



Complaint Handling Procedure for Assessment Panel Members

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.
- 1.2. The powers of the Commission in dealing with a complaint are set out in regulation 11 of the *Planning, Development and Infrastructure (General) Regulations 2017* (the Regulations). Regulation 11 also sets out requirements on the Commission and investigators in dealing with complaints.
- 1.3. This procedure sets out the Commission's approach to dealing with complaints against Assessment Panel Members. 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.
- 1.4. This procedure only applies to complaints made in respect of individual Assessment Panel Members under the Code of Conduct. Any concerns or complaints regarding the operations of the Assessment Panel or its decisions should be raised with the body responsible for appointing the Panel.
- 1.5. Any concerns or complaints regarding the development assessment process or a decision on a development application should be raised with the relevant authority responsible for assessing the development application. Further information on the relevant authority for a development application can be found on the Development Application Register: plan.sa.gov.au/development_application_register.

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
Authorised Officer	A person appointed under section 210 of the PDI Act who holds powers to inspect and obtain information under section 211 of the PDI Act.
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)

Term	Definition
Department	The administrative unit of the public service responsible for assisting the Minister in the administration of the PDI Act
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	<i>Planning, Development and Infrastructure Act 2016</i>
PDI Regulations	<i>Planning, Development and Infrastructure (General) Regulations 2017</i>
Respondent	The Assessment Panel Member to whom a complaint relates

3. Receipt of a complaint

Form and content of a complaint

- 3.1. A complaint is only validly made if it complies with the requirements of the Regulations.
- 3.2. Complaints may be lodged via email to the Commission at saplanningcommission@sa.gov.au (preferred) or via post to GPO Box 1815, Adelaide SA 5001.
- 3.3. If a person attempts to lodge a complaint with the Commission which does not satisfy the requirements under the Regulations, then the Department will write to the person to advise the requirements for a lodging a valid complaint.
- 3.4. If further information is required, the Commission will request such information in writing (and may require a further statutory declaration).
- 3.5. When a person makes a complaint to the Commission, they are encouraged to keep the details confidential so that the matter can be investigated and determined thoroughly and properly.

Timing of a complaint

- 3.6. If a person lodges a complaint regarding alleged matters which occurred more than 6 months before the person had notice of those matters, then the Commission will determine whether to approve the lodging of the complaint.
- 3.7. If a person lodges a complaint with the Commission and it is unclear whether the alleged matters occurred within 6 months of the person having notice of those matters, then further information may be sought from the person.
- 3.8. The Commission's decision regarding any extension of time for lodgement will be advised in writing to the person who lodged the complaint.

Acknowledgement

- 3.9. If a complaint satisfies the form, content and timing requirements, then the Department will acknowledge the receipt of the complaint in writing to the Complainant.

Complaint monitoring

- 3.10. Lodged complaints that do not meet the form, content or timing requirements of the Regulations will be monitored by the Commission. The Commission may request Authorised Officer compliance action under section 211 of the PDI Act should significant concerns be identified.

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 in public administration, then a report will be made by that member or public officer to the OPI.
- 4.3. The Commission will undertake an initial assessment of the complaint to determine if any of the circumstances exist to refuse to entertain the complaint, as provided in Regulation 11(6).
- 4.4. The Commission may base its initial assessment on the information provided by the Complainant and any further information gathered by the Commission. 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 Respondent for a response.
- 4.5. If the Commission determines to refuse to entertain the complaint under Regulation 11(6), the Commission will notify the Complainant in writing of this decision. If the Respondent has also been notified of the complaint, the Commission will also notify them of this decision.

5. Consideration of the complaint

- 5.1. If the Commission determines to entertain a complaint following an initial assessment, 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 Respondent for a response.
- 5.2. The Commission could determine on the basis of this information that the complaint:
 - 5.2.1 has been substantiated;
 - 5.2.2 has not been substantiated; or
 - 5.2.3 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.
- 5.4. 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 taking into account the seriousness of the consequences of the complaint being made out.
- 5.5. 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.
- 5.6. If the Commission determines that the complaint has not been substantiated, then the Commission will inform the Complainant in writing of its determination. If the Respondent has been notified of the complaint, then the Commission will also inform the Respondent in writing of its determination.
- 5.7. If the Commission determines that the complaint requires further investigation, the Commission may either seek further information itself or may appoint an investigator.

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.
- 6.2. The appointment of an investigator will be in writing and on terms consistent with those provided in Regulation 11(10) to 11(12).
- 6.3. Following appointment of an investigator, the Commission will provide the investigator with a copy of the information received or collected by the Commission in relation to the complaint.
- 6.4. The Commission may direct the investigator to undertake the investigation in a particular manner provided that any direction is not inconsistent with the requirements in the Regulations.

Informing the assessment panel member of the investigator's appointment

- 6.5. The Commission may require an investigator to gather information regarding the complaint and provide an interim report to the Commission, to enable the Commission to provide formal notification of the nature of the complaint to the Respondent as required under Regulation 11(10)(a).
- 6.6. Once the Commission is in a position to provide formal notification of the nature of the complaint to the Respondent, then the Commission will provide this notification as soon as practicable in writing.

Interim reports of the investigator

- 6.7. If on the basis of information contained in an interim report of the investigator, a member of the Commission or any other public officer has a reasonable suspicion of corruption, then a report will be made by that member or public officer to the OPI.
- 6.8. The Commission may use information in an interim report from an investigator to determine whether to refuse to further entertain a complaint in the circumstances provided in Regulation 11(6), or otherwise to take no further action in respect of a complaint under Regulation 11(14)(a).
- 6.9. If the Commission determines to take no further action on a complaint following an interim report being received, then the Commission will notify in writing:
 - 6.9.1 the Respondent to advise of the appointment of the investigator and the nature of the complaint (if this has not already occurred) and the Commission's determination to take no further action on the complaint; and
 - 6.9.2 the Complainant of the Commission's determination to take no further action on the complaint.

Final report of the investigator

- 6.10. At the conclusion of an investigation, the investigator's final report will be provided by the Commission to the Respondent.
- 6.11. The Commission will invite a response from the Respondent, if this is considered by the Commission as required to satisfy the rules of natural justice. If the Commission invites a response from the Respondent, then this response will be considered in the Commission's final determination of the complaint.
- 6.12. The Commission may determine on the basis of the investigator's final report and any response from the Respondent, that the complaint:
 - 6.12.1 has been substantiated;
 - 6.12.2 has not been substantiated; or
 - 6.12.3 requires further investigation.
- 6.13. 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.

7. Consequences of breaching the Code of Conduct

- 7.1. The Commission may take such action as provided in Regulation 11(14) in regard to an Assessment Panel Member who has been found to have breached the Code of Conduct.
- 7.2. In determining the appropriate action, the Commission will consider a range of factors, including (but not limited to):
 - 7.2.1 the severity of the breach;

- 7.2.2 the risks associated with the breach;
 - 7.2.3 other previous established breaches of the Code of Conduct (and in such cases repeated minor breaches of a similar nature may be taken to amount to a serious breach); and
 - 7.2.4 mitigating or aggravating factors such as the Assessment Panel Member's cooperation with the complaint and investigation process, their response to any initial findings of the Commission or the intent behind the Assessment Panel Member's conduct (including whether the conduct is considered as accidental or deliberate).
- 7.3. Recommendations or actions of the Commission could include that the Assessment Panel Member:
- 7.3.1 undergo training regarding the Code of Conduct;
 - 7.3.2 issue a public or private apology to the Complainant;
 - 7.3.3 be issued with a written warning; or
 - 7.3.4 be reprimanded.
- 7.4. Formal sanctions in response to a breach of the Code of Conduct cannot be directly imposed by the Commission, but may be recommended by the Commission and subsequently imposed by the designated authority responsible for appointment of the Assessment Panel, or the Minister (as relevant).
- 7.5. If the Commission forms the view that the Assessment Panel Member should be removed from office as a consequence of a breach of the Code of Conduct, then the Commission will consult with the Minister or designated authority (as relevant) prior to recommending such removal.

8. Report to the Office for Public Integrity

- 8.1. 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 in relation to the circumstances of the complaint, then a report will be made by that member or public officer to the OPI or Ombudsman SA (as relevant).
- 8.2. The Commission will follow any directions of the Independent Commissioner Against Corruption, OPI or Ombudsman SA regarding the referral, management, continuation or suspension of any inquiries or investigations initiated by the Commission regarding a complaint.