



New South Wales

# Surveying Amendment Bill 2005

## Explanatory note

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

## Overview of Bill

The object of this Bill is to make miscellaneous amendments to the *Surveying Act 2002* (*the Principal Act*) as detailed in the outline of provisions below.

## Outline of provisions

**Clause 1** sets out 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** is a formal provision that gives effect to the amendments to the *Surveying Act 2002* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the *Surveying Regulation 2001* set out in Schedule 2.

**Clause 5** is a formal provision that gives effect to the amendment to the *Defamation Act 1974* set out in Schedule 3.

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## Schedule 1      Amendment of Surveying Act 2002

**Schedule 1 [1]** makes a statute law revision amendment to take account of the change of name of the Department of Information Technology and Management to the Department of Lands.

**Schedule 1 [3]** inserts proposed section 3A into the Principal Act to provide for a definition of *spatial information*. The proposed section provides that *spatial information* is any information about a location in space and time including, but not limited to, information about any one or more of the following:

- (a) the natural resources at the location,
- (b) the environment and climate at the location,
- (c) land ownership and other ownership rights at the location,
- (d) the use of land at the location,
- (e) any infrastructure at the location,
- (f) the demography of the location.

A location to which spatial information relates may be:

- (a) a point or a two or three dimensional area, and
- (b) a location that is:
  - (i) above the Earth's surface, or
  - (ii) below the Earth's surface, or
  - (iii) on the Earth's surface, or
  - (iv) any combination of the above.

**Schedule 1 [2]** makes a consequential amendment.

**Schedule 1 [4]** inserts proposed sections 9A and 9B into the Principal Act.

Proposed section 9A provides that certain survey regulators (being, in relation to a land survey undertaken by a registered land surveyor—the Surveyor-General and the Registrar-General, and in relation to a mining survey undertaken by a registered mining surveyor—the Chief Inspector of Mines and the Chief Inspector of Coal Mines) may, by notice, require a registered surveyor to correct any error in a survey made by that surveyor. Failure to comply with a notice under this proposed section will be professional misconduct for the purposes of section 13 of the Principal Act. If a registered surveyor does not comply with a notice under the proposed section, the survey regulator who issued the notice may engage another registered surveyor to make the correction. **Schedule 1 [6]** makes a consequential amendment.

Proposed section 9B deals with certain situations involving deceased, absent, ill or missing surveyors. The proposed section provides that if:

- (a) a plan has been lodged in the office of the Registrar-General under the *Real Property Act 1900* or the *Conveyancing Act 1919*, and

- (b) the survey represented in the plan has been certified to be accurate by a registered surveyor (*the original surveyor*), and
- (c) the Registrar-General has issued a requisition or requirement to the effect that a specified thing is to be done by the original surveyor, and the Surveyor-General is satisfied that:
- (d) a requisition or requirement referred to above has not been complied with by the original surveyor because:
  - (i) of the original surveyor's death, continued absence or prolonged illness, or
  - (ii) the original surveyor cannot be found or is no longer a registered surveyor, and
- (e) it is unlikely that the requisition or requirement will be complied with by the original surveyor within a reasonable time having regard to the circumstance of the case,

the Surveyor-General may certify in writing to that effect.

On the issue of such a certificate by the Surveyor-General, a registered surveyor, other than the original surveyor, may do all or any of the things that are necessary or expedient to comply with the requisition or requirement.

**Schedule 1 [5]** amends section 10 of the Principal Act to provide that the registration administration fee for a registered surveyor is to be paid on or before 31 August in each year (rather than 31 October in each year).

**Schedule 1 [7]** inserts proposed section 16A into the Principal Act. The proposed section provides that the provisions of Part 3 of the Principal Act relating to professional misconduct extend to any person who was a registered surveyor at the time that any professional misconduct allegedly occurred but who is no longer a registered surveyor.

**Schedule 1 [8]** replaces section 27 (2) (e) of the Principal Act to provide that between one and three members of the Board of Surveying and Spatial Information (*the Board*) are to be persons appointed by the Minister from persons nominated by such relevant professional associations of persons involved in the spatial information industry as the Minister determines. Currently those members must be nominated by a single prescribed professional association of persons involved in the spatial information industry.

Section 30 (2) of the Principal Act provides that committees established by the Board must include at least 2 Board members, but may include other members who are not Board members so long as the Board members outnumber the other members.

**Schedule 1 [9]** replaces section 30 (2) to remove the requirement that Board members outnumber the other members on such committees.

**Schedule 1 [10]** inserts proposed section 33A into the Principal Act to provide that the Surveyor-General may delegate the exercise of any function of the Surveyor-General under this or any other Act (other than this power of delegation) to any member of staff of the Department of Lands or any person, or any class of persons, authorised for the purposes of the proposed section by the regulations.

**Schedule 1 [11]** inserts proposed section 35A into the Principal Act to provide that a person who discloses any information obtained in the administration of the Principal Act is guilty of an offence carrying a maximum penalty of 50 penalty units (currently \$5,500) unless the disclosure:

- (a) is made with the consent of the person to whom the information relates, or
- (b) is made in connection with the administration of the Principal Act, or
- (c) is made for the purpose of legal proceedings arising out of the Principal Act or of any report of any such proceedings, or
- (d) is made with other lawful excuse.

**Schedule 1 [12]** amends section 36 (2) (i) of the Principal Act to provide that regulations may be made for or with respect to the manner in which complaints made to the Board with respect to the conduct of a registered surveyor are to be dealt with.

**Schedule 1 [13]** replaces section 36 (3) of the Principal Act to provide that certain regulations with respect to mining surveys or formal mining survey plans may only be made following consultation between the Minister administering the Principal Act and the Minister or Ministers administering the following Acts:

- (a) the *Coal Mines Regulation Act 1982*,
- (b) the *Mines Inspection Act 1901*,
- (c) the *Coal Mine Health and Safety Act 2002*,
- (d) the *Mine Health and Safety Act 2004*.

## **Schedule 2      Amendment of Surveying Regulation 2001**

**Schedule 2 [1]** omits clause 4A (3) of the *Surveying Regulation 2001* as a consequence of the amendment made to section 27 (2) (e) in Schedule 1 [8].

**Schedule 2 [2]** inserts proposed clause 62B into the *Surveying Regulation 2001* to provide that complaints with respect to the conduct of a registered surveyor may be made to the Board, and are to be dealt with, in accordance with the document entitled *Policy for the Consideration of Complaints Against Surveyors* issued by the Board as in force from time to time.

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## **Schedule 3      Amendment of Defamation Act 1974**

**Schedule 3** inserts proposed section 17JA into the *Defamation Act 1974* to provide that there is a defence of absolute privilege in civil proceedings for defamation:

- (a) for a publication to or by any of the following:
  - (i) the Board of Surveying and Spatial Information,
  - (ii) a member of that Board as such a member,
  - (iii) a committee or subcommittee of that Board, or any member of a committee or subcommittee of that Board,for the purpose of the making or referral of a complaint of professional incompetence or professional misconduct, or the investigation of such a complaint, made in relation to a registered surveyor under the Principal Act, and
- (b) for the publication by a body or person referred to in paragraph (a) of a report of the decision or determination of the body or person in respect of a complaint, and of the reasons for that decision or determination, made in relation to a registered surveyor under the Principal Act.





New South Wales

# Surveying Amendment Bill 2005

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New South Wales

# Surveying Amendment Bill 2005

No , 2005

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## A Bill for

An Act to amend the *Surveying Act 2002* to make further provision with respect to the functions of the Surveyor-General, the registration of surveyors, the control of surveys and the constitution and functions of the Board of Surveying and Spatial Information; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1    Name of Act</b>	2
This Act is the <i>Surveying Amendment Act 2005</i> .	3
<b>2    Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5
<b>3    Amendment of Surveying Act 2002 No 83</b>	6
The <i>Surveying Act 2002</i> is amended as set out in Schedule 1.	7
<b>4    Amendment of Surveying Regulation 2001</b>	8
The <i>Surveying Regulation 2001</i> is amended as set out in Schedule 2.	9
<b>5    Amendment of Defamation Act 1974 No 18</b>	10
The <i>Defamation Act 1974</i> is amended as set out in Schedule 3.	11

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**Schedule 1      Amendment of Surveying Act 2002**

(Section 3)

**[1]    Section 3 Definitions**Omit the definition of *Department* from section 3 (1). Insert instead:*Department* means the Department of Lands.**[2]    Section 3 (1)**

Insert in alphabetical order:

*spatial information*—see section 3A.**[3]    Section 3A**

Insert after section 3:

**3A    Meaning of “spatial information”**

- (1) For the purposes of this Act, *spatial information* is any information about a location in space and time including, but not limited to, information about any one or more of the following:
  - (a) the natural resources at the location,
  - (b) the environment and climate at the location,
  - (c) land ownership and other ownership rights at the location,
  - (d) the use of land at the location,
  - (e) any infrastructure at the location,
  - (f) the demography of the location.
- (2) A location to which spatial information relates may be:
  - (a) a point or a two or three dimensional area, and
  - (b) a location that is:
    - (i) above the Earth’s surface, or
    - (ii) below the Earth’s surface, or
    - (iii) on the Earth’s surface, or
    - (iv) any combination of the above.

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<b>[4]    Sections 9A and 9B</b>	1
Insert after section 9:	2
<b>9A    Correction of survey errors</b>	3
(1)    A survey regulator may, by notice in writing, require a registered surveyor to correct within the time specified in the notice any error in a survey made by that surveyor.	4 5 6
<b>Note.</b> Failure to comply with a notice under this section is professional misconduct for the purposes of section 13 of this Act.	7 8
(2)    If a registered surveyor does not comply with a notice under this section, the survey regulator who issued the notice may engage another registered surveyor to make the correction.	9 10 11
(3)    Any costs or expenses incurred by or on behalf of a survey regulator under subsection (2) may be recovered in any court of competent jurisdiction as a debt due to the Crown from the registered surveyor to whom the notice under this section was issued.	12 13 14 15 16
(4)    In any proceedings instituted for the recovery from a registered surveyor of a debt due to the Crown under this section, a certificate of the survey regulator who engaged another surveyor under subsection (2) that stating a specified amount is the amount of the debt so due is evidence of that fact.	17 18 19 20 21
(5)    A debt due by any person to the Crown under this section is recoverable whether or not the person is found guilty of professional misconduct under section 13.	22 23 24
(6)    In this section, <b>survey regulator</b> means:	25
(a)    in relation to a land survey undertaken by a registered land surveyor:	26 27
(i)    the Surveyor-General, and	28
(ii)    the Registrar-General, or	29
(b)    in relation to a mining survey undertaken by a registered mining surveyor:	30 31
(i)    the Chief Inspector of Mines, and	32
(ii)    the Chief Inspector of Coal Mines.	33

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**9B Authority for a registered surveyor to act for another in certain circumstances**

- (1) This section applies if:
  - (a) a plan has been lodged in the office of the Registrar-General under the *Real Property Act 1900* or the *Conveyancing Act 1919*, and
  - (b) the survey represented in the plan has been certified to be accurate by a registered surveyor (*the original surveyor*), and
  - (c) the Registrar-General has issued a requisition or requirement to the effect that a specified thing is to be done by the original surveyor.
- (2) If the Surveyor-General is satisfied that:
  - (a) a requisition or requirement referred to in subsection (1) (c) has not been complied with by the original surveyor because:
    - (i) of the original surveyor's death, continued absence or prolonged illness, or
    - (ii) the original surveyor cannot be found or is no longer a registered surveyor, and
  - (b) it is unlikely that the requisition or requirement will be complied with by the original surveyor within a reasonable time having regard to the circumstance of the case,
 the Surveyor-General may certify in writing to that effect.
- (3) On the issue of a certificate by the Surveyor-General under subsection (2), a registered surveyor, other than the original surveyor, may do all or any of the things that are necessary or expedient to comply with the requisition or requirement referred to in subsection (1) (c).
- (4) A registered surveyor who amends a plan under subsection (3) is to certify on the plan that the amendment has been made under this section.
- (5) Despite any other Act, law or practice, on production of a certificate issued by the Surveyor-General under subsection (2), the Registrar-General is to accept anything done by a registered surveyor under subsection (3) as if it were done by the original surveyor.

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(6)	Nothing in this section prevents:	1
(a)	the original surveyor from authorising another registered surveyor to do all or any of the things required to be done, or	2 3 4
(b)	the Registrar-General from accepting anything done by a registered surveyor who has taken over the practice of the original surveyor that is or are necessary or expedient to be done,	5 6 7 8
	to comply with the requisition or requirement referred to in subsection (1) (c).	9 10
<b>[5]</b>	<b>Section 10 Application to registration of Licensing and Registration (Uniform Procedures) Act 2002</b>	11 12
	Omit “31 October” from section 10 (3) (f). Insert instead “31 August”.	13
<b>[6]</b>	<b>Section 13 Professional misconduct</b>	14
	Insert after section 13 (4) (c):	15
	(c1) any failure to comply with a notice under section 9A, or	16
<b>[7]</b>	<b>Section 16A</b>	17
	Insert after section 16:	18
<b>16A</b>	<b>Certain provisions of this Part apply also to former surveyors</b>	19
	For the avoidance of doubt, the provisions of this Part relating to professional misconduct extend to any person who was a registered surveyor at the time that any professional misconduct allegedly occurred but who is no longer a registered surveyor.	20 21 22 23
<b>[8]</b>	<b>Section 27 Constitution of Board</b>	24
	Omit section 27 (2) (e). Insert instead:	25
	(e) between one and three are to be persons appointed by the Minister from persons nominated by such relevant professional associations of persons involved in the spatial information industry as the Minister determines, and	26 27 28 29
<b>[9]</b>	<b>Section 30 Committees</b>	30
	Omit section 30 (2). Insert instead:	31
	(2) A committee must include at least 2 Board members, but may include other persons who are not Board members.	32 33

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<b>[10] Section 33A</b>	1
Insert after section 33:	2
<b>33A Delegation</b>	3
The Surveyor-General may delegate the exercise of any function of the Surveyor-General under this or any other Act (other than this power of delegation) to:	4
(a) any member of staff of the Department, or	5
(b) any person, or any class of persons, authorised for the purposes of this section by the regulations.	6
<b>[11] Section 35A</b>	7
Insert after section 35:	8
<b>35A Unlawful disclosure of information</b>	9
A person who discloses any information obtained in the administration of this Act is guilty of an offence unless the disclosure:	10
(a) is made with the consent of the person to whom the information relates, or	11
(b) is made in connection with the administration of this Act, or	12
(c) is made for the purpose of legal proceedings arising out of this Act or of any report of any such proceedings, or	13
(d) is made with other lawful excuse.	14
Maximum penalty: 50 penalty units.	15
<b>[12] Section 36 Regulations</b>	16
Insert “and the manner in which those complaints are to be dealt with” after “surveyor” in section 36 (2) (i).	17
<b>[13] Section 36 (3)</b>	18
Omit the subsection. Insert instead:	19
(3) A regulation under subsection (2) (a), (b), (c) or (d) with respect to mining surveys or formal mining survey plans may only be made following consultation between the Minister administering this Act and the Minister or Ministers administering the following Acts:	20
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Surveying Amendment Bill 2005

Schedule 1      Amendment of Surveying Act 2002

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| (a) | the <i>Coal Mines Regulation Act 1982</i> ,       | 1 |
| (b) | the <i>Mines Inspection Act 1901</i> ,            | 2 |
| (c) | the <i>Coal Mine Health and Safety Act 2002</i> , | 3 |
| (d) | the <i>Mine Health and Safety Act 2004</i> .      | 4 |



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<b>Schedule 2</b>	<b>Amendment of Surveying Regulation</b>	1
	<b>2001</b>	2
	(Section 4)	3
<b>[1] Clause 4A Constitution of Board: section 27</b>		4
Omit clause 4A (3).		5
<b>[2] Clause 62B</b>		6
Insert after clause 62A:		7
<b>62B Complaints against registered surveyors</b>		8
Complaints with respect to the conduct of a registered surveyor		9
may be made to the Board, and are to be dealt with, in accordance		10
with the document entitled <i>Policy for the Consideration of</i>		11
<i>Complaints Against Surveyors</i> issued by the Board as in force		12
from time to time.		13

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## **Schedule 3      Amendment of Defamation Act 1974**

(Section 5)

### **Section 17JA**

Insert after section 17J:

#### **17JA      Matters arising under the Surveying Act 2002**

There is a defence of absolute privilege:

- (a) for a publication to or by any of the following:
  - (i) the Board of Surveying and Spatial Information,
  - (ii) a member of that Board as such a member,
  - (iii) a committee or subcommittee of that Board, or any member of a committee or subcommittee of that Board,for the purpose of the making or referral of a complaint of professional incompetence or professional misconduct, or the investigation of such a complaint, made in relation to a registered surveyor under the *Surveying Act 2002*, and
- (b) for the publication by a body or person referred to in paragraph (a) of a report of the decision or determination of the body or person in respect of a complaint, and of the reasons for that decision or determination, made in relation to a registered surveyor under the *Surveying Act 2002*.