

South Australia

Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019

under the *Planning, Development and Infrastructure Act 2016*

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation
- 4 Administration of scheme

Part 2—Classes of accreditation

Division 1—Classes

- 5 Classes

Division 2—Authorised functions

- 6 Assessment manager
- 7 Assessment panel member
- 8 Accredited professional—planning level 3
- 9 Accredited professional—planning level 4
- 10 Accredited professional—surveyor
- 11 Accredited professional—building level 1
- 12 Accredited professional—building level 2
- 13 Accredited professional—building level 3
- 14 Accredited professional—building level 4

Part 3—General provisions relating to accreditation

Division 1—Obtaining accreditation

- 15 Application
- 16 Consideration of application
- 17 Conditions
- 18 Duration of accreditation
- 19 Continuation of accreditation
- 20 Surrender

Division 2—Cancellation or suspension of accreditation

- 21 Cancellation or suspension
- 22 Notice of proposed cancellation or suspension
- 23 Effect or period of cancellation or suspension

Division 3—Register of accreditations

24 Register

Part 4—Continuing professional development

25 CPD scheme

26 Records

Part 5—Audits

27 Audits

Part 6—Complaints

28 Complaints

Part 7—Review of decisions

29 Review of decisions

Part 8—Miscellaneous

30 Circumstances in which an accredited professional may not act

31 Acting without accreditation

32 Service of notices

33 Identity cards

34 Delegation

Schedule 1—Continuing professional development

1 Preliminary

2 Planning (levels 1, 3 and 4) and surveyors

3 Planning (level 2)

4 Building (levels 1, 2 and 3)

5 Building (level 4)

Schedule 2—Transitional provisions

1 Interpretation

2 Current private certifiers

3 Acting under *Development Act 1993*

4 Extended period of initial accreditation under these regulations

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019*.

2—Commencement

These regulations come into operation on the day on which section 88 of the *Planning, Development and Infrastructure Act 2016* comes into operation.

3—Interpretation

In these regulations—

Act means the *Planning, Development and Infrastructure Act 2016*;

accreditation authority means the Chief Executive;

approved form means a form approved by the Chief Executive and published on the SA planning portal;

classes of accreditation—see regulation 5;

CPD activity means an activity—

- (a) that is of significant educational, practical or technical content related to the activities of an accredited professional (taking into account the relevant class of accreditation under these regulations); and
- (b) that is conducted by a person qualified by practical or academic experience in the subject covered by the activity; and
- (c) that is relevant to the immediate or long-term professional development needs of an accredited professional who is undertaking the activity; and
- (d) that comprises—
 - (i) attendance at, or presenting material for, a lecture, seminar, conference, workshop, educational program or course; or
 - (ii) viewing or listening to material presented as part of a multi-media, web-based or recorded program; or
 - (iii) preparing material for any lecture, seminar, conference, workshop, educational program or course, or for any multi-media, web-based or recorded program;

CPD unit means 1 hour of a CPD activity;

disqualifying event means—

- (a) a finding of guilt for an offence against the Act or the repealed Act; or
- (b) a finding of guilt for an offence against any regulations under the Act (including these regulations) or the repealed Act; or
- (c) the suspension or cancellation of an accreditation under these regulations, or the suspension or cancellation of a registration under regulation 93A of the *Development Regulations 2008*; or
- (d) failing to comply with the requirements of section 15 of the Act; or
- (e) making a false or misleading statement in relation to any matter under the Act or the repealed Act, or any regulations under either Act (including these regulations); or
- (f) contravening or failing to comply with a code of conduct under clause 1(1) of Schedule 3 of the Act;

prescribed amount of CPD means the amount of continuing professional development set out in Schedule 1;

relevant CPD period means the relevant CPD period applying to an accredited professional under regulation 25(2) in a particular case.

4—Administration of scheme

For the purposes of section 88(2)(d) of the Act, the Chief Executive is responsible for the administration of the accreditation scheme established by these regulations.

Part 2—Classes of accreditation

Division 1—Classes

5—Classes

- (1) The following classes of accreditation are established:
 - (a) Accredited professional—planning level 1;
 - (b) Accredited professional—planning level 2;
 - (c) Accredited professional—planning level 3;
 - (d) Accredited professional—planning level 4;
 - (e) Accredited professional—surveyor;
 - (f) Accredited professional—building level 1;
 - (g) Accredited professional—building level 2;
 - (h) Accredited professional—building level 3;
 - (i) Accredited professional—building level 4.
- (2) The qualifications, experience and technical skills required for each class of accreditation will be determined by the Chief Executive.
- (3) The Chief Executive—
 - (a) must ensure that the qualifications, experience and technical skills required under subregulation (2) are published on the SA planning portal; and
 - (b) may vary those qualifications, experience and technical skills from time to time; and
 - (c) may approve alternative qualifications, experience or technical skills in an individual case.

Division 2—Authorised functions

6—Assessment manager

An Accredited professional—planning level 1 is authorised to perform, exercise or discharge the following functions, powers or duties:

- (a) acting as a relevant authority—
 - (i) in cases contemplated by the Act; or
 - (ii) in cases contemplated by the *Planning, Development and Infrastructure (General) Regulations 2017*;

- (b) other functions, powers or duties specified in the *Planning, Development and Infrastructure (General) Regulations 2017* as being capable of being performed, exercised or discharged by an assessment manager.

7—Assessment panel member

An Accredited professional—planning level 2 is authorised to perform, exercise or discharge the functions, powers or duties relevant to acting as a member of an assessment panel.

8—Accredited professional—planning level 3

An Accredited professional—planning level 3 is authorised to perform, exercise or discharge the following functions, powers or duties:

- (a) acting as a relevant authority in cases contemplated by the *Planning, Development and Infrastructure (General) Regulations 2017*;
- (b) other functions, powers or duties specified in the *Planning, Development and Infrastructure (General) Regulations 2017* as being capable of being performed, exercised or discharged by an Accredited professional—planning level 3.

9—Accredited professional—planning level 4

An Accredited professional—planning level 4 is authorised to perform, exercise or discharge the following functions, powers or duties:

- (a) acting as a relevant authority in cases contemplated by the *Planning, Development and Infrastructure (General) Regulations 2017*;
- (b) other functions, powers or duties specified in the *Planning, Development and Infrastructure (General) Regulations 2017* as being capable of being performed, exercised or discharged by an Accredited professional—planning level 4.

10—Accredited professional—surveyor

An Accredited professional—surveyor is authorised to perform, exercise or discharge the following functions, powers or duties:

- (a) acting as a relevant authority in cases contemplated by the *Planning, Development and Infrastructure (General) Regulations 2017*;
- (b) other functions, powers or duties specified in the *Planning, Development and Infrastructure (General) Regulations 2017* as being capable of being performed, exercised or discharged by an Accredited professional—surveyor.

11—Accredited professional—building level 1

An Accredited professional—building level 1 is authorised to perform, exercise or discharge the following functions, powers or duties:

- (a) acting as a relevant authority—
 - (i) in cases contemplated by the Act; or
 - (ii) in cases contemplated by the *Planning, Development and Infrastructure (General) Regulations 2017*;

- (b) other functions, powers or duties specified in the *Planning, Development and Infrastructure (General) Regulations 2017* as being capable of being performed, exercised or discharged by an Accredited professional—building level 1.

12—Accredited professional—building level 2

An Accredited professional—building level 2 is authorised to perform, exercise or discharge the following functions, powers or duties:

- (a) acting as a relevant authority in cases contemplated by the *Planning, Development and Infrastructure (General) Regulations 2017*;
- (b) other functions, powers or duties specified in the *Planning, Development and Infrastructure (General) Regulations 2017* as being capable of being performed, exercised or discharged by an Accredited professional—building level 2.

13—Accredited professional—building level 3

An Accredited professional—building level 3 is authorised to perform, exercise or discharge the following functions, powers or duties:

- (a) acting as a relevant authority in cases contemplated by the *Planning, Development and Infrastructure (General) Regulations 2017*;
- (b) other functions, powers or duties specified in the *Planning, Development and Infrastructure (General) Regulations 2017* as being capable of being performed, exercised or discharged by an Accredited professional—building level 3.

14—Accredited professional—building level 4

An Accredited professional—building level 4 is authorised to perform, exercise or discharge the functions, powers or duties specified in the *Planning, Development and Infrastructure (General) Regulations 2017* as being capable of being performed, exercised or discharged by an Accredited professional—building level 4.

Part 3—General provisions relating to accreditation

Division 1—Obtaining accreditation

15—Application

- (1) A person may apply to the accreditation authority for accreditation under these regulations.
- (2) The application must—
 - (a) be lodged electronically via the SA planning portal (and in accordance with any relevant requirements applying under Part 4 Division 2 of the Act); and
 - (b) be in the approved form; and
 - (c) specify the class of accreditation to which the application relates; and
 - (d) be supported by any information specified in the approved form; and

- (e) be accompanied by the relevant fee prescribed by the *Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019*.
- (3) The accreditation authority may request an applicant—
 - (a) to provide such additional documents or information as may be reasonably required to assess the application; and
 - (b) to remedy any defect or deficiency in any application or accompanying document or information required under these regulations.

16—Consideration of application

- (1) In considering an application for accreditation, the accreditation authority must be satisfied that the applicant—
 - (a) has the qualifications, experience and technical skills required under these regulations for the accreditation to which the application relates; and
 - (b) is a fit and proper person to be an accredited professional under the Act.
- (2) In connection with the operation of subregulation (1)(a), the accreditation authority may—
 - (a) accept that a person satisfies the requirements of that subregulation if—
 - (i) the person is a member of a professional association or body that provides an equivalent scheme for the recognition of qualifications, experience and technical skills that is recognised by the Chief Executive for the purposes of this regulation; and
 - (ii) the person's category of membership corresponds, in the opinion of the accreditation authority, to the level of accreditation to which the application relates;
 - (b) take into account the advice of a professional association or body engaged to assist the accreditation authority for the purposes of these regulations.
- (3) Without limiting subregulation (1)(b), in making an assessment under that subregulation the accreditation authority may take into account whether the applicant has been involved in a disqualifying event.
- (4) After considering an application for accreditation, the accreditation authority may—
 - (a) approve the application and register the applicant as an accredited professional; or
 - (b) refuse the application.
- (5) As soon as practicable after making a decision on an application, the accreditation authority must give notice of the decision to the applicant.
- (6) If the accreditation authority refuses an application, it must include in the notice of the decision—
 - (a) the reasons for the refusal; and
 - (b) the rights of review that the applicant has under these regulations.

- (7) In connection with the operation of subregulation (2)(b), the Chief Executive must ensure that information about any scheme that is recognised for the purposes of that subregulation is available on the SA planning portal.

17—Conditions

- (1) An accreditation will be subject to the following conditions:
- (a) subject to subregulation (2), that the accredited professional must hold a policy for professional indemnity insurance that is reasonable and adequate taking into account the amount and nature of work undertaken by the accredited professional;
 - (b) any condition that the accreditation authority may impose that limits the scope of the accreditation;
 - (c) any other condition—
 - (i) determined by the accreditation authority in relation to the accreditation; or
 - (ii) otherwise specified or imposed by or under these regulations.
- (2) Subregulation (1)(a) does not apply to the following accredited professionals if the accredited professional is covered by another form of indemnity scheme or arrangement that is approved by the accreditation authority for the purposes of this subregulation:
- (a) an Accredited professional—planning level 1;
 - (b) an Accredited professional—planning level 2;
 - (c) an accredited professional who is an employee of the State or a council (when acting within their scope of employment).
- (3) The accreditation authority may, if the accreditation authority considers it appropriate to do so, vary a condition that applies in relation to a particular accredited professional.
- (4) An accredited professional may, on application to the accreditation authority in the approved form, request the variation of a condition to which the accreditation is subject and the accreditation authority may, as it thinks fit—
- (a) grant the variation; or
 - (b) refuse to grant the variation.
- (5) Conditions of an accreditation may be varied by the addition, substitution or deletion of 1 or more conditions.
- (6) A person must not contravene or fail to comply with a condition of an accreditation.
Maximum penalty: \$10 000.

18—Duration of accreditation

An accreditation continues in force (unless sooner surrendered or cancelled) on a year by year basis subject to the operation of regulation 19.

19—Continuation of accreditation

- (1) A person seeking to remain accredited under these regulations must apply on a yearly basis to the accreditation authority for the continuation of the accreditation under these regulations.
- (2) An annual application must—
 - (a) be lodged electronically via the SA planning portal (and in accordance with any relevant requirements applying under Part 4 Division 2 of the Act); and
 - (b) be in the approved form; and
 - (c) be supported by any information specified in the approved form; and
 - (d) without limiting paragraph (c), be supported by information specified by the approved form for the purposes of Part 4; and
 - (e) be accompanied by the relevant fee prescribed by the *Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019*; and
 - (f) be made at least 28 days before each anniversary of the granting of the accreditation.
- (3) The accreditation authority may, if the accreditation authority thinks fit, determine a late application for continuation provided that the applicant pays the late payment fee prescribed by the *Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019*.
- (4) If an application for the continuation of an accreditation (being an application under subregulation (2)(f) or (3)) is not decided before the relevant anniversary of the accreditation, the accreditation continues in operation until the application is decided (and, if the accreditation is to continue, the anniversary date continues to apply for future applications).
- (5) The accreditation authority may refuse to consider an application under this regulation if the application is made earlier than 2 months before the relevant anniversary date.
- (6) An accreditation will cease by force of this regulation (and without the need to comply with Division 2) if—
 - (a) an application is not made or determined in accordance with this regulation; or
 - (b) without limiting paragraph (a), the accredited professional has not completed the prescribed amount of CPD within the relevant CPD period as required under Part 4 and the accreditation authority has not taken action under regulation 25(3) so as to continue the accreditation despite the failure on the part of the accredited professional.

20—Surrender

An accredited professional may, by written notice given to the accreditation authority, surrender an accreditation.

Division 2—Cancellation or suspension of accreditation

21—Cancellation or suspension

- (1) The accreditation authority may cancel or suspend an accreditation if 1 or more of the grounds specified in subregulation (2) applies.
- (2) The following grounds are specified:
 - (a) events have occurred such that the accredited professional would not be entitled to be granted accreditation if the person were to apply for accreditation;
 - (b) the accredited professional, in the performance, exercise or discharge, or purported performance, exercise or discharge, of a function, power or duty under the Act or any regulations under the Act (including these regulations), failed to comply with a provision of the Act or regulations;
 - (c) without limiting paragraph (b), the accredited professional has failed to comply with a requirement of these regulations;
 - (d) without limiting paragraph (c), the accredited professional has contravened or failed to comply with a condition of the accreditation;
 - (e) the accredited professional has contravened or failed to comply with a relevant code of conduct under clause 1(1)(c) or (d) of Schedule 3 of the Act;
 - (f) the accreditation authority considers that the accredited professional obtained the accreditation improperly or on the basis of false or misleading information;
 - (g) any other ground for the cancellation of the accreditation specified by these regulations; or
 - (h) the accredited professional—
 - (i) is otherwise, in the opinion of the accreditation authority, no longer a fit and proper person or otherwise suitable to hold an accreditation under these regulations; or
 - (ii) has otherwise acted in an unprofessional or inappropriate manner, or failed to professionally discharge a responsibility under the Act.

22—Notice of proposed cancellation or suspension

- (1) If the accreditation authority proposes to cancel or suspend an accreditation, the accreditation authority must give the accredited professional notice of the proposal and the accreditation authority's reasons for the proposal.
- (2) The notice must state that within a specified period after the notice is given, the accredited professional may make written representations to the accreditation authority concerning the proposal and the accreditation authority must not give effect to the proposal without considering any representations received within the specified period.

23—Effect or period of cancellation or suspension

- (1) A cancellation may have effect, as specified by the accreditation authority—
 - (a) permanently; or
 - (b) for a specified period; or
 - (c) until the fulfilment of specified conditions; or
 - (d) until further determination of the accreditation authority.
- (2) A suspension may have effect, as specified by the accreditation authority—
 - (a) for a specified period; or
 - (b) until the fulfilment of specified conditions; or
 - (c) until further determination of the accreditation authority.

Division 3—Register of accreditations

24—Register

- (1) The accreditation authority must keep a register of accredited professionals.
- (2) The register must include, in relation to each person on the register—
 - (a) the person's full name and nominated contact address; and
 - (b) the qualifications, experience and technical skills for accreditation held by the person; and
 - (c) particulars of any condition of registration or other limitation that specifically relates to the person as an accredited professional.
- (3) The register may include such other information as the accreditation authority thinks fit.
- (4) The accreditation authority must ensure that the register is accessible via the SA planning portal.

Part 4—Continuing professional development

25—CPD scheme

- (1) It is a condition of an accreditation under these regulations that the accredited professional will undertake the prescribed amount of Continuing Professional Development (*CPD*).
- (2) Subject to this regulation, before the accreditation authority grants an application under regulation 19, the accredited professional must first satisfy the accreditation authority that the accredited professional has completed the prescribed amount of CPD in the period of 12 months immediately preceding the date of the application being lodged with the accreditation authority (the *relevant CPD period*).

- (3) If an accredited professional who has applied under regulation 19 has not completed the prescribed amount of CPD in respect of the relevant CPD period, the accreditation authority may, on application by the accredited professional under this subregulation, if satisfied that it is reasonable to do so, after taking into account the criteria specified in subregulation (5)—
- (a) excuse the accredited professional from the requirements of the scheme set out in subregulations (1) and (2); and
 - (b) if the accreditation authority thinks fit—determine to continue the accreditation subject to a condition or conditions determined to be appropriate by the accreditation authority.
- (4) Without limiting subregulation (3)(b), a condition of accreditation may limit the functions or powers that the accredited professional may perform or exercise during a period specified in the condition (including as to prohibit the performance or exercise of specified functions or powers that the accredited professional would otherwise be entitled to perform or exercise under the Act or under these or any other regulations under the Act).
- (5) The following criteria are specified for the purposes of subregulation (3):
- (a) that the accredited professional has been unable to complete the prescribed amount of CPD because of—
 - (i) being pregnant or taking leave from work due to the birth of a child; or
 - (ii) being seriously ill or severely disabled; or
 - (iii) being required to care for a member of the accredited professional's immediate family for an extended period of time; or
 - (iv) being under severe financial stress;
 - (b) that there are other unavoidable or extenuating circumstances that made it exceptionally difficult for the accredited professional to participate in compulsory professional development over the course of the relevant CPD period, or a substantial part of the relevant CPD period.
- (6) An application by an accredited professional under subregulation (3) must be by way of statutory declaration lodged with the accreditation authority which—
- (a) sets out the evidence on which the accredited professional relies for the purposes of subregulations (3) and (5); and
 - (b) sets out the steps (if any) that the accredited professional intends to take to improve or achieve compliance with the requirements of this Part (and Schedule 1) if the accreditation is continued.

26—Records

- (1) An accredited professional must, in respect of each CPD period that applies in relation to the accredited professional's accreditation, maintain and retain for 6 years after the end of that CPD period—
- (a) a written record of CPD activities undertaken and of the CPD units completed; and

- (b) material indicating the nature of each CPD activity; and
 - (c) a record of the fact that the accredited professional undertook each such activity.
- (2) An accredited professional must provide the accreditation authority, within 14 days of receipt of a written request from the accreditation authority, information about the accredited professional's compliance with the requirements of this Part (and Schedule 1) compiled and maintained under subregulation (1).
- (3) This regulation does not derogate from the requirements imposed on an accredited professional to provide information about the accredited professional's continuing professional development as part of an application for the continuation of their accreditation.

Part 5—Audits

27—Audits

- (1) This regulation does not apply to—
- (a) an Accredited Professional—planning level 2 in relation to the performance, exercise of discharge of a function, power or duty as a member of an assessment panel; or
 - (b) an accredited professional who is an employee of the State or a council (insofar as they are acting within the scope of their employment).
- (2) For the purposes of this regulation, a person is a qualified auditor if—
- (a) the person—
 - (i) satisfies the Chief Executive that they hold appropriate qualifications, experience and technical skills in planning or building assessment or a related discipline; and
 - (ii) holds a current approval issued by the Chief Executive for the purposes of this regulation; or
 - (b) the person is acting under a memorandum of understanding entered into between the Chief Executive and an association or other body in connection with the conduct of audits under this regulation; or
 - (c) the person is an employee of the State and the Chief Executive considers that the person is suitably qualified to act as a qualified auditor under this regulation.
- (3) An approval under subregulation (2)(a), or a memorandum under subregulation (2)(b), may relate to—
- (a) planning assessment audits; or
 - (b) building assessment audits,
- (or both) as specified by the Chief Executive.

- (4) It is a condition of the accreditation of an accredited professional to which this regulation applies—
 - (a) that they must have their activities in relation to the assessment of development under the Act audited by a qualified auditor in accordance with this regulation (a *periodic audit*); and
 - (b) that they must allow a qualified auditor to audit their activities in relation to the assessment of development under the Act if so directed by the accreditation authority.
- (5) The purposes of an audit are—
 - (a) to check whether the processes and procedures associated with the assessment of development, and the granting of any relevant consents, have been undertaken in accordance with the requirements of the Act, and any relevant regulations under the Act; and
 - (b) to check any other matter determined by the accreditation authority for the purposes of this regulation.
- (6) The first periodic audit under subregulation (4)(a) must be completed in relation to an accredited professional—
 - (a) if the accredited professional is carrying on business as an accredited professional on the commencement of these regulations—within 5 years after that commencement; or
 - (b) if the accredited professional commences business as an accredited professional after the commencement of these regulations—within 5 years after the date on which the accredited professional commences business.
- (7) Thereafter, an accredited professional must ensure that a periodic audit is completed at least once in every 5 years.
- (8) An accredited professional must, when applying to continue their accreditation under these regulations, provide, in a manner determined by the accreditation authority, evidence of compliance with this regulation (insofar as may be relevant).
- (9) It will be a ground for the cancellation of the accreditation of an accredited professional if—
 - (a) the accredited professional has not complied with subregulation (6) or (7); or
 - (b) the accreditation authority considers that the accredited professional has not adequately addressed any matter identified by a qualified auditor during the course of an audit under this regulation.
- (10) An audit under this regulation will relate to an antecedent period, not exceeding 5 years, determined to be appropriate by the qualified auditor.
- (11) An audit under this regulation may be conducted by—
 - (a) analysing processes and procedures that have been employed by the accredited professional to ensure compliance with the requirements of the Act and any relevant regulations under the Act; and
 - (b) examining random or selective samples of documents or other records to check on processes and procedures or to ascertain any other relevant matter; and

- (c) conducting interviews of persons who may be able to provide information relevant to the audit; and
 - (d) taking such other steps or making such other inquiries as the qualified auditor thinks fit.
- (12) A qualified auditor must, before finalising a report for the purposes of this regulation, give a copy of the report to the accredited professional to provide a response with a view to correcting any error of fact.
- (13) A qualified auditor must report to the accreditation authority any contravention or failure on the part of the accredited professional to comply with the requirements of the Act or any regulations under the Act, or any relevant code or other instrument, in a significant respect or to a significant degree in undertaking assessments identified by the auditor during the course of an audit.
- (14) If a qualified auditor provides a report to the accreditation authority under subregulation (13), the accreditation authority may, after taking such action as the accreditation authority thinks fit—
 - (a) make recommendations to the accredited professional; or
 - (b) give directions to the accredited professional to rectify any matter, or to take any other action, with a view to preventing the recurrence of any act, failure or irregularity; or
 - (c) impose conditions on the accreditation of the accredited professional; or
 - (d) alter the accreditation of the accredited professional to a lower level of accreditation; or
 - (e) take action under these regulations to cancel or suspend the accredited professional's accreditation.
- (15) If—
 - (a) the accreditation authority makes a recommendation under subregulation (14); and
 - (b) the accreditation authority subsequently considers that the accredited professional has not, within a period specified by the accreditation authority, taken appropriate action in view of the recommendation,the accreditation authority may, after consultation with the accredited professional, give directions to the accredited professional.
- (16) If—
 - (a) the accreditation authority gives a direction under subregulation (14) or (15); and
 - (b) the accreditation authority subsequently considers that the accredited professional has not, within a period specified by the accreditation authority, taken appropriate action to comply with the direction,the accreditation authority may take action under these regulations to cancel or suspend the accredited professional's accreditation.
- (17) Nothing in this regulation limits or affects any other provision made by or under these regulations with respect to the accreditation of an accredited professional.

Part 6—Complaints

28—Complaints

- (1) In this regulation—

code of conduct means the code of conduct to be observed by accredited professionals adopted by the Minister under clause 1(1)(d) of Schedule 3 of the Act.
- (2) A person may make a complaint to the accreditation authority about an accredited professional if the person believes—
 - (a) that the accredited professional has failed to comply with, or acted in contravention of, the Act or any regulations under the Act (including these regulations) with respect to any matter associated with any assessment, decision, permission, consent, approval, authorisation, certificate or process that relates to any development (or proposed development); or
 - (b) without limiting paragraph (a), that the accredited professional has acted in manner that constitutes an offence under section 91 of the Act; or
 - (c) that the accredited professional has acted in contravention of the code of conduct.
- (3) A complaint must—
 - (a) be made in the approved form; and
 - (b) contain particulars of the allegation on which the complaint is based; and
 - (c) be verified by statutory declaration.
- (4) Except with the approval of the accreditation authority, a complaint must not be lodged with the accreditation authority more than 12 months after the day on which the complainant first had notice of the matters alleged in the complaint.
- (5) The accreditation authority may require the complainant to give further particulars of the complaint (verified, if the accreditation authority so requires, by statutory declaration).
- (6) The accreditation authority may refuse to investigate a complaint or, having accepted a complaint for investigation, may refuse to proceed further, if it appears to the accreditation authority—
 - (a) that the complainant does not have a sufficient interest in the matter to which the complaint relates; or
 - (b) that the matter raised by the complaint is trivial; or
 - (c) that the complaint is frivolous or vexatious or is not made in good faith; or
 - (d) that it would be more appropriate for proceedings to be initiated in a court or tribunal constituted by law, or for the matter to be handled by another authority; or
 - (e) that there is some other good reason not to proceed (or further proceed) with the matter under this regulation.

- (7) If an accreditation authority has given an accredited professional notice of a complaint and then decides not to proceed (or further proceed) with the complaint under subregulation (6), the accreditation authority must ensure that the accredited professional is given notice of that decision.
 - (8) The accreditation authority may appoint a person to investigate the complaint.
 - (9) If the accreditation authority appoints an investigator—
 - (a) the accreditation authority must inform the accredited professional to whom the complaint relates of the appointment of the investigator and furnish formal notification of the nature of the complaint; and
 - (b) the investigator must conduct an investigation into the complaint as soon as practicable after the appointment has been made; and
 - (c) the investigator must give the accredited professional a reasonable opportunity to make representations to the investigator about the complaint; and
 - (d) the investigator may require the accredited professional to provide to the investigator any document or other information relevant to the investigation of the complaint (verified, if the investigator so requires, by statutory declaration); and
 - (e) the investigator—
 - (i) must otherwise comply with the rules of natural justice; and
 - (ii) subject to subparagraph (i), may conduct the investigation in such a manner as the investigator thinks fit (including by undertaking such other consultations and undertaking such other inquiries as the investigator thinks fit).
 - (10) If during an investigation the investigator is satisfied that there is a matter about which another complaint could have been made against the accredited professional, the investigator may, after consultation with the accreditation authority, deal with the matter as if a complaint had been made about the matter.
 - (11) The investigator—
 - (a) may report to the accreditation authority at any stage of the investigation; and
 - (b) must report to the accreditation authority at the conclusion of the investigation.
 - (12) The accreditation authority must provide the person to whom the complaint relates with a copy of a report presented under subregulation (11)(b) (and the accreditation authority may, if the accreditation authority thinks fit, invite a response from the person).
 - (13) The accreditation authority may, on the receipt of a report under subregulation (11)(b), or at the conclusion of any process that the accreditation authority has adopted in the alternative—
 - (a) decide to take no further action on the complaint; or
 - (b) undertake any consultation or further inquiry as the accreditation authority thinks fit; or
-

- (c) caution or reprimand the accredited professional; or
 - (d) make recommendations to the accredited professional; or
 - (e) impose conditions on the accreditation of the accredited professional; or
 - (f) alter the accreditation of the accredited professional to a lower level of accreditation; or
 - (g) take action under these regulations to cancel or suspend the accredited professional's accreditation; or
 - (h) take such other action as the accreditation authority thinks fit.
- (14) The accreditation authority must inform the complainant of the outcome of a complaint under subregulation (13).
- (15) Nothing in this regulation limits or restricts any other action or proceeding that may be taken against or in relation to an accredited professional.

Part 7—Review of decisions

29—Review of decisions

- (1) In this regulation—

person affected means—

- (a) in relation to a reviewable decision about an application for accreditation, the applicant; or
- (b) in relation to any other reviewable decision, the accredited professional whose accreditation is affected by the decision;

reviewable decision means a decision of the accreditation authority under these regulations—

- (a) to refuse to grant an accreditation; or
- (b) to impose a condition on an accreditation, to vary a condition of an accreditation, or to refuse an application to vary a condition of an accreditation; or
- (c) to refuse to continue an accreditation; or
- (d) to alter the accreditation of an accredited professional to a lower level of accreditation; or
- (e) to cancel or suspend an accreditation;

SACAT means the South Australian Civil and Administrative Tribunal.

- (2) A person affected by a reviewable decision may apply to SACAT for a review of the decision.
- (3) An application for review may be made to SACAT within 28 days after the making of the relevant decision (or such longer period as SACAT may allow).
- (4) SACAT is vested with jurisdiction to review a reviewable decision.

Part 8—Miscellaneous

30—Circumstances in which an accredited professional may not act

- (1) An accredited professional must not perform any function of an accredited professional in relation to a development—
 - (a) if the accredited professional has been involved in any aspect of the planning or design of the development (other than through the provision of preliminary advice of a routine or general nature); or
 - (b) if the accredited professional has a direct or indirect pecuniary interest in any aspect of the development or any body associated with any aspect of the development; or
 - (c) if the accredited professional is employed by any person or body associated with any aspect of the development.
- (2) Subregulation (1)(b) and (c) do not apply to an officer or employee of the Crown (when acting in their capacity as such).
- (3) A person who contravenes subregulation (1) is guilty of an offence.
Maximum penalty: \$10 000.

31—Acting without accreditation

A person must not purportedly act as an accredited professional unless the person holds an accreditation under these regulations.

Maximum penalty: \$10 000.

32—Service of notices

A document or notice that must be given served on a person by the accreditation authority on a person under these regulations may be given, served or provided as follows:

- (a) by personal service on the person;
- (b) by leaving it for the person at the person's usual or last known place of residence or business—
 - (i) with a person apparently over the age of 16 years; or
 - (ii) by placing it in a letter box, or in a conspicuous place; or
- (c) by posting it in an envelope addressed to the person at the person's usual or last known place of residence or business; or
- (d) by sending it by using an email address known to be used by the person (in which case the document or notice will be taken to have been given or served at the time of transmission).

33—Identity cards

- (1) The accreditation authority may issue an identity card to an accredited professional—
 - (a) containing a photograph of the accredited professional; and

- (b) setting out the powers of the accredited professional in such manner as the accreditation authority thinks fit.
- (2) If a person who has been issued with an identity card ceases to be an accredited professional, the person must return the identity card to the accreditation authority within 5 business days after the accreditation comes to an end.
Maximum penalty: \$1 000.

34—Delegation

- (1) The accreditation authority may delegate any of the accreditation authority's functions or powers under these regulations.
- (2) A delegation—
 - (a) may be made—
 - (i) to a particular person or body; or
 - (ii) to the person for the time being occupying a particular office or position; and
 - (b) may be made subject to conditions or limitations specified in the instrument of appointment; and
 - (c) if the instrument so provides, may be further delegated by the delegate; and
 - (d) is revocable at will and does not derogate from the power of the accreditation authority to act in any matter.

Schedule 1—Continuing professional development

1—Preliminary

The Chief Executive may—

- (a) recognise a particular activity as a CPD activity for the purposes of this Schedule;
- (b) determine what is required in order for a course or other activity to be recognised as a professional competency for the purposes of this Schedule.

2—Planning (levels 1, 3 and 4) and surveyors

- (1) This clause applies in relation to—
 - (a) an Accredited professional—planning level 1; and
 - (b) an Accredited professional—planning level 3; and
 - (c) an Accredited professional—planning level 4; and
 - (d) an Accredited professional—surveyor.
- (2) The amount of continuing professional development required to be obtained by an accredited professional to which this clause applies in the relevant CPD period is 20 CPD units.

- (3) The 20 CPD units required under subclause (2) must include at least the following number of units in the following professional competencies:
 - (a) 2 units in performance based planning or design;
 - (b) 2 units in decision making in development assessment;
 - (c) 2 units in legislative compliance;
 - (d) 2 units in ethics in planning.

3—Planning (level 2)

- (1) This clause applies in relation to an Accredited professional—planning level 2.
- (2) The amount of continuing professional development required to be obtained by an accredited professional to which this clause applies in the relevant CPD period is 10 CPD units.
- (3) The 10 CPD units required under subclause (2) must include at least the following number of units in the following professional competencies:
 - (a) 1 unit in performance based planning or design;
 - (b) 1 unit in decision making in development assessment;
 - (c) 1 unit in governance;
 - (d) 1 unit in ethics in planning.

4—Building (levels 1, 2 and 3)

- (1) This clause applies in relation to—
 - (a) an Accredited professional—building level 1; and
 - (b) an Accredited professional—building level 2; and
 - (c) an Accredited professional—building level 3.
- (2) The amount of continuing professional development required to be obtained by an accredited professional to which this clause applies in the relevant CPD period is 20 CPD units.
- (3) The 20 CPD units required under subclause (2) must include at least the following number of units in the following professional competencies:
 - (a) 2 units in construction practices and principles;
 - (b) 2 units in the application of performance based building code matters;
 - (c) 2 units in decision making in development assessment;
 - (d) 2 units in legislative compliance;
 - (e) 2 units in ethics in development.

5—Building (level 4)

- (1) This clause applies in relation to an Accredited professional—building level 4.
- (2) The amount of continuing professional development required to be obtained by an accredited professional to which this clause applies in the relevant CPD period is 10 CPD units.

- (3) The 10 CPD units required under subclause (2) must include at least the following number of units in the following professional competencies:
- (a) 1 unit in construction practices and principles;
 - (b) 1 unit in the application of performance based building code matters;
 - (c) 1 unit in decision making in development assessment;
 - (d) 1 unit in legislative compliance;
 - (e) 1 unit in ethics in development.

Schedule 2—Transitional provisions

1—Interpretation

In this Schedule—

designated day means 1 July 2019.

2—Current private certifiers

- (1) The following provisions apply in relation to a person who is registered as a private certifier under regulation 93A of the *Development Regulations 2008* immediately before the designated day:
- (a) on the designated day, the person will be taken to be an accredited professional under these regulations;
 - (b) the person will be taken to hold the class of accreditation that most closely corresponds to the functions or activities that the person was authorised to perform as a private certifier under the *Development Regulations 2008* immediately before the designated day, as determined by the accreditation authority;
 - (c) the accreditation that the person holds under this Schedule will have effect until the anniversary of the person's registration under regulation 93A of the *Development Regulations 2008* next occurring on or after the designated day (and the person may apply for accreditation under these regulations to replace the accreditation conferred by this Schedule);
 - (d) the person will continue to be subject to any action, investigation or other process under regulation 93A(7) or (8), or 103, of the *Development Regulations 2008*, and the outcome of any such process may have effect for the purposes of the person's accreditation under these regulations (with the accreditation authority being able to exercise any power that would have been exercised by the Minister (or a registration authority under the *Development Regulations 2008*) in relation to the person's registration as if the person's registration under those regulations constituted accreditation under these regulations).
- (2) Nothing in this clause limits the operation of the other provisions of these regulations in relation to accredited professionals or any accreditation conferred by this Schedule.

3—Acting under *Development Act 1993*

- (1) A person who holds an accreditation under these regulations (including by virtue of the operation of clause 2) may, while the person remains accredited under these regulations, act as a private certifier under the *Development Act 1993* and the *Development Regulations 2008* if the person holds the appropriate qualifications under Part 15 of those regulations.
- (2) A person who acts as a private certifier under subclause (1) will, subject to any condition or limitation imposed by the accreditation authority under these regulations, be taken to be a private certifier for the purposes of the *Development Act 1993* and the *Development Regulations 2008* and any action under that Act or those regulations in relation to the person acting as a private certifier will have corresponding effect for the purposes of the person's accreditation under these regulations (with the accreditation authority being able to exercise any power that would have been exercised by the Minister (or a registration authority under the *Development Regulations 2008*) in relation to the person as if the person were registered under those regulations and the accreditation authority being able to take corresponding action under these regulations).
- (3) Nothing in this clause limits the operation of the other provisions of these regulations in relation to accredited professionals or any accreditation conferred by this Schedule.

4—Extended period of initial accreditation under these regulations

- (1) Despite regulation 18, the accreditation authority may, in issuing an accreditation under these regulations to a person for the first time, provide that the period of the accreditation will be for a term exceeding 12 months.
- (2) In a case where subclause (1) applies, the anniversary date of the accreditation will, for the purposes of the other provisions of these regulations, be calculated from the date occurring 12 months before the date on which the period under subclause (1) is due to expire.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

on the recommendation of the Minister acting in association with the Commissioner for Consumer Affairs and with the advice and consent of the Executive Council
on 7 February 2019

No 11 of 2019

MPL19/002CS