

Surveyors Amendment Bill 2014

CLAUSE NOTES

Clause 1 Short Title

This clause provides the short title to be used when citing the Act for any legal purpose.

Clause 2 Commencement

This clause provides for commencement on the day on which the Act receives Royal Assent.

Clause 3 Principal Act

This clause provides that the *Surveyors Act 2002* is the Principal Act.

Clause 4 Section 3 amended (Interpretation)

This clause amends the definitions section of the Principal Act by:

Inserting the term 'image' or 'images' into the definition of 'document'

This amendment ensures that, where the term 'document' is referred to in the Principal Act, it will also include 'images'. Images such as aerial and ground-based photographs often form cogent evidence in the investigation of survey issues.

Inserting the definition of 'prescribed institute'

This definition identifies uniquely in the Act and Regulations the institute having the responsibility for the training, examination and accreditation of persons seeking to establish their competency to practice as a registered land surveyor in Tasmania.

Inserting the definition of 'survey of land' to include surveys undertaken to remark boundaries of land originally surveyed for a purpose authorised under any Act

While surveys remarking original boundaries have always been considered to be surveys of land, required to be certified by a registered land surveyor to the adopted standard, the definitions of 'survey' and 'land' in the Principal Act may not in fact reflect this understanding. By inserting this definition this clause makes it clear that such surveys are in fact surveys of land.

Inserting the definition of 'Surveyor-General'

This definition clarifies that the Surveyor-General, as referred to in the Principal Act, is the person appointed under the *Survey Coordination Act 1944*.

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

This section describes the functions and powers of the Surveyor-General for the purposes of the Act.

Currently section 4 refers only to the Surveyor-General's 'functions' and section 5 refers only to the Surveyor-General's 'powers'. These sections should refer to both 'functions and powers'. This clause inserts 'powers' in section 4 to reflect this intent.

Due to amendments made through clause 8, specified requirements must be met to be eligible for ongoing registration as a land surveyor. Clause 5 inserts subparagraph (ia) into section 4(b) to provide for the Surveyor-General to consult widely on the relevant requirements.

The definition of 'survey' in the Act ensures that it is restricted to purposes required by an Act and that it will remain relevant as new measurement technologies come on line. The definition of 'land' is a shortened version of that used in the *Land Titles Act 1980*, encompassing legal rights in land. These individual definitions are required to clearly identify the scope of the provisions in the Principal Act, particularly as surveys other than surveys of land are covered by the provisions of the Act.

However, defining 'survey of land' in this way has led to the statutory inclusion of (particularly office-based) activities defining the extent of legal entitlements over land that in practice are often not, and do not need to be undertaken by a registered land surveyor. Consequently, this clause inserts paragraph (d) into section 4 enabling the Surveyor-General, through directions that are the result of consultation with relevant stakeholders, to identify and exclude such surveys from the provisions of the Act.

Subsection 7(2) (as provided in clause 8) provides for both initial land surveyor registration eligibility criteria and also criteria to demonstrate ongoing competency. Clause 5 inserts paragraph (e) into section 4 to enable the Surveyor-General, in consultation with the survey profession, to set directions for ongoing competency requirements.

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

This section provides for the Surveyor-General to delegate statutory functions and powers.

As noted above, section 4 refers only to the Surveyor-General's 'functions' and section 5 refers only to the Surveyor-General's 'powers', but these sections should both refer to both 'functions and powers'. This clause inserts 'functions' in section 5 to reflect this.

Clause 7 Section 5A inserted

5A. Deputy Surveyor-General

This section provides for the appointment of a Deputy Surveyor-General.

Section 5 provides for the delegation of any or all of the Surveyor-General's powers under the Act. In practice this is done for a particular subset of those powers. This does not allow for the circumstance where the Surveyor-General is unavailable due to leave or absence from the State, planned or otherwise, and there is need to exercise other of the Surveyor-General's functions or powers in that period of absence. Nor does it allow for the exercise of any functions or powers during a period of vacancy due to resignation of the incumbent or unforeseen circumstances.

This clause provides for the appointment of a Deputy Surveyor-General to be available to perform the functions and duties or exercise the powers of the Surveyor-General in his or her absence.

Clause 8 Sections 7 and 8 substituted

Sections 7 and 8 establish a register of surveyors and define the eligibility criteria for persons wishing to be registered as surveyors. This clause retains and reorganises the contents of these sections and provides for the additional matters outlined below.

7. Application and eligibility for registration as a surveyor

Historically surveyor registration fees have been levied by the Surveyor-General through an administrative arrangement. The funds are predominantly applied to land surveyor candidate accreditation. This is undertaken by the Institute of Surveyors Tasmania (IST) under the provisions of the *Surveyors Regulations 2003*. This clause provides for the levy of a registration fee through the insertion of subsection (1).

Subsection (2) maintains the initial registration requirements of the Act in paragraph (a). Because accreditation as a land surveyor is currently for life, annual renewal of registration does not require any evidence of ongoing competency. Given ongoing change in technology, legislation and standards, and making of case law, the competencies required at initial accreditation are very likely to differ from those currently required.

The inclusion of subsection (2)(b) provides for the demonstration of ongoing competency through continuing professional development or involvement with cadastral survey practice as an eligibility requirement for renewal of registration. Because one or both of these provisions have been adopted by most Australian jurisdictions and New Zealand, this will also assist in the maintenance of 'mutual recognition' of Tasmanian land surveyors with other States, Territories and New Zealand.

Section 7 retains the provision in the Act of voluntary registration of surveyors (other than land surveyors) with specialist competency accreditation which is recognised by a relevant institution as satisfying national competency standards for professional surveyors, but through this clause, voluntary registration on the basis of membership of a relevant institution has been removed.

This is because the breadth of membership of relevant institutions is now such that membership is possible without specific competency accreditation in surveying. No other jurisdiction in Australia or New Zealand registers surveyors without specific competency accreditation in surveying.

8. Registration by the Surveyor-General

This section maintains existing provisions of the Act.

8A. Re-accreditation by prescribed institute

Clause 8 inserts this provision to provide an avenue for the re-accreditation of land surveyors who are ineligible for renewal of registration due to not being able to satisfy the ongoing competency requirements of section 7(2)(b). It is expected this will mostly apply to surveyors who have let their registration lapse for a significant period of time. For currently registered surveyors the provisions of section 12(c) (as inserted by clause 13) will provide a three month grace period for re-accreditation to be achieved before registration is cancelled.

8B. Register of Surveyors

This section is a re-numbering of section 7 of the current Act.

8C. Disbursement of fees for registration as a land surveyor

Accreditation of land surveyors is undertaken by the Institute of Surveyors Tasmania (IST) under the provisions of the *Surveyors Regulations 2003*. Eligibility for registration as a land surveyor is, for most surveyors, provided by this accreditation. Currently surveyor registration fees have been levied by the Surveyor-General through an administrative arrangement and provided to IST on application.

This clause, through the insertion of section 8C, provides for the disbursement of land surveyor registration fees to IST for accreditation purposes prescribed in the Regulations. This involves candidate training in professional ethics, business conduct and boundary reinstatement, examination and accreditation of candidates, and participation in the activities of the Council of Reciprocating Boards of Australia and New Zealand (CRSBANZ), providing the basis for mutual recognition of registered land surveyors across Australia and New Zealand.

Clause 9 Section 9 amended (Particulars to be entered in the register)

Section 9 determines the particulars to be entered into the register for each registered surveyor.

Because email now forms a very significant component of communication with registered surveyors, this clause inserts subsection (1)(ba) requiring inclusion in the register of an email address (where one is available) for each surveyor.

Clause 8 requires that all registered surveyors must now have a specialist competency, which is critical information for the public to access specific survey services. This clause inserts subsection (1)(f), requiring this information to be included in the register rather than at the discretion of the registered surveyor.

Voluntary disclosure of membership of professional institutions remains unchanged as subsection (2), but this clause removes voluntary disclosure of performance indicators due to changes to section 25 introduced in clause 21.

The Act contains no provision for the removal from the register of a notification placed under subsections 1(f) or (5), which may unfairly impact a surveyor in the long term. This clause replaces these subsections with subsection (3) to limit notations to particulars of suspension or cancellation of registration, and with removal of the notation after three years.

This clause inserts subsection (4), which requires surveyors to keep their particulars on the register up to date. This avoids out of date information appearing on the register and ensures that official correspondence will reach the surveyor.

Clause 10 Section 10 amended (Renewal of registration)

The changes to the wording of this section update the terminology only, using '31 December' together with 'for the following year' in place of 'the first day of January'.

Clause 11 Section 10A inserted

10A. Refusal of renewal of registration

This section is inserted to provide for the Surveyor-General to refuse renewal of registration where a surveyor has failed to comply with certain requirements of the Act. For renewal of registration to be granted the surveyor must first comply with those requirements.

Section 24 of the Act provides for the Surveyor-General to request surveyors to correct errors in their surveys, and if not corrected within three months, to have the correction made and recoup the cost of correction from the surveyor. Clause 19 inserts similar requirements into section 24 for surveyors to notify affected parties of corrections made to boundaries. In addition, under section 34(5), the Director of Consumer Affairs may recoup the outstanding reasonable costs of an investigation.

However, recoupment of costs often requires an application to the Courts, involving more unrecoverable cost than the value of the survey costs being recouped. This clause inserts subsection (1)(a),(b),(c)&(d), providing that surveyors may be ineligible for renewal of registration until any outstanding defective surveys certified by them have been corrected and/or costs paid. The provisions of section 12(c) (as inserted by clause 13) provides for a three month delay on cancellation of registration within which correction or payment may be undertaken.

Section 22 provides for the Surveyor-General to undertake audits on the surveys of registered surveyors. While the audit program shows that a good standard is maintained by most surveyors, there are instances of land surveyors with long records of consistently poor survey practice being disclosed in audits. Section 25(4)&(5)(as inserted by clause 21) provides for surveyors whose last three audits do not comply with the relevant statutory requirements to require re-accreditation in order to be re-registered in the following year. This clause inserts subsection (1)(e) to provide that, where a surveyor fails to take advantage of the year's grace provided to gain re-accreditation, the Surveyor-General may refuse to renew his or her registration at the end of that year.

Subsection (2) is inserted by this clause to ensure that, once a surveyor has corrected the deficiencies identified in subsection (1), he or she is eligible for renewal of registration.

Clause 12 Section 11 amended (False or misleading statements)

Section 11 provides that a person must not falsify an application through inclusion or omission of relevant material. However, the only outcome of such action is removal from the register. There is no impediment to immediately re-applying. Other States provide financial penalties for such activity.

This clause inserts a penalty for circumstances where an application is falsified. The quantum of the penalty is in accordance with Department of Justice recommendations.

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

Section 12 deals with the circumstances in which the Surveyor-General is required to remove a surveyor's name from the register.

This clause replaces paragraph (c) in order to give surveyors a three month 'grace' period from 31st December before their registration is cancelled. The purpose of this is to facilitate re-accreditation, correction of surveys or payment of costs where this has resulted in failure to gain renewal of registration as provided for in section 10A (as inserted by clause 11).

The State has the benefit of mutual recognition of registered land surveyors with other Australian jurisdictions and New Zealand. This means that a surveyor can register in a number of States, and could minimise the impact of disciplinary action in one State by moving to another. As provided for in some jurisdictions, this clause

inserts paragraph (da) into section 12 to provide that a land surveyor whose registration, licence or practicing certificate has been suspended or cancelled as a result of disciplinary action in any other State, Territory or New Zealand should not be registered to practice in Tasmania.

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

This section deals with the development and management of directions by the Surveyor-General, which direct the activities of surveyors. This clause inserts two new matters to be covered by directions.

Directions are currently issued by the Surveyor-General to provide technical standards for undertaking surveys of land. In order to put directions into place the Surveyor-General must invite submissions and consult with all stakeholders affected by the directions. In the case of survey matters this extends to the survey profession, all institutions that in Tasmania represent surveyors, the Head of Agency responsible to the Minister administering the Act for which the survey is required, and any other entities that it appears might have a relevant interest.

Agreement must be reached with the relevant institutions and registering authorities. The Minister arbitrates any disagreements that cannot be resolved.

This clause inserts subsection (1A) to provide for the Surveyor-General to issue directions as to the types of surveys that may be exempt from the requirements of the Act. This is as a consequence of section 4(d) inserted by clause 5.

This clause inserts subsection (1B) to provide for the Surveyor-General to issue directions as to the minimum level of land survey-related activity or professional development required for the registration of land surveyors. This is as a consequence of section 4(e) (inserted by clause 5) and forms eligibility criteria for registration as a land surveyor in accordance with section 7(2)(b)(i) (inserted by clause 8).

Because of the comprehensive negotiation process required there have been occasions when minor amendments to directions have been held up until issues of sufficient gravity requiring resolution justified the time required for those negotiations. As a consequence, this clause inserts subsection 9, providing that the Surveyor-General may make amendments of a minor or clerical nature with reference only to those entities affected.

Clause 15 Section 19 amended (Appellations to be used)

This section prescribes the appellations that may be used only by registered surveyors.

The changes to this section are to bring the references to other sections of the Act into line with other amendments made in this Bill. .

In addition, this clause amends subsection (3) in order to negate the existing confusion that can be brought about by the use of the appellation 'Registered Surveyor', without any specialisation shown. Because the general registration category will be removed from the Act by clause 8, the requirement to include the specialisation in the appellation, such as 'Registered Land Surveyor', will avoid such confusion.

Clause 16 Section 20 amended (Savings for non-registered surveyors)

The change to this section is to improve the phraseology by replacing 'a registered surveyor' with 'registered as a surveyor'.

Clause 17 Section 23 amended (Survey Investigation)

Section 23 of the Act requires the Surveyor-General to investigate where registered surveyors or a registering authority are unable to agree as to the adequacy, accuracy or compliance of a survey.

The current provisions can only be said to explicitly apply to surveyors registered at the time of the disagreement, although in practice it is taken to cover the situation of a disagreement with a survey where the certifying surveyor is no longer registered. In addition, problems with surveys identified by other means such as reports from the public or mapping organisations indicating potential problems with surveys should be addressed.

It is desirable that the Surveyor-General be explicitly authorised to initiate investigations of surveys on the basis of any information received. This includes situations where the identity of the relevant surveyor(s) may not be immediately evident. This clause inserts subsection (2A) for this purpose.

Clause 18 Section 23A inserted

23A. Surveyor-General may require information

This section is inserted to better equip the Surveyor-General to investigate surveys.

Currently it is difficult to investigate in certain circumstances where there is physical evidence of surveys being undertaken but no documentary evidence to demonstrate the origin or reliability of the survey marks found. This clause provides the Surveyor-General with explicit powers to require a person who is in a position to provide information relevant to an investigation to answer any question put to him or her, or provide any record in a readily readable format or anything relevant to the matter.

Clause 19 Section 24 amended (Correction of survey errors)

This section provides for the Surveyor-General to require correction of errors in surveys, and recoup the costs of correction should the Surveyor-General be required to do so if the responsible surveyor fails to make the corrections requested.

Correction of 'registered' plans supporting title is undertaken under the provisions of the *Land Titles Act 1980*. While the Surveyor-General may request correction of surveyed boundaries under section 24 of the Act, this does not necessarily lead to correction of the affected title(s) under the *Land Titles Act 1980*.

This clause inserts subsection (3) to require the land surveyor responsible for the error, within three months of the survey correction being made, to advise all parties with an interest in the land of the consequences of boundary corrections and the process required to correct the 'registered' plan supporting title. Subsection (4) provides for the recoupment of the Surveyor-General's costs of undertaking this work should the responsible surveyor fail to do so.

Clause 20 Section 24A inserted

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

This section is inserted to ensure that surveyors are aware of areas in which surveys exist that contain errors and anomalies that cannot be readily corrected.

This clause provides for a legislated mechanism for such areas to be notified to all registered land surveyors, and for those surveyors to be required to consider the information shown in any relevant investigation survey in their following surveys.

Clause 21 Section 25 amended (Survey performance)

Section 25 provides for the Surveyor-General to collect and maintain survey audit, investigation and examination information that may be accumulated into a single quality indicator that a registered land surveyor could voluntarily have displayed on the register to assist both Government and the community to make judgements about their choice of a surveyor to carry out survey work.

However, the surveying profession has not shown significant interest in using performance indicators for competitive advantage nor has there been community demand for that information. As a consequence, this clause deletes the requirement for the maintenance and dissemination of derived performance indicators from section 25. Individual records for examination, audit and investigations will continue to be maintained and outcomes provided to surveyors as required. If necessary, the overall performance of any surveyor can be assessed by reviewing the records for examination, audit and investigation.

Section 22 provides for the Surveyor-General to undertake audits on the surveys of registered surveyors, currently only land surveyors. There is no consideration of recent survey performance in the renewal of registration process. While the audit program shows that a good standard is maintained by most surveyors, there are instances of land surveyors with long records of consistently poor survey practice being disclosed in audits. These surveyors have often continued with non-conforming survey practices despite these practices being exposed and advised through the survey audit process, but without consequences for their prospect of renewal of registration.

This clause inserts section 25 (4)&(5) to act as a circuit breaker to provide the surveyor with the opportunity to regain the required level of competency and performance through re-accreditation before resort to refusal of renewal of registration.

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

This addition is to correct a minor omission from the existing Act.

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

This section authorises surveyors to enter on land other than the land under survey following reasonable notice, to undertake certain actions required to facilitate the survey. Surveys of land could not be conducted without this provision.

Surveying often requires a surveyor to search for buried physical evidence of boundaries and previous surveys. Despite being included in previous legislation, the power for a surveyor to break up the surface of land in order to search for physical evidence of boundaries and previous surveys was inadvertently omitted from the original drafting of the Act.

This provision rectifies that omission by inserting subsection (1)(da). Section 28 will continue to provide for the surveyor to repair any damage caused.

Part 5 of the Act provides for the Director of Consumer Affairs to undertake disciplinary action in relation to the practice of registered surveyors. The Director may receive complaints for failure to comply with directions and complaints about the conduct of surveyors relating to this legislation. Experience has shown that where such a complaint is made the provisions are not sufficiently clear to enable effective disciplinary action. The following clauses provide for a more effective management of that process.

Clause 24 Section 31A inserted

31A. Temporary prohibition from practice

This section is inserted to better manage circumstances of highly detrimental activity by a surveyor.

Evidence may be provided to the Director that a registered surveyor's ongoing actions are so detrimental to the community as to justify immediate prohibition from practice, or the surveyor may have contravened an order of the Director imposing discipline short of actual prohibition. This clause, which is common to similar legislation in which the Director has disciplinary responsibilities, is inserted to provide the Director with the power to apply an immediate prohibition on that surveyor from practising as a registered surveyor pending investigation and consideration of further appropriate disciplinary action.

Clause 25 Section 32 substituted

32. Grounds for disciplinary action

This section defines the grounds against which the Director must assess the need, or otherwise, for disciplinary action.

Survey legislation in other jurisdictions tends to provide more specific criteria as a basis for disciplinary action than currently contained in section 32.

On the recommendation of the Director this clause inserts additional, more specific criteria and will improve the effectiveness of the disciplinary processes of the Act.

Clause 26 Section 34 amended (Disciplinary action)

This section provides disciplinary actions available to the Director.

Information of disciplinary activity in other jurisdictions shows that it is desirable that the Act provide for a graduated process of education and training, and graduated discipline where appropriate, in order that there be opportunity for improvement in a surveyor's practice prior to the Director having to resort to prohibition from practice. Alternatively, activity to restore competence may be required in conjunction with a period of prohibition from practice.

This clause inserts additional provisions into section 34 to enable the Director to take a graduated approach to discipline, involving education, quality assurance of a surveyor's work, and re-accreditation.

Clause 27 Section 40 amended (Survey examination)

Subsection (2) has been deleted as it duplicates section 25.

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

This section deals with the protection of survey marks.

The intention is to re-locate the requirements for survey marks currently documented in the Regulations to the Directions. This is an appropriate move given the technical nature of this provision.

This clause recognises this re-location.

Clause 29 Section 43 amended (Protection from liability)

This section provides protection from liability to the Surveyor-General and persons acting under the Surveyor-General's direction or authority from civil liability when acting in good faith for the purposes of the Act.

With the position of Deputy Surveyor-General to be created by clause 7, this clause specifically extends the protection from liability accorded the Surveyor-General to the Deputy Surveyor-General.

Clause 30 Section 46 amended (Regulations)

Section 46 provides for the making of regulations.

This clause replaces the general term 'relevant institution' found in subsections 2, 3 and 4 with the specific term 'prescribed institute'.

This clause also inserts subsection 2(g), providing for fees and charges to be specified in the Regulations.

Clause 31 Repeal of Act

This clause provides that this Act is repealed on the ninetieth day from the day on which it commences.