

Continuing Professional Development Guidelines for Adjudicators

This document constitutes the guidelines in which the Secretary (Commissioner for Fair Trading) specifies the continuing professional development required to be completed each year by an adjudicator under clause 19(4) of the *Building and Construction Industry Security of Payment Regulation 2020*.

The guidelines have legal effect from 1 September 2020. In accordance with clause 19(3) of the Building and Construction Industry Security of Payment Regulation 2020, the requirement to complete CPD specified by these guidelines commences on 1 September 2021.

DATED the **XX** day of **XX** 2020.

INSERT COMMISSIONER'S DIGITAL SIGNATURE HERE

ROSEMARY ANN WEBB

COMMISSIONER FOR FAIR TRADING

DEPARTMENT OF CUSTOMER SERVICE

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1. Glossary of terms

Words and expressions used in these guidelines have the same meaning as they have in the *Building and Construction Industry Security of Payment Act 1999* (the **Act**) and *Building and Construction Industry Security of Payment Regulation 2020* (the **Regulation**).

Adjudicator	means the person appointed in accordance with the Act to determine adjudication applications.
Authorised Nominating Authority (ANA)	means a person authorised by the Minister under section 28 of the Act to nominate persons to determine adjudication applications.
Required continuing professional development (CPD)	means the CPD required to be completed each year by an adjudicator as specified in this document.
CPD period	means an adjudicator's CPD period of 12 months.
CPD Guidelines	means this document.
CPD year	means from 1 September in one year to August 31 in the following year.
Secretary	means the Commissioner for Fair Trading, Department of Customer Service.

2. Introduction

Section 18(2)(b) of the Act enables the regulations to prescribe circumstances in which a person is ineligible to be an adjudicator. Using this head of power, clause 19(2) and 19(4) of the Regulation provide that a person is ineligible unless they have completed the CPD requirements specified by the Secretary's guidelines.

These guidelines set out the CPD required to be completed by adjudicators and how to comply with the requirement by undertaking certain training and educational activities. It also provides a template at Appendix 1 to assist adjudicators with recording their CPD activities.

Parties to adjudication should have confidence that an adjudicator will not only be competent but also be able to apply a diligent and independent mind to the issues in dispute and articulate the reasons for arriving at a decision in a clear and comprehensive manner. The CPD requirements outlined in these guidelines aim to provide adjudicators with ongoing skills, knowledge and competencies to conduct the adjudication process, achieve uniformity in outcomes and resolve disputes in accordance with the Act. Mandatory CPD will also ensure that adjudicators continually update their knowledge and skills in line with current industry practice.

To support the new CPD requirements, adjudicators will be responsible for maintaining and providing a copy of their record of CPD activities to an ANA at a time determined by an ANA.

3. Compliance with CPD requirements

3.1 CPD points

An adjudicator must accumulate 10 CPD points in each CPD year.

Within those 10 CPD points, an adjudicator must obtain 1 point for each of the compulsory topics below (a total of 3 CPD points) each year.

- a) **Legal principles and concepts** (e.g. principles of contract law, principles of construction law, construction contracts, construction projects or reading of the Act and the Regulation);
- b) **Practice and procedure** (e.g. practical aspects of adjudication, adjudication procedure, reading payment schedules or decision making and complaint handling practices); and
- c) **Ethics** (e.g. impartiality, confidentiality or conflicts of interest).

3.2 Attaining your CPD points

There are a variety of activities an adjudicator can participate in to obtain CPD points. These include attending seminars, workshops, lectures, or conferences, participating in self-directed learning, reflecting on practice through discussion with another adjudicator or undertaking formal tertiary studies.

Section 3.5 sets out the full list of CPD activities an adjudicator can participate in and the CPD point(s) that will be accumulated from completing each CPD activity. Further information on point entitlement is provided at **section 3.4**.

Adjudicators should exercise their judgement in selecting the most appropriate CPD activities that would extend their technical knowledge, competence and skills in relation to a topic.

The following example (with reference to the table at **section 3.5**) demonstrates how an adjudicator can accumulate 10 CPD points, including 3 CPD points covering the compulsory topics.

John is an adjudicator. During the CPD year, John completes the following:

- *5 hours of general education by attending 2 x 1-hour training seminars and 3 x 1 hour training workshops. One of the training seminars was focused on the principles of contract law, and one of the training workshops was focused on reading payment schedules;*
- *1 hour of reflecting on practice with his adjudicator colleague Samantha where they discussed judicial ethics; and*
- *4 hours of course work in his postgraduate course at the University of Sydney.*

Under this example, John has completed a total of 10 hours of CPD activities, with each hour being equivalent to 1 CPD point. John has also ensured that he completed at least 1 CPD point in each of the compulsory topics by:

- *attending a training seminar for 1 hour on the principles of contract law (legal principles and concepts);*
- *attending a training workshop for 1 hour discussing how to read payment schedules (practice and procedure);*

- completing 1 hour of reflection on practice with colleague Samantha (another adjudicator) where they discussed conflicts of interest (ethics).

If, for example, John had not completed an hour of reflection discussing ethics with Samantha, John would need to complete another CPD point which was focused on ethics (even if he had already completed 10 CPD points in the CPD year).

In this example, John would have completed 11 CPD points. As this exceeds the 10 CPD point requirement for the CPD year, John could carry over 1 CPD point for a non-compulsory topic into the following CPD year.

3.3 Surplus points

A surplus point refers to a CPD point earned in a CPD year in which the adjudicator exceeded the 10 CPD points required for that CPD year.

Adjudicators can carry forward to the next CPD year a maximum of 5 surplus CPD points that were not used towards the 10 point total in the CPD year in which they were earned. CPD points obtained in any of the three compulsory topics listed in paragraph 3.1 cannot be used as surplus points.

For example, if an adjudicator earned 15 points in the 2021 CPD year, 5 of the 15 points could be carried over to 2022 (except for any CPD points on compulsory topics). In the 2022 CPD year, an adjudicator would only be required to obtain 5 more CPD points (including the three compulsory points), rather than 10, in order to meet the 10 CPD points requirement.

3.4 Point entitlement

Generally, 1 hour of learning is equal to 1 CPD points, depending on the activity.

The smallest fraction of a CPD point that can be obtained in a session is 0.5 CPD points. In order to obtain 0.5 CPD points, an activity must be at least 30 minutes. An adjudicator cannot gain any CPD points if an activity runs for 29 minutes or less.

An adjudicator may round up to 1 CPD point if the CPD activity is between 30 and 59 minutes.

For example:

Training seminars accumulate 1 CPD point per hour.

If John attends a training seminar for 2 hours and 30 minutes, John can claim 2.5 CPD points.

If John attends a training seminar for 2 hours and 15 minutes, John can claim 2 CPD points because he must round down the time.

If John attends a training seminar for 2 hours and 45 minutes, John can claim 3 CPD points by rounding up the time.

3.5 Types of CPD activities

CPD points may be earned using any combination of the CPD activities listed below.

Adjudicators are not entitled to ‘double dip’ by claiming more than 1 CPD point for the completion of 1 CPD activity. For example:

John completes a postgraduate subject LAWS70239: Payment Matters in Construction Projects within his postgraduate Master of Construction Law course. The subject was delivered through lectures and tutorials at the University of Melbourne. John has earned 5 CPD points for satisfactory completion of the subject as a ‘formal tertiary study’ activity.

John cannot also claim additional CPD points for ‘attending a lecture’ within the general education CPD activity because he has already claimed this component as part of his formal tertiary CPD activity.

CPD activity	CPD format	CPD points	Points per CPD year
General education	Participating in, either in person or online, a: <ul style="list-style-type: none"> ▪ training seminar ▪ training workshop ▪ conference or discussion evening ▪ lecture or course 	1 CPD point per hour	Unlimited points per CPD year
Formal tertiary studies	Satisfactory completion of subject within an undergraduate or postgraduate course relevant to an adjudicator’s practice at a recognised tertiary institution	3 CPD points per satisfactory completion of a subject	Unlimited points per CPD year
Reflecting on practice	Discussing and evaluating adjudicated cases through professional supervision, coaching or peer mentoring arrangements	1 CPD point per hour	Maximum 4 CPD points per CPD year
Providing professional development	Preparation and/or presentation of written or oral material to be used in a CPD activity or in other forms of education provided to other adjudicators	1 CDP point per hour for the preparation or presentation of material and 1 CPD point per for the presentation of material per hour	Maximum 6 CPD points per CPD year
Credit for related professional CPD	Recognition of CPD hours accumulated to maintain an existing professional accreditation, licence, registration or similar if an adjudicator is employed in another profession that requires CPD (e.g. as an architect, certifier or solicitor) which directly relate to an adjudicator’s function	1 CPD point per hour	Unlimited points per CPD year
Self-directed learning	Individual study relevant to an adjudicator’s function, including: <ul style="list-style-type: none"> ▪ reading books, professional journals and articles ▪ listening to or viewing relevant pre-recorded content 	1 CPD point per 1 hours	Maximum 5 CPD points per CPD year

CPD activity	CPD format	CPD points	Points per CPD year
	<ul style="list-style-type: none"> ▪ writing articles or papers ▪ conducting research 		
Attendance as a professional committee member of a professional association	Attendance at a professional committee meeting or committee event involving adjudicators within the building and construction sector	0.5 CPD points per 1 hour	Maximum 3 CPD points per CPD year

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3.5 Recording the completion of CPD

An ANA may request evidence from a prospective or existing adjudicator to demonstrate how they have satisfied their CPD requirements for each CPD year.

An adjudicator must keep a written record of the activities they undertake in order to obtain CPD points. It is recommended that adjudicators use the template at **section 4, Appendix 1** to maintain a record of the CPD activities they have completed each CPD year. In addition to the template, adjudicators may keep other supporting documentation as evidence of their completed CPD, such as certificates, meeting minutes, presentations prepared by the adjudicator and seminar notes.

3.6 Non-compliance

In accordance with clause 19(2)(a) of the Regulation, if a person fails to complete the required CPD, the person will not be eligible to be an adjudicator. In this case, an ANA will not be able to refer an adjudication application to the person.

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4. Appendix 1: Template – Record of CPD activities

Please retain this for your records.

Record of CPD activities for the CPD year from 1 September _____ to 31 August _____

Adjudicator's name: _____

Examples shown in italics should be removed

CPD category	CPD format	Dates and location	Compulsory topic code Legal principles and concepts ('A') Practice and procedure ('B') Ethics ('C')	Type of supporting documents kept	Total duration of CPD activity	CPD points earned
<i>Reflecting on practice</i>	<i>Participating in a structured peer-based reflection on a recent adjudication about decision making and writing with adjudicator colleague John Smith</i>	<i>2 September 2020 via Skype</i>	<i>B</i>	<i>Meeting agenda for discussion with John Smith</i>	<i>1 hour</i>	<i>1 CPD point</i>
<i>Participating in general education</i>	<i>Training seminar held by Adjudicate Today on 'Managing Conflicts of Interest in Adjudications', delivered by Mary Davies</i>	<i>1 November 2020 at Adjudicate Today Sydney office</i>	<i>C</i>	<i>Record of attendance</i>	<i>1 hour</i>	<i>1 CPD point</i>

TOTAL CPD POINTS

SURPLUS CPD POINTS FROM PREVIOUS CPD YEAR

CPD category	CPD format	Dates and location	Compulsory topic code Legal principles and concepts ('A') Practice and procedure ('B') Ethics ('C')	Type of supporting documents kept	Total duration of CPD activity	CPD points earned

TOTAL CPD POINTS

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