

BCIPA

Annual Report 2012 - 2013



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About us

The Agency

The Building and Construction Industry Payments Agency was created in 2004 to oversee the administration of the *Building and Construction Industry Payments Act 2004* (the Act).

The Act creates a statutory right for contractors to receive progress payments for performing construction work or supplying related goods and services, and establishes an adjudication process to resolve payment disputes. The Agency provides three main services to the Queensland building and construction industry:

- education and advice on adjudication matters
- registration of ANAs, and adjudicators
- monitoring of adjudication outcomes and the performance of ANAs and adjudicators.

The Agency's vision

The Agency's vision is to improve payment and contractual outcomes in the building and construction industry. The Agency will achieve its vision through education and awareness initiatives, registration of qualified parties and the monitoring of payment and contractual developments.

The Agency's aim

The Agency's aim is to help bring about payment and contractual reform in the Queensland building and construction industry through a system of adjudication and targeted contractual initiatives.

The Agency's values

- Innovative and continuous improvement
- Consultation and collaboration
- Accountable for our actions
- Respect and trust
- Energy and fun.

Objective of the Act

The objective of the Act is to ensure that any party that contracts to perform construction work, or supply related goods and services is entitled to promptly receive and recover all progress payments that are due, including final payments and retention monies.

Staffing

In 2012-13 the Agency had 2.72 full-time equivalent positions (2011-12: 2.72). An Administration Officer and a Customer Service Officer report directly to the Adjudication Registrar and Executive Manager Contractual Development.

The action taken during the reporting period complies with Section 23 and Schedule of the *Public Sector Ethics Act 1994*.

In accordance with the *Public Records Act 2002*, the BSA uses record keeping best practices and identifies, captures and maintains complete and accurate records which are retained in an accessible and useable format that preserves the evidential integrity of those records for as long as they are required.

This Annual Report is available on the BCIPA website, www.bcipa.qld.gov.au.

The Queensland Government is committed to

providing accessible services to Queenslanders from all culturally and linguistically diverse backgrounds.

If you have difficulty understanding the annual report, you can contact us on 1300 272 272 and we will arrange an interpreter to effectively communicate the report to you.



You are free to copy, communicate and adapt this annual report, as long as you attribute the work to the State of Queensland (Building and Construction

Industry Payments Agency 2013).



For further information contact the Adjudication Registrar and Executive Manager Contractual Development.

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General Manager's report

The *Building and Construction Industry Payments Act 2004* (the Act) came into effect on 1 October 2004. The Act provides people with a statutory entitlement to receive progress payments for any construction work carried out or the supply of related goods and services, and if necessary an ability to recover such payments through a dispute resolution process called adjudication. It provides these people an alternative means to obtain payment other than the traditional legal and civil options.

The Act encourages parties to negotiate payment outcomes when a dispute arises. This acknowledges that the adjudication process is extremely rapid and it is not in the interests of a party with a weak contractual position to allow the dispute to proceed to adjudication.

The feedback received about the Act is that many more disputes are resolved through negotiations between the parties than with adjudication. This is an excellent outcome because the disputing parties incur minimum costs, and progress payments, the lifeblood of the building and construction industry, rapidly flow down the contractual chain.

In 2012-13, 721 (2011-12: 731) adjudication applications were lodged, representing payment claims totalling \$874.7 million (2011-12: \$394.7 million). Of this claimed amount, 531 adjudication decisions were released for a total value of \$311.3 million (2011-12: 553 decisions, \$242.6 million).

Whilst application numbers were slightly lower than in 2011-12, the amounts claimed were greater and therefore resulted in a higher value of released decisions. The total number of claims lodged up to \$100,000 were down by 56 applications on 2011-12 (from 431 to 375). However, the total number of claims lodged over \$100,000 increased by 34 applications on 2011-12 (from 122 to 156).

The Act was developed specifically to assist all types of contractors but in particular subcontractors, who have traditionally struggled with payment issues. Subcontractors lodged 464 (2011-12: 452) of the 721 adjudication applications. The value of their claims was \$310.9 million (2011-12: \$61.4 million).

Seventy-seven (2011-12: 74) adjudication applications were lodged by subcontractors for payment amounts ranging from \$10,000 to \$24,999. These subcontractors received an average decided amount of \$13,252.93 (2011-12: \$13,278.11) and in 61 per cent of cases they received the full amount claimed.

Since 1 October 2004, more than 5,200 adjudication applications have been lodged under the Act, resulting in about \$920 million being awarded to claimants through the adjudication process. Before the introduction of the Act many of these matters would not have been pursued by the claimants because of the high costs and delays typically associated with resolving these disputes through traditional legal means.

The Act has now been in operation for nine years. On 21 December 2012, the Honourable Tim Mander, Minister for Housing and Public Works, released a Discussion Paper entitled 'Payment dispute resolution in the Queensland building and construction industry' ("the Discussion Paper") to seek industry stakeholder feedback on the operations of the Act.

On 21 December 2012, independent consultant Mr Andrew Wallace was appointed to:

- review and assess the submissions received in response to the Discussion Paper
- liaise with relevant stakeholders, including those who provide submissions in relation to the Discussion Paper to clarify or seek further information in relation to the issues raised by the Discussion Paper
- prepare and submit a report to Government identifying the findings, options for reform and any recommended legislative amendments.

On 24 May 2013, Mr Wallace delivered his report to the Minister, who is currently waiting on advice from a committee of industry stakeholders on the implications and risks associated with a number of the recommendations made by Mr Wallace in regard to reforming the Act.

Ian Jennings

General Manager, Building Services Authority

Adjudication Registrar's report

The Act has made a substantial change to the payment and contractual culture of the building and construction industry by encouraging behavioural change among parties operating in the industry.

To use the Act to resolve payment disputes quickly and cheaply, parties who have carried out construction work or supplied related goods and services must endorse a payment claim as being made under the Act. The payment claim has to also satisfy other applicable criteria, but by endorsing

the payment claim in such a manner the claimant indicates to the respondent they are exercising their entitlements under the Act.

One of the principal benefits of the Act is that claimants and respondents are encouraged to resolve payment disputes through negotiation, without referral to adjudication, the courts or any other form of dispute resolution.

The Act achieves this by requiring prompt exchange of relevant information between the parties.

Such an exchange enables a party to become quickly aware of the other party's position in relation to the payment dispute.

When a serious payment dispute develops between the parties, many claimants are reverting to adjudication as the preferred means of resolving the matter, as opposed to the courts. However, from a peak of 999 applications in 2008-09, an average of about 700 adjudication applications have been lodged in the past three years: 2010-11 (674), 2011-12 (731), 2012-13 (721).

Seven ANAs and 126 adjudicators are registered under the Act. One of the primary responsibilities of the Agency is to monitor the services and functions they provide. The Agency had no cause to discipline or hold accountable any ANA and only had one occasion to discipline an adjudicator for failing to carry out their duties and responsibilities in a proficient manner.

Close consultation will continue with the ANAs and adjudicators to ensure any issues that arise are quickly addressed.

In 2013-14 the Agency will continue to work towards its vision of improved payments and contractual outcomes in the building and construction industry.

Michael Chesterman

*Adjudication Registrar and Executive Manager
Contractual Development*

Operations of the Act, education and registration

Operation of the Act

The Act creates a dispute resolution process called adjudication, which allows parties alleging they are owed a progress claim under a construction contract (the claimant) to promptly seek payment on an interim basis.

The Act also permits claimants access to adjudication when the construction contract has no provision for

progress payments. Under certain circumstances the Act allows for the suspension of work or supply of related goods and services.

The adjudication process is quick, relatively simple and in most cases is based entirely on written material provided by the parties. An appropriately qualified and registered adjudicator is required to make a decision within 10 business days from accepting the application, unless the parties agree to an extension.

A respondent must comply with any decision made by the adjudicator to pay a progress payment to a claimant.

If a respondent fails to pay the total adjudicated amount by the due date, the claimant may obtain an adjudication certificate for lodgement with a court of competent jurisdiction where it is registered as a judgment debt.

Unlike litigation or arbitration, adjudication cannot result in a claimant being liable to pay a respondent. Further, the respondent cannot initiate adjudication or obtain a decision that the claimant must pay the respondent money. The maximum liability of an unsuccessful claimant is the cost of the adjudication fees.

If the process has been carried out in accordance with the Act, the respondent cannot challenge the adjudicator's decision in any court.

However, in limited circumstances, the Supreme Court can review decisions made by the adjudicator.

If either party is dissatisfied with the adjudicator's decision, that party may sue separately for repayment of any alleged overpayment, or any unrecovered amount in a court of law.

The Act includes other forms of protection for claimants, such as the right to be paid for any losses and expenses if their contract is terminated as a result of any suspension made under the Act.

The Act voids 'pay when paid' and 'paid if paid' clauses, which may be included in the contract. All forms of written and oral contracts are covered by the Act.

The claimant and the respondent share equally the ANA and adjudicator fees, unless the adjudicator decides otherwise. In practice, if the party who allegedly owes the claimant money (the respondent) gives false or inadequate reasons for not paying, they are generally liable for all adjudication fees and expenses.

Education

Education and awareness continue to be a priority for the Agency. The Agency continued to raise awareness of the Act by distribution of a free,

comprehensive DVD outlining the adjudication process, along with another free DVD explaining in detail the court enforcement process in the event that the respondent fails to pay a claimant the adjudicated amount.

Contractors and subcontractors are becoming more aware of the importance of lodging and responding to payment claims and the fact that improved communication greatly assists to resolve payment disputes.

The majority of phone enquiries are about the workings of the Act and the implication of the Act on both claimants and respondents.

The Agency's website is a comprehensive source of information, including details of all released adjudication decisions.

The Agency will continue to monitor the training and development programs run by its ANAs, to ensure adjudicators receive quality, detailed information.

Registration

The Agency has seven registered ANAs: Able Adjudication Pty Ltd; Adjudicate Today Pty Ltd; Australian Solutions Centre Pty Ltd; Institute of Arbitrators and Mediators, trading as Adjudicate Australia; LEADR; Queensland Law Society; and Royal Institute of Chartered Surveyors – Dispute Resolution Service.

There are 126 registered adjudicators (2011-12: 127). All adjudicators satisfied comprehensive registration criteria and come from diverse professions including building, engineering, architecture, quantity surveying, arbitrating and law.

The Agency ensures all ANAs and their affiliated adjudicators have a broad knowledge of the Act and are abreast of industry issues. This is achieved in part through the monitoring of training and development courses offered to adjudicators by ANAs.

Audits of adjudication applications and reviews of decision outcomes and fees charged assist the Agency to monitor the performance and effectiveness of the ANAs and adjudicators.

The Agency monitors all registered adjudicators, especially the quality of their decisions in terms of their obligations under the Act, and the fees they charge.

The adjudication process operates on a 'user-pays' basis. This is seen as important in ensuring parties strive to settle disputes through negotiation, but it is essential that small trade contractors are not priced out of the process through excessively high fees.

Outcomes

Table 1 - Claims under the Act 2012-13

Claimed Amounts	YTD
Total value of claims	\$874,700,625
Maximum claim	\$85,143,851
Minimum claim	\$110
Average claim	\$1,213,177
Total value of claims - decision released	\$654,466,953
Maximum claim - decision released	\$67,540,572
Minimum claim - decision released	\$110
Average claim - decision released	\$1,232,518
Total value of adjudicated amount - decision released	\$311,362,457

Table 2 - Adjudication applications lodged

Year	Applications
June 2013	721
June 2012	731
June 2011	674
June 2010	887
June 2009	999

Table 3 - Adjudicant certificates issued 2012-13

Court	Number
District court	36
Magistrates court	142
Supreme court	14

- Claims totalling \$874,700,625 were the subject of adjudication applications (11-12: \$394,741,004).
- The largest claim was for \$85,143,851 (11-12: \$87,249,587) and the smallest claim was \$110 (11-12: \$66).
- 192 adjudication decisions had adjudication certificates issued to enforce in the courts.

Table 4 - Claim statistics 2012-13

Range of claims YTD	Total	Average claim amount	Average scheduled amount	Average decided amount	% of claimants receiving the full claim amount
\$0 - \$4999	95	\$2,308	\$471	\$2,206	89.47%
\$5000 - \$9999	54	\$7,377	(\$559)	\$6,961	79.63%
\$10000 - \$24999	100	\$15,420	\$1,601	\$13,431	62.00%
\$25000 - \$39999	50	\$31,107	\$3,378	\$24,403	48.00%
\$40000 - \$99999	76	\$63,966	\$1,143	\$48,712	38.16%
\$100000 - \$249999	45	\$163,115	\$19,716	\$101,468	31.11%
\$250000 - \$499999	40	\$350,554	\$44,906	\$235,416	12.50%
> \$500000	71	\$8,796,173	\$646,745	\$4,152,320	5.63%

Table 5 - Application statistics 2011-12 vs 2012-13

Activity	2011-12	2012-13
Applications lodged	731	721
Decisions released	553	531
Applications withdrawn	183	184
Applications outstanding	58	55

- 89.47 per cent of applications by claimants for amounts up to \$5,000 resulted in these claimants receiving the full amount claimed (11-12: 57.35%).
- 149 applications were lodged up to \$10,000 (11-12: 196).
- 452 applications lodged were by subcontractors (11-12: 464).
- Contractors/head contractors were the main respondents (619).

Table 6 - Claimant by type 2012-13

Claimant	Number
Client	1
Consultant	24
Contractor	141
Head contractor	41
Subcontractor	452
Supplier	62

Table 8 - Fees paid 2012-13

Amount	Claimant	Respondent
\$0-\$4,999	11.3%	88.7%
\$5,000-\$9,999	7.4%	92.6%
\$10,000 - \$24,999	10.1%	89.9%
\$25,000-\$39,999	17.4%	82.6%
\$40,000 - \$99,999	17.4%	82.6%
\$100,000 - \$249,999	24.3%	75.7%
\$250,000 - \$499,999	19.6%	80.4
> \$500,000	28.3%	71.7%

Table 7 - Respondent by type 2012-13

Respondent	Number
Client	72
Consultant	5
Contractor	285
Head contractor	334
Subcontractor	22
Supplier	3

Financial position

The Agency is funded through registration fees and BSA's General Fund revenue.

	Account	12-13	11-12
Income			
	Registration income		
	Rapid Adjudication income	23,825	28,181
	Sub total	<u>23,825</u>	<u>28,181</u>
Total income			
Expenditure			
	Employment costs		
	Salary costs	207,745	248,955
	Salary on costs	53,620	76,331
	Salary taxation costs	12,142	14,711
	Staff training	–	(341)
	Staff facilities	–	119
	Sub total	<u>273,507</u>	<u>340,457</u>
	Information technology		
	Data and data-related telecommunications	971	971
	Sub total	<u>971</u>	<u>971</u>
	General equipment		
	General equipment and furniture	434	18
	Sub total	<u>434</u>	<u>18</u>
	Legal costs		
	Search fees	5,041	3,689
	Consultant services	–	–
	External legal fees	6,600	1,800
	Sub total	<u>11,641</u>	<u>5,489</u>
	Advertising & public relations		
	Postage costs	96	100
	Telephone and internet	3,296	2,322
	Advertising and public relations	–	390
	FBT - Hospitality	–	–
	Hospitality	–	–
	Sub total	<u>3,392</u>	<u>2,812</u>
	Printing and stationery		
	Electronic media production	–	–
	Printing	1,294	1,495
	Stationery	94	100
	Library	1,620	1,659
	Sub total	<u>3,008</u>	<u>3,254</u>
	Motor vehicle expenses		
	Motor vehicle expenses	5,891	4,603
	Sub total	<u>5,891</u>	<u>4,603</u>
	Travel expenses		
	Travel expenses	321	3,083
	Sub total	<u>321</u>	<u>3,083</u>
	Depreciation		
	Vehicle depreciation	4,057	4,228
	Sub total	<u>4,057</u>	<u>4,228</u>
Total expenditure		<u>303,222</u>	<u>364,233</u>
Net controlled result		<u>(279,397)</u>	<u>(336,052)</u>
Total corporate overheads			
Transferred		(325,914)	(400,211)
Net overall result		<u>(605,312)</u>	<u>(736,263)</u>



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