

# NT Election 2024

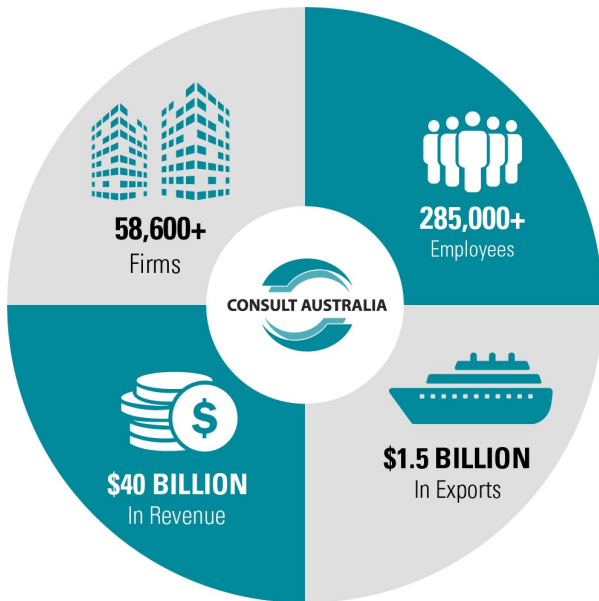


## Priorities

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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 [here](#).

## Snapshot

### **Consult Australia advocates for a healthy and sustainable ecosystem of productive businesses to realise the NT'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 NT's economic future relies heavily on delivering the record 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.

In the NT, our members work closely with the Department of Infrastructure, Planning and Logistics (DIPL), Power and Water Corporation, Department of Industry, Tourism and Trade (DITT) and other Territory government agencies, as well as the Federal Government Department of Defence on the major defence infrastructure projects in the Territory.

#### **The NT growth agenda and competition for talent**

The growth agenda of the NT government with \$53 billion in capital investment in the next 5 years demonstrates the opportunities ahead but also the challenges, particular in relation to skills and employee resourcing. The key growth sectors for the NT – energy, critical minerals and defence – are also the key growth sectors for several other jurisdictions in Australia resulting in strong competition for talent in these sectors.

Consult Australia has engaged with Infrastructure NT and Invest NT on the exciting project and investment pipeline. To assist future resourcing of engineering, design and advisory staff, we facilitated a presentation from the NT government to our members and their decision makers around Australia. This initiative is only part of the puzzle however with more promotion required by the NT government and industry to interstate business leaders as well as more co-ordination between government and industry. Collaborative development of a workforce strategy and related initiatives will be required.

#### **Productive working relationships between industry and NT government agencies**

Consult Australia commends the NT government, and in particular, the key agency with infrastructure responsibility, DIPL, on its regular engagement and approach to improving project outcomes with Consult Australia members.

Consult Australia has also engaged with Power and Water Corporation and DITT on various infrastructure and productivity matters. We are currently engaging with DITT and DIPL on problematic contract terms that impact the ability of our members to bid on projects under the NT government standard contract. The terms impact the government's ability to deliver the best project outcomes. The government must prioritise Model Client behaviours to ensure that the NT market is attractive for industry. Consult Australia notes differing levels of progress on the terms of concern. The proactive approach of DIPL's should be replicated across government.

## Summary of recommendations

We call on the next Northern Territory 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.



### **Build 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 NT government should continue to improve its infrastructure pipeline approach.

On the workforce needed to deliver the pipeline outlined in the Growth Agenda, the NT government should establish a taskforce with industry to develop an infrastructure workforce strategy and relevant initiatives.



### **Unravel risk and reduce dispute**

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.



### **Be 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 the NT's economic growth.

## Build business capacity and confidence

### Recommendations to build industry capacity and confidence:

- The NT 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 NT government to plan project releases with an awareness of the impact on the market, including competing projects by other agencies, the Department of Defence and the private sector. 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. With the significant number of investment projects expected in the NT over the next 5 years, it will be important to manage the investment as much as possible to ensure business capacity exists and projects are delivered in a timely manner.

The NT Infrastructure Strategy 2022 to 2030 will be important in this respect. In addition to articulating a vision for infrastructure investment, initiatives to address infrastructure industry challenges will be required.

The NT government should continue to improve its approach to the pipeline of projects to provide certainty to the industry. This will deliver benefits to productivity (both industry and government) and workforce planning. As already mentioned, there needs to be investment in initiatives to tackle the existing skills capacity issues for professional services – including designers, engineers and project managers.

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 if not prioritised. There are four key elements to consider:

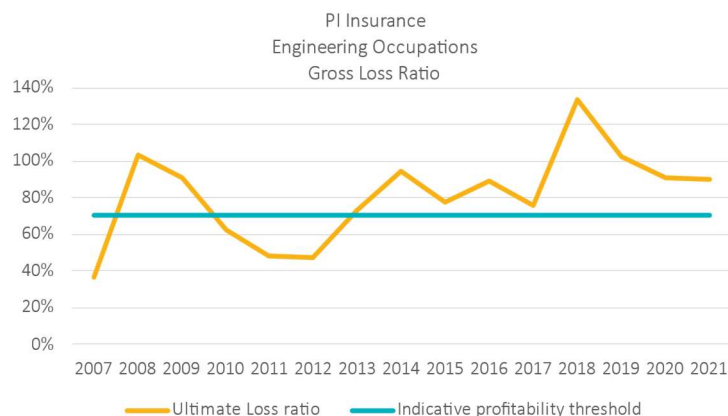
- **Shifting focus** – Pipeline uncertainty leads businesses operating across multiple jurisdictions to shift focus to secure projects and retain talent. If talent cannot be retained, employees may be forced to seek work in alternative states, territories, or even global jurisdictions.
- **Design domino** – Heavy investment in construction ready stages over planning and design stages does not equate to work for all. This often leads to later capacity constraints.
- **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.
- **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.

## Unravel risk and reduce 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 NT Government has a role to play in overseeing projects within its jurisdiction, 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 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 *Proportionate Liability Act 2005* (NT) is silent on contracting out, having no provision that refers to contracting out, but also not expressly prohibiting contracting out (unlike QLD). Consult Australia seeks an amendment to the *Proportionate Liability Act 2005* (NT) to explicitly prohibit contracting out of proportionate liability in professional services contracts.
- **Apply unfair contract term protections of the ACL to the NT 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

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. This includes a focus on risk being borne by the party best placed to manage it, including where those risks best sit with government.

The NT 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 because of claims.

## Contact

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

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## Thanks to our Industry Champions

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

