



# HIA Submission

**2024 Statutory Review**

***Building and Construction Industry Training Fund and  
Levy Collection Act 1990***

**Issues Paper – September 2024**

Construction Training Fund

4 October 2024





## Contents page

<b>Introduction.....</b>	<b>1</b>
<b>The levy .....</b>	<b>1</b>
Levy threshold.....	1
Adjustment threshold .....	2
Prescription by regulation.....	2
<b>The resources sector.....</b>	<b>2</b>
Introduction of a capital value cap .....	3
Resources integration .....	3
Review of concessional expenditure threshold.....	3
Definition of resources construction .....	4
<b>Scope of coverage.....</b>	<b>4</b>
Definition of construction work .....	4
Exemption for government work.....	5
<b>Objectives .....</b>	<b>5</b>
Quality of training .....	5
Increase the number of skilled persons .....	5
<b>The Board .....</b>	<b>6</b>
Composition of the Board.....	6
<b>Continuation of the Act .....</b>	<b>9</b>
<b>Diversity .....</b>	<b>9</b>

**Michael McGowan**  
Executive Director  
Email: [m.mcgowan@hia.com.au](mailto:m.mcgowan@hia.com.au)

**Libby Pracilio**  
Policy and Compliance Manager  
Email: [l.pracilio@hia.com.au](mailto:l.pracilio@hia.com.au)

**HOUSING INDUSTRY ASSOCIATION LIMITED**  
22 Parkland Road  
Osborne Park WA 6017  
Phone: (08) 9492 9200



## Introduction

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

HIA acknowledges the extensive work carried out to date by the Construction Training Fund (CTF) on the Review, including stakeholder feedback and actuarial assessment, as detailed in the Issues Paper. Further, the Issues Paper includes research, preliminary data and positioning that aligns in many instances with the feedback provided by HIA in its initial submission, dated 17 May 2024 ([May 2024 Submission](#)).

HIA refers to and reiterates its positions set out in its May 2024 Submission. Many of the responses provided therein remain relevant to this submission and as such, the two documents should be read together.

HIA maintains the Act functions well in its current form. While minor amendments may be beneficial, such as decoupling of definitions in other legislation and clarification around existing exclusions, care must be taken to ensure the functionality of the Act is not undermined for the sake of change.

The cost of ongoing trade shortages and the impacts on housing affordability must be a primary consideration when assessing any proposed reforms. With a number of matters yet to be resolved, ongoing consultation continues to be an integral part of determining the impact of regulatory change, in conjunction with a regulatory impact statement (RIS). This will be particularly important in relation to the collection and distribution of the levy, but assessments must 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.

HIA reiterates its strong opposition to any adjustments that would result in a reduction in contributions by the resources sector. As both a major contributor and beneficiary of the fund, the resources sector must continue to play its part in the development of skills in WA.

HIA also supports maintaining the existing objects of the Act, as well as the functionality and performance of the Building and Construction Industry Training Board (the Board), with the exception of minor improvements to ensure appropriate Board composition.

## The levy

### Levy threshold

The Issues Paper contemplates the opportunity for an increase in the threshold at which the levy applies, including interim actuarial findings to support an increase. HIA does not oppose an increase in the levy threshold on the basis that the final analysis reflects a positive cost-benefit outcome.

### Further assessment is required

Submissions are sought on whether the levy threshold should be increased within a range of \$20,000 to \$250,000. There is a notable difference between these two values, with the upper limit being in excess of ten times the lower limit. The broad range suggested makes it difficult to provide specific feedback.

HIA supports the engagement of actuaries to assess the impacts of changes to the levy. Based on the interim actuarial findings it appears the proposed increase in the levy threshold to between \$100,000 and



\$250,000 would not be unreasonable. However, with \$150,000 still separating the two values, this remains a reasonably broad project value range to consider.

Absent a comprehensive and complete analysis, it is challenging to determine the appropriate levy threshold, or even to narrow the range with confidence. To this end HIA believes there is merit in carrying out further assessment, including investigation of alternative thresholds within the suggested value range and this information should be provided to stakeholders in order to obtain relevant feedback.

It is necessary to ensure the appropriate balance is achieved between the reduction in administrative costs associated with managing low-value contributions for all stakeholders, including improvements in housing affordability, and the overall benefit to industry in the availability of funds for training. Inflation and increases in building costs in WA since the threshold was set in 1999 should form part of the assessment.

Intervals for review and adjustment of the threshold should be considered based on future projections. Again, balance is needed. While sparse intervals may result in the threshold losing relevance, intervals that are too frequent increase the risk of non-compliance and consequential regulatory burden.

### **Adjustment threshold**

At the date of release of the Issues Paper there appears to be no actuarial assessment conducted on maintaining or increasing the adjustment threshold. With multiple factors and potential outcomes to consider, it is appropriate for a robust cost-benefit analysis to be prepared.

One consideration in this assessment should be reducing the impact of price increases on simple, lower value projects, including affordable housing. Most new homes in WA currently cost more than \$250,000 to build and would still be subject to payment of the levy if the levy threshold were increased.

However, homeowners at this end of the market also face price increases for various reasons, including a range of factors outside the control of the contracting parties. Any additional costs associated with unforeseen circumstances impact these homeowners disproportionately to those in higher value ranges. By comparison, the value of the contributions to the fund for adjustments associated with lower-value projects are likely to be minimal in the greater context of the fund.

### **Prescription by regulation**

HIA does not oppose the prescription of both the levy threshold and the adjustment threshold in the regulations.

## **The resources sector**

HIA reiterates its strong opposition to any changes that would result in further exclusion of the resources sector in contributing to and benefiting from the fund, as well as any further roll-over of past recommendations. HIA supports the alignment of contributions by each sector and the proportionate distribution of funding for training. However, the circumstances in Western Australia complicate this seemingly simple approach.

As detailed in the May 2024 Submission, the residential building industry is a significant contributor to apprentice training yet experiences substantial loss of trades to the resources sector upon or shortly after completion of their apprenticeships. Although the transfer of skilled workers to the resources sector is widely known, data is difficult to compile, further complicating the proportionate allocation of funding to particular sectors.



Nevertheless, it will be critical to take these circumstances into account to ensure funding allocation is equitable. If not, the outcomes are potentially catastrophic. Initially that may include reduced trade availability, increased costs of building and maintenance, and further erosion of housing supply. In the long term, inadequate funding and personnel retention will result in irreversible erosion of skills and quality in building, reduced capacity for future training and lower industry resilience, and will have secondary impacts on the number of trades that go on to become builders and take on other roles within industry.

It is imperative that the resources sector continues to provide a fair contribution to develop construction industry skills. HIA remains 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.

### **Introduction of a capital value cap**

HIA opposes the introduction of a capital value cap on construction work. The Act already provides a sufficient basis for project owners to apply for levy reductions and exemptions.

Although interim in nature, the data included in Table 3 of the Issues Paper clearly demonstrates the impact of a capital value cap on the financial viability of the fund. This represents a reduction of more than 20% of the overall value of the fund, per annum. The removal of the tiered levy concessions in Queensland due to concerns around future financial viability provides further support for HIA's position.

Similarly, HIA sees no reason further avenues for exemption should be afforded to high value projects under s.25A, given the potential impact on the fund. The inclusion of criteria for reduction in or exemption from the levy simply opens the floodgates for applications and creates an impost on Board and CTF resources in their assessment and response.

### **Resources integration**

The actuarial analysis and commentary provided on page 10 of the Issues Paper related to a proposed differential levy rate for high-value projects unequivocally demonstrates the sizable impact on the viability of the fund that would accompany further reductions and exclusions for the resources sector.

HIA again calls for further review of the effectiveness of the existing exclusions to ensure they are functioning as intended and are not open to broad or unintended interpretation.<sup>1</sup>

### **Review of concessional expenditure threshold**

In its May 2024 Submission HIA highlighted the opportunity for unintended consequences as a result of legislative ambiguity around the concessional expenditure threshold, resulting in levy avoidance.

While HIA acknowledges the interim assessment carried out by the actuaries at [4], that reveals a relatively minimal impact associated with a change in threshold value, it is unlikely that the full impact of potential misclassification can be assessed due to a lack of data.

### **Inequitable application**

HIA reiterates the inherent inequity in the exemption of the whole or part of the resources sector from payment of the levy, where the levy remains payable by other sectors for the same work. There is no equivalent exclusion for renovation, alteration or addition works to existing homes or commercial buildings

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<sup>1</sup> See, e.g. r.3.(2)(i) enabling the classification of building work as maintenance; r.3.(2)(j) permitting contract splitting.



and this only broadens the divide between the resources sector and all other participants in the building and construction industry.

For this reason, HIA opposes any removal or increase in the concessional expenditure threshold, unless the exclusions are applied more broadly to all alteration and renovation work, including such works carried out in the residential and commercial sectors. This would be conditional on a RIS demonstrating minimal adverse impacts on the fund as a result.

### **Unintended consequences**

In addition, HIA echoes its call in the May 2024 Submission for additional rigour in the drafting of the exclusion provisions to avoid unintended consequences.

### **Definition of resources construction**

The Issues Paper provides no further insight into proposed alternative definitions for resources construction and arguably this matter may be better left until the conclusion of the Review. While HIA would not oppose the principle that the current multi-layered definitions in relation to resources work could be improved, it is not able to provide further feedback at this time with regard to this matter.

HIA would welcome the opportunity to engage with government on any future proposals to improve the definition, along with any other specific amendments to the legislation.

## **Scope of coverage**

### **Definition of construction work**

In its May 2024 Submission, HIA was supportive in principle of untethering definitions in the Act from those contained in other legislation, citing a range of complicating factors with the current approach. This aligns with HIA's recent submission on the MyLeave Review.<sup>2</sup> HIA maintains this position, conditional on future consultation on specific drafting for the proposed new definition and its functionality in the broader context of the Act.

### **Clarification of CTF powers**

HIA does not oppose clarification in the Act regarding CTF's ability to allocate its funds to achieve the principal objects of the Act by means it considers necessary and appropriate, subject to the requirements of the Operational Plan and approval by the Minister.

### **Diversification of funding**

HIA remains supportive in principle of the use of funding to provide training for a range of workers across the building and construction industry who contribute to the built form outcome, which may provide a range of benefits to industry, consumers, and government. While the businesses involved in this type of work may not be directly making the levy payment, the value of their work is included in the total project value forming the basis of the levy payable.

To facilitate this, it will be necessary to ensure the Act is amended to distinguish between the type of work for which the levy must be paid under s.21 and the activities and programs that can receive funding under s.8. The specific changes should be the subject of future consultation, including the release of Consultation Draft Amendments.

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<sup>2</sup> [HIA Submission](#) - Discussion Paper: Further consultation on the Review into the *Construction Industry Portable Paid Long Service Leave Act 1985 (WA)*, 19 August 2024.



Monitoring by CTF and the Board will be necessary to ensure funding allocation is proportionate to contributions attributable to the relevant type of work. This may require some additional reporting or data collection.

## **Exemption for government work**

Further to commentary provided in the May 2024 Submission, remaining concerns related to the removal of the exclusion of government work may be addressed by the increase of the levy threshold. HIA continues to support the removal of the exclusion on the basis that local government is also a beneficiary of the training provided to industry broadly.

## **Objectives**

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.

HIA takes the position that the objects of the Act remain relevant and does not support further amendment at this time.

## **Quality of training**

HIA maintains its opposition to the proposed removal of ‘improve the quality of training’ from the objects of the Act, the reasoning for which is provided in detail in the May 2024 Submission. This is in keeping with the position taken by the majority of stakeholders, as set out in the Issues Paper at [7].

Where positive steps are taken to effect legislative change, the amendments should have a functional impact. By contrast, if the desired outcome is to maintain the existing legislative scope and functionality, then it is difficult to understand why amendments would be considered necessary. By this logic, it is clear that the removal of ‘improve the quality of training’ from the Act will have an impact on the ability of the Board and CTF to influence quality of training and may restrict certain other actions or initiatives.

In light of opposition raised by stakeholders to the proposed change, the approach to reform should be reconsidered. Rather than pursuing the change regardless and trying to minimise the unintended impacts, HIA suggests a more appropriate approach would be to revisit the original reasoning for the proposed amendment and further explore the purported benefits to determine whether they are genuinely necessary.

## **Increase the number of skilled persons**

### **Wage subsidies**

Wage subsidies have and continue to be a strong incentive for WA employers to take on apprentices, where they otherwise may not have the capacity or means to do so. This is evidenced in data included in the Issues Paper at [8]. HIA strongly supports the ongoing use of wage subsidies to drive participation of both employers and employees in apprenticeship and other industry training programs.

The monetary support provided by wage subsidies creates a financial buffer that allows employers to focus more on providing on-the-job instruction, training, and support for apprentices, rather than their own productive, chargeable hours. This additional capacity is likely to result in better quality outcomes for



apprentices in their skill development and growth, in addition to improving retention and wellbeing outcomes.

In particular, the mature age wage subsidy has resulted in many mature age apprentices entering the industry, bringing with them a range of strong attributes, including life experience, focus and motivation to learn, established work ethic, as well as related and transferable skills. In the absence of the mature age wage subsidy, mature age apprentices often cost in excess of business means and these workers otherwise find it difficult to obtain a placement.

Although it is understood wage subsidies represent a sizeable proportion of expenditure for the CTF, it is important to acknowledge the context as a contributing factor. This includes the recent pandemic period and the prolonged preceding period of low building activity in the state. All available initiatives to stimulate industry and training participation to rebuild skills levels have been necessary to address conditions in both the labour and housing markets.

### **Alternative approaches**

It is also important to identify a number of other beneficial initiatives by the CTF that have been run concurrently, including:

- apprentice tool allowances;
- completion payments;
- 'Building Women' mentoring program;
- driving lessons for those completing CTF scholarship program; and
- Mates in Construction, including a representative visiting residential building sites.

All of these programs contribute to the achievement of the objects of the Act, ultimately improving the quality of training and increasing the number of skilled persons in the building and construction industry.

In addition to wage subsidies, HIA would support the use of CTF funding to assist with the cost of training, where there is perceived to be a shortfall in training subsidies from other channels. In addition, HIA would support the implementation of a broad range of other innovative approaches to boost skills and participation across industry. These approaches need not be mutually exclusive. A combination wage subsidies and alternative approaches could distinguish WA from other states and be an appropriate response to unique, state-specific market conditions.

## **The Board**

### **Composition of the Board**

HIA is supportive in principle of further prescription within the Act regarding the skills and expertise of Board members. While the current composition of the Board appears to be functioning well, there is the risk that over time the balance of representation will change.

The Act already prescribes membership from particular industry sectors, employer/employee representation and independent parties. However, it lacks prescription around specific expertise related to achievement of the objectives under the Act and further legislative clarity could be beneficial for future.

In its May 2024 submission, HIA identified the need for a dedicated Board position to ensure the residential building industry is represented, given the scale of training and quantum of contributions by the sector.





Further, HIA advocated for a dedicated Board position for a member with industry-specific training experience. HIA maintains its strong support for these amendments to s.10.(2).

### **Economic expertise**

HIA does not support the inclusion of a mandatory requirement under s.10.(2) for a Board member to have economic expertise and relevant qualifications. However, given proper management of the fund is a core component of the Board's role, the Minister may see fit to take into account a nominee's relevant economic, financial, or accounting expertise to contribute to the holistic composition and capabilities of the Board.

### **Legal expertise**

HIA does not support amendments to s.10.(2) to include a requirement for a Board member to have legal expertise and relevant qualifications.

Many boards have members with legal expertise, as legal knowledge supports the board in carrying out its functions, particularly given the ever-increasing demands of the regulatory environment. It is also likely that people with legal experience are naturally drawn to or viewed as appropriate candidates for board membership. However, HIA would prioritise members with industry-specific and relevant training experience as these areas of knowledge relate directly to the objects of the Act and are critical to the proper function of the Board.

It is also not necessary for members to have specific legal expertise in order to understand or have an appetite to utilise enforcement powers under the Act. Arguably Board members generally, in their understanding of the Act and duties as members, should have sufficient knowledge of the Board's enforcement powers, enabling them to instigate a strategy or targeted action in the event of non-compliance. This would be further supported by the CTF in carrying out its role, and the engagement of external parties where necessary to provide expert advice and services.

### **Number of members**

Members should collectively have the capabilities to effectively carry out the Board's functions, however HIA reiterates the requirement for members to have specific expertise or qualifications need not increase the present number of members on the Board. In some instances, single members may be able to satisfy two or more requirements for experience or skills. For example, a member representing HIA under s.10(1) is likely to have residential building industry experience and may also satisfy the requirement to have industry-specific training expertise.

Any prescription around the skills necessary to effectively run the CTF should 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 could also have the necessary governance, financial, legal, or other skills and experience to ensure the requirements of the Board are met. There is also potential for the existing independent positions under s.10.(2)(c) to be utilised to fill particular areas of expertise.

In addition, with the prescription of various additional areas of expertise for Board members, there is the risk of an excessive number of Board members and the scale of the Board becoming ungainly. This would not be conducive to timely and effective decision making and may serve to cloud the Board's focus on achieving its objectives.



## **Consultation requirements**

As identified in the Issues Paper at [12], the Minister is ultimately responsible for the appointment of Board members, under s.10. The current system of nomination is not determinative, but instead supports the Minister's role in deciding upon the composition of the Board.

HIA refers to its recommendations for more specific consultation in the May 2024 Submission, as well as the need for guaranteed residential building industry representation as detailed herein. Not only is it important that the system of consultation continues, but there is an absence of evidence to suggest it is not performing as it should or is in need of complete reform. The system may however, benefit from minor amendments.

Broad representation across the various sectors of industry is fundamental to the Board and CTF achieving positive outcomes in construction industry training. Targeted consultation is vital in reaching this outcome. Business and worker representatives, such as industry peak bodies and unions, are well-placed and readily aware of people with the necessary skills and experience to represent the industry at Board level and can make such suggestions to the Minister under the current framework.

Further, nominations are not limited to persons within the direct employ or membership of the relevant organisation. If at the end of a Board member's term, when organisations are required to submit nominations, it may be appropriate to include guidance on the scope and criteria for their selection of candidates. For example, there may be merit in noting specific expertise that may strengthen the nomination, such as those proposed to be included under s.10(2) including industry-specific training, or beneficial expertise such as financial, governance or legal.

## **Board diversity**

The Issues Paper at [10] invites feedback on the need to address diversity in the composition of the Board, under s.10. HIA points to its previous feedback that the Board appears to be functioning well, absent specific targets or quotas for diversity amongst Board members.

There is mixed data on the effectiveness of the use of targets and quotas to facilitate or mandate diversity, and there is a general understanding that these prescriptive measures should be employed only where there is an established need. In this instance, there does not appear to be a clear shortcoming in diversity amongst Board members that would warrant such changes to s.10.

With diversity being a core consideration in the composition of any group, including within modern workplaces, corporate and governance structures, HIA believes the Minister is well placed to ensure this important matter continues to be considered in appointment of new Board members.

## **Effectiveness**

### **Collection of levy and administration of programs**

The need to utilise enforcement powers depends on multiple factors including the frequency and severity of non-compliance. The underutilisation of enforcement powers as indicated in the Issues Paper suggests anecdotal non-compliance by one or more sectors.

For the residential and commercial building industries, the payment of the CTF levy as a pre-condition to the acceptance of the building permit application provides a system of co-regulation and ensures compliance. While HIA is unable to comment on issues of non-compliance that may occur in other sectors, there appears to be an opportunity that exists beyond the use of enforcement powers to introduce systems that facilitate compliance.



As indicated above in HIA’s commentary on the perceived need for legal representation on the Board, although it may not have used its enforcement powers in the past, the current Board now appears to be taking steps in this direction. HIA is also aware that CTF has been actively pursuing payments of the levy for price adjustments. While this does not necessarily amount to the use of its enforcement powers, it seems an appropriate first step in ensuring that the necessary payments are made.

If the Board were to utilise its enforcement powers, the focus should be on maximising the return on the associated cost and effort. That is to say, priority should be placed on the pursuit of debts of a justifiable quantum, or for systematic repeat and deliberate offences.

### **Industry relationship and communication**

Although HIA notes the Issues Paper requires no further feedback on industry relationship and communication at [13], HIA reiterates it has a strong working relationship with CTF and understands the same exists between CTF, the Board and broader industry.

## **Continuation of the Act**

HIA strongly supports the position taken by the Review at [11] that the Act should remain in place. HIA provided comprehensive reasoning to this effect in its May 2024 Submission. This is imperative to ensure the pipeline of workforce capability across the building and construction industry is maintained.

The need for the Act to remain relevant and effective is implied by its existence and facilitated by s.32., requiring periodic reviews. HIA believes there is no need to distract from the true objectives of the Act by expressly incorporating the “need for the Act to remain relevant and effective”.

HIA also sees no need for amendment of s.32(2)(c), to require the Minister to have regard to “the desirability of the Act to continue in operation” as a part of the review.

## **Diversity**

HIA reiterates its support for increasing diversity in the residential building industry. In addition, HIA reiterates its position that the Board’s focus should remain on the attraction, retention, and upskilling of all workers within the building and construction industry broadly.

Under the direction of the Board, CTF has contributed to and been responsible for a range of initiatives to increase diverse representation in the building and construction industry including the mature age wage subsidy and the Building Women mentoring program. This important work should continue, including additional funding or incentives for attraction and retention of female and First Nations apprentices.

While not expressly intended to address diversity, the existing support provided by CTF to encourage entry into the building and construction industry, including funding, programs and awareness campaigns, results in a more diverse representation of participants. Without CTF’s support, such as scholarship programs and assistance in obtaining drivers licenses, industry would undoubtedly see a lower representation across a range of groups.

Although the opportunity to improve diversity in the industry is unchallenged, the Issues Paper does not provide justification for legislative amendments or propose any particular changes beyond s.10. HIA would welcome the opportunity to participate in future consultation to explore measures to improve diversity within the industry.



### **Other areas of opportunity**

In addition to improving female and First Nations representation in industry, industry would benefit from increased representation from a number of other groups. Although not exhaustive, various other opportunities are listed below:

- Despite the mature age wage subsidy, there are still challenges for mature age workers in transitioning to an apprentice wage. Further initiatives to support the unique circumstances surrounding mature age apprentices will likely result in greater mature age representation.
- Regional participation in training and apprenticeships is also disproportionately low, due to the remote location of potential candidates and the prohibitive cost of travel and relocation associated with carrying out an apprenticeship.
- Work is also necessary to diversify participation across the various occupations within industry. HIA's May 2024 Submission identifies a number of occupations where representation in training and replenishment of skills is critically low. Bolstering participation in these areas is necessary to ensure critical trade shortages are avoided.