



August 1998

Code of Practice for Private Certifiers

and the

Building Rules Assessment Function of Councils

Established by the Minister for Transport and Urban Planning under Section 97(3) of the Development Act 1993 as a Code of Practice to be observed by registered Private Certifiers in South Australia.

It is also intended as an advisory Code of Practice for Local Government in the administration of the Building Rules assessment function under the Development Act.



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INTRODUCTION

Under Section 97 (3) of the Development Act 1993 the Minister may establish a Code of Practice to be observed by Private Certifiers under the Act.

This Code of Practice is intended to provide all Private Certifiers registered in South Australia with authoritative guidance on acceptable standards of conduct. Pursuant to Section 97 (4) a Private Certifier who contravenes or fails to comply with a provision of the Code of Practice is guilty of an offence.

It is also intended as an advisory Code of Practice for Local Government to provide all council officers (acting as authorised officers or providing professional advice on the Building Rules pursuant to Section 101(2)) with similar authoritative guidance on acceptable standards of conduct. While the Code of Practice is not mandatory for Local Government, a council officer should also have regard to Division 5 of Part 6 of the Local Government Act, relating to conduct of officers and employees of Council, and to the Criminal Law Consolidation Act.

The Code of Practice focuses on essential matters, however it should not be narrowly interpreted. While it contains specific principles, it is equally important that the spirit of these principles should govern professional conduct.

Any registered Private Certifier or council officer should, if in doubt as to the propriety of any course of action, seek the guidance of the Registration Authority. This is especially necessary if circumstances arise, for whatever reason, in which difficulties occur in complying with legislative requirements or taking a professionally correct course of action.

The Code of Practice sets out minimum requirements for statutory purposes. This shall not limit registered Private Certifiers or council officers from achieving a level of professionalism in excess of such minimum requirements.

It is recognised that registered Private Certifiers will also be bound by other codes of ethics or professional conduct issued by their respective Professional Associations. While those requirements will supplement the principles within this Code of Practice, they do not have any legal status under the

Development Act 1993. Where there is an apparent conflict between principles within this Code of Practice and another code of professional conduct, particularly where the public interest is concerned, this Code of Practice will take precedence.

Principles of professional conduct

1. All registered Private Certifiers and council officers to whom this Code of Practice applies must:
 - (a) recognise that the public interest is paramount in all considerations to the extent of the relevant authority's statutory responsibilities under the Development Act;
 - (b) at all times have regard for the interests of their clients and employers provided always that such interests are not contrary to the public interest;
 - (c) not knowingly or recklessly act contrary to the standards of propriety that ordinary decent members of the community would generally and reasonably expect to be observed by public officers of the relevant kind;
 - (d) have regard to their general responsibility to contribute to the quality and sustainability of the natural and built environment and the health and safety of the general public;
 - (e) not breach public trust or the specific trust of their clients and employers, acting at all times with honesty and integrity;
 - (f) be objective, impartial and free of any actual conflict of interest in the performance of their professional duties;



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- (g) bring due care and diligence to bear upon the discharge of their duties to clients and employers;
 - (h) maintain a good knowledge of the legislative framework in which they operate including, but not limited to, the Development Act 1993, the Development Regulations 1993 and the Building Code of Australia as amended from time to time including knowledge of practical application and the opportunities that it provides, and also, in the case of council officers, the Local Government Act;
 - (i) not undertake professional work which they are not competent to perform. If they are in any doubt to this matter, they must obtain such advice and assistance as will enable them to carry out such work competently;
 - (j) not disclose information acquired in the course of their professional work except where consent has been obtained or where there exists a legal or professional duty to so disclose. They must not use such information for their personal advantage or that of another party;
 - (k) refrain from any conduct or action in their professional role which may discredit the standing of registered Private Certifiers and Local Government generally and the Registration Authority; and
 - (l) maintain accreditation in accordance with Regulation 91 (a) and in the case of registered Private Certifiers maintain current insurance in accordance with Regulation 93.
2. Without limiting the generality of the foregoing, all registered Private Certifiers and council officers must:
- (a) not accept a commission from any third party in relation to any specific development application without the consent of the other party;
 - (b) provide a quarterly return on the 4% levy required under Schedule 6 Item 5 by the specified date and keep records for audit purposes;
 - (c) not use a practice name and/or description which is false, misleading or deceptive, or likely to mislead or deceive;
 - (d) only advertise or obtain publicity for their services on the proviso that the content or nature of such advertising or publicity is not false, misleading or deceptive, or likely to mislead or deceive;
 - (e) seek specialist advice where certain aspects of a statutory function are beyond their expertise. This may include, but is not limited to, referral to another relevant authority or Private Certifier, an independent technical expert, or subject to the provisions of Regulation 28 a referral to the fire authorities;
 - (f) limit their services to the specific assignments received by referral from the relevant authority, commissioned Private Certifier or client and not do anything which will impair the position of the relevant authority or commissioned Private Certifier in ongoing work for the client. The services or advice of a Private Certifier or an independent technical expert having special skills may be sought by the client, Council or, subject to the provisions of Section 95 of the Development Act 1993, by the commissioned Private Certifier;



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- (g) not at any time engage in any business or occupation which will create a conflict of interest in rendering services to a client, or which is detrimental to the public good;
- (h) not accept an engagement in replacement of another registered Private Certifier or Council without first communicating with that Private Certifier or Council and enquiring as to whether there are any circumstances they should take into account in deciding whether or not to accept such engagement, and whether the provisions of Section 96 of the Development Act 1993 concerning removal of a Private Certifier have been satisfied;
- (i) comply with statutory timeframes and expeditiously undertake statutory duties;
- (j) keep sufficient records and provide assistance to investigation officers for the purpose of achieving a fair process of investigation; and
- (k) determine whether any notices under the Development Act have been issued to the owner of land or a building which forms part of a proposed development and ensure that a provisional development plan consent has been issued for the development application. A Private Certifier or Council must not issue a provisional building rules consent until satisfied that the proposed development is consistent with the requirements of the notice(s) and/or the provisional development plan consent.