Submission No 20

INQUIRY INTO EMPLOYERS AND CONTRACTORS WHO REFUSE TO PAY THEIR SUBCONTRACTORS FOR COMPLETED WORKS

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INQUIRY INTO EMPLOYERS AND CONTRACTORS WHO REFUSE TO PAY THEIR SUBCONTRACTORS FOR COMPLETED WORKS

SUBMISSION BY DR SAMER SKAIK

16 May 2023

ATTN. THE ENVIRONMENT AND PLANNING COMMITTEE – PARLIAMENT OF VICTORIA

Dear Committee

This is my submission in response to the call for stakeholder's consultation regarding the Inquiry into employers and contractors who refuse to pay their subcontractors for completed works.

I make this submission in my capacity as:

(a) a panel adjudicator registered under the NSW security of payment legislation;

(b) an experienced academic specialising in security of payment laws with more than 20 relevant refereed publications,[1] a PhD thesis[2] and numerous submissions to governmental bodies; and

(c) a claims consultant advising construction firms on contractual issues and security of payment related matters.

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[1] See, for example, Skaik, S., & Monsalvo, K. F. (2022). Mandating the Continuing Professional Development in Statutory Adjudication: Adjudicators' Perspectives. *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction*, 14(4), 04522023; Skaik S, (2021), *Addressing the Elephant in the Room: The Inadequate Adjudicator Regulations in New South Wales*, Construction Law Journal, 37(7), 378-391; Skaik S (2020), *Security of Payment Reforms in Western Australia: A Critique of the Introduced Adjudication Review Mechanism*, Construction Law Journal, 36(8), 592-616; Skaik S, chapters 3-6 in Andrew Burr (ed), *International Contractual and Statutory Adjudication* (2017), Routledge; Skaik S, "An empirical study: How to introduce effective review mechanisms into statutory adjudication?" (2017) 33(4), *Construction Law Journal*, 301-320; Skaik S, "Operational problems and solutions of statutory complex adjudication: stakeholders' perspectives", (2017) 9(2), *International Journal of Law in the Built Environment*, 162-175; Skaik S, "Effectiveness of existing adjudication review mechanisms: Views of industry experts", (2017) 33(3), *Construction Law Journal*, 233-245; Skaik, Samer, "The tip of the iceberg, jurisdiction of statutory adjudicators", (2017) 33(2), *Construction Law Journal*, 102-120; Skaik S, Coggins J, Mills, A, "Towards diminishing judicial intervention in Australia: A pragmatic proposal", (2016) 32(6), *Construction law journal*, 659-675; Skaik S "Taking Statutory Adjudication to the next level: A proposal for Legislative Review Mechanism of Erroneous Determinations" (2016) 33(3), *International Construction Law Review*, 287-311; Skaik S, Coggins J, Mills, A, "The big picture: causes of compromised outcome of complex statuary adjudication in Australia" (2016) 33(2), *International Construction Law Review*, 123-147.

[2] Skaik S, "Introducing review mechanisms into statutory construction adjudication", (2017), PhD thesis, Deakin University, available online: http://dro.deakin.edu.au/eserv/DU:30103435/skaik--introducingreview-2017.pdf

EXECUTIVE SUMMARY

This submission responds to a call for stakeholder consultation regarding the Inquiry into employers and contractors who refuse to pay their subcontractors for completed works in Victoria, Australia. The author, an experienced academic and claims consultant specialising in security of payment laws, proposes reforms to the Victorian security of payment legislation.

The submission suggests replacing the existing legislation with a new one aligned with the security of payment reforms in New South Wales (NSW) and Western Australia (WA). The author argues for simplifying the definition of reference dates and eliminating excluded amounts to make the legislation more user-friendly. They also propose establishing trust accounts for retention moneys.

One key recommendation is the introduction of a full review mechanism similar to the one proposed in the NSW Building Bill 2022 and Building and Construction Legislation Amendment Regulation 2022. The review mechanism aims to address issues of quality, industry confidence, and delayed payments by providing an alternative to judicial review.

To ensure the effectiveness of the review mechanism, the submission suggests several essential provisions, including the requirement for aggrieved respondents to pay undisputed amounts and disputed amounts into a trust account. Review adjudicators should have jurisdiction to answer questions of law or fact, and judicial review applications should only be entertained after exhausting the legislative adjudication review process. The submission proposes a monetary threshold of $100,000 for accessing the review mechanism.

The submission also highlights the need for independence and impartiality in the adjudication process. It suggests regulating the financial relationship between Adjudication Nominating Authorities (ANAs) and adjudicators to ensure independence. ANAs should be transparent about their fees, and ANAs and adjudicators should be precluded from exerting influence on each other.

The workload of available adjudicators is another concern addressed in the submission. It suggests measures to ensure ANAs attract sufficient applications and limit the number of ANAs to maintain a proportional number of applications. The regulator should also publish market share data and limit authorisations to competent corporations.

Furthermore, the submission proposes the establishment of an adjudicator code of conduct that covers professional conduct, confidentiality, adjudication fees, and compulsory continuing professional development (CPD) activities. Adjudicators should only accept appointments if they are available and competent to handle the referred matters.

Overall, the submission emphasises the need for comprehensive reforms in the Victorian security of payment legislation to improve industry confidence, promote prompt payments, and ensure fair adjudication outcomes.

THE SUBMISSION

This submission should be read in conjunction with the author's various publications relating to the necessary reforms in the SOP laws to be fit for purpose.[3] The author recently co-published a study which found that the main causes of the under-utilisation of the SOP Act including affordability, lack of industry confidence, lack of knowledge and awareness, impact on business relationships and limited right to access the regime.[4]

Therefore, in this submission, I propose that the Victorian security of payment legislation to be completely abolished and replaced with a new legislation that is more aligned with NSW and WA legislation. In any future reform, the definition of reference dates should be simplified and excluded amounts should be completely abandoned to make the legislation more user friendly. Trust accounts should also be established for retention moneys. In addition, the reform should address the following critical areas to reinstate the user confidence in the SOP Act and encourage more users to benefit from the regime:

- **Introduction of a full review mechanism:**

The legislation should implement measures to keep the door closed for aggrieved respondents, who are not happy with the quality of adjudication decision making process to seek other available protracted despite resolution mechanisms including arbitration or litigation which will be inconvenient for both parties. Some other unhappy respondents with deep pockets may find it worthwhile to challenge the adjudication decision by way of judicial review to delay the release of adjudicated amounts to claimants.

Therefore, the introduction of adjudication review mechanism similar to the NSW model proposed in *Building Bill 2022 and Building and Construction Legislation Amendment Regulation 2022* is highly recommended. The NSW model is substantially based on the author's research findings. The introduction of adjudication review mechanism was central to the Author's research since 2014. The Author published many relevant articles[5] and completed a PhD thesis entitled "Introducing review

[3] See fn 1 above.

[4] Khatatneh, A, Skaik, S, Zhao x, (2021, Investigating *the Causes of Subcontractors' Underutilisation of the Security of Payment Legislation in Australia, 44th Aubea 2021: Australasian Universities Building Education Association Conference, Geelong, Australia*

[5] See, for example, Skaik, Samer, "An empirical study: How to introduce effective review mechanisms into statutory adjudication?" (2017) 33(4), *Construction Law Journal*, 301-320; Skaik, Samer, "Operational problems and solutions of statutory complex adjudication: stakeholders' perspectives", (2017) 9(2), *International Journal of Law in the Built Environment*, 162-175; Skaik Samer, "Effectiveness of existing adjudication review mechanisms: Views of industry experts", (2017) 33(3), *Construction Law Journal*, 233-245; Skaik, Samer, "The tip of the iceberg, jurisdiction of statutory adjudicators", (2017) 33(2), *Construction Law Journal*, 102-120; Skaik S, Coggins J, Mills, A, "Towards diminishing judicial intervention in Australia: A pragmatic proposal", (2016) 32(6), *Construction law journal*, 659-675; Skaik, Samer "Taking Statutory Adjudication to the next level: A proposal for Legislative Review Mechanism of Erroneous Determinations" (2016) 33(3),

mechanism into statutory construction adjudication".[6] The Author included the following statement in the thesis abstract:

> *The findings of this study, whilst they are very relevant to Australia, they can be applied with minor alterations to suit other jurisdictions operating equivalent security of payment legislation. It is hoped that the recommendations of this study will be considered by concerned policy makers and governmental agencies seeking to apply best practices to improve security of payment laws.*

Indeed, the available evidence from the Author's research revealed that an appropriately devised review mechanism of adjudication determinations could be a solution to many problems. The whole notion of introducing review mechanisms is to facilitate swift cash flow down the construction contractual chain and deter respondents from seeking judicial review as a delaying tactic. It is a safety net that can capture erroneous determinations away from court system which will improve industry confidence and certainty in adjudication outcomes. As such, for the review mechanism to be effective and serve the purpose, on its own right, it must pass the following checklist:

- ✓ It offers a pragmatic and practical solution that acknowledges the existing variety of adjudicators' qualities and competencies and the difficulty of attaining quality adjudication outcome due to the hasty adjudication process.
- ✓ It acts as an effective safety net to capture erroneous determinations away from curial proceedings to help control the overall cost and improve the finality and informality of statutory adjudication.
- ✓ It Reinstates industry confidence in adjudication process and determinations.
- ✓ It enhances the certainty in adjudication process and outcome which ultimately helps increase the use of the regime and inform claimants' decision of suspending works for non-payment.
- ✓ It improves the quality of original determinations where adjudicators become more vigilant in making their determinations fearing the review.
- ✓ It deters respondents from delaying the release of adjudicated payment by seeking judicial review.
- ✓ It decreases Supreme Court case load, where most of the cases can be captured by the review avenue.

International Construction Law Review, 287-311; Skaik S, Coggins J, Mills, A, "The big picture: causes of compromised outcome of complex statuary adjudication in Australia" (2016) 33(2), *International Construction Law Review*, 123-147.

[6] Skaik, Samer, "Introducing review mechanisms into statutory construction adjudication", (2017), PhD thesis, Deakin University, available online: http://dro.deakin.edu.au/eserv/DU:30103435/skaik--introducingreview-2017.pdf

In order to meet the requirements of the above checklist, any proposed model of adjudication review mechanism must include essential express provisions:

1. Aggrieved respondents must pay the undisputed adjudicated amounts to claimants in order to access the review. In addition, they must pay disputed amounts into a trust account and released immediately to the successful party in the review.[7]
2. Review adjudicators must have both competency and jurisdiction to answer questions of law or fact including those related to jurisdictional issues.[8]
3. Judicial review applications to set aside adjudication determinations must not be entertained unless the parties have firstly exhausted the alternative remedy of the legislative adjudication review. [9]

In addition, the review mechanism should not be open to all parties and should be restricted by the means of a monetary threshold to ensure that there is sufficient substance in economic terms to make the review process economical and convenient to the parties. It is proposed that $100,000 threshold amount is ideal as established in my review mechanism model,[10] Murray model[11] as well as the two existing review mechanisms in Singapore and Victoria (e.g. $100,000). In the second reading speech of the 2006 Amendment Bill in Victoria, it was confirmed that such limit is given in order not "*to disadvantage small subcontractors who rely on prompt payment to stay in business.*"[12] In Singapore, the $100,000 threshold requirement helped prevent respondents from routinely exploiting the freely available review mechanism and thereby frustrating the object of the legislation by adding a tier of additional expense.[13] In this regard, Justice Prakash noted:

> *"The drafters of the [SG Act] must have considered that it would not be convenient or economical to provide a review process for a dispute that did not have sufficient substance in*

[7] Skaik, Samer, "An empirical study: How to introduce effective review mechanisms into statutory adjudication?" (2017) 33(4), *Construction Law Journal*, 301-320.

[8] Skaik, Samer, "The tip of the iceberg, jurisdiction of statutory adjudicators", (2017) 33(2), *Construction Law Journal*, 102-120.

[9] Exhaustion of alternative remedies before seeking judicial review is an established doctrine in the administrative law. See the High Court's decision in *The Queen v Cook; Ex parte Twigg* [1980] HCA 36 [29], [30] and [34]; *Re Baker; Martin CJ in Re Carey; Ex parte Exclude Holdings Pty Ltd* [2006] WASCA 219 [128] - [140]. See also, *Re Graham Anstee-Brook; Ex Parte Mount Gibson Mining Ltd* [2011] WASC 172; 42 WAR 35 [64]*, SEF Construction Pte Ltd v Skoy Connected Pte Ltd* [2009] SGHC 257, *Comptroller of Income Tax v ACC [2010] SGCA 13; Borissik Svetlana v Urban Redevelopment Authority* [2009] SGHC 154.

[10] Skaik, S, "An empirical study: How to introduce effective review mechanisms into statutory adjudication?" (2017) *Construction Law Journal* 33(4), 301-320

[11] See John Murray, *Review of Security of Payment Laws: Building Trust and Harmony*, Department of Jobs and Small Business, (December 2017)

[12] Second Reading Speech, Building and construction Industry SOP (amendment) Bill 2006 (Vic), Madden, J. M., p2419, (15 June 2006).

[13] Fong, C. K., *Security of Payments and construction Adjudication*, (LexisNexis, 2nd ed, 2013), p. 805.

economic terms. In those cases, the respondent's arguments on principle or facts would have to be taken up subsequently in court or in arbitration proceedings."[14]

The prescribed threshold of $100,000 was based on an empirical evidence and best practices in the two jurisdictions. It also provides an appropriate indication of the complexity of the relevant adjudication matters. This indication seems to be acceptable in WA as it was evident in the classification provided for senior adjudicators (grade 2) based solely on this amount (see provision 16(2) of the code of practice for adjudicators and review adjudicators). This amount will strike the right balance between facilitating prompt payments to small subcontractors and providing convenient and swift remedy for aggrieved respondents regarding disputed adjudicated amounts between $100,000 and $200,000. As per the WA annual report 2020-2021[15], adjudication applications amounting to less than $100,000 were more than 50% of the total applications. By reducing the threshold from $200,000 to 100,000, the number of reviewable cases would only increase by a maximum of 10%.

The monetary sum of $100,000 seems appropriate considering the fact that disputants rarely go to court for amounts less than that to obtain a final decision for what is meant to be an interim decision. It will also improve the consistency in the approach regarding the classification of complex payment adjudication applications that might be reviewable by senior adjudicators. This threshold will achieve some sort of balance needed for the object of the SOP legislation to be maintained where adjudicating smaller disputes often involving simpler matters in dispute should be final as the comparatively small amounts at stake do not encourage the parties to seek further challenges.

- **The independence of adjudicators and ANAs:**

The financial arrangement between ANAs and their respective adjudicators may give rise to a reasonable perception that adjudicators may not be totally independent and objective in performing their statutory functions. Many ANAs do not charge claimants any fees for lodging adjudication applications and instead of that, they charge adjudicators a nomination fee as a percentage of the total adjudicator's fees. In the 2019-2020 financial year, for example, the reported ANA fees in NSW were AUD 1,056,928 representing around 30 percent of the total adjudicator fees of 542 released determinations.[16] In other words, the ANAs have charged adjudicators an average fee of AUD 1,950 per every adjudication determination (excluding adjudication certificate fees). In WA, some

[14] *SEF Construction Pte Ltd v Skoy Connected Pte Ltd* [2009] SGHC 257 [24].
[15] Available at https://www.commerce.wa.gov.au/sites/default/files/atoms/files/2020-21_cca_annual_report_act_2004.pdf
[16] See Adjudication Activity Statistics, Quarterly report no. 4 (2019-2020), <https://www.fairtrading.nsw.gov.au/__data/assets/pdf_file/0008/904535/Fair-Trading-ANA-Q4-Statistic-Report-1-April-2020-to-30-June-2020.pdf>.

information about the financial relationships between ANAs and adjudicators is published on the relevant government website.[17] As published, Adjudicate Today (e.g. a for-profit ANA) does not charge claimants any application fees and instead charges its respective adjudicators a 'service fee' amounting to one-third of the adjudicator's fees. Such service fee covers the cost of processing and administering adjudication matters, collecting fees, and promoting the legislation. Interestingly, Resolution Institute which is a non-for-profit ANA follows a similar arrangement and does not require claimants to pay any fees for lodging adjudication applications and instead it charges adjudicators a 'nomination fee' of 15 percent of the total adjudicator' fees to support the promotion and use of statutory adjudication and improve the standards of professional practice.

Moving forward, the appointment of independent and impartial adjudicators cannot be achieved unless the financial relationship between ANAs and adjudicators is appropriately regulated. To do so, the regulator should preclude ANAs from charging adjudicators compulsory significant fees as a precondition of appointment. The ANAs should only be allowed to charge reasonable fees provided that the fees are fully disclosed and directly related to specific services requested by adjudicators. ANAs are obliged to provide information about the fees they charge to their respective adjudicators. The WA Act also requires ANAs to charge a maximum fee against performing administrative duties for adjudicators[18] such as sending or receiving documents to adjudication parties, arranging conferences or inspections, and issuing invoices for adjudication fees and expenses.[19] In SA, ANAs are obliged to maintain a website that includes information relating to the fees charged by ANAs to adjudicators for appointment and handling of adjudication matters.[20]

Accordingly, affected ANAs should revisit the application fees to ensure they cover all reasonable costs associated with appointing adjudicators and exercising their statutory functions. As such, the current practice of charging "$Nil" fee should be prohibited as it is inconsistent with the purpose of the SOP legislation that introduced and regulated such application fees. The regulator may establish a reasonable fixed fee,[21] or a scale of maximum fees[22] for lodging applications depending on the monetary value of the payment claim. Those measures may result in a considerable reduction in the total adjudicator fees and a likely increase in application fees. However, the measures will help make the entire process more transparent, trustworthy, and cost-effective.

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[17] Available at < http://commerce.wa.gov.au/building-and-energy/find-appointor>.
[18] See WA Act s 51(7).
[19] Ibid, s 4(1).
[20] *Code of Conduct for Authorised Nominating Authorities* (SA) (April 2017). See also, Wallace Report, p 253.
[21] *Building and Construction Industry Security of Payment Regulations* 2005 (Singapore) s 12.
[22] See *Building Industry Fairness (Security of Payment) Regulation 2018 (Qld) Schedule 2*. See also, WA Act s 30(3).

Furthermore, the regulator should require ANAs to be completely independent and neutral in discharging their functions;[23] and preclude them from exercising any influence on adjudicators[24] or providing any assistance or advice to adjudication parties.[25] The Regulator should require the parties to refer to the SOP legislation or consult relevant professionals if they require clarification or assistance in preparing their adjudication submissions.[26] The regulator should also launch a hotline and develop an online portal to provide support and assistance to the parties who may struggle to understand or comply with the requirements of the SOP legislation.[27]

- **The workload for available adjudicators:**

In WA, a legislative review conducted in 2014 claimed that "*the purposes of the Act are best achieved by having the widest pool of adjudicators available.*"[28] However, having too many adjudicators may give rise to further problems. Resolution Institute explained one of those problems observed in Queensland by stating: "*There was a concern expressed that there are too many adjudicators which is diluting quality as adjudicators are not doing enough adjudication each year to maintain their skills*."[29] Accordingly, it can be argued that affected adjudicators may be commercially driven to accept nominations to adjudicate matters that do not necessarily fall within their areas of expertise.

Such claims indicate that the problem of insufficient adjudicator workload has a significant impact on the quality of adjudication outcomes. They also indicate that the legislatures are familiar with the existence of this problem but unfortunately, none of the recent legislative reviews or reforms attempted to address them. To examine the extent of this problem, an empirical analysis of the annual adjudication data was conducted by the author to examine the actual market share of ANAs and adjudicators.[30] The analysis revealed that ANAs struggled to attract sufficient applications to distribute among their respective adjudicators. The lack of applications will endanger the business sustainability of ANAs and their abilities to cover the expenses associated with performing the ANA functions as per the regulatory requirements. Furthermore, the analysis also demonstrates many adjudicators have

[23] Murray Report, p 174.
[24] Wallace Report, p 145.
[25] See Building and Construction Industry Security of Payment Act Information Kit, Building and Construction Authority (Singapore) (June 2020). Available at <https://www1.bca.gov.sg/docs/default-source/docs-corp-regulatory/sop_infokit.pdf?sfvrsn=62c5f4ab_6>.
[26] Ibid.
[27] See, eg, Security of payment, Australian Building and Construction Commission, available at <https://www.abcc.gov.au/building-code/contractors/construction-phase/security-payment>.
[28] See Philip Evans, *Report on the Operations and Effectiveness of the Construction Contracts Act 2004 (WA)*, (August 2015) p 5.
[29] See Murray Review, p 75.
[30] , Skaik S, (2021), *Addressing the Elephant in the Room: The Inadequate Adjudicator Regulations in New South Wales*, Construction Law Journal, 37(7), 378-391

received little or no referrals from the appointing body in Queensland and WA for the entire financial year. There is no reason not to believe that this problem also exists in all other jurisdictions.

Another factor contributing to this problem is the fact that the appointing body, whether it is the regulator or the ANA, has no statutory obligation to ensure that all affiliated adjudicators receive appropriate workloads to maintain their skills.[31] Furthermore, adjudicators invest considerable amounts of money in training and compliance with the regulatory requirements. However, the current low rate of referrals makes the payback period too long which may deter many competent adjudicators to engage or maintain registration.

To address this problem, the regulator should set effective measures to ensure that ANAs can attract sufficient adjudication applications to distribute among affiliated adjudicators. For instance, the regulator should link the continuity of authorisation of any ANA with its ability to maintain a reasonable market share. The regulator should publish the data relating to the market share of each ANA for public scrutiny as is currently adopted in SA and WA. In addition, the regulator should limit the number of ANAs operating at any given point of time to ensure that the number of adjudication applications is steadily proportionate to the collective number of affiliated adjudicators.[32] Indeed, there has only been a single non-for-profit ANA operating in Singapore[33] and Malaysia[34] and unlike the situation in Australia, no concerns were reported about the appointment approach.[35] Furthermore, the regulator should only authorise competent and well-established 'corporations',[36] and refrain from the current practice of authorising 'persons'. The corporation should be appropriately resourced and have ready access to a reasonable pool of competent adjudicators.

Nevertheless, the appointing body, whether it is the regulator or an ANA, should ensure that accredited adjudicators receive appropriate workloads regularly. Some accredited adjudicators, however, may not be willing to accept nominations but they opt to maintain their accreditation to advance their own career goals.[37] As such, there should be a mechanism to classify and regularly update the list of 'available' adjudicators and avoid making referrals to adjudicators who remain inactive for a long time unless they complete further training to demonstrate competence.[38] To

[31] See, eg, *Adjudicator Grading and Referral Policy 2015* (Qld), Queensland Building and Construction Commission, s 6.2.1.
[32] See, eg, NSW Act s 28 (1A); SG Act s28(2); WA Act s 89 & s 90 (1c); SA Bill s 20 (3c).
[33] Singapore Mediation Centre has been the sole authorised nominating body since the inception of the legislation in 2006.
[34] *See Construction Industry Payment & Adjudication Act* 2012, s 21(b) & s 32 (Malaysia) where the Asian International Arbitration Centre AIAC (formerly known as KLRCA) was named as the sole adjudication authority.
[35] See, eg, Singapore Academy of Law, *Proposals for Amending the Building and Construction Industry Security of Payment Act* (September 2015) part 3.
[36] Fiocco Report, p 181.
[37] See Andrew Wallace, *Discussion Paper – Payment dispute resolution in the Queensland building and construction industry-Final Report*, (May 2013), p 165.
[38] Ibid.

monitor compliance, the distribution of the referrals among available adjudicators should be disclosed regularly for public scrutiny.

- **Adjudicator code of conduct:**

The adjudicator code of conduct should be established to set out most of the expectations relating to all circumstances that may give rise to any perception of apprehended bias. The code should set expectations about professional conduct, confidentiality, policy compliance, adjudication fees, etc. The code should provide that adjudicators should also commit to genuinely engage in undertaking compulsory CPD activities similar to the arrangement in NSW and Queensland. Adjudicators should only accept the appointment if they believe they are available[39] and competent[40] to determine the referred matters. Adjudicators should also be obligated by the code to ensure they have jurisdiction to adjudicate before reviewing the merits of the referred matters,[41] and avoid incurring unnecessary expenses.[42] A contravention of the code by an adjudicator should result in suspension or cancellation of adjudicator registration. Having said that, the purported ineligibility of adjudicators should be considered as an invalid basis to challenge determinations.[43]

Regards,

Dr Samer Skaik

[redacted]

[39] See Code of Practice Governing the Conduct of Adjudicators, *Construction Contracts Act 2013* (Ireland) s 6(i).
[40] See, eg, ANAs Conditions of Authorisation (VIC) above (n 36) s 3.2; Adjudicator Standards of Conduct (TAS) Appendix 1 (March 2016); Code of Conduct for Adjudicators (Singapore) rule 4.1 (December 2019).
[41] See Murray Review, recommendation no. 63; QLD Act s 84(2); WA Act s 36(1).
[42] See, eg, *SG Act*, s 16 (3b); Wallace Report, p 245.
[43] See Expert Adjudication submission.