



Surveying and Spatial Sciences Institute Limited

Complaint and disciplinary rules

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1. Introduction

- 1.1 These Rules are made by the Board in accordance with clause 8.5 of the Constitution which empowers the Board to:
- ‘..make Rules establishing procedures for receiving complaints, consideration of complaints and processes or the disciplining of Members and may delegate its powers under this clause.’
- 1.2 In accordance with clause 8.3 of the Constitution, the Board, at its absolute discretion, has the power by resolution to censure, suspend, fine or expel any Member who has, in the opinion of the Board:
- 1.2.1 failed to observe a reasonable standard of professional conduct; or
- 1.2.2 wilfully refused or neglected to comply with the provisions of the Constitution or any code of ethics, or rules of the Institute; or
- 1.2.3 been guilty or is guilty of any act, conduct or omission which the Board considers is unbecoming of a Member or prejudicial to the best interests of the Institute or detrimental to its Members; or
- 1.2.4 exhibited conduct in connection with the practice of surveying or spatial science that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent professional.
- 1.3 In accordance with the Certification Rules, each Certificant, has agreed to be bound by the Constitution.

2. Complaints Committee

2.1 Appointment of Complaints Committee Members

The Board may, from time to time, appoint persons to the Complaints Committee.

2.2 Complaints Committee

The Complaints Committee shall consist of:

- 2.2.1 a Chairperson; and
- 2.2.2 a panel of persons who in the opinion of the Board possess:
- (a) a sufficient knowledge of the special interests of any Commission; or
- (b) any other quality or attribute that the Board desires of a Complaints Committee Member.
- 2.2.3 persons appointed to the roles in **rules 2.2.1 and 2.2.2** may be rotated from Investigation to Investigation, as determined by the Board in its absolute discretion.

2.3 Resignation and Removal of Complaints Committee Members

- 2.3.1 A member of the Complaints Committee may resign by providing notice in writing to the Board.

2.3.2 The Board may remove a person appointed to the Complaints Committee at any time in its absolute discretion.

2.4 **Remuneration of Complaints Committee Members**

The Board may approve remuneration or reimbursement of expenses for any Complaints Committee Member.

3. **Complaints**

3.1 **Making a Complaint**

3.1.1 Any person may make a complaint against Member or a Certificant by completing, signing and submitting a Complaint Form to the CEO;

3.1.2 A Complainant may submit with the Complaint Form any documents or other information in support of the Complaint.

3.2 **Receiving a Complaint**

3.2.1 Within 3 Business Days of receiving a Complaint the CEO shall;

- (a) send a Notice of Receipt of Complaint to the Complainant; and
- (b) send a Notice of Receipt of Complaint together with a copy of the Complaint and any information provided in accordance with **rule 3.1.2** to the Chair and to the Respondent.

3.3 **Initial Determination**

3.3.1 Within 20 Business Days of receipt of the Notice of Receipt of Complaint in accordance with **rule 3.2.1(b)** the Chair shall determine whether to:

- (a) reject the Complaint;
- (b) refer the Complaint to informal mediation; or
- (c) refer the Complaint to the Complaints Committee for Investigation.

and shall give notice of the Initial Determination to:

- (d) the Complainant;
- (e) the Respondent; and
- (f) the CEO.

3.3.2 The Chair in performing his function under rule 3.3.1:

- (a) shall consider:
 - (i) the nature and merit of the Complaint;
 - (ii) the Constitution;

- (iii) the Code of Ethics;
 - (iv) the Certification Rules;
 - (v) whether legal proceedings have been threatened or issued with respect to the subject matter of the Complaint;
 - (vi) any attempts made by the Complainant and the Respondent to resolve the Complaint informally and whether the Complaint is best dealt with by informal mediation;
 - (vii) any further information or submissions provided, or a failure to provide information or submission, in accordance with **rule 3.3.2(b)**; and
 - (viii) any other matter that the Chair in his absolute discretion considers relevant.
- (b) may call for further information, advice, expert opinion or submissions from any person on any matter the Chair considers relevant to the Complaint and to the Initial Determination.

3.3.3 If the Initial Determination is to reject the Complaint no further action is required to be taken.

4. Informal Mediation

- 4.1 If the Initial Determination is to refer the Complaint to Informal Mediation the CEO shall arrange and facilitate a mediation within 2 months of the Initial Determination.
- 4.2 The Informal Mediation shall be arranged in:
 - 4.2.1 the State or Territory in which the Complainant ordinary resides; or
 - 4.2.2 the State or Territory in which the conduct the subject of the Complaint occurred.
- 4.3 The Mediator shall be nominated by the Chair.
- 4.4 If the Complainant fails to agree or to attend an Informal Mediation the Complaint shall be deemed to be dismissed.
- 4.5 The Mediator shall conduct the Informal Mediation in such a manner as he determines in his absolute discretion.
- 4.6 The Complainant and the Respondent are not to be represented by a lawyer or a barrister at the Informal Mediation.
- 4.7 The Complainant and the Respondent shall bear their own costs associated with the Informal Mediation.
- 4.8 Subject to **rule 4.7** the SSSI shall pay the costs of the Mediator and other costs associated with holding the Mediation including the mediation venue.

- 4.9 Within 5 Business Days of the Informal Mediation the Mediator shall notify the CEO of the result of the Informal Mediation and whether:
- 4.9.1 the Complaint was resolved with no further action being required;
 - 4.9.2 the Complaint was resolved with further action being required, details of that action and the time within which that further action is to be taken; or
 - 4.9.3 the Complaint was not resolved.

5. Further action agreed at Informal Mediation

- 5.1 If the Complaint was resolved at the Informal Mediation on the basis that further action was required, the person required to undertake that further action shall notify the CEO and provide such evidence as the CEO reasonably requires to confirm that the further action has been completed.
- 5.2 The CEO shall notify the Chair if he does not receive notice in accordance with **rule 5.1** within the time specified in the notice received in accordance with **rule 4.9.2**.

6. Investigation

6.1 Composition of Investigating Committee

- 6.1.1 The Chair shall, within five Business Days:
- (a) of making an Initial Determination to refer the Complaint to the Complaints Committee for Investigation in accordance with **rule 3.3.1(c)**; or
 - (b) of receiving notice under **rule 4.9.3** that the Complaint was not resolved; or
 - (c) of receiving notice under **rule 5.2** that the further action agreed at the Informal Mediation has not occurred,

shall select no less than three and no more than five Complaints Committee Members to undertake an Investigation into the Complaint and provide each with a copy of the Complaint, the Notice of Receipt of Complaint, any information received in accordance with **rule 3.1.2** and the relevant Initial Determination or notice under rules **6.1.1(a)**, **6.1.1(b)** or **6.1.1(c)**.

- 6.1.2 Within two Business Days of a Complaints Committee Member receiving notice that they have been selected in accordance with **rule 6.1.1** confirm with the Chair in writing whether or not they:
- (a) have a conflict in accepting the selection; and
 - (b) accept the appointment.

- 6.1.3 If a Complaints Committee Member gives notice of a conflict or that they do not accept the appointment, the Chair shall within two Business Days of receiving such notice, select another Complaints Committee Member in their place.

6.2 Consideration of Complaint

- 6.2.1 The Investigating Committee shall consider the Complaint and any information provided in accordance with **rule 3.1.2** and:
- (a) may request further information or documents from the Complainant;
 - (b) request a response to the Complaint from the Respondent;
 - (c) may request that the Respondent deliver its file to the Investigating Committee;
 - (d) may call for expert evidence from any person it considers appropriate to assist with the Investigation;
 - (e) may call for legal advice in relation to the Complaint or any issue arising out of the Complaint;
 - (f) conduct the Investigation in any manner that it, in its absolute discretion, considers appropriate, fair and just to the Complainant, the Respondent and the SSSI.
- 6.2.2 The Investigating Committee must act expeditiously in its Investigation.
- 6.2.3 The Investigating Committee must act without bias and treat the Complainant and the Respondent with respect, fairness and in accordance with the rules of natural justice and shall:
- (a) provide any person whose interest will be directly and adversely affected by its decision, a reasonable opportunity to be heard;
 - (b) hear and determine the matter before it in an unbiased manner; and
 - (c) make a decision that a reasonable Investigating Committee could honestly arrive at.
- 6.2.4 Any decision or determination of the Investigating Committee shall be by majority vote.
- 6.2.5 The Investigating Committee is not bound by the rules of evidence or by practices and procedures applicable to Courts of Record and may inform itself as to any matter in any such manner as it thinks fit.
- 6.2.6 The Chair may make any guidelines not inconsistent with these Rules that he thinks appropriate for the practice and procedure of an Investigation. Any such guideline shall be directory in nature and no decision of the Investigating Committee shall be invalidated by reason of a guideline not being followed.

6.3 Standard of Proof

Investigating Committee shall decide on the balance of probabilities whether a Complaint has been proven.

6.4 Findings of the Investigating Committee

6.4.1 Within 90 days of its nomination in accordance with **rule 1** the Investigating Committee shall:

- (a) decide whether the Complaint is proved or not proved and may make recommendations on any sanctions to be imposed; and
- (b) produce a written report of its findings and recommendations which will be delivered to the President Elect.

6.4.2 Within 30 days of receiving the Findings the Board shall resolve:

- (a) whether to adopt the Findings;
- (b) whether to adopt the sanctions recommended in the Findings or to impose other sanctions.

6.4.3 Within 2 Business days of a resolution being passed in accordance with **rule 1** the CEO shall notify the Complainant and the Respondent of the resolution and of the Findings if adopted by the Board.

7. Appeal

7.1 Grounds for Appeal

A person may Appeal a resolution of the Board made under **rule 1** by delivering a Notice of Appeal to the CEO on one or more of the following grounds:-

- 7.1.1 that there was an error of law;
- 7.1.2 that the decision was so unreasonable that no Board acting reasonably could have come to that decision having regard to the evidence before it; and./or
- 7.1.3 that the sanction imposed was manifestly excessive.

7.2 Appeal Complaint Committee Members

7.2.1 The Appeal Complaint Committee shall consist of:-

- (a) The President Elect (Chairperson of the Appeal Complaint Committee), or his nominee; and
- (b) Complaints Committee Members selected by the Chairperson of the Appeal Complaint Committee consisting of not more than six (6) persons.

- 7.2.2 A Complaints Committee Member who was part of the Investigating Committee shall not be eligible for selection as a member of the Appeal Complaint Committee.
- 7.2.3 Within two Business Days of a Complaints Committee Member receiving notice that they have been selected in accordance with **rule 7.2.1(b)** confirm with the Chairperson of the Appeal Complaint Committee in writing whether or not they have a conflict in accepting the selection.
- 7.2.4 If a Complaints Committee Member gives notice of a conflict, the Chairperson of the Appeal Complaint Committee shall within two Business Days of receiving notice of a conflict, select another Complaints Committee Member in their place.

7.3 Consideration of Appeal

- 7.3.1 Subject to the further matters set out in these Rules, the Appeal Complaint Committee may regulate any proceedings brought before it in such manner as the Chairperson of the Appeal Complaint Committee thinks fit.
- 7.3.2 The Appeal Complaint Committee is not bound by the rules of evidence or by practices and procedures applicable to Courts of Record, but may inform itself as to any matter in such manner as it thinks fit.
- 7.3.3 The Appeal Complaint Committee shall:
- (a) provide any person whose interest will be directly and adversely affected by its decision a reasonable opportunity to be heard;
 - (b) hear and determine the matter before it in an unbiased manner; and
 - (c) make a decision that a reasonable body could honestly arrive at.

7.4 Review

- 7.4.1 The Appeal Complaint Committee shall hear all Appeals by way of a review of the evidence presented to and considered by the Investigating Committee and determine whether one or more of the Grounds have been established.
- 7.4.2 Neither the appellant nor Complainant may produce fresh evidence during the appeal process without leave of the Appeal Complaint Committee.
- 7.4.3 If an appellant or Complainant seek leave to produce fresh evidence, the Appeal Complaint Committee shall not grant such leave unless:
- (a) the evidence could not by reasonable diligence have been obtained by the appellant or the Complainant prior to the Findings being delivered to the Board; and

- (b) the evidence is of sufficient probative value that, considered with other evidence which was before the Investigating Committee, the Investigating Committee would have reached a different decision.

7.5 Onus and Standard on Appeal

The appellant shall bear the onus of establishing, on the balance of probabilities, one or more Grounds of Appeal.

7.6 Decision of Appeal Complaint Committee

7.6.1 Any question on appeal before the Appeal Complaint Committee shall be decided according to the opinion of a majority of those constituting the Appeal Complaint Committee.

7.6.2 Where the Appeal Complaint Committee determines that one or more Grounds have been established, the Appeal Board may confirm, reverse or modify the decision of the Board.

7.6.3 The Appeal Complaint Committee is not obliged to give reasons for any decision made by it under these Rules.

8. Publication & Reporting

8.1 If the Board resolves to impose a sanction against the Respondent, details of the Complaint and the sanction shall be published on the SSSI's website.

8.2 The CEO shall, upon written request, provide a copy of the Findings, if adopted by the Board, to any person.

9. Definitions

In these Rules unless the contrary intention appears:

9.1 '**Appeal**' means an appeal lodged in accordance with **rule 7**;

9.2 '**Appeal Complaint Committee**' means the appeal complaint committee referred to in **rule 7.2**;

9.3 '**Board**' means the board of the SSSI;

9.4 '**Business Days**' means any day that banks are generally open for business in Canberra but not a Saturday, Sunday or a public holiday pursuant to the *Holidays Act 1958* (ACT);

9.5 '**CEO**' means the Chief Executive Officer of the SSSI;

9.6 '**Certificant**' means a person certified in accordance with clause 13 of the Constitution;

9.7 '**Certification Rules**' means certification rules established by each Commission in accordance with clause 13 of the Constitution;

9.8 '**Chair**' means the Chair of the Complaint and Disciplinary Committee;

- 9.9 'Code of Ethics' means a code of ethics of the SSSI which have been approved by the Board;
- 9.10 'Complaint' means a complaint made strictly in accordance with **rule 3.1.1**;
- 9.11 'Complaint Form' means the complaint form set out at Schedule 1, **rule 11**;
- 9.12 'Constitution' means the constitution of the SSSI;
- 9.13 'Commission' means a commission of the SSSI;
- 9.14 'Complainant' means a person who has submitted a Complaint in accordance with **rule 3.1**;
- 9.15 'Findings' means the findings and recommendations of the Investigating Committee produced and delivered in accordance with **rule 1**;
- 9.16 'Grounds of Appeal' mean the grounds set out at **rule 7.1**;
- 9.17 'Initial Determination' means a determination made by the Chair in accordance with rule 3.3.1
- 9.18 'Informal Mediation' means a mediation held in accordance with **rule 4**;
- 9.19 'Investigating Committee' means the investigating committee comprising the Chair and the Investigating Complaints Committee Members;
- 9.20 'Investigating Complaints Committee Members' means the Complaints Committee Members selected in accordance with **rule 6.1**;
- 9.21 'Investigation' means an investigation conducted in accordance with **rule 2.3**;
- 9.22 'Mediator' means the mediator nominated by the Chair in accordance with **rule 4.3**;
- 9.23 'Member' means a member of the SSSI;
- 9.24 'Notice of Appeal' means a notice of appeal delivered in accordance with rule 7.1 in the form of the notice set out at Schedule 4, **rule 14**;
- 9.25 'Notice of Receipt of Complaint' means the notice set out at Schedule 2, **rule 12**
- 9.26 'Objects' means the objects of the SSSI set out at clause 3 of the Constitution;
- 9.27 'President Elect' means the President of the SSSI or his nominee;
- 9.28 'Respondent' means the Member or Certificant who is the subject of a complaint under **rule 3.1.1**;
- 9.29 'Rules' means these Rules; and
- 9.30 'SSSI' means the Surveying and Spatial Sciences Institute Limited ACN 135 572 815.

10. Interpretation

In these Rules unless the contrary intention appears:

- 10.1 a gender includes all genders;
- 10.2 the singular includes the plural and vice versa;
- 10.3 headings do not affect the interpretation of these Rules;
- 10.4 a reference to legislation includes any legislation which amends or replaces that legislation and any subordinate legislation;
- 10.5 a reference to a person includes companies and corporations and vice versa;
- 10.6 a reference to dollars means Australian dollars;
- 10.7 a reference to a document includes any variation or replacement of it;
- 10.8 where a word, term or phrase is defined, other grammatical forms of the word, term or phrase have a corresponding meaning;
- 10.9 a reference to a rule, schedule or annexure is to a rule of, or schedule to, or annexure to these Rules;
- 10.10 a reference to a request or notice means a request or notice in writing;
- 10.11 a reference to conduct includes any act, omission, representation, statement or undertaking whether or not in writing;
- 10.12 a reference to including, or similar words, does not limit what else might be included;
- 10.13 a reference to a person that comprises two or more persons means those persons jointly and severally;
- 10.14 a reference to a month means a calendar month; and
- 10.15 a reference to time means Australian Eastern Standard time.

11. Schedule 1 – Notice of Complaint

12. Schedule 2 – Notice of Receipt of Complaint

13. Schedule 3 – Notice of Referral of Complaint

14. Schedule 4 - Notice of Appeal

