

2007

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

SURVEYORS BILL 2007

EXPLANATORY STATEMENT

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Overview of Surveyors Bill 2007

Background

The *Surveyors Act 2001* provided the regulatory framework for surveying in the ACT. It established the position of Commissioner for Surveys (the Commissioner) and sets out the functions of that position which include:

- keeping a register of surveyors;
- determining a surveyor's eligibility for registration; and
- developing standards for the practice of surveying.

The Commissioner also has responsibilities pursuant to the *Districts Act 2002*, the *Electoral Act 1992* and the *Land Titles Act 1925*.

The *Surveyors Act 2001* requires that only registered surveyors can perform some types of surveys and in turn imposes various responsibilities upon registered surveyors.

The *Surveyors Act 2001* has served the Territory well. Surveys for the making of land boundaries in the ACT are of a very high standard and complaints against registered surveyors are rare. The functions of the Commissioner are, however, restricted to statutory and advisory roles. Changes to the Surveyors Act are required to enable this position to play a more proactive role in the management of the surveying and spatial information activities of the ACT Planning and Land Authority (the Authority).

Surveyors Bill 2007 overview

The Bill maintains the minimalist but effective approach to regulation of the surveying profession first established by the *Surveyors Act 2001*. The Bill only regulates surveying activities related to the making or reestablishment of land boundaries. Wherever possible it makes use of infrastructure available in other, larger jurisdictions. For example, rather than establish a separate process for the examination of new surveyors, the Bill relies on the Commonwealth Mutual Recognition Acts and the very comprehensive examination process conducted in NSW for induction of new surveyors to the ACT register of surveyors.

The Bill establishes the position of chief surveyor which will have all the statutory responsibilities of the Commissioner but, as a full time public servant, the chief surveyor will also manage the surveying and spatial information activities of the Authority.

The Bill creates a new Survey Advisory Committee to advise the chief surveyor on surveying standards and practices. It also requires surveyors to maintain their skills and knowledge by participating in compulsory professional development.

The chief surveyor will have powers to investigate complaints and take disciplinary action against surveyors. The disciplinary provisions of the Bill are little changed from the 2001 Act. It is anticipated, however, that these provisions will be subject to consequential amendments resulting from the review of tribunals currently being conducted by the Department of Justice and Community safety.

Bill in detail

Part 1 – Preliminary

Clause 1 - Name of act - provides for the title of the proposed Act.

Clause 2 – Commencement of Act - stipulates that the proposed Act commences on a day fixed by the Minister.

Clauses 3- 5 cover the dictionary, notes and the application of the Criminal Code.

Part 2 – Registration of Surveyors

Division 2.1 - Registration

Clause 6 – Application for registration – allows a person to apply for registration as a surveyor.

Clause 7 – Eligibility for registration – makes a person who has previously been registered in the ACT eligible for registration provided their registration was not cancelled other than at their own request. Surveyors who are licensed or registered to perform similar surveys in another state or territory or New Zealand are also eligible for registration in the ACT pursuant to the Commonwealth Mutual Recognition Acts. Only surveyors previously registered in the ACT or currently registered elsewhere will be eligible. Because of the low numbers involved, the ACT will not conduct its own examination of graduate surveyors to test their eligibility.

Clause 8 – Decision on registration application – requires the chief surveyor to decide the persons eligibility and to issue a certificate of registration where appropriate.

Clause 9 – Registration condition – makes participation in continuing professional development a condition for renewal of annual registration and enables the chief surveyor to make guidelines about continuing professional development.

Clause 10 – When does registration end – sets out when registration ends for each of the various circumstances under which registration may be suspended or cancelled.

Division 2.2 – Surveyors register

Clause 11 – Keeping surveyors register – requires the chief surveyor to keep a register of surveyors and to make the register available to the public. Personal information contained in the register is not to be made public and errors in the register can be corrected.

Clause 12 – Details to be entered in surveyors register – prescribes the details that must be entered in the register including the address and date of birth of the surveyor.

Clause 13 – Register information may be shared – allows information in the register to be shared with a registering authority in another state or territory.

Clause 14 – Changes to the surveyors register – requires the register to be updated if a surveyor’s registration ends or the surveyor’s business address changes.

Clause 15 – Surveyors to notify change of address – requires surveyors to notify the chief surveyor of any changed business address.

Part 3 – Regulatory action

Division 3.1 – Continuing registration

Clause 16 – Meaning of continuation notice – defines a continuation notice which is the form that a surveyor must provide each year to signal his or her intent to continue his or her registration.

Clause 17 – Continuation notice fee – allows for a fee to be charged in respect of a continuation notice.

Clause 18 – Continuation notice reminders – allows the chief surveyor to send surveyors a reminder that the continuation notice and fee is required at the end of each financial year. Failure by the chief surveyor to send a reminder or failure to receive the reminder does not relieve the surveyor of his or her responsibility to provide a continuation notice.

Clause 19 – Annual continuation notice for registration – requires the surveyor to provide written notice that he or she intends to continue to be registered in the coming financial year.

Clause 20 – No continuation notice by 31 August – If the surveyor has not given the chief surveyor a continuation notice by 31 August the surveyor’s registration is suspended.

Clause 21 – Lifting a s 20 suspension – requires the chief surveyor to end the suspension if the surveyor provides a continuation notice after 31 August but before the end of that financial year. A late fee may be determined.

Clause 22 – Cancellation after s 20 suspension – the surveyor’s registration is automatically cancelled if a continuation notice is not received by the chief surveyor before the end of the financial year in which his or her registration was suspended.

Division 3.2 – Cancellation of registration for incapacity

Clause 23 – Cancellation of registration for incapacity – allows the surveyor’s registration to be cancelled if the chief surveyor is satisfied that the surveyor has become mentally or physically incapacitated and the incapacity substantially affects the surveyor’s ability to practise surveying. The chief surveyor is required to give written notice of the intention to cancel the registration.

Clause 24 – Notice of intention to cancel registration for incapacity – requires the chief surveyor to give written notice of an intention to cancel a surveyor’s registration. The notice must explain why the chief surveyor intends to cancel the registration. The surveyor has 12 business days in which to respond.

Division 3.3 – Disciplinary action

Clause 25 – Definitions – defines the terms *disciplinary notice*, *inquiry* and *surveyor* for this division only.

Clause 26 – Grounds for disciplinary action – sets out the grounds for disciplinary action against a surveyor. These include making misleading statements when applying to be registered; certifying to the accuracy of a survey knowing it to be inaccurate; carelessness or incompetence leading to an unreliable survey; failing to comply with practice directions and committing an offence which is punishable by imprisonment for more than 1 year and which affects the surveyor's suitability to practise surveying.

Clause 27 – When disciplinary notice may be given – allows the chief surveyor to give a surveyor a disciplinary notice if the chief surveyor is satisfied that a ground for disciplinary action exists.

Clause 28 – Disciplinary notices – requires a disciplinary notice to state, and provide details of, the grounds for disciplinary action, set a time and place for an inquiry and inform the surveyor if his or her registration has been suspended pending the inquiry. The inquiry must be at least 10 days after the notice is given and not more than 28 days if the surveyor's registration has been suspended.

Clause 29 – Suspension during inquiry – If the chief surveyor gives or proposes to give a disciplinary notice the surveyor's registration may be suspended. Before suspending the surveyor's registration the chief surveyor must take into account the circumstances leading to the disciplinary notice and the grounds stated in the notice.

Clause 30 – End of suspension for inquiry – If the chief surveyor suspends a surveyor's registration pending an inquiry the chief surveyor can end the suspension at any time during the inquiry.

Clause 31 – Inquiry to be held – If the Chief surveyor gives a surveyor a disciplinary notice the chief surveyor must hold a hearing into each ground for disciplinary action stated in the notice.

Clause 32 – Inquiry procedure – The chief surveyor may decide any procedure for an inquiry and may adjourn an inquiry.

Clause 33 – Evidence at inquiry – Requires the chief surveyor to comply with the rules of natural justice. During an inquiry the chief surveyor is not bound by rules of evidence but may inform himself or herself in any way appropriate. The surveyor being investigated may call witnesses.

Clause 34 – Legal representation at inquiry – Allows the surveyor to be represented by a lawyer and allows the chief surveyor to appoint a lawyer to examine witnesses and to advise the chief surveyor on matters of law.

Clause 35 – Chief surveyor may require appearance, information and documents – Allows the chief surveyor to require a person to appear at an inquiry to give evidence or to produce a document or other evidence. The chief surveyor may allow the surveyor or the surveyor's lawyer to inspect a document or other evidence and make copies or take extracts.

Clause 36 – failing to attend and failing to produce document or thing – makes it an offence to fail to appear or to produce a document or other evidence when required.

Clause 37 – Confidentiality and client communications – Protects the surveyor from civil liability for providing otherwise confidential information to the chief surveyor where the confidential information is requested by the chief surveyor or the surveyor believes the confidential information would explain an act or omission being investigated.

Clause 38 – Witness expenses – When requiring a witness to appear at an inquiry the chief surveyor must provide a form for the witness to complete undertaking to appear and a form for the witness to claim reasonable costs and expenses of attendance.

Clause 39 – Disciplinary action – Where an inquiry has been held the chief surveyor must decide whether or not to take disciplinary action. If the chief surveyor is satisfied that a ground for disciplinary action is established the chief surveyor may reprimand the surveyor; require the surveyor to undertake additional training; suspend the surveyor’s registration for up to 3 years; cancel the surveyor’s registration or cancel the surveyor’s registration and disqualify the surveyor from re-applying for a stated period or until a stated thing happens. The chief surveyor must notify the surveyor in writing of the decision and the penalty applied.

Clause 40 – Giving local registering authorities information about some disciplinary action – Requires the chief surveyor to give the registering authority in each state and territory and New Zealand information about any disciplinary action taken against a surveyor including the period of time for which the surveyor has been suspended or the period of time for which the surveyor has been disqualified from re-applying.

Division 3.4 – Other regulatory action

Clause 41 – Voluntary cancellation of registration – Allows a surveyor to have his or her name removed from the register provided they have not contravened the Act.

Clause 42 – Inquiries about registered addresses – Allows the chief surveyor to, by written notice, ask a surveyor if their address is correct. If a response is not received in 2 months the chief surveyor may cancel the surveyor’s registration.

Clause 43 – Return of registration certificate on cancellation and suspension – Allows the chief surveyor to require a person whose registration has been suspended or cancelled to return their registration certificate to the chief surveyor.

Part 4 – The practice of surveying

Division 4.1 – Interpretation – pt 4

Clause 44 – Definitions – Defines *survey mark* and *surveyor* for the purpose of pt 4 only.

Division 4.2 – Power of entry and damage

Clause 45 – Power of entry generally – Enables a surveyor and his or her assistant to enter land, open a door, gate or fence, place a survey mark, dig a hole to uncover a survey mark, enter a building and trim a tree or bush. The surveyor or assistant may only enter land which is not owned by the person for whom the survey is being carried out if they have given reasonable notice.

The surveyor or assistant can only enter a building (as opposed to land) if the occupier has consented in writing or subject to an order of the Magistrates Court.

Clause 46 – Application for order to enter building etc – Allows a surveyor or a person for whom a survey is being carried out to apply to the Magistrates Court for an order where permission to enter a building has not been given.

Clause 47 – Damage by surveyors and assistants- generally – Requires the surveyor to take reasonable steps to minimise inconvenience, detriment and damage when entering land or a building to carry out a survey. The surveyor must notify the owner of any damage and is liable to pay compensation.

Clause 48 – Damage by surveyors and assistants- compensation – Allows a court to order the payment of reasonable compensation for the damage done whilst carrying out a survey. The surveyor can claim the amount of compensation that he or she has been ordered to pay as an amount owing by the person for whom the survey was carried out.

Division 4.3 – Offences

Clause 49 – Only surveyors to carry out surveys – makes it an offence for a person who is not a surveyor to carry out surveys. “*Surveyor*” is defined in the dictionary as someone who is registered under this Act. “*Survey*” is defined in the dictionary as a survey for the purpose of defining, redefining or marking the boundaries of land, a public road or public place (generally known as a cadastral survey).

Clause 50 – Certificates to be given only by surveyors – makes it an offence for someone who is not a surveyor to provide a certificate that under territory law is required to be given by a surveyor.

Clause 51 – Pretending to be a surveyor – makes it an offence to pretend to be a surveyor by, for example, using “registered surveyor” on letterhead. The definition of “*surveyor*” is a surveyor registered under the Act and this and the preceding clauses do not prevent for example an engineering or mining surveyor from calling themselves a “surveyor” or from carrying out surveys that are not for the purpose of defining or redefining land boundaries.

Clause 52 – Hindering and obstructing a surveyor and assistant – makes it an offence to hinder or obstruct the work of someone who is known to be a surveyor or an assistant carrying out a survey.

Clause 53 – Destruction of, or damage to, survey marks – makes it an offence to recklessly interfere with, change or remove a survey mark other than those that

are expected to be replaced by fences or other structures intended to be built on the boundary.

Clause 54 – Surveyors to give evidence of field procedures to chief surveyor – allows the chief surveyor to require a surveyor to provide his or her field notes and other primary evidence of field procedures. In modern survey practice these may be in digital form.

Division 4.4 – Chief surveyor practice directions

Clause 55 – Chief surveyor practice directions – enables the chief surveyor to issue directions in relation to the practice of surveying. These directions were previously made by the Minister (*Survey Practice Directions Determination 2003 (No 1)*) but due to their detailed technical nature they are more appropriately made by the chief surveyor. A practice direction will be a disallowable instrument and the chief surveyor must consult with the survey advisory committee before making a direction.

Clause 56 – Exemption from practice directions – allows the chief surveyor to exempt a surveyor from a stated requirement of a practice direction where it is not reasonably practicable for the surveyor to comply.

Clause 57 – Surveyors to comply with practice directions – requires a surveyor to comply with practice directions unless specifically exempted.

Clause 58 – Surveys and plans to comply with practice directions – requires a surveyor to ensure that a survey or a plan prepared by or under the supervision of the surveyor is in accordance with practice directions or states any exemptions applicable to the survey.

Part 5 – Chief surveyor

Clause 59 – Appointment of chief surveyor– requires the Chief Planning Executive to appoint a chief surveyor. Once appointed, the chief surveyor will be a public servant. The chief surveyor must also be a person who is, or is eligible to be, a registered surveyor.

Clause 60 – Functions of chief surveyor– are to investigate trends in surveying and to ensure that the practice of surveying is current in the ACT and aligned with best practice; to consult with the surveying profession; to liaise with organisations in Australia or elsewhere that are concerned with surveyors and the practice of surveying and any other function required by the Act or another territory law. Territory laws that give functions to the chief surveyor include the *Districts Act 2002* and the *Land Titles Act 1925*.

Clause 61 – Delegation by the chief surveyor– allows the chief surveyor to delegate functions to a public servant who is also a registered surveyor.

Part 6 – Advisory committee

Clause 62 – Establishment of advisory committee– establishes a survey advisory committee

Clause 63 – Advisory committee functions– are to advise the chief surveyor on survey practice; whether a new practice direction is needed or a direction needs revising and on proposed guidelines for continuing professional development.

Clause 64 – Advisory committee membership– The advisory committee will have at least 5 and no more than 7 members. These will consist of the chief surveyor; at least 3 other surveyors 2 of whom have been nominated by a professional entity; and at least one member who is not a surveyor.

Clause 65 – Minister to appoint advisory committee members– The Minister will appoint the advisory committee members except for the chief surveyor.

Clause 66 – Appointment of professional entity representatives– The Minister will ask a professional entity representing surveyors to nominate 3 representatives from whom 2 will be selected for membership of the advisory committee.

Clause 67 – Disclosure of interests by advisory committee members– requires advisory committee members to disclose any relevant interest in an issue being considered and, unless the committee decides otherwise, to stand aside from consideration of that issue.

Clause 68 – Advisory committee – chair – will be the chief surveyor.

Clause 69 – Advisory committee – general procedure– Requires the committee to meet at least twice each year.

Clause 70 – Minimum number for advisory committee meetings– The business of the committee can be carried out if 3 members are present.

Clause 71 – Voting at advisory committee meetings– A question will be decided by a majority of votes at a meeting of the advisory committee.

Clause 72 – Advisory committee to keep minutes– requires the advisory committee to keep minutes of its meetings.

Clause 73 – Protection of advisory committee members– An advisory committee member is not personally liable for conduct engaged in honestly and not recklessly in the exercise of a function under this Act. Any civil liability that would otherwise attach to a person attaches to the Territory.

Clause 74 – Ending appointment of advisory committee members– The Minister must end the appointment of an advisory committee member if he or she has failed to disclose an interest in an issue; has been convicted of an offence punishable by imprisonment for 1 year or more; or is no longer qualified for appointment.

The Minister may end the appointment of an advisory committee member if he or she is absent from 3 consecutive meetings; contravenes a territory law; is guilty of misbehaviour or has become physically or mentally incapacitated.

Part 7 – Review of decisions

Clause 75 – Reviewable decisions – sets out 12 decisions of the chief surveyor that are reviewable decisions.

Clause 76 – Review of decisions – allows for application to be made to the AAT for review of reviewable decisions.

Clause 77 – Notice of reviewable decisions – requires the chief surveyor to give written notice of reviewable decisions to each person affected.

Part 8 – Miscellaneous

Clause 78 – Evidentiary certificates – Allows the chief surveyor to give a certificate stating that on a given date a named person was or was not a registered surveyor.

Clause 79 – Secrecy – makes it an offence for a person to divulge protected information that they have obtained because of the exercise of a function under this Act.

Clause 80 – Determination of fees – Allows the Minister to determine fees for this Act. The determination is a disallowable instrument.

Clause 81 – Approved forms – Allows the chief surveyor to approve forms for this Act and requires the use of approved forms. An approved form is a notifiable instrument.

Clause 82 – Regulation making power – resides with the Executive.

Clause 83 – Legislation amended – sch 1 – This Act amends the legislation in schedule 1

Part 9 – Transitional

Clause 84 – Definitions – pt 9 – defines “commencement day” and “repealed Act” for the purposes of pt 9 only.

Clause 85 – legislation repealed – The *Surveyors Act 2001* is repealed along with the *Surveyors (Fees) Determination 2006 (No 1)* and the *Surveyors (Commissioner for Surveys) Appointment 2005 (No 1)*.

Clause 86 – Survey practice directions – The *Survey Practice Directions Determination 2003 (No 1)* are taken to be directions issued under this Act. If the directions have not already been repealed they are repealed 1 year after commencement.

Clause 87 – Surveyors registered under the repealed Act – Surveyors registered under the repealed Act are automatically registered under this Act and their

details transferred from the old register to the new register. The chief surveyor may ask for additional information from surveyors for entry onto the new register.

Clause 88 – Suspended registration – If a person’s registration was suspended under the repealed Act then it is also suspended under the new Act on the same terms and conditions.

Clause 89 – Action under the repealed Act etc – If the commissioner for surveys has commenced action under the repealed Act then the chief surveyor can continue the action as if it were taken under this Act.

Clause 90 – Inquiry under the repealed Act – An inquiry commenced under the repealed Act is taken to be an enquiry under this Act.

Clause 91 – Grounds for disciplinary action – s 26 – This Act in relation to a contravention includes the repealed Act.

Clause 92 – Evidentiary certificates – repealed Act – Allows the chief surveyor to give a certificate stating that on a stated date a named person was or was not registered under the repealed Act.

Clause 93 – Redistribution committee – Electoral Act 1992 – requires the chief surveyor to replace the commissioner for surveys as a member of the electoral boundaries redistribution committee.

Clause 94 – Transitional regulations – Allows the Executive to make regulations prescribing transitional matters not adequately dealt with in the Act.

Clause 95 – Expiry – pt 9 – Transitional arrangements will expire one year after commencement of the Act.

Schedule 1 Consequential amendments

Part 1.1 Districts Act 2002

[1.1] Section 7 (4) – References to the commissioner for surveys are replaced by chief surveyor. A new subsection is also added that requires the chief surveyor to certify that the land divided by a plan is correctly described only if the plan and the information in the digital cadastral database are not inconsistent with each other.

[1.2] Section 17 (1) to [1.3] Section 17 (1) – Responsibility for the keeping of an electronic database of information about land (the *digital cadastral database*) is moved from the commissioner for surveys, an appointment repealed by this Act (s85 (2)), to the planning and land authority. Where the commissioner was an independent statutory officer, the chief surveyor will be an employee of the Authority and it is appropriate that the Authority has this responsibility.

Part 1.2 Electoral Act 1992

[1.5] Section 39 (3) (c) – Replace commissioner for surveys with chief surveyor.

[1.6] New Section 39 (5) and [1.7] New Section 47 (3) –The chief surveyor serves on the electoral boundaries redistribution committee and the augmented commission as an independent expert. These amendments make it clear that the chief surveyor is not subject to direction from the Authority when exercising his or her functions under the Electoral Act.

Part 1.3 Land Titles Act 1925

References to the commissioner for surveys are replaced by chief surveyor.

Part 1.4 Legislation Act 2001

Adds a definition of chief surveyor, omits the definition of commissioner for surveys and amends the definition of registered surveyor.