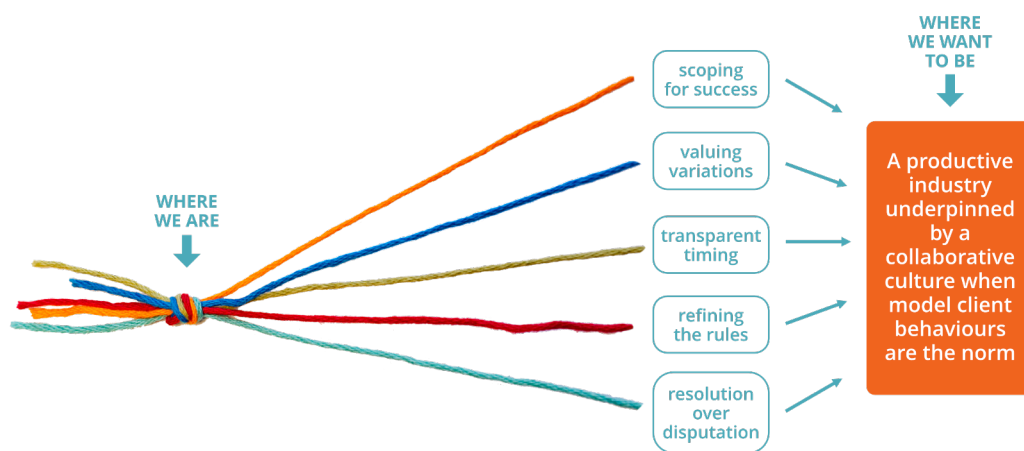


Unravelling Risk

Reforming the
design, construct &
litigate cycle

Produced for strategic leaders across government and the construction industry, Consult Australia's **Unravelling Risk** paper explores the underlying reasons for disputation in Australia's construction industry, especially as it impacts design, advisory and engineering consulting businesses.

The proposed reforms will get us closer to a productive industry underpinned by a collaborative culture where model client behaviours are the norm.



With projects growing more complex over time, the **knotty issue of risk** has become more important, but with no improvement in our management of risk. This is seen most starkly in design and construct contracting, which often results in a **design, construct and litigate cycle**.

Consult Australia proposes **five reform threads** to unravel the current situation, all underpinned by collaboration and transparency: scoping for success, valuing variations, transparent timing, refining the rules and resolution over disputation.

1 SCOPING FOR SUCCESS

Change in scope is a leading cause of claims. Collaboration and transparency between parties at the earliest stages of a project and program scoping could deal with a significant volume of unnecessary claims.

2 VALUING VARIATIONS

Claims for 'design error' are often linked to changes between the tender and final design phases. Variations should be about achieving the best outcome for the project. An early warning approach to issues would assist all to value variations.

3 TRANSPARENT TIMING

Claims for delay are frequent, with strict liability in contracts working against a collaborative approach to resolve issues to get the project 'back on track'.

4 REFINING THE RULES

Unreasonable claims against consultants can be limited by refining the Australian Consumer Law (ACL) and civil liability laws.

The misleading or deceptive conduct provisions of the ACL should be modified to guarantee protection for consumers and small businesses.

Civil liability laws in ACT, NSW, NT, SA, Tas, Vic and WA should be amended to explicitly prohibit contracting out of proportionate liability (in line with Qld law).

5 RESOLUTION OVER DISPUTATION

Australia's construction industry has a reputation as being marred by adversarial, problematic and uncollaborative contracting arrangements. Resolution of issues rather than disputation is best for project, relationship and business outcomes.