

17 October 2018

Mr Michael Lennon
Chairperson - State Planning Commission
Department of Planning, Transport and Infrastructure
GPO BOX 1815
ADELAIDE SA 5001

Via email: DPTI.PlanningEngagement@sa.gov.au.

Dear Mr Lennon

RE: DRAFT ACCREDITED PROFESSIONALS SCHEME

The South Australian Division of the Planning Institute of Australia (PIA) welcomes the opportunity to provide a submission on the draft Accredited Professionals Scheme document comprising the *draft Planning, Development and Infrastructure (Accredited Professionals) Regulations 2018*; the draft Accredited Professional qualifications and experience and technical skills (determined by the Chief Executive under draft Regulation 5), and the draft Accredited Professionals Code of Conduct, circulated for public comment by the Department of Planning, Transport and Infrastructure (DPTI) and the State Planning Commission (Commission). PIA remains supportive of the rationale and intentions of the proposed Accredited Professionals Scheme. Good urban and regional planning can only be achieved by good planners. To be seen unequivocally as the lead profession in effective planning for people and places, planners must be recognised as setting, maintaining and promoting the highest standards of professional competence.

The following comments are made on each of the respective components of the draft documents released for consultation:

DRAFT PLANNING, DEVELOPMENT AND INFRASTRUCTURE (ACCREDITED PROFESSIONALS) REGULATIONS 2018

Comments Part 1 – Preliminary

3 - Interpretation

CPD activity

CPD activity as defined excludes the inclusion of reading of relevant written content (e.g. research, legal cases, legislation changes, planning articles, etc.) or participating in a structured study tour which PIA considers to constitute legitimate CPD activities.

It is recommended the CPD activity definition be reworded as denoted in red:

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; or*
 - (iv) *reading material reading of relevant planning journals and texts. This involves the structured reading of publications and self-taught courses. These activities must be structured and demonstrably related to career/professional development; or*
 - (v) *participating in organised study tours.*

Comments Part 2 - Classes of Accreditation

In relation to Regulation 5(2), the Chief Executive (CE) of DPTI is afforded significant discretion to determine the qualifications, experience and technical skills required to be accredited at each level (the Competency Requirements). The CE is also able, pursuant to Regulation 5(3)(b) of the draft Regulations, to vary the Competency Requirements from time to time. As the Competency Requirements do not form part of the Regulations, they are able to be varied by the CE at any time.

The Regulations do not prescribe that the CE must consult with affected individuals or bodies (such as PIA, AIBS or similar) before making or varying the Competency Requirements. We recommend that the Regulations be amended to include a consultation requirement in relation to both the making and varying of the Competency Requirements. The input of affected bodies will be critical to ensuring the Competency Requirements are as effective as they can be, particularly given their centrality to the scheme of accredited professionals. This will assist with ensuring the requirements are in line with industry expectations.

Division 2 – Authorised functions

Although mentioned in the FAQs, the Regulations themselves remain unclear as to whether a person can hold multiple levels of accreditation, or if a higher level of accreditation can undertake the roles of a lower level. For example, it would make sense for a Level 1 Assessment Manager to be able to sit on a Council Assessment Panel without having to acquire another/separate level of accreditation. However, it may not be appropriate that a panel member

accredited at Level 2 be authorised to carry out the functions of a Level 3 Accredited Professional. The regulations should provide clarification and guidance to avoid misinterpretation.

Comments Part 3 – General provisions relating to accreditation

Conditions of accreditation - insurance

Regulation 16(1)(a) provides that all accreditations must include a condition that the accredited professional hold an appropriate policy for professional indemnity insurance unless the applicant is an employee of the State or a council covered by another form of indemnity scheme approved by the accreditation authority.

It is anticipated that the Local Government Association Mutual Liability Scheme (LGAMLS) will be approved for this purpose. However, it is necessary for the current arrangements between councils and the LGAMLS be reviewed to ensure that all accredited professionals employed by councils, including Assessment Panel members, and other relevant council employees fall within the Mutual Liability Scheme and are appropriately insured.

The current regulations are vague on the level of professional indemnity insurance required using terminology such as 'reasonable' and 'adequate'. It is recommended some clarity is provided in this matter particularly for private sector planners or allied professionals accredited under the Scheme to ensure consistency in application.

Comments Part 4 – Continuing professional development

The Regulations discuss the requirement for accredited professionals to maintain and retain records of Continuing Professional Development (CPD) for 6 years after the end of a CPD period. Is it envisioned that the ePlanning portal will provide a tool for this type of data collection and storage, similar to what is available through the member's portal of the PIA website? This would otherwise be an onerous task for professionals to maintain. A central location where such data and information pertaining to CPD can be uploaded and kept track of would be of benefit to all accredited under the Scheme.

Comments Part 5 – Audits

Regulation 26(7) states "*An accredited professional must ensure that a periodic audit is completed at least once in every 5 years*". Additional guidance should be provided in this respect as to who is required to commence this audit process. Clarification is sought as to whether it will be the responsibility of the accredited professional to approach the authority to instigate the process, or that the authority through its register will alert professionals as to when their audit will be commencing. It is suggested a more appropriate approach is for the auditor to be responsible for arranging audits, rather than the accredited professional. We can envisage many situations in which, through no fault of an accredited professional, an audit is not arranged in time, putting at risk that person's accreditation i.e. request for audit being unnoticed, or an appointment cancelled and not rescheduled). PIA considers it appropriate that the responsibility of accredited professionals be limited to a requirement that they make themselves available to the auditor and cooperate fully with the auditor.

The matters addressed in an audit will include whether, over a period not exceeding the antecedent five years, the accredited professional has complied with the Act and Regulations, as well as any other matter determined by the accreditation authority. By not listing specific matters to be addressed in the audit, the Regulations are investing the accreditation authority with a wide discretion to set the parameters of the audit. This allows for flexibility but does not provide any certainty to accredited professionals. If the profession displayed a preference for greater certainty as to the scope of a Regulation 26 audit, PIA would recommend a list of matters which may be examined in an audit be included as a schedule within the Regulations.

The auditing authority should be an independent body which sits outside of the State Government in order to maintain transparency and integrity.

Comments Part 6 – Complaints

Regulation 27 (8)(b) states *“an investigator must conduct an investigation into the complaint as soon as practicable after the appointment as been made...”* It is recommended that a suitable timeframe is stipulated (e.g. 6-8 weeks) rather than an open-ended timeframe potentially prolonging matters unnecessarily.

One of the questions posed within the consultation materials is whether industry bodies be allowed to deal with complaints against Accredited Professionals on behalf of the CE of DPTI. Without sufficient details on this matter, it is recommended industry bodies remain independent to avoid being potentially compromised by managing complaints against Accredited Professionals on behalf of the government.

Comments Part 7 – Review of decisions

No comments

Comments Part 8 – Miscellaneous

Part 8 Regulation 29 speaks to accredited professionals not being permitted to assess any development *“if the accredited professional is employed by any person or body associated with any aspect of the development”*. This however does not apply to an officer or employee of the Crown. Does this mean that Council employed planners are unable to assess Council applications? This would be interesting, as a similar clause was removed from the *Development Regulations 2008* a few years ago, as small tedious development applications had to be sent to SCAP for consideration. Some additional thought around this matter would be beneficial as it would be helpful if Council employed planners could assess minor applications on Council's behalf.

In instances where an employee (planner) of Council is challenged and a decision is appealed to the Environment, Resources and Development Court, it is our understanding that the case will be heard as ‘appellant vs name of accredited professional or assessment manager’. In cases where an assessment manager of a council is delegating his/her powers to other council planners (who are not accredited) and these decisions are being challenged in court, is there opportunity for the case to be heard as ‘appellant vs assessment manager of said Council’? This may aid council appointed Assessment Managers to remain steadfast in good planning decisions against which an appeal has been lodged and alleviate the fear of having one’s name incessantly run through the courts.

Comments Schedule 1 – Continuing professional development

One of the questions posed within the consultation materials asked, “How important is design as a non-mandatory Continuing Professional Development topic compared with other non-mandatory topics?”

Urban design and planning are intertwined more than ever before. Both aim to create better places to live and work in our communities. It is common occurrence for development applications and policy to be challenged on design merits, rightly or wrongly. For planners to partake in such discussions they need good urban design knowledge and skills. How to judge and argue what is appropriate density, scale and massing and how to assess the impact on existing community are key examples of important design skills for planners. PIA considers it essential that planners undertake a mandatory CPD unit/s in performance-based planning or design.

Schedule 2 – Transitional provisions

No specific comments.

DRAFT ACCREDITED PROFESSIONAL QUALIFICATIONS AND EXPERIENCE AND TECHNICAL SKILLS (DETERMINED BY THE CHIEF EXECUTIVE UNDER DRAFT REGULATION 5)

PIA is pleased to see the technical skills and core competencies for Accredited Professionals – Planning levels correlate with PIAs Registered Planner benchmarking and Full Membership categories of experience which has undergone extensive research, consultation and peer review over many years.

CODE OF CONDUCT

PIA is supportive of the Accredited Professionals – Code of Conduct as drafted.

PIA thanks you for this opportunity to comment on the draft Accredited Professionals Scheme documentation, and please do not hesitate to contact the undersigned on [REDACTED] to discuss this submission further.

Yours Sincerely



Emma de Jager RPIA
Executive Officer PIA SA

