VACC Submission

# Response to request for information on payment timing and processes impacting small business

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## Introduction

The Victorian Automobile Chamber of Commerce (VACC) welcomes the opportunity to respond the Australian Small Business and Family Enterprise Ombudsman's Issues Paper on Payment Times and Practices.

There is no doubt that extended payment times impact small business. Many members have reported the negative effect of delayed payment on their businesses, stating it is "highly critical for small business that accounts are paid and received promptly". A lack of cash flow often sees members resort to expensive overdrafts or debt collectors – to varying degrees of success.

VACC members have noted that substantial effort is also expended on chasing late payments, with office personnel experiencing undue stress due to the added workload.

Moreover, the impact of late (or no) payment has a direct impact on the businesses' ability to invest and grow their operations, employ more people and ultimately pay more taxes.

The following submission outlines the key issues facing the automotive industry, which is predominantly made up of small and medium sized businesses, and family run enterprises.

## Late payments and small business

VACC members are predominantly small employers and/or family enterprises. Many of which have small profit margins, which impacts cash flow directly, and due to the impact of late payments by mainly larger businesses, do experience financial difficulties. For this reason, VACC considers that the Government has a responsibility to monitor and where necessary regulate late payments to ensure a balanced competitive marketplace.

As referenced in the Payment Times and Practices Inquiry Issues Paper, evidence does show that large business can and do enforce late payments simply because it makes good business sense – regardless of the effect on small business. Clearly due to the imbalance in power, small business is hesitant to take action for fear of adversely affecting the contract to supply, or it is unable to enforce the terms of the business contract.

## Mechanisms used by members to manage late payments

VACC had encouraged members to complete the online survey developed through the Australian Small Business and Family Enterprise Ombudsman. In addition to this, members have reported to VACC that where they had entered into business relationships with larger business to supply services or products, and where payments are late, typically business will:

- use business overdraft facilities to continue to maintain cash flow in order to meet business financial obligations;

- where possible delay payment of business obligations including the use of longer credit terms from suppliers;
- postpone any direct investment geared towards maintenance, growth or rejuvenation;
- forego self-payment for work completed during the period that payments are late and rely on personal savings to make ends meet.

## Support for the introduction of legal capacity

Larger businesses are often in a position to take advantage of its power to impose late payments, resulting in SMEs carrying this burden, with little bargaining power. VACC supports the introduction of legal capacity to balance out the market power in fair competitive practices. The exception is where a business accepts the terms of business, such as those that rely on farmers to sell crops before those along the supply chain are paid.

VACC farm machinery dealers knowingly operate in regional areas, servicing of machinery, plant or vehicles, and/or sell to farmers that are dependent on payment from supermarkets of larger buyers for their product which is often reliant on harvest periods and conditions such as the weather. Farm machinery dealers and other businesses operating in regional areas understand and accept the terms of trade, as each business in the community is often dependent on another for survival.

## Voluntary industry codes

In the automotive industry, motor vehicle insurers are renowned for deliberately delaying both assessment of customer vehicles required to approve commencement of work to repair vehicles, and the late payment to repairers for work completed on insured vehicles. In this case VACC, together with our interstate sister organisations, the Motor Trade Associations, has taken steps to challenge the behaviour of insurers before Small Business Commissioners in each state, and in doing so, has tested the robustness of the voluntary industry code.

This testing of the industry code has armed the industry, through their organisations, to effectively gain positive and practical changes to the code when negotiating its review. Of relevance to this inquiry is the need to tighten time frames to avoid the tactics to delay employed by insurers. Unfortunately, the code is a voluntary code, and while the major insurers are signatories, the smaller players in the market are not, and therefore often faile to adhere to the code's principles in their dealings with industry repairers.

## Limitations of voluntary industry codes

Despite the recent success in the body repair sector to tighten up delay in payment practices (and other behaviours), a code is unlikely to bring relief to other businesses in the automotive industry sector because their business dealings are dependent on a business relationship. The body repair sector has, on the other hand, had a long and confrontational business relationship, as the owner of the vehicle traditionally selects the repairer of their damaged vehicle, that ties in the insurance company into payment for the repairs.

A mining company, a government department or instrumentality any other large business has choice when selecting repairers or service providers, so it follows that with the level of competition in the market among small automotive repairers and service providers that the small business will accommodate the demands of the buyer of their services in order to retain the contract, even if it results in crippling financial situations because of late payments.

While codes may have worked to varying degrees overseas, the markets are much larger and diverse. A small business capturing a contract with a large business is unlikely to be in a position where the 'client' can be easily replaced. The closure of hundreds of small businesses (e.g. catering, cleaning and parts suppliers) reliant on the automotive vehicle manufacturers are an illustration of this point. Other examples, particularly in regional centres, demonstrates the delicate balance between small and large business relationships.

## Receivable management systems

The automotive industry has one major buying group that delivers a receivable management system with point rewards, and smaller providers can be utilised. However, all come at a cost to the small business. A number of members have taken advantage of receivable management or factoring systems designed to improve cash flow at various times and can save the business from chasing debts themselves – however, they do come at a cost. Such programs are necessary, but it must be remembered that not all businesses will utilise such programs.

## Incentivising larger businesses to employ fast payments

Members have provided examples where their own policies limit payment options to their customers, but rarely do we observe larger businesses with fast payment policies for their suppliers (invariably often smaller suppliers).

Members report that even with 30 day payment terms from the date of the statement, practice shows that such terms regularly lead to 60 day payment terms from when the work or supply had occurred.

VACC argues that government can provide a platform to larger corporations to promote their fast payment policies, which would make those companies more attractive to businesses tendering to supply products or services. Government should lead by example, with *all* government departments and agencies employing fast payment terms that are strictly enforced. Additionally, VACC believes there is merit in the public reporting of payment terms offered by companies.

## Unfair contract terms legislation

The announcement of the unfair contract terms legislation was welcomed by VACC and its members. While too early to determine the effectiveness of the legislation, reminding insurers of the legislation in some instances has produced positive outcomes for industry. However, the automotive industry has raised the limitation with the legislation in dealerships as franchise agreements will not be captured due to the high value of the product. Even a small motorcycle dealership will have product to the value in excess of $1m as part of the franchise agreement, consequently such business will not be able to access any relief through the legislation.

Avenues to seek tenders through legal enforcement in courts has been utilised from time to time, but such practices are last resort, and at times not worth pursuing due to the cost of pursuing a claim.

## Case examples from VACC members

| Type of Business | Type of Business imposing late payments | Timeframes for payments | % of invoices paid late | Impact of the process or late payment | Is the trend worsening | Suggestions on how the issue can be addressed |
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| Dismantler<br>40 employees<br>$8 turnover | Insurance companies | 30 days, but often up to 60 days effectively from time of purchase. | 11 – 20% | Impacts capital allocation for business growth.<br><br>Extra effort and expense outlaid on chasing the late payments.<br><br>Late payments account for approximately $50K on a rolling basis. | Yes | Subsidised debtor finance or special debtor loans. |
| Vehicle rental | Mining<br>Infrastructure<br>Government | 60 to 90 days | 30% | Lack of cashflow for the business.<br><br>Business resorts to an overdraft. | No improvement | Implementing a standardised and binding method to charge interest on late payments extended beyond 30 day terms. |
| Dismantler/Salvager | | 30 days | 2% | The business no longer offers credit terms to customers. | | Implement Cash on Delivery terms. |

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| Farm machinery | Farmers<br>Suppliers paying warranty claims | 30 days | 30 – 40% | Effort and expense on business chasing late payments.<br><br>Difficult to reinvest capital into the business.<br><br>Undue stress and workload on personnel.<br><br>If the business changed their terms to 30 days, they would risk losing business | About the same | Debt collectors are considered extremely expensive.<br><br>Mandatory credit card payments for all farm machinery dealers at the point of sale. |