

**Response to question taken on notice from the Hon. Steve Thomas MLC regarding adjudication application numbers in other jurisdictions.**

- Members, during last nights' debate the Hon. Steve Thomas requested information regarding the number of adjudication applications made elsewhere.
- I gave the member a quick summation of numbers in New South Wales and in WA under the existing *Construction Contracts Act 2004*, but indicated I was happy to table further information to assist the member.
- Member, each jurisdiction publishes an Annual Report in one form or another that covers this information. These Annual Reports are publicly available on the relevant regulator websites.
- However, to assist the member I am happy to table a document that provides an extract from the reports for the 2019-20 financial year from New South Wales, Queensland, Victoria, and the report related to the current *WA Construction Contracts Act 2004*.
- This document contains a synopsis of the relevant report and extracts of relevant statistics that should give the member an indication of the number of adjudication applications made in that financial year, the number of decisions made, and the aggregated payment claim amounts versus the amounts determined in adjudication.

## New South Wales statistics

### **Extracts - NSW Fair Trading: Building and Construction Industry Security of Payment Act 1999: Adjudication Activity Statistics Quarterly Report – No 4 1 April 2020 to 30 June 2020**

Full report (and previous financial years) is available on the NSW Government Fair Trading website at: <https://www.fairtrading.nsw.gov.au/trades-and-businesses/construction-and-trade-essentials/security-of-payment/authorised-nominating-authorities>

According to the quarterly report produced by NSW Fair Trading, 1051 applications for adjudication were made under the *Building and Construction Industry Security of Payment Act 1999* (NSW) in the financial year 2019/20.

At the time the report was produced, 542 of those determinations had been released. The report outlines in the table the various reasons why other determinations had not been released.

The report also aggregates the total amount of disputed payment claims during the period versus to the total amount that were eventually adjudicated and determined.

During the period the total aggregated disputed payment claims was \$594,566,096 and the total amount determined in released adjudication determinations was \$297,125,564.

#### **APPLICATIONS**

Number and Status	Number (Quarterly)	YTD
Applications Lodged	289	1051
Determinations released	140	542
Determinations pending release	19	62
Determinations not released	130	477

Application by Section	Number (Quarterly)	YTD
S17(1)(a)(i)	170	580
S17(1)(a)(ii)	8	31
S17(1)(b)	111	440
<b>Total Number</b>	<b>289</b>	<b>1051</b>

Reason for determination not being released	Number (Quarterly)	YTD
Withdrawn	22	62
Settled Privately	31	118
Invalid Application	8	56
Timed Out	21	45
Jurisdiction	15	38
Not yet determined	52	71
Adjudicator conflict of Interest	0	0
Fees not paid	3	4
Other	0	7

## CLAIMED AMOUNTS

### Claimed Amount and Adjudicated Amount Statistics

Claimed Amount v Adjudicated Amount Statistics	Quarter (\$)	YTD (\$)
Total Value Claimed Amounts	\$224,570,751	\$594,566,096
Total Value Claimed Amounts (Determinations released)	\$128,085,760	\$297,125,564
Total Value Adjudicated Amounts (Determinations Released)	\$57,041,752	\$136,194,497
Average Claimed Amount	\$777,061	
Average Adjudicated Amount (Determinations Released)	\$428,885	
Maximum Claim Amount	\$40,564,377	
Maximum Adjudicated Amount (Determinations Released)	\$25,246,170	
Minimum Claimed Amount	\$239	
Minimum Adjudicated Amount (Determinations Released)	\$0	



## Queensland statistics

### Extract - QBCC Annual Report 19-20

Full report (and previous financial years) is available at <https://www.qbcc.qld.gov.au/qbcc-annual-report-2019-2020>

From 2018, the QBCC began report adjudication statistics in their Annual Report, rather than as a separate report. The Annual Report for 2019-20 is available on the QBCC website.

The Annual Report outlines the adjudications made under the *Building Industry Fairness (Security of Payment) Act 2017*.

According to the Annual Report, 421 applications for adjudication were received in that financial year, 270 determinations were released at the time of reporting.

The report also aggregates the total amount of disputed payment claims during the period versus the total amount that were eventually adjudicated and determined.

During the period the total aggregated disputed payment claims was \$169,941,533 and the total amount determined in released adjudication determinations was \$64,030,857.

**TABLE 2 | NUMBER OF ADJUDICATION APPLICATIONS RECEIVED FOR 2019-2020**

Adjudication application type	Total
Standard (less than \$750,000)	385
Complex (greater than \$750,000)	36
Total number of applications	421

**TABLE 5 | NUMBER OF ADJUDICATION DECISIONS RELEASED BY REGISTERED ADJUDICATORS IN 2019-2020**

Decision type	Total
Standard (less than \$750,000)	238
Complex (greater than \$750,000)	32
Total number of decisions released	270

**TABLE 6 | ADJUDICATION DECISIONS  
RELEASED**

Total value of claims - decisions released	\$169,941,533
Maximum claim value - decision released	\$48,000,721
Minimum claim value - decision released	\$743
Average claim value - decisions released	\$629,413
Total value of adjudicated amount - decisions released	\$64,030,857

## Victorian statistics

### Extract - VBA: Building and Construction Industry Security of Payment Act 2002: Adjudication Activity Statistics 2019-20 Financial Year

Full report (and previous financial years) is available at <https://www.vba.vic.gov.au/building/security-of-payment/adjudication-activity-statistics>

According to the Annual Report produced by the VBA for the 2019-20 financial year, 551 applications for adjudication were made under the *Building and Construction Industry Security of Payment Act 2002*, of which 314 were determined at the time of reporting.

The report also aggregates the total amount of disputed payment claims during the period versus the total amount that were eventually adjudicated and determined.

During the period the total aggregated disputed payment claims was \$331,191,694.81 and the total amount determined in released adjudication determinations was \$125,703,645.89.

#### Applications and status

Applications	Jul-Dec	Jan-Jun	FY	%
Applications managed	286	265	551	
Applications determined	184	130	314	57%
Applications not determined	102	135	237	43%

#### Claimed amount statistics

Claimed amounts	Jul-Dec \$	Jan-Jun \$	FY \$
Sum of claimed amount	135,238,241.09	197,953,453.72	333,191,694.81
Maximum claimed amount	27,190,405.76	70,682,596.87	70,682,596.87
Minimum claimed amount	650.00	235.45	235.45
Average claimed amount	472,860.98	746,994.16	604,703.62

Table 9: Claimed amount statistics for 2019-20 financial year

### Adjudicated amounts

#### Adjudicated amount statistics

Adjudicated amounts	Jul-Dec \$	Jan-Jun \$	FY \$
Sum of adjudicated amounts	63,622,019.49	62,081,626.40	125,703,645.89
Maximum adjudicated amount	27,190,405.76	38,458,627.07	38,458,627.07
Minimum adjudicated amount	0.00	0.00	0.00
Average adjudicated amount	387,939.14	535,186.43	448,941.59



## Western Australia statistics

### **Extract - Report of the Building Commissioner for the Financial Year 30 June 2020: Construction Contracts Act 2004**

Full report (and previous financial years) is available at: <https://www.commerce.wa.gov.au/building-and-energy/reports-construction-contracts-act>

According to the Annual Report produced each year by the Building Commissioner under the *Construction Contracts Act 2004* (WA), for the financial year 2019-20, 106 applications for adjudication were made, of which 61 were determined, 20 withdrawn and 25 dismissed for the various reasons under the Act.

The same comparison is not available with other jurisdictions in terms of total amount of disputed payment claims versus the total amount that were eventually adjudicated and determined.

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
<b>2019-20</b>	106	\$83,346,375.80	\$786,286.56
<b>Grand Total</b>	2,208	\$3,161,232,477.08	\$1,431,717.61

#### **ADJUDICATION OUTCOMES**

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

Table 4: Applications adjudicated 2019-20	
Number of determinations	61
Number of withdrawals	20
Number of applications dismissed	25