NATIONAL OFFICE
Level 6, 50 Clarence Street
Sydney NSW 2000
GPO Box 56
Sydney NSW 2001

T. 02 9922 4711 **F.** 02 9957 2484
E. info@consultaustralia.com.au
W. www.consultaustralia.com.au
ABN. 25 064 052 615

CONSULT AUSTRALIA

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

8 April 2014

Mr Peter Harris AO
Chairman, Productivity Commission
Public Infrastructure Inquiry
LB2 Collins Street East
Melbourne VIC
infrastructure@pc.gov.au

Dear Mr Harris,

Thank you for the opportunity to comment on the Productivity Commission's Draft Report into Public Infrastructure. Consult Australia welcomes the production of this draft report, and regards this piece of work as a valuable addition to the existing body of work about infrastructure development, and the opportunities for Australia to realise better outcomes in providing public infrastructure. We note that many of our recommendations in our original submission have been adopted in this report, and strongly commend the Commission for doing so.

In responding to this draft report, we will recap some of the major points made in our original submission, as well as adding additional content in response to the findings, recommendations, and requests for further information of the draft report and the discussion of the issues at hand.

Given the vital importance of procurement as a determinant of the cost of infrastructure, as well as potentially a major burden for our membership, Consult Australia has recently commenced work on a couple of studies into the cost and nature of poor procurement policy and practices, and where opportunities for improvement exist. Many of our draft findings inform this submission, while further detail, including specific data, will become available upon final completion of these reports. This submission will draw upon the work already done for those studies, and Consult Australia will be happy to provide the Commission with a detailed briefing on their findings upon their completion and release, although that is scheduled to occur following the conclusion of this inquiry.

Public and Private Infrastructure Funding & Financing

The public ownership or otherwise of certain infrastructure is an important element of infrastructure policy. Consult Australia strongly supports Draft Recommendation 2.1 and associated policy measures that facilitate this recommendation. The recent agreement between the Commonwealth, state and territory governments to support asset recycling through financial incentives is a sensible policy. Taken in conjunction with well-founded, complementary changes to tax arrangements, this policy will help support states and territories to maximise the returns on their existing investments in assets. That the scheme only applies where the proceeds of a sold asset are utilised to fund new productivity-boosting infrastructure is an important feature that will help ensure tax payers' existing investments are maximised through new productivity-enhancing projects.

Consult Australia has long held that with appropriate governance and decision making frameworks, governments at all levels should be proactive in financing public infrastructure from their own balance sheets. With appropriate, long-term cost-benefit analysis these investments should provide a return for the tax-payer alongside significant broader economic and social benefits.

Consult Australia agrees with Finding 5.1 that the availability of private sector capital will not be a major obstacle to financing public infrastructure in Australia. Unlocking this capital to finance projects through effective risk allocation and additional public sector investment (as per Draft Finding 6.1) is the more fundamental issue. The potential for 'most projects' to be funded by private capital markets will not just be dependent on the 'right price', but also on the risk, and increasingly on the aggregate benefits and return associated with the delivery of multiple related projects. For example, major urban redevelopment facilitated through multiple new infrastructure projects and strategic integrated planning, like Barangaroo, or Perth City Link.

Governance and Institutional Arrangements

Consult Australia strongly agrees with Draft Finding 7.1. We have long argued for all spheres of government to put in place governance and decision making frameworks that deliver expert, independent and transparent advice to support long-term infrastructure decision making across electoral cycles. These institutional arrangements need to be delivered at all levels of government to maximise the strategic coordination and prioritisation of infrastructure across jurisdictions.

The absence of this governance increases business uncertainty and is an impediment to long-term investment and business planning where project certainty is undermined by changes in government. Similarly deficiencies in government procurement processes and skills are a major contributor to poorer outcomes on the ground.

At a state and territory level we advocate for establishment of, for example, Infrastructure South Australia, Infrastructure Victoria, and a stronger, more independent Infrastructure Queensland. These bodies, modelled on Infrastructure New South Wales and Infrastructure Australia, would provide expert and transparent advice to governments and industry supporting an interagency focus on transport, water, energy, communications and social infrastructure. These bodies would be well placed to support the design and delivery of 10 year fully funded priority plans for infrastructure, alongside an appropriate delivery schedule (inclusive of short, medium and longer-term deliverables for 2, 5 and 10 years). These would be supported by longer-term state and national plans and account for the availability of skills, the economic cycle and climate and demographic change.

Draft Finding 7.2 and Draft Recommendation 7.3 must be observed and implemented across government. Within those institutional arrangements outlined in Draft Recommendation 7.1 effective processes, procedures and policy guidelines for planning and selecting public infrastructure projects, including rigorous use of cost–benefit analysis and transparency in cost–benefit assessments is essential. Governments need to consider less easily quantified benefits that come with some forms of infrastructure investment, and deploy broader longer-term cost-benefit analysis. Cost benefit analysis should also be considered across packages of complementary projects, rather on a single project-by-project basis. Productivity benefits should not be lost based on unnecessarily restrictive CBAs capped at arbitrary 20 year timeframes when the life of the asset and the wider economic benefits for investors and tax-payers extend far longer.

Road-Specific Funding Reforms

Draft Recommendations 7.2 and 4.1 are strongly supported by Consult Australia, with the only exception that revenue generated from a user-pays model should be hypothecated to transport infrastructure in the broadest sense, not restricted to roads. This point of difference is important and acknowledges that roads operate as part of the broader transport system, and that funding for public transport, rail, buses, light rail, trams, and active transport infrastructure will likely include significant flow-on benefits for road-users, principally through reduced congestion. A transport system-based approach to assessing cost-benefit of these types of investments is essential. Encouraging modal shift away from roads where possible is one outcome that user charges will support, but which will be multiplied where the availability and amenity of other transport options is improved. Overseas experience has demonstrated that public support for a user pays model will be assisted where modal shift is encouraged, and where that shift is supported by revenue hypothecated from the user charges into complementary infrastructure.

Procurement Capability

The ability of public sector clients to properly manage the procurement process is an important factor in determining whether the "best practice" outcomes this inquiry seeks can be realised. A range of vital decisions rely on the technical and procurement skills of the individuals responsible, including:

- The choice of delivery model
- Design specifications
- Tender process
- Bid selection

Too often, our members report that particular problematic practices take place either "because it has always been done that way", or through a narrow focus on achieving lowest cost instead of optimum outcomes.

Consult Australia argues that a longer term, life cycle approach to procurement would reduce costs through eliminating variations, or requiring costly upgrades to infrastructure where the specifications were inadequate in the first instance. For example, the M5 East Motorway in Sydney was built to cheaper specifications when originally procured in the late 1990s, but less than 20 years later already requires costly duplication.

Our members have reported that the best outcomes are realised when the officer responsible for procurement has a combination of technical and procurement skills, and is engaged with the work at hand, rather than taking a "checklist approach" to procurement.

One possible solution to this issue is Consult Australia's proposal to establish a Procurement Centre of Excellence, that is responsible for developing procurement skills amongst public sector clients, and also making recommendations that inform government decision making. Further information about this proposal is available on our website[1].

Regarding the requests for information at 11.1 and 11.2, our forthcoming economic analysis of the costs of poor procurement policy and practices will offer quantitative data regarding the cost and extent of poor procurement skills. Anecdotally, however, this is a major issue that has led to systematic cost overruns and a range of less desirable outcomes.

Tendering Arrangements

The quality of tender documents is frequently a source of frustration to our industry. Firms frequently report briefs containing inadequate information, refusing to verify the data upon which a bid design will be based, or containing assumptions (or even errors) that require a "non-conforming" bid, amongst other concerns. For a firm considering a bid, the poor quality of tender documentation may lead to one of the following outcomes:

- Spending resources to test the brief's assumptions. These contribute to a greater design cost, and will likely be passed on to the client.
- Submitting a bid that doesn't produce the outcome the client really wanted, creating the need for project variations following engagement, and the increased cost this will create.
- Submitting a non-conforming bid that achieves the outcome the client was after, which may create probity concerns if other bidders weren't aware they had the option to do the same.
- Making the decision not to bid for the work, reducing competitive pressures, and reducing the options for innovation that might drive increased efficiency.

[1] http://www.consultaustralia.com.au/docs/default-source/election/Procurement_Centre_of_Excellence_-_20130430.pdf?sfvrsn=0

Accordingly, the proposals set out in the Draft Report at Draft Recommendations 11.1, 11.2, and 11.6 are welcomed as possible solutions to these issues. While a longer term solution lies in improving the skills of procurement professionals for relevant agencies, more immediate benefits can be realised from these proposals.

The quality of project briefs will be improved dramatically through increased investment in the initial concept design specification, including through engaging a consultant to develop or reverse-engineer the brief. It is vital that the brief be flexible enough to allow for innovation through contesting design specifications, but also that the brief verify the specifications put forward to save bidders duplicating that same work at great cost.

The suggestion that government should contribute to tender costs for all bidders in exchange for owning the design, addresses our industry's concern that the cost of bidding for work is high, and often prohibitive, even when the contract is won. This arrangement has previously been used under some delivery models with a high level of private sector involvement. If this arrangement is used for design and construct projects, there is also scope to reduce some of the onerous risk management practices that often occur.

Finally, on this issue, Consult Australia notes the Recommendation (at 11.5) that BIM be used as a means to help lower bid costs. Australia's infrastructure design firms are well advanced in their adoption of BIM, but it must be noted that the adoption of BIM demands significant upfront capital investment by industry and ongoing training. The March 2014 report from McGraw Hill Construction, *The Business Value of BIM in Australia and New Zealand: How Building Information Modelling is Transforming the Design and Construction Industry,* explores these issues in more detail. Whilst industry adoption of BIM in Australia is strong, in comparison to other regions, Australia is still behind the mark in terms of commitment to, and use of BIM. There is a great opportunity for us to learn from elsewhere in the world, adopt best practice and deliver value for money for solutions for all parties. Just as the United Kingdom has exported BIM capabilities through Europe, so to could Australia become a centre from which BIM expertise could be exported through Asia.

Risk Allocation

Consult Australia strongly welcomes the Commission's finding that risk management is most efficient when risk is allocated to the party or parties best able to manage that risk. In practice however, this rarely occurs. In our experience, risk is allocated according to bargaining power rather than ability to manage that risk. Indeed, we would argue risk is not so much managed as offloaded by parties that have an important role to play in managing risk.

Accordingly, the recommendation that government agencies should invest more in understanding site risks (at Recommendation 11.9) may address this concern, in that by undertaking a formal risk assessment, there may be less incentive to shift risk as a default position.

Consult Australia also recommends that the Commission consider the issue of proportionate liability in this context. Under proportionate liability, each party's liability is proportionate to the loss that they are responsible for. Proportionate liability was introduced following the crisis in the insurance market around a decade ago, and drives better and more efficient project outcomes. However, the ability to contract out in some jurisdictions has undermined this reform, and a range of stakeholders including Consult Australia has been advocating for a uniform national position prohibiting contracting out of proportionate liability.

At its October 2013 meeting, the Standing Committee of Law and Justice (SCLJ) released model provisions to achieve that prohibition, although with some fundamental flaws in the draft legislation. Consult Australia encourages the Commission to consider that implementation of this proposal as another possible recommendation to encourage the practice of each party being responsible for the risks they are capable of managing. We would be happy to provide our submission in response to this proposal to inform the Commission's understanding of this issue.

Data Collection and Benchmarking

Consult Australia agrees that there is value in improving the standard of data collection and benchmarking cost and value between Australian jurisdictions, and internationally. There is particular value for clients being able to understand ahead of the tender process, an optimal value of their project. If a bid is received that is dramatically lower than the optimal value, clients should treat that with suspicion, as there is the likelihood that some risks have not been properly accounted for.
At a broader level, Consult Australia proposes that this issue might be addressed through one of the procurement studies we are undertaking, and our policy proposal to establish a Centre of Procurement Excellence, which has already been canvassed, might be an appropriate mechanism to take on the responsibility of data collection and benchmarking.

Skills

The Commission's suggestion that a more predictable pipeline of major projects would be a very significant though partial solution to addressing skills shortages is very welcome. Draft Recommendations 13.1 and 13.2 are also supported.

With regard to registration or accreditation of engineers, the most important thing is that any scheme is nationally harmonised. There are red tape and other cost-to-business risks associated with schemes that are independent of each other—as would be the case if Queensland, the ACT and Western Australia (and perhaps others) implemented unique registration schemes—that must be examined in more depth before a final recommendation is made. In the absence of a harmonised registration scheme, the Commission's suggestion, that state and territory governments should consider more direct options to address the relevant issues observed with professional engineers in their construction industries, is sensible.

Workplace Health and Safety

Consult Australia notes Recommendation 14.1, which examines accreditation issues with a view to improving access of overseas firms into the Australian market. One other recommendation that we ask the Commission to consider is streamlining workplace health and safety (WHS) accreditation systems. Our members report that there are a range of registers listing the competencies of firms they might engage, with some run by public sector agencies, and others provided privately. These registers are costly to use and to be on, and duplicate each other's work. Streamlining the ability of firms to access a database listing the accreditation of service providers represents an opportunity to remove costly duplication and red tape, and reduce costs.

Conclusion

Thank you once again for the opportunity to comment on the Draft Report of this Inquiry. Consult Australia is confident that crucial drivers of inefficiency have been canvassed in this document. We would be happy to further discuss any aspect of this submission, and to provide the Productivity Commission with a briefing on the findings of our current and future research in this area. To further discuss any aspect of this submission, please contact Jonathan Cartledge, Director of Policy & Government Relations, or Robin Schuck, Senior Advisor, Policy & Government Relations.

Yours sincerely

Megan Motto
Chief Executive Officer