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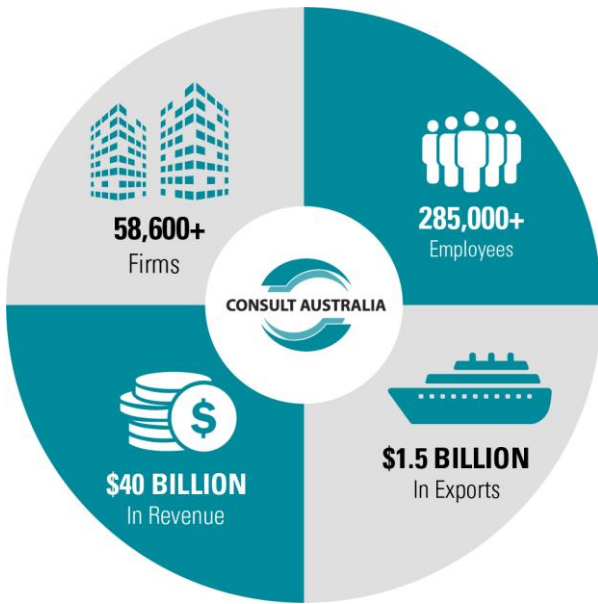
Regulator Responsiveness

SUBMISSION TO DEPARTMENT OF PREMIER AND
CABINET

Consult Australia

Postal Address: GPO Box 56, Sydney NSW 2001
Email: info@consultaaustralia.com.au

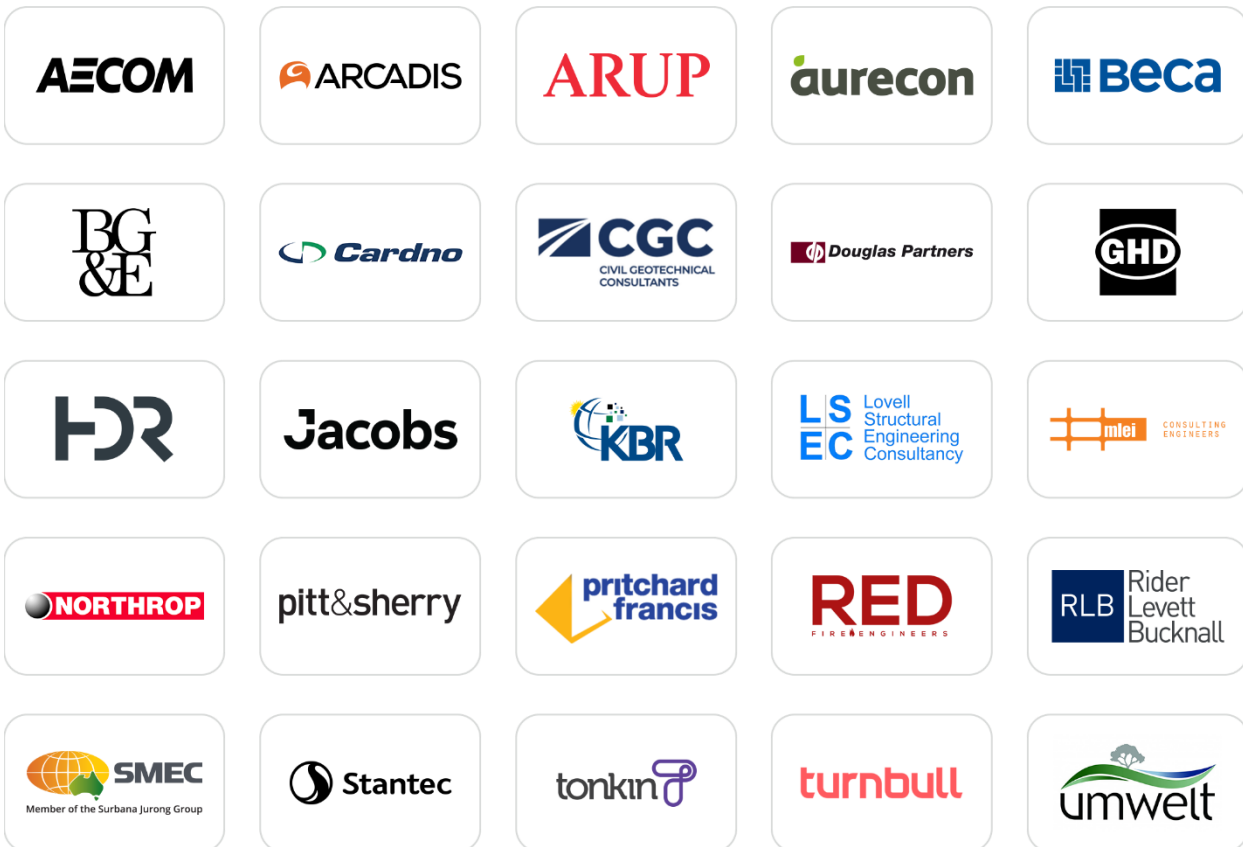
Tel: 02 8252 6700
Web: consultaaustralia.com.au



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>

Consult Australia welcomes the opportunity to contribute to the Department of Premier and Cabinet's consultation on regulator responsiveness. Recovering from the economic impacts of COVID-19 requires a resilient productive ecosystem with industry and government working cohesively.

All too often regulator responsiveness to industry needs comes too late, even when the concerns were raised early. It isn't until businesses have struggled with compliance and experienced significant unnecessary cost impacts will the regular consider solutions that were proposed pre-implementation. To address this tendency, we want to see regulators:

- co-design with industry associations and representatives
- consider market conditions when developing, implementing, and applying regulations.

Co-design with industry associations and representatives

Government entities still have a long way to go on conducting truly effective consultation processes, let alone undertake co-design with industry. Consult Australia has seen a range of concerning practices across Australia:

- Sound regulatory 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.
- Proposed initiatives tested in commercial environments, rather than an open consultation process.
- Industry associations being ignored because individual businesses had not raised the issue.

Sound regulatory policy introduced broadly – labour hire laws

Labour hire laws have been introduced into the ACT, Qld, SA and Vic. The policy underpinning the law was sound – to protect workers in high-risk industries. Unfortunately, in every jurisdiction the laws were drafted broadly, capturing some arrangements consultancy businesses have with government clients within the wide definition of 'labour hire service'. All jurisdictions struggled with exemptions; even lengthy exemption lists didn't assist our members (such as in Qld). The best exemption was that used in SA for a time which excluded all businesses where labour hire was not a core function of their business. It should be noted that SA has recently redesigned the labour hire laws to explicitly capture the high-risk industries of horticulture processing, meat processing, seafood processing, cleaning, and trolley collection.

Prior to the introduction of the ACT labour hire licensing scheme, our members advised that the cost of complying with the Qld and Vic schemes was more than \$200,000 per business (for the benefit of ten people). Businesses often apply for labour hire licences as a precaution. They often find that they have no workers to report on at the end of the reporting period. This results in unnecessary financial and administrative burdens. Members report spending approximately 20 hours a year to maintain their labour hire licence and comply with reporting requirements. This then becomes a much bigger cost and administrative businesses operating across multiple jurisdictions as they navigate the different schemes around the country.

The unnecessary burden on the consulting industry could have been avoided in all jurisdictions if the laws were directed explicitly to the high-risk industries – as SA has done now. Consult Australia continues to advocate in ACT, Qld and Vic for law reform to the labour hire laws.

Proposed initiatives tested in commercial environments rather than open consultation – TfNSW's Project Streamline

Transport for NSW (TfNSW) recently tested a new suite of contracts in a commercial environment – before any open consultation on the suite. At the outset Consult Australia raised concerns with this approach noting that in a commercial environment a business needs to balance the risk of losing the tender with the need to give frank and fearless feedback on contract terms. The feedback will always be tempered by the assessment of what the business thinks other businesses might push back on, and the government client's appetite for change (in an environment when many government clients present contracts and say 'take it or leave it'). This approach also ignores the power imbalance that exists when government contracts with suppliers.

While there are benefits of piloting initiatives – this should be done after an open consultation process when the industry voice can raise concerns. Introducing consultation after the fact creates a reactive approach to industry problems, rather than inviting proactive solutions.

Industry associations being ignored – various government agencies across Australia

Consult Australia has had government entities around Australia fail to recognise industry associations as the voice of the industry – disputing the concerns raised because individual businesses have not raised them directly. This attitude fails to recognise the market power that governments hold and the fact that individual businesses do not feel empowered to speak up. By raising concerns via their industry association, businesses feel protected and supported.

Engaging with industry associations provides a benefit for government too, being able to test ideas and solutions without commercial pressures etc. It also allows industry issues to be raised – rather than issues of concern to only one business. Consult Australia in particular is proudly member-led in its advocacy and ensures that any approach to government is based on what would benefit the industry as a whole – not one individual business.

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

Consideration of market conditions

Too often regulators put obligations on individuals or businesses, that cannot be complied with, or guaranteed into the future because of the current and ever-changing market conditions. For example, laws are drafted requiring individuals/businesses to hold insurance that covers the statutory obligations – but whether policies are available to cover those obligations is a matter for the insurance industry and the market, not the individual/business. This is akin to having a legislative requirement on a consumer guaranteeing they will have a commercial product and continue to be able to source that exact product in the future, no matter the market conditions. We have seen this go wrong in terms of insurance availability for certifiers and building surveyors.

Another example is legislative requirements for individuals/businesses to share insurance policy information, however, this material is commercial-in-confidence between the policy holder and the insurer. Noting that where the obligation is on the individual, who is part of a large business, they have no visibility of the corporate insurance policy despite being covered by it. Yet the regulator expects that individual to provide a copy.

When Consult Australia has raised these issues, the regulators deal with it on a case-by-case basis, rather than having a publicised and consistent approach to address the market conditions.

CONTACT

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

Kristy Eulenstein

Head of Policy and Government Relations

kristy@consultaaustralia.com.au

Teone Tobin

Senior Policy Advisor

teone@consultaaustralia.com.au