



Board of Surveying and Spatial Information

Policy for the Consideration of Complaints against Surveyors

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Board of Surveying and Spatial Information

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Any enquiries relating to the policy may be address to the Board of Surveying and Spatial Information at BOSSI@lpi.nsw.gov.au

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Disclaimer

This information is correct at the date of publication; changes after the time of publication may impact upon the accuracy of the material. Any enquiries relating to this publication may be addressed to the BOSSI Secretariat BOSSI@lpi.nsw.gov.au.

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Name	Role	Section the be approved
Stephen Glencorse	Registrar, BOSSI	New document
Michael Spiteri	Registrar, BOSSI	New design
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1. Policy

The Board has a **primary** responsibility for ensuring that any reported, suspected or known professional misconduct or professional incompetence involving surveyors is investigated fully and that timely and appropriate corrective and/or disciplinary action is taken where necessary.

Matters for which action may be taken against a registered surveyor include:

- professional incompetence
- professional misconduct.

Disciplinary options available include:

- imposition of conditions on registration
- suspension of registration
- cancellation of registration
- administering of a caution
- order to correct or complete an inadequate survey
- payment of compensation
- payment of a penalty.

(Sections 11-14 inclusive, Sections 21-22 inclusive and Section 28 of the Surveying and Spatial Information Act 2002 refer)

A reference to the 'Board' or 'BOSSI' in this Policy is a reference to the NSW Board of Surveying and Spatial Information.

A reference to the 'Act' in this Policy is a reference to the *Surveying and Spatial Information Act 2002*.

A reference to the 'Regulation' in this Policy is a reference to the current *Surveying and Spatial Information Regulation*.

A reference to a 'surveyor' in this Policy is a reference to a 'registered surveyor' as defined in Section 3 of the Act.

Pursuant to Section 16A of the Act, the provisions of the Act relating to professional incompetence or professional misconduct extend also to any person who was a registered surveyor at the time that any professional misconduct allegedly occurred but who is no longer a registered surveyor.

This Policy does not relate to actions taken by the Board pursuant to Sections 21 to 25 inclusive of the Act. Any such action is a civil action by the Board in accordance with the *Local Courts Act 1982* and the *Civil Procedure Act 2005* (see also Section 11 of this Policy).

2. Objectives and application

The general objectives of this policy are to:

- a) redress consumer complaints by users of surveying services
- b) ensure compliance by individual surveyors with the necessary standards of honesty, conduct and competence
- c) maintain at a sufficiently high level the ethical and practice standards of the surveying profession as a whole.

The Board's *Guide for Professional Conduct* is relevant in this regard.

The objective of this Policy in regard to the users of surveying services is to give every person the right to complain about the conduct and competence of surveyors.

The objectives of this policy relating to surveyors are to:

- a) ensure that the rules for procedural fairness (sometimes referred to as the rules of natural justice, or due process) are applied to any proceedings taken under this Policy against surveyors;
- b) provide surveyors with a reasonable opportunity to comment on any complaint raised against them; and
- c) ensure that surveyors are aware of the standards of honesty, competence and conduct expected of them (see the Board's *Guide for Professional Conduct*).

This Policy applies to all surveyors registered by the Board. This Policy does not apply to persons not registered by the Board.

3. Definitions

For the purpose of the Act and this Policy, 'professional incompetence' means one or any of the following:

- a lack of knowledge, skills or judgement in a surveyor's professional responsibilities
- a failure to adhere to the applicable standard of care
- a pattern of practice or other behaviour that demonstrates a manifest incapacity to practice surveying
- when a registered surveyor's standard of competence falls dramatically below that expected by the Board and the public
- when behaviour is particularly likely to reduce public confidence in registered surveyors
- when a number of complaints or events, although they may not be considered to individually suggest a finding to professional incompetence, together demonstrate a pattern of incompetence
- when a pattern of incompetence suggests a registered surveyor may not act competently in the future.

For the purposes of the Act and this Policy, 'professional misconduct' is defined in Section 13(4) of the Act.

A further explanatory dissertation on 'professional incompetence' and 'professional misconduct' is contained in the Board's 'Aide Memoire', now included as Attachment C to this Policy.

4. Delegation

Pursuant to Section 31 of the *Surveying and Spatial Information Act 2002*, the Board has delegated its powers under Sections 11, 12 and 13 of the Act to:

Professional Audit and Investigation Committee	Investigate, including the conduct of an investigation interview, and refer matters to the Discipline Committee.
Discipline Committee	Recommend disciplinary action.

The Terms of reference for the Professional Audit and Investigation Committee and the Discipline Committee are included in Attachment D to this Policy.

The determination of any disciplinary action or penalty is the responsibility of the Board.

5. Enquiries and/or complaints

In the first instance the Board encourages complainants to attempt to resolve their concerns with the registered surveyor personally. If this is not possible, then a complaint in writing, preferably using the Board's *Complaint form* (available on the Board's website) and containing copies of all relevant information, should be addressed to:

The Registrar

NSW Board of Surveying and Spatial Information

PO Box 143

Bathurst NSW 2795

The Registrar can provide advice to either a complainant or the surveyor in regard to resolving the complaint. Contact the Registrar on 02 6332 8236.

6. Guidelines

The efficiency and effectiveness of the NSW surveying legislation depends upon proper standards of work performance and conduct being maintained. Strategies available to the Board to maintain these standards include informal counselling, supervision, training and development, poor performance counselling and disciplinary action.

Where strategies other than disciplinary action are more appropriate to address a shortfall in performance or conduct, they are to be used to give surveyors the opportunity to address, and where possible rectify, the shortfall.

6.1 The process

All proceedings under this Policy are confidential. However, they may be subject to judicial scrutiny. In regard to confidentiality it should be noted that any BOSSI documentation may be subject to the *Government Information (Public Access) Act 2009*.

The process to be followed in the consideration of complaints against surveyors is as follows:

6.1.1 The Registrar receives a complaint regarding a surveyor registered by the Board. Other than a complaint on the Board's own motion as noted in Section 11(3) of the Act, the complaint:

- a) must be in writing, signed by the person making the complaint
- b) must set out the circumstances giving rise to the complaint.

It is preferable that any complaint be documented by the complainant on the BOSSI *Complaint form* which can be accessed on the BOSSI website at www.bossi.nsw.gov.au.

The Board does not accept anonymous complaints.

6.1.2 The Registrar decides, following advice from members of the Board if necessary, whether the complaint is a matter for the Board to consider under the Act or whether it is a matter for consideration by a professional association such as the Institution of Surveyors NSW Incorporated. Issues appropriate for consideration by a professional association would include those relating to fees charged or business practices by an association member.

6.1.3 If the Registrar considers that the complaint is a matter for consideration by a professional association, the Registrar should advise the complainant accordingly and offer to forward the complaint to that professional association.

If the complainant accepts this offer, the Registrar shall forward the complaint to the professional association for its consideration. In the case of the Institution of Surveyors NSW Incorporated the Registrar shall forward the complaint to the convenor of the Institution's Survey Practice and Legislative Sub-Committee.

6.1.4 If the complaint is a matter for consideration by the Board, the Registrar forwards the complaint to the convenor of the Board's Professional Audit and Investigation Committee (PAIC). The referral from the Registrar should be in a form that includes the following items:

- file number
- date of the receipt of the complaint
- the name of the surveyor
- the name of the complainant
- allegation(s)/ a copy of the *BOSSI Complaint form* and any attachments thereto.

The Registrar shall then forward a copy of the original complaint, complete with all attachments, to the surveyor, with an invitation to the surveyor to comment on the complaint within 28 days of the date of the invitation to do so.

6.1.5 At the next meeting of the Board, the convenor of the PAIC shall table a report detailing new complaints received and progress on the investigation of existing complaints. Unless the Minutes of the meeting indicate a contrary viewpoint, acceptance by the Board of this report is deemed to be an instruction from the Board to continue with the investigation of all matters included in the PAIC report.

6.1.6 The Registrar is to provide a monthly report to the convenor of the Board's Professional Audit and Investigation Committee, detailing the complaints that are still open. This report should note, as a minimum, the date of receipt of complaint, the numbering of the complaint and the action taken to date.

6.1.7 The Registrar shall regularly advise both the surveyor and the complainant of progress in the investigation of the complaint.

6.1.8 The Professional Audit and Investigation Committee shall undertake a preliminary investigation by consideration of the complaint and the response by the surveyor.

6.1.9 If the surveyor's response admits that the complaint is justified and that either professional incompetence or professional misconduct has occurred, the PAIC convenor shall prepare a report for forwarding to the Board's Discipline Committee for consideration, including a suggestion of any appropriate penalty or penalties.

6.1.10 If the Professional Audit and Investigation Committee decides that the complaint may be conciliated, this is to be attempted in accordance with Section 6.2 of this Policy.

6.1.11 If conciliation has been unsuccessful or has not occurred, the PAIC convenor shall formally appoint an investigator to investigate the complaint pursuant to Section 11(2) of the Act. The investigator must be a registered surveyor. Included in the correspondence to the investigator will be a reference to the appropriate sections of the Act or clauses of the Regulation.

The investigator is to be provided with all information relevant to the complaint. The PAIC convenor shall provide to the investigator no opinion on the veracity of the complaint or the guilt or innocence of the surveyor. Section 11 of the Act and Attachments A and B of this Policy are relevant in regard to the investigation process.

- 6.1.12 The investigator shall contact the complainant and advise that the complaint is being investigated. Wherever practicable, the investigator shall meet with the complainant to discuss the surveyor's response and to obtain any further advice relating to the complaint.
- 6.1.13 After contacting the complainant, the investigator shall contact the surveyor to discuss the complaint and to obtain any further advice relating to the complaint.
- 6.1.14 Following contact with the complainant and the surveyor, if the investigator decides that the complaint may be conciliated, this is to be attempted in accordance with Section 6.2 of this Policy.
- 6.1.15 The process may further involve a formal interview with the surveyor who is the subject of the complaint (Attachments A and B of this Policy refer). This interview is to be arranged by the Registrar. The interview panel is to consist of the investigator and a Board member who is a registered surveyor. The surveyor is to be given at least seven (7) days' notice of the date of the interview.
- In the invitation to the interview, the surveyor is to be provided with any further response from the complainant and any information to be tabled at the interview that has not already been sent to the surveyor.
- 6.1.16 The investigator shall analyse all information and reach a conclusion as to whether the complaint is justified. This conclusion is based on all available evidence and facts, including any comment supplied by the surveyor and any further information provided by the complainant. The investigator shall provide an opinion as to whether the action or conduct of the surveyor is one that constitutes either professional incompetence or professional misconduct (refer Sections 12 and 13 of the Act).
- 6.1.17 The investigator shall prepare a report and append relevant documentation including a transcript of any interview held in relation to the matter. The report shall include the following information as supplied by the Registrar (vide Section 6.1.4):

- file number
- date of the receipt of the complaint
- the name of the surveyor
- the name of the complainant
- allegations/ a copy of the BOSSI Complaint Form and any attachments thereto.

The report shall also include the following information:

- any other matter or complaint which has arisen as a result of the investigation
- timeframe
- deliberations and analysis
- conclusion
- options
- recommendations
- date of the report.

- 6.1.18 The investigator shall forward the report and all appendices to the Registrar for the attention of the PAIC convenor. The PAIC shall examine the investigator's report. If the PAIC concludes that the investigation is incomplete or wrong, the report shall be returned to the investigator for advice and rectification if necessary.
- 6.1.19 Once the investigation report has been accepted by the PAIC, if the investigator concludes that the complaint is either:
- a) not justified
 - b) not proven
 - c) vexatious
 - d) frivolous
 - e) misconceived.

The report prepared by the investigator and in consequence that the surveyor has no case to answer, a PAIC member who has not been involved in the investigation shall independently review the investigator's report and conclusions. If the PAIC member agrees with the investigation report and the investigator's conclusions, the PAIC convenor shall advise the Board that no further action should be taken. The Registrar shall then advise the surveyor and the complainant accordingly.

The report prepared by the investigator and accepted by the Professional Audit and Investigation Committee, together with all relevant documentation, shall be securely filed by the Registrar. Should the PAIC member not agree with the recommendation by the investigator that the surveyor has no case to answer, the PAIC member shall discuss the matter with the PAIC convenor and the investigator. If necessary, the report shall be returned to the investigator for rectification.

- 6.1.20 If the Professional Audit and Investigation Committee concludes that the complaint is justified or proven, the investigation report and all relevant documentation shall be forwarded to the Board's Discipline Committee for consideration including a recommendation for any appropriate penalty/penalties.
- 6.1.21 The Discipline Committee shall consider any report and documentation referred to it by the Professional Audit and Investigation Committee. If the Discipline Committee considers that either the process followed by the Professional Audit and Investigation Committee as detailed in the report is either insufficient or wrong, or that the recommendations contained in the PAIC Report are not supported by the Discipline Committee, it shall refer the matter back to the PAIC for further consideration by that Committee.
- 6.1.22 Once the PAIC Report has been accepted by the Discipline Committee, the Discipline Committee shall make a recommendation of further action to be taken by the Board and shall refer this recommendation to the Board for action under Section 6.3 of this Policy. Following the Board's decision, the report prepared by the Discipline Committee, together with all relevant documentation, shall be securely filed by the Registrar.
- 6.1.23 The Registrar shall advise the Board's decision to the surveyor. The surveyor may then invoke rights under Section 7 of this Policy. At the conclusion of any appeals period under Sections 7 or 9 of this Policy, the complainant shall be informed, either by correspondence or meeting in person, of the Board's decision.

6.2 Conciliation

The Board may, with the consent of the complainant and the surveyor, appoint a person to attempt to conciliate a complaint. Where the Professional Audit and Investigation Committee determines that the complaint cannot be conciliated, or where conciliation has been attempted and has failed, the complaint must progress in accordance to this Policy.

Where conciliation is successful, the appointed conciliator shall prepare a statement for the Professional Audit and Investigation Committee. The statement must be signed by the conciliator, the complainant and the surveyor.

The Professional Audit and Investigation Committee shall consider the conciliator's statement and, unless the Committee considers that, in spite of successful conciliation, the surveyor may have engaged in professional misconduct or professional incompetence, the Committee shall advise the Board that no further action should be taken. The Registrar shall then advise the surveyor and the complainant accordingly. The report prepared by the Professional Audit and Investigation Committee, together with all relevant documentation, shall be securely filed by the Registrar.

Where conciliation has been successful but the Professional Audit and Investigation Committee considers, on the balance of probabilities, that the surveyor may have engaged in professional misconduct or professional incompetence, the matter shall progress in accordance with this Policy pursuant to Section 11(3) of the Act. The surveyor shall be informed of this decision.

6.3 Recommendation of Discipline Committee

The Discipline Committee shall review the report and documentation received from the Professional Audit and Investigation Committee. The Discipline Committee shall recommend any action which it considers should be taken and forward its recommendations, together with all documentation from the Professional Audit and Investigation Committee, to a properly constituted meeting of the Board.

If the Board considers that either the process followed by the Professional Audit and Investigation Committee as detailed in the report is insufficient or that the reasoning contained in the Discipline Committee's recommendation is unsatisfactory, it may refer the matter back to the Discipline Committee for further consideration by that Committee and resubmission of its report.

The Board shall consider the report and the recommendation of the Discipline Committee as to the appropriate penalty or action. If the Board's decision is that there has not been a disciplinary breach, the Registrar shall advise the surveyor and the complainant, in writing, as soon as possible.

If the Board determines that the recommended penalty or action or any other penalty or action should be imposed, then the Registrar must advise the surveyor in writing accordingly to enable the surveyor to make written submissions (see Section 7 of this Policy). The Registrar's advice shall include the Board's determination and any other information deemed relevant.

A majority decision by the members of the Board is a decision by the Board.

Any BOSSI documentation, including reports and determinations, may be subject to the *Government Information (Public Access) Act 2009*.

6.4 Conflict of interest

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

- a) must disclose the facts and circumstances to the President of the Board as soon as possible, and
- b) must not participate in the investigation or consideration of the complaint unless the President of the Board is satisfied that in all the circumstances pertaining to the consideration of the complaint it is appropriate that the member should continue in the role.

7. 'Right to be Heard' of Surveyor

- 7.1** If the Board considers that a disciplinary breach has been established, the surveyor is to be advised of the disciplinary penalty under consideration and given twenty eight (28) days to make written submissions to the Board in relation to the proposed action or supply any additional information which he/she considers should be taken into account before a final decision on disciplinary action is made by the Board. Such additional information may include submissions by a third party.
- 7.2** Any submission by the surveyor received by the Board within the twenty eight (28) day period shall be referred to the Professional Audit and Investigation Committee for consideration. The Professional Audit and Investigation Committee is to forward the surveyor's additional information and any consequential addendum to the Committee's original report to the Discipline Committee for consideration.

The Discipline Committee is to examine the surveyor's additional information and any consequential amendment report from the Professional Audit and Investigation Committee prior to forwarding its final recommendation to a properly constituted meeting of the Board.

Taking into account all available relevant information, including any additional information supplied by the surveyor and the reports by its Discipline Committee and its Professional Audit and Investigation Committee, the Board shall decide whether the disciplinary action or penalty should be upheld, changed or withdrawn. The surveyor's additional information, the report of the Professional Audit and Investigation Committee (including any addendum or amendment to the Committee's original report) and the report by the Discipline Committee shall be securely filed by the Registrar.

A majority decision by the members of the Board is a decision by the Board.

Upon making the decision, the Board will advise the surveyor and the complainant in writing accordingly.

- 7.3** A finding by the Board of professional incompetence or professional misconduct shall be recorded against the surveyor's name on the Registrar's administration version of the Register. Disciplinary action which is no longer in effect shall be removed from the Register after five (5) years has elapsed from the date of the Board's finding.

8. Disciplinary options

In deciding upon a form of appropriate action, the following disciplinary options are available. Any disciplinary action is to be confirmed in writing, forwarded to the surveyor and its delivery noted on file.

The Board's disciplinary action in regard to a single complaint is not limited to a single penalty. The Board may impose a combination of penalties, depending on the seriousness of the disciplinary breach.

8.1 Professional incompetence

8.1.1 Imposition of conditions on registration

These conditions may include, but are not necessarily restricted to one or any of the following:

- a disciplinary meeting with members of the Board
- the provision of evidence that the surveyor has procedures in place to ensure that the problem does not recur
- the requirement for further training
- the necessity to practice only under supervision or
- the submission of all cadastral plans for a nominated duration to a pre-lodgement check at Land and Property Information NSW.

8.1.2 Suspension of a surveyor's registration for a period not more than five (5) years

The surveyor is to be informed of the minimum period of suspension and any conditions that the surveyor is required to satisfy prior to the surveyor's restoration to the Register.

8.1.3 Cancellation of a surveyor's registration

Permanent removal from the Register is considered to be the ultimate penalty in cases of professional misconduct or professional incompetence.

8.2 Professional misconduct

8.2.1 Administering of a caution

All cautions are to be recorded adequately and given in the presence of a reliable witness. All oral cautions are to be confirmed subsequently in writing, forwarded to the surveyor and delivery noted on the file copy. The caution should clearly state the reason why it is given, the standard of performance required within what timeframe and the possible consequences of a repetition.

8.2.2 Imposition of conditions on registration

These conditions may include, but are not necessarily restricted to one or any of the following:

- a disciplinary meeting with members of the Board
- the provision of evidence that the surveyor has procedures in place to ensure that the problem does not recur
- the requirement for further training
- the necessity to practice only under supervision or
- the submission of all cadastral plans for a nominated duration to a pre-lodgement check at Land and Property Information NSW.

8.2.3 Order to complete or correct inadequate survey

The order must clearly state the reason why it is given, the standard of performance required within what timeframe and the possible consequences of a repetition.

8.2.4 Payment of compensation

The Board may order the surveyor to pay compensation, totalling not more than \$10,000, to any person towards any loss or damage suffered by that person as a consequence of the misconduct, but only if that person cannot obtain compensation in any other way, for example through civil action in a court.

8.2.5 Payment of a penalty

The Board may order the surveyor to pay a penalty to the Board of not more than \$10,000.

8.2.6 Suspension of a surveyor's registration for a period not more than five (5) years

The surveyor is to be informed of the minimum period of suspension and any conditions that the surveyor is required to satisfy prior to the surveyor's restoration to the Register.

8.2.7 Cancellation of a surveyor's registration

Permanent removal from the Register is considered to be the ultimate penalty in cases of professional misconduct or professional incompetence.

9. Disciplinary appeals

Any registered surveyor against whom action is taken in accordance with this Policy may apply to the NSW Civil and Administrative Tribunal (NCAT) for a review of the Board's determination.

10. Disposal of disciplinary records

The Registrar is to take disposal action on all records of an investigation when five (5) years have elapsed from the date of Board's determination of disciplinary action, provided that the disciplinary action is no longer in effect and no subsequent action has been taken against the surveyor.

11. Criminal offences

Where, in the course of a disciplinary investigation, there is reason to believe that a surveyor may have committed a criminal offence, the matter is to be referred to the police.

In such cases the Board is to investigate the matter only to the point where the view is formed that a criminal offence may have occurred, leaving further investigation to the police.

Investigating Police are to be asked to forward a Brief of Evidence or report to the Board sufficient to enable a decision to be made on any further action which may be necessary. If this information is unavailable within a reasonable time frame the Board may proceed with investigations and possible disciplinary action.

An offence under Sections 21 to 25 inclusive of the *Surveying and Spatial Information Act 2002* may be brought before the local court by the Board. The alleged offence must have occurred within the previous six (6) months.

Attachment A – investigation interview

Where professional misconduct or professional incompetence is suspected or known to have occurred or where strategies directed to achieving the required standard of work or conduct have not produced the required result, the Board's delegated Committee, the Professional Audit and Investigation Committee, shall take action to hold an interview with the surveyor concerned.

An investigation interview is conducted for the purpose of:

- presenting facts or alleged facts to a surveyor on matters which could necessitate disciplinary action
- giving the surveyor the opportunity to respond to facts or alleged facts, to give an explanation of events, to comment on any relevant issue and present any relevant information which the surveyor believes should be considered
- gathering sufficient facts to enable a decision to be made on whether or not disciplinary action is appropriate.

The interview panel is to consist of the investigator and a Board member who is a registered surveyor.

Prior to proposed interview

Prior written notice of proposed interview is to be provided to a surveyor at least seven (7) days in advance of the proposed interview. The notice must include the following information:

- the time, date, place and nature of the proposed interview
- the subject matter of the proposed interview, i.e. a clear statement of the allegations and/or information and/or evidence held by the Board
- a copy of the investigation interview procedures
- a copy of any documentation which is to be presented to a surveyor at the proposed interview. Where the provision of a copy of documentation is not practicable, advice of arrangements for the surveyor to view the documents at least 24 hours in advance of the proposed interview
- the right to have an observer present as a witness at the proposed interview as per procedures. The observer is present to witness the interview, but not to advocate
- the right to request in advance of the proposed interview that a speaker be present at proposed interview (other than in the role of a legal representative) to speak on behalf of the surveyor. This request can be made where a surveyor considers that he/she may lack the capacity to speak effectively on his/her own behalf and/or to understand adequately the implications of the subject matter of the proposed interview. This does not limit the right of the surveyor to speak also at proposed interview
- the right to request in advance of the proposed interview that an interpreter be present (for a surveyor with English as a second language) and the right to request a signing interpreter (for a surveyor with hearing impairment) as per procedures.

The Registrar is to arrange in advance of the proposed interview, if necessary, for the presence at the proposed interview of an interpreter for a surveyor with English as a second language or a signing interpreter for a surveyor with hearing impairment.

The Registrar is to ensure that the venue of the proposed interview has adequate privacy.

At commencement of interview

At the commencement of the interview the surveyor must be advised of the following:

- the purpose of interview
- the recording arrangements for the interview
- the role of the surveyor's observer(s)

- the right of the surveyor to have, during the course of the interview, a brief adjournment/s for private off-record discussion with the observer(s)
- the manner in which questions will be asked and of the right to refrain from answering questions. The surveyor is to be advised that should he/she refrain from answering questions, the interviewer is required to proceed so that the Board can make findings and recommendations on the basis of questions answered, and other material and information which is available
- that he/she will be given the opportunity at the conclusion of questioning to make comments, submissions or statements on any issue relevant to matters raised at the interview
- that the observer will be given the opportunity to address the interviewer(s) at the conclusion of questioning.
- that following the interview a decision will be made as to the allegations. The surveyor will be informed in writing of the outcome and in cases where a disciplinary breach is established, the procedure that will be followed
- that he/she will be given the opportunity to make submissions regarding matters to be considered when determining any penalty, if a recommendation is to be made to the Board that disciplinary action is to be taken.

During interview

The interviewers have the responsibility to be fair, courteous and impartial in conducting the interview.

Recording of interviews

Interviews should preferably be recorded verbatim by a stenographer. In circumstances where verbatim recording is not possible, the interview is to be recorded either by a recording device such as a tape recorder or to the best of the interviewing member's ability.

Regardless of the method used, recording is to be undertaken with the knowledge of the surveyor to be interviewed.

The details required to be included on the record of interview appear in the pro-forma at Attachment B. This format is to be applied to all investigation interviews.

As soon as practicable after the interview, the person interviewed is to be invited to read a copy of the record of interview and to sign at the foot of each page as an indication that the record is an accurate transcription of the interview. Should the person decline to do so, no further action is to be taken in this regard other than to record the invitation to sign and the reason for the refusal. The person interviewed is to be given a copy of the record of the interview.

Regardless of the method used to record the interview, the record shall be preserved securely until disposal action is appropriate.

Interview transcript

Following the interview, the interview transcript shall be forwarded to the investigator for consideration.

Attachment B – record of interview

Record of interview between _____
 _____ and _____
 _____ (*name of person being
 interviewed and interviewer - no titles*) at the
 _____ (*location of interview*) on
 _____ (*date*), 200____, at _____ hours.

Interviewer's observer _____ (*name*).

Interviewer's surname: Mr/Mrs/Ms _____, my name is _____ I am the _____ (*Title*)
 I have asked you here today to discuss allegation(s) concerning

As these proceedings are formal, I must inform you that you may have an observer present if you so desire. The observer may be any other person of your choice. Do you desire to have an observer present?

Person being interviewed
 surname: Response.

Interviewer: What is your observer's name and in what capacity does this person attend?

Interviewee: Response.

Interviewer: I will clarify the role of your observer during this interview. The observer acts as an observer only, not as an advocate on your behalf. Your observer will be permitted to advise you within reasonable limits, but you are required to speak for yourself. During the course of the interview, a brief adjournment/s may be requested for you and your observer to have a private off record discussion. Do you understand?

Interviewee: Response.

Interviewer: Mr/Mrs/Ms _____ (*observer*) Do you understand?

Observer: Response.

(The following text is to appear at the bottom of all pages other than the final page of interview.)

Witness: _____ Signature: _____
 (Board interviewer) (Person being interviewed)

Page 2 of

Record of interview in the matter of:**Name:** _____(First/given names, lower case) **(Last/family name in Capitals)****(Highlighted)***(Above heading to appear on all pages other than page one)*

Interviewer: This interview will be recorded by *(stenographer/tape recorder)* and you will, as early as practicable, be shown a transcript of the interview and will be invited to sign it as a correct record. You may decline to sign it, but you will be given a copy. Should you decline to sign, that fact will be noted on the record together with any reason given for not signing.

Any conversation between you and your observer will not be recorded. Your observer will be permitted, if you so wish, to address me on your behalf at the conclusion of the interview, and whatever is spoken at that time, will be recorded as part of the interview. Do you understand?.

Interviewee: Response.

Interviewer: Mr/Mrs/Ms *(observer)* Do you understand?.

Observer: Response.

Interviewer: Mr/Mrs/Ms , what is your full name?

Interviewee: Response.

Interviewer: Mr/Mrs/Ms , what tertiary qualifications do you hold?

Interviewee: Response.

Interviewer: Mr/Mrs/Ms , what professional status do you hold?

Interviewee: Response.

Witness: _____ Signature: _____

(Board interviewer)

(Person being interviewed)

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Record of interview in the matter of:

Name: _____
 (First/given names, lower case) **(Last/family name in Capitals)**

(Highlighted)

Interviewer: Before I start this interview in accordance with the Board's *Policy for the Consideration of Complaints Against Surveyors*, I must inform you that you are not obliged to answer my questions unless you choose to do so. However, if you choose to take this course of action, then the Board can only adjudicate on the information that is presented to it. Do you understand?

Interviewee: Response.

Interviewer: You are advised that you will be given the opportunity at the conclusion of questioning to make comments, submissions or statements on any issue relevant to matters raised at this interview. Do you understand?

Interviewee: Response.

Interviewer: You are advised that following this interview a decision by the Board will be made as to the allegations presented to it. You will be informed in writing of the outcome. If a disciplinary breach is established you will be advised of the proposed action and will be given the opportunity to make submissions regarding matters to be considered when determining any penalty. Do you understand?

Interviewee: Response.

Interviewer: (Start of actual interview)

Interviewer: Is there anything you would like to ask of me about the questions I have put to you in this interview?

Interviewee: Response.

Interviewer: Is there anything at all you would like to tell me that could be of assistance in this matter?

Interviewee: Response.

Interviewer: Is there any comment, submissions or statement you wish to make on any issue relevant to matters raised at this interview?

Interviewee: Response.

Witness: _____ Signature: _____
 (Board interviewer) (Person being interviewed)

Attachment C – ‘Aide Memoire’

Over time various definitions have been given for the phrases of negligence, incompetence and delay. These words have been distilled to have a particular meaning in relation to professional undertakings.

A professional, be it a surveyor or any other professional, owes a duty to the client to undertake professional activity with competence and diligence. There are other requirements in respect of the relationship between the professional and the client, however the comments set out below relate particularly to the way in which a professional activity may have been undertaken in a way that is incompetent and lacking in diligence.

Professional incompetence, or lack of professional skill, could lead to a claim by the client in a court for damages. However, if professional incompetence is so gross or if it has been exacerbated by other activity then the incompetence may be considered to be a wanton disregard of the client's interests and because of that the behaviour may be professional misconduct.

The usual example given in the way an activity may proceed from being merely incompetent to being professional misconduct is where for instance an activity has been undertaken and it is clear that the activity is incompetent and then the professional who undertook the activity then lies to the client this then can be considered to be professional misconduct.

The case law in relation to other professional groups discloses that gross delay or incompetence is frequently the subject of deception in respect of the information provided to the client. The Courts have generally taken the view that where delay or incompetence has proceeded down the path to being exacerbated by deception of the client that this then goes beyond professional incompetence and becomes professional misconduct.

Professional misconduct is considered to be far more serious than professional incompetence. Having regard to the general understanding of professional incompetence and the need for protection of the cadastre and the public, Sections 12 and 13 of the Act were structured so that the conduct of a surveyor to be considered as professional misconduct needs to be ‘serious, grave and weighty’ (as referred to in decisions in various Courts and Tribunals) before that finding is made.

Edition 3 of the Policy attempts to define professional incompetence for the purpose of the Act and the Policy. The term is to be considered in relation to the general understanding of that term and the common law definitions. Generally where work is undertaken by a surveyor that may lead to a finding of professional incompetence it would be where any incompetence has not been willful and has not been so gross or exacerbated to lead to being within the understanding of professional misconduct.

The Act does define professional misconduct in Section 13(4). The seriousness of professional misconduct is also demonstrated by the range of penalties set out in Section 13(1).

Professional misconduct is more serious than professional incompetence, however professional incompetence may become professional misconduct in some circumstances. If the professional incompetence has a deleterious affect on the cadastre then it is probable that the behaviour will be considered to be professional misconduct.

Attachment D – Terms of reference for committees

Professional Audit and Investigation Committee

1. To comply with the Board's Policy for the Consideration of Complaints against Surveyors.
2. To assess received complaints in regard to whether they require investigation by the Board or the relevant professional association.
3. To investigate complaints that have been received and accepted by the Board, including alleged breaches of Sections 21 and 22 of the Act.
4. To establish a list of contract investigators to investigate complaints against registered surveyors.
5. To provide a brief to a contract investigator investigating a complaint.
6. To assess an investigation report from a contract investigator and complete the Committee Report.
7. To recommend action to the Discipline Committee following an investigation.
8. To recommend that the Board requests LPI to consider audits in areas of poor surveying practice highlighted by investigations.
9. To provide advice to the Board in regard to trends in poor surveying practice highlighted by investigations and audits.
10. To provide advice to Counsel in response to appeals to the NSW Civil and Administrative Tribunal (NCAT).
11. To recommend to the Board training programs which assist in the investigation and auditing of surveys and surveyors.
12. To liaise between the Board and LPI and Trade and Investment NSW in regard to audits.

Discipline Committee

1. To receive a report from the Professional Audit and Investigation Committee in respect of a complaint following an investigation.
2. To review the report from the professional Audit and Investigation Committee as expeditiously as possible.
3. To come to an opinion as to whether the act or conduct of the registered surveyor is one that constitutes either professional incompetence or professional misconduct.
4. To consider the options as set out in sections 12 and 13 respectively of the *Surveying Act 2002* relating to either professional incompetence or professional misconduct.
5. To forward a recommendation to the Board as to the further action to be taken.

Membership and meetings of committees

Pursuant to the *Surveying and Spatial Information Regulation 2012*, Part 3, Division 1, Clause 74:

- The committee must have at least three (3) members.
- The convenor and deputy convenor of a committee are to be nominated by the Board, and may (but need not) be members of the Board.
- Committee meetings are to be held at the times and places determined by the convenor of the committee.

- The procedures for convening committee meetings and for the conduct of business at committee meetings are to be determined by the convenor of the committee.
- At a committee meeting, a majority of the committee members constitutes a quorum.
- The convenor of a committee (or, in the absence of the convenor, the deputy convenor of the committee) is to preside at committee meetings.
- A decision supported by a majority of the votes cast at a committee meeting at which a quorum is present constitutes a decision of the committee.
- In the event of an equality of votes, the convenor of the committee has a second, or casting vote.
- The convenor of a committee is to report all decisions of the committee to the next Board meeting.