



SURVEY ACT 1992

No. 10 of 1992

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ANNO QUADRAGESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1992

No. 10 of 1992

An Act to provide for the licensing and registration of surveyors and to make provisions relating to surveying and land boundaries; to repeal the Surveyors Act 1975; and for other purposes.

[Assented to 16 April 1992]

The Parliament of South Australia enacts as follows:

PART I PRELIMINARY

Short title

1. This Act may be cited as the *Survey Act 1992*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Repeal

3. The *Surveyors Act 1975* is repealed.

Interpretation

4. (1) In this Act, unless the contrary intention appears—

“cadastral survey” means any process of determining the boundaries of land by the measurement of distances and angles (including measurement by means of an electronic device) or by photogrammetry:

“company” means a company as defined in section 9 of the *Corporations Law*:

“course” includes a lecture, seminar, tutorial or workshop:

“designated survey area”—*See Part V Division I*:

“director” of a company includes any person occupying or acting in the position of director of the company, whether validly appointed to occupy, or duly authorized to act in, that position or not, and includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act:

“equipment” includes instruments or appliances used in, or for the purposes of, carrying out a survey:

“Institution of Surveyors” means the Institution of Surveyors, Australia, South Australia Division Incorporated:

“interfere” with a survey mark includes disturb, damage, remove or destroy the survey mark:

“land” includes—

- (a) submerged land;
- (b) an interest in land:

“licensed surveyor” means a person who holds a licence as a surveyor under Part III Division II:

“permanent survey mark” means a mark or peg included in the network of survey marks established under Part V Division I:

“prescribed relative” means a parent, spouse, putative spouse, child or grandchild:

“putative spouse” includes a person who is a putative spouse notwithstanding that a declaration has not been made under the *Family Relationships Act 1975* in relation to that person:

“record” means—

- (a) a documentary record;
 - (b) a record made by an electronic, electro-magnetic, photographic or optical process;
- or
- (c) any other kind of record:

“registered surveyor” means a person registered as a surveyor under Part III Division II:

“Registrar” means the person for the time being appointed to, or acting in, the position of Registrar established by the Institution of Surveyors pursuant to Part II Division III:

“share”, in relation to a company, includes a right to participate in the distribution of the profits of the company:

“survey” means—

- (a) a cadastral survey;
- or
- (b) any process of determining—
 - (i) the form of land;or
 - (ii) the position of a point, object, structure or feature on or in land, by the measurement of distances and angles (including measurement by means of an electronic device) or by photogrammetry:

“*Survey Advisory Committee*” means the *Survey Advisory Committee* established under Part II Division II:

“survey instructions”—*See Part IV Division I:*

“survey mark” means—

(a) a mark or peg of a kind specified in survey instructions in force under this Act that is placed on or in land for the purposes of defining a boundary of the land;

or

(b) a permanent survey mark:

“surveyor” means a licensed or registered surveyor:

“Surveyor-General” means the person for the time being appointed or acting as the Surveyor-General:

“Tribunal” means the Commercial Tribunal.

(2) A person who holds a licence under this Act will be taken to be registered under this Act.

(3) A reference in an instrument (whether of a statutory nature or not)—

(a) to a licensed surveyor is to be taken to be a reference to a licensed surveyor within the meaning of this Act;

(b) to a registered surveyor is to be taken to be a reference to a licensed or registered surveyor within the meaning of this Act.

(4) For the purposes of this Act, a surveyor whose licence or registration is under suspension will be taken not to hold a licence or not to be registered (as the case may require).

Note: For definition of divisional penalties see Appendix.

PART II

ADMINISTRATION

DIVISION I—SURVEYOR-GENERAL

Surveyor-General

5. (1) There will be a Surveyor-General.

(2) The Surveyor-General must be a person who is eligible to be licensed or registered under this Act.

Delegation

6. (1) The Surveyor-General may delegate to any person any of the Surveyor-General’s functions or powers under this or any other Act.

(2) A delegation under this section—

(a) may be made subject to such conditions as the Surveyor-General thinks fit;

(b) is revocable at will;

and

(c) does not derogate from the power of the Surveyor-General to act in any matter.

Surveyor-General’s right to enter, etc.

7. The Surveyor-General, or a person authorized in writing by the Surveyor-General, may—

(a) at any reasonable time, enter any land for the purposes of performing the functions assigned to the Surveyor-General under this Act;

and

- (b) take such action as is necessary to enable those functions to be carried out effectively (including excavating or breaking the surface of land to the extent necessary to uncover or place a survey mark).

DIVISION II—SURVEY ADVISORY COMMITTEE

Committee

8. (1) The *Survey Advisory Committee* is established.
- (2) The Committee is to consist of the following members:
- (a) the person for the time being holding or acting in the office of the Surveyor-General (the presiding member);
 - (b) the person for the time being holding or acting in the office of the Registrar-General;
 - (c) three persons appointed by the Minister of whom two must be persons nominated by the Surveyor-General and one must be a person who is not a surveyor;
 - (d) five persons appointed by the Minister on the nomination of the Institution of Surveyors.
- (3) At least one member of the Committee must be a woman and one a man.
- (4) A member of the Committee appointed by the Minister holds office on such conditions and for such term as the Minister determines.
- (5) Subject to this Act and the directions of the Minister, the Committee may conduct its business in such manner as it thinks fit.

Functions of Committee

9. The *Survey Advisory Committee* is responsible for—
- (a) monitoring the operation of this Act and the law relating to surveying and making recommendations to the Minister with respect to those matters;
 - (b) exercising a general oversight over surveying, and the keeping of survey records, in this State and making recommendations to the Minister with respect to those matters;
 - (c) monitoring the operation of survey instructions in force under this Act and making recommendations to the Minister with respect to those instructions;
 - (d) carrying out such other functions as are assigned to it by the Minister.

DIVISION III—INSTITUTION OF SURVEYORS

Functions of Institution of Surveyors under this Act

10. (1) The Institution of Surveyors is responsible for—
- (a) exercising a general oversight over the professional practice of surveyors;
 - (b) monitoring the standards of courses of instruction and training available to—
 - (i) those seeking licensing or registration as surveyors;and
 - (ii) surveyors seeking to maintain or improve their skills in surveying practice;

- (c) consulting with educational authorities in relation to the establishment, maintenance or improvement of courses referred to in paragraph (b);
 - (d) making recommendations to the Minister with respect to the matters referred to in paragraphs (a), (b) and (c);
- and
- (e) carrying out such other functions as are assigned to it by this Act.

(2) The Institution of Surveyors must carry out its functions under this Act with a view to promoting and maintaining high standards of competence and conduct in surveying practice.

Administrative arrangements

11. The Institution of Surveyors must, after consulting with the Minister—

- (a) establish the position of Registrar and ensure that a person is appointed to, or acting in, that position at all times;
 - (b) establish and maintain a register of surveyors and ensure—
 - (i) that the register is accurate;and
 - (ii) that the register is available for inspection by or on behalf of the Surveyor-General without charge and by any other person on payment of the fee fixed by the Institution of Surveyors with the approval of the Minister;
 - (c) make administrative arrangements for receiving, considering and investigating complaints against surveyors;
 - (d) establish and maintain a system for collecting the levies payable under this Act on lodgment of survey plans;
- and
- (e) establish and maintain such other administrative arrangements as are necessary for the performance of the functions assigned to it by this Act.

Fees and levies

12. (1) The Institution of Surveyors—

- (a) must keep separate accounts of fees and levies received under this Act;
- and
- (b) must prepare a statement of those accounts in respect of each calendar year and have the statement audited by a registered company auditor.

(2) Fees and levies received by the Institution of Surveyors under this Act may only be used in carrying out the functions assigned to the Institution by this Act.

Annual report

13. (1) The Institution of Surveyors must, on or before 31 March in each year, deliver to the Minister a report on the performance of its functions under this Act during the calendar year that ended on the preceding 31 December.

(2) The report must include, in respect of the calendar year to which it relates—

- (a) statistics relating to licences, registrations and renewals granted under this Act, complaints against surveyors received under this Act and investigations carried out under this Act;

and

(b) the audited statement of accounts of fees and levies.

(3) The Minister must, within 12 sitting days after receipt of the report, cause a copy of the report to be laid before each House of Parliament.

PART III

LICENSING AND REGISTRATION

DIVISION I—THE PRACTICE OF SURVEYING

Obligation to be licensed to place survey mark

14. A person must not place a survey mark on or in land unless—

(a) he or she is a licensed surveyor;

(b) he or she is acting under the supervision of a licensed surveyor;

or

(c) the survey mark is placed in the course of a survey carried out as part of a course of training approved by the Institution of Surveyors.

Penalty: Division 5 fine.

Obligation to be licensed to carry out cadastral survey for fee or reward

15. A person must not carry out a cadastral survey for fee or reward unless—

(a) he or she is a licensed surveyor;

(b) he or she is acting under the supervision of a licensed surveyor;

or

(c) the survey is carried out as part of a course of training approved by the Institution of Surveyors.

Penalty: Division 5 fine.

Illegal holding out as being licensed

16. (1) A person who is not a licensed surveyor must not—

(a) hold himself or herself out as holding a licence under this Act;

or

(b) permit another person to do so.

Penalty: Division 5 fine.

(2) A person must not hold out another as being licensed under this Act unless the other person is a licensed surveyor.

Penalty: Division 5 fine.

Illegal holding out as being registered

17. (1) A person who is not a registered surveyor must not hold himself or herself out as being registered under this Act or permit another person to do so.

Penalty: Division 5 fine.

(2) A person must not hold out another as being registered under this Act unless the other person is a registered surveyor.

Penalty: Division 5 fine.

Limitation on use of certain expressions

18. (1) A person who is not a licensed surveyor must not use the expression “licensed surveyor” or any of its derivatives, or any expression reserved in the regulations for use by licensed surveyors, to describe himself or herself.

Penalty: Division 5 fine.

(2) A person who is not a registered surveyor must not use the expression “registered surveyor” or any of its derivatives, or any expression reserved in the regulations for use by registered surveyors, to describe himself or herself.

Penalty: Division 5 fine.

(3) A person must not, in the course of advertising or promoting a service that the person provides, use an expression reserved in this section or the regulations for use by licensed or registered surveyors, or any derivative of such an expression, to describe a person who is engaged in the provision of the service but who is not licensed or registered under this Act (as the case may require).

Penalty: Division 5 fine.

(4) The regulations may exempt (conditionally or unconditionally) persons of a specified class from the provisions, or any specified provisions, of this section.

Indemnity against loss

19. (1) A surveyor must not practise surveying unless—

(a) an agreement is in force between the surveyor and a person approved by the Institution of Surveyors;

and

(b) the Institution of Surveyors is satisfied that, by virtue of that agreement, the surveyor will be compensated to the extent required by the Institution of Surveyors in the event that he or she suffers loss by reason of civil liability incurred in the practice of surveying.

Penalty: Division 5 fine.

(2) The Institution of Surveyors may, on such conditions as it thinks fit, exempt a person or a class of persons from the requirements of this section and may, whenever it thinks fit, revoke an exemption or vary the conditions under which an exemption operates.

Disqualification for breach of this Division

20. A court finding a person guilty of an offence against this Division may, in addition to imposing a fine, order that the person be disqualified from being licensed or registered under this Act permanently, for a specified period, until fulfilment of stipulated conditions or until further order.

DIVISION II—LICENCES AND REGISTRATIONS

Applications

21. (1) An application for a licence or registration, or for renewal of a licence or registration, under this Act—

- (a) must be made to the Institution of Surveyors;
- (b) must, in the case of an application for renewal, be delivered to the Registrar not earlier than 1 October and not later than 30 November preceding the end of the period of the current licence or registration;
- (c) must conform to the requirements of the Institution of Surveyors as to its form, contents and the manner in which it is made;

and

- (d) must be accompanied by the fee fixed by the Institution of Surveyors with the approval of the Minister.

(2) An applicant must furnish the Institution of Surveyors with such information or records as it reasonably requires.

(3) The Institution of Surveyors may, if it thinks fit, determine an application for renewal of a licence or registration notwithstanding that it is delivered out of time or that the period of the licence or registration has expired.

Grant of licence or registration

22. (1) Where a natural person applies for a licence or registration under this Act, the Institution of Surveyors must grant the application if satisfied that the applicant—

- (a) is a fit and proper person to be licensed or registered under this Act (as the case may require);
- (b) has the qualifications required by the regulations or has qualifications, or qualifications together with experience, accredited as being equivalent to those qualifications by a body or authority specified in the regulations;
- (c) has the experience required by the regulations;

and

- (d) fulfils all other requirements set out in the regulations.

(2) Where a company applies for a licence or registration under this Act, the Institution of Surveyors must grant the application if satisfied—

- (a) that the memorandum and articles of association of the company contain stipulations to the following effect:
 - (i) an object of the company must be to practise as a surveyor and the remaining objects (if any) must be to practise in any one or more of the fields of engineering, town planning or any other field allowed by the regulations;
 - (ii) the directors of the company must be natural persons;
 - (iii) at least half of the directors of the company must be—

- (A) in the case of an applicant for a licence—practising licensed surveyors;

and

- (B) in the case of an applicant for registration—practising licensed or registered surveyors;
- (iv) the remaining directors of the company must be—
- (A) surveyors;
- (B) persons holding qualifications in, and practising in, a field included in the objects of the company;
- (C) employees of the company;
- or
- (D) in the case of a company with only two directors—a prescribed relative of the other director;
- (v) at least half of the shares in the company must be owned beneficially by—
- (A) in the case of an applicant for a licence—practising licensed surveyors who are directors or employees of the company;
- and
- (B) in the case of an applicant for registration—practising licensed or registered surveyors who are directors or employees of the company;
- (vi) the remaining shares in the company must be owned beneficially by—
- (A) directors or employees of the company;
- or
- (B) prescribed relatives of directors of the company;
- (vii) at least half of the voting rights exercisable at a meeting of the members of the company must be held by—
- (A) in the case of an applicant for a licence—practising licensed surveyors who are directors or employees of the company;
- and
- (B) in the case of an applicant for registration—practising licensed or registered surveyors who are directors or employees of the company;
- (viii) no director of the company may, without the approval of the Institution of Surveyors, be a director of any other company that is a surveyor;
- and
- (ix) where the requirements set out in subparagraphs (v), (vi) or (vii) would be contravened by virtue of—
- (A) a person ceasing to be a practising licensed or registered surveyor or a director or employee of the company;
- or
- (B) the dissolution or annulment of the marriage of a director of the company or the cessation of cohabitation of a director of the company and his or her putative spouse,
- the shares owned by the person or the spouse must be—
- (C) redeemed by the company;

(D) distributed amongst the remaining members of the company;

or

(E) transferred to a person who is, or is to become, a director or employee of the company or to a person who is a prescribed relative of a director,

to such extent as is necessary to ensure compliance with those requirements;

and

(b) that the memorandum and articles of association are otherwise appropriate to a company practising as a surveyor.

(3) The Institution of Surveyors may, with the approval of the Minister, grant an application for a licence or registration under this Act to an applicant who does not comply with any one or more of the requirements of this section if satisfied that the lack of compliance would not adversely affect the ability of the applicant to practise surveying.

Conditional licence

23. (1) The Institution of Surveyors may grant an application for a licence under this Act to an applicant who does not comply with any one or more of the requirements for eligibility for a licence in order to enable the person to do whatever is necessary to become eligible for a full licence.

(2) The Institution of Surveyors may impose conditions on a licence granted under this section, including conditions—

- (a) restricting the places and times at which the applicant may practise cadastral surveying;
- (b) limiting the areas of cadastral surveying in which the applicant may practise;
- (c) requiring cadastral surveys undertaken by the applicant to be submitted for consideration by the Institution of Surveyors;
- (d) limiting the period during which the licence remains in force.

Duration and renewal

24. (1) Subject to this Act, a licence or registration (not being a licence for a limited period) remains in force until 31 December following the grant of the licence or registration and may be renewed for successive periods of one year expiring on 31 December.

(2) Subject to this Act, where application is made in accordance with this Act for renewal of a licence or registration, the Institution of Surveyors must renew the licence or registration.

Licences or certificates

25. (1) The Registrar must, on the licensing or registration of a surveyor or the renewal of the licence or registration of a surveyor, issue a licence or certificate of registration (as the case may require) to the surveyor.

(2) The Registrar may, on request by a surveyor and payment of the fee fixed by the Institution of Surveyors with the approval of the Minister, issue a duplicate licence or certificate of registration.

Continuing education

26. (1) The Institution of Surveyors may require surveyors to attend specified courses, to gain specified experience, or to take other specified action, within a specified period for the purpose of encouraging surveyors to maintain or improve their skills in surveying practice.

(2) If the Institution of Surveyors is not satisfied that an applicant for renewal of a licence or registration has complied with requirements specified under subsection (1), the Institution of Surveyors may—

- (a) renew the licence or registration subject to specified conditions;
- (b) refuse to renew the licence or registration until specified conditions are fulfilled;
- or
- (c) refuse to renew the licence or registration.

(3) The Institution of Surveyors may, on application by a surveyor, vary or revoke a condition imposed under this section.

(4) If the Institution of Surveyors refuses to renew a licence or registration until specified conditions are fulfilled, the licence or registration is, on the fulfilment of those conditions, renewed for the period expiring on the following 31 December.

(5) The Institution of Surveyors may charge such fees as are approved by the Minister in relation to the provision of courses or other services for the purposes of this section.

Breach of conditions

27. A surveyor who contravenes or fails to comply with a condition imposed under this Act on the surveyor's licence or registration is guilty of an offence.

Penalty: Division 5 fine.

DIVISION III—SPECIAL OBLIGATIONS OF COMPANIES**Company to comply with stipulations required by Act**

28. (1) If a provision required by this Act to be included in the memorandum or articles of association of a company licensed or registered under this Act is not complied with, the company must, within 14 days, report the non-compliance to the Institution of Surveyors.

Penalty: Division 7 fine.

(2) The Institution of Surveyors may give such directions as are necessary to secure compliance with the provision.

(3) The licence or registration of a company that has received a direction from the Institution of Surveyors under subsection (2) will, if the company has not satisfied the Institution of Surveyors that it has complied with the direction, be suspended from the expiration of the time allowed by the Institution of Surveyors for compliance with the direction and will remain suspended until the company satisfies the Institution of Surveyors that it has complied with the direction.

Alteration to memorandum or articles of association

29. A company licensed or registered under this Act must not alter its memorandum or articles of association unless the proposed alteration has been submitted to, and approved by, the Institution of Surveyors or is made in pursuance of a direction by the Institution of Surveyors.

Penalty: Division 7 fine.

Companies not to practise in partnership

30. A company licensed or registered under this Act must not, without the approval of the Institution of Surveyors, practise in partnership with any other person.

Penalty: Division 7 fine.

Employment of licensed or registered persons by company

31. (1) A company licensed or registered under this Act must not, without the approval of the Institution of Surveyors, employ more surveyors than twice the number of practising surveyors who are directors of the company.

Penalty: Division 7 fine.

(2) For the purposes of subsection (1), a person who is both an employee and director of the company will not be counted as an employee.

Joint and several liability

32. Any civil liability incurred by a company licensed or registered under this Act is enforceable jointly and severally against the company and the persons who were directors at the time the liability was incurred.

Return by companies

33. (1) A company licensed or registered under this Act must, within one month after a person becomes or ceases to be a director or member of the company, lodge with the Institution of Surveyors a notice in writing of that fact stating the name and residential address of that person.

Penalty: Division 7 fine.

(2) A company licensed or registered under this Act must lodge with the Institution of Surveyors in January of each year a return in the form approved by the Institution of Surveyors containing the information required by the Institution of Surveyors.

Penalty: Division 7 fine.

DIVISION IV—DISCIPLINE**Proper cause for disciplinary action**

34. (1) A surveyor is liable to be disciplined if the surveyor—

(a) has been guilty of conduct that constitutes a breach of this Act or has contravened or failed to comply with survey instructions in force under this Act;

(b) has obtained a licence or registration under this Act improperly;

(c) has failed to exercise proper care in carrying out a survey;

or

(d) has, in the course of surveying practice—

(i) been guilty of conduct that constitutes a breach of any other Act or law punishable by imprisonment for a period of one year or more;

or

(ii) been guilty of improper or unethical conduct, incompetence or negligence.

(2) Disciplinary action may be taken under this Division against a person who was licensed or registered as a surveyor when the cause for disciplinary action arose but has since ceased to be licensed or registered as a surveyor.

Complaints

35. (1) Any person may lodge with the Institution of Surveyors a complaint against a surveyor or former surveyor.

(2) The Institution of Surveyors must, wherever practicable, attempt to resolve the subject matter of a complaint by conciliation.

Investigations by Institution of Surveyors

36. (1) The Institution of Surveyors must at the direction of the Surveyor-General or the Commercial Registrar of the Tribunal, and may in any other case, investigate a complaint made by a person against a surveyor or former surveyor.

(2) The Institution of Surveyors may appoint a suitable person to conduct an investigation.

(3) The Institution of Surveyors must provide a person so appointed with a certificate of appointment.

(4) For the purposes of an investigation, a person appointed by the Institution of Surveyors under this section—

(a) may require a person who is under investigation, or a person who is, or was, the employer, employee or a partner of that person to produce records or equipment;

and

(b) may inspect the records or equipment, make copies of the records or their contents or test the equipment and, where reasonably necessary for those purposes, seize and retain the records or equipment.

(5) A person appointed under this section must, at the request of a person in relation to whom he or she has exercised, or intends to exercise, powers under this section, produce his or her certificate of appointment.

(6) Where an investigation is conducted at the direction of the Surveyor-General or the Commercial Registrar of the Tribunal, the Institution of Surveyors must report to the Surveyor-General or Commercial Registrar (as the case may require) on the results of the investigation.

Disciplinary powers of Institution of Surveyors, etc.

37. (1) After conducting an investigation under this Division, the Institution of Surveyors may—

(a) reprimand the person;

or

(b) lodge with the Tribunal a complaint against the person setting out matters that are alleged to constitute proper cause for disciplinary action.

(2) Before the Institution of Surveyors exercises a power conferred by subsection (1), it must allow the person concerned a reasonable opportunity to make representations orally or in writing to the Institution.

(3) Where the Institution of Surveyors exercises a power conferred by subsection (1), it must report the matter to the Surveyor-General.

(4) If, after conducting an investigation under this Division, the Institution of Surveyors is satisfied that there are reasonable grounds to suspect that a person has committed an offence against this Act, it must—

(a) report the matter to the Surveyor-General;

and

- (b) at the request of the Surveyor-General, furnish the Surveyor-General with copies of any material in its possession relevant to the investigation or prosecution of the suspected offence.

Disciplinary powers of Tribunal

38. (1) The Surveyor-General, the Institution of Surveyors or any other person may lodge with the Tribunal a complaint setting out matters that are alleged to constitute grounds for disciplinary action against a surveyor or former surveyor.

(2) A complaint lodged with the Tribunal must conform to the requirements of the Commercial Registrar of the Tribunal as to its form, contents and the manner in which it is made.

(3) If a complaint has been lodged under this section (whether by the Surveyor-General, the Institution of Surveyors or any other person), the Commercial Registrar of the Tribunal may direct the Surveyor-General or the Institution of Surveyors to investigate or further investigate under this Act any matters to which the complaint relates.

(4) An inquiry may only be conducted by the Tribunal under this section in relation to matters alleged in a complaint lodged pursuant to this section or matters disclosed by investigations conducted pursuant to this section.

(5) If the Tribunal decides to hold an inquiry under this section, it must give the person to whom the inquiry relates (the respondent) reasonable notice of the subject matter of the inquiry.

(6) If, after conducting an inquiry under this section, the Tribunal is satisfied that proper cause exists for disciplinary action against the respondent, it may exercise any one or more of the following powers:

- (a) it may reprimand the respondent;
- (b) it may impose a fine not exceeding a division 5 fine on the respondent;
- (c) it may impose conditions on the respondent's licence or registration restricting the right of the respondent to practise surveying;
- (d) it may suspend the respondent's licence or registration for a specified period, until fulfilment of stipulated conditions or until further order;
- (e) it may cancel the respondent's licence or registration;
- (f) it may disqualify the respondent from being licensed or registered under this Act permanently, for a specified period, until fulfilment of stipulated conditions or until further order.

(7) A person who has been convicted of, or has expiated, an offence is not liable to a fine under this section in respect of the act or activity comprising the offence.

(8) If the Tribunal takes disciplinary action against the respondent, it may stipulate that the action is to have effect at a future time specified by the Tribunal.

(9) The Tribunal may, on application by a surveyor, vary or revoke a condition imposed under this section.

Return of licence or certificate of registration

39. Where a person's licence or registration under this Act is suspended or cancelled, the person must, at the direction of the Tribunal, return the licence or certificate of registration to the Registrar.

Penalty: Division 8 fine.

Restrictions on disqualified persons

40. (1) A disqualified person must not, without the prior approval of the Tribunal, undertake any work in connection with a survey.

Penalty: Division 5 fine.

(2) Where a person, who to the knowledge of a surveyor is a disqualified person, is employed or engaged by the surveyor in connection with a survey without the prior approval of the Tribunal, the surveyor is guilty of an offence.

Penalty: Division 5 fine.

(3) The Tribunal may, on application by a disqualified person or a person who wishes to employ or engage a disqualified person, approve the disqualified person's employment or engagement in connection with a survey subject to such conditions (if any) as the Tribunal thinks fit.

(4) Where an approval has been granted under this section, the Tribunal may, on application by the Surveyor-General, the Institution of Surveyors, the disqualified person to whom the approval relates or a person who employs or engages the disqualified person—

(a) vary or revoke a condition of the approval or impose a further condition;

or

(b) revoke the approval.

(5) A person who contravenes or fails to comply with a condition imposed under this section is guilty of an offence.

Penalty: Division 5 fine.

(6) In this section—

“disqualified person” means a person whose licence or registration under this Act is suspended or cancelled.

Consequences of action against surveyor in other jurisdictions

41. (1) Where, in consequence of action taken against a surveyor in another State or a Territory, of the Commonwealth, or in New Zealand a surveyor's right to practise surveying in that State, Territory or country is suspended or cancelled, the registration or licence of the surveyor under the Act is, unless the Tribunal otherwise determines, automatically suspended or cancelled.

(2) Where such a surveyor is reinstated on the register in that other State, Territory or country, the surveyor is, unless the Tribunal otherwise determines, automatically reinstated on the register in this State.

DIVISION V—APPEAL TO TRIBUNAL**Appeal to Tribunal**

42. (1) An appeal lies to the Tribunal in the following cases:

(a) an applicant for a licence or registration under this Act may appeal against a decision of the Institution of Surveyors to grant a conditional licence or to refuse to grant the licence or registration;

(b) an applicant for renewal of a licence or registration under this Act may appeal against a decision of the Institution of Surveyors to grant a conditional renewal or to refuse to grant the renewal (whether or not until fulfilment of specified conditions);

(c) a person who is reprimanded by the Institution of Surveyors under this Act may appeal against the reprimand.

(2) The appeal must be instituted within one month of the making of the decision appealed against, but the Tribunal may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal be instituted within that period.

(3) The Tribunal may, on the hearing of an appeal, hear such evidence as it thinks fit, whether or not the evidence was produced before the Institution of Surveyors.

(4) The Tribunal may, on the hearing of an appeal, exercise any one or more of the following powers:

(a) affirm, vary or quash the decision appealed against, or substitute, or make in addition, any decision that should have been made in the first instance;

(b) remit the subject matter of the appeal to the Institution of Surveyors for further hearing or consideration or for rehearing;

(c) make any further or other order as to costs or any other matter that the case requires.

(5) Where the Tribunal quashes a decision of the Institution of Surveyors to reprimand a person, the Institution of Surveyors must—

(a) withdraw the reprimand;

and

(b) publish the withdrawal to the same extent and in the same manner as the reprimand was published (if at all).

(6) The Institution of Surveyors must, if so required by a person affected by a decision made by it, state in writing the reasons for its decision.

(7) If the reasons of the Institution of Surveyors are not given in writing at the time of making a decision and the person affected by the decision, within one month of the making of the decision, requires the Institution to state its reasons in writing, the time for instituting an appeal runs from the time when the person receives the written statement of those reasons.

(8) Where the Institution of Surveyors or the Tribunal is satisfied that an applicant for renewal of a licence or registration under this Act has instituted or intends to institute an appeal under this section, it may extend the period of the licence or registration until the determination of the appeal and impose such conditions on the licence or registration as it thinks fit.

PART IV

SURVEYING

DIVISION I—SURVEY INSTRUCTIONS

Survey instructions

43. (1) The Governor may, by regulation, issue survey instructions in relation to cadastral surveys and records of cadastral surveys.

(2) Without limiting the generality of subsection (1), survey instructions may—

(a) regulate the manner in which cadastral surveys are to be carried out (including the records to be kept in relation to cadastral surveys);

(b) provide for tolerances in relation to the accuracy of cadastral surveys;

- (c) regulate the standard of equipment to be used in cadastral surveys;
- (d) regulate the form, establishment, custody, maintenance, removal or reinstatement of survey marks;
- (e) regulate the form or certification of plans or other records of cadastral surveys;
- (f) regulate the manner in which cadastral surveys are to be carried out in designated survey areas with a view to those areas forming part of the coordinated cadastre under this Act.

(3) Survey instructions may—

- (a) vary in their operation according to time, place or circumstance;
- (b) confer discretionary powers on the Surveyor-General.

(4) The *Survey Advisory Committee* must be consulted before survey instructions are promulgated.

(5) The Registrar-General must be consulted before survey instructions are promulgated under subsection (2) (e) in relation to plans or other records to be lodged in the Lands Titles Registration Office.

DIVISION II—RECTIFICATION OF SURVEYS

Investigations by Surveyor-General

44. (1) The Surveyor-General must at the direction of the Commercial Registrar of the Tribunal, and may on his or her own initiative or on complaint received from any person, conduct an investigation in order to determine—

- (a) whether a cadastral survey or a record or plan prepared in connection with a cadastral survey and lodged in the Lands Titles Registration Office or any other section of the Department of Lands is defective in any respect;

or

- (b) whether in relation to a cadastral survey there has been a breach of, or non-compliance with, this Act or survey instructions in force under this Act.

(2) The Surveyor-General may appoint a suitable person to conduct an investigation.

(3) The Surveyor-General must provide a person so appointed with a certificate of appointment.

(4) For the purposes of an investigation, the Surveyor-General, or a person appointed by the Surveyor-General under this section, may—

- (a) require the licensed surveyor responsible for the survey under investigation, or a person who is, or was, the employer, employee or a partner of that surveyor, to produce records kept or equipment used in connection with the survey;

and

- (b) inspect the records or equipment, make copies of the records or their contents or test the equipment and, where reasonably necessary for those purposes, seize and retain the records or equipment.

(5) A person appointed under this section must, at the request of a person in relation to whom he or she has exercised, or intends to exercise, powers under this section, produce his or her certificate of appointment.

Rectification

45. (1) If, after an investigation under this Division has been conducted, the Surveyor-General is satisfied that a cadastral survey or a record or plan is defective in some respect, the Surveyor-General may, in order to rectify that defect, require the licensed surveyor responsible for the survey to do any one or more of the following:

- (a) to carry out additional work in connection with the survey within a specified period;
- (b) to amend any record or plan prepared in connection with the survey within a specified period;
- (c) to prepare any further record or plan in connection with the survey within a specified period.

(2) Before the Surveyor-General exercises a power conferred by subsection (1), the Surveyor-General—

- (a) must allow the person concerned a reasonable opportunity to make representations orally or in writing;

and

- (b) must, if that person so requests, refer the matter to the Institution of Surveyors for advice.

(3) A surveyor who, without reasonable excuse, refuses or fails to comply with a requirement under subsection (1) is guilty of an offence.

Penalty: Division 7 fine.

(4) If a surveyor refuses or fails to comply with a requirement under subsection (1), the Surveyor-General may carry out such work as is necessary to rectify the defect and may recover the costs of that work as a debt owed by the surveyor.

(5) If a surveyor of whom a requirement under subsection (1) would have been made has died, the Surveyor-General may carry out such work as is necessary to rectify the defect.

DIVISION III—MISCELLANEOUS**Right to enter, etc.**

46. A surveyor, or a person authorized in writing by a surveyor, may—

- (a) at any reasonable time, enter any land for the purposes of carrying out work in connection with a survey;

and

- (b) take such action as is necessary to enable the survey to be carried out effectively (including excavating or breaking the surface of land to the extent necessary to uncover or place a survey mark).

Certification of plans

47. (1) A plan or other document required by law to be signed or certified by a surveyor must be signed or certified by a surveyor who is a natural person.

(2) A surveyor who certifies as correct a plan prepared in connection with a survey that the surveyor did not carry out or supervise is guilty of an offence.

Penalty: Division 5 fine.

Liability of surveyor for acts or omissions of employees

48. For the purposes of this Act, an act or omission of a person employed by a surveyor in carrying out a survey (whether under a contract of service or otherwise) is to be taken to be an act or omission of the surveyor unless the surveyor proves that the person was not acting in the course of the employment.

PART V**ESTABLISHMENT OF LAND BOUNDARIES****DIVISION I—COORDINATED CADASTRE****Coordinated cadastre**

49. (1) The Surveyor-General is responsible for establishing a coordinated cadastre for the State and may, for that purpose—

- (a) establish and maintain a network of permanent survey marks with recorded coordinates for use in surveying, mapping or related practice;
- (b) declare, by notice in the *Gazette*, specified areas of the State to be designated survey areas, being areas of land in respect of which cadastral surveys must be carried out by reference to permanent survey marks in accordance with survey instructions in force under this Act, and for which coordinates must be determined in accordance with those instructions;
- (c) record the coordinates of the boundaries of land within each designated survey area as determined by surveys carried out in the area (whether before or after the declaration of the area as a designated survey area), compare the coordinates recorded in relation to all allotments of land within the area and make any necessary adjustments to the recorded coordinates;

and

- (d) where the coordinates for all allotments of land within a designated survey area have been so recorded, compared and adjusted—

- (i) declare, by notice in the *Gazette*, that part of the State to be within the coordinated cadastre;

and

- (ii) lodge with the Registrar-General for filing in the Lands Titles Registration Office a plan delineating the boundaries of those allotments on the basis of those coordinates.

(2) A plan may be lodged under subsection (1) (d) by means of lodging a hard copy of the plan or by the electronic transfer of information.

(3) The Surveyor-General may, by notice in the *Gazette*, declare a mark or peg of a specified class to be a survey mark that may be used in the network of permanent survey marks under subsection (1).

(4) A notice under subsection (3) may be varied or revoked by subsequent notice in the *Gazette*.

DIVISION II—CONFUSED LAND BOUNDARIES**Confused Boundary Areas**

50. (1) Subject to subsection (2), the Surveyor-General may, by notice in the *Gazette*, declare that a specified area within the State is a Confused Boundary Area.

(2) A declaration under subsection (1) may only be made if the Surveyor-General is satisfied that, generally, the occupation of land within the area does not accord to a substantial

extent with the boundaries of land as shown in records or plans kept in the Lands Titles Registration Office.

(3) A notice under this section may be varied or revoked by subsequent notice in the *Gazette*.

(4) The Surveyor-General must consult with the *Survey Advisory Committee* before publishing any notice under this section.

Surveys within Confused Boundary Area

51. (1) Where a cadastral survey of land within a Confused Boundary Area is carried out by a surveyor, the boundaries of the land must (instead of being determined in accordance with accepted surveying practice and the provisions of this Act) be determined on the basis of what is fair and equitable having regard to—

(a) existing physical boundaries;

(b) the length of time that those boundaries have departed from the boundaries as shown in any public records of survey or as marked by existing survey marks;

and

(c) all other relevant factors.

(2) Where a plan of the boundaries of land within a Confused Boundary Area is lodged in the Lands Titles Registration Office, it must be accompanied by a statement that—

(a) sets out the basis on which the boundaries were determined;

and

(b) is signed by the surveyor who certifies the plan.

(3) The Registrar-General must forward a copy of any such plan to the Surveyor-General for approval under this section.

(4) As soon as practicable after a plan of the boundaries of land within a Confused Boundary Area is forwarded to the Surveyor-General under this section, the Surveyor-General must give notice in accordance with this section—

(a) to all persons with a registered interest in the land;

(b) to all persons with a registered interest in land adjoining the land;

and

(c) to all other persons who have a registered interest in land that is likely, in the opinion of the Surveyor-General, to be directly or indirectly affected.

(5) A notice under subsection (4)—

(a) must specify a place at which the plan may be viewed during normal office hours;

and

(b) must specify a period (not less than 28 days after the date of the notice) within which objections relating to the determination of the land boundaries will be received by the Surveyor-General.

(6) On consideration of a plan and any objections received under this section, the Surveyor-General may—

(a) approve the plan with or without modification;

and

(b) carry out such further work as is necessary in view of the terms of the approval.

(7) The Surveyor-General must give notice of the terms of an approval and, if a plan is approved with modification, a brief description of the reasons for the decision as to those terms, to—

- (a) the surveyor responsible for the survey;
 - (b) all persons who were entitled to be notified under subsection (4) and who continue to hold the registered interest in land by reason of which they were so entitled;
- and
- (c) all persons who have since the date of that notification acquired a registered interest in land by reason of which they would have been entitled to be notified if they had held that interest at that date.

(8) Any person entitled to receive a notice under subsection (7) may, within 14 days after receipt of the notice, appeal against the decision of the Surveyor-General to the Land and Valuation Court.

(9) The Land and Valuation Court may, on the hearing of an appeal, hear such evidence as it thinks fit, whether or not the evidence was produced before the Surveyor-General.

(10) The Land and Valuation Court may, on the hearing of an appeal, exercise any one or more of the following powers:

- (a) affirm or vary the decision appealed against, or make in addition any decision that should have been made in the first instance;
- (b) quash the decision appealed against and substitute any decision that should have been made in the first instance;
- (c) remit the subject matter of the appeal to the Surveyor-General for further consideration;
- (d) make any further or other order as to costs or any other matter that the case requires.

(11) If no appeal is lodged under this section against the approval of a plan by the Surveyor-General, the Registrar-General may deposit that plan in the Lands Titles Registration Office.

(12) If an appeal is lodged under this section and the Land and Valuation Court on appeal approves a plan, the Registrar-General may deposit that plan in the Lands Titles Registration Office.

(13) This section is in addition to and does not derogate from the *Real Property Act 1886*.

PART VI

MISCELLANEOUS

Interference with survey marks

52. (1) Subject to this section, a person must not, without the approval of the Surveyor-General, interfere with a survey mark.

Penalty: Division 7 fine.

(2) This section does not apply—

- (a) in relation to interference with a survey mark (other than a permanent survey mark) in the course of the erection or maintenance of a fence or other permanent improvement on the boundary defined by that survey mark;

(b) in relation to interference with a survey mark (other than a permanent survey mark) by a licensed surveyor, or a person acting under the supervision of a licensed surveyor, in the course of a survey if, as soon as reasonably practicable after the interference, the surveyor or other person reinstates the survey mark;

or

(c) in relation to interference with a survey mark (other than a permanent survey mark) in the course of works for the provision of roads, drains or other services in association with the division of land.

(3) Where a person has contravened subsection (1) and the survey mark interfered with has been reinstated, the cost of that reinstatement may be recovered as a debt by the person who reinstated the survey mark from the person who contravened subsection (1).

Offence to hinder or obstruct

53. (1) A person must not, without reasonable excuse, hinder or obstruct a person in the exercise of a power conferred by this Act.

Penalty: Division 6 fine.

(2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made by a person for the purposes of an investigation under this Act.

Penalty: Division 6 fine.

False or misleading information

54. A person must not, in furnishing information required under this Act, make a statement that is false or misleading in a material particular.

Penalty: Division 7 fine.

Confidentiality

55. A person must not divulge information obtained in the course of an investigation under this Act except—

(a) as authorized by or under this Act;

(b) with the consent of the person from whom the information was obtained or to whom the information relates;

(c) in connection with the administration of this Act;

or

(d) for the purpose of legal proceedings arising out of the administration of this Act.

Penalty: Division 5 fine.

General defence

56. It is a defence to a charge of an offence against this Act if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

Punishment of conduct that constitutes offence

57. Subject to this Act, where conduct constitutes an offence and is also a ground for disciplinary action under this Act, the taking of disciplinary action under this Act is not a bar to conviction and punishment for the offence, nor is conviction and punishment for the offence a bar to disciplinary action under this Act.

Levy on lodgment of plans

58. The Institution of Surveyors may charge a levy of an amount approved by the Minister on each plan certified as correct by a licensed surveyor and lodged in the Lands Titles Registration Office.

Approvals

59. An approval of the Minister, the Surveyor-General or the Institution of Surveyors under this Act—

(a) must be in writing;

and

(b) may be absolute or conditional.

Evidentiary provision

60. In any legal proceedings, a certificate, purporting to be under the hand of the Registrar, that any person was or was not licensed or registered under this Act at a specified date or as to any other information contained in the register of surveyors established under this Act is, in the absence of proof to the contrary, proof of the information so certified.

Summary offences

61. (1) An offence against this Act is a summary offence.

(2) A prosecution for an offence against this Act must be commenced within two years after the date on which the offence is alleged to have been committed or such further period as the Minister may, in a particular case, authorize.

(3) A document apparently signed by the Minister and stating that the Minister authorizes a specified extension of the period for commencing a particular prosecution is to be accepted, in the absence of proof to the contrary, as proof of the fact so stated.

Service of notices

62. (1) A notice to be given under this Act may be given—

(a) by personal service on the person or agent of the person;

(b) by leaving it for the person at the person's place of residence or business with someone apparently over the age of 16 years;

or

(c) by sending it by post to the person or agent of the person at the person's last known address, or by leaving it in the letterbox to which it would have been delivered if so posted.

(2) Where a notice is to be given under this Act to a person with a registered interest in land and it is not reasonably practicable for it to be given in accordance with subsection (1), the notice may be given by leaving it in a conspicuous position on the land.

Regulations

63. (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), the regulations may regulate company names, business names or trading names that may be used by surveyors or require that such names be approved by the Institution of Surveyors.

(3) The regulations may—

-
- (a) prescribe fines not exceeding a division 7 fine for contravention of any regulation;
- (b) apply, adopt or incorporate, with or without modification, any code, standard or other document prepared or approved by a body or authority referred to in the regulation as in force from time to time or as in force at a specified time.
- (4) Where a code, standard or other document is applied, adopted or incorporated in regulations—
- (a) a copy of the code, standard or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at the office of the Surveyor-General;
- and
- (b) in any legal proceedings, evidence of the contents of the code, standard or other document may be given by production of a document purporting to be certified by or on behalf of the Minister as a true copy of the code, standard or other document.

SCHEDULE

*Transitional Provisions***Licensed surveyors**

1. A person who was, immediately before the commencement of this Act, a licensed surveyor under the *Surveyors Act 1975* (being a registered surveyor whose registration is endorsed to the effect that he or she may perform prescribed cadastral surveys) will be taken to have been granted a licence under this Act.

Registered surveyors

2. A person who was, immediately before the commencement of this Act, a registered surveyor under the *Surveyors Act 1975* but whose registration was not endorsed to the effect that he or she may perform prescribed cadastral surveys will be taken to have been registered under this Act.

Companies

3. A company that was immediately before the commencement of this Act practising cadastral surveying will be taken to have been granted a licence under this Act (notwithstanding that the memorandum or articles of association of the company do not comply with the requirements of this Act) but that licence will not be renewed unless the company complies, at the time of renewal, with the requirements of this Act on initial application for a licence.

Register of surveyors

4. The Institution of Surveyors must enter the name of each person who was, immediately before the commencement of this Act, a licensed or registered surveyor under the *Surveyors Act 1975* on the register of surveyors established under this Act and any records maintained under the *Surveyors Act 1975* that are reasonably required for that purpose must be made available to the Institution.

Disciplinary powers

5. The powers conferred by Part III Division IV may be exercised in relation to conduct or circumstances occurring before the commencement of this Act.

Designated survey areas

6. An area of the State that was immediately before the commencement of this Act a designated survey area under the regulations made under the *Surveyors Act 1975* will be taken to have been declared a designated survey area under Part V Division I.

APPENDIX
DIVISIONAL PENALTIES

At the date of assent to this Act divisional penalties are, as provided by section 28a of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine
1	15 years	\$60 000
2	10 years	\$40 000
3	7 years	\$30 000
4	4 years	\$15 000
5	2 years	\$8 000
6	1 year	\$4 000
7	6 months	\$2 000
8	3 months	\$1 000
9	—	\$500
10	—	\$200
11	—	\$100
12	—	\$50

Note: This appendix is provided for convenience of reference only.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor