



Assessment Panel Member Complaints

If you are involved with a development application, you can make a complaint about the conduct of a decision-maker. Complaints about an individual assessment panel member (including a member of a Regional Assessment Panel (RAP) or Council Assessment Panel (CAP)) must be lodged with the State Planning Commission (the Commission).

The following questions and answers are aimed to help you identify the nature of complaints which can be lodged with the Commission.

Q – I am dissatisfied with a decision made by an Assessment Panel to approve or refuse a development application. What can I do about it?

The Commission does not have the authority to overturn a decision of an Assessment Panel or investigate a complaint made regarding the merits of a decision. As such, complaints regarding a decision by an Assessment Panel cannot be accepted by the Commission.

If you are the applicant, you may have a right to appeal a decision by a CAP or RAP for a “Performance Assessed” development. In addition to this, if an Assessment Manager appointed by a CAP or RAP acted as the Relevant Authority, as the applicant you can apply to the CAP or RAP for review of the decision. Otherwise, appeal applications must be made to the Environment Resources and Development Court (ERD Court).

If you are a neighbour, representor or other third party interested in the development, you will only be able to appeal a decision of the CAP or RAP if the development was a “Restricted” development.

The decision notification form (DNF) will outline the Relevant Authority that made the decision and include details of any appeal rights which might apply. The decision notification form is available on the [Development Application Register](#).

Further information about [decisions and appeals](#) can be found on the PlanSA portal.

Q2 – Do I have to pay to appeal a decision of the Assessment Panel?

Yes, there is a fee to lodge an appeal with the ERD Court. Details are available at: [ERD Court civil divisional fees](#).

Q3 – I think the Assessment Panel has made an error during the decision-making process. What can I do about it?

Note: this might include where you consider the Assessment Panel:

- *did not listen to or take into account your concerns;*
- *refused to look at certain plans or documents; or*
- *considered matters that were irrelevant to the decision-making process.*

The Commission does not have the authority to overturn a decision of an Assessment Panel. The Commission is only able to examine the conduct of an individual Assessment Panel Member and is not able to investigate a decision-making process or Assessment Panel process more broadly.

If you think an error has occurred, you may be able lodge an appeal to the ERD Court. The ERD Court will consider the decision-making process when remaking the decision. There are occasions where such an appeal will not be available, and you may need to consider filing an application for a judicial review with the Supreme Court of South Australia. You may wish to consider seeking professional legal advice from a legal practitioner in these circumstances.

Q4 – I observed or have direct knowledge that the Presiding Member or an Assessment Panel Member engaged in improper conduct.

Note: this might include where you consider the Member:

- *was involved in the Assessment Panel decision even though they had a conflict of interest;*
- *has not upheld expected behavioural standards or has exhibited unprofessional conduct;*
- *has not acted primarily in the public interest by putting their own personal or professional interests ahead of their statutory duty as a public officer; and*
- *has not complied with legislative requirements when carrying out their statutory function of development assessment.*

What can I do about it?

If you have direct knowledge or evidence of any improper conduct by an Assessment Panel Member you are encouraged to lodge a complaint. Complaints should be lodged using the [Complaint Form](#) available online via the PlanSA portal.

The [Complaints Handling Procedure for Assessment Panel Members](#) outlines the process from complaint lodgement through to notification of an outcome.

What if I have observed an Assessment Panel Member engage in this type of conduct and I'm also unhappy with the decision-making process and the decision?

In such a case, your complaint must only address the Assessment Panel Member's conduct. Any reference to being aggrieved either by the decision-making process or the decision itself cannot be accepted by the Commission.

Q5 – I have a complaint about an Assessment Manager. What options are available to me?

The Commission has no authority regarding complaints made against an Assessment Manager. Assessment Managers are appointed either by the relevant council (in the case of a CAP) or by the Chief Executive of the Department for Trade and Investment (in the case of a RAP).

If your complaint is about the Assessment Manager appointed to a CAP, please speak with the relevant local council who will advise you about the complaint handling process.

If your complaint is about the Assessment Manager appointed to a RAP, please contact Audit and Investigations on (08) 7133 2619 or DTI.APSCComplaints@sa.gov.au for further information about the complaint lodgement process.

Q6 – When should I not make a complaint?

The Commission is not obliged to consider a complaint that is:

- raised by someone without a sufficient interest in the subject of the complaint;
- frivolous, vexatious or made without good faith; or
- trivial.

In addition, the Commission may also decide not to proceed with a complaint where there is some other good reason not to proceed. This could include where the complaint:

- is considered by the Commission to have no merit or substance; or
- is better addressed elsewhere (for example, by another complaint authority or investigatory authority).

Examples of the kinds of complaints which the Commission is not obliged to consider are provided below.

EXAMPLE 1 – Frivolous or vexatious complaint.

A is a disgruntled ratepayer. A has had previous run-ins with X, an Assessment Panel Member on his local Council Assessment Panel. Over a decade ago, they were business partners and their company was dissolved after claims of insolvent trading were substantiated. Since that time A has had a vendetta against X. A has attended repeated meetings and monitored X's performance and made complaints to the relevant council about them. A attended a recent Assessment Panel meeting and it seemed to A that X did not fully consider the documents related to a development application which he voted for during the meeting. X participated fully in the deliberations, asked questions but did not have all of the papers with him, acknowledging that he had lost hard copies but had viewed them online.

This may be considered a vexatious complaint if it is found to be motivated by A's previous relationship and poor business dealings with X. Complaints must be about an Assessment Panel Member's conduct that breaches the provisions of the Code of Conduct. This includes the behaviour of the Member and how they have carried out their statutory powers, duties and functions under the Act. It is also an example of a complaint that is not made in good faith given X's conduct at the meeting.

EXAMPLE 2 – A trivial complaint

B attended their local Council Assessment Panel meeting as they had an interest in the outcome of a development application, having made a representation. During the meeting, they noticed that one of the Assessment Panel Members turned up 5 minutes late.

This is a trivial complaint because it is of a minor nature and does not have a substantive effect on the decision-making process of the Assessment Panel or the outcome of any development application considered by the panel during the meeting. Late attendance at a meeting alone is not considered a breach of the Code of Conduct.

EXAMPLE 3 – A complaint without merit

F was a Member of the State Commission Assessment Panel. D complained she should never have been appointed as she had been investigated for alleged professional misconduct during her employment at a council. D made a complaint to the State Planning Commission about F's current position on the Panel. F was not a Member of the Panel during the term of her employment with the relevant council.

This complaint has no merit as it does not concern a breach of the relevant Code of Conduct, which only applied to F during her term of appointment to the panel.

EXAMPLE 4 – The complaint is better addressed by another authority

L has recently been appointed to a Council Assessment Panel and holds Planning Level 2 accreditation. G has previously worked with L at an Urban Planning firm and knows that L lied about his qualifications and experience when applying for accreditation.

While Assessment Panel Members are required to hold Planning Level 2 accreditation (or be a current or former Elected Member), complaints about an Accredited Professional must be lodged with the Accredited Professionals Scheme Accreditation Authority using the [Complaint Form](#) available online via the PlanSA portal.

Q7 – I have noticed that my neighbour has or is doing some renovations to their property. I think the works are not approved and I have not been notified about them. The construction works are having an adverse effect on my property. What are my options regarding the renovations?

You can check whether a development application has been lodged and approved by searching an address via PlanSA's [development application register](#).

You can also speak with your local council who will be able to advise you whether a development application for the renovations was lodged and approved. Local councils are obligated to inspect some building works during construction and (if required) can take action to ensure that the relevant building works are in accordance with any approvals that have been granted. Where an approval has not been issued and the building works are unauthorised development, the relevant council has powers to take appropriate enforcement action.

If your property has been damaged because of construction occurring on your neighbour's property, you should seek advice from a legal practitioner about options available to you.

Q8 – I am unhappy with a decision made by the elected members of my local council or a council committee meeting. What are my options?

The Commission does not have the authority to investigate complaints about elected member conduct where the elected member is not appointed to an Assessment Panel or where the conduct does not relate to the Member's duties on the Assessment Panel.

In the first instance, you should speak with your local council as they will be able to advise you about the relevant options available for you to pursue a complaint.

Further information

If you have questions about the complaints handling process, you can access information on [how to make a complaint about a decision maker](#) online via PlanSA.

For inquiries about complaints that may be lodged with the State Planning Commission, please contact Audit and Investigations on (08) 7133 2619 or saplanningcommission@sa.gov.au.