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

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Dear Research Director

**Housing Industry Association (HIA) Submissions- *Building and Construction Industry Payments Amendment Bill 2014***

HIA welcomes the opportunity to make submissions with respect to the abovementioned legislative reform.

HIA acknowledges the *Building and Construction Industry Payments Amendment Bill 2014* ('the Bill') introduces three key areas of reform to the *Building and Construction Industry Payments Act 2004* ('the Act').

HIA is largely supportive of the contents of the Bill. Specifically HIA supports the reduction of the time in which a payment claim can be raised; the extension of the definition of excluded business days to account for the industry Christmas/New Year shutdown period; allowing lengthier time frames for respondents to provide adjudication response; and enabling respondents to provide additional information in adjudication responses. All amendments provide for greater balance of fairness in the Acts adjudication process to the benefit of both the claimant and respondent.

For reasons as set out below, HIA has some concerns as to what however appears to be unintended consequences of the proposed amendments.

### **Appointment of Adjudicators and Adjudication Process**

HIA recognises the Bill introduces the establishment of a single Adjudication Registry within the Queensland Building and Construction Commission ('QBCC'), to administer the Act, monitor performance and appoint adjudicators. HIA acknowledges that the rationale behind Authorised Nominating Authorities ('ANAs') no longer undertaking the function of appointing adjudicators is in order to remove *'the perception of conflict of interest and bias in the appointment of adjudicators'*.

HIA has concerns about the QBCC acting as the sole allocated Adjudication Registry for administering adjudication matters, and appointing adjudicators under the Act. This process fails to consider inherent and/or perception of conflicts of interest which may arise in appointment of adjudicators by the QBCC as a Government Authority, for matters which may involve Government and/or public funds. The QBCC appointing an adjudicator for a matter which involves the Department of Housing and Public Works, or the QBCC insurance fund, furthers the argument of a *'perception of conflict of interest and bias in the appointment of adjudicators'*.

In HIA's response to the December 2012 Discussion Paper *'Payment dispute resolution in the Queensland building and construction industry'* ('the Discussion Paper') HIA recommended *'a move towards a centralised system of appointment of adjudicators by way of a sole ANA, being a privatised agency'*. It was further suggested by HIA that the ANA agency position be annually be put to tender by the Building and Construction Industry Payments Agency.

A sole privatised ANA will put the Government at an arm's length from adjudication matters for the avoidance of any perceived conflicts of interest and bias. A sole privatised ANA will also remove a layer of complexity of choosing an ANA from numerous providers during a time sensitive process. HIA would further support the need for the sole ANA to fall within the jurisdiction of the Crime and Misconduct Commission (CMC), to ensure that current perceived 'conflicts of interest and bias' are under the scrutiny of the CMC.

HIA accordingly recommends the Government further explores the option of a sole privatised ANA. In the alternative, HIA urges the Government to explore and implement an alternative means of appointing adjudicators, removing the perception of conflict of interest, for matters involving Government/public funds.

### **Timeframes for Claimants and Respondents**

HIA acknowledges that the Bill seeks to address large or complex claims, by way of a dual model regime. The dual model regime introduces the term 'complex claims' whereby a claim is for more than \$750,000, or a claim in relation to a latent condition or a time related cost, provides for lengthier time for provision of payment schedules, adjudication response, and adjudicated decisions. While HIA recognises there is no 'one size fits all' approach to adjudication, it must be noted that one of the intentions of the Act is to rapidly adjudicate progress claim non-payments and disputes.

HIA has concern that a relatively simple claim involving 'latent conditions' or 'time related costs', could easily be deemed as a 'complex matter'. 'Latent conditions' or 'time related costs' are not clearly defined within the Bill, as such a relatively simple claim involving a contract which gives rise for a claim of interest penalties, could potentially be deemed as a 'complex matter', leading to lengthier time frames, and a potential for heightened costs in the adjudication process.

Accordingly HIA recommends that 'complex claims' are restricted to the \$750,000 threshold, for avoidance of jurisdictional arguments, and acknowledgement of complexities generally associated with higher monetary claims.

### **Costs for adjudication**

In HIA's response to the Discussion paper, it was noted that a complaint often made by industry is that the Act adjudication process is costly, with the cost of the application and adjudication fees often being disproportionate to the monies claimed. Accordingly HIA recommended that an upfront assessment of adjudication costs should be provided to applicants for a well-informed commercial decision.

In addressing this concern, it is noted in the Final Report of the Review of the Discussion Paper, Recommendation 42 states that in the event '*the Government elects to accept Recommendations 17 and 18, all adjudication fees and costs should be regulated and published*'. HIA accordingly supports this recommendation.

As the discontinuance of current ANA processes for appointing adjudicators, and the movement towards the adjudication registry solely appointing adjudicators (recommendations 17 and 18 of the Final Report) has been adopted, HIA would strongly encourage the Government to reconsider their position on the publishing of adjudication fees through a grading type system.

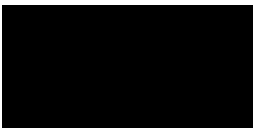
It is noted that the Bill Explanatory notes suggest the discontinuance of ANA's appointing adjudicators '*should result in the reduction of adjudication fees*'. HIA however has concerns that this is not the case.

While the Bill establishes the regulation of an application fee, the Bill does not go far enough to address cost related concerns. A grading system will not only give an applicant an idea of the costs associated with the application, it will ensure that the lack of market competition as a result of a sole authority allocating adjudicators is addressed. Without the availability of regulated adjudication fees, HIA has concerns that adjudication matters could become more costly, resulting in a cost-prohibitive process.

While HIA largely supports the Bill, HIA would urge the Government to reconsider what appear to be unintended consequences of the Bill.

Yours sincerely

HOUSING INDUSTRY ASSOCIATION LIMITED



Warwick Temby  
Executive Director