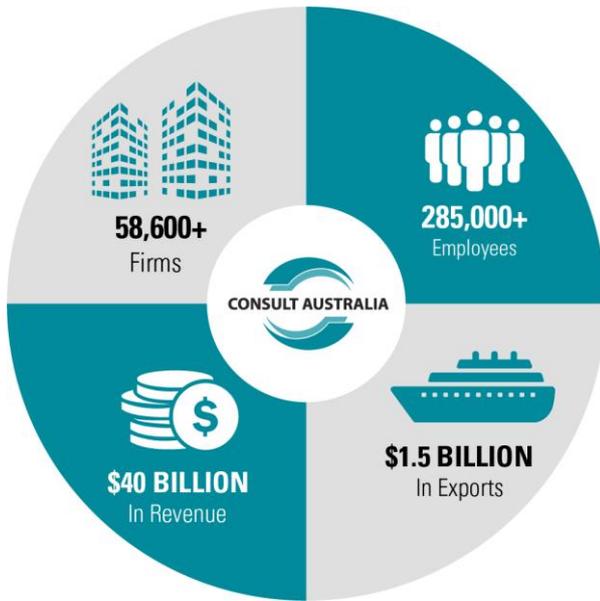




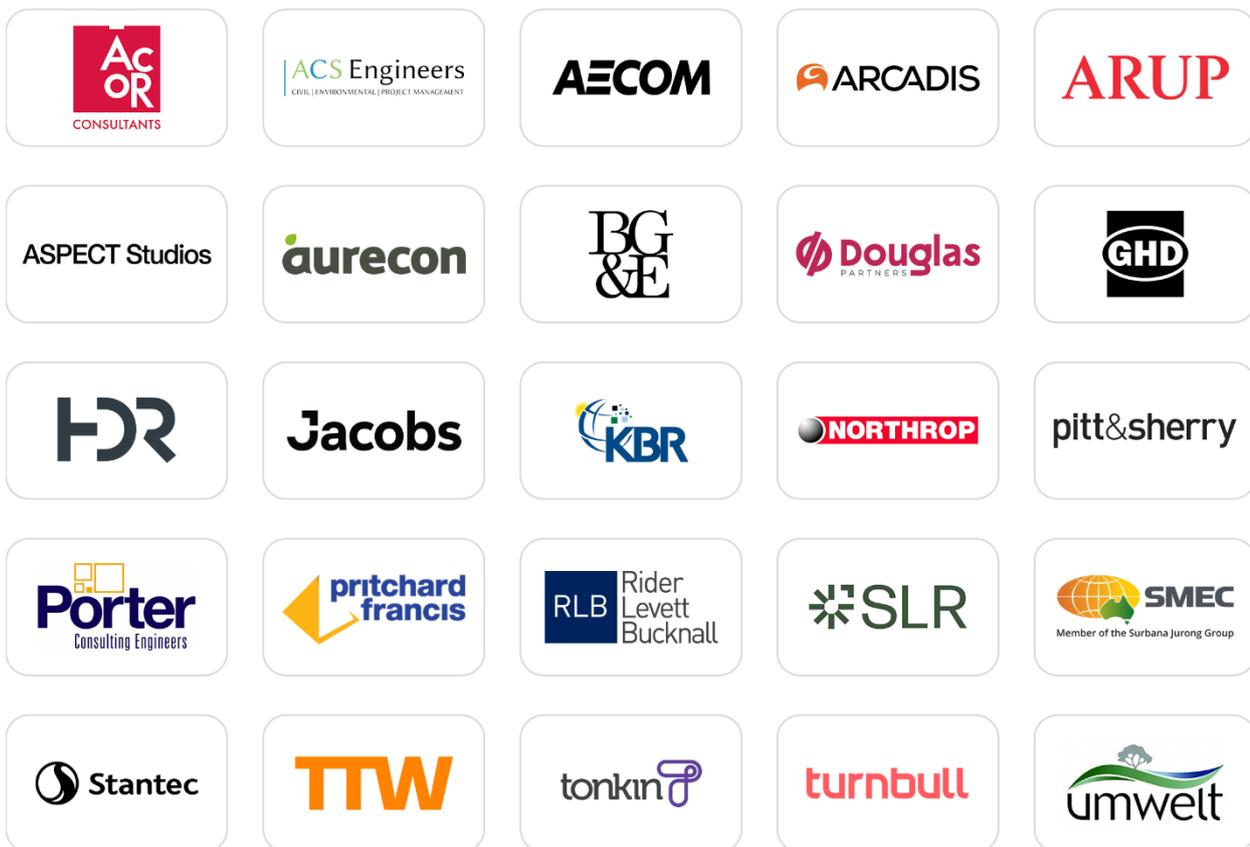
# PRE-BUDGET SUBMISSION 2024-25

## 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 contribute to the Commonwealth Treasury's consultation on the 2024-2025 Federal Budget.

The reform proposals in this submission focus on; unlocking **productivity** not only for industry, but also the government and the broader economy, improving the retention of our **people**, and restoring balance to the contractual relationships through **procurement**.

Our members 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. But without reform, productivity of the broader construction industry (of which our members are a vital component) will continue to lag and the ability to innovate will remain challenged. Consult Australia member businesses are critical to the delivery of the generational investment in infrastructure and construction.

The opportunity for governments to deliver a broader legacy from their current investments is substantial by better utilising the thriving knowledge-led professional services sector which supports the broader construction and infrastructure supply-chain.

Consult Australia's recommendations in this submission do not require new capital investment, but instead focus on smart policy reform that drives efficiency and delivers better value for money outcomes. These align with the government's priority for a stronger, more resilient economy:



### **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. Amend the Automatic Mutual Recognition/Registration legislation to deliver occupational mobility based on modern work practices.



### **Unravelling risk and reducing dispute**

Reform federal 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.



### **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 Australia's economic growth.

## BUILDING BUSINESS CAPACITY AND CONFIDENCE

### Recommendations to build industry capacity and confidence:

- The Federal 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 Federal Government to support state and territory governments 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.
- The Federal Government to support Infrastructure Australia, as well as state and territory governments to break mega projects into smaller bite-sized pieces enabling small business participation on projects and releasing large businesses from capacity constraints.
- Amend the Automatic Mutual Recognition/Registration legislation to deliver occupational mobility based on modern work practices.

### Pipeline certainty

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.

Consult Australia understands that the Federal Government has had to make infrastructure investment cuts following the 2023 Independent Strategic Review of the Infrastructure Investment Program. While productivity, sustainability and liveability were at the heart of the Federal Government's decisions, business confidence needs to be simultaneously considered. 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 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 skills resources across sectors during design work pauses leading to inflationary 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 in regional areas and for smaller jurisdictions inhibiting the delivery of federal projects in these areas.
- **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.

## Reworking registration

Government registration of occupations is not a new thing, however with the rollout of government engineering registration schemes around the country Consult Australia has seen unnecessary barriers impacting the operation of businesses of all sizes. Registration is a capacity and confidence priority for our member businesses as it is now required in many Australian jurisdictions for professional engineers to practice.

Consult Australia was supportive of the Automatic Mutual Recognition/Registration legislation drafted by the Commonwealth for implementation by states and territories. However the drafting has failed to deliver on true occupational mobility due to the current definition of 'home State'. The drafting of 'home State' is based on an individual's primary residential or office location and assumes that the 'home State' already has a relevant licensing/registration scheme, which is not always the case. Therefore, the drafting fails when it comes to professional services where individuals, from their principal place of work, provide services to other jurisdictions. It is common for an individual's first government registration to be from a jurisdiction they have never lived in or primarily worked in. This is certainly the case for many engineers given that Queensland was the only jurisdiction in Australia with government engineering registration for decades.

Our amendment of the 'home State' definition (below) would secure savings of over \$54 million in costs to business for registration of engineers already registered in another jurisdiction. The Federal Government can rectify this oversight with either of the following amendments:

- **OPTION 1 – Remove 'home State' from Part 3A and replace with 'first State'**

It is noted that 'first State' as defined in subsection 16(3) of the *Mutual Recognition Act 1992* is used for the purposes of mutual recognition of equivalent occupations (Part 3 of that Act), that is:

(3) In this Part, the first-mentioned State is called the **first State**, and the other State is called the **second State**.

If this definition of 'first State' was used in Part 3A instead of 'home State' it would allow individuals registered in any Australian jurisdiction to benefit from automatic deemed registration without any requirement that the first registration be in the jurisdiction where they primarily live or work.

One risk with this option is that, where multiple jurisdictions have in place a relevant registration scheme (including the individual's 'home State') it would allow an individual to choose the jurisdiction of their first registration. Considering engineering registration, this would be a minimal risk as jurisdictions such as Victoria and NSW have advised that the Queensland scheme has been considered for consistency. Therefore, there would be little advantage in an engineer choosing another jurisdiction over their 'home State' for first registration.

- **OPTION 2 – Modify section 42 of the Act**

Section 42A of the *Mutual Recognition Act 1992* could be modified to allow individuals whose 'home State' had no relevant registration scheme at the time of their first registration to rely on 'first State' as per subsection 16(3) of the Act. This would ensure that 'home State' remains core to automatic deemed registration but also acknowledges situations where registration schemes are not in all jurisdictions. Option 2 removes the risk in Option 1 of individuals choosing another jurisdiction over their 'home State' for first registration.

We also propose a transitional arrangement for all individuals currently registered where no 'home State' scheme commenced before this automatic deemed registration is in place – see our proposed subsection 42A(3)(c) below. This transitional arrangement would permit a person holding registration on or before 30 June 2021 to rely on registration in the 'first State' as per the definition used in subsection 16(3) of the Act.

Our proposal would have section 42A of the Act read:

**42A Mutual recognition of activities through automatic deemed registration**

- (1) The mutual recognition principle as applying to activities covered by occupations is as set out in this Part.

Note 1: Part 3 provides for mutual recognition of occupations that are equivalent.

Note 2: For the definition of *activity*, see section 4.

- (2) This Part deals with the ability of a person who is registered for an occupation in the person's home State (where available, otherwise in the *first State*) to carry on, in another State (the *second State*) the activities covered by the occupation.
- (3) (a) The *home State* of a person, in relation to an activity, is the State in which the person has:
- (i) their principal place of residence; or
  - (ii) their principal place of work in relation to the activity.

If the person's home State under paragraphs (i) and (ii) in relation to an activity is different, the person's home State is whichever of the 2 States is chosen by the person.

- (b) If the person's home State has no relevant occupational registration or licensing scheme in place, the person can rely on *first State* of registration.
- (c) If the person's home State had no relevant occupational registration or licensing scheme in place on or before 30 June 2021, and the person held a relevant registration on or before 30 June 2021, the person can rely on *first State* of registration.
- (4) To avoid doubt, a reference in subsection (2) or (3) to a State does not include a reference to a pre-adoption State.

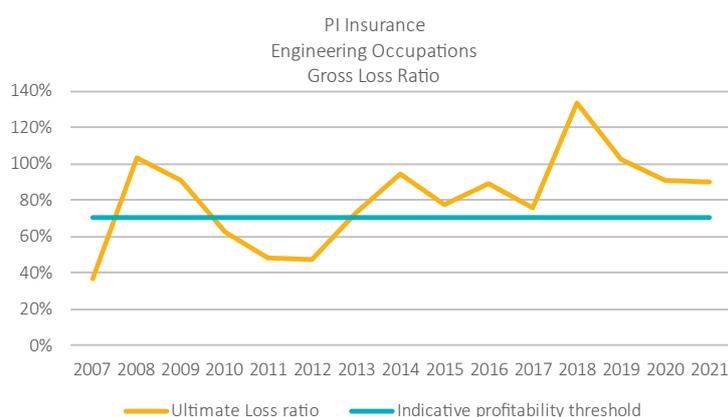
We also support a digital solution to ensure that consumers, regulators and practitioners can all access registration information throughout Australia easily and efficiently.

## 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. The Federal Government should amend the ACL to this end.
- 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. Consult Australia seeks an amendment to all state and territory civil liability laws (except Queensland) to explicitly prohibit contracting out of proportionate liability in professional services contracts. We need the Federal Government to push for this national consistency from state and territory governments to manage contract risk exposure.
- Apply unfair contract term protections of the ACL to all 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.



As a result, we are seeing a particularly 'hard' market, which results in our members being faced with unaffordable and sometimes completely unavailable professional indemnity (PI) insurance. 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

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 business 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 submission.



02 8252 6700



[linkedin.com/company/consult-australia](https://www.linkedin.com/company/consult-australia)



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



[consultaaustralia.com.au](https://www.consultaaustralia.com.au)