



Potential Commonwealth Standards for the Construction Industry

Submission to the Department of
Employment and Workplace Relations

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Executive Summary

The Housing Industry Association (HIA) is the peak national industry association for residential building in Australia, representing a membership of over 60,000 businesses, including the overwhelming majority of the nation's volume, small and medium residential builders, renovators and trade contractors. HIA members span volume builders, small and medium residential builders, renovators, trade contractors, building product manufacturers and suppliers, and industry professionals, operating in every state and territory and represent the trades who construct the substantial majority of Australia's new housing stock.

This submission reflects the interests of that membership noting that these predominantly small and medium business operate under a materially different regulatory and risk profile to the commercial, civil and high-rise sub-sectors that generate the bulk of the conduct described in the *Potential Commonwealth standards for the construction industry Discussion Paper*.

HIA supports the objectives underlying the Discussion Paper and the broader work of the National Construction Industry Forum (NCIF) in promoting and supporting an industry that is lawful, safe, productive and sustainable. HIA has consistently called for durable, system-wide reform that improves conduct, productivity and community trust, strengthens compliance and universally lifts behavioural standards across industry. In April 2026, HIA welcomed the Government's announcement of this consultation as a significant opportunity to reset expectations across the industry, if implemented carefully and pragmatically.

Despite this HIA has reservations about the mechanism proposed in the Discussion Paper. A separate compliance instrument outlining a set of national standards, in addition to a Joint Industry Charter, is not necessarily the best approach in supporting industry in meeting and maintaining the agreed behaviours and expectations going forward. Particularly where what is proposed is complex, duplicative and of ancillary value to NCIF's *Blueprint for the Future*.

The Blueprint is a tripartite supported document, representing the shared commitment by government, industry and employee representative bodies to address the significant and long-term challenges facing construction as a whole, and supporting an industry that is safe, lawful, productive and sustainable. Its four threads correspond directly to HIA's *Values Statement for the Residential Building Industry*,¹ which together provides a practical and balanced roadmap to address poor workplace culture, strengthen compliance and lift standards across the sector.

The Blueprint recommends an industry-led Charter. It does not recommend Commonwealth-imposed construction standards. The intended purpose of the NCIF endorsed approach of a Charter is to develop, entrench and maintain industry support for best-practice benchmarks for performance, behaviour, transparency and accountability. This shared goal model is intended on fostering genuine and lasting construction participant buy-in, that does not simply duplicate or reframe existing legal and structural responsibilities and expectations.

HIA's concern is that the proposal outlined in the Discussion Paper towards introducing a distinct prescriptive set of Standards, which have not been drafted as part of this consultation process, represents a shift away from the agreed approach of an industry-led Charter recommended and supported in the Blueprint. It risks imposing additional layers of unnecessary complexity, burdens and barriers into the new framework, particularly for small and medium residential builders and contractors. HIA has, and will continue

¹ April 2026: https://hia.com.au/our-industry/newsroom/industry-policy/2026/06/hia-values-statement-for-the-residential-building-industry?srltid=AU7gw4VxB70dRc3RkbT4vQ4_NL8uiiY7unyskiTtKY-0Q9PQ9ROZSABo



to strongly caution against this outcome. Accordingly, HIA questions whether a lengthy and detailed set of Standards, in addition to the proposed Charter, is the best method of responding to the Blueprint and supporting genuine change and improvements for industry.

HIA's other primary concern is that the Industry Charter, a new and still undefined suite of national construction standards, and a parallel Secure Australian Jobs Framework (SAJF) and Supplier Code amendment, released within weeks of each other (with overlapping consultation timelines) do not address the core problem this reform agenda is responding to nor does it satisfy NCIF's broader objectives. The conduct described in the Discussion Paper is already unlawful. The gap is not in the body of law or in the number of statements of intent. Rather, it is a failure to enforce the extensive legislation, regulation and contractual protections that already govern the industry.

Accordingly, one of HIA's primary recommendations is the re-establishment of a single, independent, adequately resourced Regulator for the building and construction industry, with real investigation and enforcement powers over both employer and union-side conduct, together with a specialist dispute resolution panel able to act swiftly. This would give employers, workers and the community one clear point of recourse for the culture, behaviour and workforce issues the Government and Industry is jointly trying to address. It is also how the lawful, equitable, consistent and enforceable outcomes will be delivered for the construction sector.

Recommendations

Primary recommendations:

1. Rather than progressing a complex and detailed framework comprising of an Industry Charter and separate set of lengthy standards, the most effective approach would be to **progress a single instrument** that clearly and effectively sets out the minimum behavioural expectations for all industry participants and provide a framework for industry-led adoption of best-practice behaviour, culture and performance. The Charter, as refined through the NCIF concurrent consultation process, is the best mechanism to perform that function, and is the instrument the Blueprint recommends.
2. **Re-establish a single, independent, adequately resourced Regulator** for the building and construction industry, with real investigation and enforcement powers over both employer and union conduct. Its role would be to secure compliance with existing law and with whichever single instrument is adopted. It should replace, not add to, the present dispersed arrangements and should not create unnecessary additional compliance burdens for small residential builders.
3. **Defer progression of the Charter and Standards until the evidence is made available through the Queensland Commission of Inquiry and the Victorian Royal Commission into Victoria's Construction Industry.** No substantive design decisions on construction standards should be made until these comprehensive state-based processes have concluded and reported on their findings, which will have direct relevance and impact on any national Charter and industry standards.
4. **Make the Government's procurement assurances binding.** Despite commentary around enterprise agreement neutrality and no-preferencing, there is no binding commitment made by Government to this effect. HIA therefore calls on Government to confirm that access to Commonwealth-funded building and construction work will not be contingent on enterprise agreement coverage, and give effect to that in the Supplier Code, the Commonwealth Procurement Rules and funding agreements. This would remove industry concerns that have been raised as a result of the indicator-design risk already visible in the Secure Australian Jobs Framework consultation.



Supporting Recommendations

In addition to HIA's Primary Recommendations, the following supporting recommendations are provided in response to some of the questions and issues raised in the Discussion Paper:

5. Establish a specialist construction industry dispute resolution panel able to convene within 48 hours and make interim and binding orders, whether or not a regulator is established.
6. Prohibit the engagement of, and payment to, unofficial intermediaries and industrial fixers in connection with construction industrial matters.
7. Strengthen fit and proper requirements for officials of registered organisations and for individuals who hold real control or influence over a project or site, not for businesses as a class. Provide for permanent exclusion of proven bad actors in the most serious cases.
8. Strengthen whistleblower protections, including a confidential reporting channel to the Regulator that extends to employers, contractors and subcontractors who report coercion or other criminal behaviours.
9. Codify scrutiny of pattern bargaining, by requiring a statutory test for Fair Work Commission scrutiny of genuine, uncoerced consent in pattern and multi-employer bargaining, rather than relying on individual panel discretion and the scope of a particular application. The test must have express regard to a union's conduct across the whole of the relevant bargaining campaign, not only conduct directed at the named applicant parties.
10. Scale compliance obligations to business size, rather than value of work, and target them at the sub-sectors generating harmful and illegal conduct, rather than applying uniform obligations across the industry.
11. Reject the Discussion Paper's framing of labour hire as presumptively requiring justification, and reject any model that would have a regulator or standard determine the 'appropriateness' of labour hire use on a case-by-case basis.
12. Re-assert the right to engage in genuine independent contracting which is a hallmark of the residential building and construction industry.



1. Core Positions

1.1 Proposed framework of Charter and Standards is complex and unnecessary

HIA has concerns regarding the proposal for an interconnected framework of both an industry-led Charter and separate set of government-imposed behavioural standards.

HIA contends that despite commentary to the contrary in the Discussion Paper, the role of construction standards in addition to the overarching Charter, will be duplicative and create unnecessary complexity and confusion within Industry and the broader community.

The purpose of the Charter is to be the unifying framework that puts the Blueprint into action by entrenching a shared vision, goals and behaviours as the industry benchmarks for best-practice behaviour, culture and performance. It is intended to guide and help align decision-making, shape behaviour, and support early resolution of issues, in accordance with agreed expectations. It aims to achieve this by setting goals and behavioural expectations across the “four threads”: safety, culture, productivity and sustainability; in addition to all other existing statutory, or otherwise, obligations on industry.

The Discussion Paper states that the purpose of the construction standards, on the other hand, is to support and enable the industry’s adoption of the Charter, through government-controlled mechanisms to set “*clearer minimum expectations across the industry, particularly in relation to structural and systemic issues that require government oversight, regulation and enforcement*” (page 5). The Discussion Paper also states, “*if agreed, the Charter could build on this framework as an industry-led approach to improving construction sector behaviour beyond the minimum expectations in the construction standards.*”

It is challenging to reconcile the assumptions made in this proposed purpose, as it appears to suggest that there are gaps within the Industry Charter requiring action.

The Blueprint calls for a Joint Construction Industry Charter, nationally consistent procurement principles and stronger, more coordinated enforcement. It does not propose separate Commonwealth-imposed standards that are developed to “address gaps” within the Charter and enforced via legislation and require accreditation, funding or financing conditions. Nor does it recommend that the government develop a separate set of standards to be the benchmarking floor and the Charter to build “*beyond the minimum expectations in the construction standards.*” A government-imposed floor beneath an industry-owned aspiration is far beyond what the NCIF agreed and endorsed.

HIA submits that this proposed two-tiered model, with varying expectations and standards, would lead to additional complexity, confusion, compliance burden and ultimately, non-adoption and compliance (whether wilfully or not) by industry participants, and is at odds with the objectives sought by NCIF via the Blueprint.

The better approach is to adopt the Charter, which should contain all relevant standards and expectations, as the clear, simple and single instrument that sets out the framework for industry-led adoption of best practice behaviour, culture and performance.



1.2 Single Independent Regulator

Australia has comprehensive national and state-based laws covering all aspects of the construction sector, be it work health and safety law, the Fair Work Act, competition law, corporations law, taxation law, anti-corruption law, and state-based licensing and home building regulation. The conduct cited as the case for change (administration of the CFMEU's Construction and General Division, coercion, bribery, illegal phoenixing and non-compliance: page 7) describes failures to enforce that law, as opposed to gaps existing in the regulatory environment. The Blueprint also recognises this point in recommending "joined-up, proactive and visible" enforcement (recommendation 2.2), better enforcement of statutory declarations in enterprise agreement approvals (recommendation 2.5) and greater information sharing between regulators (recommendation 2.6). Despite the issue clearly being identified and acknowledged as one of a lack of compliance and enforcement of existing regulatory requirements, the government appears to be instead responding with a proposal to draft a further set of standards. Simply developing a further set of industry requirements will not remedy the enforcement failures that clearly exist.

While not directly recommended in the Blueprint, HIA contends that in order to achieve the genuine and enduring reform sought by government, industry and community alike, there needs to be an effective deterrent and enforcer of the 'rule of law'. HIA's position on this is long-standing. Reform to address the current issues cannot be symbolic, which is why we continue to strongly support a stand-alone specialist statutory agency for the building industry, and that the industry requires access to an independent body, which is able to quickly and effectively respond to unlawful activity onsite.

The former Australian Building and Construction Commission (ABCC) was such a body. It was officially abolished by the present Government in 2023, with its regulatory responsibilities transferred to various other entities. Workplace relations compliance in the sector now rests with the Fair Work Ombudsman (which the Discussion Paper notes has made building and construction a strategic compliance priority, page 22) and a dispersed set of other bodies. Counting only the Commonwealth, the paper's architecture (page 10) identifies nine regulators and agencies with a role, before state and territory work health and safety, labour hire, building and law enforcement bodies and local government.

HIA welcomes the stated aim of "*improving coordination between regulators*" as one of the proposed areas of focus, and agrees that improving information-sharing arrangements with state and territory bodies are part of the answer. However, better coordination between many agencies across various levels of government is a mitigation measure against fragmentation of regulation, and is not a cure for many issues that arise because of it. A single regulator with clear jurisdiction and investigative powers, supported by information sharing, is the most appropriate and cost-effective structural fix required.

HIA therefore contends that the abolition of the ABCC without the replacement of some form of dedicated construction sector "watchdog" has proven to be a causation of the current problems. While the creation and adoption of an Industry Charter and minimum behaviour standards and expectations will address some issues industry is facing, there is also a clear case that a single, independent regulator needs to exist. The purpose of said regulator would be in addition to supporting the Charter standards, ensuring the compliance and enforcement of existing law against unlawful conduct (coercion, intimidation, corruption, sham arrangements, phoenix activity, and misuse of safety processes for industrial ends) by whoever engages in it, employer or union, and which replaces the present dispersed and complex arrangements.



1.3 Wait until the RC and Col evidence is finalised

HIA has called for a consultation process that is "genuine, transparent and nationally consistent" to inform the reforms needed for the construction sector. It is therefore imperative that the federal government defer progressing any proposed changes until after contemporary and investigative evidence is finalised from the two current state-based inquiries into the construction sector currently underway, namely:

- The Queensland Commission of Inquiry into the CFMEU, with hearings currently underway (as at October 2026), and its own work on a potential Queensland Building and Construction Code and independent regulator still under active consideration. The Commission is not due to deliver its final report until December 2027.
- The Victorian Royal Commission into Victoria's Construction Industry, established 20 August 2026, examining CFMEU conduct, construction companies, labour hire firms, consortia and criminal actors on major projects. Hearings began in September 2026, and the Commission is not required to report until August 2027.

A proposed Commonwealth model settled before either has reported risks building on an incomplete and out-of-date evidentiary picture, and risks inconsistency with state findings and regimes that will be progressed later. There is also a considerable amount of public awareness and interest in the two proceedings, meaning any premature national changes requiring significant industry buy-in may be undermined if there are different or competing findings made at either or both state inquiries.

The Discussion Paper describes this consultation as the first of two stages. Accordingly, HIA submits that the Commonwealth should defer progressing any substantive reform design decisions until the Queensland and Victorian processes have reported, or commit in writing to revisiting any interim model in light of their findings before implementation.

1.4 Government must commit that Commonwealth work will not be contingent on enterprise agreements

HIA's clear position is that access to Commonwealth-funded construction work must not depend on an employer being covered by a union-endorsed, or otherwise, enterprise agreement. The housing sector primarily relies on small building businesses and subcontractors, who do not generally engage in collective bargaining for known and established reasons. Accordingly, sector reform must not recreate settings that deliberately exclude capable businesses from tendering, distort competition on Commonwealth-funded projects or favour union participation.

The Discussion Paper states the Government "has no intention" of requiring employers to enter an enterprise agreement covered by a registered employee organisation as a condition of Commonwealth funding, or of preferencing such agreements when considering contractors tendering for federally funded building and construction work, and has no intention of replicating Queensland's former Best Practice Industry Conditions Scheme (page 6; repeated in the FAQ). This sentiment has been made by relevant government Ministers in various settings over the past year.

While HIA welcomes the statement, it is noted that policy assurances are not a committed course of action to which the government can be accountable to, due to the following reasons:

- It is a statement of present intention, made in a Discussion Paper that clearly states is not binding on future decisions or policy direction;



- The current commentary is narrow in scope, addressing only a requirement to have a registered-organisation-covered agreement, and "preferencing" in tendering. It does not address indicator design, scoring, benchmarking, subcontractor-level conditions, or the union-facing obligations that appear elsewhere in the same policy area, such as the SAJF's indicators that workers be "*entitled to communicate directly with a registered employee organisation or workplace delegate... including during an induction*" and have the right to access representation from a registered employee organisation (SAJF indicators 1.2(c) and (d)). It is unclear whether these rights are above and beyond the rights contained within and protected by the national employment standards and *Fair Work Framework*.
- While it is beyond the scope of this Discussion Paper, HIA notes that similar assurances in complementary policy instruments also do not strictly articulate a commitment and in fact, can be interpreted that there is no exclusion or carve-out for construction businesses. The SAJF's exclusion of construction is likely to be subordinate to the Supplier Code instrument. The SAJF preamble says it is "*not intended that the Secure Jobs Framework apply in the construction industry*", however the preamble also provides the caveat that "*in the event of an inconsistency between the Secure Jobs Framework and the Supplier Code, the Supplier Code will prevail*". The draft amended Supplier Code applies, on its terms, to "all Commonwealth contracts from 1 July 2024". The issue lies with text released for consultation which contains no construction exclusion. It states the Commonwealth's expectation that suppliers will "*demonstrate alignment with, and meet, the majority of the indicators*" in the Framework. At expectation 3.5 it expressly provides that, "in industries where enterprise bargaining is accessible", suppliers and "the majority of their workers" are "covered by an enterprise agreement... covered by a registered employee organisation/s", and that where there is no agreement, suppliers "can demonstrate through appropriate independent public benchmarking" conditions that "exceed the applicable modern award and the prevailing industry-standards (compared with employers with an enterprise agreement)". In other words, since enterprise bargaining is accessible in the construction industry as a whole, there is every likelihood that the Supplier Code does capture construction, going against the government's assurances to the contrary.
- Furthermore, the SAJF is expressly not confined to procurement contracts. The consult materials state it "*will, where appropriate, be implemented in other financial frameworks involving the expenditure of taxpayer monies*". The Discussion Paper itself records (page 13) that the Commonwealth supports construction through grants, loans, guarantees, investment vehicles and payments to states and territories, and that the majority of the \$13.5 billion in 2026-27 funding for state infrastructure projects supports projects typically delivered by states and territories rather than through direct Commonwealth procurement. The SAJF's construction exclusion does not say whether it extends to any of them.
- The SAJF also shows how "no mandate" can operate as a soft preference. It states that it "*does not require an employer to enter an enterprise agreement as a condition of receiving government funding*", yet its indicators make coverage by a registered-organisation agreement the first-listed marker of good practice (2.1(a)), while a supplier without one must clear a higher evidentiary bar by exceeding both the award and the prevailing industry-standards of employers who have one (2.1(d)). A formally neutral rule that imposes a heavier burden on non-agreement employers is a preference in effect.
- There is also the *Workplace Relations Legislation Amendment (Building Cooperative Workplaces No. 1) Act 2026* passed earlier this year that allows the Commonwealth to preference companies covered by union-negotiated enterprise agreements (EBAs) when awarding contracts and funding, which reveals a completely different legislative and policy intent despite promises and assurances from Government.

Given the Blueprint recommendation 3.1(g) that NCIF is to identify best-practice on procurement and delivery practices, it would be appropriate for the Government state what, if anything, it proposes to apply to government construction procurement requirements by giving an express commitment, with binding effect, to its policy assurance that construction will not captured by any enterprise agreement requirement.



2. Feedback on Discussion Paper Questions and Propositions

In the event that HIA's core position on a separate set of government-imposed Industry Standards should not be progressed in addition to the NCIF Charter, the following feedback is provided in response to the questions, issues and propositions raised in the Discussion Paper.

The responses are separated into the five identified theme groups, rather than sequentially addressing every specific question posed.

2.1 Theme 1: Integrity and Lawful conduct

As discussed in the Core Positions section above, HIA rejects the proposition that there are fundamental gaps in the existing regulatory frameworks and system settings, beyond the compliance and enforcement failures that exist due to the lack of a single independent Regulator for the construction sector. There already exists robust and expansive legislative processes that cover all aspects of the unlawful conduct this Discussion Paper, and NCIF more broadly, seeks to address.

The problem that should be the focus of Government is the enhancement and enforcement of these existing rules, requirements and obligations; rather than identifying further mechanisms, standards and expectations to add further layers of compliance burden and complexity, all of which will ultimately have a negative impact on productivity, improved behaviours and community trust.

The industry-led Charter is the appropriate mechanism to progress the proposed minimum standards and behaviour expectations, as outlined in the Blueprint and endorsed by government, industry and unions alike.

2.1.1 Unofficial intermediaries and industrial fixers (Question 2)

HIA does not support the use of unofficial intermediaries or "industrial fixers" in any circumstances, and does not regard "safeguards" as the right response.

Anyone who holds themselves out as able to resolve industrial issues outside the Fair Work Act and other regulated environment operate in the space between lawful representation and unlawful conduct. The matters currently before the Victorian Royal Commission, whose remit includes criminal actors, and the allegations the Discussion Paper refers to (page 7) show the harm associated with them. Evidence has shown that their operations frequently involve illicit coercion, organized crime, and systemic market distortion. Their activity should be strictly prohibited.

HIA recommends that it be an offence under the Fair Work Act, or other relevant legislative instrument, to engage, pay, or accept payment or any benefit from, a person to resolve or influence an industrial matter on a construction project other than through a lawful channel. The lawful channels should be defined: such as the parties themselves, registered organisations acting within their statutory functions, legal practitioners, and accredited mediators and tribunals.

2.1.2 Fit and proper requirements, and permanent exclusion (questions 3, 4 and 26)

HIA supports strengthening fit and proper requirements and excluding proven bad actors, directed at the right individuals. The test should attach to persons, not to businesses as a class, and should apply to:

- officials of registered employee and employer organisations, including persons who exercise entry permits or control the organisation's resources; and



- individuals within a business who hold real control or influence over a project or site, such as directors, senior and site managers with authority over the engagement of contractors, payments and site decisions. This will need to be applied on a case by case basis, due to the practical realities of businesses deploying varying governance, management and control models based on a range of factors, including business size, project scope and complexity, nature of work engaged, etc.

Accordingly, the test should not be universally applied to head contractors, subcontractors, labour hire providers or consultants as classes of entity. For most HIA member businesses it would duplicate the state and territory licensing regimes that already test the fitness and probity of those who hold a licence, adding compliance cost and paperwork with no corresponding benefit.

Criteria should be objective and tied to findings by courts and tribunals (serious contraventions, convictions, civil penalty and contempt findings, and phoenix activity indicators), not to unproven allegations. For the most serious proven conduct, such as convictions for corruption, bribery or coercion offences, exclusion should be permanent. For lesser contraventions, exclusion should be time-limited and subject to review.

Natural justice and review rights must be built in from the outset. The existing frameworks identified in question 4 (the fit and proper test for entry permit holders under the Fair Work Act, company director requirements and legal practitioner admission) should be leveraged and strengthened before any new test is created.

2.1.3 Whistleblower protections (Questions 1 and 5)

HIA supports measures to strengthen enforcement action against bribery, inducements and improper influence, and stronger protection for those who report them. Protections must work for the people who need them. The decision discussed in section 2.1.4 of this submission below, records an industry association whose general concern, that employers were targeted if they did not “get in line,” could not be established with probative evidence because, on its account, its witnesses feared retribution. The association’s case prevailed on other grounds, however, the evidentiary gap the Commissioner identified around coercion remains. A regulator with investigative and information gathering powers, able to receive confidential reports and protect those who make them, is what is required. While the Fair Work Ombudsman is nominally charged with this function, a dedicated construction entity would be better placed to respond to the discrete and complex challenges the construction sector faces when compared to others. It could also have separate dedicated resources and funding to specifically address the current issues requiring remedy.

HIA therefore recommends a confidential reporting channel to the proposed independent regulator, acceptance of anonymous reports against businesses and unions alike, compulsory evidence-gathering by the regulator so the burden does not fall on the reporter, and protection against adverse action that extends to employers, contractors and subcontractors who report coercion, not only workers and union representatives.

2.1.4 Strengthened FWC scrutiny of Pattern Bargaining (Questions 6 and 7)

HIA supports the objective stated in the Discussion Paper (page 18) that a bargaining representative should not be able to dictate the choice of subcontractors on a site, and supports measures to ensure bargaining is free of coercion and intimidation. HIA's answer to question 6 is that the weakness in the present system is not the absence of a good-faith bargaining obligation, but rather the inconsistency in the approach to scrutiny applied when bargaining is conducted on a pattern or multi-employer basis. While this recommendation may be beyond the scope of being addressed by the proposed Standards, HIA



nonetheless makes the following points relying on a recent decision as a worked example of both the value and the limits of the current, discretion-based approach.

On 24 September 2026, the Fair Work Commission dismissed an application under section 248(1)(a) of the Fair Work Act for a single interest employer authorisation, brought by twelve electrical contracting employers, with the consent of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU).² The authorisation would have permitted the companies to bargain together for a single multi-employer enterprise agreement covering the electrical contracting industry across New South Wales (NSW) and the Australian Capital Territory (ACT). The National Electrical Contractors Association (NECA) opposed the application. The decision is relevant for four reasons:

1. The application failed on the public interest limb, as the Commissioner found that the proposed authorisation may have been intended to extend the agreement to other employers, including without their consent, meaning he was not satisfied that making the authorisation was not contrary to the public interest. The Commissioner also found that this approach could restrict competition and that there was insufficient evidence of productivity benefits.
2. The outcome depended on the Commissioner's own scrutiny. Although the employers' evidence of voluntary participation was limited and there were indications of industrial pressure, the Commissioner found there was insufficient evidence of coercion. The Commissioner observed that *"it would be naïve to consider that no industrial pressure was brought to bear on any of the Employers"* but that the framework *"is designed to tolerate a degree of industrial pressure, and pressure and coercion are not always the same thing."* This highlights the need for more consistent scrutiny of genuine consent in multi-employer bargaining.
3. The current test could not take account of conduct the Commission found plainly intimidatory. The current test may exclude relevant conduct from consideration when assessing whether employers genuinely consented. Even conduct found to be intimidatory may nonetheless be treated as irrelevant if it was directed at an employer outside the particular application. This supports HIA's call for broader scrutiny of conduct across the entire bargaining campaign.
4. Pattern bargaining can disadvantage smaller businesses by imposing costs and systems better suited to larger firms. It may reduce competition and make it harder for smaller employers to remain in the market. This supports stronger scrutiny of how pattern bargaining affects businesses of different sizes.

Furthermore, HIA notes the commentary made by the Commissioner at [50] and [51]. The proposed multi-enterprise agreement sought to contain a clause requiring employers to destroy third-party surveillance evidence (including evidence of a serious safety incident, sexual harassment or a crime) and sought to prohibit its use in any disciplinary process. The Commissioner found this would not be consistent with prevailing community standards and was *"likely to undermine efforts in the construction industry and the electrical contracting industry to provide a safe workplace, uphold integrity and foster a sense of security"*. The fact that a term of this kind could be negotiated and reach the point of Commission scrutiny at all, shows that safety and integrity cannot be left to the ordinary bargaining and approval process.

While the outcome in this case was correct in HIA's opinion, the issue was that it was reached through active discretionary scrutiny of one Commission member, on the evidence one party could place before the FWC within the scope of one application. There is no guarantee that other panels or Commissioners will apply the same scrutiny going forward.

² Application by Fredon Industries Pty Ltd & Ors [2026] FWC 3685



Accordingly, HIA recommends that the government seek to strengthen the Fair Work Commission's scrutiny process of pattern bargaining by:

- ensuring that the test of genuine and uncoerced consent to bargain together requires the Commission to have regard to a union's conduct across the relevant bargaining campaign as a whole, not only conduct directed at the named applicant parties;
- the Commission be required to be satisfied on evidence of the circumstances in which agreement to bargain together or to an enterprise agreement was reached, is consistent with Blueprint recommendation 2.5;
- the public interest test, and any application to add employers to a multi-enterprise agreement, expressly require consideration of competition effects and the impact on small business;
- the Commission be able to receive evidence from employers in confidence, with appropriate safeguards, where they fear retribution; and
- the limits on industrial action in support of pattern bargaining be enforced by the Independent Regulator proposed by HIA, rather than depending on the targeted employer to bring and fund proceedings (which is in and of itself a barrier to the access of Fair Work rights for many businesses).

2.2 Theme 2: Productivity, fairness and industrial practices

2.2.1 Dispute resolution (question 8): Introduce a specialist panel

A prohibition on unregulated intermediaries and industrial fixers will only hold if the lawful alternative is faster than the informal one. HIA therefore recommends, whatever is decided on a dedicated Independent Regulator, a specialist construction industry dispute resolution panel should be introduced. Such a Panel should:

- consist of members with construction, work health and safety and industrial experience;
- a requirement to convene within 48 hours of a notified site stoppage or unresolved site dispute;
- power to make interim orders, including to return to work and to cease unlawful industrial action or pressure;
- be able to make binding determinations; and
- have appropriate coverage of site-level industrial disputes, disputes in which work health and safety processes are alleged to be used for industrial purposes (Discussion Paper, page 17), and disputes about subcontractor engagement.

This recommendation is consistent with Blueprint recommendation 1.3, which proposed state-style industry disputes panels and an expert industry panel within the FWC, which is yet to be progressed.

2.2.2 Subcontractor choice (Questions 9 and 10)

HIA supports removing the veto power of bargaining representatives over the choice of subcontractors, and transparent, merit-based subcontractor engagement free from coercion. The Discussion Paper describes the misuse of such powers (pages 17 and 18). That conduct is already unlawful in many forms and should be enforced by the Regulator.



On security of payment (question 10), HIA supports timely and full payment and opposes a parallel Commonwealth scheme that duplicates state and territory security of payment law.

2.3 Theme 3: Workforce development and job quality

2.3.1 Labour hire (questions 12 and 13)

The Discussion Paper in Theme 3 (pages 19 and 20) repeatedly uses the terminology of “legitimate” with “inappropriate” use of labour hire, with Question 13 specifically asking *"in what circumstances is the use of labour hire appropriate?"*. HIA has grave concerns with this leading question. It assumes labour hire needs special justification to be legitimate, rather than addressing concerns around exploitation and non-compliance. The implied remedy, that a regulator or standard determining “appropriate” use case by case, would be a significant intervention in ordinary commercial workforce decisions within the residential building industry, which is routinely applied to a tool that is lawful and operationally necessary for small residential businesses managing project-based demand.

HIA notes that this proposition goes well beyond the Blueprint, which lists *"precarious forms of employment including overreliance on labour hire"* as a challenge, but its recommendation (6.2) was only that the NCIF *"develop a scope of work to undertake analysis of where, why and how labour hire is currently used, to inform industry and government on how procurement frameworks and practices might best address issues"*. HIA is concerned that this recommended body of research work was not among the first tranche of priority actions, so has presumably yet to commence; and alarmingly that the Discussion Paper appears to indicate that the analysis part has been skipped before moving to questions about what can be considered “appropriate.”

The SAJF shows where “appropriate use” tests can end up: numerical thresholds, such as an indicator that *"the majority of the workforce is employed on a direct and permanent basis, e.g., over 80%"* (1.1(a)). The proposed multi-enterprise agreement considered in the Fredon Industries decision went further, by seeking to expressly prohibit the use of *"casual and temporary labour, including fixed or maximum term employment and project-based employment"*, in an industry whose work is organised by project.³ The Commissioner found that term, and the terms restricting supplementary labour, to be neutral or counter to productivity ([43]).

HIA's Values Statement records the principles and standards of conduct HIA champions on behalf of the residential building sector. We value the freedom for business owners to determine lawful business structures and commercial arrangements that are appropriate to their current and future business needs, without interference, and the preservation of the right to engage in contracting arrangements. Accordingly, HIA contends that the correct target of any regulation is exploitation, coercion and non-compliance, and should not be the inappropriate and unnecessary prohibition of labour hire as a genuine and lawful category of the engagement of work.

2.4 Theme 4: Scope and application

As previously stated, HIA's membership is predominantly consist of small business residential builders and trade contractors, and the evidence base this Discussion Paper is drawn largely from is other sub-sectors of the broader construction industry, such as commercial and civil. HIA reiterates our recommendation for a single independent regulator for the construction sector be reestablished, as made out in our Core

³ [2026] FWC 3685 at [43].



Positions. The residential building is already subject to extensive state and territory regulation. A single regulator with sector-wide jurisdiction can apply risk-based, proportionate scrutiny by sub-sector. If any standard is pursued, thresholds and scaling must be built in from the outset and small business excluded from obligations not directed at the conduct in question.

On question 23, HIA asks for confirmation that no element of the Charter will be imported as a default compliance benchmark without separate, dedicated consultation. Regardless of which, HIA maintains its core position that the Standards should not be pursued by government separate to the Charter, but instead any minimum expectations are appropriately and fully captured by the industry-led and championed instrument.

2.5 Theme 5: Governance and compliance

HIA's responses to Theme 5 are made throughout this submission and are largely be addressed via our core position of the reestablishment of a single independent regulator. This body would be the single port of call for ensuring that:

- consequences are felt by any individual or business who are non-compliant with any industry requirement or obligation, whether it is under the Industry Charter expectations or statutory;
- It would be best placed to ensure penalties and actions are proportionate, tied to proven serious contraventions and are administered consistently with appropriate natural justice and review rights (as opposed to being applied inconsistently via individual national or state entities through the raft of various frameworks);
- Flow-through of obligations across supply chains can be effectively and appropriately regulated and monitored (removing the multitude of information sharing restrictions and limitations present in the multi-regulator model which exists currently);
- Supply chain obligations are appropriately attached to the relevant party with actual control of the relevant conduct, and can be scaled according to business size (as opposed to chain-wide strict liability which is easier to implement and enforce is a multi-regulator and multi-jurisdictional model).

2.5.1 Cumulative cost on small business

It is essential that small business is appropriately accounted for when considering the cumulative cost the proposed Standards will generate. HIA draws attention to the data within the Blueprint of relevance, and which accurately depicts the status of the sector:

- The construction industry accounts for the highest share of employees employed in small businesses across any industry;
- Over 98% of construction businesses have fewer than 20 employees;
- The industry “too often operates in survival mode”; and
- construction accounts for 24.4 per cent of first-time company external administrations in 2024-25.

A builder in that position cannot readily absorb new compliance obligations, which are cumulative and have real impacts on the residential building industry. There needs to be genuine government recognition and acknowledgement that every new obligation means more paperwork and administration. Every new cost means less money available to invest in equipment, employ staff, train apprentices, innovate or grow the business.

The Discussion Paper lists ten existing government initiatives directed at the industry (page 9). The Blueprint's map (page 11) lists 39 across government, government-industry and industry; and this is not an



exhaustive list. This is in addition to economy wide reforms across the industrial relations, taxation and superannuation portfolios. Against that chaotic background of ever-changing workplace requirements, the Federal Government proposes a Charter, standards of undefined content, scope and mechanism, a Secure Australian Jobs Framework and Supplier Code amendments, each with its own vocabulary, scope, compliance expectations and consultation. The small builder most in need of certainty and clarity in this environment is the one least equipped to work out which instrument applies to which job, whether Charter behaviours are aspirational or evidential, or whether a Commonwealth-funded housing program carries Supplier Code expectations with it. Every additional layer increases the risk that those who are trying to comply, simply get it wrong, or begin choosing not to engage at all. It does nothing to change the position of those who are not trying or deliberately engaging in illegal conduct.

HIA notes that none of the compliance mechanisms contemplated in the Discussion Paper (management systems, reporting, fit and proper documentation, audit cooperation, supply chain flow-through) scales with business size. The entities whose conduct is driving this reform are, as existing evidence clearly demonstrates, large commercial and civil contractors and the organisations that deal with them including the CFMEU. Small residential builders, who are not the source of that conduct, would carry a proportionally far greater burden for a problem that is not theirs.

HIA's position is that construction reform must not unnecessarily burden compliant businesses doing the right thing, by inadvertently imposing requirements that are not fit for purpose and intended to target systemic bad behaviours. The Blueprint recommends that the NCIF advise on "*barriers to small and medium enterprise market entry, innovation, and unnecessary red tape*" (3.4). That advice has not been given, and the Discussion Paper does not indicate whether the government has, or intends to, assess the cumulative burden of what it is proposing. HIA has consistently contended that the cumulative impact of labour costs, taxes, planning delays and compliance requirements is creating a structural barrier to delivering new homes and eroding project feasibility.

HIA submits that any construction standards model must assessed the cumulative effect, scale obligations to business size, and target them at the sub-sectors and entities actually generating the conduct of concern.

3. Conclusion

HIA strongly supports a construction industry that is lawful, safe, productive and sustainable, and has consistently called for genuine structural reform to achieve it. As framed, this consultation proposes a number of concerning elements that HIA cannot support, namely:

- a second instrument where one is sufficient;
- it goes beyond what the NCIF's Blueprint recommended;
- offers assurances on enterprise agreements and union obligations that are not binding and are inconsistent across the instruments in which they appear;
- adds to a compliance environment that is already fragmented; and
- does so before two state inquiries into the same conduct have reported, and without regard to, the proportionality of the burden on the small businesses that make up most of this industry.

Above all, the Discussion Paper answers an enforcement problem with instruments that have no enforcement power.

HIA welcomes any opportunity to discuss this submission further, which should be read in conjunction with the complementary and separate feedback on the draft Joint Construction Industry Charter.