



New South Wales

# Surveying Amendment Bill 2009

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Surveying Act 2002* (the **Principal Act**):

- (a) to change the name of that Act to the *Surveying and Spatial Information Act 2002*, and
- (b) to set out the objects of that Act, and
- (c) to clarify the matters to be covered by the definition of **land survey** in that Act, and
- (d) to provide a specific exclusion from the provisions of that Act that require land surveys and mining surveys to be carried out by registered land surveyors and mining surveyors for firms that engage such surveyors to do work on their behalf, and
- (e) to enable the Board of Surveying and Spatial Information (**the Board**) to provide information to the public on a range of matters in connection with the discipline of surveying and related disciplines.

The Bill also makes consequential amendments to other Acts and regulations.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent.

## **Schedule 1      Amendment of Surveying Act 2002 No 83**

### **Change of name of Act**

**Schedule 1 [1]** amends section 1 of the Principal Act to change the name of that Act to the *Surveying and Spatial Information Act 2002*.

### **Objects of Act**

**Schedule 1 [2]** inserts proposed section 2A into the Principal Act which sets out the objects of the Act. Those objects include providing for the co-ordination of surveys carried out by public authorities, the registration of land surveyors and mining surveyors and the investigation of and provision of advice relating to the collection, collation and dissemination of spatial information and other surveys and maintaining and ensuring the integrity of the State cadastre.

### **Amendments relating to the State cadastre**

**Schedule 1 [3]** amends section 3 of the Principal Act to insert a definition of *State cadastre*.

**Schedule 1 [11]** amends section 28 of the Principal Act to include in the list of specified functions of the Board the function of providing advice to the Minister on the maintenance of the integrity of the State cadastre.

**Schedule 1 [6]** makes a consequential amendment.

### **Exclusions from certain offences for firms**

**Schedule 1 [3]** amends section 3 of the Principal Act to include a definition of *firm*, which means a corporation or a partnership or other unincorporated association of persons.

Existing section 21 of the Principal Act makes it an offence for a person to carry out a land survey for fee or reward, or to advertise that the person is willing to carry out a land survey for fee or reward, unless the person is a registered land surveyor or is acting under the supervision of a registered land surveyor. Existing section 22 of the Principal Act contains a similar offence in relation to mining surveys carried out by a person who is not a registered mining surveyor or acting under the supervision of a registered mining surveyor.

**Schedule 1 [7] and [8]** amend sections 21 and 22 of the Principal Act to provide that a firm, or a member or partner of a firm, does not commit an offence against those sections in the circumstances referred to in section 22A of the Principal Act.

**Schedule 1 [9]** inserts proposed section 22A into the Principal Act to specifically provide that a firm, or a member or partner of a firm, does not commit an offence against section 21 of the Principal Act so long as any land survey carried out in the name of or on behalf of the firm is carried out by a registered land surveyor or by another person who is acting under the supervision of a registered land surveyor. The proposed section also provides that a firm, or a member or partner of a firm, does not commit an offence against section 22 of the Principal Act so long as any mining survey carried out in the name of or on behalf of the firm is carried out by a registered mining surveyor or by another person under the supervision of a registered mining surveyor.

**Schedule 1 [13]** amends section 36 of the Principal Act to enable regulations to prescribe what constitutes relevant supervision for the purposes of the provisions of that Act.

#### **Provision of information by the Board**

**Schedule 1 [12]** inserts proposed section 29 into the Principal Act to enable the Board, as it considers appropriate, to provide information to the public in respect of the discipline of surveying and other disciplines related to the discipline of surveying. Such information might include information in respect of firms undertaking surveying services, retired or non-practising surveyors and practitioners in other related disciplines.

#### **Other amendments**

**Schedule 1 [5]** amends the definition of *land survey* in section 3 of the Principal Act to make it clear that the definition includes the carrying out of a survey in connection with the preparation of documents required to be prepared under the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986* by a registered land surveyor.

**Schedule 1 [4]** makes a statute law revision amendment.

**Schedule 1 [10]** amends section 27 of the Principal Act to make it clear that the persons to be nominated for membership of the Board by the spatial information industry are to be nominated by professional associations of persons or associations of bodies of persons involved in that industry.

**Schedule 1 [14]** amends Schedule 3 to the Principal Act to enable regulations of a savings and transitional nature to be made consequent on the enactment of the proposed Act.

### **Schedule 2      Consequential amendment of other Acts and instruments**

**Schedule 2** makes amendments to other Acts and instruments consequential on the change of name of the Principal Act by Schedule 1 [1].



First print



New South Wales

# Surveying Amendment Bill 2009

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New South Wales

## Surveying Amendment Bill 2009

No. , 2009

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### **A Bill for**

An Act to amend the *Surveying Act 2002* in relation to the objects of that Act and the carrying out of land and mining surveys; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Surveying Amendment Act 2009</i> .	3
<b>2 Commencement</b>	4
This Act commences on the date of assent.	5



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<b>Schedule 1</b>	<b>Amendment of Surveying Act 2002 No 83</b>	1
<b>[1] Section 1 Name of Act</b>		2
	Insert “ <i>and Spatial Information</i> ” after “ <i>Surveying</i> ”.	3
<b>[2] Section 2A</b>		4
	Insert after section 2:	5
<b>2A Objects of Act</b>		6
	The objects of this Act are:	7
	(a) to provide for the registration of land surveyors and mining surveyors to ensure that only appropriately qualified persons carry out land surveys and mining surveys, and	8 9 10
	(b) to ensure that registered surveyors provide services to the public in a professional and competent manner, and	11 12
	(c) to provide for the maintenance of a State cadastre and ensure its integrity, and	13 14
	(d) to provide for the co-ordination of surveys carried out by public authorities and for the establishment of a State control survey, and	15 16 17
	(e) to provide for the investigation of, and the giving of advice to the Government relating to, the collection, collation and dissemination of spatial information other than surveys.	18 19 20
<b>[3] Section 3 Definitions</b>		21
	Insert in alphabetical order in section 3 (1):	22
	<i>firm</i> means a corporation or a partnership or other unincorporated association of persons.	23 24
	<i>State cadastre</i> means an inventory that records boundaries, dimensions and measurements on, above or below the Earth’s surface for the purpose of defining rights, interests, restrictions and responsibilities within the jurisdiction of New South Wales.	25 26 27 28
<b>[4] Section 3 (1), definition of “Department”</b>		29
	Omit the definition. Insert instead:	30
	<i>Department</i> means the Land and Property Management Authority.	31 32

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<b>[5] Section 3 (1), definition of “land survey”</b>	1
Insert after paragraph (c):	2
(c1) the preparation of documents required to be prepared under the <i>Strata Schemes (Freehold Development) Act 1973</i> or the <i>Strata Schemes (Leasehold Development) Act 1986</i> by a registered land surveyor, or	3 4 5 6
<b>[6] Part 2</b>	7
Omit the heading to the Part. Insert instead:	8
<b>Part 2 Provisions relating to co-ordination, collection and maintenance of certain State cadastral information</b>	9 10 11
<b>[7] Section 21 Unregistered persons not to practise land surveying</b>	12
Insert after section 21 (3):	13
(4) Subsection (1) does not apply to a firm, or a member or partner of a firm, in the circumstances referred to in section 22A.	14 15
<b>[8] Section 22 Unregistered persons not to practise mining surveying</b>	16
Insert after section 22 (3):	17
(4) Subsection (1) does not apply to a firm, or a member or partner of a firm, in the circumstances referred to in section 22A.	18 19
<b>[9] Section 22A</b>	20
Insert after section 22:	21
<b>22A Firms offering land and mining surveying services</b>	22
(1) A firm, or a member or partner of a firm, does not commit an offence against section 21 (1) or 22 (1) if:	23 24
(a) a land survey or mining survey is carried out in the name of, or on behalf of, the firm for fee or reward, or	25 26
(b) the firm is advertised as willing to carry out land surveys or mining surveys for fee or reward,	27 28
so long as the requirements of this section are complied with.	29
(2) Any land survey carried out in the name of, or on behalf of, the firm for fee or reward may be carried out only by:	30 31
(a) a registered land surveyor, or	32

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(b)	a student of surveying, or a surveyor's assistant, acting under the general supervision of a registered land surveyor, or	1 2 3
(c)	another person acting under the immediate supervision of a registered land surveyor.	4 5
(3)	Any mining survey carried out in the name of, or on behalf of, the firm for fee or reward may be carried out only by:	6 7
(a)	a registered mining surveyor, or	8
(b)	a student of surveying, or a surveyor's assistant, acting under the general supervision of a registered mining surveyor, or	9 10 11
(c)	another person acting under the immediate supervision of a registered mining surveyor.	12 13
<b>[10]</b>	<b>Section 27 Constitution of Board</b>	14
	Omit section 27 (2) (e). Insert instead:	15
(e)	between one and three are to be persons appointed by the Minister from persons nominated by such relevant professional associations as the Minister determines and that comprise persons involved in the spatial information industry or bodies of persons involved in that industry, and	16 17 18 19 20
<b>[11]</b>	<b>Section 28 Functions of Board</b>	21
	Insert after section 28 (1) (f):	22
(f1)	the provision of advice to the Minister on the maintenance of the integrity of the State cadastre,	23 24
<b>[12]</b>	<b>Section 29</b>	25
	Insert after section 28:	26
	<b>29 Provision of information by Board</b>	27
(1)	The Board may provide information to the public in respect of the discipline of surveying (including, in particular, land surveying and mining surveying) and related disciplines.	28 29 30
(2)	Without limiting subsection (1), the Board may, if it considers it appropriate to do so, provide any of the following information to the public:	31 32 33
(a)	information in respect of firms that undertake surveying services,	34 35

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Surveying Amendment Bill 2009

Schedule 1      Amendment of Surveying Act 2002 No 83

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	(b) information in respect of retired or non-practising surveyors,	1 2
	(c) information in respect of practitioners in disciplines related to the discipline of surveying.	3 4
<b>[13]</b>	<b>Section 36 Regulations</b>	5
	Insert after section 36 (2) (j):	6
	(k) prescribing what constitutes immediate supervision or general supervision for the purposes of all or any of the provisions of this Act (including authorising a person or body to determine what constitutes such supervision).	7 8 9 10
<b>[14]</b>	<b>Schedule 3 Savings, transitional and other provisions</b>	11
	Insert at the end of clause 1 (1):	12
	<i>Surveying Amendment Act 2009</i>	13

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<b>Schedule 2</b>	<b>Consequential amendment of other Acts and instruments</b>	1
		2
<b>2.1</b>	<b>Administrative Decisions Tribunal Regulation 2009</b>	3
	<b>Clause 5 Reviewable decisions excluded from internal review</b>	4
	Omit “ <i>Surveying Act 2002</i> ” from clause 5 (k).	5
	Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	6
<b>2.2</b>	<b>Coal Mine Health and Safety Regulation 2006</b>	7
<b>[1]</b>	<b>Clause 3 Definitions</b>	8
	Omit “ <i>Surveying Act 2002</i> ” wherever occurring in the definitions of <b>registered mining surveyor</b> and <b>surveying and drafting directions</b> in clause 3 (1).	9
	Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	10
<b>[2]</b>	<b>Part 4, Division 6</b>	12
	Omit the note appearing under the heading to the Division. Insert instead:	13
	<b>Note.</b> The qualifications required of a person preparing plans required by or under the Act and requirements for the content and standard of preparation of those plans are subject to provisions in or under the <i>Surveying and Spatial Information Act 2002</i> .	14
		15
		16
		17
<b>2.3</b>	<b>Community Land Development Regulation 2007</b>	18
	<b>Clauses 13 (4) (b), 19 (4) (b), 24 (4) (b) and 29 (5) and the note to clause 29</b>	19
	Omit “ <i>Surveying Act 2002</i> ” wherever occurring.	20
	Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	21
<b>2.4</b>	<b>Conveyancing Act 1919 No 6</b>	22
	<b>Sections 131, 195C (1) (c) and 196C, definition of “Australian Height Datum”</b>	23
		24
	Omit “ <i>Surveying Act 2002</i> ” wherever occurring.	25
	Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	26

<b>2.5 Conveyancing (General) Regulation 2008</b>	1
<b>Clauses 3 (1), definition of “plan of survey”, 24 (2) (b) (i) and 35 (1) (c)</b>	2
Omit “ <i>Surveying Act 2002</i> ” wherever occurring.	3
Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	4
<b>2.6 Crown Lands (Continued Tenures) Act 1989 No 7</b>	5
<b>Schedule 7 Purchase of land held under lease</b>	6
Omit “ <i>Surveying Act 2002</i> ” from clause 14 (2).	7
Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	8
<b>2.7 Defamation Act 2005 No 77</b>	9
<b>Schedule 1 Additional publications to which absolute privilege applies</b>	10
Omit “ <i>Surveying Act 2002</i> ” wherever occurring in clause 32.	11
Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	12
<b>2.8 Dividing Fences Act 1991 No 72</b>	13
<b>Section 18 Procedure for defining boundary line</b>	14
Omit “ <i>Surveying Act 2002</i> ” from section 18 (6).	15
Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	16
<b>2.9 Encroachment of Buildings Act 1922 No 23</b>	17
<b>Sections 3 (4) and 9 (3)</b>	18
Omit “ <i>Surveying Act 2002</i> ” wherever occurring.	19
Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	20
<b>2.10 Environmental Planning and Assessment Regulation 2000</b>	21
<b>Clause 157 Applications for subdivision certificates</b>	22
Omit “ <i>Surveying Act 2002</i> ” from clause 157 (4).	23
Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	24

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<b>2.11 Lake Illawarra Authority Act 1987 No 285</b>	1
<b>Section 17 Vesting of the development area in the Authority</b>	2
Omit “ <i>Surveying Act 2002</i> ” from section 17 (4).	3
Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	4
<b>2.12 Licensing and Registration (Uniform Procedures) Act 2002 No 28</b>	5
	6
<b>Schedule 2 Registration to which Part 3 of Act applies</b>	7
Omit “ <i>Surveying Act 2002</i> ”.	8
Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	9
<b>2.13 Mine Health and Safety Regulation 2007</b>	10
<b>Clause 3 (1), definitions of “registered mining surveyor” and “surveying and drafting instructions” and note to Part 7</b>	11
	12
Omit “ <i>Surveying Act 2002</i> ” wherever occurring.	13
Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	14
<b>2.14 Mining Act 1992 No 29</b>	15
<b>Section 371 and Dictionary, definition of “registered surveyor”</b>	16
Omit “ <i>Surveying Act 2002</i> ” wherever occurring.	17
Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	18
<b>2.15 Mining Regulation 2003</b>	19
<b>Clause 3 Definitions</b>	20
Omit “ <i>Surveying Act 2002</i> ” wherever occurring in the definitions of <i>Geocentric Datum of Australia</i> and <i>statutory surveying requirements</i> in clause 3 (1).	21
	22
	23
Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	24
<b>2.16 Native Vegetation Act 2003 No 103</b>	25
<b>Section 25 Legislative exclusions</b>	26
Omit “ <i>Surveying Act 2002</i> ” from section 25 (r).	27
Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	28

<b>2.17 Offshore Minerals Act 1999 No 42</b>	1
<b>Section 10 Position on the Earth’s surface</b>	2
Omit “ <i>Surveying Act 2002</i> ” from section 10 (1).	3
Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	4
<b>2.18 Parliamentary Electorates and Elections Act 1912 No 41</b>	5
<b>Section 14A Manner of identifying boundaries of electoral districts</b>	6
Omit “ <i>Surveying Act 2002</i> ” from the note to the section.	7
Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	8
<b>2.19 Petroleum (Offshore) Act 1982 No 23</b>	9
<b>Section 7 Ascertaining points and other matters</b>	10
Omit “ <i>Surveying Act 2002</i> ” from section 7 (1).	11
Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	12
<b>2.20 Petroleum (Onshore) Act 1991 No 84</b>	13
<b>Sections 5 and 99 (2)</b>	14
Omit “ <i>Surveying Act 2002</i> ” wherever occurring.	15
Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	16
<b>2.21 Petroleum (Onshore) Regulation 2007</b>	17
<b>Clause 4 Drawing of plans: section 13</b>	18
Omit “ <i>Surveying Act 2002</i> ” from clause 4 (3).	19
Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	20
<b>2.22 Protection of the Environment Operations (Waste) Regulation 2005</b>	21
<b>Clause 4 Definitions</b>	22
Omit “ <i>Surveying Act 2002</i> ” from paragraph (a) of the definition of <i>qualified surveyor</i> in clause 4 (1).	23
Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	24
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<b>2.23 Real Property Act 1900 No 25</b>	1
<b>Sections 3 (1) (a), definition of “Plan of survey” and 135F (1)</b>	2
Omit “ <i>Surveying Act 2002</i> ” wherever occurring.	3
Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	4
<b>2.24 Real Property Regulation 2008</b>	5
<b>Schedule 5 Requirements for plans annexed to or endorsed on dealings (other than leases of premises) or caveats</b>	6
Omit “ <i>Surveying Act 2002</i> ” from item 3 (e).	8
Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	9
<b>2.25 Road Transport (Safety and Traffic Management) Act 1999 No 20</b>	10
<b>Section 43A Average speed of heavy vehicle is evidence of actual speed in certain circumstances</b>	12
Omit “ <i>Surveying Act 2002</i> ” from section 43A (10).	14
Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	15
<b>2.26 Strata Schemes (Freehold Development) Act 1973 No 68</b>	16
<b>Sections 5 (1), definition of “registered land surveyor” and 8 (6) (a)</b>	17
Omit “ <i>Surveying Act 2002</i> ” wherever occurring.	18
Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	19
<b>2.27 Strata Schemes (Leasehold Development) Act 1986 No 219</b>	20
<b>Sections 4 (1), definition of “registered land surveyor” and 7 (2E) (b)</b>	21
Omit “ <i>Surveying Act 2002</i> ” wherever occurring.	22
Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	23
<b>2.28 Surveying Regulation 2006</b>	24
<b>[1] Clause 1 Name of Regulation</b>	25
Insert “ <i>and Spatial Information</i> ” after “ <i>Surveying</i> ”.	26

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Schedule 2 Consequential amendment of other Acts and instruments

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<b>[2] Clause 5 (1), definition of “the Act” and Schedule 1</b>	1
Omit “ <i>Surveying Act 2002</i> ” wherever occurring.	2
Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	3
<b>[3] Schedule 1</b>	4
Omit “ <i>Surveying Regulation 2006</i> ” wherever occurring.	5
Insert instead “ <i>Surveying and Spatial Information Regulation 2006</i> ”.	6
<b>2.29 Very Fast Train (Route Investigation) Act 1989 No 44</b>	7
<b>Section 3, definition of “survey”</b>	8
Omit “ <i>Surveying Act 2002</i> ”.	9
Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	10
<b>2.30 Western Lands Act 1901 No 70</b>	11
<b>Schedule 4 Provisions relating to purchases of certain leased land</b>	12
Omit “ <i>Surveying Act 2002</i> ” from clause 13 (2).	13
Insert instead “ <i>Surveying and Spatial Information Act 2002</i> ”.	14