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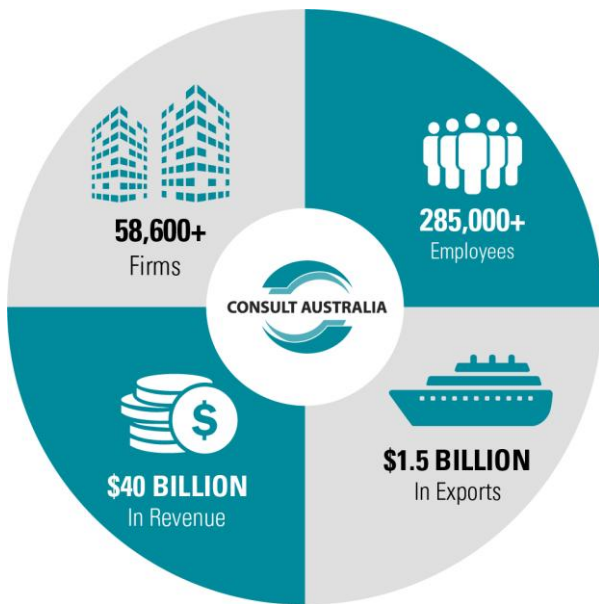
Small Business Insurance

SUBMISSION TO PARLIAMENTARY JOINT
COMMITTEE ON CORPORATIONS AND FINANCIAL
SERVICES

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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

For small businesses in the design, advisory and engineering consulting industry, access and affordability of insurance is a business-critical issue. Professional indemnity (PI) insurance in particular is vital to cover unforeseen risks and claims.

Consult Australia regularly surveys its members to collect insights on market conditions, including capacity, pipeline confidence (or lack thereof) and business costs and risks. Availability and affordability of PI insurance is consistently raised as a top concern. The [2025 Market Conditions report](#) found that:

- escalating costs of doing business was the top challenge in the last 12 months.
- insurance was identified as one of the major areas with increasing business compliance costs.
- 57% of respondents reported increasing premium costs for PI insurance despite positive signs in availability.

Government procurement settings, including PI insurance requirements and liability provisions that are not covered by PI, directly influence whether a small business participates or not. Consult Australia members consistently note that government promises about encouraging small business participation '*are just words*' as more barriers are put up. Consult Australia has consistently raised concerns about procurement and PI insurance with government at all levels and in all jurisdictions. Throughout this submission we provide case studies from member businesses demonstrating the concerns.

Consult Australia recommends key actions for governments to reduce the barriers to small business participation to support industry sustainability and productivity. To improve access, affordability and availability of small business insurance:



Collaborative and fair contracting should be adopted as government policy, reflecting Model Client behaviours and informed by market conditions.



Governments should reform legislation to ensure:

- civil liability legislation explicitly prohibits contracting out of proportionate liability in professional services contracts around the country.
- unfair contract terms protections of the Australian Consumer Law cover government contracts.
- misleading or deceptive conduct claims of the Australian Consumer Law protect consumers and small businesses.



Governments should undertake procurement reform to:

- uplift procurement capability
- recalibrate insurance obligations in contracts
- set a limit on liability without significant carve outs in contracts
- improve risk assessment and management on projects.

PI insurance and consultants

Our small business members advise that PI insurance premiums are one of their biggest business expense and year on year premiums are increasing while coverage amounts decrease – irrespective of claim history. The number of underwriters providing coverage varies and businesses need to engage early and extensively to find coverage at an acceptable price. Once secured, there is no guarantee that the same insurance level will be retained in future years as most small companies providing specialised design, advisory, or engineering services renegotiate insurance products each year. Businesses must weigh up the insurer's offer, business exposure and cost outlay with potential earnings. To be clear it is not just the small consultancy businesses facing PI challenges, even global businesses face similar challenges to get feasible coverage for their Australian operations. However, it is small businesses that are less able to access global insurance markets and/or carry increased risk exposure. We set out below some case studies from across our sector to demonstrate this point.

Case studies on premium increases on insurance renewal

A small structural and civil engineering business that provides services across Australia renewed their PI insurance with a 7% increase in fees and a 23% increase in the premium (which the broker stated was 'a good result in the current market' and the only other main option had pricing at least \$50,000 more). While they were seeking a \$20million coverage, no insurer was able to offer that. The business therefore has primary layer cover of \$10million.

Another small structural engineering business that provides services across Australia previously paid a \$60,000 premium for \$3million PI insurance cover. The renewed policy had a premium of \$250,000 for the same cover.

Members advise that government clients often see insurance as the way to manage risk and often contracts and procurement documents are framed in that way. For clarity, a consultant's PI policy is not for the benefit of the client or the public, it is a commercial product purchased by the consultant for the consultant. Insurance is the way the consultant finances liability (if it arises) and therefore should be the last step in the risk identification, assessment and allocation process.

In this submission we will talk about the contractual settings, including insurance requirements coming through from government agencies which are having a significant impact on small businesses being able to participate in the market. These settings also lead to the reputation of the Australian construction industry as being marred by adversarial, problematic and uncollaborative contracting, primarily flowing from inappropriate risk allocation.

Looking at the claims environment, the impacts of inflation on PI claims have had a consequential impact to professional service firms beyond the cost of a PI policy.¹ As Australian insurance market conditions continue to change, negotiations with insurers are increasingly complex for members. To navigate the challenges of accessing appropriate and affordable PI insurance, our members regularly explore various options with brokers, including:

- a renewal or new policy at a lower sum insured and with the retroactive date intact
- a renewal or new policy at any sum insured with a reduced retroactive date
- a renewal or new policy with no retroactive cover
- a renewal or new policy with cover for personal injury excluded

¹ AON Insights, [2024 Professional Indemnity Market Update](#)

- a renewal or a new policy with a high level of deductible
- a combination of all the above.

Consult Australia continues to raise awareness of the PI insurance market conditions and the impact for government as a client and as a regulator.

Consult Australia's [Unravelling Risk](#) report outlines the complex tangle of risk issues that need to be unravelled and resolved. Many of the issues can be addressed by government as a client, including the reforms explored below. Government contracting and behaviours at all levels, need ongoing reform to realise in practice the government promise to ensure access by small business. This includes a focus on risk being borne by the party best placed to manage it, including where those risks best sit with government.

Consult Australia's recommendations seek to de-risk, to reduce the level of unnecessary disputation in the market and re-align provisions in government contracts. Investing in these reforms will have a significant positive impact on small businesses in Australia and the economy. These reforms will improve business viability and market relationships, unlock productivity, and reduce disputation. This will in-turn influence the stability of the PI insurance market.

COLLABORATIVE AND FAIR CONTRACTING REFLECTING MODEL CLIENT

It is recommended that collaborative and fair contracting be adopted as government policy reflecting the positive behaviours in our Model Client Policy and informed by market conditions.

Government procurement has become increasingly complex and onerous for suppliers due to problematic procurement processes and difficult contract terms. Behaviour between stakeholders (including government clients, insurers, constructors, and designers) too often is marred by various forms of dispute rather than productive behaviour built on collaboration. This practice is negatively impacting the insurance market that Consult Australia members rely on to remain in business.

Consult Australia has long advocated for a Model Client Policy, with colleagues from the Australian Constructors Association also supporting updated [Model Client Behaviours](#). The idea behind Model Client is the long-established model litigant policy, to address the inherent power balance that exists between government clients and the private sector. By committing to the behaviours set out in our Model Client Policy and delivering fair and collaborative contracting, government clients can significantly de-risk the Australian building and construction industry as litigious avenues would no longer be available/needed. Ultimately, this will lead to an uplift in productivity for all parties and more accurate project costs for the client, as contractors and consultants will not be forced to price for disproportionate risk or spend significant sums on lawyers and experts as a result of claims.

Model Client Behaviours

A model client:

1. understands the commercial risks, market conditions and different roles of the industry suppliers, using that knowledge to balance the risk exposure of all parties (for example, minimises the use of security deposits for contractors and sets reasonable insurance limits and limits of liability for consultants)
2. undertakes appropriate risk identification, assessment, mitigation, and management including by understanding the particular project risks
3. has clear, consistent and transparent tender processes, evaluation criteria and provides quality documentation including well-structured and accurate briefs, providing reasonable review and response times (the key benefit flowing from this is reduced cost of bidding)
4. always considers business and industry sustainability, by avoiding unnecessary pressure on parties. For example:
 - a. setting fair and reasonable assessment of stipe-ends to account for costs to consultants and contractors
 - b. always settling invoices on time and ensuring that contract negotiations are fair; not a 'take it or leave it' approach
 - c. provides fair assessments and timely payments for work undertaken particularly in relation to additional works and claims.
5. avoids use of non-standard or heavily amended contracts and prioritises collaborative contracting including appropriate liability frameworks, maintaining proportionate liability, balanced rights/obligations, and placing risks with the party best able to manage them
6. avoids the practice of multiple rounds of best and final offers
7. fosters a collaborative culture. This includes, through early engagement, supporting and driving innovation and maintaining open and constructive communication between all parties
8. plans and prioritises projects and avoids making assumptions about industry capacity. This includes having a genuine commitment to improved culture, mental health, and diversity, and observing industry closure times (for example Christmas tender blackout periods).

Legislative reform

Civil liability legislation

It is recommended that civil liability legislation around Australia is reformed to explicitly prohibit contracting out of proportionate liability in professional services contracts.

Consult Australia has called on all government clients to explicitly prohibit contracting out of proportionate liability in professional services contracts. This would realise the original policy intention of the civil liability reforms of 2001, to bring balance back to the PI insurance market, summarised in this statement:

The operation of insurance and the law of joint and several liability has given rise to professionals often being singled out as the sole target for legal action in proceedings for property damage and purely financial loss even when the professional is only one of the parties involved and may have only contributed in a minor way to the loss. These factors have led to an exponential increase in professional indemnity premiums which are not sustainable.²

Proportionate liability is a statutory right, which ensures that a party is only liable in damages for the proportion of the suffered loss that is attributable to that party. It only applies to financial harm and economic loss, not to cases involving personal injury or death. Proportionate liability was introduced nationally through state and territory civil liability legislation to improve the availability and affordability of PI insurance in Australia following the insurance crisis of 2001 when the insurer HIH collapsed.³

The key policy objective of proportionate liability – helping to ensure that PI insurance is available, affordable and dependable – is undermined if design and engineering consultants are required by a client to contract out of the proportionate liability legislation. Unfortunately, government clients are amongst the most prolific when it comes to contracting out of proportionate liability in consultancy contracts.

The 2001 reforms were positively received by local and international insurers. Anecdotal evidence indicates these measures have assisted in improving the allocation of capital to Australian PI insurers. However, insurers have also indicated that if the application of proportionate liability can be by-passed contractually the insurance market will price and allocate capital to Australian PI risk as if proportionate liability does not apply.

Only Qld's legislation explicitly prohibits contracting out of proportionate liability while only NSW, Tas and WA explicitly allow it (by prohibiting contracting out of other civil liabilities). Contracting out of proportionate liability in professional services contracts undermines the policy goals of the proportionate liability law reform and risks another insurance crisis like the one that led to the reform.

By contracting out of proportionate liability, the consultant and the client are exposed to uninsured risk. Relying on proportionate liability ensures both the client and the consultant is managing their risks and still ensures that the consultant is liable for the economic loss they cause.

There are three key arguments often levelled against proportionate liability:

- A client should be able to recover their losses regardless of contribution
- It is easier to file a claim against a single party than multiple claims against multiple parties
- It is a good form of risk management.

² <https://ministers.treasury.gov.au/ministers/helen-coonan-2001/publications/joint-communique-ministerial-meeting-public-liability-2>

³ 2015 Treasury Briefing, 'Aftermath of the HIH collapse'.

While it seems a reasonable proposition that a client should be able to recover all their losses from a single party despite their contribution to the loss, this fails to understand the complexity of insurance law and risk management practices, and how they affect the delivery of a project. In the building, construction and infrastructure sector a disproportionate number of claims are made against professional services providers. They are seen as the most likely source for recouping losses because of their PI insurance (i.e. 'the deep pockets syndrome') as builders and contractors are assumed more likely to file for bankruptcy.

Reverting to unlimited joint and several liability perpetuates the deep pockets syndrome and also undermines the policy intention to stabilise the PI insurance market. It is also a dangerous assumption for a client to assume that requiring their consultant to contract out of proportionate liability ensures that all their losses will be recovered. A party's real ability to make good the accountability which results from joint and several liability is only as good as the balance sheet or insurance available to that consultant.

Placing the entire liability with one party also encourages less desirable risk management practices, where one party can essentially 'wash their hands' of any responsibility for problems the project may encounter. Proportionate liability, together with a proper risk assessment at the outset of a project will lead to better outcomes in terms of cost and time, as well as reduced disputation and litigation.

Frequently clients cite the convenience of filing a single claim as their reason for contracting out of proportionate liability. However, when this is the case, greater resources are devoted to costly legal proceedings, owing to cross-claims that are filed to recover money. In any event, consultants are responsible for the sub-consultants they engage, and contracting out does not change that.

To realise the intent of the civil liability reforms and to bring balance back to the market, especially as it relates to the availability and affordability of PI for consulting designers and engineers, Consult Australia advocates for preserving proportionate liability in all professional services contracts.

Unfair contract terms protections in the Australian Consumer Law

It is recommended that there is legislative reform of the Australian Consumer Law to ensure protection from unfair contract terms in government contracts.

The Australian Consumer Law (ACL) provides protections to consumers and small businesses from unfair contract terms. In 2023, amended protections came into force. Consult Australia supported the reforms that strengthened protections by:

- enhancing the range of remedies and enforcement powers
- expanding the class of contracts that are covered by the unfair contract term provisions
- clarifying and strengthening the unfair contract term provisions more generally.

At the time of the review, Consult Australia did raise concerns that the reforms were not enough without also capturing government contracts. We also suggested the following implementation strategies to ensure the best public policy outcome:

- Allocate more power and resources to the ACCC to investigate unfair contract terms issues raised by small businesses.
- Establish a searchable and public register of unfair contract terms to inform and empower small businesses.
- Ensure industry involvement in the determination of the exempted clauses.

The purpose of the 2023 amendments was to deter businesses from using unfair contract terms in standard form contracts and improve consumer/small business confidence when entering standard form contracts with larger businesses. In practice, our members have seen very little change in contract conditions or behaviours since 2023.

In respect of the standard contracts our members propose to clients, they are often:

- Australian standard contracts (Such as AS4122-2010), which (should have) balanced obligations for parties.
- Consult Australia's Consultant and Subconsultant contract, which proudly has balanced rights and obligations for both parties.

However, in many cases when Consult Australia members contract with larger businesses, it is on government projects and therefore the terms often flow through from the government client. Even in direct contracts between businesses and government, Consult Australia sees imbalance in the contract terms offered by government clients. There is mixed interest among government client's in engaging with industry to resolve the unreasonable terms. In government contracting we often see:

- government clients providing contracts as a 'take it or leave it' approach where a business is deemed to have a 'non-compliant bid' if it questions contract terms
- terms that allow government clients to unilaterally cancel or terminate an agreement without cause
- broad limitations of a government client's liability, or terms which require a business to indemnify the government client in an unreasonably broad range of circumstances
- requirements for professional service providers to pay significant performance bonds or security deposits, unrelated to the potential loss the government client would face if the professional service was not completed
- contracting out of proportionate liability.

Consult Australia holds that there will not be significant improvement to contract conditions in Australia until the unfair contract term protections apply to government contracts.

Misleading or deceptive provisions of the Australian Consumer Law

It is recommended that there is legislative reform of the Australian Consumer Law to ensure misleading or deceptive conduct provisions protect consumers and small businesses.

Consult Australia recommends amendments to the 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 these instances without the need for recourse to the ACL.

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, to overwhelm the other party and make the cost of defending the claim far greater than the value of settlement. This can be an

effective strategy because across jurisdictions there is conflicting case law on the question of whether contractual 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.

The use of misleading or deceptive conduct claims in business-to-business contracting increases the likelihood of insurance claims, thereby impacting the insurance market as a whole. The detrimental impact of a constrained insurance market is not limited to coverage for these claims and these consulting businesses, but can impact all types of projects, businesses and clients

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.

As the government seeks to uplift productivity, it is crucial that market power is balanced and fair. It is extremely important that insurance confidence is taken into consideration. If misleading or deceptive conduct claims continue to be allowed between sophisticated contracting parties, the ongoing risk to business will deepen.

Procurement reform

Uplift procurement capability

It is recommended that governments uplift procurement capability.

Procurement is about assessment and allocation of risk. However, procurement capability is a long-running challenge across Australia. Government reviews at national and state levels, including Infrastructure Australia's Market Capacity reports highlight recurring issues such as unclear scoping, over-reliance on contract transfer of risk, inconsistent commercial capability within agencies and rising dispute activity. These pressures are compounded by workforce tightness, project complexity, budget constraints and increasing expectations on value for money.

From Consult Australia's engagement with industry and government, similar themes continue to surface. Industry often has limited visibility of the compliance, assurance and audit requirements that shape government procurement decisions. Agencies have noted that consultants and contractors do not always appreciate the internal constraints that impact flexibility, timelines or documentation. At the same time, government teams can lack insight into the commercial imperatives of suppliers, especially the differences in operating models between constructors and consulting businesses. Misunderstandings around insurance coverage remain common, leading to unrealistic contractual requirements or expectations around 'back-to-back' liability that do not align with the realities of insurability. Although the language of risk-sharing is widely used, it is seldom practised in a way that supports predictable or collaborative project delivery

These gaps in understanding create unnecessary friction, drive up transaction costs, limit innovation and can contribute to cost overruns, delays or disputes. They also inhibit the early engagement that agencies identify as a key lever for better outcomes.

To tackle these system-wide challenges, Consult Australia recommends governments invest in capability uplift across the private and public sectors. There should be an efficient, structured, repeatable and scalable way for government procurement officers and industry project managers to build a common understanding of the constraints, drivers, commercial and risk environments on both sides. This investment would strengthen capability, improve decision-making, and foster more constructive relationships and discussions (e.g. on insurance) across the delivery chain.

Recalibrate insurance obligations in contracts

It is recommended that governments recalibrate insurance obligations in contracts.

As indicated above, insurance requirements sought by government on suppliers can directly impact participation and the costs of delivery depending on the suppliers' arrangements and overheads.

The insurance requirements of government clients are often out-of-step with what the consultant can obtain. Too many burdensome insurance requirements currently exist in government contracts:

- *Unreasonable policy obligations* – examples include clauses where clients must approve the business' insurance policy and/or see full copies of insurance. These types of obligations are not only unreasonable but also often unable to be met. For example, insurance policies are commercial in-confidence between the insurer, and the insured so cannot be shared.
- *Inappropriate insurance levels* – examples include significant high levels of insurance that do not reflect the risk of the supplied services and/or what is available in the market to small businesses. These requests demonstrate government's lack of understanding of market conditions, risk management and standard procurement practices in other government sectors.

Case studies on unreasonable insurance levels required by clients

In 2026, a Consult Australia small business member advised that a local government has requested suppliers have PI coverage of \$50million, which is out of step with even the highest limits generally set on larger state/territory government projects for consultants.

A new small maritime engineering business providing services across Australia with an estimated initial turnover of under \$1million reported paying approximately \$80,000 in premiums per annum for PI insurance. While clients requested \$5million-10million PI insurance coverage from the consultancy, the business was only able to obtain \$2million PI insurance coverage. Given the fees and the work the business does, this is sufficient (despite the clients' requests). The business notes that this policy was difficult to obtain, extremely limited in terms of underwriters and with premiums prohibitively high for small turnover. This insurance premium is the businesses largest business expenditure.

A small structural engineering business providing services across Australia is involved in low cost and low risk projects, however clients treat the business the same as a large structural engineering business working on large/complex projects with high risk. Clients ask for significant insurance cover when the business can only get \$5million cover – which is sufficient for the work it does (despite the clients' requests).

In 2023, a government client required consultant suppliers to have \$20million professional indemnity insurance coverage. This was out of step with other government agencies which usually had the highest coverage set to \$10million. A Consult Australia member business sought advice from its broker and noted that to increase its current coverage of \$10million to \$20million would cost the business \$50,000 per year on top of the existing cost of the policy. There would be no guarantee that the business would continue to be able to secure such coverage.

This additional insurance comes at a significant cost on projects that already have tight margins. In the construction sector, given the nature of projects and the long-tail nature of PI insurance, these increased insurances will need to be maintained by a business for at least 12 years (approximately 5 years of construction and typically 7 years of insurance post construction).

A common misunderstanding by government clients is the use of 'per claim' and 'aggregate' limits in insurance requirements. PI policies are written on a 'claims made' basis. The appropriate language for stating the level of professional indemnity required is 'per claim', with an annual 'aggregate limit'. Members have raised concerns with government contracts that specify a 'per claim' limit only, which results in unmanageable risk for the client and the supplier.

Consult Australia suggests that all governments use consistent guidance for determining insurance requirements to ensure they are in line with market availability and the risk of the particular project. It is suggested that the guidance include a risk matrix, to determine professional indemnity insurance by level of exposure:

Set professional indemnity insurance coverage by level of exposure

Level of exposure	Professional indemnity insurance required (in the aggregate)
Low	\$1 million
Medium	\$2 million
High	\$5 million
Very high	\$10 million

Set a limit on liability without significant carve outs

It is recommended that governments set a limit on liability without significant carve outs in contracts.

The concept of a limit of liability recognises the risk/reward balance between the parties. Importantly a limit of liability is an acknowledgement that consulting businesses typically have limited tangible assets, noting that the value of the business lies in the skill and professionalism of the people they employ and the intellectual property they produce.

A requirement for unlimited liability might seem attractive to government on the face of it. In reality, once a consultant's insurance and assets are exhausted, any unmet liability falls back to the client because the consultant will have no option but to close the business. This is undesirable not only for the client, but also for the people working in that organisation, the other businesses that have contracts in place with that consulting business (e.g. other clients, sub-consultants, suppliers), and the economy more broadly.

Limiting the liability of consultants through the terms of the contract ensures that there is agreement between the consultant and principal about the risks and levels of liability that both parties may be exposed to. In assessing this the parties can:

- agree an amount that provides both with some surety as to their level of exposure
- avoid duplication of contingency funds to cover the same potential risk event
- avoid unnecessarily inflating the cost of the project
- better reflect the risk/reward profile of the project.

Limitation of liability carve outs should not be included in contract drafting because they typically negate the value of the clause as they seek to undermine the operation of the limit. Examples of carve outs that should **not** be permitted:

- insurance proceeds
- indemnities
- third party claims
- property damage
- loss of use of property
- consequential loss.

Improve risk assessment and management

It is recommended that governments improve risk assessment and management on projects.

All projects carry a certain amount of risk. Every project is different and comes with both inherent and unique challenges. It is important that the government recognise this and acknowledge and account for these risks. Consult Australia recommends that risk assessment is undertaken on all projects and should be an integral part of the procurement process. A straight pass through of risk to contractors/consultants does not equate to risk management and gives project owners a false sense of security.

It also does not demonstrate a balance between risk and reward for each party involved in the project. For example, consultants are appointed to advise and assist their client to deliver a project. A consultant's fee will only be a small proportion of the total project cost – on major projects this can be typically 5% of the total project cost. Therefore, there is a significant imbalance between risk and reward if consultants are required to carry unlimited liability for all

loss/damage connected to the project, typically driven through the inclusion of indemnity and warranty clauses in the contract terms and conditions.

Project owners should instead undertake a risk assessment process to better understand and apportion risk appropriately, acknowledging they also carry ownership of risk.

All government contract clauses should be broad enough to cover the risk to the government. Too often very broad clauses are drafted and included in government contracts that are unnecessary to protect the interests of the public purse. For example, Consult Australia recommends that instead of broad consequential loss provisions, government clients assess what losses need to be protected against (such as loss of use of the final project caused by the consultant) and cover just those consequential losses.

Contact

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



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Thanks to our Industry Champions

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