

ADJUDICATE TODAY CASE STUDY



CLIENT
NPL



Using technology to streamline adjudication of complex contractual disputes

Background

NPL offers expert consultancy services for the building and construction industry throughout Australia in claims disputes and contract matters. NPL's role is to help subcontractors, building companies and development conglomerates settle disputes – ranging in worth from \$10,000 and under to tens of millions of dollars. Most cases are contentions over time or quality and they involve complex written contracts.

NPL focuses on Alternative Dispute Resolution (ADR) processes involving an impartial adjudicator rather than by judicial determination.

As part of the formal adjudication process, for each claim, NPL is entitled to select an Authorised Nominating Authority (ANA) to nominate an adjudicator and manage the facilitating process. Having experienced problems with other ANA's, NPL now uses Adjudicate Today exclusively.

Extra time within strict deadlines

In order to enter into an efficient and diligent adjudication process, NPL must prepare extensively detailed applications, payment

schedules and support documents. They can be anywhere from 10 to 30,000 pages in length; most are presented by NPL in PDF files that can be up to two gigabytes.

Says Damian Michael, Principal at NPL, "We like to work to this level of detail and file size because it enables us to do keyword searches to find specific parts of documents at any stage of the adjudication process. Maintaining control over the documents ensures we are on top of the progress of each claim every step of the way."

Adjudicate Today invested heavily in a secure electronic document exchange called Lockbox that allows claimants and respondents to submit all documents easily and quickly. It also generates confirmation receipts to ensure full and accurate records are kept following all lodgements.

"Adjudicate Today makes sure all claims are facilitated efficiently. The ease of submitting documents is paramount to the adjudication process; we must be able to lodge large documents on time according to the strict deadlines – ranging from five to 10 business days. Adjudicate Today's file delivery system is so reliable and proficient, we can actually work on the cases longer

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Damian Michael
Principal, NPL



— right up to the deadline hour - because we know regardless of the file size, we can submit them within minutes.”

Once submitted, further recorded correspondence and confirmations between the appointed adjudicator on Adjudicate Today's panel and the claimants and respondents are often required in order to address any questions for the adjudicator. “Adjudicate Today handles all communications – especially the exchange of documents – methodically, confidentially and reliably,” says Michael. “In some cases, it doesn't stop once the adjudication is given; if the matter is appealed or the respondent refuses to pay, Adjudicate Today ensures further action taken is supported by stringently maintained records and certificates.

“Adjudicate Today also keeps a regularly updated, comprehensive database not just on the cases but on individual adjudicators. This helps to ensure there is never a conflict of interest which can complicate the process further. The level of their efficiency and the lengths they go to keep everyone informed at every stage of the process is rare in this industry.” ■

Security of Payment

‘Security of Payment’ is legislation that provides for the entitlement of contractors, subcontractors, consultants or suppliers in the contractual chain to receive payment due under the terms of their contract from the party higher in the chain. Arbitrary devaluation, late payment and non-payment of progress claims are persistent problems for those who perform construction work or supply goods and services in the construction industry.

Claimants have statutory rights: to progress payments; to claim interest on late payments; to suspend work; and to retain a lawful hold on property.

They also have the right to ‘rapid adjudication’ of disputes over progress payment amounts. This means an independent adjudicator makes an interim determination as to the amount

of progress payment, if any, to be paid to a claimant by a respondent. The respondent is only entitled to make a submission to the adjudicator on the application if they provided a written response to the payment claim.

The role of the Authorised Nominating Authority (ANA)

An adjudicator can only be appointed by an Authorised Nominating Authority (ANA) chosen by the claimant. The procedures and timeframes of the adjudication process are strict. An adjudicator's determination, while not final, is an enforceable judgment. If the respondent does not pay the adjudicated amount by the relevant date, the adjudicator's determination can be registered as a judgment in a court of competent jurisdiction.

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