



June 2022

NSW Small Business Strategy

**SUBMISSION TO THE SMALL BUSINESS TASKFORCE –
DEPARTMENT OF CUSTOMER SERVICE**

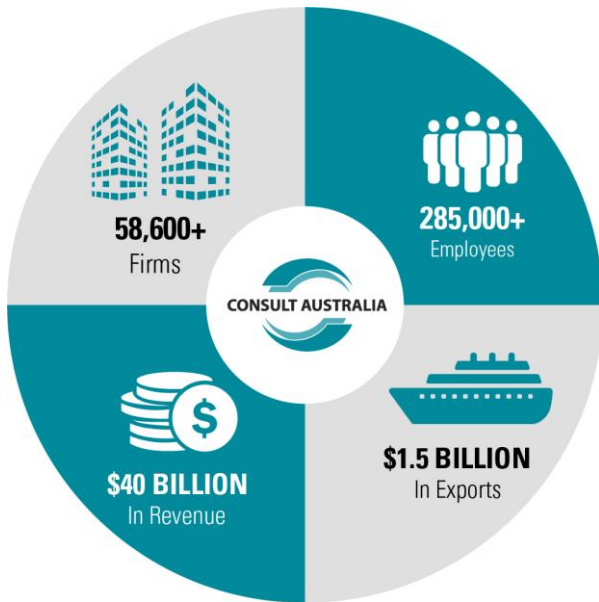
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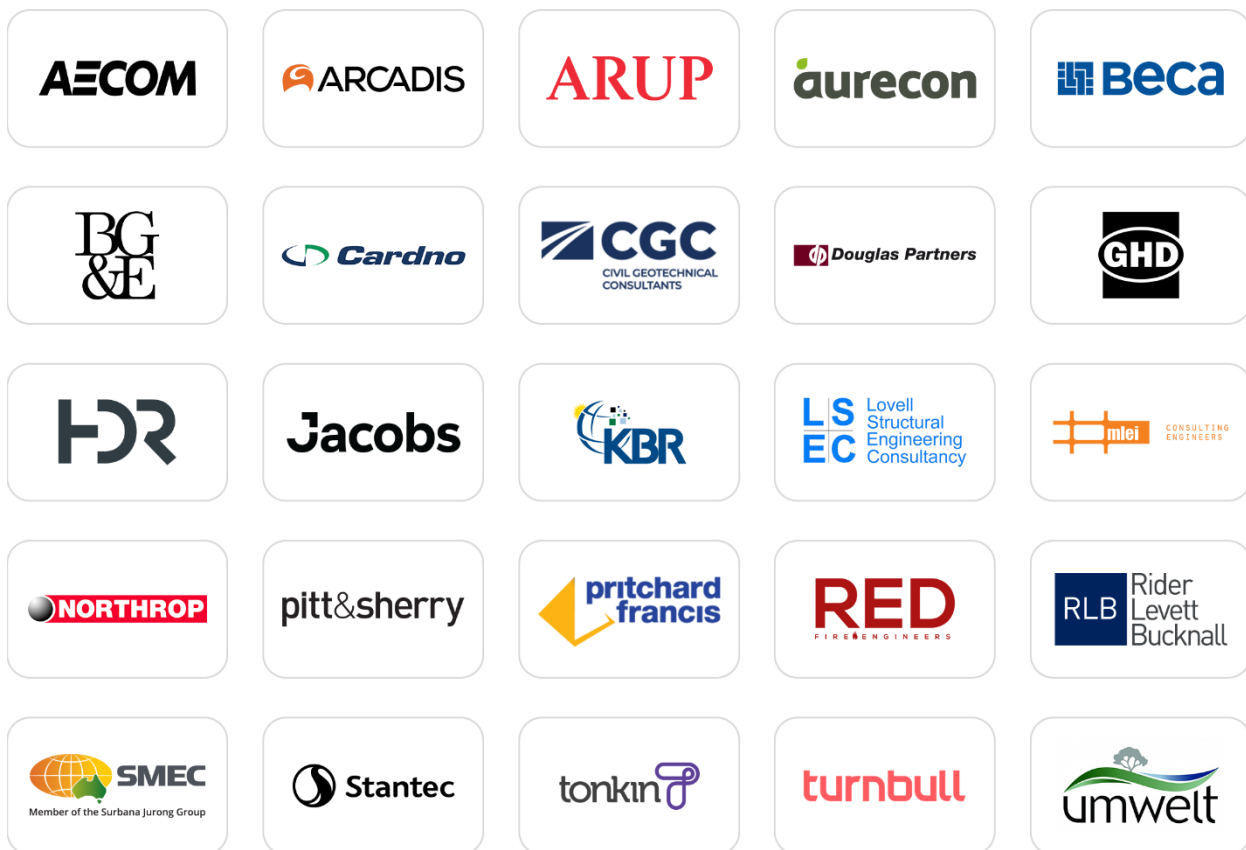
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ABOUT US

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.



Our members include:



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

EXECUTIVE SUMMARY

Consult Australia welcomes the opportunity to contribute to and be involved the consultation by the NSW Department of Customer Service on the NSW Small Business Strategy (2022-2025). We welcome the acknowledgment of the challenges small businesses have faced during the pandemic. However, it is important to recognise that small businesses have been facing many barriers prior to the onset of COVID-19.

Our submission is solutions-focussed and aligns to the focus areas set out in the consultation documents. Consult Australia's key recommendations are set out below.

Removing regulatory barriers and supporting entrepreneurship

- Consider market conditions during regulatory development.
- Co-design regulations with industry to address issues in a timely and considered way.

Boosting and empowering resilience

- Assist industry to develop and access talent.
- Contribute to a mentally healthy industry.
- Address the highly litigious and increasingly unstable construction industry.

Reducing costs on business

- De-risk the market to improve people and insurance challenges.
- Adopt collaboration as culture.

Digital and e-commerce literacy

- Streamline and standardise digital processes, terminology and standards.
- Make use of opportunities to apply productivity learnings across different projects.

Making it easier to supply to government

- Use standard contracts, such as the FIDIC Consultant Contract, NEC4 or AS4122-2010.
- Diversify the pipeline.

REMOVING REGULATORY BARRIERS AND SUPPORTING ENTREPRENEURSHIP

Consult Australia suggests that reducing regulatory barriers and supporting entrepreneurship could be as simple as the NSW government:

- considering market conditions during regulatory design
- co-designing regulation with industry to address issues, instead of rushing to get legislation in place.

Consider market conditions during regulatory design

Consult Australia's most recent Industry Health Check Survey results makes clear that the two biggest challenges for consulting businesses in the current market are skills capacity and the availability and affordability of professional indemnity (PI) insurance.

Rarely are market conditions such as these considered when regulations are drafted. This leads to significant regulatory failure in future years (if not immediately) causing distress to businesses but also lost productivity of the public service and parliament to introduce amendments to address market pressures. A prime example is insurance requirements in legislation, which cannot be guaranteed by the legislated party (for example certifiers, building surveyors or design practitioners) as insurance is a commercial product. At the simplest level, we have seen regulatory requirements on individuals/businesses to share insurance policy information, despite this being commercial-in-confidence material between the policy holder (generally the business) and the insurer – putting the businesses in a compromised position. Consult Australia has raised this concern in many forums however, we continue to see regulators deal with it on a case-by-case basis long after the regulation is in place.

Co-design regulation with industry to address issues, instead of rushing to get legislation in place

Consult Australia advocates strongly for government entities to develop regulation and regulatory policy that is co-designed with industry. Effective consultation needs to be truly collaborative with demonstrated mutual respect.

Consult Australia has seen a range of concerning practices in NSW where consultation was less than ideal and results that were from co-designed:

- Initiatives being tested in commercial environments, rather than an open consultation process.
- Industry representatives being ignored as:
 - not representing industry views because individual businesses had not raised the issues
 - complaints for 'losing bidders' etc.
- Otherwise sound policy being introduced broadly instead of targeted to the problem, causing unnecessary cost and administrative burdens on businesses not part of the original policy problem.

Consult Australia advocates for collaborate as culture which is a commitment by everyone to shift away from disputation and underpinned by respectful and open communication. Consult Australia extends this ethos when working with government.

BOOSTING AND EMPOWERING RESILIENCE

Consult Australia sees the biggest issues relevant to small business resilience as:

- having access to talent
- ensuring a mentally healthy workplace and industry
- working in a highly litigious and increasingly unstable construction industry.

The NSW Government could assist in all these areas.

Assist industry to develop and access talent

Our industry is facing a critical skills shortage that is impacting businesses of all sizes. A high demand for engineering and related skills is squeezing an already constrained supply of people to provide design, advisory and engineering services. [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, and there will be a peak deficit of 70,000 engineers, scientists, and architects.

Consultants design the future, and without changes to the status quo and adoption of new initiatives to support skills, the ability to deliver on pipeline investments is challenged. While skilled migration will assist to a degree, we need to see a greater uptake in STEM study and career paths within Australia to increase talent for the future. Consult Australia advocates for a coordinated approach involving industry, government, and universities to tackle the skills challenge. Our [Federal Election 2022 priorities](#) set this out in detail, where we call for higher education support, micro-credentialling, skills transfer initiatives, simplified skills and occupations lists, and support for businesses to navigate Australia's migration system such as an industry liaison officer like the initiative developed during the mining boom.

There is an opportunity for NSW government to assist industry develop and attract talent by improving the environment generally and investing in specific initiatives. In terms of successful initiatives, Consult Australia supports NSW School Infrastructure's traineeship program which gives Year 12 school leavers mentoring, support and giving in-depth experience – seeing projects through from planning to delivery. As part of this initiative, across the 2-year traineeship, trainees spend 8 months in each sector of the infrastructure chain; government, a consultant business and a construction company. This develops potential talent for the benefit of the industry as a whole.

Contribute to a mentally healthy industry

People are critical to the services provided by consulting businesses operating in the build and natural environment. Mental health of people is therefore a critical focus and is underpinned by three key principles:

- There is a social obligation to support the mental health of people.
- There are legal obligations to put in place appropriate measures to prevent and respond to mental health concerns in various contexts (such as the workplace).
- The performance and productivity of people can be improved by focusing on creating workplaces that thrive.

While our understanding of mental health has improved over recent years, significant stigmas around mental health are still common. These stigmas are often perpetuated by stereotypes or simply a lack of understanding. They limit the ability to create open and supportive environments, where people are willing to discuss concerns and seek support when needed. Mental health stigmas can only be removed if workplaces, industries, governments, and society all work together.

The NSW government can contribute to a mentally healthy industry by listening to industry concerns and market conditions, embodying collaboration as culture and de-risking the market (as discussed throughout this submission).

Address the highly litigious and increasingly unstable construction industry

There are significant concerns about the disputation in the construction industry and how this impacts the PI market – issues that go beyond an individual business' claim history and control. We are now seeing small businesses and sole traders face business closures and early retirement based solely on the fact they can no longer get insurance at any price (let alone at an affordable premium).

We are also seeing growing numbers of contractors going into liquidation across the country – these are the clients of our members. We have seen several our small businesses impacted by these constructor collapses, being owed significant sums.

The NSW government can address the highly litigious and increasingly unstable construction industry by listening to and responding to industry concerns, embodying collaboration as culture, de-risking the market and behaving as a Model Client.

REDUCING COSTS ON BUSINESS

As discussed above, salaries and PI insurance are the biggest costs on business, as reported in our latest Industry Health Check Survey results. Our members also note significant productivity drains when dealing with NSW government (both as a client and as a regulators).

As discussed above PI insurance premiums continue to rise, small businesses are seeing on average increases of 11-30% each year (in a good market this would only be 2-3%). Small business report that PI insurance premiums are their largest business expense after salaries.

The NSW government can help address these cost issues by de-risking the market and adopting collaboration as culture and generally behaving as a Model Client.

De-risking the market includes legislative reforms:

- Amend civil liability laws in all jurisdictions to match Queensland, by explicitly prohibiting contracting out of proportionate liability for professional services contracts. It is noted that NSW government clients frequently contract out of proportionate liability – failing to demonstrate Model Client behaviours. This is then replicated by private sector clients.
- Amend the Australian Consumer Law, to ensure more comprehensive protection for consumers and small businesses, such as:
 - extending the unfair contract terms to government contracts
 - ensuring that misleading or deceptive conduct claims cannot be brought by sophisticated commercial entities against small business suppliers.

Collaboration as culture is an integral aspect of being a Model Client, and having a go-slow-to-go-fast approach to projects. We explore what these terms mean and the positive impacts they can have on productivity savings in our [Federal Election 2022 Priorities](#).

IMPROVING DIGITAL AND E-COMMERCE LITERACY

For many years, Consult Australia has called on governments to commit to digital investment, for example, mandating Building Information Modelling (BIM) for government projects. Small business needs this commitment so that technology is an investment rather than just a cost.

While state/territory governments are now largely on the BIM journey, departments are at different stages of BIM maturity. Digital standards and requirements vary widely within and across states. Accommodating highly varied government requirements on projects is resource intensive for businesses.

We see NSW government clients mandating BIM, but then some clients using 2D/paper/pdf plans for construction. This is a significant wastage of people resources and will fail to give the asset owner the benefit of BIM. This is not only a cost to the project that adds very little value, but it consumes resource time that could be invested in innovation.

Solutions to this challenge include:

- streamlining digital terminology
- coordinating digital processes across Australia for consistency
- standardising standards, naming conventions and requirements to address productivity barriers
- opportunities to apply productivity learnings between projects.

MAKING IT EASIER TO SUPPLY

To make it easier for small businesses to supply to government, Consult Australia recommends:

- use of standard contracts, such as FIDIC Consultant Contract, NEC4 or AS4122-2010
- diversifying the pipeline.

Use of standard contracts

Rarely do NSW government clients use a standard contract – across NSW government there are a considerable number of so-called 'standard contracts'. Even in Transport for NSW's latest Project Streamline, the agency couldn't get to a single standard contract for its procurement of professional consulting services. This is despite the broad applicability of standard contracts such as AS4122-2010 and the international FIDIC contract.

Small businesses rarely have in-house legal teams, and therefore it is a significant productivity drain and financial cost for businesses to assess each bespoke contract presented by NSW government clients. Too often bespoke contracts are used by clients to pass risk, creating highly adversarial contracts. For example, contracts with unnecessary warranties and indemnities that shift liability onto a consulting business regardless of fault. This adversarial contracting behaviour feeds the culture of the construction industry.

Ideally standard collaborative contracts would be used with particular risks being addressed in risk mitigation and management plans, not via onerous contract terms. A fair management of risk and a collaborative approach to solving issues would benefit all parties as well as de-risk the market.

Diversifying the pipeline

Consult Australia encourages the NSW government to implement initiatives within the NSW Small Business Strategy that help reduce regulatory barriers and support entrepreneurship. We see potential for increased diversification of project pipelines and improved transparency to enable greater small business participation.

Consult Australia welcomed Infrastructure NSW's recommendation in the [NSW State Infrastructure Strategy 2022 - 2024](#) for '*a different mix of projects than the past decade, as the focus on megaprojects should give way to a combination of smaller and medium-sized projects, in many cases delivered in stages as multi-year programs.*'

This recommendation aligns with our push for a smarter pipeline of projects which would enable sector-wide productivity, create a dynamic workforce, and increase regional participation. Additionally, a diverse pipeline of projects would enable small to medium businesses greater access to government projects.

CONTACT

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

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