

TASMANIA

SURVEYORS BILL (No. 2) 2002

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART 2 – ADMINISTRATION

4. Functions of Surveyor-General
5. Delegation by Surveyor-General
6. Functions of Director

PART 3 – REGISTRATION OF SURVEYORS

7. Register of surveyors
8. Eligibility for registration as a surveyor
9. Particulars to be entered in register
10. Renewal of registration
11. False or misleading statements
12. Cancellation or suspension of registration
13. Certificate of registration
14. Effect of mutual recognition legislation

PART 4 – PRACTICE OF SURVEYORS

Division 1 – Directions by Surveyor-General

15. Directions for practice of surveying

Division 2 – Practice as registered surveyor

16. Only registered land surveyors to survey land or practise as land surveyors
17. Only registered surveyors to practise as registered surveyors
18. Supervision by registered surveyor
19. Appellations to be used
20. Saving for non-registered surveyors

Division 3 – Duties of registered surveyors

21. Surveys, &c., to comply with directions, &c.

Division 4 – Maintenance of standards and corrections of errors

22. Survey audit
23. Survey investigation
24. Correction of survey errors
25. Survey performance indicators
26. Certification and adequacy of surveys

Division 5 – Power to enter on land

27. Power of entry on land
28. Damage by registered surveyor

PART 5 – COMPLAINTS AND INVESTIGATIONS

29. Power of Director to receive complaints
30. Investigations
31. Consultation regarding investigations
32. Grounds for disciplinary action
33. Application to determine grounds for disciplinary action
34. Disciplinary action

35. Ancillary powers of Director
36. Contravention of order
37. Appeal against determination or order to magistrate
38. Appeals to Magistrates Court (Administrative Appeals Division)

PART 6 – MISCELLANEOUS AND SUPPLEMENTAL

39. Review of decisions by Minister
40. Survey examination
41. Destruction of, damage to, &c., survey marks
42. Misleading survey marks
43. Protection from liability
44. Prosecution for offence
45. Evidentiary value of certificates
46. Regulations
47. Savings and transitional
48. Administration of Act
49. *Land Surveyors Act 1909* repealed

SCHEDULE 1 – SAVINGS AND TRANSITIONAL PROVISIONS

SURVEYORS BILL (No. 2) 2002

(Brought in by the Minister for Primary Industries, Water and Environment, the Honourable Bryan Alexander Green)

A BILL FOR

An Act to repeal the *Land Surveyors Act 1909* and provide for the registration of surveyors with diverse specialist competencies, to regulate the practice of registered surveyors engaged in surveys authorised or required under any enactment and to provide for related matters

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:

PART 1 – PRELIMINARY

Short title

1. This Act may be cited as the *Surveyors Act 2002*.

Commencement

2. This Act commences on a day to be proclaimed.

Interpretation

3. (1) In this Act, unless the contrary intention appears –

“authorised officer” means the Director or a person declared to be, or appointed as, an authorized officer under the *Fair Trading Act 1990*;

“Board” means the Surveyors’ Board as constituted under the repealed Act immediately before the commencement day;

“commencement day” means the day fixed under section 2;

“court” means the Magistrates Court;

“Director” means the Director of Consumer Affairs;

“document” includes –

- (a) a book, plan, paper, parchment or other material on which there is writing or printing, or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) a disk, tape, paper or other device from which sounds or messages are capable of being reproduced;

“institution” means an institution or association representative of persons engaged in one or more survey disciplines which requires that its members comply with established institutional standards of ethical conduct and professional best practice;

“land” includes messuages, tenements and hereditaments, corporeal and incorporeal, of every kind and description (whatever may be the estate or interest in them);

“mutual recognition legislation” means the *Mutual Recognition Act 1992* of the Commonwealth, the *Mutual Recognition (Tasmania) Act 1993* of Tasmania or the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth;

“published” means published in such manner, whether by advertisement or otherwise, as the Surveyor-General thinks expedient;

“register” means the register of surveyors kept under this Act;

“registered land surveyor” means a person authorised by registration under this Act to undertake a survey of land;

“registered surveyor” means a person who is registered as a surveyor under this Act but, for the purpose of Part 4, does not include a person whose registration is suspended;

“registering authority” means a person or body having authority to require a survey to be carried out for a statutory purpose;

“regulations” means regulations made and in force under this Act;

“repealed Act” means the *Land Surveyors Act 1909*;

“survey” means the definition, redefinition, measurement, interpretation, marking or documentation of the geographic position, dimension, extent or relativity of points, lines and things on, above or below the surface of the earth, for any purpose authorised by any Act;

“survey mark” means any mark established by or on behalf of a surveyor which is used to identify and define any point or line of any survey and is –

- (a) cut, etched, stamped or otherwise attached to, or placed in or on, any timber, stone, masonry or other material; or
- (b) placed in or on the ground;

“surveyor” means a person who has acquired the minimum surveying qualifications, skills or experience necessary for membership of a relevant and nationally recognised institution.

(2) For the purposes of the definition of “land” in subsection (1), a person who has a licence to enter or remain on land is taken to have an interest in the land.

PART 2 - ADMINISTRATION

Functions of Surveyor-General

4. The Surveyor-General has the following functions for the purposes of this Act:

- (a) to maintain the register of surveyors and their specialist competencies as provided in Part 3;
- (b) to consult with any person or body that represents surveyors in Tasmania, and to liaise and enter into arrangements with any person or body that, in Australia or elsewhere, is concerned with surveyors and the practice of surveying, for the purpose of improving or reviewing –
 - (i) the technical specifications and standards applicable to the practice of surveying; and
 - (ii) the Surveyor-General's functions and powers under this Act;
- (c) to issue directions as to the minimum technical specifications and standards to be observed in the conduct of any surveys required by law and, for any such survey carried out by a registered surveyor, to monitor compliance with those directions as provided in Part 4.

Delegation by Surveyor-General

5. The Surveyor-General may delegate all or any of the Surveyor-General's powers under this Act to a State Service officer who is a registered land surveyor.

s. 6

No.

Surveyors (No. 2)

2002

Functions of Director

6. The Director has the functions of receiving complaints, conducting investigations and taking disciplinary action as provided by Part 5.

PART 3 – REGISTRATION OF SURVEYORS**Register of surveyors**

7. (1) The Surveyor-General must keep a register of surveyors.

(2) The register is to provide for –

- (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.

Eligibility for registration as a surveyor

8. (1) A person is eligible to be registered as a land surveyor if the person –

- (a) was a surveyor registered under the repealed Act immediately before the commencement day; or
- (b) has the educational qualifications and practical training required for the practice of land surveying as prescribed in the regulations; or

- (c) is entitled to be registered as a land surveyor under mutual recognition legislation.

(2) A person is eligible to be registered as a surveyor, other than a land surveyor, if the person –

- (a) has competency accreditation which is recognised by a relevant institution as satisfying national competency standards for professional surveyors practising other than in land surveying; or

- (b) is a member of a relevant institution.

(3) The Surveyor-General may –

- (a) require an applicant for registration to produce any additional 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.

(4) 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.

(5) 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.

Particulars to be entered in register

9. (1) The Surveyor-General must enter in the register the following particulars in respect of a registered surveyor, whether a land surveyor or not:

- (a) his or her name;
- (b) the address of each place in Tasmania where the surveyor carries on the practice of surveying or, if the surveyor has no such address, his or her home address;
- (c) a registration number allotted to the surveyor by the Surveyor-General;
- (d) the date of his or her initial registration;
- (e) the date of each successive renewal of such registration;
- (f) the date and particulars of any suspension or cancellation of registration.

(2) On the application of a registered surveyor, the Surveyor-General must, subject to authentication of any documents provided, enter in the register the particulars of any relevant specialist competency accreditation, membership of an institution and performance indicators.

(3) For the purposes of subsection (2), performance indicators are taken to be indicators compiled by the Surveyor-General from the cumulative results of survey audits and examinations as provided in Part 4.

(4) The Surveyor-General must, on the application of a registered surveyor, delete from the register any performance indicators or details of membership of an institution or competency relating to the registered surveyor.

(5) The Surveyor-General must make a note in the register of –

- (a) any disciplinary action taken against a person under this Act; and

- (b) any assurance accepted by the Director under the *Fair Trading Act 1990* in respect of the registered surveyor.

Renewal of registration

10. (1) Before the first day of January in each year, a registered surveyor may make application to the Surveyor-General for renewal of registration to practise as a registered surveyor.

(2) An application for renewal must be accompanied by whatever documents may be necessary to confirm the applicant's continuing eligibility for registration under this Act.

(3) The provisions of this Act relating to an application for registration also apply to an application for renewal of registration.

False or misleading statements

11. (1) A person must not, in or in respect of an application for registration –

- (a) state anything that is false or misleading in a material particular; or
- (b) omit from a statement anything without which the statement is misleading in a material particular.

(2) A person must not give to the Surveyor-General, in respect of an application for registration, a document containing information that is false or misleading in a material particular.

Cancellation or suspension of registration

12. The Surveyor-General must remove from the register the name of any surveyor –

- (a) who has died; or
- (b) who has requested in writing that the registration be cancelled; or
- (c) who has failed by the due date to apply for renewal of registration; or
- (d) who in, or in respect of, an application for registration has provided any false or misleading statement; or
- (e) whose registration has been suspended or cancelled as a consequence of disciplinary proceedings.

Certificate of registration

13. The Surveyor-General must, on registration and on each application for renewal, issue to every registered surveyor applying for it a certificate confirming the details of that surveyor's current registration status.

Effect of mutual recognition legislation

14. Nothing in this Part derogates from the effect of mutual recognition legislation and an appeal from a decision of the Surveyor-General under this Part may be brought as provided by legislation.

PART 4 – PRACTICE OF SURVEYORS***Division 1 – Directions by Surveyor-General*****Directions for practice of surveying**

15. (1) The Surveyor-General may issue directions as to the technical specifications and standards to be observed in the conduct of any survey for any statutory purpose, including, for example –

- (a) the preparation of plans of survey and supporting documents; and
- (b) the field procedures and practices to be observed in the conduct of surveys; and
- (c) the supervision of persons assisting registered surveyors in the conduct of surveys; and
- (d) the nature and position of survey marks; and
- (e) the achievement of accuracy in surveying; and
- (f) the form of certification to be provided by a registered surveyor on completion of a survey.

(2) A direction may provide that –

- (a) the Surveyor-General may exempt a registered surveyor from a requirement specified in the direction; and
- (b) the exemption may be subject to conditions decided by the Surveyor-General.

(3) An exemption that is subject to a condition does not have effect if the condition is not complied with.

(4) Before issuing a direction, the Surveyor-General must consult on the proposed direction and seek agreement with –

- (a) the Head of Agency of the department responsible to the Minister for the administration of any enactment under which the survey is required; and
- (b) all institutions that, in Tasmania, represent surveyors; and
- (c) other entities that appear to the Surveyor-General to have a relevant interest in the proposed direction.

(5) Where agreement cannot be reached between the Surveyor-General and a relevant institution or registering authority as to the nature of any proposed new or amended specifications or standards, the Surveyor-General –

- (a) must refer the matter to the Minister for determination; and
- (b) must notify the parties to the disagreement of his or her intention to do so.

(6) For the purposes of subsection (5), the Surveyor-General must provide a report and recommendation in writing to the Minister including –

- (a) details of the new or amended specifications or standards recommended by the Surveyor-General; and
- (b) details of all consultation undertaken; and
- (c) details of the specific matters of disagreement; and

- (d) copies of all submissions made by the interested parties relevant to the issues in contention.

(7) The Minister, on considering the report and submissions and making such further inquiry as he or she thinks fit, may approve, modify or reject the recommended specifications or standards and require the Surveyor-General to issue a direction accordingly.

- (8) The Minister's decision is final.

Division 2 – Practice as registered surveyor

Only registered land surveyors to survey land or practise as land surveyors

16. (1) A person who is not a registered land surveyor must not carry on business or hold himself or herself out as a land surveyor or registered land surveyor.

Penalty: Fine not exceeding 200 penalty units and a further penalty not exceeding 5 penalty units for each day during which the offence continues after conviction.

(2) A person who is not a registered land surveyor, or acting directly under the supervision of a registered land surveyor, must not survey land.

Penalty: Fine not exceeding 200 penalty units.

(3) A person who is not a registered land surveyor must not give a certificate that under any law is required to be given by a registered land surveyor.

Penalty: Fine not exceeding 200 penalty units.

(4) In this section, “**survey**” includes deciding, for fee or reward, whether improvements are, or are not, within the boundaries of any land.

Only registered surveyors to practise as registered surveyors

17. (1) A person who is not a registered surveyor must not carry on business or hold himself or herself out as a registered surveyor.

Penalty: Fine not exceeding 200 penalty units and a further penalty not exceeding 5 penalty units for each day during which the offence continues after conviction.

(2) A person who is not a registered surveyor must not give a certificate that under any law is required to be given by a registered surveyor.

Penalty: Fine not exceeding 200 penalty units.

Supervision by registered surveyor

18. (1) Any part of a survey authorised or required under any enactment may be carried out by a person acting under the supervision of a registered surveyor.

(2) For the purpose of subsection (1), a registered surveyor must exercise such oversight over the work of any person under supervision as may be necessary to ensure that the work is completed in accordance with this and any other Act.

Appellations to be used

19. (1) Only a person who is registered as a land surveyor as provided in section 8(1) may use the appellations “Registered Land Surveyor” or “Land Surveyor”.

Penalty: Fine not exceeding 200 penalty units.

(2) Only a person who is registered and accredited with specialist professional survey competency as provided in section 8(2) may use an appellation that includes reference to that competency such as “Registered Engineering Surveyor”, “Registered Mining Surveyor” or “Registered Hydrographic Surveyor”.

Penalty: Fine not exceeding 200 penalty units.

(3) Only a person who is registered as a surveyor as provided in section 8 or otherwise under this Act may use the appellation “Registered Surveyor”.

Penalty: Fine not exceeding 200 penalty units.

Saving for non-registered surveyors

20. Nothing in this Act prevents a person who is not a registered surveyor from practising as a surveyor, otherwise than as a land surveyor, so long as the person does not hold himself or herself out to be a registered surveyor.

Division 3 – Duties of registered surveyors**Surveys, &c., to comply with directions, &c.**

21. A registered surveyor must ensure that a survey carried out and a plan with all supporting documents prepared, by or under his or her supervision –

- (a) complies with all applicable directions under section 15; and
- (b) is endorsed with an annotation summarising all applicable exemptions and setting out sufficient particulars to enable the exemptions and any relevant conditions to be identified.

Penalty: Fine not exceeding 100 penalty units.

Division 4 – Maintenance of standards and corrections of errors

Survey audit

22. (1) The Surveyor-General may instruct an appropriately qualified and registered surveyor, as an inspecting surveyor, to conduct an audit of any survey carried out under any Act by a registered surveyor, to confirm its compliance with all relevant requirements.

(2) Where an audit discloses an error or deficiency in a survey, the Surveyor-General must inform the surveyor responsible of –

- (a) the results of the audit; and
- (b) any action that may be required to ensure that the survey to which the audit relates is correct and complies with all relevant requirements.

Survey investigation

23. (1) If two or more registered surveyors, or a registered surveyor and a registering authority, are unable to agree as to –

- (a) the adequacy or accuracy of a survey; or

- (b) the compliance of a survey with the relevant requirements –

all parties to the disagreement must submit a report on the matter of the disagreement to the Surveyor-General.

(2) The Surveyor-General must investigate a reported error or anomaly or may instruct an appropriately qualified and registered surveyor, as an inspecting surveyor, to conduct the investigation.

(3) On completion of the investigation, the Surveyor-General must inform the parties to the disagreement of –

- (a) the results of that investigation; and
- (b) the action required to ensure that the survey to which the investigation relates is correct and complies with all requirements.

Correction of survey errors

24. (1) Any registered surveyor found to have made an error in any survey carried out under any Act must, at the request of the Surveyor-General, correct the error at his or her own expense.

(2) If a registered surveyor fails to correct an error within 3 months of being informed of that error by the Surveyor-General, the error may be corrected by an inspecting surveyor instructed by the Surveyor-General, and the surveyor responsible is liable to pay the cost of that correction.

Survey performance indicators

25. (1) The Surveyor-General must –

- (a) maintain a record of the conduct and outcome of a survey audit and survey investigation which may be carried out under this Division; and
- (b) maintain, for each registered surveyor, performance indicators compiled from the cumulative results of audits and investigations as provided in this Part and the results of survey examinations conducted by a registering authority as provided in section 40.

(2) For the purposes of subsection (1), records of survey examinations, audits, investigations and the derived performance indicators may be kept in any form, including electronic form, that the Surveyor-General determines.

(3) The Surveyor-General must at reasonable and regular intervals provide each registered surveyor with advice as to the current status of his or her performance indicators.

Certification and adequacy of surveys

26. (1) A survey carried out for any statutory purpose by, or under the supervision of, a registered surveyor must be certified correct by that surveyor before being lodged for registration or acted on.

(2) If any such survey is conducted wholly or in part by a person under the supervision of a registered surveyor, the supervising surveyor remains responsible for the adequacy of the survey as certified.

(3) A registered surveyor must implement, or ensure the implementation of, any checking procedures necessary to confirm the technical accuracy and adequacy of the survey as certified.

(4) The certification is to be in accordance with the regulations and is to confirm that the survey and associated documentation complies with all relevant requirements, including survey directions issued by the Surveyor-General, and is correct for the purpose required.

Division 5 - Power to enter on land

Power of entry on land

27. (1) For the purpose of conducting a survey, a registered surveyor or a person assisting a registered surveyor may, at any reasonable time, in accordance with this section –

- (a) enter on any land, including land that is not to be surveyed; and
- (b) open a door, gate or fence; and
- (c) place a survey mark on the ground of any land entered; and
- (d) enter any building; and
- (e) trim a tree or bush obstructing a survey.

(2) A registered surveyor or a person assisting a registered surveyor may enter on land that is not owned by the person for whom the survey is being conducted only if, before entering, the surveyor has given to the owner of the land reasonable notice, oral or written, of the surveyor's intention to enter on the land.

(3) A registered surveyor or a person assisting a registered surveyor may enter a building or part of a building that is not occupied by the person for whom the survey is being conducted only –

- (a) if the occupier has consented, orally or in writing, to the entry; or
- (b) in accordance with an order of a magistrate.

(4) A registered surveyor or a person for whom a survey is being, or is to be, conducted may apply to a magistrate for an order under subsection (3)(b).

(5) A person must not, without reasonable excuse, hinder or obstruct a registered surveyor, or a person assisting a registered surveyor, in the exercise of the surveyor's powers under subsection (1).

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 6 months, or both, and a further penalty not exceeding 5 penalty units for each day during which the offence continues after conviction.

Damage by registered surveyor

28. (1) This section applies if a registered surveyor or a person assisting a registered surveyor damages any thing when exercising or purporting to exercise a power under section 27.

(2) The registered surveyor or person assisting the registered surveyor must immediately give written notice of particulars of the damage to the person who appears to be the owner of the thing.

(3) If for any reason it is not practicable to comply with subsection (2), the registered surveyor or person assisting the registered surveyor must leave the notice, in a reasonably secure way and in a conspicuous position, at the place where the damage happened.

(4) The registered surveyor must repair the damage to the satisfaction of the owner of the thing and, if he or she fails to do so, is liable to pay compensation for the damage to the owner.

(5) The registered surveyor is entitled to be reimbursed by the person for whom the survey is being conducted for any compensation payable under subsection (4) that is reasonably and necessarily caused in carrying out the survey.

PART 5 – COMPLAINTS AND INVESTIGATIONS

Power of Director to receive complaints

29. The Director may receive complaints with respect to any failure of a registered surveyor to comply with a direction under section 15 or otherwise to the conduct of registered surveyors relating to this Act.

Investigations

30. (1) The Director may conduct an investigation required for the exercise of powers or the discharge of duties under this Part.

(2) An authorised officer has the same powers for entry to premises and taking possession of or obtaining documents and other information as are conferred by sections 30 and 31 of the *Fair Trading Act 1990* and the offences and penalties provided by section 32 of that Act apply.

Consultation regarding investigations

31. For the purposes of this Part, the Director may consult with the Surveyor-General or his or her nominee and a registered surveyor nominated by any relevant institution.

Grounds for disciplinary action

32. There are grounds for disciplinary action against a registered surveyor if –

- (a) the registered surveyor has acted contrary to the *Fair Trading Act 1990*; or

- (b) the registered surveyor has 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) the registered surveyor has been found guilty of an offence involving fraud or dishonesty that is punishable on conviction by imprisonment for 3 months or more.

Application to determine grounds for disciplinary action

33. On receipt of an application in writing from any person, the Director must determine whether there are grounds for disciplinary action against a registered surveyor in accordance with the application and, for that purpose, may conduct a hearing or such investigation as he or she thinks fit.

Disciplinary action

34. (1) Where the Director determines that there are grounds for taking disciplinary action against a registered surveyor, the Director may, by order, do one or more of the following:

- (a) prohibit the registered surveyor from carrying on business as a registered surveyor;
- (b) prohibit the registered surveyor from being employed or otherwise engaged in the business of a registered surveyor;
- (c) reprimand the registered surveyor;

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

(2) The Director may order that a prohibition is to apply –

- (a) permanently; or
- (b) for a specified period; or
- (c) until the fulfilment of any conditions specified in the order; or
- (d) until further order.

(3) An order may provide that it is to have effect at a specified time and impose conditions as to the conduct of the registered surveyor who is subject to the order or that person's business until that time.

(4) An order takes effect on the day on which it is served on the registered surveyor to whom it relates.

(5) If an amount ordered to be paid by a registered surveyor as costs under subsection (1)(d) is not paid as directed by the order, that amount may be recovered by the Director as a debt due to the Crown in any court of competent jurisdiction.

Ancillary powers of Director

35. For the purpose of exercising his or her powers under this Part, the Director has the same powers as the court to administer an oath and compel the attendance of witnesses and production of documents.

Contravention of order

36. If a person carries on business as a registered surveyor in contravention of an order of the Director, the person is guilty of an offence.

Penalty: Fine not exceeding 350 penalty units and imprisonment for a term not exceeding 6 months.

Appeal against determination or order to magistrate

37. (1) This section applies to a determination or order made by the Director before commencement of the *Magistrates Court (Administrative Appeals Division) Act 2001*.

(2) A person who is aggrieved by a determination or order to which this section applies may appeal to a magistrate within 28 days after receiving notice of that determination or service of the order.

(3) At the hearing of an appeal under this section, the magistrate may –

- (a) confirm the determination or order of the Director and direct that the determination or order is to take effect from a specified date; or
- (b) set aside the determination or order of the Director; or
- (c) set aside the determination or order of the Director and substitute another determination or order that the Director could have made.

(4) Subject to this section, an appeal under this section is to be instituted, heard and determined as prescribed.

Appeals to Magistrates Court (Administrative Appeals Division)

38. On and after the commencement of the *Magistrates Court (Administrative Appeals Division) Act 2001* –

- (a) a person may not commence an appeal under section 37, but an appeal already commenced under that section may be continued and dealt with as if that Act had not commenced; and
- (b) a person aggrieved by a determination or order made by the Director may apply to the Magistrates Court (Administrative Appeals Division) for a review of the determination or order.

PART 6 – MISCELLANEOUS AND SUPPLEMENTAL**Review of decisions by Minister**

39. (1) An application may be made to the Minister in accordance with the regulations for review of any decision of the Surveyor-General relating to the keeping of the register or the practice of a registered surveyor.

(2) On a review, the Minister may affirm or set aside the decision of the Surveyor-General or vary it on such terms as the Minister thinks fit.

(3) The Minister's decision on the review is final.

Survey examination

40. (1) A registering authority which may –

- (a)** examine, as to their adequacy for any legal purpose, any survey plans and associated documents lodged for registration; or
- (b)** require the correction of any identified errors or deficiency –

must advise the Surveyor-General of the results of the examination or requisition.

(2) The Surveyor-General must maintain a record of all survey examinations and requisitions advised by a registering authority and provide reasonable and regular advice to registered surveyors as to their continuing performance.

Destruction of, damage to, &c., survey marks

41. (1) A person must not, without reasonable excuse, interfere with, change or remove a survey mark which complies with the regulations.

Penalty: Fine not exceeding 200 penalty units.

(2) If a person is convicted of an offence against subsection (1), the court may order, in addition to any other penalty, that the person pay the reasonable cost of re-establishing the survey mark.

(3) A person must not, with intent to mislead, falsely pretend that any thing is a survey mark which complies with the regulations.

Penalty: Fine not exceeding 200 penalty units.

(4) Nothing in this section affects any civil liability that may exist apart from this section.

(5) Nothing in this section prevents the removal of a temporary survey mark by, or under the supervision of, a registered surveyor if so required by law or if in accordance with any directions given by the Surveyor-General under this Act.

Misleading survey marks

42. The Surveyor-General, or a person authorised by him or her to do so, may remove, alter, deface or destroy a survey mark which, in the opinion of the Surveyor-General, is so placed as to mislead any person.

Protection from liability

43. (1) The Surveyor-General, or a person acting under the Surveyor-General's direction or authority as provided in this Act, does not incur civil liability for an act or omission done honestly and without negligence for the purposes of this Act.

(2) A liability that would, apart from this section, attach to the Surveyor-General, or a person acting under the Surveyor-General's direction or authority as provided in this Act, attaches to the Crown.

Prosecution for offence

44. A prosecution for an offence under this Act –

- (a) may be instituted by an authorised officer; and
- (b) must be commenced within 3 years after the commission of the alleged offence and within 6 months after the authorised officer first obtains knowledge of the alleged offence.

Evidentiary value of certificates

45. (1) In any proceeding, a certificate of registration is evidence of the matters stated in it and a certificate signed by or on behalf of the Surveyor-General stating that on a date or during a period stated in the certificate a person named in the certificate was or was not registered is evidence of the matters so stated.

(2) Unless the contrary is proved, a document that purports to be a certificate issued under the Act is taken to be such a certificate.

Regulations

46. (1) The Governor may make regulations for the purpose of this Act.

(2) Without limiting the generality of subsection (1), the regulations may provide for –

- (a) determining the evidence to be produced and conditions to be fulfilled by a person applying for registration as a land surveyor under this Act; and
- (b) prescribing the course of study, professional practice, conditions of service and training and examination of persons seeking to establish their competency to practise as a registered land surveyor under this Act; and
- (c) determining the role and responsibilities that may be assumed by a relevant institution in the training, examination and accreditation of persons seeking to establish their competency to practise as a registered land surveyor under this Act; and
- (d) determining the role and responsibilities to be assumed by a supervising surveyor under any professional training agreement that may be specified in the regulations; and
- (e) determining the certificates of examinations and professional competency that will be recognised as a substitute for the examinations specified in the regulations; and
- (f) determining any limitation, condition or restriction that may, in such circumstances and for such term as may be specified in the regulations, be imposed on a competent

surveyor seeking to practise as a registered land surveyor.

(3) Before making any regulations relating to the qualifications and training necessary for registration as a land surveyor, the Governor must seek and take into account any advice given –

- (a) by any relevant institution; or
- (b) if the relevant institution fails to provide that advice on request by the Minister, by a committee of appropriately qualified and experienced land surveyors convened by the Minister for the purpose.

(4) In giving advice for the purposes of subsection (3), an institution, or the appointed advisory committee, must –

- (a) consult with all relevant national professional institutions and coordinating committees; and
- (b) seek to maintain consistency with any established national competency standards, minimum qualifications and training requirements for professional land surveyors.

Savings and transitional

47. The savings and transitional provisions specified in Schedule 1 have effect.

Administration of Act

48. Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Primary Industries, Water and Environment; and
- (b) the department responsible to the Minister for Primary Industries, Water and Environment in relation to the administration of this Act is the Department of Primary Industries, Water and Environment.

Land Surveyors Act 1909 repealed

49. (1) The *Land Surveyors Act 1909* is repealed.

(2) The Surveyors' Board constituted under the repealed Act is abolished.

(3) The *Land Surveyors (Examination and Registration) By-laws 1982* and the *Land Surveyors (Survey Practice) By-laws 1982* are rescinded.

SCHEDULE 1 – SAVINGS AND TRANSITIONAL PROVISIONS

Section 47

Savings provisions relating to repealed Act

1. (1) A reference in an enactment or other instrument to the repealed Act is to be construed as a reference to this Act unless the contrary intention appears.

(2) Except as provided expressly or by necessary implication in this Act –

- (a) all things and circumstances appointed or created by or under the repealed Act or existing or continuing under that Act immediately before the commencement day continue, subject to this Act, to have the same status, operation and effect as they respectively would have had if this Act had not been enacted; and
- (b) without limiting paragraph (a), this Act does not disturb the continuity of status, operation or effect of –
 - (i) an order or decision of the court or of any other court; or
 - (ii) an enquiry, proceeding, action, appeal, liability, right or other matter or thing made, done, issued, granted, given, existing or continuing under the repealed Act before the commencement day.

(3) Nothing in subclause (1) or (2) derogates from section 16 of the *Acts Interpretation Act 1931*.

Saving for certain orders

2. Where an order was in force under the repealed Act immediately before the commencement day suspending a person's registration as a land surveyor, the order has effect according to its tenor as if it were an order of the court prohibiting the person from carrying on business as a registered surveyor for the period of the prohibition.

References to registered surveyors, &c.

3. A reference in an Act or other instrument to a registered surveyor, a land surveyor or an authorised surveyor is taken to be a reference to a registered land surveyor acting lawfully under this Act.

Distribution of funds of Surveyors' Board

4. (1) As soon as practicable after the commencement day, the Surveyor-General must pay the money standing to the credit of the Board to an account in the Special Deposits and Trust Fund.

(2) The Surveyor-General must, after taking into account any recommendations made by the Director or an institution, pay that money to any person or body so as best to foster and control the practice of registered surveyors.

Saving for appeals

5. Where –

- (a) the Board has imposed a penalty on a surveyor under section 18 of the repealed Act following an inquiry under that section; and

- (b) the surveyor was, immediately before the commencement day, entitled to appeal to the Supreme Court under section 20 of the repealed Act –

the appeal may be heard and determined by the Magistrates Court as if the decision of the Board were a decision of the Director.