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The Research Director  
Transport, Housing and local Government Committee  
Parliament House  
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**Subject – Proposed Changes to the *Building and Construction Industry Payments Act 2004***

Dear Research Officer

This submission is provided in response to the call for submissions regarding the Building and Construction Industry Payments Amendment Bill 2014 by the Transport, Housing and Local Government Committee.

I am an adjudicator registered under the *Building and Construction Industry Payments Act 2004* Qld (the **Act**) and have been since 2004. I practice as an adjudicator in all states of Australia except Western Australia and the Northern Territory.

I have read the 'Discussions Paper – Payment Dispute Resolution in Queensland Building and Construction Industry' prepared by Andrew Wallace (the **discussion paper**) and am familiar with the recommendations made in the discussion paper.

I attended the presentation on 15 April 2014 made by the Queensland Building and Construction Commission (**QBCC**) to adjudicators (the **presentation**).

While I have no objection to the majority of the recommendations in the discussion paper it is my opinion that revisions to the Act associated with large payment claims will increase the costs of adjudication for all parties, generally make things more complicated and lead to a series of other unintended consequences.

It is my recollection of the presentation that Mr Chesterman said words to the effect of '.....the Act is not "broken" we have looked into it [had the discussion paper prepared] and decided that it requires some "changes"....'

These changes were outlined in the discussion paper and apparently not all of the changes are to be implemented.

One of the changes that is being implemented is the abolition of Authorised Nominating Authorities (**ANAs**). While this was raised at the presentation it was not mentioned in the discussion paper.

The discussion paper reads in part as follows:

*'Q8 – Recommendations*

- 17. The current process of authorised nominating authorities appointing an adjudicator is not appropriate and should be discontinued as soon as is practical.*
- 18. The power to appoint adjudicators should be restricted to the Adjudication Registry ....'*

Apparently this recommendation is to overcome any 'apprehended bias' or 'perceived apprehended bias' issues.

At the presentation it became apparent that if the ANAs were abolished adjudicators would be required to communicate directly with claimants and respondents.

Since the presentation, 'adjudicators' agents' have been mentioned as a way for adjudicators to communicate with claimants and respondents reducing any (new) 'apprehended bias' or 'perceived apprehended bias' issues. It has been suggested that ANAs and others could become 'adjudicators' agents'.

Therefore the following seems apparent:

1. It is preferable that adjudicators do not communicate directly with claimants and respondents;
2. Therefore some type of 'agent' is required;
3. The discussion paper did not recommend that ANAs be abolished;
4. The discussion paper recommended that the ANAs' power to 'appoint' adjudicators be discontinued; and
5. ANAs have provided a service to the Queensland Government, claimants, respondents and adjudicators and while doing this have gained significant skills and intellectual property that all industry stakeholders have benefited from.

Another way the recommendation of the discussion paper with respect the appointment of adjudicators could be implemented is as follows:

1. ANAs remain in place;
2. Claimants make their adjudication applications to the ANA of their choice;
3. The ANA selects three (3) suitable adjudicators and provides these to the QBCC who appoints an adjudicator to decide the adjudication application;
4. The adjudicator provides his or her decision;
5. The ANA completes the balance of the functions that it currently carries out.

If the Act is not 'broken' it should not require the radical 'overhaul' proposed with respect to the ANAs particularly when this 'overhaul' was not suggested in the discussion paper.

If the government was to embark on a new course and introduce 'adjudicator's agents' or force adjudicators to communicate directly with claimants and respondents it is my opinion that this will lead to further 'apprehended bias' or 'perceived apprehended bias' issues or other unintended consequences, which may be quite severe, particularly if the experience of the ANAs was removed from the operation of the Act.

For further information please contact the undersigned.

Yours sincerely

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