Western Australia

Building and Construction Industry (Security of Payment) Act 2021

Building and Construction Industry (Security of Payment) Regulations 2022

As at 01 Jul 2026 Official Version
[PCO 00-k0-00] Published on www.legislation.wa.gov.au

Western Australia

Building and Construction Industry (Security of Payment) Regulations 2022

Contents

Part 1 — Preliminary

1. Citation 1
2. Commencement 1
3. Terms used 1

Part 2 — Construction contracts

4. Threshold contract value for construction contracts required to be in writing and contain mandatory information 2
5. Other prohibited terms of construction contracts (s. 15) 2

Part 3 — Procedure for obtaining progress payments

6. Form of homeowner's notice to be included in payment claim 3
7. Additional kinds of conflicts of interests of adjudicators 3
8. Threshold for review of adjudication 4
9. Maximum adjudication fees and expenses of adjudicators 4
10. Minimum credit rating for compliant performance bonds 5

Part 4 — Retention money trusts

11. Prescribed retention money threshold for trust scheme 6
12. Exclusion of small-scale residential contracts from retention money trust scheme 6
13. Withdrawal from retention money trust account of interest earned before release 7
14. Redaction of information relating to identity of other beneficiaries from trust accounts when inspected or copied (s. 79(4)) 8

Part 5 — Nominating authorities, adjudicators and review adjudicators

15. Fees 9
16. Refund of registration fees 9
17. Code of practice for authorised nominating authorities (s. 97) 9
18. Qualifications for registration as adjudicators or review adjudicators (s. 102(1)(a) and (2)(b)) 9
19. Experience for registration as adjudicators or review adjudicators (s. 102(1)(a) and (2)(b)) 11
20. Grading of adjudicators (s. 101(4)) 12
21. Code of practice for adjudicators and review adjudicators (s. 109) 14

Part 6 — Miscellaneous

22. Electronic lock-box service of documents on authorised nominating authorities (s. 113(3)(e)) 15
23. Time of service of documents (s. 113(4)) 15
24. Infringement notices: prescribed offences and modified penalties 16
25. Infringement notices: authorised officers and approved officers 16
26. Infringement notices: forms 17

Schedule 1 — Form of homeowner's notice

Schedule 2 — Code of practice for authorised nominating authorities

Division 1 — Preliminary

1. Citation 21
2. Terms used 21
3. Compliance with code of practice 21

Division 2 — Standards of business conduct

4. Compliance with laws 22
5. Duty of care, diligence and skill 22
6. Duty to act honestly, fairly and professionally 22
7. Duty not to direct or influence adjudicators or review adjudicators 23
8. Duty not to delegate or abrogate responsibility 23
9. Duty to ensure security of confidential information 24

Division 3 — Conflicts of interest

10. Conflicts of interest policy 24
11. Applications for adjudication or adjudication review must not be referred if conflict of interest 24
12. Authorised nominating authority must not seek, accept, agree to or offer inducements 25

Division 4 — Professional management arrangements

13. Professional management policy 26

Division 5 — Complaints and internal disputes resolution

14. Complaints and internal disputes resolution policy 26
15. Notification of Building Commissioner of complaints and internal disputes 27
16. Records of complaints and internal disputes 27

Division 6 — Adjudication applications

17. Adjudicator appointment policy 28
18. Appointment of adjudicators 28

Division 7 — Adjudication review applications

19. Review adjudicator appointment policy 29
20. Appointment of review adjudicators 29

21. Disputed adjudicated amounts and deposits or security held on trust 30

Division 8 — Fees and expenses

22. Charging of fees and expenses 31
23. Notification of deposit or security for adjudication fees and expenses 32
24. Refund of application fee 32

Division 9 — Information for Building Commissioner

25. Notifications to Building Commissioner 33
26. Information that must be provided before surrender of authorisation 33
27. Inspection and provision of copies of written policies of authorised nominating authorities 34

Division 10 — Miscellaneous

28. Authorised nominating authority must maintain website 34
29. Service of documents 35
30. Building Commissioner's practice notes 35

Schedule 3 — Code of practice for adjudicators and review adjudicators

Division 1 — Preliminary

1. Citation 36
2. Terms used 36
3. Compliance with code of practice 37

Division 2 — Professional conduct

4. Compliance with laws 37
5. Duty not to engage in unprofessional conduct 37
6. Duty to act independently and impartially 38
7. Duty not to delegate or abrogate responsibility 38
8. Duty to maintain eligibility for registration 38
9. Duty to ensure security of confidential information 39

Division 3 — Conflicts of interest

10. Adjudicator or review adjudicator must not accept appointment if they are, or are related to, authorised nominating authority 39

11. Checking for conflicts of interest 40
12. Adjudicators and review adjudicators must not seek, accept, agree to or offer inducements 40

Division 4 — Appointment of adjudicator or review adjudicator

13. Acceptance of appointments 41

Division 5 — Making of determinations

14. Form of determinations 41
15. Correction of determinations 42
16. Record keeping with respect to determinations 42

Division 6 — Adjudication fees and expenses

17. Amount of adjudication fees and expenses that may be charged 43
18. Notification of adjudication fees and expenses 44
19. Deposit or security for adjudication fees and expenses 44
20. Expert and testing adjudication expenses 45
21. Withholding determination 45

Division 7 — Miscellaneous

22. Information that must be provided by adjudicator appointed by parties 46
23. Building Commissioner's practice notes 46

Schedule 4 — Prescribed offences and modified penalties

Schedule 5 — Infringement notice forms

Schedule 6 — Fees

Notes

Compilation table 53

Defined terms

Building and Construction Industry (Security of Payment) Regulations 2022

Part 1 — Preliminary

1. Citation

These regulations are the *Building and Construction Industry (Security of Payment) Regulations 2022*.

2. Commencement

These regulations come into operation as follows —

(a) regulation 10 — on 1 February 2024;

(b) Part 4 — on 1 February 2023;

(c) the rest of the regulations — on 1 August 2022.

3. Terms used

(1) In these regulations —

section means a section of the Act.

(2) In these regulations, a reference to an amount of money is a reference to that amount inclusive of GST.

Part 2 — Construction contracts

4. Threshold contract value for construction contracts required to be in writing and contain mandatory information

For the purposes of section 13(2)(d), the amount is $20 000.

5. Other prohibited terms of construction contracts (s. 15)

(1) In this regulation —

dispute resolution process means any negotiation, conciliation or other process for the resolution of a dispute between the parties to a construction contract.

(2) A provision of a construction contract is prohibited if it requires a person who is entitled to make a claim under the Act to engage in a dispute resolution process with the other party to the contract or with a third party as a precondition to any of the following —

(a) the making of a payment claim by the person;

(b) the making of an adjudication application or an adjudication review application by the person;

(c) the exercise of any other right of, or the discharge of any obligation to, the person under the Act.

Note for this regulation:

Section 15(3) provides that a provision of a construction contract that is prohibited by this regulation has no effect.

Part 3 — Procedure for obtaining progress payments

6. Form of homeowner's notice to be included in payment claim

The homeowner's notice required to be included in a payment claim given to a principal for home building work under section 24(2) must be in the form set out in Schedule 1.

Note for this regulation:

Section 24(2) requires a homeowner's notice if the value of the construction contract exceeds $500 000. The notice is not required if the principal is a corporation or if the work is carried out in relation to multiple dwellings or for the purposes of a residential development business of the principal.

7. Additional kinds of conflicts of interests of adjudicators

(1) In this regulation —

close family member means a spouse or de facto partner, former spouse or de facto partner, child, parent, grandparent or sibling;

employed includes engaged as a contractor to perform work;

officer has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9.

(2) For the purposes of section 33(2)(d), an adjudicator also has a conflict of interest in relation to an adjudication application if —

(a) the adjudicator or a close family member of the adjudicator is an officer of the claimant or respondent; or

(b) the adjudicator or a close family member of the adjudicator is employed by the claimant or respondent; or

(c) the adjudicator was employed by the claimant or respondent at any time within the period of 12 months immediately before the adjudication application was made.

8. Threshold for review of adjudication

(1) For the purposes of section 39(2)(b)(i), the minimum amount of difference between the claimed amount and the lesser adjudicated amount is $200 000.

(2) For the purposes of section 39(2)(b)(ii), the minimum claimed amount is $50 000.

(3) For the purposes of section 39(3)(c), the minimum amount of difference between the scheduled amount and the greater adjudicated amount is $200 000.

9. Maximum adjudication fees and expenses of adjudicators

(1) For the purposes of section 50(2), the following amounts are the maximum amounts of adjudication fees and expenses payable to an adjudicator in connection with a payment claim for not more than $50 000 —

(a) if the payment claim is for not more than $5 000 — $900;

(b) if the payment claim is for more than $5 000 but not more than $15 000 — $1 500;

(c) if the payment claim is for more than $15 000 but not more than $20 000 — $2 750;

(d) if the payment claim is for more than $20 000 but not more than $25 000 — $3 300;

(e) if the payment claim is for more than $25 000 but not more than $40 000 — $5 500;

(f) if the payment claim is for more than $40 000 but not more than $50 000 — $7 250.

(2) The maximum fees and expenses under subregulation (1) do not apply to the expenses incurred by an adjudicator in arranging for a test or engaging an expert to investigate and report on any matter, as referred to in section 35(3)(d) and (e).

(3) This regulation does not apply to the fees and expenses of a review adjudicator in connection with an adjudication review application.

10. Minimum credit rating for compliant performance bonds

For the purposes of section 60(1)(i), the minimum credit rating of an authorised institution issuing a performance bond is —

(a) the rating of A under the Standard & Poor's Long-Term Issuer Credit Ratings, except as provided by paragraph (b); or

(b) if the construction contract provides for a lower minimum credit rating — that lower minimum credit rating.

Part 4 — Retention money trusts

11. Prescribed retention money threshold for trust scheme

For the purposes of section 70(1)(b), the prescribed retention money threshold is —

(a) in the case of a construction contract entered into on or after 1 February 2023 and before 1 February 2024 — $1 000 000; or

(b) in the case of a construction contract entered into on or after 1 February 2024 — $20 000.

12. Exclusion of small-scale residential contracts from retention money trust scheme

(1) In this regulation —

associated structure means a granny flat, shed, patio, deck, pergola, carport, driveway, swimming pool or similar kind of structure;

community corporation has the meaning given in the *Community Titles Act 2018* section 3(1);

dwelling means a building occupied or intended for occupation solely or mainly as a place of residence;

lot has the meaning given in the *Land Tax Assessment Act 2002* Glossary clause 2;

strata company has the meaning given in the *Strata Titles Act 1985* section 3(1).

(2) For the purposes of section 70(1)(d), a construction contract for home building work that is a small-scale residential contract is excluded from Part 4 of the Act.

(3) A ***small-scale residential contract*** is —

(a) a construction contract in respect of a single dwelling between a head contractor and a subcontractor or between 2 subcontractors; or

(b) a construction contract for an associated structure connected to, or on the same lot as, an existing or proposed single dwelling; or

(c) a construction contract for an associated structure on common property under the *Community Titles Act 2018* or the *Strata Titles Act 1985* if the principal is an individual or a strata company or community corporation.

(4) However, a construction contract that is one of a number of separate construction contracts for home building work is not a ***small-scale residential contract*** if —

(a) the parties to the construction contracts are the same; and

(b) the work is to be carried out at the same lot or at adjacent lots; and

(c) a single construction contract could have been entered into for the work; and

(d) the construction contracts were not entered into after separate tender processes.

Note for this regulation:

Section 70(2) also excludes certain other construction contracts for home building work from the retention money trust scheme in Part 4 of the Act.

13. Withdrawal from retention money trust account of interest earned before release

(1) For the purposes of section 76(2)(h), another purpose for which money may be withdrawn from a retention money trust account is for the payment to the party who established and operates the account of amounts equal in total to the interest earned on the money to which that party is entitled under section 78(1).

(2) For the purposes of section 76(4), a withdrawal from the account under subregulation (1) —

(a) before the retention money trust end date — may not be made more frequently than once every 6 months; and

(b) on or after the retention money trust end date — may be made at any time.

Note for this regulation:

Section 78 provides that interest earned on any money held in a retention money trust account that relates to any period after it is required to be released by the party holding the trust money to the other party to the contract is required to be paid to that other party, but interest that relates to the period before the money is required to be released is payable to the party holding the trust money.

14. Redaction of information relating to identity of other beneficiaries from trust accounts when inspected or copied (s. 79(4))

(1) A party to a construction contract who established and operates a retention money trust account and who allows a person having a beneficial interest in money in the account to inspect or take copies of accounting records relating to the money may redact —

(a) the name of another beneficiary of money in the account; and

(b) any other information that identifies the other beneficiary.

(2) This regulation does not authorise the redaction of information about the amount of money in which the other beneficiary has a beneficial interest.

Part 5 — Nominating authorities, adjudicators and review adjudicators

15. Fees

The fees set out in Schedule 6 are payable in respect of the matters referred to in that Schedule.

Note for this regulation:

The application fee and the registration fee for registration apply under section 104(3) to the renewal of registration.

[Regulation 15 inserted: SL 2023/35 r. 9.]

16. Refund of registration fees

(1) The Building Commissioner may, on application for a refund made by an applicant for registration or renewal of registration as an adjudicator or review adjudicator, refund a registration fee paid by the applicant if the applicant is not registered or the registration is not renewed.

(2) An application for a refund must be made in the approved form (if any).

17. Code of practice for authorised nominating authorities (s. 97)

The code of practice set out in Schedule 2 applies to the performance of the functions under the Act of authorised nominating authorities.

18. Qualifications for registration as adjudicators or review adjudicators (s. 102(1)(a) and (2)(b))

(1) The qualifications required for registration as an adjudicator or a review adjudicator are —

(a) a degree from a university or other tertiary institution in Australia, or an equivalent qualification from a

university or other tertiary institution in another country, in 1 or more of the following subjects —

(i) architecture;

(ii) engineering;

(iii) quantity surveying;

(iv) building and construction;

(v) construction management;

(vi) project management;

(vii) built environments;

(viii) law;

and

(b) the completion of a course approved by the Building Commissioner for registration as an adjudicator or a review adjudicator (as the case requires).

(2) The following are taken to have the qualification required by subregulation (1)(a) —

(a) a lawyer;

(b) an individual who is provisionally registered as an adjudicator under section 110.

(3) The Building Commissioner may, for the purposes of subregulation (1)(b), approve a course for registration as an adjudicator or a course for registration as a review adjudicator if satisfied the matters covered by the course include the following —

(a) the role and functions of an adjudicator or a review adjudicator (as the case requires);

(b) a study of the Act;

(c) the practical aspects of adjudication;

(d) ethics, procedural fairness and good faith in connection with adjudication;

(e) the obligations under the code of practice for adjudicators or review adjudicators;

(f) decision making and decision writing;

(g) legal concepts in connection with adjudication;

(h) course assessment or examination.

19. Experience for registration as adjudicators or review adjudicators (s. 102(1)(a) and (2)(b))

(1) In this regulation —

judicial officer means a judge, acting judge or auxiliary judge of —

(a) the Supreme Court or District Court; or

(b) an equivalent court of another State or a Territory; or

(c) the Federal Court of Australia or High Court of Australia.

(2) The experience required for registration as an adjudicator is —

(a) at least 5 years' experience in the management and administration of construction contracts or in the resolution of disputes in connection with construction contracts; or

(b) experience as a judicial officer; or

(c) experience as an adjudicator under the *Construction Contracts (Former Provisions) Act 2004* or under a corresponding security of payment law.

(3) The experience required for registration as a review adjudicator is —

(a) both of the following —

(i) at least 10 years' experience in the management and administration of construction contracts or in the resolution of disputes in connection with construction contracts;

(ii) experience (as an adjudicator under the Act, under the *Construction Contracts (Former Provisions) Act 2004* or under a corresponding security of payment law) in the determination of at least 10 adjudication applications, at least 5 of which were related to payment claims or payment disputes for more than $100 000;

or

(b) experience as a judicial officer.

(4) In this regulation, a reference to a specified number of years of experience in an activity is a reference to the total number of years of experience calculated on engagement in that activity on a full-time basis.

(5) For the purposes of this regulation, experience in relation to construction contracts includes experience in relation to —

(a) construction contracts (as defined in the *Construction Contracts (Former Provisions) Act 2004* section 3) that were entered into before this regulation came into operation; and

(b) construction contracts to which a corresponding security of payment law applies.

20. Grading of adjudicators (s. 101(4))

(1) An individual may be registered as —

(a) a Grade 1 adjudicator; or

(b) a Grade 2 adjudicator.

(2) An individual is not eligible to be registered as a Grade 2 adjudicator unless —

(a) the individual has (as an adjudicator under the Act) determined at least 10 adjudication applications, at least 5 of which were related to payment claims for more than $50 000; or

(b) the individual has (as an adjudicator under the *Construction Contracts (Former Provisions) Act 2004* or under a corresponding security of payment law) determined at least 10 adjudication applications, at least 5 of which were related to payment claims or payment disputes for more than $50 000; or

(c) the Building Commissioner is satisfied that the individual has equivalent experience in dealing with payment disputes in the building and construction industry.

(3) An individual must be registered as a Grade 1 or Grade 2 adjudicator when the Building Commissioner registers the individual as an adjudicator and when the Building Commissioner renews the individual's registration.

(4) A Grade 1 adjudicator may apply to the Building Commissioner for a review of their grade of registration after the adjudicator has been registered for at least 12 months.

(5) An application for review may be made —

(a) before the renewal of registration in the approved form (if any); or

(b) in an application for the renewal of registration.

(6) If the Building Commissioner is satisfied that the applicant is eligible to be registered as a Grade 2 adjudicator, the applicant becomes a Grade 2 adjudicator —

(a) if the application was made before the renewal of registration — on the giving of a written notice to the applicant by the Building Commissioner of registration as a Grade 2 adjudicator; or

(b) if the application was made in an application for the renewal of registration — on the renewal of registration as a Grade 2 adjudicator.

21. Code of practice for adjudicators and review adjudicators (s. 109)

The code of practice set out in Schedule 3 applies to the performance of the functions under the Act of adjudicators and review adjudicators.

Part 6 — Miscellaneous

22. Electronic lock-box service of documents on authorised nominating authorities (s. 113(3)(e))

(1) In this regulation —

lock-box means a facility for the electronic receipt and storage of documents.

(2) A document that by or under the Act is authorised or required to be given to an authorised nominating authority may also be given by uploading the document electronically to a lock-box controlled by the authority.

(3) A lock-box is controlled by an authorised nominating authority if documents uploaded to the lock-box —

(a) can only be accessed by the authority; and

(b) cannot be altered or withdrawn by the person who uploaded them.

(4) A document is uploaded to a lock-box when the document is capable of being retrieved from the lock-box by the authorised nominating authority.

23. Time of service of documents (s. 113(4))

The time when a document that is authorised or required by or under the Act to be given to a person is taken to have been given is as follows —

(a) in the case of a document delivered to the person personally — when the document is accepted by the person or, if the person refuses to accept the document, when the document is put down in the person's presence and the person is informed of the nature of the document;

(b) in the case of a document left for the person at the person's ordinary place of business — when the document is left at the premises concerned with a person who appears to work there;

(c) in the case of a document sent by post to the person's ordinary place of business — when the letter would have been delivered in the ordinary course of post unless a different time of actual delivery is established;

(d) in the case of a document sent to a person by email or any other form of electronic communication — when the electronic communication is taken to be received by the person in accordance with the *Electronic Transactions Act 2011* section 14;

(e) in the case of a document given by uploading it to a lock-box as provided for under regulation 22 — when the document is uploaded to the lock-box.

24. Infringement notices: prescribed offences and modified penalties

(1) The offences specified in Schedule 4 are offences for which an infringement notice may be issued under the *Criminal Procedure Act 2004* Part 2.

(2) The modified penalty specified opposite an offence in Schedule 4 is the modified penalty for that offence for the purposes of the *Criminal Procedure Act 2004* section 5(3).

25. Infringement notices: authorised officers and approved officers

(1) The Building Commissioner may, in writing, appoint persons or classes of persons to be authorised officers or approved officers for the purposes of the *Criminal Procedure Act 2004* Part 2 in relation to infringement notices issued under that Part for an offence specified in Schedule 4.

(2) The Building Commissioner must issue to each authorised officer a certificate, badge or identity card identifying the officer as a person authorised to issue infringement notices.

(3) An authorised officer may show that they are authorised to issue infringement notices for an offence specified in Schedule 4 by showing the certificate, badge or identity card issued to them under subregulation (2).

26. Infringement notices: forms

For the purposes of the *Criminal Procedure Act 2004* Part 2 —

(a) Schedule 5 Form 1 is the prescribed form for an infringement notice; and

(b) Schedule 5 Form 2 is the prescribed form for the withdrawal of an infringement notice.

Schedule 1 — Form of homeowner's notice

[r. 6]

NOTICE TO PRINCIPAL FOR HOME BUILDING WORK UNDER SECTION 24(2) OF THE *BUILDING AND CONSTRUCTION INDUSTRY (SECURITY OF PAYMENT) ACT 2021* (WA)

TAKE NOTICE	By giving you a payment claim, the claimant is seeking to obtain under the Act the claimed amount in full by the due date. If you are unfamiliar with the requirements of the Act, you should seek professional advice on your rights as early as possible. **If you do not intend to pay the claimed amount in full by the due date, or if you dispute the claimed amount, then you should give the claimant a payment schedule —** **(a) within 15 business days after you are given the payment claim; or** **(b) if applicable, by the earlier date specified in the construction contract.** If you do not give the claimant a payment schedule, and do not make payment in full by the due date, the claimed amount can be enforced against you in a court of competent jurisdiction. In those proceedings, you will not be able to bring any cross-claim against the claimant or raise any defence in relation to matters arising under the construction contract (e.g. the work was not done or was defective) and the judgment given will be on account of the contract price.

	Alternatively, instead of commencing court proceedings, the claimant may elect to refer the payment claim to an adjudicator under the Act. In that event, the claimant must give you notice of intention to apply for adjudication and you will have another 5 business days to give a payment schedule to the claimant. If you do not propose to make any payment, the payment schedule must indicate $0 or NIL and indicate why no payment is proposed and, if the reason is that you are withholding payment, the reason(s) for withholding payment. If you propose to pay an amount less than the claimed amount, the payment schedule must indicate the amount to be paid (the ***scheduled amount***) and why that amount is less and, if the reason is that you are withholding payment, the reason(s) for withholding payment. If the scheduled amount you propose to pay under a payment schedule is not paid by the due date, the scheduled amount can be enforced against you in a court of competent jurisdiction or the matter referred to an adjudicator. Under the Act, a payment schedule must: (a) be given in writing and be in the approved form (if any); and (b) identify the payment claim to which it relates; and (c) indicate the amount of the payment (if any) that you propose to make. Please note that you must include in a payment schedule all the reasons for withholding payment, as you will be limited to the reasons you have provided if the matter is referred to an adjudicator.

	If you do not give the claimant a payment schedule within the required time, you will not be entitled to give an adjudication response to the adjudicator in the event that the matter is referred to an adjudicator. Under the Act, ***business day*** means a day other than: (a) a Saturday, Sunday or public holiday; or (b) any other day that falls between 22 December in any year and 10 January in the following year (inclusive). You can find further information about the Act on the Building Commissioner's website.

Schedule 2 — Code of practice for authorised nominating authorities

[r. 17]

Division 1 — Preliminary

1. Citation

This code of practice is the *Building and Construction Industry (Security of Payment) Authorised Nominating Authorities Code of Practice*.

2. Terms used

(1) In this code of practice —

Act means the *Building and Construction Industry (Security of Payment) Act 2021*;

confidential information means information that is the subject of a duty of confidentiality or secrecy or that is of a commercially sensitive nature;

conflict of interest includes a perceived or potential conflict of interest;

family member means a spouse or de facto partner, former spouse or de facto partner, child, mother, mother-in-law, father, father-in-law, grandparent, sibling or sibling-in-law;

officer has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9.

(2) A term used in this code of practice has the same meaning as it has in the Act.

3. Compliance with code of practice

Authorised nominating authorities are, under section 97 of the Act, required to perform their functions under the Act in accordance with this code of practice.

Note for this clause:

Under section 97(3) of the Act, a contravention of this code of practice by an authorised nominating authority may be taken into account by

the Building Commissioner under Part 5 Division 1 of the Act (for example, in deciding to impose conditions on the authorisation of the authority or to revoke the authorisation of the authority).

Division 2 — Standards of business conduct

4. Compliance with laws

(1) An authorised nominating authority must comply with the requirements of —

(a) the Act, the regulations, the conditions of its authorisation and this code of practice; and

(b) other relevant written laws that apply to the performance of its functions under the Act (such as the Australian Consumer Law and laws relating to fair trading, anti-discrimination, equal opportunity and privacy).

(2) An authorised nominating authority must take all reasonable measures to ensure that any individuals involved in the nomination by the authority of adjudicators or review adjudicators have a sufficient knowledge of those requirements to enable the lawful performance of that nomination function.

5. Duty of care, diligence and skill

An authorised nominating authority must perform its functions under the Act with all reasonable care, diligence and skill.

6. Duty to act honestly, fairly and professionally

(1) An authorised nominating authority must act honestly, fairly and professionally in all of its dealings with adjudicators, review adjudicators, claimants and respondents.

(2) In particular, an authorised nominating authority must not engage in any of the following conduct in performing its functions under the Act —

(a) intimidation, harassment or abuse;

(b) discrimination or disadvantage in the nomination of adjudicators or review adjudicators;

(c) any conduct that is unconscionable or that compromises its integrity or professional independence.

7. Duty not to direct or influence adjudicators or review adjudicators

(1) An authorised nominating authority must not direct or influence, or attempt to direct or influence, adjudicators or review adjudicators in the performance of their functions under the Act.

(2) An authorised nominating authority does not breach that duty merely because —

(a) the authority provides adjudicators or review adjudicators with editorial assistance to identify any of the following in their determinations or draft determinations —

(i) a clerical mistake or defect of form;

(ii) an error arising from an accidental slip or omission;

(iii) a material arithmetic error or a material mistake in the description of any person, thing or matter;

or

(b) the authority provides adjudicators or review adjudicators with training or continuing professional development in connection with the conduct of adjudications or review adjudications under the Act.

8. Duty not to delegate or abrogate responsibility

(1) An authorised nominating authority must not delegate or abrogate any of its functions under the Act.

(2) However, an authorised nominating authority may employ or engage individuals to assist the authority in nominating adjudicators or review adjudicators or performing its other functions under the Act.

9. Duty to ensure security of confidential information

An authorised nominating authority must take all reasonable measures to ensure the security of confidential information that the authority obtains under or for the purposes of the Act.

Note for this clause:

Under section 116 of the Act, an authorised nominating authority commits an offence if it uses or discloses (except as authorised under that section) any confidential information obtained by the authority under or for the purposes of the Act.

Division 3 — Conflicts of interest

10. Conflicts of interest policy

(1) An authorised nominating authority must have a written policy for the identification and management of conflicts of interest that could affect, or might be perceived to affect, the ability of the authority to perform its functions impartially and in the interests of the parties to an adjudication or adjudication review.

(2) For the purposes of this clause, a conflict of interest includes a reasonable likelihood or expectation of an appreciable financial or other benefit or loss to the authority or to an officer or employee of the authority.

11. Applications for adjudication or adjudication review must not be referred if conflict of interest

(1) An authorised nominating authority must not refer an adjudication application or adjudication review application to an adjudicator or review adjudicator if the authority has a conflict of interest with —

(a) the adjudicator or review adjudicator; or

(b) the claimant or respondent.

(2) In particular, an authorised nominating authority must not refer an adjudication application or adjudication review application to any of the following —

(a) the authority;

(b) an officer or employee of the authority;

(c) a family member of an officer or employee of the authority.

(3) An authorised nominating authority is not precluded by this clause from referring an adjudication application or adjudication review application to an individual merely because the individual is a current or former financial or non-financial member of the authority, unless the authority is precluded by subclause (2)(b) or (c) from referring the application to the individual.

12. Authorised nominating authority must not seek, accept, agree to or offer inducements

(1) In this clause —

agent, in relation to a claimant or respondent, includes a person who is engaged by the claimant or respondent to prepare, or assist in the preparation of, the adjudication application or adjudication review application;

inducement —

(a) includes a bribe or other corrupt benefit; but

(b) does not include a fee that an authorised nominating authority is entitled to charge for the performance of its functions.

(2) An authorised nominating authority must not, directly or indirectly, seek, accept or agree to an inducement from an adjudicator, review adjudicator, claimant or respondent to refer an adjudication application or adjudication review application to a particular adjudicator or review adjudicator.

(3) An authorised nominating authority must not refer or offer to refer an adjudication application or adjudication review application to a particular adjudicator or review adjudicator at the direction or request of an agent of the claimant or respondent unless the claimant and respondent both agree in writing to the referral.

(4) An authorised nominating authority must not offer an inducement to an adjudicator, review adjudicator, claimant or respondent.

Division 4 — Professional management arrangements

13. Professional management policy

An authorised nominating authority must have a written policy about the following matters —

(a) the management of adjudication applications and adjudication review applications;

(b) the management of confidential information (including its storage and use);

(c) the management and prevention of business continuity risks.

Division 5 — Complaints and internal disputes resolution

14. Complaints and internal disputes resolution policy

(1) An authorised nominating authority must have a written policy for —

(a) the resolution of complaints about the performance of its functions made by claimants or respondents or by adjudicators or review adjudicators; and

(b) the resolution of disputes between adjudicators or review adjudicators and the authority.

(2) The policy must clearly outline the process for the resolution of those complaints or internal disputes, including the following —

(a) the process for making a complaint or notifying an internal dispute;

(b) the steps involved in each stage of the resolution of a complaint or internal dispute and the expected actions and deadlines for completing those stages;

(c) a requirement to inform the person making a complaint or notifying an internal dispute of the outcome of the complaint or dispute;

(d) measures to maintain the privacy of a person making a complaint or notifying an internal dispute.

15. Notification of Building Commissioner of complaints and internal disputes

(1) An authorised nominating authority must give the Building Commissioner written notice of a complaint or internal dispute within 10 business days after it receives the complaint or internal dispute.

(2) The notice must include —

(a) the name and contact details of the person who made the complaint or notified the internal dispute; and

(b) details of the complaint or internal dispute.

(3) An authorised nominating authority must notify the Building Commissioner of the outcome of the complaint or internal dispute within 5 business days after it makes a decision on the complaint or internal dispute.

16. Records of complaints and internal disputes

(1) An authorised nominating authority must keep a record of the following information about each complaint or internal dispute received by the authority —

(a) details of the complaint or internal dispute, including the name and contact details of the person who made the complaint or notified the internal dispute and the date on which it was made or notified;

(b) details of the action taken and decision made in response to the complaint or internal dispute;

(c) the reasons for the action taken or decision made in response to the complaint or internal dispute.

(2) The record of a complaint or internal dispute must be kept for the period of at least 5 years from the date of the receipt of the complaint or internal dispute.

(3) An authorised nominating authority must, at the request of the Building Commissioner, provide a copy of the record of a complaint or internal dispute to the Building Commissioner.

Division 6 — Adjudication applications

17. Adjudicator appointment policy

(1) An authorised nominating authority must have a written policy on the appointment of adjudicators to determine adjudication applications, including on the following —

(a) how an adjudicator will be appointed to determine the adjudication application, having regard to their grade, qualifications, experience and skills and to their availability;

(b) how the authority will identify and deal with any conflicts of interest that disqualify an adjudicator from being appointed under section 33 of the Act or under this code of practice;

(c) how the authority will ensure that adjudicators are appointed within the time required by the Act.

(2) The policy must provide that, whenever possible, a Grade 2 adjudicator is preferred for appointment to determine an adjudication application if the payment claim is for more than $100 000.

18. Appointment of adjudicators

(1) An authorised nominating authority must maintain access to a sufficient number of adjudicators who are available to be appointed to determine adjudication applications made to the authority.

(2) An authorised nominating authority must ensure that any adjudicator it appoints is registered under the Act.

(3) An authorised nominating authority must ensure that, as far as reasonably practicable, appointments of adjudicators are made in accordance with its written policy on their appointment.

(4) An authorised nominating authority must, as far as reasonably practicable, appoint the same adjudicator to determine 2 or more adjudication applications made by a claimant if —

(a) they are made in respect of the same respondent and construction contract; and

(b) they are made at the same time or within 1 business day of each other.

(5) An authorised nominating authority must suspend an adjudicator from the adjudicators available for appointment if —

(a) the adjudicator has been found by an Australian court, within the last 5 years, to have acted in bad faith or made jurisdictional errors of law in undertaking adjudications; and

(b) the authority is not satisfied that the cause of the adjudicator's conduct has been resolved.

(6) An agreement or arrangement entered into between an authorised nominating authority and an adjudicator it appoints must require the adjudicator to determine the adjudication application in accordance with the Act, the regulations and the code of practice for adjudicators.

Division 7 — Adjudication review applications

19. Review adjudicator appointment policy

An authorised nominating authority must have a written policy on the appointment of review adjudicators to determine adjudication review applications, including on the following —

(a) how a review adjudicator will be appointed to determine the adjudication review application, having regard to their qualifications, experience and skills and to their availability;

(b) how the authority will identify and deal with any conflicts of interest that disqualify a review adjudicator from being appointed under section 44(8) of the Act or under this code of practice;

(c) how the authority will ensure that review adjudicators are appointed within the time required by the Act.

20. Appointment of review adjudicators

(1) An authorised nominating authority must maintain access to a sufficient number of review adjudicators who are available to be appointed to determine adjudication review applications made to the authority.

(2) An authorised nominating authority must ensure that any review adjudicator it appoints is registered under the Act.

(3) An authorised nominating authority must ensure that, as far as reasonably practicable, appointments of review adjudicators are made in accordance with its written policy on their appointment.

(4) An authorised nominating authority must appoint a review adjudicator who is a lawyer if the adjudicator decided that they did not have jurisdiction to determine the adjudication application as referred to in section 39(2)(b)(ii) of the Act.

(5) An authorised nominating authority must suspend a review adjudicator from the review adjudicators available for appointment if —

(a) the review adjudicator has been found by an Australian court, within the last 5 years, to have acted in bad faith or made jurisdictional errors of law in undertaking adjudications; and

(b) the authority is not satisfied that the cause of the review adjudicator's conduct has been resolved.

(6) An agreement or arrangement entered into between an authorised nominating authority and a review adjudicator it appoints must require the review adjudicator to determine the adjudication application in accordance with the Act, the regulations and the code of practice for review adjudicators.

Note for this clause:

Under section 44(9) of the Act, the adjudicator who made the determination the subject of an adjudication review application cannot be appointed as the review adjudicator.

21. Disputed adjudicated amounts and deposits or security held on trust

(1) In this clause —

trust money means —

(a) any amount disputed by the respondent in an adjudication review application made by the respondent that is paid into a trust account with a recognised financial institution established by an authorised nominating authority under section 40(1)(b) of the Act; or

(b) any deposit or security held by an authorised nominating authority in a trust account with a recognised financial institution under section 51(5) of the Act.

(2) An authorised nominating authority must have a written policy to ensure the proper handling and accounting of any trust money it receives.

(3) The policy must —

(a) specify the BSB number and account number into which the trust money will be paid; and

(b) set out how the trust money will be accounted for (including the accounting records to be kept and the measures to ensure that the trust money will not be misappropriated by the authority or by its officers, employees or agents).

(4) The accounting records for the trust money must be kept for the period of at least 6 years from the date of the receipt of the trust money.

(5) An authorised nominating authority must, at the request of the Building Commissioner, provide a copy of the accounting records to the Building Commissioner.

(6) An authorised nominating authority that becomes aware of a breach of trust (or likely breach of trust) in respect of any trust money it receives must, within 5 business days, notify the Building Commissioner of the breach (or likely breach).

Division 8 — Fees and expenses

22. Charging of fees and expenses

(1) An authorised nominating authority must not charge an adjudicator or review adjudicator appointed by the authority fees that contravene a condition of its authorisation or that are inconsistent with the fees notified on its website.

Note for this subclause:

Section 51(7) of the Act provides that conditions may be imposed on the authorisation of a nominating authority about the maximum amount that the authority may charge an adjudicator or review adjudicator for

performing administrative duties for the adjudicator or review adjudicator.

(2) An authorised nominating authority must not charge claimants or respondents any fees or other amounts in connection with adjudication applications or adjudication review applications made to the authority, other than —

(a) an application fee determined by the authority and notified on its website (and any transaction fee charged by a financial institution for collecting payment of the fee); or

(b) a deposit or security for adjudication fees and expenses that the authority requires under section 51(3) of the Act.

(3) An authorised nominating authority must ensure that the adjudicators or review adjudicators it appoints do not charge adjudication fees and expenses that contravene Part 3 Division 4 of the Act.

23. Notification of deposit or security for adjudication fees and expenses

An authorised nominating authority must, promptly after receiving an adjudication application or adjudication review application, notify the claimant and the respondent whether a deposit or security for adjudication fees and expenses is required under section 51(3) of the Act and, if so, the amount of the deposit or security.

24. Refund of application fee

If an authorised nominating authority fails to appoint an adjudicator or review adjudicator within 5 business days after the adjudication application or adjudication review application is made as required by the Act, the authority must refund any application fee paid to the authority, unless the applicant consents to the fee being retained by the authority for a subsequent application.

Division 9 — Information for Building Commissioner

25. Notifications to Building Commissioner

An authorised nominating authority must, within 5 business days after it becomes aware of any of the following events, give the Building Commissioner written notice of the event —

(a) the appointment, resignation, death or removal of an officer of the authority;

(b) the institution of proceedings against the authority, or an officer of the authority, for an offence involving fraud or dishonesty;

(c) the authority, or an officer of the authority, being found guilty of an offence involving fraud or dishonesty;

(d) if the authority is an individual — the authority becoming (according to the *Interpretation Act 1984* section 13D) a bankrupt or a person whose affairs are under insolvency laws;

(e) if the authority is a corporation — the authority having a liquidator, provisional liquidator, administrator (including an administrator of a deed of company arrangement) or a receiver appointed, or otherwise being wound up, under the *Corporations Act 2001* (Commonwealth);

(f) any other event that may disrupt the performance of the functions of the authority.

26. Information that must be provided before surrender of authorisation

(1) An authorised nominating authority must, before the surrender of its authorisation under section 94(4) of the Act, give the Building Commissioner written notice of its intention to cease to perform its functions as an authorised nominating authority.

(2) The notice must include the following information —

(a) the date on which the authority intends to cease to perform its functions;

(b) the status of current adjudication applications and adjudication review applications, including —

(i) the actions that have been taken by the authority in connection with the applications; and

(ii) the dates, or expected dates, of the determination of the applications;

(c) the reasons why the authority intends to cease to perform its functions;

(d) the place where the authority will store the records kept by the authority in performing its functions.

27. Inspection and provision of copies of written policies of authorised nominating authorities

(1) In this clause —

written policy means a written policy of an authorised nominating authority under clauses 10, 13, 14, 17, 19 or 21.

(2) An authorised nominating authority must, on request, provide a copy of its written policies to the Building Commissioner.

Note for this clause:

Under section 96 of the Act, an authorised nominating authority must provide information to the Building Commissioner about adjudication applications and adjudication review applications, the appointment and grading of adjudicators and review adjudicators, the rates of fees charged by the authority and the adjudicators or review adjudicators it appoints or other requested information about the performance of its functions.

Division 10 — Miscellaneous

28. Authorised nominating authority must maintain website

An authorised nominating authority must maintain a publicly accessible website that contains the following information —

(a) information about the services provided by the authority;

(b) information about the making of adjudication applications or adjudication review applications to the authority (including any application fee determined by the authority);

(c) the authority's adjudicator appointment policy;

(d) information about the fees adjudicators and review adjudicators are charged by the authority in connection with adjudication applications or adjudication review applications made to the authority (including any percentage of the fees collected by adjudicators or review adjudicators that the authority charges and the reasons for the fees the authority charges);

(e) the authority's telephone number, email address and address for service;

(f) the authority's complaints and internal disputes policy and how complaints may be made or internal disputes notified.

29. Service of documents

(1) In this clause —

give includes serve, send or otherwise provide.

(2) An authorised nominating authority must maintain an address in Western Australia for the receipt by post of documents relating to adjudications or adjudication reviews if the documents are required to be given to the authority by post.

(3) An authorised nominating authority must maintain an operative electronic facility for the receipt of documents relating to adjudications or adjudication reviews if the authority purports to accept the documents by electronic means.

30. Building Commissioner's practice notes

(1) The Building Commissioner may publish practice notes that give authorised nominating authorities guidance on how to perform their functions in accordance with the Act, the regulations and this code of practice.

(2) Authorised nominating authorities must have regard to relevant practice notes in the performance of their functions.

(3) The practice notes must be published on a website maintained by the department of the Public Service principally assisting in the administration of the Act.

Schedule 3 — Code of practice for adjudicators and review adjudicators

[r. 21]

Division 1 — Preliminary

1. Citation

This code of practice is the *Building and Construction Industry (Security of Payment) Adjudicators and Review Adjudicators Code of Practice*.

2. Terms used

(1) In this code of practice —

Act means the *Building and Construction Industry (Security of Payment) Act 2021*;

adjudicator appointed by the parties means a person to whom an adjudication application is made under a relevant construction contract that provides that the person is to be the adjudicator for the application;

confidential information means information that is the subject of a duty of confidentiality or secrecy or that is of a commercially sensitive nature;

family member means a spouse or de facto partner, former spouse or de facto partner, child, mother, mother-in-law, father, father-in-law, grandparent, sibling or sibling-in-law;

officer has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9.

(2) A term used in this code of practice has the same meaning as it has in the Act.

3. Compliance with code of practice

Adjudicators and review adjudicators are, under section 109 of the Act, required to perform their functions under the Act in accordance with this code of practice.

Note for this clause:

Under section 109(3) of the Act, a contravention of this code of practice by an adjudicator or review adjudicator may be taken into account by the Building Commissioner under Part 5 Division 2 of the Act (for example, in deciding to impose conditions on the registration of adjudicators or review adjudicators or to suspend or cancel registration).

Division 2 — Professional conduct

4. Compliance with laws

An adjudicator or review adjudicator must comply with the requirements of —

(a) the Act, the regulations, the conditions of their registration and this code of practice; and

(b) other relevant written laws that apply to the performance of their functions under the Act (such as the Australian Consumer Law and laws relating to fair trading, anti-discrimination, equal opportunity and privacy).

5. Duty not to engage in unprofessional conduct

An adjudicator or review adjudicator must not engage in any of the following conduct in performing their functions under the Act —

(a) intimidation, harassment or abuse;

(b) discrimination or disadvantage in dealings with claimants or respondents;

(c) undue influence on the exercise by a party of their functions in relation to an adjudication or adjudication review;

(d) any conduct that is unconscionable or that compromises the integrity or professional independence of the adjudicator or review adjudicator.

6. Duty to act independently and impartially

An adjudicator or review adjudicator must be impartial and independent.

Note for this clause:

Under the Act, an adjudicator or review adjudicator must not accept an appointment and, if appointed, must withdraw from the adjudication or adjudication review if they are aware that they have a conflict of interest.

7. Duty not to delegate or abrogate responsibility

(1) An adjudicator or review adjudicator must not delegate or abrogate any of their functions under the Act.

(2) However, adjudicators or review adjudicators may engage an authorised nominating authority to assist them with administrative duties.

(3) An adjudicator or review adjudicator who engages an authorised nominating authority to assist with administrative duties —

(a) must take all reasonable measures to ensure that the engagement does not give rise to a conflict of interest with the authority; and

(b) if a conflict of interest does arise, must immediately terminate the engagement.

8. Duty to maintain eligibility for registration

An adjudicator or review adjudicator —

(a) must not accept an appointment or conduct an adjudication or adjudication review if they are not eligible to be registered; and

(b) must notify the Building Commissioner in writing as soon as possible if they cease to be eligible to be registered.

9. Duty to ensure security of confidential information

(1) An adjudicator or review adjudicator must take all reasonable measures to ensure the security of confidential information they obtain in performing their functions under the Act.

(2) An adjudicator or review adjudicator must, during and after an adjudication or adjudication review —

(a) avoid engaging in publicity or making public statements about the conduct of the adjudication or adjudication review that may lead to the unauthorised use or disclosure of the confidential information; and

(b) notify the parties to the adjudication or adjudication review, as soon as possible, of any breach of confidentiality of which they become aware.

Note for this clause:

Under section 116 of the Act, adjudicators or review adjudicators commit an offence if they use or disclose (except as authorised under that section) any confidential information obtained by them under or for the purposes of the Act.

Division 3 — Conflicts of interest

10. Adjudicator or review adjudicator must not accept appointment if they are, or are related to, authorised nominating authority

(1) An adjudicator or review adjudicator must not accept an appointment by an authorised nominating authority if the adjudicator or review adjudicator is —

(a) the authority; or

(b) an officer or employee of the authority; or

(c) a family member of an officer or employee of the authority.

(2) An adjudicator or review adjudicator is not precluded by subclause (1)(a) from accepting an appointment merely because the individual is a current or former financial or non-financial member of the authority, unless the adjudicator or review adjudicator is precluded by subclause (1)(b) or (c) from accepting the appointment.

11. Checking for conflicts of interest

(1) In this clause —

conflict of interest has the same meaning as in section 33 of the Act.

(2) An adjudicator (other than an adjudicator appointed by the parties) and a review adjudicator must check whether they have a conflict of interest before accepting an appointment by an authorised nominating authority and when they receive information during the course of the adjudication or adjudication review.

(3) An adjudicator appointed by the parties must check whether they have a conflict of interest when they receive an adjudication application and when they receive information during the course of the adjudication (being a check that includes a review of the documents received by the adjudicator).

(4) An adjudicator or review adjudicator cannot avoid withdrawing from an adjudication or adjudication review because of a conflict of interest by obtaining the informed consent of the claimant and respondent to proceed despite the conflict of interest.

12. Adjudicators and review adjudicators must not seek, accept, agree to or offer inducements

(1) In this clause —

inducement —

(a) includes a bribe or other corrupt benefit; but

(b) does not include adjudication fees and expenses to which an adjudicator or review adjudicator is entitled under the Act.

(2) An adjudicator or review adjudicator must not, directly or indirectly, seek, accept or agree to an inducement from a claimant or respondent, or from an authorised nominating authority, in connection with the determination of an adjudication application or adjudication review application.

(3) An adjudicator or review adjudicator must not offer an inducement to an authorised nominating authority, claimant or respondent.

Division 4 — Appointment of adjudicator or review adjudicator

13. Acceptance of appointments

(1) An adjudicator or review adjudicator must, before accepting an appointment to determine an adjudication application or adjudication review application, satisfy themselves that —

(a) they are eligible to be appointed in accordance with the Act, the regulations and this code of practice; and

(b) they are available to determine the application within the time required by the Act.

(2) If an adjudication review application relates to a matter in which the adjudicator decided that they did not have jurisdiction to determine the adjudication application as referred to in section 39(2)(b)(ii) of the Act, a review adjudicator must not accept appointment unless they are a lawyer.

(3) If an adjudicator or review adjudicator considers that it is necessary to seek legal advice on the question of their eligibility to be appointed or on any other question concerning the adjudication or adjudication review, expenses incurred in obtaining that legal advice cannot be charged to the parties.

Division 5 — Making of determinations

14. Form of determinations

(1) An adjudicator or review adjudicator must use computer word processing software for the preparation of the determination of an adjudication application or adjudication review application so that it can be given to the parties electronically in a commonly used file format.

(2) The determination must have a cover page that specifies the following —

(a) the name and registration number of the adjudicator or review adjudicator;

(b) the names of the parties (including any ABN, ACN or trading name);

(c) the date of the determination;

(d) the reference number created by the authorised nominating authority or by the adjudicator or review adjudicator to identify the determination;

(e) the amount to be paid (or repaid) by a party and the amount of any interest payable on that amount;

(f) the total amount of adjudication fees and expenses payable;

(g) the date by which any payment (or repayment) is due.

(3) The determination must —

(a) be signed by the adjudicator or review adjudicator (including by way of an electronic signature); and

(b) have each page sequentially numbered.

15. Correction of determinations

An adjudicator or review adjudicator must not, after giving the determination of an adjudication application or adjudication review application to the parties, make any changes to the determination other than a correction authorised by section 38(7) or 48(7) of the Act.

16. Record keeping with respect to determinations

An adjudicator or review adjudicator must keep a copy of the following for at least 6 months after determining an adjudication application or adjudication review application —

(a) the adjudication application or adjudication review application;

(b) any adjudication response or adjudication review response;

(c) the determination;

(d) any other document given to the adjudicator or review adjudicator by the parties in connection with the adjudication or adjudication review.

Division 6 — Adjudication fees and expenses

17. Amount of adjudication fees and expenses that may be charged

(1) An adjudicator or review adjudicator may only charge the amount of adjudication fees and expenses to which they are entitled under the Act, namely —

(a) the amount agreed between the adjudicator or review adjudicator and the parties to the adjudication or adjudication review; or

(b) if the amount is not agreed – the amount determined at the rates approved and published by the Building Commissioner.

Note for this subclause:

The amount of adjudication fees and expenses that an adjudicator may charge in connection with a payment claim for not more than $50 000 is also subject to the maximum amount prescribed by the *Building and Construction Industry (Security of Payment) Regulations 2022* regulation 9.

(2) If the amount of adjudication fees and expenses are not so agreed, the amount of the adjudication fees and expenses that an adjudicator or review adjudicator determines in accordance with the rates so approved and published must be a reasonable amount having regard to —

(a) the complexity of the dispute; and

(b) the time spent by the adjudicator or review adjudicator on the adjudication or adjudication review; and

(c) any other relevant matter.

(3) An adjudicator or review adjudicator must not seek adjudication fees and expenses to which they are not entitled under the Act.

Note for this subclause:

Section 50(8) of the Act provides that an adjudicator or review adjudicator is not entitled to adjudication fees and expenses if they fail to determine the adjudication application or adjudication review application within the time allowed under the Act. Section 50(9) of the Act provides that if an adjudication application or adjudication review application is withdrawn, the adjudicator or review adjudicator is only entitled to adjudication fees and expenses up to the time of withdrawal.

18. Notification of adjudication fees and expenses

(1) An adjudicator or review adjudicator must provide the following information to the Building Commissioner at the time and in the form the Building Commissioner requires —

(a) information about the adjudication fees (inclusive of GST) that the adjudicator or review adjudicator charges, including whether fees are charged at an hourly rate or as a lump sum;

(b) information about the adjudication expenses that the adjudicator or review adjudicator charges, including whether they are at cost or cost plus a particular percentage.

(2) As soon as practicable after any change to the information about adjudication fees or adjudication expenses that the adjudicator or review adjudicator has previously provided to the Building Commissioner, the adjudicator or review adjudicator must provide information about the change to the Building Commissioner in the form the Building Commissioner requires.

(3) An adjudicator or review adjudicator must ensure that information about the adjudication fees or adjudication expenses they charge is included in any promotional or other document they publish or authorise about their services as an adjudicator or review adjudicator.

19. Deposit or security for adjudication fees and expenses

(1) This clause applies if an adjudicator or review adjudicator requires, under section 51(4) of the Act, one or both of the parties to provide a reasonable deposit or security for adjudication fees and expenses.

Note for this subclause:

An adjudicator or review adjudicator may require a deposit or security under section 51(4) of the Act if a deposit or security is not held by the authorised nominating authority. The deposit or security must, under section 51(5) of the Act, be held in a trust account with a recognised financial institution and dealt with in accordance with the relevant provisions of the Act relating to the payment of adjudication fees and expenses.

(2) An adjudicator or review adjudicator must ensure that there are procedures in place and appropriate records kept to ensure the proper handling and accounting of the deposit or security.

20. Expert and testing adjudication expenses

(1) This clause applies if an adjudicator proposes, unless all the parties object, to arrange for a test or engage an expert for the purposes of determining an adjudication application.

(2) Before arranging for a test or engaging an expert, the adjudicator must —

(a) advise the parties of the proposal and ensure that they are given an opportunity to object; and

(b) advise the parties of the adjudication expenses (or likely adjudication expenses) that they will incur for the test or expert.

(3) The adjudicator must take all reasonable measures to ensure that the adjudication expenses for the test or expert are reasonable in the circumstances and are in proportion to the claimed amount.

Note for this clause:

The adjudicator may, under section 51(4) of the Act, require a reasonable deposit or security (or further reasonable deposit or security) for the adjudication expenses for the test or expert.

21. Withholding determination

An adjudicator or review adjudicator cannot withhold giving their determination of an adjudication application or adjudication review application because the adjudication fees and expenses have not been paid, unless authorised to do so under section 51(1) of the Act.

Note for this clause:

Section 51(1) of the Act authorises the adjudicator or review adjudicator to withhold giving the determination if the adjudicator or review adjudicator has given the parties an invoice for the adjudication fees and expenses before the time allowed under the Act for determining the adjudication application or adjudication review application.

Division 7 — Miscellaneous

22. Information that must be provided by adjudicator appointed by parties

An adjudicator appointed by the parties must provide the following information to the Building Commissioner at the time and in the form the Building Commissioner requires —

(a) the names of the parties to the adjudication application;

(b) the claimed amount and the scheduled amount (if any);

(c) any other information relating to the matter that the Building Commissioner requires the adjudicator to provide.

Note for this clause:

Under section 32 of the Act, an adjudicator appointed by the parties must give the Building Commissioner a copy of the written notice given to the claimant and respondent of acceptance of the appointment and a copy of a written notice given to the claimant and respondent of withdrawal from the adjudication. Under section 38(4)(c) of the Act, an adjudicator must give the Building Commissioner a copy of the determination of an adjudication application by the adjudicator.

23. Building Commissioner's practice notes

(1) The Building Commissioner may publish practice notes that give adjudicators and review adjudicators guidance on how to perform their functions in accordance with the Act, the regulations and this code of practice.

(2) Adjudicators and review adjudicators must have regard to relevant practice notes in the performance of their functions.

(3) The practice notes must be published on a website maintained by the department of the Public Service principally assisting in the administration of the Act.

Schedule 4 — Prescribed offences and modified penalties

[r. 24]

Offence under the Act		Modified penalty
s. 13(3)	Construction contract not in writing or does not contain mandatory information	$400
s. 13(4)	Varied contract not in writing or does not contain mandatory information	$400

Schedule 5 — Infringement notice forms

[r. 26]

Form 1 — Infringement notice

<table>
<tr><td colspan="3">Building and Construction Industry (Security of Payment) Act 2021
INFRINGEMENT NOTICE</td><td>Infringement notice no.</td></tr>
<tr><td rowspan="4">Alleged offender</td><td rowspan="2">Name</td><td colspan="2"></td></tr>
<tr><td colspan="2"></td></tr>
<tr><td rowspan="2">Address</td><td colspan="2"></td></tr>
<tr><td colspan="2"></td></tr>
<tr><td rowspan="8">Alleged offence</td><td>Date or period</td><td colspan="2"></td></tr>
<tr><td>Time</td><td colspan="2"></td></tr>
<tr><td>Place</td><td colspan="2"></td></tr>
<tr><td rowspan="2">Details of offence</td><td colspan="2"></td></tr>
<tr><td colspan="2"></td></tr>
<tr><td rowspan="2">Written law contravened</td><td colspan="2"></td></tr>
<tr><td colspan="2"></td></tr>
<tr><td>Date</td><td>Date of notice</td><td colspan="2"></td></tr>
<tr><td rowspan="3">Issuing officer</td><td>Name</td><td colspan="2"></td></tr>
<tr><td>Office</td><td colspan="2"></td></tr>
<tr><td>Signature</td><td colspan="2"></td></tr>
<tr><td>Modified penalty</td><td colspan="3">$</td></tr>
<tr><td>TAKE NOTICE</td><td colspan="3">It is alleged that you have committed the above offence.
If you do not want to be prosecuted in court for the offence, pay the modified penalty to the Approved Officer within 28 days after the date of this notice.</td></tr>
</table>

	If you do not pay the modified penalty within 28 days, you may be prosecuted or enforcement action may be taken under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*. Under that Act, some or all of the following action may be taken — your driver's licence may be suspended, your vehicle licence may be suspended or cancelled, you may be disqualified from holding or obtaining a driver's licence or vehicle licence, your vehicle may be immobilised or have its number plates removed, your details may be published on a website, your earnings or bank accounts may be garnished, and your property may be seized and sold. **If you need more time** to pay the modified penalty, you should contact the Approved Officer at the address below. Paying the modified penalty will not be regarded as an admission for the purposes of any civil or criminal court case. **If you want this matter to be dealt with by prosecution in court**, sign and date here: _____ / / and post this notice to the Approved Officer at the address below within 28 days after the date of this notice.	
How to pay	By post	Tick the box below and post this notice to: Approved Officer — *Building and Construction Industry (Security of Payment) Act 2021* [*Address*] □ I want to pay the modified penalty. A cheque or money order (payable to 'Approved Officer' — *Building and Construction Industry (Security of Payment) Act 2021*) for the modified penalty is enclosed.

Form 2

	In person	Pay the cashier at: [*Address*]	
Method of service		**Date of service**	

Form 2 — Withdrawal of infringement notice

Building and Construction Industry (Security of Payment) Act 2021 **WITHDRAWAL OF INFRINGEMENT NOTICE**			Withdrawal no.
Alleged offender	Name		
	Address		
Details of infringement notice	Infringement notice no.		
	Date of issue		
Alleged offence	Date or period		
	Time		
	Place		
	Details of offence		
	Written law contravened		
Approved Officer withdrawing notice	Name		
	Office		
	Signature		

Form 2

<table>
<tr><td>Date</td><td>Date of withdrawal</td><td colspan="2"></td></tr>
<tr><td>Withdrawal of infringement notice
[*Delete whichever is not applicable]</td><td colspan="3">The above infringement notice issued against you for the above alleged offence has been withdrawn.
If you have already paid the modified penalty for the alleged offence, you are entitled to a refund.
* Your refund is enclosed
or
* If you have paid the modified penalty but a refund is not enclosed, you may claim your refund by signing and dating this notice and posting it to:
Approved Officer — Building and Construction Industry (Security of Payment) Act 2021
[Address]</td></tr>
<tr><td>Your signature</td><td></td><td>Date</td><td></td></tr>
</table>

Schedule 6 — Fees

[r. 15]

[Heading inserted: SL 2026/95 r. 7.]

Item	Column 1 Matter	Column 2 Provision of Act	Column 3 Fee ($)
1.	Application fee for authorisation as nominating authority	s. 88(2)(b)	1 070.00
2.	Application fee —	s. 100(3)(b)	
	(a) for registration as adjudicator only		103.00
	(b) for registration as review adjudicator only		103.00
	(c) for registration as both adjudicator and review adjudicator		206.00
3.	Registration fee —	s. 100(3)(c)	
	(a) for registration as adjudicator only		421.00
	(b) for registration as review adjudicator only		421.00
	(c) for registration as both adjudicator and review adjudicator		842.00

[Schedule 6 inserted: SL 2026/95 r. 7.]

Notes

This is a compilation of the *Building and Construction Industry (Security of Payment) Regulations 2022* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table.

Compilation table

Citation	Published	Commencement
Building and Construction Industry (Security of Payment) Regulations 2022	SL 2022/85 17 Jun 2022	Regulations other than r. 10 and Pt. 4: 1 Aug 2022 (see r. 2(c)); Pt. 4: 1 Feb 2023 (see r. 2(b)); r. 10: 1 Feb 2024 (see r. 2(a))
Commerce Regulations Amendment (Fees and Charges) Regulations 2023 Pt. 4	SL 2023/35 5 May 2023	1 Jul 2023 (see r. 2(b))
Commerce Regulations Amendment (Fees and Charges) Regulations 2024 Pt. 3	SL 2024/96 12 Jun 2024	1 Jul 2024 (see r. 2(c))
Commerce Regulations Amendment (Fees and Charges) Regulations 2025 Pt. 3	SL 2025/89 11 Jun 2025	1 Jul 2025 (see r. 2(b))
Commerce Regulations Amendment (Fees and Charges) Regulations 2026 Pt. 3	SL 2026/95 10 Jun 2026	1 Jul 2026 (see r. 2(c))

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

Defined term	Provision(s)
Act	Sch. 2 cl. 2(1), Sch. 3 cl. 2(1)
adjudicator appointed by the parties	Sch. 3 cl. 2(1)
agent	Sch. 2 cl. 12(1)
associated structure	12(1)
close family member	7(1)
community corporation	12(1)
confidential information	Sch. 2 cl. 2(1), Sch. 3 cl. 2(1)
conflict of interest	Sch. 2 cl. 2(1), Sch. 3 cl. 11(1)
dispute resolution process	5(1)
dwelling	12(1)
employed	7(1)
family member	Sch. 2 cl. 2(1), Sch. 3 cl. 2(1)
give	Sch. 2 cl. 29(1)
inducement	Sch. 2 cl. 12(1), Sch. 3 cl. 12(1)
judicial officer	19(1)
lock-box	22(1)
lot	12(1)
officer	7(1), Sch. 2 cl. 2(1), Sch. 3 cl. 2(1)
section	3(1)
small-scale residential contract	12(3) and (4)
strata company	12(1)
trust money	Sch. 2 cl. 21(1)
written policy	Sch. 2 cl. 27(1)

© State of Western Australia 2026.
This work is licensed under a Creative Commons Attribution 4.0 International Licence (CC BY 4.0).
To view relevant information and for a link to a copy of the licence, visit www.legislation.wa.gov.au.
Attribute work as: © State of Western Australia 2026.

By Authority: ANDREW JONES, Government Printer