

Report from the Board's Chair

Financial Year 2022 - 2023

Building
Appeals Board



Chairperson, Eric Riegler

Chair'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 that Part it is empowered to consider and determine proceedings that are grouped into three categories; appeals, matters referred (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) to give a direction to fix;
 - e) as to the appropriateness of

- f) proposed protection work; and
 - f) of municipal councils declaring the date of construction of swimming pools;
- 2) Disputes include disputes over:
 - a) issues connected with 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* (**BCA**) or the Australian Standards referenced by the BCA.

The Board is chaired by Mr Eric Riegler, deputy chaired by Mr Stephen Lodge and comprised 57 members in total during the reporting period although one member resigned in that period. Apart from the Chairperson, all other Board members are sessional. The members of the Board are drawn from experienced professionals within the building, planning and construction sector 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 and to ensure decisions are correct, preferable, just and consistent.

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.

Access to Justice and Expedition.

The Board continues as a fully digital and paperless tribunal and setting it apart from other jurisdictions continues with online hearings (**eHearings**). Improving access to justice throughout Victoria, eHearings allow parties to proceedings and for those required to give evidence at those hearings to attend whilst remaining in their homes or places of work and to not have to travel often long distances to a physical hearing room. The Board also provides interpreter services without charge.

EHearings also enhance the agility of Board members to convene hearings at short notice wherever they may be located. Further, it allows the Board to list more matters in any given period

and increase the number of hearings without the reliance on physical hearing rooms. This aids expedition of Board proceedings from commencement to finalisation.

Enhancing a paperless operation, the Board uses an online filing system. Parties to proceedings can view in real time documents filed in their proceeding and can file documents with the Board online via this platform. It also provides e-hearing books that are hyperlinked, indexed and paginated.

The Board undertook a website refresh in this reporting period resulting in its website's full alignment with accessibility obligations. Its content was also reviewed and updated to be more consistent with the wording used in the *Building Act 1993*.

Transparency and Accountability

All our in-person hearings (where the parties to proceedings or their representatives appear before the Board) are open to the public to attend and observe and as the hearings are held online, observing a hearing can be from the convenience of home or office or wherever an observer may be located.

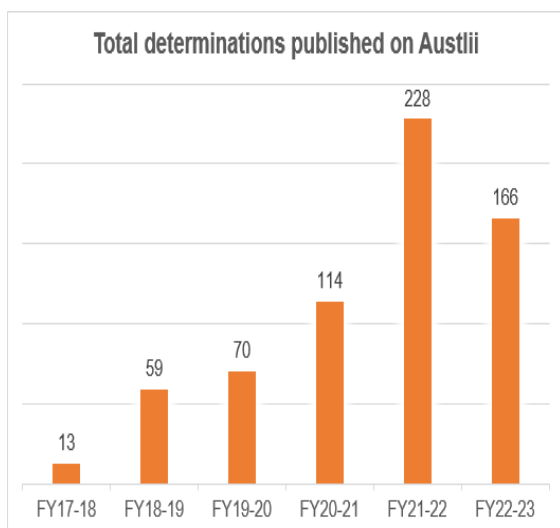
Where the parties to a proceeding are content to have the matter dealt with on the papers (**Paper Hearing**) and the Board is satisfied that the proceeding is amenable to having a Paper Hearing an in-person hearing is dispensed with.

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 usually provided. If reasons are not provided with the decision a party may, provided it is within one month after being served with the determination, request reasons and the Board is required to provide those reasons without delay.

The Board’s Determinations

The AustLII website, ‘Australia’s online free-access resource for Australian legal information’ has been publishing selected determinations with reasons of the Board since 2018. There were 166 determinations published on AustLII in this reporting period. Determinations that are published on AustLII are intended to inform Victorians on the Board’s jurisdiction, its decision-making and reasons for those decisions. All determinations published on AustLII can be accessed [here](#). A determination may also be made available upon a request being made to the registry without charge.



¹ Cases often contain multiple proceedings concerning the same address. Proceeding is

Determinations of the Board are final and may be enforced in a court of competent jurisdiction. They are, however, subject to judicial review in the Supreme Court, which has the power to set aside the determination and remit the decision to the Board for reconsideration before a differently constituted panel. During this reporting period there were four judicial review proceedings on foot in which a party sought review of a determination of the Board. Judgments were handed down in two proceedings and subsequently leave was sought by one of the parties in each proceeding to seek leave to appeal to the Court of Appeal. Both were pending a final hearing in this reporting period. Another was set down for final hearing in 2024. The remaining proceeding on foot in this reporting period is yet to be set down for final hearing in the trial division.

Performance overview

There were 1152 proceedings (875 cases) commenced at the Board in FY22-23 and 1055 proceedings (811 cases) finalised in the same period.¹ Commencements were up slightly compared to the previous reporting period and the second highest out of the last five reporting periods. Appeals, disputes and compensation commencements and finalisations increased significantly compared to the previous four reporting periods. Modification and compliance assessment commencements were up

defined under the *Building Act 2018* as an appeal or a matter referred [dispute] or an application.

on the previous reporting period and finalisations were slightly lower.

In case managing these proceedings, there were 1707 listings compared to 1779 in the previous reporting period. This included 66 mediations (compared to 52 in the previous reporting period); 267 directions hearings (compared to 258 in the previous reporting period); 267 in-person hearings (258 in FY21-22) and 1002 'paper hearings' (1146 in FY21-22). The increase in mediations and directions hearings and a significant drop in matters reaching a final 'paper hearing' as well as a decrease in Austlii publications of determinations are indicators of an enhancement of intensive case management earlier in the proceedings'

life, which has translated in more matters settling before they require a final hearing and determination. Out of the 66 mediations convened, at least 36 cases settled at or following the mediation.

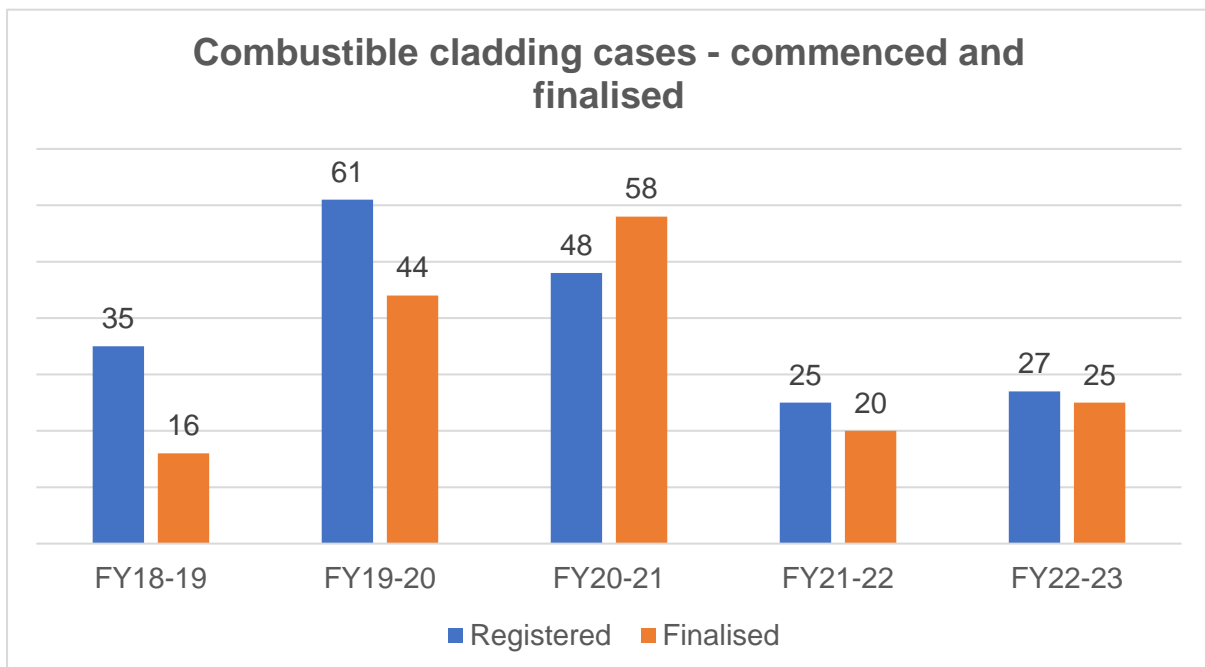
Charts and tables expanding on these numbers as well as illustrating other performance measures are annexed to this report in Annexure A.

Eric Riegler
Chairperson of the Building
Appeals Board

ANNEXURE A

Proceedings - Commenced and Finalised

Proceeding commencements:					
Category	2018-19	2019-20	2020-21	2021-22	2022-23
Appeals, Disputes and s 159 proceedings	262	327	236	330	352
Modification and compliance assessments	867	891	801	788	800
Total Open/Registered	1129	1218	1037	1118	1152
Proceedings finalised:					
Appeals, Disputes and s 159 proceedings	266	307	270	302	326
Modification and compliance assessments	717	967	908	793	729
Total finalised proceeding	983	1274	1178	1095	1055



Average Lifespan of Cases² Commenced and Finalised in Same Reporting Period³

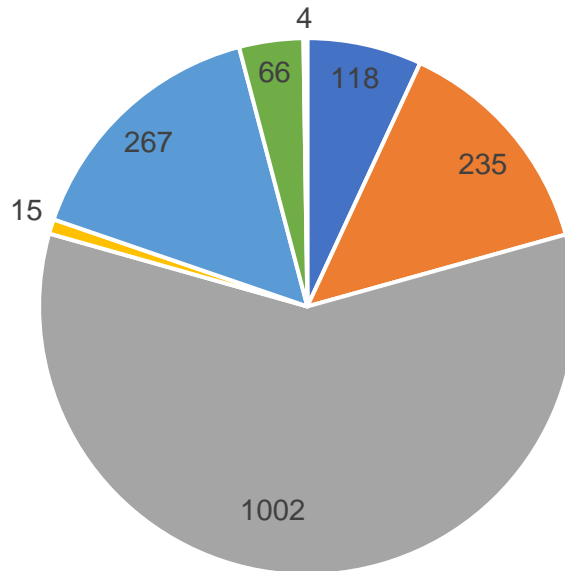
Modification and Compliance Assessment Applications	FY 2017/2018	FY 2018/2019	FY 2019/2020	FY 2020/2021	FY 2021/2022	FY 2022/2023
Number of cases commenced and finalised in the same reporting period	658	668	661	668	618	626
Average duration to final hearing (in days)	47.25	43.64	53.17	48.34	41.35	50.53
Average duration to finished proceeding (in days)	69.23	77.13	82.96	68.45	59.37	63.99

Appeals, Disputes and s 159 compensation applications	FY 2017/2018	FY 2018/2019	FY 2019/2020	FY 2020/2021	FY 2021/2022	FY 2022/2023
Number of cases commenced and finalised in the same reporting period	205	181	219	187	243	251
Average duration to final hearing (in days)	126.96	115.92	125.65	111.98	101.80	97.93
Average duration to finished proceeding (in days)	187.57	153.06	187.14	153.20	133.80	114.55

² As previously noted cases can contain multiple proceedings.

³ Table does not include cases that were commenced and finalised in different reporting periods.

Listings for the FY2022/2023



- Administrative mentions
- Paper hearings
- Oral hearings
- Site inspections
- Directions hearings
- Facilitated paper hearings
- Mediations

Listings	FY21-22	FY22-23
Administrative mentions	82	118
Directions hearings	210	235
Paper hearings	1146	1002
Facilitated paper hearings	27	15
Oral hearings	258	267
Mediations	52	66
Site inspections	4	4
Total hearings	1779	1707