**Using this form**

This form must be used for applying to the Building Commissioner for authorisation as a nominating authority under the *Building and Construction Industry (Security of Payment) Act 2021* (the Act).

Authorisation as a nominating authority entitles the nominating authority to nominate adjudicators and review adjudicators to determine adjudication or adjudication review applications respectively.

Please note that an authorisation can only be granted by the Building Commissioner to nominate both adjudicators and review adjudicators. It cannot be for one or the other, e.g. to appoint adjudicators but not review adjudicators, or to appoint review adjudicators but not adjudicators.

**Who can apply?**

Authorisation as a nominating authority is open to any person who duly makes an application for authorisation under section 88 of the Act.

The application must be made using this Form 2, and provide information or documents as to the eligibility of the applicant to be authorised, as required by the form.

The application must also be accompanied by the fee to be prescribed by the regulations.

***Important Note:*** *For applications made before 1 August 2022, the prescribed fee will be collected at a later date. Only upon the receipt and processing of payment of the prescribed fee will the Building Commissioner make a determination on authorisation. A representative of the Building Commissioner will contact the applicant to discuss their application and make arrangements for payment.*

**Term of authorisation as a nominating authority**

The authorisation of a person as a nominating authority may be given for a period of up to 5 years. An authorised nominating authority may seek a further authorisation on application made no earlier than 6 months before the expiry of the existing authorisation.

**Application fee**

The application fee is $915.00 and must accompany the application.
The application fee is non-refundable.

***Important Note:*** *The fee will be prescribed in the Building and Construction Industry (Security of Payment) Regulations 2022 and updated from time-to-time. Applications made before 1 August 2022, do not need to include the application fee with their application. This will be collected at a later date prior to the determination on the grant of the authorisation.*

**Incomplete applications**

The Building Commissioner cannot assess incomplete applications. If the application is incomplete at the time of lodgement, you will be requested to provide outstanding or additional information.

If you do not provide the information by the date stated in the request, your application will lapse or be refused. The application fee will not be refunded.

It is important to be aware that if you are refused authorisation then this may affect your eligibility to apply for authorisation again in the future.

**Exceeding the prescribed limit**

Regulations made under the Act may limit the number of persons who can be authorised as nominating authorities. Applications made for authorisation as a nominating authority that, if granted, would exceed the prescribed limit, will not be accepted.

**How to lodge your application**

Applications will only be accepted by email to: ana@dmirs.wa.gov.au.

Applications sent by post or fax will not be accepted.

You will receive a confirmation email when your application is successfully submitted.

**Return of documents**

The Building Commissioner does not return documents lodged with an application. If you need a copy of the forms or documents for your records, please make a copy before you lodge your application with this Department.

**After your application is lodged**

The Building Commissioner will confirm receipt of your application. If you do not receive an acknowledgement of your application within 15 business days, please contact 1300 489 099 or email ana@dmirs.wa.gov.au.

If the Building Commissioner requires further information, you will be contacted via email. Should there be any issues of concern with the application, applicants will be given an opportunity to address these before a final determination of the application is made.

**State Administrative Tribunal (SAT) review of decisions**

The decision to refuse an application for authorisation is a reviewable decision. If you disagree with the Building Commissioner’s decision in relation to this application for authorisation you may apply to the SAT for a review of the decision.

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| **Applicant details (to be attached)** |

For applicants that are a company/body corporate (e.g. incorporated association), please supply the following:

* Applicant company/body corporate name
* Australian Company Number (ACN)
* Australian Business Number (ABN)
* Business name (trading as)
* Date of incorporation
* Place of incorporation
* Principal place of business address (required for publication on the public register. It cannot be a PO Box) and post code
* Registered address (address for service) and post code
* Postal address and post code
* Telephone details (and fax details if applicable)
* Email address (an email address must be provided for all correspondence with the Building Commissioner)
* Website address (if applicable)

A current (within 30 working days before making the application to be authorised) Company Extract (available from ASIC) or Association Extract must be attached to the application.

For applicants that are an individual, please supply the following:

* Salutation (Mr, Mrs, Ms, Other)
* Surname
* First name
* Middle name(s)
* Date of birth
* Place/country of birth
* Whether applicant has been known by any other name (if yes, provide full details on separate page)
* Residential address and post code
* Postal address and post code
* Principal place of business address (required for publication on the public register. It cannot be a PO Box) and post code
* Australian Business Number (ABN)
* Business name (trading as)
* Telephone details (home, work, fax, mobile)
* Email address (an email address must be provided for all correspondence with the Building Commissioner)
* Website address (if applicable)

If the application is for a partnership, the same details above must be provided for each partner.

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| **Information regarding prior conduct** |

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| Has a previous authorisation of the applicant (whether under the Act or a corresponding security of payment law) been withdrawn or revoked (otherwise than at the request of the person)?  [ ]  Yes [ ]  No |
| Has the applicant been refused a previous application for an authorisation (whether under the Act or a corresponding security of payment law) within the period of 5 years before making the application to be authorised under the Act?  [ ]  Yes [ ]  No |
| Has the applicant (or a related person¹) been convicted of a serious offence²?  [ ]  Yes [ ]  No |
| Has the applicant (or a related person¹) been a bankrupt³ within the period of 3 years before making the application to be authorised under the Act? [ ]  Yes [ ]  No |
| Has the applicant (or a related person¹) been a corporation in liquidation within the period of 3 years before making the application to be authorised under the Act?  [ ]  Yes [ ]  No |

Applicants must give responses to the following questions by using the check boxes supplied.

If you answered “Yes” to any of these questions, provide full details on a separate page and submit with this application.

***¹ related person*** in relation to a corporation, means an officer of the corporation as defined in the *Corporations Act 2011* (Cth) section 9.

***² serious offence*** means an offence under a law of the Commonwealth, or a State offence that has a federal aspect, punishable by a maximum penalty of imprisonment for 5 years or more.

***³ bankrupt means*** that the person is a bankrupt as defined in the *Bankruptcy Act 1966* (Cth) or has a substantially similar status under a law applicable in a place where that Act not apply, as defined in the *Interpretation Act 1984* (WA) section 13D.

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| **Information regarding capability (to be attached)** |

The Building Commissioner must be satisfied the applicant is reasonably capable of performing the tasks required under the Act of an authorised nominating authority.

The applicant must attach separate documentation addressing all of the following criteria. Incomplete or insufficient applications may be rejected.

1. **Adjudicator appointment processes**

Details of the policies and procedures that will be in place to ensure the appointment of adjudicators and review adjudicators to determine adjudication applications or adjudication review applications under the Act.

This includes:

* the recruitment of appropriately skilled and qualified adjudicators**\*** to cover all types of payment claims (e.g. simple and complex payment claims);
* how adjudication applications and adjudication review applications are to be received, including:
* any electronic means (e.g. by email or lockbox); or
* address and place for physical service in Western Australia.
* how adjudicators or review adjudicators will be nominated within the time required under the Act to determine applications, including:
* who will carry out the nomination (names to be specified) and the process that will be followed;
* the steps and criteria to be applied in making the decision to nominate, including how the applicant will ensure the adjudicator or review adjudicator with the right skills and knowledge is nominated; and
* who will actually make the decision to nominate.
* how probity issues (bad faith, misconduct or breach of natural justice) in the adjudication or adjudication review process will be managed;
* processes to support and maintain the adjudicator/review adjudicator’s independence under the Act; and
* how any reporting obligations to the Building Commissioner under the Act will be satisfied.

*\** ***Important note:*** *Both the Act and Code of Practice for Authorised Nominating Authorities (to be prescribed) require that a person who is a related person, or family member of a related person, must not be appointed by an authorised nominating authority which is a body corporate as an adjudicator or review adjudicator. Individuals also cannot perform the functions of an authorised nominating authority and an adjudicator or review adjudicator. Applicants for authorisation must demonstrate they can comply with this requirement.*

1. **Dealing with conflicts of interest**

Details of the policies and processes that will be in place to ensure that any conflicts of interest are identified and adequately dealt with, including in respect to any conflicts of interest -

* that the nominating authority may have in relation to an applicant for adjudication or adjudication review;
* that appointed adjudicators or review adjudicators may have in adjudication and adjudication review applications respectively; and
* that the nominating authority may have in relation to the nomination and referral of adjudicators or review adjudicators.
1. **Past performance and reputation**

Details of the applicant’s past performance as an authorised nominating authority under the Act, corresponding security of payment law, or as a prescribed appointor under the *Construction Contracts Act 2004* (WA).

This includes:

* details on the length of time of the applicant’s past performance; and
* industry recognition and reputation (e.g. awards, recognitions, involvement in policy development etc.)

If the applicant does not have a past performance as an authorised nominating authority or prescribed appointor, details of the applicant’s reputation and standing in providing services to the construction industry, resolution of disputes or similar are required.

1. **Probity**

In addition to responding to each of the questions above under “Information regarding prior conduct” on page 4 of this application form, a National Police Certificate, no more than 3 months old (for the date of the application), must be provided for each individual or for any related person if the applicant is a body corporate. These are available direct from WA Police Force or interstate police authorities.

Details must also be provided about:

* whether the applicant, or any related person, is currently suspended or disqualified or carrying on any business, occupation or profession relating to the construction industry or the resolution of disputes; and
* whether the applicant, or any related person, has been placed in administration, liquidation, deed of company arrangement, receivership, bankruptcy, or wound up on financial grounds.

If the answer was “Yes” to any of the questions above, provide full details with this application.

1. **Fee structure**

Details of the fee structure for adjudication applications and adjudication review applications and any controls on fee levels.

This includes:

* the amount of nomination fees to be charged;
* any amounts to be charged to adjudicators/review adjudicators for performing administrative duties under the Act; and
* any other fees and charges (e.g. credit card fees etc.).

***Important note:*** *The Building Commissioner may impose a condition on the authorisation of a nominating authorising which caps or otherwise restricts the maximum amount of fees the nominating authority can charge an adjudicator or review adjudicator for performing administrative duties.*

1. **Trust accounts**

Details of the trust account(s) held or to be held by the applicant for the purposes of holding any deposit or security for adjudication fees and expenses under the Act and/or an adjudicated amount in respect to a review application.

This includes:

* the bank or other financial institution at which the trust account(s) is/are to be held; and
* the processes and procedures for the proper handling and accounting of moneys held in the trust account(s).
1. **Complaint resolution**

Details of the policies and procedures that will be in place to investigate and resolve complaints regarding issues with an adjudication and/or adjudication review process.

1. **Confidentiality**

Details of practices and procedures which ensure the management of documents and notices relating to the adjudication and review adjudication process are confidential and confidential information is not disclosed in breach of section 116 of the Act.

1. **Other information**

Provide other information that the applicant believes is relevant to the application.

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| **Important notes for applicant**  |

Please note the following information.

1. Authorisation is effective from the date of the Building Commissioner’s approval. For applications made and determined before 1 August 2022, authorisation does not take effect until that date.
2. The Building Commissioner may revoke an authorisation at any time. This may occur where the authorised nominating authority has:
	* provided false or misleading information in connection with this application;
	* contravened a requirement of the Act or regulations;
	* contravened a condition of the authorisation; or
	* contravened a requirement of the Code of Practice for Authorised Nominating Authorities prescribed by the regulations.
3. Ongoing monitoring of authorised nominating authorities will be undertaken by the Department of Mines, Industry Regulation and Safety – Building and Energy Division.
4. Authorised nominating authorities will be required to provide quarterly reports on their operations to the Building Commissioner. These reports must be provided in the manner, form and time stipulated.
5. Authorised nominating authorities must promptly notify the Building Commissioner of any change to any particulars contained in the application.

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| **Proof of identity (if applicable)** |

If the applicant is an individual or partnership, proof of identity will be required for the individual or each partner respectively, by way of the applicant attaching certified copies of two or more documents making a total of at least 100 points.

At least one document must include photo identification. To have a copy certified you must show a copy of the document, together with the original document, to a person who is an authorised witness. A list of authorised witnesses is available at [www.commerce.wa.gov.au/consumer-protection/authorised-witnesses](http://www.commerce.wa.gov.au/consumer-protection/authorised-witnesses).

The witness must:

* certify the copy is a true copy of the original;
* place their signature, together with their full name and their qualification to be a witness, immediately adjacent to the words of certification.

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| Provide proof of your identity by attaching certified copies of two or more documents making a total of at least 100 points. At least one document must include photo identification. |
| Points allowed | Document | Points | *Office use* |
| 65 points | **[ ]** Current passport |  |  |
| [ ]  Birth certificate (not an extract) |  |
| [ ]  Australian citizenship certificate |  |
| 40 points- for first document from this category.25 points - for additional documents from this category. | [ ]  Current Australian drivers licence or other government issued licence or permit card  |  |  |
| [ ]  Current Australian government issued identification card  |  |
| [ ]  Australian tertiary student identification |  |
| 35 pointsA document from this set must show your name and current residential address. | [ ]  Mortgage document held by an Australian financial body |  |  |
| [ ]  Australian Land Title Office record |  |
| [ ]  Document from the Credit Reference Association of Australia |  |
| **25 points** | [ ]  Australian public utility bill, rates notice or bank statement |  |  |
| [ ]  Credit or debit card issued by Australian banking or credit institution |  |
| [ ]  Medicare card |  |
| [ ]  Marriage certificate (for maiden name only) or change of name certificate |  |
| **Total points** |  |  |

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| **Declaration by applicant** |
| Applicants must give a declaration (to be signed by them and dated) that all information in their application is true and correct and that they authorise the Building Commissioner or persons acting on behalf of the Building Commissioner to make enquiries considered necessary to assess the application. [ ]  I declare that all information in this application is true and correct, and I authorise the Building Commissioner or persons acting on behalf of the Building Commissioner to make enquiries considered necessary to assess the application. **Application date:**      **/**     **/****Applicant’s name:**       |
| **Applicant’s signature:**  |       |

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| **Payment**  |
| Application fee GST is not applicable[ ]  $915 |
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| [ ]  Cheque | [ ]  Money order | [ ]  In person (cash or credit card) |  |

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| **Credit card payments (do not provide credit card information on this form)**If you wish to pay by credit card, please provide a contact number to enable one of our staff to contact you to obtain credit card details over the phone. **Contact number:**       |
| Level 1, 303 Sevenoaks Street, Cannington WA 6107 | Locked Bag 100, East Perth, WA 6892Telephone 1300 489 099 | ana@@dmirs.wa.gov.au www.dmirs.wa.gov.au/building-and-energy |