



Policy for Consideration of Complaints about the Conduct of Registered Surveyors

1. Aims and scope of this policy

This policy describes the procedures that the Surveyor-General may follow when considering a complaint about the conduct of a surveyor in the ACT. The procedures are designed to ensure that complaints are considered with due regard to:

- timely and appropriate resolution of complaints
- procedural fairness for surveyors
- the promotion of ethical and practice standards of the surveying profession
- confidentiality
- the Surveyor-General's statutory obligations to provide certain information about the conduct of surveyors to registration authorities in other jurisdictions.

Depending on the nature of a complaint and the alleged conduct of the surveyor, the options available to the Surveyor-General include (but are not limited to) facilitating conciliation between the complainant and the surveyor, informal counselling of the surveyor, encouraging supervision, training or development of the surveyor and applying for occupational discipline orders through the ACT Civil and Administrative Tribunal (ACAT).

Grounds for occupational discipline orders by ACAT in relation to surveyors are set out in the *Surveyors Act 2007* (the *Surveyors Act*).¹ If the Surveyor-General believes, on reasonable grounds, that a ground for occupational discipline under the *Surveyors Act* exists in relation to a surveyor, the Surveyor-General may apply to ACAT for an occupational discipline order in relation to the surveyor.²

Only ACAT has power, on disciplinary grounds, to (for example):

- cancel or suspend a surveyor's registration
- disqualify a surveyor from applying for registration
- require a surveyor to give an undertaking that is enforceable in the ACT Magistrates Court
- require a surveyor to pay an amount representing any financial advantage that the surveyor gained through action justifying occupational discipline.

The full range of occupational discipline orders that ACAT may make in relation to surveyors are set out in the *ACT Civil and Administrative Tribunal Act 2008* (the *ACAT Act*).³

This policy does not relate to a person who performs surveying work while not being registered as a surveyor in the ACT. It is an offence against the *Surveyor's Act*⁴ for a person who is not a registered surveyor in the ACT to carry out a survey of land,⁵ give a surveying certificate, pretend to be qualified to carry out a survey or pretend to be a registered surveyor. The Surveyor-General may refer such matters to the Australian Federal Police.

2. Making a complaint about a surveyor

In the first instance the Surveyor-General encourages complainants to attempt to resolve their concerns with the registered surveyor personally. If this is not possible, then complaints about the conduct of surveyors in the ACT may be made to the Surveyor-General. A complaint should:

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

A complaint form is available at Appendix A [\[**insert hyperlink for people reading this policy online\]](#). Please lodge the completed form and copies of supporting documents:

- online at [\[**insert hyperlink\]](#)
- or send to:

Surveyor-General of the ACT
Environment and Planning Directorate
GPO Box 158, Canberra ACT 2601

Phone: 02 6207 1965
Fax: (documents less than 10 pages) 02 6207 1615
Email: [\[**Insert email address\]](#)
Web: www.planning.act.gov.au

The Surveyor-General can also provide advice to either a complainant or the surveyor in regard to resolving the complaint.

The Surveyor-General does not accept anonymous complaints.

³ Section 66, ACT Civil and Administrative Tribunal Act 2008

⁴ Division 4.3, Surveyors Act 2007

⁵ 'Survey' is defined in the Dictionary of the Surveyors Act 2007

¹ Section 26, Surveyors Act 2007

² Section 27, Surveyors Act 2007

3. Initial consideration of a complaint

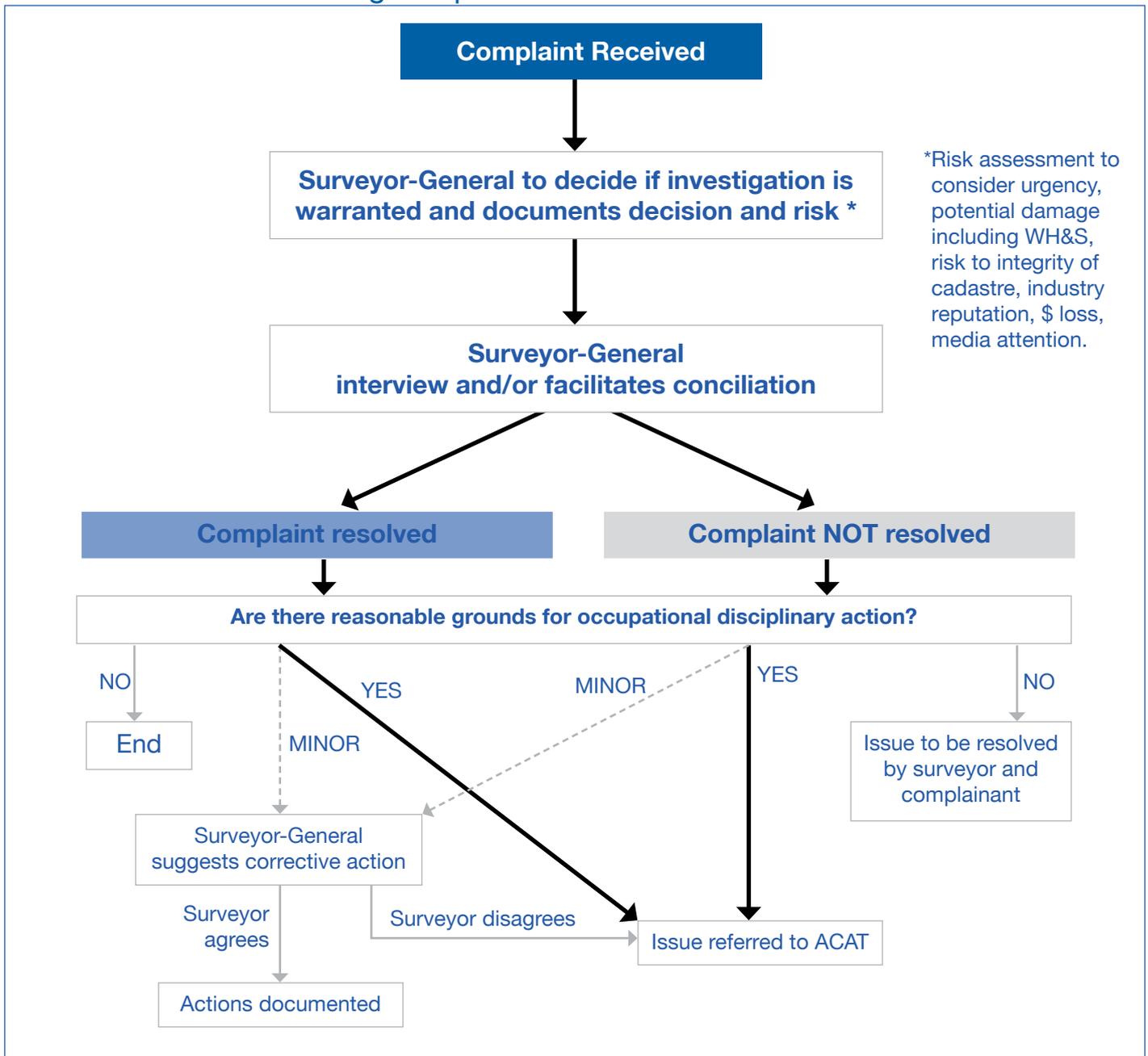
The Surveyor-General aims to acknowledge receipt of a written complaint within seven working days. After initial consideration of the complaint, the Surveyor-General **may** decide:

- to investigate the matter to establish whether or not there are reasonable grounds for occupational discipline under the Act
 - An investigation may proceed whether or not the complainant wishes to pursue the matter.
- if the Surveyor-General believes there are grounds for occupational discipline under the Act, apply to ACAT for an occupational discipline order

- facilitate conciliation between the complainant and the surveyor
- settle the matter by agreement
- if the matter relates to general ethical business practices, to refer the matter to a professional association of which the surveyor is a member or to the ACT Office of Fair Trading.

The Surveyor-General will, where practicable, forward a copy of the complaint to the surveyor, with an invitation to the surveyor to comment on the complaint within 28 days of the date of the invitation.

4. Process for considering complaints



5. Managing minor complaints

Most complaints against surveyors appear to be minor in nature. In such cases, and with the consent of the complainant and the surveyor, the Surveyor-General may facilitate conciliation to reconcile the complaint.

The Surveyor-General may employ a conciliator for this process. Records of conciliation will be maintained and, where appropriate, should be agreed upon by all relevant parties.

If, in the opinion of the Surveyor-General, there are no grounds for occupational discipline under the Act, the Surveyor-General may advise the complainant of this opinion in writing.

Where the Surveyor-General considers there may be grounds for occupational discipline, the Surveyor-General may, among other things:

- invite the surveyor to an interview with the Surveyor-General
- seek to agree with the surveyor on a suitable course of action, which may include:
 - an undertaking by the surveyor to ensure that the relevant action, or similar actions, of the surveyor, are not repeated
 - providing the Surveyor-General with details of procedures or practices instigated by the surveyor to prevent re-occurrence of the relevant action
 - an agreement to undertake additional continual professional development training
 - an understanding that the surveyor may be subject to additional audits for an agreed period
 - document the meeting(s) with both parties agreeing to the record of the meeting(s).

Interviews with the Surveyor-General should be in accordance with the processes outlined in Appendix B. ([Hyperlink](#))

Before agreeing to records of relevant meetings, the surveyor should be aware that the Surveyor-General may consider the circumstances of a complaint against the surveyor in relation to future complaints or incidents and may make records of the incident available to ACAT for their consideration.

6. Grounds for ACAT occupational discipline orders

If the Surveyor-General is not satisfied that a suitable course of action has been, or will be, agreed or that the surveyor has failed to adequately comply with an agreed

course of action, the Surveyor-General will consider applying to ACAT for an occupational discipline order.

When deciding whether or not to apply for an order from ACAT, the range of factors the Surveyor-General may consider includes, but is not limited to:

- the seriousness of the surveyor's conduct
- whether the surveyor has previously been subject to occupational discipline
- the past performance and record of the surveyor
- what steps the surveyor has taken to avoid or rectify the problem
- the risk to the community of the surveyor's actions
- the risk to the integrity of the cadastre
- any other factors relevant to the surveyor's action or offence
- the potential for the surveyor to repeat the relevant action, or a similar action, or reoffend
- whether the Surveyor-General was able to reach a voluntary agreement with the surveyor on a course of action that would remedy the situation and, if so, whether or not the surveyor has complied with the agreement.

The grounds for occupational discipline of a surveyor by ACAT are set out in section 26 of the Surveyor's Act, and include:

- the surveyor gave information in relation to his or her application for registration that was false or misleading in a material particular
- the surveyor has certified to the accuracy of a survey or a measurement survey knowing it to be inaccurate
- the surveyor has, deliberately or through carelessness or incompetence, carried out a survey or a measurement survey that is so inaccurate or defective as to be unreliable
- a survey has been carried out, or a plan prepared, by or under the supervision of the surveyor that contravenes section 58 (Surveys and plans to comply with practice directions) of the Surveyor's Act
- the surveyor has contravened, or is contravening, the Surveyor's Act (or a regulation or statutory instrument made under the Act), whether or not the surveyor has been convicted of an offence for the contravention
- both of the following apply:
 - the surveyor has been convicted or found guilty in Australia of an offence involving fraud, dishonesty or violence that is punishable by imprisonment for 1 year or longer

- the Surveyor-General is satisfied that committing the offence affects the surveyor's suitability to practise surveying
- both of the following apply:
 - the surveyor has been convicted or found guilty outside Australia of an offence involving fraud, dishonesty or violence that, if it had been committed in the ACT, would be punishable by imprisonment for 1 year or longer
 - the Surveyor-General is satisfied that committing the offence affects the surveyor's suitability to practise surveying.

7. Application by Surveyor-General to ACAT for occupational disciplinary order:

If the Surveyor-General believes on reasonable grounds that a ground for occupational discipline under the Surveyor's Act exists, the Surveyor-General may apply to ACAT for an occupational discipline order (section 27 of the Surveyor's Act).

Section 66 of the ACAT Act sets out the full range of occupational discipline orders ACAT may make. Only ACAT (and not the Surveyor-General) has power to:

- cancel or suspend a surveyor's registration on disciplinary grounds
- require a surveyor to give an enforceable undertaking
- require a surveyor to pay an amount representing any financial advantage that the surveyor gained by the relevant action of the surveyor.

8. Notifying other registering authorities

The Surveyor-General must give the authorities responsible for regulating the surveying profession in the Commonwealth, the states and New Zealand information about whether a surveyor's registration has been cancelled or suspended or the surveyor disqualified (Surveyor's Act, section 28(2)).

If an authority responsible for regulating surveyors in the Commonwealth, the states, the Northern Territory or New Zealand notifies the Surveyor-General that they require information in connection with actual or possible disciplinary action against a surveyor, the Surveyor-General is obliged to provide such information under the *Mutual Recognition Act 1992* (Cwlth), section 37.

9. Other considerations

9.1 Links with NSW

The majority of practising surveyors registered within the ACT are also registered in NSW. The Surveyor-General's observer role on the NSW Board of Surveying and Spatial Information (BOSSI) provides an important link between jurisdictions. The Surveyor-General may refer complex issues to the BOSSI Professional Audit and Investigation Committee for advice and to ensure consistency across jurisdictions.

9.2 Learning cycle

Where there is no possibility of violating confidentiality of individual cases, the Surveyor-General may use experience gained from investigating complaints and liaising with BOSSI to educate the profession.

1. APPENDIX A

Surveyor-General Complaint Form

IMPORTANT

- We suggest that you try to resolve the complaint yourself before making a written complaint.
- Please phone the Surveyor-General for information and advice about whether this complaint-handling procedure is appropriate for your complaint (see the back page for contact details).
- The Surveyor-General can only deal with matters under the *Surveyors Act 2007*.
- Financial recompense is not available through this process.
- If you do wish to make a formal complaint, please complete this form. If you have difficulty with this form, please contact the Surveyor-General (see the back page for contact details).
- Do NOT send original documents with your complaint. Please attach photocopies of any relevant material.
- Please sign the Declaration on the last page before you submit this form.
- If you are complaining about more than one surveyor, please submit a separate form for each surveyor. Please lodge all complaints at the same time if possible.
- We will usually send a copy of your complaint to the surveyor during our enquiries. If this is a problem for you, please indicate this on the form and/or contact the Surveyor-General..

1. Your details

Mr Ms Dr Given Name(s): Surname:

Address: Postcode:

Phone (H): Phone (B):

Mobile: Main language spoken at home:

Are you making this complaint on behalf of another person, such as a client or relative? Yes: No:

If yes, please tell us who you are making the complaint for, and why?

Complainant's Name:

Address: Postcode:

Reason:

2. Details of surveyor

Please try to identify the individual/s you are complaining about.

Surveyor's name:

Name of firm:

Address:

Postcode:

Phone (H):

Phone (B):

Phone (Fax):

3. Before you lodge a formal complaint

Have you already tried to resolve this complaint? Yes: No:

If yes how?

Please attach copies of any relevant correspondence.

4. In this matter, the surveyor named in question 2 (page 1)

Worked for me: worked for someone else: other (see below):

Other:

5. By making this complaint to the Surveyor-General I am hoping to:

have the surveyor disciplined improve my communication with the surveyor

receive an apology improve the service provided by the surveyor

receive financial compensation resolve my dispute with the surveyor

other:

Financial recompense is not available through this process. You should seek independent legal advice about other possible actions you can take for compensation.

6. When did the conduct occur?

Date of conduct:

If the conduct you are complaining about occurred more than three years ago, your complaint can only be accepted if the Surveyor-General is satisfied that:

it is just and fair to do so, considering the delay and the reason/s for it, or

the complaint concerns an allegation of professional misconduct and it is in the public interest to deal with the complaint.

As a matter of fairness, the Surveyor-General will only accept a complaint about conduct that occurred more than three years ago after both the complainant and the surveyor have had an opportunity to make submissions about whether the complaint should be accepted.

7. For a complaint which involves a court case:

Does your complaint involve a court case? Yes: No:

Optional:

Case name:

Case number:

Court name:

Courthouse location:

Dates of hearing:

8. Please list the main issues you are complaining about [attach other page(s) if necessary]:

A:

B:

C:

9. On the following page, please give details of the complaint/s listed in question 8

Please tell us about:

the events that led to your complaint

what you believe the surveyor did or did not do

the date or dates of the conduct you are complaining about.

If there is not enough space on this form, please attach another page(s).

Attach **copies** of relevant documents to support your complaint, and a list of these documents. Do not send original documents.

If there are witnesses who can provide direct **independent** evidence that will help us deal with your complaint, please provide their names and full contact details. Say why you think they can help.

10. Declaration

I declare that the information I have given in, and with this complaint is true and correct.

Signed:

Date:

11. Please send the completed form and photocopied attachments to:

ACT Surveyor-General

Phone: 02 6207 1965

Environment and Planning Directorate

GPO Box 158, Canberra ACT 2601

Web: www.planning.act.gov.au

12. Appendix B

Surveyor-General Interview Procedure

The following procedure should be followed when the Surveyor-General interviews a surveyor in relation to a complaint or investigation into possible professional misconduct.

The Surveyor-General is to inform the surveyor:

- Purpose of the interview.
- The role of the observer including to record the interview.
- Right of the surveyor to request a postponement and/or have their own observer
- Right of the surveyor not to answer any questions. This may mean the Surveyor-General has to determine what further steps are required based on reduced information.
- A record of the conversation will be recorded in writing and the surveyor given a copy and asked to confirm or provide their version of the conversation. In the latter case this will also be recorded although not necessarily agreed with.
- The surveyor will be advised in writing of any decision made in relation to this matter.
- Should further disciplinary action be pursued, the surveyor will have the right to make a further submission.

12.1 Confidentiality:

While meetings and discussions will be confidential, the surveyor should be aware that the Surveyor-General may wish to discuss this matter with the NSW Board of Surveying and Spatial Information, in particular that Board's Discipline Committee. The record of this interview may also be provided to the ACT Civil and Administrative Tribunal in relation to this or any other matter involving the surveyor.