



Board of Surveying
& Spatial Information

BOSSI Complaint Policy

September 2021

Edition 4

Title:

BOSSI Complaint Policy

Published by:

Board of Surveying and Spatial Information

346 Panorama Avenue

Bathurst NSW 2795

T: (02) 6332 8238

www.bossi.nsw.gov.au

Copyright:



© Crown in right of New South Wales through the Board of Surveying and Spatial Information 2021.

This copyright work is licensed under a Creative Commons Australia Attribution 4.0 licence, <http://creativecommons.org.au>

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

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@customerservice.nsw.gov.au

Document summary

Document control

Document Details	
Status	Approved
Edition	4
Date	September 2021
Author	Professional Audit and Investigation Committee
Owner	Board of Surveying and Spatial Information

Change history and approval

Edition	Date	Authorised by	Change details
1	May 2007	Manager, OSG	New document
2	August 2013	Manager, OSG	New design
3	May 2015	Surveyor General	Amendments due to review
4	July 2021	BOSSI	Whole document review

Contents

1. Policy Overview:.....	5
1.1. Policy Objectives:	5
1.2. Scope:.....	6
1.3. Definitions:	6
1.4. Enquiries and Complaints:	8
2. Complaint process:.....	10
2.1. Receiving Complaints:	10
2.2. Acknowledging complaints:	10
2.3. Assessing complaints:	10
2.4. Conflict of interest:	11
2.5. Conciliation:	11
2.6. Investigation:.....	12
2.7. Investigation steps:	13
2.8. Unregistered persons not to practise land/mining surveying:	14
2.9. Interviews:.....	15
2.10. Making findings:.....	16
3. Complaint outcome:	17
3.1. Professional incompetence:.....	17
3.2. Professional misconduct:	18
4. Right of Appeal to the Board:	19
5. Complainant satisfaction:	19
6. Complaint privacy policy:.....	19
7. Summary:	20

1. Policy Overview:

The Board of Surveying and Spatial Information (BOSSI, the Board) Complaint Policy explains the process whereby complaints made against NSW Registered Surveyors or “land surveys and mining surveys” are investigated by the Board.

The Board maintains the primary responsibility for any investigations of complaints reported and that those complaints are assessed in a timely, objective, and fair manner.

The Board is committed to effective complaint handling for customers – who are both complainants and responding surveyors. Complaint handling principles include:

Customer focus – the organisation is committed to effective complaint handling and values feedback generated through the complaint process.

Visibility – information about how and where to make a complaint is readily available.

Clarity – the process for making a complaint and subsequent investigation is easy to understand.

Responsiveness – complaints are acknowledged promptly, with all affected parties kept informed throughout the process.

Objectivity and fairness – complaints are dealt with in an equitable and unbiased manner.

Review – there are opportunities for internal and external review and/or appeal about the Board’s decisions, and all parties are informed about these avenues.

Accountability – complaints and responses to them are monitored and reported to the Board and /or other stakeholders where appropriate.

Continuous Improvement – complaints are a source of improvement as they enable the Board to identify poor practice and take remedial action at an industry-wide level.

1.1. Policy Objectives:

The general objectives of this policy are to:

- i) Provide a framework to ensure compliance with the Act and Regulation by Registered Surveyors in NSW
- ii) Investigate unregistered persons performing or advertising to carry out land and mining surveys in NSW and recommend judicial action where appropriate
- iii) Redress complaints by users of land or mining surveying services within NSW
- iv) Maintain a high level of ethical and practice standards in the surveying profession

The policy provides a coordinated approach to investigations. The Board has delegated the responsibility of these investigations to the Professional Audit and Investigation Committee (PAIC).

The Board maintains the right to procedural fairness and natural justice in its investigations by providing transparency, consistency, and/or opportunity to respond to all involved in its regulative requirements.

The policy also provides a guide for the Board’s Professional Audit and Investigation Committee on how to conduct the:

- i) Receipt of complaints
- ii) Assessment of Complaints
- iii) Investigation of Complaints
- iv) Report on the findings of Investigations

1.2. Scope:

This policy applies to:

- Registered Surveyors, their conduct and survey products
- Land and Mining surveys prepared or advertised by unregistered surveyors in NSW

This policy **does not**:

- determine what disciplinary actions or penalties should be administered to persons under the Act or Regulation.

As per Section 16A of the Act, investigations relating to professional misconduct extend 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.

1.3. Definitions:

- i) **The Act** – refers to the *Surveying and Spatial Information Act 2002*
- ii) **BOSSI or the Board** – refers to the NSW Board of Surveying and Spatial Information
- iii) **Cadastre** – a digital representation of all land parcel and property boundaries in NSW. This includes managing the collection, storage, maintenance and product development, in line with customer requirements, NSW and national policies, initiatives and guidelines, of the authoritative State cadastre
- iv) **Complaint** – refers to a written complaint recorded on the BOSSI Complaint form
- v) **Disciplinary Committee (DC)** – Board Committee responsible for reviewing complaint investigation outcomes and recommending appropriate actions or penalties
- vi) **Form of Demand** – For the purpose of investigating a survey carried out by a Registered Surveyor, the Board may under Section 11 of the Act, request the surveyor to produce documents relevant to the conduct of a survey
- vii) **Firm** – means a corporation or a partnership or other unincorporated association of persons
- viii) **Fit and Proper Person** - that a surveyor, surveyors assistant, student of surveying or applicant, displays not only that they have the requisite knowledge of the duties and responsibilities of the holder of a surveyor's registration or surveyors' assistant enrolment but also that they possess sufficient moral integrity and rectitude to be accredited to the public as a person to be entrusted with the work as subject of the surveyor's registration or surveyors' assistant enrolment
- ix) **Interview** – A formal process where a surveyor is invited to provide information to the Professional Audit and Investigation Committee investigators about a specific survey
- x) **Land Survey** – as defined by the Act is a survey (other than a mining survey) that is carried out in connection with:
 - (a) the reservation or dedication of land for any purpose, or
 - (b) the creation, variation, transfer or extinguishment of any interest in land, or
 - (c) the preparation of a plan for lodgement under Division 3 of Part 23 of the [Conveyancing Act 1919](#), or
 - (c1) the preparation of documents required to be prepared under the [Strata Schemes \(Freehold Development\) Act 1973](#) or the [Strata Schemes \(Leasehold Development\) Act 1986](#) by a registered land surveyor, or

- (d) the identification or marking out, or both, of the boundaries of a parcel of land.
- xi) Mining Survey** – as defined by the Act is a survey that is carried out for the purposes of the [Work Health and Safety \(Mines and Petroleum Sites\) Act 2013](#)
- xii) Non-compliant survey** – a survey that does not maintain or meet minimum industry standard or Regulation requirements
- xiii) Professional Audit and Investigation Committee (PAIC)** – Board Committee responsible for reviewing and investigating (if appropriate) lodged complaints against Registered Surveyors and unregistered persons undertaking a “land or mining” survey.
- xiv) Professional Incompetence** – as defined in Section 12 of the Act means:
A lack of knowledge, skill or judgement in a Registered Surveyors professional ability that demonstrates:
- (a) A failure to apply a suitable standard of care
 - (b) An unacceptable pattern of behaviour
 - (c) A standard of competence below the expectations of the Board
 - (d) When the behaviour significantly reduces public confidence in NSW Registered Surveyors
 - (e) When a pattern of events exists that would collectively be considered incompetent
- xv) Professional Misconduct** – as defined in Section 13 of the Act means:
- (a) any contravention of the conditions of the surveyor’s registration, or
 - (b) any failure to comply with the standards imposed by this Act or the regulations with respect to the carrying out of surveys, or
 - (c) any failure to comply with an order referred to in subsection (1) (c), (d) or (e), or
 - (c1) any failure to comply with a notice under section 9A, or
 - (d) any failure to comply with the requirements of the [Licensing and Registration \(Uniform Procedures\) Act 2002](#), or
 - (e) any contravention of this Act or the regulations, or
 - (f) any contravention of the [Work Health and Safety \(Mines and Petroleum Sites\) Act 2013](#) with respect to the conduct of surveys, or
 - (g) any act or omission that demonstrates that the surveyor is not a fit and proper person to be registered as a surveyor, or
 - (h) any act or omission that the regulations declare to be professional misconduct for the purposes of this Act
- xvi) Registered Land Surveyor** – A person who is registered as a land surveyor in NSW under the Act
- xvii) Registered Mine Surveyor** – A person who is registered as a mining surveyor in NSW under the Act
- xviii) Registered Surveyor** – a registered land surveyor or registered mining surveyor
- xix) The Regulation** - refers to the Surveying and Spatial Information Regulation 2017

- xx) Supervision** – is the act, process, or function of overseeing, directing or managing work, workers or a project. The supervising surveyor takes full responsibility for the work of the supervised person
- xxi) Unregistered Person** – is a person who is not registered under the Act, who carries out a land or mining survey, or advertises that they are willing to undertake a land or mining survey for fee or reward

1.4. Enquiries and Complaints:

Complaints alleging criminal or corrupt behaviour:

The Board is to investigate complaints to the point where the view is formed by PAIC that a criminal offence may have occurred. PAIC will then halt the investigation and refer the matter to the complainant and advise them to seek independent legal advice and to report the matter to the appropriate law enforcement agency for further investigation.

The Board will assist law enforcement investigators where appropriate.

The Board are legally obliged to report identified serious criminality to NSW Police Force as per Section 316 of the [Crimes Act 1900 \(NSW\)](#).

PAIC will maintain liaison with the Investigating Police or prosecuting agency to establish if there is any further need for the Board to take any remedial or disciplinary action relevant to a Registered Surveyors conduct.

Anonymous Complaints:

The Board does not accept or act on anonymous complaints. All complaints are to be recorded on the BOSSI Complaint Form, clearly defining the name of the complainant, the nature of complaint and the complainant's signature.

All proceedings under this Policy are treated with strict confidentiality, however all parties must be aware that the complaint form including the consent to release supporting documents may be provided to the Registered Surveyor for response.

BOSSI documentation is subject to the Government Information (Public Access) Act 2009.

Vexatious or Malicious Complaints:

A vexatious or malicious complaint is one that is falsely made; that is, it is not made in good faith or based on evidence.

When the allegations are not supported by any evidence and there is other evidence to suggest that the complaint was made vexatiously – that is, primarily to cause annoyance to a person or entity, the Board will not continue with the investigation process. PAIC will finalise the complaint and record its actions.

The complainant will be advised that no evidence was found to support the allegations and no further action will be taken by the Board in this instance. However, any further complaints from the same person will be freshly assessed to see if they have any substance.

Unsigned Complaints or Complaints not on a BOSSI complaint form:

PAIC will review all complaints supplied to them.

Without a signed complaint form, the Board do not commit to a formal investigation and generally seek to resolve these complaints by providing general advice to the complainant with an outcome focus in mind. These complaints are not placed on the complaints register and are managed locally by PAIC at the discretion of the Board. Such complaints are reported to PAIC and recorded in meeting minutes.

All parties must be aware that the complaint form including the consent to release supporting documents may be provided to the Registered Surveyor for response.

Time Limitations:

The Board has instructed PAIC to only investigate complaints where the survey or conduct of the surveyor occurred within the three years preceding lodgement of the complaint.

This limitation does not apply where the Board considers:

- 1) the omission / error / conduct is of such a serious nature that it would significantly impact on the:
 - NSW Cadastre
 - reputation of the surveying industry
- 2) it is in the public interest to do so

PAIC are to seek Board endorsement to either accept or refuse any investigations over the three-year limitation.

The decision to investigate or decline to investigate a complaint is minuted in a PAIC meeting.

When offences are identified within the Act that are subject to judicial process, there is a “statute of limitations” of six months from the time of the offence occurring in which the prosecuting authority has to initiate due process. The relevant legislation is Section 179 of the [Criminal Procedures Act 1986](#).

Sections 21 to 26 inclusive of the Act are subject to the statute of limitations:

- *Sect 21 Unregistered persons not to practise land surveying*
- *Sect 22 Unregistered persons not to practise mining surveying*
- *Sect 22A Firms offering land and mining surveying services*
- *Sect 23 Obstruction of registered surveyors*
- *Sect 24 Removal etc of survey marks*
- *Sect 25 Marks in the form of permanent survey marks not to be used without authority*
- *Sect 26 Exercising powers of entry without certificate of authority*

Who can investigate:

For the purpose of investigating a survey that has been carried out by a registered surveyor the Board’s functions are to be exercised as per the act:

- a) by a Board member who is a Registered Surveyor, or
- b) by some other Registered Surveyor to whom the Board delegates the exercise of those functions.

Complaints against a Registered Surveyor are undertaken by a Registered Surveyor appointed by the PAIC with the support of the BOSSI investigator.

Complaints against an unregistered surveyor accused of undertaking a land or mining survey may be conducted by the BOSSI investigator with the support of a PAIC appointed Registered Surveyor and/or legal representative.

2. Complaint process:

The BOSSI complaint process provides a procedural guideline to determine what action is required to all complaints received. It assists the PAIC to select the appropriate investigative approach by looking at any statutory requirements, the nature of the issue, the likely outcome of the investigation and develop an investigation plan if required, ensuring proper powers and authority have been exercised.

2.1. Receiving Complaints:

The complaint must:

- a) be in writing
- b) signed by the person making the complaint
- c) set out the circumstances giving rise to the complaint
- d) indicate if the complainant is willing for the complaint to be conciliated

The associated records are kept in an electronic file assigned sequentially by the complaint register number. The complaint register is maintained by the BOSSI Registrar or the PAIC Convenor. The entries include subsequent action taken in relation to the complaint, and copies of relevant material (correspondence, evidence) filed.

The initial record of the complaint should identify (wherever possible):

- the contact details of the person making the complaint
- any request for the suppression of details of the complainant to other involved parties
- the details of the subject of the complaint
- the issues raised
- the outcomes sought
- any other information required to properly respond to the matter
- any additional information the person making the complaint may provide that will assist in the investigation
- if the complaint is resolved at first contact, details about the resolution including information provided or referrals made.

The BOSSI Complaint form can be accessed on the BOSSI website at www.bossi.nsw.gov.au.

2.2. Acknowledging complaints:

The receipt of each complaint will be acknowledged promptly by the convenor of PAIC or the BOSSI Registrar. Consideration will be given to the most appropriate medium for communicating with the person, considering the complainant's business needs and expressed preferences.

2.3. Assessing complaints:

Assessing a complaint involves determining what action is required, which may include options other than a formal investigation. Upon receipt of the complaint, the Registrar or the Convenor of PAIC will assign the complaint a number, correlate the information and forward the complaint to PAIC for their assessment.

Assessment of a written complaint may involve considering:

- does the complaint relate to a NSW Registered Surveyor?

- did the incident occur in NSW?
- has the statute of limitations as per the [Criminal Procedures Act 1986](#) elapsed since the alleged events occurred (six months from the date of offence)?
- does the complaint primarily involve a communication issue or misunderstanding that can be resolved through explanation or discussion?
- is there an alternative means of redress or a more appropriate mechanism for dealing with the issue, for example referral to NSW Fair Trading or NSW Police Force?
- should the complaint be notified to a relevant government agency?
- how significant is the issue for the complainant and/or the Board?

After assessing a complaint, a decision will be made by PAIC regarding how to manage it.

Managing a complaint may involve:

- giving the complainant information, advice, or an explanation in writing
- requesting further information from the complainant before the assessment phase can be completed or investigation commenced
- conciliation
- investigating the claims made in the complaint
- declining to investigate.

All recorded complaints are reported to the Board. If PAIC reaches a consensus to not investigate a matter, the reasons are recorded and reported to the Board.

2.4. Conflict of interest:

Where or a member of the Board, a member of PAIC or a PAIC appointed Investigator 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, that member:

- **must** disclose the facts and circumstances to the President of the Board or the Registrar as soon as possible
- **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.

2.5. Conciliation:

Initially PAIC will review the complaint package and determine if the complaint is suitable to be conciliated. Conciliation is appropriate where PAIC determines minor breaches of process have occurred and/or communication is the cause of the complaint. This is only done when PAIC decide it is the most suitable and efficient course of action, and all parties consent to conciliation.

If, however, upon initial assessment PAIC identifies potential professional misconduct or professional incompetence, the matter will not be conciliated, and instead will progress in accordance with this policy

PAIC will appoint a person to attempt to conciliate a complaint. Where PAIC determines that the complaint cannot be conciliated, or where conciliation has been attempted and has failed, the complaint will progress in accordance with this policy.

Where conciliation is successful, the appointed conciliator will prepare a report for the Board. The report must be signed by the conciliator, the complainant, and the surveyor.

2.6. Investigation:

A PAIC investigation is to establish and document relevant facts, reach appropriate conclusions based on the available evidence, and determine a suitable response. The nature and scope of any PAIC investigation will depend on the circumstances of each case and any relevant statutory requirements that apply.

If PAIC considers that an investigation is warranted, PAIC will consider the most appropriate person to conduct the investigation when taking into consideration qualifications, experience and availability. It is important that the investigator does not have a conflict of interest in the matter. Any unavoidable conflict of interest must be identified and carefully managed.

The most appropriate investigative approach will also need to be determined. This involves consideration of any statutory requirements, the nature of the issue and the likely outcomes. PAIC conduct two types of investigations, 'outcome-focused' or 'evidence-based'.

Outcome-focused investigation:

An appropriate strategy for less serious issues. PAIC may elect this type of investigation to quickly identify and remedy complaints that do not require a lengthy and in-depth analysis of all available evidence. In conducting an outcome-focused investigation, the following factors will be considered:

- if the complaint involves a communication issue that can be resolved through explanation or discussion
- if a more appropriate means of dealing with the issue is available
- if the complaint can or must be referred or notified to a relevant government agency
- the significance of the issue for the complainant and/or the Board

Possible remedies arising from an outcome-focused investigation include:

- workplace training
- amended policies or systems
- an apology

conciliation **Evidence-based investigation:**

Is undertaken by a PAIC investigator if a complaint has been received about a surveyor's actions that could result in a finding against:

- a person that could significantly affect their reputation or interests and /or
- the reputation and interests of the surveying industry and /or
- significantly impacts on the NSW Cadastre

Evidence-based inquiries seek to pursue all lines of inquiry in a way that meets legal and procedural requirements. The more serious the allegation and possible consequences, the more rigorous the investigation will need to be.

Upon completion of the investigation, a report is provided by the investigator to PAIC. By consensus agreement, PAIC will determine if an investigation report is provided to the Disciplinary Committee for their consideration of disciplinary outcomes or if the matter is reported directly to the Board for their information only.

2.7. Investigation steps:

Assess the complaint & select the appropriate investigation approach

Once PAIC have assessed the complaint as being valid and requiring investigation PAIC will determine if the investigation is either evidence-based or outcome-focused.

Plan the investigation

PAIC will define the issues in the complaint to be investigated and establish a course of action. The investigation plan may be reviewed by PAIC throughout the investigation.

Dependent on the nature of the investigation, PAIC will identify what questions need to be answered, what information is required to answer those questions, and the best way to obtain that information.

Upon this consideration PAIC will appoint a suitably qualified investigator to conduct enquiries.

Ensure proper powers and authority

PAIC determines if the complaint falls within the Board's legislated powers to investigate.

Matters for which the Board may take action against a Registered Surveyor include:

- professional incompetence
- professional misconduct.

PAIC's role is to distinguish between the **right to ask** and the **power to demand** under the auspice of investigating allegations. PAIC must consider all evidence gathered in the course of the investigation including all supportive (inculpatory) and excluding (exculpatory) evidence when making its direction.

If the investigation is major or sensitive, PAIC will seek approved terms of reference and adequate resources from the Board or NSW Department of Customer Service Legal Services.

Evidence gathering

PAIC and the investigator gather sufficient reliable evidence to prove or disprove matters relevant to the issue being investigated.

Evidence obtained must adhere to the rules of evidence to ensure fairness and admissibility. Evidence must show:

Impartiality

Investigators must be impartial, adopting an inquisitorial approach, attempting to ascertain the truth and uncover all relevant facts.

Confidentiality

Investigators must maintain the confidentiality of the investigation to within the confines of PAIC until its findings are a matter of public record.

Communication

The complainant and surveyors subject to the investigation will be informed of its progress throughout the investigation.

Standard of proof

PAIC must prove beyond reasonable doubt that the allegations are substantiated.

Rules of evidence:

The applicable rules of evidence in an investigation are:

- **Relevance and cogency** – the most fundamental consideration which should be given to any piece of evidence is its relevance. Evidence must also be sufficiently cogent (reliable, convincing, truthful, sound) and compelling (of sufficient weight) that it logically supports the finding that has been made.
- **Hearsay evidence** – this is evidence based on what has been reported to a witness by others, rather than what he or she has heard directly. This evidence is generally inadmissible.
- **Opinion evidence** – a witness’s opinions about a person, or about what happened or should have happened, are usually irrelevant to an inquiry unless the witness is an expert whose opinion is relevant to the subject matter of the investigation. PAIC rely on “expert witnesses” to provide opinion evidence in its investigation.
- **Direct and circumstantial evidence** – evidence can be either direct (evidence of what was said or done, perceived through any of the five senses) or circumstantial (evidence from which facts may be inferred). Typically, an investigator will make use of both forms of evidence although more weight should generally be given to direct evidence. Reviewing the evidence is an important preliminary step to reaching initial or preliminary conclusions about the matters under investigation.
- **Procedural Fairness and right to be heard** - Regulatory or governing bodies are required by legislation to afford procedural fairness to persons who are the subject of disciplinary proceedings. Investigators must provide all parties the right to respond to the allegations in an open and transparent manner. This is very important in an investigation that could result in an outcome that affects the rights, interests, or reputation of an individual.

Any investigation that is subject of the [Criminal Procedures Act 1986](#), i.e. Part 5 Offences of the Act, the rules of evidence **DO** apply, however, Section 11 of the Act provides the Board with authority to request a response. A registered surveyor is required to provide a response to the Boards inquiries as a condition of their registration. The Board and PAIC must carefully manage any information provided “under direction” when considering outcomes or referrals to the Discipline Committee falling outside the confines of the Boards jurisdiction.

Section 11 of the Act:

- (1) *For the purpose of investigating a survey that has been carried out by a Registered Surveyor, the Board:*
 - a) *may require the surveyor to produce, for inspection by the Board, any field books or other documents relevant to the conduct of the survey, and*
 - b) *may carry out further surveys, and*
 - c) *has a Registered Surveyor’s functions under Part 4 with respect to entry on lands.*
- (2) *The Board’s functions under subsection (1) are to be exercised:*
 - a) *by a Board member who is a Registered Surveyor, or*
 - b) *by some other Registered Surveyor to whom the Board delegates the exercise of those functions.*
- (3) *Action may be taken under this section on the Board’s own motion or as a consequence of a complaint made to the Board.*

2.8. Unregistered persons not to practise land/mining surveying:

If there is an allegation subject to the *Criminal Procedures Act 1986*, relating to a person preparing, practicing, or advertising their services as described in the Act, PAIC will make initial inquiries to establish that the:

- services are a “land survey or mining survey” as defined in the *Surveying and Spatial Information Act 2002*
- person who prepared the survey is an unregistered surveyor in NSW, and that person is not carrying out survey work under the appropriate supervision of a NSW Registered Surveyor

- survey was prepared for “fee or reward”
- survey is in the state of NSW
- survey was completed within the last six months (as the statute of limitations apply to the judicial process).

The Board or any other prosecutor may require additional information including:

- instruction from the person for whom the survey was prepared as to their desire to pursue legal recourse
- a statement of events from that person, or an indication of a willingness to provide a signed statement if the matter is to proceed to court
- a copy of the “terms of engagement” – highlighting what services the surveyor was engaged to provide
- any invoice issued for the services provided
- any receipt or proof of payment
- suitability of the individual to be supervised under the Act or recognition by the Board
- any other documented evidence that would support the prosecution, for example emails or letters.

2.9. Interviews:

The interview process is purely voluntary and must adhere to the right for natural justice. The interview is to be conducted without bias using open questions and inviting answers to address identified issues. The interviewee has the right to know all evidence being relied upon before interview and must be given the right to rebut or cross examine this evidence at interview. No threat, promise, or inducement whether real or perceived can be relied upon to illicit information.

Where professional misconduct or professional incompetence is suspected or known to have occurred and/or where investigation strategies have failed to yield sufficient information to satisfy the nature of the allegation, PAIC may request an interview with the surveyor concerned to establish reasonable practice or any wrongdoing has occurred.

The conduct of interviews must ensure fair treatment of interviewees. As part of the interview process the:

- surveyor is to be advised that they are **NOT** compelled to undertake an interview and that any information provided is done so freely
- interviewee **MUST** consent to the interview taking place. The Board does not have authority to direct a person to participate in an interview.
- interview may be recorded, and a copy of the interview will be provided to the interviewee & the interviewer at the time of the interview or at the earliest opportunity thereafter.
- investigator and a member of the Board who is a Registered Surveyor must be present.
- surveyor is to be provided with all relevant information regarding the complaint and nature of the allegations prior to the interview, along with a list of intended questions. This does not prevent additional questions being asked in the interview.
- surveyor is to be afforded the opportunity of having an observer present at the interview. The observer is not to actively participate in the interview.
- surveyor and observer can suspend the interview to confer in private
- surveyor is to be provided with an interpreter, as required.

2.10. Making findings:

Where an evidence-based investigation has been conducted, the PAIC Investigator will prepare an investigation report setting out the complaint, how the investigation was conducted, relevant facts, conclusions, and findings.

The investigator's report will include the following:

Recommendations – Alleged Offences:

A brief overview of the whole report, including

- how the investigation came about
- the nature of the investigation process that took place
- the nature of the evidence that emerged from this investigation

Recommendations – Proposed Investigation Findings:

The determinations or recommendations that are made by the investigator are based on the evidence gathered. The investigator will detail either the allegation has been:

- Proven
- Not proven

PAIC do not make recommendations regarding proposed penalties.

Relevant Facts: Background:

This section includes an outline of the circumstances:

- that gave rise to the decision to hold an investigation
- in which the investigation was delegated to an investigator, the scope and purpose, and the investigation objectives that were detailed in that delegation

Relevant Facts: Summary of Investigation:

This section is an outline of the investigation process that took place, including but not limited to:

- reference to the actual documents sourced in the investigation
- a chronological analysis of the evidence presented and gathered
- identifying relevance to key factual evidence compared to the allegations
- analysis of the gathered evidence to make a determination with respect to each core factual issue.

Key Facts Establishing Offences and/or grounds for proposed action:

This section lists the findings and conclusions the investigator has drawn from analysis of the evidence gathered. Each finding is a separate, short statement.

For example: FINDING 1:

The evidence gathered identified that [name of affected person] between [date] and [date] **DID** [identify inappropriate activity, for example, "breach the *Surveying and Spatial Information Act 2002* by [describe how the breach occurred, for example, "fail to comply with Section 9 A of the Act"].

For example: FINDING 2:

The evidence gathered identified that [name of affected person] between [date] and [date] **DID NOT** [identify inappropriate activity, for example, "breach the *Surveying and Spatial Information Act 2002* by [describe how the breach occurred, for example, "fail to comply with Section 9 A of the Act"].

Other Relevant Facts and Analysis:

The investigator references or correlates all evidence gathered that may assist in either proving or disproving the allegations. This section allows the investigator to comment on information relied upon in making a finding, including any differences discovered from the information in the original allegation.

Investigators Declaration:

A declaration by the investigator that:

- all reasonable steps to avoid a conflict of interest have been reviewed
- the investigation has been conducted to the best of their ability
- the investigation report presented to PAIC includes all relevant facts for consideration

A consensus on an evidence-based investigation is recorded and is maintained with the BOSSI complaint file.

3. Complaint outcome:

The investigation report is presented to PAIC for consideration by its members. PAIC will review the findings of the investigators report and establish by a majority of the votes cast at a meeting at which a quorum is present, whether the allegation has been:

- **Proven** – When a consensus by PAIC has established the allegations as proven, the finalised report will be presented to the Disciplinary Committee.
- **Not Proven** – When a consensus by PAIC has established the allegations are not proven, they will record their findings and notify the Board of the outcome.

In the event of an equality of votes, the convenor has a second, or casting vote

PAIC **do not** make recommendations regarding proposed penalties.

PAIC then forward the completed investigation report including the confirmation of the findings to the Disciplinary Committee. The outcomes from the Disciplinary Committee are referred for acceptance by the Board and PAIC are advised of any penalties or outcomes. The PAIC Convenor or BOSSI Registrar will then notify the complainant in writing of the outcomes of the investigation.

Any disciplinary action is to be confirmed in writing by the Board, forwarded to the surveyor and its delivery noted on file with the appeal timeline commencing from that date.

The Board's disciplinary action regarding a single complaint is not limited to a single penalty. The Board may impose a combination of penalties, depending on the seriousness of the matter. The Board may invite PAIC to comment on any penalty imposed or response from involved parties.

3.1. Professional incompetence:

Imposition of conditions on a surveyor's registration

Conditions may include, but are not restricted to one or any of the following:

- disciplinary meeting with members of the Board
- provision of evidence to the Board that the surveyor has procedures in place to ensure that the problem does not recur
- requirement for further training
- requirement to practice only under the supervision of a Registered Surveyor or

- submission of all cadastral plans for a nominated duration to a pre-lodgement review at NSW Land Registry Services.

Suspension of a surveyor's registration

For a period not more than five years, the surveyor is informed of the period of suspension and any conditions that the surveyor is required to satisfy prior to the surveyor's restoration as Registered Surveyor.

Cancellation of a surveyor's registration

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

3.2. Professional misconduct:

Administering of a caution

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

Imposition of conditions on a surveyor's registration

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

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

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 of the misconduct.

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.

Payment of a penalty

The Board, under Section 13 of the Act, may order the surveyor to pay a penalty to the Board of not more than \$10,000.

Suspension of a surveyor's registration

For a period not more than five years, the surveyor is informed of the period of suspension and any conditions that the surveyor is required to satisfy prior to the surveyor's restoration as Registered Surveyor.

Cancellation of a surveyor's registration

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

4. Right of Appeal to the Board:

If the Board considers that a disciplinary breach has been established, the surveyor is to be advised of the proposed disciplinary penalty and given 28-days to make written submissions to the Board in relation to the proposed penalty or supply 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.

Any submission by the surveyor received by the Board within the 28-day period may be referred to the PAIC or the Discipline Committee for consideration. If referred to PAIC for review, the surveyor's additional information and any consequential addendum to the Committee's original report will be forwarded to the Discipline Committee for consideration.

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.

5. Complainant satisfaction:

The Board, PAIC and the investigator aim to ensure the:

- treatment of individuals involved is respectful and courteous with consistent information provided to them.
- expectations of complainants about the complaint handling process are informed and the expected likely outcome of their complaints is realistic.
- Board's complaint handling procedures are clear, fair and reasonable.

Complainants need to be aware of the balancing set of 'responsibilities' that they must accept when they make a complaint. This includes a responsibility to:

- Clearly identify the issues of complaint
- Provide all relevant information about their complaint – to the best of their ability
- Cooperate with any requests for information, inquiries, or investigations
- Act honestly
- Treat the people handling their complaint with courtesy and respect.

6. Complaint privacy policy:

The Board, PAIC and the investigator aim to ensure that:

- Personal information obtained during the complaints is collected and held by the Board and PAIC only for the purpose of complaint handling and resolution, including investigating and following up on the relevant complaint.
- A complainant may access or amend complaint information you provide the Board and PAIC at any time.
- A complainant's information and identity may be disclosed to the person about whom the complaint is being made as consented to in the signed complaint form, where the complainant has consented, to enable a fair investigation and appropriate outcome.

- A complainant's information and identity may be disclosed to professional standards bodies such as the Department of Fair Trading or the NSW Police for investigation.
- A complainant's information and identity may be disclosed as required by law or legal process, such as subpoena or warrant.
- A complainant is not obligated by law to provide the details requested, however if they do not provide complete and accurate details then it will not be possible to provide updates about the complaint. It will also not be possible to investigate the complaint, as our investigation procedure requires that both parties be given a fair opportunity to respond and have the necessary information to do so.

7. Summary:

This policy is prepared to provide reassurance to all involved. One of the roles of Board is to establish effective regulation of the industry so Surveyors will recognise that if an allegation is made against them in the future the Board will:

- take specific steps to ensure the matter is properly investigated
- the individual rights of registered surveyors are maintained and respected
- the NSW cadastre is protected
- the integrity of the surveying industry is protected by consistent and transparent regulatory process
- the actions of investigators and the Board are accountable in this process