

# Government Client Briefing

## COVID-19 and the Economy

DATE: March 2020



### **INTRODUCTION – HOW OUR MEMBERSHIP CAN ASSIST**

Consult Australia is the industry association representing the business interests of consulting firms providing design, advisory and engineering services for the built and natural environment. We represent an industry comprising some 48,000 businesses across Australia, ranging from sole practitioners through to some of Australia's top 500 companies.

The construction industry is already reporting impacts due to COVID-19 including the reduction in access to materials, plant and equipment from overseas. Whilst this is impacting building and construction work, it does not affect the ability for upfront design and advisory work to continue. The design and advisory needed prior to construction, is predominantly only constrained to the extent that key personnel are incapacitated or in short supply due to demand. Our members can therefore continue to support the pipeline of essential work for local, state and territory economies and the Australian economy as a whole.

Unlike the construction sector of our industry, which requires on-site presence to conduct physical work, our members are well placed to continue providing professional consulting services via a remote workforce. While sites remain open our members can also safely manage site visits to complete work that is essential to the preparation of designs.

The worst case scenario for the industry would be a complete hold on all projects, thus starving the whole industry of a pipeline, resulting in an unknown period of delay before any projects can commence, causing significant detriment to Australia's economy.

If the Government deems it necessary to shutdown all bar essential services, we stand ready to continue to provide our services in support of the economy. In defining us as essential services and giving us appropriate access to sites where we can ensure compliance with all necessary health and hygiene requirements, we can continue our work in the nation's interest.

We are already receiving reports of private sector clients putting work on hold, which makes our sector more reliant on the flow of government funded work. In addition, some government-run water utilities and local governments have already publicly stated that they are putting capital delivery on hold to focus on essential services.

We can avoid this by committing to delivering design and advisory consulting services for projects that are underway or are in the existing pipeline and due to come to market. This will not only provide Government with continuity of service, but also ensure an essential pipeline of work for our sector of the industry to reduce the risk of job loss / business insolvency. As Government leads the way on continuing the pipeline, the private sector market will too gain confidence and bring projects back online. It will also ensure that once the threat has passed, the construction phase can begin immediately bringing relief to that segment of the industry.

#### **Assistance with remote working**

We are aware of the challenges that some government agencies face in facilitating their procurement teams to work from home/remotely. Our members are ready to assist Government by sharing their policies and procedures on remote working enabling agencies adapt to a new way of working. In particular issues such as system access and facilitating remote payment of invoices are priorities.

We would also like to offer to work together to resolve practical issues such as how to provide remote witness signatures for key documents.

### POLICY PROPOSALS

**In addition to maintaining the current pipeline of work, we also propose the following to ensure continuity of services for Government:**

#### Supply of work

- **Hold industry briefings (virtual) to share the pipeline**  
Regular joint industry and government briefing sessions on the status of the current pipeline will both provide an opportunity for the market to adjust to Government's needs, and facilitate constructive dialogue between government clients and industry easing the level of uncertainty and anxiety for all parties. It will also provide clarity around the number of projects already being delivered so that businesses can plan accordingly in response to a smooth transparent pipeline of work.
- **Bring projects forward**  
Maintenance projects are a good example of projects that can be brought forward, as these are less reliant on substantial material supply and provide a pipeline of work that benefits across the building and construction sector.
- **Break projects into smaller packages**  
Breaking down some projects into smaller packages also spreads the availability of work to small and medium businesses, helping to maintain competition for Government and also provide a much needed pipeline of work for SMEs.
- **Simplify the process**  
We can work together to bring forward the best lessons learnt from responses to natural disasters, such as the Christchurch earthquake. In needing to mobilise recovery quickly, procurement assessment and processes can be streamlined to maximise efficiency. Industry and Government can refocus on what is crucial to help to bring projects to market more quickly and make turnaround more achievable. This will also assist our members adapt quickly to provide consistency in quality of services to clients.
- **Rethink the model**  
Consultants and clients can explore together the best way to deliver projects where there is a shift to more upfront design and advisory work. Issues to be explored include the optimum procurement model for the particular circumstances.

#### Supply of payment

- **Practical measures be introduced in relation to contractual conditions relating to delays**  
The question of delays caused by COVID-19, compensation for delay, and termination of the contracts due to delays, are of significant concern to all parties in the project from clients through the supply chain.

Our members do not want to see their contracts terminated due to delay but want to continue working as best they can. Nor do they want to face claims for compensation due to a risk that was entirely unforeseeable and not in the control of either of the parties to the contract. As clients, Government has the power to ease many of these contractual concerns, and we recommend that Government:

- Publicly advise all contractors and consultants that no action will be taken for missed timelines due to COVID-19 delays – this includes seeking penalties under the contract;

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- Negotiate an amended provision for all contracts, acknowledging delays due to COVID-19 are not actionable; and
  - In the longer term, introduce a codified force majeure regime that acknowledges pandemic outbreaks and includes alternative remedies (such as parties bearing own costs).
- **Security of payment transparency**

We support the Minister responsible for security of payment legislation having greater transparency in relation to their projects, over the flow of payments across the supply chain to identify points of stress in order to be able to assess the best method of supporting those businesses. In addition, we recommend:

    - Ensure that invoices received are paid within 1-5 working days (noting that the Department of Defence announced on 25<sup>th</sup> March 2020 its intention to pay within 1 day) to ensure cash flow throughout the contractual chain;
    - Direct procurement officers to grant relief for timeframes for payment claims/schedules/ notices under security of payment legislation, where financial distress is evident; and
    - Where possible consider setting up payment on account for work to be delivered by consultants, that is ring-fenced from the contractor. In arrangements where the government has a contract with a contractor, who then enters into an agreement with a consultant, a significant risk to the consultant and its subconsultants is contractor insolvency.

### **DELIVERING BETTER VALUE FOR MONEY OUTCOMES**

Outside the COVID-19 crisis Australia's population is still growing, and Australia is behind on critical infrastructure. Analysis of successful and unsuccessful project delivery has consistently shown that more complete design work before construction starts results in better outcomes. Consultants and contractors alike acknowledge the benefit of more complete designs and the benefits of collaboration during the design process to work through constructability. This approach should also assist in lessening the risk to all parties during construction.

We do see an opportunity for Government to rethink and restructure major projects so the pipeline of projects can continue. Never has there been such a significant catalyst for greater collaboration in bringing building and infrastructure projects to the market and in doing so reducing risk and costs for all parties. Our membership stands ready to work with Government come through this crisis to deliver for all Australians.