

Accredited Professionals Scheme – Complaints

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 Accredited Professionals in understanding the way a 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 Regulations) and the *Accredited Professionals Scheme Complaint Handling Procedure*.

What happens if the Authority receives a complaint about me?

The first step in the complaint handling process requires the Authority to verify the lodged complaint is about an individual Accredited Professional and that it has been made in accordance with the Regulations. A Complaint Officer assesses the complaint to determine whether it:

- is in the approved form
- specifies the particulars of the allegation(s) made
- is verified by statutory declaration
- has been made no more than 12 months from the date the complainant had first notice of the matters alleged in the complaint
- is vexatious, frivolous, trivial, not made in good faith or the complainant does not have sufficient interest in the matter to which the complaint relates
- is better handled elsewhere or by another authority.

Complaints that meet the validity requirements of the Regulations will progress to the initial assessment phase (further described below).

Complaints that have not been made in accordance with the Regulations will not be entertained by the Authority. In these instances, the Authority notifies the complainant in writing of the determination.

Will I be notified that a complaint has been made against me?

The Authority will only notify you that a complaint has been made against you if the complaint is accepted by the Authority during the validity check phase and the initial assessment indicates there may be substance to the allegations.

The Authority's complaint notification letter will provide you with information about the complaint and invite you to provide a response to the allegations within 21 days. It is important to note that the Authority has not yet made a decision regarding the allegations against you at this point.

Who will get to see the 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.

You will be provided with enough information about the complaint to provide a response. In some instances, the Authority may give you a copy of the complaint. The Authority will not disclose the complainant's identity to you unless there is a need to do so and will redact complainant's details within the copy of the complaint provided to you.

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.

What is meant by 'initial assessment'?

The initial assessment commences once the Authority has accepted the complaint. This is when Complaint Officers start to identify potential sources of evidence and gather information and documentation around the core factual issues that the Authority will need to examine to determine whether or not an allegation is true.

Where possible, the Complaint Officers will attempt to gather evidence in a way that does not alert others of the initial assessment. Evidence may include:

- your accreditation application(s) and accreditation history
- your response(s) to the complaint allegations
- further information obtained from complainant(s)
- CCTV footage
- interviews with people with direct knowledge of matters, which may include seeking technical expert advice, obtaining witness statements from an applicant or local council officers
- Development Application Processing (DAP) system documentation and data
- email correspondence
- your business policies, procedures and processes
- legislated procedures and requirements.

In most cases, the Authority can make a decision regarding the complaint allegations after the initial assessment.

When does an 'investigation' occur and how does this differ from the 'initial assessment'?

An investigation is a formal process under the Regulations and is conducted where circumstances warrant it.

It will usually be necessary for a formal investigation to occur when additional information beyond the initial assessment is required for the Authority to make a decision, or the severity of the complaint is of such a nature that it is best that a complaint proceed directly to an investigation. For example, the Authority may determine to appoint an investigator where:

- the Authority is required to consult with parties beyond those with direct knowledge of the matters alleged (e.g. people other than the complainant, respondent, applicant, relevant council or technical expert)
- a complaint refers to a development application, but other development applications may also be relevant, necessitating extensive research beyond the Authority's reach and requiring discussion with parties not directly connected with a complaint
- overt or covert surveillance may be required
- the initial assessment identifies additional potentially serious breaches or contraventions of the Act, regulations and/or Code of Conduct
- a complaint reveals the potential commission of a criminal offence that may pose a threat to the safety and security of Authority staff. These matters will also be referred to SAPOL.

This is not an exhaustive list of the circumstances where an investigation may occur. The Authority reserves the right to conduct an investigation in other circumstances.

The Authority is required to formally notify you in writing if an investigator is appointed. The investigator must conduct their investigation into the complaint as soon as practicable and is required to comply with the rules of natural justice. This means that you must be afforded the opportunity to be heard before any decision is made by the Authority, there must be no bias, and the decision must have some basis in fact or reasoning.

Will I be able to respond to the complaint? At what stage?

You will have the opportunity to respond to a complaint to satisfy natural justice and procedural fairness.

This may occur:

- during the initial assessment if the Authority notifies you in writing of the allegation(s) and invites you to respond to the allegation(s)
- if an investigator is appointed, you 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 you and the Authority may invite a response from you regarding the report
- if the Authority is contemplating making findings and the decision could affect your rights or interests, you must be given the opportunity to respond before the Authority makes any final determination. Further details about substantiated complaints is provided below.

Am I required to co-operate with an investigation or provide any response to the complaint?

If you receive a letter from the Authority informing you that a complaint has been received about you, details of the allegations will be provided within the notification letter. The Authority will also invite you to provide your view on the matter to ensure you have a fair opportunity to respond and resolve the complaint. You can decide to decline the Authority's invitation to provide a response to the complaint.

If the Authority appoints an investigator to formally investigate the allegations, you may be required to comply with any lawful direction of the investigator, including providing any document or other information relevant to the investigation of the complaint.

Can I use the assistance of a legal practitioner to respond to a complaint?

It is up to you if you would like to obtain legal practitioner assistance at any time during the complaint process, including responding to a complaint or an investigator. You will be required to cover any legal expenses incurred.

Can I appear personally before the Authority to respond to the complaint?

If you are notified that a complaint has been made about you, you will be invited to provide a written response and any additional relevant information in the first instance. The Authority will request that your written response is verified by statutory declaration.

The contact details of the assigned Complaint Officer will be provided to you in the complaint notification letter. You can telephone the Complaint Officer to discuss the allegations and any additional information you may wish to provide to the Authority.

Discussion of the complaint in-person will be at the discretion of the Authority or the Complaint Officer. This includes occasions where you may be invited to attend a meeting with the Complaint Officer (or investigator) to view evidence gathered throughout the initial assessment (or investigation).

Telephone and in-person discussions with the Complaint Officer, Investigator and/or the Authority 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.

The Authority prefers that your response to any complaint findings and proposed sanctions is made in writing.

What determinations can the Authority make?

A number of options are open to the Authority at the conclusion of an initial assessment or a complaint investigation. These options include:

- a. taking no further action on the complaint; or
- b. undertaking any consultation or further inquiry as the Authority thinks fit; or
- c. issuing you with a caution or reprimand; or
- d. making recommendations to you; or
- e. imposing condition(s) upon your accreditation; or
- f. altering your accreditation to a lower level of accreditation; or
- g. taking action to cancel or suspend your accreditation; or
- h. taking any other action that the Authority thinks appropriate.

Procedural fairness requires that you have the right to be heard before any adverse finding is made or any disciplinary action imposed. If the Authority is contemplating making findings of this nature, you must be given an adequate opportunity to respond to the allegations before the final determination is made. The Authority will write to you and:

- outline the allegations made against you
- provide the facts that have been established by the initial assessment, or, if an investigator was appointed to investigate the complaint, the Authority will provide you with a copy of the investigation report
- outline the decision the Authority is contemplating making

- give you as much detail as possible so that you can fully respond to the allegations and provide information in response to the decision being considered
- ensure you have a reasonable opportunity to present credible and relevant information, explanation, mitigating circumstances or other evidence to the Authority in response.

What is meant by 'a complaint is substantiated'?

A complaint is substantiated where the allegations made in the complaint are established by evidence on the balance of probabilities. In coming to that decision, the Authority examines whether there is sufficient and credible evidence, other than from the complainant, which corroborates the allegations.

What happens if the Authority determines a complaint is substantiated?

Consequences vary depending on the severity, nature and behaviour associated with the conduct found to be substantiated. The Authority's decision will have regard to several factors including:

- the severity of the conduct – was the conduct of minor, moderate, high or significant severity, the factors of harm and culpability, the level of detriment, whether there is significant public interest or concern and whether the conduct has occurred over a long period of time
- the nature of the conduct – did it involve administrative processes that are not required by law, administrative procedures required to be followed by law, a potential breach of legislative obligations including those that are a threat to public safety or unprofessional conduct that brings the Accredited Professionals Scheme into disrepute
- the behaviour associated with the conduct – this can range from a simple mistake or oversight right through to negligence, gross negligence or where an Accredited Professional knowingly and deliberately misrepresents or misleads others about the relevant conduct.

Given the wide range of circumstances, complaint outcomes are tailored to suit the individual facts of a particular complaint, as no two cases are ever alike.

Can I be subject to disciplinary action or can a sanction be imposed on my accreditation because of a complaint?

Yes. The Accreditation Authority can take action under the Regulations to impose sanctions upon an accreditation.

Any disciplinary action imposed by the Authority must be fair, proportionate and appropriate to the conduct found to breach, or contravene, the Act, the regulations and/or the Code of Conduct.

Examples of sanctions include a requirement to undergo training on the Code of Conduct, issue a public or private apology to the person who made the complaint, or to be reprimanded. The Authority could also take action under the Regulations to suspend or cancel your accreditation.

The Authority must notify you of adverse complaint findings against you, including any proposed sanctions, and ensure you have an opportunity to respond before a formal decision is made.

What happens if I disagree with a sanction imposed by the Authority?

If you disagree with the Authority's final decision to impose a sanction, you may apply to the South Australian Civil and Administrative Tribunal (SACAT) in certain cases for a review of the decision.

An application for a review of a decision can only be made to the SACAT where the Authority has imposed a condition on your accreditation or varied a condition of your accreditation, altered your level of accreditation to a lower level of accreditation, or cancelled or suspended your accreditation. Your application must be lodged with the SACAT within 28 days after the Authority's decision has been made (which is usually the date of the decision indicated on the letter from the Authority).

It is suggested that you seek legal advice if you are considering an appeal. You may also contact the SACAT for preliminary advice regarding lodging an application on 1800 723 767 or www.sacat.sa.gov.au.

What happens if I have repeated complaints made against me?

When repeated complaints are made against you and the complaints raise similar allegations, they are treated separately for initial assessment and, where necessary, investigation purposes.

If the Authority makes findings of a breach or contravention, your compliance history including finding on previous complaints made separately over time will be taken into consideration to ensure disciplinary action is fair, proportionate and appropriate to the conduct.

This means that a single complaint may only lead to a warning, whereas several complaints may lead to a more serious sanction. Several complaints over time are indicative of behaviour that has not changed, notwithstanding any warnings or other sanctions that may have been imposed.

If someone makes a complaint about you, and it is substantiated, the Authority strongly encourages you to use it as a basis to improve your processes and the way you conduct your professional duties. A mistake made once is a mistake, a mistake made more than once is a decision.

Are complaints confidential?

The Authority will request that you, the complainant 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 the identity of the complainant or 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.

How can I contact the Complaint Officers?

If you have any questions about the Authority's complaint handling procedures, please contact Audit and Investigations via DHUD.APSCComplaints@sa.gov.au or 08 7133 2619.