



Progress - PI insurance and advocacy

August 2024

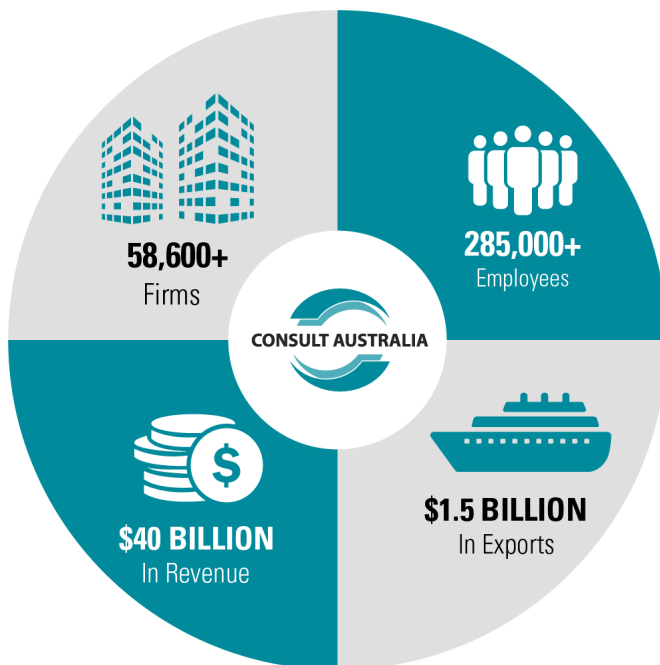


At the beginning of 2024 Consult Australia expected strong action in the year would be needed to meet the many challenges faced by members on the already business-critical issue of accessibility and affordability of professional indemnity insurance.

In this progress report we note some key advocacy wins as well as an expansion and return of capital for construction professionals. Despite this return, we cannot delay reform. Without a reduction in disputation, the renewed interest from insurance providers will evaporate fast. Consult Australia's role as the strong and unified voice across states, territories and federally remains vital.

The strength of Consult Australia's advocacy relies on the support of its members.

ABOUT US



Consult Australia is the industry association representing consulting businesses in design, advisory and engineering, an industry comprised of over 58,600 businesses across Australia. This includes some of Australia's top 500 companies and many small businesses (97%). 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.

SNAPSHOT

State of the PI market:

In recent months there has been a rapid expansion and return of capital for construction professionals generally. The increased appetite appears across a range of professions including project managers and some disciplines of engineering such as building services, acoustic, civil, structural and geotechnical.

Unfortunately, this appetite does not diminish the concerns insurers have about activities that include high rise residential, facades design, design and construct and complex infrastructure projects.

Progress on issues nominated in our Look Ahead (Jan 2024):

- ✓ Consult Australia secured advocacy wins on the NSW Government's proposed Engineering Practice Standard. In March 2024, the government released its proposed standard which implemented several of Consult Australia's suggested changes. Further, in August 2024 the government announced that it would delay implementation of the standard until early 2025 after further consultation occurs.
- ✓ We continue to engage with governments around Australia on procurement and regulatory requirements to curtail the move towards large and often excessive amounts of coverage for businesses. This includes our push against unnecessarily high insurance limits and unreasonable obligations in contracts. We have seen a number of wins in government contracts.
- ✓ Consult Australia is working collaboratively with the Insurance Council of Australia, brokers and our peer associations to continue to pressure governments to realise an approach closer to that of a 'model client'.
- ✓ Consult Australia has raised with parliamentary and government stakeholders the opportunity in the Competition Review to stop the unreasonable use of misleading or deceptive conduct provisions of the Australian Consumer Law during contracting disputes against consultants.
- ✓ Consult Australia concluded its survey of members and produced the [Confidence & Continuity](#) report, including findings on the affordability and availability of professional indemnity insurance.

Our call to action:

- Members to continue to support Consult Australia's action by amplifying our advocacy, sharing problematic contracts with us and alerting us to regulatory barriers.
- Government as both clients and regulators to proactively engage with Consult Australia on reform agendas.
- Industry stakeholders to collaborate with Consult Australia for influence and impact.

STATE OF THE PI MARKET

The PI market certainly changed for us this year – for the better. I spoke with two new underwriters, both looked in great detail at the type of work we do, who our customers are, the experience of our people and our quality assurance systems. The underwriter we chose offered us the same cover (and same exclusions) as our current insurer but at a significantly lower premium.

Consult Australia small business member

The insurance market is generally understood to have a cyclical nature, periodically going through hard and soft cycles. Since around 2017 we have seen a particular 'hardening' of the professional indemnity (PI) insurance market which has resulted in increased policy excesses and premiums as well as cover restrictions.

Over the past year or two we have seen an improvement in general PI lines overall which have not necessarily translated to engineering occupations. Experts advise that the general insurance market is finally starting to move from the hard to the softer side of the market.

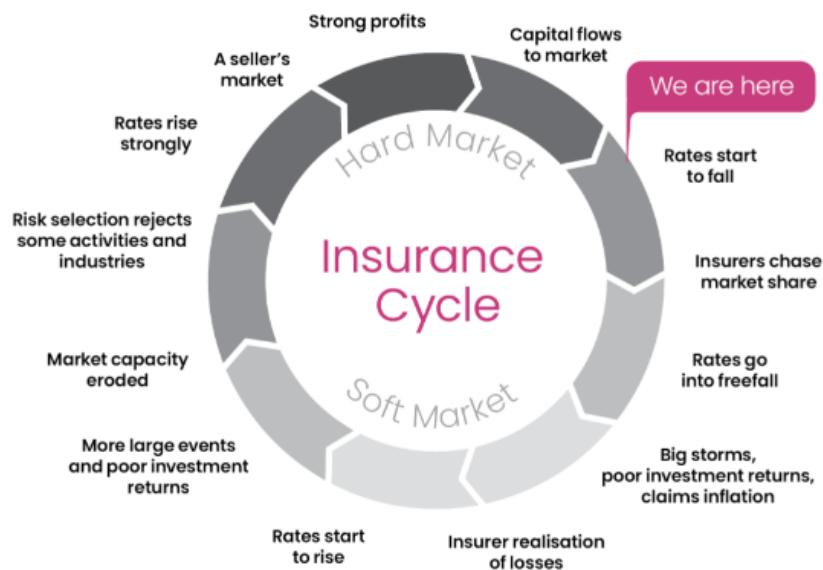


Figure 1 – Bellrock advisory 'insurance clock' from its [Market Update – July 2024](#)

Recent reports also note a rapid expansion and return of capital for construction professionals. There is increased appetite across professions including project managers and some disciplines of engineering such as building services, acoustic, civil, structural and geotechnical. Unfortunately, this appetite does not diminish the concerns insurers have about activities including high rise residential, facades design, design and construct and complex infrastructure projects.

This expansion will be welcome news for many Consult Australia members, especially where businesses can show limited exposure to those still 'risky' activities.

PROGRESS ON ISSUES

In our January [Look Ahead](#) we set out some of the top-of-mind issues and opportunities needing action in 2024. Consult Australia's commitment to provide solutions to government (both as clients and as regulators) to untangle the issues that impact the PI insurance market have led to progress in all areas as demonstrated below.

A change and then a pause on statutory fit for purpose obligation in NSW

In January 2024, we expected that the NSW Government would continue its push for an Engineering Practice Standard that would include a fit for purpose obligation on engineers. Since late 2021, Consult Australia has strongly and consistently argued against such an obligation (read the detail of our [August 2023 submission here](#)).

In March 2024, the NSW Government released the Engineering Practice Standard with a much narrower definition and criteria for its 'fit for purpose'. This change reflects Consult Australia's advocacy and reassures the insurance industry about the availability of professional indemnity insurance for engineers working in the NSW building sector. At the time, the NSW Government was working towards implementation in September 2024.

In July 2024, the NSW government announced that it has delayed implementation until early 2025, and it will conduct further consultation. Consult Australia has notified the government that it expects to be involved in that consultation to seek further improvements to this regulation.

Continued advocacy on insurance limits and obligations in contracts

Throughout the start of 2024, Consult Australia has advocated in all relevant forums for clients to bring down insurance limits and temper unreasonable obligations in contracts. This has included high-level policy industry forums with government agencies at the federal, state and territory level.

In August 2024, our advocacy was reflected in the [Energising Enterprise](#) paper by the Australian Small Business and Family Enterprise Ombudsman, including the call for government to '*undertake urgent and decisive action to ensure that essential insurances for small businesses are understandable, accessible and affordable*'.

In the first half of 2024, Consult Australia members have increased their reporting of clients that won't budge on contractual terms including those relevant to insurance. This intel drives our engagement with those clients to shift the dial.

Bringing attention to misuse of misleading and deceptive conduct provisions

Consult Australia has brought the misuse of misleading and deceptive conduct provisions in contractual disputes to the attention of relevant ministers, cross-bench parliamentarians, and agencies.

For example, in forums with Assistant Minister Leigh we have applauded the launch of the [Competition Review](#) but await an opportunity to present our proposed reforms of the Australian Consumer Law (ACL) to ensure consumers and small businesses are protected but also stop the misuse in contractual disputes.

Similar remarks have been made to independent senators such as Senator David Pocock who has a keen interest in removing barriers for business:

I want businesses to have certainty so they can plan and invest with confidence. I am committed to being a strong voice for business in Canberra, advancing our role in building Australia's future economy.

Senator Pocock, [Supporting business & a strong economy](#)

An example of the wins in government contracting

In response to intel from members, Consult Australia continues its engagement with government on problematic contracting terms. In every jurisdiction we are taking action on government contracts – including the contracts that impact members as sub-consultants.

One key example of government amendments due to advocacy is in the Queensland Department of Transport and Main Roads' Infrastructure Building Construction Panel contracts. The [latest Infrastructure Contracts](#) reflect Consult Australia's advocacy by:

- providing for an effective cap on the supplier's liability and limiting the liability under the indemnity.
- having many of the performance elements under the 'supplier's obligations' section of the contract, rather than in the warranty provisions, which also removes duplication.
- no longer having a reference to 'Professional standard' in supplier obligations.
- having clearer compliance requirements for approvals.

This is in addition to the changes we secured in 2022 and 2023 including the removal of liquidated damages, removal of a security obligation, amendment of an appropriate reliance clause for supplied information and provisions for a liability cap.

MAINTAINING THE PRESSURE

Consult Australia's view is that the positive shifts in the PI market will be short lived unless we also address the unnecessary disputation in the market. Therefore, we will maintain the pressure through our key activities and campaigns:

- Continued engagement of government regulators on regulatory reform.
- Release of thought leadership reports, including *Unravelling Risk*.
- Contractual discussions with government clients.
- Continued collaboration with the Insurance Council of Australia, including through its Business Advisory Council.

You have a role:

- **Members** can support Consult Australia's advocacy and action by amplifying our advocacy and sharing problematic contracts with us.
- **Government as clients** can proactively engage with Consult Australia on procurement and contracting reform, including by revisiting the insurance, liability and indemnity provisions within their contracts and explicitly commit to our Model Client Policy.
- **Government as regulators** should heed the advice and concerns raised by the broader industry about likely impact of proposed regulations and collaborate with industry to re-design regulation to ensure that the public policy intent is met.

Kristy Eulenstein, Head of Policy and Government Relations



Kristy is your go-to to talk all things insurance. Since joining Consult Australia in July 2019, she has fostered strategic relationships with the insurance industry and led the charge on government engagement to change the status quo.

She develops the strategic policy and advocacy priorities of the association and leads the team of policy and stakeholder engagement professionals in the states and territories.

With over 15 years in the public service Kristy knows how to develop solutions that work for government.

Thanks to our Industry Champions

For their outstanding leadership and engagement on behalf of the industry.



AECOM

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smec
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Jacobs



 **Stantec**

COLLABORATIVE LEADERSHIP COMMITTED TO THE SUCCESS OF OUR INDUSTRY

We acknowledge the Traditional Custodians of the land on which we work and live which includes the lands of the Gadigal, Kuarna, Kulin, Turbal and Wirundjeri people.

We pay our respects to Elders, past and present.

Art Artwork 'Safe Passage' by Kimberley Back under license until March 2025.

Consult Australia offers a range of in-house Professional Development education that can be tailored specifically to suit your firm's requirements. In-house education encourages greater teamwork and builds awareness and understanding of each other's roles in the organisation by enabling group discussion to be based around real examples that are specific to your business environment and policies. In-house education can also be run at a fraction of the per head cost of sending each participant to an open programme and have the added advantage of being able to be conducted at either your premises or at an off-site location of your choosing at a time that suits you.

An overview of the course available to be run in-house is included below — more information on each can be found at our website under [Events & Courses](#).

ROLE OF THE SUPERINTENDENT

The Superintendent's role is a complex one. It requires a sound understanding of the law of contract, substantial engineering skills, and particularly an understanding of the provisions of the particular project outcomes. This intensive and interactive programme teaches you how to confidently manage the various Superintendent duties, the dual roles of the Superintendent, and how to avoid common legal traps.



CONTRACTS FOR CONSULTANTS

This intensive 2.5-day programme is aimed at those who are regularly confronted with client contracts. The programme provides essential advice and insight on managing and controlling contractual rights and obligations. It is conducted in a small group interactive format and has helped those with both limited and extensive experience to deal more effectively with contracts and their various terms and conditions.

Tools and advice are given on how to develop fair and reasonable contractual relationships with clients.

