

2000

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

SURVEYORS BILL 2000

EXPLANATORY MEMORANDUM

**Circulated by authority of
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Minister for Urban Services**

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OUTLINE

The *Surveyors Act 1967* has been reviewed under National Competition Policy (NCP) principles and found to be too prescriptive and lacking flexibility to fully utilise modern technology and practices. The *Surveyors Bill 2000* will replace the existing legislation. The reforms introduced by this Bill provide for an efficient and effective framework for survey practice in the ACT.

The Bill provides for the appointment of a Commissioner for Surveys. The Commissioner will be a statutory officer appointed by the Minister for a period not exceeding 5 years. The Surveyors Board of the ACT will be abolished on repeal of the *Surveyors Act 1967* and responsibility for the Board's functions will transfer to the Minister and the Commissioner.

Registration of Surveyors for the division of land and for boundary definition is being retained to protect the integrity of the survey cadastre.

Disciplinary procedures have been streamlined and made less adversarial. The Bill provides grounds for the commissioner to take appropriate disciplinary action against a registered surveyor. Application can be made to the Administrative Appeals Tribunal for review of disciplinary and other decisions of the Commissioner.

The Bill provides for the Minister to issue the Survey Practice Directions that were previously issued by the Surveyors Board. The Bill also provides for power of entry to conduct a survey and for the protection of survey marks.

REVENUE/COST IMPLICATIONS

The Commissioner's salary is anticipated to equate to that of the current Chief Surveyor. There will be a small cost saving on abolition of the Surveyors Board.

CLAUSE NOTES

Formal Clauses

Clauses 1 & 2 set out the name of the Bill and provide for its commencement.

Clause 3 gives the status of explanatory notes in the Act.

Clause 4 defines terms used in the Act.

Commissioner for Surveys

Clause 5 establishes the position of Commissioner for surveys.

Clause 6 sets out the functions of the Commissioner, including those conferred by the Act or any other Act. These functions are to develop standards of survey practice, consult on major policy issues with organisations in the Territory that represent surveyors and to enter into reciprocal recognition of qualifications with appropriate authorities outside Australia and New Zealand. The Commissioner is to also liaise and make arrangements with surveying entities for the purpose of improving or reviewing the practice of surveying, qualifications and professional development of surveyors and, the Commissioner's powers and functions.

Clause 7 provides for the Minister to appoint the Commissioner. Sections 4 & 5 of the *Statutory Appointments Act 1994* apply to the appointment of a public servant. The Commissioner must be eligible for registration as a surveyor under the Act.

Clause 8 provides for the term of office to be specified in the instrument of appointment. The term is not to exceed 5 years.

Clause 9 requires that the Commissioner be or be eligible to be registered as a surveyor.

Clause 10 provides for the Minister to decide on the terms of appointment of the Commissioner where such terms are not specified in this or another Act.

Clause 11 provides for the Minister to grant leave of absence to the Commissioner on terms that the Minister considers appropriate.

Clause 12 provides for the Minister to end the Commissioner's appointment on grounds of misbehaviour or physical or mental incapacity. Also, the Commissioner's appointment may be ended if he or she becomes bankrupt, applies for relief of bankruptcy or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit. The third ground for ending the Commissioner's appointment is if he or she is absent, without leave, for 14 consecutive days or 28 days in any 12 months.

Clause 13 enables the Commissioner to delegate powers to a public servant and

Clause 14 protects the Commissioner from suit.

Registration of Surveyors Administration

Clause 15 requires the Commissioner to maintain a register of surveyors, which may be in electronic form, and to provide access to, and copies from, the register.

Clause 16 details the particulars that the commissioner must enter in the register and empowers the Commissioner to make corrections.

Eligibility for Registration

Clause 17 states that a person may apply in writing to the Commissioner for registration.

Clause 18 details educational, training and experience requirements for registration, and provides for mutual recognition and reciprocal recognition arrangements. However a surveyor whose registration has been suspended is not eligible to be registered. This Clause also provides for a person whose registration has been cancelled, terminated or suspended in the ACT or elsewhere to again be eligible for registration subject to also being entitled under mutual recognition provisions or, in the case of termination or cancellation, the Commissioner being satisfied that the reasons for this action no longer apply.

Clause 19 provides for the Commissioner to enter into arrangements with appropriate authorities (outside Australia and New Zealand) for the reciprocal recognition of qualifications and eligibility to practice surveying, and also disciplinary action.

Clause 20 allows for the Commissioner to require information and make reasonable inquiries about an application for registration.

Clause 21 requires the Commissioner to either register or refuse to register a person who has applied for registration depending on whether the requirements for registration have been met.

Clause 22 provides for the issuing of a certificate of registration upon application by a surveyor.

General provisions relation to surveyors

Clause 23 requires a registered surveyor to pay an annual registration fee before 1 July each year. Failure to do so will incur a surcharge for late payment. If the annual fee and surcharge is not paid by 1 November then registration is automatically cancelled. A person may apply to have his or her registration restored by paying the necessary fee and surcharge and satisfying the Commissioner that the requirements of the Act have been met. In which case the Commissioner must restore the registration.

Clause 24 requires a registered surveyor to notify his or her change of address within 21 days.

Clause 25 provides for voluntary cancellation of registration and surrender of certificate of registration. The Commissioner must cancel the surveyor's registration if satisfied that the surveyor is not in contravention of any provision of the Act or regulations.

Clause 26 provides for the names and particulars of registered surveyors who have died or whose registration has been cancelled, to be removed from the register.

Clause 27 empowers the Commissioner to seek verification of a registered surveyor's address. The Commissioner is able to cancel the registration of a surveyor who does not respond to a notice to verify his or her address.

Clause 28 requires a surveyor, whose registration has been suspended or cancelled, to surrender his or her certificate of registration to the Commissioner within 14 days of being requested to do so.

Disciplinary Provisions

Clauses 29 and 31 define a disciplinary notice and stipulate what it must contain including the time constraints for any inquiry into an alleged offence.

Clause 30 sets out the grounds under which the Commissioner may issue a disciplinary notice.

Clause 32 enables the Commissioner to suspend a surveyor's registration, pending an inquiry, if the Commissioner considers it necessary in the public interest. The Commissioner may also revoke a suspension at any time and, unless already revoked, the suspension ceases to have effect once the Commissioner tells the surveyor the result of the inquiry.

Clause 33 provides for the Commissioner to inquire into the grounds on which a disciplinary notice was sent. The inquiry is not bound by legal procedures of rules of evidence. Another person may not, unless the Commissioner agrees, represent the surveyor. At the completion of the inquiry the Commissioner must, if satisfied that the ground for the notice exists, either reprimand the surveyor for a period up to 3 years, or suspend or cancel registration. The Commissioner must inform the surveyor, in writing, of the outcome of the inquiry. If the outcome of the inquiry is suspension or cancellation of registration, the Commissioner must tell the surveyor when it takes effect which cannot be earlier than the day after the Commissioner notifies the surveyor of the outcome of the inquiry.

Clause 34 enables the Commissioner to suspend the registration of a surveyor who has been suspended by another State, New Zealand or other reciprocating jurisdiction, for the same period.

The Practice of Surveying

Clauses 35 and 36 provide that only registered surveyors can, for fee or reward, carry out cadastral or land boundary surveys and give certificates required of surveyors.

Clause 37 provides that a person who is not a surveyor must not pretend to be a surveyor or pretend to be qualified to carry out a survey as per Clause 35.

Clause 38 enables the Minister to issue survey practice directions (as a disallowable instrument) on advice from the Commissioner. Before giving such advice, the Commissioner is required to consult with the industry.

Clause 39 requires surveyors to comply with directions issued under Clause 38.

Clause 40 requires surveys to be carried out in accordance with the Survey Practice Directions.

Clause 41 gives surveyors power to enter land for the purpose of carrying out a surveys. Reasonable notice has to be given of the surveyors intention to enter land. Where it is necessary for a surveyor to enter an adjoining building in order to complete his or her survey and the occupier of that building denies permission then, the surveyor may apply to a magistrate for an order.

Clause 42 requires a surveyor to make good or compensate for any damage caused whilst exercising power of entry under Clause 41.

Clause 43 imposes a penalty on any person, without reasonable excuse, destroying, removing or damaging a survey mark.

Clause 44 enables the Commissioner to require a surveyor to produce evidence of his or her field procedures.

Miscellaneous

Clause 45 requires a person applying for registration not to give a false or misleading statement or omit from a statement something that would cause the statement to be misleading.

Clauses 46 and 47 deal with the administrative processes for fees charged under the Act.

Clause 48 enables regulations to provide for the payment of fees and for registration to be suspended, cancelled or revoked for non payment of fees. The Clause also provides for restoration of registration.

Clause 49 provides for application to be made to the Administrative Appeals Tribunal for review of decisions made by the Commissioner. Decisions of the Commissioner must be given to the person affected in writing.

Clause 50 provides that in any proceedings, a certificate of registration or a certificate signed by or on behalf of the Commissioner, is evidence that a person is or is not registered for the period stated on the certificate.

Clause 51 provides for the Commissioner to approve forms and requires such forms to be used.

Clause 52 provides for the Executive to make regulations, particularly to make provision for registration of surveyors.

Transitional

Clauses 53 to 60 provide transitional arrangements between the repealed *Surveyors Act 1967* and this Act. The transitional arrangements expire 12 months after the commencement of the new Act.