



# Authorised Nominating Authorities Application for Authorisation

*Building and Construction Industry  
Security of Payment Act 2002*

Issued: May 2025



July 2025

## Acknowledgment of Country

The Building and Plumbing Commission (BPC) respectfully acknowledges the Traditional Owners and custodians of the land and water upon which we rely. We pay our respects to their Elders past and present. We recognise and value the ongoing contributions of Aboriginal and Torres Strait Islander peoples and communities to Victorian life.

We embrace the spirit of reconciliation, working towards equality of outcomes and an equal voice.





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## Introduction

### ***Building and Construction Industry Security of Payment Act 2002***

The *Building and Construction Industry Security of Payment Act 2002* (**SOP Act**) provides a fast, cheap and non-legalistic way to resolve payment disputes through adjudication.

Adjudicators are nominated by Authorised Nominating Authorities (**ANAs**).

ANAs are authorised to perform this service by the Building and Plumbing Commission (**BPC**) under section 42 of the SOP Act. The BPC may also withdraw any authorisation it has given.

Before authorising an ANA under section 42, the BPC must have regard to guidelines issued by the Minister (**Ministerial Guidelines**) under section 44 of the SOP Act.

In addition, section 43 of the SOP Act permits the BPC to impose conditions of authorisation, and to vary or revoke any existing conditions (**ANA Conditions of Authorisation**) in accordance with Ministerial Guidelines.

A copy of the ANA Conditions of Authorisation is appended to the *Application for authorisation as an Authorised Nominating Authority*.

An ANA can appeal to the Building Appeals Board under section 144A of the *Building Act 1993* against the imposition or variation of a condition.

### ***Applying for authorisation as an Authorised Nominating Authority***

Organisations wishing to apply for authorisation as an Authorised Nominating Authority must complete the *Application for authorisation as an Authorised Nominating Authority*.

Applicants are required to provide detailed information demonstrating procedures and policies to deliver fast, fair, low cost and high quality adjudication services under the SOP Act.

All schedules must be completed. Failure to do so will delay consideration of the application.

### ***Contact and submission information***

All enquiries and completed applications, including supporting material, are to be submitted by email to the following email address: [ANAAplication@bpc.vic.gov.au](mailto:ANAAplication@bpc.vic.gov.au).

Completed applications together with supporting material should be submitted in scanned PDF format with a minimum resolution of 300 dpi and a file size not exceeding 20 MB. For file sizes exceeding that limit, please submit in separate parts or contact the BPC using the above email address for alternate instructions.

# Application for Authorisation as an Authorised Nominating Authority

The Applicant hereby applies to the BPC pursuant to section 42 of the SOP Act for authorisation as an ANA.

The Applicant acknowledges that it is a condition of authorisation that it demonstrates its capacity to comply with conditions as issued by the BPC from time to time, pursuant to section 43 of the SOP Act.

In support of this application, the Applicant provides the information in Schedules A to E and provides an executed declaration and undertakings which support the Applicant's future compliance with the ANA Conditions of Authorisation, the SOP Act and SOP Regulations.

## Applicant's Declarations

The Applicant hereby declares that the information provided by the Applicant to the BPC in connection with this application is true and correct and not misleading in any particular, to the best of the Applicant's knowledge, information and belief.

## Applicant's Undertakings

If the BPC authorises the Applicant to nominate adjudicators for the purposes of the SOP Act, the Applicant undertakes to:

1. comply with the ANA Conditions of Authorisation, the SOP Act and SOP Regulations
2. provide information reasonably requested by the BPC about any aspect of the adjudication process
3. comply with any adjudication reporting system required by the BPC, and
4. promptly notify the BPC of any change to any particulars contained in the Applicant's application.

## Execution of this application form

This form may be executed and witnessed in any manner permitted by the *Corporations Act 2001* and *Electronic Transactions (Victoria) Act 2000* (as the case may be).

The Applicant warrants and agrees that signing this application form (by any method permitted above) and any associated electronic communication identifies the Applicant as the signatory to this application and evidences the Applicant's intention to be bound by the undertakings given by the Applicant.



Executed by

\_\_\_\_\_

ACN

\_\_\_\_\_

In accordance with s 127(1) of  
the *Corporations Act 2001*  
(Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary  
(Please delete as applicable)

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary (print)



## Schedule A – Applicant Details

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**Name of Applicant:**

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**Trading Name (if different):**

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**Contact Person:**

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**Position in Organisation:**

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**Registered Business  
Address:**

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**Postal Address (if  
different):**

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**ABN:**

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**Telephone:**

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**Fax:**

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**Email:**

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**Website:**

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### ANA Contact details for BPC website

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**Name of ANA:**

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**Business address:**

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**Postal Address (if different):**

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**Telephone:**

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**Fax:**

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**Email:**

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**Website:**

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## Supporting documentation

The Applicant is required to set out a brief summary of its background, experience and qualifications, including a profile of its management and membership, professional or industry connections, number of members and any other information which will assist the BPC to determine whether the Applicant should be granted authorisation.

This information should include, but not be limited to, the information set out below.

### 1. Certificate of incorporation, registration, articles of association etc.

Where the Applicant is a corporation or incorporated association, the Applicant is required to attach its certificate of incorporation or registration, memorandum and articles or constitution, certificate of registration of any business name, and any other document evidencing the formation of the Applicant.

### 2. Applicant's financial information

Applicants are required to attach documents detailing their financial position, including their Financial Statement for the preceding financial year and latest Balance Sheet.

### 3. Membership profile

Applicants that are a corporation or incorporated association are required to provide a profile of their membership.

### 4. History and reputation of the Applicant

Where relevant, Applicants are required to demonstrate their history and reputation including in maintaining industry confidence in the ANA process. This information should include but not be limited to:

- the Applicant's history of acting as an ANA in this jurisdiction
- other jurisdiction(s), if any, in which the Applicant is authorised as an ANA and/or otherwise operating under Security of Payment legislation in Australia, and
- details of the authorisation period or arrangements in any other jurisdiction(s), if any, in which the Applicant is authorised as an ANA and/or otherwise operating under Security of Payment legislation in Australia.

### 5. Applicant's personnel

The management and staff available to carry out the functions of an ANA, details of their roles and responsibilities and their experience, qualifications and training relevant to the discharge of the functions of an ANA.

# Schedule B – Professional Conduct

## 1. Probity

Provide information which demonstrates that the ANA and its directors and officers are fit and proper people to perform the functions of an ANA under the SOP Act<sup>1</sup>.

## 2. Procedural fairness

Demonstrate policy and procedures which:

- evidence the Applicant's capacity to perform its functions as an ANA in accordance with the requirements of procedural fairness; and
- support and maintain the independent exercise of an adjudicator's responsibilities under the SOP Act.<sup>2</sup>

## 3. Conflict of interest

### 3.1 Before nomination or appointment of adjudicators

Demonstrate policy and procedures which:

- identify and resolve conflicts of interest in performing its function as an ANA, and
- identify and resolve conflicts of interest for any adjudicator it considers for nomination or appointment.

### 3.2 After nomination or appointment of adjudicators

Demonstrate policy and procedures which identify the action expected of an adjudicator who becomes aware of any conflict between the adjudicator and either the claimant or the respondent.

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<sup>1</sup> The factors to consider in determining whether a person is 'fit and proper' are outlined in footnote 2 to the ANA Conditions of Authorisation.

<sup>2</sup> The requirements of procedural fairness are set out in footnote 3 to the ANA Conditions of Authorisation.

# Schedule C – Management of Adjudication Process

The Applicant is required to provide detailed information which demonstrates its capacity to manage the adjudication process in accordance with the SOP Act and the ANA Conditions of Authorisation.

## 1. General responsibility for the adjudication process

Demonstrate practices and procedures that deliver an adjudication process that addresses the requirements set out in Condition 5.1 of the ANA Conditions of Authorisation.

## 2. Management of Documents and Notices

Demonstrate practices and procedures which ensure management of the documents and notices relating to the adjudication process, in accordance with Conditions 5.2 to 5.4 of the ANA Conditions of Authorisation.

## 3. Nomination of Adjudicators

Demonstrate practices and procedures for the selection and nomination of adjudicators that addresses the requirements set out in Condition 5.5 of the ANA Conditions of Authorisation.

This will include:

- the administrative processes for dealing promptly with applications for nomination
- the steps and criteria on which each decision to nominate will be made
- who will actually make the decision to nominate (for example, delegations)
- the precautions the Applicant has in place to ensure probity in nominating.

## 4. Quality of adjudication

Demonstrate a quality assurance system that supports consistent and reliable adjudicator selection, training, and monitoring in accordance with Condition 5.6 of the ANA Conditions of Authorisation. This will include:

- information about the adjudicators available for nomination; their qualifications and industry experience
- policies and procedures which ensure that adjudicators nominated by the Applicant perform their functions under the SOP Act in compliance with the requirements of the Adjudicator Standards of Conduct at Appendix 1 of the ANA Conditions of Authorisation
- policies and procedures which ensure that adjudicators nominated by the Applicant possess the skills and knowledge set out in the Adjudicator Core Competencies at Appendix 2 of the ANA Conditions of Authorisation, and ensure the adjudicator's skills remain up to date.

## 5. Panel of Adjudicators

The Applicant is required to provide the following information for each adjudicator that the Applicant proposes to include on its panel of adjudicators:

- educational qualifications
- industry experience
- area(s) of expertise
- number of years' experience as an adjudicator:
  - in Victoria; and
  - in another jurisdiction(s)
- jurisdiction(s), other than Victoria, in which the person is operating as an adjudicator and/or otherwise operating under Security of Payment legislation in Australia
- whether the adjudicator is included on the panel of adjudicators of another ANA in Victoria, and if so, the name of the ANA(s) and details of how that will be managed by the Applicant
- details of performance over the current authorisation period for each reporting period or part thereof (i.e. 1 July 2022 to 30 June 2023; 1 July 2023 to 30 June 2024; 1 July 2024 to 31 March 2025):
  - date included on the panel of adjudicators
  - date from which available for nomination
  - date(s) not available for nomination
  - number of applications accepted
  - number of determinations made
  - number of applications accepted where a determination was not made and the reason(s) the determination was not made
  - number of determinations subject to judicial review
  - number of determinations quashed or remitted
  - level or grade of the adjudicator and hourly rate applicable to each level or grade.

## 6. Information about the Applicant's provision of information and advice to the public

The Applicant is required to provide information about how the Applicant provides information and advice to the public about the Security of Payment scheme and the adjudication process, including:

- the Applicant's management and staff available to provide information and advice to the public about the Security of Payment scheme and the adjudication process; and
- the circumstances in which the Applicant refers a request from the public for information and advice to another person or organisation, and if so, why and to whom the request is referred.

## 7. Privacy and Confidentiality

Demonstrate a quality assurance system that ensures the security of all confidential information and protection of personal information to the standards required by Condition 3 of the ANA Conditions of Authorisation.



## Schedule D – Complaints Procedure

The Applicant is required to provide a detailed outline of its complaints procedure that demonstrably meets the requirement set out in Condition 7 of the ANA Conditions of Authorisation. This includes how a person involved in the adjudication process is made aware of the organisation's complaints procedure.

## Schedule E – Applicant’s Fee Structure

The Applicant is required to provide a detailed outline of the Applicant’s fees and fee structures. This will include but is not limited to:

- the method by which they will charge a fee for their work as an ANA
  - any costs to parties to the adjudication and an outline of payment procedures
  - any fee or financial arrangement between the ANA and nominated adjudicators
  - any fee or financial arrangement not included in the above between the parties and nominated adjudicators.
- 

### Want to know more?

If you have any questions about this document, please contact the BPC.

Telephone: 1300 067 088

Email: [ANAAApplication@bpc.vic.gov.au](mailto:ANAAApplication@bpc.vic.gov.au)

### Building and Plumbing Commission

Level 19, 242 Exhibition Street

Melbourne, Victoria

Australia 3000

[bpc.vic.gov.au](http://bpc.vic.gov.au)

# Authorised Nominating Authorities Conditions of Authorisation

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# Introduction

## ***Building and Construction Industry Security of Payment Act 2002***

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ANAs are authorised to perform this service by the Building and Plumbing Commission (**BPC**) under section 42 of the SOP Act. The BPC may also withdraw any authorisation it has given.

Before authorising an ANA under section 42, the BPC must have regard to guidelines issued by the Minister (**Ministerial Guidelines**) under section 44 of the SOP Act.

In addition, section 43 of the SOP Act permits the BPC to impose conditions of authorisation, and to vary or revoke any existing conditions (**ANA Conditions of Authorisation**), in accordance with Ministerial Guidelines.

An ANA can appeal to the Building Appeals Board under section 144A of the *Building Act 1993* against the imposition or variation of a condition.

# 1. General Obligations

## Compliance with these Conditions

- 1.1 All ANAs must comply with these Conditions of Authorisation. A breach of any condition may affect the authorisation of the ANA concerned.

## Compliance with the SOP Act and SOP Regulations

- 1.2 All ANAs must comply with the requirements of the SOP Act and the SOP Regulations. A breach of any requirement may affect the authorisation of the ANA concerned.

## Capacity to perform functions

- 1.3 The ANA must have procedures and policies in place that enable it to perform its functions as an ANA as required by the SOP Act, the Ministerial Guidelines and these Conditions of Authorisation.
- 1.4 The ANA is required to establish and maintain quality assurance systems that enable it to continuously monitor and improve its performance as an ANA.

## Responsibility to perform functions

- 1.5 While an ANA may adopt any structure and method of operation, including outsourcing, it remains directly and fully responsible for the performance of its functions. It must not delegate or abrogate any function, power, authority or duty conferred on it by the SOP Act.<sup>1</sup>

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<sup>1</sup> The functions of an ANA are described in section 43A of the SOP Act.

## 2. Professional Conduct

### Probity

2.1 The ANA and its directors and officers must be fit and proper to perform the functions of an ANA under the SOP Act.<sup>2</sup>

### Procedural Fairness<sup>3</sup>

2.2 The ANA must perform its functions as an ANA in accordance with the requirements of procedural fairness.

2.3 The ANA must not hinder or interfere with the independent exercise of an adjudicator's responsibilities under the SOP Act.

### Conflict of interest

2.4 The ANA must have processes and procedures in place to identify and resolve conflicts of interest in performing its functions as an ANA.<sup>4</sup>

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<sup>2</sup> The factors to consider in determining whether a person is 'fit and proper' depend on the nature of the activities in which the person is engaged but generally can be expected to include the person's character (indicating likely future conduct) or reputation (indicating public perception as to likely future conduct). As a guide, the BPC considers that any of the following factors could raise doubt as to whether an individual is a fit and proper person. However, none of the items is necessarily conclusive, and the list is not exhaustive.

- Criticism, disqualification or removal by a professional or regulatory body or court.
- Evidence that the person has been obstructive, misleading or untruthful in dealing with regulatory bodies or a court.
- Refusal to comply with regulatory or professional requirements.
- Adverse findings about the person in relevant criminal or civil proceedings.
- Failure to manage personal debts satisfactorily.
- Failure to deal with conflicts of interest appropriately.
- Evidence that the person has been, or is, considered of bad repute.

<sup>3</sup> The requirements of procedural fairness, or natural justice, include a duty to provide a fair hearing and a duty to be unbiased. Providing a fair hearing means that each party has a reasonable opportunity to prepare for and present its case within the limitations of the SOP Act and knows what the case against it is. The duty to be unbiased means that the ANA must be impartial and act independently, avoiding both actual and apparent bias.

<sup>4</sup> Conflict of interest issues arise where any interests or circumstances of the ANA are likely to compromise, or be perceived as compromising, the ability of the ANA to carry out its duties impartially. The risk is particularly high when nominating an adjudicator to determine an adjudication application.

- 2.5** The ANA must have processes and procedures in place to identify and resolve conflicts of interest for any adjudicator it considers for nomination or appointment.<sup>5</sup>
- 2.6** The ANA must not nominate or appoint an adjudicator where it is aware, or reasonably should be aware, that a conflict may or does exist between the interests of the adjudicator and the interests of the claimant or the respondent.<sup>6</sup>

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<sup>5</sup> Section 19(2) of the SOP Act prohibits a party to the relevant construction contract, or an employee of a party to that contract, from being nominated as an adjudicator. Other circumstances may also give rise to a conflict of interest, such as an association with either party or involvement in preparing the adjudication application or response.

<sup>6</sup> Section 28G(3) of the SOP Act prohibits a person who was involved directly or indirectly with an adjudication determination from being appointed by the relevant ANA to review that determination.

## 3. Confidentiality and Privacy

### Confidential information

- 3.1 The ANA must keep all confidential information secure. The ANA is responsible for, and must take all reasonable measures to ensure, the security of confidential information for so long as that confidential information is within its control. In so doing, the ANA must ensure that the confidential information is protected at all times from access, use or misuse, damage or destruction, by any person not authorised to receive it.<sup>7</sup>

### Personal information

- 3.2 The ANA must ensure that the personal information it collects, uses, holds and discloses in performing its functions as an ANA is protected to the standards set out in the National Privacy Principles in the *Privacy Act 1988* (Cth).<sup>8</sup>

### Limits on use and disclosure

- 3.3 The ANA, its staff and all other persons involved in the adjudication process must not use or disclose any matters or documents related to the adjudication except to the extent necessary for the performance of their functions under the SOP Act and SOP Regulations and these Conditions of Authorisation.<sup>9</sup>

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<sup>7</sup> Confidential information' means any information or data, including personal information, whether or not in material form, which is confidential to a party, including confidential information acquired, collected or developed for the purpose of the adjudication or obtained during the adjudication, except that which is already in the public domain otherwise than as a result of breach of these Conditions of Authorisation.

<sup>8</sup> Personal information' refers to information that directly or indirectly defines an individual and is defined in section 6 of the *Privacy Act 1988*. Organisations with an annual turnover of less than \$3 million are generally exempt from the *Privacy Act 1988* but can opt-in to the federal privacy regime by notifying the Federal Privacy Commissioner of their choice to be covered. An ANA that is otherwise exempt from the *Privacy Act 1988* is not required to opt-in but is required to protect personal information to the same standard as those organisations that are covered by the federal privacy regime.

<sup>9</sup> The ANA is required by section 43B of the SOP Act and by these Conditions of Authorisation to provide information to the BPC.

## 4. Public Access

### Information and advice

- 4.1 The public must be able to seek and obtain accurate information and timely advice from the ANA about the Security of Payment scheme and the adjudication process.

### Service of documents

- 4.2 The ANA must maintain at all times an address in Australia where adjudication applications, adjudication responses and other documents may be expeditiously served by post, fax or other delivery.<sup>10</sup>

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<sup>10</sup> Section 50 of the SOP Act sets out the methods by which notices and documents may be served for the purposes of the SOP Act.

## 5. Management of the Adjudication Process

### General responsibility for the adjudication process

- 5.1 The ANA is required to establish and maintain practices and procedures that deliver an adjudication process that is:
- in accordance with the SOP Act, the SOP Regulations, the Ministerial Guidelines and these Conditions of Authorisation
  - fair and impartial
  - expeditious
  - provided within a reasonable and appropriate cost framework, and
  - transparent.

### Management of Documents and Notices

- 5.2 The ANA must manage documents and notices in a timely manner.<sup>11</sup>
- 5.3 The ANA must develop and maintain a procedure for recording the time and date of receipt and service of any document relevant to a process under the SOP Act.
- 5.4 The ANA must produce adjudication certificates promptly on request.

### Nomination of Adjudicators

- 5.5 The ANA must develop and maintain a procedure for the selection and nomination of adjudicators that:
- is expeditious
  - is carried out fairly and without favouritism or self interest
  - identifies adjudicators who are suitably qualified and whose skills are appropriate to the particular adjudication application, and
  - ensures that any conflict of interest is addressed before nomination.

### Quality of adjudication

- 5.6 The ANA must establish and maintain a quality assurance system that supports consistent and reliable adjudicator selection, training and monitoring. The system should ensure that all nominated adjudicators:
- are monitored for compliance with the SOP Act, the SOP Regulations and the Adjudicator Standards of Conduct at Appendix 1 of these Conditions of Authorisation
  - meet the Adjudicator Core Competencies at Appendix 2 of these Conditions of Authorisation, and
  - continually update their skills and knowledge relevant to the practice of adjudication under the SOP Act.

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<sup>11</sup> The SOP Act sets out timelines within which documents and notices must be delivered at all stages of the adjudication process.

## 6. Record Keeping and Reporting

### Records

**6.1** The ANA must maintain all records relating to the administration and conduct of adjudication matters that are necessary to enable reporting to the BPC as required.

### Notification of subsequent court proceedings

**6.2** The ANA must notify the BPC as soon as practicable of any court action of which it becomes aware relating to or affecting an adjudication application made to that ANA.

### Annual Reports<sup>12</sup>

**6.3** The ANA must submit an annual report in the approved form to the BPC that includes the following information relating to the reporting period:

- Details of staff, indicating FTE (full time equivalent), available to carry out the ANA's obligations, particularly under clauses 4, 5 and 6 of these Conditions of Authorisation.
- Details of training activities provided to staff.
- Details of adjudicators nominated by the ANA (including qualifications of each adjudicator and the frequency of nomination).
- Details of training activities offered to adjudicators, and taken up by adjudicators.
- Details of any complaints received about the ANA or the conduct of any adjudicator arising from the SOP Act along with any investigations, relevant decisions and the outcome of such complaints.
- Details of the ANA's fees charged and received, for services provided in connection with adjudication applications for the reporting period, to include:
  - The fee structures by which they charge for their work as an ANA, to adjudicators and to parties to adjudication.
  - All fee or financial arrangements between the ANA and parties to adjudication.
  - All fee or financial arrangements between the ANA and nominated adjudicators.
  - All fees received from adjudicators and parties to adjudication.
  - Details of fees charged and received by nominated adjudicators.

**6.4** The reporting period for Annual Reports is the 12 month period from 1 July to 30 June. Annual Reports must be signed by the Director, Company Secretary or equivalent office holder of the ANA and submitted by 31 July each year.

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<sup>12</sup> The ANA is required by section 43B(1) of the SOP Act to provide such non-identifying information to the BPC as the BPC may reasonably request. Section 43B(2) specifies that the information that the BPC may reasonably request may include information regarding the nomination of adjudicators and appointment of review adjudicators, the assessment of the eligibility of persons to be adjudicators and the fees charged by the ANA and adjudicators.



## Quarterly Reports

- 6.5** The ANA must submit a quarterly report in the approved form to the BPC. The Quarterly Report will provide statistical information.
- 6.6** The submission dates for Quarterly Reports are recorded below.

Quarter	Reporting period	Submission date
Quarter 1	1 July to 30 September	31 October
Quarter 2	1 October to 31 December	31 January
Quarter 3	1 January to 31 March	30 April
Quarter 4	1 April to 30 June	31 July

## Notification of change in circumstances

- 6.7** The ANA must report to the BPC any changes in details supplied in the ANA Application for Authorisation as a Nominating Authority within seven (7) days of the changes occurring.
- 6.8** An ANA that ceases to provide the services of an ANA to the public must inform the BPC as soon as practicable.

## 7. Complaints

### Availability of complaints procedures

- 7.1** The ANA must establish, and make available to any person involved in the adjudication process, a complaints procedure that provides:
- an independent investigation, particularly if a complaint concerns the ANA
  - a timely resolution, and
  - appropriate remedies and sanctions where the complaint is proved.
- 7.2** The ANA's complaint procedures must be able to address complaints relating to:
- any process of the ANA in relation to or arising out of the SOP Act
  - any conduct by any officer or personnel of the ANA
  - any conduct by an adjudicator nominated by the ANA, or
  - any other relevant matter concerning the ANA.
- 7.3** The ANA must make any person involved in the adjudication process aware of its complaints procedures.

## 8. Public Disclosure of Fee Sharing Arrangements

### Fee Sharing Arrangements

8.1 The ANA must publish and keep published on its website or internet page:

- the ANA's fee sharing arrangements with its adjudicators, and
- a description of the services the ANA provides to an adjudicator for those fees.

# Appendix 1 – Adjudicator Standards of Conduct

The conduct of adjudicators in performing functions under the SOP Act should at all times meet the standards set out in this Appendix.

The ANA Conditions of Authorisation require ANAs to monitor the adjudication process and report to the BPC about any complaints they receive about the adjudicators they nominate.

## 1. General Obligations

- 1.1 Adjudicators must comply with the requirements of the SOP Act, the SOP Regulations and these Standards of Conduct.
- 1.2 Adjudicators must conduct themselves in a professional and competent manner when exercising their powers under the SOP Act.

## 2. Probity

- 2.1 Adjudicators must at all times be fit and proper people for the role of determining applications and review applications under the SOP Act.<sup>13</sup>
- 2.2 Adjudicators must exercise their responsibilities independently and take into account only relevant matters.<sup>14</sup>

## 3. Competence

- 3.1 Adjudicators must meet and maintain the Adjudicator Core Competencies as set out in Appendix 2 to these Conditions of Authorisation.
- 3.2 Adjudicators must accept nominations only if they consider they are competent in view of the nature and complexity of the matter.

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<sup>13</sup> The factors to consider in determining whether a person is 'fit and proper' depend on the nature of the activities in which the person is engaged but generally can be expected to include the person's character (indicating likely future conduct) or reputation (indicating public perception as to likely future conduct). As a guide, the BPC considers that any of the following factors could raise doubt as to whether an individual is a fit and proper person. However, none of the items is necessarily conclusive, and the list is not exhaustive.

- Criticism, disqualification or removal by a professional or regulatory body or court.
- Evidence that the person has been obstructive, misleading or untruthful in dealing with regulatory bodies or a court.
- Refusal to comply with regulatory or professional requirements.
- Adverse findings about the person in relevant criminal or civil proceedings.
- Failure to manage personal debts satisfactorily.
- Failure to deal with conflicts of interest appropriately.
- Evidence that the person has been, or is, considered of bad repute.

<sup>14</sup> The matters an adjudicator must consider in determining an adjudication application are set out in section 23 of the SOP Act.

## 4. Conflict of Interest

- 4.1 Adjudicators must not accept any adjudication application or undertake an adjudication review if doing so would create any actual or likely conflict of interest, or any perception of conflict of interest or bias on their part.
- 4.2 An adjudicator who identifies an actual or likely conflict of interest after the adjudication has commenced must notify the nominating ANA as soon as practicable and follow that ANA's procedures for resolving the conflict.<sup>15</sup>

## 5. Procedural Fairness

- 5.1 Adjudicators must exercise their powers under the SOP Act in accordance with the rules of natural justice and procedural fairness.
- 5.2 Adjudicators must exercise their powers under the SOP Act impartially and avoid any actual or perceived bias.
- 5.3 Adjudicators must ensure that each party has a reasonable opportunity to be heard and full knowledge of the evidence and information on which the adjudicator will make the decision.

## 6. Confidentiality and Privacy

- 6.1 Adjudicators must protect confidential information at all times from access, use, misuse, damage or destruction by any person not authorised to receive it.<sup>16</sup>
- 6.2 Adjudicators must protect the personal information they collect, use, hold and disclose in performing functions under the SOP Act in accordance with the privacy policy of the nominating ANA or otherwise to the standards set out in the National Privacy Principles in the *Privacy Act 1988* (Cth).<sup>17</sup>
- 6.3 A determination must only include information that is necessary to explain the basis of any decision.

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<sup>15</sup> ANAs are required to have processes and procedures to identify and resolve conflicts of interest for any adjudicators they consider for nomination or appointment – Conditions of Authorisation 2.5.

<sup>16</sup> 'Confidential information' means any information or data, including personal information, whether or not in material form, which is confidential to a party, including confidential information acquired, collected or developed for the purpose of the adjudication or obtained during the adjudication, except that which is already in the public domain otherwise than as a result of a failure to meet these Standards of Conduct.

<sup>17</sup> 'Personal information' refers to information that directly or indirectly defines an individual and is defined in section 6 of the *Privacy Act 1988* (Cth).

## 7. Fees

- 7.1 Adjudicators must charge fees which are reasonable, having regard to the nature and complexity of the matter, the time required and the expertise of the adjudicator.
- 7.2 Adjudicators must fully disclose their scale of fees and other likely charges to the parties and the nominating ANA before commencing the adjudication, and provide itemised invoices at the end of the process.

## 8. Complaints

- 8.1 An adjudicator must refer any complaint about the service provided by the adjudicator to the nominating ANA.
- 8.2 Adjudicators who wish to make a complaint regarding unsatisfactory or unprofessional conduct by an ANA or any officer or personnel of the ANA must raise the matter with the ANA in the first instance, except in the circumstances described in 8.3.<sup>18</sup>
- 8.3 If it might cause the adjudicator personal or professional prejudice or detriment to make a complaint to the ANA, the adjudicator may make a complaint referred to in 8.2 to the BPC.

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<sup>18</sup> ANAs must have procedures in place to address complaints made by any person about themselves, their officers or personnel, or any adjudicator they nominate – Condition of Authorisation 7.2.

## Appendix 2 – Adjudicator Core Competencies

ANAs must ensure that the adjudicators they nominate for the purposes of the SOP Act have the qualifications, knowledge and skills set out in this Appendix.

### Recognised qualifications

1. At least one of the following –
  - 1.1 A degree from a university or other tertiary institution in Australia, or an equivalent qualification from outside Australia, in one of the following disciplines:
    - Architecture
    - Building
    - Engineering
    - Construction
    - Quantity surveying
    - Building surveying
    - Law
    - Project management, or
  - 1.2 Eligibility for registration as a builder under the Building Act 1993 in the class of commercial builder (unlimited) or domestic builder (unlimited), or
  - 1.3 10 or more years' experience in the administration, management and supervision of construction contracts or in dispute resolution relating to construction contracts.

### Relevant experience

2. At least five years' experience in the administration, management and supervision of construction contracts or in dispute resolution relating to construction contracts.

### Adjudication training

3. Successful completion of an adjudication qualification that attests to the adjudicator possessing the essential skills and knowledge set out below.

### **3.1 Overview of the SOP Act**

- The object of the SOP Act
- The purpose of the SOP Act
- The structure of the SOP Act
- Meaning of terms
- Comparison with equivalent legislation in other Australian jurisdictions

### **3.2 Scope and purpose of adjudication under the SOP Act**

- The interim nature of adjudication
- Comparison with other forms of alternative dispute resolution
- Payment claims
- Claimable variations
- Excluded amounts
- Relationship between the SOP Act and contractual provisions
- The two tiers of adjudication: initial adjudication and adjudication review
- Consequences of acting outside jurisdiction

### **3.3 Regulatory framework**

- Role and functions of the BPC
- Role and functions of ANAs
- Relationship between BPC and ANAs
- Relationship between ANAs and adjudicators
- Ministerial Guidelines
- Conditions of Authorisation

### **3.4 Role and functions of adjudicators under the SOP Act**

- Responsibilities and duties under the SOP Act and SOP Regulations
- Monitoring by the nominating ANA and the BPC

### **3.5 Appointment of adjudicators**

- Eligibility requirements and restrictions specified in the SOP Act
- Factors the ANA must consider in nominating an adjudicator or selecting a review adjudicator, including conflict of interest and the type and complexity of the particular dispute

- Factors the adjudicator must consider in accepting a nomination, including conflict of interest, availability and competence
- Statutory deadlines and the claimant's right to withdraw application if not met

### **3.6 Adjudication process**

- Challenges to jurisdiction
- Withdrawal of application; settlement by the parties
- Previous adjudication applications
- Concurrent adjudication applications
- Time constraints and extensions of time
- Fees – right to withhold decision until paid
- Invoicing
- Correcting mistakes in determinations
- Reporting requirements

### **3.7 Standards of conduct**

- Probity
- Avoiding conflict of interest, both perceived and actual
- Ensuring procedural fairness and meeting the requirements of natural justice
- Ensuring confidentiality and privacy
- Consequences of failure to meet Adjudicator's Standards of Conduct
- Applying the standards – including, as a minima, how to approach the following issues:
  - Relationship with ANA and other adjudicators
  - Prior or current connections with parties to the contract, perceived or actual
  - Previous or current involvement in the matter (e.g. advising parties, preparing claims or responses)
  - Contact with parties and their representatives
  - Communications and submissions by parties and their representatives
  - Calling, and conduct of, conferences and inspections
  - Keeping records of all communications
  - Using and disclosing confidential information

- Conducting the adjudication expeditiously and impartially

### **3.8 Conduct of the adjudication**

- Identifying issues
- What the adjudicator must take into account
- What the adjudicator must not take into account
- Seeking further written submissions
- Use of information arising from conferences and inspections
- Valuing the construction work carried out
- Valuation in any previous adjudication
- Managing intimidating tactics (excessive documents, additional submissions, unsolicited contact by parties or representatives)
- Apportionment of adjudicator fees

### **3.9 Preparing the determination**

- Making a finding on each issue
- Providing written reasons for each finding
- Contents of a determination
- Writing for ease of understanding

### **3.10 Adjudication review**

- Reviewable determinations
- Respondent's and claimant's rights to review
- Grounds for review
- Selection of review adjudicator
- Procedure for review
- Timing of review adjudication process

### **3.11 Adjudication Certificates**

- Purpose of adjudication certificates
- Process for requesting an adjudication certificate

- Role of the ANA
- The contents of an adjudication certificate

### 3.12 Complaint handling

- Responding to complaints in a timely fashion
  - Role of the ANA
  - Reporting requirements
- 

#### Want to know more?

If you have any questions about this document, please contact the BPC

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