

## Article Information

Authors: Tim Coleman, Emer Sheridan

Service: Dispute Resolution & Litigation, Projects Infrastructure & Construction

Sector: Infrastructure

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## Quality Control: Adjudicators must provide adequate reasons

**The Nuance Group (Australia) Pty Limited v SHAPE Australia Pty Limited [2018] VSC 362 re-affirms that an adjudication determination will be quashed if the adjudicator fails to provide adequate reasons for their determination.**

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We review the decision and discuss the circumstances in which a determination can be overturned.

Across all Australian jurisdictions, Security of Payment legislation provides that where the amount in a payment schedule is less than that in the payment claim, then a claimant may bring an application to have the matter determined by an adjudicator. Such a determination is only interim and so it does not finally settle the matters in dispute between the parties – which may still be litigated or arbitrated.

The quality of the written reasoning provided by the adjudicator will be decisive to the validity of the determination. Justice Digby relevantly held:[\[1\]](#)

*[The adjudicator must] undertake the task of determining whether claimed construction work (including the provision of related goods and services) have been performed, must value that work, and goods and services, and must do so in writing, including reasons, and the basis on which any amount determined has been decided.*

To that end, his Honour asserted that bare reasons which render the determination comprehensible will be sufficient.[\[2\]](#) Previous case law has further acknowledged that an adjudicator working under the strict time limits of the Act cannot be expected to replicate the same standards of detail which would, for example, be expected of a judge who has a longer time to come to a decision.[\[3\]](#)

In *Nuance Group*, Justice Digby ultimately found that the Adjudicator had failed to undertake the basic and essential task required of him and so, the determination was not valid and compliant under the legislation. This finding was made on three key bases:

### The Adjudicator worked backwards from the total claimed amount

Rather than undertaking an item by item analysis of the payment claim and the payment schedule, the Adjudicator instead worked backwards by starting with the total claimed amount and from there adjusting it 'by deducting composite items of the claimant's claims in a way which cannot be comprehended on a fair and reasonable consideration of the Adjudicator's Determination, but can only be inferred and reconstructed in a number of instances'.[\[4\]](#) Working backwards from an assumption that the claimed amount is correct is therefore an invalid method by which an Adjudicator can come to a determination.

### There is no sufficiently comprehensible basis for the amount determined

Furthermore, an adjudication determination should be sufficiently comprehensible when it is read alongside the payment claim and the payment schedule such that the basis for the amount awarded can be readily determined.[\[5\]](#) If reference must be had to extraneous documents, such as those used for administration and certification, in order to determine the basis of the Adjudicator's reasoning then this is an indication that such reasoning was not sufficient.[\[6\]](#)

### The Adjudicator failed to determine whether work had been performed and to value such work

Justice Digby further found that the Adjudicator had failed to make the required finding as to whether the work which was

claimed had been performed and to determine the value of such work.<sup>[7]</sup> A claim that work was performed for a certain value must not be lightly accepted by the Adjudicator without proper consideration.

Claimants and respondents should be aware of the threshold requirements for a valid and binding determination under the legislation. If an adjudicator has made an unfavourable determination against you which is not supported by adequate reasoning, it may be quashed by the court. In light of *Nuance Group*, this is particularly likely where the adjudicator has worked backwards from the claimed amount, failed to provide comprehensible reasoning or has not determined the value of the work and whether it was performed.

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<sup>[1]</sup> *The Nuance Group (Australia) Pty Limited v SHAPE Australia Pty Limited* [2018] VSC 362 at [51].

<sup>[2]</sup> *Ibid* at [52].

<sup>[3]</sup> *Shellbridge Pty Ltd v Rider Hunt Sydney Pty Ltd* [2005] NSWSC 1152 at [15].

<sup>[4]</sup> *The Nuance Group (Australia) Pty Limited v SHAPE Australia Pty Limited* [2018] VSC 362 at [65].

<sup>[5]</sup> *Ibid* at [67].

<sup>[6]</sup> *Ibid* at [68].

<sup>[7]</sup> *Ibid* at [69].