

# **The Professional Surveyors' Occupational Association NSW Incorporated**

## **DISCIPLINARY REGULATIONS**

**August 1999  
Amended July 2007**



**PROFESSIONAL SURVEYORS' OCCUPATIONAL ASSOCIATION NSW Inc**  
**(The Association)**

**DISCIPLINARY REGULATIONS**

**COMPLAINTS**

**1. Making a Complaint**

- (1) Any person may make a complaint of improper conduct against a person or corporation who is or has been a member of the Association.
- (2) A complaint:
  - (a) must be in writing, signed by the person making the complaint;
  - (b) must set out the circumstances giving rise to the complaint;
- (3) A complaint must be lodged at the office of the Association.
- (4) The Secretary will provide reasonable assistance to the complainant in the preparation and lodging of a complaint.

**2. Notification of Complaint**

The Secretary, if satisfied that adequate particulars of a complaint against a member have been provided by a complainant, must promptly:

- (a) inform the member of the details of the complaint;
- (b) by notice, invite the member to make a written submission in response to the complaint within a period of at least 21 days; and
- (c) forward the complaint to the Chairman of the Association.

**CONCILIATION**

**3. Complaint may be Conciliated**

- (1) The Chairman of the Association may, with the consent of the complainant and the member, appoint a suitably qualified person to attempt to conciliate a complaint.
- (2) Where the Chairman of the Association determines that the complaint cannot be conciliated, or where conciliation has been attempted and failed, the complaint must be dealt with in accordance with these regulations.
- (3) Where conciliation is successful, the conciliator is to prepare a statement outlining the basis on which the complaint has been conciliated. Both the complainant and the member must sign the statement. The statement is to be forwarded to the Secretary.
- (4) Successful conciliation of a complaint requires no further action under these regulations, unless the Chairman of the Association considers that the member, on the balance of probabilities, may have engaged in improper conduct.

- (5) When conciliation is successful but, on the balance of probabilities, the Chairman of the Association considers that the member may have engaged in improper conduct, the complaint must be dealt with in accordance with these regulations.

## INVESTIGATION OF COMPLAINT

### 4. Appointment of an Investigator

An investigator may be appointed by the Chairman of the Association to investigate a complaint.

### 5. Powers and Duties of Investigator

- (1) An investigator may:
- (a) seek and consider information from any source;
  - (b) convene conferences with the member and witnesses, including the complainant, which are to be conducted as the investigator thinks fit; and
  - (c) seek submission of statutory declarations to support evidence.
- (2) An investigator may investigate one or more complaints against a member in any investigation.
- (3) If the member does not respond to the notice of complaint, the investigator may still consider the matter on the basis of available material.
- (4) If, during an investigation, it appears to an investigator that another complaint could have been made against the member, the investigator may investigate and report as if a separate complaint had been made.
- (5) Where an investigator exercises power under subsection (4), the investigator must notify the Secretary of the circumstances giving rise to the complaint, who must notify the member and the Chairman of the Association in accordance with section 2.
- (6) Where an investigator has investigated a complaint, the investigator cannot be appointed as a member of either a Disciplinary Panel or an Appeal Panel established to hear that complaint.

### 6. Investigator to Prepare Report

- (1) Upon completion of an investigation, the investigator must prepare a written report, which must include:
- (a) details of the complaint submitted by the complainant;
  - (b) any additional matter or complaint arising as a result of the investigation;
  - (c) the response, if any, provided by the member;
  - (d) any other relevant material that the investigator has become aware of in the course of the investigation;
  - (e) a recommendation that:
    - (i) the complaint be dismissed on the grounds that the complaint is vexatious, frivolous, misconceived or lacking in substance; or
    - (ii) in the investigator's opinion there are reasonable grounds for the member's conduct to be considered by a Disciplinary Panel; and
  - (f) a statement of reasons for the recommendation.

- (2) The investigator must complete his investigations and provide the report to the Secretary within a reasonable time span.
- (3) The Secretary is to forward the report to the Chairman of the Association.
- (4) The Secretary must by notice:
  - (a) provide a copy of the investigator's report to the member; and
  - (b) invite the member to respond in writing to the investigator's report within a period of at least 14 days.

## **7. Dismissal of Complaint**

- (1) The Chairman of the Association may dismiss a complaint if an investigator recommends that it be dismissed on the grounds that the complaint is vexatious, frivolous, misconceived or lacking in substance.
- (2) The member and complainant must be promptly advised in writing when the Chairman of the Association has dismissed a complaint on the grounds set out in subsection (1).

## **DISCIPLINARY HEARING**

### **8. Complaints and Appeal Panels**

The Chairman of the Association may:

- (a) appoint the members and Chairman of a Panel;
- (b) remove members from a Panel;
- (c) appoint an investigator, or withdraw an investigator's appointment;
- (d) suspend, terminate or re-initiate an investigation; or
- (e) suspend or re-initiate any proceedings.

### **9. Establishment of Disciplinary Panel**

- (1) A Disciplinary Panel is to be established where the Chairman of the Association determines that there are reasonable grounds for the conduct of the member to be considered by a Disciplinary Panel.
- (2) The Chairman of the Association must appoint not less than three persons to be members of the Disciplinary Panel.
- (3) In determining the complaint, the Chairman of a Disciplinary Panel has a deliberative vote and, in the event of an equality of votes, has a second or casting vote. A decision supported by the majority of the votes cast is the decision of a Disciplinary Panel.
- (4) A Disciplinary Panel may meet at such times and places as determined by the Chairman of the Panel.
- (5) If the member does not respond to the notice of complaint, the Disciplinary Panel may consider the matter on the basis of available material.

### **10. Hearing by Disciplinary Panel**

- (1) A Disciplinary Panel must determine whether the member has engaged in improper conduct.
- (2) The determination is to be by way of hearing of the matter.

- (3) The Secretary must:
  - (a) notify the member and the complainant of the date of the hearing, and invite their attendance
  - (b) advise that the member may be represented at the hearing;
  - (c) advise that the member may, at the hearing, question any parties referred to in the investigator's report, within reasonable limits set by the Chairman of the Disciplinary Panel;
  - (d) advise that the member may call witnesses and produce any information relevant to the hearing;
  - (e) advise that the matter may be determined in the absence of the member on the basis of material before the Disciplinary Panel.
- (4) The member must receive the notice of the hearing at least 21 days prior to the hearing.

### **11. Member to Notify Secretary of Certain Matters**

The member must notify the Secretary at least 10 days prior to the hearing whether the member:

- (a) will attend the hearing;
- (b) intends to call witnesses and how many; and
- (c) will be represented at the hearing and by whom.

### **12. Procedures for Conducting Hearing**

- (1) Subject to subsection (2), the Disciplinary Panel may determine its procedures for conducting a hearing.
- (2) A Disciplinary Panel:
  - (a) is not bound by the rules of evidence;
  - (b) is bound by the rules of natural justice;
  - (c) may ask questions or seek clarification from any party;
  - (d) may call and examine witnesses;
  - (e) may request physical evidence be presented if it exists;
  - (f) may inform itself on any matter in any manner it thinks fit; and
  - (g) must conduct its proceedings with as much speed as proper consideration of the matters before it permits.
- (3) If the member agrees, a Disciplinary Panel may conduct a hearing on the basis of documentary evidence, without the physical appearance before a Disciplinary Panel by the parties or their representative or witnesses.
- (4) If the member has been given at least 21 days notice of when and where the hearing is to take place, and the member fails to appear, a Disciplinary Panel may proceed to hear the matter in the member's absence.
- (5) A hearing may be adjourned to a specified date at the discretion of the Chairman of the relevant Disciplinary Panel.

### **13. Decision of Disciplinary Panel**

- (1) The Disciplinary Panel must make a determination based on the material produced at the hearing in relation to each complaint referred to it that:
  - (a) the complaint be dismissed; or

- (b) the member has engaged in improper conduct.
- (2) A Disciplinary Panel must prepare a statement outlining the reasons for its decision.

#### **14. Referral of Matter to Other Tribunal**

Where provision is made by Statute that the matter may be referred to another Tribunal for final determination, the Disciplinary Panel may refer the matter in accordance with the procedures set down by that Statute.

#### **15. Imposition of Sanctions by Disciplinary Panel**

- (1) Where a Disciplinary Panel is satisfied that the member has engaged in improper conduct sufficient to warrant a sanction, a Disciplinary Panel may direct the imposition of one or more of the following sanctions:
  - (a) caution or reprimand the member;
  - (b) direct the member to require the individual concerned undertake specified professional development ;
  - (d) direct that the member to require the individual concerned is to operate professionally for a specified time under the supervision of an appropriate person;
  - (e) impose a fine not exceeding three hundred penalty units;
  - (f) direct the member to report on their practice in the manner and to the person specified by the Disciplinary Panel;
- (2) When considering the imposition of a sanction or sanctions against the member, a Disciplinary Panel may take into account any previous finding against the member and the sanction applied.
- (3) The Disciplinary Panel must notify the Secretary in writing of its finding on each complaint and any sanction it directs.

#### **16. Imposition of Sanction Determined by Other Tribunal**

Where a matter has been referred to another Tribunal in accordance with section 14, and that Tribunal has made a determination of the matter and recommended the imposition of a sanction, the Chairman of the Association must impose the sanction determined by that Tribunal.

#### **17. Notification to Member and Complainant**

- (1) When a Disciplinary Panel has notified the Secretary of a decision, the Secretary must promptly advise the member and the complainant of the Disciplinary Panel's decision and the reasons for it.
- (2) Where the Disciplinary Panel has found that the member has engaged in improper conduct, the Secretary must notify the member of the right of appeal and the time period for lodging an appeal.

### **APPEAL**

#### **18. Appeal by Member**

- (1) Where a Disciplinary Panel makes a finding of improper conduct against a member, the member may appeal the finding, or terms of any sanction, or both. The appeal is to be made within 28 days after notification of a decision of the Disciplinary Panel.

- (2) An appeal may be made:
  - (a) on the grounds that the procedures required by these regulations had not been followed;
  - (b) on the grounds that the conduct complained of does not constitute improper conduct;
  - (c) against the severity of sanction imposed by a Disciplinary Panel.
- (3) The appeal by the member must:
  - (a) be in writing;
  - (b) set out the grounds for appeal; and
  - (c) be lodged with the Secretary.

## 19. Duties of Secretary

On receipt of an appeal, the Secretary must:

- (a) forward the notice of appeal to the Chairman of the Association;
- (b) give written notice to the member that the appeal has been received;
- (c) inform the member of the date on which the Appeal Panel will consider the appeal; and
- (d) inform the member as to the procedure of the Appeal Panel.
- (e) inform the complainant that an appeal has been lodged

## 20. Establishment of Appeal Panel

- (1) Where an appeal is made pursuant to section 18, the Chairman of the Association is to appoint an Appeal Panel to conduct the appeal.
- (2) The Chairman of the Association must appoint not less than three persons to be members of the Appeal Panel.
- (3) In determining the complaint, the Chairman of an Appeal Panel has a deliberative vote and, in the event of an equality of votes, has a second or casting vote. A decision supported by the majority of the votes cast is the decision of an Appeal Panel.
- (4) An Appeal Panel may meet at such times and places as determined by the Chairman of the Panel.
- (5) A person must not serve as a member of an Appeal Panel where that person has served as a member of the Disciplinary Panel dealing with the same complaint.

## 21. Conduct of Appeal

- (1) Subject to subsections (2) (3), and (4), the Appeal Panel may determine its procedures for conducting a hearing.
- (2) The Appeal Panel:
  - (a) is not bound by the rules of evidence;
  - (b) is bound by the rules of natural justice;
  - (c) may ask questions or seek clarification from any party;
  - (d) may call and examine witnesses;
  - (e) may request physical evidence be presented if it exists;
  - (f) may inform itself on any matter in any manner it thinks fit; and
  - (g) must conduct its proceedings with as much speed as proper consideration of the matters before it permits.
- (3) The member, or the member's representative, is entitled to make a submission to the Appeal Panel detailing why the decision or sanction of the Disciplinary Panel should be quashed or varied.

- (4) The Appeal Panel must take into consideration:
  - (a) the investigator's report;
  - (b) the response of the member to the report (if any);
  - (c) any matters raised at the Disciplinary Panel hearing;
  - (d) the statement of reasons of the Disciplinary Panel;
  - (e) the grounds of the member's appeal;
  - (f) any relevant submissions made orally or in writing to the Appeal Panel.
- (5) If the member has been given at least 28 days notice of when and where the proceeding is to be heard, and the member person fails to appear, an Appeal Panel may proceed in the member's absence.

## **22. Member to Notify Secretary of Certain Matters**

The member must notify the Secretary at least 10 days prior to an appeal whether the member:

- (a) will attend the appeal;
- (b) intends to call witnesses and how many; and
- (c) will be represented at the appeal and by whom.

## **23. Adjournment of Appeal Proceedings**

Appeal proceedings may be adjourned to a specified date at the discretion of the Chairman of an Appeal Panel or with the agreement of the parties.

## **24. Determination of Appeal**

- (1) When determining an appeal, an Appeal Panel may:
  - (a) confirm, quash or vary a decision or sanction of the Disciplinary Panel;
  - (b) impose such other sanctions as it thinks fit, being one of the sanctions specified in section 15; or
  - (c) refer a complaint back to the Chairman of the Association to be reassessed.
- (2) The Appeal Panel must prepare a statement of reasons for its decision and notify the Secretary of its decision.

## **25. Notification of Decision of Appeal Panel**

- (1) The Secretary must provide the member with a written statement of the decision of the Appeal Panel, including the statement of reasons and any sanctions imposed.
- (2) The Secretary must notify the complainant in writing of the outcome of the appeal and, if requested by the complainant, provide the complainant with a copy of the Appeal Panel's statement of reasons.

## **MISCELLANEOUS**

### **26. Conflict of Interest**

1. Where an investigator, or a member of a Panel has any material, pecuniary or other interest that would lead to a reasonable apprehension that the investigator or panel member may be biased in the conduct of their role, they:
  - (a) must disclose the facts and circumstances to the Chairman of the Association as soon as possible; and

- (b) must not participate in the consideration or investigation of a complaint unless the Chairman of the Association is satisfied that in all the circumstances it is appropriate that the investigator or member of the Panel should continue in the role.
2. Where the Chairman of Association has any material, pecuniary or other interest that would lead to a reasonable apprehension that he may be biased in the conduct of an aspect of his role, he:
- (a) must disclose the facts and circumstances to the Board of the Association as soon as possible, and
  - (b) must not participate in the conduct of that aspect of his role unless the other members of the Board of the Association are satisfied that in all the circumstances it is appropriate that the Chairman of the Association should continue that aspect of his role.
  - (c) where the other members of the Board of the Association are not satisfied that the Chairman of the Association should continue to act in that aspect of his role, they shall nominate one of their number to act as the Chairman of the Association for that particular aspect.

## 27. Costs

- (1) The member, complainant and/or witnesses are not entitled to recover any sum from the Association in respect of expenses relating to a complaint other than those awarded by the Association under subsection (2).
- (2) A Panel, at the time of making its decision in relation to a complaint, may make a recommendation to the Chairman of the Association regarding the extent to which the expenses of the member, complainant and/or witnesses incurred in the proceedings should be paid by the Association.
- (3) Where the member fails to notify the Secretary in accordance with sections 11, 22 and 29(3), the member will be liable to pay costs associated with the deferral of proceedings.

## 28. Notices

- (1) Any notice to be given under these regulations is deemed to be properly served if sent by certified post to the last address advised to the Association by the member.
- (2) If the member, either before or after the complaint has been disposed of, satisfies the Chairman of the Association:
  - (a) that any notice to them was not in fact delivered; or
  - (b) was delivered later than delivery might have been expected in the ordinary course of certified post; and that in consequence, they were unaware of the proceedings being taken against them, then, at the member's request, the Chairman of the Association must re-initiate proceedings, notwithstanding that the proceedings may have been concluded.

## 29. Representation

- (1) A legal representative may be engaged by the Association for the purpose of advising an investigator, Disciplinary Panel or Appeal Panel on the manner in which their functions may be exercised.

- (2) In any proceeding, the member may appear in person or may be represented by some other person at his or her own cost.
- (3) Where the member intends to be represented by legal counsel in any proceeding, the member must notify the Secretary of that intention at least 10 days prior to the proceedings.

### 30. Legal or Other Proceedings

The member and/or complainant are required to advise the Secretary of any known Court or Tribunal proceedings relevant to the complaint.

### 31. Deferral or Suspension of Proceedings

The Chairman of the Association must defer or suspend an investigation of a complaint, if the Chairman considers that commencing or continuing proceedings may:

- (a) give rise to conduct that may be considered contempt of any Court or Tribunal having power to punish for contempt;
- (b) prejudice the fairness of any proceedings relating to the matters giving rise to the complaint before, or likely to come before a Court or Tribunal having power to determine rights or liabilities in relation to those matters;
- (c) if the complaint is referred to another deliberative body established under Statute; or
- (d) in other circumstances as deemed necessary by the Chairman of the Association.

### 32. Indemnity of Office Bearers and Others

Persons undertaking duties on behalf of the Association, pursuant to these regulations, are indemnified in the discharge of their duties under these regulations by the Association.

### 33. Register of Complaints

- (1) The Secretary must keep a register of all complaints made under these regulations including sanctions imposed and confirmation of compliance with sanctions.
- (2) Access to the register is to be determined in accordance with policy approved by the Association.

### 34. Definitions

In these regulations the following words have these meanings unless otherwise specified:

**“Association”** means the Professional Surveyors’ Occupational Association.

**“complainant”** means the person who initiated a complaint.

**“document”** includes:

- (a) any paper or other material, including maps plans and drawings, on which there is writing;
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; or
- (c) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any article or device.

**“improper conduct”** means conduct that includes:

- (a) a failure to observe one or more requirements of the Code of Ethics;
- (b) a failure to maintain appropriate surveying standards as determined by a Panel;
- (c) conviction of a person for an indictable offence, or another offence that, in the opinion of a Panel, renders the person unfit to be a member of the Association;
- (d) conduct, whether consisting of an act or omission, occurring otherwise than in connection with the practice of surveying, that would, in the opinion of a Panel, render a person unfit to remain a member;
- (e) professional misconduct or unsatisfactory professional conduct by a member which the Association, pursuant to Statute, is required to investigate.

**“member”** means an individual as listed on the role of the Association.

**“Panel”** means a Disciplinary Panel or an Appeal Panel.

**“penalty unit”** means a pecuniary penalty unit as defined by Section 4AA of the Crimes Act 1914 (Commonwealth) as amended from time to time.

**“person”** includes a body corporate.

**“proceeding”** means a proceeding commenced under these regulations and includes both an investigation and a hearing.

**“PSOA”** means the Professional Surveyors’ Occupational Association NSW Inc.

**“Secretary”** means the Secretary of the PSOA. The Secretary is responsible for ensuring the performance of administrative actions required by the Chairman of the PSOA, the investigator, Disciplinary Panels or Appeal Panels.

**“Tribunal”** means any Tribunal, or other judicial body set up by Statute.

In these regulations unless the context otherwise requires:

- (a) expressions used to denote persons include a firm, a body corporate as well as an individual;
- (b) a reference to the singular includes the plural and words in the plural number include the singular;
- (c) words importing a gender include every other gender;
- (d) where any person occupying a particular office or position is referred to, the reference shall include all persons who, at the relevant time, are occupying and performing the duties of the said office or position;
- (e) where a provision of the regulations provides that a person or body may do a particular thing, the act or thing may be done at the discretion of, or delegated by the person or body.