

MEDIA RELEASE



Driving Business Success for Consulting Firms in the Built and Natural Environment

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Liability Crisis Undermines NSW Infrastructure Investment

Given the once in a generation spend on infrastructure many of the projects are at risk of being delayed or not delivered due to the loophole that this Budget has failed to address.

State Manager for industry association Consult Australia, Matthew Trigg, says the NSW Government has so far failed to act despite repeated warnings for over a decade.

“Spending billions on infrastructure projects while failing to provide sensible risk management presents a clear systemic risk to the New South Wales economy.”

“Taxpayer dollars could be essentially worthless if the businesses delivering them are forced to close because they cannot get or afford insurance, or because they are sued into bankruptcy.”

“With insurance costs increased up to 25% and no guarantee of availability, the burden being placed on business by not having proportionate liability as standard is simply unsustainable.”

“A domino effect could see a rapid economic collapse and significant costs and delays to Government services and infrastructure.”

Consult Australia continues to call on the NSW Government to immediately prohibit the contracting out of proportionate liability in all new government contracts and to amend the *Civil Liability Act 2002* to align with Queensland where the practice is prohibited.

END

Attachment:

A Growing Liability Crisis in New South Wales: Protecting Proportionate Liability

For further information or to arrange an interview, please contact Consult Australia’s State Manager for New South Wales, Matthew Trigg on 02 8252 6708 or matthew@consultaustalia.com.au

About Consult Australia

Consult Australia is the association that represents the business interests of consulting firms that design, engineer, assess and plan our built and natural environments.

We represent an industry comprising some 48,000 firms across Australia, ranging from sole practitioners through to some of Australia’s top 500 firms. Collectively, our industry is estimated to employ over 240,000 people, and generate combined revenue exceeding \$40 billion a year.

Consult Australia has undertaken significant work to further the discussion, including on how major works are financed and procured. For more visit www.consultaustalia.com.au

A Growing Liability Crisis in New South Wales

Protecting Proportionate Liability



- Systemic risk to the State has grown over last 15 years and action is now needed
- Legislative 'loophole' is allowing disproportionate allocation of risk and liability
- Insurance costs increased up to 25% and requirements not aligned to availability
- Project costs unnecessarily increased and competition is being restricted
- Legal system needlessly burdened by adversarial culture of claims and cross-claims

Proportionate liability protects a business from being held liable for a loss caused by someone else's actions.

It allows businesses to effectively manage the risks they are responsible for and ensures that each year they only need to buy insurance for their own tasks and projects.

The *New South Wales Civil Liability Act 2002* established the proportionate liability regime following the insurance crisis in the years before. However, five months after coming into effect, the Act was amended to permit the 'contracting out' of all parts except Part 2 Personal Injury Damages.

The *Queensland Civil Liability Act 2003* includes a similar provision however this excludes the contracting out of Personal Injury Damages and Proportionate Liability.

Over time an increasing number of contracts have required businesses to contract out of proportionate liability. So much so it is now the default position in many contracts.

Insurance coverage is purchased on an annual basis and businesses must pay more where proportionate liability does not apply. This kind of cover will likely become less available should the global insurance market tighten through natural cycles or because of a major event(s).

Without insurance **businesses will be forced to close**, causing disruption and delays. A domino effect could see **a rapid economic collapse and significant costs and delays to Government services and infrastructure**.

In allowing an increasing number of businesses and projects to sign such contracts, the NSW Government is complicit in allowing this systemic risk to develop.

In February 2017 the Legislative Assembly Committee on Transport and Infrastructure recommended the *NSW Government assess whether contracting out of proportionate liability provisions should be prohibited across government contracts*.

Allowing the contracting out of proportionate liability:

- **Increases project costs** through businesses having to factor in disproportionate levels of project risk, purchase additional insurance, and passing these costs on to clients and Government.
- **Reduces competition** from those unable to obtain or afford the additional insurance cover, or unwilling to sign contracts that contract out.
- **Increases risk of delays and cost-overruns** caused by businesses being distracted or forced to close because of litigation or unsustainable overheads.
- **Consumes court time unnecessarily** through an ongoing adversarial culture of claims and cross-claims rather than being resolved in a single decision.
- **Exposes local businesses to global shocks** by requiring parties to buy annual insurance products susceptible to restricted availability due to any future tightening in local and global insurance markets.
- **Creates a culture of poor risk management** where liability is allocated to those with the weakest defense capabilities, deepest pockets, and away from those with the greatest bargaining power.

A Pathway to Reform

A two-stage solution has been the focus of discussions between industry and government:

1. Prohibit the contracting out of proportionate liability across government contracts
2. Amend the *Civil Liability Act 2002* to align with Queensland and prohibit the practice

For more information contact our NSW State Manager via nsw@consultaaustralia.com.au or 02 8252 6708.