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Driving business success for consulting firms in the built and natural environment

7 February 2022

Director
Consumer Policy and Currency Unit
Market Conduct Division
Treasury
Langton Crescent
Parkes ACT 2600

Via email: consumerlaw@treasury.gov.au

Dear Director,

RE – Improving consumer guarantees and supplier indemnification provisions under the Australian Consumer Law

Thank you for the opportunity to comment on the Treasury's consultation into consumer guarantees and supplier indemnification provisions under the Australian Consumer Law. I am writing on behalf of Consult Australia member businesses.

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.

We support the ideas explored in the Consultation Regulation Impact Statement and agree that further education would be useful to ensure businesses and consumers understand the how and why of consumer guarantees and remedies. However, we wish to emphasise the importance of the exemption for architects and engineers from guarantees as to fitness for a particular purpose and ensure it remains protected.

The need for the fitness for purpose exemption for engineers and architects was described by Senator Haines in 1986:

The issue with regard to architects and engineers is we believe that they fall into a special category as far as their relationship to their client is concerned; that is that while they come up with designs, specifications and so on in accordance with whatever a particular client wishes, in the implementation of those specifications, designs, contracts and so on a fairly significant third party intervenes [...]

To imply that the architects or engineers are absolutely responsible and that if a building or whatever turns out to be unfit in some way for the purpose they are wholly responsible is to place a far more onerous provision on them, I would have thought, than is placed in any other dealings between another group of professionals and their clients or patients [...] ²

We hold that the Senator's remarks remain as accurate today as they were in 1986. An engineer/architect cannot guarantee the final build because there are too many factors beyond the control of the engineer/architect. The design is essentially a piece of advice (like lawyer's advice to a client) and therefore does not guarantee the final build (like a lawyer cannot guarantee the outcome

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of a trial). For these reasons, Consult Australia wishes to emphasise the importance of protecting this exemption.

If you would like any further information on our submission, please contact Kristy Eulenstein, Head of Policy and Government Relations at kristy@consultaaustralia.com.au or on 0405 195 830.

Yours sincerely,

A handwritten signature in black ink that reads "K. Eulenstein".

Kristy Eulenstein

Head of Policy and Government Relations