



August 2025

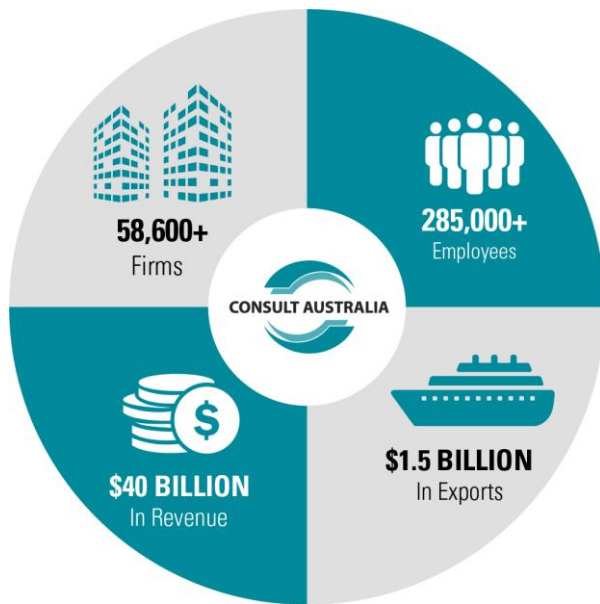
Construction Productivity Inquiry – Interim Report

**SUBMISSION TO QUEENSLAND PRODUCTIVITY
COMMISSION**

Consult Australia

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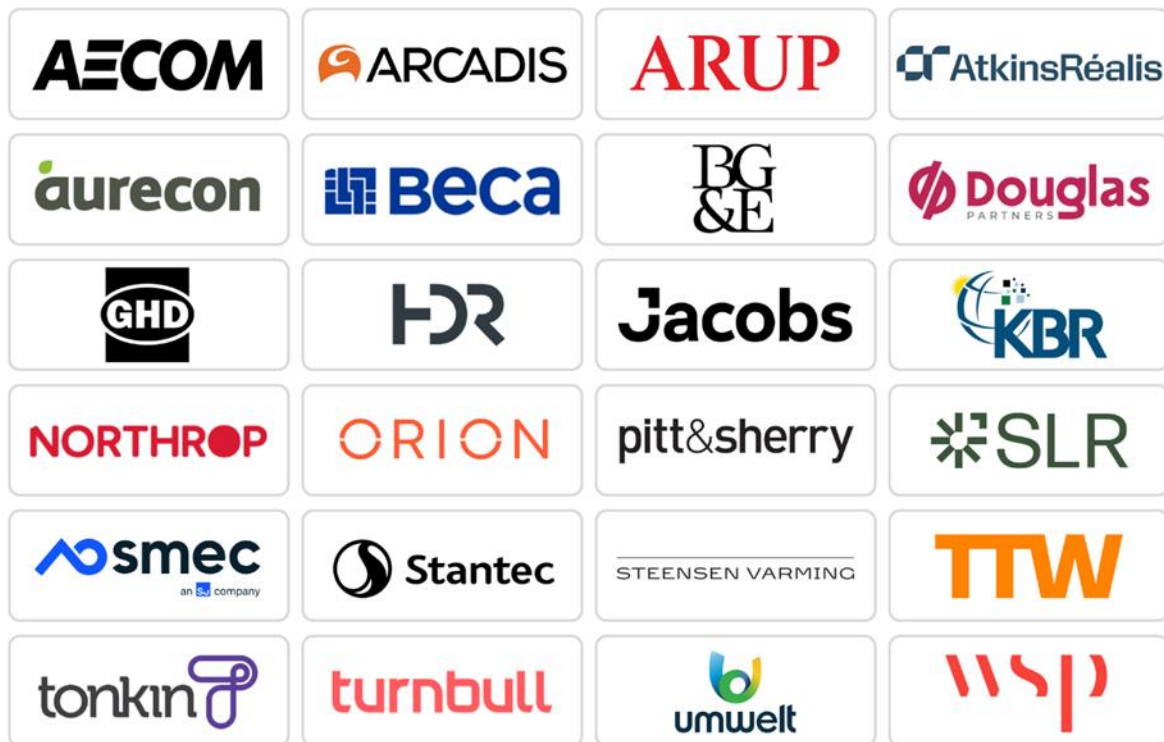
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About us

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 on our [website](#).

Executive summary

Consult Australia welcomes the release of the Queensland Productivity Commission's *Interim Report into Opportunities to Improve Productivity of the Construction Industry* which reflected many of our recommendations of [our June submission](#). We support the interim recommendations that:

- recognise procurement reform as central to productivity.
- oppose excessive insurance requirements and inappropriate back-to-back risk allocation.
- support collaborative contracting and digital by default approaches.
- encourage whole-of-government pipeline visibility.
- seek to reduce excessive and inconsistent regulation.
- encourages occupational mobility.

It is encouraging that the Commission has taken a broader view of productivity and not forgotten about uplifting productivity from the very start of project planning.

We are pleased to provide more information as requested on key aspects:

- Project selection and sequencing
- Qld government procurement policy
- Improving tendering and contracting
- Impacts arising from NCC 2022
- Prioritising occupational licensing reviews
- Opportunities to better utilise skilled overseas migration
- Labour hire regulation in construction.

The members of Consult Australia have a vital role in the broader construction industry, with a well-established role in supporting planning, design and delivery. The highly technical services our members provide are critical to deliver the government's construction priorities.

With every design, advisory and engineering service provided by our membership, there is a positive impact on job growth, community connectivity and economic productivity. But without reform, productivity of the broader construction industry will continue to lag and the ability to innovate will remain challenged.

Consult Australia's suggestions are workable proposals to address clearly identified problems, where the government can influence and where significant benefits can be gained.

Project selection and sequencing

QLD'S CAPITAL PROGRAM AND THE IMPACT ON THE INDUSTRY

The Commission has requested information on:

the extent to which the Queensland Government's capital program is impacting or is likely to impact the construction industry's ability to deliver other projects (for example, private residential and non-residential projects), and whether there are opportunities to improve the selection and sequencing of future projects.

Consult Australia confirms that the way in which the capital program is sequenced can have a significant impact on the industry's ability to deliver.

However, it should be noted that a surge in infrastructure projects does not necessarily impact the industry's ability to deliver other projects. Sustained and predictable infrastructure investment is in fact critical, for both infill and greenfield housing, to unlock supply and ensure services are in place to deliver for these communities.

We jointly made this point with the Australia Constructors Association, the Australasian Railway Association, the Civil Contractors Federation, Infrastructure Partnerships Australia and Roads Australia in response to the [August 2024 report](#) by the NSW Productivity and Equality Commission suggesting that infrastructure spend be reprioritised for housing. This group represents the breadth of the construction supply chain from design and engineering through to constructors and construction.

Caution should be taken when talking of the capacity in the market to deliver across sectors. For example, the workforce requirements for complex infrastructure are not the same as for residential or commercial construction. Therefore, the capacity that currently exists in the market to deliver governments' infrastructure priorities across sectors is not diverting resources from other construction.

Suggestions that infrastructure projects be put on hold risks further uncertainty in the immediate infrastructure pipeline that is already seeing some businesses restructure. Recent contractions in major transport investment across Australia, combined with delays in the pipeline of energy projects coming to market are seeing many firms reduce their workforces. Previous forecasts for labour demand from major project delivery has not been realised as pipeline shifts with removal of projects, changed schedules and decreased investment.

In a market already challenged by uncertainty in the forward infrastructure pipeline we need to create confidence that allows businesses to invest in their workforce to deliver over the longer term. Canvassing further delays or the reprioritisation of existing capital spend only puts this at risk.

INCENTIVES TO IMPROVE SELECTION, PRIORITISATION AND STAGING

The Commission has requested information on:

arrangements or incentives that would help government improve its selection, prioritisation and staging of infrastructure. In particular:

- Whether internal to government mechanisms can help improve decision making, and if so, what has been successful in the past or in other jurisdictions.
- If there is any evidence that independent advisory bodies, such as the former Building Queensland, compared to other processes, have improved infrastructure outcomes, and what design elements have proven most successful.

- Whether there are other effective and efficient mechanisms for improving the way government selects, prioritises, stages and contracts infrastructure projects.

Internal government mechanisms

Consult Australia sees unrealised benefit that will come from having a clearer picture and understanding of the overall infrastructure program for the whole of Qld government. Benefits include leveraging industry intel for:

- Government to identify opportunities for different procurement approaches that will attract a competitive market response.
- Government to use knowledge of capacity requirements to inform project scheduling and have a concerted effort for a smooth pipeline.
- Government to plan and target use of emerging and new technologies across Qld government infrastructure program.

These benefits can be achieved through visibility of project planning and pipeline, along with regular industry engagement on upcoming and potential projects.

Independent advisory bodies

Consult Australia is an advocate for independence in the governance system for infrastructure planning, investment, and prioritisation.

In 2018 we published [*iBodies Infrastructure Governance in Australia*](#), which was recognised in both Australia and internationally as valuable thought leadership on infrastructure governance best practice. In reviewing the role and structure of infrastructure bodies that had been established at that time by various jurisdictions, including Qld, we identified four core components that make for robust infrastructure governance:

1. Independence
2. Planning
3. Assessment
4. Prioritisation.

The abolishment of Building Queensland in 2021 compromised the first component of good infrastructure governance, that being independence. We estimated that this abolishment delivered savings of approximately \$1m per annum. This is a negligible saving when you consider savings to the state that could easily be achieved by reducing the state's reliance on obtaining external legal advice to amend/revise/bespoke its contracts across its infrastructure portfolio and instead adopting standardised forms of contract.

We note Building Queensland did not appear to have full responsibilities of an iBody. The primary focus of Building Queensland was on uplifting infrastructure proposals across Qld government, implementing best practice business case development and analysis. Consult Australia views infrastructure project prioritisation as the most pressing challenge for Qld government, as well as actual versus perceived independence and authority. Without an independent infrastructure body, the project prioritisation process, interrelationship and coordination with Infrastructure Australia is unclear to agencies and the industry, eroding transparency and creating uncertainty. For example, the Independent Strategic Review of the Infrastructure Investment Program Pipeline resulted in a six to nine month pause on agency procurement activity whilst program changes were reviewed and confirmed.

The Organisation for Economic Co-operation and Development (OECD) has conducted a considerable amount of work into best practice for the governance of infrastructure. It's 2017 report [*Getting Infrastructure Right*](#) provides an overview of current practices in infrastructure

governance and presents practical tools to help policymakers better manage infrastructure. Based on this work and best practice in the UK and from within Australia, independent infrastructure bodies are essential to realise the benefit from infrastructure investments by:

- removing the politics from infrastructure development by establishing long-term strategic plans.
- providing independent and expert advice about current and future infrastructure needs.
- creating a pipeline for the roll-out of infrastructure projects that will deliver jobs and growth.
- making infrastructure decision-making transparent and evidence based.

With a public funded \$44.8b infrastructure pipeline in Qld over the next five years, an annual investment to ensure a robust governance structure to support the investment in infrastructure, is a solid investment in the future of the state.

Qld government procurement policy

THE IMPACT OF QLD GOVERNMENT PROCUREMENT POLICY

The Commission has requested information on:

How Queensland Government procurement policies:

- impact the procurement decision of government
- affect contractor behaviour and on-site productivity
- provide benefits or costs not considered by the Commission and whether these justify their retention.

Qld government procurement policies and practices have led to an environment where:

- tenders have been unreasonably labelled non-conforming
- there is a preference for localism, without considering the market impacts,
- there is drive towards lowest price, and
- status quo over best suited for project lead.

Non-conforming bids

Consult Australia raised concerns regarding the practice of labelling bids as 'non-conforming' in our previous submission. This concern is not about where technical requirements haven't been met, but where clarifications on legal and risk issues have led to a bid being considered a 'non-conforming tender'. There seems to be a lack of understanding from government how the legal and risk settings impact market competitiveness and how important it is for businesses to be able to request departures or seek legal clarification as part of the risk assessment and management during the tender process – ultimately for the benefit of the project. This is particularly the case when there is not a standardised contract suite for all government projects, or where the risks on each project have not been identified and managed in light of the services being requested.

Qld government would likely see a drop in departures to contracts if there was a standardised contract suite developed with industry (discussed below) and tenders were released with risk management (rather than risk pass-through) as a focus. This would uplift productivity and avoid wasted effort both for industry and the government.

Preference of localism

There are several government procurement policy documents that require and/or encourage localism (e.g. supplier experience, workforce and/or location) including:

- [Queensland Procurement Policy](#) (clause 25)
- [Optimising Opportunities for Local Suppliers](#)
- [Queensland Charter for Local Content](#)
- [Local Benefits Test](#).

While on first glance localism requirements are considered as a positive way to retain workforce and experience in the state, it can have unintentional market impacts.

For example, a requirement for local experience on similar projects impacts diversity of market participants by reducing the ability of businesses to introduce new people and develop experience, use interstate resources and/or overseas complementary resource centres. An over-reliance on local experience on similar projects can mean that Qld is missing out on expertise and innovation that suppliers have provided in other jurisdictions.

A requirement for suppliers to be located locally (sometimes in regions, not just in the state) can work against market diversity and favour only larger businesses that can afford to establish offices in the localities. Yet there are many small businesses that have the desired capabilities to deliver on the projects, but not the ability to open regional offices. Proximity is not capability, and having an office nearby doesn't mean you will deliver the best solution.

A requirement for a local workforce makes sense for some sectors of the construction industry – but not all. Consulting designers, advisors and engineers can work from anywhere and therefore a mandated local workforce makes it difficult for businesses to be flexible in how they allocate their resources to projects, especially as pipelines flex and change frequently.

Consult Australia encourages Qld government to mitigate the impacts of localism requirements by taking a national view and focusing on capacity and capability building.

Drive to lowest price

Value for money is a key focus for the Qld government, however there can be an over-reliance on lowest price, which doesn't always equate to value. Consult Australia acknowledges there is a place for lowest cost where the scope is well defined. Beyond this scenario, Consult Australia does not support price being the predominant criteria, which in practice happens once price is weighted 40% or more. For this reason, transparency of tender criteria weighting and the assessment process is critical for the market to respond and foster value for money.

Consult Australia encourages Qld government to review the scope to determine a suitable position based on the type of project, and if a higher weighting of non-price criteria and early tenderer discussions is more likely to deliver value for money.

When it comes to selecting consultants, the International Federation of Consulting Engineers (FIDIC) recommends Quality Based Selection (QBS) which means selecting consultants based on their skills, experience, and integrity, rather than price, see the [FIDIC Guidelines for Selection of Consultants](#).

Project lead choices

For Qld government projects the project lead is usually the architect or the constructor. Architects provide a specific discipline and skillset, highly valued in the early stages of the project lifecycle. Whereas the constructor primarily has responsibility for delivery. In comparison, design and engineering consultants cover multi-disciplines, and are involved through all stages of the project lifecycle. Additionally, in some sectors, architects are unable to obtain the required professional indemnity insurance, which has flow on impacts.

Consult Australia would like Qld government to rethink always giving the architect or constructor the lead role for a project and consider who is best placed to achieve the desired project outcomes. For some projects this will be architects, for other projects it will be constructors, and there will also be projects where the consultant is the best choice.

PRE-QUALIFICATION SYSTEM

The Commission has requested information on:

How the pre-qualification system impacts contractors, building consultants and subcontractors, and the extent to which it impacts the ability of small and medium subcontractors in regional areas to compete for government tenders, and what could be done to improve matters.

Prequalification (PQC) has implications across all industry sectors. Consult Australia would like Qld government to be more consistent when it comes to prequalification and to reduce the burden on both government and industry.

Consult Australia members note there are both benefits and challenges to having a single source for all opportunities. There can be a loss of productivity if each agency has their own arrangements and Consult Australia has seen this occur across all levels of government. Panel size also has an impact. For example, if you have a consultant that is one of 3 panellists, compared to one of 20 panellists there is impacts on:

- Bidding decisions – Consultants need to balance the costs involved in preparing a bid (up to 3% of the consultant contract value) with the risk of not being selected.
- Relationships – A larger panel makes it more challenging to develop long term relationships with a client that will deliver the best collaborative and project outcomes.

Consult Australia engages with Qld government on opportunities to streamline and reduce the regulatory burden of PQC for both government and industry:

- Building, Construction and Maintenance (BCM) – Consult Australia's feedback informed changes to information requirements for consultant PQC. A further improvement being discussed is the impact of the requirement for the head contractor to be QBCC licensed, regardless of the nature of the project. This is adding unnecessary costs. For example, carpark projects assigned to QBCC licensed head contractors, e.g. builders, result in multiple layers of subcontracting to deliver the project as the head contractor has no experience in civil works. The layers of subcontracting impact the job costing, with one example shared of a carpark job value with an estimated increase from \$350k to \$1M due to subcontracting.
- Transport and Main Roads (TMR) – In response to Consult Australia feedback, TMR established a prequalification working group with Consult Australia members. To date, this work has benefited government and industry through the standardisation of CV templates and clarification of renewal requirements. Work is ongoing to deliver further improvements.

Consult Australia would like Qld government to reduce the number of prequalification processes, and encourage departments and agencies to use existing panels, rather than create their own.

Improving tendering and contracting

BARRIERS TO ADOPTION OF DIGITAL TECHNOLOGY

The Commission has requested information on:

the key barriers to increased adoption of digital technologies, such as Building Information Modelling, and the policies or practices that would allow the opportunities for digital technologies to be fully leveraged.

Consult Australia recommends Qld government focuses on:

- providing the legal and regulatory framework that will support advancement and exploration of new and emerging technologies
- engaging with industry to identify where new and emerging technologies can deliver project benefits and improved outcomes for government, industry and communities
- valuing data and the associated costs/ benefits.

Consult Australia is working with other jurisdictions on similar initiatives and can share insights and work collaboratively with Qld government to do similar.

The goal is to provide consistency and clarity around what's appropriate for each project. Data requirements can impact efficiency of design, so it is important that government makes conscious and informed decisions around data requests that align with needs. Consult Australia acknowledges the complexity of technology advancement and the importance of industry engagement on the possibilities, costs and benefits. The provision of a government framework to guide and enable will help shift from reactive to proactive.

Example

Consult Australia does not propose a one-size-fits-all approach to BIM and projects, but rather an approach that considers the value and suitability of BIM to each project and aligning prequalification levels appropriately. For example, Consult Australia has worked with other industry participants and government in another jurisdiction to work through new BIM requirements on government building projects. The key being that pre-tender, the government review the initial project brief and assess the value and suitability of BIM to the project to recommend that:

- the project is not suited to BIM, or
- core BIM is required for the project, or
- project specific BIM is required.

Only after that decision is made is the project released for tender. To support this approach, it is important to also align prequalification requirements to the BIM needs of the project. For example, a specialist/expert level of knowledge and proficiency should only be needed on complex, large scale complex projects (say over \$250m) not for all projects including simple, conventional, small-scale buildings where a prequalification on practical application of relevant principles and concepts is needed.

COST/BENEFIT OF COLLABORATIVE CONTRACTING

The Commission has requested information on:

the benefits and costs of collaborative contracting arrangements, and the key barriers to greater adoption of collaborative contracting (including early contractor engagement).

Consult Australia's *Unravelling Risk* explores the impact on the design, advisory and engineering sector of the current culture of disputation in the Australian market, especially from the design and construct model of contracting. Design and construct contracting is rarely collaborative through the whole chain. While there might be collaborative behaviour between the client and constructor, that does not guarantee collaboration with the consultant who has a direct relationship with the constructor but not the client. An active client is necessary to ensure a design and construct model delivers collaboration at all levels.

The benefits of collaborative contracting include reduced disputation as explored in *Unravelling Risk*, which will help to improve the professional indemnity insurance market and improve the diversity of market participating in tenders.

Culture and behaviour change is not cost neutral and cannot be delivered overnight. However, we hold that the cost is out balanced by benefit. Consult Australia has seen a number of jurisdictions invest in collaborative approaches in recent years:

- Major Road Projects Victoria (MRPV) introduced their new approach a few years ago where design and construct contracting is used, but MRPV is an active client and established commercial principles it expects to be reflected in contracting. In this approach parties can go to MRPV where there are concerns about conditions or behaviours of other participants. Consult Australia have been sharing learnings from the MRPV approach with TMR as it undertakes its Collaborative Project.
- TasWater's has recently introduced NEC4 contracts and a partnership approach to projects. Consult Australia supports this shift as the past approach to major projects raised concerns about the agency taking a 'hands off' approach, making it difficult to escalate and resolve issues.

In discussions with clients across Australia, Consult Australia believes the biggest barrier to introducing collaborative contracting is the wish of the client to remain 'hands off'. However, real culture change needs the client to be both a model client and an active client.

RISK ALLOCATION

The Commission has requested information on:

how risk can be more appropriately allocated in government contracts.

Consult Australia submits that some of the most onerous contract terms seem to have no consideration of risk for the project. See for example the *Unravelling Risk* chapter on the 'knotty issue of risk' where it is noted that too often legal advisers have the say on risk settings in contracts and those setting are not informed by actual risk identification. Uninsurable and problematic contract clauses and unreasonable insurance requirements increases the liability of one party but does nothing to manage a particular risk.

To address how risk is allocated in government contracts parties need to be specific about which risk/s are relevant to the project and then how to balance the exposure of each party – including whether to manage the risk or transfer the risk. To assist in defining and specifying risks, let's talk about 'risk items'. Risk items can include:

- Aboriginal culture and heritage
- authority approvals

- escalation
- geotechnical
- industrial disruption
- latent conditions / inground services
- stakeholder engagement
- supply constraints
- weather.

Each risk item will have a cost, time and likelihood component. What is needed is careful consideration by the parties of each risk item up front, with clients undertaking a cost/benefit analysis on minimising each risk item. For each risk item, the client should decide if it is worth continuing with a project with the current settings, or whether action should be taken to reduce the risk item/s with the highest cost/time/likelihood. In practice, we see little attention to risk items and contractual settings that result in the supplier paying for the impacts of risk items arising without that risk being properly priced or even considered.

Example

A geotechnical risk item on a project is noted as having a potential cost impact of \$20m, a significant impact on time and a high likelihood of arising. It is recommended that the client undertake a cost/benefit analysis to determine if it should:

- (a) take action to reduce the risk item – this might mean a delay to the project so that more investigations of the ground conditions can be done to lessen the cost/time/likelihood of a geotechnical risk item impacting the project. This is managing the risk item.

OR

- (b) agree to carry the risk item – this means the client will pay for the impacts arising during the project because of the geotechnical risk item. It is noted that the risk item may not eventuate or might have a different cost impact than the estimated \$20m. This is not managing the risk, but this is balancing the exposure of the parties to the risk item.

OR

- (c) agree to pay the supplier \$20m to carry the risk – this means the supplier will pay for the impacts arising during the project because of the geotechnical risk item. It is noted that the risk item may not eventuate or might have a different cost impact than the estimated \$20m. This is not managing the risk, but this is balancing the exposure of the parties to the risk item.

Consult Australia is of the view that if government clients adopt a model client policy and delivered fair and collaborative contracting, this would significantly de-risk the Australian building and construction industry as litigious avenues would no longer be available or needed.

COST/BENEFIT OF STANDARDISED CONTRACTS

The Commission has requested information on:

the benefits and costs of adopting standardised contracts.

Consult Australia recently produced [*Industry Insight on Standardised Contracts*](#) in partnership with NEC Contracts, which explores the costs and benefits of standardised contracting. The simplicity in language and improved clarity through standardisation are not superficial benefits when you

consider the impact on project outcomes, government delivery, industry productivity and community outcomes. Standard contract forms, such as the NEC4 Suite of Contracts, drafted in plain English with clear terms and stating the requirements of the parties, reduce the potential for misunderstanding and disputes.

Consult Australia provides detail below on the consultant view. Given that consultants are often engaged by constructors, it is also essential that the constructor's contracts with government are standardised to manage the risk and exposure of consultants.

In terms of productivity, standardised contracts increase the speed and simplicity of project establishment or partnership formation, with each party arriving with an understanding of their role. Consistency drives efficiency. Standard contracts reduce the need for staff to be trained and re-trained on a wide variety of contracts. Consult Australia members have provided intel on the internal processes and procedures which would not be enlivened if standardised fair contracts were in place.

Example

All bespoke contracts, i.e. non-industry standard contract, get reviewed by a business' internal legal team.

Time required for an internal contract review by a business' legal counsel can vary depending on the complexity of the contract, ranging from 2 hours to 5 working days. Certain issues need to be escalated for approval, for example where it pertains to risk or insurability issues.

Where there are uninsurable obligations and/or particular risk settings in a contract, those tenders are generally escalated for approval beyond the internal legal team. This can include national and international directors, chief operating officers and presidents, and takes time and resources. This is a productivity drain on industry and government.

For completeness, members have advised that the clauses below generally require risk mitigation beyond the internal legal review:

- The inclusion of a novation clause
- No effective cap on liability
- The inclusion of a fit for purpose clause
- The inclusion of unqualified indemnities
- Inflexible variation requirements
- The inclusion of a set-off clause
- Inappropriate or undefined consequential loss
- Exposure of the company's professional indemnity insurance under the liability provision
- Inappropriate professional indemnity insurance amount required (e.g. \$10 million for a \$30,000 service)
- Inappropriate requirements relevant to the company's professional indemnity insurance policy such as:
 - The client's approval must be sought for policy renewal
 - The client to be named/covered by the policy

There will always be an upfront cost of shifting to a new contract, irrespective of whether it is a standard or a bespoke form. However, by their nature, efficiencies accumulate where the more widespread and uniform the application of a standard contract occurs, reducing costs over time and increasing the benefits. Consistent industry adoption of a standard contract reduces upfront

costs and time to establish a project, and builds understanding and trust between parties reducing dispute. A consistent understanding of roles, risks and responsibilities will have a compounding affect over time leading to reduced costs over the long-term. This also reduces the need for continued substantial investment in legal resources and streamlines the time it takes to create, negotiate, draft and review each contract.

BUNDLING OF PROJECTS

The Commission has requested information on:

the extent to which there are likely to be benefits from greater bundling of projects, and the extent to which this might prevent competition by preventing smaller firms from tendering for work.

Visibility and certainty of the project pipeline remains a key focus for Consult Australia. Design, advisory and engineering consulting business need to know what work is planned and have clarity around preclusion for future projects to be able to make informed tendering decisions. Consult Australia recommends Qld government prioritise delivering benefits on improved project planning and publication.

Consult Australia [*Qld Election Priorities*](#) provided two recommendations to build industry capacity and confidence:

- The Queensland Government to take a 30-year view of the infrastructure pipeline. Longer-term planning will enable the design industries to build capacity and deliver the evidence base governments need for informed decisions when fully considering options, cost benefit, community engagement and social outcomes.
- The Queensland Government to plan project releases with an awareness of the impact on the market, including competing projects by other agencies. A steady stream of projects supports market sustainability as opposed to whole sector release at one time.

Example

Industry waited whilst government undertook multiple reviews to confirm the plan for the 2032 Olympic and Paralympic Games. These delays consumed valuable lead time which impacted project options for government. Over the last month industry has seen a flurry of activity with short turnaround timeframes, confusion over preclusion for future projects and investment by industry in a combination of ROI and EOI processes.

The benefit of the ROI process was unclear as participants are not precluded from future EOI processes. In terms of productivity, this highlights the importance of both government and industry knowing the objective of procurement processes to enable considered decisions, avoid potential wasted effort and promote valued investment.

CAPACITY OF GOVERNMENT PROCUREMENT AGENCIES

The Commission has requested information on:

whether government procurement agencies have the capacity to undertake the types of changes noted in submissions, and what additional capabilities (public and private) are required and how these could be best achieved.

To undertake the types of changes, Consult Australia advocates for, the government will need to be an active client as well as train and empower procurement teams over legal teams. We suggest that guidance and training for procurement officials be on risk assessment and management, insurance, commercial settings of industry and contract management. This is informed by feedback from Consult Australia members that:

- clients do not always understand the commercial imperatives of supplier businesses or appreciate the different operating models of different suppliers (e.g. the difference between constructor businesses and consultancy businesses).
- insurance coverage is often misunderstood by clients leading to unrealistic and unreasonable requirements in contracts.
- 'back-to-back' contracting is a fallacy and risk-sharing is discussed but rarely practiced.

Arguably, industry could improve its capability by appreciating the compliance and assurance requirements within government.

Procurement capability of clients and industry is a common frustration for all parties and Consult Australia proposes that joint workshops focused on knowledge sharing would improve overall culture and built trust between industry and government.

INCENTIVES TO IMPROVE RISK- ALLOCATION

The Commission has requested information on:

examples of successful approaches that have been used to incentivise improved risk-allocation by contracting agencies.

To improve risk allocation, Consult Australia recommends the use of contracts that are clear, simple, and written in plain English, with risk, commercial, and insurance settings that are most appropriate to encourage participation by the broadest range of suitable consulting businesses. This includes the Australian Standard Contract for Consulting Services (AS4122-2010) without significant amendment, the Consult Australia Suite of Contracts, the FIDIC Contracts, and the NEC4 contract suite. These contracts are fair and balanced for all parties, which Consult Australia views as the key premise to incentivise improved risk allocation.

Example

One of the core reasons Consult Australia supports the use of the NEC4 contract suite is that it was developed by project managers (rather than lawyers) and has been designed to support collaboration, performance and project delivery. NEC4 contracts also enable an active client mindset. The settings in the NEC4 contract suite address some of the persistent dispute issues seen by Consult Australia including scoping, insufficient design, timing and variations. For example, the NEC4 contract suite:

- sets expectations with a foundational contract clause for the parties to act 'in a spirit of mutual trust and co-operation'
- promotes time, cost and quality outcomes through its early warning process
- manages change with defined processes for 'compensation events'.

PRESCRIPTIVE SPECIFICATION VS PERFORMANCE-BASED SPECIFICATIONS

The Commission has requested information on:

the pros and cons of replacing prescriptive specifications with more performance-based specifications.

Consult Australia supports performance-based specifications as this enables greater innovation through less rigidity and by focusing on the outcome to be achieved. For example, TMR has a strong intent to be innovative, however this is not clear in all documentation and is hampered by the suite of technical specifications, which can be unflexible. It is challenging to fit new products into stringent specifications. If specifications are performance-based and focused on outcomes, then there is more opportunity to question, innovate and evolve.

Consult Australia also supports national harmonisation of standards and specifications to improve productivity. Establishing unified standards will ensure consistency, improve interoperability and streamline efforts across sectors. For example, Consult Australia's [Digital by Default white paper](#) outlines the opportunity to address fragmentation between jurisdictions on data and information management

Impacts arising from NCC 2022

The Commission has requested information on:

Changes to the NCC are agreed upon through a process involving public consultation, review by expert committees and assessment of costs and benefits. Only those changes that have a demonstrated net benefit to the community are supposed to be adopted. The Commission would like to understand if stakeholders agree that this is a reasonable process, and if not, what changes should be made.

Building integrity is a key concern around the country, and to achieve and maintain building integrity, industry participants need access to quality standards and codes. Quality standards are those that are up-to-date and which, when followed, help achieve a quality design and build. Consult Australia therefore sees significant value to the industry and the community in the regular three yearly reviews and updates of the NCC, and the implementation of each revision.

In November 2024, Consult Australia co-signed a letter to the Australian Building Ministers setting out the importance of the NCC:

- The NCC sets the national standard for how we build in Australia. It covers matters from fire safety, structural integrity, health and amenity, accessibility to sustainability considerations including emerging issues like embodied carbon, resilience to our changing climate, and increased frequency and intensity of natural disasters.
- Since the early 1990s, the adoption of a single building code by state and territory governments has been a national project grounded in productivity and efficiency, to save businesses money from unnecessary and confusing duplication between states and territories and undue regulation, focusing on reforms that have a net benefit to society. The NCC also ensures an appropriate safety net for quality, comfort and cost to all Australians, the people who ultimately own, work and live in the buildings we construct.
- Over time, the issues addressed in the design, construction and refurbishment of buildings have changed and evolved in response to the risks faced. From ensuring personal safety in case of fires and structural failures to addressing systemic defects in quality like waterproofing and condensation, there is a strong need to consider emerging challenges.
- Constructing buildings and homes that will still be here in 40 and 50 years' time requires taking a long-term view of what appropriate minimum standards need to be achieved. Improving the energy performance of new homes and buildings will benefit Australians for decades to come and make the transition to renewable energy faster and cheaper. The energy performance requirements for homes introduced in NCC 2022 will lead to significant and ongoing energy bill savings for households, better health outcomes, better resilience to worsening extreme weather events and heatwaves, cuts to our emissions and less need for expensive generation and network augmentation.

Industry would benefit from certainty on implementation – therefore it is recommended that there be a set date by which reviewed NCC editions are implemented by states, say one year. This would give industry time to get up to speed on the changes that impact their work before implementation. Arguably there is a stronger role for the Australian Building Codes Board and state regulators in more education for industry to also ease transition. Consult Australia would also support the development of a platform that integrates the NCC and regulated standards in an easily understandable and useable form for all industry participants.

Prioritising occupational licensing reviews

The Commission has requested information on:

to best prioritise these reviews, the Commission is seeking stakeholder views on what specific construction-related occupational licensing requirements are most likely to impose the greatest net costs on the community and how a program of stock reviews could best be coordinated across relevant agencies.

Consult Australia recommends that the Qld government should prioritise the realisation of occupational mobility for engineering given the licensing scheme is already in place and there is a significant cost saving of over \$54 million if:

- QLD opted into mutual recognition/automatic deemed registration for professional engineers
- the 'home State' definition in the *Mutual Recognition Act 1992* (Cth) was amended to remove a barrier to occupational mobility for businesses with registered professional engineers that work across state borders.

Government registration of occupations is not a new thing, however, with the rollout of government engineering registration schemes around the country, Consult Australia has seen unnecessary barriers impacting the operation of businesses of all sizes. Registration is a priority for our member businesses as it is now required in many Australian jurisdictions for professional engineers to practice.

Consult Australia was supportive of the 2022 amendments to the *Mutual Recognition Act 1992* (Cth) that facilitated 'automatic deemed registration'. The automatic deemed registration scheme was intended to reduce costs and avoid the often lengthy and administratively burdensome full registration process where a practitioner was seeking registration in a second jurisdiction.

Unfortunately, true occupational mobility has not been realised because states, such as Qld have opted out of it and the legislation has a significant barrier - the definition of 'home State'.

The definition is too restrictive and does not allow sufficient flexibility in the current environment when it comes to professional engineering registration. Section [42D of the Mutual Recognition Act 1992 \(Cth\)](#) allows for automatic deemed registration where a person registered in their 'home State' to carry on activities covered by their occupation can carry on those activities in a 'second State' (where the second state also requires registration for their occupation). Section [42A of the Mutual Recognition Act 1992 \(Cth\)](#) defines 'home State' as meaning:

- (a) the State in which the person has their principal place of residence;
- (b) the State in which the person has their principal place of work for the occupation.

If automatic deemed registration worked effectively, the jurisdiction where the person lives or works would not be relevant so long as they hold a registration that can be recognised. The services provided by professional engineers can be provided remotely, in fact over 90% of Consult Australia members (including sole traders and small businesses with only one office location) provide services in more than one jurisdiction. There are many professional engineers providing services in Australia that hold a registration, that is not for their 'home State'.

The solution is to amend that definition. Consult Australia has identified options to amend the 'home State' definition that would secure savings of over \$54 million in costs to businesses for the registration of engineers already registered in another jurisdiction. The federal government can rectify this oversight by:

1. Removing 'home State' from Part 3A and replacing it with 'first State', OR
2. Modifying section 42A.

Consult Australia can provide further detail on these solutions for legislative amendments. We also support digital implementation to ensure that consumers, regulators and practitioners can all access registration information throughout Australia easily and efficiently.

Opportunities to better utilise skilled overseas migration

The Commission has requested information on:

To ascertain the opportunity for leveraging skilled overseas migration to address gaps in the construction labour force that cannot be filled domestically, the Commission is seeking stakeholder views and evidence on:

- the need and opportunities for the Queensland Government to nominate more subclass 190 or 491 visas for construction tradespeople
- the opportunities to reduce duplicative skills assessments, or to recognise equivalent overseas qualifications, and if these opportunities exist, what the benefits, costs and risks are
- other specific opportunities to increase the use of skilled overseas migration to meet Queensland's construction skills needs.

Consult Australia agrees there is an opportunity to leverage skilled overseas migration to address gaps in the construction labour force. As highlighted in our submission, the preference for localism deters the use of overseas employees. Consult Australia recommends government supports and encourages initiatives to address any gaps in practical skills and/or knowledge of Australian legislation and regulations. Our [business guide](#) with Engineers Australia supports businesses in accessing the untapped potential of overseas qualified engineers. There is also a need for government to demonstrate its willingness to accept skilled overseas migrants as proficient and qualified.

Labour hire regulation in construction

The Commission has requested information on:

in relation to labour hire in construction, the Commission is seeking evidence as to whether:

- labour hire licensing arrangements enhance workplace health and safety outcomes beyond those achieved by other laws
- the costs imposed on businesses by the regime are disproportionate to those benefits
- Queensland workers and businesses would be better served by the state's participation in the process underway for a national (rather than state-based) scheme.

Workplace health and safety

Labour hire laws were introduced to protect vulnerable workers from exploitation, and to promote the integrity of the labour hire industry. There were specific concerns about certain industries including where workers were on visas, and/or lower income earners. There were no concerns about professional design, advisory or engineering specialists who are generally well remunerated.

Consult Australia members do not provide labour hire service as a core function of their business. However, they are frequently caught by a technical reading of the legislation. Due to the drafting of labour hire laws, some workforce arrangements undertaken by a design, advisory,

engineering consulting business can be captured, requiring the business to have a labour hire licence and undertake the relevant compliance reporting.

We agree with the original policy intent of the legislation, but not its application beyond industries where workers have been found to be particularly vulnerable. Consult Australia does not believe that labour hire laws ensure workers in our industry have important protections – they already have all relevant protections without the application of the labour hire laws to our member businesses.

Cost/benefit

Consult Australia argues that the burden of compliance reporting and applying for a licence far outweighs the risk of exploitation of the professional services workers provided by engineering, design and advisory consultancy businesses.

It should be noted that the exceptions provided for in Qld are not comprehensive enough to capture the types of arrangements that clients request of our members.

While the licensing fees are relatively modest, the time costs are significant and occupies the attention of critical and busy staff. The reporting is twice a year for Qld. Our members have estimated the cost of reporting 10 arrangements across Vic and Qld to be more than \$200,000 and often requiring two to three months' work per reporting period. The process of identification and capturing these arrangements is manual and cumbersome because the service offering is not core business.

The steps and resources of the business typically needed for reporting include:

<i>Application</i>	
Audit of all relevant arrangements, needing:	• 2-3 members of the internal legal team • 2-3 administrative staff • external legal advice required for niche arrangements • involvement of the Regional Operations Director to identify projects. • interaction with project managers for all identified projects (could be 20+ individuals).
Application and relevant person checks, needing:	• 1-2 members of the internal legal team • 2-3 administrative staff • involvement of Directors and Company Secretary • involvement of Regional Operations Director.
<i>Renewal</i>	
Audit of all relevant arrangements, needing:	• 2-3 members of the internal legal team • 2-3 administrative staff • external legal advice required for niche arrangements • involvement of the Regional Operations Director to identify projects. • interaction with project managers for all identified projects (could be 50+ individuals).
Submission	• 1-2 members of the internal legal team • involvement of a Director or the Company Secretary • involvement of Regional Operations Director.

It is reasonable to assume that where a business incurs such compliance costs because of client requirements, that cost will inevitably need to be passed on in some way.

National scheme

Consult Australia agrees that Qld's participation in a national scheme would better serve businesses where there a single set of regulatory obligations applying across Australia.

While Workplace Relations Ministers have agreed to publish the endorsed model and senior officials were tasked with developing a strategy for consultation with business, industry, unions and other stakeholders – these have not yet been released.

To be clear, Consult Australia would advocate that the national scheme should only cover the industries needing regulatory intervention, not all businesses that might have arrangements that technically meet the definition of labour hire.

Contact

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



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