

AUTHORISED NOMINATING AUTHORITY

CODE OF PRACTICE

Under the
Building and Construction Industry (Security of Payment) Act 2009 (ACT)

1. Introduction

Each Authorised Nominating Authority (ANA) under *the Building and Construction Industry (Security of Payment) Act 2009 (the Act)*, must give the Minister an undertaking to abide by the ANA Code of Practice (and any update thereof) and to notify the Minister forthwith of any departure from the code and the reasons for the departure.

2. Summary of the code

An ANA must:

- a. efficiently and without discrimination provide and continue to provide the functions of an ANA specified in the Act
- b. provide regular reports to the Minister
- c. manage the adjudication application process
- d. manage the adjudication certification process
- e. manage the selection, training and monitoring of adjudicators
- f. not depart from this code without good reason and without promptly notifying the Minister of the departure and the reasons.

3. Functions

- 3.1 An ANA is required to comply with this code while providing the functions of an ANA specified in the Act.
- 3.2 An ANA must promote to the construction industry its existence as an ANA, the services that it provides and the fees it charges. An ANA must notify the Minister promptly if the ANA is or will be unable or unwilling to continue to provide to the public the services of an ANA. An ANA must not delegate or abrogate its functions.
- 3.3 An ANA must at all times maintain an address in the ACT where adjudication applications, adjudication responses and other documents may be readily served by post, fax, delivery or email. The ANA must have a process for recording the time and date of receipt of an adjudication application, an adjudication response, a request for a certificate and any other document relevant to an adjudication application.
- 3.4 An ANA must, without discrimination, accept adjudication applications from any applicant who pays the ANA's appropriate fee, if any. In charging fees the ANA must not discriminate in favour of or against any person or class of persons.
- 3.5 On receipt of an adjudication application and payment of the ANA's fee, the ANA must promptly nominate an appropriate person to act as an adjudicator. If that person fails to accept the adjudication application within four business days after the adjudication application is made and, as a consequence, the claimant withdraws the application under section 28 of the Act, an ANA must refund to the applicant any fee paid by the applicant with the adjudication application.
- 3.6 An ANA must monitor the adjudication process, maintain appropriate records and, for that purpose, obtain the necessary information from adjudicators.

3.7 Upon receipt of a request for an adjudication certificate and payment of the ANA's appropriate fee, an ANA must promptly provide to the applicant an adjudication certificate. The adjudication certificate must include the information required by section 26(3) of the Act.

4. Reports

4.1 The ANA must provide to the Minister reports of its activities quarterly and annually or on request by the Minister. A report must include the information required under section 35 of the Act or other information the Minister may request.

4.2 The ANA must notify the Minister of any change in the ANA's details within seven days after the change. Such notification shall occur from the date of application for authorisation (prior to authorisation under the Act) until the ANA is no longer authorised as a nominating authority under the Act.

4.3 The ANA must notify the Minister of:

- a. the fee structure to be charged under the Act by the ANA within seven days of authorisation and
- b. any proposed change in the fees to be charged under the Act by the ANA, 28 days prior to implementation of the change.

4.4 The ANA must notify any instance of non-compliance and unsatisfactory adjudicator performance including details on remedial action to ensure such issues do not arise again.

4.5 The ANA must provide the Minister with quarterly and annual reports of its activities undertaken during the preceding quarter or financial year as relevant. The reports must be signed and submitted within 14 days of the end of each quarter or financial year.

4.6 The quarterly and annual Report must:

- a. provide a summary of the ANA's activities with respect to the Act and possible recommendations to enhance the operation of the Act
- b. include but not necessarily be limited to:
 - (i) statistical data related to adjudication applications including the total number of:
 - a. adjudication applications received (including optional adjudication applications)
 - b. optional adjudication applications received
 - c. adjudicator nominations
 - d. withdrawn adjudication applications
 - e. adjudication determinations
 - f. adjudication certificates issued.
 - (ii) details of adjudicators nominated by the ANA (including the number of times each was nominated) and the competencies each adjudicator possesses
 - (iii) details on the nature of any complaints and the outcomes of such complaints
 - (iv) details of training activities, including the numbers of students and training outcomes
 - (v) details of any change to information submitted by the ANA in the ANA's application for authorisation
 - (vi) schedule of fees charged and any changes thereto
 - (vii) details of actions taken by the ANA to promote its services.

5. Adjudication application

5.1 An ANA must:

- a. provide to a claimant (on request) an adjudication application form. This form may be ANA specific but must contain all the information required under the Act;
 - i. assign a registration number to every adjudication application received by the ANA whether the application results in adjudication or not
- b. endorse on the ANA's adjudication application form the ANA's schedule of fees
- c. provide to each claimant lodging or proposing to lodge an adjudication application, the ANA's schedule of fees.

6. Selection, training and monitoring of adjudicators

6.1 An ANA will manage the processes of selection, training and monitoring of adjudicators as outlined in Schedule 1.

7. Address for and manner of delivering of reports

7.1 All reports are to be in writing, unless otherwise stated, and posted or delivered to the:

Manager Construction Occupations Section

ACT Planning and Land Authority

16 Challis Street

Dickson ACT 2602

Fax: (02) 6207 6438

Email: constructionoccupationsregulation@act.gov.au

8. Enclosures

8.1 Schedule 1 – Adjudicator – Selection, Training and Monitoring.

SCHEDULE 1

Adjudicator selection, training and monitoring

1. An ANA must:
 - a. determine the necessary core competencies of adjudicators required to undertake the adjudication process under the Act
 - b. select, train and monitor on a continuous basis
 - i. adjudicator compliance with the Act and
 - ii. adjudicator performance with the view to maintaining high levels of competency of adjudicators and their adjudication determinations
 - c. report any instance of non-compliance and unsatisfactory adjudicator performance; in such instances the ANA is to provide remedial action to ensure such issues do not arise again
 - d. establish and maintain a training, accreditation and pre-qualification scheme where necessary
 - e. establish and maintain effective ANA services to all parts of the ACT including but not limited to the numbers and type of adjudicators necessary to cater for all such adjudication
 - f. maintain a suitable quality system that supports consistent and reliable adjudicator selection, training and monitoring.
2. In nominating an adjudicator the ANA will ensure that:
 - a. the adjudicator has the core competencies to carry out each specific adjudication determination noting that all adjudications are unique and may require varying degrees of competencies
 - b. the adjudicator has been adequately trained and retrained in the adjudication process relating to the Act
 - c. any perception of conflict of interest has been addressed prior to nomination.