

CONSTRUCTION CONTRACTS ACT 2004 — ADJUDICATION

**1119. Hon SUE ELLERY to the Minister for Commerce:**

I refer to the Construction Contracts Act 2004 and matters accepted for decision by the adjudicators.

- (1) How many applications that have been assessed by the adjudicators since 23 September 2008 have concerned claims of over \$1 million?
- (2) Of the applications in (1), on how many occasions did the adjudicator decline to meet with both parties involved in the dispute?
- (3) How many of the applications in (1) have been subsequently referred to the State Administrative Tribunal, and what were the outcomes of these referrals?
- (4) What actions can aggrieved defendants take to have adverse findings by adjudicators against them reviewed?
- (5) Did the Building Commissioner give to the minister, prior to 1 November 2011, a written report about the operation and effectiveness of this act during the 2010–11 financial year, as required by section 52 of the act; and, if so, will the minister table that report?

**Hon SIMON O'BRIEN replied:**

I thank the honourable member for notice of the question.

- (1)–(3) To provide an accurate and useful answer in the short amount of time available is not possible, so I ask the honourable member to place parts (1) to (3) of this question on notice.
- (4) An adjudication is primarily to resolve a dispute regarding a particular payment. A determination will relate specifically to that payment dispute and may be enforced in the same manner as a judgement or order of the court—section 43(2). Determinations that have been decided by an adjudicator are not subject to statutory appeal or review—section 46(3). If there is an error in law, a person may take the matter to the courts.

If an adjudicator dismissed an application to review a payment dispute under section 31(2)(a)(i) to (iv) on the basis that the application, respectively, did not concern a construction contract, was not prepared and served correctly, a binding decision—that is, by a court or arbitrator—has already been made on the matter, or the matter was too complex to determine fairly made, a person who is aggrieved by that decision may apply to the State Administrative Tribunal for a review of that decision. If a person is unhappy with the conduct of an adjudicator, they can make a complaint to the Registrar of the Building Commission, who will investigate the conduct under section 48(5). In any case, an applicant or respondent may have any contract, or provision thereof, reviewed by an arbitrator or court, irrespective of the payment dispute.

- (5) The Building Commission has prepared a written report on the operation and effectiveness of the act during the 2010–11 financial year, as required by section 52 of the act; and, after I have given the report due consideration, I will instruct the Building Commission to publish the report.