

16th June 2014

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

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

Dear Sir/Madam

Re: Proposed amendment to the Building and Construction Industry Payments Act 2004 (the Act);

Adjudicate Today has serious concerns about a number of proposed amendments to the Act. However there has been a lack of time to give proper consideration, so we focus on two issues:

- The abolition of Authorised Nominating Authorities; and
- The second tier process of adjudication for “complex” payment claims.

A. Executive Summary

The Wallace report makes recommendations in response to question 8: “Do you consider the current process of authorised nominating authorities (ANAs) appointing adjudicators appropriate? If not, what alternate (sic) system would you propose?” Adjudicate Today agrees with the recommendations arising from question 8.

However these recommendations have been interpreted by the Adjudication Registrar (the Registrar) and the Department of Housing and Public Works (the Department) as a requirement to abolish ANAs. The report contains no such recommendation. Further the report contains no justification for harsh and oppressive treatment for small businesses trading as ANAs and there is no evidence advanced for such treatment.

ANAs should be permitted to continue trading, albeit without the power to appoint adjudicators, and also continue providing services to adjudicators and industry participants. Wallace has not recommended that the vast majority of services undertaken by ANAs be provided by the Registrar. It would be excessively expensive if such services were funded by government.

The Registrar has said he will encourage adjudicators to engage “agents” so that adjudicators don’t deal directly with parties to disputes. However it would be a shocking outcome, replete with many conflicts of interest, if preparers could also act as “agents” for adjudicators. Already some preparers are positioning themselves for such a role. There are dishonest preparers operating in the industry. Agents for adjudicators should be licenced by government otherwise unqualified, unsuitable, incompetent and possibly dishonest persons may establish themselves as agents.

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The Act or the Registrar (presumably by a condition of registration to work as an adjudicator) should not be forcing adjudicators to appoint unregistered, unlicensed agents without any statutory responsibility. There is no guarantee such agents will be professional or reliable and their errors will reflect on the adjudicator and possibly cost parties thousands and in larger matters millions of dollars. The Act, by removing the statutory indemnity for existing agents (ANAs), would expose potential agents to massive damage claims initiated either by the parties or adjudicators seeking to defend their reputation.

The sections of the Bill establishing a dual form of adjudication for “complex’ matters contain a major drafting flaw. The Payments Act is mainly about providing a dispute resolution mechanism to reduce the number of insolvencies in the building and construction industry. This is achieved by providing rapid, cheap, interim decisions on account which decide who holds the disputed monies should the parties continue their disagreement in court or as otherwise provided by contract. Undoubtedly unintended, the drafting of the Bill will ensure the vast majority of claims will be processed as complex, including claims with a value of less than \$10,000. The cost of processing complex claims will be very expensive.

B. Background

In December 2012, the then Minister for Housing and Public Works (the Minister) appointed Mr Andrew Wallace (Wallace), a Queensland barrister, to:

- review and assess the submissions received in response to a Discussion Paper entitled "Payment dispute resolution in the Queensland building and construction industry";
- liaise with relevant stakeholders, including those who provide submissions in relation to the Discussion Paper to clarify or seek further information in relation to the issues raised by the Discussion Paper; and
- prepare and submit a report to Government identifying the findings, options for reform and any recommended legislative amendments.

The report was submitted in May 2013. It was released in April 2014. Question 8 in the Discussion Paper was as follows: "Do you consider the current process of authorised nominating authorities appointing adjudicators appropriate? If not, what alternate (sic) system would you propose?"

Wallace made five recommendations (pp 165 and 166) in respect of Question 8. Recommendations 17 and 18 are relevant to this discussion and provide:

17. The current process of authorised nominating authorities appointing adjudicators is not appropriate and should be discontinued as soon as is practicable.
18. The power to appoint adjudicators should be restricted to the Adjudication Registry.

The Queensland Government has announced acceptance of these recommendations and proposes to amend the Act with effect from 1 September 2014.

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C. Discussion

a. Abolition of ANAs

The words of one industry heavyweight (based in Canberra), who has long and publicly campaigned against any security of payment legislation, have been reported to Adjudicate Today. He is claimed to have said:

“Whose idea was it to abolish ANAs? We should push for this in other States, it will really f*** the legislation”.

With respect to the language, whose idea was it and will the abolition of ANAs undermine the legislation? Wallace didn't recommend the abolition of ANAs. Adjudicate Today has spoken to him about it. In his words:

“The Report speaks for itself...”

To the best of our knowledge, no industry association requested the abolition of ANAs. It has come as a complete surprise to all. In the numerous briefings, including briefings by the Minister prior to release of the amending Bill, there was no mention of the abolition of ANAs. Neither of the Ministerial press statements refer to it. The Minister's correspondence dated 7 April 2014 to Adjudicate Today makes no reference. The Department's fact sheet omits it entirely and the Minister's first reading speech on 21 May 2014 states:

“ANAs will continue to offer their services as a document service agent.”

Adjudicate Today welcomes the Minister's words but, respectfully, how can this be so when the Bill omits all reference to ANAs and our responsibilities under the Act. After 1 September 2014, ANAs will not exist in Queensland.

Either Adjudicate Today or other ANAs have spoken to the vast majority of industry associations in Queensland. No industry association supports the abolition of ANAs. All were taken by surprise. The associations fit into two camps:

1. Those that support the retention of ANAs; and
2. Those that are “agnostic” (without an opinion) as they have not had the time to seek a view from their management committee.

All industry associations have said they would not be critical of government should the decision to abolish ANAs be reversed.

In our discussions with industry associations, we have speculated on “whose idea was it and why the secrecy”. Noting the 11 month delay between report completion and its release, our perception is that the idea emerged from the Registrar and the Department's implementation committee. Respectfully both the Department and Registrar are conflicted on the issue. The Department (as well as other government agencies) are respondents to adjudication applications. In particular, the Department through its agencies has an intense interest when it comes to defending its actions in withholding payments to sub-contractors in relation to building work under the Home Warranty scheme.

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The Registrar is the beneficiary of the amendments to the Act. At a time of restructure for the Commission, his area is to be greatly increased with additional staff and responsibility. The Registrar has NOT demonstrated independence from the Department. On at least two occasions, the Registrar (and / or his staff) has pressured Adjudicate Today not to pursue the Department in relation to fees owing to adjudicators under the Act.

We perceive the secrecy over the abolition of ANAs was to minimise our available response time. It stopped ANAs having any influence whatsoever over the draft Bill. Industry associations were not trusted with the secret. In the parlance of the industry (and the Wallace report), we were ambushed so as to minimise the time available to prepare a response.

Turning to the second point of the industry “heavyweight’s” opinion: will the abolition of ANAs undermine the legislation?

Yes, the abolition of ANAs will undermine the legislation and render it ineffectual.

To understand our response requires an understanding of the functions and responsibilities of ANAs. At page 129 of the Report, Wallace lists statutory responsibilities of ANAs:

1. Provide advice and assistance to parties regarding the adjudication process;
2. Accept adjudication applications from claimants;
3. Nominate an appropriate adjudicator to decide an adjudication matter;
4. Issue Adjudication Certificates to claimants upon request;
5. Where approved to do so by the Adjudication Registrar, conduct courses for adjudicators in the prescribed adjudication qualification and upon successful completion, issue a Certificate in Adjudication to the adjudicator.”

His recommendation only relates to point 3. In relation to the other points:

1. Provide advice and assistance to parties regarding the adjudication process

Adjudicate Today has a staff complement of 7 highly trained advisors. Each has undergone adjudication training (although they are prohibited from deciding adjudication applications) and received extensive and continuing in-house training. We receive hundreds of phone calls each week, many involving extended time in explaining a party’s rights under the Act, how it operates and the process of making an application. Staff do not provide advice as to the merits of proposed submissions for an application. As a general rule the smaller the value of the application, the more time spent explaining the Act.

The Registrar has stated he will not be providing this information. In the absence of ANAs, smaller claimants will be forced to take expensive legal advice – a necessity the framers of the Act sought to avoid. This becomes particularly acute given the dual form of adjudication being introduced. Many potential applications will either not proceed or fail due to errors in their drafting.

2. Accept adjudication applications from claimants

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The framers of the 2004 Act deliberately created a business model to promote competition between ANAs. Competition is waged on many levels including cost, quality of service, access to professional and courteous staff over extended working hours and the general provision of information (overwhelmingly web based). Competition is NOT based on being “claimant friendly” or the referral of adjudication applications to “claimant friendly” adjudicators. This issue is covered below.

The business model has served the Act and government well. Private enterprise has invested hundreds of thousands of dollars in providing user-friendly systems and information at a cost effective price to industry participants. This has spared government great time and cost.

The Bill is contrary to Government’s policy position to be the "enabler" not the "doer". - Page 1, “A Plan: Better Services for Queenslanders” – Queensland Government publication.

The Newman Government has warmly embraced the trend of enabling the private sector to innovate to provide greater public services: new methods, lower costs delivering better services. The “reforms” in the Bill go completely against the policies of the Government towards not providing a service that can be provided by the private sector (the 'Yellow Pages' rule) and against the trend of other initiatives Minister Mander has supported within and across the Housing and Public Works portfolio.

3. Nominate an appropriate adjudicator to decide an adjudication matter

We accept the Registrar should appoint adjudicators as recommended by Wallace. However ANAs should nominate adjudicators for consideration for appointment by the Registrar. Ref

4. Issue Adjudication Certificates to claimants upon request.

This is purely an administrative action and most cost efficiently integrated with the other responsibilities of ANAs.

5. Where approved to do so by the Adjudication Registrar, conduct courses for adjudicators in the prescribed adjudication qualification and upon successful completion, issue a Certificate in Adjudication to the adjudicator.”

Ten weeks from the proposed introduction of the new system, there have been no announcements in this area. No arrangements have been made for training. Adjudicate Today has recently received correspondence from the Registrar requiring that we not conduct further adjudicator training courses. In the absence of any information, we guess Adjudicate Today will be permitted to provide these service in conjunction with senior and professorial staff drawn from both the University of Queensland and the University of NSW. However, we will have no time in which to prepare the necessary courses.

Beyond these statutory duties as identified by Wallace, ANAs perform many other responsibilities either as a consequence of our “Conditions of Authorisation” issued by the Registrar or as necessary and essential services for adjudicators.

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These services include:

1. Publish and update a comprehensive website containing information on the Act, making and responding to adjudication applications, interactive process flowcharts, and templates. Refer www.adjudicate.com.au. Over 10 years, Adjudicate Today has invested in excess of \$300,000 in developing this website.
2. Deliver seminars on the adjudication process to universities and industry based organisations.
3. Provide an address for service for adjudication applications, responses, further submissions and court documents either electronically or at any of our seven offices.
4. Receive and register all documents served by parties by email, lockbox, hand delivery, fax and post.
5. Request hard copy documentation from parties and follow up when necessary.
6. Forward documentation to the adjudicator in a timely manner.
7. Undertake general checks of time compliance and report to relevant adjudicator.
8. Follow up regarding further submissions from parties if no reply received.
9. Request further submissions from parties on behalf of adjudicators.
10. Receive adjudicator's decisions – upload to Commission web-site.
11. Receive adjudicators' invoices.
12. Release decisions to parties upon payment of adjudication fees.
13. Provide decision to Registrar following payment.
14. Provide adjudicator with any slip rule requests.
15. Release slip rule amendments to parties.
16. Invoice parties on behalf of adjudicators.
17. Answer enquiries regarding fees charged.
18. Represent the adjudicator in any Supreme Court (High Court) proceedings.

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In addition, and most importantly, ANAs provide two further essential and time consuming functions.

1. Act as a buffer between adjudicators and parties. It is entirely inappropriate for parties to contact adjudicators and make statements of which other parties are unaware

Section 25(4) of the Act requires the adjudicator to give parties the opportunity to comment on each other submissions. Section 26 (2) requires the adjudicator only consider submissions “properly made”. When parties speak to adjudicators on the excuse of procedural issues, they inevitably seek to make comments to support their case. These comments are not “properly made” and lay the ground for a Court to invalidate the adjudication.

Unlicensed, untrained, unregistered agents can provide no certainty to the adjudicator in the management of documents. Overwhelmingly they will be incapable of providing the 18 functions described above. The Registrar has said he won’t be providing most of the functions. In the absence of a licencing regime and statutory indemnity as currently received, Adjudicate Today would place itself at grave risk to take on the time and cost of providing such services when there is no business model providing for our payment or statutory protection.

By way of example. Smith has made an adjudication application against Jones for \$300,000 (a little less than the average value of adjudication applications made). Agent Cameron fails to pass to the adjudicator the adjudication response of Jones or does not check the documents and only passes some of them. The adjudicator makes the decision in favour of Smith. By the negligence of the unlicensed, unregulated, untrained agent, the respondent has suffered a great injustice and unnecessary cost and delay in rectifying the situation.

Adjudicate Today has operated as an ANA for 10 years in Queensland and 14 years in NSW. We have tracking and compliance software in place to guarantee against such errors. In all the time we have existed, it has never been established that a failure of service, within time, or a shortfall in the service of documents has been the responsibility of Adjudicate Today.

Why would government move from a licenced system for adjudicator agents (ANAs) to an unlicensed regime with all the compliance risk that such entails? Neither the Department nor Registrar have sought to provide any reason whatsoever.

An unlicensed regime for adjudicator agents will be a major factor in undermining the legislation and rendering it ineffectual.

2. Proofread decisions for typographical errors.

Adjudicators work under huge time pressures. Not surprisingly, their eye often overlooks errors. Examples include calling the respondent the claimant and vice versa, omitting a “not” when that is what is meant, wrongly transcribing party names or ABN details, having different amounts decided in the front of the decision to the back and adding tables wrongly. Omitting necessary punctuation. The list goes on.

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Between the 3 Adjudicate Today staff who have proof reading duties, we spend an average 50 hours per week proof reading. We submit this is of great value to adjudicators and industry parties generally. Unlicensed, untrained, unregistered agents are totally incapable of performing this duty. Judge's Associates spend much time proof reading. It is a most important function that will be lost with the abolition of ANAs.

At Attachment I to this submission, we provided a comprehensive table of functions performed by ANAs. There are 3 columns:

- Services currently provided by Adjudicate Today (under light green heading) ;
- Services proposed to be provided by the Adjudication Registrar (under red heading); and
- Services proposed be provided by Adjudicate Today after 1 September 2014 (under light blue heading).

Study of the table reveals that there are many functions (including additional items to those listed above) currently undertaken by ANAs which will "slip through the cracks" if ANAs are abolished.

Page 3 of the Explanatory Notes accompanying the Bill state that:

"There are no direct financial impacts on the State arising from the proposed amendments to Act. The Commission has the capacity to absorb the costs associated with the implementation of this initiative".

Respectfully we disagree – unless the Commission has a spare \$2 million dollars at its disposal. If government provides any/all of these services without private sector innovation and management, greater resources must be financed. Should the Registry be required to undertake all the additional functions, we estimate (based on Adjudicate Today internal costings) a minimum additional funding requirement of \$2,000,000 and 7 staff.

The manner in which the Wallace recommendations are being implemented in the Bill constitutes a severe and harsh punishment to Adjudicate Today and other ANAs. Such treatment is not supported by any empirical evidence. Wallace clearly makes the same point.

At page 131 Wallace states:

"It is important to recognise however when reading the following submissions that they are untested, unsubstantiated assertions that are largely based on hearsay evidence".

Again at page 155 Wallace states:

"It is important to note again at this juncture that all of the submissions and information provided to the Review are untested. The Review did not receive evidence under oath, nor did it have any powers of compulsion, nor were the providers of the evidence in the individual interviews thoroughly tested as one would expect under cross-examination. In the premises, the information provided remains nothing more than untested allegations.... In those circumstances, it would be quite inappropriate of me to make any adverse comments or findings against a party without them having had the opportunity to be heard in response to specific

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allegations of impropriety. Without the benefit of receiving evidence under oath/affirmation or the benefit of considering the credit of witnesses under cross-examination, the untested allegations remain just that”.

In fact, there exists much empirical evidence that ANAs operate most responsibly.

For at least the last 6 years, the Registrar has publicly defended ANAs against the claim of referral to “claimant friendly” adjudicators. In so doing he quotes empirical evidence that he collects and publishes on a monthly basis. The Registrar has presented his evidence to a forum chaired by Wallace. Adjudicate Today discusses the evidence in its written submission. It was quite unfair to ANAs for Wallace not to reference the evidence.

What is the empirical evidence? In the Registrar’s monthly report, there is empirical data published under the heading “% of Claimants Receiving Full Claim Amount”. This data is also available to individual ANAs based on their own monthly performance. The empirical data is also published in the Registrar’s annual report. Colloquially this data is known as the “ANA User Friendly Index”. The Registrar confirmed to Adjudicate Today that the data was provided to Wallace.

At 8.12 of the Adjudicate Today’s submission to Wallace, we draw attention to the Registrar’s 2012 (then current) annual report and the statistics titled “% of Claimants Receiving Full Claim Amount”. Following, we embarked on a major analysis observing that:

“The published figures include all applications whether the payment schedule was or was not served. When the payment schedule is not served, the likelihood of the claimant being wholly successful is increased”.

Quoting from our submission at 8.13:

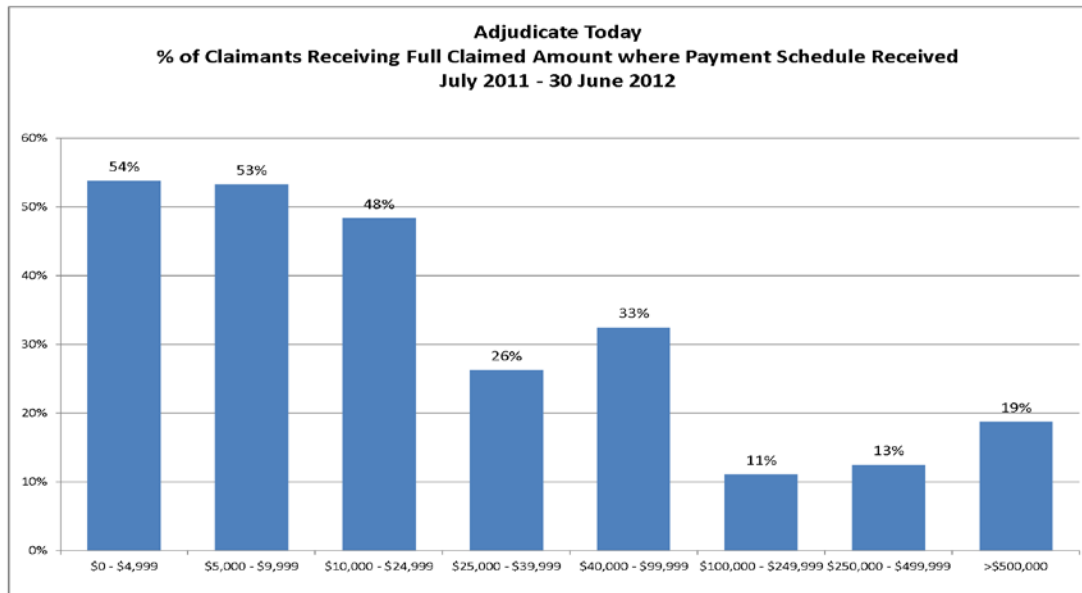
“Table 1 below displays Adjudicate Today internal statistics of the 385 Queensland adjudication applications managed from 1 July 2011 to 30 June 2012. We then removed all applications where a payment schedule was not received. This allows us to chart in Figure 1 the “% of Claimants Receiving Full Claim Amount where payment schedule received”. If there is to be a measure of “claimant friendliness”, and many could quibble as each matter stands on its own, we submit our approach gives a more accurate statistical result. The figures in Table 1 below are not figures representing a “claimant friendly” process. Indeed they are indicative of adjudicators taking their responsibilities most seriously and that their decisions are balanced by submissions advanced by parties.

Table 1

Range of claims	Total AA's lodged	Total Decisions Released	Number of Payment Schedules Lodged	No. of Claimants Receiving Full Claimed Amount where Payment Schedule Received (Decision Released)	% of Claimants Receiving Full Claim Amount where Payment Schedule Received
\$0 - \$4,999	87	59	26	14	53.8%
\$5,000 - \$9,999	45	28	15	8	53.3%
\$10,000 - \$24,999	68	48	31	15	48.4%
\$25,000 - \$39,999	38	25	19	5	26.3%
\$40,000 - \$99,999	70	47	40	13	32.5%
\$100,000 - \$249,999	27	18	18	2	11.1%
\$250,000 - \$499,999	10	8	8	1	12.5%
>\$500,000	40	34	32	6	18.8%
TOTALS	385	267	189	64	33.9%

Figure 1

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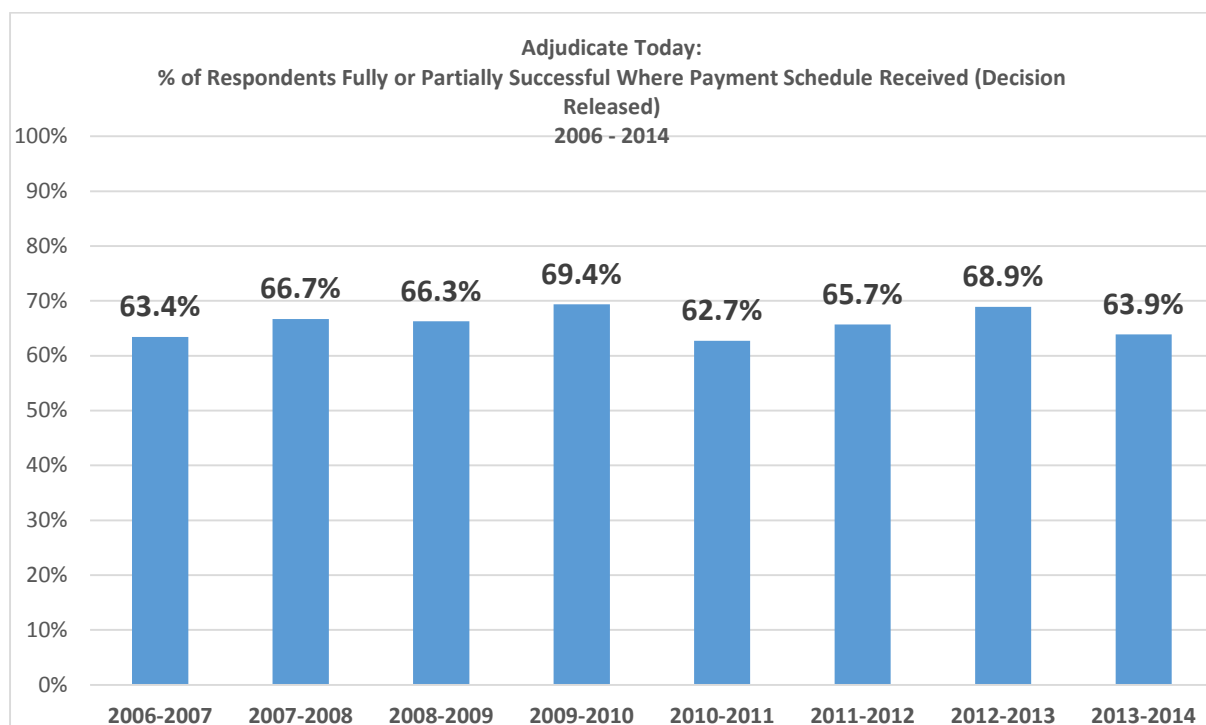


Quoting from our submission to Wallace at 8.14:

“Overall 66.1% of Respondents who served payment schedules in Adjudicate Today managed applications were wholly or partially successful”.

Adjudicate Today has updated these statistics for each financial year commencing 2006. The results showing the success or partial success rates of respondents are as follows:

Figure 2



These consistent results across all years of meaningful data do not demonstrate that adjudicators are “claimant friendly”. Neither, in our opinion, they do not demonstrate adjudicators are “respondent friendly”. Rather the figures highlight a fair and impartial process with decisions by adjudicators carefully weighed based on the merits of the arguments presented.

At Attachment 2 of this submission, we provide a year by year analysis of all decisions released by Adjudicate Today. Each year shows the breakup using the same data points adopted by the Registrar in his reports.

Adjudicate Today does not take issue with the Wallace findings that there is a perception in some minds that the process is “claimant friendly”. However, while the perception may exist, the available evidence supports the opposite conclusion. On this basis, ANAs should not be treated harshly and oppressively by being forced out of a market they spent years and, in the case of Adjudicate Today, hundreds of thousands of dollars promoting.

We submit that a perception of bias towards claimants is unavoidable while the Act limits the right to make an adjudication application solely to claimants. Adjudicate Today has consistently advocated allowing both claimants and respondents (purchasers) the right to make application. By the simple stroke of the legislative pen, a great and real benefit is extended to industry respondents. Inexplicitly this view was not considered in the Wallace Report’s response to Question 3 which considers whether respondents should be entitled to make an application.

Many industry participants do not understand the valuable service provided by private sector ANAs in subsidising the cost of low value adjudication applications. The charging model was introduced in 2006 following extensive representations by the Registrar. Properly, he was seeking to minimise the cost of adjudication for those that could least afford it.

The pricing model, agreed with the Registrar and approved by him, provides that ANAs retain approximately one-third of adjudicator income received. In terms of income received, there are 3 categories of application:

- Those which result in no income as they are discontinued as a consequence of either successful settlement negotiations or the payment claim is paid once the respondent receives the adjudication application
- Those smaller claims where there is some income but less than the average cost of administering an application
- Other claims where there is no subsidy.

For the 21 month period from 1 July 2012 to 31 March 2014, the average cost to Adjudicate Today of providing our full range of services and administering adjudication applications (averaged by all applications across Australia) was \$1,049.35. This figure includes our salary expenses, overheads and rentals on 7 offices. These costs exclude all payments to adjudicators.

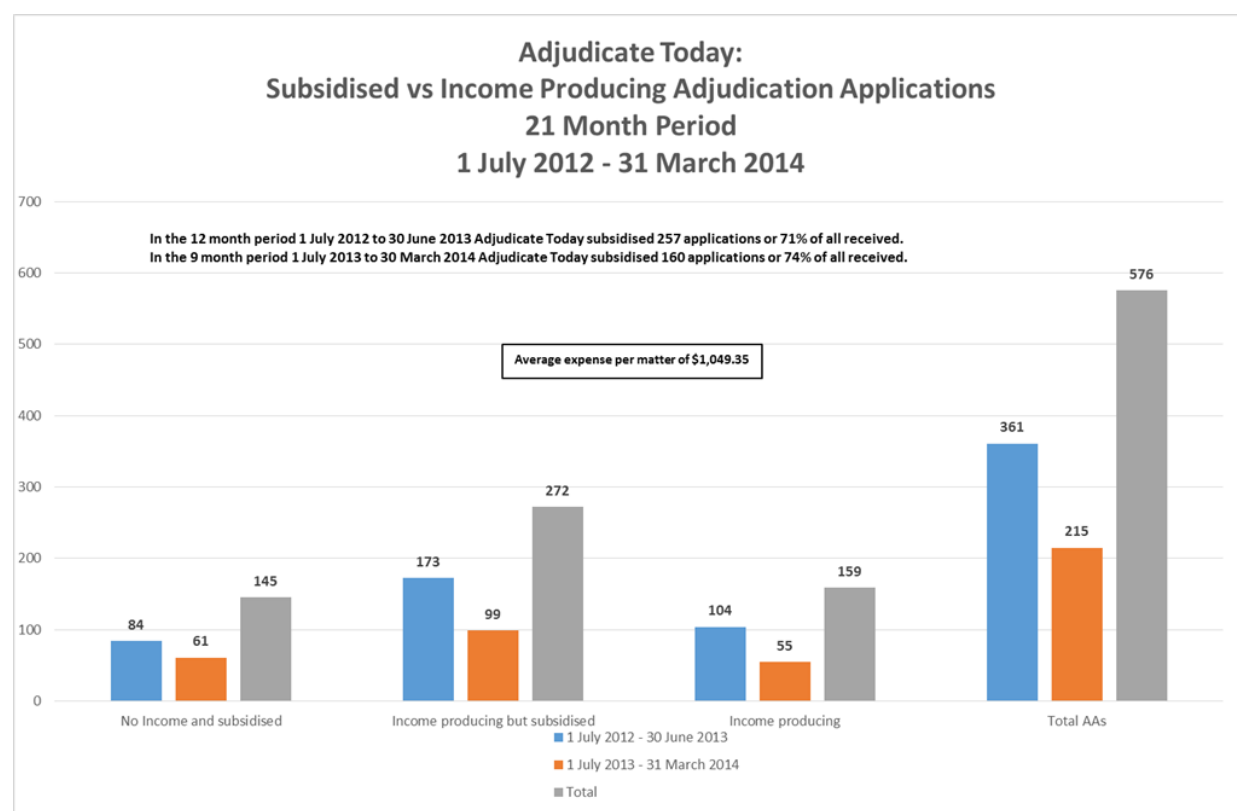
In Queensland, for the 12 month period 1 July 2012 to 30 June 2013, Adjudicate Today subsidised 257 applications or 71% of all received.

In Queensland for the 9 month period 1 July 2013 to 30 March 2014, Adjudicate Today subsidised 160 applications or 74% of all received.

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Mona Vale NSW 2103		Southbank VIC 3006	Barton ACT 2600	Hobart TAS 7000	Adelaide SA 5000
nsw@adjudicate.com.au	qld@adjudicate.com.au	vic@adjudicate.com.au	act@adjudicate.com.au	tas@adjudicate.com.au	sa@adjudicate.com.au

Figure 3 shows subsidised versus income producing adjudication applications for the 21 month period 1 July 2012 to 31 March 2014.

Figure 3



Adjudicate Today offers fixed price adjudications for small claims.

- Up to \$5,000 - fixed price of \$660
- From \$5,001 to \$15,000 - fixed price of \$1,100.

Our subsidy for applications to \$5,000 is in excess of \$800 per matter and for applications from \$5,000 to \$15,000 is in excess of \$600 per matter.

Without ANAs, parties will pay the full cost of adjudication as there is no competitive motive to continue the subsidy programs. The cost of adjudication will increase, particularly for those least able to afford the process.

Adjudicate Today accepts that for adjudicators to be appointed by the Registrar, and with ANAs continuing to provide their many other services, the Registrar will need to establish rules with which ANAs must comply. The Registrar must be empowered to require ANAs to provide such information as to permit the Registrar to appoint an adjudicator.

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We suggest an adjudicator appointment process which provides for ANAs to nominate adjudicators to the Registrar to appoint can best operate as follows:

1. The ANA to which an adjudication application is made shall refer the details of the adjudication application as soon as practical and within 4 business days to the Registrar for nomination of a person eligible to be an adjudicator under section 22.
2. The Registrar shall appoint an adjudicator from the panel of eligible adjudicators as advised from time to time by the ANA to which the adjudication application was made.
3. The ANA shall provide the Registrar with such details of the adjudication application as are prescribed by the Registrar for the purpose of the Registrar appointing an eligible adjudicator. The Registrar may prescribe the number of adjudicators to be nominated by an ANA for each application.

With these simple legislative changes, parties can be assured that the appointment process is managed impartially by the Registrar and ANAs can continue providing their advice to industry participants, services to adjudicators and subsidy of low cost claims.

At attachment 3, we provide our views as to how the Bill may be amended to restore ANAs and empower the Registrar to appoint adjudicators.

Many of our adjudicators and some industry associations have expressed concern that the Registrar will be conflicted when it comes to the appointment of adjudicators where the government or one of its agencies is respondent. Previously we have noted that the Department has an intense interest when it comes to defending its actions in withholding payments to sub-contractors in relation to building work under the Home Warranty scheme. We have also noted that the Registrar has NOT demonstrated independence from the Department. On at least two occasions, the Registrar (and / or his staff) has pressured Adjudicate Today not to pursue the Department in relation to fees owing to adjudicators under the Act.

However we submit these concerns can be addressed by the Registrar taking particular note of the recommendation of ANAs where it comes to the appointment of adjudicators in matters where government or its agencies are respondents.

Unless ANAs stand between government and parties to dispute, a great number of problems arise for government:

- The perception will be that government appoints adjudicators to decide disputes. Therefore complaints will be directed at the Minister either directly or via representations from MPs.
- About 70% of parties (claimants and respondents) to adjudication are dissatisfied as they are not entirely successful in their submissions. This creates many oral questions and / or complaints which are currently dealt with by ANAs. Without ANAs dealing with complaints, the Minister / Commission should expect to receive about 5 complaints per week.

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- MPs will also have complaints directed at them from constituents, encouraging questions in the Parliament and unfounded criticism of government.

An ANA can deal with complaints far more efficiently than any government prescribed process. Without ANAs nominating to the Registrar, proper administrative appeal systems will need to be established. Courts will assert their right to intervene in appeal processes. In contrast, the senior management of Adjudicate Today are experienced mediators. The Managing Director is a former Produce and Grocery Industry Ombudsman for the Commonwealth Government. We handle “grumbles” quickly and efficiently before they are translated into formal written complaints.

The system of ANAs and adjudicators was deliberately designed with checks and balances. ANAs are the check that balances out government involvement. The participation of ANAs is all the more pressing when the appointment of adjudicators is perceived as made by government.

b. Complex matters

The sections of the Bill establishing a dual form of adjudication for “complex” matters contain a major drafting flaw.

Clause 15 of the Bill provides for revised adjudication procedures and particularly introduces a distinction between complex payment claims and standard payment claims. If the adjudicator decides the payment claim for an adjudication application has been incorrectly identified as a complex payment claim, the adjudicator must continue to decide the application as if it related to a complex payment claim. However if the adjudicator decides the payment claim for the adjudication application has been incorrectly identified as a standard payment claim, the adjudication application is taken to be withdrawn.

Therefore labelling a payment claim runs the risk of being “taken as withdrawn” unless there is certainty on the question. Unfortunately there is major uncertainty as to what constitutes a complex payment claim. Clause 45 of the Bill defines a complex payment claim as constituting any (my emphasis) of the following-

- (a) Any payment for an amount more than \$750,000 or, if a greater amount is prescribed by regulation, the amount prescribed;
- (b) A latent condition under the relevant construction contract;
- (c) A time-related cost under the relevant construction contract.

Sub-clause (a) may seem clear but the lack of a clear definition will guarantee confusion and litigation. Let’s assume the payment claim is for \$1,000,000 and the payment schedule is for \$600,000. The amount in dispute is \$400,000. Do these circumstances fall under sub-clause (a)? The Bill should provide better direction.

Sub-clause (b) is guaranteed to invoke disagreement over what constitutes a “latent condition”. The Bill provides no guidance. Many contracts define the term in different ways. Often a “latent condition” is treated as a variation and progressed in that way. A typical example is an excavation job for a home builder during which asbestos is discovered. The quote is for \$30,000. Arguably the discovery of asbestos is a latent condition under the Act.

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In the absence of any definition of the term “time-related cost” sub-clause (c) means all things to all people. What does the term time-related cost mean? Here are some examples of potential argument over whether a claim is time-related:

- Builder says to his regular electrician. “I am happy to pay your hourly rate of \$65 per hour. How long to rewire that factory? Answer: 2 weeks.
- Same builder says to same electrician: “Give me a price to rewire that factory.” Answer \$5,000 but if you want any additional work, my price is \$65 per hour?
- The builder and electrician are now in dispute. The electrician’s terms of engagement provide that if he/she is not paid within 14 days of serving an invoice interest can be claimed. As 14 days has elapsed, does such a contractual provision render any payment claim time-related?

At the minimum Clause 15 should include further definitions and only apply where the dispute is in excess of \$750,000 (however defined) and applies to either latent conditions or time-related costs (however defined).

As the Bill is currently framed, responsible advice to claimants would be to label all payment claims as complex regardless of circumstances. However this advice comes at a great financial and time cost.

Under the current Act, adjudication of all claims are “standard”. Assuming the parties have no agreement for an extension of time, the maximum time to completion from service of the adjudication application to the adjudicator’s decision is 5 weeks. In stark contrast, where parties and the adjudicator take full advantage of all times provided under the Act (and assuming no additional extensions are agreed by the parties), an adjudication application of a complex payment claim will take 15 weeks and 5 days to complete. Clearly such claims will be more expensive and lead to great delays in eventual payment. Such delay will increase the number of insolvencies in the industry.

D. Conclusion

Since completing the report in May 2013, Wallace has worked closely with Adjudicate Today to reform our Chief Adjudicator system, improve the monitoring of adjudication decisions (after they are released), enhance the feedback to adjudicators on their performance and create greater independence in the training, marking and assessment of candidates seeking registration as adjudicators. Inherent in the close collaboration has been a strong desire by Adjudicate Today to address concerns (albeit unfounded) as to the quality of adjudication decisions and the independence and transparency of adjudicator appointment.

We wish to continue working with Wallace and the Registrar to enhance and improve the administration of adjudication and the quality of adjudication decisions in Queensland. We request that implementation of the Wallace recommendations be limited to what Wallace recommends and not extended to the unnecessary and harsh and oppressive abolition of ANAs. We request further consideration be given to the “complex matter” proposals.

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In order to progress these issues, we request the opportunity to appear before the Committee.

Yours sincerely



Bob Gaussen
Managing Director

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SERVICES CURRENTLY PROVIDED BY ADJUDICATE TODAY:	SERVICES TO BE PROVIDED BY THE ADJUDICATION REGISTRAR (based on his briefings):	SERVICES PROPOSED BE PROVIDED BY ADJUDICATE TODAY AFTER 1 SEPTEMBER 2014:
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Attachment 1

ANA PRIMARY FUNCTIONS	ANA PRIMARY FUNCTIONS	ANA PRIMARY FUNCTIONS
Accept adjudication applications in various modes: email, lockbox, hand delivery, fax, post at any of our 7 offices in Australia	Accept adjudication applications which must be made on-line. (Under the AT proposal, this is unnecessary).	Accept adjudication applications in various modes: email, lockbox, hand delivery, fax, post at any of our 7 offices in Australia
Nominate adjudication applications to suitable adjudicators	Appoint a suitable adjudicator to decide adjudication applications	Nominate 3 names of suitable and available adjudicators to Adjudication Registrar from which one will be appointed
	Advise adjudicator of their appointment by Registrar	Advise adjudicator of their appointment by Registrar
Issue adjudication certificates when requested by a claimant	Issue adjudication certificates when requested by a claimant. (Under the AT proposal, this is unnecessary)	Issue adjudication certificates when requested by a claimant
ADDITIONAL FUNCTIONS	ADDITIONAL FUNCTIONS	ADDITIONAL FUNCTIONS
1. INFORMATION DELIVERY TO INDUSTRY STAKEHOLDERS	1. INFORMATION DELIVERY TO INDUSTRY STAKEHOLDERS	1. INFORMATION DELIVERY TO INDUSTRY STAKEHOLDERS
Comprehensive website available to all industry participants containing information on the Act, process flowcharts, templates	Unknown. The existing website is most poor	Comprehensive website available to all industry participants containing information on the Act, process flowcharts, templates. It is anticipated that updating the existing website will take 2 month intensive work
Experienced staff available to provide general information and assistance on the adjudication process	No - Registrar has stated it is up to parties to make own enquiries	Experienced staff available to provide general information and assistance on the adjudication process
Delivery of seminars on the adjudication process to Universities, industry based organisations	No	Delivery of seminars on the adjudication process to Universities, industry based organisations
2. SERVICE OF DOCUMENTS	2. SERVICE OF DOCUMENTS	2. SERVICE OF DOCUMENTS
Act as a buffer between adjudicators and parties. It is inappropriate for parties to contact adjudicators and make statements of which other parties are unaware	No, adjudicators will need to make their own arrangements	Act as a buffer between adjudicators and parties. It is inappropriate for parties to contact adjudicators and make statements of which other parties are unaware

SERVICES CURRENTLY PROVIDED BY ADJUDICATE TODAY:	SERVICES TO BE PROVIDED BY THE ADJUDICATION REGISTRAR (based on his briefings):	SERVICES PROPOSED BE PROVIDED BY ADJUDICATE TODAY AFTER 1 SEPTEMBER 2014:
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Attachment 1

Provide a Queensland address for service for adjudication applications, responses, further submissions and court documents	No	Provide a Queensland address for service for adjudication applications, responses, further submissions and court documents
Various methods of receiving documents: Email, Lockbox, hand delivery, fax, post	No	Various methods of receiving documents: Email, Lockbox, hand delivery, fax, post
Receive and date stamp hard/soft copy documentation from parties	No	Receive and date stamp hard/soft copy documentation from parties
Request hard copy documentation from parties and follow up when necessary	No	Request hard copy documentation from parties and follow up when necessary
Forward documentation to Adjudicator in a timely manner	No	Forward documentation to Adjudicator in a timely manner
Undertake general checks of time compliance and report to relevant adjudicator	No	Undertake general checks of time compliance and report to relevant adjudicator
3. LIASING WITH PARTIES	3. LIASING WITH PARTIES	3. LIASING WITH PARTIES
Provide general information on the adjudication process and updates to parties upon request. Maintain industry leading website	No	Provide general information on the adjudication process and updates to parties upon request. Maintain industry leading website
Respond to requests for information from parties to adjudication	No	Respond to requests for information from parties to adjudication
Direct enquiries to BCIPA if/when necessary	No	Direct enquiries to BCIPA if/when necessary
Notify parties of Adjudicator's withdrawal if/when necessary	Unknown	Notify parties of Adjudicator's withdrawal if/when necessary
4. REFERRAL OF ADJUDICATION APPLICATIONS TO ADJUDICATORS	4. REFERRAL OF ADJUDICATION APPLICATIONS TO ADJUDICATORS	4. REFERRAL OF ADJUDICATION APPLICATIONS TO ADJUDICATORS
Adjudicator panel contains 29 active adjudicators and mentees with varying qualifications and grades	Active vs inactive adjudicator panel to include information on their skills, knowledge and experience	Adjudicator panel contains 29 active adjudicators and mentees with varying qualifications and grades
Conflict of interest reviews undertaken prior to referral of adjudications. Existing referral criteria both comprehensive and complex	Registry staff to review adjudication applications and categorise them based on unknown criteria for referral to an 'active' adjudicator	Conflict of interest reviews undertaken prior to referral of adjudications. Existing referral criteria both comprehensive and complex

SERVICES CURRENTLY PROVIDED BY ADJUDICATE TODAY:	SERVICES TO BE PROVIDED BY THE ADJUDICATION REGISTRAR (based on his briefings):	SERVICES PROPOSED BE PROVIDED BY ADJUDICATE TODAY AFTER 1 SEPTEMBER 2014:
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Attachment 1

Adjudication applications referred to suitable adjudicators based on general overview of disputed issues which are matched with adjudicator skills, knowledge and experience	Adjudication applications referred to suitable adjudicators based on general overview of disputed issues which are matched with adjudicator skills, knowledge and experience	Nominate to Registrar, required number of suitable adjudicators based on general overview of disputed issues which are matched with adjudicator skills, knowledge and experience
Service of the Adjudicator's Notification of Acceptance of an adjudication application on the parties	No	Service of the Adjudicator's Notification of Acceptance of an adjudication application on the parties
5. REQUESTS FOR FURTHER SUBMISSIONS	5. REQUESTS FOR FURTHER SUBMISSIONS	5. REQUESTS FOR FURTHER SUBMISSIONS
Request further submissions from parties on behalf of adjudicators	No	Request further submissions from parties on behalf of adjudicators
Answer any enquiries from parties regarding requests from the Adjudicator	No	Answer any enquiries from parties regarding requests from the Adjudicator
Follow up regarding further submissions from parties if no reply received	No	Follow up regarding further submissions from parties if no reply received
Ensure parties do not contact Adjudicator directly	No	Ensure parties do not contact Adjudicator directly
6. ORGANISE CONFERENCES OR INSPECTIONS	6. ORGANISE CONFERENCES OR INSPECTIONS	6. ORGANISE CONFERENCES OR INSPECTIONS
If requested by an adjudicator, organise a conference of the parties including venue	No	If requested by an adjudicator, organise a conference of the parties including venue
If requested by an adjudicator, organise an inspection of a site or documents	No	If requested by an adjudicator, organise an inspection of a site or documents
7. DECISION HANDLING	7. DECISION HANDLING	7. DECISION HANDLING
Receive adjudicators' decisions - upload to web-site	Receive adjudicators' decisions - upload to web-site	Receive adjudicators' decisions - upload to web-site
Receive adjudicators' invoices	No	Receive adjudicators' invoices
Proof read decisions for typographical errors	No	Proof read decisions for typographical errors
Releasing Decision to parties upon payment of adjudication fees	No	Releasing Decision to parties upon payment of adjudication fees
Providing Decision to BCIPA (if necessary)	No	Providing Decision to BCIPA (if necessary)
Provide Adjudicator with any slip rule requests	No	Provide Adjudicator with any slip rule requests

SERVICES CURRENTLY PROVIDED BY ADJUDICATE TODAY:	SERVICES TO BE PROVIDED BY THE ADJUDICATION REGISTRAR (based on his briefings):	SERVICES PROPOSED BE PROVIDED BY ADJUDICATE TODAY AFTER 1 SEPTEMBER 2014:
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Attachment 1

Releasing slip rule amendments to parties	No	Releasing slip rule amendments to parties
8. INVOICING and DEBT RECOVERY	8. INVOICING and DEBT RECOVERY	8. INVOICING and DEBT RECOVERY
Invoicing parties on behalf of adjudicators	No	Invoicing parties on behalf of adjudicators
Ensure prompt payment of invoices by following up with parties	No	Ensure prompt payment of invoices by following up with parties
Answer enquiries regarding fees charged	No	Answer enquiries regarding fees charged
Multiple payment methods available: cash, money order, electronic funds transactions, credit card	No	Multiple payment methods available: cash, money order, electronic funds transactions, credit card
9. DEALING WITH COMPLAINTS FROM PARTIES	9. DEALING WITH COMPLAINTS FROM PARTIES	
Respond to complaints. Detailed complaints procedure described at www.adjudicate.com.au/complaint.php	Unknown	Respond to complaints. Detailed complaints procedure described at www.adjudicate.com.au/complaint.php
Analysis of decisions (after released to parties) by 2 senior adjudicators, members of the Adjudication Competency Assessment Panel	No	Analysis of decisions (after released to parties) by 2 senior adjudicators, members of the Adjudication Competency Assessment Panel
Reporting outcome of complaints process to the BCIPA	Unknown. Expect majority of complaints will be made to Minister	Reporting outcome of complaints process to the BCIPA
10. LIAISING WITH GOVT	10. LIAISING WITH GOVT	10. LIAISING WITH GOVT
Respond to any enquires of the Registrar or his staff	N/A	Respond to any enquires of the Registrar or his staff
Extranet reporting on adjudication applications	Public reporting functions - unknown	Extranet reporting on adjudication applications
11. APPLICATIONS BY PARTIES TO ADJUDICATION TO THE SUPREME COURT	11. APPLICATIONS BY PARTIES TO ADJUDICATION TO THE SUPREME COURT	11. APPLICATIONS BY PARTIES TO ADJUDICATION TO THE SUPREME COURT
Accept service of court documents on behalf of adjudicators	No	Accept service of court documents on behalf of adjudicators
Confirm relevant parties' position regarding any order for costs against an adjudicator	No	Confirm relevant parties' position regarding any order for costs against an adjudicator

SERVICES CURRENTLY PROVIDED BY ADJUDICATE TODAY:	SERVICES TO BE PROVIDED BY THE ADJUDICATION REGISTRAR (based on his briefings):	SERVICES PROPOSED BE PROVIDED BY ADJUDICATE TODAY AFTER 1 SEPTEMBER 2014:
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Attachment 1

Provided no order for costs is sought, file Notice of Address for Service on behalf of an adjudicator	No	Provided no order for costs is sought, file Notice of Address for Service on behalf of an adjudicator
12. ONGOING PROFESSIONAL DEVELOPMENT FOR ADJUDICATORS	12. ONGOING PROFESSIONAL DEVELOPMENT FOR ADJUDICATORS	12. ONGOING PROFESSIONAL DEVELOPMENT FOR ADJUDICATORS
Monitoring program for new adjudicators by Peer Review process	Unknown	Monitoring program for new adjudicators by Peer Review process
Compulsory attendance at our annual adjudicator seminar	Unknown	Compulsory attendance at our annual adjudicator seminar and other professional education events and ensuring compliance with all government benchmarks for skills and qualifications of adjudicators
Peer Review Committee	No	Peer Review Committee
Circulation of papers (Practice Notes) based on Supreme Court decisions to raise awareness of contemporary issues and developments in case law	No	Circulation of papers (Practice Notes) based on Supreme Court decisions to raise awareness of contemporary issues and developments in case law
In the event a decision is set aside by the Supreme Court, adjudicators are required to write a paper demonstrating their understanding of the reasons for a decision being set aside	Unknown	In the event a decision is set aside by the Supreme Court, adjudicators are required to write a paper demonstrating their understanding of the reasons for a decision being set aside
13. TRAINNG	13. TRAINNG	13. TRAINNG
Professional training, including mentoring program, conducted over 3 months	Unknown	Professional training, including mentoring program, conducted over 3 months
Access to senior adjudicators for their advice in resolving complex issues	No	Access to senior adjudicators for their advice in resolving complex issues

Criteria

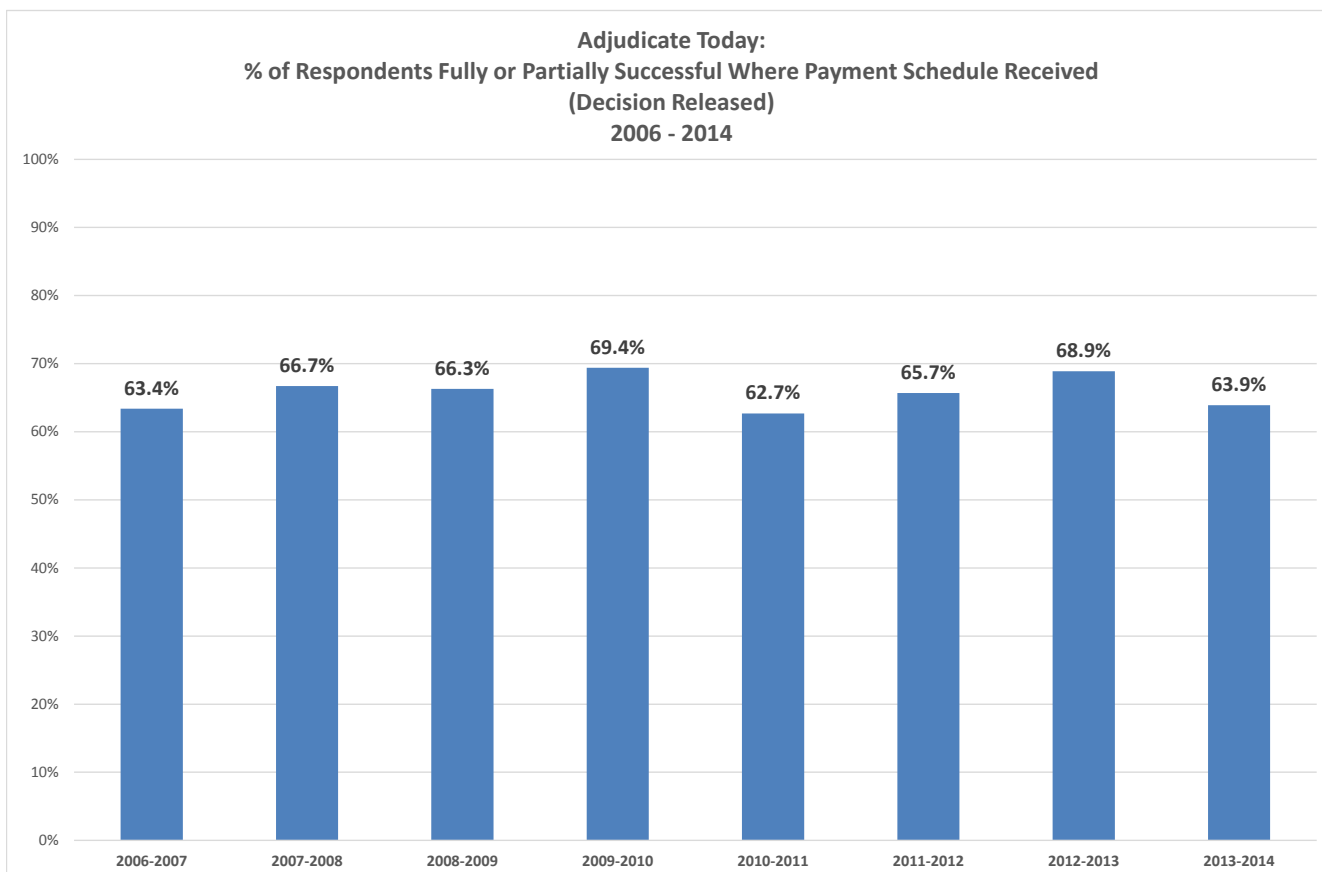
All formulas in the "-(3)" spreadsheet are based on the following criteria:

Date Adjudication Application lodged must be between 1 July and 30 June of the relevant year.

Table 1

Date Range	% of Respondents Fully or Partially Successful Where a Payment Schedule was Received (Decision Released)
2006-2007	63.4%
2007-2008	66.7%
2008-2009	66.3%
2009-2010	69.4%
2010-2011	62.7%
2011-2012	65.7%
2012-2013	68.9%
2013-2014	63.9%

Figure 1



Criteria

All formulas in the "-(3)" spreadsheet are based on the following criteria:

Date Adjudication Application lodged must be between 1 July and 30 June of the relevant year.

Table 1

Date Range	% of Claimants Receiving Full Claimed Amount Where Payment Schedule Received (Decision Released)
2006-2007	36.1%
2007-2008	31.1%
2008-2009	34.3%
2009-2010	37.3%
2010-2011	30.6%
2011-2012	33.7%
2012-2013	33.3%
2013-2014	36.6%

Figure 1

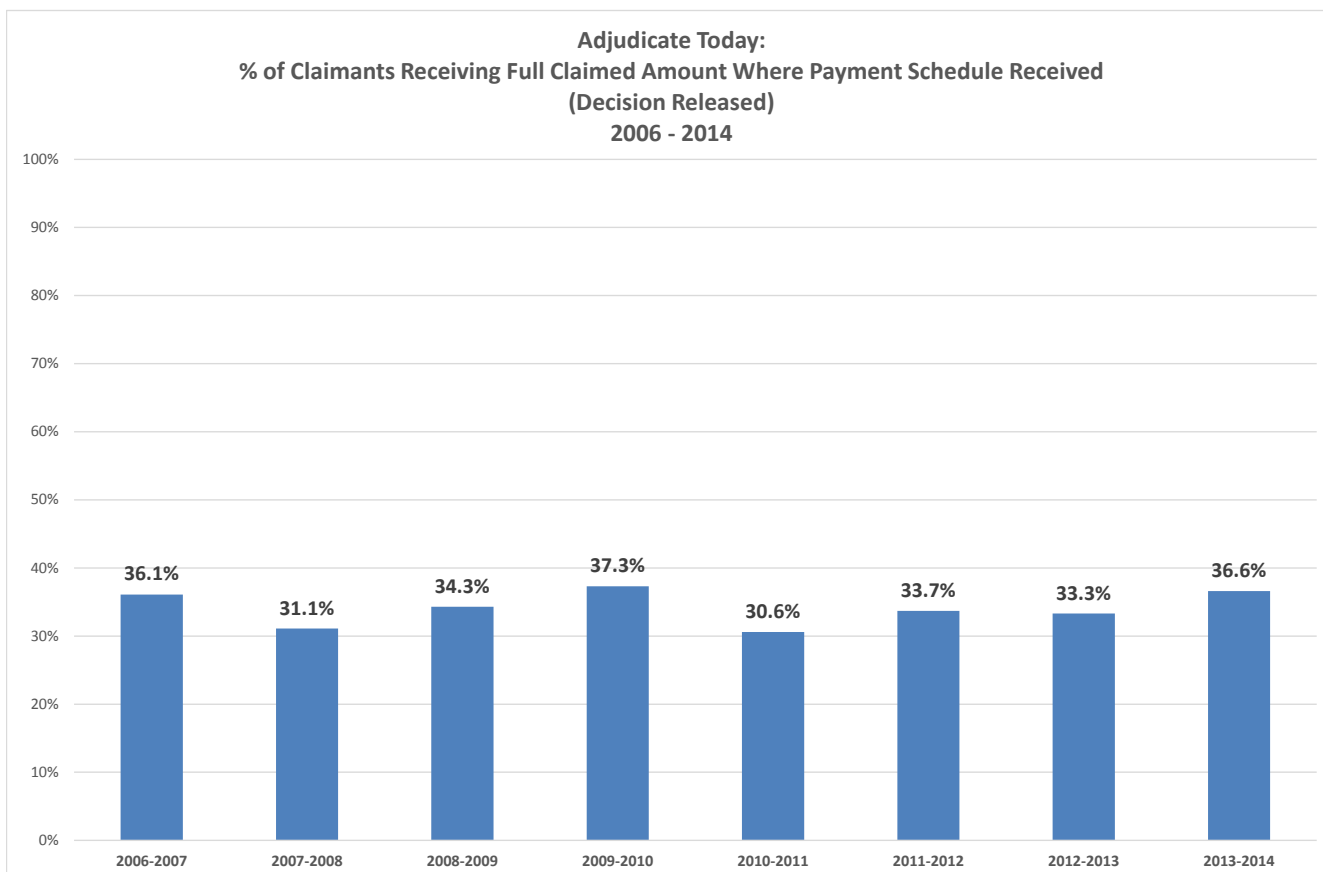


Table 1:

Range of claims	Total AA's lodged	Total Decisions Released	Number of Payment Schedules Lodged (Decision Released)	No. of Claimants Receiving Full Claimed Amount Where Payment Schedule Received (Decision Released)	% of Claimants Receiving Full Claimed Amount Where Payment Schedule Received (Decision Released)	% of Respondents Fully or Partially Successful Where a Payment Schedule was Received (Decision Released)
\$0 - \$4,999	18	13	5	3	60.0%	40.0%
\$5,000 - \$9,999	29	19	10	6	60.0%	40.0%
\$10,000 - \$24,999	39	37	21	10	47.6%	52.4%
\$25,000 - \$39,999	28	27	18	8	44.4%	55.6%
\$40,000 - \$99,999	49	44	28	7	25.0%	75.0%
\$100,000 - \$249,999	25	25	20	8	40.0%	60.0%
\$250,000 - \$499,999	12	11	9	3	33.3%	66.7%
>\$500,000	24	23	23	4	17.4%	82.6%
TOTAL	224	199	134	49	36.6%	63.4%

Figure 1:

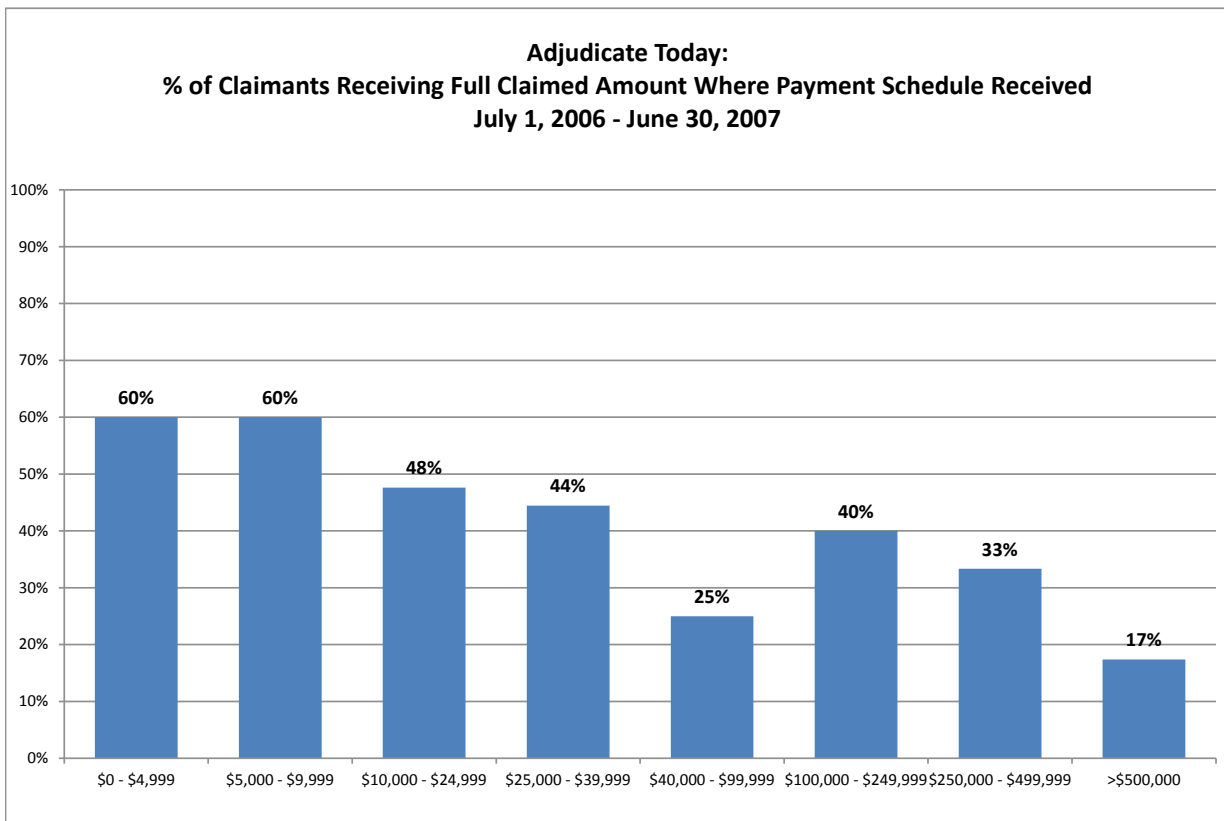


Table 1:

Range of claims	Total AA's lodged	Total Decisions Released	Number of Payment Schedules Lodged (Decision Released)	No. of Claimants Receiving Full Claimed Amount Where Payment Schedule Received (Decision Released)	% of Claimants Receiving Full Claimed Amount Where Payment Schedule Received (Decision Released)	% of Respondents Fully or Partially Successful Where a Payment Schedule was Received (Decision Released)
\$0 - \$4,999	33	24	5	5	100.0%	0.0%
\$5,000 - \$9,999	31	28	16	8	50.0%	50.0%
\$10,000 - \$24,999	61	39	19	12	63.2%	36.8%
\$25,000 - \$39,999	36	28	16	4	25.0%	75.0%
\$40,000 - \$99,999	60	48	39	10	25.6%	74.4%
\$100,000 - \$249,999	29	17	14	4	28.6%	71.4%
\$250,000 - \$499,999	10	9	9	1	11.1%	88.9%
>\$500,000	23	19	17	1	5.9%	94.1%
TOTAL	283	212	135	45	33.3%	66.7%

Figure 1:

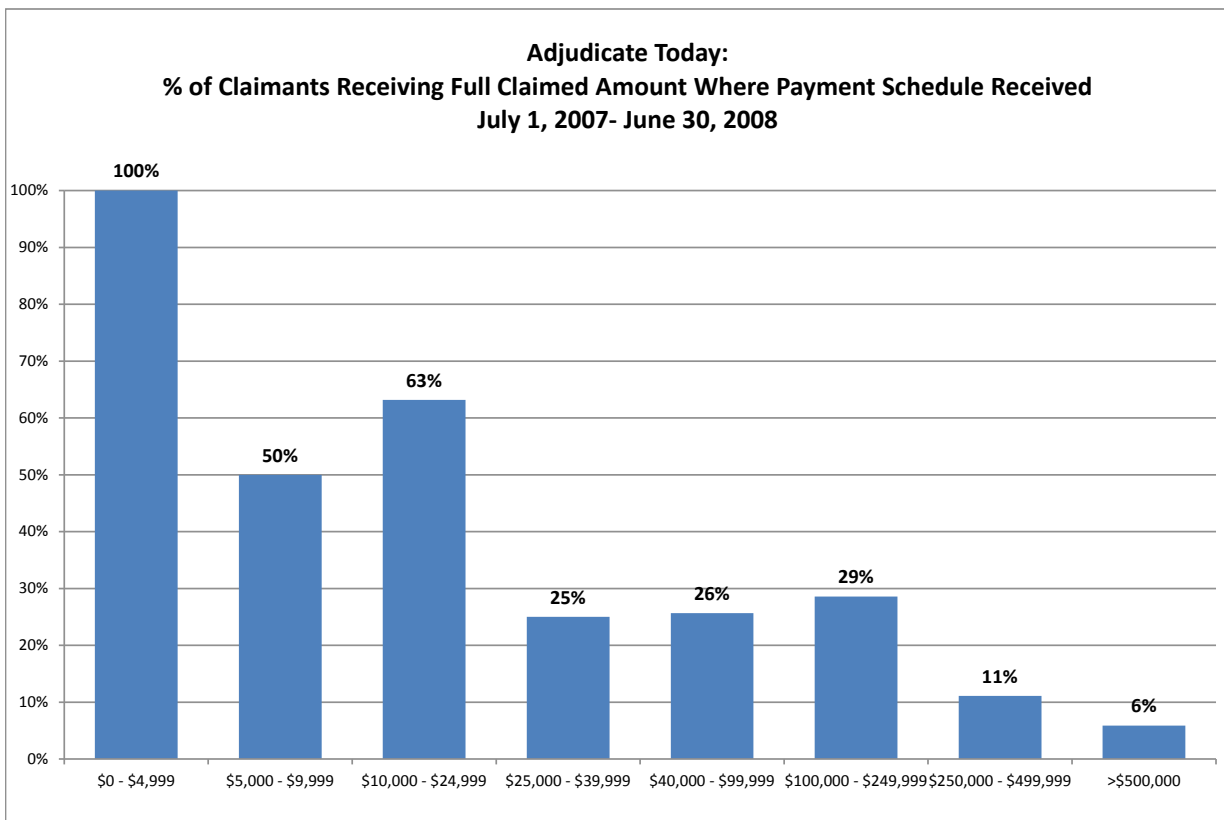


Table 1:

Range of claims	Total AA's lodged	Total Decisions Released	Number of Payment Schedules Lodged (Decision Released)	No. of Claimants Receiving Full Claimed Amount Where Payment Schedule Received (Decision Released)	% of Claimants Receiving Full Claimed Amount Where Payment Schedule Received (Decision Released)	% of Respondents Fully or Partially Successful Where a Payment Schedule was Received (Decision Released)
\$0 - \$4,999	42	27	7	3	42.9%	57.1%
\$5,000 - \$9,999	63	41	16	7	43.8%	56.3%
\$10,000 - \$24,999	92	67	35	19	54.3%	45.7%
\$25,000 - \$39,999	46	37	19	6	31.6%	68.4%
\$40,000 - \$99,999	68	51	29	13	44.8%	55.2%
\$100,000 - \$249,999	45	34	29	9	31.0%	69.0%
\$250,000 - \$499,999	31	27	23	5	21.7%	78.3%
>\$500,000	41	38	35	3	8.6%	91.4%
TOTAL	428	322	193	65	33.7%	66.3%

Figure 1:

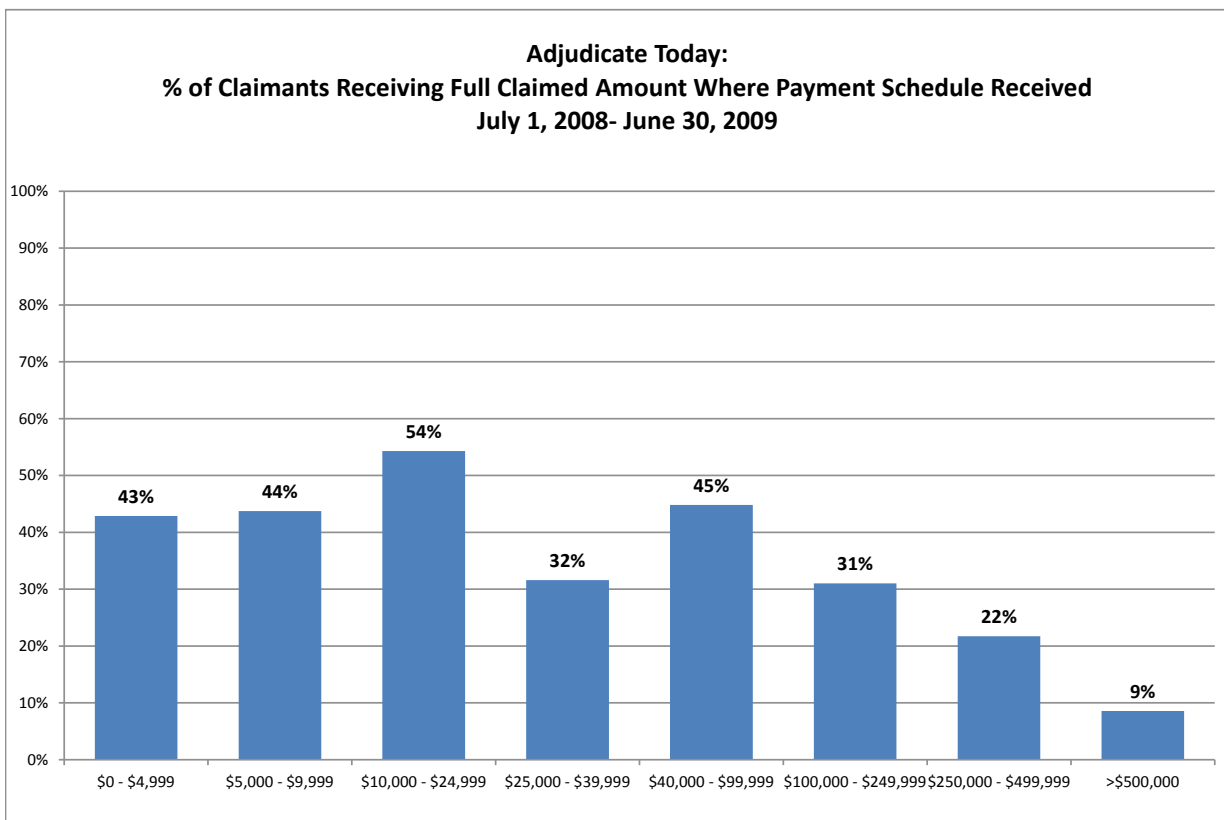


Table 1:

Range of claims	Total AA's lodged	Total Decisions Released	Number of Payment Schedules Lodged (Decision Released)	No. of Claimants Receiving Full Claimed Amount Where Payment Schedule Received (Decision Released)	% of Claimants Receiving Full Claimed Amount Where Payment Schedule Received (Decision Released)	% of Respondents Fully or Partially Successful Where a Payment Schedule was Received (Decision Released)
\$0 - \$4,999	85	76	9	5	55.6%	44.4%
\$5,000 - \$9,999	36	22	13	9	69.2%	30.8%
\$10,000 - \$24,999	71	53	32	11	34.4%	65.6%
\$25,000 - \$39,999	44	34	24	12	50.0%	50.0%
\$40,000 - \$99,999	69	58	43	11	25.6%	74.4%
\$100,000 - \$249,999	49	44	34	10	29.4%	70.6%
\$250,000 - \$499,999	20	17	16	3	18.8%	81.3%
>\$500,000	44	35	35	2	5.7%	94.3%
TOTAL	418	339	206	63	30.6%	69.4%

Figure 1:

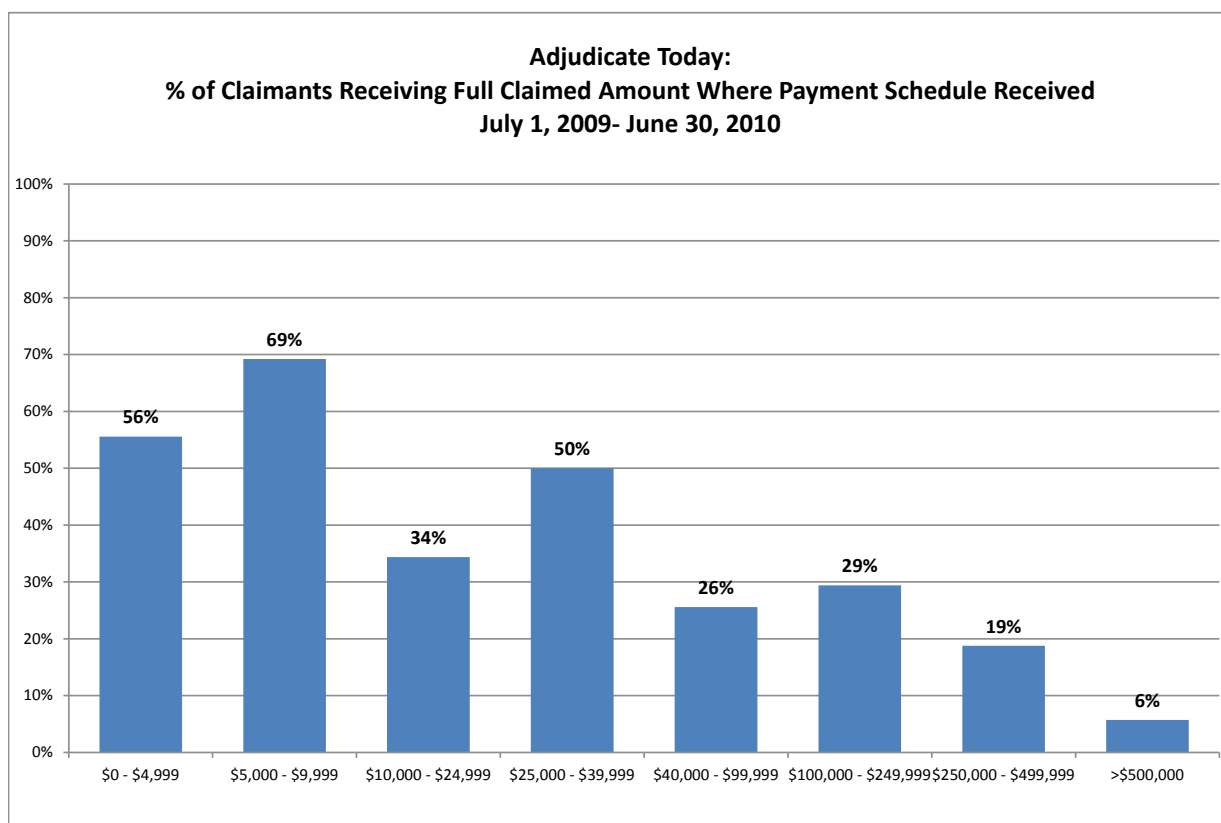


Table 1:

Range of claims	Total AA's lodged	Total Decisions Released	Number of Payment Schedules Lodged (Decision Released)	No. of Claimants Receiving Full Claimed Amount Where Payment Schedule Received (Decision Released)	% of Claimants Receiving Full Claimed Amount Where Payment Schedule Received (Decision Released)	% of Respondents Fully or Partially Successful Where a Payment Schedule was Received (Decision Released)
\$0 - \$4,999	57	42	18	16	88.9%	11.1%
\$5,000 - \$9,999	44	29	11	8	72.7%	27.3%
\$10,000 - \$24,999	63	41	26	15	57.7%	42.3%
\$25,000 - \$39,999	31	17	13	7	53.8%	46.2%
\$40,000 - \$99,999	45	30	25	8	32.0%	68.0%
\$100,000 - \$249,999	37	31	27	3	11.1%	88.9%
\$250,000 - \$499,999	17	16	12	1	8.3%	91.7%
>\$500,000	33	29	26	1	3.8%	96.2%
TOTAL	327	235	158	59	37.3%	62.7%

Figure 1:

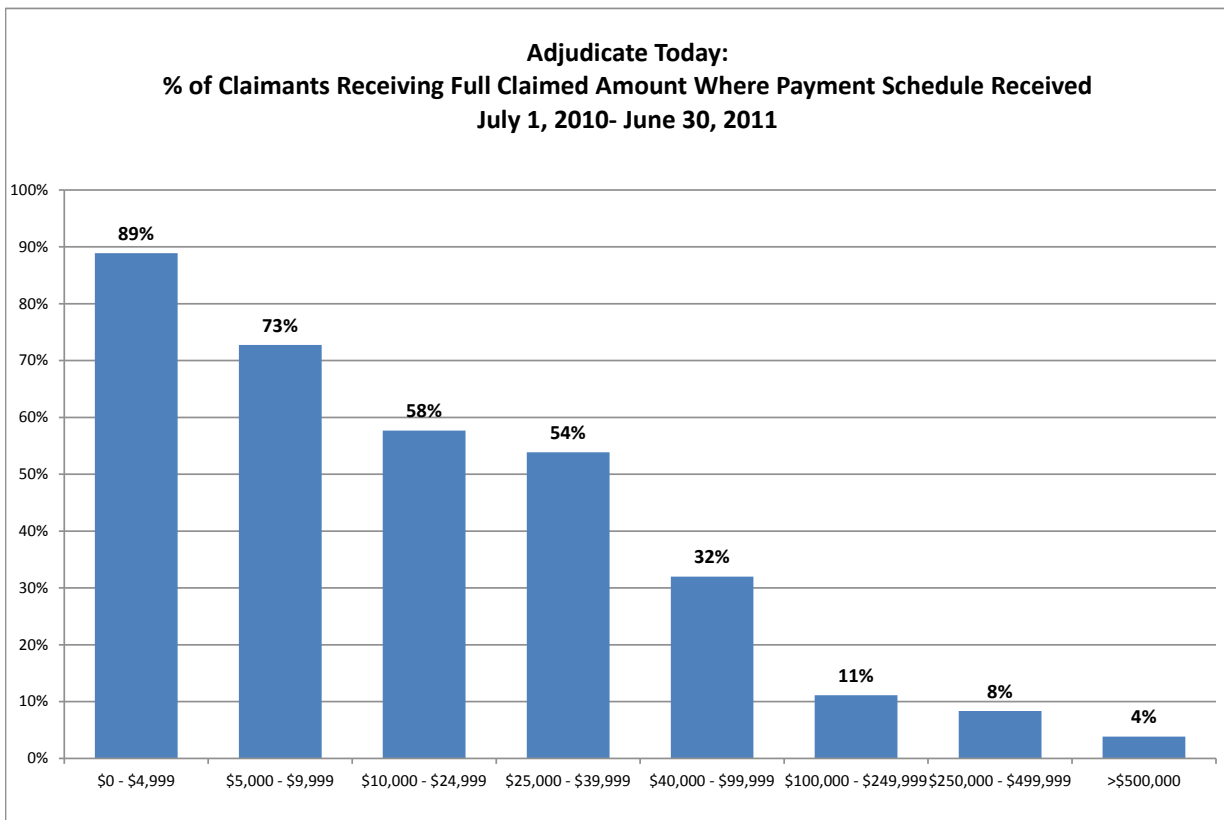


Table 1:

Range of claims	Total AA's lodged	Total Decisions Released	Number of Payment Schedules Lodged (Decision Released)	No. of Claimants Receiving Full Claimed Amount Where Payment Schedule Received (Decision Released)	% of Claimants Receiving Full Claimed Amount Where Payment Schedule Received (Decision Released)	% of Respondents Fully or Partially Successful Where a Payment Schedule was Received (Decision Released)
\$0 - \$4,999	87	62	29	15	51.7%	48.3%
\$5,000 - \$9,999	45	32	18	10	55.6%	44.4%
\$10,000 - \$24,999	68	51	32	15	46.9%	53.1%
\$25,000 - \$39,999	38	28	21	7	33.3%	66.7%
\$40,000 - \$99,999	70	51	42	14	33.3%	66.7%
\$100,000 - \$249,999	27	20	20	2	10.0%	90.0%
\$250,000 - \$499,999	10	8	8	1	12.5%	87.5%
>\$500,000	40	36	34	6	17.6%	82.4%
TOTAL	385	288	204	70	34.3%	65.7%

Figure 1:

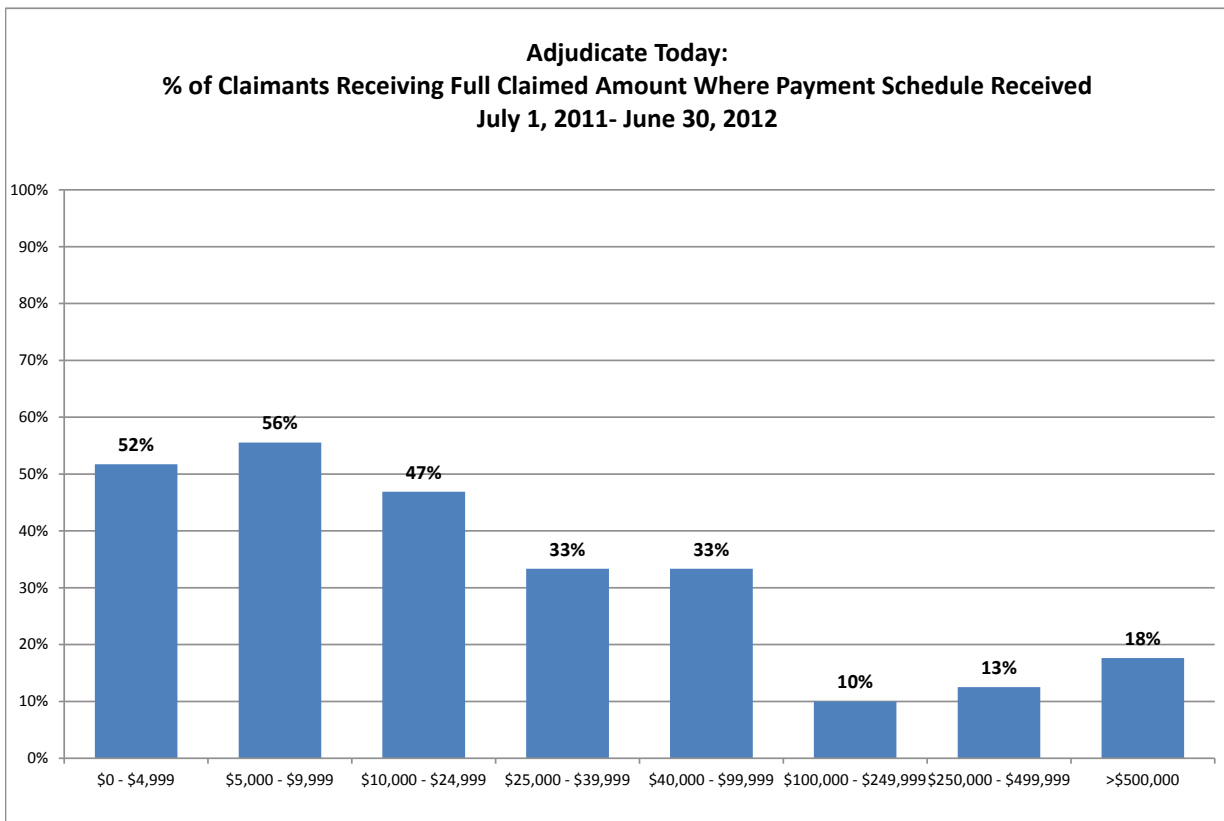


Table 1:

Range of claims	Total AA's lodged	Total Decisions Released	Number of Payment Schedules Lodged (Decision Released)	No. of Claimants Receiving Full Claimed Amount Where Payment Schedule Received (Decision Released)	% of Claimants Receiving Full Claimed Amount Where Payment Schedule Received (Decision Released)	% of Respondents Fully or Partially Successful Where a Payment Schedule was Received (Decision Released)
\$0 - \$4,999	70	52	11	8	72.7%	27.3%
\$5,000 - \$9,999	26	21	9	7	77.8%	22.2%
\$10,000 - \$24,999	68	49	23	11	47.8%	52.2%
\$25,000 - \$39,999	35	26	20	5	25.0%	75.0%
\$40,000 - \$99,999	59	45	35	8	22.9%	77.1%
\$100,000 - \$249,999	40	26	25	8	32.0%	68.0%
\$250,000 - \$499,999	27	22	20	4	20.0%	80.0%
>\$500,000	31	25	24	1	4.2%	95.8%
TOTAL	356	266	167	52	31.1%	68.9%

Figure 1:

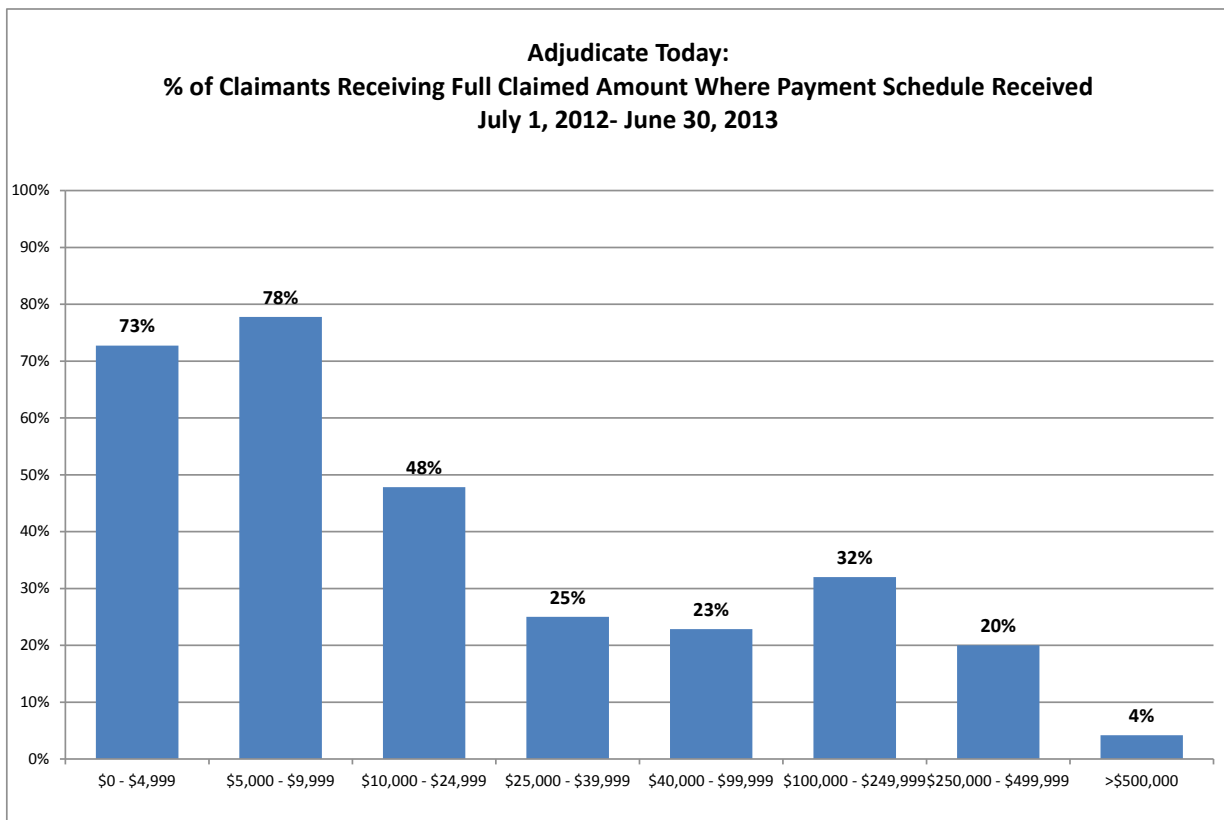
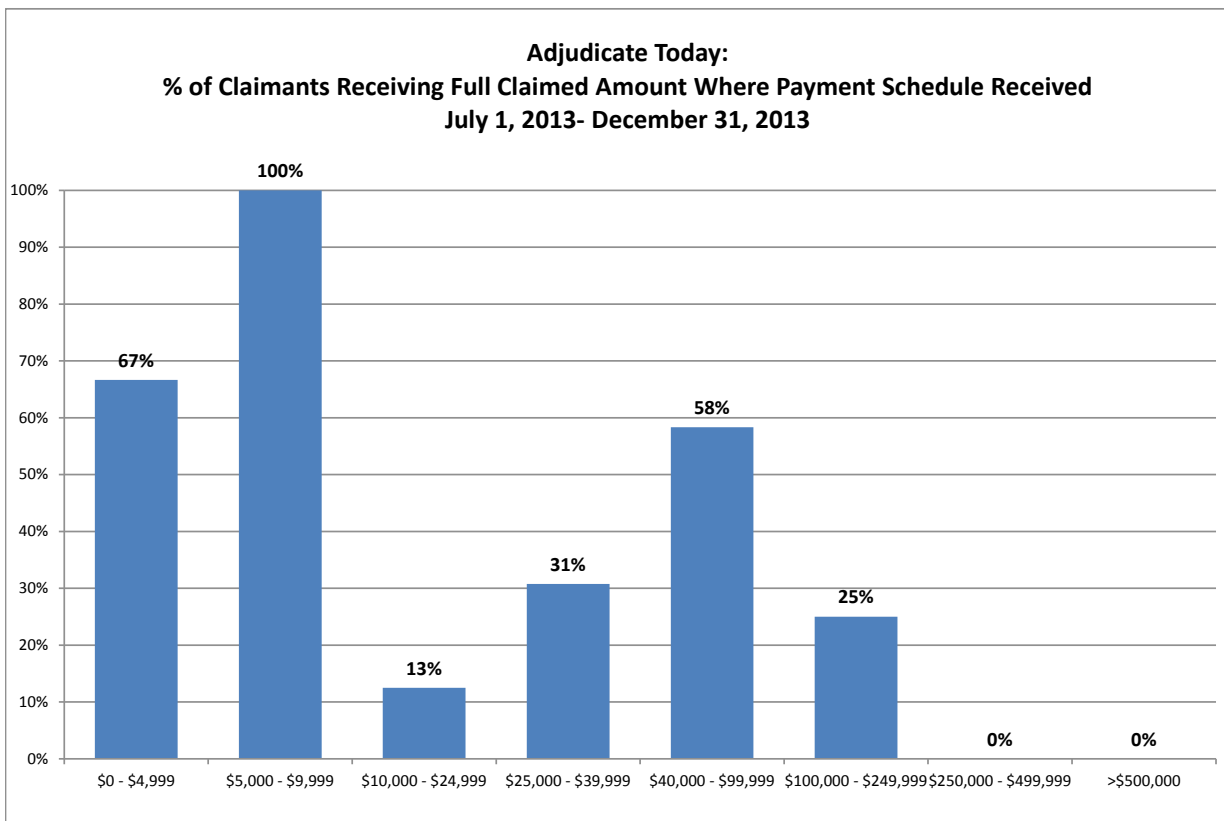


Table 1:

Range of claims	Total AA's lodged	Total Decisions Released	Number of Payment Schedules Lodged (Decision Released)	No. of Claimants Receiving Full Claimed Amount Where Payment Schedule Received (Decision Released)	% of Claimants Receiving Full Claimed Amount Where Payment Schedule Received (Decision Released)	% of Respondents Fully or Partially Successful Where a Payment Schedule was Received (Decision Released)
\$0 - \$4,999	25	16	9	6	66.7%	33.3%
\$5,000 - \$9,999	22	14	5	5	100.0%	0.0%
\$10,000 - \$24,999	25	19	8	1	12.5%	87.5%
\$25,000 - \$39,999	18	15	13	4	30.8%	69.2%
\$40,000 - \$99,999	23	15	12	7	58.3%	41.7%
\$100,000 - \$249,999	18	13	12	3	25.0%	75.0%
\$250,000 - \$499,999	6	3	2	0	0.0%	100.0%
>\$500,000	20	11	11	0	0.0%	100.0%
TOTAL	157	106	72	26	36.1%	63.9%

Figure 1:

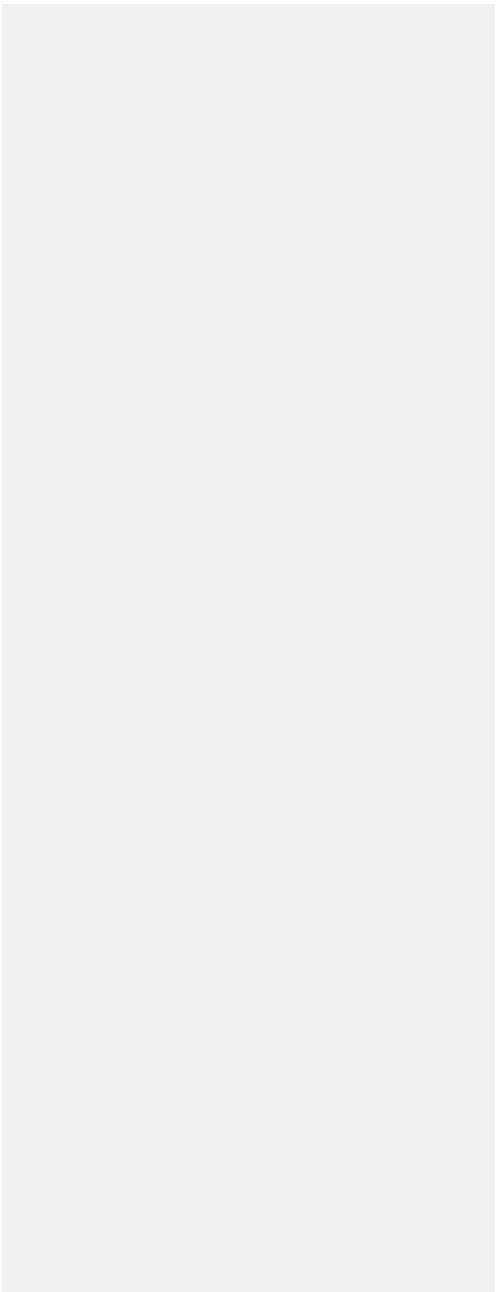




Queensland

Building and Construction Industry Payments Amendment Bill 2014

[Proposed Adjudicate Today amendments to retain ANAs, without the power to nominate adjudicators](#)





Queensland

Building and Construction Industry Payments Amendment Bill 2014

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Building and Construction Industry Payments Amendment Bill 2014

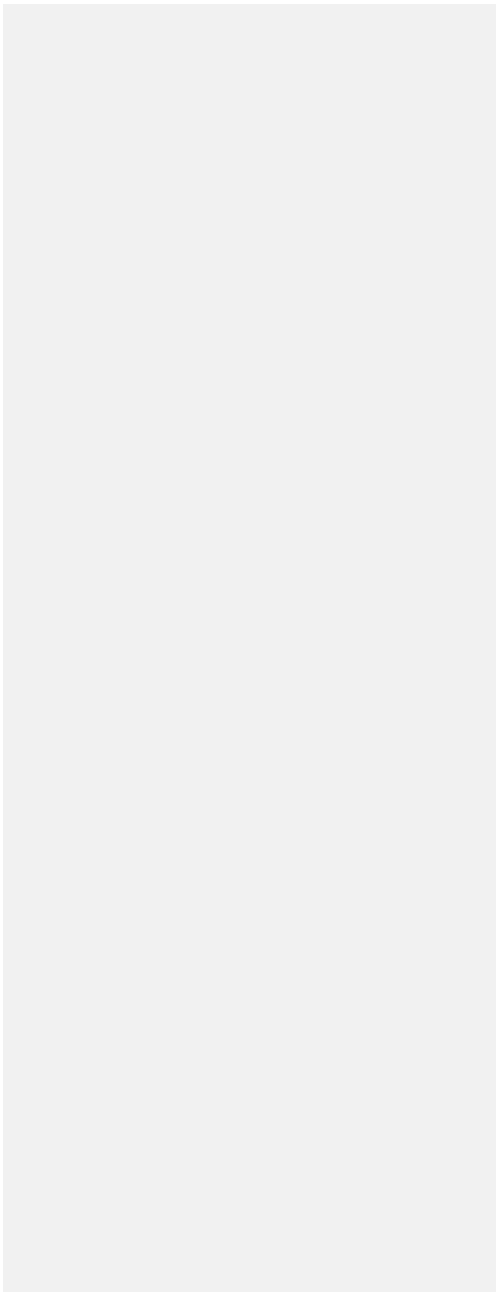
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Building and Construction Industry Payments Amendment Bill 2014

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2014

A Bill

for

**An Act to amend the *Building and Construction Industry
Payments Act 2004* for particular purposes**

[s 1]

The Parliament of Queensland enacts— 1

Clause 1	Short title	2
	This Act may be cited as the <i>Building and Construction Industry Payments Amendment Act 2014</i> .	3 4
Clause 2	Commencement	5
	This Act commences on a day to be fixed by proclamation.	6
Clause 3	Act amended	7
	This Act amends the <i>Building and Construction Industry Payments Act 2004</i> .	8 9
Clause 4	Amendment of s 4 (Effect of giving notice of claim of charge under Subcontractors' Charges Act 1974)	10 11
(1)	Section 4(4)(a), 'section 18(5)'—	12
	omit, insert—	13
	section 19(2)	14
(2)	Section 4(4)(b), 'section 19(2)(a)(i)'—	15
	omit, insert—	16
	section 19(3)(a)(i)	17
(3)	Section 4(4)(d)(ii), 'an authorised nominating authority'—	18
	omit, insert—	19
	the registrar	20
(4)	Section 4(5), '34 or'—	21
	omit.	22
Clause 5	Amendment of s 17 (Payment claims)	23
(1)	Section 17(2)—	24

Commented [RG1]: Omit. Administrative process more efficiently performed by ANA

insert—

- (d) must identify whether it is a standard payment claim or complex payment claim.

(2) Section 17(4) to (6)—

omit, insert—

- (4) A claimant can not serve more than 1 payment claim for each reference date under the construction contract, but may include in any payment claim an amount that has been the subject of a previous payment claim.

Clause 6 Insertion of new s 17A

After section 17—

insert—

17A Time requirements for payment claims

- (1) This section applies if a claimant serves a payment claim on a respondent.
- (2) Unless the payment claim relates to a final payment, the claim must be served within the later of—
 - (a) the period, if any, worked out under the relevant construction contract; or
 - (b) the period of 6 months after the construction work to which the claim relates was last carried out or the related goods and services to which the claim relates were last supplied.
- (3) If the payment claim relates to a final payment, the claim must be served within the later of the following—
 - (a) the period, if any, worked out under the relevant construction contract;

[s 7]

- (b) 28 days after the end of the last defects liability period, if any, worked out under the relevant construction contract; 3
- (c) 6 months after the later of— 4
 - (i) completion of all construction work to be carried out under the relevant construction contract; or 5
 - (ii) complete supply of related goods and services to be supplied under the relevant construction contract. 6
- (4) In this section— 7
 - defects liability period*, for a construction contract, means the period, if any, worked out under the contract as being the period— 8
 - (a) starting on the day the construction work is completed or the related goods and services are supplied; and 9
 - (b) ending on the last day any omission or defect in the construction work or related goods or services may be rectified. 10
- final payment* means a progress payment that is the final payment for construction work carried out, or for related goods and services supplied, under a construction contract. 11

Clause 7	Amendment of s 18 (Payment schedules)	25
	Section 18(4) and (5)—	26
	<i>omit.</i>	27
Clause 8	Insertion of new s 18A	28
	After section 18—	29
	<i>insert—</i>	30

18A Time requirements for payment schedules	1
(1) This section applies if a respondent serves a payment schedule on a claimant.	2
(2) The payment schedule, if it relates to a standard payment claim, must be served on the claimant within the earlier of—	3
(a) the time required, if any, by the relevant construction contract; or	4
(b) 10 business days after the payment claim is served.	5
(3) The payment schedule, if it relates to a complex payment claim, must be served on the claimant within the earlier of—	6
(a) the time required, if any, by the relevant construction contract; or	7
(b) whichever of the following applies—	8
(i) if the claim was served on the respondent 90 days or less after the reference date to which the claim relates—15 business days after the claim is served;	9
(ii) if the claim was served on the respondent more than 90 days after the reference date to which the claim relates—30 business days after the claim is served.	10

Clause 9 Replacement of s 19 (Consequences of not paying claimant if no payment schedule)	11
Section 19—	12
<i>omit, insert—</i>	13

[s 10]

- 19 Consequences of not paying claimant if no payment schedule**
- (1) This section applies if a respondent served with a payment claim does not serve a payment schedule on the claimant within the time that the respondent may serve the schedule on the claimant.
 - (2) The respondent becomes liable to pay the claimed amount to the claimant on the due date for the progress payment to which the payment claim relates.
 - (3) If the respondent fails to pay the whole or any part of the claimed amount on or before the due date for the progress payment to which the payment claim relates, the claimant—
 - (a) may—
 - (i) recover the unpaid portion of the claimed amount from the respondent, as a debt owing to the claimant, in any court of competent jurisdiction; or
 - (ii) make an adjudication application under section 21(1)(b) in relation to the payment claim; and
 - (b) may serve notice on the respondent of the claimant's intention to suspend, under section 33, carrying out construction work or supplying related goods and services under the construction contract.
 - (4) A notice under subsection (3)(b) must state that it is made under this Act.

- Clause 10 Amendment of s 20 (Consequences of not paying claimant under payment schedule)**
- (1) Section 20(1)(b)—
omit, insert—

- (b) the respondent serves a payment schedule on the claimant within the time that the respondent may serve the schedule on the claimant; and
- (2) Section 20(4)—
omit.

Clause 11 Insertion of new s 20A

Part 3, division 1—

insert—

20A Notice required before starting proceedings to recover unpaid portion as a debt

- (1) This section applies if a claimant—
 - (a) may, under section 19(3)(a)(i), start proceedings to recover an unpaid portion of a claimed amount as a debt owing to the claimant; or
 - (b) may, under section 20(2)(a)(i), start proceedings to recover an unpaid portion of a scheduled amount as a debt owing to the claimant.
- (2) The claimant can not start the proceedings unless—
 - (a) the claimant first gives the respondent notice, within 20 business days immediately following the due date for payment, of the claimant's intention to start the proceedings; and
 - (b) the notice states that the respondent may serve a payment schedule on the claimant within 5 business days after receiving the notice; and
 - (c) the respondent does not serve the payment schedule on the claimant within the time required under paragraph (b).

[s 12]

- (3) A notice under subsection (2)(b) must state that it is made under this Act. 1 2
- (4) If the claimant starts proceedings to recover the unpaid portion of a claimed amount or scheduled amount as a debt owing to the claimant— 3 4 5
 - (a) judgment in favour of the claimant is not to be given by a court unless the court is satisfied of the existence of the circumstances referred to in— 6 7 8 9
 - (i) if the claimant starts proceedings under section 19(3)(a)(i)—section 19(1) and (3); 10 11 12
 - (ii) if the claimant starts proceedings under section 20(2)(a)(i)—section 20(1); and 13 14
 - (b) the respondent is not, in those proceedings, entitled— 15 16
 - (i) to bring any counterclaim against the claimant; or 17 18
 - (ii) to raise any defence in relation to matters arising under the construction contract. 19 20 21

Clause 12 Amendment of s 21 (Adjudication application) 22

- (1) Section 21(1)(a) and (b), 'division 1'— 23
 - omit, insert—* 24
 - this part 25
- (2) Section 21(3)(a) and (b)— 26
 - omit, insert—* 27
 - (a) must be in the approved form; and 28
 - (b) must be made to the registrar, an authorised nominating authority chosen by the claimant; and 29
- (3) Section 21(3)(e)— 30
 - omit, insert—* 31

Commented [RG2]: Retain 2004 Act – application to ANA chosen by claimant

- (e) must be accompanied by the fee prescribed by regulation for the application; and
- (4) The authorised nominating authority to which an adjudication application is made- shall refer the details of the adjudication application as soon as practical and within 4 business days to the registrar for nomination of a person eligible to be an adjudicator under section 22.
- (5) The registrar shall appoint an adjudicator from the panel of eligible adjudicators as advised from time to time by the authorised nominating authority to which the adjudication application was made.
- (6) The authorised nominating authority shall provide the registrar with such details of the adjudication application as are prescribed by the registrar for the purpose of the registrar appointing an eligible adjudicator. The registrar may prescribe the number of adjudicators to be nominated by an ANA for each application.
- omit, insert —*
- registrar

Commented [RG3]: Retain 2004 Act – Application fee should be set by ANA. AT application fee is \$0 – why increase charges to parties unnecessarily?

Commented [RG4]: Similar to Act other than registrar now responsible for nomination of the adjudicator.

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Commented [RG5]: Omit

- Clause 13 Amendment of s 23 (Appointment of adjudicator)**
- Section 23(1), ‘an authorised nominating authority’ —
- omit, insert —*
- the registrar

Commented [RG6]: Agree

- Clause 14 Replacement of s 24 (Adjudication responses)**
- Section 24 —
- omit, insert —*
- 24 Adjudication responses**
- (1) This section applies if —
- (a) an adjudicator accepts a claimant’s adjudication application under section 23; and

- (b) the respondent served a payment schedule on the claimant within the time that the respondent may serve the schedule on the claimant. 19
20
21
22
- (2) The respondent may give the adjudicator a response to the adjudication application (the *adjudication response*). 23
24
25
- (3) The adjudication response— 26
 - (a) must be in writing; and 27
 - (b) must identify the adjudication application to which it relates; and 28
29

[s 14]

- (c) may contain the submissions relevant to the response the respondent chooses to include.
- (4) If the adjudication application is about a standard payment claim, the adjudication response can not include any reasons for withholding payment unless those reasons were included in the payment schedule when served on the claimant.
- (5) If the adjudication application is about a complex payment claim, the adjudication response may include any reasons for withholding payment whether or not those reasons were included in the payment schedule when served on the claimant.

24A Time requirements for adjudication response

- (1) Subsection (2) applies for an adjudication response to an adjudication application about a standard payment claim.
- (2) The respondent must give the adjudicator the adjudication response within the later of the following to end—
 - (a) 10 business days after receiving a copy of the adjudication application;
 - (b) 7 business days after receiving notice of the adjudicator's acceptance of the adjudication application.
- (3) Subsections (4) to (7) apply for an adjudication response to an adjudication application about a complex payment claim.
- (4) The respondent must give the adjudicator the adjudication response within the later of the following to end—
 - (a) 15 business days after receiving a copy of the adjudication application;

- (b) 12 business days after receiving notice of the adjudicator's acceptance of the adjudication application. 3
- (5) However, the respondent may apply to the adjudicator for an extension of time, of up to 15 additional business days, to give the adjudication response. 4 5 6 7
- (6) The application must— 8
 - (a) be made within the later of the following to end— 9 10
 - (i) 5 business days after receiving a copy of the adjudication application; 11 12
 - (ii) 2 business days after receiving notice of the adjudicator's acceptance of the adjudication application; and 13 14 15
 - (b) be in writing; and 16
 - (c) include the reasons for requiring the extension of time. 17 18
- (7) If the application is granted, the respondent may give the adjudicator the adjudication response no later than the end of the extension of time granted by the adjudicator. 19 20 21 22
- (8) A copy of an adjudication response must be served on the claimant no more than 2 business days after it is given to the adjudicator. 23 24 25

24B Reply to new reasons for withholding payment 26

- (1) This section applies if, under section 24(5), the respondent includes in an adjudication response reasons for withholding payment that were not included in the payment schedule when served on the claimant (the *new reasons*). 27 28 29 30 31
- (2) The claimant may give the adjudicator a reply to the new reasons (the *claimant's reply*) within 15 32 33

[s 15]

business days after receiving a copy of the
adjudication response.

- (3) However, the claimant may apply to the
adjudicator for an extension of time, of up to 15
additional business days, to give the claimant's
reply if, because of the complexity or volume of
the new reasons, an extension of time is required
to adequately prepare the claimant's reply.
- (4) The application must—
 - (a) be made within 5 business days after
receiving a copy of the adjudication
response; and
 - (b) be in writing; and
 - (c) include the reasons for requiring the
extension of time.
- (5) If the application is granted, the claimant may
give the adjudicator the claimant's reply no later
than the end of the extension of time granted by
the adjudicator.
- (6) A copy of the claimant's reply must be served on
the respondent no more than 2 business days after
it is given to the adjudicator.

Clause 15	Replacement of s 25 (Adjudication procedures)	23
	Section 25—	24
	<i>omit, insert—</i>	25
	25 Adjudication procedures	26
	(1) Subject to the time requirements under section 25A, an adjudicator must decide the following as quickly as possible—	27 28 29
	(a) an adjudication application;	30
	(b) applications for extensions of time under this part.	31 32

- (2) An adjudicator must not consider an adjudication response or a claimant's reply unless it was given to the adjudicator within the time that the respondent or claimant may give it to the adjudicator.
- (3) For a proceeding conducted to decide an adjudication application, an adjudicator—
 - (a) must decide whether he or she has jurisdiction to adjudicate the application; and
 - (b) may ask for further written submissions from either party and must give the other party an opportunity to comment on the submissions; and
 - (c) may set deadlines for further submissions and comments by the parties; and
 - (d) may call a conference of the parties; and
 - (e) may carry out an inspection of any matter to which the claim relates.
- (4) If a conference is called, it must be conducted informally and the parties are not entitled to any legal representation.
- (5) The adjudicator's power to decide an adjudication application is not affected by the failure of either or both of the parties to make a submission or comment within time or to comply with the adjudicator's call for a conference of the parties.
- (6) If an adjudicator decides the payment claim for the adjudication application has been incorrectly identified as a complex payment claim, the adjudicator must continue to decide the application as if it related to a complex payment claim.
- (7) If an adjudicator decides the payment claim for the adjudication application has been incorrectly

[s 15]

identified as a standard payment claim, the
adjudication application is taken to be
withdrawn.

**25A Time requirements for adjudication
proceedings**

- (1) An adjudicator must not decide an adjudication
application until after the end of the following
periods that apply for the application—
- (a) the period within which the respondent may
give an adjudication response to the
adjudicator;
- (b) the period within which the claimant may
give a claimant's reply to the adjudication
response.

Note—

Only a complex payment claim may involve a claimant's
reply—see section 24B.

- (2) An adjudicator must decide an adjudication
application relating to a standard payment claim
within 10 business days after the earlier of—
- (a) if the adjudicator was given an adjudication
response—the date on which the adjudicator
receives the response; or
- (b) if the adjudicator was not given an
adjudication response—the date on which
the adjudicator should have received the
response.
- (3) An adjudicator must decide an adjudication
application relating to a complex payment claim
within 15 business days after—
- (a) if the adjudicator was given an adjudication
response and was not also given a claimant's
reply—the date on which the adjudicator
receives the response; or

- (b) if the adjudicator was given an adjudication response and was also given a claimant's reply—the date on which the adjudicator receives the reply; or
- (c) if the adjudicator was not given an adjudication response—the date on which the adjudicator should have received the response.
- (4) Despite subsections (2) and (3), if the claimant and respondent agree in writing to the adjudicator having further time (the *agreed time*) to decide an adjudication application, the adjudicator must decide the application within the agreed time.
- (5) The claimant and respondent may agree to the further time under subsection (4) before or after the expiry of time under subsection (2) or (3).

25B Extension of time requirements by adjudicator

- (1) This section applies if—
 - (a) an adjudication application relates to a complex payment claim; and
 - (b) in the opinion of the adjudicator, the claimant and respondent attempt, but fail, to reach agreement under section 25A(4).
- (2) The adjudicator may, despite section 25A(3), decide the application within 5 business days after the time the adjudicator would otherwise have to decide the application under section 25A(3).

Clause 16 Amendment of s 30 (Consequences of not paying claimant adjudicated amount)

- (1) Section 30(1)(a), 'authorised nominating authority to whom the adjudication application was made'—

*omit, insert—***Commented [RG7]:** Omit. Administrative process more efficiently performed by ANA

[s 17]

- ~~registrar~~ 1
- (2) Section 30(4), 'request the authorised nominating authority'— 2
~~omit, insert—~~ 3
~~ask the registrar~~ 4
- (3) Section 30(6), 'authorised nominating authority'— 5
~~omit, insert—~~ 6
~~registrar~~ 7

Commented [RG8]: Omit. Administrative process more efficiently performed by ANA

Commented [RG9]: Omit. Administrative process more efficiently performed by ANA

- Clause 17 Amendment of s 32 (Claimant may make new application in certain circumstances)** 9
 Section 32(1)(b), 'section 25(3)'— 10
~~omit, insert—~~ 11
 section 25A or 25B 12

- Clause 18 Amendment of s 33 (Claimant may suspend work)** 14
 Section 33(2), 'section 19(1)'— 15
~~omit, insert—~~ 16
 section 19(2) 17

- Clause 19 Replacement of s 34 (Authorised nominating authority's fees)** 18
~~Section 34~~ 19
~~omit, insert~~ 20

Commented [RG10]: Omit. Retain right of ANAs to charge a fee

- 34 Incorrectly identified standard and complex payment claims** 22
 (1) Subsection (2) applies if, under section 17(2)(d), a claimant incorrectly identifies a complex payment claim as a standard payment claim. 23
 (2) The payment claim is taken to be a standard payment claim for the purpose of part 3 unless 24

Commented [RG11]: Renumber to 34A

and until an adjudicator decides the payment
claim has been incorrectly identified under
division 2.

Note—

Section 25(7) states the consequences of an adjudicator
deciding that a complex payment claim has been
incorrectly identified as a standard payment claim.

- (3) Subsection (4) applies if, under section 17(2)(d),
a claimant incorrectly identifies a standard
payment claim as a complex payment claim.
- (4) The payment claim is taken to be a complex
payment claim for the purpose of part 3.

Clause 20 Amendment of s 35 (Adjudicator's fees)

- (1) Section 35(4), from '(other' to '25(3)'—
omit.
- (2) Section 35(5)—
omit, insert—
 - (5) However, subsection (4) does not apply if—
 - (a) the adjudication application is withdrawn;
or
 - (b) the adjudicator decided he or she did not
have jurisdiction to adjudicate the
application.
 - (6) Also, if a court finds that the adjudicator's
decision is void and unenforceable, the
adjudicator is still entitled to be paid any fees or
expenses for the adjudication of the application if
the adjudicator acted in good faith in adjudicating
the application.
 - (7) For subsection (4), an adjudicator does not fail to
make a decision merely because the adjudicator
refuses to communicate the adjudicator's
decision on an adjudication application until the
adjudicator's fees and expenses are paid.

[s 21]

- (8) In this section— 1
adjudicating, an adjudication application, 2
includes accepting, considering and deciding the 3
application. 4

Clause 21 Insertion of new ss 35A and 35B 5

Part 3, division 4— 6

insert— 7

35A Matters to be considered in deciding fees 8

- (1) This section applies if an adjudicator is making a 9
decision about the proportion of the adjudicator's 10
fees and expenses to be paid by the claimant and 11
respondent under section 35(3). 12
- (2) In making the decision, the adjudicator may 13
consider the following matters— 14
- (a) the relative success of the claimant or 15
respondent in the adjudication; 16
- (b) whether the claimant or respondent 17
commenced or participated in the 18
adjudication for an improper purpose; 19
- (c) whether the claimant or respondent 20
commenced or participated in the 21
adjudication without reasonable prospects 22
of success; 23
- (d) whether the claimant or respondent has 24
acted unreasonably leading up to the 25
adjudication; 26
- (e) whether the claimant or respondent has 27
acted unreasonably in the conduct of the 28
adjudication; 29
- (f) the reasons given by the respondent for not 30
making the progress payment the subject of 31
the adjudication application; 32

- (g) whether the respondent included additional reasons for withholding payment in the adjudication response that were not included in the payment schedule served on the claimant;
- (h) whether an adjudication application is withdrawn;
- (i) the services provided by the adjudicator in adjudicating the adjudication application, including the amount of time taken to consider discrete aspects of the amount claimed;
- (j) another matter the adjudicator considers relevant in making the decision.

35B Withdrawing from adjudication

An adjudication application is taken to have been withdrawn if—

- (a) a claimant has served a notice of discontinuation on the adjudicator and respondent; or
- (b) a respondent has paid the claimed amount the subject of the adjudication application to the claimant.

Note—

Despite the withdrawal of an adjudication application an adjudicator is still entitled to be paid fees for considering the application—see section 35.

Clause 22 Amendment of s 38 (Registrar's functions and powers)

- (1) Section 38(2), before paragraph (a)—

insert—

- (aa) ~~to refer adjudication applications to adjudicators;~~
- (2) ~~Section 38(2)(a), 'authorised nominating authorities and'~~

Commented [RG12]: Agree

Commented [RG13]: Omit. Retain ANA register as per 2004 Act

[s 23]

~~omit.~~

(3) Section 38(2)(a), 'paragraph (b)'—

omit, insert—

paragraph (c)

(4) Section 38(2)(aa) to (g)—

renumber as section 38(2)(a) to (h).

Clause 23 Amendment of s 39 (Delegation by registrar)

Section 39(2)—

omit.

Clause 24 Omission of s 40 (Acting registrar)

Section 40—

omit.

Clause 25 Amendment of s 41 (Annual report on operation of Act and registry)

Section 41(2)—

omit, insert—

(2) The report may be included in the commission's annual report.

(3) Unless the report is included in the commission's annual report, the Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

(4) In this section—

annual report means an annual report prepared under the *Financial Accountability Act 2009*, section 63.

Clause 26	Omission of pt 4, div 2 (Registration of authorised nominating authorities)	1	Commented [RG14]: Retain registration of ANAs as per 2004 Act. Omit section 43 (g) of existing Act as refers to ANAs appointing adjudicators. Omit section 53 of existing Act as refers to ANAs appointing adjudicators.
		2	
	Part 4, division 2 —	3	
	omit.	4	
Clause 27	Amendment of s 68 (Form of certificate of registration)	5	Commented [RG15]: Omit. Retain 2004 Act
	Section 68(a), [registrant's]	6	
	omit, insert —	7	
	adjudicator's	8	
Clause 28	Amendment of pt 4, div 4, (Renewals of registrations of authorised nominating authorities and adjudicators)	9	Commented [RG16]: Omit. Retain 2004 Act
		10	
	Part 4, division 4, heading 'authorised nominating authorities and'	11	
	omit.	12	
		13	
Clause 29	Amendment of s 69 (Definitions for div 4)	14	Commented [RG17]: Omit. Retain 2004 Act
	(1) Section 69, definition registrant —	15	
	omit, insert —	16	
	[registrant] means an adjudicator applying for a renewal of registration as an adjudicator.	17	
		18	
	(2) Section 69, definition registration —	19	
	omit, insert —	20	
	[registration] means renewal of registration as an adjudicator.	21	
		22	
Clause 30	Amendment of pt 4, div 5, hdg (Amendment of registrations of authorised nominating authorities and adjudicators)	23	Commented [RG19]: Omit. Retain 2004 Act
		24	
		25	
	Part 4, division 5, heading 'authorised nominating authorities and'	26	
		27	

[s 31]

~~omit.~~

1

Clause 31 Amendment of s 73 (Definitions for div 5)

2

(1) Section 73, definition *registrant*—

3

~~omit, insert~~

4

registrant means an adjudicator applying for
amendment of a registration as an adjudicator.

5

6

(2) Section 73, definition *registration*—

7

~~omit, insert~~

8

registration means an amendment of a
registration as an adjudicator.

9

10

Commented [RG20]: Omit. Retain 2004 Act

**Clause 32 Amendment of pt 4, div 6, hdg (Suspension or
cancellation of registrations of authorised nominating
authorities and adjudicators)**

11

12

13

Part 4, division 6, heading 'authorised nominating authorities
and'

14

15

~~omit.~~

16

Commented [RG21]: Omit. Retain 2004 Act

Clause 33 Amendment of s 76 (Definitions for div 6)

17

a. Section 76, definition *registrant*—

18

~~omit, insert—~~

19

registrant means a person registered as an
adjudicator.

20

21

b. Section 76, definition *registration*—

22

~~omit, insert—~~

23

registration means registration as an adjudicator.

24

Clause 34	Amendment of s 84 (Effect of suspension or cancellation of registration of authorised nominating authority or adjudicator)	1
		2
		3
	(1) Section 84, heading, 'authorised nominating authority or' —	4
	<i>omit.</i>	5
	(2) Section 84(1)(a), 'an authorised nominating authority or' —	6
	<i>omit.</i>	7
	(3) Section 84(1)(b), 'made to the authorised nominating authority' —	8
	<i>omit, insert —</i>	9
	made to the registrar	10
	(4) Section 84(5) —	11
	<i>omit, insert —</i>	12
	(5) The adjudicator is not entitled to any fees or	13
	expenses in relation to the adjudication	14
	application taken to have been withdrawn under	15
	this section.	16
		17
Clause 35	Amendment of pt 4, div 7, hdg (Other provisions about registrations of authorised nominating authorities and adjudicators)	18
		19
		20
	Part 4, division 7, heading 'authorised nominating authorities and' —	21
	<i>omit.</i>	22
		23
Clause 36	Amendment of s 86 (Definitions for div 7)	24
	(1) Section 86, definition <i>registrant</i> —	25
	<i>omit, insert —</i>	26
	<i>registrant</i> means a person registered as an	27
	adjudicator.	28
	(2) Section 86, definition <i>registration</i> —	29

Commented [RG22]: Omit. Retain 2004 Act

Commented [RG23]: Omit. Retain 2004 Act

Commented [RG24]: Omit. Retain 2004 Act

[s 37]

~~omit, insert~~ 1
~~registration means registration as an adjudicator.~~ 2

Clause 37 Amendment of s 100 (Effect of pt 3 on civil proceedings) 3
 Section 100— 4
 insert— 5
 i. If, in any proceedings before a court in relation to 6
 any matter arising under a construction contract, 7
 the court finds that only a part of an adjudicator's 8
 decision under part 3 is affected by jurisdictional 9
 error, the court must— 10
 1. identify the part affected by the error; and 11
 2. allow the part of the decision not affected by 12
 the error to remain binding on the parties to 13
 the proceeding. 14

Clause 38 Omission of s 101 (Adjudicator must give copy of 15
~~decision to authorised nominating authority)~~ 16
 Section 101— 17
~~omit.~~ 18

Commented [RG25]: Omit. Retain 2004 Act

Clause 39 Replacement of s 102 (Authorised nominating authority 19
~~must give information to registrar)~~ 20
 Section 102— 21
~~omit, insert~~ 22
102 Adjudicator must give information to registrar 23
 An adjudicator must, at the times specified by the 24
 registrar, give the registrar— 25
 (a) a copy of the adjudicator's decisions; and 26
 (b) the other information required in the 27
 approved form. 28

Commented [RG26]: Omit. Retain 2004 Act. The ANA is required by section 102 to provide copy of the adjudication decision to registrar.

Clause	4038 Amendment of s 105 (Evidentiary aids)	1
	(1) Section 105(2)(a)—	2
	<i>omit.</i>	3
	(2) Section 105(2)(b) and (c)—	4
	<i>renumber</i> as section 105(2)(a) and (b).	5
Clause	41 Amendment of s 107 (Protection from liability for adjudicators and authorised nominating authorities)	6
	(a) Section 107, heading, ‘and authorised nominating authorities’	8
	<i>omit.</i>	9
	(2) Section 107(2)	11
	<i>omit.</i>	12
Clause	4239 Amendment of pt 7, hdg (Transitional)	13
	Part 7, heading, ‘Transitional’—	14
	<i>omit, insert—</i>	15
	Transitional provisions	16
Clause	4340 Insertion of new pt 7, div 1, hdg	17
	After part 7, heading—	18
	<i>insert—</i>	19
	Division 1 Transitional provision for Act No. 6 of 2004	20
		21
Clause	4441 Insertion of new pt 7, div 2	22
	After section 112—	23
	<i>insert—</i>	24

Commented [RG27]: Omit Retain 2004 Act. ANAs must retain their legal protection.

Division 2 Transitional provisions for
Building and Construction
Industry Payments
Amendment Act 2014

113 Registration of authorised nominating

authorities

- (1) The registration of an authorised nominating authority ends.
- (2) The registrar must refund the amount of the authorised nominating authority's registration fee that, on the ending of an authorised nominating authority's registration, is proportional to the unexpired period of the registration in whole months.
- (3) An application for registration or application for renewal of registration made, but not decided, before the commencement is taken to be withdrawn.
- (4) The registrar must refund to the authorised nominating authority the amount of the application fee for registration or for renewing his or her registration.
- (5) In this section
application for registration means an application for registration as an authorised nominating authority under repealed section 42.
application for renewal of registration means an application for renewal of a registration under section 70.
commencement means the commencement of this section.

Commented [RG28]: Omit, as ANAs being retained

114 Applications to authorised nominating authorities for adjudication

- (1) This section applies to an adjudication application made under section 21, but not yet decided, before the commencement.
- (2) The adjudication application must be dealt with and decided under the unamended Act as if this Act had not been amended by the *Building and Construction Industry Payments Amendment Act 2014*.
- (3) In this section—
commencement means the commencement of this section.
unamended Act means this Act as in force immediately before the commencement of this section.

Clause 45 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, *adjudication certificate*, *adjudication fees*, *authorised nominating authority* and *business day*—
omit.
- (2) Schedule 2—
insert—
adjudication certificate means a certificate provided by the *authorised nominating authority registrar* under this Act.
adjudication fees means fees or expenses charged by an *authorised nominating authority or adjudicator* under this Act.
business day does not include—
(a) a Saturday or Sunday; or
(b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done; or

Commented [RG29]: It would be simpler and less expensive for ANAs to continue with issuing certificates. Wallace did not recommend this function be transferred to the registrar.

Commented [RG30]: Retain 2004 Act

[s 45]

- (c) any day occurring within any of the following periods—
- (i) 22 to 24 December;
 - (ii) 27 to 31 December;
 - (iii) 2 to 10 January.
- complex payment claim** means a payment claim for any of the following—
- (a) any payment for an amount more than \$750000 or, if a greater amount is prescribed by regulation, the amount prescribed;
 - (b) a latent condition under the relevant construction contract;
 - (c) a time-related cost under the relevant construction contract.
- standard payment claim** means a payment claim that is not a complex payment claim.
- (3) Schedule 2, definition *adjudication response*, ‘24(1)’—
omit, insert—
24(2)
- (4) Schedule 2, definition *relevant offence*, paragraph (f),
‘authorised nominating authority or an’—
omit.

Commented [RG31]: Omit. Retain 2004 Act