



Accredited Professional Scheme – Code of Conduct Guidance Material

Introduction

Under Schedule 3 of the *Planning, Development and Infrastructure Act 2016* (the Act), the Minister has adopted the following codes of conduct:

- Accredited Professionals Scheme – Code of Conduct
- Assessment Panel Members – Code of Conduct
- State Planning Commission Members – Code of Conduct
- Infrastructure Scheme Coordinators – Code of Conduct
- Joint Planning Board Members – Code of Conduct.

The guidance material below provides explanatory notes and examples of how the Accredited Professional Scheme Code of Conduct (the Code) should be interpreted and applied. It is intended that the notes be used to clarify the meaning and scope of the Code's requirements and is not an exhaustive list of all situations that may give rise to a breach. If you are unsure about a requirement of the Code of Conduct, you can contact the Accredited Professionals Scheme through DHUD.APSQueries@sa.gov.au.

Note – Accredited professionals* are defined as Public Officers under the *Independent Commission Against Corruption Regulations 2013* and as such, any matter that amounts to corruption or maladministration must be referred to the Office for Public Integrity for their assessment and/or investigation.

*Other than an accredited professional who only performs the functions of a relevant authority under the Act as an assessment panel member or as an assessment manager for an assessment panel.

Contravention of the Code

The Code applies to all accredited professionals and must be adhered to at all times.

If a person believes an accredited professional has acted in contravention of the Code, they may make a complaint to the Accredited Professionals Scheme Accreditation Authority (the Authority) under regulation 28 of the *Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019*.

A contravention of the Code is considered a disqualifying event that may affect a person's suitability to be accredited with the Authority.

General Duties (Requirement 1)

Section 15 of the Act outlines expectations for a person or body that seeks to obtain authorisation under the Act, performs, exercises or discharges a function, power or duty under the Act, or takes benefit of the Act or is otherwise involved in a process provided by the Act. These expectations include:

- Acting in a cooperative and constructive way.
- Being honest and open in interacting with other entities under the Act.
- Being prepared to find reasonable solutions to issues that affect other interested parties.
- Exercising professional care and diligence.
- Acting honestly and in an impartial manner.
- Being responsible and accountable.
- Complying with any code of conduct, service benchmark or other requirement that applies to the person or body.

Professionalism (Requirements 2-4)

Members of the public, as well as other accredited professionals and those in the planning and building industry, are entitled to respect and courtesy. Requirements 2, 3 and 4 relating to *Professionalism* outline the minimum service standards expected of accredited professionals.

Discrimination, bullying, harassment, or any conduct that would bring the public's perception of the planning or building industry into disrepute is specifically prohibited.

Examples of conduct that may constitute a breach of this clause include –

- An accredited professional's use of profanity in written or verbal dealings with clients, professional bodies or any other person.

- Refusing to progress development application assessments for a regular client due to a dispute about another one of their applications (including payment disputes).
- An accredited professional ignoring, or refusing to correspond or discuss application matters with, clients or other interested parties when engaged to provide services.
- Failing to update a client of any changes to business and/or contact details, such as phone number, email address or ability to carry out accredited professional duties.

Act in the public interest (Requirement 5)

Acting in the public interest means that the outcome of any decision-making process, as well as the processes and procedures followed in reaching that outcome, are in the public interest and seen to be in the public interest.

This means that accredited professionals must prioritise their public duty and compliance with the legislation and relevant instruments, standards and codes over their business interests, personal interests, preferences, a specific individual's interests or political influence.

This includes the expectations that accredited professionals:

- do not take any action that would compromise the health and safety of any person or the person's property.
- consider the greater public when making a decision on a development application as distinct from the interest of an individual or individuals.

An accredited professional acting in the public interest will:

- put their statutory public duty first.
- understand, declare and appropriately manage their conflicts of interest.
- adhere to the applicable legislation.

- comply with this Code.
- ensure the principles of procedural fairness are followed.
- make decisions fairly and impartially.

Examples of conduct that may constitute a breach of this clause include –

- Using discretionary powers to approve a structure that does not meet relevant standards based on the applicant’s individual circumstances and without consideration of other, or future, occupants. For example, granting approval for a structure that has a ceiling height of less than 2400mm because the applicant is shorter than the average population and does not require higher ceilings.
- Approving a development that bypasses the requirements of the National Construction Code to save the applicant time and money through the assessment stage but is likely to cause increased costs in the future.
- Failing to ensure application documentation includes non-discriminatory access to premises or includes a valid exemption in accordance with the Access Code and Premises Standards.
- Circumventing the full regulatory requirements to the benefit of a client, such as determining an application variation does not need public notification, even though the legislated trigger for public notification was met.

Duty of Care
(Requirement 6)

The Code requires accredited professionals to exercise reasonable care and diligence in carrying out statutory functions. Diligence can be defined as careful and persistent work and requires thorough assessment to ensure all details are carefully considered.

In carrying out the functions of an accredited professional, this includes the expectation that accredited professionals ensure they have enough time to apply the required attention and thoroughly review each development application they are assessing.

Examples of conduct that may constitute a breach of this clause include –

- Taking on work as a relevant authority even though the accredited professional is unable to carry out a full and complete assessment within the statutory timeframes due to other existing commitments.
- Bypassing a statutory planning assessment by verifying a development application as ‘accepted development’ when the application did not demonstrate the required criteria.
- An accredited professional being verified as the relevant authority but failing to appropriately reassign the development application when they were not the correct entity to conduct the function or duty.

Procedures
(Requirements 7 & 8)

Accredited professionals are required to operate under established customer management systems for timely management and resolution of enquiries and complaints.

Part of this requirement expects that all accredited professionals will either establish their own grievance or complaints procedure or ensure the Council/private business they are working for has an established grievance or complaints procedure.

The established grievance or complaints procedure will ensure that applicant and other stakeholder enquiries, concerns and complaints are dealt with promptly and professionally and should include details on how a complaint can be made, the steps that will be taken upon receipt of the complaint and where the person can go if the matter remains unresolved.

Additionally, a private accredited professional is required to maintain an appropriate level of professional indemnity insurance and must not carry out any function or duties provided by the Act without an active policy.

It is a condition of accreditation for each private accredited professional to inform their client of their professional indemnity insurance policy during engagement

It is expected that, in the event a private accredited professional's professional indemnity insurance is cancelled or lapses, they cease any functions or duties being carried out under the Act until they can re-establish an active professional indemnity insurance policy.

Examples of conduct that may constitute a breach of this clause include –

- Failing to establish processes for timely handling of enquiries or complaints.
- Taking on work as a relevant authority without a current professional indemnity insurance policy in place.

Regard for honesty
(Requirements 9-12)

Accredited professionals, as designated public officers, are required to act with strong ethical and moral principles, and to explicitly “do the right thing”. This requirement has been summarised in the Code as including expectations that accredited professionals must –

- Act with honesty, integrity, good faith and equity.
- Not engage in any misleading or deceptive conduct.
- Not take advantage of their position, power or duties to obtain preferential treatment.
- Notify the Authority immediately if they are subject to an investigation, been found guilty of a breach of legislation relating to a planning, building or development matter, or are subject to a professional indemnity insurance claim.

Examples of conduct that may constitute a breach of this clause includes –

- Supplementing documentation or editing a site plan to change the design or amending plans to address deficiencies, such as private open space, soft landscaping, pool safety barrier, exit signage, fire extinguishers and/or smoke detectors, to grant a consent.
- Refusing to proceed with an assessment on the grounds the applicant has not yet paid the professional services fees agreed to, or any other fee that is not a prescribed fee.
- Divulging or sharing accredited professional DAP user account access to enable recording and endorsement of decisions without appropriate accountability or oversight of the accredited user account owner.

Acting within level of professional competence
(Requirements 13-17)

An accredited professional must ensure that they are appropriately authorised and qualified to undertake a statutory function prior to commencing the work, and ensure they are only carrying out their duties and/or providing advice within their level of competence or expertise, despite their level of accreditation.

Examples of conduct that may constitute a breach of this clause includes –

- An accredited professional provides a statutory decision outside of the authority provided by their class and/or level of accreditation.
- A private accredited professional advertises they can complete statutory services even though they are not accredited to undertake them.
- Completing an assessment for an application that involves a complex performance solution which is outside the verified relevant authority's expertise.

Requirement 17 of the Code relates to an accredited professional's obligation to undertake continuing professional development (CPD).

CPD is a mandatory requirement for all accredited professionals and must be undertaken to ensure continuation of accreditation.

CPD ensures professionals are kept informed of any developments in the planning and building industry and can include any activity that is of significant educational, practical or technical value to the individual's role as an accredited professional.

Further information about what can be claimed as CPD is available within the [Guide to the Accredited Professionals Scheme](#).

Examples of conduct that may constitute a breach of this clause includes –

- Failure to complete or demonstrate through written records the minimum CPD requirements in the 12-month period immediately prior to accreditation anniversary date.

Making decisions and taking action *(Requirements 18-20)*

An evidence-based approach to practice is important for accredited professionals to inform their decision-making process.

These Code requirements include a broad range of conduct and actions that link to the obligations and procedures set by the Act and accompanying regulations.

They are summarised as an accredited professional:

- Being able to demonstrate they have taken reasonable steps to obtain relevant facts;
- Ensuring that their decisions and actions are fair, reasonable and appropriate; and

- Demonstrating all legislative requirements are met.

Example of conduct that may constitute a breach of this clause includes –

- An application with deficient/insufficient documentation is progressed without contacting the applicant to remedy the defects and address missing, relevant Schedule 8 requirements.
- Continuing to assess an application as a class 10a building, despite assessment of the application showing characteristics more consistent with a class 1a building.
- Failing to adhere to the statutory timeframes for decision making set by the Act and the *Planning, Development and Infrastructure (General) Regulations 2017*.

Maintain adequate records *(Requirement 21)*

An accredited professional is required to maintain properly documented records of decisions, including –

- The decision that was made;
- The reason for making the decision; and
- All evidence used to support the decision

This may include plans, discussion notes, engineering reports, fire safety reports and must include anything that was relied upon to make the decision.

Examples of conduct that may constitute a breach of this section include –

- Destroying or deleting records of decisions, unless where required to do so by law.
- Failing to upload all documentation relied upon for deciding to grant or refuse a planning or building consent to the PlanSA portal.

- Not recording decision making for a minor variation within the PlanSA portal in accordance with Practice Direction 19.
- Incorrectly or incompletely recording details upon the schedule of essential safety provisions, including failing to adequately document a performance solution and its applicable installation standard or maintenance requirement.

**Protection and use of
information**
(Requirements 22 & 23)

Accredited professionals must maintain the integrity and security of confidential information and must not disclose any information acquired in the course of their work, unless they have the consent of the relevant person, or where there is a legal or professional duty to disclose such information.

For the purposes of requirement 23, the relevant person will be the person who has provided the information. This will generally be the applicant.

This clause does not prevent the accredited professional from maintaining adequate records as required, however the records should be securely kept.

Examples of conduct that may constitute a breach of this section include –

- Discussing an applicant’s personal details, complaint/grievance or payment history with a third party.

Conflict of interest
(Requirements 24 & 25)

The Code requires accredited professionals to take all reasonable steps to avoid direct or indirect conflicts of interest, either actual or perceived, and prohibits an accredited professional from performing a statutory function when they –

- have been involved in the planning or design of the development; and/or
- are employed by a person or body that was associated with any aspect of the development; and/or
- have any other actual or perceived conflict of interest.

It is important for accredited professionals to understand how the work they do can be affected by conflicts of interest.

The key terms that are used when considering conflicts of interest include:

- A direct interest – this is an interest where the accredited professional will be directly affected by the outcome of the decision, either positively or negatively.
- An indirect interest – an interest where the accredited professional does not stand to benefit directly, but a person or other entity connected to them will gain a benefit (or suffer a loss).
- An associate – includes:
 - a relative
 - a spouse or domestic partner
 - a body corporate in which the accredited professional, relative or spouse, have an interest exceeding 10% of its capital
 - a trustee of a trust to which the accredited professional, or any of the above, are a beneficiary.
- Financial conflict of interest – also known as a *pecuniary interest*, this is where the accredited professional, their associate, or a person an accredited professional has a close personal relationship with, stands to gain a financial or monetary benefit.
- Non-financial conflict of interest – also known as a *non-pecuniary interest*, this is when the accredited professional receives a benefit such as enhancement of personal reputation or advancement (or loss) of some other personal interest. It can include involvement or affiliation with a community, social or other cultural organisation.

- **Actual conflict of interest** – arises when the accredited professional has a direct personal or pecuniary interest in the matter being considered.
- **Potential conflict of interest** – this is when a conflict of interest may arise in the future.
- **Perceived conflict of interest** – this is where a reasonable and fair-minded person could perceive that the accredited professional's interests may influence or impact on the performance of their statutory functions and duties.
- **Substantial class of persons** – where an accredited professional's interest is shared with a significant proportion of other community members, a conflict of interest may not arise.

Accredited professionals should exercise caution in determining whether their interest is shared with a 'significant proportion' of other community members, and if there is any doubt should deal with the matter as if there is a perceived conflict of interest.

Questions for accredited professionals to consider in determining whether a conflict exists:

1. Have I been involved in the planning and design of the development? If so, was my involvement more than the provision of general advice?
2. Was/is the company I work for associated with any aspect of the development?
3. Do I, or an associate, have a direct or indirect personal or pecuniary interest in the matter?
4. Does someone I have a close personal relationship with have a direct or indirect personal or pecuniary interest in the matter?
5. Is my (or my associate's) interest greater than a significant proportion of other community members?
6. Will my involvement negatively affect the community's trust in the decision?

7. Will the decision have a big impact on me, an associate or someone I have a close personal relationship with?

If an accredited professional has answered "yes" to one or more of the questions above, a conflict of interest may exist.

Examples of conduct that may constitute a breach of this clause include –

- An accredited professional acting as the relevant authority for a development application where they, or their family, or the company they work for, was involved as a consultant and/or designer, including preparation of application documentation, performance solution reports or planning reports.
- An accredited professional acting as the relevant authority for a development application where a family member or their company is the applicant.

Bias
(Requirement 26)

An accredited professional must have regard to any interest that could lead to a reasonable apprehension of bias that may result in a lack of objectivity when carrying out their duties.

Bias can be defined as having a tendency or prejudice toward or against something or someone and can include –

- **Explicit bias** – beliefs or attitudes that a person may have towards another person or group on a conscious level; or
- **Implicit bias** – an automatic and unintentional bias which still impacts decisions and judgements; and
- **Actual bias** – where someone has a personal interest in the outcome of a matter; or
- **Apparent bias** – where conduct of a person raises suspicion that their decision will not be impartial.

The test to determine whether there is an apparent bias is whether a reasonable and fair-minded person would perceive that the accredited professional's action may not be impartial.

Examples of conduct that may constitute a breach of this clause include –

- Assessing a development application for a structure that is proposed on a site in proximity to the accredited professional's (or associates) place of residence.
- An accredited professional using their position to manipulate the assessment outcome by requiring an applicant to amend proposed development plans so that approved designs reflect their personal preferences.

Gifts and benefits
(Requirement 27 & 28)

Seeking or accepting gifts and/or benefits that are likely to cause, or could be perceived as likely to cause, an accredited professional to act impartially is prohibited.

This requirement also extends to an accredited professional's family members.

A gift or benefit is anything that is offered above an accredited professional's salary or usual professional services fee.

- A gift – includes any free item or hospitality offered to accredited professionals in association with their public duties.
- A benefit – includes any preferential treatment, privileged access, discount, favour or other advantage offered to an accredited professional that could be perceived as influencing their decision-making and public duties.

Gifts and benefits can include things like additional income, free or discounted event tickets, gift vouchers, free accommodation, bottles of wine and Christmas hampers, or favours conducted by another party.

If an accredited professional is offered a token or small, inexpensive gift (such as a box of chocolates) it may, in the first instance, appear to be trivial and inconsequential. However, regular and reoccurring token gifts being offered by the same person or business may amount to gifts that could be perceived likely to cause an accredited professional to act in an impartial manner.

Where possible, any offer of a gift or benefit should be politely declined. Accepting gifts or benefits, no matter how small or trivial, could be seen as an attempt to influence a public decision-maker in the performance of their duties.

If the receipt of gifts or benefits is believed to amount to corruption, it must be reported to the Office for Public Integrity (OPI).

Examples of conduct that may constitute a breach of this clause include –

- Accepting an increased service fee to grant consent for a development that is inconsistent with the relevant criteria.
- An accredited professional accepting tickets to a big sporting event from a building company that they undertake assessment work for.
- An accredited professional granting consent for a business that offers them free gym membership at their newly constructed premises.

Ensure adequate supervision of employees
(Requirements 29, 30 & 31)

The Code requires accredited professionals to be accountable for their functions and duties performed under the Act.

Whilst many private accredited professionals run their own business as a sole trader, others choose to employ staff to assist in carrying out their functions.

It is recognised that employees may include:

- graduates entering the planning and building certification fields (such as para planners and building cadets)
- qualified individuals that are seeking to advance in their careers, need to be afforded the opportunity to further develop knowledge, skills and experience on the job under appropriate supervision
- administration staff to undertake Development Application Processing (DAP) system data entry of applications and decisions for accredited professional decision-makers.

An accredited professional who intends to engage or employ someone to assist in carrying out their statutory functions and duties should:

- make sure that the person they employ or engage has the necessary skills, knowledge and experience required to carry out the work required of them.
- maintain appropriate supervision and oversight of the work the person engaged or employed is completing, and ensure that the work completed, or corrected, is of a satisfactory level.

This does not require that all employees hold a degree or level of accreditation prior to employment. Skills, qualifications and experience will depend on the role they are being hired for.

It is expected that an accredited professional will establish processes to supervise and mentor staff, conduct quality assurance checks and review work to confirm that all assessments, decisions and DAP data entry are correct.

Accredited professionals, other than Assessment Managers, are not permitted to delegate their accreditation authority to others.

Examples of conduct that may constitute a breach of this clause include –

- Having a staff member carry out an assessment and complete the decision within the DAP system without the relevant authority reviewing the uploaded plans and attached documentation to confirm the accuracy of the assessment or endorsing the decision.

Accredited professionals undertaking Building Rules assessments must – (Requirements 32 & 33)

A person undertaking a building rules assessment is required to ensure that advice provided, or a decision made, is based on all relevant provisions of the Building Rules. This is demonstrated through approved documentation which must contain enough detail that a person undertaking inspection of the constructed works can determine its compliance without the need to perform calculations or refer to Australian Standards.

The Building Rules assessment and Building Consent is one, albeit key, piece of the overall development approval and inspection process in which multiple professionals, of differing skills and experience levels, may be involved.

It is important for accredited professionals to use an evidence-based approach for assessments against the provision of the Building Rules to clearly indicate the various elements of construction. This will result in a development that is compliant with the requirements of the Building Rules, including the National Construction Code, Ministerial Building Standards, Practice Directions and Australian Standards.

These requirements are in addition to, and should be read in conjunction with, Requirement 15 – *Advice within level of professional competence*, Requirement 19 – *Decisions must be supported by adequate documentation* and Requirement 21 – *Maintain adequate records*.

Examples of conduct that may constitute a breach of this clause include –

- An accredited professional completes an assessment without all the information required by Schedule 8 of the Regulations or Ministerial Building Standard because their knowledge and experience provides them with adequate assurance the development will comply with relevant deemed-to-satisfy requirements. The documentation supporting the decision lacks sufficient detail on how the approved development is to be constructed in compliance with the Building Rules.

For example, development application documentation for a new dwelling in a high bushfire risk area only notes that the required water supply is to be provided in accordance with *MBS008 – Designated bushfire prone areas – additional requirements*, however the approved documentation does not satisfactorily demonstrate how the proposal will achieve all the applicable MBS008 criteria such as details, specifications and location of the pump, hose, reel, outlet and fittings.

Performance solutions (alternative solutions) (Requirement 34)

This requirement is similar to Requirements 19 and 33, however, it is specific to building consent applications that involve the assessment of a performance solution and requires accredited professionals to have due regard for the increased risks associated with approving a performance solution.

The performance solution assessment must be conducted in accordance with the Assessment Methods contained in the National Construction Code (NCC), which comprise of:

- Evidence of suitability
- Comparison with the DTS Provisions
- Verification methods
- Expert judgement.

There is the expectation that an accredited professional's performance solution assessment is documented and clearly demonstrates:

- the applicable Performance Requirement(s) and/or DTS Provision(s);
- the Assessment Methods used;
- details of the performance-based design brief and the analysis and evaluation undertaken;
- confirmation that the applicable Performance Requirement(s) and/or DTS Provision(s) have been met; and
- if relevant, details of conditions or limitations, if any exist.

An accredited professional is prohibited from assessing a performance solution where they developed the performance solution or work for the company that developed the performance solution.

These requirements are in addition to, and should be read in conjunction with, Requirement 15 – *Advice within level of professional competence*, Requirement 19 – *Decisions must be supported by adequate documentation*, Requirement 21 – *Maintain adequate records*, Requirement 25 – *Conflict of interest* and Requirement 33 – *Advice and decisions based on assessments*.

Further information about the NCC Assessment Methods can be found at ncc.abcb.gov.au/ncc-navigator/using-ncc-assessment-methods.

An example of conduct that may constitute a breach of this clause includes –

- An accredited professional approves a performance solution without adequate justification and evidence demonstrating the applicable Performance Requirements and/or DTS Provision(s) have been met.

***Relying on certification
from others***
(Requirement 35)

The Code requires that when a building accredited professional relies on certification or advice from an independent technical expert, they must ensure that the expert's qualifications and/or experience are suitable to issue such certification or advice prior to relying on it.

An accredited professional is required to conduct validation checks to be satisfied that the independent technical expert:

- is not the building owner or an employee of the building owner;
- has not been involved in any aspect of the relevant development other than the provision of preliminary advice of a general nature;
- has not had a direct or indirect pecuniary interest in any aspect of the development or any body associated with any aspect of the development; and
- has engineering or other qualifications that qualify the person to act as a technical expert.

An accredited professional is also required to ensure that any advice, opinion, certificate or other document provided by an independent technical expert state:

- the person's full name and contact details; and
- the person's relevant qualifications.

Examples of conduct that may constitute a breach of this clause include –

- An accredited professional relies on a signed document on company letterhead that does not include the name or qualifications of the author.
- An accredited professional relying on a landscape gardener signing off on a 2-meter high retaining wall instead of an appropriately completed engineer's report.

Accredited Professional Scheme:

DHUD.APSQueries@sa.gov.au

Accredited Professional Complaints:

DHUD.APSComplaints@sa.gov.au



ACCREDITATION
AUTHORITY



**Government
of South Australia**

Department for Housing
and Urban Development