



# **Authorised Nominating Authorities**

## **Application for Authorisation**

*Building and Construction Industry*

*Security of Payment Act 2002*

Issued April 2019

## Contents

Introduction .....	1
Application for Authorisation as an Authorised Nominating Authority .....	2
Applicant Undertakings.....	3
Applicant Declaration.....	4
Schedule A – Applicant Details.....	5
Schedule B – Professional Conduct.....	7
Schedule C – Management of Adjudication Process .....	8
Schedule D – Complaints Procedures .....	10
Schedule E – Applicant’s Fee Structure.....	11

## 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.

For information on completing the application contact: [ANAAApplication@vba.vic.gov.au](mailto:ANAAApplication@vba.vic.gov.au).

Completed applications must be submitted to: [ANAAApplication@vba.vic.gov.au](mailto:ANAAApplication@vba.vic.gov.au).

## **Application for Authorisation as an Authorised Nominating Authority**

The Applicant 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 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
4. promptly notify the VBA of any change to any particulars contained in the Applicant's application.



## Schedule A – Applicant Details

Name of Applicant: .....

Trading Name (if different): .....

Contact Person: .....

Position in Organisation: .....

Registered business address: .....

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Postal Address (if different): .....

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ABN: .....

Telephone: ..... Fax: .....

Email: .....

Website: .....

### **ANA Contact details for VBA website**

Name of ANA: .....

Business address: .....

Postal Address (if different): .....

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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.

### **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.

## 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>2</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>3</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>2</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>3</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 adjudicators' skills remain up to date.

## **5. 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.

## 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 ANAs
- 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.