

Surveying Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to regulate the conduct of surveys carried out by the Surveyor-General and other public authorities, and
- (b) to provide for the establishment and maintenance of a register of public surveys, and
- (c) to provide for the registration of land surveyors and mining surveyors, and
- (d) to confer powers of entry on the Surveyor-General and registered surveyors, and
- (e) to create offences with respect to the conduct of surveying and the protection of survey marks, and
- (f) to provide for the constitution and functions of a Board of Surveying and Spatial Information (*the Board*), and
- (g) to repeal the *Surveyors Act 1929*, the *Survey Co-ordination Act 1949* and certain Acts and instruments, to amend certain other Acts and instruments and to enact savings, transitional and other provisions as a consequence of the enactment of the proposed Act.

The Bill arises from a National Competition Policy review of the *Surveyors Act 1929* and incorporates the following reforms:

- (a) the extension of the requirements for registration as a surveyor to mining surveyors,
- (b) the inclusion within the membership of the Board of Surveyors (to be renamed the Board of Surveying and Spatial Information) of representatives of a range of persons and bodies having an interest in surveying and spatial information,
- (c) the removal of powers with respect to the regulation of advertising by registered surveyors.

Outline of provisions

Part 1 Preliminary

Clause 1 specifies the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines various words and expressions used in the proposed Act.

Part 2 Public surveys

Clause 4 provides for the establishment of a State control survey and empowers the Surveyor-General to carry out surveys, and establish permanent survey marks, in connection with the State control survey.

Clause 5 requires surveys carried out by public authorities to be carried out by reference to the Geocentric Datum of Australia, with elevations adjusted to Australian Height Datum, and to comply with the regulations under the proposed Act.

Clause 6 requires public authorities to provide the Surveyor-General with such information as to the surveys they carry out as the Surveyor-General may require.

Clause 7 requires the Surveyor-General to establish and maintain a register of public surveys and to make the register available to the public.

Clause 8 empowers the Surveyor-General to adjust any public survey so as to ensure that it is consistent with the State control survey and with other public surveys.

Clause 9 provides for the maintenance and repair of permanent survey marks.

Part 3 Registration of surveyors

Clause 10 provides for the registration by the Board, under the *Licensing and Registration (Uniform Procedures) Act 2002*, of land surveyors and mining surveyors, and makes certain modifications to the way that Act applies in that regard.

Clause 11 empowers the Board to conduct investigations into surveys carried out by registered surveyors.

Clause 12 empowers the Board to impose conditions on a surveyor's registration, or to suspend or cancel a surveyor's registration, if the surveyor demonstrates incompetence in carrying out a survey.

Clause 13 empowers the Board to impose conditions on a surveyor's registration, to suspend or cancel a surveyor's registration and to impose a variety of other sanctions on a surveyor if the surveyor is guilty of professional misconduct.

Clause 14 enables any surveyor against whom action is taken under the proposed Part to apply to the Administrative Decisions Tribunal for a review of the Board's determination to take such action.

Clause 15 requires the Registrar of the Board to establish and maintain a register of surveyors and to make the register available to the public.

Clause 16 gives evidentiary weight to a certificate by the Registrar of the Board as to matters recorded in the register of surveyors.

Part 4 Entry to land for survey purposes

Clause 17 confers power on the Surveyor-General to enter land, and authorise others to enter land, for the purpose of conducting surveys and maintaining or repairing permanent survey marks.

Clause 18 confers power on a registered surveyor to enter land for the purpose of conducting surveys.

Clause 19 regulates the manner in which a power to enter land is to be exercised.

Clause 20 requires a person to do as little damage as possible when exercising a power to enter land, and provides for the payment of compensation for damage unreasonably caused by the exercise of such a power.

Part 5 Offences

Clause 21 prohibits a person from carrying out a land survey for fee or reward, or advertising a willingness to carry out a land survey for fee or reward, unless the person is a registered land surveyor. Certain exceptions are made in favour of survey drafters, surveyors' assistants and students of surveying. The maximum penalty for an offence against the proposed section is 50 penalty units (currently \$5,500).

Clause 22 prohibits a person from carrying out a mining survey for fee or reward, or advertising a willingness to carry out a mining survey for fee or reward, unless the person is a registered mining surveyor. Certain exceptions are made in favour of survey drafters, surveyors' assistants and students of surveying. The maximum penalty for an offence against the proposed section is 50 penalty units (currently \$5,500).

Clause 23 creates an offence of obstructing or hindering the Surveyor-General, a registered surveyor or any other person in the exercise of a function conferred or imposed by the proposed Act. The maximum penalty for an offence against

the proposed section is 25 penalty units (currently \$2,750).

Clause 24 creates an offence of removing, damaging, destroying, displacing, obliterating or defacing any survey mark unless with lawful authority. The maximum penalty for an offence against the proposed section is 25 penalty units (currently \$2,750).

Clause 25 creates an offence of using marks resembling a permanent survey mark except with lawful authority. The maximum penalty for an offence against the proposed section is 15 penalty units (currently \$1,650).

Clause 26 requires a person who exercises functions under proposed Part 4 to carry a certificate of authority while doing so, and creates an offence of failing to do so. The maximum penalty for an offence against the proposed section is 5 penalty units (currently \$550).

Part 6 The Board of Surveying and Spatial Information

Clause 27 provides for the constitution of the Board of Surveying and Spatial Information. The Board is to consist of between 10 and 12 members, each having an interest, or representing a body having an interest, in surveying or spatial information. The Surveyor-General is to be the President of the Board. The Board is to be a statutory corporation that represents the Crown.

Clause 28 provides that the functions of the Board are to be as follows:

- (a) the registration of surveyors,
- (b) the investigation of surveyors' registration and licensing schemes in other States and Territories, and the provision of advice to the Minister in connection with the recognition of the qualifications and experience of surveyors registered or licensed under such schemes,
- (c) the investigation of complaints against registered surveyors,
- (d) the taking of disciplinary action against registered surveyors,
- (e) the investigation of matters referred to it by the Minister for advice or report in relation to surveying or any other aspect of the spatial information industry,
- (f) the provision of advice to the Minister with respect to the practice to be followed in the conduct of surveys or in the collection, collation and dissemination of any other kinds of spatial information,
- (g) the provision of advice to the Minister with respect to any other matter in connection with the administration of this Act.

Clause 29 provides for the appointment of a Registrar and such other staff as are necessary to enable the Board to exercise its functions. The proposed section also enables the Board to make use of the staff and facilities of government departments and public authorities.

Clause 30 provides for the establishment of advisory and other committees. A committee's membership must include a majority of persons who are Board members.

Clause 31 enables the Board to delegate its functions, subject to the restriction that its investigative functions may be delegated only to a registered surveyor and its functions of taking action with respect to incompetence and professional misconduct may be delegated only to a Board member.

Clause 32 deals with the exclusion of personal liability for acts and omissions of the Board, Board members and persons acting under the direction of the Board or a Board member.

Part 7 Miscellaneous

Clause 33 requires the annual report for the Department of Information Technology and Management to include a report on the work and activities of the Surveyor-General under the proposed Act.

Clause 34 provides that the proposed Act is to bind the Crown.

Clause 35 enables any fee or penalty imposed by the Board to be recovered as a debt in any court of competent jurisdiction.

Clause 36 enables the Governor to make regulations for the purposes of the proposed Act. Regulations affecting mining surveyors will be able to be made only after consultation with the Minister administering the *Coal Mines Regulation Act 1982*.

Clause 37 repeals the following Acts and instrument consequent on the enactment of the proposed Act:

- (a) the *Survey Co-ordination Act 1949*,
- (b) the *Survey (Geocentric Datum of Australia) Act 1999*,
- (c) the *Survey Marks Act 1902*,
- (d) the *Surveyors Act 1929*,
- (e) the *Surveyors (General) Regulation 1999*.

Clause 38 is a formal provision giving effect to a Schedule of amendments to other Acts and instruments.

Clause 39 is a formal provision giving effect to a Schedule of savings, transitional and other provisions.

Clause 40 is a standard provision requiring the proposed Act to be reviewed after 5 years from the date of assent.

Schedule 1 The Board of Surveying and Spatial Information

This Schedule contains standard provisions with respect to the constitution and procedure of the Board.

Schedule 2 Amendment of other legislation

This Schedule contains amendments to the following Acts and instruments:

Coal and Oil Shale Mine Workers (Superannuation) Act 1941 No 45

Coal Mines Regulation Act 1982 No 67

Community Land Development Regulation 2000

Conveyancing Act 1919 No 6

Crown Lands (Continued Tenures) Act 1989 No 7

Dividing Fences Act 1991 No 72

Encroachment of Buildings Act 1922 No 23

Environmental Planning and Assessment Regulation 2000

Geographical Names Act 1966 No 13

Lake Illawarra Authority Act 1987 No 285

Licensing and Registration (Uniform Procedures) Act 2002 No 28

Mines Inspection Act 1901 No 75

Mining Act 1992 No 29

Offshore Minerals Act 1999 No 42

Petroleum (Onshore) Act 1991 No 84

Petroleum (Submerged Lands) Act 1982 No 23

Real Property Act 1900 No 25

State Environmental Planning Policy No 62—Sustainable Aquaculture

Strata Schemes (Freehold Development) Act 1973 No 68

Strata Schemes (Leasehold Development) Act 1986 No 219

Western Lands Act 1901 No 70

Schedule 3 Savings, transitional and other provisions

This Schedule contains a number of savings, transitional and other provisions consequent on the enactment of the proposed Act, including a provision enabling the regulations under the proposed Act to enact further provisions of a savings

or transitional nature.