CONSULT AUSTRALIA

The trusted voice for business in design, advisory and engineering

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Treasury
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Unfair trading practices protections for small businesses – Submission

Consult Australia is the industry association representing consulting businesses in design, advisory and engineering, an industry comprised of over 58,600 businesses across Australia. Around 97% of this industry is made up of small businesses. Our members provide solutions for individual consumers through to major companies in the private sector and across all tiers of government.

Our industry directly employs over 285,000 people in architectural, engineering, and technical services and many more in advisory and business support. It is also a job creator for the Australian economy, the services we provide unlock many more jobs across the construction industry and the broader community.

Consult Australia is pleased to provide a submission to Treasury's consultation on unfair trading practices protections for small businesses, which follows on from previous work by Treasury in 2023 and 2024. It is acknowledged that concerns previously raised by Consult Australia have been called out in the latest consultation paper, including the behaviour of a client requiring a small business to sign an additional agreement to obtain payment for work already performed and agreed upon.

More behaviours that members have reported which could be considered 'unfair trading practices' include:

- clients accepting performance of services without a signed contract but then not paying for completed services without the business signing a contract.
- clients requiring documents to be submitted with payment claims that are not required under the contract, such as design certificates, payment affidavits or copies of insurance policies. The terms of these requirements are often objectionable in and of themselves.
- clients requiring objectionable changes to already-agreed contract templates.

However, it is unclear that the proposed regulatory changes would address these behaviours. As noted in previous submissions, many of the clients drawn out as examples by Consult Australia members are government clients. Therefore, it would seem that a better approach to address such behaviours would be having the existing unfair contract term protections of the Australian Consumer Law apply to government, rather than introducing new broad unfair trading practice regulation that apply in business-to-business transactions or where small business is a customer.

The current proposal would add another layer of uncertain obligations over already complex regulatory settings and fail to address a key area of concern – government contracts.

For these reasons, Consult Australia does not support the proposed unfair trading practices framework.

I invite you to contact me directly at kristy@consultaustralia.com.au for more information or to arrange a meeting to discuss.

Yours sincerely,

Kristy Eulenstein
Head of Policy and Government Relations