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

22 September 2020

The Hon Tim Pallas
Treasurer
VIC Government
Via email: tim.pallas@parliament.vic.gov.au

The Hon Danny Pearson
Assistant Treasurer, Minister for Regulatory Reform
VIC Government
Via email: danny.pearson@parliament.vic.gov.au

The Hon Richard Wynne
Minister for Planning
VIC Government
Via email: richard.wynne@parliament.vic.gov.au

Dear Treasurer, Assistant Treasurer, and Minister,

Urgent reform to Construction Supplier Register – Victorian stimulus projects at risk

I am writing on behalf of Consult Australia member businesses seeking your combined assistance to remove an unnecessary barrier in the Construction Supplier Register (CSR) which could significantly impact Victoria's economic recovery from COVID-19.

Consult Australia is the industry association representing consulting businesses in design, advisory and engineering. Our industry comprises some 48,000 businesses across Australia, ranging from sole practitioners through to some of Australia's top 500 companies, providing solutions for individual consumers through to major companies in the private sector and across all tiers of government. Our industry is a job creator for the Australian economy, directly employing 240,000 people. The services we provide unlock many more jobs across the construction industry and the broader community. In Victoria there are almost 10,000 people directly employed by our members.

The CSR is administered by the Department of Treasury and Finance and is a resource for government agencies to shortlist consultants and contractors for EOI/tender. In our experience pre-qualification on the CSR is often a government client requirement and without it a tender will be deemed 'non-compliant'. Our concern is that the current CSR requirements are reducing the competition in the tender market (resulting in poorer value for money outcomes for the government) as businesses are excluded from tendering simply based on their business structure. It is vital that all suitably qualified and experienced consultant businesses are on the CSR to ensure delivery of Victoria's stimulus projects.

The issue arises particularly for our multi-disciplinary Tier 1 and 2 companies. The expertise of these businesses covers a wide range of engineering and broader consulting disciplines. The *Building Act 1993* (Vic) requires registration of a body corporate on the CSR and that there is a 'nominated director' for each registration class under the Act. This means, for example, that for a multi-disciplinary business that works across the engineering fields of; civil, electrical, fire safety and mechanical, (to name but a few in a large multi-disciplinary business) up to four Board positions must be held by professionally qualified and practising engineers. This confuses governance with operations and is not a practical requirement for our Tier 1 and 2 members.

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An unintended consequence of this obligation is that companies may not be able to achieve diversity in their Board members across the range of professional skills needed for good corporate governance, because the size of the Board will become unwieldy if every type of engineering discipline offered by the business has to be on the Board. A diverse Board is a key pillar of a healthy and inclusive Board, which sets organisational culture and as an outcome achieves a more innovative company and therefore industry. The ASX Corporate Governance Council's [Corporate Governance Principles and Recommendations 2.1 \(2019\)](#) provides the following practical guidance in relation to the size of a Board:

The Board should be of sufficient size so that requirements of the business can be met and changes to the composition of the Board and its committees can be managed without undue disruption. However, it should not be so large as to be unwieldy.

The Australian Institute of Company Directors is active in this area and recommends a diverse mix of competencies on modern boards to ensure proper management of the company – that is across governance, legal, accounting etc. See: <https://aicd.companydirectors.com.au/resources/director-tools/practical-tools-for-directors/board-composition/board-recruitment>

Up until August 2019, the Department of Treasury and Finance accepted registration of consulting businesses where there was a nominated *person* in the company with the appropriate professional registration (rather than a director). Our members generally nominate a senior leader in these instances. This approach reflects the approach used in Queensland where our members have a 'nominated building practitioner' for each class, who needn't be a director of the company. There is no evidence that this practice has impacted community safety or confidence.

The Department advises that it is concerned to ensure that the CSR reflects the obligations of the *Building Act 1993* (Vic) and therefore would like to move away from that past practice. In effect, this means that some businesses are disadvantaged over others simply because of the company structure. This fails to consider market realities including the increasing consolidation of consulting companies and the need for multi-disciplinary operations.

It is an untenable position for the Victorian government to reduce access to the best businesses because of this barrier. There is no public policy purpose delivered by this requirement that cannot be realised by ensuring there is a nominated person (rather than director). It is also unreasonable to expect businesses to expand their Board, or alternatively restructure their business, to accommodate this requirement.

In the attached brief we set out potential solutions:

- **Amend the *Building Act 1993* (Vic)** to make clear that a 'nominated person' rather than a 'nominated director' must be registered in the relevant class/es. This maintains the public purpose of registration while removing a barrier to participation. We understand that legislative change is neither easy nor fast, but we believe such a change could be achieved in an Omnibus Bill to address issues of immediate importance to Victoria's recovery from COVID-19.
- **Ministerial Direction by the Minister for Planning** exempting businesses from the requirement where that business can instead provide a 'nominated person' as a registered building practitioner.
- **Department to add a new overarching category of 'registered engineer'** (and removal of sub-classes of mechanical, electrical etc.) so that any currently registered engineer on the company board would be suitable to demonstrate the business can undertake any engineering work.

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While we have been in discussions with the Department for almost a year to resolve this issue, now is the time to act, as without action Victoria's stimulus projects will not be delivered.

Consult Australia's Health Pulse Surveys (conducted in May 2020 and again in September 2020) demonstrate the second wave of COVID-19 cases in Victoria and the Stage 4 restrictions has had a significant impact on businesses compared to the Australia-wide figures. For example, 78% of businesses that provide services in Victoria are seeing a reduction in work (compared with 55% Australia-wide) and the average reduction in work for businesses providing services in Victoria is 27% (compared with 22% Australia-wide). Unfortunately, our members noted delays in client responsiveness and decision-making. The second wave is having a greater impact than the first wave, including in respect of employee mental health.

The change to the CSR requirement may seem inconsequential, but it is a small change that will deliver significant business certainty to the industry. Together we can ensure that all suitably qualified and experienced consultant businesses are on the CSR so they are ready, willing and able to work for Victorians.

I would be pleased to meet (virtually) with you to discuss this further, with senior leaders from the Consult Australia membership who operate in Victoria. I invite your office to contact me at nicola@consultaaustralia.com.au or on 0499 878 839.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Nicola Grayson".

Nicola Grayson
Chief Executive Officer

CC:
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