

South Australia

# **Planning, Development and Infrastructure (General) (Assessment Panels) Variation Regulations 2017**

under the *Planning, Development and Infrastructure Act 2016*

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## **Contents**

### **Part 1—Preliminary**

- 1 Short title
- 2 Commencement
- 3 Variation provisions

### **Part 2—Variation of *Planning, Development and Infrastructure (General) Regulations 2017***

- 4 Substitution of heading to Part 2
  - Part 2—Administration and structural matters
  - 5 Variation of regulation 8—Disclosure of financial interests
  - 6 Insertion of regulation 11
    - 11 Compliance with code of conduct—assessment panels
  - 7 Insertion of Part 3
  - Part 3—Assessment panels—procedures
    - 12 Application
    - 13 Public access to meetings
    - 14 Minutes and other documents
    - 15 Quorum
    - 16 Voting
    - 17 Validity of proceedings
    - 18 Other matters
- 

## **Part 1—Preliminary**

### **1—Short title**

These regulations may be cited as the *Planning, Development and Infrastructure (General) (Assessment Panels) Variation Regulations 2017*.

### **2—Commencement**

These regulations will come into operation on [date to be inserted].

### **3—Variation provisions**

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

## **Part 2—Variation of *Planning, Development and Infrastructure (General) Regulations 2017***

### **4—Substitution of heading to Part 2**

Heading to Part 2—delete the heading and substitute:

### **Part 2—Administration and structural matters**

### **5—Variation of regulation 8—Disclosure of financial interests**

Regulation 8—after subregulation (12) insert:

- (13) For the purposes of paragraph (b) of the definition of *relevant official* in clause 1(1) of Schedule 1 of the Act in relation to an assessment panel appointed by a council, the chief executive officer of the council is prescribed as the relevant official.

### **6—Insertion of regulation 11**

After regulation 10 insert:

#### **11—Compliance with code of conduct—assessment panels**

- (1) In this regulation—  
*code of conduct* means the code of conduct to be observed by members of an assessment panel adopted by the Minister under clause 1(1)(b) of Schedule 3 of the Act.
- (2) A person may make a complaint to the Commission if the person believes that a member of an assessment panel has acted in contravention of the code of conduct.
- (3) A complaint must—
  - (a) be in writing; 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 Commission, a complaint must not be lodged with the Minister more than 6 months after the day on which the complainant first had notice of the matters alleged in the complaint.
- (5) The Commission may require the complainant to give further particulars of the complaint (verified, if the Commission so requires, by statutory declaration).
- (6) The Commission may refuse to entertain a complaint or, having accepted a complaint for investigation, may refuse to continue to entertain a complaint, if it appears to the Commission—
  - (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 there is some other good reason not to proceed (or further proceed) with the matter under this regulation.
- (7) The Commission may, as the Commission's first step in dealing with a complaint, refer the matter to the member of the assessment panel to whom the complaint relates for a response.
- (8) The Commission may take such further action as the Commission thinks fit (including deciding not to proceed further with the matter).
- (9) The Commission may, whether or not the Commission has acted under subregulation (7), appoint a person to investigate a complaint.
- (10) If the Commission appoints an investigator—
- (a) the Commission must inform the member of the assessment panel to whom the complaint relates of the appointment of an 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 member of the assessment panel to whom the complaint relates a reasonable opportunity to make representations to the investigator about the complaint; and
  - (d) the investigator may require—
    - (i) the complainant; and
    - (ii) the member of the assessment panel to whom the complaint relates,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).

- (11) If during an investigation the investigator is satisfied that there is a matter about which another complaint could have been made against the member of the assessment panel, the investigator may, after consultation with the Commission, deal with the matter as if a complaint had been made about the matter.
- (12) The investigator—
- (a) may report to the Commission at any stage of the investigation; and
  - (b) must present a report to the Commission at the conclusion of the investigation.
- (13) The Commission must provide the person to whom the complaint relates with a copy of a report presented under subregulation (12)(b) (and the Commission may, if the Commission thinks fit, invite a response from the person).
- (14) The Commission may, on the receipt of a report under subregulation (12)(b), or at the conclusion of any process that the Commission 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 Commission thinks fit; or
  - (c) take action to have the member of the assessment panel to whom the complaint relates removed from office; or
  - (d) take such other action as the Commission thinks fit.
- (15) The Commission must inform the complainant of the outcome of a complaint under subregulation (14).
- (16) Without limiting a preceding subregulation, the Commission may, at any time, consult with or provide a report to—
- (a) the Minister; and
  - (b) in the case of a complaint that relates to a member of an assessment panel appointed by a joint planning board or a council, the joint planning board or the council (as the case requires),
- about a complaint that has been made under this regulation.
- (17) Nothing in this regulation limits or restricts any action or proceedings that may be taken against or in relation to a member of an assessment panel on account of the member being an accredited professional under the Act.

**7—Insertion of Part 3**

After regulation 11 insert:

**Part 3—Assessment panels—procedures**

**12—Application**

This Part applies to and in relation to the procedures of an assessment panel established under section 83 of the Act or clause 12 or 13 of Schedule 8 of the Act.

**13—Public access to meetings**

- (1) In connection with the conduct of the proceedings of an assessment panel, members of the public are entitled to attend a meeting of the panel other than as set out in subregulation (2).
- (2) An assessment panel may exclude the public from attendance at a meeting—
  - (a) during so much of the meeting as is necessary to receive, discuss or consider in confidence any of the following matters:
    - (i) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);
    - (ii) information the disclosure of which—
      - (A) could unreasonably be expected to confer a commercial advantage on a person, or to prejudice the commercial position of a person; and
      - (B) would, on balance, be contrary to the public interest;
    - (iii) information the disclosure of which would reveal a trade secret;
    - (iv) commercial information of a confidential nature (not being a trade secret) the disclosure of which—
      - (A) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
      - (B) would, on balance, be contrary to the public interest;
    - (v) matters affecting the safety or security of any person or property;

- (vi) information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;
  - (vii) matters that should be considered in confidence in order to ensure that the assessment panel, or any other entity, does not breach any law, or any order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;
  - (viii) legal advice;
  - (ix) information relating to actual litigation, or litigation that the assessment panel believes on reasonable grounds will take place;
  - (x) information the disclosure of which—
    - (A) would divulge information provided on a confidential basis by or to a Minister of the Crown, the Commission, or another public authority or official; and
    - (B) would, on balance, be contrary to the public interest;
- (b) during so much of the meeting that consists of its discussion or determination of any application or other matter that falls to be determined by the assessment panel.

#### **14—Minutes and other documents**

- (1) An assessment panel must ensure that accurate minutes are kept of its proceedings.
- (2) A disclosure by a member of an assessment panel of a direct or indirect pecuniary interest in any aspect of a development or any body associated with any aspect of a development required under the Act must be recorded in the minutes of the assessment panel.
- (3) Members of the public are entitled to reasonable access to—
  - (a) the agendas for meetings of an assessment panel; and
  - (b) the minutes of meetings of an assessment panel.
- (4) However, an assessment panel may, before it releases a copy of any minutes under subregulation (3), exclude from the minutes information about any matter dealt with on a confidential basis by the assessment panel.
- (5) Minutes must be available under subregulation (3) within 5 business days after their adoption by the members of the assessment panel.

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## 15—Quorum

A quorum at a meeting of an assessment panel is a number obtained by dividing the total number of members of the assessment panel for the time being in office by 2, ignoring any fraction resulting from the division, and adding 1.

## 16—Voting

- (1) Each member of an assessment panel present at a meeting of the assessment panel is entitled to 1 vote on a matter arising for decision and, if the votes are equal, the member presiding at the meeting is entitled to a second or casting vote.
- (2) Subregulation (1) does not apply to a person who is taken to be a member of an assessment panel under section 85 of the Act.

## 17—Validity of proceedings

A proceeding of an assessment panel (and any decision made by an assessment panel) is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

## 18—Other matters

Except insofar as a procedure is not prescribed by the Act or these regulations, the procedures of an assessment panel in relation to the conduct of its business will be as determined by the assessment panel (and an assessment panel is accordingly a specified body for the purposes of section 246(6)(d) of the Act).

### 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

with the advice and consent of the Executive Council  
on

No            of 2017