



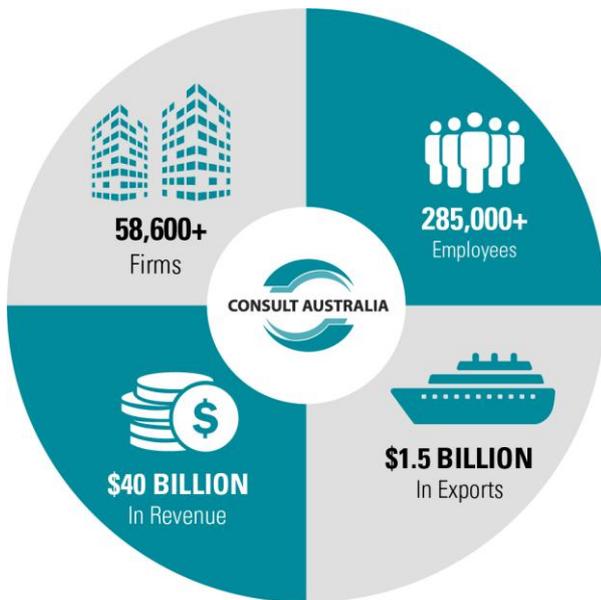
February 2026 Productivity in Australia

SUBMISSION TO SELECT COMMITTEE ON
PRODUCTIVITY IN AUSTRALIA

Consult Australia

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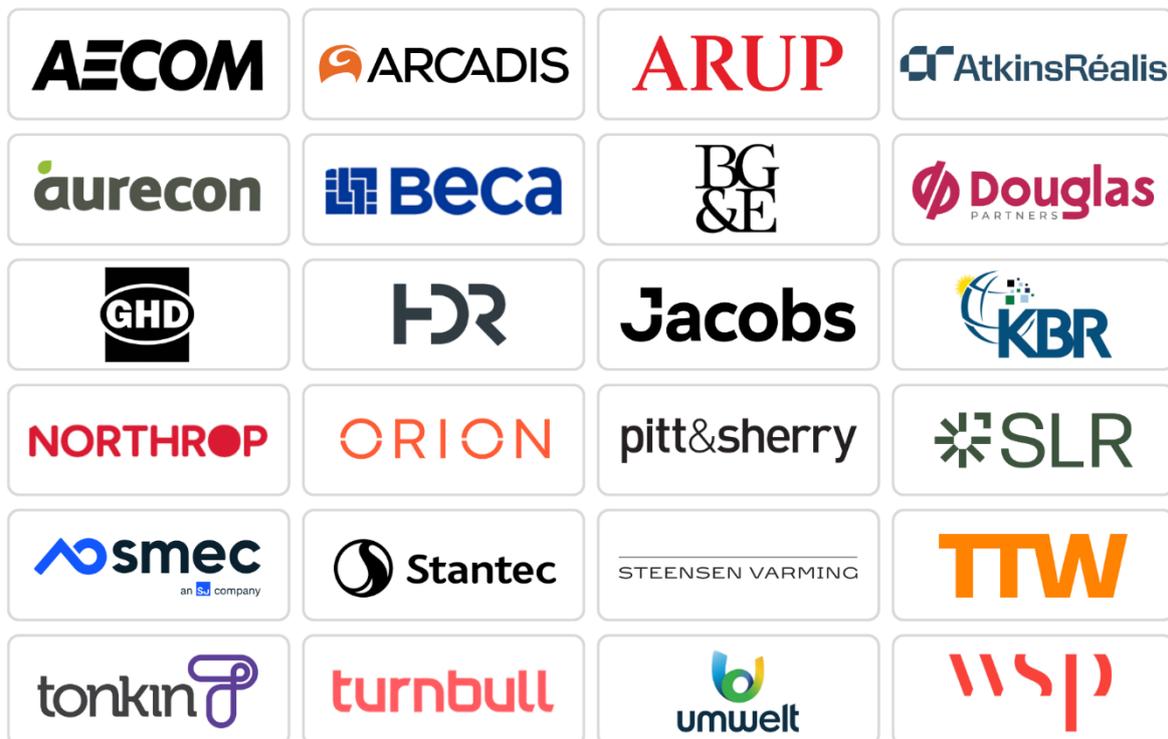
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About us

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 members design the future. With every design, advisory and engineering service there is a positive impact on job growth, community connectivity, and economic productivity. On productivity, Consult Australia's advocacy focuses on removing barriers and advancing opportunities to improve the health and sustainability of industry and deliver benefits for government, industry and the community. Therefore, this submission responds to the Select Committee's questions on regulatory burden, the effectiveness of Australia's competition policy, use of technology and the dynamism of Australia's labour market.

In responding to this consultation, Consult Australia has reviewed the [reform priorities from the Productivity Commission's five productivity inquiries](#) and identified further opportunities to realise productivity benefits, improve the efficacy of federal competition law and leverage technology.

Our recommendations draw on our previous work, including our:

Submissions to the Productivity Commission's 5 Pillar Productivity Agenda (September 2025) to [create a more dynamic and resilient economy](#), [invest in energy and net zero transformation](#), [build a skilled and adaptable workforce](#), and [harness data and digital technology](#).

[Submission to the Productivity Commission's National Competition Policy Analysis 2025](#) (June 2025) on realising occupational mobility for engineers across international and overseas standards in regulatory frameworks and harmonising regulated standards across Australia.

[Submission to Treasury's Revitalising National Competition Policy](#) (September 2024) consultation addressing regulatory complexity, inconsistency and market behaviours that compromise regulatory intent.

Consult Australia recommends the Select Committee advance opportunities to:



Support a competitive market - It is well understood that the regulatory environment and policy settings of government impact the market and that better regulation can in fact support a competitive environment. Consult Australia recommends regulatory reforms, capability uplift and infrastructure investment to improve market competitiveness.



Advance digitalisation - Good digital practices are happening around the country. Integration and coordinated leadership would enable digital by default and harness the benefits of data and digital to improve project outcomes for government, industry and communities.



Provide certainty – Workforce participation across and within jurisdictions is influenced by government policy and regulation. Pipeline certainty over the long-term gives businesses confidence to invest and build capacity. Consult Australia recommends improved pipeline coordination and long-term infrastructure planning, and the review of government policies and regulation to remove barriers to workforce participation.

Recommendations

The Senate Committee was formed prior to the final recommendations from the Productivity Commission's 5 Pillar Productivity Agenda, which included:

- creating a dynamic and resilient economy by removing regulation handbrakes on growth and ensuring new regulation better balances the benefits and trade-offs.
- harnessing data and digital through policy settings that safely and responsibly allow capture of the productivity benefits of AI and make better use of available data and information.
- building a skilled and adaptable workforce by making the best use of existing skills and addressing excessive occupational entry requirements.

Reflecting on these, and the Senate Committee's terms of reference, Consult Australia's recommendations identify further opportunities to realise productivity benefits.

SUPPORT A COMPETITIVE MARKET

Recommendations

- Fix the misleading or deceptive conduct provisions of the ACL to ensure consistency with other ACL provisions by protecting consumers and small businesses.
- Proceed with the plan for a national approach to labour hire laws to remove duplication and unnecessary restrictions on businesses where labour hire is only incidental to their services.
- Provide free access to Australian Standards referenced in legislation and the National Construction Code.
- Invest in procurement capability uplift for both the public and private sector, particular in managing risk.
- Require investment to support due diligence, early industry engagement and explore innovation at the earliest stages of projects, including under infrastructure federal funding agreements.

The regulatory environment and policy settings of government impact the market. Refinement of standards, regulation and procurement practices leads to improved market behaviours and conditions.

The Committee requested information on the regulatory requirements imposing the greatest burden and affecting productivity, and the role of competition. Consult Australia nominates the following areas for regulatory reform, capability uplift and improved practices:

- misleading or deceptive conduct provisions of the Australian Consumer Law
- labour hire laws
- standards
- government procurement
- infrastructure investment.

Misleading or deceptive conduct provisions of the ACL

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 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, in an attempt 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.

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 laws

Consult Australia recommends that federal and state and territory governments proceed with the plan for a national approach to labour hire laws. This would remove duplication between jurisdictions and unnecessary restrictions 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 services 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 are necessary to 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 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.

Standards

Consult Australia, as a member of the Australian Construction Industry Forum (ACIF) agrees that Australian Standards referenced in the National Construction Code (NCC) must be freely available. Just as the NCC is made freely available, so should the standards referenced in the NCC.

Lack of free access to these standards has serious implications for the safety and quality of buildings. In the last few years, building integrity and confidence has been a major concern for the community, governments and industry. Enabling better access to Australian Standards is a practical way to address this issue and directly assist industry participants to understand and apply the standard requirements to deliver higher quality and safer buildings.

Better access to standards is both readily solvable and relatively inexpensive. Consult Australia supports the recent [collaboration](#) by Standards Australia with industry leaders to advocate for a national standards access model for the construction sector. Consult Australia recommends government enables standards to be made freely accessible where they are required by law.

Government procurement

The Productivity Commission's [final inquiry report on creating a more dynamic and resilient economy](#) included a focus on delivering growth, competition and innovation through regulatory systems, with government communicating risk tolerance and trade-offs to build public servant confidence in proactively responding to regulatory issues. Consult Australia supports this and recommends that a similar capability focus be brought to government procurement.

Procurement is about assessment and allocation of risk. It is often the tool used by government to promote and assess regulatory compliance. 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 the federal government invest in capability uplift for both 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 and risk environments on both sides. Such an investment would strengthen capability, improve decision-making and foster more constructive relationships across the infrastructure delivery chain.

Infrastructure investment

Consult Australia has long supported earlier and stronger engagement with industry at the earliest stages of projects to improve project outcomes, identify efficiencies and manage risks in scope, cost, timeframes or scheduling against broader pipeline delivery.

Consult Australia's [submission to Treasury's Revitalising National Competition Policy](#) included recommendations to promote innovation and industry involvement. Government procurement practices that hinder innovation and the long-term competitiveness of markets include the practice of labelling bids as 'non-confirming bids', and late engagement of industry on project design and scope. To lead the way on innovative projects, we recommended all governments:

- engage industry early to explore innovation as part of project scoping
- move away from the 'non-confirming bid' mindset that dissuades bidders from delivering innovation
- recognise the commercial nature of the market and use that to drive innovation

Further, Consult Australia's [submission to the Inquiry into Financial Support for State and Territory Infrastructure Projects](#) recommends investment to support due diligence at the earliest stages should be a fundamental requirement of federal funding agreements. Embedding all these requirements would strengthen accountability, improve consistency across jurisdictions and materially reduce the risk of cost escalation and delivery failure that can affect productivity.

ADVANCE DIGITALISATION

Recommendation

- Champion coordinated leadership to enable digital by default and realise data and digital productivity benefits.

Good digital practices are happening around the country but without integration or coordination. Consult Australia's [Enabling Digital by Default White Paper](#) sets out a clear roadmap to embed digital solutions as a default approach in infrastructure planning, design, and delivery across Australia:

1. Build a Digital by Default Community of Practice
2. Invest in the business case
3. Harmonise standards and guidance for data and information management
4. Embed requirements through procurement with an outcome-led approach
5. Build capability and skills.

Developed through expansive consultation with industry and government leaders and drawing on best practice globally, the paper highlights digital enablement as a strategic lever to improve productivity, reduce risk, and enhance project outcomes.

While we see many leading practices within jurisdictions, the opportunity for a nationally coordinated approach, with all the multiplier benefits remains. Our recommendations provide a pathway to achieve that, founded in a national Community of Practice. The fragmented approaches to innovation, data and information management across different jurisdictions result in unrealised productivity benefits.

Consult Australia is already working with various jurisdictions on digital initiatives and can share insights and work collaboratively to build on these. 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. Coordinated leadership will help shift data and digital technology progress from reactive to proactive.

PROVIDE CERTAINTY

Recommendation

- Support workforce planning and investment through strategic pipeline certainty for infrastructure projects.
- Review government policies and regulation to remove barriers where excessive and/or unproportionate to improve workforce mobility and participation.

Support workforce planning and investment

The [Delivering Net Zero Infrastructure: Workforce Report](#), launched recently by Infrastructure Australia as part of the Infrastructure Net Zero Initiative, presents a collective picture of what it means to be part of the 'net zero infrastructure workforce' and the levers to inform workforce planning. Consult Australia, as part of the Initiative, suggests that the Productivity Commission actions the recommendations in this report to build the workforce with the skills needed to deliver a net zero infrastructure future.

To deliver these recommendations, pipeline clarity and certainty is critical. Where there is a lack of certainty in infrastructure pipelines there is then a lack of business confidence. Engineering, consulting and design firms are letting talent go as they cannot plan based on the published project pipelines. Investment in energy infrastructure is projected to increase six-fold over the next five years. But without these projects hitting the ground, the certainty to employ the needed teams is lacking.

Certainty, coordination and programmatic procurement are key factors to building skills and capability to deliver energy infrastructure. Consult Australia recommends the Australian Government:

- support long-term infrastructure planning, including the appropriate evidence base needed to make informed decisions and fully consider options, cost benefit, community engagement and social outcomes.
- support coordination between state and territory governments to plan project releases with an awareness of the impact on the market, including competing project releases. A steady stream of projects supports market sustainability as opposed to a whole sector release at one time.
- support state and territory governments to adopt programmatic approaches to enable participation by various businesses with varying skills and sizes, where relevant.

The opportunity exists to enact these recommendations through federal funding arrangements as outlined in our [submission](#) to the Inquiry into Financial Support for State and Territory Infrastructure Projects.

Net zero infrastructure is a decades-long task. The workforce transition needs to be planned now to allow time to build the capability. Thirteen public and private organisations are already collaborating under the Infrastructure Net Zero Initiative to address complex workforce challenges. The opportunity exists for Federal government to collaborate with this collective to support the workforce and skills needed for government decarbonisation plans.

Reduce policy barriers to workforce participation

The Select Committee's discussion paper highlights the impact of labour market dynamism on productivity. Consult Australia is an advocate for coordinated government policy and regulation across and within jurisdictions, to reduce limitations on the ability to realise workforce mobility and maximise workforce participation.

Consult Australia provided a [submission](#) to the Productivity Commission's National Competition Policy Analysis inquiry and supports its [final recommendations](#), which include instigating an independent evaluation of Automatic Mutual Recognition scheme and removing remaining exemptions by states and territory governments. Consult Australia commends the inclusion of occupational licensing reforms, prioritising engineering occupations, in the National Competition Policy Federation Funding Agreement Schedule in 2025.

Consult Australia would like to see further reform to deliver increased workforce participation that will enhance productivity and enable our members to plan, design and deliver infrastructure around Australia. This would realise the value of intersecting policy levers to support productivity outcomes.

Our industry faces systematic skills shortages in the long term but unclear pipeline certainty in the short term. In this complex environment it is even more important that the existing workforce is not restricted from participating and continues to grow. Consult Australia's experience is that government procurement policies, rather than the laws, are more likely to restrict or hamper workforce participation. We provide examples below to highlight the value of having intersecting policy levers to support productivity outcomes. In the case of workforce, nothing is solved by one policy lever. Consult Australia recommends the impact of government policies on workforce participation is considered to build a skilled and adaptable workforce.

Examples of procurement policy practices impacting workforce participation

Target setting without market knowledge

Procurement policies can set a target for employment of underrepresented groups; however, these do not necessarily account for the lead time needed to develop skilled people, especially in technical roles and this impacts the size of the available workforce. This makes the target difficult, if not impossible to achieve without other interventions much earlier in the education system.

For example, a university engineering degree takes approximately 5.5 years to complete, with at least an additional 5 years of professional experience to meet the requirements for independent practice and for registration as a professional engineer in many jurisdictions.

It is vital to acknowledge that industry cannot solve this pipeline of talent alone, especially for disciplines where it is shown that decisions can be made as early as primary school.

Preference for localism

A procurement requirement for local experience on similar projects can restrict the diversity of market participants tendering. This requirement can reduce the ability of businesses to introduce new people from other jurisdictions or sectors to develop their experience. It also limits using overseas complementary resources.

An over-reliance on local experience on similar projects can mean that jurisdictions miss out on expertise and innovation that suppliers have provided in other jurisdictions.

Focus on corporate experience over practitioner experience

Where procurement and/or prequalification requires corporate experience, valuable practitioner experience is ignored. This is notable given turnover within our industry is between 10–20%. This requirement can limit the diversity of market participants. For example, this requirement would limit an SME where the practitioners have relevant project experience, but that was developed at a different (likely larger) business. However, that larger business still benefits from the project experience, even if none of the delivery team remain.

Contact

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



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