

TASMANIA

SURVEYORS AMENDMENT BILL 2014

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SURVEYORS AMENDMENT BILL 2014

*(Brought in by the Minister for Primary Industries and Water,
the Honourable Jeremy Page Rockliff)*

A BILL FOR

An Act to amend the *Surveyors Act 2002*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Surveyors Amendment Act 2014*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Principal Act

In this Act, the *Surveyors Act 2002** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

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- (a) by inserting “an image or” after “is” in paragraph (a) of the definition of *document*;
- (b) by inserting “images,” after “which” in paragraph (b) of the definition of *document*;
- (c) by inserting the following definition after the definition of *mutual recognition legislation*:

prescribed institute means the institute prescribed as having responsibility for the training, examination and accreditation of persons seeking to establish their competency to practise as a registered land surveyor under this Act;

- (d) by inserting the following definition after the definition of *survey mark*:

survey of land includes a survey of land undertaken to re-mark boundaries of land originally surveyed for a purpose authorised by any Act;

- (e) by inserting the following definition after the definition of *surveyor*:

Surveyor-General means the person appointed under section 3A of the *Survey Coordination Act 1944*;

5. Section 4 amended (Functions and powers of Surveyor-General)

Section 4 of the Principal Act is amended as follows:

- (a) by inserting “and powers” after “following functions”;
- (b) by inserting the following subparagraph after subparagraph (i) in paragraph (b):
 - (ia) the requirements for eligibility for registration as a land surveyor; and
- (c) by omitting from paragraph (c) “Part 4.” and substituting “Part 4.”;
- (d) by inserting the following paragraphs after paragraph (c):
 - (d) to issue directions as to the types of surveys of land that may be exempt from the requirements of this Act;
 - (e) to issue directions as to the minimum level of land survey-related activity or professional development required for registration as a land surveyor.

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6. Section 5 amended (Delegation by Surveyor-General)

Section 5 of the Principal Act is amended by inserting “functions and” after “s”.

7. Section 5A inserted

After section 5 of the Principal Act, the following section is inserted in Part 2:

5A. Deputy Surveyor-General

- (1) The Minister may appoint a State Service officer or State Service employee to be Deputy Surveyor-General and that person may hold that office in conjunction with State Service employment.
- (2) The Deputy Surveyor-General so appointed may, in the absence of the Surveyor-General, perform any of the functions or duties or exercise any of the powers of the Surveyor-General under this Act.

8. Sections 7 and 8 substituted

Sections 7 and 8 of the Principal Act are repealed and the following sections are substituted:

7. Application and eligibility for registration as a surveyor

- (1) A person, on payment of the prescribed fee, may apply to the Surveyor-General to be registered as a surveyor.
- (2) A person is eligible to be registered as a land surveyor if –
 - (a) the person –
 - (i) was a surveyor registered under the repealed Act immediately before the commencement day; or
 - (ii) has been accredited by the prescribed institute as having the educational qualifications and practical training required for the practice of land surveying as prescribed in the regulations; or
 - (iii) is entitled to be registered as a land surveyor under mutual recognition legislation; and
 - (b) the person –
 - (i) has undertaken such land survey-related activities or professional development as may be

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prescribed in the directions issued under Part 4; and

(ii) is capable of carrying out the practice of land surveying in Tasmania in accordance with all statutory requirements.

(3) A person is eligible to be registered as a surveyor, other than a land surveyor, if the person has competency accreditation which is recognised by a relevant institution as satisfying national competency standards for professional surveyors practising other than in land surveying.

8. Registration by Surveyor-General

(1) The Surveyor-General may –

(a) require an applicant for registration to produce any documents or other information that the Surveyor-General considers necessary to decide the application; and

(b) make any inquiries that the Surveyor-General reasonably needs to decide the application.

(2) The Surveyor-General must register a person who applies for registration if the person is eligible for registration and the

requirements of this Act relating to the application have been met.

- (3) The Surveyor-General must refuse to register a person who applies for registration if the person is not eligible for registration or the requirements of this Act relating to the application have not been met.

8A. Re-accreditation by prescribed institute

- (1) If an applicant satisfies the requirements of section 7(2)(a), but is unable to satisfy the Surveyor-General in accordance with section 7(2)(b), the applicant may apply to the prescribed institute for re-accreditation.
- (2) If the prescribed institute is satisfied that the applicant has sufficient knowledge and skills equivalent to that provided by the professional training referred to in the regulations, the institute may accredit the applicant.
- (3) Accreditation under this section is sufficient to satisfy the Surveyor-General for the purposes of section 7(2)(b).

8B. Register of surveyors

- (1) The Surveyor-General must keep a register of surveyors.
- (2) The register is to provide for –

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- (a) the mandatory registration of a surveyor intending to practise as a land surveyor; and
 - (b) the voluntary registration of a surveyor intending to practise other than as a land surveyor.
- (3) The register may be kept in any form, including electronic form, that the Surveyor-General approves.
- (4) The Surveyor-General must make the register available to the public and may give to any person a copy of part of, or an entry from, the register certified by the Surveyor-General to be a true copy.

8C. Disbursement of fees for registration as land surveyor

- (1) Any funds received by the Surveyor-General in a financial year in respect of an application for registration as a land surveyor, other than any fees for late applications, are to be provided to the prescribed institute by the next 31 July.
- (2) The funds paid to the prescribed institute are to be applied in the payment of any expenses necessarily incurred by the institute in undertaking its responsibilities under this Act.
- (3) By not later than 31 September each year, the prescribed institute is to provide the Surveyor-General with an account of

the expenditure of the funds provided to it in the preceding financial year.

9. Section 9 amended (Particulars to be entered in register)

Section 9 of the Principal Act is amended as follows:

(a) by inserting the following paragraph after paragraph (b) in subsection (1):

(ba) his or her email address;

(b) by omitting paragraph (f) from subsection (1) and substituting the following paragraph:

(f) any specialist competency that the surveyor relied on for registration.

(c) by omitting subsections (2), (3), (4) and (5) and substituting the following subsections:

(2) The Surveyor-General must –

(a) on the application of a registered surveyor and subject to authentication of any documents provided, enter in the register the particulars of the surveyor's membership of any relevant institution; and

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- (b) delete those details, on the application of that surveyor.
- (3) The Surveyor-General must –
 - (a) make a note in the register of the date and particulars of any suspension or cancellation of registration; and
 - (b) remove that note at the end of the period of 3 years commencing on the date it was made.
- (4) A registered surveyor must notify the Surveyor-General of a change in any of the particulars referred to in subsection (1) within one month of the change occurring.

10. Section 10 amended (Renewal of registration)

Section 10(1) of the Principal Act is amended as follows:

- (a) by omitting “the first day of January” and substituting “31 December”;
- (b) by inserting “for the following year” after “as a registered surveyor”.

11. Section 10A inserted

After section 10 of the Principal Act, the following section is inserted in Part 3:

10A. Refusal of renewal of registration

- (1) The Surveyor-General may refuse to renew a surveyor's registration if the surveyor fails –
 - (a) to correct a survey within 3 months of a request being made in accordance with section 24(1); or
 - (b) to pay all the costs of a correction made in accordance with section 24(2) or notification made in accordance with section 24(4); or
 - (c) to notify all relevant parties in accordance with section 24(3); or
 - (d) to pay all the costs required to be paid under section 34(1)(h); or
 - (e) to be re-accredited following advice from the Surveyor-General in accordance with section 25(5).
- (2) On the correction of a failure referred to in subsection (1), the surveyor may apply for a renewal of registration under section 10.

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12. Section 11 amended (False or misleading statements)

Section 11 of the Principal Act is amended as follows:

- (a) by inserting the following penalty after paragraph (b) in subsection (1):

Penalty: Fine not exceeding 40 penalty units.

- (b) by inserting the following penalty after subsection (2):

Penalty: Fine not exceeding 40 penalty units.

13. Section 12 amended (Cancellation or suspension of registration)

Section 12 of the Principal Act is amended as follows:

- (a) by omitting paragraph (c) and substituting the following paragraph:

(c) who has failed to apply for renewal of registration before the expiration of the period of 3 months commencing on the due date for renewal; or

- (b) by inserting the following paragraph after paragraph (d):

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- (da) whose registration as a land surveyor has been suspended or cancelled as a consequence of disciplinary proceedings in a jurisdiction in which mutual recognition legislation applies; or
- (c) by inserting in paragraph (e) “under this Act” after “proceedings”.

14. Section 15 amended (Directions for practice of surveying, professional development, &c.)

Section 15 of the Principal Act is amended as follows:

- (a) by inserting the following subsections after subsection (1):
 - (1A) The Surveyor-General may issue directions as to the types of surveys of land that may be exempt from the requirements of this Act.
 - (1B) The Surveyor-General may issue directions as to the minimum level of land survey-related activity or professional development required for registration of land surveyors.
- (b) by inserting in subsection (4) “under subsection (1) or (1A)” after “a direction”;

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- (c) by inserting in subsection (4) “invite submissions and” after “must”;
- (d) by inserting the following subsection after subsection (4):
 - (4A) Before issuing a direction under subsection (1B), the Surveyor-General must invite submissions and consult on the proposed direction and seek agreement with –
 - (a) all institutions that, in Tasmania, represent land surveyors; and
 - (b) other entities that appear to the Surveyor-General to have a relevant interest in the proposed direction.
- (e) by omitting from subsection (5) “or standards” and substituting “, standards or requirements”;
- (f) by omitting from subsection (6)(a) “or standards” and substituting “, standards or requirements”;
- (g) by omitting from subsection (7) “or standards” and substituting “, standards or requirements”;
- (h) by inserting the following subsection after subsection (8):

- (9) Notwithstanding subsections (4), (4A), (5), (6), (7) and (8), the Surveyor-General may make amendments of a minor or clerical nature, to directions issued under this section, following consultation with only those entities that the Surveyor-General deems appropriate.

15. Section 19 amended (Appellations to be used)

Section 19 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “section 8(1)” and substituting “section 7(2)”;
- (b) by omitting from subsection (2) “accredited with specialist professional survey competency as provided in section 8(2)” and substituting “has competency accreditation which is recognised as provided in section 7(3)”;
- (c) by inserting in subsection (3) “and the use of the appellation must include reference to the specialised professional survey competencies for which the surveyor is registered” after “Registered Surveyor”.

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16. Section 20 amended (Saving for non-registered surveyors)

Section 20 of the Principal Act is amended by omitting “a registered” first occurring and substituting “registered as a”.

17. Section 23 amended (Survey investigation)

Section 23 of the Principal Act is amended as follows:

(a) by inserting the following subsection after subsection (2):

(2A) The Surveyor-General may initiate an investigation, or instruct an appropriately qualified registered surveyor, as an inspecting surveyor, to conduct an investigation, based on any information that the Surveyor-General receives through any means.

(b) by inserting in subsection (3) “, and those responsible for the surveys under investigation,” after “disagreement”.

18. Section 23A inserted

After section 23 of the Principal Act, the following section is inserted in Division 4:

23A. Surveyor-General may require information

- (1) The Surveyor-General may require a person who is in a position to provide information relevant to an investigation under section 23 to answer questions or provide any document or other information relevant to that investigation.
- (2) A person must not fail to answer questions or provide any information or record when required to do so.

Penalty: Fine not exceeding 40 penalty units.

- (3) A person must not, in answering a question or providing any information or record under this section –
 - (a) make a statement knowing it to be false or misleading; or
 - (b) omit any matter from a statement knowing that without that matter the statement is false or misleading.

Penalty: Fine not exceeding 40 penalty units.

19. Section 24 amended (Correction of survey errors)

Section 24 of the Principal Act is amended by inserting after subsection (2) the following subsections:

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- (3) Where the correction of an error in a survey of land requires a correction of the boundaries of a property registered under the *Land Titles Act 1980*, the registered land surveyor must notify all parties with an interest in the affected land of the correction of the error and the steps required to correct the affected land title, within 3 months of the correction of the error being made.
- (4) If a registered land surveyor fails to notify all parties in accordance with subsection (3), the notification may be made by an inspecting surveyor instructed by the Surveyor-General, and the surveyor responsible is liable to pay the cost of that notification.

20. Section 24A inserted

After section 24 of the Principal Act, the following section is inserted in Division 4:

24A. Notification of errors and anomalies that cannot be readily corrected

- (1) Where a survey investigation reveals an error or anomaly in a land boundary but that error or anomaly cannot be readily corrected, the Surveyor-General is to publish details of the error or anomaly in such a way as is reasonably accessible to any registered land surveyor.

- (2) A registered land surveyor is to take into account any error or anomaly of which he or she has been notified under subsection (1) in any future dealings with the relevant boundary.

21. Section 25 amended (Survey performance)

Section 25 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(b) “performance indicators compiled from the cumulative results of audits and investigations as provided in this Part and”;
- (b) by omitting from subsection (2) “, investigations and the derived performance indicators” and substituting “and investigations”;
- (c) by omitting subsection (3) and substituting the following subsections:
- (3) The Surveyor-General may from time to time provide each registered surveyor with advice as to the current status of his or her records of survey examinations, audit and investigations.
- (4) Where, on the application in a particular year for the renewal of a land surveyor’s registration, the Surveyor-General finds that the

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land surveyor's last 3 audits do not comply with the relevant statutory requirements, the land surveyor's registration may nevertheless be renewed for the following year.

(5) Where a land surveyor's registration is renewed for a year in accordance with subsection (4), the Surveyor-General is to advise the land surveyor –

(a) of the details of the non-compliances with the relevant statutory requirements; and

(b) that the renewal of the land surveyor's registration for the year following that year is dependent on the land surveyor's re-accreditation by the prescribed institute.

22. Section 26 amended (Certification and adequacy of surveys)

Section 26(4) of the Principal Act is amended by inserting "or directions issued under section 15" after "regulations".

23. Section 27 amended (Power of entry on land)

Section 27(1) of the Principal Act is amended by inserting after paragraph (d) the following paragraph:

- (da) break up the surface of any land, whether paved or not, to search for survey marks or physical objects; and

24. Section 31A inserted

After section 31 of the Principal Act, the following section is inserted in Part 5:

31A. Temporary prohibition from practice

- (1) The Director may prohibit a registered surveyor from carrying on business as a registered surveyor if satisfied –
 - (a) that the registered surveyor has failed to comply with an order of the Director under section 34; or
 - (b) that the prohibition is in the public interest.
- (2) A prohibition under this section is in force until the conclusion of an investigation under section 30 or a hearing or investigation under section 33 or until the Director takes action under section 34.

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25. Section 32 substituted

Section 32 of the Principal Act is repealed and the following section is substituted:

32. Grounds for disciplinary action

There are grounds for disciplinary action against a registered surveyor if the registered surveyor has –

- (a) acted contrary to the *Australian Consumer Law (Tasmania) Act 2010*; or
- (b) acted unlawfully, improperly, negligently or unfairly in the course of carrying on, or being employed or otherwise engaged in, the business of a registered surveyor; or
- (c) falsely certified in respect of a survey or plan; or
- (d) acted contrary to a direction issued under section 15; or
- (e) contravened a provision of this Act; or
- (f) contravened a condition of his or her registration imposed by the Director; or
- (g) gained registration as a result of a false or misleading statement; or

- (h) been found guilty of an offence involving fraud or dishonesty that is punishable on conviction by imprisonment for a term of 3 months or more.

26. Section 34 amended (Disciplinary action)

Section 34 of the Principal Act is amended as follows:

- (a) by omitting paragraph (d) from subsection (1) and substituting the following paragraphs:
 - (d) require the registered surveyor to attend a specified educational course or provide evidence of self-education;
 - (e) require the registered surveyor to submit surveys for inspection by the Surveyor-General, at the surveyor's expense, prior to lodgement with the relevant authority;
 - (f) require the registered surveyor, at his or her own expense, to have surveys co-certified by another registered surveyor prior to lodgement;
 - (g) in the case of a land surveyor, require the surveyor to be re-

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accredited by the prescribed institute;

(h) require the registered surveyor to pay the reasonable costs of the hearing or any investigation conducted for the purposes of the hearing, or both.

(b) by omitting from subsection (2) “a prohibition” and substituting “any disciplinary action under subsection (1)”;

(c) by omitting from subsection (5) “subsection (1)(d)” and substituting “subsection (1)(h)”.

27. Section 40 amended (Survey examination)

Section 40 of the Principal Act is amended by omitting subsection (2).

28. Section 41 amended (Destruction of, damage to, &c., survey marks)

Section 41 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “the regulations” and substituting “directions issued under section 15”;

(b) by omitting from subsection (3) “the regulations” and substituting “directions issued under section 15”.

29. Section 43 amended (Protection from liability)

Section 43 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “Deputy Surveyor-General” after “Surveyor-General,”;
- (b) by inserting in subsection (2) “Deputy Surveyor-General” after “Surveyor-General,”.

30. Section 46 amended (Regulations)

Section 46 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(c) “a relevant institution” and substituting “the prescribed institute”;
- (b) by omitting from subsection (2)(f) “surveyor.” and substituting “surveyor; and”;
- (c) by inserting the following paragraph after paragraph (f) in subsection (2):
 - (g) fees and charges payable in respect of any matter under the Act.
- (d) by omitting from subsection (3)(a) “any relevant institution” and substituting “the prescribed institute”;

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- (e) by omitting from subsection (3)(b) “relevant institution” and substituting “prescribed institute”;
- (f) by omitting from subsection (4) “an institution” and substituting “the prescribed institute”;
- (g) by omitting from subsection (4)(a) “all”.

31. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which this Act commences.