HOUSING INDUSTRY ASSOCIATION

Submission to the
The Treasury

Supporting business adoption of eInvoicing

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contents

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ABOUT THE HOUSING INDUSTRY ASSOCIATION

The Housing Industry Association (HIA) is Australia's only national industry association representing the interests of the residential building industry.

As the voice of the residential building industry, HIA represents a membership of 60,000 across Australia. Our members are involved in delivering more than 170,000 new homes each year through the construction of new housing estates, detached homes, low & medium-density housing developments, apartment buildings and completing renovations on Australia's 9 million existing homes.

HIA members comprise a diverse mix of companies, including volume builders delivering thousands of new homes a year through to small and medium home builders delivering one or more custom built homes a year. From sole traders to multi-nationals, HIA members construct over 85 per cent of the nation's new building stock.

The residential building industry is one of Australia's most dynamic, innovative and efficient service industries and is a key driver of the Australian economy. The residential building industry has a wide reach into the manufacturing, supply and retail sectors.

Contributing over $100 billion per annum and accounting for 5.8 per cent of Gross Domestic Product, the residential building industry employs over one million people, representing tens of thousands of small businesses and over 200,000 sub-contractors reliant on the industry for their livelihood.

HIA exists to service the businesses it represents, lobby for the best possible business environment for the building industry and to encourage a responsible and quality driven, affordable residential building development industry. HIA's mission is to:

> *"promote policies and provide services which enhance our members' business practices, products and profitability, consistent with the highest standards of professional and commercial conduct."*

HIA develops and advocates policy on behalf of members to further advance new home building and renovating, enabling members to provide affordable and appropriate housing to the growing Australian population. New policy is generated through a grassroots process that starts with local and regional committees before progressing to the National Policy Congress by which time it has passed through almost 1,000 sets of hands.

Policy development is supported by an ongoing process of collecting and analysing data, forecasting, and providing industry data and insights for members, the general public and on a contract basis.

The association operates offices in 22 centres around the nation providing a wide range of advocacy, business support services and products for members, including legal, technical, planning, workplace health and safety and business compliance advice, along with training services, contracts and stationary, industry awards for excellence, and member only discounts on goods and services.

1. INTRODUCTION

The Housing Industry Association (HIA) takes this opportunity to respond to the Consultation Paper 'Supporting Business Adoption of Electronic Invoicing' released by the Treasury on 15 December 2021.

Measures that facilitate prompt cash flow and timely payment are worthwhile and the modernisation of invoices through the adoption of electronic invoicing systems and technology is one way of assisting businesses in this regard. However, HIA objects to the introduction of a mandatory requirement that all businesses adopt Business eInvoicing Right (BER).

Not only does the Consultation Paper lack detail regarding the regulatory impact the proposal may have on the ability of a business to manage their own cash flow but the previous Consultation Paper *'Options for mandatory e-Invoicing adoption by businesses'* outlined a number of potential disadvantages for a mandatory eInvoicing requirement for all businesses. The previous Consultation Paper also acknowledged that the mandate could impose significant regulatory costs on business and those who don't use sophisticated or any business software systems may find the process more challenging and expensive.

Further, it remains unclear what market failure the proposal seeks to remedy. A regulatory approach should only be used where there is an identifiable and qualifiable failure of the market that exposes participants to some form of risk or undesirable outcome. With measures such as the Payment Times Report Scheme currently in place it is hard to discern the problem the proposal is seeking to address.

Finally, the Consultation Paper fails to consider industry specific factors that may not support the widespread adoption of the eInvoicing and BER scheme. The residential building industry is unique, and the sector should be excluded from the operation of a mandatory scheme should it be pursued.

Payment practices in the residential building industry are already heavily influenced by existing consumer protection and security of payment laws in each jurisdiction, the latter of which sets out a process for the rapid adjudication of payment disputes and imposes mandatory requirements regarding payment arrangements.

At this stage, it is unclear whether the benefits of compelling businesses to adopt electronic invoices outweigh the costs associated with establishing such a system across the economy. HIA recommends that any further moves on the matter be informed by a rigorous regulatory impact assessment to determine and assess the costs and benefits of the proposed scheme.

2. RESPONSE TO CONSULTATION PAPER

2.1 PAYMENT AND CASHFLOW CONSIDERATIONS IN THE RESIDENTIAL BUILDING INDUSTRY

HIA estimates that more than 90 percent of the residential building industry is comprised of small businesses and sole traders.

With such a high number of small businesses, this sector is particularly vulnerable to the negative impact of additional red tape and government regulation.

The industry faces challenging factors such as:

- The homeowner, whose significant emotional and financial investment places additional pressures on the builder and trade contractors;
- Prescriptive statutory contractual arrangements;
- Quasi regulation of payment terms through the involvement of financial institutions;
- Ineffective, time consuming and often litigious methods of recouping late payments;
- Demanding terms of trade from suppliers; and
- Significant exposure to uncontrollable events such as inclement weather and fluctuations in the supply of building materials.

A consistent challenge for builders is managing cashflow under a negative cash flow model. Whilst a trade contractor is typically paid for work in arrears and must finance this cost, the same holds true for builders who must 'finance' an owner's costs. Subcontractors and suppliers will naturally not wait for the substantial client to builder payment late in the duration of the job and often builders must source other financing arrangements to keep cash 'flowing'.

Builders in the residential building industry ordinarily fund their works by way of debt financing. Revenue on the other hand is derived from client payments which are highly regulated and paid after completion of work and after the building costs are incurred. Yet, the activities undertaken are subject to a high level of risk.

Subcontractor considerations

It is well known that residential building, in particular the detached housing and renovation work areas, rely on the use of subcontractors. The construction of a house will generally involve around 25 to 30 different trades on-site. This may include concreters, bricklayers, framing carpenters, plumbers, electricians, roof tilers and painters. Others include the contractor who pegs out the site, backhoe operators, drainers, termite system installers, plasterers, floor tilers, glaziers, kitchen installers, the fitting out carpenter, the floor sander, the brick cleaner and finally the garage door fixer.

Subcontracting predominates down to the lowest levels, meaning there are relatively few employees on a low or medium density housing site. The flexibility of the subcontract system and the highly competitive nature of the residential building industry have interacted to secure a high degree of efficiency and productivity.

As with any commercial relationship, there are risks for both builders and trade contractors in managing the subcontractor relationship. For builders and principal contractors there are ongoing challenges ensuring the trade work is done to an adequate standard, management of defect and liability periods and payment issues.

Despite such issues, it is HIA's view that the relationship between the builder (head contractor) and subcontractor must be able to operate largely unencumbered in order to maintain the advantages of the subcontract system for housing supply and affordability.

At this stage, it is unclear what impact the eInvoicing scheme may have on head contractors and subcontractors. HIA would strongly advise a conservative approach be taken when considering measures that affect the head contractor/subcontractor relationship.

2.2 IMPACT ON THE RESIDENTIAL BUILDING INDUSTRY

HIA supports any mechanism which reduces the administrative burdens and facilitates prompt payments. However, the proposed BER raises red flags for an industry which is already heavily regulated. While at this stage it is unclear how the proposed scheme would impact the current payments arrangements in the residential building industry, it is clear that:

- Payments from a homeowner to a builder will not be captured by the BER.
- Payments between builders and contractors are already, in a number of ways, heavily regulated including through security of payments laws and mechanisms through the ATO such as the Taxable Payments Reporting Scheme which place obligations on parties regarding the invoicing and making of for payments and making those payment.

Consequently, the residential building industry would likely have multiple systems to accommodate homeowner clients or other businesses who are not captured by eInvoicing. Any proposals for regulatory intervention must be mindful of this.

2.3 BUSINESS ADOPTION OF EINVOICING

It is unclear what problem, if any, a mandatory eInvoicing scheme is seeking to resolve.

The Consultation Paper discusses potential 'significant economic benefit' to businesses who use eInvoicing.

However, the Consultation Paper fails to:

- provide sufficient detail to explain the time and cost implications for businesses needing to establish the capability within their business to adopt eInvoicing; or
- set out any compelling evidence of a need to regulate the freedom of a business to choose their payment terms and administrative methods.

It is alarming that the scheme may also create civil penalties or sanctions for breaches of the requirements.

The proposal to mandate the use of eInvoicing across the economy either via legislation or a separate regulatory arrangement would impose a significant regulatory cost on business and may result in some businesses incurring costs for a service or capability that is not regularly used and not noticeably deficient now to the individual business. There is already sufficient and significant regulation of payments for residential building businesses, including the Payment Times Reporting Scheme and security of payment laws.

At this stage, and without more detail, HIA objects to the BER and eInvoicing being introduced as a mandatory requirement for all private sector businesses. It should be offered, with incentives and adequate training and guidance materials, as a voluntary opt-in capability. A mandate appears likely to impose significant regulatory costs for small businesses especially those who may not have the software or systems to support the scheme with limited benefits realised.

3. CONSULTATION QUESTIONS

HIA provides response to relevant consultation questions below.

Business adoption of eInvoicing

1. ***Should a Business eInvoicing Right (BER) be introduced to accelerate business adoption of Peppol eInvoicing?***

   No, the BER should not be introduced as a mandatory scheme. Businesses should have the freedom to choose whether or not to elect to use eInvoicing.

2. ***Are there other regulatory methods that might increase eInvoicing adoption?***

   At this stage, HIA does not support eInvoicing within a regulatory method.

3. ***What key implementation challenges or issues would businesses face if the Government introduces a BER?***

   Some of the key issues which may be experienced within the residential building industry may include:

   - Cost of system set up to allow for eInvoices to be sent and received.
   - Financial and time efficiency costs required to train staff to use the new systems.
   - Ongoing administration burdens.

Who would be captured by the BER?

4. ***Would Option 1 or Option 2 be more appropriate to set the scope for participation in the BER and why? Are there other approaches that may be appropriate?***

   At this stage, HIA submits that if the proposal proceeds, the scope and participation of the BER should not include the residential building industry.

   The residential building industry should have the opportunity to opt into the scheme and should have the option to choose to use the technology at a time which is suitable to their business.

As the Consultation Paper raises, there is already a regulatory framework which regulates payments, being the Payment Times Reporting Scheme (PTRS).
If the BER is introduced, businesses will face an unnecessary duplication of regulatory payment frameworks. The PTRS and BER will increase the regulatory burden for all parties involved.

5. What, if any, exemptions would a BER need to include (e.g. for on-the-spot or point-of-sale business-to-business transactions, not-for-profit organisations, newly created businesses, entities supplying taxi travel, recipient created tax invoices (RCTIs))?

The residential building industry should be exempt from the BER.

Identifying businesses covered by the BER

6a. Should the Government create a public register of businesses covered by the BER?

It is unclear why another public register would be required to give effect to this scheme.

The publication of information relating to payment arrangements ignores the regulatory requirements that applies to the residential building industry and the administrative and financial complexities to the potential detriment of the residential building industry.

6b. Are there any other approaches that would be appropriate to identify businesses covered by the BER?

There are already multiple public registers for businesses, including the ASIC register and Business Registration Service. To avoid duplication of information and increasing the administration for businesses, these registers should be utilised. Should BER be pursued, adding a business status in using or receiving eInvoicing may have purpose.

Thresholds for business size under the BER

7a. Would businesses be comfortable with being publicly identified as small, medium-sized, or large?

No. It is unlikely that businesses would wish to, or volunteer, to publicise this information. Further, the benefits and intent of the scheme should not be reliant upon businesses being required to publicise information which is not currently offered via other regulatory schemes and serves no apparent purpose to the use of eInvoicing beyond a company choosing or not choosing to use such a scheme.

8. Which of the potential approaches to create a register of small, medium-sized, and large businesses covered by the BER would be appropriate?

Any thresholds should be based upon current thresholds used by the Australian Taxation Office and the Australian Bureau of Statistics.

9. What regulatory costs may be involved for businesses for these options?

Businesses would likely need to expend additional time and administration costs in continuing to assess their eligibility. Businesses may also be mindful of these thresholds and impact business decisions regarding growth.

Accommodating changes in business sizes

10. Should the BER apply to differently sized businesses at the different times?

A transitional approach to allow small businesses time to implement the changes is necessary.

11a. Should turnover-based thresholds be used to differentiate business size under the BER? What alternative thresholds are available and would be appropriate and administratively feasible?

The small business entity threshold used by the ATO may be appropriate.

11b. What levels of annual turnover would be most appropriate to differentiate small, medium-sized, and large businesses under the BER?

The thresholds should be the same as defined by the ATO and/or ABS.

12a. Would a framework for turnover aggregation and related grouping rules be required for the BER?

No, this is unnecessary.

12b. If required, would a framework for turnover aggregation and related grouping rules like those in current tax laws be appropriate for the BER?

Yes.

13a. What would be the appropriate implementation timeframes for the BER?

If pursued, at least 24 – 36 months for all businesses, but particularly small businesses.

13b. How much advance notice would covered businesses need to be ready by their corresponding deadlines under the BER?

At least 12 months if not longer depending on requirements and complexity.

13c. What alternative timing approaches might also be feasible and appropriate?

N/A

14a. What should a valid request to receive Peppol eInvoices involve or include?

To reduce administrative burdens for businesses, any request for an eInvoice should include details such as:

- The timeframe for the business to respond or take other action; and
- Details of the requesting party and relevant transaction details.

14b. What communication and record-keeping requirements would the BER require for covered businesses, particularly in relation to communicating requests to receive eInvoices?

Any record keeping obligations should match existing record keeping rules set for business, for example, the ATO rules. This will reduce any unnecessary duplication of administrative requirements or confusion regarding different sets of rules.

Monitoring, compliance and enforcement, and protections for participants

15. What mechanisms should be put in place to protect businesses that choose to exercise their BER (e.g. whistle blower protections)?

It is unclear why a business needs to be protected under this scheme. It is inappropriate for businesses to be fined, penalised or otherwise monitored with respect to any method they choose to send or receive invoices.

Integrating eInvoicing with payments

21. What is the level of impact on business adoption that the integration of eInvoicing and payments would have?

The integration of eInvoicing and payments appears likely to have a high impact on the administration of a business at the implementation stage. Once operational it may be beneficial for businesses, provided that the business is able to conduct a cost/benefit analysis and elect to utilise the technology where they believe it serves their business needs. If mandated, the transitional administrative burden would be significant and will negatively impact businesses who are not ready, financially or for any other reason, have challenges in implementing changes to their existing payment systems and processes.