



Complaints Handling Procedure for Assessment Panels

1. Introduction

- 1.1. A complaint may be lodged with the Commission alleging a breach by an assessment panel member of the Code of Conduct adopted by the Minister under clause 1(1)(c) of schedule 3 to the PDI Act. The powers of the Commission in dealing with a complaint are set out in regulation 11 of the PDI Regulations. Regulation 11 also sets out requirements on the Commission and investigators in dealing with complaints.
- 1.2. This procedure sets out the Commission's approach to dealing with complaints. This procedure supplements regulation 11 of the PDI Regulations. If there is any inconsistency between this procedure and regulation 11, the regulation will prevail to the extent of the inconsistency.
- 1.3. Powers and functions of the Commission under regulation 11 of the PDI Regulations may be undertaken by the Commission or a delegate of the Commission. References to the 'Commission' in this procedure include a reference to a delegate of the Commission appointed under section 30 of the PDI Act.
- 1.4. This policy only concerns complaints made in respect of individual assessment panel members under the Code of Conduct. Any concerns regarding the assessment and/or determination of a development application, should be raised with the relevant development assessments staff and/or where available, pursued through the appeal process under the PDI Act.
- 1.5. The Commission may consult with, or provide a report to, the Minister at any stage regarding a complaint made under regulation 11 of the PDI Regulations. Where the assessment panel member who is the subject of the complaint was appointed by a joint planning board or a council, the Commission may consult with, or provide a report to, that entity at any time in relation to that complaint.

2. Defined terms

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

Term	Definition
Assessment Panel Member	A member of a panel established under section 29(1)(a) or Part 6 – Division 2 of the PDI Act
Code of Conduct	Assessment Panel Members – Code of Conduct adopted by the Minister under clause 1(1)(c) of schedule 3 (gazetted 29 September 2017, as amended from time to time)

Term	Definition
Complainant	A person who makes a complaint against an Assessment Panel Member under the Code of Conduct
Commission	State Planning Commission established under section 17 of the PDI Act (or its delegate)
Investigator	A person appointed by the Commission for the purpose of investigating a complaint against an Assessment Panel Member
Minister	Minister for Planning
OPI	Office for Public Integrity
PDI Act	Planning, Development and Infrastructure Act 2016
PDI Regulations	Planning, Development and Infrastructure (General) Regulations 2017

3. Receipt of a complaint

Form and content of a complaint

- 3.1. A person may lodge a complaint with the Commission alleging that an assessment panel member has breached the Code of Conduct. A complaint is only validly made if the complaint:
 - (a) is in writing;
 - (b) contains particulars of the allegations on which the complaint is based; and
 - (c) is verified by a statutory declaration.
- 3.2. Complaints may be addressed to the State Planning Commission, GPO Box 1815, Adelaide, SA, 5001.
- 3.3. If a person attempts to lodge a complaint with the Commission which does not satisfy these requirements, then a letter will be sent to the person indicating the requirements for a lodging a valid complaint.
- 3.4. The Commission may require the person lodging a complaint to provide further information to the Commission. The Commission may require this further information to be verified by statutory declaration.
- 3.5. When a person makes a complaint to the Commission, they are encouraged to keep the details confidential so that it can be investigated and determined thoroughly and properly.

Timing of a complaint

- 3.6. A complaint is required to be lodged within 6 months of the day on which the complainant first became aware of the matters alleged in the complaint, unless the Commission approves otherwise.

- 3.7. If a person lodges a complaint with the Commission in regard to circumstances which occurred more than 6 months before lodging the complaint, then the Commission will determine whether to approve the lodging of the complaint. The Commission's decision will be advised by letter to the person who lodged the complaint.
- 3.8. If a person lodges a complaint with the Commission and it is unclear whether the circumstances occurred within the 6 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 6 months prior to the lodging of the complaint, then the Commission will determine whether to approve the lodging of the complaint. The Commission's decision will be advised by letter to the person who lodged the complaint.

Acknowledgement

- 3.9. If a complaint satisfies the form, content and timing requirements, then the Commission 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 Commission will make an initial assessment of the complaint.
- 4.2. If on the basis of information contained in a complaint, a member of the Commission 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 that member or public officer to the OPI (see part 9 of this procedure).
- 4.3. The Commission may refuse to entertain a complaint if it appears to the Commission 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; or
 - (d) there is some other good reason not to proceed (or further proceed) with considering the complaint.
- 4.4. The Commission will undertake an initial assessment of the complaint to determine if any of the circumstances listed in paragraph 4.3 exist. The Commission may base its assessment on the information provided by the complainant and further information, if any, gathered by the Commission either directly or through an investigator (see part 6 of this procedure). The Commission 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 assessment panel member to whom the complainant relates for a response.
- 4.5. If the Commission determines that a circumstance listed in paragraph 4.3 exists, then the Commission will determine whether or not it will refuse to entertain the complaint. If the Commission determines to refuse to entertain the complaint, then the Commission will notify the complainant of this decision by letter.

5. Consideration of the complaint

- 5.1. If the Commission determines to entertain a complaint, then the Commission 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 assessment panel member to whom the complainant relates for a response.
- 5.2. The Commission could determine on the basis of this information that the complaint:
 - (a) has been substantiated;
 - (b) has not been substantiated; or
 - (c) requires further investigation.
- 5.3. For the Commission to determine that a complaint has been substantiated, the Commission must be reasonably satisfied that the facts alleged in the complaint have been established on the information available to the Commission and that these established facts constitute a breach of the Code of Conduct. Where an allegation to be determined will have serious consequences, then the Commission 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.
- 5.4. If the Commission determines that the complaint has been substantiated then the Commission will consider the action to be taken in response to the complaint. See part 8 of this procedure.
- 5.5. If the Commission determines that the complaint has not been substantiated, then the Commission will inform the complainant of its determination by letter.
- 5.6. If the Commission determines that the complaint requires further investigation, the Commission 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 Commission may at any time after the receipt of a complaint determine to appoint an investigator. The appointment of the investigator will be in writing. The Commission will provide the investigator with a copy of the information received by the Commission in relation to the complaint.
- 6.2. 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 member of the assessment panel to whom the complaint relates a reasonable opportunity to make representations to the investigator about the complaint;
 - (c) may require the complainant or the assessment panel member to provide any documentation or other information relevant to the investigation of the complaint;

- (d) may require any information provided by a complainant or the relevant assessment panel member 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 Commission, investigate circumstances of which the investigator is satisfied which would be the basis of another complaint against the assessment panel member.

6.3. The Commission 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 assessment panel member of the investigator's appointment

6.4. The Commission must inform the assessment panel member of the appointment of an investigator and provide formal notification of the nature of the complaint.

6.5. The Commission may require an investigator to gather information regarding the complaint and provide an interim report to the Commission, so that the Commission is able to provide formal notification of the nature of the complaint to the assessment panel member.

6.6. Once the Commission is in a position to provide formal notification of the nature of the complaint to the assessment panel member, then the Commission will provide this notification as soon as practicable by letter. The letter will also inform the assessment panel member that:

- (a) he or she will be provided with:
 - (i) a reasonable opportunity to make representations to the investigator regarding the complaint; and
 - (ii) a copy of the investigator's final report to the Commission in relation to the complaint;
- (b) the information provided by the assessment panel member to the investigator will need to be verified by statutory declaration; 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 assessment panel member.

Interim and final reports of the investigator

6.7. If on the basis of information contained in an interim report or final report of the investigator, a member of the Commission 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 that member or public officer to the OPI (see part 9 of this procedure).

- 6.8. The Commission may also 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 Commission determines not to proceed with a complaint, then the Commission will by letter notify:
- (a) the assessment panel member of the appointment of the investigator and the nature of the complaint (if this has not already occurred) and the Commission's determination not to proceed further with the complaint; and
 - (b) the complainant of the Commission's determination not to proceed further with the complaint.

7. Following an investigation

- 7.1. At the conclusion of an investigation, the Commission will consider the investigator's final report.
- 7.2. The final report will be provided by the Commission to the assessment panel member. The Commission may invite the assessment panel member to provide a response to the report to the Commission. The Commission should invite a response from the assessment panel member, if this is required to satisfy the rules of natural justice. If the Commission invites a response from the assessment panel member, then this response should be considered in the Commission's final determination of the complaint.
- 7.3. The Commission could determine on the basis of the investigator's report and any response from the assessment panel member, that the complaint:
- (a) has been substantiated;
 - (b) has not been substantiated; or
 - (c) requires further investigation.
- 7.4. For the Commission to determine that a complaint has been substantiated, the Commission must be reasonably satisfied that the facts alleged in the complaint have been established on the information available to the Commission and that these established facts constitute a breach of the Code of Conduct (see paragraph 5.3 of this procedure).
- 7.5. The Commission may:
- (a) decide to take no further action on the complaint;
 - (b) undertake any consultation or further inquiry as the Commission thinks fit;
 - (c) take action to have the assessment panel member removed from office; or
 - (d) take such other action as the Commission thinks fit.

8. Consequences of breaching the Code of Conduct

- 8.1. The Commission may take action in regard to an assessment panel member who has breached the Code of Conduct. In determining the appropriate action, the Commission will consider the severity of the breach. Repeated minor breaches of the Code of Conduct by an assessment panel member may be considered to be a serious breach of the Code of Conduct.
- 8.2. Assessment panel members are appointed either by a joint planning board or council (a 'designated authority') under section 83 of the PDI Act or the Minister under section 84 of the PDI Act. Sanctions in regard to a breach of the Code of Conduct cannot be imposed by the Commission, but can (subject to the terms of an assessment panel member's appointment) be imposed by the designated authority or the Minister (as relevant).
- 8.3. If the Commission forms the view that the assessment panel member should be removed from office as a consequence of the breach of the Code of Conduct, then the Commission will consult with the Minister or designated authority (as relevant to the assessment member) with respect to removing the assessment panel member from office.
- 8.4. If the Commission determines that another sanction is appropriate in respect of the breach of the Code of Conduct, then the Commission will consult with the Minister or designated authority (as relevant to the assessment member) with respect to the Commission's recommendation. Recommendations of the Commission could include that the assessment panel member:
 - (a) undergo training in regard to the Code of Conduct;
 - (b) issue a public or private apology to the complainant; or
 - (c) be reprimanded.

9. Report to the Office for Public Integrity

- 9.1. The members of the Commission are public officers for the purposes of the *Independent Commissioner Against Corruption Act 2012*.
- 9.2. If at any stage during the handling of a complaint, a member of the Commission 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 that member or public officer to the OPI in accordance with *Directions and Guidelines for Public Officers* issued by the Independent Commissioner Against Corruption.
- 9.3. The Commission 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 Commission in regard to the relevant complaint.