CONSULT AUSTRALIA

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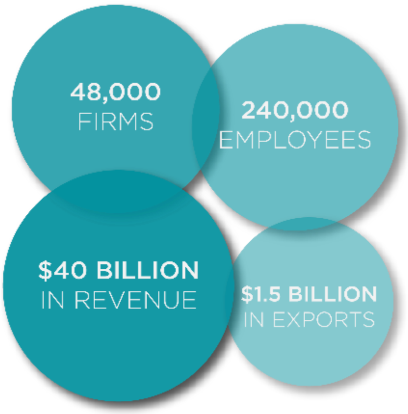
About us



Consult Australia is the industry association representing consulting businesses in design, advisory and engineering. Our industry comprises some 48,000 businesses across Australia, 90% of which are small business but also include some of Australia's top 500 companies. They provide solutions for individual consumers through to major companies in the private sector and across all tiers of government. Our industry is a job creator for the Australian economy, directly employing 240,000 people. The services we provide unlock many more jobs across the construction industry and the broader community.

Some of our member businesses include:

Summary

Consult Australia's submission for the 2021-22 Federal Budget seeks to emphasise the importance of infrastructure and built environment projects for improving our economic prosperity, creating thriving communities, and providing valuable links for people and goods. Improving our approach to these projects will have a compounding effect on economic growth across the country, and on the wellbeing of Australians.

However, improving how we deliver projects across the country is not as simple as increasing the total spend. We must continue to improve how we plan, fund, procure, design, and deliver new projects. This must be underpinned by a vibrant workforce with the right capabilities and capacity to meet demands.

The impacts of COVID-19 on the Australian economy are unprecedented. While measures to date have been swift and effective at eradicating the health impacts of the pandemic, Australia now faces a long-term challenge of finding the economic gains and future growth areas needed in the next phase of our response.

The Australian Government is well placed to be a leader in this space, and we strongly support the establishment of the National Cabinet in supporting nationwide response and recovery efforts. The National Cabinet provides an ideal platform for dealing with issues that cross jurisdictions and responsibilities, and some recommendations in our submission highlight potential focus areas in a Federal budget context.

As the industry association representing businesses in design, advisory, engineering and professional services in the built and natural environment sector, our budget submission and recommendations are structured around four priority areas focused on:

- A smart and sustainable infrastructure pipeline;
- Investing in our industry's people;
- Improving procurement practices; and
- An appropriately regulated practice environment.

Recommendations

In brief, our budget submission includes the following recommendations:

Pipeline	• Leverage existing infrastructure governance arrangements to create a smart long-term pipeline of high-value projects • Re-establish an improved asset recycling initiative
People	• Develop measures to tackle skill shortages in the built enironment industry • Adopt practical skilled migration reforms that reduce the burden on industry • Introduce childcare and paid parental leave reforms to create more inclusive workplaces
Procurement	• Work with states and territories to improve civil liability legislation across Australia • Improvements to the Australian Consumer Law • Continue funding for the National Centre of Procurement Excellence • Adopt the Model Client Policy
Practice	• Fund a national government portal for registered practitioners • Adopt better regulation practices

Pipeline – supporting a smart and sustainable long-term pipeline of built environment projects

Boost the economy through a high value pipeline of built environment projects

Infrastructure investment decision-making processes

Recommendation 1.1: *Ensure all infrastructure announcements in the Federal budget, including the fast-tracking of funding for projects, are backed up by existing assessment and prioritisation processes through Infrastructure Australia.*

Increasingly over recent months, the role of infrastructure investments has been rightly described as a critical policy lever to help governments address Australia's economic and social challenges from COVID-19 impacts. This stems from infrastructure and new investments being seen as important enablers of broader economic and social development across the country, rather than seeing these investments as traditional demand-verse capacity and asset-by-asset considerations.

Consult Australia believes this focus on boarder economic and social benefits reinforces why governments should continue to follow robust governance and decision-making processes to inform infrastructure investment decisions. This will maximise investment outcomes, particularly in the context of fast-tracking new projects to stimulate a slowing economy. The capital spend is too often the focus when measuring the benefits from investments or the effectiveness of a government's approach. Instead, we firmly believe infrastructure investment decisions by governments should be centred on how the project will deliver ongoing value to the economy and the community (i.e. the post construction whole of life value), and that this be a key component of the business case assessment.

The Australian Government has made inroads over the past decade establishing Infrastructure Australia as an independent statutory body to audit Australia's infrastructure needs and to provide advice on the priority and effectiveness of project proposals. We believe the Australian Government should ensure Infrastructure Australia is empowered to inform all of the Commonwealth's infrastructure investment decisions through business case assessments for project proposals and through the infrastructure priority list.

Any desire to fast-track the delivery of projects to help boost the economy should not skip or rush these important upfront considerations, as they are critical for ensuring downstream challenges are considered and for ensuring the Commonwealth is supporting a smart long-term pipeline of high-value infrastructure projects.

Additionally, we believe there is a role for the Australian Government to ensure there is an appropriate spread of project types and work packages for businesses of all sizes to benefit or participate in its pipeline of projects. This includes consideration of the size and scale of projects and whether it is more appropriate to break-up mega projects into smaller projects to give smaller businesses the ability to participate to deliver sector-wide productivity. This highlights the need to ensure there is appropriate guidance developed between governments and industry on fast-tracking and packaging projects, and ensuring these align with best practice infrastructure governance arrangements. As such, we believe this should be supported by Infrastructure Australia through their current work on industry capacity.

A business case-led approach to shore up new waves of projects

> ***Recommendation 1.2:*** *Provide funding to support the development of more infrastructure business cases by state and territory governments to shore up new waves of projects in the long-term pipeline beyond the next six to twelve months.*

The Australian Government has played a critical role in supporting the economic response and recovery to COVID-19 over recent months. In addition to the JobKeeper scheme and other measures designed to cushion business impacts, the Australian Government has also brought forward funding for a range of shovel ready projects from the long-term pipeline of infrastructure. These decisions have significantly helped the broader construction industry.

Going forward, the Australian Government should be mindful of the potential for a flash-burn effect in the construction market. An ongoing approach that focuses exclusively on bringing forward shovel ready projects means capacity could be quickly exhausted by delivering projects at pace now, and substantially reducing the forward pipeline of new projects in the medium to long-term. As such, stimulus should not just look at moving projects forward in the pipeline, but also new waves of projects in the forward pipeline to support growth and productivity objectives to sustain the economy beyond the next six to twelve months.

We therefore encourage the Australian Government to now take a business case-led approach to Australia's response and recovery efforts by developing a new wave of sound investment proposals that will shape the country in a post-COVID-19 world. Sound investment proposals underpinned by business cases that inform project selection is the best way for the Australian Government to maximise the social and economic benefits from stimulus targeting the pipeline.

Investing in business cases also creates jobs. We estimate the labour multiplier (i.e. jobs created) from government investments in business case developments is 11 jobs per million for a typical project.[1] This compares favourably to estimates for the labour multiplier for construction activities, which can be around four to seven jobs per million investment.

Creating the conditions for a strong pipeline of private sector projects

> ***Recommendation 1.3:*** *Increasing private sector investment appetite and business confidence in the construction industry by reviewing and reforming the regulatory and taxation tools available to governments. This work should be led by the Australian Government to ensure there is a consistent and national approach across all levels of governments.*

It is becoming increasingly clear that one area significantly impacted by COVID-19 is private sector investment confidence in new property projects. 98 per cent of our members who are currently experiencing a reduction in work due to the pandemic said this downturn relates to privately funded projects. Furthermore, 64 per cent of our members noted their reduction relates to a downturn in commercial building projects and 54 per cent for residential projects. Many also noted that a reduced six-month outlook for these projects types is of significant concern for their business.[2]

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[1] Consult Australia briefing note, Labour multiplier from investments in business cases (June 2020)

[2] Consult Australia, [COVID-19 pulse survey (June 2020)]

We estimate that the pipeline of work for our industry is broadly made up of a 50/50 split between private and public funded projects, so this reduced confidence has substantially contracted the pipeline.

This sharp decline has impacted small and medium enterprises in particular because fewer participate in projects funded by governments.

While governments could address this abeyance in investment by targeting project types using similar capabilities (such as school and health facility upgrades), we also believe all levels of governments have a number of policy levers relating to taxation and regulations that could also increase the private sector investment appetite in this space. One area that we believe is worthy of investigation by governments is property taxes and development charges.

While many of these taxes and development charges are state and territory matters, we believe the Prime Minister's recent work establishing a true National Cabinet provides an ideal platform to review how these arrangements could be improved in a nationally consistent manner. Given the interrelated nature of taxes and the impacts an inconsistent approach can have on other arrangements such as GST revenue, it is critical that governments work together to develop a solution to how property tax reform can attract further private sector investment in this sector.

An obvious solution that has been discussed in detail over recent decades is a nationally consistent land tax that replaces stamp duty and local council rates. We believe this is an appropriate starting point, coupled with more flexible development charges that can also be used to incentivise investments, and governments should focus on how these solutions can be implemented. These types of reforms can help put Australia in a good position to deal with the ongoing challenges from COVID-19 impacts, and at the same time enable state and territory governments to step up their responses further by having a stable revenue stream.

Re-establish an improved asset recycling initiative

Recommendation 1.4: *An asset recycling initiative be re-established. Incentive payments for states and territories under the new initiative should no longer be based on asset transfer prices or a 'first come, first served' approach, and instead be based on an assessment of asset transfer conditions.*

The Australian Government has an important role to play in driving consistent reform across the country to improve how states and territories plan, deliver and manage infrastructure assets. As highlighted by Infrastructure Australia, the Australian Government is best placed to address the current 'vertical fiscal imbalance' between jurisdictions by using its responsibility to address disparities (through funding allocations) as a tool for implementing reform.[3]

It is also important to note that the Australian Government, or Australian governments, cannot fund our economic recovery from COVID-19 impacts alone, and attracting private sector involvement and investment in these efforts needs to form part of this mix. Asset recycling provides one sustainable and proven option to help governments invest more in infrastructure and to use these investments to help stimulate the economy. To this end, we believe the Australian Government should promote asset recycling as an important reform to help states and territories unlock capital from balance sheets, to fund additional infrastructure, and to use these investments to help drive the economic recovery from COVID-19.

[3] Infrastructure Australia, Making reform happen: using incentives to drive a new era of infrastructure reform (2018)

An asset recycling approach needs a consistent structure and be designed for success. From experiences over recent years, we believe a key learning is that asset recycling does not lead to successful outcomes by default. There are numerous examples that point to successful and unsuccessful approaches to asset recycling. It is the unsuccessful examples that highlight our concern with the design of the Australian Government's previous asset recycling initiative, which was heavily focused on upfront asset transaction prices and did not focus enough on ongoing asset transfer conditions. We believe this creates a risk of a race to the bottom where impacts on service outcomes and ongoing public benefits are not sufficiently considered.

Consult Australia therefore recommends the Australian Government re-establish a new and improved asset recycling initiative to improve the approach and to encourage consistency across the country. The initiative should be designed around the below principles.

- Increase the appetite of states and territories to explore asset recycling as an option to fund additional infrastructure needs.
- Encourage a nationally consistent approach to asset recycling focused on improving service outcomes for users, delivering tangible public benefits, aligning with national interests, and ensuring no jurisdiction is left behind from a structural infrastructure funding gap.
- Include a national position on appropriate asset recycling by asset type and transfer conditions, to influence the approach taken by states and territories.
- Require states and territories to reinvest all proceeds from asset transfers into new infrastructure to be eligible for incentive payments.
- Incentive payments should not be based on or linked to asset transfer prices. Instead, incentive payments should be based on an assessment against the Australian Government's position on appropriate asset recycling. This will discourage any desire to maximise the upfront value of an asset at the expense of transfer conditions.
- Encourage the uptake of new technology to manage assets more efficiently and to improve the user experience through asset transfers.
- Include balance across states and territories with incentive payments. The initiative should no longer be a 'first come, first served' approach, and could instead be limited by caps for each jurisdiction.

A new asset recycling initiative should also include funding for Infrastructure Australia to work with states and territories to identify assets appropriate for recycling, and to help determine any regulatory structures or transfer conditions required to limit negative outcomes. Other support could include helping states and territories develop a better understanding of the full lifecycle of assets to better understand future costs.

People – a sustainable workforce and vibrant workplaces for consulting firms in the built environment sector

Addressing skill shortages and gender diversity challenges in the built environment

The built environment industry has long experienced systemic skill shortages in key employment disciplines such as civil and structural engineering, and in senior roles requiring extensive experience. Some of these skill shortages and their impacts are outlined in our recently released report on the topic.

From our perspective, our industry has over recent decades struggled to develop the professional skills and experiences needed to meet demand, and the size of the future STEM talent pipeline from the education system is a factor behind this. The problem is then exacerbated during periods of elevated infrastructure investments and through procurement practices that focus too much on lowering costs rather than investing in long-term capabilities. This makes our industry vulnerable to prevalent skill shortages, particularly in the current environment when the problem cannot be partly addressed through skilled migration.

Our budget submission makes three recommendations on different aspects relating to skill shortages in our industry in addition to separate recommendation on skilled migration – these focus on retaining and attracting talent, creating more career pathways in the industry through STEM short programs, and a deep dive on the gender diversity challenge specifically to women and girls in engineering and construction.

Growing the built environment workforce through a retention and attraction scheme

> ***Recommendation 2.1:*** *To create a retention and attraction scheme for the built environment workforce in partnership with industry, and to complement this scheme with targeted initiatives focused on addressing skill shortages through the broader workforce.*

While education and skilled migration will have key roles to play in addressing skill shortages in Australia, particularly over the longer term, the impacts can be reduced through an industry-wide focus on retaining and re-attracting talent. This focus is something that we believe could be supported by the Australian Government because it aligns well with the JobMaker plan and current infrastructure investment objectives.

The United Kingdom's Construction Talent Retention Scheme (CTRS) provides a good industry and government partnership model that could be used as a template with a package of other supporting measures to help proactively sustain and grow the workforce in Australia. The CTRS was developed as an early response to COVID-19 impacts on the UK workforce, however from our perspective it also provides a useful platform to respond to skill shortages and to prime the industry for an upswing from economic recovery efforts.

We also believe an Australian approach to a talent retention and attraction scheme needs to be complimented with a package of other proactive and targeted measures to address skill shortages. These could include:

- Creating incentives to attract people back to the industry – particularly for talent in areas of need
- Providing support to individuals who are looking for new opportunities in the industry – Infrastructure Australia's research highlights that a project-based workforce can hinder attraction and retention,[4]

[4] Infrastructure Australia, Australian Infrastructure Audit 2019 – Industry efficiency, capacity and capability

and an industry-wide approach to address leakage from project to project could help address this challenge
- Supporting alternate career pathways into and within the industry – such as through scholarships, and the development and recognition of formal short courses to enable people to upskill (as highlighted in the recommendation below)
- Investigating how attraction and retention correlates to culture, working practices, and procurement arrangements, and addressing this through meaningful and measurable action
- Marketing campaigns that showcase careers and opportunities in the built environment industry

Boosting the built environment future talent pipeline through STEM short program

Recommendation 2.2: *Investment in short programs to strengthen Australia's future talent pipeline for engineering and other STEM-related occupations.*

We believe further investment in, and the promotion of, short programs by the Australian Government could help increase the technical skills and experience of potential candidates that industry is seeking from the Australian market. There are already some excellent government initiatives that could be taken and applied to the areas where skill shortages are most prevalent such as civil and structural engineering.

The existing short program between the Australian Government and RMIT for block-chain technology is a great initiative that could be replicated and focused on technical skills in engineering. Further, programs such as the NSW Government Infrastructure Traineeship could be rolled out as short programs providing both entry-level and mid-level candidates an opportunity to gain practical industry experience while undertaking tertiary education.

The benefits of short programs in this context include but are not limited to:

- An opportunity for applicants to upskill who have the knowledge required but need further technical skills training
- An opportunity for candidates to upskill in a short period of time which in turn would provide an efficient pipeline of increased talent
- An opportunity for school leavers to undertake STEM subjects they did not undertake during their schooling but require as a prerequisite for STEM degrees and careers
- An opportunity for industry to work with the Australian Government to build short programs that meet the needs of the profession by ensuring practical experience is part of the program – this could also help bridge the gap for many engineers who are degree qualified, and for some have experience, in other countries but struggle to meet local work requirements

Consult Australia welcomes any opportunities to work in partnership the Australian Government to address industry-wide skill shortages, particularly through the education system and creating alternate career pathways.

Promoting greater gender diversity in engineering and construction

Recommendation 2.3: *Complementing the Australian Government's existing women in STEM initiatives with targeted efforts focused on engineering and the broader construction industry.*

Engaging with undiscovered talent is crucial as Australia seeks to recover from the impacts of COVID-19. With this in mind, Consult Australia encourages the Australian Government to dive deeper into STEM gender diversity by focusing current campaigns on when gaps are greatest and in areas of industry skill shortages.

Current initiatives such as the Women in STEM Ambassador and STEM Superstars have proven highly successful in engaging and encouraging females to pursue STEM education and careers. However, we do believe they have in parts been weighted towards promoting science and academic opportunities, and we therefore encourage more initiatives targeted at engineering and related disciplines, which create pathways into design, advisory, and engineering careers. An increased focus on these areas will help increase female participate in our industry.

The Commonwealth Department of Industry reported in the *Advancing Women in STEM strategy* that only 28% of female students surveyed were interested in engineering. This was compared to 61% in science, 54% in technology and 45% in mathematics[5]. Further, the Office of the Chief Scientist reports that only 14% of female undergraduates were undertaking engineering degrees. This was in comparison to 33% in maths, 36% in earth sciences, 42% in chemistry, 51% in agriculture and environment, and 59% in biology. Postgraduate degrees also reported low numbers with 21% of females surveyed undertaking a postgraduate in engineering in comparison to 35% undertaking maths, 48% in earth sciences, 42% in chemistry, 54% in agriculture and environment and 57% in biology.

The Office of the Chief Scientist has also documented the gender distribution of STEM qualified females in senior occupations. Of those that were VET qualified, 4% were employed in engineering senior positions with 3% being managers and only 1% being executives. This was in comparison to 56% employed in natural and physical sciences, 21% employed in agricultural and environmental science, and 19% employed in information technology. Of those that were university qualified, 15% were employed in engineering senior positions with 11% working as managers and 6% as executives. This was in comparison to 49% employed in science, 42% employed in agricultural and environmental science, 22% employed in information technology and 39% employed in mathematics[6].

These statistics emphasise that many engineering fields continue to lag behind other STEM disciplines. Consult Australia would welcome opportunities to engage further with the Australian Government to discuss potential initiatives that could make a difference in engineering and related disciplines. No one stakeholder can improve the above statistics alone and Consult Australia is committed to a collaborative effort in improving gender diversity in our industry.

Practical skilled migration reforms that reduce regulatory burdens on industry

Given some of the recent changes to Australia's immigration system and the significant impact of COVID-19 on various visa programs, Consult Australia believes the time is right to investigate a range of practical and targeted improvements to current arrangements. Efforts to improve the skilled migration processes for industry and their responsiveness to emerging skill demands will ensure the system is well placed to play a key role in driving the next phase of Australia's recovery from COVID-19. We have a golden opportunity to put in place reforms that will enable the skilled migration system to have a positive impact on Australia's

[5] Department of Industry, Science, Energy and Resources, Advancing Women in STEM (2019)
[6] Office of the Chief Scientist, Australia's STEM Workforce (2020)

productivity demands and to lead Australia's economic recovery when immigration is able to return in large numbers.

Feedback from Consult Australia members has consistently highlighted the complexity and confusion surrounding the Commonwealth's current skilled migration arrangements. This is a deterrence for many businesses to use the visa system, which ultimately leads to a negative outcome on the Australian economy by limiting growth opportunities when skills are not readily available on the domestic market. This demonstrates a need for Government to provide greater education and guidance in order to clarify the new policies and dispel any misconceptions.

Industry Outreach Initiative

> ***Recommendation 2.4:*** *Re-introduce the Department of Home Affairs' industry outreach initiative.*

We believe there is an important role for the Department of Home Affairs to provide direct assistance to industries experiencing skills shortages to help educate and navigate the skilled migration system. A support program previously existed when shortages were experienced during the mining boom – the Industry Outreach Officer initiative. Consult Australia was a beneficiary of the program and an immigration officer was seconded to assist our membership during the height of the skills shortage between 2005 and 2014.

We see a strong case to reinstate this program to help address the increasing skills gap in our sector from the current 'infrastructure investment boom'.

During the mining boom, our sector experienced significant skills shortages and the professional relationship built between industry outreach officers and our member firms was a key success factor in meeting demands. A detailed understanding by the Department of the key skills issues facing our member firms, particularly an increased reliance on specialist engineers and other technical professions, helped ensure that our skilled migration needs were efficiently met. This included a threefold increase in those on temporary visas from 2,260 in 2003-04 to 6,940 in 2010-11.

The reintroduction of the Industry Outreach Officer initiative should focus on sectors that the government anticipates will play a role in increasing the productivity of the economy as part of the COVID-19 recovery, and where additional support to address systemic skills shortages is in the national interest. This more tailored approach to the previous initiative recognises the need to apply fiscal discipline, but also recognises the benefits of supporting industry sectors like ours that are key to driving economic growth.

Subclass 400 visa improvements

> ***Recommendation 2.5:*** *Deliver improvements to the subclass 400 visa to increase its relevance for project-based sectors.*

The ability for Consult Australia's members to access the global workforce is a competitive advantage for Australia, and this need will only increase in a post-COVID-19 world.

In the future, many of our members will require the ability to quickly and easily bring in resources, including global experts, to support project requirements, knowledge transfer, training, and teamwork across multinational businesses. Temporary skilled migration arrangements are essential for this global movement.

Required travel patterns of specialist staff in our sector are not suited to the business visitor visa program as they are involved in substantive work. The typical travel patterns for specialist staff in our sector are:

- Short-term assignments of three to 12 months. These short stays arise particularly in project-based sectors which require a concentrated period of work and no intention for the employee to seek to reside in Australia permanently; and
- Short visits of only a few days or weeks each time, but constantly or regularly over a long-term period and involving substantive work.

Short-term specialised services have the potential to deliver significant benefits to infrastructure and other built environment projects across Australia. We see a strong rationale for the Department of Home Affairs to facilitate and support access to global expertise, particularly for skills not readily available.

The subclass 400 visa has the potential to be an essential tool for enabling consulting firms in the built environment sector to access specialised experts from the sector's globalised workforce. However, due to the current policy settings of this visa, travel patterns for short-stay specialists are directed to the subclass 482 visa (temporary skill shortage) which includes arrangements that are too onerous for the length of stay involved.

At the same time, processing of subclass 400 visa applications is slow and convoluted because documentary requirements are inconsistent from post to post, processing times are not sufficiently responsive to business needs.

In addition to improving the conditions for the subclass 400 visa, Consult Australia believes processing times should be reduced to 48 hours by adopting a risk-tiering approach to processing applications that negate the need for assessing every aspect of an application, and by implementing a 'trusted user' or accredited status for businesses with a sound compliance history.

Childcare and paid parental leave reforms to create more inclusive workplaces

Recommendation 2.6: *Adopt the Grattan Institute's recommendations on more affordable childcare to boost female workforce participation.*

Recommendation 2.7: *Increase the flexibility and equitability of the Commonwealth's paid parental leave scheme.*

Affordable childcare

Consult Australia believes there is a strong case, and a number of significant downstream benefits relating to improving gender diversity in the workplace by improving arrangements for the Commonwealth's childcare subsidy.

Measures such as this that increase and better enable workforce participation for parents will positively impact the Australian economy and will help tackle some of the diversity and inclusion challenges facing many sectors.

The Grattan Institute recently published a paper on this topic titled *Cheaper childcare: a practical plan to boost female workforce participation*. This outlines that an additional $5 billion investment by the Commonwealth on the childcare subsidy, coupled with practical reforms, would result in a $11 billion increase in GDP from an increase in workforce participation.

To achieve this outcome, this paper recommends:

- The subsidy for low-income families should be raised from 85 per cent to 95 percent, gradually tapering downwards as a percentage for households with income above $68,000;
- The annual cap that limits the dollar amount that can be claimed per child for families with income higher than $188,163 (to $10,373 per child in any one year) should be removed.

While women's workforce participation rate is at an all-time high (at 59 per cent), Australia has one of the highest proportions of women working part-time at 68 per cent.[7] This represents the fourth highest women's part-time employment rate in the world,[8] which we believe can be attributed to limited access to affordable childcare.[9]

While the Australian Government has addressed some of these concerns in 2018 reforms and in response to COVID-19 impacts, we believe additional and permanent steps can be taken to make it more attractive for primary carers to re-enter the workforce. As such, Consult Australia supports the recommendations put forward in the recent paper by the Gratton Institute.

Equitable paid parental leave scheme

When compared to paid parental leave schemes in other countries in the OECD, Australia's arrangements can be described as more gendered and less generous. For example, the Commonwealth's paid parental leave scheme offers 18 weeks paid leave at the rate of the national minimum wage for the primary carer (which is usually the mother) and 2 weeks paid leave at the rate of the national minimum wage for the secondary carer (which is usually the father).

This compares to a total of 35 weeks of paid leave in Canada (with pay at a certain percentage of their income) and 37 weeks in the United Kingdom (at a base pay or 90 per cent of their income, whichever is lowest), which can be used by either parent or shared between parents.

Consult Australia believes there is a strong case to update the Commonwealth's paid parental leave scheme to be similar to Canada and the United Kingdom at a minimum. A focus should be on increasing the flexibility and equitability of how leave is divided between carers (and how caring and carers are defined), and potentially separating upfront maternity leave entitlements (i.e. giving birth) with ongoing caring leave entitlements. These new arrangements would also negate the need for current secondary carer leave entitlements.

[7] McKinsey & Company, How advancing women's equality can add $12 trillion to global growth (2015)
[8] OECD data, Part-time employment rate (2017)
[9] The Centre for Independent Studies, Research report: Why childcare is not affordable (2018)

Procurement – delivering better value through improved arrangements and a partnership approach with industry

Proportionate Liability

Recommendation 3.1: *In partnership with state and territory governments, reform all civil liability legislation in Australia to explicitly prohibit contracting out of proportionate liability for professional services contracts.*

The current state of the Australian professional indemnity (PI) insurance market poses a significant risk to Australia's economic recovery as small businesses face going out of business despite having sufficient work and a dependable client base. Government interventions can help 'de-risk' the Australian insurance market. This includes restoring the policy intent of proportionate liability by reforming all civil liability legislation in Australia to explicitly prohibit contracting out of proportionate liability for professional services contracts.

Proportionate liability is a statutory right, which ensures that a party is only liable in damages for the proportion of the suffered loss that is attributable to that party. It only applies to financial harm and economic loss, not to cases involving personal injury or death. Proportionate liability was introduced nationally through state and territory civil liability legislation to improve the availability and affordability of professional indemnity (PI) insurance in Australia following the insurance crisis of 2001 when the insurer HIH collapsed.

The key policy objective of proportionate liability – helping to ensure that PI insurance is available, affordable and dependable – is undermined if consultants are required by a client to contract out of proportionate liability legislation. Insurers have indicated that if the proportionate liability can be by-passed contractually the insurance market will price and allocate capital to Australian PI risk as if proportionate liability does not apply.

Consult Australia members advise that PI insurance cover is significantly difficult to acquire – especially at a reasonable price. As one example, multiple brokers specialising in engineering and professional services cover have advised that in some circumstances there is no cover 'from any insurers, underwriters, or other markets (at any price)'. Consequentially without PI insurance, many of our members lose their licence to operate, either because they no longer comply with state/territory registration requirements, or they cannot comply with their clients' professional services contracts, which all require PI insurance of a specified amount to be maintained (evidenced by a certificate of currency).

Only Queensland's legislation explicitly prohibits contracting out of proportionate liability while only NSW, Tasmania and WA explicitly allow it (by prohibiting contracting out of other civil liabilities). Contracting out of proportionate liability in professional services contracts undermines the policy goals of the proportionate liability law reform and risks another insurance crisis like the one that led to the reform. Further, by contracting out of proportionate liability, both parties are exposed to uninsured risk. Relying on proportionate liability ensures all parties are managing their risks and are liable for the economic loss they cause. It also ensures clients don't use their market power to contractually require that professional service providers surrender the protection afforded to them by proportionate liability.

Two independent experts engaged to report on proposals to achieve national consistency in proportionate liability legislation, after considering the arguments for and against contracting out of proportionate liability, both recommended that proportionate liability legislation should prohibit parties from contracting out.[10]

Australian Consumer Law

Recommendation 3.2: *Make changes to the Australian Consumer Law to:*

- *ensure unfair contract term protections apply to government contracts in all jurisdictions*
- *misleading and deceptive conduct provisions explicitly protect consumers and small businesses only.*

The current state of the Australian PI insurance market poses a significant risk to Australia's economic recovery as small businesses face going out of business despite having sufficient work and dependable client base. Government interventions can help 'de-risk' the Australian insurance market. This includes making changes to the Australian Consumer Law.

The Australian Consumer Law provides protections against unfair contract terms for consumers and small business but fails to protect those same parties where they contract with government clients. The Australian Consumer Law also protects against misleading and deceptive conduct, however Consult Australia members advise that this protection is being used by sophisticated contracting parties to seek uncapped settlements. The public policy intent of protecting consumers is being distorted by these claims.

Unfair contract terms and claims against professional services providers contribute to the deterioration of the Australian professional indemnity (PI) insurance market. Our members advise that PI insurance cover is significantly difficult to acquire – especially at a reasonable price. Without PI insurance, many consultancy businesses lose their licence to operate, either because they no longer comply with state/territory registration requirements, or they cannot comply with their clients' professional services contracts, which all require PI insurance of a specified amount to be maintained (evidenced by a certificate of currency).

Unfair contract term protections

A significant proportion of the services our members provide is to government clients, and therefore the fairness (or otherwise) of government contracts is a major issue for our members. In government contracting we often see:

- government clients providing contracts as a 'take it or leave it' approach where a business is deemed to have a 'non-compliant bid' if it questions contract terms
- terms that allow government clients to unilaterally cancel or terminate an agreement without cause
- broad limitations of a government client's liability, or terms which require a business to indemnify the government client in an unreasonably broad range of circumstances
- requirements for professional service providers to pay significant performance bonds or security deposits, unrelated to the potential loss the government client would face if the professional service was not completed
- contracting out of proportionate liability (as explained above).

[10] Horan, T *Proportionate Liability: Towards National Consistency*, DLA Phillips Fox, September 2007; and EM Prof Davis, JLR *Proportionate Liability: Proposals to Achieve National Uniformity*, Australian National University, 2008.

Members have also advised that government clients have unfairly withheld payment at the conclusion of the work because professional service providers rely on the agreement reached during negotiation, rather than additional terms that extended the scope of services requested by the client at the end of the project.

It is now common for government agencies to use onerous contract terms to allocate risk to businesses inappropriately. The fact cannot be ignored that government clients hold significant market power combined with the inherent and substantial power imbalance in favour of the government when it contracts with the private sector. When it comes to government contracts, we would argue that all businesses need unfair contract term protections, but small businesses are undeniably more vulnerable than larger businesses. Our small business members are involved with the public sector from local municipal councils, state and territory governments and even federal agencies.

Misleading and deceptive conduct

The Australian Consumer Law protects against misleading and deceptive conduct, however our members advise that this protection is being used by sophisticated contracting parties to seek uncapped settlements. The public policy intent of protecting consumers is being distorted by these claims.

Misleading and deceptive conduct claims are being used by contracting parties to seek uncapped damages from professional services providers outside of the contract (as the contract usually caps the party's liability). It is uncommon for the grounds of the claim to be related to advertising or promotional material. Instead acts or omissions already covered in the contract are used to base the misleading and deceptive conduct claims.

Consult Australia supports the policy intent of misleading and deceptive conduct provisions but recommends that the law should explicitly be limited to consumers and small businesses (as is the case for the unfair contract term protections).

Continue funding for the Commonwealth Centre of Procurement Excellence

Recommendation 3.3: *Make changes to the Australian Consumer Law to ensure unfair contract term protections apply to government contracts in all jurisdictions and misleading and deceptive conduct provisions to explicitly protect consumers and small businesses only.*

Consult Australia congratulates the Australian Government for establishing the Centre for Procurement Excellence (CoPE) to provide tools, advice and whole-of-government systems to build procurement capability, streamline processes, and provide quality reporting to execute their procurement responsibilities.

The continued funding of CoPE is imperative to realise the full potential of the Government's stimulus investment in the pipeline of infrastructure and built environment projects. There is a real risk that existing procurement practices and contracting behaviours will undermine Australia's economic recovery from COVID-19. Procurement reform has been needed for many years and will unlock greater productivity.

Now is the opportunity for CoPE to champion best practice procurement across Australia by providing transparent expert advice to all levels of government, including through the National Cabinet process to ensure that in every jurisdiction there is:

- improved procurement skills and capacity across all government entities – including increased capability to work productively remotely
- consistent procurement practice across all government entities

- improved capability and delivery of fair, balanced and collaborative procurement practice with businesses of all sizes
- regular knowledge-sharing between all government entities and industry to drive best practice for each and every project.

We know that the construction industry is plagued by legal disputation, with at least 50% of consultant fees at risk of opportunistic claims, especially in situations where contracting models dissuade collaboration and problem-solving. Now is the time to change this culture through procurement reform. In our *Uplifting productivity* report Consult Australia members nominated over 20 individual projects across Australia that demonstrate best practice in procurement and contracting is not an invention test – it's been done before. With economic recovery an imperative, the Australian Government can now drive a coordinated approach to tackle unnecessarily complex and lengthy procurement procedures and undesirable contracting behaviours – issues that have always been problematic. By investing in CoPE and a national approach, barriers to small and medium enterprises (SMEs) can finally be dealt with. Consult Australia's work can demonstrate how productivity gains can be found in every phase of the project; pre-tendering, tendering, contracting, project delivery and post-completion.

Adopt the Model Client Policy

Recommendation 3.4: *All federal government agencies and departments adopt the Consult Australia Model Client Policy and promote its adoption by all states and territories to drive productivity to support the economic recovery from COVID-19.*

Consult Australia continues its call for all governments to embed Consult Australia's Model Client Policy into procurement practices. Like the Model Litigant Policy, a Model Client Policy commits Government, as a major procurer of goods and services from the private sector, to works collaboratively with industry to achieve mutually beneficial outcomes. In addition to the government's inherent market power in contracting, the actions of government set the trend for the private sector, assisting all small businesses in their dealings with all clients.

The Australian Government could also encourage the adoption of the Model Client Policy by state and territories through National Cabinet processes as well as where the Commonwealth is provides funding for the delivery of state/territory infrastructure projects.

The Model Client Policy will drive productivity as it addresses many of the unnecessarily complex and lengthy procurement procedures and undesirable contracting behaviours which will hinder Australia's economic recovery from COVID-19. Too much time and money is spent at the beginning of every project in every jurisdiction because there is a need to seek; reasonable modifications to contract terms, clear scopes and briefings as well as timely payments. Further, much of the opportunistic claims made against from consultants stems from the undesirable contracting terms that the Model Client Policy addresses.

In summary, model client behaviours see:

- Appropriate risk assessment, management, and allocation;
- Consistent use of proportionate liability and appropriate limits on liability;
- Consistent use of standard contracts (with minimal variations – all clearly justified);

- Procurement and delivery methodology that is clear, consistent, transparent, and focused on best for project outcomes;
- Early engagement and maintained open and constructive communication between all parties;
- Productive and healthy working relationships fostered throughout the supply chain, with the roles of each party (and the limits of those roles) recognised;
- Consistent planning and prioritisation of projects;
- Minimal costs of tendering and documentation requirements;
- Clear, well structured, accurate briefs, with reasonable review and response times;
- On time settlement of invoice payments and payment claims; and
- A culture of continuous improvement and innovation fostered through the recognition of procurement skills and training.

By embedding the Model Client Policy, all parties can invest more time in delivering the project for public benefits. This will also give confidence to businesses, allow for innovation and collaboration as well as help stabilise the professional indemnity insurance market.

Given the significant spend committed to infrastructure projects, even a one per cent efficiency would translate into significant savings. Further, as our 2019 *Innovation in Infrastructure* report demonstrates, improved procurement practices can also lead to more innovative delivery of projects.

Practice – ensuring a certain and stable regulatory environment

Fund national government portal for registered practitioners

Recommendation 4.1: *Fund a national government portal for registered practitioners, with input from the Australian Building Codes Board and relevant states and territories to minimise duplication across jurisdictions, improve consumer confidence and limit unnecessary burdens on industry.*

We strongly support occupational mobility as the latest priority area for the Federal Deregulation Taskforce and the Prime Minister's *CEDA State of the Nation* speech that called on regulators to be more pragmatic (as they have been in response to COVID-19). We are actively engaged with the Deregulation Taskforce and promote their work to our state and territory government stakeholders who are introducing (or flagging) regulatory requirement for the registration of professional engineers/practitioners. We are also actively engaged with the Australian Building Codes Board (ABCB) Building Confidence Report Framework Implementation Team who is conducting considerable work finding a nationally consistent approach to this issue.

However, the is a substantial disconnect between the work at the national level and at the states and territories as individual state/territory governments proceed with separate schemes instead of working together to develop a single scheme that would deliver true occupational mobility and ultimate consumer confidence.

We call on the Australian Government, through the National Cabinet process to ensure that all jurisdictions work together to establish a single government portal that facilitates one registration by a practitioner (what we call *mutual registration*) rather than one registration and then multiple mutual recognitions (as is the usual practice). We look to the approach demonstrated by the Australian Health Practitioner Regulation Agency (AHPRA) which has:

- a national registration and accreditation scheme;
- a single online register of all practitioners;
- a cooperative approach to auditing compliance;
- accrediting training; and
- managing complaints (although it is noted that NSW and QLD manage complaints separately).

With 90% of our members being SMEs, there is real concern about the unnecessary financial and administrative burdens of states and territories introducing individual registration schemes. This concern was prevalent pre-COVID-19 and has only intensified in significance as two-thirds of our members have experienced a reduction in work due to the pandemic, with an average downturn of around 32%. What was previously considered a financial and administrative burden – 'the cost of doing business' – is now a question of business viability.

Our mutual recognition proposal would include a technological solution that essentially provides a 'one-stop-shop' for citizens, clients and governments (instead of numerous jurisdiction specific registers). This approach would improve confidence, especially in the building sector as it addresses the purported movement between jurisdictions of 'rogue' operators.

The central portal would hold information including:

- Name;
- Contact details;
- Qualifications;
- Employer (if relevant);
- ABN/CAN (if relevant);
- Date of first registration;
- Currency of registration;
- Actions against the registered engineer (if any);
- Conditions on the engineer's registration (if any); and
- State/territory of original registration.

This information could be used by citizens and clients (of engineering services) to search for a registered engineer to assist in making an informed decision about choosing an engineer for their project. State and territory governments/regulators could utilise the portal to monitor any enforcement action taken against an engineer in other states/territories, or restrictions on their registration. The portal might assist state-based regulators to decide on appropriate disciplinary action, if for instance the scheme permitted the regulator to consider actions against the registered engineer in other jurisdictions.

The portal would avoid duplication across levels of government and provide consumer confidence in the profession as a whole throughout Australia. By being a government portal, using government information it would be a trusted source.

Better regulation for productivity and recovery

Recommendation 4.2: *Increase real engagement with industry on regulatory impost to find pragmatic solutions driving productivity for the economic recovery from COVID-19. The Commonwealth Government should use National Cabinet process to drive coordinated change in states and territories.*

We strongly support the Prime Minister's *CEDA State of the Nation* speech that called on regulators to be more pragmatic (as they have been in response to COVID-19). Too often industry engagement is too late in the process or insufficient for regulators to understand the true impact on business.

While the Australian Government as well as state and territory governments have regulatory impact assessment processes – the use of these varies from jurisdiction to jurisdiction as well as from reform package to reform package. The regulatory impact statement (RIS) framework is a vital tool that, when used in a consultative way, can ensure that new reforms are not just additional red tape, but are real reforms that balance the needs of the community with the productivity of industry. With economic recovery from COVID-19, the focus must now be on better regulation from a productivity perspective. This productivity must be realised throughout the country.

We call on the Australian Government to implement and to use the National Cabinet process to drive coordinated change in all states and territories to ensure:

- An immediate focus by all government agencies on finding productivity savings from reforming legislation currently on the books. Industry engagement is key to suggest more pragmatic approaches to the regulated issues.

- All future reforms to undergo a consultation RIS process (in line with the requirements for reforms by the Council of Australian Governments (COAG)) that provides industry with a real opportunity to suggest practical alternative solutions.
- All reforms to undergo a public consultation post-implementation review' to assess the real regulatory impost on industry and citizens. This step should allow regulatory review to remove productivity barriers.

Consult Australia is aware of legislation around the country which is a drag on productivity for our sector – for example labour hire licensing laws, which were devised to solve a particular public policy problem in other sectors and because of broad brush regulatory drafting now captures our members.

The suggestion of post-implementation reviews would determine the actual regulatory burden borne by industry. Where a pre-decision RIS was conducted, the comparison of the two RIS' would reveal areas where the pre-decision RIS process could be improved to derive more accurate information.

It is vital that the Australian Government drive the coordinated approach, through the National Cabinet process as too often industry does not see any regulatory impact assessments from state/territory agencies. This may mean that the government agency has conducted a preliminary assessment and determined it does not meet the threshold to undertake a thorough assessment or no assessment was done at all. Where a RIS is conducted it is rarely a consultation RIS process like that used for COAG initiatives, meaning that the impost data is developed by public officials without requiring input from industry. By the time legislation is drafted it is difficult to negotiate changes with governments that balance community needs with industry impost. As we all strive to do our best to assist in the economic recovery from COVID-19, we need to work together to find uplifts in productivity and there is no replacement for expert industry advice on this.

Contact

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