

## Making a complaint about an Accredited Professional

### Introduction

The Accredited Professionals Scheme Accreditation Authority (the Authority) is the body that can receive complaints about the conduct of Accredited Professionals. A person may lodge a complaint about an Accredited Professional with the Authority if they believe that the Accredited Professional has:

- failed to comply with, or acted in contravention of, the *Planning, Development and Infrastructure Act 2016* (the Act), or any regulations under the Act, about any matter associated with any assessment, decision, permission, consent, approval, authorisation, certificate or process that relates to any development (or proposed development); and/or
- acted in a manner that constitutes an offence under section 91 of the Act; and/or
- acted in contravention of the *Accredited Professionals Scheme Code of Conduct* (the Code of Conduct), adopted by the Minister for Planning under Schedule 3 clause 1(1)(d) to the Act.

This Frequently Asked Questions (FAQ) guide is to assist those making complaints understand when a complaint may be lodged and how their complaint will be handled by the Authority. The FAQ is a guide only and should be read in conjunction with the *Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019* (the AP Regulations) and the *Accredited Professionals Scheme Complaint Handling Procedure*.

### I am dissatisfied with a decision made by an Accredited Professional to approve or refuse a development application. What can I do about it?

The Authority does not have the authority to overturn a decision made by an Accredited Professional.

If you are the applicant, you may have the right to apply to the relevant Council Assessment Panel or Regional Assessment Panel for a review of a decision made by an Assessment Manager. Otherwise, if you think an error has occurred, you may be able to lodge an appeal to the Environment, Resources and Development Court. There are occasions where such an appeal will not be available, and you may need to consider filing an application for 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.

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

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

### What complaints can be made about an Accredited Professional?

You can lodge a complaint about an Accredited Professional if you believe that they have:

- not followed the legislated requirements or procedures under the Act, the AP Regulations, the *Planning, Development and Infrastructure (General) Regulations 2017*, or as set out within any other statutory instrument under the Act. For example, this can include (but is not limited to) when an Accredited Professional is:

- the relevant authority decision-maker for a development application including granting planning consent or building consent, issuing a certificate of occupancy, or issuing a schedule of essential safety provisions
- undertaking other statutory duties including conducting inspections or provision of independent technical expert certifications
- representing or advising an applicant as a planning or building consultant
- acted in a manner that constitutes an offence under section 91 of the Act. For example, this includes (but is not limited to) when you believe an Accredited Professional:
  - did not comply with the legislative requirements that regulate or govern accredited professionals in the performance of their statutory functions, powers or duties
  - failed to place public interest ahead of private interests and the interests of clients, colleagues and other practitioners
  - has asked for, accepted or agreed to a bribe or improper benefit (other than their professional fees) for themselves or another associate when performing their statutory duties
  - has granted development authorisation which is not consistent with any other development authorisation that has already been given for the development proposal
- failed to conduct themselves in accordance with the *Accredited Professionals Scheme Code of Conduct* (the Code of Conduct), adopted by the Minister for Planning under Schedule 3 clause 1(1)(d) to the Act. The Code of Conduct covers a variety of professional obligations. It is recommended that you review the [Code of Conduct](#) on the PlanSA portal if you are considering lodging a complaint about a conduct breach.

## I would like to make a complaint about an Accredited Professional – what do I need to do?

Your complaint needs to be made in writing in the approved form, contain the details on which your complaint is based and must be accompanied by a witness's statutory declaration. It cannot be lodged more than 12 months later after the day you first became aware of the matters alleged in your complaint unless the Authority allows you to.

The Authority's [complaint form](#) is available online via the PlanSA portal. Completed complaints can be mailed to the Accreditation Authority, GPO Box 1815, Adelaide SA 5001 or emailed to [DTI.APSComplaints@sa.gov.au](mailto:DTI.APSComplaints@sa.gov.au).

To ensure that your complaint can be considered thoroughly and properly, it is recommended that you do not discuss the details of your complaint with other people.

## I made a complaint, what happens next?

The first step in the complaint handling process requires the Authority to verify your complaint is about an individual Accredited Professional and that it has been made in accordance with the Regulations.

Complaints that have not been made in accordance with the Regulations will not be entertained by the Authority. In these instances, the Authority will write to you and let you know what steps you need to take for your complaint to be accepted.

If your complaint contains the details needed as noted above, the Authority will write to you to acknowledge your complaint and start to process your complaint. The acknowledgement letter will provide the details of the Complaint Officer assigned to your complaint, who is available for you to contact throughout the complaint handling process.

The Authority will then undertake an initial assessment of your complaint. If your complaint proceeds, the Authority may appoint an investigator. You may be asked to provide further information to the Authority, the Complaint Officer or the investigator.

The Authority may decline to process your complaint further in the following circumstances:

- you do not have a sufficient interest in the matter to which the complaint relates
- the matter raised by the complaint is trivial
- the complaint is frivolous or vexatious or is not made in good faith
- that it would be more appropriate for the proceedings to be initiated in a court or tribunal constituted by law, or for the matter to be handled by another authority
- that there is some other good reason not to proceed with considering the complaint.

## Do I have to provide further information to the Authority, Complaint Officer or investigator?

You are not required to do so, but if you choose not to, this may mean that your complaint cannot be substantiated or may not proceed further.

## Can I appear personally before the Authority to provide information on a complaint?

A complaint can only be lodged with the Authority in writing and must be accompanied by a witnessed statutory declaration. The Authority encourages anyone who is considering lodging a complaint about an Accredited Professional to discuss their concerns with a Complaint Officer via email at [DTI.APSCComplaints@sa.gov.au](mailto:DTI.APSCComplaints@sa.gov.au) or telephone (08) 7133 2619 prior to lodging their written complaint with the Authority.

Discussion about the complaint or lodgement of your written complaint in-person may be arranged and will be at the discretion of the Authority or the Complaint Officer.

Once the Authority has received your written complaint, the contact details of the assigned Complaint Officer will be provided to you in the complaint acknowledgement letter. You can telephone, email or arrange in-person meetings with the Complaint Officer to discuss your complaint and any additional information you may wish to provide to the Authority. Additional information may be required to be verified by a witnessed statutory declaration.

Telephone and in-person discussions are documented and retained within the complaint file. You may be provided with a copy of a discussion record and asked to confirm the accuracy of the documented information.

## Who will get to see my complaint?

The Authority's Complaint Officers will initially see the complaint. If an investigator is appointed, they will also receive a copy of the complaint.

Accredited Professionals are declared as public officers under regulation 19 of the *Independent Commission Against Corruption Regulations 2013*. This means that a Complaint Officer (or any other public officer involved in the Authority's complaint handling process) must make a report to the Office for Public Integrity (OPI) if, on the basis of information contained in a complaint, there is reasonable suspicion of corruption, serious or systemic misconduct or serious or systemic maladministration. The Authority will follow any directions of the Independent Commissioner Against Corruption (ICAC) or OPI regarding the continuation or suspension of any inquiries or investigations initiated by the Authority regarding the relevant complaint.

## Will the Accredited Professional be told I have made a complaint about them?

If the Authority entertains your complaint, the Accredited Professional may be notified a complaint has been made about them. This is to ensure that the principles of natural justice and procedural fairness are afforded to the Accredited Professional.

The Accredited Professional may be notified that a complaint has been lodged about them:

- during the initial assessment, where the Authority may invite a response from the Accredited Professional regarding the allegation(s)
- if an investigator is appointed, the Accredited Professional must be provided with a reasonable opportunity to make representation to the investigator regarding the complaint. A copy of the investigator's final report must also be provided to the Accredited Professional and the Authority may invite a response from the Accredited Professional regarding the report
- if the Authority is contemplating making findings and the decision could affect the Accredited Professional's rights or interests, the Accredited Professional must be given the opportunity to respond before the Authority makes any final determination

The Authority will give the Accredited Professional enough information about your complaint for them to provide a response. In some instances, the Authority may provide the Accredited Professional with a copy of your complaint. The Authority will not disclose your identity to the Accredited Professional unless there is a need to do so and will redact your details within the copy of the complaint provided to them.

## Will I be able to find out the outcome of my complaint?

If the Authority determines at any time to not proceed further with your complaint, you will be notified in writing.

Otherwise, the Authority will advise you of the outcome of the complaint in writing at the conclusion of the complaint process.

## Can I use the assistance of a legal practitioner?

It is up to you if you would like to obtain legal practitioner assistance at any time during the complaint process. You will be required to cover any legal expenses incurred.

## Are complaints confidential?

The Authority will request that you, the Accredited Professional and any witnesses approached during initial assessment or investigation of the complaint keep the matter confidential to enable a fair, objective and impartial assessment process.

Information obtained during initial assessment and/or investigation, including your identity and the details of witnesses, will be treated as confidential. Information will only be disclosed where appropriate or required by law.

Complaint outcomes are not required by law to be kept confidential.

## Further information

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

For inquiries about complaints that may be lodged with the Authority, or if you have any questions about the Authority's complaint handling procedures, please contact Audit and Investigations via (08) 7133 2619 or [DTI.APSComplaints@sa.gov.au](mailto:DTI.APSComplaints@sa.gov.au).