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25 June 2014
The Research Director
Transport, Housing and Local Government Committee
Parliament House
George Street
Brisbane 4000

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

Dear Director,

**Transport, Housing and Local Government Committee
Supplementary Submission #2 on the Construction Industry Payment Amendments Bill 2014**

Lowry Consulting begs permission to add to its submission to Transport, Housing and Local Government Committee (THLGC) in response to its invitation with respect to Building and Construction Industry Payments Amendments Bill 2014.

We are aware that the date for submissions on the Bill has passed, but, since the closing date there has been considerable discussion and concern expressed in legal and construction circles about the operation of “simple” and “complex” claims under the Amendment Bill, this concern is reflected in a number of submissions.

Having managed a nominating authority in Queensland for the Australian Institute of Quantity Surveyors, as well as acting as an adjudicator and in an advisory capacity to claimants and respondents, we are acutely aware of the issues and challenges facing the BCIPA, industry participants and the advisory professions in this matter.

The Act was initially proposed to provide a method for the rapid, cost-effective interim settlement of payment disputes. We have all lost sight of that objective. Even now, nobody doubts that claimants and respondents do not find the adjudication process simple. An industry of legal and technical advisers has grown around the Act, making claims expensive and unviable for many claimants.

Requiring claimants under the Act to select between simple and complex claims by assessing a range of criteria will be difficult for all concerned. There are significant interpretations of defined terms that claimants, respondents, adjudicators and BCIPA officers will be required to make. There is also the very real prospect that the ability to make a reasonable decision on the simple / complex question may not be possible before receipt of the adjudication response.

Litigation around this issue (adjudication pathway selection) is certain. An increase in the number of invalid adjudication applications is certain. It will increase the cost of adjudication to the parties, the BCIPA and adjudicators. Advisory services will become an even more essential part of the adjudication process, thereby locking out even more claimants.

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There is a very simple way to remedy this issue without adding extra cost to the parties or adding extra responsibility to BCIPA officers.

Under the AIQS authorised nominating authority's automated online adjudication system, adjudicators were required to moderate applications before accepting a reference. This moderation included conflict of interest and their ability to undertake the estimated workload. After moderation, upon (a one-click) acceptance of the application, the parties would receive the adjudicator's acceptance, including all conditions of the acceptance of an adjudication.

Adjudicators, under the proposed Bill will be further required to moderate and ultimately decide on jurisdiction. As it stands, they must also decide on the simple / complex issue, with the consequences detailed in the Act.

The adjudicator's moderation / acceptance cycle can be very simply extended to include acceptance on the basis of being a simple or complex claim. The adjudicator is the best and only person properly qualified and in a position to make a judgement on the simple / complex issue within the constraints of adjudication. Provision could also be made to allow an adjudicator to extend an application to "complex" upon receipt of an adjudication response.

Allowing adjudicators to moderate the simple/complex issue and accept the application on the condition of one or the other will:

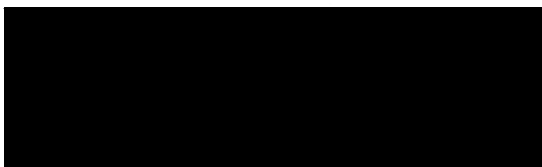
- Take out the risk to the parties of having to make an unqualified judgement;
- Remove any responsibility from the BCIPA in relation to this matter;
- Reduce the need to expand definitions in the Act;
- Reduce the need for legal and technical advisers on low value claims;
- Reduce invalid claims and applications;
- Reduce the cost of adjudication;

it is a simple matter to automate the notices and processes required to facilitate the moderation procedure.

I would be reasonable to divert a portion of any adjudication application fee to adjudicators for undertaking the moderation role.

Thank you for the opportunity to make this further submission in relation to the Act. We will make ourselves available to attend the public hearing or give other evidence or explanation at the discretion of the Committee.

Yours faithfully,
John Lowry



Managing Director
Lowry Consulting Pty Ltd.