

SECOND READING SPEECH

SURVEYORS AMENDMENT BILL 2014

Madam Speaker,

I move that the Bill now be read a second time.

The Bill before the House contains amendments to the *Surveyors Act 2002* (the Act). The *Surveyors Act 2002* provides for the mandatory registration of land surveyors and the voluntary registration of surveyors with other competencies, the regulation of practice for surveys undertaken for a statutory purpose and the investigation of complaints against registered surveyors by the Director of Consumer Affairs.

The Act and the amendments provided for in this Bill aim to ensure that surveys made for a statutory purpose are undertaken by competent surveyors who operate according to accepted standards, and that where errors in surveys do occur, they are effectively dealt with. This is accomplished through accreditation of surveyors prior to registration, regulation of survey standards, monitoring of surveys against those standards and investigation of surveys by the Surveyor-General, and the investigation of complaints against registered surveyors by the Director of Consumer Affairs.

Surveyors provide a wide range of services that contribute to the community's welfare, including mapping of the State's land and water assets, planning and development of its land and water resources and infrastructure, and production from its mines and forests. Land surveying, in particular, has been regulated by the State since its inception due to the importance of its contribution to the management of the State's land assets.

A secure and efficient land registration system provides for an efficient land market and forms the basis of the State's wealth and prosperity. Accurate and reproducible boundaries are an essential component of that security. In Tasmania this is provided through approximately 100 registered land surveyors operating in accordance with regulated standards. In line with other jurisdictions across the Commonwealth, regulation has ensured that the system has remained secure while providing the community with a competitive professional service.

The Act was originally introduced as a response to the Regulatory Impact Statement and Final Report of the review of the *Land Surveyors Act 1909* produced by the Land Surveyors Review Committee in July 1999. The review was instigated by the Tasmanian Government as a consequence of the inter-governmental Competition Principles Agreement arising out of National Competition Policy.

During the parliamentary debate on the *Surveyors Bill (No. 2) of 2002* it was recognised that there were fundamental changes from the previous Act, the efficacy of which were untested. As a consequence the opinion was expressed that Parliament would be well advised to maintain a watching brief to ensure that no significant emerging problems with its operation were left unremedied.

While there have been no serious flaws detected during the intervening period requiring urgent corrective action, both government and the profession have identified the need for the adjustment of some existing provisions and additional provisions to improve the effectiveness of the Act. In particular, because errors in surveyed boundaries have such a long-lasting impact that significantly increases the costs to the community of dealings in land, the Bill has a strong focus on dealing with the small

number of surveyors responsible for the majority of such errors, the minimisation of errors, and correction where they are identified.

Extensive consultation leading up to the introduction of this Bill has shown strong support for the amendments proposed to the Act. Input from the profession has been sought by the Surveyor-General through direct consultation with survey practices and from the Director of Consumer Affairs in relation to the Director's complaints and investigations function under the provisions of the Act.

A review paper was distributed both internally to government and to external stakeholders, comprising surveyors, the relevant surveying and other professional industry bodies, business associations and infrastructure providers for comment. Public workshops were held in Hobart, Launceston and Devonport to enable stakeholders to request further information and provide input to the review. These were well attended, with strong support from surveyors and their professional bodies for the thrust of the review, and a high degree of consensus as to specific options adopted for the Bill.

As a result of this process more than 20 specific amendments were identified, the majority of which can be grouped into six primary amendment sets.

The first relates to the inclusion in the Act of prescribed fees for registration and their use for the purpose of land surveyor accreditation, and the requirement of a recognised specialist competency for registration.

Although there is no provision currently in the Act for surveyor registration fees, some years ago the profession flagged the need for fees to be levied to support land surveyor candidate accreditation. Consequently, in recent years registration fees have been levied

by the Surveyor-General through an administrative arrangement. The Bill re-introduces registration fees to the Act, as was the case in the previous *Land Surveyors Act 1909*.

The funds are predominantly applied to land surveyor candidate training in professional ethics, business conduct and boundary reinstatement, examination and accreditation of candidates. This is undertaken by the Institute of Surveyors Tasmania under the provisions of the *Surveyors Regulations 2003*.

The Act currently mandates registration of land surveyors and provides for voluntary registration of surveyors other than land surveyors with specialist competency accreditation or on the basis of membership of a relevant institution.

Although not the case in 2002 when the Act was first introduced, the amalgamation of surveying and spatial institutions has resulted in a breadth of membership such that membership is possible without specific competency accreditation in surveying.

The purpose of registration is to provide assurance of competency, in this case as a surveyor. No other jurisdiction in Australia or New Zealand registers surveyors without specific competency accreditation in surveying. Consequently, the Bill removes the capacity for voluntary registration on the basis of membership of a relevant institution only.

The second set of amendments relates to the introduction of a requirement that registered land surveyors maintain competency through an ongoing practice requirement and/or continuing professional development.

Because accreditation as a land surveyor is currently for life, annual renewal of registration does not require any evidence of ongoing competency. Given ongoing changes 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.

Renewal of registration as a land surveyor in all but one other Australian jurisdiction and New Zealand requires either a minimum level of continuing professional development for all re-registrants, or to a lesser extent self-certification of currency of competence based on continuing involvement with cadastral survey practice.

The Bill provides for the determination of continuing professional development requirements through directions and the demonstration of ongoing competency through these measures as an eligibility requirement for renewal of registration, with recourse to re-accreditation should a surveyor be unable to meet these requirements. This will also assist in the maintenance of 'mutual recognition' of Tasmanian land surveyors with other States, Territories and New Zealand.

The third set of amendments introduces limitations on a surveyor's right to renew or maintain registration where corrections or costs required under the Act are outstanding, the surveyor's surveys demonstrate ongoing failure to comply with the relevant standards, or his or her registration has been suspended or cancelled in another State.

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 make the correction and recoup the cost from the surveyor. The Bill inserts similar requirements into section 24 for surveyors to notify affected parties of corrections made to boundaries. In addition, the Act provides for the Director of Consumer Affairs to 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 costs being recouped. The Bill provides 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 Bill provides for a three month 'grace' period before cancellation of registration takes effect within which time correction or payment may be undertaken.

Section 22 of the Act 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. The Bill provides that surveyors who demonstrate ongoing failure to comply with the relevant standards may be required to gain re-accreditation in order to be re-registered in the following year.

The fourth set of amendments introduces wider powers for the Surveyor-General to investigate problems with surveys, including collection of relevant information, and an improved process for managing errors in surveyed boundaries where those errors cannot be immediately remediated.

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. It is desirable that the Surveyor-General be explicitly authorised to initiate investigations of surveys on the basis of any information received, including reports from the public or related organisations such as mapping authorities.

Currently, it is difficult to investigate in 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. The Bill provides the Surveyor-General with

powers to require a person who is in a position to provide information relevant to an investigation to do so.

There are instances in which the Surveyor-General, having completed a survey investigation showing erroneous or anomalous boundaries, does not issue a request to a surveyor to correct survey work. It may be the case that the surveyor is no longer registered, that the survey investigation results in the identification of errors that are not feasible to correct immediately, or the original surveyed boundaries are not able to be definitively reinstated. The Bill provides a legislated mechanism to ensure all registered land surveyors are notified of the relevant areas, and to require those surveyors to consider the information shown in any relevant investigation survey in subsequent surveys.

The fifth set of amendments introduces a requirement for surveyors responsible for correcting boundary errors to notify and assist affected parties in the process of correcting their titles.

The Surveyor-General regularly requests correction of surveys under section 24 of the Act, but where title boundaries are affected has no power to require correction of the 'registered' plan supporting title under the *Land Titles Act 1980*. This leaves an unsatisfactory situation where boundary marks have been corrected in the field or dimensions have changed, but the 'registered' plan supporting title continues to reflect the previous erroneous survey.

Under the *Land Titles Act 1980* all parties with an interest in a title must be party to correcting the plan supporting that title. It is appropriate for Government to ensure that all interested parties are fully aware of the consequences of boundary corrections and, if relevant, the process required to correct the 'registered' plan supporting title.

The Bill introduces a requirement that the land surveyor responsible for the error undertake this task within three months of the survey correction being made, and for the recoupment of the Surveyor-General's costs of undertaking this work should the responsible surveyor fail to do so.

The sixth and final set of amendments introduces provisions better enabling the Director of Consumer Affairs to investigate complaints against surveyors, including the introduction of more specific grounds for, and a graduated process of, disciplinary action.

The current broad ground for disciplinary action contained in section 32 has proved problematic for the Director to deal effectively with breaches of the Act. Survey legislation in other jurisdictions tends to provide more specific criteria as a basis for disciplinary action. On the recommendation of the Director the Bill inserts additional, more specific criteria that will improve the effectiveness of the disciplinary processes of the Act.

Currently section 34 is a rather blunt disciplinary instrument. 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.

The Bill 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. In addition, the Bill allows for prohibition from practice to be imposed during the Director's investigation process or in conjunction with activity designed to restore competence.

The Bill contains further amendments to allow for: the appointment of a Deputy Surveyor-General; the removal of cumulative performance indicators; surveys re-marking legal boundaries to be properly recognised under the Act and for the Surveyor-General to issue directions as to surveys not to be considered surveys of land for the purposes of the Act; reinstatement of a provision previously inadvertently omitted to allow a surveyor to break up of the surface of land to search for evidence of boundaries and survey marks; and penalties for falsified applications for registration.

In summary, the Bill amends the Act to improve its operation in the areas of registration of surveyors, the regulation of practice for surveys undertaken for a statutory purpose and the investigation of complaints against registered surveyors. These amendments all have strong support from the survey profession.

Madam Speaker, the Government fully supports the introduction of this Bill.

I commend this Bill to the House.