



Fair  
Trading

Authorised Nominating Authority

Code of Practice

*Building and Construction Industry Security of  
Payment Act 1999*

**Version 2.2**

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## INTRODUCTION

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An Authorised Nominating Authority (ANA) under the *Building and Construction Industry Security of Payment Act 1999* (the 'Act'), gives the Minister for Fair Trading (the 'Minister') an undertaking to abide by this ANA Code of Practice and to notify the Minister of any departure from the Code and the reasons for the departure.

An ANA is required to comply with the ANA Code of Practice and the NSW Government Code of Practice for the Construction Industry whilst providing the functions of an ANA specified in the Act.

### Terms used

**The Act** means the [Building and Construction Industry Security of Payment Act 1999](#).

**The Minister** (responsible) is the Minister for Fair Trading

**The Minister's representative** is the defined contact point for the submission of all reports, complaints, review submissions, notices etc. so that submissions to the Minister's Representative are submissions to the Minister.

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**Authorised Nominating Authority** (ANA) means a person authorised by the Minister under section 28 of the Act to nominate persons to determine adjudication applications.



## GENERAL CONDITIONS

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1. An ANA must comply with the *Building and Construction Industry Security of Payments Act 1999*.
2. An ANA must at all times maintain an address in NSW where adjudication applications, adjudication responses and other documents may be readily served by post, fax or delivery.
3. An ANA must notify the Minister of any change in the ANA's details supplied in its application within 7 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. An 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.
5. Upon receipt of an adjudication application and payment of the ANA's fee, an ANA must promptly nominate an appropriate person to act as an adjudicator. If that person fails to accept the adjudication application within 4 business days after the adjudication application is made or fails to determine the application within the time allowed under the Act and, as a consequence, the claimant withdraws the application under section 26 of the Act, an ANA must refund to the applicant any fee paid by the applicant with the adjudication application.
6. An ANA must monitor the adjudication process, maintain appropriate records and, for that purpose, obtain the necessary information from adjudicators.
7. An ANA must notify the Minister's representative of any complaint or allegation made against an adjudicator or the ANA, including court actions or adjudications submitted for judicial review, within 7 days of becoming aware of the complaint or allegation, whether by formal or informal means.
8. An ANA must efficiently and without discrimination provide and continue to provide the functions of an ANA specified in the Act. An ANA must not delegate or abrogate its functions.
9. An ANA must provide copies of adjudication decisions to the Minister's representative, as requested.



10. An ANA will manage the processes of Selection, Training and Monitoring of adjudicators as outlined in [Schedule 1](#).
11. An ANA must provide materials requested for audit.
12. 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.
13. 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 certificate should provide, as a minimum:
  - a. ANA name and contact details
  - b. claimant name and contact details
  - c. respondent name and contact details
  - d. adjudicator's name
  - e. date of adjudication
  - f. adjudicated amount
  - g. due date of adjudicated amount
  - h. rate of interest applied and amount of interest due on adjudicated amount
  - i. unpaid share of adjudication fee (if any)
  - j. total amount due (including interest and adjudication fee).
14. An ANA must notify the Minister of the fee structure to be charged under the Act by the ANA within 7 days of authorisation, and any proposed change in the fees to be charged under the Act by the ANA, 28 days prior to implementation of the change.
15. The ANA agrees that the Minister, or the Minister's representative, may attend any ANA courses without fees.
16. An office bearer or employee of an ANA is not to refer an adjudication application to another office bearer or employee of the ANA.
17. An ANA must promote to the construction industry its existence as an ANA, the services that it provides and the fees it charges.
18. 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.
19. An ANA must provide to a claimant (on request) an adjudication application form.



### Reporting schedule

1. An ANA must provide adjudication data for performance reporting purposes to the Minister's representative as requested.
2. An ANA must provide Quarterly Reports containing performance reporting data as follows:
  - a. Quarter 1: 1 July – 30 September                      Due 31 October
  - b. Quarter 2: 2 October – 31 December                      Due 31 January
  - c. Quarter 3: 1 January – 31 March                      Due 30 April
  - d. Quarter 4: 1 April – 30 June                      Due 31 July
3. Where the due date falls on a weekend or public holiday, the reports may be provided on the next business day.
4. The reports must include detailed performance management data as specified in the spreadsheet provided by NSW Fair Trading. Reports should be furnished electronically via email to [SecurityofPayment@finance.nsw.gov.au](mailto:SecurityofPayment@finance.nsw.gov.au).
5. The reports are to also include details of any adjudications referred for judicial review and of any complaints and/or allegations made against an adjudicator or the ANA, including court actions. The report should provide information on the outcome of the judicial review or complaint, and, if required, rectification or remediation action by the ANA. If the ANA has already notified the Minister's representative of a complaint, the report should provide any information that has since become available, such as the outcome of the judicial review or remedial actions.
6. The Quarter 4 report due on 31 July should also include:
  - a. details of any change to information submitted by the ANA in the ANA's application for authorisation;
  - b. the ANA's current schedule of fees;
  - c. details of actions taken by the ANA to promote its services.
7. If an ANA stops operating, or its authorisation is withdrawn, a report covering operations for the most recent quarter up to the withdrawal date, and any other outstanding reports, must be provided within 28 days of withdrawal of authorisation.



# **SCHEDULE 1**

## **SELECTION, TRAINING AND MONITORING OF ADJUDICATORS**

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An ANA must:

1. Determine the necessary core competencies of adjudicators required to undertake the adjudication process under the Act;
2. Select, train and monitor on a continuous basis:
  - a. adjudicator compliance with the Act; and
  - b. adjudicator performance with the view to maintaining high levels of competency of adjudicators and their adjudication determinations
3. Monitor and report any instance of non-compliance and unsatisfactory adjudicator performance including details on remediation actions to ensure such issues do not arise again. Such notification is to be submitted with the next scheduled quarterly report.
4. Establish and maintain a training, accreditation and pre-qualification scheme where necessary;
5. Establish and maintain effective ANA services including but not limited to the numbers and type of adjudicators necessary to cater for all such adjudication;
6. Maintain a suitable quality system that supports consistent and reliable adjudicator selection, training and monitoring;
7. Ensure when nominating an adjudicator 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.



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