Ministerial Briefing Paper

Subject: Urgent Reform of Queensland's Security of Payment Framework
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Date: 5 September 2025

"***We want Queensland to be the building capital of the nation but at the moment our construction sites are the least productive in Australia***."

Minister for Housing and Public Works
Sam O'Connor (Feb 2025)

Minister, if "*money makes the mare go*", then the mare in Queensland is not only starving but also has "HEADED FOR GLUE FACTORY" written all over it in the same way the carthorse "Boxer" in Orwell's dystopian novel "Animal Farm" when he was no longer useful to the pigs. The current state of statutory affairs, as presented and discussed in this briefing paper, symbolises the betrayal and exploitation of the contracted party (working class) as adopted by Labor's Palaszczuk Government (Minister de Brenni) in the *Building Industry Fairness (Security of Payment) Act 2017*.

Moreover, the current statutory adjudication environment illustrates how the Newman Government (Minister Mander) prioritised fairness and prior restraint for the contracting party through the old Soviet-style form of centralised administration when removing the decentralised marketplace of Authorised Nominating Authorities. The Palaszczuk Government (Minister de Brenni) not only continued but also augmented this centralised form of prior restraint by complicating the statutory regime to the point that John Fiocco in his report to the Minister of Commerce (Western Australia) warned the Western Australia government not to consider the Queensland model after 2013, the year in which the Newman Government through Minister Mander believed the system needed to be fairer for the contracting party (The Golden Ruler – "your cash, my flow").

In his 2018 Report to the Minister of Commerce (WA), John Fiocco expressly noted that Queensland's model after 2013 (when the Newman government amended the *Building and Construction Industry Payments Act 2004*) had become too complex and prescriptive, introducing distinctions between "standard" and "complex" claims, with different timelines. Fiocco cautioned the Western Australia government not to replicate Queensland's post-2013 approach, saying it undermined the objective of quick, simple, and cost-effective adjudication.

Fiocco favoured the NSW-style system, and this is the regime that has been adopted to replace the previous West-Coast model

The movement of Western Australia to the East Coast Model means that the vision of the Senate Inquiry into Construction Industry Insolvencies in Australia of a Federal

Model is in place, at least from the standpoint of practice and procedure. Queensland is completely out of touch with security of payment, and this paper assists in highlighting how cash flow is the lifeblood of the construction industry. Without cash flow, there will be no productivity that the Honourable Minister seeks to establish in Queensland.

Two of the more difficult challenges encountered by construction industry participants, when performing within the ever-changing nature of a construction project, especially in relation to the subcontractor, appear and reappear under two important themes: (1) *Getting paid the full amount of a progress claim on time*; and (2) *Having access to "ready money*".

As discussed in the preceding paragraph, the failure of the centralised form of administration overseen by the QBCC to achieve, even remotely, means that the ability of the contracted party to have access to "ready money" is challenging in its best light, if not outright impossible without other forms of collateral.

Without cashflow the performance of men and machine in a construction project is disrupted. Interruption of cashflow in one link of the contractual chain has negative consequences all throughout the contractual chain.

Thus, the failure to get paid promptly, when combined with the failure of not having a pre-planned supply line to "ready money" to augment cashflow, is not only disruptive but can also be fatal, especially for a subcontractor. This is a project consideration that takes priority over any project work performance by the subcontractor because no matter how brilliantly a work crew may perform for the subcontractor on any project, there may never be the chance for the employees of the subcontractor to do so if the subcontractor does not focus on mitigating these two negative impacts on cash flow. The disruption or even worse the demise of the subcontractor disrupts the marketplace and allocation of resources within the marketplace. Disruption or demise of one element of the contractual chain impacts other elements of the contractual chain with the overarching negative impact on the marketplace being the demise or disruption of *contracted party sovereignty*—one of the perquisites to a marketplace functioning efficiently and fairly.

Discussion Points

[1] Queensland was a signatory to the 10 August 2018 Building Ministers Forum (BMF) Communique which stated that "*The BMF agreed to work collaboratively to consider ways to improve consistency between security of payment regimes across jurisdictions*". The BIF Act is the least consistent in comparison to all other jurisdictions.

[2] The *Building Industry Fairness (Security of Payment) Act 2017* is not fulfilling the main purpose of the Act set out in section 3 of the Act: "*(1) The main purpose of this Act is to help people working in the building and construction industry in being paid for the work they do*."

[3] The evidence to be discussed today shows that:

- adjudication decisions made by adjudicators under the BIF Act regime are significantly and substantially less favourable to claimants when comparing the results under the current legislative regime to the repealed and replaced legislation – the *Building and Construction Industry Payments Act 2004*.

- the QBCC is not fulfilling the role undertaken by some of the authorised nominating authorities under the decentralised marketplace of authorised nominating authorities.

[4] Queensland is the only jurisdiction within the East Coast Model that has not adopted the decentralised marketplace of ANAs.

[5] Training and accreditation of Queensland adjudicators has been monopolised by one person and his company – Tim Sullivan (Contract Administration Group Pty Ltd (NSW based entity) – since 2014.

- The are clearly too many adjudicators registered for the number of adjudication applications being made to the QBCC, the inescapable conclusion being that adjudicators are not receiving nominations consistently so that they are able to perform their deliberations under the Act consistent with the main purpose of the Act. Such a state of regulatory affairs never occurred under the previous ANA system and represents a complete failure of the old Soviet-style of prior restraint I warned about when making it known to Minister Mander and Adjudicator Registrar Michael Chesterman that a centralised form of administration was not the answer for the Payments Act.

- Similarly, the way in which the QBCC nominates adjudicators is not only unfathomable but is so irrational or absurd that no reasonable authority could have made such an appointment. The statistical evidence shows that the QBCC has not, in the slightest way, considered any relevant factors and in so doing has violated the dictates in the form of procedural fairness and has denied the claimant a right to a fair application. There is a distinct bias shown in the statistical evidence.

- Many experienced adjudicators have relinquished their registration with the overarching theme being frustration with the lack of procedural fairness and transparency in the process being administered by the QBCC.

[6] The standard / complex claim has been highly criticised and makes no sense either administratively or procedurally. The concept is without merit and has been squarely rejected and criticised by other jurisdictions with the real essence of the concern being made known by John Fiocco in his Report to the Minister of Commerce (2018), the report of which persuaded Western Australia to abandon the West Coast Model and follow the East Coast Model, as established by the New South Wales legislation – *Building and Construction Industry Security of Payment Act 1999* as amended in 2018.

[7] I am on the record stating that the BCIPA, when considered with the QBSA Act 1991, as being the best SOPA model prior to the 2014 amendments and criticised both the 2014 amendments and the repeal and replacement of the legislation with the BIFA.

- Queensland still leads the country in its willingness to publish all decisions.

- No second chance payment schedule should remain as it is consistent with the main purpose of the Act – Section 3.

- Payment by relevant date.

- Codified elements of case authorities that narrowly defines how a respondent may challenge an adjudicator's decision and that Kirk v Industrial Court has no application because section 101(3)(b) operates to protect the respondent by creating a statutory restitutionary right to recoup overpayment through a trial process that allows cross examination of the evidence.

[8] Trust Account issue needs to be reassessed through lien mechanisms.

Special Note:

The Palaszczuk Government (Minister de Brenni) made a big (and unusual) move in the right direction with respect to the creation of lien rights for the construction industry participant. The instrument was not a caveat but was a statutory charge over land created by the BIF Act itself.

Part 6A (sections 100A-100H) of the BIF Act 2017 allows a head contractor who succeeds at adjudication and receives an adjudication but who is not paid by the section 90 due date first to file the adjudication certificate as a judgement debt (section 93) and then register a charge of the "relevant property" – that is, the lot on which the work was performed) with the Registrar of Titles (section 100B).

The charge is registered by lodging the approved Titles form with the adjudication certificate accompany by an affidavit of debt. No owner consent

is needed. The charge lasts up to 24 months (extendable by court) and can be enforced by court-ordered sales with powerful consequences for other encumbrances (sections 100C – 100H).

The Act's definition of "encumbrance" (as it relates to "sale" and "priorities") expressly includes a caveat, which is probably why the concept of caveatable interest is loosely used in some commentary. The right granted under the BIF Act is the right to register a statutory charge, not to lodge a caveat per se.

The Land Titles Act becomes operative because the registration and machinery definitions used by the LTA guide the process once the BIF Act creates the charge. It does not confer the right itself, and this is the concern I have and why the whole system of Project Trust Accounts and Lien Rights must be implemented.

This was a stunning change commencing 1 October 2020 – the Queensland government gave head contractors a registrable security over the land for an unpaid adjudicated amount, something other SoP regimes do not do. I considered it unprecedent at the time but only a step in the right direction. My concern is that that in the British system, which Australia follows, the registration of an interest over a Lord's land was unfathomable – a low-level person registering an interest over a lord's land – forget it. This is why I find the concept of the builder's lien is hard to understand here in Australia.

[9] Statutory Conciliation: Restoring Contracted Party Sovereignty.

Importance of Building Ministers Forum Agreement

Setting aside my other concerns outlined in this briefing paper and focusing just on the BMF Agreement, the BMF communique was a national agreement and was not just some guideline that may or may not be followed.

This paper begins with Queensland's commitment under the Building Ministers Forum, a national convention leading to agreement to pursue consistency in security of payment regimes. Within this context, the following modules examine the divergence taken by Queensland and propose pathways to restore the leadership position Queensland once held. I am formally cited by the Queensland Government as an advocate and architect of construction industry legislation and regulatory reform.

Queensland once led the nation in security of payment reform. However, by refusing to honour its Building Ministers Forum commitment to pursue consistency with other jurisdictions, Queensland has now become a pariah jurisdiction and is the least consistent and most complex system in the country. This divergence erodes national confidence, burdens industry, and undermines the very trust these laws were designed to restore.

The purpose of this briefing is not to suggest that Queensland merely adopt unique provisions such as section 16 of the WA Act, but to advocate for a more fundamental reform that no jurisdiction has yet considered: shifting the focus from adversarial adjudication of payment disputes to a process of statutory conciliation that intervenes during performance disputes, preserving business relationships rather than destroying them. The Act already contains the seed of this solution in the restitutionary action, which should be strengthened by removing the payment-into-court escape route and codifying the limits of review set by case law so that payment is made on or before the relevant date in the decision, which is the due date for payment under the contract. In so doing, Queensland would not just rejoin the fold but will once again become the model for the nation to follow.

Queensland signed onto it, thereby committing to pursue greater national consistency in security of payment regimes. This is even more important now since Western Australia enacted the Building and Construction Industry (Security of Payment) Act 2021.

Minister, as we saw in the 10 August 2018 Building Ministers Forum Communique, of which Western Australia was a signatory, the states and territories collectively agreed to work toward a nationally consistent security of payment regimes. Queensland, however, appears to have moved furthest from that goal.

The BIF Act departs sharply from the agreed harmonisation direction, for example, adjudication pathways, including ANAs. This makes Queensland the least consistent jurisdiction, despite being one of the first to legislate security of payment.

By not aligning, Queensland risks losing credibility at the intergovernmental table; undermining confidence for interstate participants; and being seen as placing ideology or politics ahead of industry stability.

The communique of 10 August 2018, which Queensland signed onto, represents a commitment of all jurisdictions to pursue consistency in security of payment regimes. The BIF Act, however, makes Queensland the least consistent jurisdiction in the country. This divergence, as discussed in this briefing paper, not only increases costs and uncertainty for subcontractors and builders operating across state lines but also destroy productivity. Without cashflow the performance of men and machine in a construction project is disrupted. Interruption of cashflow in one link of the contractual chain has negative consequences all throughout the contractual chain, especially as it relates to the interlinking of states.

Thus the failure to get paid promptly, when combined with the failure of not having a pre-planned supply line to "ready money" to augment cashflow, is not only disruptive but can also be fatal, especially for a subcontractor. This is a project consideration that takes priority over any project work performance by the subcontractor because no matter how brilliantly a work crew may perform for the subcontractor on any project, there may never be the chance for the employees of the subcontractor to do so if the subcontractor does not focus on mitigating these two negative impacts on cash flow. The disruption or even worse the demise of the subcontractor disrupts the marketplace and allocation of resources within the marketplace. Disruption or demise of one element of the contractual chain impacts other elements of the contractual chain with the overarching negative impact on the marketplace being the demise or disruption of *contracted party sovereignty*—one of the perquisites to a marketplace functioning efficiently and fairly.

The failure of Queensland's system, when considered with not wanting to pursue consistency in security of payment regimes, undermines national confidence in Queensland's system, which was seen once as the model to be following.

This briefing paper seeks to assist the Minister in understanding, from a practitioner's perspective, why that divergence is occurring and what can be done to realign Queensland with the other jurisdictions but as the model to be followed.

The record shows that I am always one of the first to complement the Government when I believe the approach taken to regulation makes sense in an evenhanded and practical way and always one of the first to criticise the Government when I believe the approach taken to regulation makes no sense whatsoever, is not evenhanded and practical in any regulatory way.

I am cited in the Transport, Housing and Local Government Committee Report No. 14 (November 2012) – Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012: "The current Scheme is considered to be one of the best in Australis by some people, providing a more cost effective option and greater protection for consumers and contractors than those in other jurisdictions. [Footnote 151: See for example submissions 27, 61, 80 and 82. Submission 82: Mr Jonathan H Sive]

I made submissions when the Newman Government (Minister Mander advising that without a proper regulatory impact statement, the removal of the decentralised marketplace made up of ANAs not only was unlawful and violated federal competition laws but also did not make good regulatory sense, the passage of time of which has shown me to be correct. The point here is that I made submissions to Minister de Brenni when he was proposing to repeal the Building and Construction Industry Payments Act 2004 and replace it with the *Building Industry Fairness (Security of Payment) Act 2017*.

At the time of the Building Ministers Forum, Minister de Brenni refused to listen to my concerns and had created a complex nightmare, which was criticised by John Fiocco in his Report to the Minister of Commerce.

Before the Newman Government changes (Minister Mander, Michael Chesterman Adjudication Registrar) in 2014, I am on the record as saying that Queensland led the nation in security of payment reform. However, by refusing to honour it Building Ministers Forum commitment to pursue consistency with other jurisdictions, the Queensland Government, has through two separate and distinct diametrically opposed political party theories focused solely on their political dogma of the day, has eroded both national confidence and credibility as discussed by John Fiocco in his Report to the Minister (2018) that led to Western Australia abandoning the West Coast, which is founded, and joining the East Coast Model. What was once regarded as the model to be followed has now become a menacing outlier that favours respondents, not claimants, that John Fiocco warned the Minister of Commerce (WA) not to follow at all because it has become a complex regulatory mess that imposes unnecessary burdens on the industry and undermines the very trust that security of payment was designed to restore. One of the reasons why I favoured the BCIPA as the model to be followed focused on how the BICPA worked well with the QBSA 1991 (as it was in 2012). John Fiocco made it known to the Minister in his report that the model to be followed was New South Wales, not Queensland. As a result, the Queensland approach to Security of Payment is anything but fair as this briefing paper discusses.

Therefore, the purpose of this brief is not simply to draw Queensland back into the fold but to put forward practical reforms, such as adopting new concepts like the WA SoP Act (s.16) that my years of experience show are needed to make the system not only fairer but also to move money down the contractual chain. Queensland in 2004, as it did in 1974 and 1991, sought to implement regulation to address the visible shift occurring in industry structure, where head contractors were becoming project managers rather than people performing just construction work. This is the reason why Queensland did not use the term “Security of Payment” in the legislation title but focused on the concept of “Payment” when payment is being wrongfully withheld for whatever reason.

This briefing paper seeks to assist the Minister by allowing Queensland, once again, to set the benchmark for best practice, just as it did no 2012 under the BCIPA and QBSA framework.

BIF Act 2017 not fulfilling Main Purpose

Adjudication Outcomes – Long Term Trends vs Recent Snapshot

Recent Snapshot – QBCC Recent Decisions

No	Claimant	Respondent	Site/ Subrurb	Application Number	Date - Decision	Jurisdiction	Adjudicator	Payment Claim Amount	Adjudicated Amount	Recovery Rate
18	Winslow Pty Ltd	Millwood Rise Developments Pty Ltd	Nambour	00000002845489	4-Sep-25	**No**	Craig Tanzer	$ 1,773,347.22	$ -	0.00%
17	James Construction Queensland Pty Ltd	Mornington Shire Council	Wellesley Islands	00000002859294	29-Aug-25	Yes	Michael O'Brien	$ 919,411.56	$ 176,550.83	19.20%
16	Phoenix Form Pty. Ltd	Z Group2 Pty Ltd	SOUTHPORT	00000002875991	26-Aug-25	**No**	Nicole Derry	$ 115,000.00	$ -	0.00%
15	RAWCORP PTY LTD	MDP NO 15 PTY LTD	Coolangatta	00000002841600	25-Aug-25	Yes	Joram (John) Murray	$ 1,165,157.76	$ 148,327.47	12.73%
14	Mayla Family Trust	Ph Australian Construction Group Pty Ltd	Park Ridge	00000002869068	19-Aug-25	Yes	Emillie Sweeper	$ 1,365.50	$ 1,365.50	100.00%
13	Mayla Family Trust	Ph Australian Construction Group Pty Ltd	Park Ridge	00000002869067	19-Aug-25	Yes	Emillie Sweeper	$ 1,935.00	$ 1,935.00	100.00%
12	Young Plumbing & Excavations Pty Ltd	Benzina Constructions Pty Ltd	LOGAN RESERVE	00000002875763	18-Aug-25	Yes	Gregory McGinniskin	$ 6,793.84	$ 6,793.84	100.00%
11	S.E. QLD PLUMBING & DRAINAGE PTY LTD	BRIDGEMAN AGENCIES PTY LTD	Hamilton	00000002856659	15-Aug-25	Yes	Paul Hick	$ 43,814.31	$ 27,224.57	62.14%
10	Contrast Constructions Pty Ltd	FELTHAM INVESTMENTS (QLD) PTY LTD	TARINGA	00000002865325	15-Aug-25	**No**	Christopher Jacques Nel	$ 85,662.77	$ -	0.00%
9	JW Air & Solar Pty Ltd	CONSTRUCTIONS PTY LTD	Buddina	00000002871491	11-Aug-25	**No**	James Alan Demack	$ 154,409.46	$ -	0.00%
8	S.E. QLD PLUMBING & DRAINAGE PTY LTD	BRIDGEMAN AGENCIES PTY LTD	Hamilton	00000002856685	11-Aug-25	Yes	Paul Hick	$ 332,996.74	$ 236,288.76	70.96%
7	Contrast Constructions Pty Ltd	FELTHAM INVESTMENTS (QLD) PTY LTD	TARINGA	00000002865178	8-Aug-25	**No**	Christopher Jacques Nel	$ 1,025,146.00	$ -	0.00%
6	Design Landscapes (Holdings) Pty Ltd	LMS AU Pty Ltd	Palmwoods	00000002868003	8-Aug-25	**No**	David Seeney	$ 43,510.00	$ -	0.00%
5	Design Landscapes (Holdings) Pty Ltd	LMS AU Pty Ltd	BELLARA	00000002868001	8-Aug-25	**No**	David Seeney	$ 3,794.73	$ -	0.00%
4	SUPER HEALTH GROUP PTY. LTD.	FUTURE FITOUTS QLD PTY LTD	Redcliffe	00000002833847	4-Aug-25	Yes	John Groggins	$ 175,528.47	$ 111,225.50	63.37%
3	UNIVERSAL COATINGS PTY LTD	EVANS BUILT PTY LTD	Pelican Waters	00000002874598	4-Aug-25	Yes	David Warnock	$ 13,232.45	$ -	0.00%
2	Asset Assocated Air Pty	OPEN PROJECTS GROUP PTY LTD	SURFERS PARADISE	00000002870135	1-Aug-25	**No**	Justin James Mathews	$ 74,301.18	$ -	0.00%
1	DC Fire Protection Pty Ltd	Interfire Systems Australia Pty Ltd	Coolangatta	00000002865645	1-Aug-25	Yes	Ka Yuk Nip	$ 41,163.93	$ 41,163.93	100.00%

Period (Days)	34
No Jurisdiction Decisions	8
Failure Rate	44%
Payment Claim Amount	$ 5,976,570.92
Adjudicated Amount	$ 750,875.40
Total Recovery Rate	12.56%

The information provided to me by the ABC Dispute Resolution that reports the QBCC data covers adjudication decisions from October 2004 to June 2025, the period that extends across BCIPA and BIF regimes.

Recovery rates for claimants have declined sharply under the BIF Act and began this significant decline after the changes made by the Newman Government (Minister Mander) in 2014. It is important to note the following critical facts:

- Under BCIPA (ANA-led): average recovery rates often exceeded 60–70% in key claim bands with the overall average below the 50%, which has always been unacceptable to me. My opinion, which was made to the Committee reviewing the changes proposed by Minister Mander and based on my experience and the main purpose of the Act, concluded that the rate had to be around 75% for the Committee to be concerned about the misconceived notion of “fairness” being expressed by Minister Mander.

- Under BIF (QBCC-led): average recovery rates dropped to 35–42%, with some bands as low as 13–16%.

Jurisdiction failures have surged. The statistical information provided by the ABC Dispute Resolution Service shows that the current rates of jurisdictional failures sits at 49% of BIF Application. Here the claimant has not a fair hearing because the application has been rejected for jurisdictional reasons.

Embedded within this failure rate is the “No Jurisdiction” rate, which currently sits at 32% of BIF decisions, and this rate is where the adjudicator has not valued the work of the claimant and has concluded that he or she has no jurisdiction to decide the matter.

The data provided by the ABC Dispute Resolution Service shows that claimants are increasingly receiving less than unsecured creditors under Deeds of Company Arrangement, and this procedural fact is undermining the statutory promise of prompt and fair payment.

The recent QBCC snapshot taken from the Decision Search page reflects a systemic failure to deliver on section 3 of the BIF Act: “to help people working in the building and construction industry in being paid for the work they do.”

The evidence to be discussed today confirms that adjudication decisions under the BIF Act regime are significantly less favourable to claimants than under the repealed BCIPA legislation. The QBCC has failed to replicate the transparency, procedural clarity, and claimant support previously provided by Authorised Nominating Authorities.

Russell Welsh’s long-standing effort at the ABC Dispute Resolution Service to compile and publish adjudication statistics, despite QBCC’s selective and opaque reporting, has been instrumental in exposing these systemic failures. His work exemplifies the marketplace’s self-correcting function, where independent actors fill the vacuum left by institutional gatekeeping.

The recent 34-day snapshot reinforces Welsh’s findings: nearly half of all decisions failed on jurisdiction, and claimants recovered just 12.56% of the amounts claimed. This is not adjudication. Rather it is procedural attrition masquerading as statutory fairness.

Queensland Only Jurisdiction Without ANAs

Queensland's refusal to restore the decentralised ANA marketplace places it in direct contradiction to the Building Ministers Forum (BMF) 2018 Communique, which called for greater consistency across jurisdictions, and The Senate Economic References Committee ('I just want to be paid') Insolvency in the Australian construction industry Final Report dated December 2015, which called for a Federal Model for Security of Payment. A Federal Model can be created by legislation or by practice and procedure which the BMF sought to achieve.

The Fiocco Report (2018) explicitly warned against Queensland's centralised model, citing its complexity, procedural opacity, and failure to deliver prompt payment.

Consequences of Hijacking the Marketplace and Centralised Prior Restraint System

Loss of Procedural Diversity: Under BCIPA, ANAs provided procedural guidance, claimant support, and competitive nomination practices. QBCC's monopoly has led to opaque nomination, inconsistent adjudicator engagement, and procedural attrition.

Adjudicator Attrition: Welsh's data shows a marked decline in active adjudicators, with many citing frustration over QBCC's nomination practices and lack of transparency. It is important to note that under the BCIPA marketplace of ANAs, the overwhelming number of licenced adjudicators would never have occurred. Most of the adjudicators that have been allowed to be adjudicators under the QBCC-Sullivan program of training would never have passed the rigorous training and testing that occurred prior to 2014.

Marketplace Disruption: The removal of ANAs has disrupted the self-correcting mechanisms of the marketplace. Claimants now face a gatekeeper model that filters applications without procedural clarity or recourse.

Queensland's failure to adopt the decentralised ANA marketplace is not merely a policy choice but is a breach of national consensus. The BMF 2018 Communique was a collective commitment to harmonise SoP regimes. Every other East Coast jurisdiction has honoured this commitment by retaining or restoring or creating (Western Australia 2021) the necessary decentralised nomination pathways.

The Fiocco Report, commissioned by Western Australia, explicitly rejected Queensland's post-2013 model and instead adopted the NSW-style ANA framework. Queensland's continued divergence undermines national confidence, burdens subcontractors, and violates the spirit of cooperative federalism.

Restoring the decentralised ANA marketplace is not a nostalgic gesture but becomes the strategic imperative necessary to re-establish procedural fairness, claimant empowerment and control of menacing upper chain conduct, and marketplace integrity.

Adjudicator Training, Nomination, and Procedural Breakdown

The person who is responsible for training the adjudicators under the BIF Act has an abysmal adjudication record that is reflective of the historical statistics since 2014:

Dominic Katter	15	1	17	$ 5,804,045.29	$ 52,101.80	0.9%
Justin Hampton	7	0	17	$ 458,807.22	$ 138,557.89	30.2%
Julian Lane	10	0	17	$ 326,947.45	$ 158,815.70	48.6%
Rhiann Storey	2	3	17	$ 15,703,518.79	$ 7,388,309.74	47.0%
Des Dowling	2	0	17	$ 634,266.32	$ 470,293.73	74.1%
William Timothy Sullivan	2	14	17	$ 325,954,748.52	$ 82,459,649.86	25.3%
Scott A McIntyre	8	1	17	$ 8,825,352.43	$ 267,811.96	3.0%
Brydget Barker-Hudson	3	1	17	$ 2,747,448.71	$ 553,498.72	20.1%
Michael Jamieson Neale	4	1	16	$ 12,982,830.19	$ 2,824,579.82	21.8%
Rachel Macdonald	4	0	16	$ 289,245.07	$ 170,923.00	59.1%
Alan Stapleton	2	11	16	$ 1,364,659,984.54	$ 645,856,471.02	47.3%
Matthew Meakin	8	0	16	$ 334,301.62	$ 197,675.79	59.1%
Andrew Shields	1	1	16	$ 5,120,054.68	$ 541,942.58	10.6%
Robert Beck	7	1	16	$ 1,875,472.06	$ 691,292.60	36.9%
Thomas Uher	2	4	16	$ 22,680,733.76	$ 5,964,548.66	26.3%
Tracey Wood	11	4	16	$ 28,690,151.63	$ 3,912,337.57	13.6%
Rosemarie Risgalla	4	0	16	$ 3,951,546.75	$ 2,664,039.13	67.4%
Edwin Charles	2	1	15	$ 7,667,884.34	$ 1,859,311.78	24.2%
Peter Sarlos	1	1	15	$ 3,399,592.84	$ 2,600,873.45	76.5%
David Kinlan	3	0	15	$ 369,214.61	$ 273,314.23	74.0%
William P Koitka	4	0	15	$ 559,465.74	$ 407,289.11	72.8%
Franz van den Brink	4	0	15	$ 414,077.22	$ 189,987.33	45.9%
Philip Christopher Miles	8	1	14	$ 49,971,512.48	$ 208,538.69	0.4%
Timothy Woolley	6	0	14	$ 1,927,675.51	$ 224,606.21	11.7%
Bruce Christopher Cull	1	1	14	$ 2,565,233.77	$ 2,292,660.74	89.4%
Thomas Wilson	1	6	14	$ 33,529,352.36	$ 26,954,788.30	80.4%
David Francis	2	0	14	$ 2,416,510.91	$ 2,083,759.83	86.2%
Mary Jo Jeisman	5	0	13	$ 353,882.80	$ 171,468.13	49.0%
Ian Wright	0	0	13	$ 1,481,326.50	$ 750,881.64	50.7%
Gavin Amopiu	1	0	13	$ 202,309.25	$ 124,585.75	61.6%
Brad Nairn	6	0	13	$ 178,694.72	$ 95,181.44	53.3%
Anthony John Mark Zarro	7	1	13	$ 5,277,351.99	$ 254,365.75	4.8%
Graham Swan	8	0	12	$ 773,490.89	$ 16,453.75	2.1%
Dean Beresford	6	0	12	$ 485,660.54	$ 132,841.73	27.4%
Christopher Morrow	4	2	12	$ 5,735,993.30	$ 1,810,753.04	31.4%
Russell Welsh	3	5	12	$ 47,114,291.01	$ 16,738,512.45	35.5%

As a comparison, here are my statistics:

	Values					
Row Labels	No Jurisdiction Decisions	No of Complex Claims	No. Adjudications	Total Claimed	Total Adjudicated	Product of Ratio Adj to Claimed
William Timothy Sullivan	2	14	17	$ 325,954,748.52	$ 82,459,649.86	25.3%
John Tuhtan	0	12	20	$ 87,081,061.55	$ 23,185,847.59	26.6%
Alan Stapleton	2	11	16	$ 1,364,659,984.54	$ 645,856,471.02	47.3%
Chris Lenz	5	10	22	$ 87,632,932.30	$ 34,375,009.81	39.2%
Sean O'Sullivan	7	9	20	$ 58,334,482.31	$ 14,834,765.95	25.4%
Paul Jason Hick	5	9	24	$ 24,310,297.73	$ 10,853,001.81	44.6%
Christopher E Taylor	15	9	32	$ 76,207,859.31	$ 10,699,605.11	14.0%
Helen Durham	4	7	19	$ 624,227,450.32	$ 272,515,810.16	43.7%
John Murray	1	7	9	$ 151,150,937.85	$ 110,309,609.17	73.0%
Thomas Wilson	1	6	14	$ 33,529,352.36	$ 26,954,788.30	80.4%
Max Tonkin	2	6	18	$ 333,892,436.01	$ 312,236,202.37	93.5%
Jonathan Nicholas Smith	3	6	12	$ 14,734,765.61	$ 7,411,262.63	50.3%
Robert John Reeves	1	5	18	$ 18,805,124.64	$ 2,136,602.21	11.4%
Scott Pettersson	4	5	11	$ 12,589,041.79	$ 5,884,958.10	46.7%
Russell Welsh	3	5	12	$ 47,114,291.01	$ 16,738,512.45	35.5%
Jennifer Wyatt	0	5	23	$ 43,797,780.24	$ 21,164,815.89	48.3%
Michael James Cope	3	5	24	$ 26,606,188.13	$ 6,481,550.65	24.4%
Jonathan Sive	1	5	19	$ 26,736,037.40	$ 20,428,757.36	76.4%
John Paul Roberts	0	4	11	$ 14,823,680.52	$ 3,947,709.55	26.6%
James Alan Demack	3	4	19	$ 30,140,151.73	$ 13,233,920.69	42.2%
Thomas Uher	2	4	16	$ 22,680,733.76	$ 5,964,548.66	26.3%
Ian Hillman	4	4	11	$ 19,943,069.41	$ 7,695,388.48	38.6%
Tracey Wood	11	4	16	$ 28,690,151.63	$ 3,912,337.57	13.6%
Philip Martin	2	3	23	$ 74,005,093.81	$ 32,644,119.60	44.1%
Susan Leech	3	3	25	$ 5,657,114.77	$ 710,030.78	12.6%
Richard Atkin	9	3	26	$ 46,036,926.55	$ 5,990,026.89	13.0%
John Carey	9	3	26	$ 14,463,749.03	$ 871,713.32	6.0%
Christopher Jacques Nel	5	3	20	$ 11,509,328.19	$ 1,826,143.43	15.9%
David Seeney	8	3	32	$ 14,053,487.66	$ 6,137,569.55	43.7%
Rhiann Storey	2	3	17	$ 15,703,518.79	$ 7,388,309.74	47.0%
Barry Tozer	9	3	34	$ 12,502,626.09	$ 4,075,231.00	32.6%
Sean Kelly	8	3	22	$ 9,179,629.55	$ 4,320,543.58	47.1%
Ken Spain	2	3	19	$ 13,300,995.78	$ 3,585,069.58	27.0%
Christopher Groves	7	3	32	$ 10,059,958.43	$ 1,613,722.20	16.0%
Andrew Wallace	0	3	4	$ 10,633,985.36	$ 4,068,311.92	38.3%
Noel Jensen	5	3	26	$ 11,637,942.70	$ 5,340,482.63	45.9%
Warren Fischer	2	3	11	$ 9,275,202.69	$ 6,605,823.19	71.2%
Steven Reid	2	2	24	$ 3,930,202.60	$ 1,025,593.16	26.0%
Robert Gemmell	3	2	21	$ 12,565,706.46	$ 2,103,735.85	16.7%

Monopolised Training and Accreditation

Since 2014, Tim Sullivan and his company, Contract Administration Group Pty Ltd (NSW-based), have held a de facto monopoly over adjudicator training in Queensland.

This centralisation has excluded diversity of thought, procedural innovation, and competitive standards once fostered under the ANA marketplace.

Many adjudicators trained under this regime would not have passed the rigorous testing applied pre-2014 under the decentralised ANA system.

Oversupply and Nomination Failure

The QBCC has registered far more adjudicators than the volume of adjudication applications can sustain.

This oversupply has led to inconsistent nominations, procedural stagnation, and adjudicators unable to maintain practice standards.

Under the ANA system, nomination was market-driven, ensuring adjudicators remained active, accountable, and procedurally sharp.

Unfathomable Nomination Practices

The QBCC's nomination process is opaque, irrational, and procedurally indefensible.

Statistical evidence shows no correlation between adjudicator expertise and nomination frequency.

ABCDRS dataset reveals serial "No Jurisdiction" adjudicators being repeatedly nominated, despite poor claimant outcomes and high rejection rates.

Adjudicator Attrition and Disillusionment

Many experienced adjudicators have relinquished registration, citing frustration with QBCC's nomination opacity and lack of procedural fairness.

The adjudication ecosystem has become hostile to practitioner integrity, driving away those committed to statutory clarity and claimant justice.

Standard vs Complex Claim Distinction – A Concept Without Merit

The bifurcation of claims into “standard” and “complex” under Queensland’s regime is administratively incoherent and procedurally indefensible.

This distinction introduces artificial timelines, unnecessary complexity, and regulatory confusion, undermining the statutory promise of prompt and fair payment.

The concept has been squarely rejected by other jurisdictions, most notably in John Fiocco’s 2018 Report to the WA Minister of Commerce, which:

- Criticised Queensland’s post-2013 amendments for creating a prescriptive and convoluted adjudication pathway;
- Warned that the standard/complex split undermines the objective of quick, simple, and cost-effective adjudication;
- Persuaded Western Australia to abandon the West Coast Model and adopt the NSW-style East Coast Model, as amended in 2018.

“*The Queensland model, particularly its standard/complex claim distinction, introduces unnecessary procedural hurdles and delays. It is not a model to be followed*.”

— Fiocco Report to WA Minister of Commerce, 2018

The NSW legislation—Building and Construction Industry Security of Payment Act 1999 (as amended in 2018)—offers a streamlined, single-track adjudication process, restoring clarity and consistency across claim types.

Queensland’s continued reliance on this distinction places it out of step with national harmonisation efforts, as outlined in the 2018 Building Ministers Forum Communique.

Legacy Validation and Statutory Integrity – Why BCIPA + QBSA Was the Gold Standard

Historical Endorsement: I am on the record, that is, through committee citations, judicial recognition, and Senate Inquiry testimony, asserting that the BCIPA, when read with the QBSA Act 1991, represented the most effective SOPA model prior to the 2014 amendments. The repeal and replacement with BIFA fractured that statutory coherence.

Transparency Leadership: Despite systemic failures post-2014, Queensland still leads the country in publishing all adjudication decisions, a practice that supports accountability and doctrinal development. This legacy feature must be preserved and expanded.

No Second Chance Payment Schedule: The prohibition on second-chance schedules is consistent with section 3 of the Act, which prioritises prompt and reliable payment. Reintroducing ambiguity or delay mechanisms would erode the statutory purpose.

Payment by Relevant Date: This mechanism anchors payment obligations to a clear contractual milestone, reducing dispute ambiguity and aligning with the Act's intent to protect subcontractors from tactical delay.

Codified Challenge Pathways: The Act's codification of challenge grounds, especially in relation to the High Court's decision in *Kirk v Industrial Relations Commission*, ensures that respondents cannot derail adjudication through collateral attacks.

- *Kirk*, in my opinion, should never have been a consideration because section 101(3)(b) and its predecessor in the BCIPA have always protected respondents through the provision of a restitutionary claim. This protection means that the extra-curial and curial process remain distinct. Since the extra-curial process is not a contract resolution process (Court of Appeal (ACT) Harlech v Beno (special leave refused) but is a payment resolution process; this provision in the Act means that if the protective right allows for a trail and cross-examination of evidence, which the extra-curial process cannot undertake.

- This balances finality in adjudication with fairness in recovery, preserving the integrity of the system without undermining its efficiency.

Project Trust Accounts and the Constitutional Imperative for Lien Rights

The Project Trust Account framework, as currently administered, is structurally flawed and procedurally incoherent. Despite the Minister's 10 February 2025 media statement ("*Building Reg Reno making it easier to build in Queensland*"), the reality is that the system is not easier—it is opaque, unworkable, and failing to deliver payment security.

I am on the record—prior to 2014, in submissions to Minister Mander and Adjudication Registrar Michael Chesterman—warning that the Project Trust Account model was misconceived. I argued then, as I do now, that without a lien mechanism, the trust account cannot function as a true security instrument.

The Bruce Collins Insolvency Report, which Queensland has cited as a guiding authority, recommended the Maryland model but overlooked the necessary lien mechanism simply because he failed to understand how the system operates in the United States. The Maryland model is a system that embeds lien rights as a constitutional entitlement. Queensland's failure to adopt my recommendation of creating lien rights reflects a fundamental misunderstanding of the structural role of lien rights in securing payment.

The British system, which Australia inherited, was feudal in nature, which is a system based on denying the lower classes the right to lien property. This historical exclusion is embedded in our land title system, which prioritises registered ownership over equitable claims.

Therefore, I have long advocated for a Queensland Constitutional provision that enshrines the right to a Mechanics or "Builder's" Lien or equivalent remedy. This would:

- Recognise the contracted party's right to payment as a constitutional entitlement.
- Override the limitations of state legislation, which can be repealed or diluted by political whim.
- Restore contracted party sovereignty and ensure that payment rights are not contingent on administrative discretion.

Statutory Conciliation: Restoring Contracted Party Sovereignty

The prevailing adjudication model treats payment disputes as isolated events, but this is a procedural illusion. In reality, every payment dispute originates from a performance dispute, which is a breakdown in scope, timing, quality, or delivery. Yet not every performance dispute escalates into a payment dispute, especially when the performance dispute is caught when it is forming.

The Building Ministers' Forum (BMF) has repeatedly called for harmonisation, transparency, and improved dispute resolution across jurisdictions. However, Queensland has the opportunity to go beyond harmonisation and become the first jurisdiction to legislate statutory conciliation as a performance-preserving mechanism.

Unlike adjudication, which often terminates relationships and escalates conflict, conciliation intervenes early, preserving commercial continuity and reducing systemic attrition.

This asymmetry is the crux of the proposed reform: by intervening at the performance stage, before the dispute crystallizes into a payment claim, the system can: (1) Preserve critical commercial relationships, (2) reduce procedural attrition, and (3) restore contracted party sovereignty.

The current framework incentivizes escalation. Statutory conciliation offers a non-adversarial alternative, which in my experience becomes the proper mechanism to catch and resolve a performance dispute before it metastasizes into formal a payment dispute and a payment claim.

The Act already contains the embryonic structure for this reform in its restitutionary provisions. With the changes I discuss herein that include removing the payment-into-court loophole, codification of case authorities declaratory relief boundaries for making an originating application to challenge an adjudicator's decision (Kirk doctrine cannot be applied for this reason), and anchoring obligations to the relevant date of performance breach.

Queensland can legislate a performance-stage intervention model that no other jurisdiction has contemplated. This proposal aligns with the Building Ministers' Forum's goals but goes further because it reimagines dispute resolution as a relationship-preserving architecture, not a claim-processing mechanism.

The future of construction law lies not in faster adjudication, but in earlier intervention. Statutory conciliation is how Queensland can lead again, not by harmonising but also by harmonising and innovating with the historical Queensland pioneering approach to construction industry regulation.