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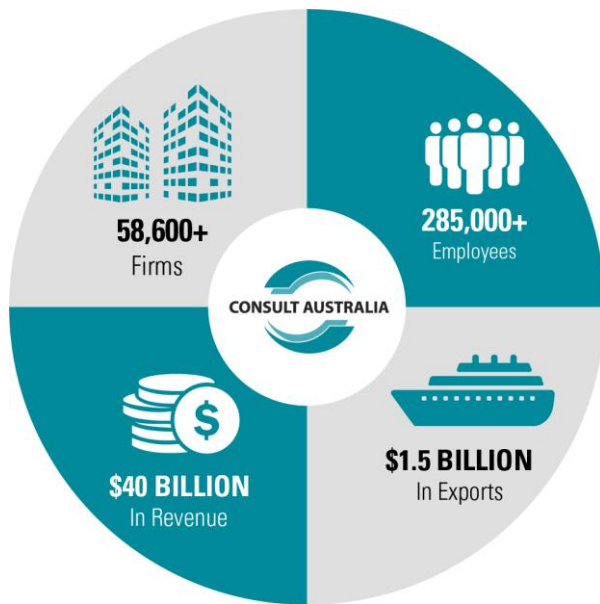
**Creating a more dynamic and
resilient economy –
Interim Report**

SUBMISSION TO PRODUCTIVITY COMMISSION

Consult Australia

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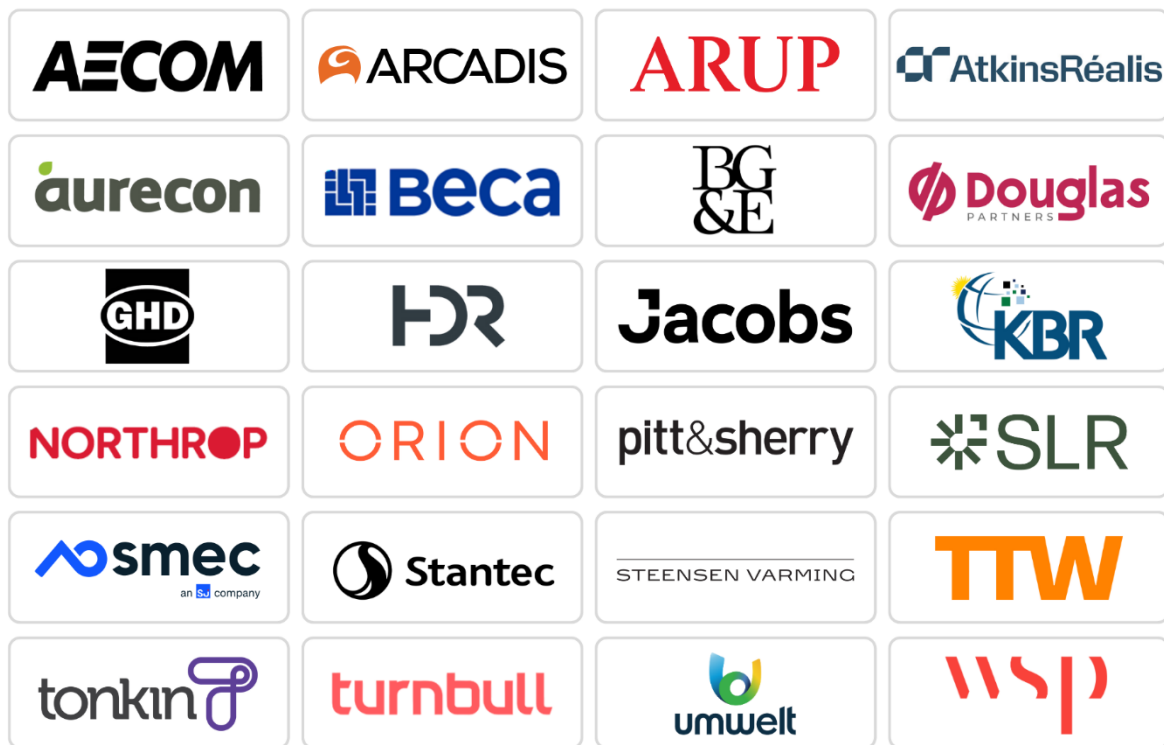
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About us

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 Productivity Commission's Interim Report into Creating a More Dynamic and Resilient Economy under the five pillar productivity growth agenda. We support the interim recommendations on regulating to promote business dynamism:

- Set a clear agenda for regulatory reform
- Bolster high-level scrutiny of regulations
- Enhance regulatory practice to deliver growth, competition and innovation.

The members of Consult Australia design the future. With every design, advisory and engineering service provided by our membership, there is a positive impact on job growth, community connectivity, and economic productivity. Australia's productivity will continue to lag and the ability to innovate will remain stifled if the government does not address barriers to confidence, commerciality, mobility, coordination and quality.

We are pleased to provide more information on key aspects:

- **Regulatory reform** — We have identified inconsistent, duplicative and rigid regulation which the government could fix. We propose an increased role for the Office of Better Regulation to track regulatory quality and measure burden. We recommend prioritising the review of gender equality regulation to assess the cumulative effect on businesses and ensure the best regulatory outcomes.
- **Regulatory stewardship** — Consult Australia agrees with a mindset that balances risk and growth, and encourages a focus on growth sectors, where market forces may be hindered by regulation. Building capability and confidence of public servants is integral to creating a regulatory stewardship culture. We recommend changes to the government capability framework, greater focus on regulation co-design with industry, increased use of industry and government working groups and a focus on building stronger procurement capability, particularly in managing risk.

Our submission considers the interplay between the five pillars of the productivity growth agenda. There are opportunities and improvements identified in the Creating a More Dynamic and Resilient Economy Interim Report that can benefit other productivity pillars such as workforce, net zero and digital.

Regulatory reform

The Interim Report recommends setting a clear agenda for regulatory reform. This includes:

- a whole-of government statement committing to effective regulatory practice with clarity of principles, roles and responsibilities
- a schedule, reissued regularly, of regulatory reforms for immediate action and quantitative targets for government to achieve.

The Commission requested further information on regulatory failures, quantitative measures/targets and priority areas for regulatory review.

Consult Australia considers that it is not just about regulatory practices, it is also the flow through to procurement that drives regulatory outcomes and impose. We question whether quantitative measures/targets for reforms are appropriate alone. We instead support a mix of both quantitative and qualitative measures. For example, the end goal of regulatory reform should include a focus on improvements to industry understanding and compliance which is measured by both economywide measures as well as and industry case studies and examples. Progress can be measured both on quantitative and qualitative measures.

EASIER REGULATORY FIXES

The Commission identified categories of regulatory failure and requested specific examples of regulatory failures, that could easily be fixed by government. Consult Australia has provided further detail on regulatory improvement opportunities for design, advisory and engineering consulting businesses.

Inconsistent regulation

Consult Australia recommends two examples of inconsistent regulation that could easily be fixed by government – misleading or deceptive conduct, and labour hire.

Misleading or deceptive conduct

As per our [June 2025 submission](#), Consult Australia recommends amendments to the Australian Consumer Law (ACL) to ensure the misleading or deceptive conduct provisions (under section 18) are consistent with other ACL provisions by protecting consumers and small businesses.

Our members, of all sizes, have noted that the misleading or deceptive conduct provisions are used in claims against them, often by much larger sophisticated businesses that have the benefit of both internal and external legal advice. Consult Australia holds that there is sufficient legal protection both within the contract between the parties and the common law. In practice these misleading or deceptive conduct claims are rarely heard by the courts. We are of the view that misleading or deceptive conduct claims are being used inappropriately as a tool to pressure our members and other suppliers in the contract chain to settle claims made under the contract. By adding a claim of misleading or deceptive conduct, sophisticated corporate entities are seeking to throw a 'catch all' blanket over their log of claims, in an attempt to overwhelm the other party and make the cost of defending the claim far greater than the value of settlement out of court. This can be an effective strategy because across jurisdictions there is conflicting case law on the question of whether limitation of liability clauses apply to claims made under section 18 of the ACL.

Around 97% of the businesses in the design, advisory and engineering consulting industry are small businesses (of less than 20 people). Therefore, it is vital that these businesses, who rarely have in-house legal, have protection under the ACL. The rest of the ACL focuses on protecting consumers and small businesses, misleading or deceptive conduct provisions however seem to be more open.

Consult Australia proposes that to maintain consistency with other parts of the ACL, section 18 of the ACL be amended to incorporate the definition of consumer and small businesses used in section 23 of the ACL:

- consumer – an individual whose acquisition of the goods, services or interest is wholly or predominantly for personal, domestic or household use or consumption.
- small business – a business that employs fewer than 100 persons or the annual turnover of the business is less than \$10 million. (Note: this definition came into force on 9 November 2023).

Taking this into consideration, we propose this new drafting of section 18 of the ACL:

18 Misleading or deceptive conduct

(1) A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive a consumer or a small business.

*(2) A **consumer** for the purposes of subsection (1) is an individual whose acquisition of the goods, services or interest is wholly or predominantly for personal, domestic, or household use or consumption*

*(3) A **small business** for the purposes of subsection (1) is a business that:*

(a) has fewer than 100 employees; or

(b) has an annual turnover of less than \$10million.

(4) Nothing in Part 3-1 (which is about unfair practices) limits by implication subsection (1).

Note: For rules relating to representations as to the country of origin of goods, see Part 5-3.

The other option is to amend the ACL to explicitly allow contracting parties to exclude liability and/or set liability limits for misleading and deceptive conduct in business-to-business contracts. However, this approach would not remedy the inconsistency with other parts of the ACL.

Labour hire

As per our [June 2025 submission](#), Consult Australia recommends amendments to labour hire laws to remove unnecessary burdens on businesses where labour hire is only incidental to their services.

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 and often provided to public sector clients.

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 in Qld, Vic and ACT. The drafting of labour hire laws can capture some workforce arrangements undertaken by a design, advisory, engineering consulting business, requiring the business to have a labour hire licence and complete 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.

This is an instance of national regulatory failure, and negatively impacts businesses, particularly those working across jurisdictions. Over 90% of Consult Australia members (including sole traders and small businesses with only one office location) provide services in more than one jurisdiction.

A national scheme would better serve businesses where there a single set of regulatory obligations applying across Australia. Workplace Relations Ministers have endorsed a national scheme, agreed to publish and senior officials were tasked with developing a strategy for consultation with business, industry, unions and other stakeholders. However, the national scheme has 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. Consult Australia recommends the Federal Government drive forward the national scheme as agreed to clarify regulatory objectives and facilitate consistency in application.

Duplicate regulation

Consult Australia recommends the duplication within the [Commonwealth Supplier Code of Conduct](#) could easily be fixed by government to reduce the regulatory burden.

The Commonwealth Supplier Code of Conduct duplicates existing obligations and creates a burden through insufficient detail. The Code references competition law, as well as work and health and safety laws without explaining the obligations of suppliers which can cause issues. This can 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 this provision:

Suppliers must develop and maintain appropriate processes to manage their legal and regulatory obligations relevant to the nature of the supply of goods or services to the government.

Rigid regulation

Consult Australia recommends the rigidity of the 'home state' definition with the *Mutual Recognition Act 1992* (Cth) could easily be fixed by government to improve occupational mobility.

As per our [June 2025 submission](#), Consult Australia recommends amendments to the *Mutual Recognition Act 1992* (Cth) to realise occupational mobility for registered professional engineers. An example of the impact of the rigidity was included in that submission. We provided more detail to the Commission in response to its consultation on the [National Competition Policy Analysis 2025](#). Rather than replicate, we have provided links to our previous submissions and welcome the opportunity to discuss.

With over 58,000 businesses in the design, advisory and engineering consulting industry, employing over 280,000 people, this regulatory failure is having a significant impact on business productivity, resourcing and operating costs. Consult Australia [supports](#) the recommendation in the Interim Report – National Competition Policy Analysis 2025 to instigate the agreed independent evaluation of the Automatic Mutual Recognition scheme. Consult Australia recommends the regulatory failure can be easily addressed through changes to the home state definition and recommends the Commission prioritise this aspect.

IMPACT ANALYSIS

The Commission requested information on the quantitative measures that it should track for the quality of regulation and regulatory burden.

Consult Australia supports the quantitative candidates listed in the Interim Report. We recommend a mix of both quantitative and qualitative measures. For example, the end goal of regulatory reform should include a focus on improvements to industry understanding and compliance which is measured by both economywide measures as well as and industry case studies and examples. Progress can be measured both on quantitative and qualitative measures.

We recommend reporting on industry sentiment and experience on regulatory compliance to aim for an uplift. For example, survey-based measures of compliance burden can be supplemented with industry suggestions on what changes are needed to further improve. Active engagement with industry bodies is essential to explore solutions.

Consult Australia also recommends the Office of Impact Analysis undertake:

- mandatory reviews of new regulation one year after implementation to assess the real regulatory impact against the anticipated impact.
- reviews of every regulation on a three-year cycle. These reviews should have similar considerations to Regulatory Information Statements, i.e. cost to industry, cost benefit to community and test if regulation delivers the desired outcomes.

To determine how to measure burden, Consult Australia recommends holding a forum with industry to discuss and establish options for measures. Targets may vary depending on the regulation and the context for each.

PRIORITY REGULATORY REVIEWS

The Commission requested information on sectors or regulatory systems where immediate regulatory review is most warranted. Consult Australia supports the priority review of the housing construction sector proposed in the Interim Report. Consult Australia recommends the Commission also prioritise review of gender equality regulation to assess the cumulative effect on businesses and regulatory outcomes.

Consult Australia is a leading advocate for gender equality. Since 2012, Consult Australia members have tackled the gender disparity in the consulting sector by committing to the [Champions of Change](#) initiative. Over time, the legal obligations and regulatory impose for businesses has increased, with current legalisation including:

- the [Fair Work Act 2009 \(Cth\)](#) and other Commonwealth workplace relations legislation
- the [Equal Opportunity Act 2010 \(Vic\)](#), the [Gender Equality Act 2020 \(Vic\)](#) and the [Charter of Human rights and Responsibilities Act 2006 \(Vic\)](#)
- the [Sex Discrimination Act 1984 \(Cth\)](#) and the [Workplace Gender Equality Act 2012 \(Cth\)](#)
- enterprise agreements, workplace determinations and modern awards.

Businesses are now investing significant time and resources to meet duplicative and different regulatory requirements. This includes Gender Equality Action Plans (GEAP) for government entities and reporting to the Workplace Gender Equality Agency (WGEA). Consult Australia has highlighted the opportunity to leverage digital in streamlining reporting for businesses on gender equality in its submission the Interim Report into Harnessing Data and Digital Technology. Simultaneously, Consult Australia recommends the Commission prioritise review of gender equality regulation to ascertain the cumulative effect, and harmonise requirements, where possible.

Regulatory Stewardship

To improve Australia's overall regulatory system, the Commission recommends bolstering high-level scrutiny of regulations, including raising the standards for impact analyses and greater use of external sectoral reviews. The Commission requested further information on:

- balancing risk with growth objectives and helpful guidance.
- additional government levers to help promulgate and embed a culture of regulatory stewardship.

BALANCING RISK AND GROWTH

Consult Australia agrees with a mindset that balances risk and growth. Consult Australia encourages regulators to think about growth of sectors that are being regulated and how market forces may be hindered by regulation.

Regulators and policy makers should engage in real co-design with industry. The inclusion of industry perspectives, an understanding of market conditions and a consideration of competition impacts is essential to inform the design of policy options as well as understanding the impacts of new regulatory proposals. However, these can sometimes be overlooked especially when there is no embedded culture of considering these during the policy design stage. Consult Australia recommends including an explicit requirement to consider business impacts (especially small business), market conditions and competition impacts when developing regulation and policy.

Regulators should establish formal and informal feedback opportunities with government and industry (for example, through industry bodies) to review and enhance regulation. Consult Australia recommends that there should be mandatory reviews of new regulation one year after implementation to assess the real regulatory impact. This analysis should reapply the Better Regulation principles to identify any potential changes (including streamlining regulations) to minimise unnecessary impacts.

The flow of regulation through to procurement policies and practices, overseen by public servants, will also influence the balance of risk and growth. The Commission recommends ministerial statements of expectation (including how much risk should be tolerated), greater guidance and capability building for public servants to become regulatory stewards. Understanding risk is fundamental to building the capability for public servants to act autonomously to identify and proactively respond to regulatory issues. Consult Australia's [Unravelling Risk](#) recommends reforms to build capability.

ADDITIONAL GOVERNMENT LEVERS

Consult Australia recommends regulatory stewardship, including risk identification be included in the Australian Public Service (APS) capability framework, particularly the integrated leadership system, as one of the key capabilities and requirements for all APS levels. This could be supported through specific training and development.

Consult Australia recommends increased use of industry and government working groups, and industry bodies, to embed a culture of regulatory stewardship. Consult Australia supports the recommendation by Australian Small Business and Family Enterprise Ombudsman (ABSFO) to provide formal advice on small business impacts as part of regulatory impact processes.

BUILDING CAPABILITY

To embed a culture of regulatory stewardship, procurement capability and the flow through of regulatory obligations to procurement obligations should be considered. Procurement is about assessment and allocation of risk. It is often the tool used by government to promote and assess regulatory compliance.

The Commissions' recommendations promote communication of risk tolerance and trade-offs to build public servant confidence to identify and proactively respond to regulatory issues. Consult Australia support this and recommends that a similar capability focus be brought to procurement.

Consult Australia's [Unravelling Risk](#) report explores the increasingly complex risk landscape and the impact on the design, advisory and engineering sector of the current culture of disputation in the Australian market. The chapter on the 'knotty issue of risk', notes that parties need to be specific about which risk/s are relevant to the project and then decide how to deal with each risk including whether to manage the risk or transfer the risk.

Consult Australia recommends adopting [Unravelling Risk](#) reforms to build procurement capability, and therefore confidence, and points to the reform threads on:

- [Scoping for success](#) – The best quality scope has clarity that can support appropriate risk allocation. We need government and industry to work together to scope for success, and to dispel any misapprehension of what is driving the behaviour of other parties.
- [Valuing variations](#) – changes in design can happen during a project, despite quality scoping at pre-tender. Therefore, Consult Australia recommends all parties adopting a collaborative 'early warning' approach for variations.
- [Refining the rules](#) – Clarifying and refining how current legislative provisions are framed and used would reduce the volume of unnecessary and unreasonable claims, supporting effective risk management.

Contact

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



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Thanks to our Industry Champions

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



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