

# COMPLAINT AND DISCIPLINARY PROCEDURE POLICY

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1.0	SBQ	Unknown	-
2.0	SBQ	7 December 2023	To formally document and approve that previous version of this document

## Definition of Terms & Acronyms

Terms / Acronym	Definition
PCRP	Professional Conduct Review Panel
Professional Misconduct	As per Schedule 3 of the <i>Surveyors Act 2003</i> <i>professional misconduct, of a registrant or former registrant, means 1 or more of the following relating to the registrant's or former registrant's conduct or practice—</i> <ul style="list-style-type: none"> <li>a) <i>carrying out a survey without the relevant competency;</i></li> <li>b) <i>failing to achieve the level of accuracy or other survey quality prescribed under a regulation or required under another Act for a survey, including, for example, a cadastral survey carried out under the supervision of the registrant or former registrant;</i></li> <li>c) <i>noncompliance with any disciplinary conditions of the registration;</i></li> <li>d) <i>noncompliance with—</i> <ul style="list-style-type: none"> <li>i) <i>this Act or the repealed Act; or</i></li> <li>ii) <i>the code of practice or any code of professional conduct compiled or adopted under the repealed Act; or</i></li> <li>iii) <i>the Survey and Mapping Infrastructure Act 2003, including survey standards made under that Act; or</i></li> <li>iv) <i>survey standards made under the repealed Act.</i></li> </ul> </li> </ul>
the Act	Surveyors Act 2003
the Board	Surveyors Board of Queensland

## Associated Documentation & Legislation

Associated Documentation & Legislation
Surveyors Act 2003 Surveying and Mapping Infrastructure Act 2003 Code of Conduct

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## 1. **PURPOSE & OBJECTIVES**

- The Surveyors Board of Queensland (the Board) is a Queensland Government statutory authority that administers the *Surveyors Act 2003* (the Act) by the registration of surveyors and controlling the practice of such surveyors. The purposes of the Act include the protection of the public, upholding the standards of practice within the profession and to maintain public confidence in the profession of surveying.
- The Board is committed to effective and efficient complaints management. The Board strives to manage complaints in an accountable, transparent, timely and fair manner that is both compatible with human rights and compliant with the Act.
- This Policy explains the process whereby complaints made against Queensland Registered Surveyors and unregistered persons carrying out survey work (land and mining) are investigated.

## 2. **PRINCIPLES**

The Board and this Policy are aligned to the following guiding principles:

- a) **People focused**: People should be able to make a complaint via a clear and accessible Board complaint management system. Complainants will be respected and the Board, where appropriate, will address all relevant issues raised by the complainant.
- b) **Timely and fair**: Complaint handling processes are clear, impartial and confidential, with timely acknowledgements and responses.
- c) **Clear communication**: There are clear and communicated expectations and standards for all parties involved in a complaint.
- d) **Accountable**: The Board's roles and responsibilities for complaint management are clear and publicly available.
- e) **Improving services**: The Board's resources are regularly reviewed to ensure relevance, accuracy and effectiveness.

### 3. **APPLICATION & SCOPE**

- This Policy applies to:
  - a) Registered Surveyors in Queensland, their conduct and survey products
  - b) Land and Mining surveys prepared or advertised by unregistered surveyors in Queensland.
  
- This policy and associated procedures apply to Board employees, Board members and Board appointed investigators.

#### **In Scope**

This Policy applies to complaints received:

- from the public;
- from registered surveyors and/or registered corporations;
- via Departmental correspondence (see section 85(3) of the Act);
- via Ministerial correspondence;
- anonymously.

#### **Out-of-scope**

The Policy does not apply to:

- complaints not relating to a breach of the Act or Queensland related surveying legislation or the Board's Code of Conduct;
- where a matter has been previously investigated and all options to the Board have been exhausted;
- where a matter is being addressed in an external forum or court, e.g. QCAT, a tribunal, a commission, a court or another agency;
- allegations of corrupt conduct made in accordance with the Crime and Corruption Act 2001;
- complaints made by staff about decisions affecting their employment in accordance with the Public Service Act 2022, e.g. grievances, appeals;
- allegations of serious misconduct made against an employee in accordance with the Public Service Act 2022;

## 4. COMPLAINT PROCESS

### 4.1 WHAT IS A COMPLAINT?

Section 85(1) of the Act provides for a person who is aggrieved by a registrant's conduct in carrying out, or in relation to, a survey may make a written complaint about the conduct to the Board.

Section 86 of the Act permits the Board to investigate the conduct of a registrant without receipt of a formal complaint if the Board reasonably suspects professional misconduct.

### 4.2 WHAT IS NOT A COMPLAINT?

Section 85(2) of the Act provides that the Board may reject the complaint if it reasonably believes the complaint is frivolous, vexatious, or trivial.

The Board is contacted for many reasons and most of the time people who contact the Board do not have a complaint. It is not a complaint when people:

- are not complaining about the professional conduct of a registered surveyor
- are complaining about a non-surveying matter relating to a boundary or property dispute between the individual and another property owner
- are complaining about a non-surveying matter relating to a fee dispute
- request information
- make a suggestion for improving services
- express a concern about a situation
- provide feedback on the Board's performance
- are not directly affected by the decision or action of the Board
- provide information (e.g. reporting an incident)
- are seeking compensation for negligence

### 4.3 ACCESSIBILITY

Complaints can be made by:

- telephone
- email
- in person
- the Board website
- letter or via the mail

When making a complaint, complainants:

- can be supported by a friend, an advocate, an interpreter or a community elder
- can request other reasonable assistance, e.g. translation services
- will be provided information about how to make a complaint and how complaints will be managed, including any review options available
- can remain anonymous, although this may limit how the Board can address a complaint.

#### 4.4 HOW WE HANDLE COMPLAINTS

Resolution:	We try to resolve complaints as quickly as possible.
Internal Review:	As per the Act, a decision made by the Board regarding the outcome of a complaint matter is not an internally reviewable decision.
External Review:	A complainant may have a Board decision externally reviewed by the Queensland Ombudsman. As per the Ombudsman Act 2001, the Queensland Ombudsman has the power to investigate the decisions and actions of Queensland state government departments and agencies.
Outcome & Confidentiality:	As per section 190 of the Act, the Board is not permitted to explain to the complainant the outcome of an investigation or the reasons for a Board's decision without the consent of the surveyor involved. If consent is provided by the surveyor then the Board's decision may be disclosed.
Constraints:	The Board is only a small organisation and meets eight times per year. The Board employees two (2) full-time administrative staff members. It is the role of these two employees to collate all data and documentation and present these to the Board in a timely and efficient manner.

#### 4.5 COMPLAINT TYPE AND RESPONSE TIMES

The time it takes to resolve a complaint depends on a number of factors, including when the complaint was made and the complexity of the complaint. The Board endeavours to always resolve complaint matters expeditiously.

#### 4.6 COMPLAINT CATEGORIES

There are four (4) complaint categories used by the Board:

1. 'Minor' matters are assessed through in-house review and consultation. This category also includes complaints the Board reasonably believes to be frivolous, vexatious, or trivial under Section 85(2) of the Act.
2. 'Of note' matters are resolved informally between the Board and the registered person - the focus is on addressing the cause of the problem, including through introduction of quality assurance processes, and specific training or counselling. Section 86 of the Act applies in these cases.
3. 'Of concern' signifies a matter where the registered person is alleged to have committed a substantial breach of professional conduct. Under Section 89 of the Act, following an investigation a Professional Conduct Review Panel (PCRP) of the Board is appointed to determine whether disciplinary actions will be taken under Section 91.
4. 'Serious' matters involve allegations of professional misconduct that has serious consequences, or allegations of significant continuing misconduct. The Board draws up charges which are heard before a PCRP or the matter is referred to either the Queensland Civil and Administrative Tribunal (QCAT) or Magistrates Court.

#### 4.7 COMPLAINANT RESPONSIBILITIES

Individuals making a complaint are responsible for:

- cooperating respectfully and understanding that unreasonable conduct will not be tolerated, including abusive, aggressive, or disrespectful behaviour
- clearly communicating the main issues
- providing all relevant information and evidence when the complaint is made
- understanding that some decisions cannot be overturned or changed under the Framework approach
- informing the Board of changes affecting the complaint matter including if the Board's assistance is no longer required



## **5. COMPLAINTS MANAGEMENT PROCEDURE**

### **5.1 OVERVIEW**

Section 85(1) of the Act provides for a person who is aggrieved by a registrant's conduct in carrying out, or in relation to, a survey may make a written complaint about the conduct to the Board.

Section 86 of the Act permits the Board to investigate the conduct of a registrant without receipt of a formal complaint if the Board reasonably suspects professional misconduct.

The Board will review a complaint and determine the appropriate action to take. Applicable action may range from dismissal of the complaint to appointment of an independent investigator to investigate the complaint and determine if there is evidence of professional misconduct. The Act defines professional misconduct and provides the legislative power for the Board to take disciplinary action if appropriate. The main issues of concern to the Board are the relevant competency of the registrant, compliance with survey legislation and standards, and adherence to the Board's Code of Practice

### **5.2 PROCEDURE**

The Board has a formal complaint form which can be completed and submitted to the Board and/or the Board will accept written correspondence outlining the factors of the complaint. Emails are accepted by the Board as written correspondence.

Details of the complainant are to be kept confidential, even if information needs to be requested from the registrant named in the complaint. It is acknowledged that if information is sought from the registrant that this may permit the registrant to make an assessment about who may have potentially lodged the complaint. While the Board makes all efforts to keep information confidential the Board has a responsibility to assess and investigate the complaint once received.

On receipt of a formal complaint the Executive Officer is to:

- acknowledge receipt of the complaint via correspondence or email;
- open a complaint file and allocate a complaint number;
- notify the Board's Complainant's Convenor of the complaint;
- include all complaint information provided on the next Board agenda; and
- add to the complaint file or Board's computer system either printed or electronic copies of all documents.

Subject to the information received, either the Board's Complainant's Convenor or Executive Officer may need to contact the complainant and seek further information prior to the Board meeting.

Each complaint is to be reviewed and assessed by the Board to determine if there is evidence of professional misconduct or evidence that warrants further investigation for possible misconduct.

The Board decision will be recorded in the Board minutes and an action item created for the Executive Officer to implement, e.g. write to the registrant, and seek information.

Once the Board have concluded their assessment/investigation of the complaint the Executive Officer will write to the complainant to advise the outcome and that the complaint file has been closed.

As the facts and circumstances for each complaint differ it is not appropriate to list formal procedures about how the Board is to address each complaint or expand on the application of all the disciplinary options listed within the Act.

### 5.3 CONFLICT OF INTEREST

Where a member of the Board or a Board appointed Investigator has any material, pecuniary or any other interest which would lead to a reasonable concern that they may be biased in the conduct of their role, that person:

- must disclose the facts and circumstances to the Chair of the Board or the Executive Officer as soon as possible; and
- must not participate in the investigation or consideration of the complaint unless the Chair of the Board is satisfied that in all the circumstances pertaining to the consideration of the complaint it is appropriate that the person should continue in the role.

### 5.4 DISCIPLINARY ACTION

If a complaint after subsequent investigation warrants disciplinary action, then the following procedures may apply.

#### 5.4.1. Section 86 Meeting

A s86 meeting is a disciplinary option that is generally utilised by the Board to discuss a matter of concern with a registrant. Sometimes during the meeting further information is disclosed that is of greater concern and the Board has the option to escalate the matter to a formal investigation. Alternatively, the Board may be satisfied at the meeting that the registrant now understands the correct procedures, etc and no further action may need be taken.

A Board resolution is required to approve the s86 meeting and to nominate which Board members are to represent the Board at the s86 meeting.

The registrant's attendance at a s86 meeting is voluntary and any disciplinary outcome has to be agreed to by the registrant, e.g. correct a survey, or complete a competency assessment.

A s86 meeting is formal process and strict procedures must be followed.

- A formal written request to attend the s86 meeting is sent to the registrant generally via email and post (post optional)
- The notification is to include:
  - that attendance is voluntary

- the reasons or issues the Board seeks to discuss
- the registrant is advised in advance of their rights per the Act
- the potential outcomes from the s86 meeting
- a copy of s86 of the Act
- the date and time of the proposed meeting
- seek confirmation that the registrant will attend
- copy of the s86 declaration that all details about the s86 meeting have been disclosed to the registrant

At the commencement of a s86 meeting:

- A formal introductory script is read outlining the rights of the registrant per the notification,
- The registrant is requested to sign the s86 declaration as evidence of acknowledgement that all formal requirements were advised to the registrant in advance of the meeting commencing,
- The meeting is video recorded to eliminate any doubt about what is said or discussed,
- The registrant is advised a copy of the video recording will be made available if a request is made.

After the s86 meeting, formal correspondence is to be sent to the registrant advising of the Board's decision.

#### 5.4.2. Professional Conduct Review Panel (PCRP)

Formal disciplinary charges can only proceed after an investigation has been completed and the investigation report identifies evidence of professional misconduct.

If, after review of the investigation report, the Board determines that there is evidence of professional misconduct and that the matter is to be referred to a PCRP. The Board must pass a resolution:

- authorising that a PCRP is to proceed;
- detailing which Board members will participate;
- authorising nominated Board member to develop and finalise the charges; and
- appointing at least 4 board members as members of the PCRP.

Once the formal charges are finalised, they are sent to the registrant by email or post (optional).

Compliance with the Act must be strictly adhered to ensure no claim can be made of a miscarriage of justice, or that information was withheld by the Board. If not already provided, the surveyor will at this stage be provided with a copy of the investigator's report. It is usual for at least one month's notice to be provided of the PCRP hearing date. The registrant is notified that they can be legally represented at the PCRP hearing and the legal representative can speak at the hearing and advocate for their client.

At the commencement of the PCRP hearing a formal introductory script will be read and a number of questions asked to ensure the registrant acknowledges they fully understand

the process, the significance of the issues and the potential outcomes. As per section 92 of the Act, the registrant is to be advised as to their right of protection against self-incrimination.

The PCRCP hearing is video recorded and the registrant is entitled to a copy of the digital file. The digital video file eliminates the need for a formal written transcript. The digital file is to be stored by the Executive Officer in an appropriate place.

At the conclusion of the PCRCP hearing the registrant will be, notified in writing of the PCRCP's decision, and offered the opportunity to submit a written penalty submission, usually within two weeks. The notification by the Board must disclose the reasons for the decision. A penalty submission is not readdressing the evidence, it is an opportunity for the registrant to advise of issues the PCRCP may not be aware of.

On receipt of the written penalty submission the PCRCP will reconvene to determine the penalty. The Board will follow general legal guidelines which are for a first offence up to 25% of the maximum fine per the Act if a fine is imposed. A second offence may see the fine percentage increase to 50%. The PCRCP can also recover all costs of the PCRCP process, e.g. the cost of the investigation.

The Board will then formally write to the surveyor and advise the decision of the PCRCP regarding the penalty. A formal Information Notice must be provided of the PCRCP decision.

#### 5.4.3. Queensland Civil and Administrative Tribunal (QCAT)

Section 89(2)(b)(ii) of the Act provides the Board with the option of referring a matter to QCAT to hear and decide on disciplinary proceedings.

#### 5.4.4. Summary Proceedings

Section 181 of the Act provides the Board with the option of referring a matter to summary proceedings. eg. Magistrates Court.