



Report from the Board's Chair

Financial Year 2023 - 2024

Building Appeals Board

A tribunal established under the
Building Act 1993



Chairperson, Eric Riegler

Chair's Report

About the Building Appeals Board

The Building Appeals Board (**BAB**), established under s 166 of the *Building Act 1993* (**Act**), is an independent tribunal operating since the commencement of that Act in 1993.

Its jurisdiction is set out under Part 10 of the Act. Under that Part it is empowered to consider and determine proceedings. There are three types of proceedings that the BAB deals with. They 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) to give a written direction to fix;

- e) as to the appropriateness of proposed protection work; and
 - f) of municipal councils declaring the date of construction of swimming pools;
- 2) Disputes include disputes over:
 - a) matters in connection 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 may 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 BAB is chaired by Mr Eric Riegler, deputy chaired by Mr Stephen Lodge and comprised 56 members in total as at 30 June 2024. Apart from the Chairperson, all BAB members are sessional. The members of the BAB are drawn from experienced professionals within the building, planning and construction sector and from within the legal profession. The BAB draws upon the extensive experience of its members to ensure that hearings are empanelled with members experienced in the subject matter of the proceeding and to ensure decisions are correctly and expeditiously made.

The BAB is supported by a registrar and two deputy registrars. They lead the BAB's registry, which is staffed by experienced case and administration officers.

Access to Justice and Expedition.

The BAB continues as a fully digital and paperless tribunal and continues to hear most matters remotely and through online hearings (**eHearings**). Improving access to justice throughout Victoria, eHearings allow parties and witnesses to attend and give evidence at hearings whilst remaining in their own homes or places of work. Given that many proceedings before the BAB involve persons who reside or work in regional centres, having the ability to appear remotely obviates the need to travel long distances to a physical hearing room in Melbourne. The BAB also provides interpreter services at no

additional charge to the party requesting this service.

EHearings also enhance the agility of BAB members to convene hearings at short notice wherever they may be located. Further, it allows the BAB 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 BAB proceedings from commencement to finalisation.

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

Transparency

All our in-person hearings (where the parties to proceedings or their representatives appear before the BAB) 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 anywhere in the world.

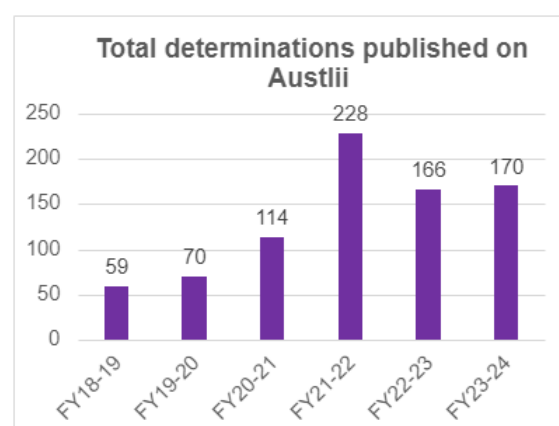
Where the parties to a proceeding are content to have the matter dealt with on the papers (**Paper Hearing**) and the BAB is satisfied that the proceeding is amenable to having a Paper Hearing an in-person hearing is dispensed with.

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 BAB is required to provide those reasons without delay.

The BAB's Determinations and their oversight

The AustLII website, 'Australia's online free-access resource for Australian legal information' has been publishing selected determinations with reasons of the BAB since 2018. There were 170 determinations published on AustLII in this reporting period. Determinations that are published on AustLII are intended to inform Victorians on the BAB's jurisdiction, its decision-making and its 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 at no charge. 123 determination requests were actioned in this reporting period.



Determinations of the BAB 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 affirm or quash the determination as well as remit that decision to the BAB for reconsideration before a differently constituted panel. As of 30 June 2024, there were two judicial review proceedings on foot and one application in the Court of Appeal made by a party seeking leave to appeal a decision of the trial division which affirmed a determination of the BAB.

Overview – FY23-24

There were a total of 1121 proceedings commenced in the BAB in FY23-24 and 1084 proceedings finalised in the same period. Commencements were down slightly compared to the previous reporting period but higher than the two reporting periods prior to that.

The number of appeals, disputes and compensation commencements was 346, which is down slightly compared to the previous reporting period and ranked second highest when compared to the six most recent reporting periods. Finalisations of this proceeding grouping numbered 301.

Modification and compliance assessment commencements had decreased in numbers compared to the previous reporting period and finalisations were higher.

In case managing these proceedings, there were 1950 listings compared to 1707 in the previous reporting period. This included 31 mediations (compared to 66 in the previous reporting period); 233 directions hearings (compared to

235 in the previous reporting period); 273 in-person final hearings (267 in FY22-23) and 1198 'paper hearings' (1002 in FY22-23). While directions hearings and in-person hearings remained relatively static year on year, trending up were the number of 'paper hearings' and trending down were mediations. Out of the 31 mediations

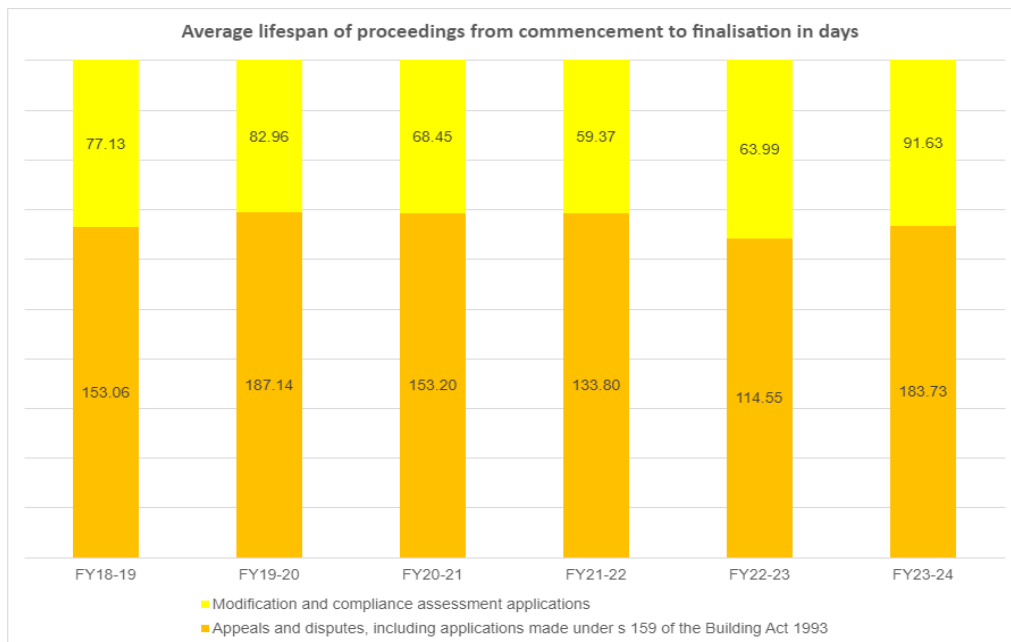
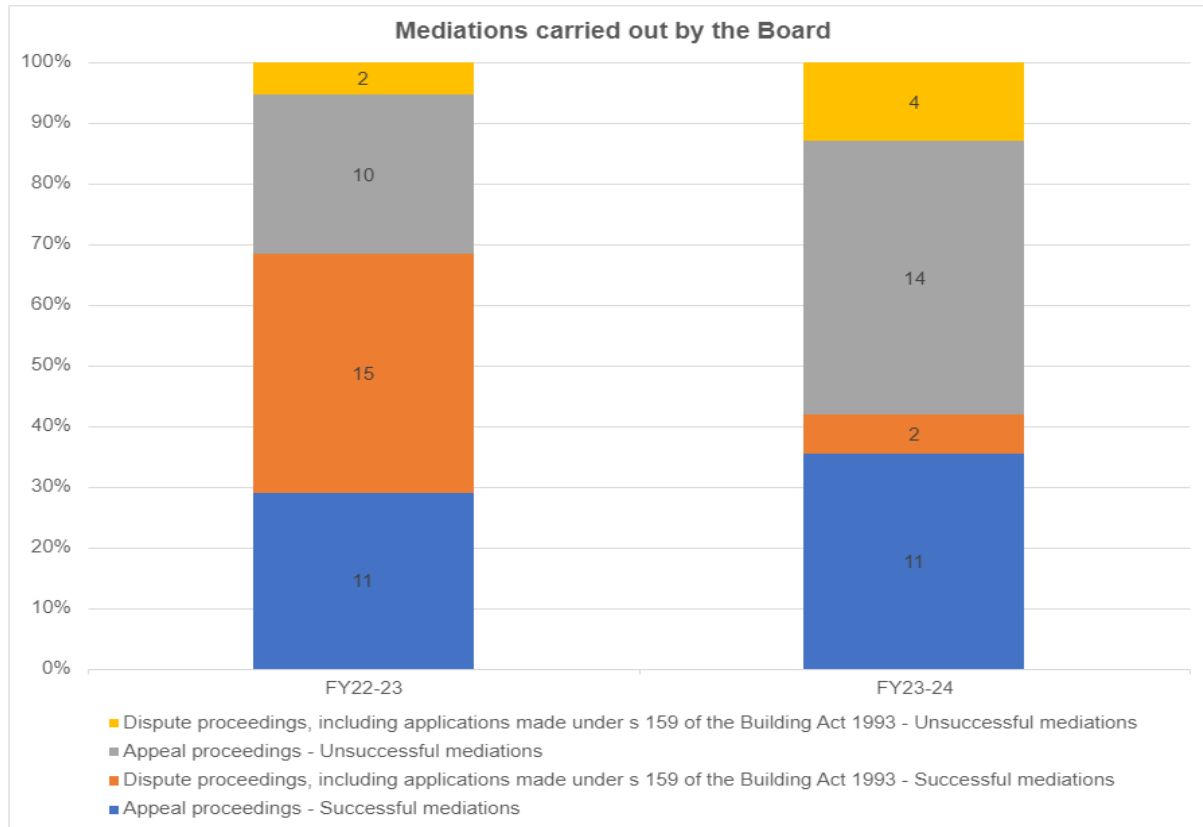
convened, at least 13 proceedings settled prior to reaching a final hearing.

Charts illustrating these numbers as well as charts illustrating other data sets are annexed to this report in Annexure A.

Eric Riegler

Chairperson of the BAB

ANNEXURE A¹



¹ There are small variations to the figures reported in previous reports compared with the figures produced in this report. The reason for these small variations is due to a system error with the case management system reports in which duplicate proceeding entries were subsequently identified and removed.

