4 Byfield Street
Macquarie Park NSW 2113
PO Box 884
North Ryde BC NSW 1670
t (02) 9978 3333
f (02) 9978 3375
hia.com.au

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Building and Construction Industry Long Service Payments Regulation 2022
Policy and Strategy, Better Regulation Division
Level 22, 4 Parramatta Square
12 Darcy Street
PARRAMATTA NSW 2150

HIA Letter of Submission | Proposed *Building and Construction Industry Long Service Payments Regulation 2022* and accompanying Regulatory Impact Statement.

HIA takes this opportunity to comment on the Proposed *Building and Construction Industry Long Service Payments Regulation 2022* (Regulations) and accompanying Regulatory Impact Statement (RIS) released for consultation and feedback as a result of the regulations reaching its 5-year anniversary.

HIA's December 2021 submission (HIA's First Submission) in response to refinements to the *Building and Construction Industry Long Service Payments Regulation 2017* will also be referred to throughout this submission.

At the outset, HIA support a number of proposals outlined in the Regulations including:

- Reduction in the levy rate.
- Increase of threshold on the cost of erection of a building for when a levy becomes payable.
- Providing an option to attend appeal hearing via audio visual link.
- Updating outdated references.
- Simplifying language to improve readability.
- Modernising record keeping for employers and contractors via electronic means including serving annual statements to registered workers via a web portal.

HIA remain concerned with:

- The potential imposition of a penalty regime that could result in unjustified financial and regulatory burden on businesses, particularly small businesses in the residential building industry.
- The introduction of a moveable interest rate payable on unpaid levies which had not been foreshadowed.

In HIA's view, such changes have not been substantiated.

HIA elaborates on these matters below and provides responses to the specific proposals in the RIS.

Response to the Questions in the RIS

1. ***Are there any further amendments needed to the provisions in the proposed Regulation dealing with workers, service credits and long service payments?***

   Overarchingly, it is HIA's view that any changes to portable long service leave schemes should be directed towards:

   - Minimising administrative and financial burden on business; and
   - Encouraging workers to remain in the residential building industry.

   Further, HIA has continuously maintained its position that portable long service entitlements should only apply to those nominated trades and labourers engaged in undertaking onsite construction work.

   HIA would seek to be involved in any consultation should there be further amendments made.

2. ***Do you support the proposed change to the levy rate? If not, why not?***

3. ***Do you support the proposed change to the threshold level which attracts payment of the levy? If not, why not?***

   Yes, HIA supports both the reduction in the levy and the increase in threshold value.

   Whilst the RIS does not include details on the reasoning behind the specific figures proposed for the levy rate (0.25%) and threshold value ($250,000), HIA acknowledge the actuarial projection of surplus liabilities and asset provided in support of the change.

   HIA does however, see the need for a thorough financial assessment to fully understand the financial impact these changes could have on the fund. HIA would be willing to participate in a dedicated consultation on this.

4. ***Are there any further amendments needed to the provisions dealing with appeals?***

   No.

5. ***Is the web portal an appropriate way for statements and other documents to be served?***

   HIA does not oppose the use of web portal for service of documents. However, it is important that industry participants are thoroughly briefed and educated about the process. For example, how to upload documents such as statements, how to log in and access these statements, etc. This is crucial to ensure that the intended outcome of ease of access as well as process efficiency would be achieved.

6. ***Are the proposed penalty infringement notice offences and amounts appropriate and reasonable?***

   As illustrated in HIA's First Submission, HIA oppose proposals that would see penalties increased as well as adding an extra layer of penalties by way of imposing a 'pre-penalty' through Penalty Infringement Notices (PIN).

   Disappointingly, the RIS does not provide evidence that the current penalties are ineffective or that increasing penalties will achieve the objective of deterring non-compliance as outlined in the *Better Regulation Legislation Amendment (Miscellaneous) Bill 2021* under which these arrangements can be introduced.

   As highlighted in HIA's First Submission, HIA again urge the NSW Government to monitor the effectiveness of the current penalties prior to imposing a PIN regime. Furthermore, should PIN be implemented now, sufficient transitional period must be allowed to provide an opportunity to educate the industry. Discretionary power should also be given not to issue a PIN on a case-by-case basis.

Again, the RIS does not provide further data regarding the current rate of non-compliance and the effectiveness of existing penalties. Finally, no further consultation was undertaken to determine the appropriate dollar value of the PIN.

Other comments – Moveable Interest Rate

The introduction of a moveable interest rate payable on unpaid levies of 6% above the cash rate has not been previously indicated. The RIS fails to justify the need for such a change and without more HIA opposes this proposal.

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED

David Bare
Executive Director