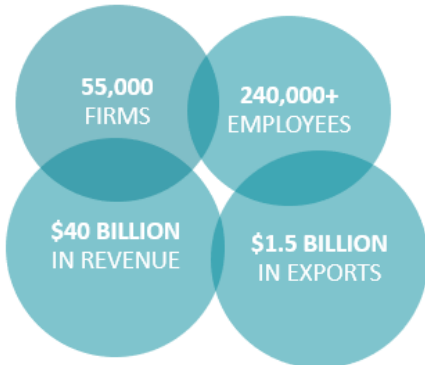




# FEDERAL ELECTION 2022

CONSULT AUSTRALIA'S PRIORITIES

### ABOUT US



Consult Australia is the industry association representing consulting businesses in design, advisory and engineering, an industry comprised of over 55,000 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 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.

### Our members include:



A full membership list is available at: <https://www.consultaustralia.com.au/home/about-us/members>

### Consult Australia advocates for a healthy and sustainable ecosystem of productive businesses to realise Australia's economic future

Consultants design the future. With every design, advisory and engineering service provided by our membership, there is a positive impact on job growth, community connectivity, and economic productivity.

Australia's economic future relies heavily on delivering the record investment in infrastructure as well as stimulating private sector investment in other areas. To achieve this, we need a strong ecosystem of productive businesses, ready to take the lead on innovation and collaboration. We call on the next federal government to be a part of this future by adopting our seven key policy recommendations, set out below.

Now is the time for a robust reform agenda to unlock productivity and build the talent pipeline in Australia. As acknowledged by [Infrastructure Australia's 2021 Plan](#), Consult Australia and other industry groups/thought leaders have called for reform over many years. Reform is now more urgent than ever because of the diminishing health of the industry as a whole and the size and scale of the demand especially in infrastructure. Consult Australia's solutions, as presented below, will deliver benefits for industry, the government (both as a client and as a regulator) and the community. Our proposals span across statutory reforms to fix the insurance market, procurement practices, skills, and mental health. At the heart, our priorities are business driven but people centric.

#### De-risking for delivery



*Introduce a range of statutory reforms to de-risk the market. This will dramatically reduce the level of disputation and bring some balance back to the professional indemnity insurance market.*

#### Collaboration as culture



*Embrace and embed collaboration as the cultural norm in contract design and tendering approaches. This will significantly reduce the imbalance between contracting parties and provide a more collaborative, productive environment with all parties focussed on successful project delivery.*

#### 'Go slow to go fast'



*Adopt and support a 'go slow to go fast' approach for all projects ensuring best practice in due diligence right at the start of projects. This will deliver better projects and minimise cost and time over-runs that currently mar projects, particularly infrastructure projects.*

#### Smarter pipeline of projects



*Adopt and support an approach to the pipeline of projects that provides certainty to the industry and increases accessibility for SME businesses. This will deliver benefits to productivity (both industry and government), workforce planning and regional participation.*

#### Digital by default



*Drive innovation by committing to and pushing for digital investment at all stages and on all projects so businesses, particularly small businesses, have the confidence to do the same. This will deliver benefits for both government and industry.*

#### Thinking smarter about skills



*Invest in a range of initiatives to tackle the deepening skills shortage in engineering and related professions. This will ensure that maintain world class design, engineering and advisory services for Australia and boost productivity by job growth and high employment participation.*

#### Striving for a mentally healthy industry



*Champion model behaviours both as a regulator and a client to support the vitality of our industry. This will ensure we have sustainable businesses with healthy and productive people at the heart.*

### Recommendations

#### De-risking for delivery



*The federal government should introduce a range of statutory reforms to de-risk the market including civil liability reforms to secure proportionate liability, limit misleading or deceptive conduct to protect consumers and small businesses and modify unfair contract term protections to capture government contracts. This will address the imbalance in market power in government to business and business to business contracts, reduce wastage through unnecessary disputation, and bring balance back to the professional indemnity insurance market.*

A focus on de-risking will have a significant positive impact on consulting businesses in Australia and for the delivery of projects. We are currently seeing the worst conditions in the professional indemnity (PI) insurance market since the collapse of HIH in 2001. Unfair contract terms in professional services contracts are driven predominately by the imbalance in market power between the professional services consultant and their client (whether public or private). As a result, Australia's building and construction industry has the highest levels of disputation in the world, outside of California in the USA. Consult Australia's proposed legislative reforms will address this imbalance and result in a fairer contracting environment and reduce the most significant areas of litigation seen across our industry in Australia:

- **Civil liability laws should explicitly prohibit contracting out of proportionate liability in professional services contracts.** This will secure the policy intent of the proportionate liability reform introduced throughout Australia between 2001-2004 and stabilise the PI insurance market. Queensland is the only jurisdiction that expressly does this, and by securing the same in other jurisdiction insurers will know that consultants are managing their risk exposure properly. It is inherently unfair that a consultant be held liable for the fault of others in the delivery chain.
- **Misleading or deceptive conduct claims should be limited to protect consumers and small business.** This will ensure that large, sophisticated businesses cannot claim against consulting businesses when other (more appropriate) avenues of redress are available through the contract or common law. Currently misleading or deceptive conduct claims are used to avoid contracted liability caps and to pressure consultants to settle other unproven claims, noting the considerable legal associated with defending multiple heads of claim.
- **Existing unfair contract terms protections should be extended to government contracts.** The current protections have the potential to be a very powerful incentive to fix bad contracting in Australia – however Australian government departments, agencies and clients are the most prolific creator of contracts but are not subject to the Australian Competition Law. As a flow on, private sector clients follow the lead of government, and it is a constant drain on the resources of consulting businesses attempting to negotiate fair contract terms in the market, which at the size and scale of projects in the market is a consistent lag on productivity.

The federal government has a role to play both as the regulator (through the ACCC in respect of the Australian Consumer Law elements) but also as the developer of model laws and convenor of National Cabinet where state and territory agencies can come together to agree on and deliver these changes throughout Australia.

If these de-risking reforms are prioritised by all governments across Australia, we will see significant changes in the productivity and mental health of the industry and enhanced business certainty for our professionals. Without a focus on de-risking, the PI insurance market will continue to deteriorate, and the diversity of consultant businesses will diminish as businesses and people exit our industry thus impacting the ability to design the future. It is up to the Australian Government to champion model client behaviour by embracing these de-risking opportunities.

See our [Professional Indemnity Insurance Market Briefing \(September 2021\)](#), [Model Client Policy](#), our [submission](#) to the Parliamentary Standing Committee on Infrastructure, Transport and Cities, Inquiry into Procurement Practices for Government-Funded Infrastructure as well as the [Infrastructure Australia's 2021 Plan](#) for more information.

### Collaboration as culture



*The federal government should embrace collaboration as the cultural norm and embed collaboration in contract design and tendering approaches which will significantly reduce the imbalance between contracting parties and provide a more collaborative, productive environment with all parties focussed on successful project delivery.*

Collaboration as culture is a commitment by everyone to shift away from disputation and embed a positive collaborative culture at every stage of a project, underpinned by communication. This combined with 'de-risking for delivery' (above) and 'go slow to go fast' (below) will dramatically change the broader construction industry for the better and deliver significant productivity savings for all parties. Using past projects as case studies, Consult Australia's [Uplifting Productivity](#) report demonstrates how collaboration and communication can be prioritised at all stages of a project from pre-tender to post-completion.

Having a collaborative culture would also dramatically reduce the disputation in the market and create more mentally healthy workplaces. It is acknowledged by government clients, contractors, and consultants that while no one contract model is by default 'always good' or 'always bad' some models are typically less collaborative, such as lump sum design and construct (D&C) contracting.

Consult Australia has collected claims data that demonstrates that 57% of consultant revenue is at risk when entering a D&C contract. This is a devastating impact on consultant businesses, despite representing only a very small percentage of the overall construction cost of a project (0.9%), hence government clients are often unaware of the extent of the disruption. Consult Australia holds that the claims, especially where 'design error' is cited, cannot represent actual design errors otherwise we would see more rectification work being undertaken around the country. These claims are typically settled before adjudication in the courtroom because the number and type of claims made are constructed tactically to push the consulting business towards settlement to avoid the substantial costs of defending the claim in court.

Adoption of more collaborative forms of contract and procurement practices will have multiple benefits:

- Significant reduction in the costs and resources (both government and industry) throughout the project lifecycle
- Uplift in productivity
- Uplift in innovation: noting that the value-add services our members provide is finding solutions to wicked problems, most significantly transitioning to a net-zero economy.

The federal government has a role to play both as an investor in infrastructure projects, but also as a conduit to bring all the state and territory governments along on the same journey. If prioritised by all levels of government, collaboration as the cultural norm can deliver significant productivity benefits to everyone and enhance project outcomes.

See our [Uplifting Productivity](#) report and [Model Client Policy](#) as well as the [Infrastructure Australia's 2021 Plan](#) for more on collaborative contracting.

### 'Go slow to go fast'



*The federal government should adopt and support a 'go slow to go fast' approach for all projects ensuring best practice in due diligence right at the start of projects. This will deliver better projects and minimise cost and time over-runs that currently mar projects, particularly infrastructure projects.*

The 'go slow to go fast' approach is where the emphasis in project development is placed on preliminary due diligence to enhance project outcomes. The investment of time and resources up front will also reduce project risks making it more likely that:

- clients (including government clients) will meet financial settings and reduce financial loss
- industry will meet delivery deadlines
- industry will deliver the right outcomes.

This is in stark contrast to the current environment where projects are put to market without a clear/defined scope, incomplete design, and substantial risk transfer. This predictably leads to problems with the market's ability to price the project, commit to a timetable, or assess the risks involved. Lack of due diligence in the early stages of project development is consistently cited in case study analysis of projects that have been beleaguered by disputes and failures.

If prioritised by all levels of government, 'go slow to go fast' can deliver significant benefits to everyone and enhance project outcomes and improve the operating environment for all stakeholders. In addition, with government clients leading the way, private projects will see the benefits of a 'go slow to go fast' approach and follow.

The greatest opportunities to ensure the best solution for the end-user happen at the earliest stages of the project during problem identification, project origination, and design. Improving how projects are conceived, planned, designed, and assured in these early stages has long been regarded the most effective mechanism owners have to consistently deliver superior project outcomes.

See our [Uplifting Productivity](#) report and [Model Client Policy](#) as well as the [Infrastructure Australia's 2021 Plan](#) for more detailed consideration of this approach.

### Smarter pipeline of projects



*The federal government should adopt and support an approach to the pipeline of projects that provides certainty to the industry and increases accessibility for SME businesses. This will deliver benefits to productivity (both industry and government), workforce planning and regional participation.*

A smarter pipeline of projects will produce sector-wide productivity, create a dynamic workforce, and increase regional participation. A smarter pipeline relies on the key elements of transparency and diversity of industry participants (in addition to an embedded 'go slow to go fast' mentality as discussed above).

It is expected that transparency of the upcoming pipeline of projects across Australia and cross-jurisdictional sequencing will ensure that:

- government clients can utilise industry feedback more effectively on barriers experienced by industry (which may not yet be seen by government – including skills shortages)
- industry can predict, prepare, and plan the resources required to meet demand, including the creation and maintenance of a dynamic workforce
- industry can attract workers to regional areas based on the pipeline in the region
- all parties benefit from increased productivity.

It is expected that if mega projects are broken up into smaller packages, small to medium businesses will be utilised for government projects, which will re-balance their current experience of having a downturn in work, and support larger businesses that are struggling to keep up with tender demands (see our latest [Industry Health Check results: September 2021](#)). This will help maintain a healthy diversity of businesses capable of delivering for Australia.

The federal government has a role to play both as an investor in infrastructure projects and as a convenor to bring all the state and territory governments together. If prioritised by all levels of government, having a smarter pipeline of projects will lead to greater economic prosperity across the industry.

### Digital by default



*The federal government should drive innovation by committing to and pushing for digital investment at all stages and on all projects so businesses, particularly small businesses, have the confidence to do the same. This will deliver benefits for both government and industry including job growth, increased productivity, improved risk management, improved accessibility and innovation.*

Digital by default means job growth, global leadership, increased productivity, risk management, and digital solutions to improve accessibility and innovation.

There are numerous ways in which digital by default can be delivered, from data sharing during projects, digital project controls, using digital tools to manage project risks and delivering building information modelling (BIM) and/or digital twins of assets. By going digital by default businesses (especially small businesses) will see the cost of digital tools as an investment rather than burden and will deliver better outcomes by reducing risk and increasing innovation.

Consult Australia has long called for mandated BIM for government projects, with very few jurisdictions taking that approach. See also Consult Australia's [Uplifting Productivity](#) report for examples where digital solutions were used in successful projects.

We also see digital solutions being vital in the successful implementation of the automatic mutual recognition/automatic deemed registration regime throughout Australia, particularly for engineers and other registered professionals.

The federal government has a role to play both as an investor in infrastructure projects and a model client to mandate the adoption of digital by default. If prioritised by all levels of government, digital by default will deliver significant productivity savings for Australia.

See also [Infrastructure Australia's 2021 Plan](#) for more digital by default recommendations.

### Thinking smarter about skills



*The federal government must think smarter about skills, investing in a range of initiatives to tackle the existing skills capacity issues – including developing a national workforce plan, simplifying skills and occupation lists incorporating emerging occupations, investing in education and upskilling and supporting businesses to navigate the migration system. This will ensure that the current pipeline of projects can be delivered.*

Thinking smarter about skills, includes investing in education and migration initiatives but also addressing the issues that currently impact on workplace mental health and cause burn-out of people (see above on 'de-risking for delivery' and 'go slow to go fast', and below on 'striving for a mentally healthy industry'). By doing this, we can ensure we have thriving workforce to deliver the current and future pipeline of projects.

The size of the infrastructure pipeline will create significant job growth both during the delivery phase and through the benefits of the infrastructure itself. However, we do not currently have enough people to deliver the infrastructure pipeline or participate in the job creation it will generate. Consult Australia has campaigned for a stronger focus on engineering education for many years, noting that the skills shortages are systemic. Australia is not addressing our education system's poor performance in mathematics. The PISA results show 46% of Australian aged 15 years failed to meet the minimum national standards in mathematics and our mean scores have continuously declined. Engineering degree intakes have not increased in more than a decade and with the loss of international student intakes over the last two years of the COVID-19 pandemic (noting international students make up the majority), the skills shortages in engineering are going to deepen even further in coming years.

Infrastructure Australia's Market Capacity report published in October 2021 found that approximately 57,000 FTE jobs in engineering are required in 2021-2022 alone to meet demand. The sobering reality is our industry lacks the people resources to deliver on the productivity projections for the future. Skilled migration will assist to a degree and we support implementation of the recommendations of the final report on [Temporary Migration](#) and the final report into the [Inquiry into Australia's Skilled Migration Program](#). However, because there is high global demand for engineering and related skills, critical initiatives are needed including:

- a national workforce plan that streamlines state and federal government approaches to address the skills challenges in education, employment and skilled migration
- continued support for higher education but also micro-credentialling for flexibility and skills transfer – for example this could utilise existing skilled migrant workforce and provide mid-level candidates an opportunity to upskill

- simplifying skills and occupation lists so that they remain accessible, applicable, and updated
- upskilling and supporting businesses to navigate the migration system by introducing an industry liaison officer initiative, like the initiative developed during the mining boom.

The federal government has a role to play as a contributor to the national curriculum, funding of government schools and tertiary institutions, and regulator of skilled and temporary migration. For more information on the skills shortage facing our industry, please see [Infrastructure Australia's Market Capacity Report](#).

### Striving for a mentally healthy industry



*The federal government must set the tone from the top and strive for a mentally healthy industry. In doing so, the federal government should champion model behaviours both as a regulator and a client to support the vitality of our industry. This will ensure we have sustainable businesses with healthy and productive people at the heart.*

Striving for a mentally healthy industry is a multi-level problem needing many solutions. Many of the recommendations above, if realised will have a significant positive impact on the mental health of our people. Currently, the stress of accessing affordable PI insurance, the litigious nature of working in the construction and the built environment, pipeline demands, including client timetabling/tender requests, the lack of a collaborative culture, and the significant skills shortage, are all taking a toll on the mental health and wellbeing of our workforce.

The [House Select Committee on Mental Health and Suicide Prevention final report](#) has called on the Australian Government to ensure under the Commonwealth Procurement Rules it is a condition for participation that any potential supplier demonstrate minimum standards of mental health support and care in their workplace. If the government is to adopt this recommendation, the government must set the tone from the top and strive for a mentally healthy culture in its dealings with industry. One way to demonstrate would be committing to Consult Australia's Christmas Tender Campaign and implementing an Australia-wide black-out tender period across Christmas and New Year to give industry a well-deserved and uninterrupted rest period. Currently, support from government agencies is sporadic and is often undermined by many projects 'by exception'.

The federal government has a role to play not only through the work of the National Mental Health Commission and related initiatives, but also as an investor in infrastructure projects and as a conduit bringing all the state and territory governments along on the same journey. By prioritising mental health of our people, we will see positive impacts on projects because the success and sustainability of Australia's economy is underpinned by the health and wellbeing of its people.

For more information see Consult Australia's [Striving for Mentally Healthy Workplaces](#) as well as [Infrastructure Australia's 2021 Plan](#) which revealed that the construction industry is 'in the top three unsafe sectors in Australia.'

### CONTACT

We would welcome any opportunity to further discuss the issues raised in this paper.

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