

Report from the Board's Chair

Financial Year 2020 - 2021

Building
Appeals Board



Chairperson, Eric Riegler

Chairperson's Report

The past financial year continued with several initiatives designed to improve how the Board processes applications and how people interact with the Board. Further improvements have been made to the website, including the conversion of all application forms to be in an editable PDF format.

In the past financial year all hearings (including mediations) were conducted remotely via the Zoom® conferencing platform. The previously published Practice Note 6 – 2020 provided guidance for all users who participated in these remote hearings, either as parties or observers.

The Board also published a new Practice Note 7 – 2021. This practice note was developed to provide guidance for proceedings which

concern combustible external wall materials.

There are also now forms relating to requests for an audio recording of a hearing, withdrawing a proceeding, inspecting a file and applying for further directions and orders in a proceeding. All these forms are available to be downloaded from the Board's website.

Despite the pandemic, the Board has continued to deliver on the timely expedition of proceedings by transitioning to a paperless tribunal, which has included the continued improvement in the delivery of remote hearings, e-filing and the provision of registry services remotely. A reflection upon the previous financial year of 2020-21 shows that the Board has been able to adapt to the pandemic and further enhance on the transitions that have been made.

The Board has maintained its focus on working towards its objectives. The objectives of the Board in the last financial year were focused on:

- 1) transitioning to a fully digital and paperless tribunal;
- 2) providing a professional

service that improves the case management of proceedings and timely expedition to finalisation; and

- 3) promote well-being and development to enhance the registry's collaborative ethos.

In addition to reforms rolled out in response to the COVID-19 restrictions, the Board has introduced several other reforms and enhancements to case management and the Board's operations. These include:

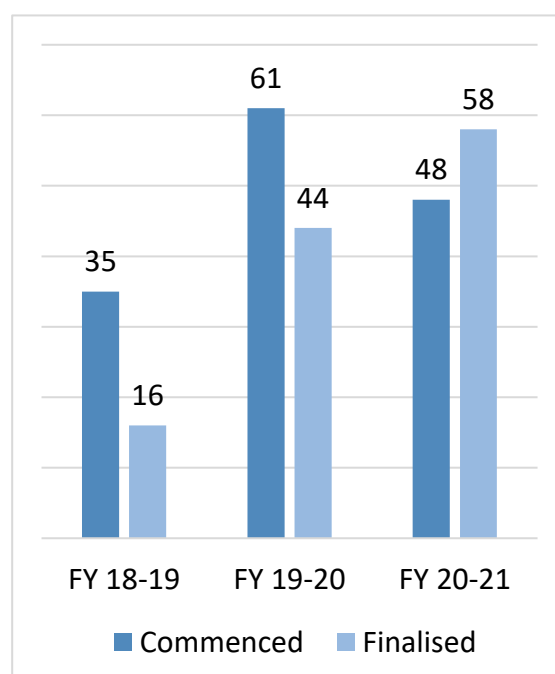
- 1) Publishing the Board's Daily Lists on the website to enhance user accessibility;
- 2) Piloting a transition to a cloud-based party and Board member e-filing and document management system;
- 3) Researching a new case management system to streamline processes; and
- 4) Transition to an e-register to enhance the Board's accuracy

of recording any pecuniary or conflicts of interest.

- 5) Publication of a Practice Note providing guidance in respect of combustible cladding proceedings.

The number of proceedings which involve combustible cladding continue to occupy a significant proportion of the Board's time and resources. Although the number of initiations is marginally less than the preceding financial year, the complexity of those proceedings remains high.

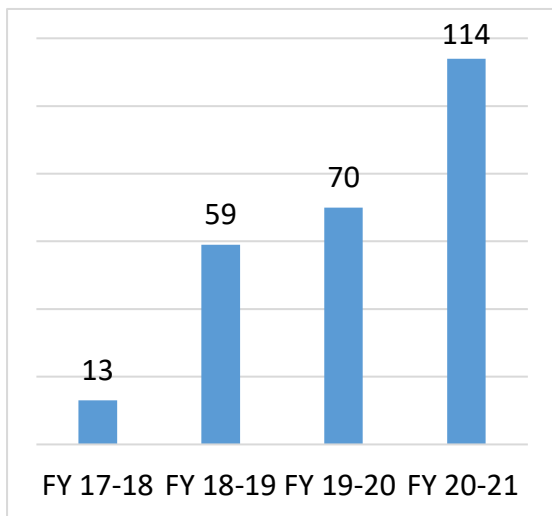
Combustible cladding proceedings - commenced and finalised



Since 2018, the Board has continued to publish significant determinations on the Austlii website. Over 256 determinations have been published on that site, 114 of which were published in the last financial year. This translates to an increase of 63% of determinations being published on Austlii compared to the previous financial year.

This is testament to the increasing complexity of many of the proceedings that are determined in this jurisdiction.

Total determinations published on Austlii



All determinations published on Austlii can be accessed [here](#).

Eric Riegler

Chairperson of the Building Appeals Board

About the Building Appeals Board

The Building Appeals Board ('the Board') is an independent statutory body established under s 166(1) of the *Building Act 1993* ('the Building Act'). The Board must hear and determine any dispute referred or any application or appeal made to it under the Building Act or any other Act. This includes Part 14 of the *Residential Tenancies Act 1997*.

The Board is empowered to hear and determine matters including:

- 1) appeals in relation to
 - a) building and occupancy permits;
 - b) decisions of a municipal council concerning report and consent of siting matters;
 - c) building notices and orders;
 - d) directions to fix;
 - e) determinations as to the appropriateness of protection work;
 - f) declarations by municipal councils as to the date of construction of swimming pools;
- 2) disputes about matters relating to
 - a) protection work;
 - b) the building permit levy;
 - c) the application and effect of building regulations;
 - d) the construction of party walls;
- 3) applications for compensation arising out of protection work;
- 4) applications that a provision of the regulations does not apply or applies with the modifications or variations specified in the application; and
- 5) applications 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 and comprises 55 members of varying disciplines and professions, who bring a range of

expertise to the determinations made by the Board. The Board considers a diverse range of increasingly complex matters including combustible cladding related proceedings.

The Board is mandated to proceed with as much expedition as the requirements of the Act and the Regulations and the proper consideration of the matter before it permit.

Performance overview

There was a total of 1,064 listings before the Board in the 2020-21 financial year including oral and paper hearings, directions hearings as well as site inspections and mediations (This does not include administrative mentions).

642 proceedings were heard and determined following one paper hearing only.

205 oral hearings were listed in 191 proceedings. A small number of proceedings had multiple oral hearings to enable the parties to file further material.

In addition to oral hearings there were 96 proceedings in which at least one directions hearing was listed.

The Board has further utilised mediations as a form of dispute resolution. 27 mediations were conducted in the 2020-21 financial year, this is 3 times greater than the amount conducted in the previous financial year. Of those 27 mediations, 16 proceedings were

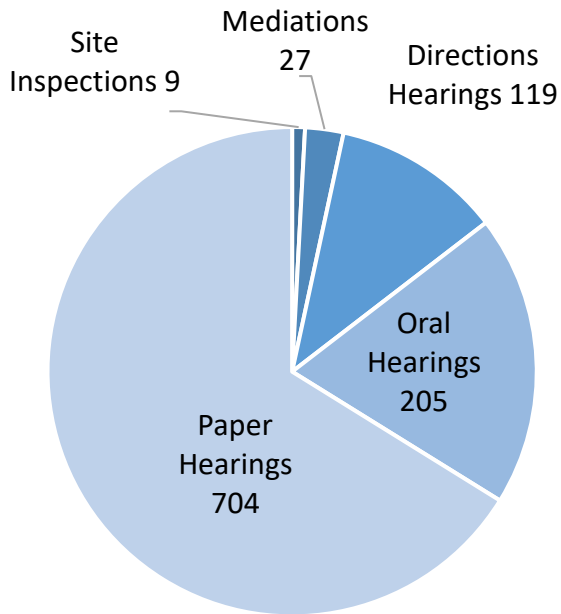
resolved, resulting in those proceedings being discontinued. In addition, approximately 75 other proceedings were either withdrawn or struck out by consent following a directions hearing or interaction with a registry technical or administrative officer.

This highlights the importance of triaging and interacting with the parties at an early stage of the proceeding to foster settlement discussions or suggest other solutions which may provide a more appropriate pathway for resolving the proceeding.

To that end, intensive case management of complex matters increased by 16% this financial year with 119 directions hearings held. In addition, approximately 500 *Directions and Orders* were published in the last financial year, most of which were made 'In Chambers', without the need for any party to appear.

Despite the pandemic, the Board was able to complete a similar number of listings as those conducted in the 2019-20 financial year.

Total hearings – FY2020/2021



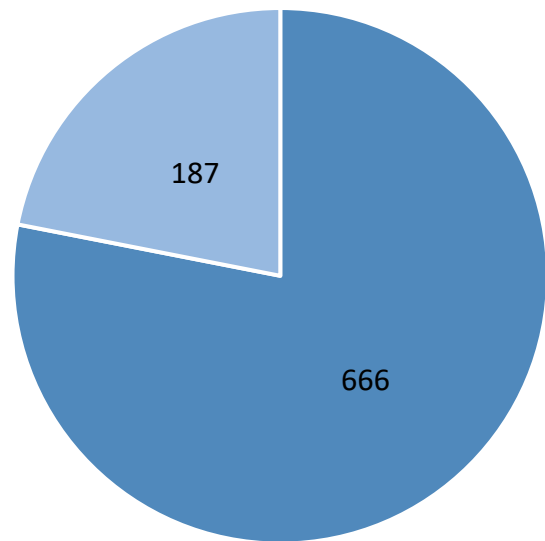
The total number of proceedings that were commenced with the Board in the 2020-21 financial year was 853.

From that number, 187 were appeal or dispute proceedings and 666 were modification or compliance assessment proceedings.

The total number of proceedings that were finalised with the Board in the 2020-21 financial year was 923.

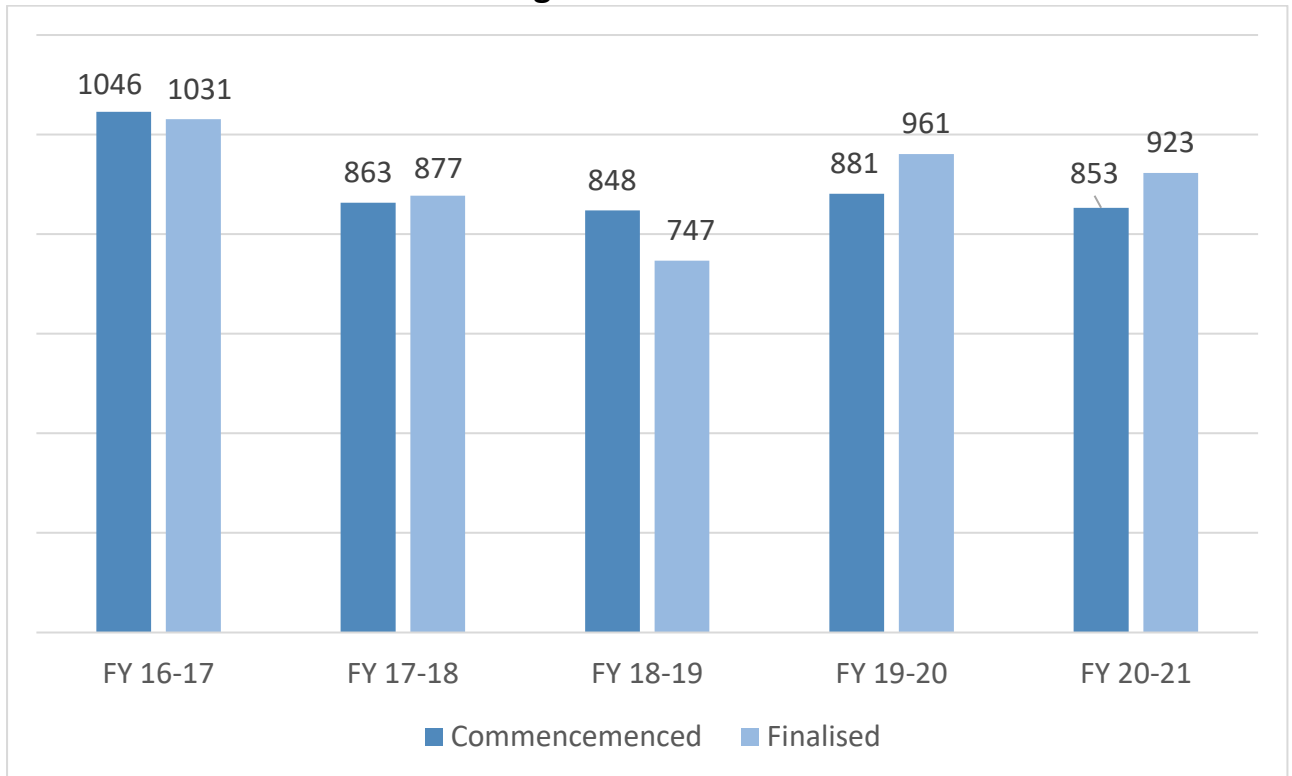
From that number, 217 were appeal or dispute proceedings and 706 were modification or compliance assessment proceedings.

New Proceedings – FY2020/21

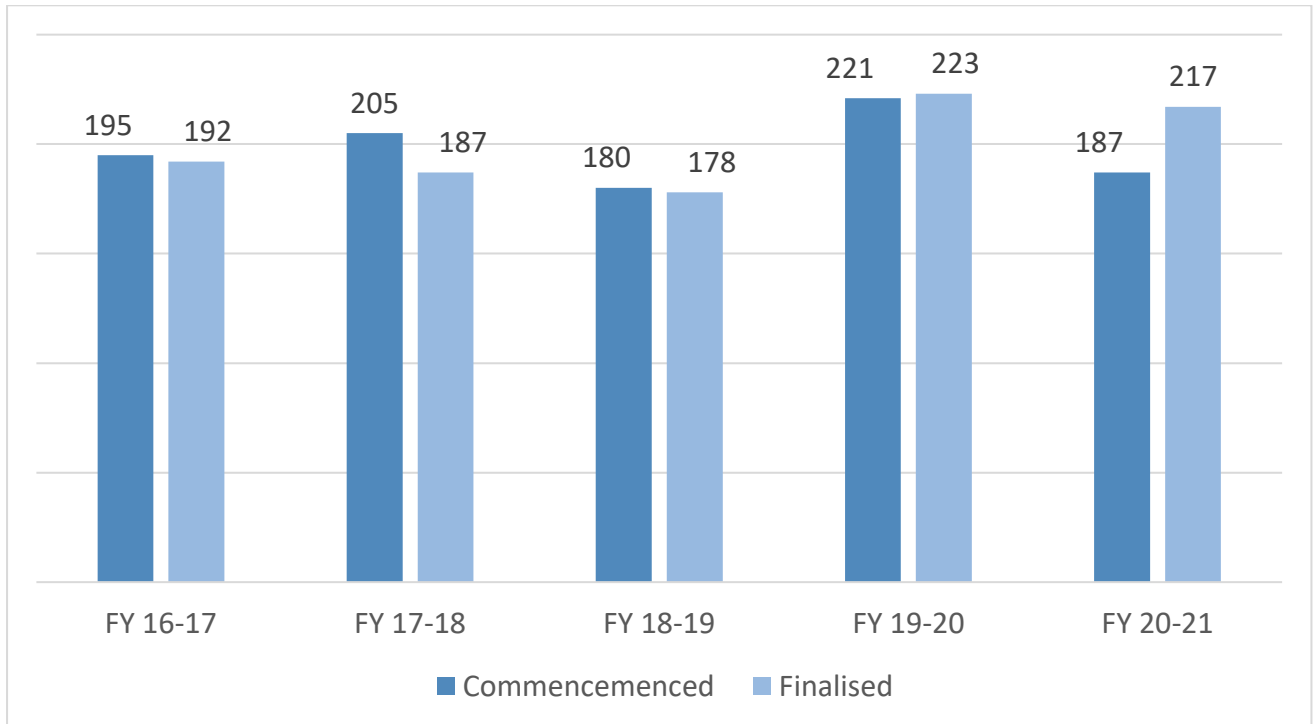


- Modifications/Compliance Assessments
- Appeals/Disputes

Total Proceedings - commenced and finalised



Appeal and dispute proceedings - commenced and finalised



Modification and compliance assessment proceedings - commenced and finalised

