

POLICY FOR THE REGISTRATION OF PRACTISING ARBITRATORS

Adopted by resolution of Council on 13 September 2001 and subsequently amended and adopted by Council on 13 November 2008, 18 October 2010 and 18 March 2011.

1. Introduction

- 1.1 This policy statement replaces all previous statements on the subject of grading.
- 1.2 The Articles of Association of the Institute provides for a Register of Members and for a separate Register of Practising Arbitrators.
- 1.3 The Register of Practising Arbitrators identifies those members of the Institute who are available to act as arbitrators and who, in the opinion of Council have the necessary qualifications to so act. It is essential to the function of the Institute as a nominating or appointing authority for arbitrators, that only such persons who, by education, experience and competence are qualified to so act, should be represented to the public as arbitrators. Institute membership of itself does not qualify an individual to be an arbitrator.

2. Register of Practising Arbitrators

- 2.1 The Register of Practising Arbitrators shall comprise those members of the Institute who have been given a grading by Council and have been allocated a Panel or Panels that cover the professional or occupational fields in which the member practises.
- 2.2 The Register of Practising Arbitrators shall be restricted to those members who satisfy Council that they have the knowledge, experience, personal qualities and qualifications necessary to qualify them to be nominated as an arbitrator.
- 2.3 Any member seeking grading and entry on the Register of Practising Arbitrators shall :
 - (a) apply in writing on the prescribed forms for grading and for listing on those Panels on which the applicant considers he or she is qualified to be so listed, providing details of qualifications and experience in the applicant's profession or calling and in the field of arbitration.
 - (b) satisfy Council that he or she has the academic knowledge and experience appropriate for an arbitrator, by completion of education and training to the satisfaction of Council in accordance with Section 8 of this Policy.
 - (c) be interviewed and recommended by an Assessment Panel appointed pursuant to Section 7 of this Policy.
- 2.4 The Council of the Institute may, if it is otherwise satisfied as to the competence of a member to act as an arbitrator, in its unfettered discretion, exempt a member from compliance with any or all of the requirements of this Policy.

3. Panels

- 3.1 The Register of Practising Arbitrators shall be arranged in Panels according to the professional or occupational fields in which the members listed respectively practise.

4. Grading of Arbitrators

- 4.1 Members listed in the Register of Practising Arbitrators shall be graded respectively as Grade 1, Grade 2 or Grade 3, as follows:

Grade 1: Those considered to have wide experience in arbitration and able to deal with large and/or complex arbitrations

Grade 2: Those considered able to conduct arbitrations of medium size, or which are straight forward, within the arbitrator's fields of expertise

Grade 3: Those with less experience who are considered able to conduct small arbitrations which may call for knowledge in restricted or specialised fields

5. Initial Grading of Arbitrators

- 5.1 The prerequisites for Initial Grading as an Arbitrator are:

(a) Candidates MUST hold a certificate of satisfactory completion of the University Course.

(b) Candidates must EITHER:

- Attend one preliminary conference and one or more arbitration hearings over a period of three days incorporating lay and expert evidence and a view, and submit an IAMA Pupillage Record Sheet of attendance at each conference and day of hearing signed by the arbitrator or referee; OR
- Attend equivalent relevant court hearings and submit an IAMA Pupillage Record Sheet of attendance at each conference and day of hearing signed by counsel; OR
- Produce a CPD log of attendance to demonstrate 20 relevant CPD points with a written commentary of 2,000 words.

(c) Candidates MUST attend an Assessment Panel.

(d) Candidates MUST submit the IAMA Pupillage Record or CPD log for consideration by the Assessment Panel.

- 5.2 In considering whether any applicant is suitable for a grading higher than Grade 3, the Assessment Panel shall take into account the requirements of the IAMA Competency Standards for Arbitrators as well as any other matter which the Assessment Panel considers relevant in relation to:

- (a) judicial capacity;
- (b) decision making capacity;
- (c) personality, ability to relate to people and likely acceptance by the parties as an arbitrator capable of dispensing impartial justice;
- (d) attendance at and satisfactory completion of the education and training requirements prescribed by Council under Section 8 of this Policy;
- (e) professional qualifications or training in applicant's field of expertise;

- (f) standing in profession or occupation;
- (g) experience as an arbitrator;
- (h) experience as a court appointed referee;
- (i) experience as an expert witness or court appointed expert;
- (j) experience as an expert appraiser;
- (k) experience as an adjudicator pursuant to statutory requirements;
- (l) experience as a lawyer;
- (m) experience as a pupil;
- (n) knowledge of the law and practice of arbitration;
- (o) knowledge of substantive law;
- (p) contract administration experience;
- (q) knowledge of contract documents and their application;
- (r) satisfactory completion of grading examinations (if applicable).

5.3 If and when required by the Assessment Panel, an applicant for grading shall provide such further information and documentary material as the Assessment Panel shall reasonably require in order to complete its assessment and recommendation in accordance with Section 7 of this Policy.

6. Role of Chief Executive Officer in Grading

6.1 The Chief Executive Officer shall be responsible to the Council for the administration of this Policy, including the following:

- (a) preparation, updating and presentation to Council for approval of Rules, Guidelines and Policy Statements for grading and re-grading of arbitrators and for listing on Panels;
- (b) processing of all applications for grading and re-grading including liaison with Assessment Panels;
- (c) the submission of all applications to Council for grading and re-grading, together with a report and recommendation;
- (d) publication of the Register of Practising Arbitrators; and
- (e) liaison with, and formulation of recommendations to, the Education & CPD Committee in respect of the subject matter, timing, form and conduct of the education and training requirements for grading and re-grading.

7. Assessment Panel

7.1 Following receipt of an application for grading or re-grading, the relevant Chapter Administrator shall convene an Assessment Panel as soon as reasonably practicable after receiving a request from the Chief Executive Officer. The Assessment Panel shall comprise at least three members who are Grade 1 or Grade 2 Arbitrators. Unless otherwise agreed by the Chief Executive Officer, the Assessment Panel shall include a National Councillor and/or Chapter Chairman (or past Chairman), and a member of the same profession as the applicant. Where the application is for re-grading, the Assessment Panel shall include two Grade 1 Arbitrators.

7.2 In applications for initial grading:

- (a) The Assessment Panel shall assess the application for grading having regard to the criteria set out in Sections 4.1 and 5.2 of this Policy, and any further information and documentary material required by the Assessment Panel pursuant to Section 5.3 of this Policy.
- (b) The Assessment Panel shall complete the assessment form in Annexure A to this policy, or such other assessment form as may be approved by Council from time to time.
- (c) The Assessment Panel shall recommend a grade, or that an applicant not be graded, and shall provide reasons for its recommendations.

7.3 In applications for re-grading:

- (a) The Assessment Panel shall assess the application for re-grading having regard to the criteria set out in Sections 4.1, 5.2 and 9.2 of this Policy, the material provided by the applicant pursuant to Section 9.3 of this Policy, and any further information and documentary material required by the Assessment Panel pursuant to Section 9.5 of this Policy.
- (b) The Assessment Panel shall complete the assessment form in Annexure B to this Policy, or such other assessment form as may be approved by Council from time to time.
- (c) The Assessment Panel shall recommend whether an applicant should be re-graded (and, if so, to what grade), and shall provide reasons for its recommendations.

7.4 Where Council (or the Executive) considers it appropriate, it may require the Chief Executive Officer to convene an Assessment Panel, to act in lieu of an Assessment Panel established by a Chapter pursuant to Section 7.1 hereof.

8. Education and Training

8.1 Council may approve University Courses for the education and training of members seeking grading and entry on the Register of Practising Arbitrators. Such courses will be held annually, providing sufficient enrolments are obtained and appropriate arrangements can be made with a University or Universities for the provision of such course.

8.2 Satisfactory completion of an approved University Course is a pre-requisite for grading unless:

- (a) the applicant is qualified under Section 8.3; or
- (b) Council grants exemption from completion of an approved University or Institute Course to an applicant who has other qualifications which Council considers sufficient to justify exemption.

Persons seeking exemption under Section 8.2.2 shall apply in writing giving full details of their qualifications together with such documents or information as Council requires to assess whether the qualifications are sufficient for exemption.

8.3 If University Courses are not held pursuant to Section 8.1 above, then Council may authorise Chapters to conduct General Courses and Advanced Courses (“Institute Course”) for the education and training of members seeking grading and entry on the Register of Practising Arbitrators. Any such General and Advanced Courses shall be held as and when directed by Council provided sufficient enrolments are obtained, and shall be controlled by Council’s Education and Professional Development Committee, which will delegate to a Chapter the detailed organisation of the courses. Subjects, speakers and course content shall be approved by Council. The following requirements in respect of education and training shall be met by applicants for grading who have attended General and Advanced Courses conducted under this Section 8.3:

- (a) Satisfactory attendance and completion of both General and Advanced Courses prior to sitting for a grading examination. Satisfactory completion of a General Course shall be a pre-requisite to attendance at an Advanced Course.
- (b) Satisfactory completion of the Institute's grading examination at a level approved by Council. Such examination shall be held as and when directed by Council and shall be a written examination.
- (c) The Education and Professional Development Committee shall set and mark the grading examination and shall forward the results achieved by candidates to the Chief Executive Officer. The Chief Executive Officer will notify candidates of the results of the examination. The Chief Executive Officer shall also make the results available to Assessment Panels convened under Part 7 of this Policy.
- (d) Council may grant exemption from the examination and/or attendance at courses having regard to the applicant's:
 - (i) qualifications and/or experience in the law and practice of arbitration;
 - (ii) appropriate experience in arbitral or judicial procedures; and/or
 - (iii) professional standing.

9. Re-grading of Arbitrators

9.1 Subject to Section 9.2 hereof, a member listed in the Register of Practising Arbitrators as a Grade 2 Arbitrator or Grade 3 Arbitrator may apply for re-grading.

9.2 An application for re-grading may only be made:

- (a) if the applicant has, in the period of 12 months before applying for re-grading, completed the number of hours of eligible training required under the Institute's CPD Policy;
- (b) if a period of 2 years has elapsed from the date of the determination of the grading from which re-grading is sought; and
- (c) if a period of 12 months has elapsed from the date of the determination of a previous unsuccessful application for re-grading.

9.3 An application for re-grading shall be made in writing and shall set out full particulars of the applicant's training and experience in dispute resolution since the current grade was awarded (together with copies of all relevant documents) including:

- (a) experience gained as an arbitrator, expert appraiser, court-appointed referee etc, pupil, or lawyer engaged in dispute resolution;
- (b) provision of copies of two reasoned arbitral awards, or reports as an expert appraiser or court-appointed referee etc (in confidence);
- (c) attendance at Masterclasses conducted by the Institute (applicants for re-grading to Grade 1)
- (d) attendance at other educational and CPD activities conducted by the Institute;
- (e) attendance at courses, training, seminars etc on dispute resolution conducted by other bodies;
- (f) papers, articles or other activities in dispute resolution;
- (g) completed CPD record sheet, setting out details of CPD activities completed in the 12 months preceding the application;

- (h) date of award of current grading and dates of any prior unsuccessful applications for regrading;
- (i) any other material the applicant considers relevant.

9.4 On receipt of an application for re-grading, the Chief Executive Officer shall consider the material submitted and, if satisfied that the application complies with the requirements of Section 9.2 and 9.3, shall refer the application to an Assessment Panel formed pursuant to Section 7 of this Policy.

9.5 If and when required by the Assessment Panel, an applicant for re-grading shall provide such further information and documentary material as the Assessment Panel shall reasonably require in order to complete its assessment and recommendation in accordance with Section 7 of this Policy.

10. Review of Grading

10.1 The grading of all Grade 1 and Grade 2 arbitrators shall be reviewed every three years ('the triennial review'). All Grade 1 and Grade 2 arbitrators shall only hold such grading until the next triennial review, unless Council otherwise determines pursuant to Sections 10.2 or 10.3 below.

10.2 Council may determine that a particular arbitrator may not be subject to the general requirement for triennial review in appropriate circumstances, for example where that arbitrator has been recently graded or re-graded.

10.3 Council may, of its own motion, determine that the grading of any graded arbitrator should be reviewed at any time, if the circumstances are such as to reasonably justify such review before the next triennial review.

10.4 Unless otherwise determined by Council, maintenance of an arbitrator's grading in the triennial review shall be subject to:

- (a) satisfactory completion of a Masterclass since the last triennial review;
- (b) completion of the number of hours of eligible training required under the Institute's CPD Policy;

and the review shall be conducted in the following manner:

- (c) Written notice shall be given by the Chief Executive Officer to each Grade 1 or Grade 2 arbitrator of the date of the triennial review, requiring submission of the material on which that arbitrator relies as justifying retention of the arbitrator's grading, and specifying the date by which any such material is to be submitted;
- (d) Each Grade 1 or Grade 2 arbitrator shall submit to the Chief Executive Office by the date specified (or such extended date approved by the Chief Executive Officer), the material on which that arbitrator relies as justifying retention of the arbitrator's grading, including such of the material referred to in Section 9.3 sub-paragraphs (a) to (i) and in subparagraphs 10.4(a) and (b) hereof as may be appropriate in the circumstances.
- (e) The review shall be conducted by the Institute's Professional Affairs Committee, or such other persons nominated by Council, who:
 - (i) may require the submission of further material from a particular arbitrator or arbitrators including material referred to in Section 9.3 sub-paragraphs (a) to (i) as may be appropriate in the circumstances; and
 - (ii) on completion of their review, shall submit their recommendations to Council for its approval as soon as reasonably practicable.

- (f) In the event that the Professional Affairs Committee concludes that an arbitrator should be removed from or downgraded in the Register of Practising Arbitrators, the Committee shall provide to the Chief Executive Officer its reasons for that decision.

10.5 As soon as reasonably practicable after consideration of the recommendations by the Council, the Chief Executive Officer shall advise each Grade 1 or Grade 2 arbitrator of the decision of Council in respect of his or her grading.

10A. Commercial Arbitration Bill 2010

- 10A.1 This provision applies in addition to the requirements of clauses 5, 9 and 10 of this Policy where an applicant for initial grading or a graded arbitrator proposes to carry on practice in a jurisdiction where there is in force legislation based on the *Commercial Arbitration Bill 2010*, adopted by the Standing Committee of Attorneys General in May 2010 (“new legislation”).
- 10A.2 In considering applications for Initial Grading, Assessment Panels shall take into account whether the applicant has an appropriate level of familiarity with the new legislation. Appropriate familiarity may be demonstrated by successful completion of a University Course, where the University Course deals with the new legislation as part of the curriculum or by successfully attending a course approved by Council dealing with the operation of the new legislation.
- 10A.3 In addition to the requirements set out in clause 9.3 of this Policy, an application for re-grading shall set out full particulars of matters relevant to the applicant’s familiarity with the new legislation. The Assessment Panel considering an application for re-grading shall consider whether the applicant has an appropriate level of familiarity with the new legislation. Appropriate familiarity may be demonstrated by successful attendance at a Masterclass or other course approved by Council dealing with the operation of the new legislation.
- 10A.4 In carrying out the review of an arbitrator’s grading under clause 10, the review shall take into account whether the arbitrator has an appropriate level of familiarity with the new legislation. Appropriate familiarity may be demonstrated by successful attendance at a Masterclass or other course approved by Council dealing with the operation of the new legislation.
- 10A.5 In addition to the requirements of clauses 10A.2 to 10A.4 above, as a condition of maintaining their existing grading, grade 3 arbitrators are required to have an appropriate level of familiarity with the new legislation. Appropriate familiarity may be demonstrated by successful attendance at a Masterclass or other course approved by Council dealing with the operation of the new legislation.

10B. Substantial Changes

- 10B.1 This provision applies in addition to the requirements of clauses 9, 5, 10 and 10A of this Policy where in the opinion of Council a substantial change to the law or practice of commercial arbitrations has taken place which requires an appropriate degree of familiarity on the part of Arbitrators.
- 10B.2 When considering applications for initial grading or re-grading, Assessment Panels shall take into account whether the applicant has an appropriate level of familiarity with the substantial change, which may be demonstrated by successfully attending a Masterclass or other course approved by Council dealing with the substantial change.
- 10B.3 In carrying out a review of an Arbitrator’s grading under clause 10, the review shall take into account whether the Arbitrator has an appropriate level of familiarity with any substantial change. Appropriate familiarity may be demonstrated by successful attendance at a Masterclass or other course approved by Council dealing with the substantial change.
- 10B.4 In addition to the requirements of clauses 10B.2 and 10B.3 above, as a condition of maintaining their existing grading, grade 3 arbitrators are required to have an appropriate level of familiarity with any substantial change to the law or practice of commercial arbitrations. Appropriate familiarity may be demonstrated by successful attendance at a Masterclass or other course approved by Council dealing with the substantial change.

11. Procedures for Grading and Re-Grading

- 11.1 Applications for grading or re-grading must be made on the form obtainable from Chapter Offices and forwarded to the Chief Executive Officer.
- 11.2 The Chief Executive Officer shall process applications for grading or re-grading in the following manner:
- (a) acknowledge receipt of the application, and advise the applicant that the Chapter Administrator will advise him/her of a date and time for an interview.
 - (b) request the Chapter Administrator to convene an Assessment Panel in accordance with Section 7.1, and to notify the applicant of the date and time of the interview.
 - (c) forward to the Chapter Administrator the application form and other supporting material submitted by the applicant, together with details of examination results or other relevant available information, as well as proforma assessment forms.
 - (d) refer the completed assessment form to Council for consideration at its next meeting.
- 11.3 In conducting the grading or re-grading interview, the Assessment Panel shall comply with the provisions of Sections 5 and 9 of this Policy and any other requirements prescribed by Council from time to time. As soon as reasonably practicable after the interview, the Assessment Panel shall forward the completed assessment forms, completed and signed by each member of the Assessment Panel, to the Chief Executive Officer for submission to Council.
- NOTE:** Recommendations such as “subject to undertaking pupillage” or “subject to attendance at a course/class” should not be submitted and may not be considered by Council.
- 11.4 As soon as reasonably practicable after Council has considered the recommendation for grading or regrading, the Chief Executive Officer will advise the applicant of Council's decision, and shall provide a copy thereof to the relevant Chapter office.

12. Failure to Comply with Continuing Professional Development Scheme

- 12.1 In the event that the Professional Affairs Committee determines that an arbitrator should be removed from (or re-graded in) the Register of Practising Arbitrators by reason of a failure to comply with the requirements of the Continuing Professional Development Scheme and notifies the Council and member accordingly, that arbitrator shall be so removed (or re-graded), subject to a right of appeal to the Council in the following manner.
- 12.2 An appeal against the decision of the Professional Affairs Committee must be commenced by written notice, setting out fully the grounds of appeal, to be received by the Chief Executive Officer within 21 days of the date of notice of the determination of the Professional Affairs Committee, or within such extended period as the Council on good cause may permit. Any material upon which the arbitrator relies must be provided with the notice of appeal.

13. Council's Decision Final

- 13.1 The decision of Council on any matter arising under this Policy is final and binding, and Council is not required to give a reason or reasons for any such decision.