

2010/2011
WESTERN AUSTRALIA

**REPORT OF THE BUILDING COMMISSIONER
*CONSTRUCTION CONTRACTS ACT 2004***

FOR THE YEAR ENDED
30 JUNE 2011

PRESENTED TO THE HON SIMON O'BRIEN MLC
MINISTER FOR COMMERCE

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**HON SIMON O'BRIEN MLC
MINISTER FOR COMMERCE**

I have pleasure in presenting the Annual Report of the Building Commissioner pursuant to s.52 of the *Construction Contracts Act 2004* for the year ended 30 June 2011.

PETER GOW
BUILDING COMMISSIONER

1. INTRODUCTION

The *Construction Contracts Act 2004* (“the Act”) commenced operation on 1 January 2005 and includes supplying the Minister with an annual report about the operation and effectiveness of the law for the previous financial year.

The Act essentially provides security and fairness in building and construction matters by:

- prohibiting payment (not wages and salary) provisions in contracts that inhibit 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.

Amendments to the Act as a consequence of the new *Building Services (Complaint Resolution and Administration) Act 2011* provide that the Building Commissioner of the Department of Commerce is responsible for the administrative and reporting roles performed by the former Registrar.

2. REGISTERED ADJUDICATORS

S.48 of the Act provides that individuals may become registered adjudicators subject to possessing prescribed qualifications and experience accepted by the Building Commissioner. Following registration these individuals may adjudicate payment disputes where an application for adjudication has been lodged in accordance with s.26 of the Act.

2010/11 Outcomes: The Tables below summarise registration activity and details of the 52 individuals recorded on the Register of adjudicators for the reporting year.

Table 2A : Registered Adjudicators (Summary of 2010/11 registration activity)

Number of registered adjudicators reported as at 30/6/2010	51
Number of applications 1/7/2010 – 30/6/2011	7
Applications for registration as adjudicators rejected 1/7/2010 – 30/6/2011	0
Number of appointments 1/7/2010 – 30/6/2011	4
Number of resignations 1/7/2010 – 30/6/2011	3
Total number of registered adjudicators reported as at 30/6/2011	52
Number of applications pending at 30/6/2011	3

Table 2.2: Registered Adjudicators (2010/11 Register under the *Construction Contracts Act 2004*)

NAME	Certificate No.	NAME	Certificate No.
Graham Anstee-Brook	1	Vittorio Tassone	31
John Fisher	2	John Morhall	32
Phil Faigen	3	Gavin Brackenreg	33
Richard Machell	4	David Court	34
Alan Riley	5	Fulvio Prainito	35
Kevan McGill	6	Zvy (Steve) Lieblich	36
Scott Ellis	7	Mark Taylor	37
Antony Ednie-Brown	8	Graham Morrow	38
Roger Davis	9	Kevin Windross	39
Kim Doherty	10	Bernard Lynch	41
Laurie James	11	Alex Durning	42
Mark Sheehan	12	Michael Murrey	43
Philip Dyer	13	Rod Perkins	44
Kersh De Courtenay	14	Barry Tonkin	45
Adrian Goold	15	Thomas Muttrie	46
Mirina Muir	18	Gregory Downing	47*
Mark Jones	19	Auke Steensma	48
Phillip Evans	20	John Hockley	49
Ralph Unger	21	Lyndon White	50
Paul Wellington	22	Natasha Owen-Conway	51
Michael Charteris	23	Dennis Oon	53
Glynn Logue	24	Russell Welsh	54
Philip Loots	25	Colin Bond	55
William Lau	26	David Trinder	57
Raymond Gibson	27		
Peter Byrne	28	Total 2010/11 Panel	52
Colin Touyz	29	(Net growth of +1 after past retirements and deaths recorded)	
Robert Wallis	30		

Certificates withdrawn: #16 David Aitken deceased; #17 Brian Wales retired; #40 Gary Affleck deceased.
 Certificates: #47 to be reissued; #52 #56 #58 applicants being assessed for possible issue in 20011/12.

3. PRESCRIBED APPOINTORS

The Act provides parties to a payment dispute access a prescribed appointor to assist in the selection of a registered adjudicator. This follows where an application for adjudication has been served on the prescribed appointor in accordance with s.26 of the Act.

The supporting Construction Contracts Regulations 2004 identify eight industry bodies as prescribed appointors.

2010/11 Outcomes:

(a) The Table below lists these bodies and the number of appointments each made during the reporting period and the disputes arbitrated without access to the appointors.

(b) No changes to the appointors' panel occurred by way of new registrations or withdrawals from the list.

Table 3.1 : Prescribed Appointors and number of appointments in 2010/11

Identifier	Prescribed Appointor	Appointment of Adjudicators
1	The Australian Institute of Building	5
2	Australian Institute of Project Management	0
3	The Australian Institute of Quantity Surveyors	4
4	Electrical and Communications Association of Western Australia (Union of Employers)	2
5	The Institute of Arbitrators and Mediators Australia	98
6	Master Builders Association of Western Australia (Union of Employers)	75
7	RICS Australasia Pty Ltd (Royal Institute of Chartered Surveyors Australasia Pty Ltd)	8
8	The Royal Australian Institute of Architects	3
9	Other ie Registered Adjudicator chosen by parties (s.26(1) (c)(i) but not appointed via a Prescribed Appointor	2
	Total	197

The Building Commission's website www.buildingcommission.wa.gov.au provides information (under the Services link) to customers regarding contact details and fee details charged by the prescribed appointors.

4. CONSTRUCTION CONTRACTS OPERATIONS

2010/11 Outcomes: The Tables below show the level of applications and the outcomes from adjudication activity in the reporting period and an historical snapshot of past activity. Outcomes and adjudication costs are also mapped across building groups.

A. Applications for Adjudication

Section 25 of 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.

Table 4A.1: Applications for adjudication in 2010/11

Adjudications received	197
Number of determinations made	99
Applications for adjudication pending as at 30 June 2011	14*
Number of applications for adjudication dismissed	57
Number of applications for adjudication withdrawn	27
Number of applications lapsed under section 31(3)	0

*The adjudications pending resulted from several timing, growth and demand factors in 2010/11. These included applications arriving later in the financial year, an overall growth in adjudication business up 15% in number and nearly 33% in payment claims value over 2009/10 and competing demands for adjudications in large scale construction and building disputes primarily in the mining sector.

Table 4A.2 Growth in applications for adjudication from commencement of the Act

Year	Number of Adjudications	Total \$A Value of Payment Claims	Mean value of Payment Claims
2005-2006	29	\$10,485,828.12	\$361,580.28
2006-2007	36	\$15,938,123.77	\$442,725.66
2007-2008	86	\$98,222,008.65	\$1,142,116.38
2008-2009	105	\$35,838,998.23	\$341,323.79
2009-2010	172	\$233,266,050.32	\$1,356,197.97
2010-2011	197	\$308,553,664.77	\$1,566,262.25

*The Building Commissioner will require adjudicators dealing with contracts written in foreign currency to report all claims, determinations and related activity at the prevailing exchange rate and applicable GST.

B. Amounts claimed, determined, dismissed and withdrawn in 2010-11

Table 4B.1 Amounts claimed

Total number of payment claims	197
Total value of payment claims	\$308,553,664.77
Mean value of payment claims	\$1,566,262.25
Largest single payment claim	\$104,733,907.60
Smallest single payment claim	\$2,850.87

The following outcomes are net of 14 pending adjudication matters at the time of reporting

Table 4B.2 Value of determinations

Total number of determinations	99
Total value of determinations	\$93,371,335.97
Mean value of determinations	\$943,144.81
Largest single determination	\$38,638,535.78
Smallest single determination	\$2,850.87

Table 4B.3 Value of claims dismissed

Total number of dismissals	57
Total value of claims dismissed	\$150,747,196.46
Mean value of claims dismissed	\$2,644,687.66
Largest single claim dismissed	\$66,095,372.90
Smallest single claim dismissed	\$1,367.69

Table 4B.4 Value of claims withdrawn

Total number of claims withdrawn	27
Total value of claims withdrawn	20,399,790.70
Mean value of claims withdrawn	755,547.80
Largest single claim withdrawn	12,007,981.94
Smallest single claim withdrawn	9,178.00

C. Construction occupations with applications for adjudication in 2010/11

Table 4C.1 Use of adjudicators x group (Frequency and payment claim amount)

Industry grouping	Number of Claims	% of claims	Total payment claims by group	% of claims
Architectural Services	1	0.508	\$33,550.32	0.011
Building Design	1	0.508	\$11,000.00	0.003
Ceiling Construction	1	0.508	\$193,763.68	0.063
Civil Work	15	7.614	\$44,245,109.25	0.143
Commercial Building	42	21.320	\$34,752,272.44	11.263
Concrete Works	4	2.030	\$961,890.21	0.312
Construction Works	3	1.523	\$412,755.23	0.134
Crane Hire	1	0.508	\$27,500.00	0.009
Curtain Wall Installation	2	1.015	\$1,872,229.03	0.607
Drainage and Power	2	1.015	\$0	0
Earthworks	3	1.523	\$754,714.96	0.245
Electrical	8	4.061	\$1,289,921.55	0.418
Engineering Design Works	1	0.508	\$404,248.60	0.131
Fabrication	2	1.015	\$18,866.50	0.006
Formworks	1	0.508	\$28,675.90	0.009
Glazing	1	0.508	\$601,622.75	0.195
Hire of Labour	2	1.015	\$93,412.58	0.030
House Maintenance	2	1.015	\$29,250.17	0.009
Hydraulic Services	1	0.508	\$1,017,712.15	0.330
Marine Works	4	2.030	\$10,982,613.41	3.559
Medium Works	2	1.015	\$100,560.65	0.033
Mining*	12	6.091	\$173,930,227.79	56.369
Modular Building	5	2.538	\$2,052,882.94	0.665
On Site Services	1	0.508	\$53,874.70	0.175
Panel Tanks	1	0.508	\$28,710.00	0.009
Pipe work	3	1.523	\$14,338,998.03	4.647
Plant Hire	2	1.015	\$37,447.00	0.012
Power Generation	3	1.523	\$1,529,922.57	0.496
Residential Buildings	31	15.730	\$4,876,385.97	1.580
Road Works	1	0.508	\$2,810,367.54	0.911
Roofing	1	0.508	\$21,670.83	0.007
Scaffolding	7	3.553	\$716,788.07	0.232
Steel Works	4	2.030	\$236,170.95	0.076
Structural Drawings	1	0.508	\$252,472.63	0.082
Tiling	3	1.523	\$180,475.54	0.058
Unallocated	23	11.675	\$9,655,700.83	3.129
Total	197	100%	\$308,553,664.77	100%

*The table shows the significance of the mining sector's use of adjudicators in large scale building and construction payment disputation in 2010/11. Mining (by value) has overtaken the traditional commercial, civil, and residential sectors using this form of dispute resolution outside the formal Court's processes.

* The categories and level of reporting at this level will be included in the review of the Act.

Table 4C.2: Fees charged to industry groups for adjudications during 2010/11

Industry grouping	Total fees	Frequency	Highest fee	Lowest fee	Mean average
Architectural Services	3,500.00	1	3,500.00	3,500.00	3,500.00
Building Design	1,361.25	1	1,361.25	1,361.25	1,361.25
Ceiling Construction	2,500.00	1	2,500.00	2,500.00	2,500.00
Civil Works	71,177.75	13	10,467.60	2,420.00	5,475.22
Commercial Building	149,076.20	36	18,304.00	120.00	4,141.02
Concrete Works	16,586.50	4	12,226.50	1,000.00	4,146.53
Construction Works	3,262.50	2	1,7500.00	1,512.50	1631.25
Crane Hire	484.00	1	484.00	484.00	484.00
Curtain Wall Installation	4,087.25	2	2,087.25	2,000.00	2043.63
Drainage and Power	2,400.00	1	2,400.00	2,400.00	2,400.00
Earthworks	12,600.00	2	9,000.00	3,600.00	6300.00
Electrical	29,774.00	8	8,000.00	220.00	3721.75
Engineering Design Works	3,000.00	1	3,000.00	3,000.00	3,000.00
Fabrication	1,480.00	2	1,000.00	480.00	740.00
Formworks	462.00	1	462.00	462.00	462.00
Glazing	5,000.00	1	5,000.00	5,000.00	5,000.00
Hire of Labour	5,436.00	2	5,016.00	420.00	2718.00
House Maintenance	10,420.00	2	8,000.00	2,420.00	5210.00
Hydraulic Services	5,062.20	1	5,062.20	5,062.20	5,062.20
Marine Works	22,594.36	4	7,198.12	1,000.00	5648.59
Medium Works	484.00	1	484.00	484.00	484.00
Mining	94,456.29	8	28,023.05	647.50	11,807.04
Modular Building	29,611.75	5	11,838.75	432.00	5922.35
On Site Services	6,270.00	1	6,270.00	6,270.00	6,270.00
Panel Tanks	0.00	0	0.00	0.00	0.00
Pipe work	23,025.00	3	11,025.00	1,000.00	7675.00
Plant Hire	4,572.00	2	2,636.00	1936.00	2286.00
Power Generation	18,548.50	3	14,300.00	800.00	6,182.84
Residential Buildings	80,530.79	29	7,746.79	600.00	2,876.01
Road Works	12,024.00	1	12,024.00	12,024.00	12,024.00
Roofing	4,800.00	1	4,800.00	4,800.00	4,800.00
Scaffolding	26,142.50	7	7,562.50	1,100.00	3,734.64
Steel Works	20,695.00	4	9,295.00	2,000.00	5173.75
Structural Drawings	4,567.80	1	4,567.80	4,567.80	4,567.80
Tiling	4,800.00	3	2,500.00	650.00	1600.00
Unallocated	29,444.60	7	10,000.00	1,000.00	4,206.37
Totals	\$710,236.24	162			

*The fees charged on the above 162 occasions are 35 less than the 197 applications. This is explained in part by the 14 pending cases and up to 27 applications known to have been withdrawn incurring a partial or no adjudication fee.

D. The costs of adjudication

Registered adjudicators are responsible for setting their own fees but disclose these for publication by the Building Commissioner on the web site (See details in 7. below)

This information is updated annually via this service but is indicative only. Parties are to confirm fee details directly with the adjudicator or via the appointer. There may also be private arrangements between the adjudicator and parties in setting the fees to be charged based on stage the action is withdrawn or time location and volume of work to resolve a disputed matter.

Table 4D.1 Adjudication fees charged for the 162 matters in 2010/11

Range of Claims	Total fees	Highest	Lowest	Mean average
\$1 - \$9,999	\$35,932.50	\$7,500.00	\$220.00	\$1,634.30
\$10,000 - \$24,999	\$34,912.35	\$8,000.00	\$800.00	\$3,880.15
\$25,000 - \$99,999	\$141,849.90	\$10,000.00	\$462.00	\$3,224.86
\$100,000 - \$249,999	\$108,508.55	\$13,318.61	\$120.00	\$3,876.31
\$250,000 - \$499,999	\$90,447.96	\$18,304.00	\$432.00	\$4,761.42
\$500,000 and over	\$298,584.98	\$28,023.05	\$1,000.00	\$7,465.62
TOTAL	\$710,236.24			

5. ADJUDICATION TRAINING COURSES

Regulation 9(4) requires the successful completion of an appropriate training course, qualifying the person to perform the functions of an adjudicator under the Act.

There are four appropriate adjudication-training courses for applicants conducted by the following bodies:

- Institute of Arbitrators & 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

In 2010-11 several presentations were given by the former Registrar at meetings of industry and related professional institutes and associations.

The Building Commissioner is aware that industry practitioners including adjudicators and appointors have raised issues and suggested proposals for review of certain provisions and requirements under the legislation. These matters will be revisited in the forthcoming review of the Act (see 9. below).

7. WEBPAGE AND PUBLICATIONS

The Building Commission maintains a specific web page (under Customer Services and Dispute Resolution) about the Act, its operations and participants located at www.buildingcommission.wa.gov.au. This webpage is regularly updated with contact details and profiles on the currently 52 registered adjudicators and 8 prescribed appointors.

Potential applicants can also access information on relevant training and the applicable Code of Conduct and Practice Guidelines for Registered Adjudicators and Prescribed Appointors.

Tradespersons and owner builders continue to be targeted in information campaigns to inform them of the fundamentals of managing payments under a construction contract and the benefits that can flow from applying that knowledge and the provisions of the Act.

Publications regarding the use of adjudication as an effective and alternate means to resolve disputes and a Facts sheet on the Act and the new complaints resolution processes provided by the Building Commission are available in hard copy and web based formats.

Links are also provided to PDF versions of the Act and its regulations and previous Annual Reports.

8. MATTERS REFERRED TO THE STATE ADMINISTRATIVE TRIBUNAL

8. A Conflict of interest

Section 29(3) of the Act provides that, if during the course of an adjudication, a party to a payment dispute believes there is a conflict of interest on the part of the adjudicator, and this occurs before the adjudicator's decision or a determination is made, then that party may apply to the State Administrative Tribunal (SAT) to have the adjudicator disqualified.

2010/11 Outcomes: No matters were referred to SAT in relation to a conflict of interest.

8. B 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.

2010/11 Outcomes: There were 3 decisions published by SAT, which reviewed decisions made by an adjudicator in relation to payment disputes. Appendix A summarises each of these matters and in all instances the application for review was dismissed.

8. C Previous Registrar's decision

Under section 49 of the Act, a person who is aggrieved by a decision made by the Building Commissioner (previously 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.

2010/11 Outcomes: No action was initiated to challenge decisions of the former Registrar.

8. D Indian Ocean Territories

The Commonwealth has previously agreed to powers vested in the former Registrar under the *Construction Contracts Act 2004* be applied in the Territories of Christmas Island and the Cocos (Keeling) Islands.

This delegation will be refreshed in 2011/12 as a consequence of the *Building Services (Complaint Resolution and Administration) Act 2011* to enable the Building Commissioner to carry out these functions.

8. E Appointment fee issues

The level of charges related to the appointment of a registered adjudicator by the prescribed appointor pursuant to s26 of the Act was clarified in 2009/10.

Currently the following principles apply with regard to fees charged and the disclosure of information:

- the primary obligation of a prescribed appointor (as a industry peak body) is to appoint a suitably registered adjudicator and this should not be contingent on that person being a member of a particular Institute or Association or agreeing to pay any assessment fee to the appointor.
- it is open to the prescribed appointor to make it a requirement of membership that adjudicators undergo regular professional development and that for this purpose they pay a fee and obtain the parties' consent to have determinations disclosed to their professional body solely for assessment and peer review purposes.
- the adjudicator must obtain the consent of the parties to release a copy of the determination to other parties for professional development purposes only and must disclose that the adjudicator is to pay any fee for this assessment. The identity of the parties must be removed from the copy of that determination.

- the prescribed appointor and the registered adjudicator must not charge more than the fees published on the Building Commission website.

2010/11 Outcomes: It is apparent that there were variations to these practices and certain appointors have not updated their fees for uploading on the Building Commission's web site.

The Building Commissioner will include these matters for consideration in the Review of the Act at 9.below and amend the existing Practice Codes and Guidelines for adoption by appointors and adjudicators.

8.F Complaints and Concerns About Adjudicators

Two complaints relating to the conduct of adjudicators were received by the former office of the Registrar. These claimed that the adjudicator in each case failed to understand the nature of the claim or the contract on which it was based. Other concerns raised less formally with the Registrar or through other government channels dealt with the independence of adjudicators and the awarding of costs for frivolous and vexatious conduct.

The Building Commissioner does not consider that any of the matters complained about warrant the de-registration of any adjudicator, but is continuing to investigate the matters with a view to providing clearer guidance to adjudicators and in framing issues for consideration in the planned review of the Act.

9. REVIEW OF THE ACT

A review to examine the operation and effectiveness of the *Construction Contracts Act 2004* is planned in financial year 2011/12. This will provide the opportunity for building and construction industry practitioners and clients to comment on all related aspects including the adjudications process and suggestions raised in industry forums.

The review timetable will also allow the legislative reforms in recent building services such as the complementary *Building Services (Complaint Resolution and Administration) Act 2011* that commenced from 29 August 2011, to be factored into local building and construction contracts and an impact assessment made on security of payment and related dispute matters.

10. CONCLUSION

The building and construction sectors in Western Australia continue to use the adjudications process under the *Construction Contracts Act 2004* (the Act) as an alternate payment dispute resolution process to assist funds flowing through the industry.

The 2010-11 reporting period demonstrated significant growth in the number of applications for adjudications (up 14.5% to 197 from 172 in 2009/10) and in the scale of disputes (up nearly a third at \$308.5M from \$233.3M in 2009/10).

Parties to mining sector construction contract disputes used adjudications at historically high levels. This signals further confidence in the certainty of the adjudications process in dealing with complex, large sum security of payment issues and its associated benefits in terms of savings in cost and time over formal court processes. The capacity to have decisions reviewed by the State Administrative Tribunal and determinations enforced as a recoverable debt are further comforts under the Act to both parties in dispute.

The panel of registered adjudicators is stable (at 52 in 2010/11 up from 46 in 2005/6) however there are likely to be pressures on the supply of these experts to attend lower level disputation as more complex disputes are dealt with.

The new *Building Services (Complaint Resolution and Administration) Act 2011* will operate in 2011/12 as a complement to the Act. This will render further assistance to industry participants and their customers by clarifying the nature of a complaint and smooth out the number of non payment disputes sought for adjudication under the Act.

The Building Commissioner is also examining ways to promote the take up of the Act and will include these matters along with issues regarding the registration of adjudicators and prescribed appointors in a forthcoming review of the Act commencing in 2011/12 for further report to the Minister.

11. APPENDIX A – STATE ADMINISTRATIVE TRIBUNAL DECISIONS 2010/11

(i) PERRINEPOD PTY LTD and GEORGIU BUILDING PTY LTD [2010] WASAT 136

The applicant applied for a review of a decision of an adjudicator under the *Construction Contracts Act 2004 (WA)*. The applicant considered that the adjudicator ought to have dismissed the application on the ground that the application was too complex.

The adjudicator declined to dismiss the application and went on to make a determination on the merits. The Tribunal concluded that its right of review was limited to a review of a decision of an adjudicator to dismiss an application without making a determination on the merits. That conclusion was consistent with the reasoning applied in *Match Projects Ltd and Arcon (WA) Pty Ltd [2009] WASAT 134*. The application was therefore dismissed.

(ii) MCC MINING (WESTERN AUSTRALIA) PTY LTD and THIESS PTY LTD [2010] WASAT 140

MCC Mining (Western Australia) Pty Ltd sought a review of a decision of an adjudicator under the *Construction Contracts Act 2004 (WA)* not to dismiss the application for adjudication that had been made by Thies Pty Ltd. The Tribunal had previously decided that decisions of that character were not open to review in the Tribunal. On the basis of the Tribunal's earlier decision on the point, Thies Pty Ltd sought dismissal of MCC Mining (Western Australia) Pty Ltd's review application. MCC Mining (Western Australia) Pty Ltd in turn sought to have the question of law, specifically whether it had any right to seek review, referred to the Court of Appeal for determination. It agreed that the correctness of the Tribunal's earlier decision was attended by sufficient doubt to warrant a request to the Court of Appeal to deal with the question. The Tribunal considered the argument raised by MCC Mining (Western Australia) Pty Ltd to demonstrate that the Tribunal's earlier decision was wrong but was unpersuaded by that argument. It determined that the application should be dismissed on the basis that no right of review was available to MCC Mining (Western Australia) Pty Ltd in the Tribunal. The Tribunal considered that the appropriate course for MCC Mining (Western Australia) Pty Ltd to follow was to seek leave to appeal the dismissal of its application.

(iii) FUEL TANK & PIPE PTY LTD and DECMIL AUSTRALIA PTY LTD [2010] WASAT 165

The applicant applied under s 46(1) of the *Construction Contracts Act 2004 (WA)* to review a decision of an adjudicator to dismiss an adjudication application without a determination of its merits. The adjudicator dismissed the application on the ground that it was made more than 28 days after the dispute had arisen. The Tribunal concluded that the adjudicator's decision was correct. The application for review was accordingly refused and the decision of the adjudicator was affirmed.