

Adjudication Survey

2023



Construction & Technology Attorneys

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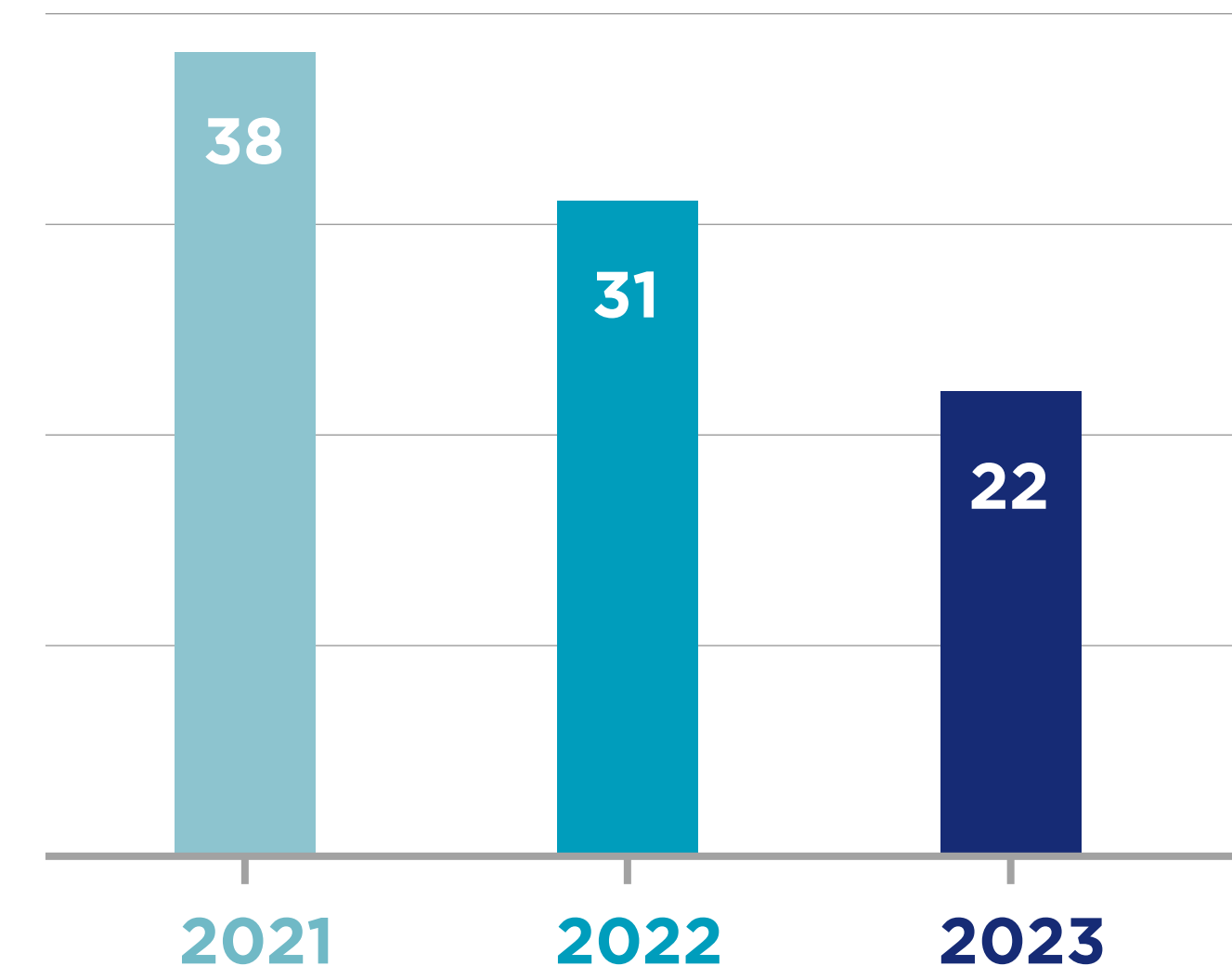
Introduction

The MDA Adjudication Survey aims to provide some (albeit limited) statistical information regarding the state of adjudication in South Africa.

The survey consists of information collected by MDA in respect of adjudications where MDA were retained to represent one of the disputing parties, or where one of our fee earners acted as an adjudicator.

The information collected relates to adjudications where a decision was issued between 01 January, 2023 and 31 December, 2023. MDA assisted with **22** adjudications during this period.

The survey does not attempt to provide a representation of statistics of all adjudications in South Africa but simply provides analysis taken from these **22** adjudications and provides some interesting insight.



Nature of dispute

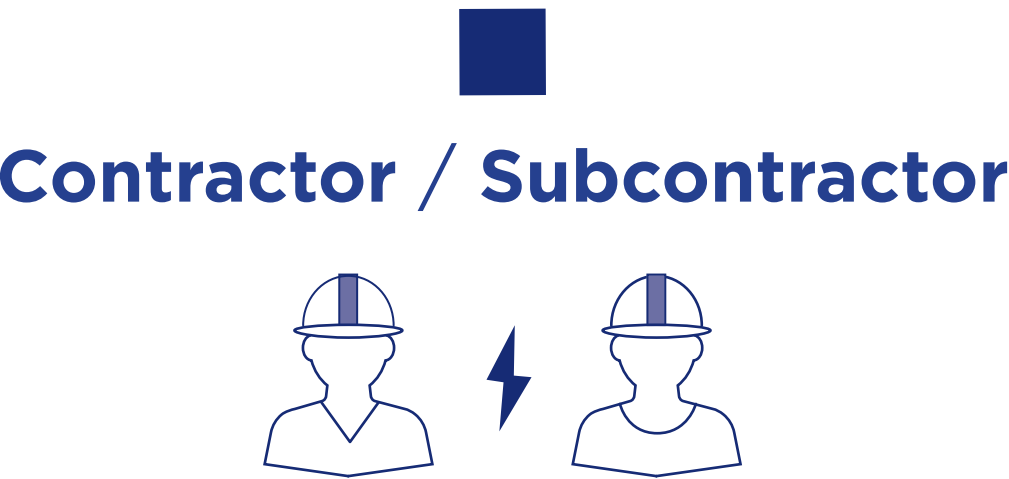
	2021	2022	2023
Claim for payment of outstanding monies/ incorrect certification	7	9	7
Claim for extension of time and time related costs	8	8	8
Claim for defective work	2	2	0
Enforcement of contractual rights	4	4	1

Claim for penalties or other <i>contra charges</i> by an employer (against a contractor) or a contractor (against a subcontractor)	2
Claim for price adjustment for inflation	1
Claim for standing time only as no delay occurred	1
Time bar	1
Ambiguities in Works Information	1



The most common disputes referred to adjudication during the 2023 year were those in respect of claims for extension of time and time related costs followed by claims for payment of outstanding monies/ incorrect certification. This is a continuation of the previous years trend. Of more significance is the decline in claims for defective work and the enforcement of contractual rights.

Parties to the dispute



Similar to previous years, the majority of the disputes handled by MDA involved disputes between contractors and employers, with only 3 out of 22 disputes between contractor/ subcontractor.



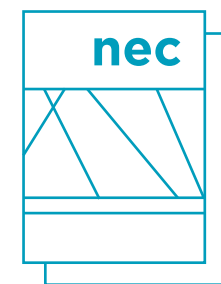
Conditions of contract





FIDIC Suite





NEC Suite



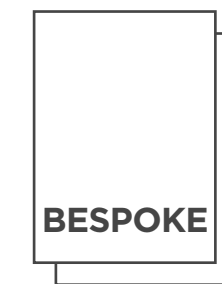

JBCC 2000 series




**GCC 2010 or
GCC 2015**

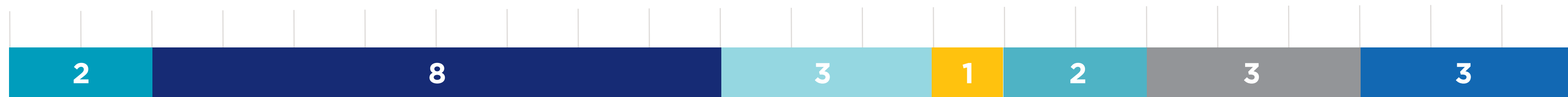



Bespoke



In previous years the highest ranking contract causing disputes has predominantly been the NEC. This year the JBCC made up the largest portion of the contracts creating disputes. Many of these were building projects hence the higher ranking of the JBCC from previous years. Also of note is that no disputes have been declared under the GCC. This may be an indication of the decline in GCC related contracts mostly awarded by municipalities.

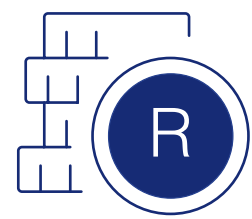
Monetary value of dispute



■
Less than
R1 mill



■
R1 mill to
R5 mill



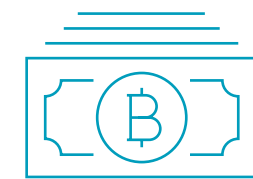
■
R5 mill to
R10 mill



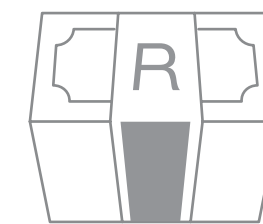
■
R10 mill to
R20 mill



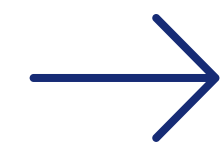
■
R20 mill to
R50 mill



■
More than
R50 mill



■
N/A




Even though the number of disputes referred to adjudication has decreased year on year, we have noted that the value of the disputes referred has increased significantly.

Qualification of adjudicator



■
Engineers



■
Quantity Surveyor



■
Attorney/ advocate



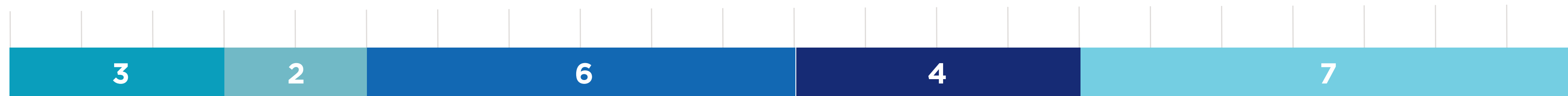
■
Dual qualified



Once more there is an even spread in the qualification of adjudicators. Most DAB's appeared to contain at least three members with an even spread of qualifications.



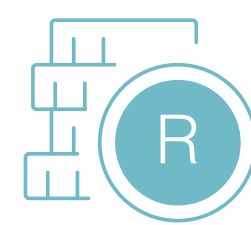
What was adjudicator's hourly rate?



■
**R2000/
hour or less**



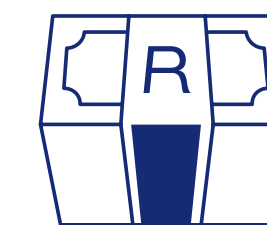
■
**R2001 - R2500/
hour**



■
**R2501 - R3500/
hour**



■
**More than R3500/
hour**



■
Undisclosed



On average the most typical rate charged per hour for an adjudication falls into the region of R2501 - R3500/ hour. We are seeing a trend of competitive pricing amongst adjudicators which may be due to the decline in the volume of disputes. Parties should be warned that a lower hourly rate may not necessarily equate to a lower overall cost of the adjudication.

Appointment of the adjudicators

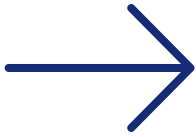


Named in the contract

Agreed between parties

Appointed by adjudicator nominating body

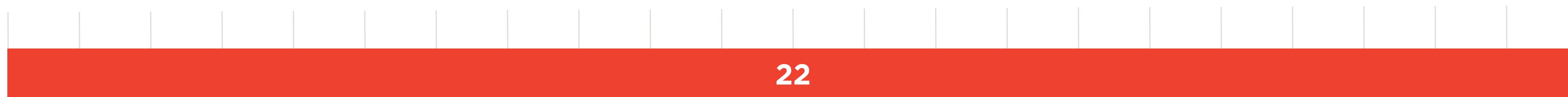
- ICE-SA
- Assoc of Arb
- SAICE
- AFSA



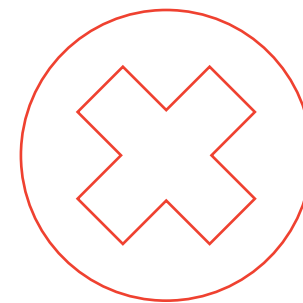
This years data shows that most adjudicators are appointed by an adjudicator nominating body with the Association of Arbitrators being the most prominent.



Was there a hearing?



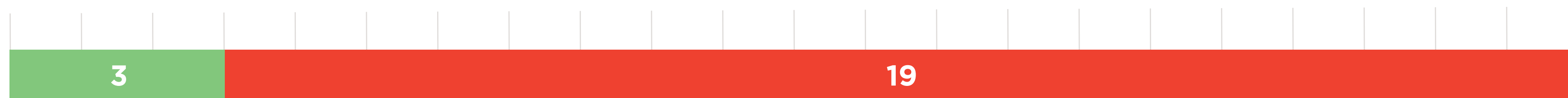
No



In the early days of adjudications hearings were commonplace, it appears as the industry has come to accept the success of adjudication that it is rare to find parties having hearings.



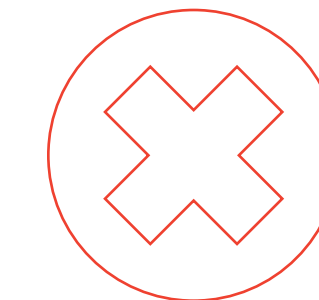
Was there a settlement reached during the adjudication process?



Yes



No



In the past it was rare for parties to reach a settlement during adjudication proceedings, this is certainly a new trend being seen in the industry.



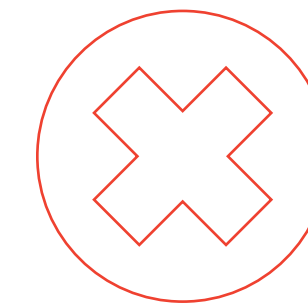
Was the adjudication converted into an arbitration - or another process - prior to the decision being published?



Yes



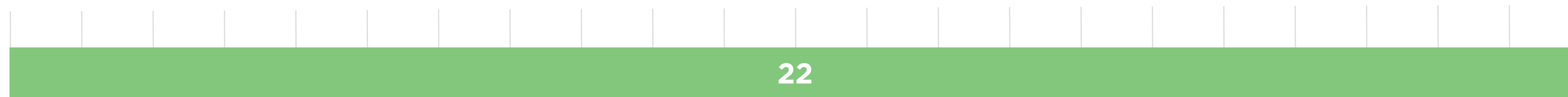
No



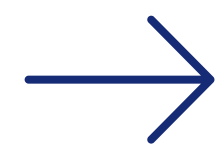
The dispute in question was complex requiring significant expert evidence, hence the conversion to an arbitration as the dispute was not suitable for an adjudication.



Did the adjudicator issue his/her decision in time?



Yes



The statistics included here includes where an adjudicator has exercised a lien over their decision until payment was made. We have noticed an increase in parties delaying payments to adjudicators.



If dispute an Employer / Contractor dispute then decision in favour of



Employer



Contractor



This data is unsurprising given that the contractor is typically the referring party in an adjudication.



If dispute a Contractor/ Subcontractor dispute then decision in favour of



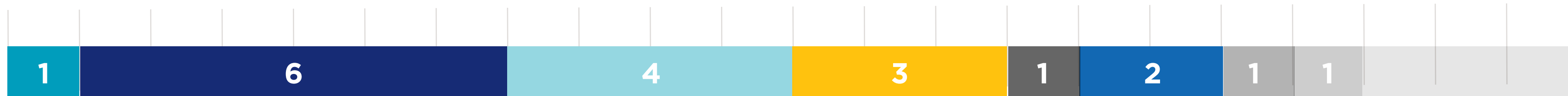
Contractor



Subcontractor



Monetary value of decision



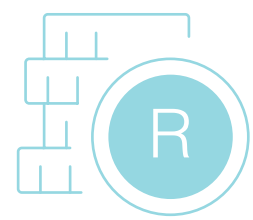
Nil



Less than R1 million



R1 million to R5 million



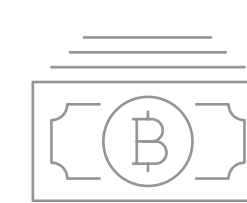
R5 million to R10 million



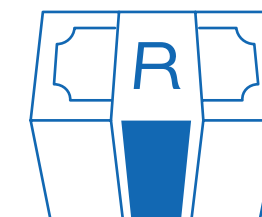
R10 million to R20 million



R20 million to R50 million



More than R50 million

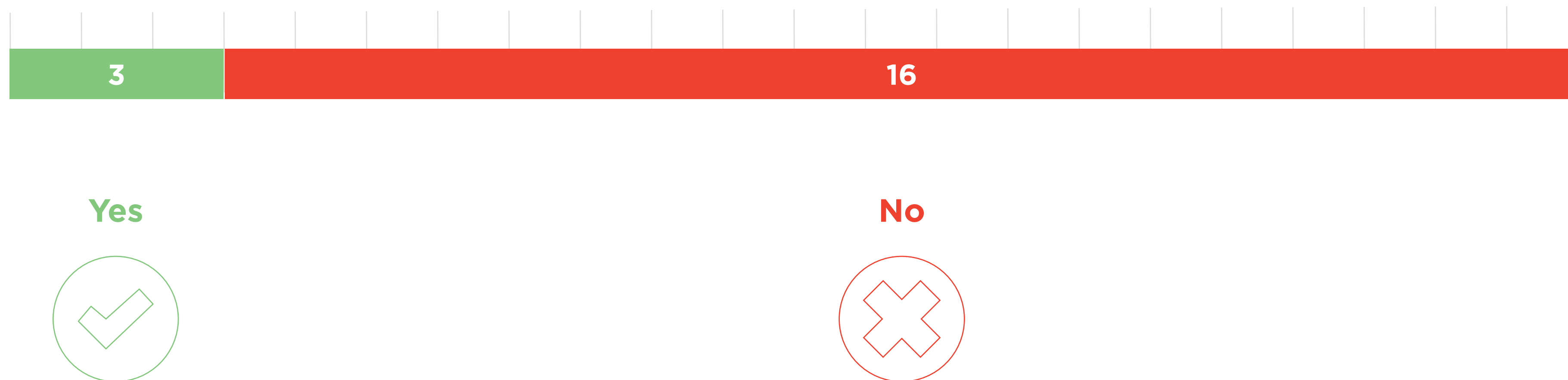


N/A



The data here ties back to higher values seen in the disputes declared.

Has a notice of dissatisfaction been issued within the required time period?



Of the final 19 decisions the vast majority were accepted, showing the robustness of the adjudication procedure.



Construction & Technology Attorneys

JHB: +27 (11) 648 9500

DBN: +27 (31) 764 0811

E: info@mdalaw.co.za

www.mdalaw.co.za