

BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT 2009 (Tasmania)

Adjudicator Training Course **Expression of Interest**

Dates: Monday, 21 Tuesday 22 and Wednesday 23 June 2010

Venue: T.B.A in Hobart, Tasmania

Cost: \$3,300 (incl. GST) for training

Trainers: Philip Davenport LLB (Australia's foremost adjudicator and author:
Adjudication in the Building Industry 2nd ed. 2004 Federation Press)

**Adrian Ashman, Professor of Education, The University of Queensland
and Member of the Queensland Civil and Administrative Tribunal**

Adjudicate Today is the largest Authorised Nominating Authority (ANA) under the building and construction industry payment legislation in New South Wales, Queensland and Victoria. With the commencement of the Security of Payment Act in Tasmania, Adjudicate Today is applying to be authorised as a nominating authority. Subject to authorisation, we must establish our adjudicator panel in this jurisdiction.

Adjudicate Today is calling for an Expression of Interest from those who wish to be considered as candidates for the course. Those interested **MUST** submit their Curriculum Vitae (of no more than three (3) pages) by Friday, 28 May 2010. Successful candidates will be invited to register for the course by Monday, 7 June 2010.

The adjudicator training course is designed for:

- *Accredited adjudicators who are desirous of applying to join the Adjudicate Today panel of adjudicators in the Tasmania.*
- *Professionals working in the building and construction industry and others who are interested in being registered as adjudicators under Tasmania's legislation. Successful candidates will be given the opportunity of applying to join the Adjudicate Today panel of adjudicators in Tasmania.*
- *Professionals working in the building and construction industry and others who wish to represent clients or their employer in adjudication.*

Adjudicate Today Pty Limited ABN 39 109 605 021

NSW
Suite 2, MVB, 90 Mona Vale Road
MONA VALE NSW 2103
nsw@adjudicate.com.au

VIC
Suite 1, First Floor,
191 Balaclava Road
CAULFIELD NORTH VIC 3161
vic@adjudicate.com.au

QLD
Level 18, 333 Ann Street
BRISBANE QLD 4000
qld@adjudicate.com.au

Introduction

Contracts for construction work in Tasmania or for related goods and services supplied in Tasmania or elsewhere are, with a few exceptions, governed by the *Building and Construction Industry Security of Payment Act 2009* (Tas). An important aspect of the legislation is the right to have disputes over progress payments rapidly determined by an adjudicator. The course is designed to provide a detailed understanding of the Act and adjudication.

Any participant who hopes to become an accredited adjudicator must be familiar with the construction industry and construction contracts. He or she must be computer literate and have access to the Internet.

Participants who appear to have sufficient qualifications and experience and who pass the course will be issued with a "Certificate of Adjudication".

- The certificate is required before Adjudicate Today will consider appointing a candidate to our panel of adjudicators.

Important Points to Consider

- All applicants for appointment to the Adjudicate Today panels must complete the Adjudicate Today course. Current adjudicators who have not passed our course will not be considered for appointment.
- The requirements for the course are demanding. **Not all course participants will pass the course.**
- Passing the course does not guarantee appointment to the Adjudicate Today panel of adjudicators. Appointment to the panel is determined by the Board of Adjudicate Today which considers a number of factors, including the report of the mentoring adjudicator (see below).
- The number of places in the course will be limited to 10.
- **There are no refunds for candidates who fail the course.** There are no exceptions.

Details of the course

The course will be conducted by Philip Davenport, LLB (Australia's foremost adjudicator and author: *Adjudication in the Building Industry* (2nd ed. 2004 Federation Press)). Philip is a solicitor with over 40 years experience in construction law. Philip spent 9 years as a part-time referee on the NSW Building Disputes Tribunal and 10 years as a part time lecturer in the Faculty of the Built Environment, University of NSW. He has been an adjudicator in NSW, Queensland, and Victoria since the commencement of the legislation in the respective States.

The NSW Government engaged Philip as a consultant to assist in the drafting and implementation of the New South Wales adjudication legislation. Philip is the Chief Adjudicator for Adjudicate Today.

Adjudicate Today Pty Limited ABN 39 109 605 021

NSW

Suite 2, MVB, 90 Mona Vale Road
MONA VALE NSW 2103
nsw@adjudicate.com.au

VIC

Suite 1, First Floor,
191 Balaclava Road
CAULFIELD NORTH VIC 3161
vic@adjudicate.com.au

QLD

Level 18, 333 Ann Street
BRISBANE QLD 4000
qld@adjudicate.com.au

Professor Adrian Ashman will be training on how to construct and write an adjudication decision that is concise and comprehensible to the parties.

Fourteen (14) days before the course or upon payment of the course fee (whichever last occurs) each participant will be provided with:

- An updated course outline;
- A comparison of the Tasmanian and New South Wales Acts;
- A list of relevant cases;
- Preparatory exercises;
- Copies of actual adjudication determinations under other Acts;
- Assignment tasks to be completed before the course commences;
- Any updated assessment details;
- A copy of the book: *Adjudication in the Building Industry, 2nd ed. 2004.*

Assessment

Assessment will be based upon three factors, namely:

- Preparation, knowledge, and participation in the course [40%].
The assignment tasks to be completed before the course commences must be presented upon arrival for the first day of the course. Failure to present the assignment tasks at the commencement of the course will render it impossible to pass this module.
- Written examination in class [20%].
The examination will commence at 1:00 pm on Wednesday, 23 June 2010.
- A hypothetical decision [40%].
The decision must be completed within 10 business days of the end of the course.

Preparation, knowledge and participation

The first factor is an assessment by the trainer of the preparation, knowledge, and participation displayed by a participant. Each participant will be expected to have studied in detail the Tasmanian Act and to bring a copy to the course.

Assignment tasks will be allocated to each course participant. The participant must, at the commencement of the course, give the trainer the written assignment.

Participants will bring all allocated materials to class, explain any matter allocated to them and contribute generally to class discussions. This is to test the extent of the participant's preparation and ability to comprehend not only the words of the Act but the wider implications and explain them to others.

The importance of preparation cannot be overemphasised. The course is only three days in duration because participants are expected to be experienced in the building industry and to have already completed extensive preparation. Adjudicators must be capable of independent research and thought.

Adjudicate Today Pty Limited ABN 39 109 605 021

NSW
Suite 2, MVB, 90 Mona Vale Road
MONA VALE NSW 2103
nsw@adjudicate.com.au

VIC
Suite 1, First Floor,
191 Balaclava Road
CAULFIELD NORTH VIC 3161
vic@adjudicate.com.au

QLD
Level 18, 333 Ann Street
BRISBANE QLD 4000
qld@adjudicate.com.au

Examination

The second factor of assessment will be a written examination on the afternoon of Day Three. It will be 'open book'. Participants will be able to use any written materials and their own computer. Usual examination rules apply. After the examination, the trainer will go over the questions, explaining what answers were expected. Exam papers will be exchanged and marked, on a preliminary basis, by course participants.

Assignment

The third factor of assessment is an assignment to write a decision based upon a hypothetical adjudication applications. This is to be returned [typewritten, by post, fax or email] to Adjudicate Today so that it is received within 10 business days. Failure to meet the deadline will mean failure in the course. The assignment will involve writing a decision just as if it was a decision of an actual adjudication application. Sharing of answers between course participants will mean failure in the course.

The purpose is to ensure that the participant decides all the matters that must be decided and provides sufficient reasons. In marking the assignment consideration will also be given to how the decision is set out, clarity and grammar.

Registration

Participants who pass all components of assessment will be awarded the "Certificate of Adjudication". Participants who are awarded the "Certificate of Adjudication" may apply for "mentoring membership" of Adjudicate Today's panel of registered adjudicators.

Adjudicate Today has complete discretion as to who is included on the panel and the removal of anyone from the panel without assigning a reason.

Before inclusion on its panel, an adjudicator must enter a contract with Adjudicate Today. A draft copy of contract is discussed during the course. An important aspect of the contract will concern mentoring the performance of the adjudicator.

Mentoring

For the first two adjudication applications referred to an adjudicator, the adjudicator will be supervised by a mentor who is an experienced adjudicator. The adjudicator must pay the mentor a mentoring fee. This will be a proportion of the adjudication fee. The adjudicator will be expected to discuss the adjudication with the mentor and to show the mentor a draft of the decision for comment before the adjudicator makes a final decision. Adjudicators have found mentoring most helpful.

The function of the mentor is not to help the adjudicator decide the adjudication application. The Act provides that in deciding an adjudication application, the adjudicator can only have regard to certain matters defined by the Act. The function of the mentor is to assist the adjudicator in complying with the requirements of the Act, for example, to see that the adjudicator has made a decision on those matters which the adjudicator has to decide and that the adjudicator has given reasons for his or her decision. After each adjudication is completed the mentor will report to Adjudicate Today on the adjudicator's performance

Adjudicate Today Pty Limited ABN 39 109 605 021

NSW

Suite 2, MVB, 90 Mona Vale Road
MONA VALE NSW 2103
nsw@adjudicate.com.au

VIC

Suite 1, First Floor,
191 Balaclava Road
CAULFIELD NORTH VIC 3161
vic@adjudicate.com.au

QLD

Level 18, 333 Ann Street
BRISBANE QLD 4000
qld@adjudicate.com.au

Contract of Engagement

From the course results, the mentor's report and general observations, Adjudicate Today determines whether to refer further adjudication applications to the adjudicator. Under the contract Adjudicate Today provides a range of services including handling enquiries, providing general assistance to parties on complying with the requirements of the Act, an address for service on the adjudicator, correspondence with the parties, collecting adjudication fees and issuing decisions. For these services Adjudicate Today retains just over one-third of the adjudication fee or as otherwise described in the contract.

Further enquiries may be addressed to Lorraine Djuricin on 1300 760 297.

Expression of Interest

Send your maximum three (3) page CV to Adjudicate Today by close of business on Friday, 28 May 2010 by either:

Fax: 1300 760 220 **OR**

Post: Adjudicate Today Pty Limited
Suite 2, MVB, 90 Mona Vale Road
MONA VALE NSW 2103 **OR**

Email: tas@adjudicate.com.au

COURSE OUTLINE

[There may be changes in the details]

Day 1 - Monday, 21 June 2010

Introduction

- Objectives of the course
- How the course will be conducted
- Requirements for certificate and accreditation
- Submission of mandatory preparatory exercise by candidates
- The relationship between Adjudicate Today and adjudicators
- Role and functions of a NA
- Complaints

The regulatory framework

- Role and functions of the Security of Payments Official
- Regulations
- Ministerial guidelines
- Conditions of authorisation

The language of adjudication

- A review of terms that have a special meaning in the context of adjudication.

Adjudicate Today Pty Limited ABN 39 109 605 021

NSW
Suite 2, MVB, 90 Mona Vale Road
MONA VALE NSW 2103
nsw@adjudicate.com.au

VIC
Suite 1, First Floor,
191 Balaclava Road
CAULFIELD NORTH VIC 3161
vic@adjudicate.com.au

QLD
Level 18, 333 Ann Street
BRISBANE QLD 4000
qld@adjudicate.com.au

Analysis of the Act

- A thorough understanding of the Act is essential. The meaning and significance of each section will be examined
- Choosing between statutory debt or optional adjudication
- Time constraints and extension of time
- How the Tasmanian Act differs from the equivalent New South Wales, Victorian and Queensland Acts

Appointment of the adjudicator

- Statutory obligations
- Probity
- Nomination
- Acceptance
- Security for costs
- Conflict of interest, both perceived and actual
- Fees
- Challenge to jurisdiction
- Disqualification/Stepping down
- Withdrawal of adjudication application
- Settlement by the parties
- Concurrent proceedings
- Previous adjudications, issue estoppel and abuse of process
- Confidentiality

Determining the issues

- Jurisdictional issues
- Onus of proof
- Identifying the issues
- Interim nature of adjudication
- You must determine three matters
- You may determine a fourth
- Two ways of valuing the progress payment
- Valuation in a previous adjudication
- Determining the due date and interest
- Apportioning adjudication fees and reasons

Conduct of the adjudication

- Earliest and latest date for making a determination
- Optional adjudication without payment schedule
- Section 21(4) notice
- What if you can't determine within time
- Seeking further information
- Conference is not a hearing
- Inspection – use blinkers
- What an adjudicator can take into account

Adjudicate Today Pty Limited ABN 39 109 605 021

NSW

Suite 2, MVB, 90 Mona Vale Road
MONA VALE NSW 2103
nsw@adjudicate.com.au

VIC

Suite 1, First Floor,
191 Balacava Road
CAULFIELD NORTH VIC 3161
vic@adjudicate.com.au

QLD

Level 18, 333 Ann Street
BRISBANE QLD 4000
qld@adjudicate.com.au

- Don't use your own expertise
- Dealing with telephone calls from a party
- Principles of natural justice
- Special issues arising when adjudicating disputes over residential structures. Section 19(3)
 - Criteria for determining whether an inspection of a residential structure is appropriate

Case law

- Analysis of cases on adjudication. Each participant is expected to have read all the cases on the case list provided to participants prior to commencement of the course

Day 2 - Tuesday, 22 June 2010

Recap of Day One

- General discussion open to all
- Guest speaker

How to write a determination

- Writing styles and language
- Making a finding on each issue with reasons
- Dealing with issues, including variations
- Setting out and formatting the determination and reasons
- Part payment before determination
- Effect of final decision in other proceedings
- Settlement
- Examination of actual determinations
- Writing a mock determination

After making your determination

- Lien for costs
- Invoicing
- Service of the determination
- The slip rule
- What if you find that you have made a mistake that can't be corrected under the slip rule
- Finality of determination
- Responding to queries about or criticism of your determination
- Don't try to defend your determination
- Answering a summons – submitting appearance
- Liability in contract, tort and under statute
- Private adjudication

Adjudicate Today Pty Limited ABN 39 109 605 021

NSW
Suite 2, MVB, 90 Mona Vale Road
MONA VALE NSW 2103
nsw@adjudicate.com.au

VIC
Suite 1, First Floor,
191 Balaclava Road
CAULFIELD NORTH VIC 3161
vic@adjudicate.com.au

QLD
Level 18, 333 Ann Street
BRISBANE QLD 4000
qld@adjudicate.com.au

Adjudication certificates

- Role of Adjudicate Today
- When and how a claimant requests an adjudication certificate
- What goes in the adjudication certificate
- Affidavit of debt
- Filing adjudication certificate as a judgment
- Correcting an error in an adjudication certificate
- Making an application to set aside judgment
- Enforcing judgment
- Role for mediation
- Explanation of examination and expectations

Day 3 - Wednesday, 23 June 2010

Recap of Days 1 and 2 and covering any matters not completed in days 1 and 2

- General discussion open to all

Examination

- Written, open book examination under examination conditions

Marking the Examination

Review

- Questions
- Explanation of take home assignment and expectations.

© Adjudicate Today Pty Limited

Updated at 7 May 2010

Adjudicate Today Pty Limited ABN 39 109 605 021

NSW

Suite 2, MVB, 90 Mona Vale Road
MONA VALE NSW 2103
nsw@adjudicate.com.au

VIC

Suite 1, First Floor,
191 Balaclava Road
CAULFIELD NORTH VIC 3161
vic@adjudicate.com.au

QLD

Level 18, 333 Ann Street
BRISBANE QLD 4000
qld@adjudicate.com.au

REGISTRATION FORM

Please return this form by:

Fax: 1300 760 220 **OR**

Post: Adjudicate Today Pty Limited
Suite 2, MVB, 90 Mona Vale Road
MONA VALE NSW 2103 **OR**

Email: tas@adjudicate.com.au

Name: _____

Organisation: _____

Address: _____

Tel: _____ **Fax:** _____

Email: _____

You must provide your CV within 2 business days of submitting the Registration Form to be considered for entry into the course. The CV should provide particular emphasis on experience in or related to the building and construction industry as it is expected number of applicants will exceed places available.

Numbers for the course are limited to 10 participants.

COST FOR ADJUDICATION TRAINING

I wish to register for Adjudication Training **on 21, 22, and 23 June 2010** in Hobart Tasmania at a venue to be advised.

☐ Cost \$3,300. (including GST)
Price includes course manual, book (Adjudication in the Building Industry), other course materials, catering and Certificate of Adjudication (upon passing course).

PLEASE TICK THE RELEVANT BOX

- ☐ A cheque for \$ _____ is attached
- ☐ EFT Details: National Australia Bank - Adjudicate Today Pty Limited
BSB: 082 294 A/C: 57150 0017
- ☐ Please invoice me
- ☐ Please bill \$ _____ my credit card (MasterCard, VISA). **PLEASE CIRCLE**

Cardholder Name (as it appears on the card):

Card Number: _____

Expiry date: _____ Signature: _____