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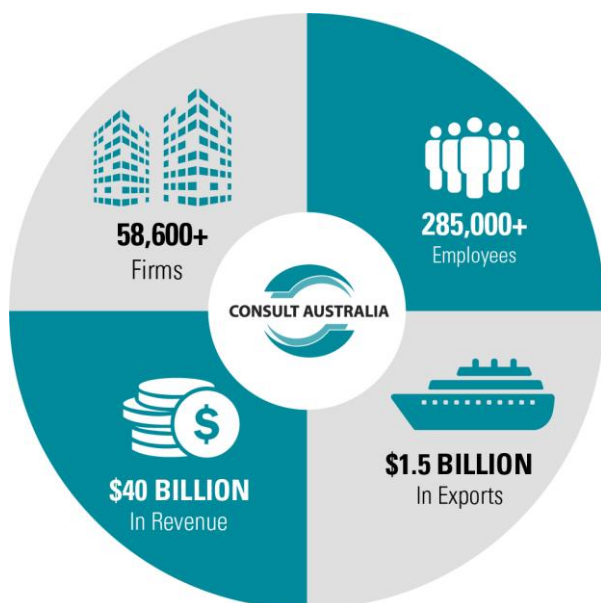
Pillar 1 – Dynamic and resilient economy

SUBMISSION TO PRODUCTIVITY COMMISSION

Consult Australia

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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 on our [website](#).

Executive Summary

Consult Australia welcomes the opportunity to submit to the Productivity Commission's 5 Pillar Productivity Agenda. We will focus on Pillar 1 – Creating a Dynamic and Resilient Economy.

Consult Australia supports the work of the Productivity Commission examining policy options that incentivise investment, make the business environment more productive and foster entrepreneurship and innovation.

To foster a dynamic and resilient economy, Consult Australia agrees with the Productivity Commission's focus on policy settings that:

- drive competition, reduce prices and improve product quality
- support innovation and investment
- enable businesses and workers to readily respond to changing economic conditions.

From the suggested reform areas, Consult Australia has identified '[reduce the impact of regulation on business dynamism](#)' as most relevant to our members and their work. Consult Australia agrees that reducing excessive or inappropriate regulation can unshackle business and enhance business dynamism and productivity.

In responding to the consultation questions, we draw on our previous work, including our:

- [Submission to Australia's Productivity Pitch](#) to enable productive businesses through reforms to remove barriers to participation, address regulatory inefficiencies and improve procurement practices to enable productive businesses.
- [Submission to Treasury's Revitalising National Competition Policy](#) consultation addressing regulatory complexity, inconsistency and market behaviours that compromise regulatory intent.

Therefore, in summary, Consult Australia's recommendations are:

- Amend the Australian Consumer Law to ensure the misleading or deceptive conduct provisions protect consumers and small businesses and cannot be misused otherwise.
- Amend civil liability laws in all jurisdictions, except Queensland, to explicitly prohibit contracting out of proportionate liability for professional services contracts.
- Amend the *Mutual Recognition Act 1992* (Cth) to realise occupational mobility for registered professional engineers.
- Amend labour hire laws in Vic, Qld and ACT to remove unnecessary burdens on businesses where labour hire is only incidental to their services.
- Require all governments to reduce the complexity of regulation across different regulatory instruments and avoid duplication/overlap in regulatory and compliance processes.
- Require all governments to apply more rigour to regulatory market analysis.
- Include an explicit requirement in the National Competition Policy on all governments to consider small business impacts, market conditions and competition impacts when developing regulatory policy.
- Maintain the explicit exemption in the Australian Consumer Law for the '*supply of services of a professional nature by a qualified architect or engineer*' from the fit-for-purpose consumer guarantee.
- Disallow the practice of fee capping by clients and government agencies, which overrides market forces.

Regulatory improvements

The Productivity Commission has sought information on the areas of regulation that are enhancing business dynamism and resilience.

Consult Australia has seen some improvements in regulation to foster business confidence, encourage broader market participation, and improve gender diversity.

- Consult Australis supports the explicit exemption in the Australian Consumer Law for the *'supply of services of a professional nature by a qualified architect or engineer'* from the fit-for-purpose consumer guarantee. This remains vital for businesses.

This exemption makes sense when you consider that creating a unique design for the first time is very different from making, testing, and selling a commercial product. Consulting architects and engineers can be pressured when contracting with clients to agree to fit-for-purpose obligations. This can be problematic because it is almost impossible to define the 'purpose' of a professional advisory service with the same certainty as the purpose of a finished build/ end product.

Further, it is generally the case that professional indemnity insurance policies do not cover assumed liabilities or contractual warranties (and a fit for purpose guarantee is such a liability/warranty).

- Consult Australia was supportive of the introduction of the automatic deemed registration provisions of the *Mutual Recognition Act 1992* (Cth). However, the legislation has failed to deliver on true occupational mobility due to the current definition of 'home State'. See more detail below.
- Consult Australia was pleased to see the Australian Government recognise, in 2024, that a nationally coordinated, clearly defined, transparent and predictable pipeline of infrastructure projects would provide the construction sector with more certainty and enable better strategic planning. Pipeline certainty is vital to provide industry confidence and an ability for businesses to invest in capacity.

A review of the national infrastructure investment pipeline was undertaken and confirmed nationally significant projects. The [Investment Infrastructure Program strategic review](#) was a positive first step. However, it did result in project delays and impacts to industry capacity.

Further opportunities exist for better planning and coordination between state and territory governments on project releases and increasing the use of programmatic approaches to enable participation by various businesses with varying skills and sizes.

- Consult Australia welcomed the updates to the Commonwealth Procurement Rules in 2024, which reflected the Australian Government's commitment to sourcing from small and medium enterprises (SMEs) and providing more opportunities for SMEs to participate in Commonwealth procurement. However more work is needed, especially across states and territories.
- Consult Australia notes that there has been continuous improvement to payment times regulations to support businesses. This includes changes to the Payment Times Reporting regulations to simplify and streamline reporting, add proportionate regulatory powers and improved transparency for entities reporting under the Scheme. The inclusion of a requirement in the Commonwealth Supplier Code of Conduct for suppliers to reflect the Commonwealth's maximum payment times in their contracts with subcontractors was also welcomed.
- Consult Australia notes that the publication of employer gender pay gaps for private and public sector employers by the [Workplace Gender Equality Agency \(WGEA\)](#) has supported gender diversity discussions and policy development around Australia.

Regulatory burden

The Productivity Commission has sought input on how the burden of government regulation has grown and is impacting businesses.

Over time, Consult Australia has seen regulations get more complex, duplicative and inconsistent. Consult Australia has seen several state governments develop unnecessarily complex regulatory systems in the rush to regulate. To demonstrate action, a government might draft and pass a broad-based act through parliament without detail and follow up with detailed regulations and codes of practice. This leads to an appearance of regulatory policy making 'on the run'.

It has always been the case that regulations are more detailed than acts, as they provide the details on how to administer the act. However, we are increasingly seeing even less detail in the acts with regulatory requirements being split over the act and regulations (instead of being set out in the act and detailed administration information in the regulations). This is often compounded by a lack of detail in the consultation policy documents released to the industry for comment.

This complex structuring of regulatory requirements through acts, regulations and government documents imposes a burden on business, including an administrative burden. Splitting obligations across different regulatory instruments could create a convoluted approach, making it harder for professionals and the businesses that employ them to understand and comply. This can impact the markets a business is willing/able to participate in, especially smaller businesses without dedicated internal legal and compliance teams.

Complexity example

The NSW Government has a complicated building compliance regime including numerous acts, regulations and codes. For example, a professional engineer providing consulting design services on a class 2 building will need to ensure they are suitably registered to undertake relevant work under the Design and Building Practitioners Act and meet all the relevant obligations contained in that Act, the Design and Building Practitioners Regulation and the Code of Practice for Professional Engineers. In addition, the NSW government has proposed a new Practice Standard for Professional Engineers.

Consult Australia is aware that leading consulting businesses are avoiding or reducing the number of building projects in NSW because of the burden of the regulations, despite the projects being within their competency and having qualified employees.

To improve market participation, all governments should reduce the complexity of regulation across different regulatory instruments and aim to include all regulatory requirements in a single instrument, making it easy for professionals and businesses to understand and comply. Reducing the layers of regulation should also have a positive impact on compliance costs.

Administrative cost burdens can also be minimised by avoiding duplication and overlap in regulatory and compliance processes. For example, when procuring, government clients often request and validate insurance documentation at the prequalification stage, then again at tender and again at the award stage. Consult Australia understands that assessing the validity of supplier information is an important compliance measure for government procurement. However, duplicative processes result in unnecessary costs and a 'by exception' or 'as required' information update process could be used instead.

Duplication example

The Commonwealth Supplier Code of Conduct duplicates existing obligations and creates a burden through insufficient detail. References to competition law, work, and health and safety laws in the Code, without explanation of the obligation required by suppliers as relevant to the specific supplier, can cause issues. This could lead to businesses agreeing to comply with obligations that don't reflect their standing obligations.

To minimise the burden, Consult Australia recommends that the Code include a provision that states:

Suppliers must develop and maintain appropriate processes to manage their obligations relating to their operations, consistent with relevant policy and law.

Inconsistencies in registration schemes and failure to realise automatic deemed registration create a challenge in managing workforces and impact competition in the built and natural environment.

For businesses in our industry to maintain registration of their staff, ready for deployment on projects in various locations, there are significant registration costs. Consult Australia continues to advocate for consistency and automatic deemed registration to allow businesses to provide engineering services across different jurisdictions with reduced burdens and barriers.

Inconsistency examples

Amending the definition of 'home State' in the Mutual Recognition Act 1992 (Cth) could save at least \$54m in business costs across businesses with registered engineers operating in multiple jurisdictions

Consult Australia business members with staff who are registered engineers in one jurisdiction (but not their 'home State' because that state had not introduced registration at the time of the engineer's first registration) cannot use the automatic deemed registration provisions of the Act, because of the limitation of 'home state'.

Therefore, these businesses must pay full registration costs for each of these registered engineers to be registered in each new jurisdiction, instead of being able to benefit from a 'driver's licence' model, where registration in one jurisdiction permits that person to practice the same occupation in another jurisdiction. We have provided more detail on this to the Productivity Commission in response to its consultation on the National Competition Policy Analysis 2025.

Amending the labour hire laws in Qld, Vic and ACT could save over \$200,000 per business

Consult Australia members who currently need to report under labour hire laws advise that a saving of over \$200,000 per business could be realised if unnecessary regulatory burdens of labour hire laws were removed where labour hire is not the core service of the business.

Consulting businesses were not part of the policy problem sought to be addressed by the legislation, but are caught up in the Queensland, Victorian and ACT schemes because of the legislative drafting.

Regulator examples

The Productivity Commission asked submitters to share any specific examples of where they think a regulator has done a good or bad job of understanding and reducing regulatory burden on businesses.

Consult Australia engages regularly with members to explore the impacts of regulation and the behaviour of regulators. Members have told us that **time** is the main issue when it comes to considering regulatory policy making (see quote below).

Our members also note significant productivity drains when dealing with the government both as a client and as a regulator. Member insights informed our recommendation for an explicit requirement on all governments to consider small business impacts, market conditions and competition impacts when developing regulatory policy. This could be in the form of a short flyer setting out the core issues for consideration. This flyer would allow small businesses to quickly understand the new proposal and decide whether to spend more time with their industry association influencing the government.

Consult Australia has seen a range of concerning practices across government where consultation, and therefore results, were less than ideal. Many Consult Australia members have felt disillusioned with how industry involvement is conducted by government, even where industry roundtables and working groups are established.

'In a company of 10, every billable hour spent on reviewing proposals, giving feedback, roundtables etc is significant. Given this is also usually at director level, it is taking the most profitable staff away from billable work. Larger companies with a much bigger staff base are hence able to dedicate significantly more absolute hours with an almost imperceptible impact on billable income. Smaller businesses are hence constantly weighing up the need to influence regulation with the need to bill hours, and hence we cannot always be as loudly heard.'

Quote from a small business member operating in NSW

Synthesising member experiences, Consult Australia makes the following recommendations regarding industry involvement in roundtables and working groups.

- Shift culture within government to embrace co-design, where testing ideas with industry associations earlier is encouraged.
- Ensure any industry roundtable and working group has a clear focus and is lead by a senior leader within the public service.
- Ensure any industry roundtable and working group includes representatives from all industry associations that represent impacted businesses.
- Communicate outcomes of roundtables and working groups as well as how industry comments will inform policy development.
- Be clear on the role and authority of any external presenters at roundtables and working groups.
- Ensure that all roundtables and working groups provide time for industry to comment and ask questions.

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Thanks to our Industry Champions

For their outstanding leadership and engagement on behalf of the industry.



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