

REPORT OF THE BUILDING COMMISSIONER
FOR THE FINANCIAL YEAR 30 JUNE 2014

CONSTRUCTION CONTRACTS ACT 2004 (WA)

**PRESENTED TO THE HON.MICHAEL MISCHIN MLC
ATTORNEY GENERAL; MINISTER FOR COMMERCE**

1. PURPOSE OF THE ACT

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

The Act provides measures of security and fairness to building and construction industry participants by:

- prohibiting unfair payment provisions in construction contracts that inhibit the movement of funds through the contracting chain;
- implying fair and reasonable payment terms into construction contracts that are not in writing;
- clarifying the right to deal in unfixed materials when a party to a contract becomes insolvent; and
- providing a mechanism supporting rapid adjudication of construction contract payment disputes.

The Building Commissioner administers the Act and pursuant to s.52 presents an annual report to the Minister for Commerce detailing the operation and effectiveness of the Act for the previous financial year.

2. CONSTRUCTION CONTRACT PAYMENT DISPUTES

The Act provides at s.25 that if a payment dispute arises under a construction contract a party to that contract may apply to have the dispute determined by an adjudicator registered with the Building Commissioner. In order to bring action under the Act, an applicant must refer the matter for adjudication within 28 days of a dispute arising. Under s.6 a payment dispute arises when:

1. the time for a payment claim under the contract to be paid has passed without full payment or where the claim has been rejected or wholly or partly disputed; or
2. the time for the release of security or retention moneys has passed without the return of the amount of security or retention money in full.

ADJUDICATION APPLICATIONS 2013/14

The tables below summarise industry use of the Act with Table 2.1 showing adjudication applications for the reporting period tracked against historical outcomes and Tables 2.2 to 2.5 providing descriptive statistics of applications activity in 2013/14.

<i>Table 2.1.—Applications for Adjudication by Financial Year</i>			
<i>Financial Year</i>	<i>Number of Applications</i>	<i>Total Payment Claims</i>	<i>Mean value of Payment Claims</i>
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
2011-2012	178	\$183,701,052.55	\$1,086,988.48
2012-2013	208	\$226,300,887.35	\$1,103,906.77
2013-2014	175	\$378,903,585.63	\$2,165,163.35
Total	1186	\$1,491,210,199.39	\$1,062,918.33

The 2013/14 outcomes slowed in absolute application numbers i.e. down 15.87% (33) against the 2012/13 reporting peak but were at an historically high level for annual total claims value by exceeding the 2010-11 results and up 67.43% (\$152,602,698.28) from 2012/13 claims.

The Act is being increasingly applied to high end, high value construction payment disputes in mining/oil and gas construction, related infrastructure and civil works/infrastructure projects.

<i>Table 2.2 – Applications for Adjudication in 2013-2014 (Descriptive statistics)</i>	
Number of Applications:	175
Total Value of Payment Claims	\$378,903,585.63
Mean Value of Payment Claims	\$2,165,163.35
Median Value of Payment Claims	\$280,500.00
Largest Payment Claim	\$82,995,300.00
Smallest Payment Claim	\$2811.60

Of the 175 applications five claims did not contain information required under the Act to conduct an adjudication such as (a) not providing a claim value or (b) being settled or withdrawn by the parties prior to the appointment of an adjudicator.

The largest payment claim tabled above by value came from the mining/oil infrastructure sector. This one claim represented 21.9% of all claims. Large scale payment claims from this grouping significantly skew the mean value for all industry sectors to be substantially higher than the median claim value.

The smallest valid payment claim (i.e. greater than \$Nil) came from the residential sector concerning an interest payment dispute.

<i>Table 2.3 – Applications for Adjudication in 2013-2014 (x Industry Sector)</i>				
<i>Construction/Building Group</i>	<i>Claims for Payment</i>			
	<i>Number</i>	<i>% Total n Claims</i>	<i>Total \$ Amount Claimed</i>	<i>% Value of Claims</i>
Residential	26	14.86%	\$4,339,730.33	1.15%
Commercial	25	14.28%	\$26,780,747.36	7.07%
Industrial	9	5.14%	\$6,398,585.61	1.69%
Public buildings	25	14.28%	\$41,455,799.86	10.94%
Civil works/infrastructure	23	13.14%	\$101,550,084.66	26.80%
Mining/oil and gas	63	36.00%	\$197,071,844.08	52.01%
Other	4	2.30%	\$1,306,793.74	0.34%
Totals	175	100.00%	\$378,903,585.64	100.00%

The traditional construction and building grouping of residential, commercial and industrial activities together made up just over a third of all payment claims by number but less than 10% by value.

The mining/oil and gas projects grouping dominated in terms of the number of disputed payment claims seeking resolution under the Act and their value representing over one half of all industry sector payment claims.

(3)

Industry participants undertaking capital works projects including new building for hospitals and local schools and associated works also made significant use of the Act by value.

Civil works and infrastructure projects in roads, services and ground works largely supported construction works in the other industry groupings.

<i>Table 2. 4 –Applications for Adjudication in 2013-2014 (x \$value Range)</i>				
Range	CLAIMS			
	Number	%	Total	Mean
\$ 0	7	4.00%	\$0.00	\$0.00
\$1 - \$9,999	4	2.29%	\$21,452.87	\$5,363.22
\$10,000 - 24,999	5	2.86%	\$88,240.50	\$17,648.10
\$25,000 - \$99,999	35	20.00%	\$2,183,080.67	\$62,373.73
\$100,000 - \$249,999	31	17.71%	\$4,942,347.32	\$159,430.56
\$250,000 - \$499,999	30	17.14%	\$10,469,367.78	\$348,978.93
\$500,000 and over	63	36.00%	\$361,199,096.49	\$5,733,318.99
Totals	175	100.00%	\$378,903,585.63	

The Act deals with a wide range of construction industry payment claims. The current reporting period shows that less than ten valid claims were submitted seeking adjudications for disputes in the range less than \$25,000. The payment claim disputes in the range (\$25K <x< \$100k) also account for less than one half of a percent of all claims value.

The clear shift in the number and value of applications to the higher end of construction contract dispute clearly reflects the accelerated use of the Act for mining oil/gas projects.

Claims over \$500,000 have jumped to over one third of all claims in number but more significantly over 95% of all claims by value.

<i>Table 2.5 – Applications for Adjudication in 2013-2014 (x WA Location)</i>		
Location	Number	% Total Claims
Metropolitan	69	39%
Unknown/Not disclosed	3	2%
Regional	103	59%
Totals	175	100.00%

The number of adjudications sought for construction contracts payment disputes for regional WA projects exceeded that for metropolitan Perth projects by 50%. The mining gas and infrastructure projects identified in the Pilbara dominated the regional location grouping with 85/103 claims representing 48% of the State's total applications in 2013/14.

The Building Commission's records for the reporting period also show that total regional claims in dispute exceeded \$310M against \$68M for Perth projects. This translates to a regional claims average of treble that for capital city based construction contract payment disputes.

ADJUDICATION OUTCOMES 2013/14

The Act provides at s.31 that within a prescribed time (14 days unless an extension of time is granted by both parties) an appointed adjudicator will issue a decision to the parties to the dispute and either dismiss or determine an application. This outcome will be based on evidence gained from the application claim and the respondent's reply.

The adjudicator's decision on the payment dispute is binding on the parties subject to a review by the State Administrative Tribunal only in instances where the application has been dismissed. There are avenues to appeal to higher jurisdictions on questions of procedure and law.

The tables 2.6 to 2.8 below report the outcome of adjudications (numbers values and percentages) for the current reporting period for dismissals and determinations under the Act and "withdrawals" sought by the contracting parties. Adjudication costs associated from each of these outcomes are also reported.

Dismissals

<i>Table 2.6 – Claims Dismissed by Adjudicators in 2013-2014</i>	
Number of claims dismissed:	47
Total value dismissed:	\$153,223,909.86
Largest dismissed claim:	\$82,995,300.00
Smallest dismissed claim:	\$4,442.52
Mean value of dismissed claims:	\$3,330,954.56
Median value of dismissed claim:	\$402,788.29
Total adjudicator fees for claims dismissed:	\$301,420.39
Mean value of adjudicator fees for claims dismissed:	\$6,316.06

The Act requires the appointed adjudicator to first assess whether an application fails prescribed criteria such as not being a construction contract or not being served in time. Applications dismissed represented approximately 27% of all claims by number and over 40% of the total value originally claimed (Table 2.2).

The Act dealt with a wide range of project values for construction contract payment disputes. The distribution of these values impacts on the reported mean and median statistics. The largest amount dismissed was from the mining/gas infrastructure sector and that single decision accounted for over 55% of all dismissed amounts by value state-wide in 2013-2014.

The fees earned by appointed Adjudicators from failed applications represented nearly 23% of total fees paid to these adjudicators from 2013-2014 appointments.

Determinations

<i>Table 2.7– Determinations by Adjudicators made in 2013-2014</i>	
Total number claims with awards to applicants:	101
Total value of awards to applicants:	\$63,229,408.58
Largest single award:	\$16,586,760.08
Smallest single award:	\$599.96
Mean value of awards to applicants:	\$626,033.75
Median value of awards to applicants:	\$179,748.06
Total adjudicator fees for successful claims:	\$907,533.12
Mean value of adjudicator fees for successful claims:	\$9,692.14

For the current reporting period almost 58% of all disputed claims were determined in favour of the applicant. The amount awarded was around 16.5% of the total originally claimed value (Table 2.2).

The range of construction contract payment disputes catered for under the Act (largest to smallest in value above) affects the reported mean and median averages. Again the largest determination was from the mining/oil and gas sector with a single award in the Pilbara region accounting for one third of the value of all determined amounts state-wide in 2013/14.

The fees earned by appointed Adjudicators from determinations in favour of the applicant represented some 62% of all fees paid to these adjudicators from 2013/14 appointments.

Withdrawals

The Act does not specifically provide a formal withdrawal mechanism however in practice many applicants request appointed adjudicators to discontinue their payment claim for a number of sound reasons.

Typically a withdrawal request follows early settlement of the claim between the parties prior to or upon service of an application. Adjudicators may use the existing provisions of the Act to allow a withdrawal request to be accommodated by the application lapsing out of time under s.31(3) and be dismissed or determining there is no dispute to adjudicate.

The number and details of appointments resulting in a “withdrawal” are tracked for reporting and review purposes:

<i>Table 2.8 –Applications “withdrawn” in 2013-2014</i>	
Total Number of Claims Withdrawn:	27
Total Value of Claims Withdrawn:	\$24,262,011.98
Largest Claim Withdrawn:	\$10,375,799.15
Smallest Claim Withdrawn:	\$0.00
Mean Value of Claims Withdrawn:	\$898,593.04
Median Value of Claims Withdrawn:	\$90,163.99
Total Adjudicator Fees for Withdrawn Claims:	\$62,568.38
Mean Value of Adjudicator Fees for Withdrawn Claims:	\$1,196.46

The outcomes for the reporting period show applications “withdrawn” from the adjudications process at the request of the participants ran at nearly 15.5% of all claims in number and 6.40% of the total original claimed value (Table 2.2).

The range of construction contract payment disputes catered for under the Act (largest to smallest in value above) impacts on reported mean and median averages. The largest amount withdrawn was from the mining/gas infrastructure sector and that single outcome for a Pilbara project represents over 43% of the value of all claims withdrawn in the reporting period.

The fees earned by appointed Adjudicators from lapsed applications represented about 2.5% of all fees paid to adjudicators from 2013-2014 appointments.

3. PRESCRIBED APPOINTORS

Parties to a construction contract payment dispute may self-appoint an adjudicator or use a prescribed Appointor to select a registered adjudicator. In the latter case a claimant must serve an application for adjudication on the prescribed Appointor in accordance with s.26 of the Act. The prescribed Appointor in turn must appoint a registered adjudicator within 5 days of receiving an application.

The Building Commissioner has registered several peak construction and building industry bodies under the Act to fulfil the prescribed Appointor role.

<i>Table 3.1: Appointor Activity 2013-2014</i>		
Name of Prescribed Appointor	Number of appointments	
	No.	% of Total
The Institute of Arbitrators and Mediators Australia (IAMA)	122	70%
Master Builders Association of Western Australia (Union of Employers) (MBA)	37	21.14%
RICS Australasia Pty Ltd (RICS)	10	5.71%
(National) Electrical and Communications Association of Western Australia (Union of Employers) (NECA)	3	2%
Other -adjudicator appointed directly by the parties	2	1.14%
The Australian Institute of Building (AIB)	1	1%
Total	175	100%

In 2013-2014 IAMA and the MBA continued a long term trend as the most active local Appointors of adjudicators. IAMA and RICS seek to service all construction industry sector payment disputes. Generally MBA, NECA and AIB provide adjudication services to specific industry segments.

Appointment fees

The following long standing principles apply to fees charged and information disclosed where a registered adjudicator is appointed by a prescribed Appointor (s.26 and s.28 refer)

1. the primary obligation of a prescribed Appointor (as an industry peak body) is to appoint a registered adjudicator in 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;
2. it is open to an industry body that is also a prescribed Appointor, to make it a requirement of membership that adjudicators undergo regular professional development. It is for that purpose that the adjudicator pays a fee and must obtain the consent of the parties (to a construction contract payment dispute) to have the determination disclosed to the professional body solely for assessment and peer review purposes;
3. 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; and the prescribed Appointor and the registered adjudicator must not charge more than the fees published on the *Register of Adjudicators* and List of Prescribed Appointors at www.commerce.wa.gov.au/buildingcommission

4. REGISTERED ADJUDICATORS

Section 48 of the Act provides that individuals may become registered adjudicators subject to possessing prescribed qualifications and experience accepted by the Building Commissioner. A *Code of Conduct and Practice Guidelines for Adjudicators* issued by the Building Commissioner applies to all such persons.

Once registered these individuals may adjudicate construction payment disputes where an application for adjudication has been lodged in accordance with the Act.

Table 5.1 : Statement of Registered Adjudicators 2013-2014	
Number of registered adjudicators reported as at 30 June 2013	68
Summary of registration activity from 1 July 2013 to 30 June 2014 (2 new appointments, 4 appointments lapsed through retirement or death) Net position:	-2
Number of registered adjudicators as at 30 June 2014	66

A Register of Adjudicators is published on the Department of Commerce web site that includes a profile of each registered adjudicator, their skills and experience, contact details and fees for adjudication appointments. Individual adjudicators are obliged to inform the Building Commissioner of any changes to their details for updating of published information.

The Building Commissioner's administration of the Act also includes recording and monitoring details of matters referred to the adjudicators, fees charged, outcomes of applications and the time taken to adjudicate disputes.

For 2013-2014 35 of the 66 registered adjudicators were appointed to the 175 applications for resolution of construction contract payment disputes.

At any one time a registered adjudicator may be unable to take on an appointment under the Act. This can occur due to an adjudicator being contracted elsewhere and unavailable, on overseas postings, on academic or government assignments or where a potential conflict of interest is perceived from the offered appointment.

Table 5.2: Summary statistics for Adjudicator fees in 2013-2014	
Total Adjudication fees for the 175 claims made.	\$1,271,521.88
Mean	\$7,265.84
Median	\$5,483.97
Max	\$42,350.00
Min	\$440/\$0.00
Adjudicator fees per hour	
Max	\$390.00
Min	\$180.00
Avg	\$265.36
StdDev	+/- \$54.29

The highest adjudication fee was for a complex payment dispute in a marine works project. Nil or nominal fees were charged by several adjudicators in the face of a commercial settlement ending the payment dispute early in the adjudications process. This is linked to the parties request to "withdraw" the matter.

The *Code of Conduct and Practice Guidelines for Adjudicators* provides where an adjudicator is appointed by a prescribed Appointor the adjudicator is to charge no more than the published fees. Where the parties to a dispute agree to self-appoint an adjudicator directly or via their construction contract agreement then a higher fee may apply.

5. EDUCATION MATTERS

Regulation 9(4) of the *Construction Contracts Regulations 2004* requires the successful completion of an appropriate training course before a person is qualified to apply for registration to the Building Commissioner to perform the functions of an adjudicator under the Act.

For 2013-14 the Institute of Arbitrators & Mediators Australia (IAMA) was the State's only registered training institution able to conduct the relevant course.

6. INDUSTRY ENGAGEMENT

For the reporting period the Building Commissioner attended a number of meetings with industry peak bodies on the operation of the Act.

The Building Commissioner is aware of recurrent issues and suggested proposals for review of certain provisions and requirements under the Act raised by registered adjudicators. Examples include: (a) the time frames attached to all participants in the adjudications' processes (b) the exclusion of mining activities and related processing plant construction (c) how the Act deals with commercial settlements prior to or during an adjudication appointment or determination leading to a request to 'withdraw' the application or end the adjudication (d) the awareness and use of the Act by contractors and subcontractors.

Feedback from adjudicators, industry and the public will be considered in the statutory review of the Act.

7. ADMINISTRATION

The Building Commission maintains the web content for all matters adjudication at www.commerce.wa.gov.au/buildingcommission

This information source provides links to the Act, the *Register of Adjudicators*, prescribed Appointor details, payment dispute information and associated forms to make an application to an Appointor for an adjudication appointment and issue a response to the appointed Adjudicator. Previous annual reports on the operation of the Act are also available from the Department of Commerce web site.

Publications and forms are available in both electronic and hard copy format.

Potential candidates for registration as an adjudicator can view course training details and dates as well as the current *Code of Conduct and Practice Guidelines* for Adjudicators and Appointors.

The Building Commission (a) administers the initial registration of adjudicators by the Building Commissioner and updates records of adjudicator profiles, contact details and fees (b) records all adjudication appointments and outcomes for analysis and reporting to the Building Commissioner and Minister (c) deals with enquiries with respect to the workings of the Act (d) provides information to industry participants (e) assists in the certification of adjudicators' determinations for debt enforcement purposes; and (f) monitors the outcomes of relevant court proceedings referencing an adjudication determination for administrative purposes and possible practice improvement and legislative review consideration.

8. STATE ADMINISTRATIVE TRIBUNAL (WASAT) MATTERS

8.1 Conflict of interest for an appointed adjudicator

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 WASAT to have the adjudicator disqualified from adjudicating the dispute.

No matters were referred to WASAT in relation to a conflict of interest by registered adjudicators in 2013-14.

8.2 Review of an adjudicator's decision to dismiss an application

Under s.46 (1) of the Act, a person who is aggrieved by a s.31 (2) (a) decision of a registered adjudicator to dismiss an application may apply to WASAT for a review of that decision. The Act does not however allow any avenue through WASAT to review an adjudicator's determination of an application.

Table 2.6 shows that there were 47/175 applications dismissed in 2013-14. From that result seven matters were referred to WASAT for a review of the adjudicators' decision:

- (i) EC & M Pty Ltd and CTEC Pty Ltd [2013] WASAT 114;
- (ii) The MCIC Nominees Trust t/a *Capital Projects & Developments* and Red Ink Homes Pty Ltd [2013] WASAT 177;
- (iii) Croker Construction (WA) Pty Ltd and Stonewest Pty Ltd [2014] WASAT 19;
- (iv) MRCN Pty Ltd t/a *WestForce Constructions* and ABB Australia Pty Ltd [2014] WASAT 59;
- (v) Field Deployment Solutions Pty Ltd and SC Projects Australia Pty Ltd [2014] WASAT 101;
- (vi) MRCN Pty Ltd t/a *WestForce Constructions* and ABB Australia Pty Ltd [2014] WASAT 135; and
- (vii) Alliance Contracting Pty Ltd and Tenix SDR Pty Ltd [2014] WASAT 136

In summary for the purposes of this report for item:

(i) and (ii) the Adjudicators' decisions (to dismiss) were affirmed by WASAT;

(iii) the application was granted and the Adjudicator's original decision was overturned. A fresh determination was issued by the adjudicator to the parties and the Building Commissioner's records updated accordingly;

(iv) the applicant succeeded in having the matter reopened for consideration of additional evidence that resulted in (vi) the original decision being overturned. A fresh determination was issued by the adjudicator to the parties and the Building Commissioner's records updated accordingly;

(v) the Adjudicator's decision (to dismiss) was affirmed by WASAT. The rationale used to dismiss was not however supported by WASAT and may be the subject of further action in another court of competent jurisdiction; and

(vii) the Adjudicators' decision (to dismiss) was affirmed by WASAT.

The full decision by WASAT for each of these matters is published at www.decisions.justice.wa.gov.au.

The Building Commission records now show that 33 matters have sought s.46 (1) reviews by WASAT since the commencement of the Act. Of those reviews ten original decisions to dismiss have been set aside (including the 2 x matters cited above) and fresh determinations issued to the respective parties by the appointed Adjudicator.

8.3 Building Commissioner's decision

The Act at s.49 provides that 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 s.48 of the Act may apply to WASAT for a review of that decision.

No action was initiated to challenge decisions of the Building Commissioner regarding the registration of Adjudicator(s) in 2013-14.

9. MATTERS REFERRED TO COURTS OF WESTERN AUSTRALIA

9.1 The District Court of Western Australia (WADC)

From the commencement of the Act to the end of the current reporting period less than 1% of all adjudications of construction contract payment disputes (8/1186) have been referred to the WADC. These matters normally deal with the certification of an adjudicator's determination for enforcement purposes or the citing of provisions of the Act in further disputes between contracting parties.

Two matters from previous years' adjudications were dealt with by WADC in 2013-14:

- (i) 2012-13 adjudication: *KPA Architects Pty Ltd -v- Diploma Constructions (WA) Pty Ltd* [2013] WADC 106. (A related matter [2014] WADC 130 unsuccessfully sought new costs)
- (ii) 2010-11 adjudication: *Kulleen Pty Ltd as trustee for the Gismondi Family Trust t/a Italsteel Structural Engineering WA -v- Rostruct Pty Ltd* [2013] WADC 172.

For the purposes of this report in matters (i) leave was granted to enforce the Adjudicator's determination; and in (ii) the Defendant did not repudiate its obligation to complete outstanding works.

The full decision by WADC for each of these matters is published at www.decisions.justice.wa.gov.au.

9.2 The Supreme Court of Western Australia (WASC)

From the commencement of the Act to the end of the current reporting period less than 2% of all adjudications of construction contract payment disputes (23/1186) have been referred to the WASC.

Seven adjudications were either challenged by the respondent (as plaintiff) or cited in further action between the parties and dealt with by WASC in 2013-14. These were:

- (i) 2012-13 adjudication: *Zurich Bay Holdings Pty Ltd v Brookfield Multiplex Engineering And Infrastructure Pty Ltd* [2014] WASC 39.
- (ii) 2012-13 adjudication: *Zurich Bay Holdings Pty Ltd v Brookfield Multiplex Engineering And Infrastructure Pty Ltd* [2014] WASC 40.
- (iii) 2013-14 adjudications: *Red Ink Homes Pty Ltd v D V Court* [2014] WASC 52.
- (iv) 2012-13 adjudication: *Diploma Construction (WA) Pty Ltd v KPA Architects Pty Ltd* [2014] WASC 91.
- (v) 2013-14 Adjudication: *Kellogg Brown & Root Pty Ltd v Doric Contractors Pty Ltd* [2014] WASC 206.
- (vi) 2013-14 Adjudication: *Alliance Contracting Pty Ltd v L E James* [2014] WASC 212.
- (vii) 2013-14 adjudication: *Enerflex Process Pty Ltd v Kempe Engineering Services (Australia) Pty Ltd* [2013] WASC 406.

In summary for the purposes of this report items: (i), (ii), (iv), (vi) and (vii) were dismissed.

In items (ii) the adjudicator's determination was quashed on the ground of denial of procedural fairness and enforcement fell away; (iii) the Court held that orders absolute for certiorari must issue quashing the three determinations by the adjudicator; and (v) the defendant was restrained from enforcing the statutory demand on the ground of an abuse of process.

The full decision by WASC for each of these matters is published at www.decisions.justice.wa.gov.au.

10. REVIEW OF THE ACT

The Minister has approved a statutory review of the Act.

On 10 June 2014, the Building Commissioner announced that Professor Philip Evans of Curtin University has been appointed to conduct the review.

The review will consider the operation and effectiveness of the *Construction Contracts Act 2004* in terms of:

1. the context in which the Act now operates;
2. issues related to how the Act operates, including (but not exclusively):
 - a. scope of the Act;
 - b. the mechanisms in the Act;
 - c. Court rulings and interpretation;
 - d. adjudicators;
 - e. prescribed Appointors; and
 - f. other issues identified during stakeholder consultations.
3. whether amendments to the Act or related laws are needed to improve the Act's effectiveness and efficiency; and
4. any negative impact or additional regulatory burden that may be foreseen with proposed amendments that may be subject to Regulatory Impact Assessment at a later date.

The review's Terms of Reference and a Discussion Paper have been distributed to industry practitioners and stakeholders. At www.commerce.wa.gov.au/buildingcommission/public-consultations contains supporting information and invites comment from interested parties on the important matter of security of payment in construction contracts state-wide.

It is also proposed to conduct stakeholder forums and industry workshops and take written submissions from interested parties closing on Friday 14 November 2014.

11. CONCLUSION

2013-2014 adjudication activity showed the Act continues to be relevant to all construction industry sectors as a relatively inexpensive and speedy dispute resolution process to release moneys subject to a payment dispute. While there was a decline in the number of applications from 2012-2013 claims value was at an historic high at \$378.9M.

Participants in large scale mining sector projects (mainly for the Pilbara region) were the dominant users of the Act (measured in contract payment claim value terms). The residential commercial industrial industry group was second ranked by claims number but for the first time lowest ranked by value after major civil works and public buildings projects.

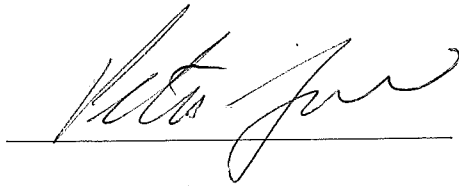
The number of registered adjudicators declined slightly in the financial year (down from 68 to 66). State-wide demand for adjudication expertise from all industry sectors is being adequately serviced by the current number of panel members. It is noted however that several registered adjudicators have yet to be appointed to a construction payment dispute.

The review of the Act being undertaken by Professor Philip Evans of Curtin University is welcomed and now well underway. Practitioners and interested stakeholders are being invited to participate in examining the Act's coverage and its operation to assess how efficient and effective current local laws are in protecting security of payment for building and construction contracts in this State.

(12)

The Building Commission's data base of adjudication matters, developed since 2004-2005, will play a key support role in the quantitative assessment of proposals from the review.

With public consultations closing on Friday 14 November 2014 I look forward to presenting the Minister with recommendations for advancements to the *Construction Contracts Act 2004* early in 2015.

A handwritten signature in black ink, appearing to read 'Peter Gow', is written over a horizontal line.

PETER GOW
BUILDING COMMISSIONER