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Driving business success for consulting firms in the built and natural environment

5 April 2019

Australian Government
Department of Industry, Science, Energy and Resources

Submitted online via: <https://consult.industry.gov.au/small-business/payment-times-reporting-bill-exposure-draft/>

Submission on Payment Times Reporting Framework

Consult Australia welcomes the opportunity to provide comment on the Department of Industry, Science, Energy and Resources' consultation on the Payment Times Reporting Framework. We support moves to ensure our small business members are paid on time given the imbalance in market power between clients and these consulting businesses. We note the reforms only apply to businesses with over \$100 million in annual turnover. Unfortunately, small business members advise that government agencies are among the worst at paying on time. We therefore urge all public sector agencies to sign up to our [Model Client Policy](#), which includes a commitment to paying consultants on time. This would show a real commitment and would set an example for the rest of the supply ecosystem.

Consult Australia is the industry association that represents the business interests of professional services firms within the built and natural environment that provide design, advisory, and engineering services. Our membership is diverse, we represent sole traders and small businesses as well as large firms that operate internationally.

To inform this submission, Consult Australia sought feedback from our small business members operating throughout Australia on both local and interstate projects. Our small business members service a range of clients; home/property owners, local councils, state governments as well as medium and large residential, agricultural and industrial developers. They offer a range of professional services including design, advisory and engineering solutions.

We acknowledge the related Supply Chain Financing Review conducted by Australian Small Business and Family Enterprise Ombudsman ('the Ombudsman'), to which we recently submitted similar comments and concerns. At the outset we note that our small business members support the recommendations of the Ombudsman set out in the [Position Paper](#) of 7 February 2020, particularly those that relate to payment times.

Extended payment times are often imposed on our small business members

Our small business members advise that they frequently have their payment times ignored – even by government clients. Small businesses face significant challenges enforcing payment terms when clients hold greater market power.

Generally, consultants seek payment within 30 days of issuing their invoice, which considers the cash flow needed to keep the business running. Our small business members report being subjected to extended payment times by clients. Extended payment terms put significant stress on small businesses. Numerous members report that they have turned down large projects for this reason alone.

Extended payment times are reportedly 30, 35, 45, 60 and even 90 days after the end of the month. Some clients also claim the need to be invoiced by a specific day of the month and if missed the small business consultant needs to wait 30 days until the next payment cycle before the invoice will be acknowledged. This can in effect lead to payment times of up to 120 days. Clients expect these extended payment times irrespective of the consultant's payment terms.

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Small business members advise that a broad range of clients expect these extended payment times, including:

- Engineering procurement construction firms;
- larger consultancy firms;
- local governments; and
- state government agencies.

The experience of our small business members indicates that the larger the client business the more onerous the payment terms and the less flexible they are to changes to the terms. Significant time is wasted by small business constantly chasing payments from big business. It seems that a lack of processes and a lack of accountability contribute to slow payers.

Payment delay is not the only difficulty faced by small businesses in getting paid. Members advise that large businesses are increasingly outsourcing their payment systems to third party providers – including the issuing of invoices. Our members advise they are required to use platforms such as *payapps* that require the payment of a fee (by the consultant) for invoices to be issued. Noting the significant impacts delayed payments and unnecessary fees have on small businesses, more support is needed to ensure that fair payment terms can be enforced.

Government clients also subject small businesses to lengthy payment times

There are indications that the Commonwealth Government has a policy of improving payment terms, however this does not seem to be reflected at the state/territory and local government level. When working with government clients, internal procedures often impact payment times. For example, the approval of the government project manager on each invoice might be required before the invoice is forwarded to the finance department for payment. Government clients expect consultancy firms to accept these internal procedures, but rarely do they negotiate on terms. Therefore, in addition to already holding much more market power than small businesses, government clients make very few concessions on standard practice for this sector. This is disappointing as the benchmark for fair and ethical behaviour should be government, as other participants in the market take their lead from government.

Consult Australia has published its [Model Client Policy](#) that sets out how government clients can act fairly in engaging with the market. Given that the rest of the market takes its lead from government actions, it is vital that government agencies at all levels act ethically, fairly, and honestly in their dealings with the private sector. Consult Australia's Model Client Policy sets out how governments can do this when engaging consultants, and importantly one of the twelve points in the policy is to 'settle invoice payments and payment claims on time'.

Comments on the Payment Times Framework set out in the Consultation Paper

Consult Australia supports the Payment Times Framework as set out in the Consultation Paper, in particular the three objectives:

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

However, we remain concerned that the enforcement regime relates only to the reporting mechanism and wonder how this will support small businesses when they are faced with a client (whether in the private or public sector) that delays payment or withholds payment.

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We support the Framework's approach to transparency, with all reports being displayed on a public website. We agree that this will allow small businesses to make better informed decisions about who they do business with. As stated above, small businesses will reject work if they know the client has bad payment terms and/or record. It is hoped this transparency will incentivise large businesses to improve their payment times.

It is noted that the report will need to be signed off by a senior member of the large business, such as the CEO and be approved by the company's board of directors. We commend the Department for recognising that this is about culture change as well as regulatory impost. It is important that this is a governance issue that is given priority.

Noting the experience of our small business members, it is recommended that the Payment Times Framework also capture any internal policy or use of third parties/apps that could impact on payment times. This is in addition to businesses reporting on their promised payment terms, their actual payment terms and the use of supply chain financing.

Given Consult Australia's membership includes large consultancy businesses that may be subject to the Framework, we are pleased to see that:

- Businesses will be given time to adapt their financial and other systems to comply with the new reporting requirements, as the scheme will not commence until at least January 2021.
- The administrative burden is limited because the reporting will be six monthly, based on the financial year the business uses for tax purposes and businesses will have up to three months to submit the reports (with an ability to apply for an extension).
- There is procedural fairness for businesses under the scheme with avenues for review by the Administrative Appeals Tribunal in respect of findings of non-compliance and rejection of extension requests.
- Businesses will have time to become familiar with the reporting requirements without being subject to penalties immediately, as the enforcement mechanisms will be rolled out 18 months after the Framework begins.

In conclusion, Consult Australia supports the Payment Times Framework as a demonstration of the Government's support of small business. The Framework provides a way to bring transparency to payment terms without undue impost on larger businesses. There are outstanding concerns about government clients not captured by the Framework and what support will be available for small businesses where they continue to be subject to unfair payment terms.

If you would like to discuss our submission, please contact Kristy Eulenstein, Policy Advisor (Legal & Regulatory) at kristy@consultaaustralia.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Nicola Grayson", with a long, sweeping tail.

Nicola Grayson
Chief Executive
Consult Australia