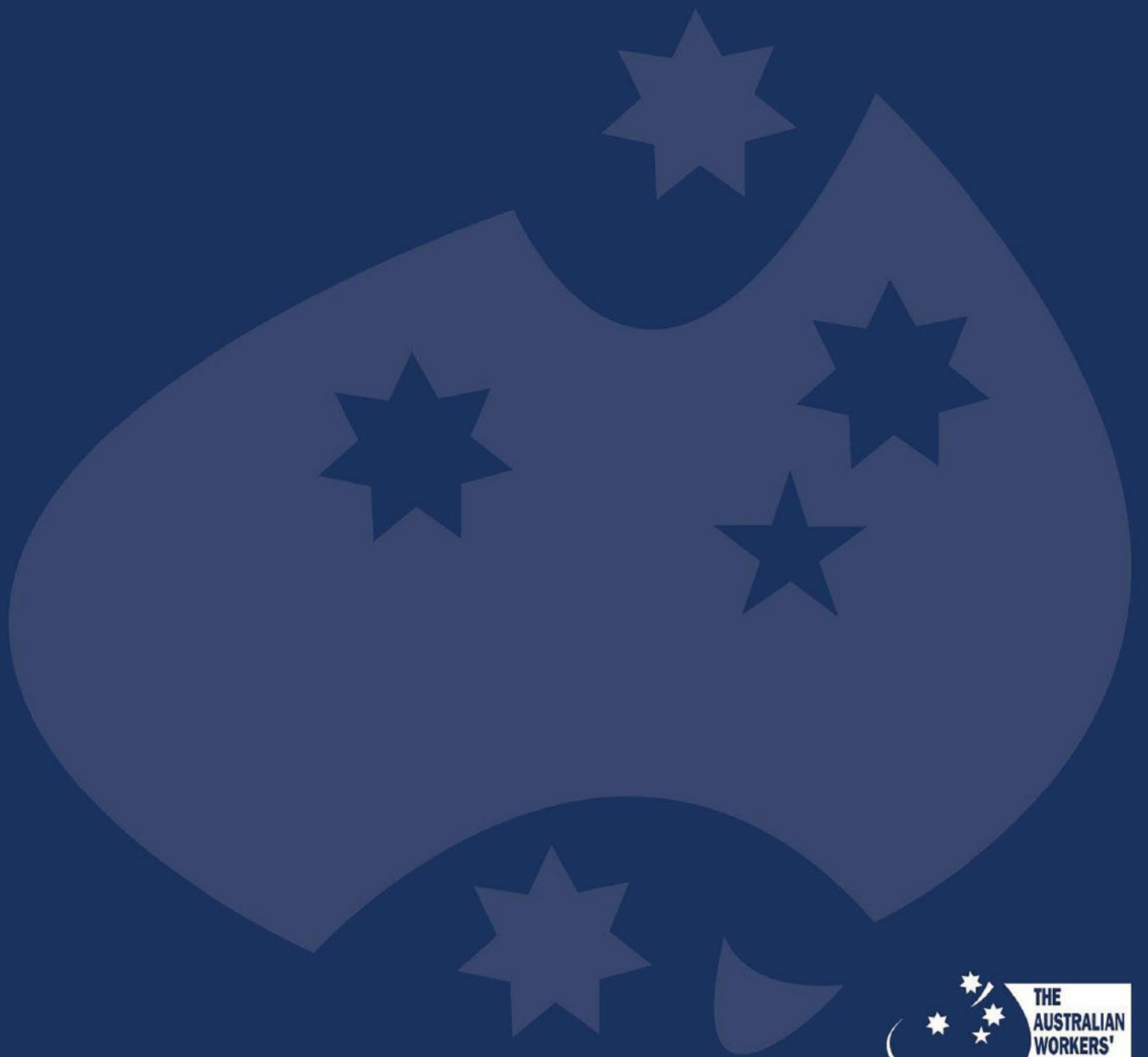


Consultation on the proposed Building and Construction Industry Long Service Payments Regulation 2022

**SUBMISSIONS OF THE AUSTRALIAN WORKERS' UNION (AWU) NSW BRANCH
JULY 2022**



AWU NSW Branch

A: Introduction

The Australian Workers' Union (**AWU**) welcomes the opportunity to provide a submission in relation to the proposed *Building and Construction Industry Long Service Payments Regulation 2022*.

The AWU is the nation's oldest union, and also one of its largest. The AWU has broad constitutional coverage in a wide variety of industries including building and construction in New South Wales. The building and construction industry is traditionally a very manually intensive industry, requiring employees to work jobs that are generally considered physically demanding and are completed in difficult environments. Consequently, the risk of injury is increased. The *Building and Construction Industry Long Service Payments Act 1986* (**the Act**) was enacted in an attempt to alleviate the disadvantage often caused by construction workers being required to take time out of the industry or moved between various construction projects.

These submissions comment on the *Regulatory Impact Statement: Proposed Building and Construction Industry Long Service Payments Regulation 2022* (**the Regulatory Impact Statement**) and *Public Consultation Draft Building and Construction Industry Long Service Payments Regulation 2022* (**the Draft Proposed Regulation**).

B: Prescribed Awards

Electrical Power Industry Award 2020

Clause 4 of the proposed Regulation adds a new award, *Electrical Power Industry Award 2020 [MA000088]* to the provision. The AWU supports this inclusion in the Regulation.

Updating 2010 Awards

Two of the prescribed awards in the Draft Proposed Regulation are expressed as being "2010" awards; proposed Regulation 4(a) (i) "*Asphalt Industry Award 2010*" (**AIA**) and Regulation 4(a) (ii) "*Building and Construction General Award 2010*" (**BCGOA**). Following the most recent Fair Work Commission Modern Award Review each of the Federal system prescribed awards are now "2020" awards and need to be updated accordingly. For example, the BCGOA needs to be expressed as the *Building and Construction General Award 2020* and the AIA needs to be expressed as the *Asphalt Industry Award 2020*. Subject to these amendments, the AWU supports the updating of the prescribed awards.

C: Non-service days

Exclusion of pregnancy-related condition

Regulation 7 in the Draft Proposed Regulation adds a new category of exclusion from the definition of non-service days relating to absences occurring because the worker "has a pregnancy-related condition." The AWU supports this extension of the exclusion to cover days when a worker has a pregnancy-related condition.

Exclusion of adoption of a child

The Draft Proposed Regulation could go further to exclude absences relating to the adoption of a child as a new category of exclusion so as to allow for parents going through similar challenges to be treated the same way. We refer to the treatment of pre-adoption absences within the National Employment Standards (s 22 *Fair Work Act 2009*).

D: Long Service Levies

The Draft Proposed Regulation proposes an increase in the threshold amount attracting payment of the levy from \$25,000 to \$250,000. This amounts to a 900% increase. A further proposal seeks to reduce the levy from 0.35% to 0.25%.

Proposed increase in threshold

The Regulatory Impact Statement suggests that an industry benefit arising from the increasing of the threshold is that it has the potential to improve housing affordability, create jobs, encourage business investment, and increase housing supply.¹ Although the AWU recognises the benefits to broadly improving the construction sector, we consider that the predominant focus of the draft proposed regulation should be to continue to allow employees to access to the benefits of the scheme. We do not accept that the savings to developers will necessarily be directed towards creating jobs or improving housing affordability.

There are many factors which contribute to the increase in mean price of residential properties in NSW, and the AWU is doubtful that the proposed increase of the levy threshold will make any meaningful change to housing affordability. It may be meaningful to consider the disparity between housing prices in inner Sydney and the outer suburbs to recognise that the cost of construction is not the predominant cause for the rise in housing prices.

The AWU does not support the proposed increase in threshold. However, the AWU recognises the administrative burden on local councils in determining and collecting the levy, and we would support a more moderate increase of the threshold, if any.

Proposed reduction of the levy rate

Given current economic uncertainty and rising inflation, the AWU believes that it is important for the scheme to remain financially secure. Although the fund is currently substantially in surplus, this surplus is important in ensuring that the fund remains available to employees who would otherwise not have access to the payment of long service entitlements. We would encourage leaving the percentage levy payments at their existing rates ensuring that employee and employer rights under the scheme remain intact.

The AWU does not support the proposed decrease in the levy rate. We advocate for the levy rate to stay the same at 0.35% in the 2017 Regulation.

Sincerely,

Tony Callinan
AWU NSW BRANCH SECRETARY

¹ Regulatory Impact Statement, *Proposed Building and Construction Industry Long Service Payments Regulation 2022*, p 16.