



Accredited Professionals Scheme – Code of Conduct

Introduction

The Minister has adopted a code of conduct to be observed by accredited professionals registered under the Accredited Professionals Scheme under Schedule 3 of the *Planning, Development and Infrastructure Act 2016* (the Act).

This Code of Conduct provides the standards of conduct and professionalism that must be upheld by all accredited professionals performing functions and duties under the Act.

All accredited professionals must carry out, and be seen to carry out, their functions and duties with the highest ethical standards to maintain public confidence in the integrity of the planning and development system.

This Code of Conduct is the key tool to ensure that all accredited professionals act professionally, 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 Act, they should seek the advice of the State Planning Commission or the Accreditation Authority.

While some accredited professionals may also be bound by other codes of conduct or professional standards issued by their respective professional associations or employers, they have no legal status under the 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 Act.

Code of conduct requirements

Unless explicitly stated otherwise, accredited professionals must, at all times, comply with requirements 1 to 31 below. In addition, an accredited professional performing any function or duty in relation to the issuing of a building consent must also comply with requirements 32 to 35, 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.

Professionalism

2. An accredited professional must at all times act in a manner which does not bring their profession or the public's perception of the planning or building industry into disrepute.
3. In performing their duties, an accredited professional must treat others with courtesy and respect and must not:
 - a. discriminate against any person or organization; and/or
 - b. exert undue influence, intimidate, bully and harass, or pressure any person.
4. An accredited professional must ensure that they keep all relevant parties informed of any:
 - a. changes to the accredited professional's availability or suitability that will affect timely decision making in accordance with the legislation; and/or
 - b. further information that is required to carry out their statutory function.

Act in the public interest

5. 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

6. An accredited professional must exercise reasonable care and diligence in carrying out their statutory function and providing services to clients and employers.

Procedures

7. An accredited professional must ensure they operate under established processes for timely management and resolution of enquiries or complaints.
8. An accredited professional conducting their duties within a private business must ensure they maintain an appropriate level of professional indemnity insurance (unless exempt under the *Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019*).

Regard for honesty

9. An accredited professional must act with honesty, integrity, good faith and equity at all times.
10. An accredited professional must not engage, whether by act or omission, in misleading or deceptive conduct in connection with the performance of a statutory function.
11. 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.
12. An accredited professional must advise the Accreditation Authority immediately if:
 - a. there has been a finding against them in relation to any other code of conduct, ethical standards or similar, in any other State or Territory, or through a professional body of which they are a member.
 - b. they have been found guilty of a breach of any legislation related to planning, building or a development related matter in any State or Territory.
 - c. they are subject to a claim against their professional indemnity insurance policy for the purposes of their accreditation under the Scheme.
 - d. they have been found guilty of fraud or any other significant offence that may undermine or bring the industry's reputation into disrepute.

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 ensure that any advice provided is within the scope of their qualifications, experience and expertise and relevant to the particular application.
16. An accredited professional must not make false, misleading or deceptive statements about their own professional capabilities.
17. An accredited professional must continue to maintain and update the professional competencies relating to their functions and duties as an accredited professional to ensure their knowledge and skills are current for the work they undertake. This includes the law relevant to performing the accredited professionals' functions, codes, practice directions, standards, and conditions of accreditation.

Making decisions and taking action

18. An accredited professional must be able to demonstrate that all reasonable steps have been taken to obtain all relevant facts and information required when making decisions and carrying out any other statutory function.

19. 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.
20. 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.

Maintain adequate records

21. An accredited professional must maintain properly documented reasons for decisions, including the decision made, the reason for making the decision and all evidence used in support of the decision.

Protection and use of information

22. An accredited professional must maintain the integrity and security of confidential information in their possession or for which they are responsible.
23. An accredited professional must not disclose information acquired in the course of their professional work except for:
 - a. where consent of the relevant person has been granted; or
 - b. where there is a legal or professional duty to disclose such information.

Conflict of interest

24. An accredited professional must take all reasonable steps to avoid direct or indirect conflicts of interest, either actual or perceived, between their professional duties and their personal or business interests.
25. An accredited professional must not perform a statutory function where:
 - a. they have been involved in any aspect of the planning or design of the development (including designing performance solutions), other than the provision of preliminary advice of a routine or general nature.
 - b. they are employed by any person or body associated with any aspect of the development (other than an employee of the Crown or an officer or employee of a council acting in their capacity as such).
 - c. they have an actual, perceived or potential conflict of interest with a person, business or development application.

Bias

26. 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.

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

Gifts and benefits

27. 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.
28. 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 other person is a spouse, de facto partner, sibling, parent or child of the accredited professional.

Ensure adequate supervision of employees

29. An accredited professional must ensure that any person they engage or employ to assist in carrying out their functions and duties under the Act has the necessary skills, knowledge and experience to perform the work to an appropriate professional standard.
30. An accredited professional must ensure that any person they engage or employ to assist in carrying out their functions and duties under the Act, performs their work competently.
31. Where a function relating to the assessment of development or statutory decision-making has not been completed by the verified relevant authority in the Development Application Processing (DAP) system, the accredited professional named as relevant authority must:
 - a. review the DAP records and confirm they are correct; and then
 - b. if correct, endorse the relevant decision within the DAP system (where system functionality allows).

Note: This excludes assessments completed by persons delegated under the Act.

Accredited professionals undertaking Building Rules assessments must-

32. 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.
33. 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.

Performance solutions (alternative solutions)

34. 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.

Relying on certification from others

35. 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.

Legislative framework

Under Section 15 of the 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*

(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 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.*