



Government of Western Australia
Department of Mines, Industry Regulation and Safety



REPORT OF THE BUILDING COMMISSIONER FOR THE FINANCIAL YEAR TO 30 JUNE 2021

Construction Contracts Act 2004

PRESENTED TO THE HON. AMBER-JADE SANDERSON MLA
MINISTER FOR COMMERCE

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1. PURPOSE OF THE ACT

The *Construction Contracts Act 2004* (the Act) commenced operation on 1 January 2005.

The Act provides a means for the rapid adjudication of payment disputes for parties to a contract for the carrying out of construction work and/or the supply of related goods and services (a construction contract) on a site in Western Australia (WA).

Rapid adjudication is a dispute resolution process to help resolve disagreements between parties over payments for construction work and/or the supply of related goods and services. It is designed to be quick and reasonably cost effective.

The Act also:

- prohibits 'paid-if-paid' or 'paid-when-paid' provisions in construction contracts that inhibit the movement of funds through the contracting chain;
- implies fair and reasonable payment terms into construction contracts that are not in writing; and
- clarifies the right to deal with unfixed materials when a party to a construction contract becomes insolvent.

2. PURPOSE OF THIS ANNUAL REPORT

The Building Commissioner administers the Act. Under section 52 of the Act, the Building Commissioner is required to present a report to the Minister for Commerce before 1 November in each detailing the operation and effectiveness of the Act for the immediately preceding financial year (the reporting period).

The report timing enables outcomes of adjudication applications made on or before 30 June to be included in the reporting period.

3. DATA SOURCES

For the purposes of preparing this annual report, information was gathered from the following sources:

- Determinations of adjudicators;
- Information provided by prescribed appointors;
- Information provided by adjudicators; and
- The online decisions database of the Supreme Court of Western Australia.

4. EXECUTIVE SUMMARY

- The total number of applications for adjudication reduced by 34 per cent in 2020-21 when compared to the previous reporting period.
- The highest frequency of adjudication applications was from the commercial sector of the industry.
- The lowest, highest and mean value of payment dispute values for the reporting period were \$3,074.39, \$29,795,992.08 and \$1,192,480.23 respectively.
- The highest frequency of adjudicator appointments by a prescribed appointor was 29, by the Resolution Institute.
- The lowest, highest and mean value of adjudication fees were \$337.50, \$89,000 and \$8,839.64 respectively.
- On 25 June 2021, the new *Building and Construction Industry (Security of Payment) Act 2021* (BCISP Act) received Royal Assent. While the major Parts of the BCISP Act will be proclaimed to commence operation in stages, it is expected that over time the volume of adjudications under the CCA will continue to diminish.
- Once proclaimed to commence operation, sections 115 and 139 of the BCISP Act will replace section 52 of the CCA.

5. ADJUDICATION ACTIVITY

Table 1 shows the number and values of applications for adjudication by reporting period.

Table 1: Applications for Adjudication by Financial Year			
Financial Year	Number of Applications	Gross Claims Value	Mean Value of Payment Dispute
2005-06	29	\$10,485,828.12	\$361,580.28
2006-07	36	\$15,938,123.77	\$442,725.66
2007-08	86	\$98,222,008.65	\$1,142,116.38
2008-09	105	\$35,838,998.23	\$341,323.79
2009-10	172	\$233,266,050.32	\$1,356,197.97
2010-11	197	\$308,553,664.77	\$1,566,262.25
2011-12	178	\$183,701,052.55	\$1,086,988.48
2012-13	208	\$226,300,887.35	\$1,103,906.77
2013-14	175	\$378,903,585.63	\$2,165,163.35
2014-15	235	\$580,655,848.46	\$2,470,875.95
2015-16	225	\$685,990,359.67	\$3,048,846.04
2016-17	176	\$187,563,024.84	\$1,065,699.00
2017-18	165	\$71,942,426.85	\$436,014.71
2018-19	115	\$60,524,242.18	\$526,297.76
2019-20	106	\$83,346,375.80	\$786,286.56
2020-2021	70	\$83,473,615.78	\$1,192,480.23
Grand Total	2,278	\$3,244,706,092.86	\$1,424,366.15

Table 2 provides statistics on the applications for adjudication by industry sector.

Table 2: Applications for Adjudication in 2020-2021 by Industry Sector				
Industry Sector	Applications			
	Frequency	% Total Claims	Total \$ Amounts Claimed	% Value of Claims
Residential	16	21.97	\$3,670,284.72	4.40
Public Building/Works	4	5.79	\$1,938,270.41	2.32
Commercial	24	36.30	\$7,325,813.98	8.78
Mining/Oil and Gas	9	11.71	\$48,507,962.04	58.11
School/Education Building	1	0.60	\$285,763.10	0.34
Industrial	0	0.00	\$0.00	0.00
Civil Works/Infrastructure	12	20.04	\$21,477,976.33	25.73
Rural/Agricultural	1	0.85	\$62,726.50	0.08
Mixed Use	1	0.08	\$40,561.08	0.05
Aged Care	2	2.66	\$164,257.61	0.20
Total	70	100	\$83,473,615.78	100

Table 3 provides statistics on the applications for adjudication by payment dispute value.

Table 3: Applications for Adjudication in 2020-21 by payment dispute value				
Range	PAYMENT DISPUTE			
	Applications	%	Total Value	Mean Value
\$1 to<\$10,000	11	16.78	\$68,048.65	\$6,186.24
\$10,001 to<25,000	8	12.52	\$155,861.71	\$19,482.71
\$25,001 to<\$50,000	9	12.60	\$314,779.73	\$34,975.53
\$50,001 to<\$100,000	8	9.98	\$605,286.52	\$75,660.82
\$100,001 to<\$250,000	10	13.16	\$1,568,312.33	\$156,831.23
\$250,001 to<\$500,000	8	11.39	\$2,972,890.08	\$371,611.26
\$500,001 to<\$1,000,000	5	5.55	\$3,452,480.60	\$690,496.12
\$1,000,001 to<\$1,500,000	2	3.30	\$2,788,134.69	\$1,394,067.35
\$1,500,001 to<\$2,500,000	1	0.32	\$1,985,475.01	\$1,985,475.01
\$2,500,001 to<\$5,000,000	5	9.26	\$17,921,329.16	\$3,584,265.83
\$5,000,001 to<\$10,000,000	1	1.17	\$9,425,312.63	\$9,425,312.63
\$10,000,001 to<\$15,000,000	1	1.49	\$12,419,712.59	\$12,419,712.59
>\$15,000,001	1	2.49	\$29,795,992.08	\$29,795,992.08
Total	70	100%	\$83,473,615.78	\$1,192,480.23

6. ADJUDICATION OUTCOMES

Table 4 shows the number of applications for adjudication that were determined, withdrawn or dismissed.

Table 4: Applications adjudicated 2020-21	
Number of determinations	46
Number of withdrawals	12
Number of applications dismissed	12

7. PRESCRIBED APPOINTORS

Table 5 provides statistics on the number of adjudicator appointments made.

Table 5: Appointor Activity 2020-2021		
Name of Prescribed Appointor	Number of Appointments	
	#	% Total
Adjudicate Today Pty Limited	23	35.45
Australian Institute of Building	4	7.00
Australian Institute of Project Management	0	0.00
Master Builders' Association of Western Australia (Union of Employers) (MBA)	11	13.40
Resolution Institute (previously Institute of Arbitrators and Mediators Australia)	29	40.16
RICS Australasia Pty Ltd	0	0.00
The Electrical and Communications Association of Western Australia Inc.	3	3.98
<i>Self-appointed</i>	0	0.00
Total	70	100%

Table 6 provides a summary of adjudication fees.

Table 6: Summary of Adjudication/Adjudicator fees 2020-2021	
Max published adjudicator fees per hour (excl. GST)	\$700.00
Min published adjudicator fees per hour (excl. GST)	\$100.00
Indicative Average hourly fee	\$328.15
Actual Adjudication fees (70 applications)	\$ 618,774.63
Mean	\$8,839.64
Highest fee revenue	\$89,000.00
Lowest fee revenue (>\$0)	\$337.50
Max fee applied for adjudications	\$450.00
Min fee applied for adjudications	\$250.00

8. CERTIFICATION OF ADJUDICATION DETERMINATIONS

The Building Commissioner certified 10 determinations under section 43(2) of the Act to allow Applicants to recover amounts owed through the courts.

9. JUDICIAL REVIEW

The Supreme Court is the forum to receive applications for judicial review, such as a challenge to an Adjudicator's determination on the grounds of jurisdictional error.

During the reporting period, no applications for judicial review were made in connection with determinations made under the Act.



Kristin Berger
BUILDING COMMISSIONER

