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Driving Business Success for Consulting Firms in the Built and Natural Environment

8 September 2014

Review of the Tasmanian Building Regulatory Framework
Building Standards and Occupational Licensing
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Rosny Park TAS 7018

wstinfo@justice.tas.gov.au

To Whom it May Concern,

Review of the Tasmanian Building Regulatory Framework

Consult Australia is pleased to submit this response to the Department of Justice in relation to the Review of the Tasmanian Building Regulatory Framework.

About Us

Consult Australia is the industry association representing the business interests of consulting firms operating in the built and natural environment. These services include design, engineering, architecture, technology, surveying, legal and management solutions for individual consumers through to major companies in the private and public sector including local, state and federal governments.

We represent an industry comprising some 48,000 firms across Australia, ranging from sole practitioners through to some of Australia's top 500 firms with combined revenue exceeding \$40 billion a year.

Approximately 40 percent of our industry's work is undertaken for public sector clients, and our member firms have played vital roles in the creation of some of Australia's iconic public infrastructure, including road, rail, hospital, airport, educational facilities, water and energy utilities, justice, aged care, sports stadia, and urban renewal projects. Our industry's work varies from scoping studies to environment impact statements and other contributions to the planning phase of building and infrastructure projects, through to final design of built environment projects.

Consult Australia has prepared our response to this Review in consultation with Engineers Australia and we have concentrated on contractual and commercial aspects of the current legislation.

Are the Objects of the Building Act Still Relevant?

Consult Australia is concerned that the Building Act is being used to certify the design of all design projects, not just buildings.

There are a number of deficiencies in using the Building Act to certify all Projects:

- Despite not being necessary in the design of industrial and infrastructure projects, a building designer is still required to comply with the Building Act
- Many industrial structural designs are based on load, and set out information provided by the equipment manufacturer and this information, which is critical to the design process, remains uncertified
- There currently does not appear to be any requirement to certify geotechnical reports for industrial designs
- The concept of occupancy is not relevant for the installation of new equipment inside existing facilities

Certification

Consult Australia does not support the current process of certifying designers.

- The registration process duplicates the current certification system used by the Engineers Australia—adding unnecessary bureaucratic procedures for our members
- It is necessary to obtain multiple registrations across jurisdictions to design elements across multiple states

National Registration for Engineers

Consult Australia has had a long-standing position of support for a nationally harmonised registration scheme for engineers. We do not however support the introduction of unique schemes on a jurisdiction-by-jurisdiction basis.

There are a range of benefits to registration, such as being part of a risk management regime that can protect consumer interests. There are however red tape and other significant cost-to-business risks associated with schemes that are independent of each other—that must be examined in more depth.

In the absence of a harmonised registration scheme, consult Australia supports the Productivity Commission's suggestion that was made in its recent report into public infrastructure: that state and territory governments should consider more direct options to address the relevant issues observed with professional engineers in their construction industries.

Standards

Consult Australia has no comments on this section of the review

Compliance Enforcement

Consult Australia notes question 6.15 regarding the possibility of contracting out of proportionate liability. We have campaigned strongly for less onerous terms and conditions to be contained in contracts for our industry, as a step that can work to the benefit of both our industry and our clients. The use of onerous terms leads to less desirable project outcomes in terms of cost, delays and disputation, while also potentially voiding professional indemnity insurance cover for any liabilities that arise. One such onerous practice is the routine contracting out of proportionate liability by clients.

We would urge the Tasmanian Government to set a precedent by retaining proportionate liability legislation and ceasing the practice of contracting out of its own Professional Standards Legislation. We note there are already steps being taken in other jurisdictions towards achieving a nationally uniform position against contracting out of proportionate liability, which is a position we endorse. To this end, we recommend you read our submission to the NSW Government canvassing the benefits of retaining proportionate liability. It can be found at:

<https://www.consultaustralia.com.au/docs/default-source/contracts-liability/proportionate-liability-reform-submission--march-2014.pdf>

Protection

Consult Australia has no comments on this section of the review

Professional Education, Training and Development

Consult Australia's members currently receive minimal benefit from the Building Industry Training Levy. We consider that this is appropriate as the levy should be used to increase the skills of builders and tradesman.

Consult Australia, is concerned that there does not appear to be any structured training in relation to how to use the Building Act. We consider that this is fundamental to the successful regulation of this industry.

Consult Australia also notes that the continuing professional development regime for engineers is identical to that being administered by Engineers Australia and question the value in both parties administering identical processes. We see the regime managed by Engineers Australia as holding greater benefits as the auditing processes are completed by engineering peers.

To our knowledge there has been no auditing of engineer's CPD activities under the Building Act and we question what value we are obtaining from this duplicate activity.

Accreditation, Licensing and Registration

Consult Australia has covered our concerns regarding this in the above responses.

Defining Work

Consult Australia considers the definition of work under the Building Act is not clear and is being confused by including design activities that are not in keeping with the processes outlined under the Act. The Act relates to occupiable buildings and cannot be made to function for other industrial and/or infrastructure projects.

Planning

Consult Australia does not support integration of the planning processes and building processes under the same act. Unless there is self assessment of planning applications we consider regulation is unnecessary. We also do not support integration of the planning and building processes as this would not be in keeping with the governmental intention to simply the current planning processes and it ignores the fact that a large number of planning applications do not involve building works

Plumbing and Building

Consult Australia has no comments on this section of the review

Appeals and Review of Determinations or Applications

Consult Australia has no comments on this section of the review

Thank you for the opportunity to comment. If you have any questions in relation to this submission please contact Zeina Iesa, State Manager - Tasmania on: Zeina@consultaustalia.com.au; or phone: 03 8699 7700.

Yours sincerely,

Rob Casimaty
Chair
Consult Australia Tasmanian Division