

From: Jinu Kim [REDACTED]

Sent: Monday, 16 June 2014 4:43 PM

To: Transport Housing and Local Government Committee

Cc: [REDACTED]

Subject: Hearings into Building and Construction industry Payments Bill 2014

Dear Research Officer

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

I am an adjudicator - Jinu Kim

I support the general thrust of the Wallace Report recommendations to amend the Building and Construction Industry Payments Act 2004 and the information contained in the Minister's media release of 9th April 2014. While I am not in support of the recommendation for Registry appointment of adjudicators as the argument is appallingly weak (the recommendation is based on the perception of a few without any empirical evidence or consultation), the focus of this submission is on government's decision to abolish 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 work as an adjudicator, I am familiar with the operation of Adjudicate Today. I know that ANA 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 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;
- 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 sides 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 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.

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.

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

Jinu Kim

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