

Expert Determiners Policy

May 2022

1. Introduction

- 1.1 This policy commences on 1 June 2022 and replaces all previous statements on the subject of registration of expert determiners.
- 1.2 The Constitution provides for a Register of Members (s.4) that may record such particulars as the Board of Resolution Institute (**the Board**) may prescribe. The Board has, by adopting this Policy, prescribed that a Register of Practising Expert Determiners (**the Register**) shall be maintained.
- 1.3 The Register identifies those members of Resolution Institute who, in the opinion of the Board, have the necessary qualifications to act as expert determiners.
- 1.4 The responsibility for setting and maintaining the professional standards for inclusion in the Register rests with the Board which may take into account recommendations of the Determinative Committee (**the Determinative Committee**). The CEO and staff are to give effect to this Policy.

2. Register of Practising Expert Determiners

- 2.1 The Register will include only members of Resolution Institute who satisfy the Board, on the recommendation of the Determinative Committee, that they have the knowledge, experience, personal qualities, and qualifications necessary for them to be nominated by Resolution Institute as an expert determiner.
- 2.2 Any member seeking inclusion in the Register must:
- (a) apply in writing to the CEO of Resolution Institute in the prescribed form,
 - (b) pay the non-refundable application fee of \$300,
 - (c) provide details of qualifications and experience in the applicant's profession or calling,
 - (d) provide details of training in expert determination,
 - (e) provide details of experience in:
 - i. conducting expert determinations including the provision of at least 2 written expert determinations or arbitral awards or adjudication decisions together with all procedural orders made leading to those determinations; or
 - ii. preparing expert reports including the provision of 2 reports together with the instructions given for the purposes of preparing those reports,
 - (f) provide details of training and experience in conducting any other determinative process,
 - (g) be interviewed and recommended by an Assessment Panel appointed pursuant to Section 5, and

- (h) satisfy the Board on the advice of the Determinative Committee, that he or she has the academic knowledge and experience, personal qualities and skills appropriate for an expert determiner, by completion of education and training in accordance with Section 6.

2.3 The Board may exempt a member from compliance with all or any part of section 2.2 where it is satisfied by reason of the member's seniority and determinative experience that it is appropriate to do so without compromising the principles stated in section 2.1.

3. Registration of Expert Determiners

3.1 The prerequisites for registration as an expert determiner are that:

- (a) candidates **MUST** hold a certificate of satisfactory completion of the Resolution Institute Expert Determination Course or the Accelerated Expert Determination Course (if appropriate) plus successfully complete one expert determination under the supervision and guidance of an Expert Determiner already on the register;
- (b) candidates **MUST** attend an Assessment Panel interview;
- (c) candidates **MUST** demonstrate to the Assessment Panel that they have accumulated either 15 CPD points relevant to determinative matters within the immediately preceding 12 months, or 50 such CPD points within the previous three years; and
- (d) candidates **MUST** provide at least two expert, arbitral, or adjudicative determinations, expert witness reports, or other documents to demonstrate a high standard of literacy and analysis. The decisions may be redacted or modified so as to avoid identifying the parties. One of these decisions can be a successful assignment submitted as part of the Resolution Institute Expert Determination Course.

(together **the Prerequisites**)

3.2 The Board on the advice of the Determinative Committee may exempt a member from compliance with all or part of Section 3.1 where it is satisfied by reason of the member's seniority and expert determinative experience that it is appropriate to do so without compromising the principles stated in section 2.1.

3.3 In considering any application the Assessment Panel is to consider and assess the applicant's:

- (a) judicial capacity;
- (b) decision making capacity;
- (c) competence and skill in interpersonal relationships;
- (d) likely acceptance by the parties as an expert determiner capable of making impartial and objective determinations;

- (e) professional qualifications or training in the applicant's field of expertise;
- (f) standing in the applicant's profession or occupation;
- (g) experience as an expert determiner;
- (h) experience as an arbitrator;
- (i) experience as a court appointed referee;
- (j) experience as an expert witness or court appointed expert;
- (k) experience as an expert appraiser;
- (l) experience as an adjudicator;
- (m) experience as a lawyer;
- (n) knowledge of the law and practice of expert determination;
- (o) knowledge of substantive law;
- (p) contract administration experience;
- (q) knowledge of contract documents and their application; and
- (r) satisfactory completion of the appropriate Resolution Institute Course on Expert Determination (unless exempted).

(together **the Assessment Criteria**)

- 3.4 An applicant for registration must provide such further information and documents as the Assessment Panel reasonably requests in order to complete its assessment and recommendation in accordance with Section 5 of this Policy.

4. Role of Chief Executive Officer

- 4.1 The Chief Executive Officer is responsible to the Board for the administration of this Policy by Resolution Institute staff including:
- (a) establishing, maintaining, and publishing the Register and associated Policy documents;
 - (b) recording all applications received and ensuring they are dealt with in a timely manner in accordance with this policy; and
 - (c) submission to the Board of all Expert Determination Register Reports (see section 5.4) together with their associated applications and assessments.

5. Assessment Panels

- 5.1 As soon as practicable following receipt of an application for inclusion in the Register and payment of the fee prescribed in section 2.2(b), the Chief Executive Officer or her or his delegate is to convene an Assessment Panel comprising three experienced members on the Register. Wherever possible the Chief Executive Officer is to ensure that the Assessment Panel is chaired by a person who does not reside in the same State or Territory as the applicant, and who is a member of the same profession as the applicant.
- 5.2 In assessing applications for registration the Assessment Panel:
- (a) must assess the application having regard to the Prerequisites and the Assessment Criteria set out in Sections 2.1, 3.1 and 3.3 of this Policy;
 - (b) must use a standard assessment form reflecting the Assessment Criteria; and
 - (c) may recommend to the determinative committee that the applicant be included in the Register or that an applicant not be included and is to provide reasons for its recommendation.
- 5.3 A member who is included in the Register must apply every three years to renew their inclusion in the Register (**the triennial review application**), and in considering such applications:
- (a) an Assessment Panel set up to consider triennial review applications is to assess whether the applicants continue to meet the Assessment Criteria set out in Section 3.3, have conducted expert determinations in the preceding three years and have completed during that period a minimum of 15 hours of CPD relevant to expert determination or other determinative processes (**the triennial review**); and
 - (b) the Assessment Panel may recommend an applicant's retention, removal or conditional retention on the Register but must provide cogent reasons for recommending a member's removal from the Register or that conditions be placed on any recommended retention.

6. Education and Training

- 6.1 An expert determination training program (**the Program**) is to be held at least once a year (online) in Australia and New Zealand for training for persons planning to seek inclusion in the Register provided sufficient enrolments are obtained. The Program is to have three components:
- (a) Introduction to Expert Determination,
 - (b) The Resolution Institute Expert Determination Course, and
 - (c) The Accelerated Expert Determination Course which will only be available to grade 1 and 2 Arbitrators, and legal practitioners experienced in arbitration and/or expert determination with relevant secondary professional training and/or experience.

(the Expert Determination Courses)

- 6.2 A Program is to be organised and resourced by the CEO supported by the Determinative Committee.
- 6.3 For the avoidance of doubt:
- (a) completion of the Introduction to Expert Determination part of the program does not satisfy s.3.1 (a); and
 - (b) completion of the Resolution Institute Determination Course or the Accelerated Expert Determination Course do not, on their own, entitle registration.
- 6.4 The Resolution Institute Expert Determination Course and the Accelerated Expert Determination Course will each include a sample expert determination written by each applicant that will be assessed by an experienced member of the Register residing in another state to the applicant. The name of the applicant is to be withheld from the member assessing the determination. Satisfactory assessment must be obtained to achieve completion.

7. The Board and the CEO in Relation to Registration

- 7.1 The inclusion or non-inclusion of the name of any person on the Register is a matter in which the Board has total discretion.
- 7.2 The Board may, of its own motion, determine that the inclusion of a member in the Register should be removed or reviewed at any time, if the circumstances require, including if a complaint has been made. Prior to making a removal determination, the member is to be provided with sufficient information about the circumstances to enable the member to make a written submission. Reasons are not required to be supplied to the member on the making of a determination under this section.
- 7.3 The Board will consider any Expert Determination Register Report and make such decisions or resolutions as it sees fit. Reasons are not required to be supplied to the member on the making of a decision or resolution by the Board under this section.
- 7.4 As soon as reasonably practicable after any decision or resolution by the Board relevant to a member in relation to the Register, the CEO shall advise the member of that decision or resolution.
- 7.5 A member's name is to be removed from the Register if:
- (a) More than 42 months (or such longer period as the Board may in exceptional cases allow) has elapsed since the member's last triennial review application under section 5.3; or
 - (b) The Board of its own motion has so determined under section 7.2; or
 - (c) The Board has considered a removal recommendation from the CEO or and Assessment Panel.
- 7.6 If a member's name is removed from the Register pursuant to section 7.5(a) any subsequent application by that member is to be treated as an application for initial registration under section 2. If removal was pursuant to clauses 7.5(b) or 7.5(c) the member must draw this to the attention of any Assessment Panel considering the member's fresh application.

8. Appeal Panel and Special Review Panel Procedures

- 8.1 Any member the subject of an adverse decision by the Board under sections 7.5(b) or 7.5(c) may lodge an appeal in writing with the CEO, setting out fully the grounds of appeal. The member's identity is to be treated as confidential.
- 8.2 The CEO and the Chair of the Determinative Committee shall convene an appeal panel comprising three senior members of the Register (**the Appeal Panel**). If possible:
- (a) one panel member shall reside in a State different to the appealing member's State of residence; and
 - (b) one panel member should be from the same profession as the appealing member (or be sufficiently familiar with the requirements of that profession) and conversant with the subject matter of the appealing member's expertise where that is relevant to the appeal.
- 8.3 Any member the subject of an adverse recommendation by an Assessment Panel may also request a review following the process included in section 8.2. In this circumstance a Special Review Panel shall be convened by the CEO prior to submitting a final recommendation to the Board.
- 8.4 Both Appeal Panels and Special Review Panels shall conduct themselves in accordance with the principles of natural justice including:
- (a) providing the appellant with all written assessments, reports or determinations in relation to the appellant's application and circumstances;
 - (b) providing an opportunity to make submissions and be heard by video conferencing by the Panel; and
 - (c) the appellant and the Resolution Institute shall bear their own costs of the Appeal.
- 8.5 At the conclusion of an appeal the Appeal Panel shall produce a formal determination that must be provided to the Appellant and to the Board.
- 8.6 At the conclusion of a special review, the Special Review Panel shall produce a recommendation to the CEO, to be submitted to the Board for consideration, together with the recommendation provided by the original assessment panel.
- 8.7 So far as possible, regardless of the outcome of any appeal, the Board, the CEO, and each member of the Appeal Panel are to keep confidential the deliberations of the Appeal Panel and the outcome and circumstances of any appeal, unless the Board, acting reasonably, determines to the contrary.

9. Board Decision Final

- 9.1 Subject to section 8, the decision of the Board on any matter arising under this Policy is final and binding, and the Board is not required to give a reason or reasons for any such decision.

10. Approval and Review Process

Approval and Review	Details
Approval Authority	Board
Committee to Endorse	Resolution Institute Determinative Committee
Responsible Person	Training & Accreditations Manager
Original Approval Date	10 November 2020
Amendment and Review Date	May 2022
Scheduled Review Date	May 2024
Version	FINAL v3