material enough to be reported on in the framework. This matters because the mix of invoices impacts the actual or performance times reported. For example, a large business that pays a high volume of small value payments quickly (such as a catering order), but a smaller number of larger contracts or invoices late, could appear to be an exceptional performer if metrics were calculated on straight averages of all invoices. Reporting both the number and value of invoices in specified categories could help.

Other options include:

- Applying a minimum threshold for relevant invoices, e.g. only invoices over \$500 would be reported on.
- Requiring large businesses to report payment information broken up by brackets based on the value of invoices (e.g. >\$1000, > \$10,000).

The review is interested in feedback from stakeholders on whether the mix or materiality of invoices is important to the quality of data reported, and if the framework should apply any materiality thresholds for the invoices reported upon. The review is also interested in whether setting a materiality threshold would increase or lower the reporting burden.

Reportable days

A second important definitional question is whether to impose a standard definition of days to pay for the framework. Large businesses have varying practices around when they begin counting days to pay. Some businesses count days to pay from the day an invoice or goods are first received (Net), some count the days from when an invoice is received by an internal accounts payable team, and others count days to pay from the end of the month in which the business's accounting department logs an invoice (EOM).

Including a standard definition of days to pay in the framework would mean that all reporting entities report on a like-for-like basis. This would make the reported information substantially easier for users of the data, including small businesses, to understand and compare. It would recognise the companies applying better practices for small suppliers, and highlight the companies that do not. This will encourage a change of culture and practices among reporting entities, improving the payment outcomes for small businesses. A standard definition of days to pay could count day one as the day the invoice and / or good is received, and the final day as the day the supplier receives payment.

However, requiring businesses to adopt a standard definition of days to pay may impose a higher regulatory burden on those companies that use a different definition in their standard terms.

The review is therefore interested to understand the value of reporting days to pay in a standard manner, the best definition of standard days to pay, and what this means for the reporting burden. In particular, the review is interested in which definition makes the most difference to improving payment outcomes for small businesses.

4. How should entities report

The review needs to determine how information will be reported by entities and collected by administrators. This includes the choice of technical reporting mechanism (i.e. via a central portal or in reports posted on reporting entities' websites) and the format and frequency of reporting.

Reporting Mechanism

The reporting mechanism refers to the method by which reporting data is entered, assured, aggregated and published. A key choice for the reporting framework is whether it should use a **decentralised** or **centralised** reporting mechanism.

A **decentralised** model allows qualifying entities to publish a standardised report on their own websites. Entities would provide an URL of the report location to the administrator so that data can be scraped and aggregated for analysis. A **centralised** model would require entities to report via a central online portal maintained by a government agency.

A decentralised model requires much less technical infrastructure, and will potentially cost the government much less to implement, as reports are published by the entity on its own website.

However, decentralised reporting makes aggregation of the data across all reporting entities more challenging. It could be automated if reports are published in a machine-readable format, but there will be data quality challenges. This may include companies not publishing reports in a consistent way; assuring that data is not amended post-publication; archiving of data if a company stops publishing it (i.e. due to a merger or insolvency); and ensuring that URLs provided do not change. If there was a desire to publish reporting data in a single place, such as on a register and / or a data cube, a decentralised model may make this more challenging.

A centralised portal model is most commonly used for large-scale reporting programs. A central model is used by the UK's Payment Practices and Performance Reporting scheme, as well as Australian schemes such as workplace gender equity reporting and the *Modern Slavery Act reporting* scheme. A centralised model places less burden on industry because they could enter data into a simple web-form, rather than having to produce and publish a compliant machine-readable form. It would simplify administration, as the format of reporting could be standardised and updated, and aggregation and publication of data into a single register or data cube would be easier.

However, a centralised model will be more expensive for government as it requires the reporting infrastructure to be built and maintained. It may also carry more delivery risk as it is a more complex IT project to build compared to a decentralised model.

The review is interested in whether stakeholders would prefer a centralised or decentralised reporting model.

Reporting frequency

The framework needs to decide when and how often a qualifying entity must report. There are three aspects to this choice:

- **Determining the frequency of reporting**, for example, should reports be submitted annually, half-yearly or quarterly.
- **Defining the reporting period**, that is, should entities report on the same year (such as the Australian financial year) or should they be able to nominate the financial year they will use. This would, for example, allow some businesses to use the US financial year
- **Deciding the time frame for reporting**, for example, how many days do qualifying entities have to submit the report after the end of the reporting period?

Reporting less frequently translates to lower costs, assurance and compliance burdens for government and firms, but it also results in available data being less broken down. Annual reporting is most common for Australian large business reporting frameworks; however, the UK Payment Practices and Performance scheme requires businesses to submit information every six months.

Reporting using a standardised financial year allows for clarity around reporting expectations and a more comparable dataset. However, it increases compliance costs and assurance burdens for businesses using alternative financial periods.

Requiring businesses to report relatively quickly after the end of the reporting period means data will be reasonable current. However, setting a reporting timeframe that is too short may increase the regulatory burden on businesses and decrease the accuracy of reported data.

The UK Payment Practices and Performance scheme allows a self-chosen year but requires half-yearly submission. The deadline for the submission is one month after the end of the reporting period.

The review is interested in stakeholder views on the optimal frequency of reporting, whether entities should report on their financial year, or the Australian financial year, and how much time after the end of a reporting period entities need to prepare and submit reports.

Reporting format

One objective of the framework is to make sure data collected under the framework is made accessible to stakeholders and data innovators. The format in which data is collected may influence how easy it is to collect, aggregate, publish, reuse and analyse by third parties. For example, collecting and / or publishing data in a machine-readable format and / or publishing it as a single dataset could maximise the ability of third parties to use it for further innovation or analysis. The copyright and privacy terms under which data is collected may influence what can be published, and if and how data can be reused by other parties.

The review is interested in understanding any technical or legal considerations for the format of reporting that may affect the ability and ease for third parties to collate and reuse data collected under the framework. Options for managing and publishing data are discussed later in this paper.

5. How should the framework be administered

The review also needs to decide how the framework will be established and administered. This includes:

- Determining which legal or other instruments will establish the framework.
- Deciding the functions and powers associated with the framework.
- Determining the role and identity of the framework's administrators.

Legislative basis of the framework

The intent of the framework is to develop a reporting obligation. Therefore, the framework will need to be legislated. However, there are a range of options for the way the framework could be established in legislation that balance regulatory certainty with flexibility and a potentially lower regulatory burden. The three main options are:

- Defining every aspect of the framework in legislation.
- Using a mix of legal instruments, such as legislation and regulation or standards. For example, the overarching framework may be enacted in legislation but certain details, such as the specific details or manner of reporting, could be made by regulation.
- Combining legislation with non-binding instruments, for example industry codes. In this option, the overarching framework would be legislated, but a reporting entity might be able to meet its obligations by complying with provisions of a non-legislated industry code approved by the framework's administrator.

The first option would provide more regulatory certainty but would make it difficult to amend the framework later. The second option would provide clarity on the overarching framework while allowing details to be determined or iterated later and more flexibly via regulation or standards. These instruments would be faster to draft and introduce compared with amending legislative provisions. Combining legislation with industry codes would likely have the least regulatory burden on industry. However, it would also make it difficult to standardise and manage obligations, and it is likely information reported would be hard for small businesses to find, interpret and navigate.

The review is interested in whether the framework should be established using legislation or other instruments.

Powers and functions of the framework

A critical decision for the framework is what powers and functions should be associated with it. The most common powers and functions for similar reporting frameworks are:

- The power to compel the provision of information.
- The power to publish information.
- The power to monitor and assure data collected under the framework.
- The power to enforce compliance with the framework.

- The power to accept complaints and investigate or resolve individual or systemic issues or disputes related to payment practices.

The review is interested in feedback from stakeholders on which powers the framework needs to be effective, and whether these powers should sit with government or industry / third parties.

The right to compel provision of information

The right to compel the provision of information is essential for a mandatory reporting framework. However, it is important that the framework collects high-value information for small businesses and other stakeholders, and that the information reported does not impose an unnecessarily high burden on reporting entities.

The review is interested in how this power should be defined, and whether there are any limitations that should be imposed on it to ensure the regulatory burden is minimised.

The power to publish information

The power to publish information, and the form in which information can be published, is likely to be central to the framework's impact. A key benefit of the reporting framework could be the ability to aggregate reporting information for large organisations into a single place, such as a searchable register or a single datacube. This would allow small businesses and other suppliers to find information on their procurement partners; enable better analysis of payment practices by policy-makers; help regulators better respond to complaints or disputes; and allow new research and data innovation by third parties.

Publication of information may be a concern for reporting entities depending on the sensitivity of information reported. It is possible it may be hard to raise awareness of the existence of a register amongst small businesses, and therefore it may not be fully utilised.

The review is interested in feedback on the value of publishing information reported under the framework; the different user cases for third parties accessing this information, particularly small businesses and data innovators; and the most useful form or forms for publishing information. The review is also interested to understand any concerns about the publication of information, such as exposing sensitive data.

The power to monitor and assure data collected under the framework

Making sure that reporting entities report under the framework, and that the data collected under the framework is accurate, is clearly important to the reporting framework's success.

However, this may be challenging given the potential difficulties in identifying liable entities and the high volume of reporting that may be received.

A central administrator could have monitoring and assurance powers and functions under the framework. Monitoring powers could include determining entities that are likely to be liable to report in advance of reporting being due and notifying them of their obligation, and / or requesting an entity reports if reporting is not received. It may also include undertaking regular reviews of data received to determine if there is evidence of any systemic payment practice issues.

An assurance role could include checking data received for accuracy and completeness, such as by automated checks on a form when data is first entered, or random rolling sample checks once data is received. The agency's assurance function could also extend to aggregating and cleaning data and publishing it in a single dataset or on a register. When the agency plays a more active assurance role, this will increase the burden on both industry and government as the administrator would have to interact with the company to improve the data if issues were encountered.

Such monitoring and assurance functions would improve the framework's coverage, and the quality and integrity of data collected under it. However, these activities are likely to be highly time- and resource-intensive and impose a high cost on the government administrator.

An alternative would be to place an onus on liable entities to comply with the reporting framework and assure their data, with the regulator taking a lighter touch monitoring and assurance role. Large businesses may be required to self-determine if they are obliged to report and required to assure that reported data is valid and complete.

To ensure that assurance is performed, the framework could require reporting entities to assure the validity and completeness of their data through an existing, independent external auditing process and / or it could require company directors to assure the information.

The role of the regulator may then be to act only in exceptional circumstances, such if there is evidence that a company is evading reporting obligations, or if there is evidence of systemic non-compliance.

This approach would likely reduce the overall administrative burden of the reporting framework, while ensuring compliance with reporting and data integrity and public confidence in the framework. However, it may decrease the quality of data, and the ease of publishing it as a single dataset if there is no central body playing a dedicated quality assurance role.

The review is interested in stakeholder feedback on whether monitoring and powers / functions are needed for the framework, and whether they should sit with the administrator or reporting entities.

The power to enforce compliance with the framework

Legislating the obligation to report will not ensure that all eligible entities actually report, or that reporting is accurate. To create a level playing field, the administrator may need enforcement powers, including the ability to compel action, to publish the names of non-compliant entities, and / or to seek penalties or other action against a non-compliant entity (for example, being prohibited from tendering for Commonwealth Government contracts). Similar reporting frameworks in Australia, such as the *Modern Slavery Act 2018*, provide for such enforcement powers.

The review is interested in stakeholders' views on whether enforcement powers are necessary to ensure reporting obligations under the framework are met, and if so, what would be the most effective and proportionate suite of powers.

Finally, it is possible that the early years of the framework will see higher levels of non-compliance due to error as reporting entities become accustomed to the reporting obligation. One option would

be to introduce enforcement powers, but provide for a grace, transition period in the framework's initial period of operation where enforcement action will not be taken. The review is interested in whether stakeholders see merit in this approach.

The power to accept complaints and lead investigations into payment practices

The framework's administrator could also be given the power to accept complaints or instigate investigations. This could be limited to accepting complaints about a failure to meet reporting obligations by reporting entities, or broadened to include investigations into systemic poor payment practice if evidence of this arose from reported data.

It is also possible data under the framework could be used by existing regulators to inform their complaints and investigations functions, such as investigations into small business complaints handled by the Australian Small Business and Family Enterprise Ombudsman and equivalent state bodies. However, these complaint and investigation functions would remain independent from the Payment Times Reporting Framework.

The review is interested in whether any complaints or investigations powers should be assigned to the framework's administrator, and if or how it would be valuable for the reporting framework to support other, existing complaints and investigations processes.

Role and identity of the framework's administrator

The framework needs to determine the role of the framework's administrator, and which Commonwealth agency or agencies should administer it.

One option is that a single agency administers each aspect of the framework. Assuming the broadest range of powers and functions for the framework, this would include the framework's policy design, management of the reporting function and potentially a register, enforcing compliance with reporting obligations, and potentially, resolving complaints or leading investigations related to payment practices.

A second option is that functions associated with the framework could be shared across agencies. For example, a department may retain policy responsibility, but a second agency could take on the more operational functions, such as managing the reporting mechanism and potentially maintaining a register, and managing the enforcement and complaints functions.

The ability to leverage existing agency capabilities and / or powers may be material to this decision. This is more efficient than creating new and potentially duplicative functions and powers, and potentially less risky if the capability is complex. It may also make it easier for small and large business to navigate.

The review is interested in stakeholders' views on the optimal roles for the framework's administrator/s, and which agencies would be best placed to perform these functions.

6. Government obligations

An important design choice for the Payment Times Reporting Framework is whether Commonwealth Government agencies should transition to reporting under the framework or continue to report under the government-specific scheme.

Commonwealth Government agencies already have obligations to pay small businesses on time, and to report on their payment performance. Currently, all Non-Corporate Commonwealth Entities (NCCEs) must pay invoices for contracts under \$1 million within 30 calendar days (regardless of the size of the business). This is set to change to 20 calendar days in July 2019.

In addition, the Department of Jobs and Small Business runs the annual Pay-on-Time survey, which measures the payment times of NCCEs. In the past, the survey has been voluntary; however, it will become mandatory by the 2018-2019 financial year. The survey does not identify the proportion of contracts under \$1 million awarded to small suppliers.

A crucial design issue for the Payment Times Reporting Framework is whether NCCEs - and potentially other government entities - should report under the framework, or align reporting standards and fields in the Pay-on-Time survey to the Payment Times Reporting Framework.

The options are:

- The Pay-on-Time survey is discontinued and qualifying Government agencies transition to using the Payment Times Reporting Framework
- There is partial alignment of the Government and large business reporting obligations, for example:
 - a. Government agencies transition to reporting under the Payment Times Reporting Framework, with their data published in the register, but the fields used for business and government may be customised to suit their circumstances.
 - b. Government agencies continue to use the Pay-on-Time survey, but the survey fields are aligned with the Payment Times Reporting Framework obligations.
- No change to the currently planned approach for Commonwealth agency reporting with agencies continuing to report using the Pay-on-Time survey and the fields it contains.

Option one may be the most convenient for small businesses and other users of data, as it will mean information about the payment practices of large organisations will be aggregated in a single place and is reported in a comparable way. It may also reduce the overall administrative burden on government if only one framework needs to be administered.

Option two would be advantageous if there are differences between large businesses and Government agencies that require some customisation in the reporting. For example, Government agencies use standard contract terms set centrally (for non-ICT contracts valued up to \$200,000 with an option to use up to \$1 million), whereas large businesses have significant variation in terms, so the utility of collecting term information will differ by sector.

Further, Government agencies currently report in some depth on payment time practices, such as specifying the number and value of contracts paid within specified time brackets. There are no minimum thresholds that trigger the obligation to report. If the Payment Times Reporting Framework were to attempt to minimise the regulatory burden on businesses by involving less onerous or detailed reporting requirements, or a financial threshold, there may be benefits to having Government agencies retain their existing reporting format.

The final option would be preferable only if there are significant differences in the context or information required of business and government which mean it is more insightful to have them report under separate schemes, or if the cost or complexity of transitioning Government agencies to the Payment Times Reporting Framework is high.

The review is interested in whether Government entities be obliged to report under the framework and / or continue to report under the existing Pay-on-Time survey. It is also interested in whether the information reported be identical for government and business, or if there are differences between the two sectors which mean there should be some customisation in what is reported – and whether information about government payment terms and practices should be included on a register if one is used for large businesses.

Conclusion

The introduction of the Payment Times Reporting Framework can play a crucial role in encouraging fairer and faster payment times and terms for small businesses. It will provide more visibility of payment terms and practices for small business, which in turn, can help drive better treatment of small businesses by large organisations. Designed well, the framework can achieve these aims while minimising the reporting burden on either large or small businesses, or government.

Working together with stakeholders from the large and small business sector is integral to the successful design of the framework. The Department of Jobs and Small Business looks forward to receiving feedback from all stakeholders on the choices in this discussion paper.