



Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**



Assessment Policy

Equivalent Experience for Grading of Adjudicators

Under the Building and Construction Industry (Security of Payment) Act 2021



AUGUST 2022

Policy context and background

When the Building Commissioner registers an individual as an adjudicator (or renews the individual's registration), the Building Commissioner (through its delegates in Building and Energy) is required to grade the individual as a Grade 1 or Grade 2 adjudicator.

There are three pathways under which an individual may be eligible to be registered as a Grade 2 adjudicator:

- Adjudicator grading Scenario 1 - the individual has (as an adjudicator under the Act) determined at least 10 adjudication applications, at least 5 of which were related to payment claims for more than \$50,000; or
- Adjudicator Grading Scenario 2 - the individual has (as an adjudicator under the CCA or under a corresponding security of payment law) determined at least 10 adjudication applications, at least 5 of which were related to payment claims or payment disputes for more than \$50,000; or
- Adjudicator Grading Scenario 3 - the Building Commissioner is satisfied that the individual has equivalent experience in dealing with payment disputes in the building and construction industry.

The intent of Adjudicator Grading Scenario 3 is to provide a pathway for applicants to become graded as a Grade 2 adjudicator, in circumstances where their training and professional experience in the construction industry are translatable as equivalent experience.

Purpose of the policy

These guidelines outline factors for consideration when assessing if prospective or current adjudicators registered under the *Building and Construction Industry (Security of Payment) Act 2021* (the Act) meet the equivalent level of experience for the purposes of being graded as a Grade 2 adjudicator under Adjudicator Grading Scenario 3.

Scope

These guidelines apply to Building and Energy staff responsible for the processing and determination of applications for registration as an adjudicator under the Act.

Principles

In assessing equivalence in relation to experience in dealing with payment disputes in the building and construction industry, the following should be considered:

- A person with substantial industry or academic experience who is judged to have a depth of knowledge/skills in the area.
- A subject matter expert with experience obtained through the practice of a profession, including university teaching experience, and from which the professional competency, knowledge, skills and learning of the person can be assessed.

- A senior legal practitioner (for example, a barrister, law firm partner, or construction claims specialist) with substantial experience in representing and/or advising clients in relation to adjudications under the Act, the *Construction Contracts (Former Provisions) Act 2004*, or a corresponding security of payment law.
- A judicial officer with substantial experience determining matters related to construction contracts, reviewing determinations made under the Act, the *Construction Contracts (Former Provisions) Act 2004*, or a corresponding security of payment law, or administrative law appeals.
- A person who is judged to have knowledge and skills at the cutting edge of construction law topics in the area in which they have specialised (for example, a person who teaches in a specialist Masters program; has substantial professional development experience; and has published extensive research in their specialist field).

A **judicial officer** has the same definition as in the Act.

Roles and responsibilities

Determination of questions of equivalent experience will be made only by the Building Commissioner and their authorised delegates.



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