



October 2024 NSW Building Reforms

SUBMISSION TO NSW GOVERNMENT

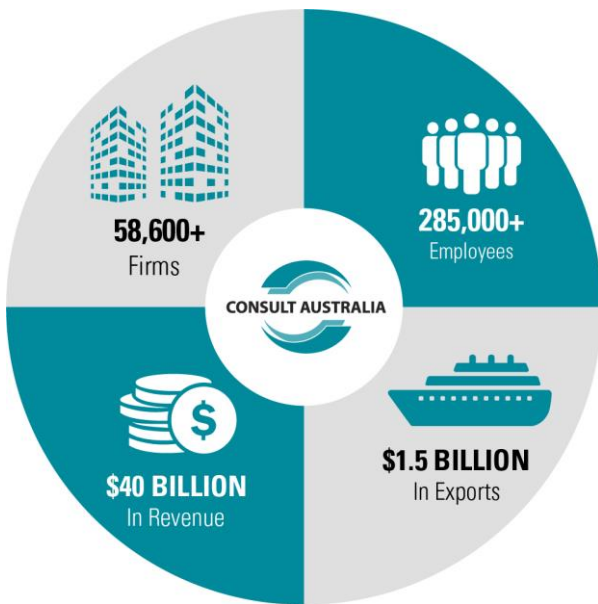
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ABOUT US

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:



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

EXECUTIVE SUMMARY

Consult Australia welcomes the opportunity to provide this submission to the NSW government on the extensive reforms proposed relevant to buildings, including the new Building Bill 2024. As always, we remain committed to working with the government to achieve balanced regulation that addresses the policy problem at hand.

It is noted that the creation of an overarching Building Bill is an election commitment of the NSW Government to streamline the confusion of laws in place in NSW relevant to buildings, the people who design and build them and the consumers who use them. The ambition is applauded; however, Consult Australia suggests that **best practice in governance and regulation** will not be achieved by rushing this process and without having the detail needed for industry clarity and certainty. Consult Australia recommends that the NSW government **pause to review and evaluate** what should be captured in the new Building Bill and also to test with industry in a more constructive way, the **possible unintended consequences** of trying to incorporate so many disparate pieces of legislation into one act.

Consult Australia has considered the detailed consultation materials, but we fail to see how some of the proposed reforms are designed to solve a policy problem. For example, we are unsure what has prompted the NSW government to propose changes to the regulation of architects by removing the dedicated *Architects Act 2003* (NSW). Consequently, the nationally consistent registration enjoyed by architects (which other professions including engineers need) will be damaged. Other jurisdictions with overarching building legislation still maintain separate legislation for architects and engineers.

Consult Australia is also concerned about how the Building Bill 2024 will impact the NSW infrastructure pipeline of projects. It is unclear if the NSW Building Commissioner is seeking to incorporate all buildings over time, including those procured and delivered by agencies such as Infrastructure NSW, Health Infrastructure, Schools Infrastructure and Transport for NSW. If so, these agencies need the opportunity to consider the ramifications on pipeline and projects – including the impact of the regulated design process on already pressured programming. Is it anticipated that random building audits which the NSW Building Commissioner is known for, would also apply to government projects? The impact of regulation designed for class 2 buildings being applied to government construction and how that impacts value-for-money outcomes for the government and the NSW community must be thoroughly explored with both government clients and the industry that delivers these projects.

Consult Australia has consistently raised serious concerns with the *Design and Building Practitioners Act 2020* (NSW), seeking a review to improve its application. We do not prosecute in detail all those concerns again in this submission, but we do note that with the introduction of an overarching Building Bill, there is an opportunity for the NSW government to take time to produce quality, well thought-out and co-designed regulation. That opportunity should not be squandered. Without rectification of the industry's outstanding concerns with the individual pieces of current regulation, issues will perpetuate into the Building Bill 2024.

We do not believe that the NSW government has defined the policy problem justifying the extensive reforms suggested. It should also be remembered that these regulations are being introduced in a highly constrained market for professionals. Where the government should be encouraging entry by new participants and prioritising the mobility of skills, the government is instead discouraging both.

Consult Australia remains willing to assist the government in co-designing regulation and policy settings that address issues of concern. The end goal should always be solutions that resolve the core policy problem and only impose justified burdens on businesses to achieve that goal.

BEST PRACTICE IN GOVERNANCE AND REGULATION

The NSW government's [Guide to Better Regulation](#) sets out why regulation should be *'well designed, and properly targeted'* – because it helps deliver the community's economic, social and environmental goals. The same guide also warns of the impost of regulation including administrative and compliance burdens on businesses, not-for-profits, consumers, government and the wider community. Consult Australia does not have clarity on how the burdens of the latest building reforms have been weighed against the benefits.

We are concerned with the regulatory approach proposed in this transitional reform. The plan is to combine ten existing standalone acts, and prescribe many important aspects in a single act, but with a lack of detail (presumably to be incorporated into regulations).

We understand that having an overarching building bill was an election commitment of the NSW government, and it has many positive aims that Consult Australia supports, including to:

- consolidate NSW building legislation into a single framework
- make laws easier to understand for consumers and practitioners
- remove duplication
- modernise legislation and ensure regulatory oversight of emerging trends.

The consultation materials indicated that the supporting regulations will cover the following things:

- Competency assessments and a proposed co-regulation model
- Consumer protections for home building work
- Regulation of prefabricated buildings
- Fire safety regulatory framework
- Building approvals framework.

However, there is a lack of detail on these supporting regulations. Detail is needed for business and industry certainty. Detail is also needed so industry associations can provide industry insights on implementation issues that the government relies on us for. In fact, there is not even clarity as to why some of the standalone acts are being incorporated. With the limited time, it is nearly impossible for the industry to articulate all the possible unintended consequences of the proposed reform.

Best practice in governance and regulation would see the government working with industry and provide detail before rushing through legislation. Industry representatives are the best placed to provide the government with the regulatory impact and provide suggestions for how to streamline the regulatory regime to alleviate the business burden while delivering solutions to the relevant policy problem.

PAUSE TO REVIEW AND EVALUATE

The current consultation is about the consolidation of ten standalone acts into a single act, however much of the consultation material provided draws on the underlying policy problem that justified the *Design and Building Practitioners Act 2020* (NSW). This policy basis doesn't seem to make sense for some of the decisions. For example, the regulatory impact statement does not evidence systemic issues in other building classes to justify the regulatory approach introduced to deal with class 2 buildings.

Further, the government doesn't seem to be using this opportunity to alleviate industry concerns already raised with the standalone acts. Without rectification of the industry's outstanding concerns with the individual pieces of current regulation, issues will perpetuate into the Building Bill 2024.

Consult Australia has made several submissions regarding the *Design and Building Practitioners Act 2020* (NSW) including:

- [Submission on Draft Design and Building Practitioners Bill 2019](#)
- [Submission on Regulatory Impact Statement and draft Design and Building Practitioners Regulation 2020](#)
- [Submission to Further Inquiry into the Regulation of Building Standards](#)
- [Submission on Proposal to Reform Building Laws in NSW](#)
- [Submission on Professional Indemnity Insurance in the Building and Construction Industry](#)
- [Submission on the Review into reforms to Building Laws in NSW.](#)

We also have outstanding issues with the NSW government's proposed Practice Standard for Professional Engineers – [see our submission here](#) – to be implemented in 2025.

Consult Australia therefore recommends that the NSW government pause to review and evaluate what should be captured in a new overarching building bill and also to test with industry, in a more constructive way, the possible unintended consequences of trying to incorporate so many disparate pieces of legislation into one act.

POSSIBLE UNINTENDED CONSEQUENCES

With the limited detail and limited time provided, it has not been possible to consider all the consequences that will flow from the Building Bill 2024. However, there are two issues that we have noted as needing attention in the first instance.

Undoing national consistency in the registration of architects

It is worth noting that as Consult Australia represents businesses in design, advisory and engineering, this also includes consulting architecture businesses. The consultation materials indicate that the *Architects Act 2003* (NSW) will be incorporated into the Building Bill 2024. We are unsure what has prompted the NSW government to propose this change.

As a consequence, the nationally consistent registration enjoyed by architects (which other professions including engineers need) will be damaged. Other jurisdictions with overarching building legislation still maintain separate legislation for architects and engineers. It is unclear why NSW needs to be different.

It is also unclear how this move will impact architects who don't work on buildings that aren't regulated by the Building Bill 2024.

Consult Australia is aware that the Association of Consulting Architects also has concerns about the building reforms and the approach to architects. We support the submission of that association

and request that any further scoping of solutions for designers and architects also involve Consult Australia.

Application of the Building Bill to infrastructure and government projects

Consult Australia is also concerned about how the Building Bill 2024 will impact the NSW infrastructure pipeline of projects. It is unclear if the NSW Building Commission is seeking to have the regulatory regime designed for class 2 buildings to cover all buildings over time, including those procured and delivered by agencies such as Infrastructure NSW, Health Infrastructure, Schools Infrastructure and Transport for NSW.

We note other submissions to the 2024 NSW Parliamentary Review into the *Design and Building Practitioners Act 2020* (NSW) raised concerns about implications for infrastructure and the application of the statutory duty of care to infrastructure. We share those concerns.

The original policy problem identified to be addressed by the *Design and Building Practitioners Act 2020* (NSW) was with class 2 buildings. Consult Australia understands the Building Commission's concerns with other residential classes but we hold the position that there is no other identified policy problem in other building classes that would warrant the imposition of the regulated design regime.

The impacts for NSW government and the industry that delivers government projects must be considered in detail. New regulatory requirements should be considered against usual market practices and the commercial needs of the parties involved.

Relevant government agencies need the opportunity to consider the ramifications on projects – including the impact of the regulated design process on already pressured programming and forward pipelines. Is it anticipated that random building audits which the NSW Building Commissioner is known for, would also apply to government projects? The impact of regulation designed for class 2 buildings being applied to government construction and how that impacts value-for-money outcomes for the government as well as the NSW community must be thoroughly explored with both government clients and the

SUGGESTED NEXT STEPS

Consult Australia looks forward to engaging with the NSW government to ensure that the proposed building reforms, transition to NSW Building Bill and subsequent legislation achieves the public policy outcome and consumer benefit while also balancing the needs of quality businesses and professionals in a constrained market.

Contact

Consult Australia thanks the NSW government for the opportunity to provide feedback on the draft NSW Building Bill. If further information is needed about our submission, please don't hesitate to contact us.

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Thanks to our Industry Champions

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



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