

SUPPLIER PAYMENT CODE REVIEW

Terms of Reference

6 September 2018

Context

On 29 May 2017, the Business Council of Australia launched the Australian Supplier Payment Code, an industry-led initiative to improve payment times across the economy and pay small businesses within 30 days of receipt of a correct invoice.

To date, 46 Business Council members and 37 non-members have adopted the Code. These entities collectively earn revenue of more than \$416 billion.

The Code requires that its performance in improving payment times and practices is reviewed. The Business Council is launching the first review of the Code on 6 September 2018.

Independent Reviewer and Code Panel

The Independent Reviewer of the Supplier Payment Code is **Professor Graeme Samuel AC**. Professor Samuel previously served as the chairman of the Australian Competition and Consumer Commission from 1 July 2003 to 31 July 2011. Professor Samuel has recently completed a review of the Food and Grocery Code of Conduct, and is part of the APRA Panel of Inquiry into the Commonwealth Bank of Australia.

The review will be overseen by a Panel made up of:

- Kate Carnell AO, Australian Small Business and Family Enterprise Ombudsman
- Judy O'Connell, Victorian Small Business Commissioner
- Peter Strong, Chief Executive, Council of Small Business Australia (COSBOA)
- Dirk Fourie, Principal, Procurement, Rio Tinto Australia

It is intended that the Reviewer will meet with the Panel on a regular basis, to discuss and test his conclusions and recommendations. The Reviewer must take into account the views of the Panel in preparing his report.

Objective of the Review

The review will assess whether the Code is fit-for-purpose; namely, whether it is improving payment times and practices, particularly for small business suppliers.

Scope of the Review

The Reviewer has been tasked with answering the following questions as part of the review, and providing recommendations to the Board of the Business Council of Australia:

- What impact has the Code had on payment times?

- Are there examples of improved relationships between small and big businesses?
- Have adopters had any challenges complying with the Code?
- Is the purpose of the Code clear?
- Are any of the Code requirements unclear, that may require re-drafting or guidance?
- What are the barriers to adopting the Code?
- Are further exemptions to the small business payment standard required?
- Should any of the Code requirements change?
- Should the Code focus on particular industries where the requirements are most relevant, such as retail, manufacturing and construction?
- Can compliance with the Code be deemed from compliance with other sources of regulation?
- Should the Code include some independent oversight of compliance, with implications for non-compliance?
- Is the existing level of publication of payment timeframes and processes sufficient?
- How can the Code be better promoted, and adopted more broadly?
- What could the Government do to assist with adoption of the Code?
- Is the application of the Code limited without an accompanying register of small businesses, to allow Code adopters to identify which of their suppliers are small businesses?

Process

Adopters of the Code will be contacted, to seek their views on transition and compliance with the Code.

Business Council members who have not yet adopted the Code will be contacted to get a better understanding of any barriers to adoption.

External organisations and individuals are invited to provide input into the review via written submissions, addressing the scope of the review detailed above. Data as well as qualitative feedback is welcomed.

Submissions are due by **28 September 2018**, to be sent to codereview@bca.com.au. Submissions will be confidential; any reference in the review's report to feedback from any party will be deidentified unless explicitly requested otherwise by the party in question.

The Reviewer is required to provide a draft report to the Board of the Business Council of Australia by **11 December 2018**.

Consultation

The Independent Reviewer will conduct the review publicly in consultation with:

- The Panel
- Minister for Small and Family Business, Skills and Vocational Education, Senator the Hon Michaelia Cash
- State-based Ministers responsible for small business
- State-based small business commissioners
- Business representative bodies and individual businesses