

→ OUR
NEW
SYSTEM

ACCREDITED PROFESSIONALS SCHEME CODE OF CONDUCT

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Government
of South Australia

Department of Planning,
Transport and Infrastructure

Introduction

Under Schedule 3 of the *Planning, Development and Infrastructure Act 2016* (PDI Act), the Minister may adopt a code of conduct to be observed by accredited professionals registered under the statutory accreditation scheme established by regulations¹ made under the PDI Act (**Scheme**). The Code of Conduct provides guidance on the standards of conduct and professionalism expected with regard to all accredited professionals performing functions under the PDI Act.

A key requirement of the PDI Act is that all accredited professionals must carry out, and be seen to carry out, their functions with the highest ethical standards so as to maintain public confidence in the integrity of the planning system.

This Code of Conduct is the key tool to ensure that all accredited professionals act honestly and ethically with a high degree of accountability. If an accredited professional has any doubt in regard to any function they are asked to perform (or are performing) under the PDI Act, they should seek the advice of the State Planning Commission.

While some accredited professionals may also be bound by other codes of conduct or professional standards issued by their respective professional associations, they have no legal status under the PDI Act. In situations where there is a conflict between requirements in the Accredited Professionals Scheme Code of Conduct and any other professional code or standard, this Code of Conduct prevails for the purposes of the PDI Act.

Legislative framework

Under Section 15 of the *Planning, Development and Infrastructure Act 2016* (PDI Act), all accredited professionals are subject to the following general duties:

- (1) *It is expected that a person or body that—*
 - (a) *seeks to obtain an authorisation under this Act; or*
 - (b) *performs, exercises or discharges a function, power or duty under this Act; or*
 - (c) *takes the benefit of this Act or is otherwise involved in a process provided by this Act,*
will—
 - (d) *act in a cooperative and constructive way; and*
 - (e) *be honest and open in interacting with other entities under this Act; and*
 - (f) *be prepared to find reasonable solutions to issues that affect other interested parties or third parties.*
- (2) *Without limiting subsection (1), a person or body performing, exercising or discharging a function, power or duty under this Act must—*
 - (a) *exercise professional care and diligence; and*

¹ *Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019*



- (b) *act honestly and in an impartial manner; and*
 - (c) *be responsible and accountable in its conduct; and*
 - (d) *comply with any code of conduct, service benchmark or other requirement that applies in relation to the person or body.*
- (3) *The Minister may, after taking into account the advice of the Commission, establish and maintain service benchmarks for the purposes of this section.*
- (4) *The principles and benchmarks under this section—*
- (a) *do not give rise to substantive rights or liabilities; but*
 - (b) *may lead to action being taken on account of a breach of a code of conduct or professional standard that applies in relation to a relevant person or body.*

Section 91 of the PDI Act sets out the consequences of a breach of duty by an accredited professional:

- (1) *An accredited professional must act in accordance with the public interest.*
Maximum penalty: \$50 000
- (2) *An accredited professional must not—*
- (a) *perform any act or make any omission that results in a failure to comply with this Act; or*
 - (b) *seek, accept or agree to accept a benefit from another person (whether for himself or herself or for a third person) as a reward or inducement to act against a provision of this Act; or*
 - (c) *act in a manner contrary to any other duty prescribed by the regulations.*
- Maximum penalty: \$50 000.*
- (3) *An accredited professional who contravenes or fails to comply with a provision of a code of conduct that applies to the accredited professional under Schedule 3 is guilty of an offence.*
Maximum penalty: \$50 000.
- (4) *A person who improperly gives, offers or agrees to give a benefit to an accredited professional or to a third person as a reward or inducement for an act done or to be done, or an omission made or to be made, by the accredited professional in the performance of a function under this Act is guilty of an offence.*
Maximum penalty: \$50 000.
- (5) *An accredited professional must ensure that any development authorisation given by the accredited professional is consistent with any other development authorisation that has already been given in respect of the same proposal.*
Maximum penalty: \$25 000.
- (6) *In this section—*
- benefit** *does not include a benefit that consists of remuneration or any condition of appointment or employment properly attaching or incidental to the work of an accredited professional under this Act.*

Code of Conduct requirements

In performing any function as an accredited professional under the PDI Act, an accredited professional must comply with requirements 1 to 20, below. In addition, an accredited professional performing any function in relation to the issuing of a building consent must also comply with requirements 21 to 26, also below.

General duties

1. An accredited professional must at all times behave in accordance with the general duties as set out in Section 15 of the PDI Act in undertaking any function under this Act.

Act in the public interest

2. An accredited professional must carry out their functions and duties, and exercise any discretionary powers, in a manner that promotes or protects the public interest.

Duty of care

3. An accredited professional must exercise reasonable care and diligence in carrying out their statutory function and providing services to clients and employers.
4. An accredited professional must not provide any information, statement or document knowing it to be false or misleading or omit to provide any information, statement or document knowing that the omission results in a false or misleading impression.

Regard for honesty

5. An accredited professional must not misinform or mislead any regulatory, government, professional body or any other person about any matter relating to the performance of their work.
6. An accredited professional must act with honesty, integrity, good faith and equity and must not discriminate against any person in performing their duties.
7. An accredited professional must advise the Accreditation Authority² immediately if they:
 - a. are the subject of a formal investigation into, or have been found to have, breached any other code of conduct, ethical standards or similar, either in another state or territory, or through a professional body of which they are a member
 - b. have been found guilty of a breach of any legislation related to planning, building or a development related matter
 - c. are subject to a claim against their professional indemnity insurance policy for the purposes of their accreditation under the Scheme.

Making decisions and taking action

8. An accredited professional must take all reasonable steps to obtain all relevant facts and information when making decisions and carrying out any other statutory function.
9. An accredited professional must ensure that their decisions and actions are reasonable, fair and appropriate to the circumstances, based on consideration of all relevant facts obtained, and supported by adequate documentation.

² Chief Executive of the Department of Planning, Transport and Infrastructure



10. An accredited professional must ensure that all legislative requirements are met and where appropriate, advise their client, council or the State Planning Commission (as relevant) of any matter that requires their advice or input.

Protection and use of information

11. An accredited professional must maintain the integrity and security of confidential information in their possession or for which they are responsible and must not use confidential information gained by virtue of their official position for the purpose of securing a private benefit for themselves or any other person.
12. An accredited professional must not disclose information acquired in the course of their professional work except where consent of the relevant person has been granted or where there is a legal or professional duty to disclose such information.

Acting within level of professional competence

13. An accredited professional must ensure that they are appropriately authorised or qualified to undertake a statutory function before commencing that function.
14. An accredited professional must, despite their level of accreditation, carry out their duties only within their level of competence or expertise.
15. An accredited professional must not make false, misleading or deceptive statements about their own professional capabilities.

Conflict of interest

16. An accredited professional must not perform a statutory function where there is either a real or perceived conflict of interest between their professional duties and their personal or business interests.

Proper exercise of power

17. An accredited professional must not take advantage of their position, power or duties for the purpose of obtaining, either directly or indirectly, any preferential treatment or other improper advantage for themselves or any other person.

Gifts and benefits

18. An accredited professional must not seek or accept a gift or benefit that is intended to, is likely to or could be perceived as likely to, cause them to act in an unfair or biased manner in the course of their duties.
19. An accredited professional must take all reasonable steps to ensure that a person related to them does not receive gifts or benefits that could appear to be an attempt to influence or secure or have the effect of influencing or securing, a favour from the accredited professional. A person is related to an accredited professional for the purpose of this provision if the person is a spouse, de facto partner, sibling, parent or child of the accredited professional.

Bias

20. An accredited professional must always have regard to any affiliation, disposition or any material, pecuniary or other interest that would lead to a reasonable apprehension that the accredited professional may be biased in carrying out any function or duty of their professional role.³

Persons undertaking Building Rules assessments must-

21. Ensure that any approved documentation clearly indicates, for a builder or a person inspecting the building, how the proposed building work is to be constructed in compliance with the Building Rules.
22. Ensure that all assessments undertaken and advice provided are:
 - a. within the scope of the person's qualifications (as prescribed by regulation 87 of the Development Regulations 2008);
 - b. within the scope of the person's experience and expertise and that any appropriate advice has been obtained where a matter is outside that experience, expertise and qualifications (other than those in (1));
 - c. relevant to the particular application;
23. Ensure that any advice provided and decisions made are based on assessments made against all provisions of the Building Rules that are relevant to the proposed development.

Risk management

24. A person undertaking Building Rules assessments must:
 - a. identify any risks associated with processing an application for Building Rules compliance and advise the relevant authority as to how these might be addressed by the development approval.
 - b. ensure that any decision made and any advice provided has had due regard for the level of risk associated with any possible non-compliance and that appropriate control measures have been taken to minimise the level of risk. The level of risk must be determined on the basis of an appropriate risk analysis that takes into account the probability of any non-compliance with the Building Rules, together with the potential consequences that could arise from the non-compliance.

Performance solutions (alternative solutions)

25. A person assessing a performance solution must:
 - a. ensure that the performance solution has had due regard to higher level risk associated with a performance solution, before advice is provided or a decision is made on whether the solution should be accepted.
 - b. ensure that when a performance solution is assessed, a complying assessment method is used and all relevant reasons, risks, opinions, expert advice and other relevant matters are considered.

³ The receipt of a fee for carrying out work in relation to an application or any statutory function under the PDI Act is not a pecuniary interest within the meaning in requirement 20.



Relying on certification from others

26. A person undertaking a statutory function must:
- a. ensure that when certified documentation is received from an independent technical expert, the person providing the certification is appropriately qualified and the certification is supported by adequate documentation
 - b. seek expert advice from an appropriately qualified and experienced person where certain aspects of an assessment or other statutory function are beyond their own expertise.



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