

CODE OF CONDUCT FOR ADJUDICATORS

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INTRODUCTION

This Code of Conduct (Code) is made by the Adjudication Registrar (the Registrar) pursuant to section 181 of the *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act) and approved by the Building Industry Fairness (Security of Payment) Regulation 2018 (BIF Regulation).

The main purpose of the BIF Act is to help people working in the building and construction industry get paid for the work they do.

A key link in achieving the purpose of the BIF Act is the creation of an enhanced procedure for the making of payment claims and responses to payment claims to resolve payment issues faster. The BIF Act provides processes to ensure a streamlined system for adjudication of disputed payment claims for greater ease of use, and the recovery of amounts claimed.

This Code sets out the standards of conduct required from adjudicators when adjudicating payment claim disputes made under the BIF Act.

PURPOSE

The purpose of this code is to:

- Set the standards of conduct and professionalism required from adjudicators when adjudicating payment claim disputes under the BIF Act;
- Inform the public and participants in the adjudication process of the standards of conduct and professionalism they can expect from an adjudicator.

COMPLIANCE WITH THE CODE OF CONDUCT

Pursuant to section 170 of the BIF Act, contravention of a requirement of the Code by an adjudicator is a ground for suspending or cancelling the adjudicator's registration.

STANDARDS OF CONDUCT

A registered Adjudicator must:

1. Manage prescribed conflicts of interest
2. Conduct her/himself professionally
3. Maintain impartiality and objectivity
4. Ensure confidentiality is maintained
5. Comply with legislation and the Registrar's policies
6. Charge reasonable fees

EXPLANATORY STATEMENTS OF THE STANDARDS OF CONDUCT

1. An adjudicator must manage conflicts of interest

An adjudicator is to appropriately manage any conflict of interest that could impact, or be conceived as impacting, on an adjudicator's ability to fulfil their functions as an adjudicator impartially.

Section 80 of the BIF Act states that an adjudicator is ineligible to adjudicate an adjudication application if the adjudicator:

- a) Is a party to a construction contract to which an application relates; or
- b) Has a conflict of interest as prescribed under the BIF Regulation.

Section 13 of the BIF Regulation prescribes the circumstances that are deemed to be conflicts of interest that would prevent an adjudicator from adjudicating an adjudication application.

2. An adjudicator must conduct themselves professionally

An adjudicator must, at all times, conduct themselves professionally and with dignity and not behave in a manner which might reasonably be perceived as conduct diminishing the standing of the BIF Act, the Adjudication Registry or the adjudication process.

This includes:

- a) Communicating with those involved in the adjudication process with courtesy and respect;
- b) Carrying out his/her role in a conscientious and diligent manner;
- c) Preparing appropriately for the adjudication concerned;
- d) Not delegating any duty to decide to any other person;
- e) Not unduly delaying the completion of the adjudication process; and
- f) Abiding by the adjudication process.

In the event of any complaint, the adjudicator is to afford all assistance to enable the Registrar to determine the merits of the complaint.

3. An adjudicator must maintain impartiality and objectivity

An adjudicator must, at all times, maintain the integrity and fairness of the adjudication process. This requires that an adjudicator remain impartial during the adjudication process towards the parties and any representatives involved in the dispute.

Section 88 of the BIF Act specifically limits the adjudicator to considering only the following when making a determination:

- a) The provisions of the BIF Act;
- b) The provisions of the relevant contract giving rise to the dispute;
- c) The payment claim and all submissions, including relevant documentation provided by the claimant;
- d) The payment schedule of the respondent and those submissions, including relevant documentation provided by the respondent, that do not contain new reasons that were not in the payment schedule; and
- e) Results of any inspection carried out by the adjudicator.

An adjudicator's decision must disclose proper analysis, objectivity and regard only to those limited matters referred above.

4. An adjudicator must ensure that confidentiality is maintained

Confidential commercial information disclosed by the parties to an adjudication must only be used or disclosed by the adjudicator for the purposes of the adjudication or in connection with the performance of a function under the BIF Act.

An adjudicator must ensure that all documentation provided in the adjudication process is protected against loss or unauthorised access, use or disclosure.

An adjudicator is to adhere to these principles of confidentiality both during and after completion of the adjudication process.

5. An adjudicator must comply with legislation and the Registrar's policies

An adjudicator is at all times to comply with all requirements of the BIF Act and supporting regulations and abide by policies made by the Registrar in accordance with the BIF Act.

6. Adjudicator fees and expenses to be charged

An adjudicator is to adhere to the maximum fees prescribed under section 14 of the BIF Regulation for the adjudication of a payment claim of \$25,000 or less.

For the adjudication of all other matters, an adjudicator is to only charge fees and expenses agreed between the adjudicator and the parties to the adjudication, or if no amount is agreed, only reasonable fees and expenses.

7. Complaints

The Registrar may investigate a complaint received about the conduct of an adjudicator. If an adjudicator has contravened a requirement of the code, the Registrar may suspend or cancel the adjudicator's registration.

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