



Victoria Government Gazette

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Building and Construction Industry Security of Payment Act 2002

MINISTERIAL GUIDELINES

No. 1/2025

AUTHORISATION OF NOMINATING AUTHORITIES

I, Harriet Shing, Minister for Housing and Building, issue the following Guidelines under section 44(1) of the **Building and Construction Industry Security of Payment Act 2002** (the ‘Act’).

1. Background and Purpose of these Guidelines

- (a) Under section 42(1) of the Act, the Victorian Building Authority (‘the Authority’) may, on application made by any person, authorise the applicant to nominate adjudicators for the purposes of the Act and may withdraw any authority so given. Before giving such an authority, the Authority must have regard to any guidelines issued by the Minister.
- (b) Section 44 of the Act empowers the Minister to issue guidelines relating to, among other things, the giving, variation or withdrawal of authorities given by the Authority to nominate adjudicators for the purposes of the Act (‘the Guidelines’).
- (c) The purpose of these Guidelines is to set out the matters the Authority must have regard to when administering and determining applications for authorisation as authorised nominating authorities (‘ANAs’) under the Act.
- (d) In accordance with section 44 of the Act, these Guidelines cover:
 - (i) the procedures for making applications for authorisation and the information to be provided with applications;
 - (ii) the criteria to be applied by the Authority in deciding whether to authorise an applicant;
 - (iii) consideration of the financial resources necessary for carrying out the functions of an authorised nominating authority;
 - (iv) the procedure for notifying and recording a grant of authorisation;
 - (v) the maximum duration of an authorisation and extensions of an authorisation;
 - (vi) the conditions that may be imposed on an authority, including conditions relating to the processes to be followed by an ANA in nominating adjudicators for the purposes of the Act; and
 - (vii) the procedure for varying and withdrawing an authorisation.

2. Commencement

These Guidelines come into effect on the date they are published in the Government Gazette.

3. Application of Guidelines

These Guidelines replace the Minister’s Guidelines published in Special Gazette No. S 69 on 30 March 2007, which are revoked.

4. Procedure for Making Applications for Authorisation and Information to be Provided with Applications

- (a) The Authority should require an applicant to follow the procedure and include the information set out in this clause 4.
- (b) The Authority should require an applicant to make its application in writing, using a form provided by the Authority.
- (c) The Authority should attach to the form of application any standard conditions that the Authority would impose upon the granting of an authorisation (refer to clause 8(a)).

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- (d) The form of application should require that an application include the following information, statements and documents:
- (i) an attestation to the accuracy of all copies of documents provided and all information submitted in, and statements made in support of, the application;
 - (ii) the applicant's name, business address, telephone number, fax number (if applicable), email and website address;
 - (iii) if the applicant is a corporation or incorporated association, the applicant's 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;

Note regarding unincorporated associations: Under section 42(1) of the Act, only a 'person' may apply to be authorised to nominate adjudicators. Unincorporated associations should not be authorised.
 - (iv) if the applicant is a corporation or incorporated association, a profile of its directors and membership (as applicable);
 - (v) information about the applicant's panel of adjudicators, including:
 1. the applicant's selection criteria for adjudicators; and
 2. any training program, accreditation or pre-qualification scheme that the applicant requires its adjudicators to complete or obtain; and
 3. the number of adjudicators, their areas of expertise, geographical coverage and the applicant's method of monitoring each adjudicator's performance;
 - (vi) information about the applicant's nominating process, including:
 1. procedures for dealing efficiently and impartially with applications for adjudication;
 2. the precautions which the applicant has in place to ensure probity in nominating adjudicators; and
 3. if the applicant is a corporation or an incorporated association, any delegations or authorisations relevant to its process of nominating adjudicators;
 - (vii) information about the applicant's fees and fee structures, including:
 1. the method by which they will charge a fee for their work as an ANA;
 2. any adjudicator fees and expenses to be paid by the parties to an adjudication; and
 3. any fee or financial arrangement between the ANA and nominated adjudicators;
 - (viii) details of the applicant's complaints resolution procedures;
 - (ix) information demonstrating the applicant's strong commitment to investigating and responding to complaints in relation to all aspects of their service and functions;
 - (x) information demonstrating the applicant's capacity to identify conflicts of interest between adjudicators and the following persons, whether actual or potential, and its processes in place to handle such issues, including measures to ensure that the applicant, as an ANA, will not nominate a person as an adjudicator where a conflict of interest or potential conflict of interest exists between the adjudicator and the claimant or between the adjudicator and the respondent;
 - (xi) details of the applicant's financial position, including its most recent balance sheet;
 - (xii) the applicant's background, experience and qualifications and any other information which the applicant considers may assist the Authority to determine whether the applicant should be granted an authorisation.

5. Criteria for Authorisation as a Nominating Authority

The Authority should have regard to the following criteria and circumstances in considering applications for the authorisation of a nominating authority.

- (a) The ease with which a claimant can lodge an adjudication application with the applicant, and the applicant's capacity to provide a prompt administrative response, including the following:
 - (i) the applicant's place of business in Australia should be open during normal business hours;
 - (ii) the applicant should be able to be contacted by email and have an internet site or web page; and
 - (iii) the applicant should provide the service of an electronic lockbox or similar facility for parties' service of notices and other documents under the Act.
- (b) The relevant history and reputation of an applicant should be compatible with the maintenance of the industry's confidence in ANAs.
- (c) Efficiency and timeliness:
 - (i) the applicant should have efficient administrative processes that will enable the applicant to assess applications for adjudication and nominate adjudicators in a timely manner;
 - (ii) an applicant that is a corporation or an incorporated association should have in place delegation or authorisation arrangements that will enable the decisions of the corporation or association to be made promptly.
- (d) The capacity of the applicant to nominate suitable people to act as adjudicators:
 - (i) the applicant's nomination process should be likely to result in the selection of suitably qualified adjudicators whose skills are appropriate to the particular application;
 - (ii) the applicant should demonstrate they provide ready access to a sufficient number of suitably qualified people who can act as adjudicators.
The applicant's nomination procedures should demonstrate that the nomination of adjudicators will be carried out fairly.
- (e) Probity of process:
 - (i) the applicant's selection and nomination processes should demonstrate the applicant's capacity to identify, avoid or address and manage issues such as conflict of interest;
 - (ii) if the applicant is an industry body whose members are likely, from time to time, to request nomination of an adjudicator, the applicant should demonstrate it has systems and precautions to ensure probity of process when nominating adjudicators.
- (f) The applicant should have sufficient financial resources, including an adequate cash flow, to carry out an ANA's functions.

6. Procedure for Notifying and Recording Grants of Authorisations

- (a) Within ten business days of determining an application, the Authority should advise the applicant of the Authority's decision in writing;
- (b) The Authority should maintain on its website a list of ANAs, their contact details and the date when each authorisation commenced and when it will end (including any extension of the term of authorisation under clause 7) and the Authority should make this list available, on request, to any person without charge.

7. Term and Extension of Term of an Authorisation

- (a) Authorisation should be for the period of time determined by the Authority when granting the authorisation, which term should not exceed three (3) years;
- (b) In respect of each period of authorisation, the Authority may, upon written request from an ANA demonstrating good cause, or on its own motion, extend the term of any ANA's authorisation for up to 24 months;
- (c) The Authority's website should state both the commencement date and end date of the term of each ANA's authorisation, including the end date for any extension of the term.

8. Conditions of an authorisation

- (a) The Authority may issue a set of standard conditions that the Authority will impose on every authorisation when granted.
- (b) When granting an authorisation, the Authority should impose the following conditions of authorisation requiring an ANA:
 - (i) to notify the Authority of any change in any of the matters and information that is required to be included in an application for authorisation within seven days of the change;
 - (ii) to publish and keep published on the ANA's website or internet site (as applicable) the ANA's fee sharing arrangements with its adjudicators;
 - (iii) to report, in response to a request by the Authority, about the ANA's ongoing compliance with the conditions of its authorisation or, in the event of non-compliance, its actions and other measures to achieve compliance;
 - (iv) when nominating an adjudicator, do so without the influence of any improper or pecuniary interest or inducement;
 - (v) when nominating an adjudicator, do so without imposing any conditions on the adjudicator; for example, that the claimant agree to indemnify the ANA against claims;
 - (vi) to not hinder or interfere with the independent exercise of an adjudicator's responsibilities under the Act.

Note in relation to conditions: Under section 43 of the Act the Authority may impose conditions on any authorisation and may vary or revoke the conditions of an authorisation.

9. Procedures in Response to an ANA's Non-compliance with Conditions

- (a) If the Authority forms an opinion that an ANA has failed to comply with any of the conditions of its authorisation, the Authority should give the ANA a written notice asking the ANA to show cause, in writing, by a date specified in the notice, why the Authority should not exercise its powers under section 42 or 43 of the Act;
- (b) If the Authority reasonably concludes that the ANA has failed to show cause why the Authority should not exercise its powers under sections 42 or 43 of the Act, the Authority may –
 - (i) withdraw the ANA's authorisation if the Authority forms an opinion that the ANA should not continue to be authorised; or
 - (ii) vary or revoke any conditions of the ANA's authorisation or impose any condition(s) that the Authority considers appropriate to address the failure to comply.

Note on Authority's powers: Section 42 of the Act gives the Authority the power to withdraw an ANA's authorisation and section 43 empowers the Authority to impose, vary or revoke any conditions on an authority given under section 42.

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