# ACCC Compliance and Enforcement Priorities 2027-28
# Feedback provided to the online stakeholder survey

## Summary of the Australian Institute of Architects response

The Institute responded to advocate for better procurement and contracting practices that support genuine competition, fair risk allocation, SME participation and diverse, resilient professional services markets.

## About the ACCC and the survey

The Australian Competition and Consumer Commission (ACCC) is the independent Commonwealth regulator that promotes competition and protects consumers under the *Competition and Consumer Act 2010*. Each year, it sets compliance and enforcement priorities to guide the issues and sectors it will focus on.

For 2027-28, the ACCC sought views from business, consumer, community, government and legal stakeholders on persistent and emerging harms, current priority areas and where its future efforts could have the greatest effect.

## Why the Institute responded

Architectural practices participate in procurement processes run by governments, institutions, developers and major contractors. The Institute responded because procurement and contracting settings can influence who can compete, how risk is allocated and whether small, specialist, emerging and regional practices can participate meaningfully.

Our response framed these concerns as competition, market access and fair contracting issues. The Institute advocates for open, transparent and proportionate procurement that enables genuine competition on capability, quality, risk and value.

## What the survey asked

The survey asked stakeholders to identify:

- the leading issues facing consumers and businesses
- sectors where competition or consumer harm should be prioritised
- the ACCC priorities that should continue in 2027-28
- new or emerging concerns and the most effective regulatory tools
- opportunities to improve consumer product safety and engagement with the ACCC

## Summary of the Institute response

## Competition and market participation

The Institute encouraged the ACCC to consider procurement and contracting practices affecting small and medium professional services businesses as an emerging competition issue. While individual requirements may have legitimate purposes, their cumulative effect can create barriers to market participation, restrict supplier diversity and transfer disproportionate risk to businesses with limited bargaining power.

Relevant settings can include large project packaging, turnover and financial capacity thresholds, insurance requirements, prior experience criteria, repetitive prequalification processes, short timeframes and extensive tender demands. Together, these settings may favour established incumbents and reduce participation by smaller, specialist, emerging and regional practices.

The Institute submitted that open, transparent and proportionate procurement supports genuine competition on capability, quality, risk and value. Where participation is unnecessarily restricted, markets may lose access to specialist expertise, innovation, supplier diversity and business resilience.

The Institute is also aware of broader competition and market participation issues affecting the built environment, including barriers facing smaller and specialist businesses and the growing influence of digital platforms and software services.

## Unfair contracts and uninsurable risk

The Institute supported continued ACCC attention to unfair terms in small business and professional services contracts, particularly where there is a substantial imbalance in bargaining power. Consultancy agreements can transfer risk beyond a consultant's reasonable scope, authority or capacity to control.

Many professional consultants are being asked to accept risks that are beyond their control or uninsurable, including unlimited liability clauses, broad indemnities covering the actions of unrelated parties, and contractual arrangements that transfer responsibility for matters outside their control.

The Institute consistently advocates against uninsurable obligations, including unlimited liability and consequential loss. Procurement should allocate risk to the party best able to manage it and avoid obligations that cannot be reasonably controlled or insured.

The Institute supported continued ACCC enforcement of unfair contract terms and encouraged greater scrutiny of contracting practices that transfer disproportionate, uncontrollable or uninsurable risks to small businesses and professional consultants.

## Unpaid professional services in tendering

Our response highlighted concerns about procurement processes that require architects to provide unpaid professional services before appointment. We distinguished these services, including design work, from normal tender information such as capability statements and fees.

Requiring substantive professional work through a tender process creates unrecovered costs and can discourage smaller practices from competing. It also affects productivity because practices must absorb these costs or recover them through other commissions, placing further pressure on business sustainability and workforce investment.

Diverse professional services markets are more resilient, innovative and competitive. Poor procurement settings can increase costs, reduce productivity and discourage participation across the construction sector.

## Sectors, priorities and regulatory tools

The Institute identified construction, professional, scientific and technical services, and rental, hiring and real estate services as relevant sectors from the options provided. It supported continued attention to unfair contract terms, environmental and sustainability claims, and competition in digital markets.

Professional services markets influence competition, innovation and quality outcomes across the economy. For architects, this can include requirements to provide unpaid design work during tender processes, excessive prequalification requirements and unfair contract terms imposed on small businesses.

Housing is both Australia's largest consumer purchase and one of its largest economic sectors. The Institute is also aware of broader issues affecting competition and consumer outcomes across the built environment, including misleading sustainability claims and transparency regarding building performance and outcomes. While these issues were not a primary focus of the Institute's ACCC response, they remain areas of ongoing interest and monitoring.

Priorities for 2027-28

- Unfair contract terms, particularly procurement practices that reduce competition
- Environmental and sustainability claims, including building performance misrepresentation
- Digital market competition
- Protection of small and regional businesses