

RECOMMENDED GOOD PRACTICES FOR THE CONDUCT OF STATUTORY ADJUDICATION PROCEEDINGS UNDER THE CONSTRUCTION INDUSTRY PAYMENT AND ADJUDICATION ACT 2012

INTRODUCTION

These are recommended guidelines, save where the recommendations made are specifically set out as procedural requirements under the Construction Industry Payment and Adjudication Act 2012 (“CIPAA”). This document serves as a guide to adjudicators appointed under the CIPAA towards the conduct of the adjudication proceedings and the process culminating thereto, commencing from prior to the adjudicator’s appointment to the close of the adjudication proceedings.

The Forms referenced in this guide act as templates that can be used at various stages of the adjudication proceedings. Parties and adjudicators are free to modify the format and contents of the Forms whilst always ensuring that the prescribed statutory requirements are satisfied.

This guide shall in no way constitute nor be treated as an exhaustive, mandatory, or otherwise binding document between the AIAC, the Director of the AIAC (“Director”) and the adjudicator *inter se*. Any reliance placed or decisions made by an adjudicator based on the contents of this guide shall be through no compulsion of the AIAC and shall not serve as a ground to invalidate or set aside a decision or be relied upon to institute, commence or maintain any civil action and/or any other complaint. Neither the AIAC nor the Director shall be liable for any reliance placed on this guide whether through any act and/or omission of any party or the adjudicator.

CONDUCT OF ADJUDICATION PROCEEDINGS

Given that the objective of the CIPAA is to provide a speedy and efficient mechanism for the resolution of payment disputes in the construction industry, the adjudicator shall, at all times, act in accordance with the CIPAA and Construction Industry Payment and Adjudication Regulations 2014 (“CIPA Regulations”), ensuring that the process of adjudication is completed within the time limits prescribed in the CIPAA. The CIPAA framework is governed by stringent time limits determined based on working days. The calculation of the working days shall mean a calendar day excluding weekends and public holidays applicable at the State or Federal Territory where the project site is located.¹ The adjudicator is also strongly reminded to adhere to the duties and obligations imposed by the CIPAA and to conduct the adjudication in a manner the adjudicator considers appropriate within the powers granted.

No.	Item	√
Conflict Check		
1.	Conducting a conflict check upon receiving the same by email from the AIAC, particularly with reference to the matters set out in Regulation 5(6) of the CIPA Regulations	

¹ CIPAA, Section 4

No.	Item	√
2.	Confirming the adjudicator's availability to serve as the adjudicator in the proposed adjudication within the time limits stipulated by the AIAC	
Appointment by the Director of the AIAC		
3.	Peruse and review the Letter of Appointment, Letter of Acceptance, Declaration, and banking details issued by the AIAC via email to the adjudicator	
4.	Confirming receipt and returning the executed Letter of Acceptance, Declaration via email, followed by physical copy, and upon receipt of the physical copy, returning the executed physical copy to the AIAC	
5.	Acknowledging receipt of the Letter of Acknowledgment notifying Parties of the appointment and refrain from engaging in any communication with the Parties until receipt of the email copy of the Letter of Acknowledgment	
Appointment through Agreement of Parties		
6.	Claimant issuing the selected adjudicator with the Request to the chosen adjudicator to act (Form 4), alongside a copy of the Notice of Adjudication in seeking his/her consent to act as the adjudicator ²	
7.	Notifying the AIAC of the Claimant's issuance and the selected adjudicator's receipt of the Request to the chosen adjudicator to act (Form 4)	
Notice of acceptance of appointment to act as adjudicator		
8.	Proposing and negotiating the adjudicator's terms of appointment including the fees i.e. Standard Schedule of Fees, Recommended Schedule of Fees, or other agreed fees ³ , service of documents, mode of communication, etc. <i>The express and written consent of both Parties is required for the adoption of the Recommended Schedule of Fees and where email is proposed as a method of service</i>	
9.	The adjudicator to indicate his/her acceptance of the terms of appointment vide the Notice of acceptance of appointment to act as adjudicator (Form 6) within (10) working days from the date the adjudicator was notified of the appointment ⁴ i.e. the date of appointment as stated in the Letter of Appointment or the date of receipt of the Request to the chosen adjudicator to act (Form 4) <i>The following contents are recommended inclusions in the Notice of acceptance of appointment to act as adjudicator (Form 6):</i> <ul style="list-style-type: none"> • <i>direction to the Claimant and the Respondent to serve the Adjudication Claim, Adjudication Response and Adjudication Reply within the time limit prescribed in the CIPAA;</i> • <i>direction to the Parties to deposit with the AIAC the adjudicator's full fees and the AIAC administrative fees;</i> • <i>direction to the Parties on the applicable mode of service for documents; and</i> • <i>include any additional expenses that the adjudicator estimates to incur during the proceedings for travel and site visits, courier, and printing</i> 	

² CIPAA, Section 22(1)

³ CIPAA, Section 22(2) and Section 23(2); CIPA Regulations, Schedule [Regulation 6]; AIAC CIPAA Circular 02 – Circular on AIAC's Recommended Schedule of Fees

⁴ CIPAA, Section 23(2)

No.	Item	√
	<p><i>OR, if the adjudicator rejects the appointment or fails to indicate his/her acceptance within the time limit prescribed, then:</i></p> <ul style="list-style-type: none"> • <i>Parties may proceed to appoint another adjudicator by mutual consent under Section 21(a) of CIPAA; or</i> • <i>Parties may request the Director of the AIAC to appoint another adjudicator under Section 21(b) of CIPAA</i> 	
Communications with AIAC		
10.	Ensuring that correct subject line is used in all email and physical correspondence	
11.	AIAC Case Counsel and AIAC Adjudication to be copied to all correspondence	
12.	Noting the issuance of invoices by the AIAC for the amount payable in equal shares by the Parties and following up on the status of payment from time to time	
Filing of the Adjudication Claim, Adjudication Response and Adjudication Reply		
13.	Ensuring the service and receipt of the Adjudication Claim (Form 7), Adjudication Response (Form 8) and Adjudication Reply (Form 9) are within the time limits prescribed in the CIPAA ⁵ and in accordance with the modes of service of the documents recognised under CIPAA ⁶	
Powers of the Adjudicator		
14.	Exercising the powers of the adjudicator within the scope and ambit prescribed under the CIPAA as and when necessary ⁷	
15.	Exercising the powers of the adjudicator in the event of non-compliance including making any order and allowing any amendment as and when necessary ⁸	
Delivery of Adjudication Decision		
16.	Obtaining the AIAC's confirmation on the Parties' remittance of the deposit with the AIAC before releasing the Adjudication Decision to the Parties	
17.	The Adjudication Decision (Form 15) shall be made in writing and contain reasons for such decision unless the requirement for reasons is dispensed by the Parties ⁹ and state the determined adjudicated amount and the time and manner that such amount is payable ¹⁰	
18.	Deciding and delivering the Adjudication Decision within the applicable forty-five (45) working days ¹¹ or by a further time limit agreed to in writing between the Parties upon the request by the adjudicator for an extension of time ¹²	
19.	Ensuring that a copy of the Adjudication Decision accompanied by the Delivery of Adjudication Decision (Form 16) is delivered and received by the Parties and the	

⁵ CIPAA, Section 9, Section 10 and Section 11

⁶ CIPAA, Section 38

⁷ CIPAA, Section 25

⁸ CIPAA, Section 26(2)(b)-(c)

⁹ CIPAA, Section 12(4)

¹⁰ CIPAA, Section 12(5)

¹¹ CIPAA, Section 12(2)(a) and (b)

¹² CIPAA, Section 12(2)(c)

No.	Item	√
	Director of the AIAC, within the prescribed time limit on or before the due deadline ¹³	
20.	Preparing invoices to the AIAC for disbursement based on the payment of deposits by both Parties or either Party	
<i>Non-payment / Part Payment of the Deposit</i>		
21.	In a situation where no payment has been made by both Parties, issuing reminders to the Parties for payment and consulting the Director of the AIAC on the possibility of setting aside the proceedings either wholly or partly for non-compliance ¹⁴	
22.	In a situation where only one Party has paid the deposit, directing the Party to make payment on behalf of the other Party ¹⁵	
23.	Serving the Notice for withholding the release of the decision until payment of fees and expenses in full (Form 14) upon the Parties and the AIAC on or before the deadline for the delivery of the Adjudication Decision ¹⁶	
<i>Correction of Adjudication Decision</i>		
24.	Correcting the Adjudication Decision on own motion, or upon request made by Party limited to computational or typographical errors only ¹⁷	
<i>Withdrawal / Termination of Adjudication Proceedings</i>		
25.	Writing to the Director of the AIAC with a timesheet describing the work done, total time spent and proposed withdrawal costs ¹⁸ upon receipt of the Notice of withdrawal of adjudication claim proceedings (Form 11)	
26.	Upon receiving the Director of the AIAC's determination on withdrawal costs, issuing a direction to the relevant Party to pay the approved withdrawal costs	
27.	Mindful that irrespective of the approved quantum of the adjudicator's withdrawal costs, the AIAC administrative fee is payable in full ¹⁹	

CONCLUSION

Please note that the abovementioned recommendations only serve as a guideline to the adjudicator appointed under the CIPAA. These recommendations are not exhaustive and the adjudicator has full discretion to conduct the arbitration proceedings as he/she deems fit and to deliver the decision in such proceedings.

¹³ CIPAA, Section 12(6)

¹⁴ CIPAA, Section 26(2)

¹⁵ AIAC Adjudication Rules & Procedure, Rule 9(4)

¹⁶ CIPAA, Section 19(5)

¹⁷ CIPAA, Section 12(7)

¹⁸ AIAC Adjudication Rules & Procedure, Rule 9(5A)

¹⁹ AIAC Adjudication Rules & Procedure, Schedule III, Clause 1.2