

2005/2006
WESTERN AUSTRALIA

**REPORT OF THE
CONSTRUCTION CONTRACTS REGISTRAR**

FOR THE YEAR ENDED
30 JUNE 2006

PRESENTED TO THE HON MICHELLE ROBERTS MLA
MINISTER FOR HOUSING AND WORKS

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**HON MICHELLE ROBERTS MLA
MINISTER FOR HOUSING AND WORKS**

I have pleasure in presenting the report of the Construction Contracts Registrar for the year ended 30 June 2006.

The Annual Report of the Registrar is submitted pursuant to section 52 of the *Construction Contracts Act 2004*.

A handwritten signature in black ink, appearing to read "Peter Gow". The signature is written in a cursive style with a large initial 'P' and a long, sweeping underline.

PETER GOW
CONSTRUCTION CONTRACTS REGISTRAR

1. INTRODUCTION

The *Construction Contracts Act 2004* (“the Act”) received Royal Assent on 8 July 2004 and was proclaimed on 14 December 2004 to commence operation on 1 January 2005.

The purpose of the Act is to provide security of payment for the building and construction industry by:

- Prohibiting payment provisions in contracts that slow or stop the movement of funds through the contracting chain;
- Implying fair and reasonable payment terms into contracts that are not in writing;
- Clarifying the right to deal in unfixed materials when a party to the contract becomes insolvent; and
- Providing an effective rapid adjudication process for payment disputes.

The *Construction Contracts Regulations 2004* (“the regulations”) were gazetted on 14 December 2004.

2. REGISTERED ADJUDICATORS

Under section 48 of the Act, the Registrar may register an individual as a registered adjudicator if the Registrar is satisfied that the individual has the qualifications and experience prescribed by regulation 9 of the regulations. Registered adjudicators may adjudicate payment disputes where an application for adjudication has been lodged in accordance with section 26 of the Act. In the reporting period, 10 individuals applied for registration as an adjudicator, and 14 individuals were registered (this figure included some applications which were pending from the previous reporting period).

Table 2.1 Number of applications for registration as an adjudicator under the *Construction Contracts Act 2004*

Number of applications for registration as an adjudicator (1/7/2005 – 30/6/2006)	10
Number of applications for registration as an adjudicator (1/1/2005 – 30/6/2005)	36
TOTAL	46
Number of individuals registered as adjudicators (1/7/2005 – 30/6/2006)	16
Number of individuals registered as adjudicators (1/1/2005 – 30/6/2005)	23
TOTAL	39
Number of individuals registered as adjudicators applications pending (at 30/6/2006)	10
Applications for registration as adjudicators rejected (1/7/2005 – 30/6/2006)	0
Applications for registration as adjudicators rejected (1/1/2005 – 30/6/2005)	0
TOTAL	0

The complete list of registered adjudicators is contained in Table 2.2.

Table 2.2 Individuals registered as adjudicators under the *Construction Contracts Act 2004*.

ADJUDICATOR'S NAME	CERT NO	ADJUDICATOR'S NAME	CERT NO
Graham Anstee-Brook	1	John Fisher	2
Phil Faigen	3	Richard Machell	4
Alan Riley	5	Kevan McGill	6
Scott Ellis	7	Antony Ednie-Brown	8
Roger Davis	9	Kim Doherty	10
Laurie James	11	Mark Sheehan	12
Philip Dyer	13	Kersh De Courtenay	14
Adrian Goold	15	David Aitken	16
Brian Wales	17	Mirina Muir	18
Mark Jones	19	Phillip Evans	20
Ralph Unger	21	Paul Wellington	22
Michael Charteris	23	Glynn Logue	24
Philip Loots	25	William Lau	26
Raymond Gibson	27	Peter Byrne	28
Colin Touyz	29	Robert Wallis	30
Vitorio Tassone	31	John Morhall	32
Gavin Brackenreg	33	David Court	34
Fulvio Prainito	35	Zvy (Steve) Lieblich	36
Mark Taylor*	37	Graham Morrow*	38
Kevin Windross*	39		

* Appointed since 1 July 06

A total of 7 applications for registration as an adjudicator under the Act remain pending at 30 June 2006.

3. PRESCRIBED APPOINTORS

A prescribed appointor is an industry body prescribed in the regulations. Prescribed appointors are authorised to appoint an adjudicator for the adjudication of a payment dispute where an application for adjudication has been served on the prescribed appointor in accordance with section 26 of the Act.

The *Construction Contracts Amendment Regulations 2005* were gazetted on 1 April 2005, and prescribe nine industry bodies as prescribed appointors. The prescribed appointors, along with the numbers of appointments each made during the reporting period are outlined in Table 3.1.

Table 3.1 Prescribed appointors registered and number of appointments made during the reporting period (1/7/2005 – 30/6/2006)

Certificate Number	Prescribed Appointor	Number of Appointments Made
1	Australian Institute of Building	0
2	The Australian Institute of Quantity Surveyors	1
3	Electrical and Communications Association of Western Australia	1
4	The Institute of Arbitrators and Mediators Australia	11
5	Master Builders Association of Western Australia	13
6	The Royal Australian Institute of Architects	2
7	Australian Institute of Project Management	0
8	Royal Australian Institute of Chartered Surveyors	0
9	LEADR	0
	Adjudicator not appointed by Prescribed Appointor	1
	Total	29

No applications for registration of a prescribed appointor were received during the period 1 July 2005 – 30 June 2006.

A list of all prescribed appointors, along with the fees they charge is maintained on the DHW website at http://www.dhw.wa.gov.au/330_823.asp.

4. CONSTRUCTION CONTRACTS OPERATIONS

4.1 Applications for Adjudication

The Act provides that if a payment dispute arises under a construction contract any party to the contract may apply to have the dispute adjudicated by a registered Adjudicator. Twenty-nine applications for adjudication were reported to the Registrar during the reporting period. A summary of the results of these applications is outlined in Table 4.1.

Table 4.1 Applications for adjudication made during the reporting period (1/7/2005 – 30/6/2006)

Adjudication applications for adjudication received	29
Number of determinations made	21
Applications for adjudication pending (as at 30/6/2006)	0
Number of applications for adjudication dismissed	2
Number of applications for adjudication withdrawn	6
Number of applications lapsed under section 31(3)	0

4.2 Amounts claimed, determined, dismissed and withdrawn

A summary of the results of all applications for adjudication made during the reporting period (1 July 2005 – 30 June 2006) is outlined in the tables below.

Table 4.2.1 Amounts claimed during the reporting period (1/7/2005 – 30/6/2006)

Total number of payment claims	29
Total value of payment claims	\$10,485,828.12
Mean value of payment claims	\$361,580.28
Largest single payment claim	\$5,620,017.96
Smallest single payment claim	\$1,750.00

Table 4.2.2 Value of determinations made during the reporting period (1/7/2005 – 30/6/2006)

Total number of determinations	21
Total value of determinations	\$1,055,322.66
Mean value of determinations	\$50,253.46
Largest single determination	\$300,414.42
Smallest single determination	\$320.15

Table 4.2.3 Value of claims dismissed during the reporting period (1/7/2005 – 30/6/2006)

Total number of dismissals	2
Total value of claims dismissed	\$768,045.58
Largest single claim dismissed	\$758,498.00
Smallest single claim dismissed	\$9,547.58

Table 4.2.4 Value of claims withdrawn during the reporting period (1/7/2005 – 30/6/2006)

Total number of claims withdrawn	6
Total value of claims withdrawn	\$6,543,553.04
Mean value of claims withdrawn	\$1,090,592.17
Largest single claim withdrawn	\$5,620,017.96
Smallest single claim withdrawn	\$1,750.00

4.3 Construction industries subject to applications for adjudication

Of 29 applications for adjudication made during the reporting period, a broad range of industries were involved, as outlined in table 4.3.1. The range of claim size for each industry is outlined in table 4.3.2.

Table 4.3.1 Applications for adjudication by industry for the reporting period (1 July 2005 – 30 June 2006)

Industry	Number of claims	% of all claims
Architecture	2	6.9%
Bored piling works	2	6.9%
Building - commercial	3	10.3%
Building - residential	5	17.2%
Carpentry	2	6.9%
Civil engineering	2	6.9%
Concreting	2	6.9%
Electrical	1	3.4%
Glazing	2	6.9%
Plumbing	1	3.4%
Roadworks	1	3.4%
Roofing	1	3.4%
Stabilisation works	1	3.4%
Tiling	1	3.4%
Painting	1	3.4%
Not advised	2	6.9%
TOTAL	29	100.0%

Table 4.3.2 Payment claims made by industry for the reporting period 1 July 2005 – 30 June 2006

Industry	Total Amount Claimed (\$)	Mean Amount Claimed (\$)	Largest Claim (\$)	Smallest Claim (\$)
Architecture	36,645.00	18,322.50	32,883.00	3,762.00
Bored piling works	2,701,633.00	1,350,816.50	1,943,135.00	758,498.00
Building - commercial	5,648,727.96	1,882,909.32	5,620,017.96	28,710.00
Building - residential	92,094.51	23,023.63	39,985.34	4,205.55
Carpentry	5,095.00	2,547.50	3,345.00	1,750.00
Civil engineering	1,044,363.86	522,181.93	847,093.98	197,269.88
Concreting	170,262.82	85,131.41	121,622.62	48,640.20
Electrical	218,433.29	218,433.29	218,433.29	-
Glazing	186,128.00	93,064.00	178,395.00	7,733.00
Plumbing	2,829.00	2,829.00	2,829.00	-
Roadworks	32,983.55	32,983.55	32,983.55	-
Roofing	12,000.45	12,000.45	12,000.45	-
Stabilisation works	Not available	Not available	Not available	Not available
Tiling	12,270.50	12,270.50	12,270.50	-
Painting	28,710.00	28,710.00	28,710.00	-
Not advised	214,105.98	53,526.50	167,058.40	9,547.58

4.4 The costs of adjudication

Adjudicators are responsible for setting their own fees. Details of fees are published on a Department of Housing webpage: http://www.dhw.wa.gov.au/330_822.asp.

Table 4.4.1 indicates the number of claims made, the total costs for adjudication in each value range, as well as the highest, lowest, and the average fee for adjudication for each value range for the reporting period.

Table 4.4.1 Highest, lowest and mean adjudication fees by payment claim size during the reporting period (1/7/2005 – 30/6/2006)

Range of Claims	No of Claims	Total Fees for Adjudication (\$)	Highest Fee For Adjudication (\$)	Lowest Fee For Adjudication (\$)	Average Fee for Adjudication (\$)
\$1 - \$9,999	9	11,671.50	4,400.00	0	1,296.83
\$10,000 - \$24,999	3	6,948.50	3,558.00	750.00	2,316.17
\$25,000 - \$99,999	7	13,982.76	4796.00	0	1,997.54
\$100,000 - \$249,999	6	25,160.84	6,613.20	1,068.69	4,193.47
\$250,000 - \$499,999	0	-	-	-	-
\$500,000 and over	4	13,748.95	6,966.30	450.00	3,437.24
TOTAL	29	71,512.55			

This data are graphically represented in figure 4.4.1 (following page), which demonstrates that, based on the data gathered during the reporting period, claim size does not appear to influence costs of adjudication.

Fig 4.4.1 Highest, lowest and mean adjudication fees by payment claim size during the reporting period (1/7/2005 – 30/6/2006)

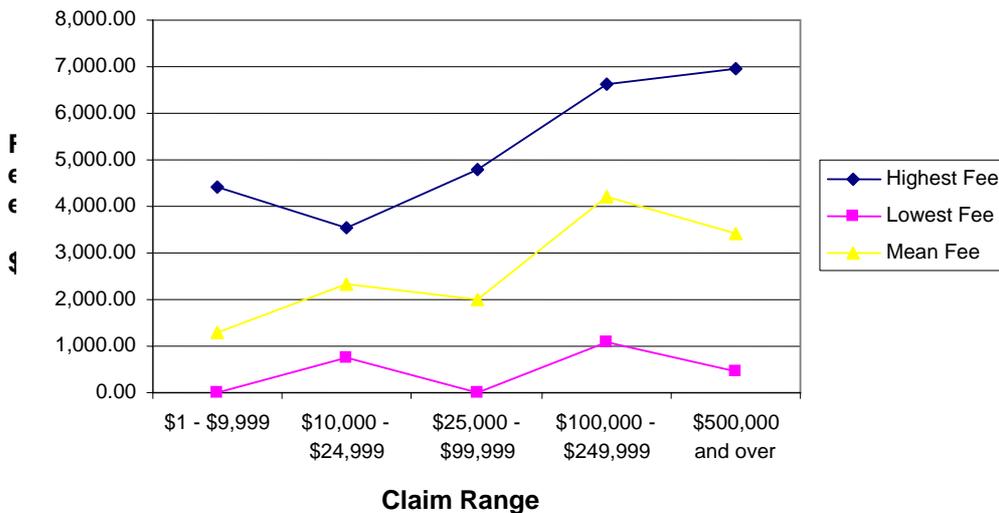


Table 4.4.2 indicates the costs of adjudication by industry for the reporting period.

Table 4.4.2 The costs of adjudication by industry for the reporting period (1 July 2005 – 30 June 2006)

Industry	Number of claims	Highest Fee for Adjudication (\$)	Lowest Fee for Adjudication (\$)	Mean Fee for Adjudication (\$)
Architecture	2	3,080.00	1,760.00	2,420.00
Bored piling works	2	6,966.00	5,000.00	5,983.00
Building - commercial	3	5,904.00	450.00	2,481.00
Building - residential	5	4,896.00	2,200.00	2,972.01
Carpentry	2	1,210.00	0	1,210.00
Civil engineering	2	3,875.00	1,332.65	2,603.83
Concreting	2	1,924.26	1,068.64	1,496.45
Electrical	1	4,950.00		4,950.00
Glazing	2	2,750.00	1,512.50	2,131.25
Plumbing	1	1,700.00		1,700.00
Roadworks	1		0	0
Roofing	1	2,640.00		2,640.00
Stabilisation works	1	4,400.00		4,400.00
Tiling	1	750.00		750.00
Painting	1	1,732.50		1,732.50
Not advised	2	6613.20	250.00	3,431.60
TOTAL	29			

Tables 4.4.1 and 4.4.2, and Figure 4.4.1 indicate that while there is no correlation between the size of the claim and fees for adjudication, there may be a link between construction industry and fees for adjudication. However, because of the limited data that is currently available, generalisations about the correlation between construction industry and the fees for adjudication cannot be made at this time. However, with the

collection of more data and as more claims are made, the correlation between construction industry and the fees for adjudication may be more fully understood.

5. ADJUDICATION TRAINING COURSES

One of the qualifications for registered adjudicators under regulation 9(4) of the regulations is the successful completion of an appropriate training course, which qualifies the person for the performance of the functions of an adjudicator under the Act.

The Registrar has approved four adjudication training courses:

Institute of Arbitrators and Mediators Australia Training course
Minter Ellison-Clifton Coney Group Adjudication Training course
Australian Institute of Quantity Surveyors (WA Chapter) and Jackson McDonald
Lawyers in conjunction with the Master Builders Association
Royal Institution of Chartered Surveyors (RICS) Dispute Resolution Service

6. FORUMS

The office of the Registrar conducted one public forum on the Act. The forum was provided free of charge.

7. WEBPAGE AND PUBLICATIONS

The Registrar has established and maintains a *Construction Contracts Act 2004* webpage on the Department of Housing and Works website: http://www.dhw.wa.gov.au/330_350.asp. This webpage is regularly updated with registered Adjudicators' contact details, rates and profiles and prescribed appointors' contact details and rates and details of adjudicator training courses.

A Brochure entitled "Introduction to the *Construction Contracts Act 2004*"; and a Government Information Guide are available for download from the page. The Guide contains 13 information sheets on various aspects of the Act, including 6 pro-forma forms and 4 flowcharts outlining processes for different parties under the Act.

Links are also provided to PDF versions of the Act and regulations.

8. MATTERS REFERRED TO THE STATE ADMINISTRATIVE TRIBUNAL

8.1 Conflict of interest

A conflict of interest may arise through the appointed adjudicator having a material personal interest in a payment dispute or in the contract under which a dispute has arisen. Section 29(3) of the Act provides that, if during the course of an adjudication, a party to a payment dispute becomes aware of a conflict of interest, and this occurs before the adjudicator's decision or determination is made, then that party may apply to the State Administrative Tribunal (SAT) to have the adjudicator disqualified.

There were nil matters referred to SAT in relation to an appointed adjudicator's alleged conflict of interest during the current reporting period.

8.2 Adjudicator's decision

Under section 46(1) of the Act, a person who is aggrieved by a decision made by a registered adjudicator under section 31(2)(a) to dismiss an application for adjudication may apply to the SAT for a review of the decision.

There was one SAT decision reversing an adjudicator's determination in relation to a payment dispute in the current reporting period. In that case, the adjudicator dismissed the claim on the basis that the contract was entered into before the commencement of the Act. SAT set aside this dismissal, referring the matter back to the adjudicator. The adjudicator subsequently dismissed the application on the basis that the payment claim was not a valid payment claim.

8.3 Registrar's decision

Under section 49 of the Act, a person who is aggrieved by a decision made by the Registrar in relation to the registering of an adjudicator under section 48 of the Act may apply to the SAT for a review of the decision.

There were nil matters referred to SAT requesting a reversal of a decision made by the Registrar in relation to the registration of an adjudicator during the current reporting period.

9. CONCLUSION

The primary goal of the legislation was to ensure a mechanism for the rapid adjudication of construction contracts disputes to keep money flowing through the construction industry by avoiding the expense and delay of formal litigation. The data presented in this report demonstrates that the *Construction Contracts Act* is operating as it was intended, and is making considerable savings, both financial and in time, in resolving construction contracts disputes.

The data also demonstrates that there may be a relationship between industry and adjudicator's fees, however there does not appear to be a relationship between claim size and fees for adjudication. There is clear value in exploring this issue further as more data becomes available.