

From: John Goggins [REDACTED]
Sent: Monday, 16 June 2014 10:41 AM
To: Transport Housing and Local Government Committee
Subject: Re: Hearings into Building and Construction industry Payments Bill 2014
Importance: High

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

16th June 2014

By email to ... thlgc@parliament.qld.gov.au

Dear Research Officer

Re: Hearings into Building and Construction Industry Payments Bill 2014

I am a registered adjudicator in Queensland ([REDACTED]) and have, to date, been appointed to decide on sixteen (16) matters under the Building and Construction Industry Payments Act 2004 (Qld) ['the Act'], with the following content and outcomes:-

- I have decided thirteen (13) matters;
 - I have withdrawn from one (1) matter for lack of jurisdiction;
 - One (1) matter was settled before I made my decision; and
 - The claimant abandoned one (1) matter.
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- Of those that I have decided ...
 - I have had to consider total payment claims of (approx) \$120,000 (ranging from \$1,000 to \$23,000);
 - I have considered and valued these at a total entitlement of \$84,000; and
 - For more than half of the matters the respondent has expressly or implicitly raised particular jurisdictional issues.

While I am a relatively 'new' adjudicator I believe it is fair to say that I operate at the 'day-to-day end' of the Act, as such am exposed to all manner of submissions, adjudication parameters and potential influences, and am therefore well placed to make the following comments and recommendation.

I support the general thrust of the Wallace Report recommendations to amend the Act and the information contained in the Minister's media release of 9th April 2014.

While I do not support the recommendation for Registry appointment of adjudicators (because I see that recommendation as being based on the perception of a few with little empirical evidence or consultation) I make this submission in relation to the Government's decision to abolish Authorised Nominating Authorities ['ANA's'].

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 ANA's.

The Wallace report identifies many valuable statutory functions fulfilled by ANA's. 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. That particular ANA invests substantial resources to provide advice and assistance to industry participants, ensuring applications comply with the sometimes complex and always strict provisions of the Act. I am also aware that other ANA's provide analogous resources.

Adjudicate Today's staff are extremely well trained, professional and helpful. It is my experience that, at all times, they present to the parties as providing a statutory 'administrative' role; independent of my decision making functions. In my other work endeavours (as an 'free lance' engineer / project manager) I have never once had a small contractor or large engineering corporation express or indicate to the contrary.

At no time have I been or felt influenced by Adjudicate Today (or anyone else) in relation to considering the matters for which I have been appointed, nor in any way influenced as regards establishing jurisdiction, or the outcome of my matters.

There are many services undertaken by ANA's which will be lost to industry participants should ANA's be abolished, including:-

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- ✓ The information and guidance provided in their websites, including forms and templates;
- ✓ Telephone assistance in complying with the strict timeframes of the Act;
- ✓ 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;
- ✓ Selecting adjudicators on the basis of suitability for resolving the dispute;
- ✓ Subsidising the costs of smaller value adjudication applications; and
- ✓ Most importantly, ANA's provide an essential and vital point of separation between parties and adjudicators.

In the absence of this last point I consider it certain, and am most concerned that parties will ring me directly (or indeed visit me!) to make submissions, without the other party's knowledge and opportunity to respond. This will be a 'seed bed' for denial of natural justice and without doubt cause me to seek, otherwise unnecessary, further submissions; involving additional cost to the parties.

I understand that the Registrar is considering the prospect of adjudicators appointing agents to prevent this happening. However, unless these agents are suitably licenced and / or otherwise formally vetted and made accountable, there will be no restriction on adjudicators appointing whomever they choose, such as colleague

adjudicators, family member(s), staff in their own business, etc., etc.; even perhaps preparers of adjudication applications (which would be an entirely untenable situation, as no doubt the Director is aware, recently attracting curial rejection in SA)

I fail to understand why Government would want to abolish ANA's? 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 such essential services? I am most concerned that if ANA's lose their statutory role, these valuable services will cease altogether. Without doubt 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 ANA's continue all their statutory functions other than the appointment of adjudicators. To mitigate costs, ANA's should compete through the provision of information and quality of service to receive adjudication applications. The only difference will be that ANA's supply the Registrar with their nominations for appointment.

I hold myself available to confirm this submission and invite you to contact me if I can be of any assistance.

Yours sincerely

John Goggins

Integrated Engineering Systems Pty. Ltd. (IES)

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