

Nomination Services Policy & Procedures

Preamble

As the leading dispute resolution membership organisation in Australia and New Zealand, Resolution Institute has the important business function of Nomination Services. Resolution Institute may act as an appointing body such as an Authorised Nominating Authority (ANA) under various legislative regimes, or through other ad-hoc or contractual arrangements. Through these arrangements, Resolution Institute acts as an independent, impartial and neutral third-party organisation to nominate the most appropriate accredited dispute resolver with relevant expertise. Resolution Institute carefully considers the nature of the dispute, the experience and knowledge required, relevant accreditations, location and price point to nominate a professional to assist the parties in the resolution of any given matter.

The primary consideration of any nomination made by Resolution Institute is to provide the disputing parties with the most appropriate dispute resolver for their dispute.

The policy and procedures for Resolution Institute are set out below.

Policy

On receipt of an application to appoint a dispute resolver for:

- Adjudications
- Arbitrations
- Expert Determinations
- Mediations
- Conciliations

Resolution Institute will appoint a dispute resolver with due regard to:

- The provision of a high quality, timely, efficient and cost-appropriate alternate dispute resolution service
- The type and nature of dispute
- Specific requirements of parties to the dispute
- Legislative and/or contractual requirements
- The appointment of a dispute resolver with appropriate experience, standing in the community, qualifications, current accreditation, professional membership of Resolution Institute and standing within peer group
- Availability of qualified dispute resolvers to conduct and complete the dispute resolution process in a timely way

- Conflict of Interests of potential dispute resolvers
- Reputation of the dispute resolver and past experiences with that dispute resolver (either positive or negative)
- Past contribution and service of the dispute resolver to Resolution Institute
- Diversity considerations including, but not limited to gender, age, experience and qualifications, and cultural background

Resolution Institute is committed to diversity and inclusion and has a comprehensive approach to ensuring that all dispute resolvers regardless of their gender, age, experience and qualifications, and cultural background, have access to appropriate nomination opportunities.

The appointed dispute resolver is expected to specify an estimate of fees in the contract the dispute resolver has with the parties. The dispute resolver is also encouraged to set a reasonable fixed fee for low quantum matters.

Roles and Responsibilities

Chair of Resolution Institute

- Governance Standards of Nominations Services
- Appointment of Dispute Resolvers for Arbitrations, Expert Determinations and Mediations

Chief Executive Officer

- Reporting to the board
- Ensuring Governance Standards are met
- Oversight of operational standards ensuring they are met
- Risk management and escalation of issues and/or complaints
- In partnership with the Chair of the Resolution Institute Determinative Committee, conduct the regular review process of determinative panels
- Promoting to government, industry and law firms the use of Resolution Institute dispute resolution clauses and nomination services

Chief Finance Officer

- Operational management of Nomination Services
- Consulting with Nominations Services Officer(s) on nominations of dispute resolver
- First point of escalation and resolution for issues and/or complaints
- Nomination Reporting for both internal and external purposes, as required by regulators including quantitative information (number, type, classification etc of nominations) and qualitative reporting (name of dispute resolvers nominated for publication purposes as appropriate)
- Strategic planning to continually improve nomination processes
- Coordinate the regular review process of determinative panels

Nomination Services Officer(s)

- Day-to-day administration of Nomination Services
- Preparation of short lists of Dispute Resolvers for consideration for arbitrations, expert determinations, and mediations
- Identifying Adjudicators for adjudications
- Assist Chief Finance Officer in the planning to continually improve nomination processes
- Assist Chief Finance Officer in preparation of internal reports and reports for regulators including quantitative information (number, type, classification etc of nominations) and qualitative reporting (name of dispute resolvers nominated for publication purposes as appropriate)
- Liaising with Dispute Resolvers during the conduct of resolving matters

Chair of Professional Groups/Local Councils

- Consultative role in the appointment of dispute resolvers for matters Resolution Institute has been asked to nominate
- Strategic advice to continuous improvement of Nomination Services processes
- Working with staff to market the service to local stakeholders including in respect of government, industry and law firms

Chair of the Resolution Institute Determinative Committee or Facilitative Committee (RIDC & RIFC)

- Confidential guidance to the Chair of Resolution Institute in his/her role of nomination appointments (at the discretion of the Chair)
- Act as nominator for rare matters where it is determined the Chair of Resolution Institute is the most appropriate dispute resolver
- Coordinate and provide feedback from the RIDC on policy and procedural matters relating to the nominations of dispute resolvers
- In partnership with the CEO, conduct the regular review process of panels
- Provide a sounding board and referral to appropriate source of advice to the Resolution Institute Nominations Service Officer(s)

Procedures: Arbitrations, Expert Determinations & Mediations

1. Initial Review of Applications

For each nomination application, the Nomination Services Officer completes a compliance check of the application with all supporting documentation submitted with due consideration of the technical nature and complexity of the dispute. Then the Nomination Services Officer considers a core set of factors and other features unique to the circumstances of the dispute including the:

- Technical Nature of Dispute
- Jurisdiction
- Quantum of Claim
- Qualifications, Experience and Expertise required
- Specific requirements of applicant

2. Consideration and Recommendation/Shortlisting

Following the initial review, a Nomination Request Summary is prepared setting out the key details and compliance criteria of the matter including preparing a short list of dispute resolvers.

In preparing the shortlist of dispute resolvers the Nominations Services Officer will:

- Assess the appropriate experience, reputation, standing, accreditation, qualifications, and grading where applicable, of the available professional members (paid up) for the dispute resolution process.
- Ensure as far as practical the qualifications, experience and location of the shortlisted dispute resolvers match the criteria as set out in the application.
- Consider how many and how recently members have received nominations from Resolution Institute including whether or not the dispute resolver has availability of time to efficiently conduct the process

In the circumstances where a professional (financial) member cannot be identified to match the criteria and requirements of the application the Nomination Services Officer will discuss with both the CEO and CFO to provide an alternative for consideration on the shortlist.

3. Consultation

When the shortlist is completed the Nomination Services Officer will consult with the Chair (or delegate) of the appropriate local Resolution Institute Council to identify any unforeseen issues relating to the proposed shortlist, or to identify other appropriate dispute resolvers not on the shortlist, while taking into account any issues of conflict of interest, risks of independence, bias and impartiality.

The Nominations Services Officer and CFO should consider any potential conflict of interests (both perceived and actual) relating to the matter and the Chair (or delegate) prior to consultation.

It should be noted that the consultation step is one of information sharing only, to better inform the Chair in his/her capacity of appointing a dispute resolver.

4. Appointment

The Nomination Services Officer will then forward the Nomination Request Summary to the Chief Financial Officer for final review following which will submit to the Chair of the Resolution Institute for consideration and approval.

The Chair shall send a short email to the Nominations Services Officer communicating who the Chair has decided to nominate for the particular dispute.

Following the nomination by the Chair of Resolution Institute, the Nomination Services Officer will contact the nominee to determine whether there are any conflict of interest issues (real or perceived), and confirm their availability to accept the matter and discuss in general the nature of the dispute, fielding any queries in the matter. Reference may be had to the IBA Guidelines on conflicts of interest. The discussion will also include the relevant professional fee rate applicable.

The Nominations Officer will then issue to the dispute resolver the following:

- Acceptance and Declaration Form
- Notice of Completion
- Draft Notice of Nomination to Parties

The proposed nominee will be required to complete and return Acceptance and Declaration Form.

A confirmation of the appointment email shall be sent by the Nominations Services Officer on behalf of the Chair (and copying in the Chair) to the nominated dispute resolver.

5. Post Appointment

Upon receipt of the signed Acceptance and Declaration Form, the Notice of Nomination to Parties will be issued by Resolution Institute whereupon the dispute resolver is then able to liaise directly with the parties to enter a formal engagement.

The Nomination Services Officer will manage and administrate the matter on an ongoing basis and check the completion status of all matters until the Notice of Completion is returned and the Nomination Fee is issued.

Procedures: Adjudications

Building and Construction Industry Security of Payment Acts and Regulations (NSW) (VIC) (SA) (TAS) (ACT)

The Authorised Nominating Authority (ANA) Conditions of Authorisation specify that the Authorised Nominating Authority ('ANA') must develop and maintain a procedure for the selection and nomination of Adjudicators which is characterised by being:

- Expeditious
- fair without favouritism or self-interest
- identifies accredited adjudicators who are suitably qualified and whose skills are appropriate to the particular adjudication application
- ensures that any issues of conflict of interest is addressed prior to giving effect to the nomination

As an ANA Resolution Institute is responsible for maintaining a panel of Adjudicators for each applicable State from which nominated adjudicators are chosen from. All members of the panels are professional (financial) members of Resolution Institute.

1. Initial Review of Applications

Following receipt of an Adjudication Application, the Nomination Services Officer will conduct a compliance check of all documentation submitted in accordance with the legislative requirements of the relevant jurisdiction. Noting:

- History of the dispute (background)
- Type of dispute

- Complexity of issues
- Quantum
- Technical specialisation
- Sensitivity

2. Consideration and Identifying an Adjudicator from the Relevant Panel

In identifying a suitable adjudicator from the relevant panel, the Nomination Services Officer will:

- Assess the appropriate accreditation, qualifications, of the adjudicator
- Ensure as far as practical the qualifications, experience of the identified adjudicator match the criteria as set out in the application
- Consider how many and how recently the adjudicator has received nominations from Resolution Institute

3. Consultation

When the adjudicator has been identified the Nomination Services Officer will consult with the designated member of the appropriate local Resolution Institute Council (exclusive of Adjudicator panellists) to ascertain any unforeseen issues relating to the proposed adjudicator, or to identify other appropriate adjudicators not identified, while taking into account any issues of conflict of interest, risks of independence, bias and impartiality.

4. Appointment

The Nomination Services Officer, following consultation with the Chief Finance Officer, will make contact with the identified Adjudicator to discuss the matter in general and determine:

- a) any conflict of interest
- b) availability to accept the matter
- c) hourly professional fee rate including any relevant fixed fee schedule for low quantum matters subject to the regulatory requirements of the jurisdiction.

The Nomination Services Officer will then email the Adjudicator with a conflict of interest check to be signed and returned.

5. Post Appointment

Upon verbal and/or written confirmation of conflict check clearance, the Nomination Services Officer will email an Adjudicators Brief including an:

- a) Adjudication Checklist
- b) Acceptance Form
- c) Summary of Determination

At the same time, the Nomination Services Officer will issue a Notice of Nomination to the Parties with details of the Adjudicator.

The Adjudicator must serve a Notice of Acceptance to the Parties and Resolution Institute pursuant to legislation and will then complete the Determination within the requisite timeframe. Resolution

Institute reports to the Regulator on the Adjudication Application lodged and acceptance by the Adjudicator so nominated

The Nomination Services Officer will continue to manage the process in the administration of the matter while meeting the reporting requirements of the regulator, as well as, attending to any requests by the Adjudicator such as an extension of time or requests for further submissions, dealing with queries, providing guidance, direction and support and capturing and recording data.

The Resolution Institute Nomination Fee will be invoiced upon receipt of the tax invoice for the Adjudicator's Fee to the Parties prior to the release of the Determination.

Upon release, the Determination will be reviewed by the Nomination Services Officer to record the details of the decision and ensure the reporting obligations of each Regulator in each jurisdiction are met including notifying the Regulator that the matter has been determined and attaching a copy of the decision.

Building and Construction Industry Security of Payment Acts and Regulations (WA only)

Following receipt of an application, the Nominations Officer will refer the application to the current Duty Appointor, a member of the Perth Professional Development Group (PDG) / Council, who will, in consultation with the Nominations Officer, recommend an adjudicator from the WA panel of adjudicators. The Nominations Officer will keep the Duty Appointor apprised of current accredited and financial adjudicator members for consideration for appointment. The selection of an adjudicator is consistent with the policy and has due regard to the frequency pattern of past nominations.

The Duty Appointor will make contact with the selected adjudicator to determine availability and discuss in general the nature of the matter and whether there are any conflict of interest issues. The discussion will also include the option of a fixed fee for low quantum matters]

The Nominations Officer will then:

- a) email the nominated adjudicator with a notice of appointment, noting their oral advice to the conflict of interest check and confirming arrangements in regard to the appointee fee and requirement to provide a copy of the subject determination to the Nominations Officer (unless either of the parties notes its objection).
- b) issue a notice of completion to the adjudicator.
- c) at the same time, notify the parties of details of the application and appointed adjudicator.
- d) provide notification of the application details and appointment made to the Building Commissioner in accordance with the statutory timeframe (within one business day of the appointment)
- e) The appointee fee will be determined upon receipt of the notice of completion.
- f) The Nominations Officer will circulate the determination to the Perth PDG review panel members on receipt from the appointed adjudicator. Extract from appointment notice "This initiative is designed to enable Resolution Institute to improve the quality of its membership's determinations and promote consistency... and will be used for the purpose

of identifying matters that require attention through the established professional development program.”

6. Annual Review of Adjudication Panels

The Chair of the Resolution Institute Determinative Committee and CEO will, in consultation with the Chair of the Adjudication Sub Committee and Local Council Chairs will conduct a regular review of specific Adjudication panels with any recommendations to be signed off by the Chair of Resolution Institute.

Nominating the Chair of Resolution Institute

1. Ordinarily, the Chair will not nominate or appoint themselves as an arbitrator, mediator, conciliator, expert determiner or other dispute resolver (“the dispute resolver”) in response to any nomination or appointment which is received by Resolution Institute.
2. In the rare event that the CFO and CEO determines that the Chair is most appropriately qualified person to be nominated or appointed as a dispute resolver due to their particular expertise or experience or other special circumstances, the CEO will consult with the Chair of the Resolution Institute Determinative Committee about the reasons for nominating the Chair before taking further action.
3. The Chair of the RIDC will consider such determination and the reasons, together with any other potential candidates considered for nomination, and why the Chair is the most appropriate dispute resolver for the matter at hand as per the Resolution Institute principle of nominating the most appropriate qualified dispute resolver for each matter.
4. If the Chair of the RIDC agrees with the proposed nomination of the Chair, then they will direct the Chair to nominate or appoint themselves as the dispute resolver.
5. If the Chair of the RIDC does not agree that the Chair should be nominated for the given matter, then the normal policy and procedure applies.

Reporting

The Chief Financial Officer will, prepare quarterly reports detailing:

- Statistical analysis of nomination applications, closed matters where applicable and withdrawn matters.
- Nomination income and trend analysis
- Names of nominated dispute resolvers broken down by state

Reports will be provided to the Resolution Institute Board and relevant Resolution Institute Committees.

Approval and Review Details

Approval and Review	Details
Approval Authority	Board
Committee to Approval Authority	Resolution Institute Determinative Committee
Responsible Person	CEO and Chair
Original Approval Date	
Scheduled Review Date	
Version	FINAL

Relevant Documents

[IBA Guidelines Conflict of Interest](#)