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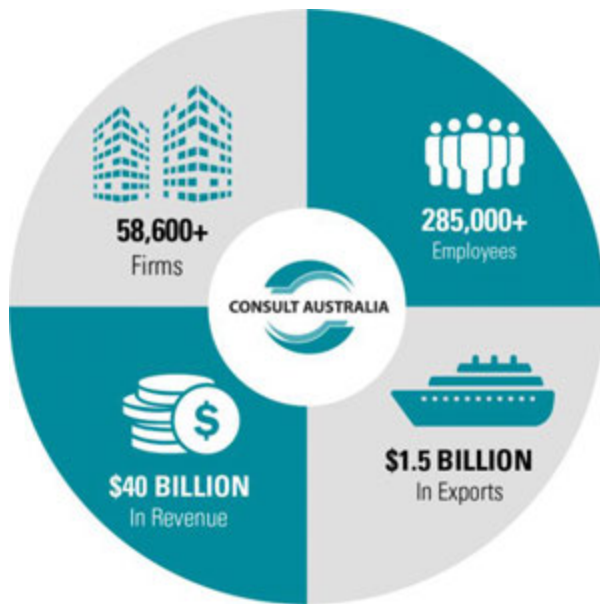
National Competition Policy Analysis 2025

SUBMISSION TO THE PRODUCTIVITY COMMISSION

Consult Australia

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About us

Consult Australia is the industry association representing consulting businesses in design, advisory and engineering, an industry comprised of over 58,600 businesses across Australia. This includes some of Australia's top 500 companies and many small businesses (97%). Our members provide solutions for individual consumers through to major companies in the private sector and across all tiers of government. Our industry directly employs over 285,000 people in architectural, engineering and technical services and many more in advisory and business support. It is also a job creator for the Australian economy, the services we provide unlock many more jobs across the construction industry and the broader community.

Our members include:



A full membership list is available on our [website](#).

Executive Summary

Consult Australia is pleased to provide this submission to the Productivity Commission as it develops advice to the Treasury for the following:

- an occupational licensing scheme that provides for labour mobility nationally
- adopting international and overseas standards in regulatory frameworks and harmonising regulated standards across Australia
- any other reform options identified as a priority during the study.

It is noted that this National Competition Policy Analysis 2025 is taking place at the same time the Productivity Commission is conducting five inquiries into reforms to promote productivity growth, therefore, this study and those inquiries are intended to complement one another. This is supported as Consult Australia is also submitting to the Commission's *Creating a more dynamic and resilient economy* inquiry. For completeness, it is worth noting that Consult Australia has already submitted to the Treasury on the National Competition Policy in September 2024 – [our submission is available here](#).

In summary, Consult Australia suggests the following:



Realise occupational mobility for engineers across Australian jurisdictions

Automatic deemed registration under the *Mutual Recognition Act 1992* (Cth) has not realised its purpose and is causing a significant productivity drain on businesses of all sizes and impacting projects. A simple amendment to the definition of 'home State' would better reflect modern work practices and realise occupational mobility for highly skilled registered practitioners. Over \$54 million could be saved if occupational mobility were realised for existing registered engineers.



Champion quality standards

Ensuring building integrity and consumer confidence in buildings involves many parties with access to quality standards. Continued investment in developing international standards to the local context should be prioritised, as should regular updates to the National Construction Code. Free access should be provided to Australian Standards referenced in legislation and building codes.



Support commercial outcomes

Businesses of all sizes face significant productivity loss due to regulatory complexity, impost and inconsistency, as well as when market behaviours that negatively impact competition go unaddressed. Consult Australia suggests refining key regulations to improve market behaviours, enabling various businesses to participate.

Realise occupational mobility

The federal government should amend the 'home State' definition in the *Mutual Recognition Act 1992* (Cth) to remove a barrier to occupational mobility, delivering over \$54 million in savings for businesses with registered professional engineers that work across state borders.

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

Consult Australia was supportive of the amendments to the *Mutual Recognition Act 1992* (Cth) in 2022 that facilitated 'automatic deemed registration'.

Mutual recognition, automatic mutual recognition and automatic deemed registration:

There is sometimes confusion between mutual recognition, automatic mutual recognition and automatic deemed registration. For clarity:

- Mutual recognition has been in place in Australia for decades and allows for one jurisdiction to recognise occupations from other jurisdictions. Generally, the worker still needs to apply to the second jurisdiction to be recognised, pay a fee, and there is usually an assessment process. See Part 3 of the *Mutual Recognition Act 1992* (Cth).
- Automatic mutual recognition is the national scheme that allows workers to use their 'home State' registration to work in another participating jurisdiction.
- Automatic deemed registration is the process by which automatic mutual recognition happens, so that the worker with an eligible occupation can be considered registered in another jurisdiction to perform the same activities without further application processes or fees. See Part 3A of the *Mutual Recognition Act 1992* (Cth).

In this submission, Consult Australia uses 'automatic deemed registration' because it is this process that is currently not working to achieve occupational mobility, and which, if it functioned, would realise the 'driver's licence' type approach wanted by businesses.

The automatic deemed registration scheme was intended to reduce costs for the individual and avoid the often lengthy and administratively burdensome registration process in a second jurisdiction. Unfortunately, true occupational mobility has not been realised because the legislation (as drafted by the Commonwealth for implementation by states and territories) has a significant barrier – the definition of 'home State'.

The issue

Section [42D of the *Mutual Recognition Act 1992* \(Cth\)](#) allows for automatic deemed registration where a person registered in their 'home State' to carry on activities covered by their occupation can carry on those activities in a 'second State' (where the second state also requires registration for their occupation). Section [42A of the *Mutual Recognition Act 1992* \(Cth\)](#) defines 'home State' as meaning:

- (a) the State in which the person has their principal place of residence;
- (b) the State in which the person has their principal place of work for the occupation.

This definition is too restrictive and does not allow sufficient flexibility in the current environment when it comes to professional engineering registration. If automatic deemed registration worked effectively, the jurisdiction where the person lives or works would not be relevant so long as they hold a registration that can be recognised.

The services provided by professional engineers can be provided remotely, with the majority of Consult Australia members providing services in more than one jurisdiction (including sole practitioners and small businesses with only one office location). There are many professional engineers providing services in Australia who hold a registration that is not for their 'home State'.

A quick snapshot of engineering registration around Australia:

- **Registration for all industry sectors**

Since 1930, QLD has had government professional engineering registration for all industry sectors and was the only jurisdiction with it for many decades.

In 2021, Vic introduced its government registration for professional engineers for all industry sectors and then the ACT enacted its scheme in 2024.

- **Registration of engineers in the building sector**

NSW and WA have schemes to license engineers working in the building sector. Tas has licensing obligations on engineers working in the building sector, and the NT has some certifying engineer requirements.

It is noted that SA is currently developing its engineering registration scheme.

Consult Australia has been highlighting the significant business impact of registration for many years, particularly when businesses work across jurisdictions. Automatic deemed registration is not achieving occupational mobility for businesses working across state/territory borders.

An example of the issue:

Sarah is a professional engineer at a consultancy business based in SA and works on class 2 building projects for NSW, so she holds a registration in NSW. The business is starting to provide services to Vic and wants Sarah to work on Vic projects (still from the SA office).

Sarah cannot seek automatic deemed registration to deliver her professional engineering services to Vic, because her first registration is for NSW, which is not her 'home State'.

Further, when SA does introduce professional engineering registration, Sarah will not be able to utilise automatic deemed registration to get registered in SA, even if she holds registration in both NSW and Vic, because neither is her 'home State'.

Note: The Vic professional engineering registration scheme requires registration if you work in Vic or for Vic (therefore covering professional engineers based in other jurisdictions). This does not impact the 'home State' definition in the Mutual Recognition Act 1992 (Cth). Vic is just being clear about when it expects a professional engineer to be registered in Vic. This is a separate question from a person's 'home State' for automatic deemed registration.

The solution

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

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

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

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

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

One risk with this option is that where multiple jurisdictions have in place a relevant registration scheme (including the individual's 'home State'), it would allow an individual to choose the jurisdiction of their first registration, arguably choosing an 'easy' registration. Considering engineering registration, this would be a minimal risk as jurisdictions tend to develop largely consistent schemes. Therefore, there would be little advantage for an engineer 'shopping' for their first registration.

2. OPTION 2 – Modify section 42A of the Act

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

We also propose a transitional arrangement for all individuals currently registered where no 'home State' scheme commenced before this automatic deemed registration was in place – see our proposed subsection 42A(3)(c) below. This transitional arrangement would permit a person holding registration on or before a set date to rely on registration in the 'first State' as per the definition used in subsection 16(3) of the Act. Consult Australia has proposed that the date be 30 June 2021 to cover professional engineers in NSW and Vic who already held a Qld registration before those two states introduced their schemes. This would also benefit professional engineers in other jurisdictions that introduced schemes after this date.

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

42A Mutual recognition of activities through automatic deemed registration

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

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

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

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

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

- (b) If the person's home State has no relevant occupational registration or licensing scheme in place, the person can rely on **first State** of registration.

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

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

The cost and productivity benefits

Consult Australia members have noted the significant financial and administrative costs as well as productivity lost through the lack of a driver's licence type scheme for professional engineers.

The cost of separate registrations (e.g. mutual recognition instead of automatic deemed registration)

In 2021, Consult Australia estimated the cost of the problematic drafting if businesses were to register their professional engineers in second jurisdictions and be required to pay the fees in those jurisdictions – this was based on the commencement of the NSW and Vic schemes only:

A sample survey of our member businesses that provide engineering services indicates that in 2021, around 77% employ professional engineers who are registered in a jurisdiction where they do not principally live or work.

At the time, the Board of Professional Engineers of Qld noted that 5,414 engineers registered under that scheme were not based in Qld. This equated to over \$27 million in immediate cost for these registered individuals, assuming they all sought registration in either Vic or NSW when those schemes commenced and up to over \$54 million if they sought registration in both states (based on registration costs in 2021).

It can be assumed that this cost has grown since 2021, both in Vic and NSW, but also with the introduction of government registration in other jurisdictions for professional engineers.

It is common for businesses to pay for the registration of their professional engineers during employment. Again, in 2021, Consult Australia gathered case studies of the cost of registration for a sole practitioner, a small business with 5 registered professional engineers and a large business with 71 registered professional engineers:

Almost \$14,000 for a sole practitioner (for a 3-year registration)

A significant proportion of consultant sole practitioners provide their services across Australia, including specialists where the capacity and capability are not available in the relevant jurisdictions. These professional engineers provide services to both private and public clients.

For example, it is estimated to cost a Consult Australia sole practitioner member business, that is a professional fire engineer, \$13,952.36 to be registered for 3 years in QLD, NSW and VIC (in 2021).

This is a significant cost impost on a sole practitioner business.

Almost \$70,000 for a small business with 5 registered professional engineers (for a 3-year registration)

The majority of small consultancy businesses in Australia provide services in more than one jurisdiction.

For example, one Consult Australia small business member is a structural engineering business that employs 22 people, 5 of whom are professional structural engineers who are currently registered in QLD. The estimated cost of having those 5 engineers registered in QLD, NSW and VIC is \$69,821.80 for three years (as at 2021).

This is a significant cost impost on a small business.

Over \$990,000 for a large business with 71 registered professional engineers (for a 3-year registration)

All large consultancy businesses in Australia provide services in more than one jurisdiction.

For example, one Consult Australia member is a large multidisciplinary company that employs 485 staff, with several hundred engineers, 71 engineers employed were registered in QLD in 2021.

The wider policy of the business at the time was that once an engineer achieves Chartered Engineer status or equivalent (via IChemE, IStrucE, etc) they then register in QLD (as the only government system at the time). This policy gave the company flexibility in staffing on projects. The business noted in 2021 that this policy would likely need to be reviewed as other engineering registration schemes come into play, because the company cannot afford to register all employed engineers in all jurisdictions where the business provides services.

The estimated cost of having these 71 engineers registered in QLD, NSW and VIC is \$990,617.56 (as at 2021).

This is a significant cost impost, even on a large business.

Consult Australia members have advised that the above costs have risen since 2021. Not only have the mentioned jurisdictions increased the cost of registration, but more jurisdictions have introduced professional engineering registration.

It should be noted that the above is just the financial cost, however, there is significant productivity lost by the sheer application process in each jurisdiction where automatic deemed registration is not fully realised.

Other costs and productivity impacts

Businesses often need to transition staff at short notice when projects are paused or stopped due to projects in other jurisdictions. Without functioning occupational mobility, it is difficult for businesses to 'follow the investment' and work nimbly.

Unnecessary compliance costs are also soaring for businesses as they try to track the different registrations held by the professional engineers they employ. The tracking is complicated by the fact that the duration of registration also differs between jurisdictions. For example, Victorian registration is for 3 years while QLD registration is for one year.

For each professional engineer holding registration in 4 jurisdictions, 7.5 hours are spent yearly on administration (completing documents and paying fees)

One Consult Australia small business member estimated that it takes 7.5 hours per year, per professional engineer, to renew registrations in 4 Australian jurisdictions. This includes necessary registration with Engineers Australia (the institute for the engineering profession) as it provides recognised continuing professional development and is an approved assessment entity for several government schemes, including in QLD and Vic. Below is the time breakdown per jurisdiction/entity:

Jurisdiction/entity	Admin process involved	Time spent (hours)
NT	Completing documentation and payment of fee	1.0
QLD	Payment of fee	0.5
Tas	Payment of fee	0.5
Vic	Completing documentation and payment of fee	5.0
Engineers Australia	Payment of fee	0.5
TOTAL		7.5 hours

Noting the administrative burden of registration, some Consult Australia members have invested in staff to manage the process, as indicated by a Consult Australia medium-sized business member below.

My business employs a full-time position at approximately \$125,000 a year to manage employee registration and accreditations, as well as relevant regulatory requirements and design panels. Having a 'driver's licence' type scheme for my professional engineers would not only help me obtain better value from this overhead elsewhere in the business but also give me more flexibility to deploy engineers to different projects across jurisdictions as needed.

From a Consult Australia medium-sized business member working across 2 jurisdictions in land development and infrastructure.

Champion quality standards

Continued investment in developing international standards for the local context is important, as are the regular three-yearly reviews and updates of the National Construction Code. Free access must be provided to Australian Standards referenced in legislation and codes.

Consult Australia is a Nominating Organisation to Standards Australia, which allows representatives from our membership with suitable skills and experience to assist in the development and review of standards, including developing international standards for the local context.

Building integrity is a key concern around the country and is a particular area where quality standards and codes are needed to achieve and maintain building integrity. Standards must be made freely accessible where they are required by law.

Maintaining quality

Quality standards are those that are up-to-date and which, when followed, help achieve a quality design and build.

Consult Australia shares the concerns of Standards Australia about the automatic adoption of overseas standards without an investment in ensuring those standards are suitable (and/or modified) for the local context.

Consult Australia also sees significant value to the industry and the community in the regular three-yearly reviews and updates of the National Construction Code (NCC), and the implementation of each revision. In November 2024, Consult Australia co-signed a letter to the Australian Building Ministers setting out the importance of the NCC:

The NCC sets the national standard for how we build in Australia. It covers matters from fire safety, structural integrity, health and amenity, accessibility to sustainability considerations, including emerging issues like embodied carbon, resilience to our changing climate, and increased frequency and intensity of natural disasters.

Since the early 1990s, the adoption of a single building code by state and territory governments has been a national project grounded in productivity and efficiency, to save businesses money from unnecessary and confusing duplication between states and territories and undue regulation, focusing on reforms that have a net benefit to society. The NCC also ensures an appropriate safety net for quality, comfort and cost to all Australians, the people who ultimately own, work and live in the buildings we construct.

Over time, the issues addressed in the design, construction and refurbishment of buildings have changed and evolved in response to the risks faced. From ensuring personal safety in case of fires and structural failures to addressing systemic defects in quality like waterproofing and condensation, there is a strong need to consider emerging challenges.

Constructing buildings and homes that will still be here in 40 and 50 years' time requires taking a long-term view of what appropriate minimum standards need to be achieved. Improving the energy performance of new homes and buildings will benefit Australians for decades to come and make the transition to renewable energy faster and cheaper. The energy performance requirements for homes introduced in NCC 2022 will lead to significant and ongoing energy bill savings for households, better health outcomes, better resilience to worsening extreme weather events and heatwaves, cuts to our emissions and less need for expensive generation and network augmentation.

Industry would benefit from certainty on implementation – therefore, it is recommended that there be a set date by which reviewed NCC editions are implemented by states, say one year. This would give industry time to get up to speed on the changes that impact their work before implementation. Arguably there is a stronger role for the Australian Building Codes Board and state regulators in more education for industry to also ease transition.

Ensuring access

Consult Australia, as a member of the Australian Construction Industry Forum (ACIF) agrees that Australian Standards referenced in the NCC must be freely available. Just as the NCC is made freely available, so should the standards referenced in the NCC.

Lack of free access to these standards has serious implications for the safety and quality of buildings. In the last few years, building integrity and confidence has been a major concern for the community, governments and industry. Enabling better access to Australian Standards is a practical way to address this issue and directly assist industry participants to understand and apply the standard requirements to deliver higher quality and safer buildings.

While a smartphone app was created by Standards Australia to provide sets of standards for around \$100, this is of little or no use to professionals, who often need access to many more standards referenced in the NCC.

Better access to standards is both readily solvable and relatively inexpensive. Accessibility improvements extend beyond affordability and must include better digital usability, searchability, and interactive functionality.

Support commercial outcomes

The National Competition Policy (NCP) should support commercial outcomes for the market by dealing with regulatory complexity, impost and consistency:

- All governments should reduce the complexity of regulation across different regulatory instruments and avoid duplication and overlap in regulatory and compliance processes.
- All governments should apply more rigour to regulatory market analysis.
- The NCP should include an explicit requirement on all governments to consider small business impacts, market conditions and competition impacts when developing regulatory policy.
- The NCP should have an extended legislation review principle to require competition to be promoted where it is in the public interest.

Further, the federal government should deal with market behaviours that negatively impact competition by:

- refining the Australian Consumer Law to ensure the misleading or deceptive conduct provisions protect consumers and small businesses and cannot be misused otherwise.
- maintaining the explicit exemption for the '*supply of services of a professional nature by a qualified architect or engineer*' from the fit-for-purpose consumer guarantee in the Australian Consumer Law.
- supporting all state/territory governments except QLD to amend civil liability legislation to explicitly prohibit contracting out of proportionate liability in professional services contracts.
- disallowing the practice of fee capping by clients and government agencies which overrides market forces.

The federal government should also support innovation and industry involvement 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 NCP provides clear direction to all governments to promote and encourage innovation.
- ensuring the NCP requires 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 and technologies.

Consult Australia details these recommendations in our [2024 submission to Treasury on Revitalising National Competition Policy](#) and would welcome a further discussion of these, but a summary is provided below.

Consult Australia supports the removal of barriers or impediments to competition that do not provide a net public benefit or that are unnecessary to achieve the desired public policy outcome. Our proposals draw on thought leadership including our:

- [Uplifting Productivity Report](#)
- [Confidence and Continuity](#) survey findings
- [Enabling Digital by Default White Paper](#)

- Model Client Policy (originally released [in 2018](#) and [re-released in collaboration](#) with the Australian Constructors Association in 2022).

Consult Australia holds that these recommendations support the delivery of improved competition outcomes for government, industry and communities.

Ensuring the NCP deals with regulatory complexity, impost and consistency

The call from industry for less complex and less duplicative regulation is not new.

Developing regulation

Consult Australia has seen several state governments develop unnecessarily complex regulatory systems in the rush to regulate. To demonstrate action, a government might draft and pass a broad-based act through parliament without detail and follow up with detailed regulations and codes of practice. We are increasingly seeing even less detail in the acts with regulatory requirements being split over the act and regulations (instead of being set out in the act and detailed administration information being in the regulations). Over time, acts are becoming too high level and the important details are left to be developed outside of the parliamentary system.

This complex structuring of regulatory requirements through acts, regulations and government documents imposes a burden on business, including an administrative burden. Splitting obligations across different regulatory instruments could create a convoluted approach, making it harder for professionals and the businesses that employ them to understand and comply. This can impact the markets a business is willing/able to participate in, especially smaller businesses without dedicated internal legal and compliance teams.

To improve market participation all governments should reduce the complexity of regulation across different regulatory instruments and aim to include all regulatory requirements in a single instrument, making it easy for professionals and businesses to understand and comply. Reducing the layers of regulation should have a positive impact on compliance costs by making it easier for businesses to understand and comply.

Administrative cost burdens can also be minimised by avoiding duplication and overlap in regulatory and compliance processes. 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.

Impact assessment

Consult Australia proposes that more rigour could be applied to regulatory impact analysis by state and territory governments to reduce complexity. For example, at the federal government level the Office of Impact Analysis provides a transparent review process which includes oversight from outside the agency proposing the regulation and brings a level of consistency across the whole of government. Consult Australia would support a similar oversight approach in states and territories.

Complementing this would be increased training of policy officers and advisors within government on 'better regulation' policies and impact analysis. The inclusion of industry perspectives, an understanding of market conditions and a consideration of competition impacts is essential to inform the design of regulatory and compliance processes. These can have a significant impact on small and nascent businesses and can sometimes be overlooked. Therefore, we propose that an explicit requirement is included to consider small business impacts, market conditions and competition impacts when developing regulatory policy.

Dealing with market behaviours that negatively impact competition

Australia's construction industry has a reputation for adversarial, problematic and uncollaborative contracting, primarily flowing from inappropriate risk allocation. A market with a high likelihood of claims and corresponding high insurance costs does not foster participation and competition. Behaviours contributing to the market conditions include:

- misuse of the ACL's misleading or deceptive conduct provisions
- clients requiring providers of professional services to contract out of proportionate liability
- inappropriate use of fit for purpose clauses in professional services contracts, which is inconsistent with the exclusion in the ACL
- fee capping by clients and government agencies.

Statutory reform recommendations formed part of Consult Australia's 2021 submission to and were quoted in the 2022 final report of the [Commonwealth inquiry into procurement practices for government-funded infrastructure](#). Positive action is yet to be taken.

The above practices discourage businesses from competing in the market. More detail on these can be found in our [submission to Treasury on the National Competition Policy Review](#).

Supporting innovation and industry involvement

Government procurement practices that hinder innovation and the long-term competitiveness of markets include the:

- practice of labelling bids as 'non-conforming bids'
- late engagement of industry on project design and scope.

Consult Australia has previously advised that members are dissuaded from providing innovation on government projects when bidding because any deviation has been considered a 'non-conforming bid'.

Connect with us

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Thanks to our Industry Champions

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

