

# ACT Election 2024



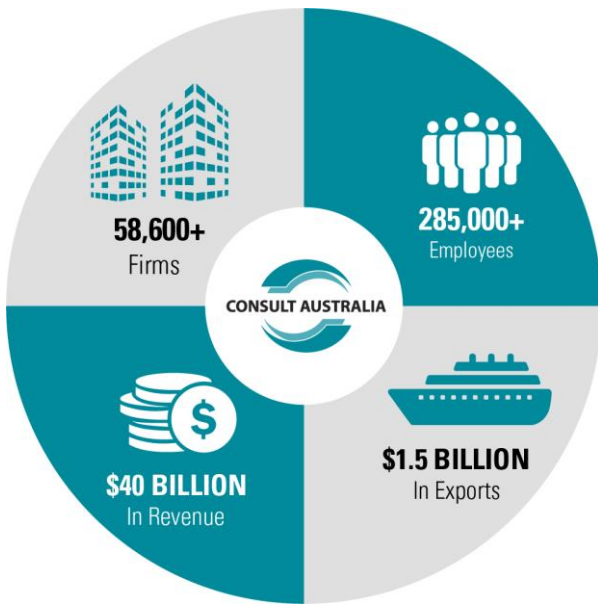
CONSULT AUSTRALIA

## Priorities

Consult Australia

Postal Address: GPO Box 56, Sydney NSW 2001  
Email: [info@consultaaustralia.com.au](mailto:info@consultaaustralia.com.au)

Tel: 02 8252 6700  
Web: [consultaaustralia.com.au](http://consultaaustralia.com.au)



## About us

Consult Australia is the industry association representing businesses in design, advisory and engineering consultancy, 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:



Consult Australia's members are listed in full [here](#).

## Snapshot

### **Consult Australia advocates for a healthy and sustainable ecosystem of productive businesses to realise the ACT's economic future**

Consultants 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.

The ACT's continued growth relies heavily on delivering investment in infrastructure as well as stimulating private sector investment in other areas. To achieve this, we need a strong ecosystem of productive businesses, ready to take the lead on innovation and collaboration. Consult Australia member businesses are critical to the delivery of the investment in infrastructure and construction.

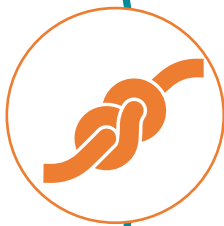
We call on the next ACT Government to be a part of this future by adopting our three key policy recommendations, set out below.

Consult Australia's solutions, as presented below, do not require new capital investment, but instead focus on smart policy that drives efficiency and delivers better value for money outcomes.



#### **Building business capacity and confidence**

Ensure the infrastructure pipeline is coordinated and planned with certainty over the long-term to ensure businesses can have confidence to invest and build capacity. The ACT Government should continue to improve its infrastructure pipeline approach.



#### **Unravelling risk and reducing disputation**

Reform government contracting behaviours to realise in practice the objectives of the Commonwealth Procurement Rules: that risk is actually borne by the party best placed to manage it, including by government. The ACT Government has a role to play in overseeing the projects it governs and as a principal, setting the tone for the rest of the supply chain.



#### **Being a Model Client**

Adopt a Model Client Policy and embody Model Client behaviours into all procurement to address undesirable contracting behaviours which hinder productivity and ACT's economic growth.

## Building business capacity and confidence

### Recommendations to build industry capacity and confidence:

- **The ACT 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 ACT 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.

Pipeline investment is an economic lever. If that lever is pulled too tightly, or let loose, it has implications on market capacity to deliver, regional growth, and competition.

The ACT Government should continue to improve its approach to the pipeline of projects that provides certainty to the industry and increases accessibility for small to medium businesses. This will deliver benefits to productivity (both industry and government) and workforce planning.

While many of the historical barriers to talent growth have not been resolved for professional design consultants working across the built and natural environment, the shortages have the potential to increase if capacity and confidence is not prioritised. There needs to be investment in local territory initiatives, i.e. skills and university education to tackle capacity concerns for professional services, including designers, engineers, and project managers.

There are four key elements to consider:

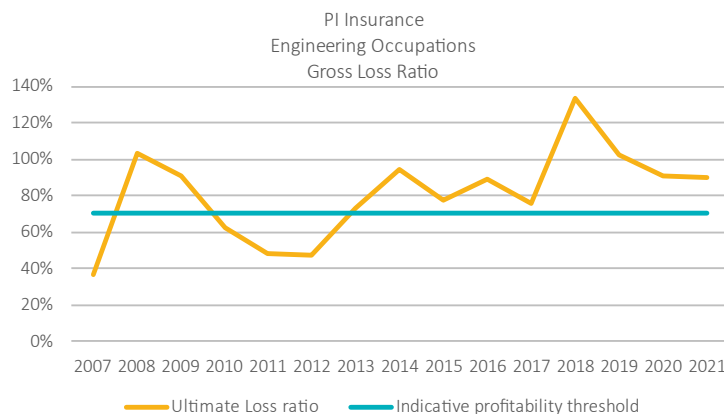
- **Shifting focus** – Pipeline uncertainty in one jurisdiction leads businesses operating across multiple jurisdictions to shift focus to secure projects and retain talent. If talent cannot be retained, employees may be forced to seek work in alternative states, territories, or even global jurisdictions.
- **Design domino** – Heavy investment in construction ready stages over planning and design stages does not equate to work for all. Rather, what we are seeing in many jurisdictions is that design work is drying up or being put on pause with a fast ramp-up to the construction ready stage. This often leads to later capacity constraints. Businesses are forced to consider reallocating highly skilled resources across sectors during design work pauses leading to pressures where these skills are sought in future.
- **Capacity drought** – When businesses shift talent from one jurisdiction to another to follow projects, the first market may experience a capacity drought for a lengthy time. Further, professionals tired of being redirected across jurisdictions may seek stable employment in countries outside of Australia. These shifts can be particularly acute for smaller jurisdictions.
- **Compounding skills shortages** – There are historical skills shortages prevalent in our industry from before the global pandemic, which have only intensified. Regulatory barriers, including the complexities of registration and accreditation challenge businesses as they seek skilled talent to address capacity constraints quickly.

# Unravelling risk and reducing disputation

## Recommendations

- Limit misleading or deceptive conduct provisions to protect consumers and small businesses** – The Australian Consumer Law’s misleading or deceptive conduct provisions are being misused by sophisticated businesses in business-to-business situations to avoid contractually agreed liability caps and to strong-arm consultants into settling claims. Consult Australia wants to ensure that misleading or deceptive conduct claims are preserved to protect consumers and small businesses as opposed to being used in contractual situations where sufficient legal protection is provided under the contract or common law. Consult Australia is seeking ACL amendments to this end. The ACT Government has a role to play in governing its’ projects, setting the tone, culture and rules of play to promote ethical and fair contracting and prudent expenditure.
- Guarantee proportionate liability in professional services contracts** – The original policy intent of proportionate liability in civil liability reforms of 2001 was to bring stability back to the professional indemnity insurance market. This is being undermined by clients (including government clients) contracting out of proportionate liability in professional services contracts. The *Civil Law (Wrongs) Act 2002* (ACT) only prohibits contracting out in respect of professional standards (see section 4.58 of Schedule 4 to that Act). Proportionate liability is dealt with in Chapter 7A of this Act. Consult Australia recommends a new section be inserted into Chapter 7A of the *Civil Law (Wrongs) Act 2002* to expressly prohibit contracting out of proportionate liability for professional services contracts.
- Apply unfair contract term protections of the ACL to ACT government contracts** – We support the extension of the unfair contract term protections to capture more small businesses but also encourage extending the operation of the protections to apply when businesses contract with government as a client. It is also recommended that a searchable and public register of unfair contract terms is established to inform and empower small businesses – industry involvement will be necessary in the determination of the clauses.

Australia’s construction industry has a reputation as being marred by adversarial, problematic and uncollaborative contracting, primarily flowing from inappropriate risk allocation. This results in high gross loss ratios for professional indemnity insurance (especially in engineering). This is demonstrated in the figure below – insurers need the gross loss ratio to be below the teal line which is the indicative profitability threshold. Engineering occupations have been above that line since around 2013.



Source: Finity’s Marketvue estimates from NCPD data

Despite a softening in the broader market, the ongoing level of disputation means professional indemnity (PI) insurance is still unaffordable and sometimes completely unavailable for our members. This is a business-critical issue because design consultants often cannot operate without having PI coverage in place.

There is a complex tangle of risk issues that need to be unravelled and resolved to help tackle this adversarial culture. Many of the issues can be addressed by government as a client, including as discussed below the commitment to a Model Client Policy. Federal government contracting behaviours need ongoing reform to realise in practice the objectives of the Commonwealth Procurement Rules. This includes a focus on risk actually being borne by the party best placed to manage it, including where those risks best sit with government.

The ACT Government has a role to play in supporting federal regulatory reforms, as well as in the capacity of a client (agency by agency) by protecting proportionate liability and avoiding misleading or deceptive conduct claims between sophisticated parties where an alternative is available.

Consult Australia's recommendations seek to reduce the level of unnecessary disputation in the market and align contracting provisions in government contracts to cover government risk. Investing in these reforms will have a significant positive impact on 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.

## Be a Model Client

### Recommendation

- **Adopt and champion Model Client behaviours** as set out in the [Partnership for Change Model Client paper](#)

Government procurement has become increasingly complex and onerous for suppliers due to problematic procurement processes and difficult contracting terms. Engagement between stakeholders (including government clients, insurers, constructors, and designers) too often is marred by various forms of contractual dispute rather than productive behaviour built on fair risk allocations. This practice is having significant negative impacts on the insurance market that Consult Australia members rely on to remain in business.

Tendering practices requiring lowest price at the tender box are compounding adversarial behaviours, particularly when risks are not properly priced or catered for. Onerous and unnecessary contract terms are more likely to lead to disputation instead of collaborative problem solving. It cannot be overstated how much the private sector follows the example set by government.

By committing to the behaviours set out in our [Model Client Policy](#) government clients will not only improve their relationships with the supply chain, they will also drive positive change in the industry more broadly. 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.

## Contact

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

**Kristy Eulenstein**

Head of Policy and Government Relations

[kristy@consultaaustralia.com.au](mailto:kristy@consultaaustralia.com.au)

**Alison Kirk**

Manager NSW and ACT

[alison@consultaaustralia.com.au](mailto:alison@consultaaustralia.com.au)

## Thanks to our Industry Champions

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



**AECOM**

**aurecon**

**smec**  
an **su** company

**Jacobs**



 **Stantec**

COLLABORATIVE LEADERSHIP COMMITTED TO THE SUCCESS OF OUR INDUSTRY