



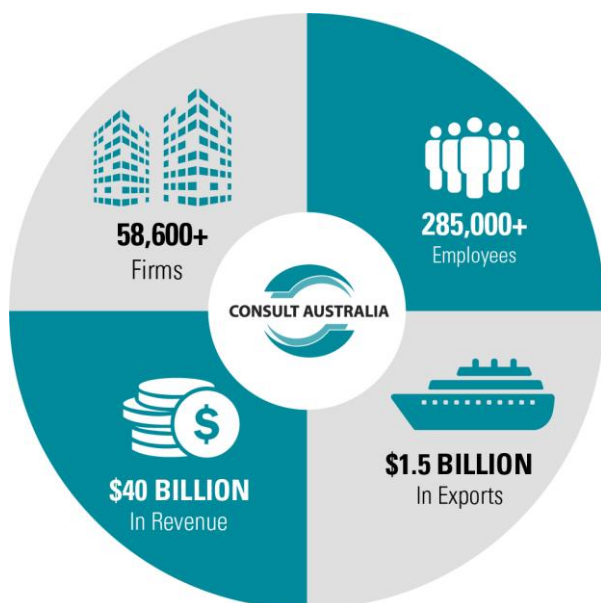
# April 2025 National Construction Strategy

SUBMISSION TO DEPARTMENT OF  
INFRASTRUCTURE, TRANSPORT, REGIONAL  
DEVELOPMENT, COMMUNICATIONS AND THE  
ARTS

Consult Australia

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

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



## 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 welcomes the opportunity to respond to the National Construction Strategy discussion papers on:

- Data collection and benchmarking
- Workforce
- Procurement and contracting
- New technology and modern methods of construction.

The members of Consult Australia have a vital role in the construction industry, with a well-established role in supporting infrastructure planning, design and delivery. The highly technical services our members provide across the infrastructure asset lifecycle are a critical part of the supply chain required to deliver the government's infrastructure construction priorities.

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 will continue to lag and the ability to innovate will remain challenged. For these reasons, the National Construction Strategy is just as important to the consultant sector and should reflect the needs and the value that sector brings to the broader industry.

We contend that fragmentation has had a significant impact, especially on stifling productivity and therefore, nationally coordinated approaches will realise benefits. For this reason, Consult Australia supports the National Construction Strategy.

In this submission, we provide insights on each of the four discussion paper areas, drawing on our thought leadership, including:

- [Uplifting Productivity Report](#)
- [Confidence and Continuity Survey Findings](#)
- [Model Client Policy](#) (originally released in 2018 and re-released in collaboration with the Australian Constructors Association in 2022)
- [Enabling Digital by Default White Paper](#)
- [Unravelling Risk](#).

Our recommendations focus on doing things differently, improving project practices, evaluating workforce actions for greater clarity and effectiveness, enabling digital by default and restoring balance to the contractual relationships across procurement supply chains.

A vital consideration that seems to be missing from the discussion papers is the interplay between the four areas, as nothing happens in a silo. Our submission demonstrates how improvements in one area, such as procurement and contracting, can benefit other areas such as new technology or data collection.

Consult Australia has been calling for reform for many years to unlock greater productivity for industry, government and the broader economy. Therefore, reform opportunities such as the National Construction Strategy should be maximised through coordination and alignment with other reforms. For example, we are keen to understand the interplay and consistency with the [National Construction Blueprint](#).

We actively collaborate with existing governance forums that are drivers of coordination, such as the Construction Industry Leadership Forum. However, these mechanisms need to fully represent consultants, giving them an equal seat alongside constructors.

## Data collection and benchmarking

Consult Australia's recommendations:

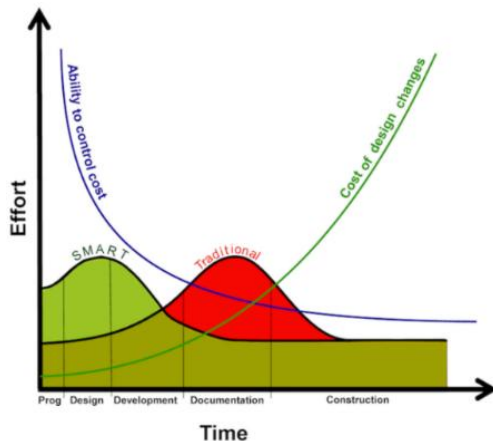
- **Do things differently** – As outlined in Consult Australia's [Uplifting Productivity](#) report there needs to be a focus on improving productivity across the project lifecycle, from pre-tender to post-completion.
- **Unravelling risk** – The reforms in Consult Australia's [Unravelling Risk](#) report aim to improve project practices through scoping for success, valuing valuations, transparent timing, refining the rules and resolution over disputation.
- **Increase collective engagement** – The value of industry associations for engagement needs to be realised. The government should expand and increase the use of industry associations to obtain qualitative insights and a collective view.

The National Construction Strategy discussion paper on data collection and benchmarking recognises that various factors of project performance impact on productivity and explores the challenges associated with defining, capturing and reporting productivity measures. Acknowledging these challenges, the paper proposes a focus on economic performance measures alongside readily available outcome performance measures.

Consult Australia supports the National Construction Strategy proposal to focus on productivity at a project level, across the phases of the project lifecycle, and to pursue a small number of economic performance measures alongside readily available outcome performance measures. Consult Australia recommends that this be combined with our three key recommendations, as explored below.

### DO THINGS DIFFERENTLY

The discussion paper raises the potential impact of planning and design and the value of investment during these phases to improve productivity in the delivery phase.



This view is supported by the [MacLeamy Curve](#), which illustrates the benefits of an integrated design process with early involvement of design professionals (see the 'smart' green curve).

This includes industry briefings, tender processes, scope of projects, and contract negotiations with a focus on fair and balanced contract terms and appropriate risk allocation.

Productivity is wasted by rushing to market with an insufficient scope.

With this in mind, Consult Australia's [Uplifting Productivity](#) report is about doing things differently to improve productivity across the project lifecycle – from pre-tender to post-completion. This includes early industry engagement and more collaborative contracting to leverage the influence and capability of the designer to optimise cost, time, scope and quality.

It is recommended that the National Construction Strategy take on the ideas presented in Uplifting Productivity to help the whole construction industry, in a coordinated way, do things differently.

## UNRAVELLING RISK

When looking at the project level, project scope and how it is defined and can be varied is vitally important; it can be a major contributor to productivity or provide a significant barrier and/or encourage bad behaviour and culture.

Consult Australia's [Unravelling Risk](#) report explores the leading causes of claims on infrastructure projects, with change in scope being the leading cause of claim and dispute both globally and locally. These claims often relate to where the scope has changed over the life of the project because it was not well defined at the commencement. We propose five reform threads in the report that go to unravelling the risk of claim and disputation at the project level:

1. [Scoping for success](#)

Change in scope is a leading cause of claims. Collaboration and transparency between parties at the earliest stages of a project and program scoping could deal with a significant volume of unnecessary claims.

2. [Valuing variations](#)

Claims for 'design error' are often linked to changes between the tender and final design phases. Variations should be about achieving the best outcome for the project. An early warning approach to issues would assist all to value variations.

3. [Transparent timing](#)

Claims for delay are frequent, with strict liability in contracts working against a collaborative approach to resolve issues to get the project 'back on track'.

4. [Refining the rules](#)

Unreasonable claims against consultants can be limited by refining the Australian Consumer Law (ACL) and civil liability laws. The misleading or deceptive conduct provisions of the ACL should be modified to guarantee protection for consumers and small businesses. Civil liability laws in ACT, NSW, NT, SA, Tas, Vic and WA should be amended to explicitly prohibit contracting out of proportionate liability (in line with Qld law).

5. [Resolution over disputation](#)

Australia's construction industry has a reputation as being marred by adversarial, problematic and uncollaborative contracting arrangements. Resolution of issues rather than disputation is best for project, relationship and business outcomes.

It is recommended that the National Construction Strategy adopt the five reform threads of the Unravelling Risk report, as they support a focus on project performance measures and practices, in line with the National Construction Strategy. The goal of much of Consult Australia's work is to understand where project practices are impacting productivity and recommend reforms to influence project productivity trends.

## INCREASE COLLECTIVE ENGAGEMENT

Qualitative insights are invaluable to identify improvements to project practices and productivity. Industry associations provide an ideal vehicle for government to gain industry insights and explore topics whilst protecting against probity and conflict of interest risks with potential service providers and regulated entities. Industry associations provide a safe conduit for government by offering a collective view.

Therefore, it is recommended that the National Construction Strategy explicitly refer to the value and use of industry associations to obtain qualitative insights and allow collective engagement.

# Workforce

Consult Australia's recommendations:

- **Clarify roles and expectations across the ecosystem** – Consideration needs to be given to the role and influence of the construction ecosystem to provide clarity and inform the implementation of workforce actions.
- **Address the culture of disputation** – The workforce actions on culture should be reviewed to overcome the culture of disputation, which hinders the attempt to achieve a consistent project culture of trust, openness and collaboration.
- **Leverage a model client approach to flexible working** – This would result in clear direction on flexible working expectations and, through early industry engagement (e.g. pre-tender) on scope and requirements, enable priorities, commitments, initiatives and the associated costs to be clarified and confirmed.
- **Create a healthy and sustainable ecosystem** – Revise workforce actions to recognise the broader responsibility and commitment from contractors to support a healthy culture across the industry.

The National Construction Strategy discussion paper on workforce is in some ways limited by not considering the entire construction ecosystem. Consult Australia members provide valued services in the planning, design and delivery of construction projects and are part of the transport infrastructure construction workforce.

Consult Australia supports the proposed principles and commitments in the discussion paper to improve workforce culture, flexibility and diversity, and this focus aligns with the strategies that we have been working on for several years within the consulting industry. Based on this work, Consult Australia presents recommendations below to inform the further development of the workforce element of the National Construction Strategy.

## CLARIFY ROLES AND EXPECTATIONS ACROSS THE ECOSYSTEM

The National Construction Strategy discussion paper proposes common definitions and a suite of actions with assigned accountability. Consideration needs to be given to the role and influence across the whole construction ecosystem to provide clarity and inform the implementation of workforce actions.

For example, to improve workforce culture, a proposed action is to work towards implementation of the Culture in Construction Standard. Consult Australia has long supported the development and implementation of the Culture Standard. The core concern Consult Australia has, and continues to have, with the Culture Standard is that it does not always consider the role of consultants in the construction ecosystem. Implementation of the Culture Standard on projects and pilots is often limited to the constructor/client relationship, missing a valuable piece of the puzzle. Consult Australia is working with governments in NSW and ACT to address this concern.

Accountability for the proposed workforce actions in the discussion paper is allocated to government, industry and/or contractors. Yet the distinction between industry and contractors, or the parties covered by the term 'industry' is unclear. For example, who is to provide the fatigue management plan and gender equity action plan – principal contractor, all site contractors, leading consultant?

Further, the proposed workforce definition has an 'onsite' focus, which may or may not include the technical consultants that provide services both onsite and/or offsite.

Consult Australia, recommends that the National Construction Strategy strengthen workforce actions by clarifying roles and expectations across the construction ecosystem.



## ADDRESS THE CULTURE OF DISPUTATION

Australia's construction industry has a reputation of adversarial, problematic and uncollaborative contracting, primarily flowing from inappropriate risk allocation and the prevalent practice of lead contractors passing through contractual obligations and liabilities to sub-contractors and sub-consultants.

The culture of disputation in Australia is a barrier to achieving the National Construction Strategy workforce goal of a consistent project culture of trust, openness and collaboration. The culture encountered in commercial dealings and the level of disputation impact the mental health of employees across the Consult Australia membership (large, medium and small businesses). Whilst we understand that the Culture Standard seeks to raise awareness amongst clients that their behaviour impacts on the culture of the construction sector, there is a need for contractors to also be accountable for their culture and behaviours towards others in the ecosystem.

Consult Australia's [Unravelling Risk](#) report explores the underlying reasons for disputation in Australia's construction industry and proposes five reform threads to unravel the current situation, all underpinned by collaboration and transparency:

### 1. Scoping for success

Change in scope is a leading cause of claims. Collaboration and transparency between parties at the earliest stages of a project and program scoping could deal with a significant volume of unnecessary claims.

### 2. Valuing variations

Claims for 'design error' are often linked to changes between the tender and final design phases. Variations should be about achieving the best outcome for the project. An early warning approach to issues would assist all to value variations.

### 3. Transparent timing

Claims for delay are frequent, with strict liability in contracts working against a collaborative approach to resolve issues to get the project 'back on track'.

### 4. Refining the rules

Unreasonable claims against consultants can be limited by refining the Australian Consumer Law (ACL) and civil liability laws. The misleading or deceptive conduct provisions of the ACL should be modified to guarantee protection for consumers and small businesses. Civil liability laws in ACT, NSW, NT, SA, Tas, Vic and WA should be amended to explicitly prohibit contracting out of proportionate liability (in line with Qld law).

### 5. Resolution over disputation

Australia's construction industry has a reputation as being marred by adversarial, problematic and uncollaborative contracting arrangements. Resolution of issues rather than disputation is best for project, relationship and business outcomes.

Consult Australia recommends the proposed workforce actions for culture be reviewed to address the barrier created by the culture of disputation that exists in the Australian construction industry. Further, consideration should be given to whether it is appropriate for workforce actions/requirements on contractors to be passed through to the below supply chain, or not, and direction provided on the implementation where needed to mitigate unintended outcomes.

## LEVERAGE A MODEL CLIENT APPROACH ON FLEXIBLE WORKING

The National Construction Strategy discussion paper seeks feedback on flexible working, including views on mandating a best practice approach, and project lifecycle timing for clarifying priorities/commitments and outlining project initiatives.

Consult Australia believes the answer is to adopt a model client approach, where the government is an 'active client' and sets the tone from the top. Being a 'model client' means working

collaboratively with the industry on projects and achieving mutually beneficial outcomes. It formalises the government's intent to do things better by putting clear obligations in place. Practically, a model client approach makes the government a more attractive client for industry to work with, provides business confidence, and in turn attracts an increased market response and informed, quality tenders for work. For more information, see Consult Australia's [Model Client Policy](#).

Leveraging a model client approach would result in clear direction on flexible working expectations, reducing the need to mandate best practice and through early industry engagement (e.g. pre-tender) on project scope and client requirements, enable priorities, commitments, initiatives and the associated costs to be clarified and confirmed.

## CREATING A HEALTHY AND SUSTAINABLE ECOSYSTEM

We are all responsible for driving the change we wish to see. Consult Australia members successfully drive positive change in culture, diversity and mental health. Since 2012, our members have tackled the gender disparity in the consulting sector by committing to the [Champions of Change](#) initiative. While the initiative is deliberately focused on gender diversity, members have seen wider positive impacts on cultural behaviour beyond gender. Our latest results are available in the Impact Report [here](#); see pages 85 to 92 for the Consult Australia Group.

Consult Australia has previously recommended that contractors set up a Champions of Change Group via the Champions of Change Institute, a coalition of Australia's leading business organisations. This now global initiative will provide contractors with the research evidence, tools and expertise to drive programmes with a proven track record to increase gender diversity. This would save time and effort and set constructors and consultants on the same path towards culture change by running complementary programmes under the umbrella and with the support of the Champions of Change Institute.

In terms of mental health, Consult Australia established a Mentally Healthy Workplaces campaign in 2018, which showcased the work of our member firms in leading conversations to tackle and reduce the stigma associated with mental health, in developing supportive resources and engaging in Australia's mental health policy approach. In 2021, this work was recognised in the [National Mental Health Commission's Series](#) on initiatives in Australia supporting mentally healthy workplaces, as one of only 12 case studies. This recognition demonstrates our commitment to striving for mentally healthy workplaces and driving positive change.

To create real cultural change, a holistic and collaborative approach is needed. Consult Australia has previously called for much stronger recognition of the responsibility of contractors to support a healthy culture across the industry, not only the relationship between client and contractor. The proposed workforce actions for the National Construction Strategy should recognise this broader responsibility and the commitment from contractors to its industry partners. Consult Australia expects this will also have a positive impact on industry attractiveness.



## Procurement and contracting

Consult Australia's recommendations on the procurement principles:

- **Value for money** – Expand to encourage improvement in the management of risk, which will support commercial outcomes.
- **Transparency and appropriate competition** – Expand to evaluate any negative impacts on competition or barriers to entry, broaden the available experience in the market and supply chain participation, and create a more sustainable industry.
- **Probity** – Leverage industry insights by enabling unrestricted input from industry associations to ensure best practice policy.
- **Scalability and efficiency** – Include a focus on removing duplication, engaging early with industry and streamlining the approvals process for major projects to uplift productivity of tender processes.
- **Building skills and capability** – Promote long-term infrastructure planning and project coordination between state and territory governments to provide business confidence to build capability and capacity.
- **Continuous improvement** – Revise to address procurement practices that are limiting innovation and recognise the role of government to provide clear direction on innovation
- **Collaborative contracting** – Add a principle of collaborative contracting for government to commit to and drive improvements in contracting and productivity.

Consult Australia's recommendations on the contract model selection criteria:

- **Contract choice matters** – Promote use of contracts with risk, commercial and insurance settings most appropriate to encourage participation by a broad range of suitable business suppliers.
- **Foster transparency and accountability** – Reflect an active client mindset by setting expectations for contractors, encouraging open communication from the supply chain and holding contractors to account on culture and collaboration expectations.
- **Pass throughs and the back-to-back fallacy** – Consider how the practice of pass-through or back-to-back arrangements of provisions from the lead contractor to the sub-consultant will impact consultants and take action to mitigate that risk.

Procurement and contracting are complex issues to tackle in the context of a nationally coordinated perspective, but we commend the ambition to do so in the National Construction Strategy. Procurement and contracting settings can influence the other three areas of the National Construction Strategy, as well as other challenges, such as achieving net zero.

Consult Australia is an advocate for a productive industry underpinned by a collaborative culture where model client behaviours are the norm. Our advocacy is heavily focused on procurement and contracting – we aim to find solutions to the broader business challenges of productivity, promote increased innovation and collaboration, and restore balance to the contractual relationships across procurement supply chains. We point to our significant contribution through our thought leadership work, but also through our [Centre for Contracting and Risk](#).

The National Construction Strategy discussion paper on procurement and contracting reflects the complexity and the challenge in navigating these issues. These issues are so important, and the complexity captured demonstrates the need for a program of engagement with industry to further explore the issues and find practical ways for implementation. Our submission is provided with that in mind and with an expectation of further conversations.

## PROCUREMENT PRINCIPLES

### Value for money

Value for money is a principle in many jurisdictional procurement policies. Yet it is a challenge to achieve, with increasing labour and materials costs, competing budgetary demands and low productivity.

Consult Australia believes that until there is improvement in the management of risk and the associated commercial outcomes, value for money will remain tricky to achieve. Consult Australia's [Unravelling Risk](#) outlines how greater attention to risk items and contractual settings will enable an improved understanding of the associated costs, risks and value for both client and suppliers.

Consult Australia recommends that the value for money principle encourages improvement in the management of risk to support commercial outcomes.

### Transparency and competition

The transparency and competition principle focuses on competent contractors and misses the opportunity to foster competition across the broader supply chain. This includes looking at barriers for all suppliers and providing opportunities for different levels of the supply chain to tender on projects.

For example, Consult Australia has recommended to the Federal government that the National Competition Policy require all governments to undertake targeted reviews to assess if legislation, government policies or processes are negatively impacting competition in a particular market or creating barriers to entry of new participants.

Consult Australia recommends that the principle to encourage appropriate competition during procurement is expanded to evaluate any negative impacts on competition or barriers to entry, broaden the available experience in the market and create a more sustainable industry.

### Probity

Engaging with an industry association enables the government to gain industry insights and explore topics while protecting against conflict of interest with potential service providers and regulated entities. Industry associations provide a safe conduit for the government as the associations offer a collective view.

However, as the industry association for design, advisory and engineering consulting businesses, Consult Australia is increasingly being asked to sign confidentiality and conflict of interest agreements to participate in government consultation. The government must acknowledge that the specialist knowledge rests with the members of an industry association, not the staff. Confidentiality agreements between government and industry association staff hamper the consultation process and compromise the outcomes by restricting the industry association from engaging with its members. Industry associations have internal processes to ensure sharing of collective views to reduce the risk of conflict of interest and unauthorised disclosure.

Consult Australia recommends the probity principle refers to the role of industry associations and enables unrestricted input from industry associations on industry insights to ensure best practice policy.

### Scalability and efficiency

The scalability and efficiency principle focuses on improving tender processes. This is a recommendation of our [Uplifting Productivity](#) report. Improvements to procurement practices can unlock significant productivity and business opportunities across the broader economy, and in turn create a healthier ecosystem.

Consult Australia's productivity pitch to the Productivity Commission relevantly recommended:

- All governments to work to simplify and streamline the approvals process for major projects and avoid duplication in the tender process.
- All procuring agencies to invest more time and resources in the planning and/or pre-design phases of projects, engaging with industry during these phases.

The burden and costs of procurement practices can be minimised by avoiding duplication and overlap. For example, when procuring, government clients often request and validate insurance documentation at the prequalification stage, then again at tender and again at the award stage. Consult Australia understands that assessing the validity of supplier information is an important compliance measure for government procurement. However, duplicative processes result in unnecessary costs and a 'by exception' or 'as required' information update process could be used instead.

Consult Australia recommends that the scalability and efficiency principle include a focus on removing duplication, early industry engagement and streamlining the approvals process for major projects to improve tender processes.

### Building skills and capability

Consult Australia has previously called for the use of programmatic approaches to enable participation by various businesses with varying skills and sizes. It is positive to see that sizing and packaging of work is considered under the building skills and capability principle. However, this principle fails to recognise the importance of pipeline certainty.

Pipeline investment is an economic lever. If that lever is pulled too tightly or let loose, it has implications for market capacity to deliver, growth, and competition. Pipeline certainty is needed by the industry to give them confidence to invest in the capacity of their business. Consult Australia members cannot afford to have skilled professionals on staff without any projects to work on. As much as possible businesses shift people capacity between sectors and jurisdictions and therefore the coordination piece becomes important.

Consult Australia's submission to Treasury on the National Competition Policy review, relevantly recommended:

- The federal government should 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.
- The federal government should 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.

These recommendations should be reflected in the 'building skills and capability' principle.

### Continuous improvement

The continuous improvement principle is about the adoption of innovation. Consult Australia recommends that this principle be revised to be more explicit in promoting innovation.

Consult Australia's submission to Treasury on the National Competition Policy review recommended that the federal government support innovation, industry involvement and digital by default by:

- discouraging the procurement practice of labelling bids as 'non-conforming' which is stifling innovation.
- encouraging all procuring agencies to engage industry early in the pre-design phase to explore innovation as part of project scoping.

- ensuring the National Competition Policy provides clear direction to all governments to promote and encourage innovation.
- moving away from the 'digital by exception' mindset to clearly specify digital requirements in procurement processes and advance 'digital by default'.

With the current 'non-confirming bid' mindset evident in government procurement, any deviation by bidders is left unconsidered, limiting innovation. More early involvement of the supply chain in the pre-design phase and collaboration would enable a detailed understanding of desired project outcomes between client and supplier and can facilitate innovation.

Collaboration is a key aspect of Consult Australia's Model Client Policy, which advocates for government to be an 'active client' and set the tone from the top. Consult Australia recommends the continuous improvement principle provides clear direction for the government to promote and encourage innovation and modern methods of construction.

### Collaborative contracting

Consult Australia recommends collaborative and fair contracting is added as a procurement principle for the National Construction Strategy to drive improvements in contracting with the private sector.

Consult Australia has long advocated for reform that embraces early involvement and collaborative relationships, including through contracting with a fair and balanced risk allocation. These concepts underpin the [Partnership for Change Model Client Policy](#), which advocates for governments to lead by example, collaborate and create a knowledge-sharing culture on best practices.

Consult Australia recommends all governments display their commitment to collaborative and fair contracting by endorsing a Model Client Policy and/or being subject to the ACL unfair contract terms protections. Government projects can be delayed by unnecessary contract negotiations to address clauses that transfer undue risks onto suppliers, in our context, consulting businesses, which are outside their management and/or control. Governments with their purchasing power in the market present terms on a take it or leave it basis that do not adequately recognise the roles of the parties nor strike a balance between risk and reward.

A procurement principle for collaborative and fair contracting will ensure that the standards governments set for our industry via law and policy are also applied to their own dealings when procuring the services of the private sector.

## CONTRACT MODELS AND SELECTION CRITERIA

Consult Australia notes that it was difficult to see from the discussion paper how the models and criteria would work in practice, enabling clients to make efficient and effective decisions. We have provided comments in line with the discussion paper to assist in progressing to the next stage. However, we believe there is a better way forward if we could have industry engagement through forums and working groups.

The information we have provided below is not exhaustive of all the commentary or solutions that Consult Australia could assist with, so we look forward to the next stage and further conversations.

### Contract choice matters

Consult Australia recommends that the contract model selection criteria on market appetite and competition encourage the use of contracts with risk, commercial and insurance settings, most appropriate to encourage participation by a broad range of suitable business suppliers. This includes Australian Standards without significant amendment, ensuring a cap on liability and exclusion of consequential loss.

Consult Australia does not support the significant amendment of Australian Standard contracts that undermine the fair and balanced approach of the standard. Our experience is that amendments to Australian Standard contracts reduce productivity, lead to inappropriate risk allocation, may be uninsurable, impede collaboration and deter suppliers. Where governments are seeking to amend the Australian Standard contracts, we propose that further discussion with industry on the government's drivers and intent for the contractual settings would be beneficial. Through this discussion, we may be able to find a solution that works better than having uncommercial or uninsurable contractual terms and make it easier for the industry to engage and perform.

### Foster transparency and accountability

Some of the contract model selection criteria focus solely on the contractor relationship. For example, contractor innovation. The contractor has an impact and influence over the broader supply chain through their direct access to the client and collaboration ethos.

When it comes to a design and construct type model, where the consultant is at arm's length to the government principal client, Consult Australia has had improved outcomes where the government acts as an active client, setting expectations on the lead contractor and allowing sub-consultants to raise issues with the principal. The best example is the contracting approach used by Major Road Projects Victoria.

The selection criteria on contractor innovation does not recognise or leverage the influence and capability of the designer. Consult Australia holds that the designer is integral to the delivery of innovation on a project. The designer has a key role in identifying possible innovation, and the contractor and client then influence what innovation is adopted. Incentivisation for innovation needs to apply to contractors and designers.

### Pass throughs and the back-to-back fallacy

Consult Australia recommends that the contract model selection criteria on risk allocation consider how the practice of pass-through or back-to-back arrangements of provisions from the lead contractor to the sub-consultant will impact consultants and take action to mitigate that risk.

Due to the prevalent practice of lead contractors passing through contractual obligations and liabilities to sub-consultants, our members acting as sub-consultants are often faced with inappropriate obligations and/or significant liabilities that outweigh the services provided.

An expectation of 'back-to-back' is misplaced where:

- the sub-consultant is contracting to a constructor because the roles of consultants and constructors are different and many of the requirements imposed on a constructor are unsuitable for consultants and are uninsurable under their PI insurance policy.
- the sub-consultant is contracting to another consultant but only doing a part of the services of the head contract because the liability outweighs the services the sub-consultant is providing.

We recommend government ensures that contracts used to engage the consultant reflect the role and services of the consultant to ensure there is no unresolved risk.

# New technology and modern methods of construction

Consult Australia's recommendation:

- **Address lack of coordination** – as per Consult Australia's [Enabling Digital by Default](#) paper, establish a nationally endorsed Digital by Default Community of Practice to address the issue of coordination and harness best practices to create an enabling environment that catalyses change.
- **Provide clear direction to advance digital by default** – as per Consult Australia's [Enabling Digital by Default](#) paper, move away from the 'digital by exception' mindset to advance 'digital by default'.

The National Construction Strategy discussion paper identified four primary barriers to the adoption of new technology and modern methods of construction:

- pipeline uncertainty and granularity
- misaligned incentives
- inadequate enabling environment
- gaps in knowledge and skill.

Acknowledging these barriers, Consult Australia views lack of coordination and direction as the fundamental issue. Consult Australia's [Enabling Digital by Default](#) paper presents five recommendations to address these issues and harness best practices to create an enabling environment that catalyses change:

1. [Build a Digital by Default Community of Practice](#)
2. [Invest in the business case for digital technology](#)
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.](#)

The roadmap for digital transformation presented in Consult Australia's [Enabling Digital by Default](#) paper aims to address industry fragmentation, innovation inertia and sluggish productivity. By leveraging the expertise and commitment of diverse stakeholders through a community of practice, we can drive the necessary standards and innovations to build momentum and achieve digital by default and do so consistently across jurisdictions.

The Australian Government maintains a commitment to a \$120 billion 10-year rolling infrastructure pipeline. It makes sense to invest just a fraction of this in each jurisdiction to enable digital by default. Building a community of practice provides a platform for digital champions to share information and best practice and harmonise standards. Australia will not benefit from eight different standards for digital in infrastructure – that would be a repeat of the rail gauge problem that plagued the nation for 150 years.

Businesses in the infrastructure sector are waiting for governments to set standards for digital working. Governments are waiting for market forces to determine the pathway forward. We need everyone to come together, and this can be achieved through Consult Australia's [Enabling Digital by Default](#) recommendations.



## Connect with us



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)

## Thanks to our Industry Champions

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



**AECOM**

**aurecon**

**smec**  
an S&P company

**Jacobs**



 **Stantec**

COLLABORATIVE LEADERSHIP COMMITTED TO THE SUCCESS OF OUR INDUSTRY