Adjudicator Grading and Referral Policy 2015
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Adjudicator Grading and Referral Policy
2015

1 Adjudicator Grading and Referral

This Policy covers adjudicator grading and the referral of adjudication applications to adjudicators. The referral of adjudication applications to adjudicators is an administrative decision-making power undertaken by the Registrar of the Queensland Building and Construction Commission’s Adjudication Registry. As such it is generally appropriate to provide criteria for making a decision under that power.


After extensive consultation with industry experts the Queensland Building and Construction Commission (‘QBCC’) has accepted that there is a need to assess adjudication applications in order to marry each application with a suitably qualified adjudicator to decide the dispute.

The Deputy Registrar has delegation under section 39 of the Building and Construction Industry Payments Act 2004 (‘BCIPA’) to perform any of the Registrar’s powers identified in this Policy.

This Policy is approved under section 101 of the BCIPA.

2 Approach

The QBCC takes a transparent, objective and outcome-focused approach to the grading and referral of adjudication applications to adjudicators, adhering to a set of principles that dictate how an adjudicator is graded and what selection criteria are to be considered in the referral process.

2.1 Transparency

2.1.1 The QBCC will deal with parties involved in a construction contractual dispute (parties) and adjudicators in an open and transparent manner so that they have a clear understanding of what is expected of them and what they can expect from the QBCC.

2.1.2 The QBCC relies on the consistent application of set policy considerations to ensure the referral process of adjudication applications remains transparent and free from apprehended and/or actual bias. Increased confidence will be gained by the parties from the knowledge that a suitable adjudicator will decide their dispute and that the referral process to select that adjudicator has been governed by a set of transparent and
consistently applied considerations.

2.1.3 The Registrar must adhere to the criteria and considerations implemented in this Policy during the referral process. This will result in the Registrar’s discretion being fettered by the requirement to follow due process.

2.1.4 The application of this Policy will be the subject of any investigation undertaken by the Ombudsman and/or the Crime and Corruption Commission. These ‘watch and investigation’ authorities provide another level of control over the actions undertaken by the QBCC.

2.2 Objective and Consistent

2.2.1 As a result of extensive consultation with industry experts, concerns were identified with respect to apprehended and/or actual bias during the referral process. The BCIPA was amended in part to address these concerns. The object of this Policy is to identify criteria that must be taken into account when grading and referring an adjudication application to an adjudicator and provide guidance to adjudicators about reasonable fees that may be charged for an adjudication. In applying this policy the QBCC addresses any concerns surrounding apprehended and/or actual bias during the referral process.

2.2.2 The consistent application of this Policy results in an objective selection of the most suitable adjudicator based on the application received.

2.3 Outcome Focused

2.3.1 The use of this Policy will result in the swift referral of adjudication applications to suitable adjudicators ensuring that the QBCC’s resources are used in an efficient manner.

2.3.2 The grading, referral and complaint handling process will be conducted as efficiently as possible to avoid costly delays and business uncertainty. Efficient processing of applications will minimise any detriment to the parties whilst maximizing the effectiveness of the activity.

2.3.3 The QBCC aims to ensure that 90% of all referrals are made within 4 business days.

3 Application

3.1.1 Under the BCIPA the Registrar has the power to refer adjudication applications to adjudicators. While the BCIPA itself does not suggest specific criteria for the selection of adjudicators, the Registrar will select adjudicators for referral based on an analysis of each application and marry that analysis with a suitably graded adjudicator.
3.1.2 The grading of adjudicators is predicated on three criteria:
   1. the relevant experience (based on decided matters and payment claim amount decided);
   2. the qualifications held;
   3. the skill of the adjudicator (gleaned from the transitional training and ongoing training requirements).

3.1.3 The Registrar will undertake an initial assessment of applications that are submitted and from that assessment determine which adjudicator will best serve the parties to resolve the dispute.

3.1.4 The Registrar will assess applications to ascertain:
   - the claimed amount in the dispute;
   - the material issues in dispute; and
   - any other relevant consideration that may influence the referral of an application to an adjudicator.

3.1.5 When there is more than one adjudicator assessed by the Registrar as being suitable for referral of an adjudication application, the Registrar may have consideration to the last occasion these adjudicators were referred an application in order to fairly distribute the referral of applications.

4 Adjudicator Grading

Adjudicators are graded in three grades, identified as follows:
   1. Adjudicator (lowest)
   2. Advanced Adjudicator
   3. Senior Adjudicator (highest)

The three criteria considered to determine grading are the relevant experience held, the qualifications held and the skill of the adjudicator.

4.1 Relevant Experience

4.1.1 Relevant experience relates to the number of decisions made by adjudicators and the dollar value of claims decided. After considering the number of decisions made by an adjudicator, the Registrar will have regard to the dollar value of claims decided in accordance with the following table.
### Payment Claim Grade:

<table>
<thead>
<tr>
<th>Condition</th>
<th>Grade</th>
</tr>
</thead>
<tbody>
<tr>
<td>If 5 decisions made where a Payment Claim is $750,000(^1) and over</td>
<td>Senior Adjudicator</td>
</tr>
<tr>
<td>If 5 decisions made where a Payment Claim is for between $749,999 and $50,000(^2)</td>
<td>Advanced Adjudicator</td>
</tr>
<tr>
<td>If 5 decisions made where a Payment Claim is for below $50,000</td>
<td>Adjudicator</td>
</tr>
</tbody>
</table>

1. The amount of $750,000 aligns with the threshold for a complex claim under the BCIPA.
2. While the monetary range between $749,999 and $50,000 looks large, in effect only 123 out of 472 claims were received and decided in this range in the 2013-2014 financial year.

4.1.2 This system takes into account the experience an adjudicator has making decisions under the BCIPA while simultaneously providing the Registrar with an indication as to what grade of adjudicator should be appointed to decide a matter based on the amount of the payment claim. The Registrar may also have regard to the quality of prior decisions made by an adjudicator.

4.2 Relevant Qualifications/Expertise

4.2.1 The various qualifications held by each adjudicator enables them to bring specific expertise to help identify and resolve issues in dispute. The Registrar must take account of the relevant qualifications and/or expertise that an adjudicator possesses; namely, tertiary qualifications and/or fellowship of recognized institutes such as the Australian Institute of Building; and/or work experience.

To qualify as a Senior Adjudicator, the adjudicator must possess a relevant qualification or fellowship of a recognized institute. Alternatively the adjudicator must possess suitable work experience within the industry.

4.3 Relevant Skills

4.3.1 As a means of increasing the overall skill level of registered adjudicators, the Registrar, in August 2014, imposed a condition of registration upon all adjudicators requiring completion of transitional training. The intent of the training is to inform adjudicators of the changes made as a result of the 2014 amendments to the BCIPA, as well as to reinforce the high standard that is expected as a condition of their ongoing registration.

Adjudicator’s results obtained from the transitional training are leveraged by the Registrar to endorse the grading of the adjudicator within a definitive bracket.

Further opportunities will be provided to adjudicators to enable them to develop their skills with a view to assisting adjudicator promotion from one grade to the next.
4.4 Reclassification of adjudicators

4.4.1 The Registrar has the discretion to reclassify the grading of adjudicators based on a continual re-evaluation of their performance.

Indicia to be taken into account in the upgrading of an adjudicator include the following:
1. Number of decisions made;
2. Dollar value of claims decided;
3. Additional training undertaken.

4.4.2 The Registrar may also have regard to the quality of prior decisions made by an adjudicator. Where it is evident to the Registrar that an adjudicator has not conducted themselves in a professional and competent manner, the Registrar will be able to utilize the power to suspend or cancel an adjudicators registration under section 77 of the BCIPA. As part of the suspension the Registrar may require additional training be undertaken by the adjudicator to resolve any performance issues.

4.5 Option for Nominating for Adjudications

4.5.1 Adjudicators may advise the Registry of the highest payment claim amount that they wish to adjudicate. For example, while an adjudicator may be suitable to decide on large matters, they may wish to only be appointed to adjudication applications below a certain amount.

4.5.2 Adjudicators may also advise the Registry whether he or she wishes to be considered for referral of applications that are determined suitable for an adjudicator of a lower grade. In this situation, the adjudicator should have regard to the recommended fee associated with the dollar value of that particular application. For example, it would be appropriate for a ‘Senior Adjudicator’, who has advised the Registry that they wish to be considered for referral of applications that are determined suitable for an adjudicator of a lower grade, to only charge a maximum hourly rate of $260 for an application that would normally be referred to an ‘Adjudicator’.

Summary of Criteria for Grading of Adjudicators

The grading system takes account of:
- The number of decisions;
- The amount of the payment claims that have been decided;
- The quality of the decisions;
- Relevant qualifications / expertise; and
- Relevant skills.
5 Selection Criteria for Assessing Adjudication Applications and Referring Applications to Adjudicators

Upon accepting lodgement of an adjudication application, the Registrar will assess the application in order to refer it to an appropriate adjudicator. In the course of this assessment the Registrar will identify and consider key indicators when determining which adjudicator will be best suited to decide the application.

5.1 Claim Amount

5.1.1 In assessing an adjudication application the Registrar will first identify the claim amount (ex GST). Once the claim amount is identified it will be used as the initial criteria for identifying what grade of adjudicator may be best suited to decide the adjudication.

<table>
<thead>
<tr>
<th>Adjudicator Grade</th>
<th>Claim Amount (ex GST)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjudicator</td>
<td>Less than $50,000</td>
</tr>
<tr>
<td>Advanced Adjudicator</td>
<td>$50,000 or more, but less than $750,000</td>
</tr>
<tr>
<td>Senior Adjudicator</td>
<td>$750,000 or more</td>
</tr>
</tbody>
</table>

5.1.2 The analysis of the claim amount will initially govern the grade of adjudicator that should be appointed to decide the application. An adjudicator who is graded above the minimum grade determined may also be appointed to decide the matter should they advise the Registry of their intention to decide applications below their ranking (refer section 4.5).

5.1.3 The Registrar will have the discretion to refer an application to an adjudicator graded below the minimum grade deemed suitable when the Registrar considers that the adjudicator is almost eligible for reclassification to the next grade and is for all other reasons, considered a suitable adjudicator for the referral of the application.

5.2 Material Issues in Dispute

5.2.1 In assessing an adjudication application the Registrar will identify the material issues in dispute for the purpose of confirming the appropriate grade of adjudicator to decide the application. It is expected that these issues will include:

1. disputes directly related to the construction or the supply of goods and services, such as variations, latent conditions, delay claims or valuation of works; and
2. disputes surrounding areas of legal or other complexity, such as jurisdictional arguments or contractual interpretation, for example a right to set off.

5.2.2 If an assessment of the application identifies that there are no disputes of reasonable complexity, then the Registrar may refer the application to an ‘Adjudicator’, subject to the
claimed amount being less than $50,000.

5.2.3 If an assessment of the application identifies a range of disputes with any of the issues identified as reasonably complex, then the Registrar may refer the application to an ‘Advanced Adjudicator’, subject to the claimed amount being less than $750,000.

5.2.4 If an assessment of the application identifies that the issues in dispute are of significant complexity, then the matter must be decided by a ‘Senior Adjudicator’ regardless of the value of the payment claim.

5.2.5 This analysis, in accordance with an assessment of the value of the claim will determine the material issues in dispute and the grade of adjudicator that should be appointed to decide the dispute.

5.3 Specialist Discipline/Expertise

5.3.1 After considering the adjudication application, the submissions included in the application and determining what issues are in dispute, the Registrar will have the discretion to turn his attention to decide what, if any, specialist qualification or expertise may be best suited to assist in deciding a particular matter.

5.3.2 While a specific qualification or expertise may be of assistance, it does not necessarily preclude another adjudicator who does not hold that particular qualification or expertise from being equally competent to decide the matter.

5.4 Voided Decisions

5.4.1 The Registrar will also take into consideration any decisions made by an adjudicator that were declared void by the Court when determining whether a referral is appropriate. Factors such as number of void decisions and reasons for a decision being voided will be taken into account.

6 Adjudicator Fees

The BCIPA provides that, should no fee be agreed upon by the parties and the adjudicator, the adjudicator is entitled to be paid an amount that is reasonable having regard to the work and expenses incurred by the adjudicator.

To provide guidance to adjudicators about what may constitute a ‘reasonable’ amount, the Registry has developed a schedule of recommended fees, which vary depending on the claim amount and how the adjudicator is graded. The fees represent the upper scale of what may be considered reasonable for an adjudicator to charge. The fees were determined based on industry consultation and an analysis of fees historically charged for adjudications.
6.1 Reasonable Adjudicator Fees

6.1.1 Claim amount up to $25,000 (ex. GST)

For applications with a payment claim value up to $25,000 (ex. GST), the Registry recommends the following maximum fees, depending on the claim amount.

<table>
<thead>
<tr>
<th>Claim Amount (ex GST)</th>
<th>Reasonable Fee Inc. Disbursements</th>
</tr>
</thead>
<tbody>
<tr>
<td>If claim amount is $5,000 or less</td>
<td>$610</td>
</tr>
<tr>
<td>If claim amount is more than $5,000 but not more than $15,000</td>
<td>$900</td>
</tr>
<tr>
<td>If claim amount is more than $15,000 but not more than $20,000</td>
<td>$1800</td>
</tr>
<tr>
<td>If claim amount is more than $20,000 but not more than $25,000</td>
<td>$2000</td>
</tr>
</tbody>
</table>

6.1.2 Claim amount over $25,000 (ex GST)

For applications with a payment claim value above $25,000 (ex. GST), the Registry recommends the following maximum hourly rates, depending on how the adjudicator is graded.

<table>
<thead>
<tr>
<th>Adjudicator Grade</th>
<th>Reasonable Hourly Fee Inc. Disbursements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjudicator</td>
<td>Not more than $260</td>
</tr>
<tr>
<td>Advanced Adjudicator</td>
<td>Not more than $325</td>
</tr>
<tr>
<td>Senior Adjudicator</td>
<td>Not more than $385</td>
</tr>
</tbody>
</table>

6.1.3 Conference or site visit costs

For the purpose of this section 6.1, disbursements include such costs as printing, mail, photocopying and stationery. Disbursements of this nature are inclusive within the Reasonable Fee and Reasonable Hourly fee. Reasonable costs associated with any conferences or site visits, such as travel and venue hire, that an adjudicator deems necessary for making a decision are considered reasonable costs to charge in excess of the Reasonable Fee and / or Reasonable Hourly Fee.

6.2 Referral of Applications to Same Adjudicator

6.2.1 In an attempt to conserve costs, the Registrar has the discretion when referring an adjudication application to refer more than one application to one adjudicator without regard for when that adjudicator may last have been appointed to an adjudication.

6.2.2 Previous Adjudication Application

Should the Registry receive an application involving two parties to a previous adjudication,
the Registrar can have regard to the adjudicator previously appointed. The Registrar may consider whether the application at hand is best decided by the adjudicator previously appointed whether or not the previous application has been decided.

6.2.3 Consecutive Adjudication Applications

Should the Registry receive consecutive applications involving the same parties and the same contract, the Registrar may consider whether both applications would best be decided by one adjudicator.

6.3 Exceptions and Availability

6.3.1 The Registrar will liaise with a particular adjudicator to ascertain the following matters before referring them an adjudication application:

1. an adjudicator’s availability;
2. the fees an adjudicator intends to charge;
3. whether any conflict of interest arises that might bar referral; and
4. any perception of apprehended and/or actual bias (such as if an adjudicator has recently decided a dispute between the parties).

Summary of Criteria for Assessing Adjudication Applications and Appointing Suitable Adjudicators

1. The Registrar will assign a minimum preliminary adjudicator grade to an application for adjudication based on the claim amount.
2. The Registrar will undertake an analysis of each adjudication application and based on the submissions included in the application, determine what issues are in dispute. Depending on the complexity of issues in dispute the final grade of an adjudicator may change from the preliminary grading.
3. The Registrar will determine what (if any) qualifications or expertise may be desirable in an adjudicator.
4. The Registrar will consider availability of adjudicators and whether there is any perceived apprehended and/or actual bias or conflict of interest.