

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

16<sup>th</sup> June 2014

By email: [thlgc@parliament.qld.gov.au](mailto:thlgc@parliament.qld.gov.au)

Dear Research Officer

Re: Hearings into Building and Construction industry Payments Bill 2014;

I am an adjudicator and been registered in Queensland since 2005. I have decided approximately 100 adjudication applications since first being registered.

I support the general thrust of the Wallace Report recommendations to amend the Building and Construction Industry Payments Act 2004 in seeking an equitable way to appoint adjudicators and provide a balance between the interests of the claimant and the respondent and the information contained in the Minister's media release of 9<sup>th</sup> April 2014.

I am not in support of the recommendation for Registry appointment of adjudicators or the abolition of ANAs. The argument for this action is based on a few observations with no evidence in support of those observations. I do not consider that this will provide a more equitable way to appoint adjudicators.

I am deeply concerned that the amendment Bill goes much further than either the recommendations of the Wallace Report or the Minister's media release. The Bill also 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 Adjudicate Today invests substantial resources to providing advice and assistance to industry participants in ensuring applications comply with the sometimes complex provisions of the Act. The staff of Adjudicate Today is very well trained, professional and helpful.

It is not straight forward for many applicants to lodge an application that conforms to the requirements of the Act. A party that is new to the process is often overwhelmed by the terminology and requirements of the Act. Adjudicate Today provides an invaluable service to these applicant. Many would give up due to a lack of understanding of the requirements and process. That means these applicants would not recover money that is often rightly owed to them.

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;
- c. The convenient receipt of documents whether it be in hardcopy or 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. I am most concerned that parties will ring me to make submissions without the other side's knowledge and capacity to respond. I understand that the Registrar is "thinking" of ensuring adjudicators appoint agents to prevent this happening. However, unless these agents are licensed there will be no constraint on adjudicators appointing whoever they choose e.g. preparers of adjudication applications (a huge concern), colleague adjudicators, family member, and staff in their own business etc. The agents need to be more than someone to act as an intermediary. They need knowledge of the Act and a commitment to working diligently to carry out the required functions that are today provided by the ANAs.

No reason is given why the government would want to abolish ANAs. After the Registrar is tasked with the appointment of adjudicators, 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, so these valuable services will cease altogether and 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 including the appointment of adjudicators. I predict that costs can only rise if the adjudicator has to take on an administrative role that would be necessary with the abolition of ANAs. The only difference I propose would be that ANAs supply the Registrar with their nominations for appointment for review and acceptance.

I do not consider the Registrar can ensure the adjudicator best suited is nominated for a particular matter. This issue to date is satisfactorily handled by the ANAs who train and have knowledge the abilities of each individual adjudicator so the ANA can appoint the appropriate person. I do not consider this ability can be replicated by the Registrar to ensure the person appointed has the required ability and experience to decide on a particular matter.

I am not convinced that there should be two tiers of applications based on cost. I consider that the time frames available to date are adequate to provide a speedy resolution and payment if decided for a payment claim and need no change. Any delay increases pressure on those awaiting payment. If it is concluded that there is an imbalance in timeframes for the Claimant and the Respondent, I support the time to provide an adjudication response be extended for all applications to 10 business days after receiving an adjudication application with the inclusion that the Respondent may provide additional reasons in the adjudication response that the Claimant can respond to within 5 business days.

Please contact me if I can be of further assistance.

Yours sincerely,

P. J. Martin

Registration number [REDACTED]