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The Research Director  
Transport, Housing and local Government Committee  
Parliament House  
George Street  
Brisbane Qld 4000

**BY EMAIL ONLY:** [thlgc@parliament.qld.gov.au](mailto:thlgc@parliament.qld.gov.au)

Dear Research Officer

#### **HEARINGS INTO THE BUILDING AND CONSTRUCTION INDUSTRY PAYMENTS BILL 2014**

I am a solicitor practising in the building and construction industry and an adjudicator accredited under the New South Wales Act. I am currently in the process of becoming accredited under the Queensland Act.

I have reviewed and generally agree with many of the recommendations made in the Wallace Report to amend the Building and Construction Industry Payments Act 2004 and the information contained in the Minister's media release of 9<sup>th</sup> April 2014. I do not, however, support the recommendation for Registry appointment of adjudicators. In my view, the basis for that recommendation is not founded on the actual experience of the adjudication process. As an adjudicator I work with Adjudicate Today in New South Wales; becoming a member of Adjudicate Today's panel was a rigorous process. Having completed that process, and practising law within the building and construction industry, I feel confident in my ability to stay abreast of changes in the legislation. However, I personally know several qualified adjudicators who never went on to make decisions or determinations, that is to say, never went on to practice as an adjudicator. The suggestion that the Registry be responsible for the appointment of adjudicators would lead, in my opinion, to the very real risk of having inexperienced or out of touch adjudicators making decisions in matters. The flow on effect of decisions being challenged in the Courts would dramatically affect both public perception and the effectiveness of the legislation itself.

The other matter I am concerned about, and wish to address in these submissions, is that the amendment Bill goes much further than the recommendations of either the Wallace Report or the Minister's media release, and abolishes ANAs. The Wallace report identifies many valuable statutory functions fulfilled by ANAs. Of those functions, it only recommends that the appointment of adjudicators be transferred to the Adjudication Registrar.

In my work as an adjudicator, I am familiar with the operation of Adjudicate Today. I know that ANAs invest substantial resources to providing advice and assistance to industry participants in ensuring applications comply with the frequently complex provisions of the Act. The staff of Adjudicate Today are very well trained, professional and helpful.

There are many services undertaken by ANAs which will be lost to industry participants should ANAs be abolished, including:

- a. The information and guidance provided in their websites, including forms and templates;
- b. Telephone assistance in complying with the strict timeframes of the Act;



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- c. The convenient receipt of documents, whether it be in hardcopy of electronically. In the case of Adjudicate Today, they have arrangements to receive documents 24 hours a day;
- d. Selecting adjudicators on the basis of suitability for resolving the dispute;
- e. A subsidy of the costs for smaller value adjudication applications.

Importantly, ANAs provide a point of separation between parties and adjudicators. The legislation is already attacked regularly in the Courts on the grounds of procedural fairness and abuse of process. I am most concerned that with the removal of ANAs as a buffer between myself as an adjudicator and the parties, parties will ring me to make submissions without the other side's knowledge and capacity to respond. Particularly, I fear the cost implications, as adjudication is designed to be (and to my mind is) a cheaper alternative to litigation. Adjudicate Today performs all the administrative work I would otherwise have to perform (and charge) in making my decisions.

I understand that the Registrar is "thinking" of ensuring adjudicators appoint agents to prevent this happening, however, unless these agents are licenced there will be no constraint on adjudicators appointing whoever they choose e.g. preparers of adjudication applications (a huge concern), colleague adjudicators, family member, staff in their own business etc.

I am not aware of any reason given by the Government for why they wish to abolish ANAs. I have reviewed the concerns discussed in the Wallace Report regarding public perception, particularly that as ANAs are for profit organisations, the adjudication process is claimant friendly. Readily available empirical evidence shows this is not the case. I am unable to think of a single benefit that would come to the adjudication process should ANAs be abolished.

Aside from the appointment of an adjudicator, there are many more functions that need to be performed in the interest of the proper operation of the Act. I understand the Registrar does not intend to provide these services, and thus question why the government is removing access to the services. I am concerned that if ANAs lose their statutory role, these valuable services will cease altogether. This will be to the detriment of industry participants and contribute to an increased rate of insolvency in the building and construction industry.

I recommend the Bill be amended so that ANAs continue all their statutory functions, other than the appointment of adjudicators, and are able to nominate adjudicators to the Registry for appointment. To keep costs down, ANAs should compete through the provision of information and quality service to receive adjudication applications. The only difference will be that ANAs supply the Registrar with their nominations for appointment. This would avoid inexperienced or non-practising adjudicators being appointed, and still allow the industry to avail itself of the vital services that ANAs provide in the adjudication process.

Please contact me if I can be of further assistance.

Yours faithfully  
**Terry-Whitall & Associates**



Michael Terry-Whitall  
Principal



