

**From:** Clive Warren [REDACTED]  
**Sent:** Monday, 16 June 2014 9:01 AM  
**To:** Transport Housing and Local Government Committee  
**Subject:** [REDACTED] Hearings into Building and Construction industry Payments Bill 2014  
**Importance:** Low

Dear Research Officer

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

I am a registered adjudicator Clive Warren

I have been monitoring and contributing to the Wallace Report into Building and Construction Industry Payments Act 2004 and support the general thrust of the recommendations to amend and improve the Act and the information contained in the Minister's media release of 9<sup>th</sup> April 2014. However I do not support the recommendation for Registry appointment of adjudicators as this will place both the appointment and regulation of adjudicators with the Registrar and remove the ANA's from the process. In my submission to the Wallace review and in my interview with Mr Wallace I strongly supported the role of the ANA in providing a separation between the adjudicator and the parties and in also providing a very valuable role in administering the process. While I do stingily support the separation of the adjudicator role from the preparers and ANAs to ensure that any potential for perceived conflict of interest is removed I am very concerned at the abolition of the ANAs.

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 role as an adjudicator I have now undertaken 200 adjudications since the commencement of the Act in 2004. In all this time I have valued the role that the ANA plays in invests substantial resources to providing advice and assistance to industry participants in ensuring applications comply with the complex provisions of the Act. The staff of Adjudicate Today with whom I work as an adjudicator are very well trained, professional and helpful and without them I am sure that many of the small claims submitted for adjudication would not proceed.

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 attempt to contact me to make further submissions without the other sides knowledge and capacity to respond. I understand that the Registrar is considering requiring adjudicators appoint agents to prevent this happening. If issues of conflict of interest are to be avoided then, in my opinion such agents must be registered and independent of the role of adjudication or preparation of adjudication submissions.

Why does government would want to abolish ANAs? No reason has been given. After the Register 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 why is government removing access to the services? I am concerned that if ANAs lose their statutory role, 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 particularly among the smaller subcontractors. The Act was originally intended to help protect vulnerable small sub-contractors from unconscionable conduct entered into by some head contractors and to ease the pressure on the courts in reducing the number of disputes going to court. In my opinion the proposed changes to the ANAs will significantly reduce the protections afforded to contractors.

I recommend the Bill be amended so that ANAs continue all their statutory functions other than the appointment of adjudicators. To keep costs down, ANAs should compete through the provision of information and quality of service to receive adjudication applications. The only difference will be that ANAs supply the Registrar with their nominations for appointment.

Please contact me if I can be of further assistance.

Yours sincerely

Clive Warren

**Dr. Clive Warren** | [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

