



Construction & Technology Attorneys

ADJUDICATION SURVEY 2018

INTRODUCTION

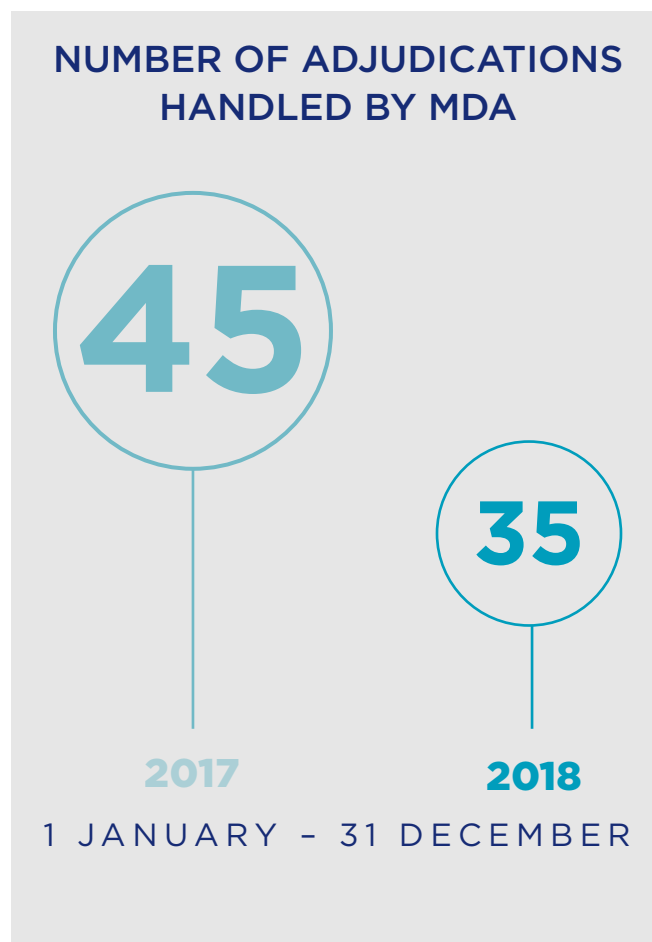
The MDA Adjudication Survey aims to provide some (albeit limited) statistical information regarding the state of adjudication in South Africa.

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 1 January 2018 and 31 December 2018.

MDA assisted with 35 adjudications during this period.

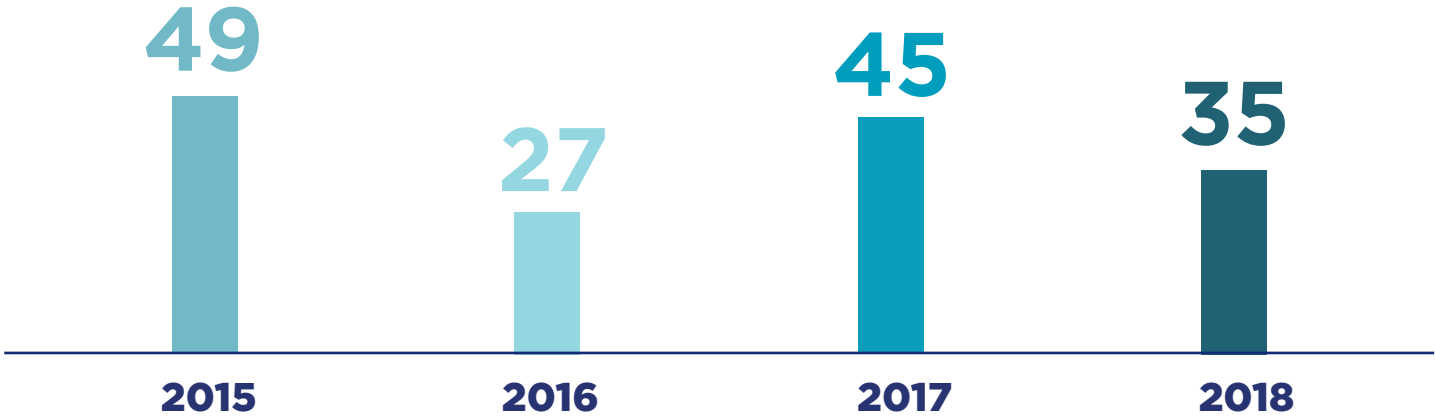
The survey does not attempt to provide a representation of statistics of all adjudications in South Africa but simply provides analysis taken from these 35 adjudications and provides some interesting insight.



OVERVIEW

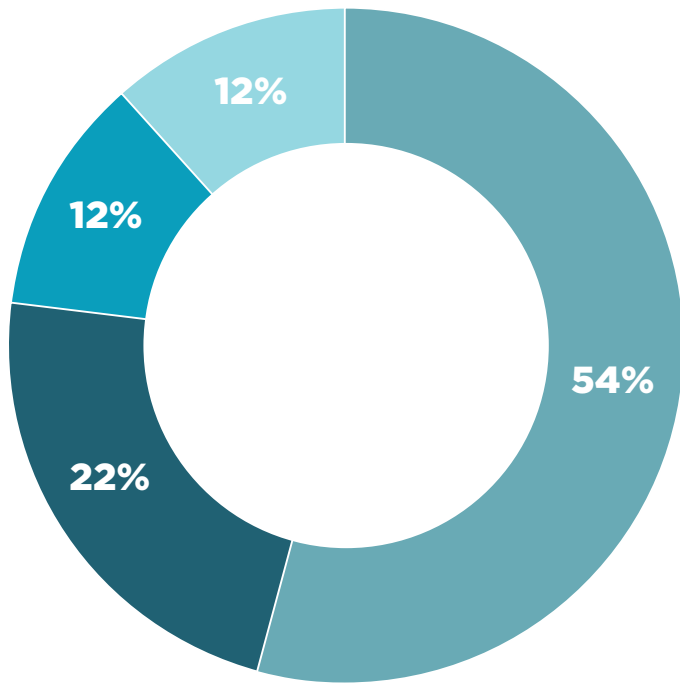
1. Number Of Adjudications - 2015 To 2018
2. Nature Of Dispute
3. Parties To The Dispute
4. Conditions Of Contract
5. Monetary Value Of The Dispute
6. Qualifications Of The Adjudicator
7. What Was Adjudicator's Hourly Rate?
8. Appointment Of The Adjudicators.
How Was The Adjudicator Appointed.
9. Was There A Hearing?
10. Was A Settlement Reached During The Adjudication Process?
11. If Dispute An Employer/ Contractor Dispute
Then Decision In Favour Of...
12. If Dispute A Contractor/ Subcontractor Dispute
Then Decision In Favour Of...
13. Monetary Value Of Decision
14. Did The Adjudicator Issue His/Her Decision In Time?
15. Has A Notice Of Dissatisfaction Been Issued?

1. NUMBER OF ADJUDICATIONS - 2015 to 2018



1 JANUARY - 31 DECEMBER

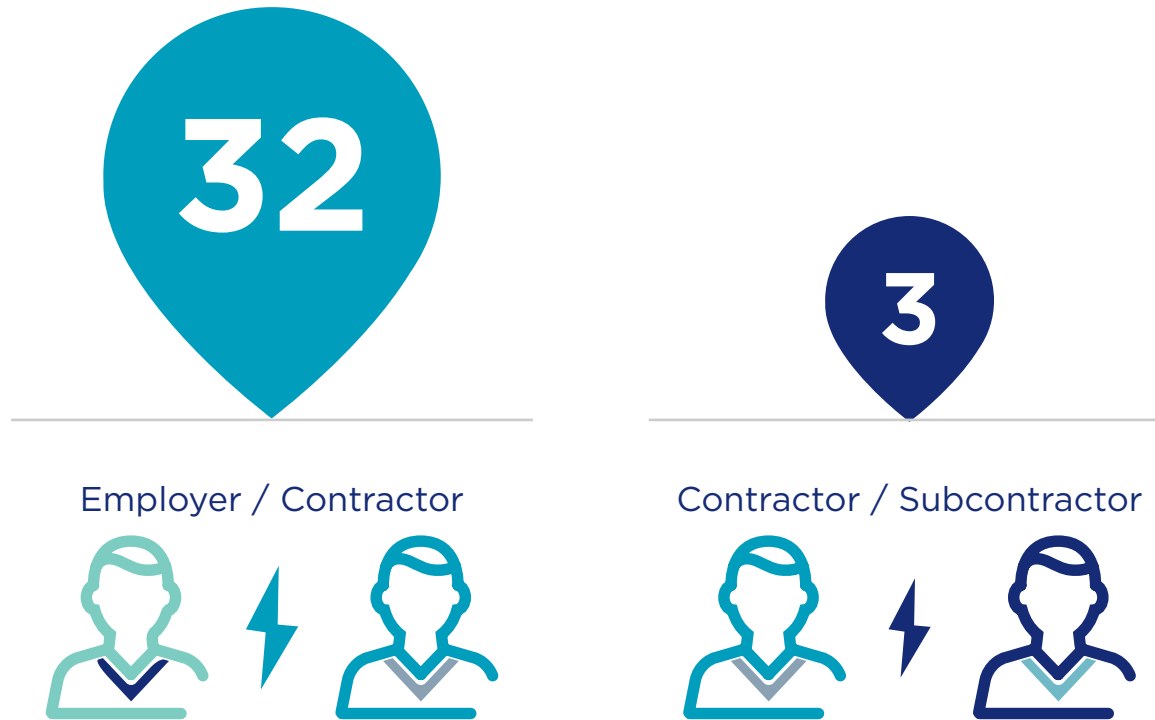
2. NATURE OF DISPUTE



■	Claim for extension of time and time related costs	19
■	Claim for payment of outstanding monies/ incorrect certification	8
■	Enforcement of contract rights	4
■	Claim for additional payment	4

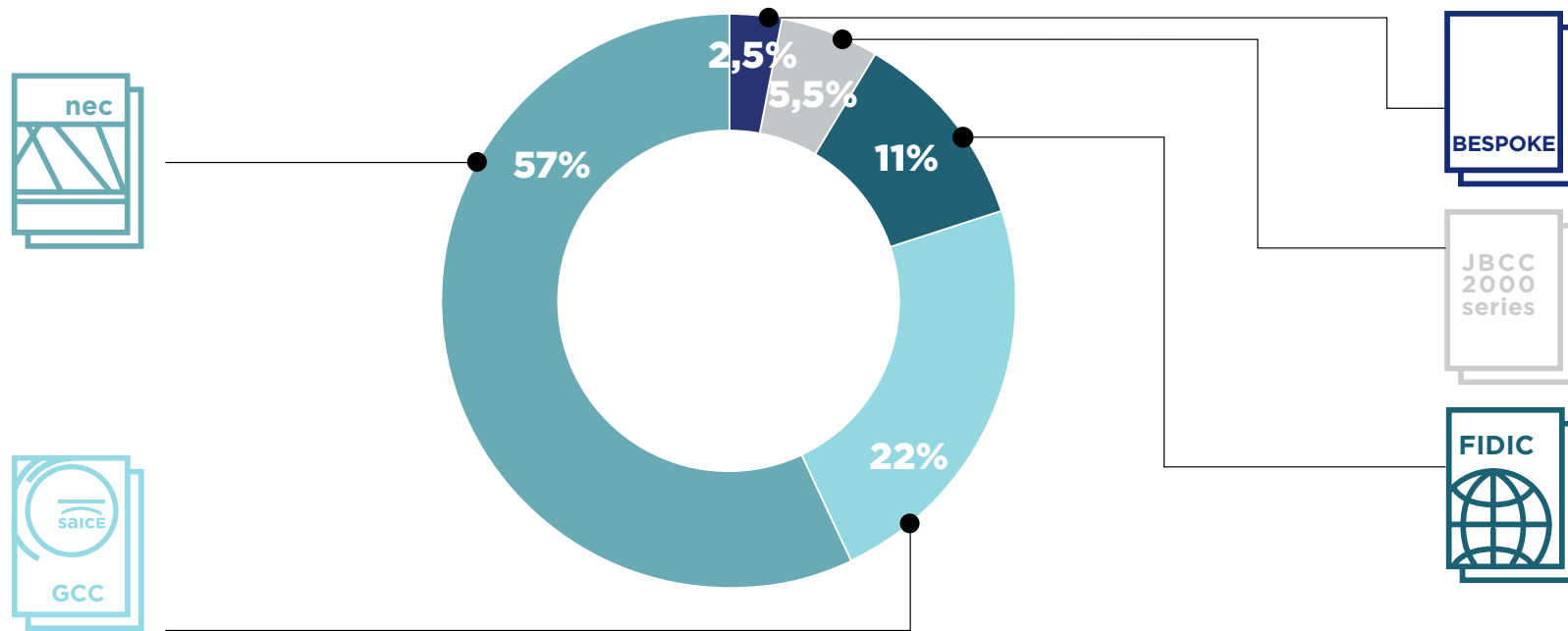
The most common disputes referred to adjudication during the 2018 year were those in respect of claims for extension of time and time related costs. This is a continuation of the 2017 trend.

3. PARTIES TO THE DISPUTE



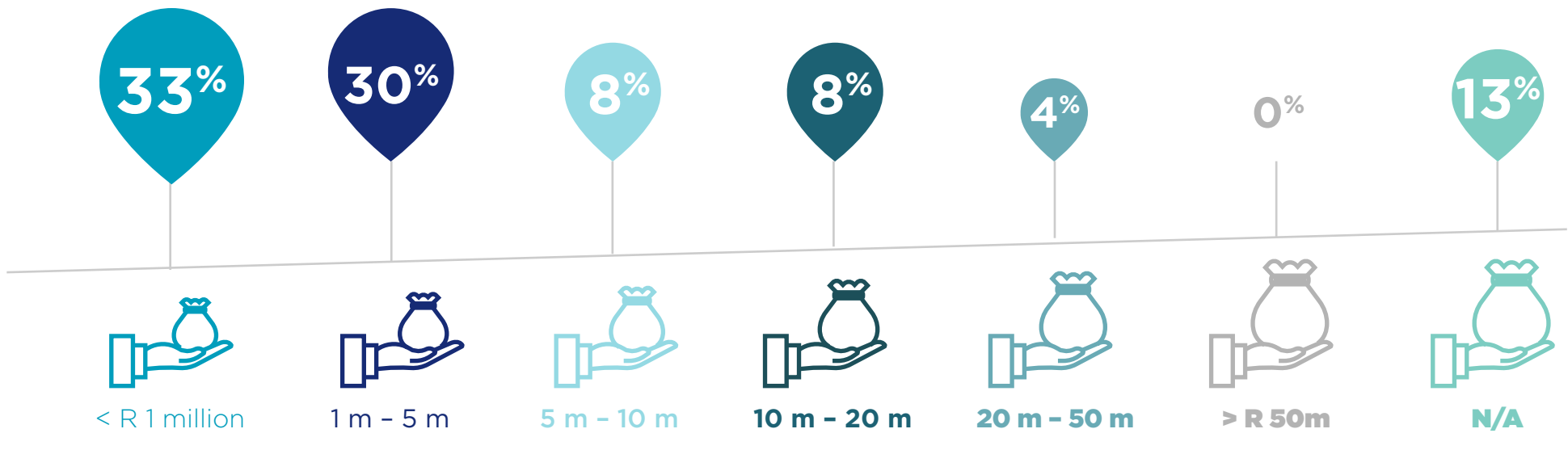
Similar to previous years, the majority of the disputes handled by MDA involved disputes between contractors and employers, with only 3 out of 35 disputes between subcontractor and contractor.

4. CONDITIONS OF CONTRACT



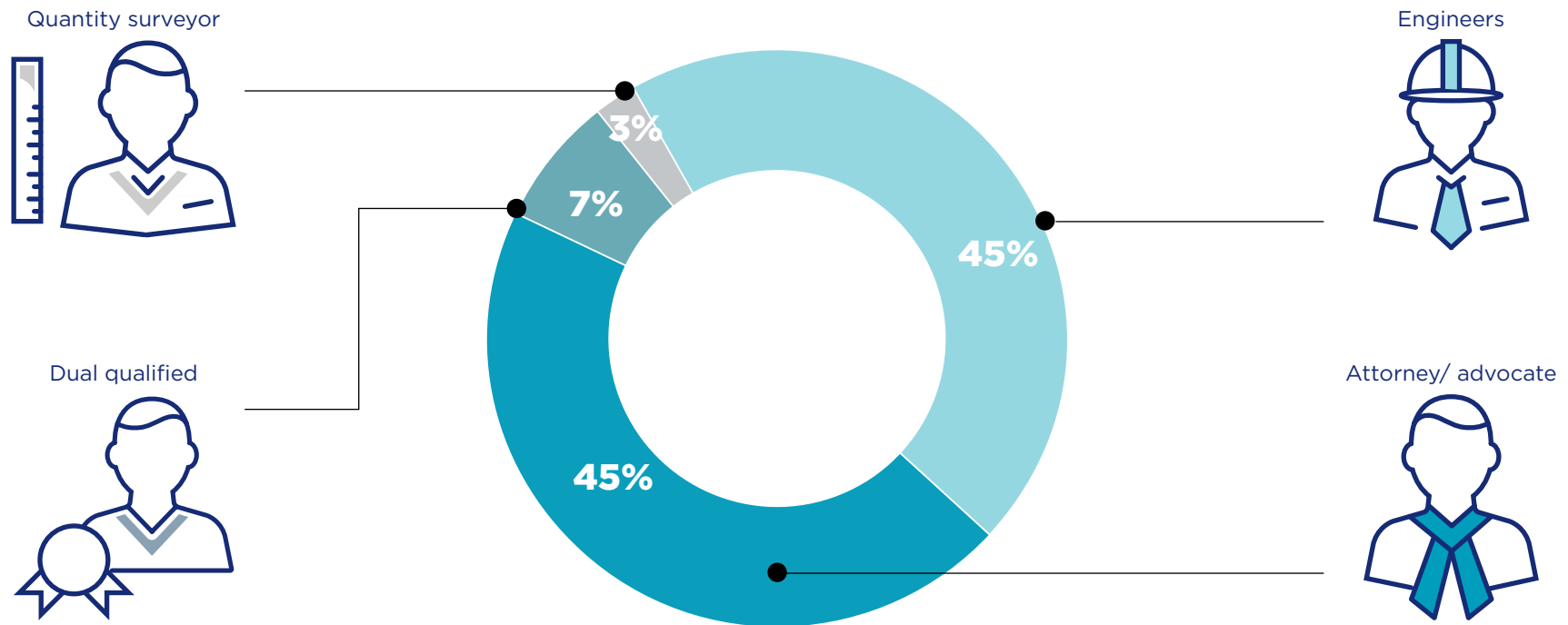
As with previous surveys the NEC makes up the largest portion of the contracts creating disputes. Second in line is the GCC 2010/ 2015 suite.

5. MONETARY VALUE OF THE DISPUTE



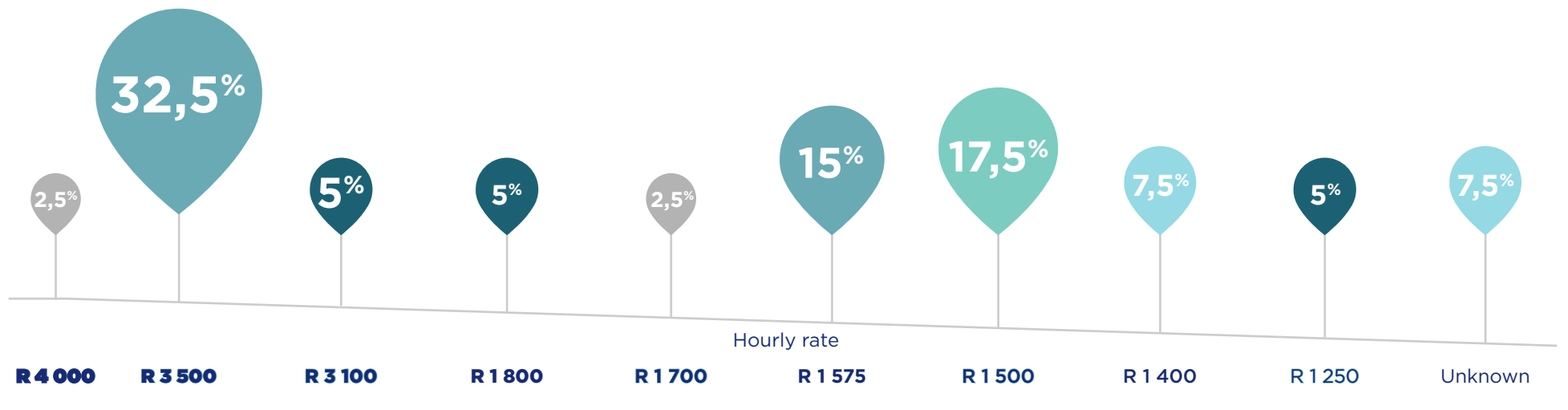
Continuing the common trend, large majority of the disputes referred to adjudication dealt with monetary values of R5 million and less.

6. QUALIFICATIONS OF THE ADJUDICATOR



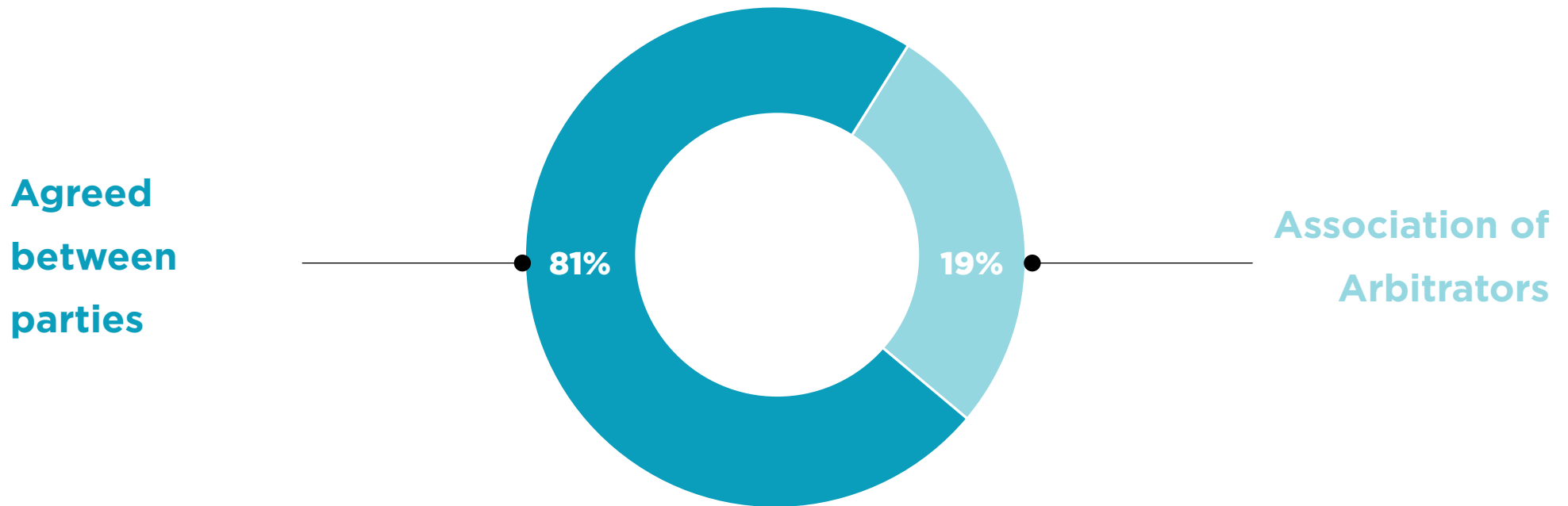
Once more engineers and attorneys make up the majority of the adjudicators. Most DAB's appeared to contain at least three members with an even spread of qualifications. MDA has also seen an increase in dual qualified adjudicators over the years.

7. WHAT WAS ADJUDICATOR'S HOURLY RATE?



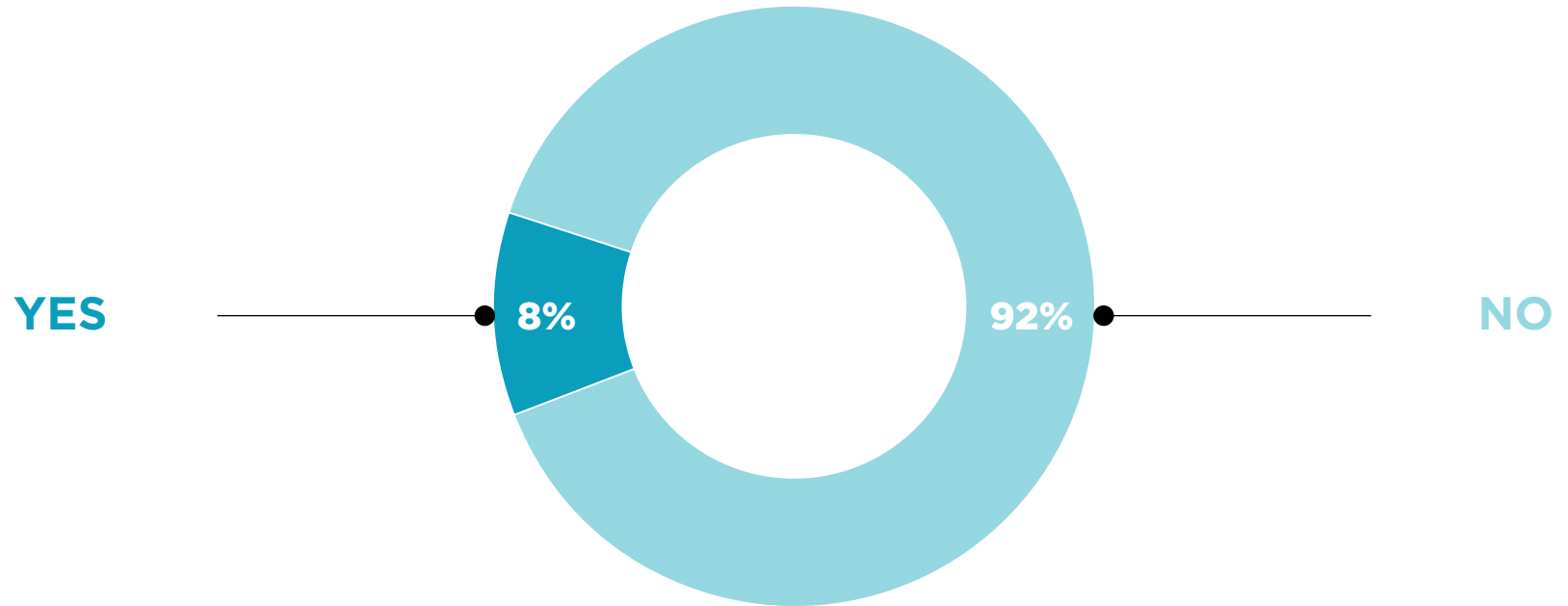
A wide range of adjudicators rates were recorded over the 2018 year. Interestingly there does not appear to be any industry related standard or guidelines in the rates that adjudicators charge but this appears rather to be linked to the adjudicators qualifications.

8. APPOINTMENT OF THE ADJUDICATORS. How was the adjudicator appointed.



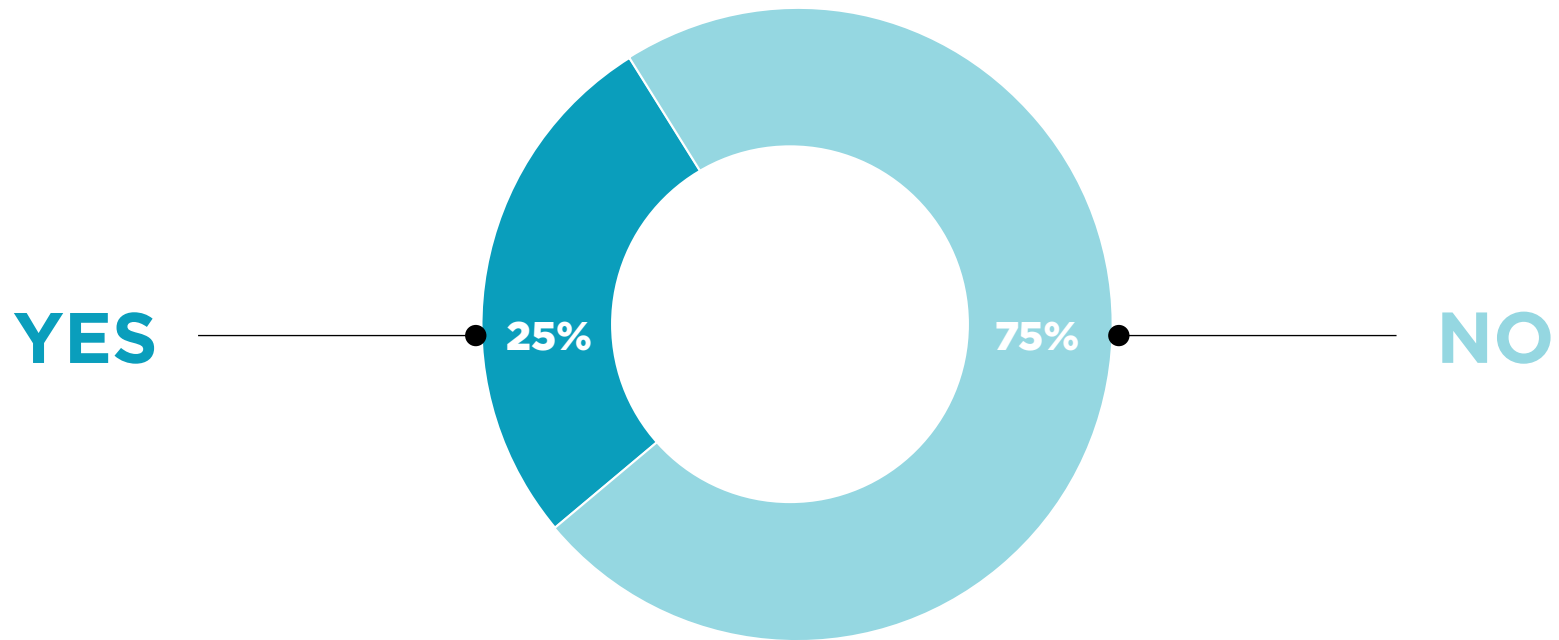
This year we included a new point in our questionnaire to ascertain how adjudicators are being appointed. The stats showed most are being appointed via agreement between parties as this provides them with an element of control.

9. WAS THERE A HEARING?



In stark contrast to 2017. Only 3 of the 35 adjudications went to hearing.

10. WAS A SETTLEMENT REACHED DURING THE ADJUDICATION PROCESS?



In sharp contrast to 2017, 25% of the matters reached a settlement during the adjudication process.

11. IF DISPUTE AN EMPLOYER/ CONTRACTOR DISPUTE THEN DECISION IN FAVOUR OF



Similar to previous years, contractors are still proving more successful than employers in disputes, with 55% of decisions in favour of contractors. A small number of disputes find a decision reasonably spread between employer and contractor on grounds of principle.

12. IF DISPUTE A CONTRACTOR/ SUBCONTRACTOR DISPUTE THEN DECISION IN FAVOUR OF

2

Contractor

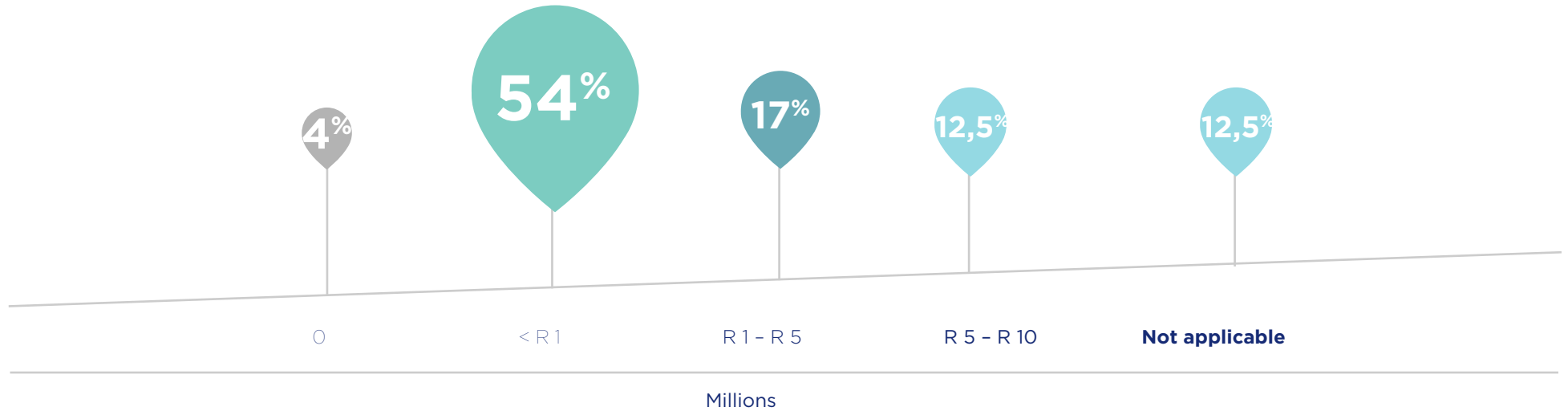


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Subcontractor

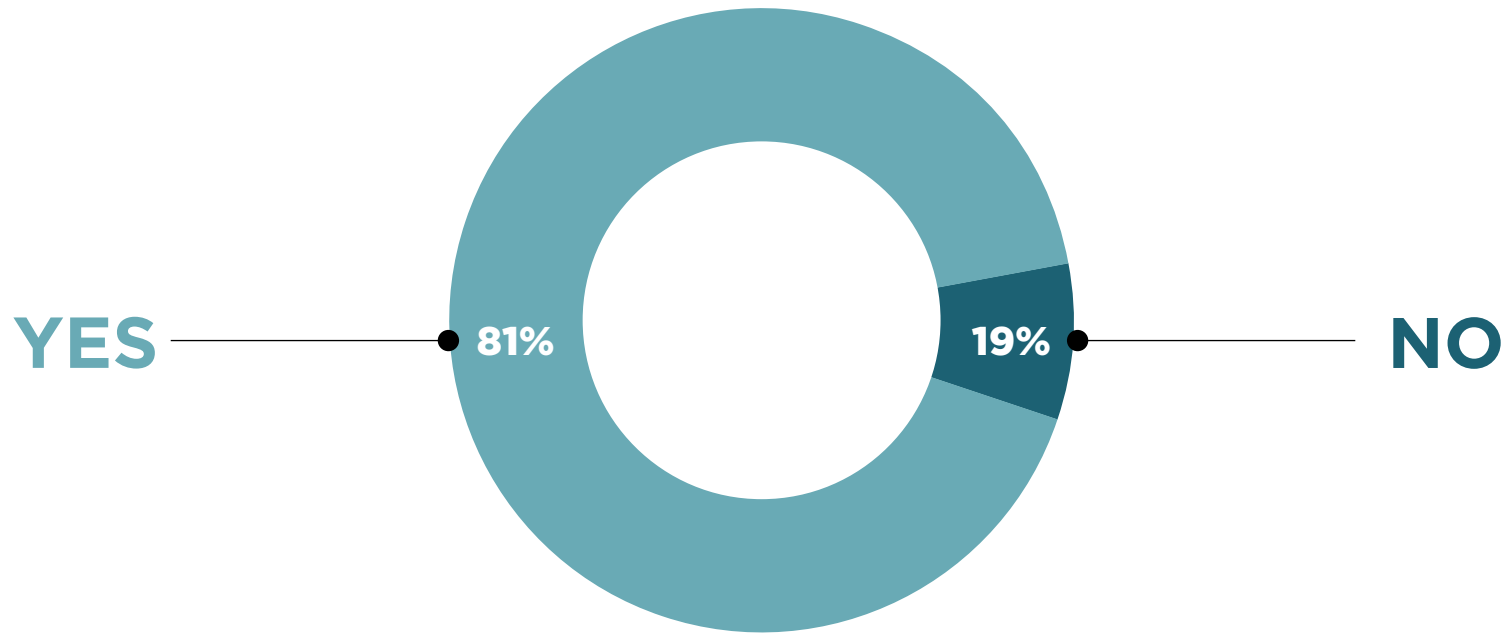


13. MONETARY VALUE OF DECISION



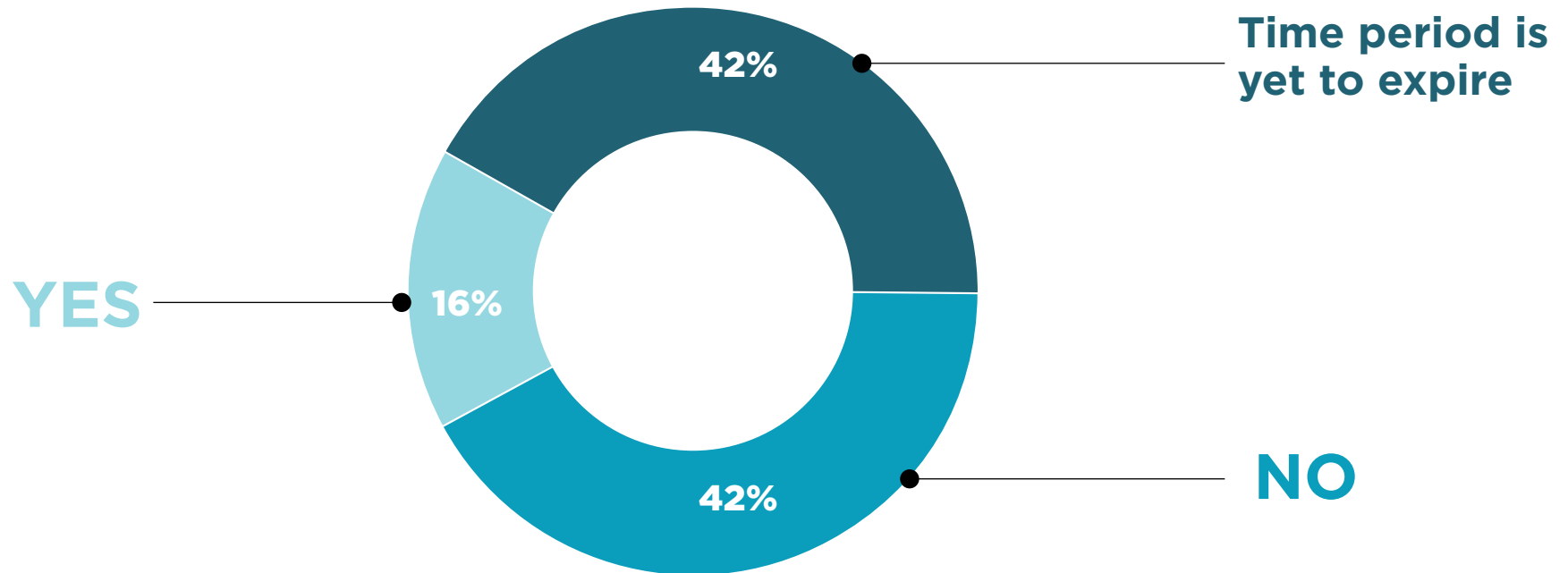
The majority of the adjudicators awarded decisions less than R1 million. This correlates with the values of the disputes referred to adjudication.

14. DID THE ADJUDICATOR ISSUE HIS/HER DECISION IN TIME?



Only 81% of decisions were issued on time. This is a concerning drop in performance by adjudicators.

15. HAS A NOTICE OF DISSATISFACTION BEEN ISSUED?



42% of the total dispute outcomes accepted the adjudicators decision as final. Although a small number of Notices of Dissatisfaction were issued, this does not necessarily mean the dispute will go to arbitration. Only a small number of adjudications are taken to arbitration.