



Authorised Nominating Authorities Application for Authorisation

*Building and Construction Industry Security of
Payment Act 2002*

Issued April 2022

Victorian Building Authority
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Introduction

Building and Construction Industry Security of Payment Act 2002

The *Building and Construction Industry Security of Payment Act 2002* (the 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 Victorian Building Authority (the **VBA**) under section 42 of the SOP Act. The VBA may also withdraw any authorisation it has given.

Before authorising an ANA under section 42, the VBA 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 VBA to impose conditions of authorisation, and to vary or revoke any existing conditions, 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.

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 inquiries and completed submissions, including supporting material, are to be submitted by email to the following email address by **no later than 30 April 2022**: ANAAApplication@vba.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 VBA using the above email address for alternate instructions.

Application for Authorisation as an Authorised Nominating Authority

The Applicant hereby applies to the VBA 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 VBA 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 VBA 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 Undertakings

If the VBA 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 VBA about any aspect of the adjudication process,
3. comply with any adjudication reporting system required by the VBA, and
4. promptly notify the VBA 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

Name of Applicant:	
Trading Name (if different):	
Contact Person:	
Position in Organisation:	
Registered Business Address:	
Postal Address (if different):	
ABN:	
Telephone:	
Fax:	
Email:	
Website:	

ANA Contact details for VBA website

Name of ANA:	
Business address:	
Postal Address (if different):	
Telephone:	
Fax:	
Email:	
Website:	

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 VBA 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.
- 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.¹

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.²

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.

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

² 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 2019 to 30 June 2020; 1 July 2020 to 30 June 2021; 1 July 2021 to 31 March 2022):
 - 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 Procedures

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.