

# Accredited Professionals Complaint Handling Procedure

## 1. Context

- 1.1. A complaint may be lodged with the Accreditation Authority pursuant to regulation 28 of the Accredited Professionals Regulations alleging that the accredited professional has:
- failed to comply with, or has contravened, the PDI Act or regulations made under that Act with respect to any matter associated with any assessment, decision, permission, consent, approval, authorisation, certificate or process that relates to any development (or proposed development);
  - acted in a manner which constitutes an offence under section 91 of the PDI Act; or
  - breached the Code of Conduct adopted by the Minister under clause 1(1)(d) of schedule 3 to the PDI Act,
- (each a Breach).
- 1.2. The powers of the Accreditation Authority in dealing with a complaint are set out in regulation 28 of the Accredited Professionals Regulations. Regulation 28 also sets out requirements on the Accreditation Authority and Investigators in dealing with complaints.
- 1.3. This procedure sets out the Accreditation Authority's approach to dealing with complaints. This procedure supplements regulation 28 of the Accredited Professionals Regulations. If there is any inconsistency between this procedure and regulation 28, the regulation will prevail to the extent of the inconsistency.
- 1.4. References to the 'Accreditation Authority' in this procedure include references to a delegate of the Accreditation Authority appointed under section 34 of the PDI Act and, where authorised by that delegate's instrument of appointment, a sub-delegate of the delegate.

## 2. Defined terms

- 2.1. The following table sets out definitions for capitalised terms used in this procedure.

Term	Definition
<b>Accreditation Authority</b>	the Chief Executive (or delegate)
<b>Accredited Professionals Regulations</b>	<i>Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019</i>
<b>Breach</b>	has the meaning given in paragraph 1.1.
<b>Chief Executive</b>	the Chief Executive of the Department responsible for the administration of the <i>Planning, Development and Infrastructure Act 2016</i>

Term	Definition
<b>Code of Conduct</b>	<i>Accredited Professionals Scheme Code of Conduct (April 2019) adopted by the Minister under clause 1(1)(d) of schedule 3 (gazetted 26 March 2019) as amended from time to time</i>
<b>Minister</b>	Minister for Planning
<b>OPI</b>	Office for Public Integrity
<b>PDI Act</b>	<i>Planning, Development and Infrastructure Act 2016</i>
<b>public officer</b>	has the meaning given that term in the <i>Independent Commissioner Against Corruption Act 2012</i>

### 3. Receipt of a complaint

#### ***Form and content of a complaint***

- 3.1. A person may lodge a complaint with the Accreditation Authority alleging a breach.
- 3.2. A complaint is only valid if made in the form approved by the Accreditation Authority (as published on the SA planning portal). A complaint must also:
  - (a) contain particulars of the allegations on which the complaint is based; and
  - (b) be verified by statutory declaration.<sup>1</sup>
- 3.3. If a person attempts to lodge a complaint with the Accreditation Authority which does not satisfy these requirements, then a letter will be sent to the person indicating the requirements for lodging a valid complaint.
- 3.4. The Accreditation Authority may require the person lodging a complaint to provide further information to the Accreditation Authority. The Accreditation Authority may require this further information to be verified by statutory declaration.<sup>2</sup>

#### ***Timing of a complaint***

- 3.5. A complaint is required to be lodged within 12 months of the day on which the complainant first became aware of the matters alleged in the complaint, unless the Accreditation Authority approves otherwise.<sup>3</sup>
- 3.6. If a person lodges a complaint with the Accreditation Authority in regard to circumstances which occurred more than 12 months before lodging the complaint, then the Accreditation Authority will determine whether to approve the lodging of the complaint. The Accreditation Authority's decision will be advised by letter to the person who lodged the complaint.
- 3.7. If a person lodges a complaint with the Accreditation Authority and it is unclear whether the circumstances occurred within the 12 months prior to lodging the complaint, then further information will be sought from the complainant. If this further information indicates that the matters alleged in the complaint occurred more than 12 months prior to the lodging of the complaint, then the Accreditation Authority will determine whether to approve the lodging of the complaint. The Accreditation Authority's decision will be advised by letter to the person who lodged the complaint.

<sup>1</sup> Regulation 28(3), Accredited Professionals Regulations.

<sup>2</sup> Regulation 28(5), Accredited Professionals Regulations.

<sup>3</sup> Regulation 28(4), Accredited Professionals Regulations.

## **Acknowledgement**

3.8. If a complaint satisfies the form, content and timing requirements, then the Accreditation Authority will acknowledge the receipt of the complaint by letter to the complainant.

## **4. Initial assessment of a complaint**

- 4.1. Once a complaint has been received, the Accreditation Authority will make an initial assessment of the complaint.
- 4.2. If on the basis of information contained in a complaint, the Accreditation Authority or any other public officer has a reasonable suspicion of corruption, serious or systemic misconduct or serious or systemic maladministration by an Accredited Professional, then a report will be made to the OPI (see part 9 of this procedure).
- 4.3. The Accreditation Authority may refuse to entertain a complaint if it appears to the Accreditation Authority that:
- (a) the complainant does not have a sufficient interest in the matter to which the complaint relates;
  - (b) the matter raised by the complaint is trivial;
  - (c) the complaint is frivolous or vexatious or is not made in good faith;
  - (d) that it would be more appropriate for proceedings to be initiated in a court or tribunal constituted by law, or for the matter to be handled by another authority; or
  - (e) there is some other good reason not to proceed (or further proceed) with considering the complaint.<sup>4</sup>
- 4.4. The Accreditation Authority will undertake an initial assessment of the complaint to determine if any of the circumstances listed in paragraph 4.3 exist. The Accreditation Authority may base its assessment on the information provided by the complainant and further information, if any, gathered by the Accreditation Authority either directly or through an Investigator (see part 6 of this procedure). The Accreditation Authority or Investigator may request further information from the complainant, seek information from persons with direct knowledge of the matters alleged in the complaint or refer the complaint to the Accredited Professional to whom the complaint relates for a response.
- 4.5. If the Accreditation Authority determines that a circumstance listed in paragraph 4.3 exists, then the Accreditation Authority will determine whether or not it will refuse to entertain the complaint. If the Accreditation Authority determines to refuse to entertain the complaint, then the Accreditation Authority will notify the complainant of this decision by letter.
- 4.6. If the Accreditation Authority has given an Accredited Professional notice of a complaint and then decides not to proceed with the complaint due to a circumstance listed in in paragraph 4.3, the Accreditation Authority must provide written notice of that decision to the Accredited Professional.<sup>5</sup>

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<sup>4</sup> Regulation 28(6), Accredited Professionals Regulations.

<sup>5</sup> Regulation 28(7), Accredited Professionals Regulations.

## 5. Consideration of the complaint

- 5.1. If the Accreditation Authority determines to entertain a complaint, then the Accreditation Authority may request further information from the complainant, seek information from persons with direct knowledge of the matters alleged in the complaint or refer the complaint to the Accredited Professional to whom the complaint relates for a response.
- 5.2. The Accreditation Authority could determine on the basis of this information that the complaint:
  - (a) has been substantiated
  - (b) has not been substantiated
  - (c) requires further investigation.
- 5.3. For the Accreditation Authority to determine that a complaint has been substantiated, the Accreditation Authority must be reasonably satisfied that the facts alleged in the complaint have been established on the information available to the Accreditation Authority and that these facts establish a Breach. Where a substantiated complaint will have serious consequences, then the Accreditation Authority should ensure that the evidence supports the findings of fact to its reasonable satisfaction. The level of proof required to attain reasonable satisfaction is determined by the seriousness of the consequences of the complaint being made out. The Accreditation Authority could consider seeking legal advice in respect of the whether the level of proof required in a given case can be satisfied by the available evidence.
- 5.4. If the Accreditation Authority determines that the complaint has been substantiated, then the Accreditation Authority will consider the action to be taken in response to the complaint. See part 8 of this procedure.
- 5.5. If the Accreditation Authority determines that the complaint has not been substantiated, then the Accreditation Authority will inform the complainant of its determination by letter.<sup>6</sup>
- 5.6. If the Accreditation Authority has given an Accredited Professional notice of a complaint and then decides that the complaint is not substantiated, the Accreditation Authority must provide written notice of that decision to the Accredited Professional.<sup>7</sup>
- 5.7. If the Accreditation Authority determines that the complaint requires further investigation, the Accreditation Authority will either seek further information itself or will appoint an Investigator (see part 6 of this procedure).

## 6. Appointing an Investigator

### *Terms of appointment*

- 6.1. The Accreditation Authority may at any time after the receipt of a complaint determine to appoint an Investigator.<sup>8</sup> The Accreditation Authority should consider engaging an authorised officer appointed under section 210 of the PDI Act as an Investigator. An authorised officer may exercise the powers set out in section 211 of the Act in relation to investigating a complaint. These include powers to compel a person who the authorised officer reasonably suspects has knowledge of matters in respect of which information is reasonably required for the administration or enforcement of the PDI Act to answer questions in relation to those matters.

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<sup>6</sup> Regulation 28(14), Accredited Professionals Regulations.

<sup>7</sup> Regulation 28(7), Accredited Professionals Regulations.

<sup>8</sup> Regulation 28(8), Accredited Professionals Regulations.

- 6.2. The appointment of an Investigator will be in writing. The Accreditation Authority will provide the Investigator with a copy of the information received by the Accreditation Authority in relation to the complaint.
- 6.3. The terms of an Investigator's appointment will provide that the Investigator:
- (a) must investigate the complaint as soon as practicable after the appointment has been made;
  - (b) must give the Accredited Professional to whom the complaint relates a reasonable opportunity to make representations to the Investigator about the complaint;
  - (c) may require the Accredited Professional to provide any documentation or other information relevant to the investigation of the complaint;
  - (d) may require any information provided by the Accredited Professional to be verified by statutory declaration;
  - (e) may investigate in such manner as the Investigator thinks fit (including by undertaking other consultations and inquiries), provided that the Investigator must comply with the rules of natural justice; and
  - (f) may following consultation with the Accreditation Authority, investigate circumstances of which the Investigator is satisfied which would be the basis of another complaint against the Accredited Professional.<sup>9</sup>
- 6.4. The Accreditation Authority may direct the Investigator to undertake the investigation in a particular manner provided that any direction is not inconsistent with the terms set out above.

***Informing the Accredited Professional of the Investigator's appointment***

- 6.5. The Accreditation Authority must inform the Accredited Professional of the appointment of an Investigator and provide formal notification of the nature of the complaint.<sup>10</sup>
- 6.6. The Accreditation Authority may require an Investigator to gather information regarding the complaint and provide an interim report to the Accreditation Authority,<sup>11</sup> so that the Accreditation Authority is able to provide formal notification of the nature of the complaint to the Accredited Professional.
- 6.7. Once the Accreditation Authority is in a position to provide formal notification of the nature of the complaint to the Accredited Professional, then the Accreditation Authority will provide this notification as soon as practicable by letter.<sup>12</sup> The letter will also inform the Accredited Professional that:
- (a) they will be provided with:
    - (i) a reasonable opportunity to make representations to the Investigator regarding the complaint;<sup>13</sup> and
    - (ii) a copy of the Investigator's final report to the Accreditation Authority in relation to the complaint;<sup>14</sup>

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<sup>9</sup> Regulation 28(9), Accredited Professionals Regulations.

<sup>10</sup> Regulation 28(9)(a), Accredited Professionals Regulations.

<sup>11</sup> Regulation 28(11)(a), Accredited Professionals Regulations.

<sup>12</sup> regulation 28(9)(a), Accredited Professionals Regulations.

<sup>13</sup> Regulation 28(9)(c), Accredited Professionals Regulations.

<sup>14</sup> Regulation 28(12), Accredited Professionals Regulations.

- (b) the information provided by the Accredited Professional to the Investigator will need to be verified by statutory declaration;<sup>15</sup> and
- (c) aside from investigating the notified complaint, the Investigator is permitted to investigate other circumstances if satisfied that these would be the basis of another complaint against the Accredited Professional.<sup>16</sup>

### ***Interim and final reports of the Investigator***

- 6.8. If on the basis of information contained in an interim report or final report of the Investigator, the Accreditation Authority or any other public officer has a reasonable suspicion of corruption, serious or systemic misconduct or serious or systemic maladministration then a report will be made by the Accreditation Authority or other public officer to the OPI (see part 9 of this procedure).
- 6.9. The Accreditation Authority may use information in an interim report from an Investigator in order to determine whether to refuse to further entertain a complaint due to one of the circumstances listed in paragraph 4.3, or otherwise to take no further action in respect of a complaint. If the Accreditation Authority determines not to proceed with a complaint, then the Accreditation Authority will by letter notify:
- (a) the Accredited Professional of the appointment of the Investigator and the nature of the complaint (if this has not already occurred) and the Accreditation Authority's determination not to proceed further with the complaint;<sup>17</sup> and
  - (b) the complainant of the Accreditation Authority's determination not to proceed further with the complaint.<sup>18</sup>

## **7. Following an investigation**

- 7.1. At the conclusion of an investigation, the Accreditation Authority will consider the Investigator's final report.
- 7.2. The final report will be provided by the Accreditation Authority to the Accredited Professional. The Accreditation Authority may invite the Accredited Professional to provide a response to the report to the Accreditation Authority.<sup>19</sup> The Accreditation Authority should invite a response from the Accredited Professional, if this is required to satisfy the rules of natural justice. If the Accreditation Authority invites a response from the Accredited Professional, then this response should be considered in the Accreditation Authority's final determination of the complaint.
- 7.3. The Accreditation Authority could determine on the basis of the Investigator's report and any response from the Accredited Professional, that the complaint:
- (a) has been substantiated
  - (b) has not been substantiated
  - (c) requires further investigation

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<sup>15</sup> Regulation 28(9)(d), Accredited Professionals Regulations.

<sup>16</sup> Regulation 28(10), Accredited Professionals Regulations.

<sup>17</sup> Regulations 28(7) and 28(9)(a), Accredited Professionals Regulations.

<sup>18</sup> Regulation 28(14), Accredited Professionals Regulations.

<sup>19</sup> Regulation 28(12), Accredited Professionals Regulations.

- 7.4. For the Accreditation Authority to determine that a complaint has been substantiated, the Accreditation Authority must be reasonably satisfied that the facts alleged in the complaint have been established on the information available to the Accreditation Authority and that these facts establish a Breach (see paragraph 5.3 of this procedure). The Accreditation Authority could consider seeking legal advice in respect of the whether the level of proof required in a given case can be satisfied by the available evidence.
- 7.5. The Accreditation Authority may:
- (a) decide to take no further action on the complaint
  - (b) undertake any consultation or further inquiry as the Accreditation Authority thinks fit
  - (c) caution or reprimand the Accredited Professional
  - (d) make recommendation to the Accredited Professional
  - (e) impose conditions on the accreditation of the Accredited Professional
  - (f) alter the accreditation of the Accredited Professional to a lower level of accreditation
  - (g) take action under the Accredited Professional Regulations to cancel or suspend the Accredited Professional's accreditation
  - (h) take such other action as the Accreditation Authority thinks fit.<sup>20</sup>
- 7.6. The Accreditation Authority will inform the complainant and the accredited professional of the outcome of the complaint by letter.<sup>21</sup>

## **8. Consequences of a Breach**

- 8.1. The Accreditation Authority may take action in regard to an Accredited Professional who has engaged in a Breach. In determining the appropriate action, the Accreditation Authority will consider the severity of the Breach. Repeated minor Breaches by an Accredited Professional may be considered cumulatively as a serious Breach.
- 8.2. The Accreditation Authority may impose the following sanctions:
- (a) caution or reprimand the Accredited Professional;
  - (b) make recommendation to the Accredited Professional;
  - (c) impose conditions on the accreditation of the Accredited Professional;
  - (d) alter the accreditation of the Accredited Professional to a lower level of accreditation;
  - (e) take action under the Accredited Professional Regulations to cancel or suspend the accredited professional's accreditation
  - (f) take such action as the Accreditation Authority thinks fit.<sup>22</sup>

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<sup>20</sup> Regulation 28(13), Accredited Professionals Regulations.

<sup>21</sup> Regulations 28(7) and 28(14), Accredited Professionals Regulations.

<sup>22</sup> Regulation 28(13), Accredited Professionals Regulations.

8.3. Prior to determining the appropriate sanction, the Accreditation Authority should inform the Accredited Professional of the proposed sanction by letter. The letter should include the reasons for the proposed sanction and invite the Accredited Professional to make a written submission to the Accreditation Authority. Any submission made by the Accredited Professional should be taken into account by the Accreditation Authority prior to determining the sanction to be imposed. These steps are required to accord natural justice to the Accredited Professional and are an express requirement of the Accredited Professional Regulations in relation to a proposed suspension or cancellation of accreditation (see paragraph 8.15).

8.4. If the proposed sanction is to:

- (a) impose conditions on the accreditation of the Accredited Professional;
- (b) alter the accreditation of the Accredited Professional to a lower level of accreditation; or
- (c) take action under the Accredited Professional Regulations to cancel or suspend the Accredited Professional's accreditation,

then the letter should also inform the Accredited Professional that there is a right of appeal from that decision to SACAT under regulation 29 of the Accredited Professionals Regulations.

#### ***Caution or reprimand***

8.5. Where the Breach is of a minor nature, the Accreditation Authority may determine that only a caution or reprimand is warranted.<sup>23</sup> The issuing of a caution or reprimand in regard to a breach could be taken into account by the Accreditation Authority if a subsequent complaint was lodged with respect to the Accreditation Authority.

#### ***Make recommendation to the Accredited Professional***

8.6. In other circumstances of minor Breach, the Accreditation Authority may determine to make recommendations to the Accredited Professional.<sup>24</sup> These recommendations could include steps to be taken by the Accredited Professional or future conduct. Recommendations of the accreditation Authority would not be binding on the Accredited Professional.

#### ***Imposition of conditions***

8.7. The Accreditation Authority can impose conditions limiting the scope of an accreditation or any other condition in relation to the accreditation.<sup>25</sup> This could include conditions such as:

- (a) working under supervision permanently or for a period of time
- (b) undertaking training.

8.8. A decision to impose conditions on an accreditation may be subject to a review by SACAT (see regulation 29, Accredited Professional Regulations). An application for review must be lodged within 28 days of the decision to impose conditions.

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<sup>23</sup> Regulation 28(13)(c), Accredited Professionals Regulations.

<sup>24</sup> Regulation 28(13)(d), Accredited Professionals Regulations.

<sup>25</sup> Regulation 28(13)(e), Accredited Professionals Regulations.



### ***Altering the accreditation to a lower level***

- 8.9. Various levels of accreditation of the Accredited Professional are provided for in Part 2 of the Accredited Professionals Regulations.<sup>26</sup> The Accreditation Authority could determine that an appropriate consequence of the Breach is to reclassify the Accredited Professional at a lower level of accreditation.
- 8.10. A decision to alter the level of an accreditation may be subject to a review by SACAT (see regulation 29, Accredited Professional Regulations). An application for review must be lodged within 28 days of the decision to alter the level of accreditation.

### ***Suspension or cancellation of accreditation***

- 8.11. The Accreditation Authority is empowered under the Accredited Professionals Regulations to suspend or cancel the accreditation of an Accredited Professional.<sup>27</sup>
- 8.12. The Accreditation Authority may only suspend or cancel an accreditation if one or more of the circumstances set out in the Accredited Professionals Regulations apply.<sup>28</sup> These circumstances are:
- (a) events have occurred such that the Accredited Professional would not be entitled to be granted accreditation if the person were to apply for accreditation (see regulations 15 and 16, Accredited Professional Regulations);
  - (b) the Accredited Professional, in the performance, exercise or discharge, or purported performance, exercise or discharge, of a function, power or duty under the PDI Act or any regulations under the PDI Act, failed to comply with a provision of the PDI Act or regulations;
  - (c) the Accredited Professional has contravened or failed to comply with a condition of the accreditation;
  - (d) the Accredited Professional has contravened or failed to comply with the Code of Conduct or a code of conduct applying to the Accredited Professional as an assessment panel member;
  - (e) the Accreditation Authority considers that the Accredited Professional obtained the accreditation improperly or on the basis of false or misleading information;
  - (f) any other ground for the cancellation of the accreditation specified by the Accredited Professionals Regulations; or
  - (g) the Accredited Professional:
    - (i) is otherwise, in the opinion of the Accreditation Authority, no longer a fit and proper person or otherwise suitable to hold an accreditation under the Accredited Professionals Regulations; or
    - (ii) has otherwise acted in an unprofessional or inappropriate manner, or failed to professionally discharge a responsibility under the PDI Act.

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<sup>26</sup> Regulation 28(13)(f), Accredited Professionals Regulations.

<sup>27</sup> Regulation 28(13)(g), Accredited Professionals Regulations.

<sup>28</sup> Regulation 21, Accredited Professionals Regulations.

- 8.13. The circumstances listed in paragraph 8.12 are broader than the circumstances which may constitute a Breach. In the context of handling complaints in regard to a Breach, the suspension or cancellation of an accreditation can only occur if the circumstance supporting the suspension or cancellation of the accreditation is also a circumstance which constitutes a Breach.
- 8.14. Where a circumstance which would support a suspension or cancellation of accreditation is not a circumstance which constitutes a Breach, then the Accreditation Authority may act under regulation 21 to suspend or cancel the accreditation. However, a delegate could only act to suspend or cancel an accreditation in these circumstances, if the powers of the Accreditation Authority under regulation 21 had been delegated to that delegate.
- 8.15. If the Accreditation Authority proposes to suspend or revoke an accreditation then notice must be given to the Accredited Professional. The notice must:
- (a) provide reasons for the proposed suspension or revocation; and
  - (b) invite the Accredited Professional to submit a written representation to the Accreditation Authority concerning the proposed suspension or revocation within a specified period after the notice is given.<sup>29</sup>
- 8.16. The Accreditation Authority must consider any written representations provided by the Accredited Professional prior to determining whether to suspend or revoke the accreditation.<sup>30</sup>
- 8.17. The Accreditation Authority may suspend or cancel the accreditation of an accredited professional:
- (a) for a specified period
  - (b) until the fulfilment of specified conditions
  - (c) until further determination of the Accreditation Authority.<sup>31</sup>
- 8.18. The Accreditation Authority may cancel the accreditation of an Accredited Professional permanently.<sup>32</sup>
- 8.19. A decision to suspend or cancel an accreditation may be subject to a review by SACAT (see regulation 29, Accredited Professional Regulations). An application for review must be lodged within 28 days of the decision to suspend or cancel an accreditation.

***Take such action as the Accreditation Authority thinks fit***

- 8.20. The Accreditation Authority is empowered to take such action as the Accreditation Authority thinks fit in response to a complaint being substantiated. Despite the broad drafting of this power, the action which the Accreditation Authority can take must be consistent with the PDI Act and regulations made under that Act, be referable to the type and severity of the Breach and be reasonable in the circumstances.

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<sup>29</sup> Regulation 22, Accredited Professionals Regulations.

<sup>30</sup> Regulation 22(2), Accredited Professionals Regulations.

<sup>31</sup> Regulation 23, Accredited Professionals Regulations.

<sup>32</sup> Regulations 23(1)(a), Accredited Professionals Regulations.

## 9. Report to the Office for Public Integrity

- 9.1. The Accreditation Authority is a public officer for the purposes of the *Independent Commissioner Against Corruption Act 2012*.
- 9.2. If at any stage during the handling of a complaint, the Accreditation Authority or another public officer has a reasonable suspicion of corruption in public administration, serious or systemic misconduct in public administration or serious or systemic maladministration in public administration in relation to the circumstances of the complaint, then a report will be made by the Accreditation Authority or other public officer to the OPI in accordance with *Directions and Guidelines for Public Officers* issued by the Independent Commissioner Against Corruption.
- 9.3. The Accreditation Authority will follow any directions of the Independent Commissioner Against Corruption or OPI regarding the continuation or suspension of any inquiries or investigations initiated by the Accreditation Authority in regard to the relevant complaint.

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