

ADJUDICATOR REFERRAL POLICY

Version 1.0 | November 2018

INTRODUCTION

Section 154 of the *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act) provides that the functions of the Adjudication Registrar (the Registrar) include referring adjudication applications to adjudicators.

Section 201 of the BIF Act allows for the procedure for processing adjudication applications by the Registrar to be prescribed.

Section 155 BIF Act provides that the Registrar may make a policy about the administration of Chapters 3 and 5 of the BIF Act. Chapter 3 of the BIF Act contains the provisions about the referral of applications to adjudicators.

The Registrar makes this Adjudicator Referral Policy (the Policy) pursuant to section 155 of the BIF Act.

This Policy sets the matters that the Registrar will have regard to when referring adjudication applications to adjudicators.

Section 79 of the BIF Act requires the Registrar to refer an adjudication application to an eligible adjudicator within 4 business days after receiving the application.

PURPOSE

The purpose of this Policy is to provide guidance on matters which will be considered by the Registrar in referring adjudication applications to adjudicators to ensure transparency and consistency.

1. THE APPLICATION REFERRAL PROCESS

Upon receipt of an adjudication application, the Registrar will assess the application to identify key matters which will be relevant to whether a Grade 1 Adjudicator or Grade 2 Adjudicator will be best suited to decide the application.

The key matters which will be considered by the Registrar include:

- The claimed amount;
- The complexity of the material issues in dispute; and
- Any specific skills, expertise or qualifications best suited to determine the dispute.

When there is more than one adjudicator assessed by the Registrar as being suitable for referral of an adjudication application, the Registrar may give consideration to the last occasion the adjudicators were referred an application, in order to fairly distribute the referral of applications, although the Registrar is not required to refer equal numbers of applications to adjudicators.

For newly registered adjudicators, the Registrar may give priority to those adjudicators receiving the next available adjudications to be referred in the fixed fee category to provide immediate experience and develop skills.

When considering referral of complex claim applications to a Grade 2 Adjudicator, consideration may be given to the last opportunity the Grade 2 Adjudicator has had to decide a complex matter, although the Registrar is not required to refer equal numbers of complex matters to Adjudicators.

2. CLAIMED AMOUNT

In assessing an adjudication application, the Registrar will first identify the claim amount (including GST).

Once the claimed amount is identified, it will generally be used as the initial criteria for identifying what grade of adjudicator may be best suited to decide the adjudication as follows:

| Adjudicator Grade | Claim Amount (including GST) |
|---------------------|------------------------------|
| Grade 1 Adjudicator | Less than \$150,000 |
| Grade 2 Adjudicator | \$150,000 or more |

Under section 16 of the BIF Regulation, a Grade 1 adjudicator who has decided less than 3 adjudication applications will only be referred adjudication applications relating to payment claims of \$25,000 or less.

3. COMPLEXITY OF THE MATERIAL ISSUES IN DISPUTE

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

- Disputes directly related to the construction or the supply of goods and services (e.g. variations, latent conditions, delay claims or valuation of works); and
- Disputes involving areas of legal or other complexity (e.g. jurisdictional arguments or contractual interpretation, such as a right to set off).

If an assessment of the application identifies that there are no areas of complexity, then the Registrar may refer the application to a Grade 1 Adjudicator, subject to the claimed amount and experience requirements prescribed by regulation.

If an assessment of the application identifies that the issues in dispute are complex, then the matter must be referred to a Grade 2 Adjudicator regardless of the value of the payment claim.

4. SPECIFIC SKILLS, EXPERTISE OR QUALIFICATIONS

The Registrar will also consider whether any specific skill, expertise or qualification may be required to assist in deciding a particular adjudication application. This may be where an application includes, for example, complex legal questions or requires high level technical knowledge.

5. OTHER RELEVANT CONSIDERATIONS

The Registrar may have regard to referring adjudication applications involving the same parties to a previous or concurrent adjudication to the same adjudicator.

6. REFERRAL OF ADJUDICATION APPLICATIONS

An adjudicator is to accept or reject an adjudication application as soon as practicable but within four business days (unless the adjudicator has a reasonable excuse) as required under section 81 of the BIF Act.

To assist the adjudicator, the Registrar will provide an adjudicator with an *Adjudication Application Referral Kit*. An adjudicator may choose to use the forms provided in the *Adjudication Application Referral Kit*. Use of the forms is one way to satisfy the requirement for the adjudicator to provide written notice to the claimant, respondent and registrar under section 81 of the BIF Act.

On acceptance of an adjudication application, an adjudicator is to advise the Registrar in writing of:

- Any agent contact details (if applicable); and
- The format of the adjudication application (e.g. electronic or physical copy). For adjudication applications lodged online, a physical copy will only be made available if in excess of 200 pages.

ADJUDICATOR AVAILABILITY

An adjudicator may notify the Registrar in writing, as soon as practicable after becoming aware they will be unavailable to receive adjudication applications.

If an adjudicator is unavailable until further notice, then the adjudicator may notify the Registrar in writing including, when the adjudicator may be available to be referred adjudication applications in the future.

Once notified, the Registrar will not refer an adjudication application to the adjudicator until the Registrar receives written notification that the adjudicator is again available to receive adjudication applications.

ENQUIRIES

Enquiries regarding the Adjudication Referral Policy are to be directed to the adjudication registry registry@qbcc.qld.gov.au.

Need more information?

Visit qbcc.qld.gov.au or call us on **139 333**.

