



HIA Submission
2024 Statutory Review
Building and Construction Industry Training
Fund and Levy Collection Act 1990

Minister for Training and Workforce Development
17 May 2024





Contents page

Introduction	1
Executive Summary	1
Impacts on industry	2
Future consultation	2
Effectiveness of the Board	3
Relationship with industry and effectiveness of communication	3
Structure of the Board and its effectiveness in meeting the needs of different sectors of the industry	3
Attainment of the objectives of the Act	5
To improve the quality of training	5
To increase the number of skilled persons in the building and construction industry	5
The need for this Act to continue in operation	8
The resources sector	10
Introduce a capital value cap	10
Increase threshold at which the Levy applies	12
Resources integration	12
Review of levy revenue and CTF expenditure	13
Outstanding 2019 recommendations	13
Review of concessional expenditure threshold	13
Definitions	14
Streamlined definition of resources construction	15
Exemption for government work	15
Specify levy adjustments in regulations	15
Remove 'improve the quality of training' from the Act	15
Benefits and effectiveness in addressing diversity.....	16



Introduction

Housing Industry Association (HIA) takes this opportunity to respond to the 2024 Statutory Review of the *Building and Construction Industry Training Fund and Levy Collection Act 1990* (the Review).

Attracting, training, and retaining skilled workers is fundamental to the ability of the residential building industry to deliver the homes Australia needs. This is a framework made up of a multitude of components, however, there is no argument that effective education and training pathways, and insight into the rewarding prospects of a career in the residential building industry are critical. For an industry so dependent on skills and currently throttled by skills shortages, training becomes all the more important.

The imposition of a training levy across the building and construction industry in Western Australia is a long-standing feature. On the one hand the Construction Training Fund (CTF) levy can give businesses a sense of ownership of, and involvement in, training. The levy may also further stimulate training, as the industry and employers are directly involved in managing the training fund and identifying priorities. On the other hand, a levy of this type is essentially another form of taxation and cost on business, ultimately impacting housing affordability.

Notwithstanding this, HIA recognises and supports the benefits of ongoing training, and the levy is one way of facilitating this outcome. A careful balance must be struck between the cost burden imposed by the levy and the benefits to industry of dedicated resources targeting skills, training, and development. Therefore, any amendments to the *Building and Construction Industry Training Fund and Levy Collection Act 1990* (the Act), including the collection and distribution of those funds, could have serious implications for the building industry.

Broadly HIA takes the position that the Act is functioning well. While there may be areas where change could be implemented to improve outcomes with little measurable impact on the fund, HIA is largely supportive of maintaining the Act in its current form.

Executive Summary

A summary of HIA's position in response to the Review is set out below.

Impacts on industry

Although consultation is an integral part of determining the impact of regulatory change, the detailed impacts of any changes are only able to be determined with a regulatory impact statement (RIS). The cost of ongoing trade shortages and the potential impacts on housing affordability must be key considerations as part of a holistic analysis.

Effectiveness of the Board

It is understood that the Building and Construction Industry Training Board (BCITB) is currently composed of a diverse and competent range of representatives across industry. To ensure this is maintained into the future, HIA suggests further detail under the Act for BCITB members. Members with industry-specific training knowledge and governance experience are both necessary to ensure the objectives are achieved.

The BCITB and CTF foster a strong working relationship and effective communication with a broad section of industry, including those in the regions.



The resources sector

HIA strongly opposes adjustments to the inclusion of and contributions by the resources sector that may result in a reduction in funds available for training. There is opportunity under the review for the concessional expenditure threshold to be reviewed, to ensure it is not interpreted to avoid paying the levy.

Definitions

HIA supports the inclusion of definitions specific to the purpose and functionality of the Act within the Act itself and does not oppose the review of definitions that would see improvements in clarity. Further, prescription in the Regulations of 'construction work' exclusions and the levy rate, is also not opposed.

Quality

HIA supports the retention of improvement of quality as an objective of the Act, on the basis that quality is integral to the success of any training initiative. It is difficult to understand a need for this change given the inherent limitations by BCITF's realm of influence in its distribution of funding.

Diversity

HIA supports improvement of diversity in the building and construction industry, which has a range of benefits, not least of which includes improvement in industry's prospects to attract and retain workers. A strategic approach to addressing diversity in industry could be taken by CTF, with the primary focus remaining on supporting employers and their apprentices.

Impacts on industry

Any approach to regulatory reform should be based on objective research and evidence to ensure that the regulatory objectives are achieved, and genuine improvement is made with minimal impact on housing affordability. Measures to evaluate any proposed reforms should involve a RIS, including a cost-benefit analysis and investigation of alternative approaches, comprehensive consultation and targeted engagement with stakeholders and industry representatives.

It is difficult to determine the specific impacts of any changes, including hidden and consequential costs, without a comprehensive analysis. This is further complicated where multiple adjustments are made to the provisions, which may have a composite impact on the fund. Without detailed investigation, it is unknown whether these adjustments will have the desired effect in balancing the statutory costs to build, against the benefit to industry, or will ultimately have a detrimental effect on building and construction industry participants by increasing costs or eroding the fund.

It is also imperative that the impacts on housing affordability are properly considered in relation to any changes in the levy. These considerations should extend beyond the immediate cost impacts of the levy itself, to future trade and skills pipelines, training costs and subsidies, administrative burden, and red tape.

Future consultation

HIA welcomes the opportunity to engage further with government to ensure that potential outcomes of any proposed reforms on the residential building industry are considered.



Effectiveness of the Board

Relationship with industry and effectiveness of communication

HIA understands there is a good relationship between the current BCITB and the building and construction industry. The BCITB, and CTF more broadly, have demonstrated a willingness to foster engagement with industry across both metro and regional areas and maintain a visible and active presence.

HIA has a strong working relationship with CTF, including members of the Executive Team. Their regular involvement at events and in-person presence within industry supports the work of the BCITB and its members, promotes the work of CTF and reflects its strong position as a key industry stakeholder. HIA has found that CTF has been facilitative and responsive to the needs of industry in delivering on training and funding requirements.

Structure of the Board and its effectiveness in meeting the needs of different sectors of the industry

Current BCITB Structure

HIA is supportive of the current BCITB structure and its membership. The current composition strikes a reasonable balance across the different industry sectors, employer/employee representation, experience, and diversity.

However, over time, membership of the BCITB will change and the current balance achieved in membership of the BCITB will evolve. Presently the Act is not overly prescriptive as to the composition of the BCITB, however, to ensure the appropriate balance is maintained into the future, further legislative clarity may be beneficial.

Consultation requirements

Although BCITB members are ultimately appointed by the Minister, there is a requirement to consult with a range of employer and employee organisations, representing a range of industry sectors, as listed in s.10.(1).

The requirement to consult is critical to the engagement of stakeholders in the appointment process and their support and investment in the success of the BCITB and the fund, however the Act could go further in specifying that consultation is required specifically with the groups to whom the appointment relates. For example, if a BCITB position was to be held by a representative of the petroleum industry under s.10.(2)(b), then only those bodies associated with the petroleum industry ought to be consulted.

This change would work alongside further prescription around the composition of the BCITB, as set out below.

Industry expertise

The residential building industry is one of the most heavily regulated industries in WA. Those in the industry must manage a complex web of national, state, and local laws, regulations and codes ranging from planning, design, environment, health and safety to local authority inspection and certification and a multitude of building, electrical, mechanical, and plumbing processes. Industry participants must also comply with a legislative framework that spans a variety of issues including licensing, owner-builders, dispute resolution, builders warranty obligations and contractual requirements.



The industry is further complicated by a spectrum of business sizes and structures, from large project home builders to small family run operations, from companies and partnerships to sole traders. In addition, the industry is supported by a range of specialised trade contractors. More broadly, the industry also intersects with manufacturers and suppliers, various types of professionals and training providers.

Factors contributing to the cost of building and housing affordability, training and education, subcontracting arrangements and procurement are not properly understood by those outside the industry, even those with a background in commercial construction.

Both as a significant contributor to the fund, and a vital proponent and contributor to the education and training of the future workforce, the residential building industry should be directly engaged in the processes to attract, train, and retain that workforce. Strong representation from the residential building industry is fundamental to the proper operation of the BCITB and is necessary to optimise the results in its administration of the CTF and development of the Operational Plan.

HIA supports an amendment to the Act under s.10.(2) to require a BCITB member to have experience or expertise in the residential building industry. This will ensure that the unique characteristics of the residential building industry are properly considered, positive training outcomes are achieved, and would function in conjunction with the requested amendments to s.10.(1), as detailed above.

Training expertise

It is important that the BCITB is composed of members of the building and construction industry to ensure they can add tangible value. Equally important is that BCITB members have contemporary, industry-specific training expertise. As the fundamental purpose of the fund, the need for two or more BCITB members with training experience should be enshrined in the Act by amendment to s.10.(2).

Functions of the BCITB

Members should collectively have the capabilities to effectively carry out the functions of the BCITB. This is a necessary amendment to maintain the level of skill and expertise required to competently operate in an increasingly demanding regulatory environment.

Any prescription around the skills necessary to effectively run the CTF need not come at the cost of industry skill and expertise. As a result of the diversity across industry, there is an abundance of people with a broad range of skillsets across the various business scales and sub-sectors. In addition to their foundation of strong industry experience, they would also have the necessary governance skills and experience to ensure the requirements of the BCITB are met.

Any additional requirements for BCITB composition that may be included in s.10.(2), do not necessarily need to increase the size of the BCITB. It may be possible for BCITB members to be selected on the basis that they meet one or more of the requirements and this could be addressed in a provision to that effect. For example, a member of the residential building industry could also have experience in industry training and governance.

There is also potential for the existing independent positions under s.10.(2)(c) to be utilised to fill particular areas of expertise where the other members of the BCITB may be lacking.

Deputy members

Deputy members are currently able to be appointed by the Minister under s.11. While HIA opposes the appointment of deputy members in principle, it agrees that in the event that deputies may be appointed, it is appropriate that power to appoint is held by the Minister.



The Act is unclear as to whether deputies are permitted to represent more than one member of the BCITB and there is the opportunity for this to be clarified. Every member of the BCITB is appointed on their own merits, subject to the composition requirements set out in the Act and any deputies should also support this. Further, it would not be appropriate for a single deputy to appear for both employer-representative and employee-representative members given the divergent viewpoints typically held by each. Having deputies that represent more than one member could undermine the collective ability of the BCITB to carry out its functions.

Attainment of the objectives of the Act

The objects of the Act include the establishment of a fund to be used to improve the quality of training and to increase the number of skilled persons in the building and construction industry. If achieved, these objectives allow the residential building industry to become an attractive, reliable, and rewarding career choice with an education system that is set up to provide students with real life experiences and quality outcomes.

In addition to providing clarity on the purpose and function of the fund, the BCITB and related matters, legislative objectives also assist in measuring the effect and impact of the BCITB. Conversely, the BCITB's performance can also test the effectiveness of the objectives. Given that the BCITB is currently understood to be performing well, it could also be suggested that the objectives of the Act remain appropriate.

To improve the quality of training

HIA is unaware of an instance within the remit of the BCITB where the quality of training has not been improved as a result of CTF funding. Further commentary around improvement of the quality of training by the BCITB is included later in this submission.

To increase the number of skilled persons in the building and construction industry

HIA supports increasing the number of skilled persons in the building and construction industry as an objective of the Act. This is vital to the health of the residential building industry and feed directly into industry's ability to deliver homes to homeowners and respond to the demands on a growing housing shortage.

Apprentices in construction trade occupations account for around a third of all Australian apprentices and trainees, and around half of all apprentices in trade occupations. There are over 116,000 apprentices currently in training in construction trade occupations, which represents a considerable increase compared to the years leading up to the pandemic.

Across Australia the number of apprentices in training was steadily rising through to 2007, reaching a level of around 89,000 apprentices before the global financial crisis interrupted economic activity. The economic shock precipitated a number of policy changes, which included changes to support programs for apprenticeships and economic stimulus measures which aimed to boost construction activity.

The number of apprentices in construction trade occupations remained at a plateau between 2007 and 2011, before dropping to around 73,000 by the end of 2014. Apprentice numbers began to improve in 2015 but took until 2018 to return to the level reached in 2007. Apprentice numbers remained around 90,000 between 2018 and 2020, at which point the substantial fiscal support measures implemented during the pandemic lead to a significant increase in the number of apprentices in training.



Apprentices in training - Construction trade occupations

Source: NCVET, HIA



Western Australia

Training and retention of trades in WA is complicated by the high dependency of WA's state economy on the cyclical nature of the resources sector.

WA is still recovering from a lengthy period of extremely low activity in the housing sector between 2014 and 2020. This has impacted the amount of training provided over that period, and in combination with the attrition of skilled, trained workers, this has also impacted industry's capacity to train new workers. With a decrease in the pipeline of work, the profile of a career in the building and construction industry also suffered.

The dramatic overnight increase in activity in 2020, saw a significant boost in apprenticeships, but was perhaps stifled due to the abundance of work and the resultant lack of training capacity. In any event, this saw an uptick in commencements, with those commencing their apprenticeship around this time set to complete in the near future. Retaining and continuing to develop these workers is essential.

With the sustained high demand for homes in WA, CTF has and will continue to play a critical role in raising awareness of the opportunities available to those in pursuing a career in building, in the context of a highly competitive employment market. Despite the pressures and fluctuations in the WA economy and its impact on opportunities and capacity, there is a continual need to articulate and foster the growth of skilled persons in the industry, starting with keeping commencements high.

Initiatives

There have been a variety of initiatives by CTF to assist in bolstering the number of skilled workers in the industry in recent years, including:

- Mature Age Wage Subsidy;
- Increased support through COVID with additional payments to employers;
- Tool allowances for apprentices;
- Completion payments;
- Co-funding the wage subsidy;



- Building Women mentoring program;
- Driving lessons for those completing CTF scholarship program; and
- Mates in Construction, with particular focus on a representative walking slabs in residential building.

Currently it costs an employer an additional \$15,000 (approximately) to host a mature age apprentice in their first year alone. This often meant businesses were priced out of the opportunity to onboard workers simply based on their age, who brought an additional level of skill, experience, and drive to the role. The Mature Age Wage Subsidy covered the wage gap and as a result, mature age apprentice numbers increased. Although successful, an ongoing hurdle for this initiative is the transition and ongoing challenge for a mature age person to live on an apprentice wage.

Completion payments incentivise the continued commitment of apprentices to gain their certificate. Improved completion rates lift recognition and place additional value on trade qualifications, as well as increasing qualified representation and professionalism across industry.

While most funding for apprenticeships is directed towards employers, providing tool allowance funding to apprentices encourages them to invest in themselves by purchasing tools and safety equipment that allow them to be competent on site. This provides them with a boost in confidence, proficiency and goes some way to easing the additional challenges of living off an apprentice wage.

Disparity in participation

There is very heavy concentration of apprentices within a small number of occupations. Apprentices undertaking training as electricians, carpenters, and plumbers account for 82 per cent of apprentices in the industry. Due to this concentration, the increase in the number of apprentices in these three occupations have made the largest contribution to the increase in the overall number of apprentices in training over recent years.

The number of apprentices in training as electricians, carpenters, and plumbers, respectively, have increased by 31 per cent, 30 per cent and 21 per cent since the beginning of the pandemic related apprentice support measures.

Apprenticeships in construction with the greatest participation

<i>Occupation</i>	<i>Apprentices in training</i>
Electrician (General)	41,537
Carpenter	35,111
Plumber (General)	19,127
Cabinet Maker	4,966
Painter	3,036
Bricklayer	2,306
Roof Plumber	1,888
Plasterer (Wall and Ceiling)	1,662
Wall and Floor Tiler	1,417
Glazier	1,086

Source: NCVET (Sept 2023), HIA

These figures are not necessarily representative of demand from employers, with members of industry reporting critical shortages and compounding future challenges with the availability of various trades,



including bricklayers, plasterers, and tilers. This represents an opportunity for the BCITB to consider how it might seek to increase the uptake of apprenticeships for specific trades.

The need for this Act to continue in operation

HIA strongly supports the continuation of the Act.

In many ways, building and construction is a unique industry, in that its products are generally hand built by skilled tradespersons in an infinitely variable workplace, and there is very limited ability to substitute industrial processes and unskilled labour for skilled trades. By comparison to other industries, such as manufacturing, the availability of skilled tradespersons is fundamental to its operation.

Current shortages

Further to the shortages in labour and skills in the residential building industry, it is widely recognised that there is high demand for skilled workers in the construction industry more broadly, including commercial building, civil and heavy engineering construction. While the industry continues to provide training opportunities for new entrants into the labour force, growth of the construction workforce has not kept pace with the growth in demand for skilled workers.

Amidst the imbalance in the supply and demand for labour, businesses in the industry are experiencing intense competition to attract and retain skilled workers. Many businesses have reported being unable to access the skilled workers needed, which is characteristic of a labour shortage, the acuteness of which varies with respect to occupation and geography.

The HIA Trades Availability Survey is undertaken each quarter. The survey of businesses within the residential building industry asks respondents to rate the availability of each key trade occupation.

Survey results are used to create a quantitative index. An index reading below zero indicates that the net response is that trades are in shortage, and an index level further below zero indicates a more acute shortage. The chart below shows the time series of the HIA Trades Availability Index.

HIA Trades Availability Index - All trades



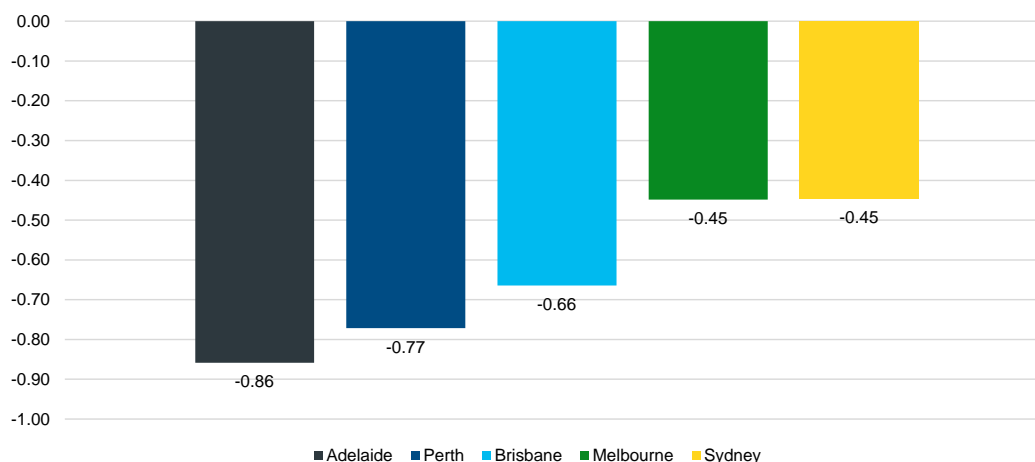
Businesses in the residential building industry have reported that key trades have been in shortage consistently since 2014, with a brief exception during the early stages of the COVID pandemic. In the years following the pandemic the availability of trades workers deteriorated sharply. While there has been an



improvement in availability since mid-2022, the index suggests that access to skilled trades remains worse than any other period in the last decade.

The survey undertaken in the March quarter of 2024 showed that the shortages of construction workers were most acute in Adelaide and Perth.

HIA Trades Availability Index - Capital Cities, March Quarter 2024



Although not represented on the charts, it is likely that areas across regional WA are experiencing shortages well in excess of those seen in the metro area.

The Trades Availability Index tends to have an inverse relationship with jobs advertisement data, whereby a deterioration in the Trade Availability Index coincides with an increase in the number of job vacancies advertised on online platforms. Data through to the end of April 2024 shows an elevated level of job vacancies in construction trade occupations, compared to levels observed prior to 2020.

Future availability

The housing industry should be seen as a career pathway, taking a person through an apprenticeship, and learning technical skills, to gaining experience and business understanding that enable and empower them to establish their own business. In their later career years, industry leaders and mentors should be encouraged and supported to remain involved in the industry to share their knowledge and develop the industry of the future.

Developing the workforce capabilities of the residential building industry is critical. Failing to support careers over the long term will diminish industry's labour force productivity and will have flow-on impacts on quality and affordability.

Impact of CTF in WA

HIA is a national organisation and has teams located in all Australian states and territories, as well as key locations in regional areas. HIA is also a Group Training Organisation and Registered Training Organisation (RTO). Despite the acute trade shortages in WA, it is HIA's experience and observation that CTF has an immense impact on the training landscape in this state, by enabling and promoting participation in training at all levels in industry.

This makes the Act, and the optimal functionality of the BCITB and CTF, fundamental to the continued growth and future sustainability of the building and construction industry. Both the current shortages, future



requirements, as well as the success of CTF's initiatives in WA, are evidence of the need for the Act to continue in operation.

The resources sector

HIA strongly opposes any moves to change the operation of the Act that would result in further exclusion of the resources sector in contributing to and benefiting from the fund.

Although most of the evidence of the flow of workers from residential and commercial construction to the resources sector would be anecdotal, it is known to be so widespread that it is difficult to understand how it could be a point of contention. For example:

- As a significant contributor to the training of apprentices in the residential building industry in WA, ABN Group reports a loss of approximately 50% of trades to the resources sector within 2 years of completion of their apprenticeships.
- Members seeking support from HIA's Contracts and Compliance team often report losing their trades and supervisors to "the mines", causing delays and cost increases on their projects.
- Similar reports have been received across HIA's various WA-based committees, from members in a variety of different business types and scales.

However, despite the experience of industry, the data is incredibly difficult to compile.

HIA also recognises that in an environment that is highly competitive for building and construction skills and experience, the BCITB must strike a delicate balance in satisfying a vast number of key stakeholders that all contribute to the fund.

Ultimately the resources sector benefits both directly and indirectly from training and skills development made possible by the CTF and should continue to make a fair contribution. Although there would be no change in the rate of transfer of workers from building and construction to resources, if the contribution parameters were to change the funding available to train those workers could be depleted. Given the prevalence and value of resources construction work in WA, the impacts of a change to the contribution framework may be significant and should be the subject of a RIS.

Introduce a capital value cap

HIA opposes the introduction of a capital value cap on construction work.

The 2014 Review

The Review of the Operation and Effectiveness of the Building and Construction Industry Training Fund and Levy Collection Act 1990 dated June 2014 (the 2014 Review) recommended withdrawing the current exemption from payment of the levy applying to engineering construction projects in the resources industry. The basis of this recommendation was largely due to the inequitable application of the levy and the benefits received by the resources sector from recruitment of skilled tradespeople, who were trained at the expense of the building and construction industry.

The 2014 review also suggested the introduction of an upper limit value cap of \$5 billion for levy payments on resources work.

The 2019 Review

The 2019 Review included feedback from the resources sector that the policy intent of the removal of the exemption was undermined by very high capital value projects, where a large proportion of the project value



was related to imported capital equipment. The 2019 Review pointed back to the suggestion under the 2014 Review for the introduction of a value cap. The reasoning behind this position is flawed.

Imported buildings and building components

Costs associated with imported goods and equipment are captured within any construction project, large or small. For example, homes have a range of incorporated fixed equipment and appliances that has been manufactured overseas and for which the cost of the item against the labour component is disproportionate. These costs are included in the building contract, the building permit value and are taken into account when calculating the levy.

Elements used in residential building structures are often manufactured off-site, including prefabricated structural components, extension modules and full homes. Transportable homes and granny flats have been built this way for many years and offshore fabrication is growing rapidly. Again, the cost of this work is taken into account when calculating the levy for all participants, except those projects subject to the high capital value cap. This is inequitable.

Passing on costs

In the case of any building and construction work, whether a small residential project or resources mega-project, the cost of the levy is ultimately passed on to the consumer. Arguably, the resources sector has an advantage with a higher level of foreseeability in their project feasibility and cost forecasting and has the potential to pass any necessary increases to consumers and businesses sooner. By comparison, residential builders are required to carry costs until such time as the contract allows them to claim a progress payment.

Existing exclusions

There is a swathe of exclusions for the resources sector presently listed in r.3(1)(e) and (2). These exclusions already allow a great deal of work in the resources sector to avoid attracting the levy, despite the considerable draw on equivalent or transferable skills from other sectors. The introduction of a value cap represents another avenue for the resources sector to benefit from, but avoid contributing to, the scheme.

Instead of increasing exemptions for resources work, HIA strongly supports a review of the effectiveness of these exclusions, to ensure there are no unintentional avenues for the levy to be avoided. For example, r.3.(2)(i) is so broad that it could capture a range of building work simply being classed as maintenance. Another example is r.3.(2)(j) that facilitates contract splitting.

Impact on industry

Moves to remove the capital value cap, at whatever threshold, will ultimately result in erosion of the funds available to the building and construction industry to train workers. This will lead to poorer outcomes for all involved, including end users and across industry, whether training workers directly, or accessing skilled workers from other sectors.

Alternative levy structure

An alternative proposal under the 2019 Review was that a tiered levy based system based on project value which is capped ensuring an equitable contribution by engineering construction projects in the resources sector. Reference was provided to the Queensland system, which was the subject of criticism as set out in the Changes to QLeave Building and Construction Levies Decision RIS 2020.

While HIA supports an uncapped single-tier levy, if a tiered levy system for very high capital value projects is under consideration, it should be subject to a cost-benefit analysis to understand the full impact of this change on the fund. The contribution from engineering construction projects in the resources sector will be



crucial in encouraging and improving skills development of tradespeople in the building and construction industry in our recovering economy.

Increase threshold at which the Levy applies

HIA does not oppose a review of the current minimum value for construction work, subject to a comprehensive cost benefit analysis. This assessment should include the efficiency in administering and enforcing levy collection for lower value projects, where the cost expended by the CTF in collecting the levy may outweigh the levy and benefit to industry.

Building cost increases

The exclusion of construction work valued \$20,000 or less was set under *Building and Construction Industry Training Fund and Levy Collection Regulations 1991* (the Regulations), r.3(1)(a) in 1999. With well-documented inflation and increased building costs since that time, and even just in the last four years, it would be difficult to dispute the merits of an increase to the threshold.

Links to other legislation

Importantly however, \$20,000 is a key figure in relation to building work in WA and is tied into a range of other building legislation, including:

- The *Building Services (Registration) Regulations 2011* r.13(1) specifies that 'builder work' is work that is valued \$20,000 or more and requires a building permit. This means the work must be carried out by a registered building service contractor.
- The *Home Building Contracts Regulations 1992* r.7 prescribes the minimum value for work requiring home indemnity insurance as \$20,000.
- The *Building and Construction Industry (Security of Payment) Regulations 2022* requires:
 - under r.4 construction contracts worth \$20,000 or more must be in writing and meet mandatory requirements; and
 - under r.11 construction contracts valued \$20,000 or more trigger the statutory deemed retention trust requirements.

Alignment of the monetary thresholds represent a point of efficiency in the administration of a business, particularly small-to-medium sized enterprises. In departing from the \$20,000 threshold, consideration should be given on the impact to industry in the misalignment with the other thresholds, some of which were established on the basis of another.

Intervals for review

Further consideration should also be given to the appropriate intervals for review and increase of the value threshold. Intervals should be spaced no less than 3 years apart, referenced to indexation, but kept at figures rounded to the nearest \$1,000. This will reduce confusion and minimise the impact on stakeholders in administering and contributing to fund.

It may also be appropriate to include a provision for BCITB assessment of any scheduled increases based on historical financial data and informed projections, in addition to Minister approval of any adjustments. This will ensure that extraordinary circumstances may be taken into account and discretion applied.

Resources integration

Consistent with HIA's position as articulated throughout this submission, the resources sector should not be excluded from paying the levy. It is imperative that the resources sector continues to provide a fair contribution to support construction industry skills.



The resources sector argues that it trains its own workers. In relation to process-based operations this may be the case where there are additional skills necessary beyond those of a building trade to carry out the relevant type of work. However, when the resources sector requires construction work to be carried out related to process and non-process infrastructure, the work is often contracted to construction companies who draw in workers from across the industry, including residential, commercial, and civil sectors.

At this point there has been sufficient time since the removal of the resources exclusion to ensure that this change is appropriate. HIA sees no further benefit in the continued contemplation of this proposal.

Apprentice numbers

While the construction contractors working for the resources sector do employ apprentices, it is unlikely that they are anywhere near the numbers employed by residential building businesses. Despite HIA's position, if any additional assessment is to be carried out with regard to the continued integration of the resources sector, data on the proportion of apprentices employed by heavy/civil engineering construction businesses when compared to the residential and commercial sectors should be obtained and made available as a part of any reporting.

Review of levy revenue and CTF expenditure

HIA reiterates its opposition to any changes that would impact participation under the Act by the resources sector and any further roll-over of past recommendations.

However, HIA is supportive of a review of the financial status of the levy, including revenue and demand for programs, with the view to optimising outcomes for all scheme participants.

Outstanding 2019 recommendations

Review of concessional expenditure threshold

HIA opposes the concessional expenditure threshold of \$10 million for alterations and additions to resources facilities under r.3(2)(j) and supports a review with the view to reducing or removing this provision. As set out in the 2019 Review it will be important for insight from CTF in monitoring the effect of this threshold, as a part of this process.

Unintended consequences

As identified earlier in this submission, the ability to split contracts solely for the purpose of avoiding the levy is a reasonable prospect. Although the clause appears to attempt to prevent this type of behaviour in its reference to work taken in aggregate, there is clarity required around the measure of remoteness of related contracts. If no permits or statutory approvals are necessary for the type of work carried out, there would be no mechanism for checking whether the exclusion is being misappropriated.

HIA requests further rigour around the drafting of the exclusion to prevent any unintended outcomes that result in non-payment of the levy.

Inequitable application

The purpose of this review, as set out in the 2019 Review, is to ensure the threshold has been established at a level that exempts all operations and maintenance activities that are not related to construction of a new resources facility. Is it reasonable that an exemption would be available to work that is genuinely operational in nature, but the inclusion of 'maintenance', particularly of buildings and structures, starts creating ambiguity.



By comparison, building and construction work for any other purpose, including almost all work on single residential and grouped dwellings, falls below the \$10 million threshold, and attracts a levy. This is inequitable, particularly where the work excluded under r.3(2)(j) draws from the same pool of skilled workers.

HIA also objects to the assertion under the 2019 Review that the levy should only apply to the construction of *new* resources facilities. There is no equivalent exclusion for renovation, alteration or addition works to existing homes or commercial buildings and this only broadens the divide between the resources sector and all other participants in the building and construction industry.

Definitions

Inclusion of a definition in the Act

HIA would be supportive in principle of the definition for ‘construction work’ and ‘building and construction industry’ to be contained within the Act, subject to further consultation and availability of specific drafting. This may work alongside an alternative approach to the definitions, that are more general and all-encompassing, however this should be subject to further investigation.

Currently the Act relies on definitions included in the *Construction Industry Portable Paid Long Service Leave Act 1985* (PLSL Act) and *Building Act 2011*. This is problematic for a number of reasons, including:

- Each piece of legislation is covered by a separate Ministerial portfolio and associated government departments.
- The purpose of one piece of legislation does not necessarily align with another. For example, the purpose of portable long service leave is to support on-site employees whose roles are project-based, whereas the purpose of a training levy is to support the building and construction industry in the development of a skilled workforce, which may apply to a broader contingent of workers.
- When one piece of legislation is amended, it has the potential for unintended consequences with another.
- Having definitions spread across various pieces of legislation becomes more challenging to navigate and understand.

An opportunity now exists to ensure that the integrity of the Act maintained and is no longer subject to external influences with potentially competing objectives. By including definitions within the Act that wholly align with the intended purpose of the Act and its functionality, there can be greater agency in optimising outcomes for industry.

Contributors and recipients

The definition of ‘building and construction industry’ and ‘construction work’ determine two key issues:

- The type of work for which the levy must be paid, s.21
- The activities and programmes that can be funded from the levy under the Operational Plan, s.8

The current linking of these definitions (via the PLSL Act definitions) has the potential to create ambiguity and disparity within the building and construction industry. Where the whole of project costs are taken into account in the calculation of the levy, this may include a variety of work carried out off-site and more modern methods of construction. Businesses carrying out this work may not be paying the levy directly, but the value of their work is contributing to the overall levy contribution rate.



There is also a benefit to direct contributors in a considered approach to broadening the scope for funded training under the Act. Builders and contractors who are paying the levy receive the benefits of an increase in skills and quality of workmanship of a broader range of their trades. This has direct commercial impacts for their businesses, including minimising the cost of rectification of defects and associated rework, reduction in disputes as well as improvements in consumer confidence and industry reputation.

Monitoring by CTF and the BCITB will be necessary to ensure that funding allocation is not out of step with the proportion of contributions attributable to the type of work.

Exclusion by Regulation

HIA supports in principle improvements to legislation that improve clarity, allowing stakeholders to easily understand, and effectively apply the requirements of the law with certainty. To this end, HIA does not oppose any and all exclusions from the levy to be prescribed in the Regulations.

Where construction work is not captured by the definitions under the Act, it may also be appropriate to allow for specific inclusion under the Regulations.

Streamlined definition of resources construction

In principle, HIA would not oppose a review of the multi-layered definitions that apply to work in the resources sector, on the basis that it enhances clarity in the application of the Act. However, HIA would not support amendments to the definitions that would serve to dilute the present coverage of the Act.

Further consultation is necessary on any proposed amendments including specific drafting, to ensure feedback can be provided and the potential for unintended consequences can be properly assessed.

Exemption for government work

Although the current exclusion for government work under r.3.(1)(d) applies largely to work carried out by local government workers, local government is also a beneficiary of the training provided to industry broadly and should be required to pay the levy. HIA would support the removal of this exclusion provided that the administrative costs related to levy collection did not outweigh the contribution. This could be addressed with any potential amendment to the threshold at which the levy applies.

Specify levy adjustments in regulations

It would not be out of step with the legislative approach in WA to prescribe the rate or project value threshold of the levy by Regulation. HIA does not oppose this change.

Remove 'improve the quality of training' from the Act

HIA does not support the removal of 'improve the quality of training' from the Act.

This reference occurs three times in the Act, including:

- the objects of the Act;
- s.7.(1)(ba) related to the functions of the BCITB; and
- s.8.(1) related to Operational Plans.

This reinforces the importance of quality, as a fundamental factor in any successful training initiative. Without meeting a level of quality, the integrity of the training is undermined, and the output of skilled, capable workers is compromised. Quality training is also a vital component of worker retention.



Both the 2014 Report and the 2019 Report provide commentary on this recommendation. This includes particularly, concerns raised with regard to the removal of quality from the CTF's responsibilities.¹

Also included in the 2019 Report is commentary that quality should be removed from the Act on the basis that other frameworks have been introduced since the Act came into force. For example, the Training Accreditation Council under the *Vocational Education and Training Act 1996* provides for the quality assurance and recognition processes for RTOs and accreditation of courses in WA. However, this overlooks the concept that outcomes, including quality in training, are driven by a variety of influences.

Arguably, every party involved in the training delivery chain carries a level of responsibility for quality. CTF's role is in the collection and distribution of funds on behalf of industry to be used for industry-specific training. So, while CTF, and by extension the BCITB, is not directly responsible for the provision of training and does not have a direct influence on quality in the same way as a training provider or regulator, it is directly responsible for enabling training to occur. This was reflected in the addition of s.7(1)(ba) in 2022.

Prior to receiving funding or becoming eligible for grants or subsidies, the applicant must meet CTF's requirements, or provide appropriate justification as to the merit of their proposal. It is determined by CTF whether the funds are granted. For example, in relation to employer grants CTF has final determination of both the eligibility and the value of the grant to be paid to an employer. It is difficult to understand how quality could be divorced from the BCITB's functions.

While there is no regulatory function for CTF there is a compelling argument that, as the holder of the purse strings, the BCITB plays a key role in controlling and therefore improving the quality of training across industry. There is a delicate balance for the BCITB in meeting this objective, such that it must ensure that employers, training organisations and other recipients of grants and funding, are providing quality training as conditional to the distribution of the funds. However, this must not come at a cost to industry, whether by increases in administrative burden, or otherwise dissuading employers to take on apprentices or carry out important facilitative functions to skills development.

CTF is also an important part of the feedback loop within the training delivery chain, providing data and information on the funding of training that can be used by Department of Training and Workforce Development, TAFEs, training providers and employers to improve the quality of training.

Benefits and effectiveness in addressing diversity

HIA supports increasing diversity in the residential building industry, which has a range of well-known benefits, and results in an increase in the skilled workforce. However, the BCITB's primary focus should remain on the attraction, retention and upskilling of all workers within the building and construction industry.

The BCITB has driven and contributed to a range of initiatives that seek to increase representation from a number of under-represented groups within the building and construction industry. Increasing and fostering diversity should continue to be a consideration when funding programs run by organisations but should not reduce support provided to apprentices and employers. Additional funding or incentives for attraction and retention of female or first nations apprentices may also prove beneficial.

¹ ACIL Allen Consulting, Review of the Building and Construction Industry Training Fund and Levy Collection Act 1990 Final Report to Review Chair, s. 3.2.7.