

Report from the Board's Chair

Financial Year 2021 - 2022

Building
Appeals Board



Chairperson, Eric Riegler

Chairperson's Report

About the Building Appeals Board

The Building Appeals Board (**Board**), established under s 166 of the *Building Act 1993* (**Act**), is an independent and impartial decision-making tribunal operating since 1993.

Its jurisdiction is set out under Part 10 of the Act under which it is empowered to determine proceedings commenced under what can be grouped into three broad categories. Those categories are appeals, disputes and applications.

1) Appeals include appeals against decisions:

- a) concerning building and occupancy permits;
- b) of a municipal council concerning

report and consent of siting matters;

- c) to serve building notices and the making of building orders;
- d) concerning directions to fix;
- e) that determine the appropriateness of protection work; and
- f) of municipal councils declaring the date of construction of swimming pools;

2) Disputes include disputes over:

- a) protection work;
- b) the building permit levy;
- c) the application and effect of building regulations; and
- d) the construction of party walls;

3) Applications can be made:

- a) for compensation arising out of protection work;
- b) for a determination that a provision of the regulations does

not apply or applies with the modifications or variations specified in the application;

and

- c) that a particular design of a building or an element of a building complies with the Building Act, the *Building Regulations 2018*, the *Building Code of Australia* or the Australian Standards.

The Board is chaired by Mr Eric Riegler, deputy chaired by Mr Stephen Lodge and comprises 59 members in total. Apart from the Chairperson, all other Board members are sessional. The members of the Board are drawn from experienced professionals from varying fields within the building industry and legal profession. The Board draws upon the extensive experience of its members to ensure that hearings are empanelled with members experienced in the subject matter of the hearing.

The Board is supported by a registrar, deputy registrar and a senior technical advisor. They lead the Board's registry, which is staffed by case and

administration officers nominally located in Docklands in Melbourne.

A Digital and Paperless Tribunal with Online Hearings.

Despite the emergence from lockdowns during the 2021-22 period, the Board has retained and enhanced a fully digital and paperless tribunal with the continuation of remote hearings that offer convenience to parties to proceedings and for those required to give evidence at those hearings.

Recognised as one of the first jurisdictions in Australia to move to remote hearings via Zoom Meetings© early in 2020, its continued use has proven to enhance the agility of the Board members to convene hearings at short notice remotely wherever they may be located. Further, it allows the Board to list more matters in any given period and increase simultaneous hearings without the reliance on physical hearing rooms. This aids greater expedition, which is a clear statutory mandate of the Board.

Adopting a cloud-based platform, the Board has also moved to an online filing system. Parties to proceedings can now view in real

time documents filed in their proceeding and can file documents with the Board online via this platform. This is in addition to the platform providing member and party facing e-hearing books that are hyperlinked, indexed and paginated.

Transparency

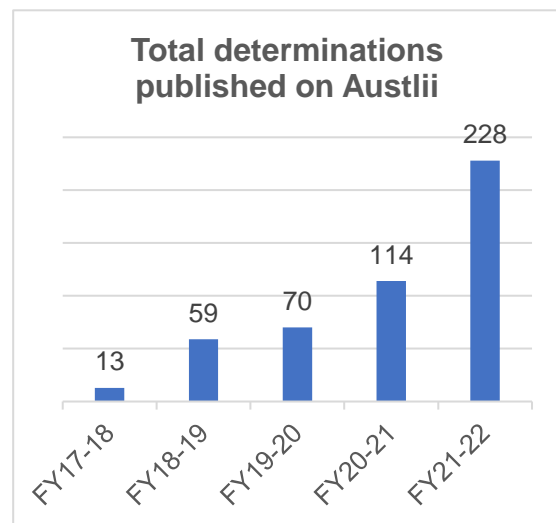
All our in-person hearings (where the parties to the proceeding appear before the Board) are open to the public to attend and observe and as the hearings are held remotely observing a hearing is from the convenience of home or office or wherever they may be located. Where the parties to a proceeding are content to have the matter dealt with on the papers and the Board is satisfied that the proceeding is amenable to being dealt with on the papers an in-person hearing is dispensed with.

All determinations made in appeal, dispute and compensation proceedings include written reasons for the determination. If a modification application is refused, findings or

reasons for the decision are also provided.

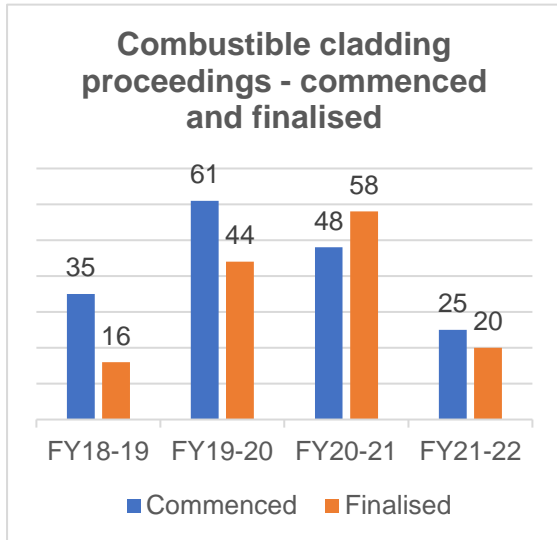
Publication of the Board's determinations

The AustLII website, 'Australia's online free-access resource for Australian legal information' has been publishing determinations of the Board since 2018. Since 2018 there has been a year-on-year increase in the number of publications. There were 228 determinations published on AustLII in this reporting period compared to 114 in the previous reporting period.



Whilst the peak of the number of proceedings which involve combustible cladding has passed the increasing number of determinations found on Austlii year on year is testament to the increasing complexity of many

proceedings determined by the Board. All determinations published on AustLII can be accessed [here](#).



Accountability - Appeals to the Supreme Court

Determinations of the Board are final and may only be appealed to the Supreme Court in the form of judicial review. Three appeals to the Supreme Court from determinations of the Board were before the Supreme Court during this reporting period. In all three matters, the Board adopted what is known as the *Hardiman* position, meaning that the Board did not actively participate in the proceeding, other than to assist the Court where required. Only one of the three appeals before the Supreme Court during this

reporting period was determined, whereby the appeal dismissed.

Practice Notes

The Board published two new practice notes during the 2021-2022 financial year. Practice Notes 8A and 8B provide guidance respectively on protection work dispute proceedings and compensation proceedings ([8A](#)) and protection work appeal proceedings ([8B](#)). The Board has now published nine practice notes and is planning to publish several more in the next reporting period.

Commencement forms and website

The Board's registry has also undertaken a comprehensive refresh of the Board's forms used to commence a proceeding. The forms now provide greater guidance on appeal periods, references to practice notes with hyperlinks embedded, guidance on which forms to use and not to use and what documents should be filed when commencing a proceeding and where they can be sourced. Further improvements have been made to the website, including the conversion of all commencement

forms to be in an editable PDF format.

Performance overview

There were 862 proceedings commenced in 21-22 and 864 finalisations in the same period (many of the proceedings comprise more than one matter, consolidated within a single proceeding and have not been separately or individually counted). Commencements were up slightly compared to the previous reporting period. Appeals, disputes and compensation commencements and finalisations had increased significantly compared to the previous five reporting periods. Modification and compliance assessment commencements and finalisations recorded a downward trend from the previous reporting period.

In case managing these proceedings, there were 1779 listings. This included 52 mediations, 210 directions hearings and 258 in-person hearings. Of the 52 mediations,

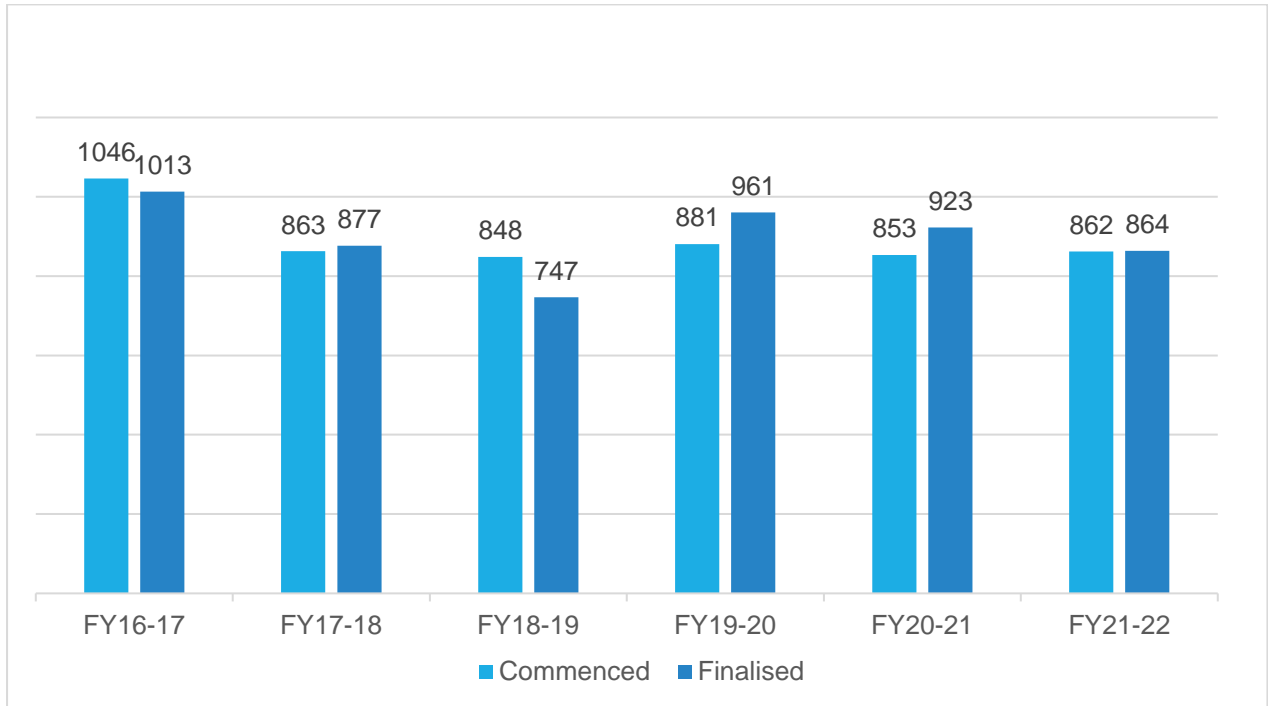
at least 15 proceedings settled at or following the mediation.

Charts illustrating these numbers are annexed to this report in Annexure A.

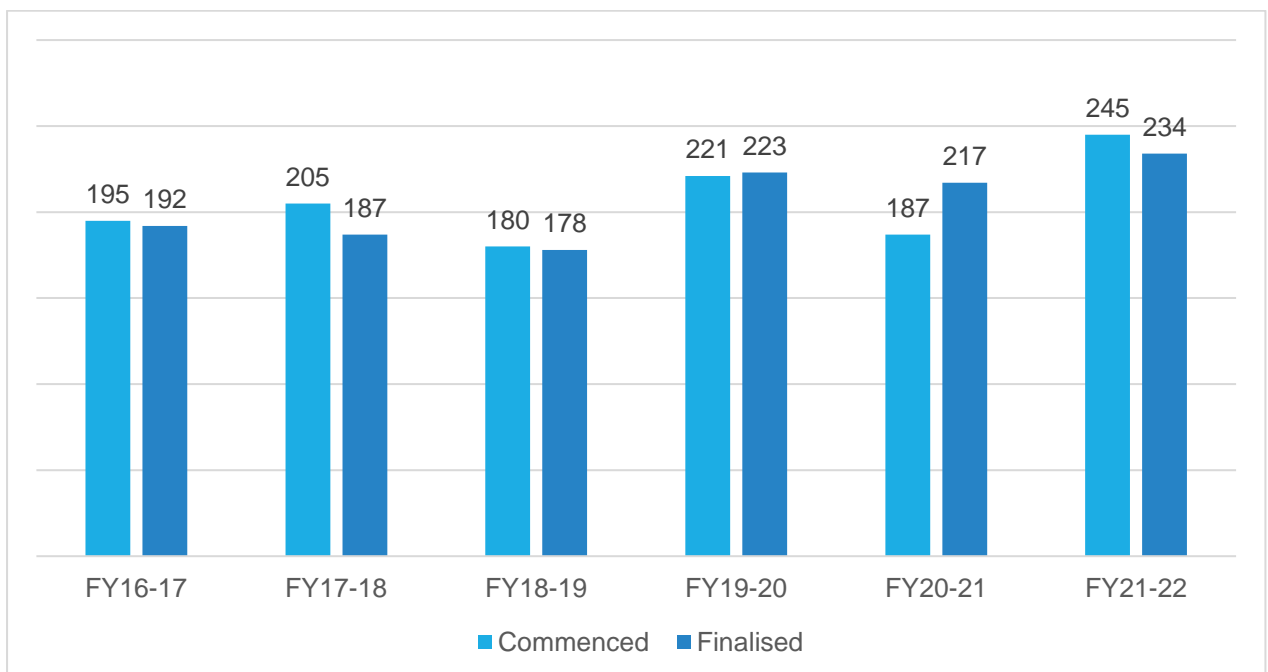
Eric Riegler
Chairperson of the Building
Appeals Board

ANNEXURE A

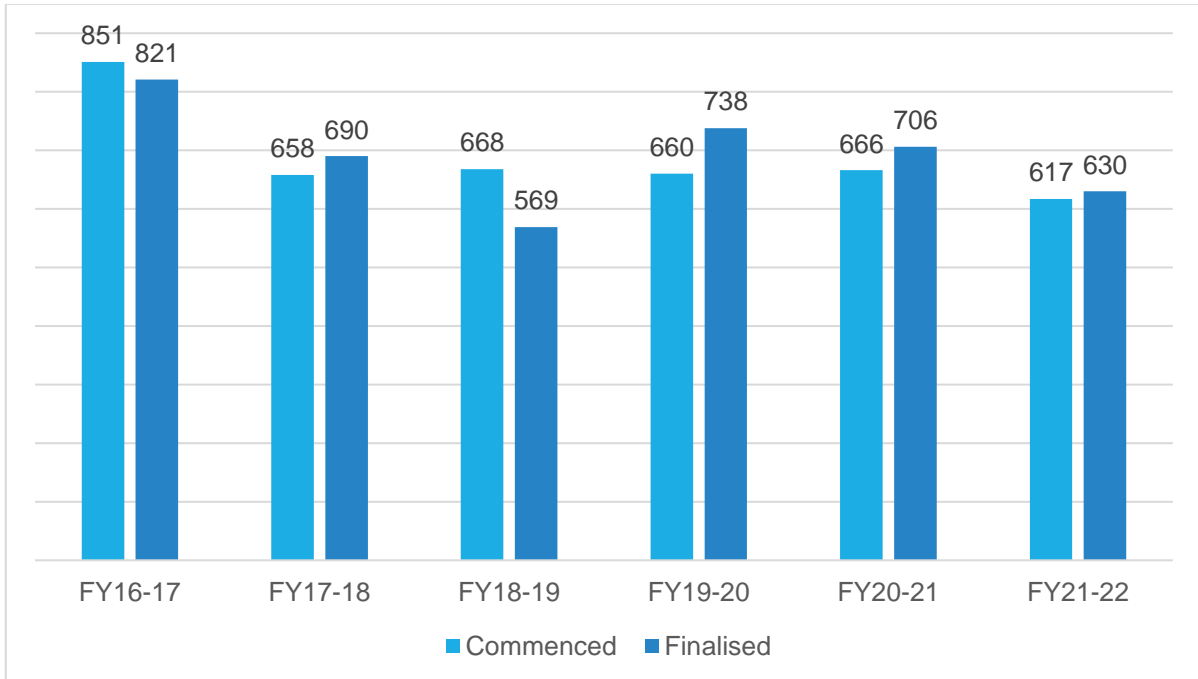
Total Proceedings - commenced and finalised



Appeal and dispute proceedings - commenced and finalised



Modification and compliance assessment proceedings - commenced and finalised



New Proceedings – FY2021/FY2022

