

# Surveying Act 2002 No 83

[2002-83]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Coal Mine Health and Safety Act 2002 No 129](#) (not commenced)
  - [Mine Health and Safety Act 2004 No 74](#) (not commenced)
- **See also**
  - [Public Sector Employment Legislation Amendment Bill 2006](#)

### Authorisation

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# Surveying Act 2002 No 83



New South Wales

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# Surveying Act 2002 No 83



New South Wales

An Act to make provision with respect to the functions of the Surveyor-General, the registration of surveyors, the control of surveys and the constitution and functions of the Board of Surveyors and Spatial Information; to repeal the *Surveyors Act 1929*, the *Survey Co-ordination Act 1949* and certain other Acts and instruments; to make consequential amendments to certain other Acts and instruments; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Surveying Act 2002*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

(1) In this Act:

**Australian Height Datum** means the datum surface approximating mean sea level that was adopted by the National Mapping Council of Australia in May 1971.

**Board** means the Board of Surveying and Spatial Information constituted by section 27.

**Department** means the Department of Lands.

**exercise** a function includes perform a duty.

**formal land survey plan** means a survey plan describing the results of a land survey, being a plan prepared in accordance with the regulations by or on behalf of a registered land surveyor.

**formal mining survey plan** means a survey plan describing the results of a mining survey, being a plan prepared in accordance with the regulations by or on behalf of a registered mining surveyor.

**formal survey plan** means a formal land survey plan or a formal mining survey plan.

**function** includes power, authority or duty.

**Geocentric Datum of Australia** means the datum surface approximating the shape of the earth's surface that was adopted by the Intergovernmental Committee for Surveying and Mapping in May 1990.

**Note—**

The datum surface is described in a notice published by the Surveyor-General in Gazette No 88 of 8 August 1997, at pages 6127 and 6128, and designated in that notice as "The Geocentric Datum of Australia (GDA)".

**land survey** means a survey (other than a mining survey) that is carried out in connection with:

- (a) the reservation or dedication of land for any purpose, or
- (b) the creation, variation, transfer or extinguishment of any interest in land, or
- (c) the preparation of a plan for lodgment under Division 3 of Part 23 of the [Conveyancing Act 1919](#), or
- (d) the identification or marking out, or both, of the boundaries of a parcel of land.

**mining survey** means a survey that is carried out for the purposes of the [Coal Mines Regulation Act 1982](#) or the [Mines Inspection Act 1901](#).

**permanent survey mark** means a survey mark that is in a form or style declared by the regulations to be the form or style for a permanent survey mark under this Act.

**public authority** means any Government Department, local government authority, State owned corporation or statutory body representing the Crown.

**public survey** means a survey in respect of which details are included in the register of public surveys.

**register of public surveys** means the register referred to in section 7.

**register of surveyors** means the register referred to in section 15.

**registered land surveyor** means a person who is registered as a land surveyor under this Act.

**registered mining surveyor** means a person who is registered as a mining surveyor under this Act.

**registered surveyor** means a registered land surveyor or registered mining surveyor.

**Registrar of the Board** means the Registrar referred to in section 29.

**spatial information**—see section 3A.

**State control survey** means the State control survey referred to in section 4 (1).

**student of surveying** has the meaning given to that expression by the regulations.

**survey**, when used as a noun, means an activity that includes any of the following:

- (a) the taking of measurements of distance, height, depth, level or direction in relation to land, including the air space above land and the subsurface below land and including land covered by water,
- (b) the insertion of survey marks in or on any land,
- (c) the recording of any measurements so taken and the location of any survey marks so inserted,
- (d) the collating of any measurements and locations so recorded,
- (e) the preparation of plans or other documents (whether in writing or in electronic form) to illustrate the results of any such measurements or the location of any such survey marks,

but does not include any activity involved in mapping or the preparation of navigational charts or any other activity declared by the regulations not to be a survey.

**survey drafter** has the meaning given to that expression by the regulations.

**survey mark** means a mark that is in a form or style declared by the regulations to be the form or style for a survey mark under this Act.

**survey plan** means a plan of the kind referred to in paragraph (e) of the definition of **survey**.

**Surveyor-General** means the person holding office or acting as the Surveyor-General under Chapter 2 of the [Public Sector Employment and Management Act 2002](#).

**surveyor's assistant** has the meaning given to that expression by the regulations.

- (2) Notes in the text of this Act do not form part of this Act.

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

- (1) For the purposes of this Act, **spatial information** is any information about a location in space and time including, but not limited to, information about any one or more of the following:

- (a) the natural resources at the location,
  - (b) the environment and climate at the location,
  - (c) land ownership and other ownership rights at the location,
  - (d) the use of land at the location,
  - (e) any infrastructure at the location,
  - (f) the demography of the location.
- (2) A location to which spatial information relates may be:
- (a) a point or a two or three dimensional area, and
  - (b) a location that is:
    - (i) above the Earth's surface, or
    - (ii) below the Earth's surface, or
    - (iii) on the Earth's surface, or
    - (iv) any combination of the above.

## **Part 2 Public surveys**

### **4 Surveys carried out by Surveyor-General**

- (1) A State control survey is to be established for the purposes of this Act.
- (2) The Surveyor-General may carry out surveys in connection with the State control survey and, for that purpose, may establish permanent survey marks throughout the State.
- (3) A survey carried out by or on behalf of the Surveyor-General must be carried out:
  - (a) subject to the regulations, by reference to the Geocentric Datum of Australia, but with elevations established by reference to Australian Height Datum, and
  - (b) in accordance with the requirements of the regulations.

### **5 Surveys carried out by public authorities**

A survey carried out by or on behalf of a public authority must be carried out:

- (a) subject to the regulations, by reference to the Geocentric Datum of Australia, but with elevations established by reference to Australian Height Datum, and
- (b) in accordance with the requirements of the regulations.



## **6 Details of surveys to be provided to Surveyor-General**

- (1) The Surveyor-General may, by order in writing, direct a public authority to provide the Surveyor-General with such information as to surveys carried out by that authority (including any relevant records, maps and survey plans) as are specified in the order.
- (2) A public authority to which such a direction is given must comply with the requirements of the direction.

## **7 Register of public surveys**

- (1) The Surveyor-General must establish and maintain a register of public surveys.
- (2) The register may contain details as to:
  - (a) such surveys carried out by the Surveyor-General under this Part, and
  - (b) such surveys for which details have been forwarded to the Surveyor-General under this Part,as the Surveyor-General considers appropriate to include in the register.
- (3) The Surveyor-General is to ensure that the register is made available to the public, subject to such charges as may be prescribed by the regulations, at the head office of the Department.

## **8 Co-ordination of public surveys**

The Surveyor-General may adjust any public survey so as to ensure that it is consistent with the State control survey and with other public surveys with respect to the same or any adjacent locality.

## **9 Maintenance and repair of permanent survey marks**

- (1) The Surveyor-General may, from time to time, cause notice to be given to any public authority of the location of any permanent survey marks that are located on land that is subject to the authority's control or management.
- (2) A public authority to which such a notice is given must ensure that all permanent survey marks identified in the notice are kept in good condition and repair.
- (3) On the application of a public authority to which such a notice is given, the Minister may direct that it is the duty of the Surveyor-General, and not the public authority, to keep any or all of the permanent survey marks concerned in good condition and repair.

## **9A Correction of survey errors**

- (1) A survey regulator may, by notice in writing, require a registered surveyor to correct

within the time specified in the notice any error in a survey made by that surveyor.

**Note—**

Failure to comply with a notice under this section is professional misconduct for the purposes of section 13 of this Act.

- (2) If a registered surveyor does not comply with a notice under this section, the survey regulator who issued the notice may engage another registered surveyor to make the correction.
- (3) Any costs or expenses incurred by or on behalf of a survey regulator under subsection (2) may be recovered in any court of competent jurisdiction as a debt due to the Crown from the registered surveyor to whom the notice under this section was issued.
- (4) In any proceedings instituted for the recovery from a registered surveyor of a debt due to the Crown under this section, a certificate of the survey regulator who engaged another surveyor under subsection (2) that stating a specified amount is the amount of the debt so due is evidence of that fact.
- (5) A debt due by any person to the Crown under this section is recoverable whether or not the person is found guilty of professional misconduct under section 13.
- (6) In this section, **survey regulator** means:
  - (a) in relation to a land survey undertaken by a registered land surveyor:
    - (i) the Surveyor-General, and
    - (ii) the Registrar-General, or
  - (b) in relation to a mining survey undertaken by a registered mining surveyor:
    - (i) the Chief Inspector of Mines, and
    - (ii) the Chief Inspector of Coal Mines.

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

- (1) This section applies if:
  - (a) a plan has been lodged in the office of the Registrar-General under the *Real Property Act 1900* or the *Conveyancing Act 1919*, and
  - (b) the survey represented in the plan has been certified to be accurate by a registered surveyor (**the original surveyor**), and
  - (c) the Registrar-General has issued a requisition or requirement to the effect that a specified thing is to be done by the original surveyor.
- (2) If the Surveyor-General is satisfied that:

- (a) a requisition or requirement referred to in subsection (1) (c) has not been complied with by the original surveyor because:
  - (i) of the original surveyor's death, continued absence or prolonged illness, or
  - (ii) the original surveyor cannot be found or is no longer a registered surveyor, and
- (b) it is unlikely that the requisition or requirement will be complied with by the original surveyor within a reasonable time having regard to the circumstance of the case,

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

- (3) On the issue of a certificate by the Surveyor-General under subsection (2), a registered surveyor, other than the original surveyor, may do all or any of the things that are necessary or expedient to comply with the requisition or requirement referred to in subsection (1) (c).
- (4) A registered surveyor who amends a plan under subsection (3) is to certify on the plan that the amendment has been made under this section.
- (5) Despite any other Act, law or practice, on production of a certificate issued by the Surveyor-General under subsection (2), the Registrar-General is to accept anything done by a registered surveyor under subsection (3) as if it were done by the original surveyor.
- (6) Nothing in this section prevents:
  - (a) the original surveyor from authorising another registered surveyor to do all or any of the things required to be done, or
  - (b) the Registrar-General from accepting anything done by a registered surveyor who has taken over the practice of the original surveyor that is or are necessary or expedient to be done,

to comply with the requisition or requirement referred to in subsection (1) (c).

### **Part 3 Registration of surveyors**

#### **10 Application to registration of [Licensing and Registration \(Uniform Procedures\) Act 2002](#)**

- (1) The Board may grant the following kinds of registration for the purposes of this Act:
  - (a) registration as a land surveyor,
  - (b) registration as a mining surveyor.

- (2) Part 3 of the *Licensing and Registration (Uniform Procedures) Act 2002* (**the applied Act**) applies to and in respect of registration under this Act, subject to the modifications and limitations prescribed by or under this Act.

**Note—**

See clause 3 of Schedule 3, which temporarily suspends the provisions of the applied Act in relation to the making of applications by way of electronic communication.

- (3) For the purposes of applying Part 3 of the applied Act to registration under this Act:
- (a) an application for the granting of registration may only be made by an individual, and
  - (b) registration may be amended under that Act, and
  - (c) the reference to 28 days in section 46 (1) of that Act (as to the period within which applications are to be dealt with) is to be read as a reference to 12 weeks, and
  - (d) the reference to 14 days in section 48 (1) of that Act (as to the period within which notice of the Board's decision on an application is to be notified) is to be read as a reference to 28 days, and
  - (e) section 53 (2) of that Act does not have effect, and
  - (f) the requirement of section 54 of that Act for a registration administration fee to be paid to the relevant registration authority within 14 days after each anniversary of the date on which the relevant certificate of registration was issued is to be read as a requirement for such a fee to be so paid on or before 31 August in each year.
- (4) Registration under this section is continuing registration for the purposes of Part 3 of the applied Act.
- (5) Subject to this section, the regulations may make provision for or with respect to such matters concerning registration under this Act as are relevant to the operation of Part 3 of the applied Act.

## 11 Investigations

- (1) For the purpose of investigating a survey that has been carried out by a registered surveyor, the Board:
- (a) may require the surveyor to produce, for inspection by the Board, any field books or other documents relevant to the conduct of the survey, and
  - (b) may carry out further surveys, and
  - (c) has a registered surveyor's functions under Part 4 with respect to entry on lands.
- (2) The Board's functions under subsection (1) are to be exercised:

- (a) by a Board member who is a registered surveyor, or
  - (b) by some other registered surveyor to whom the Board delegates the exercise of those functions.
- (3) Action may be taken under this section on the Board's own motion or as a consequence of a complaint made to the Board.

## **12 Professional incompetence**

- (1) The Board may take any one of the following kinds of action against a registered surveyor who demonstrates incompetence in carrying out a survey:
- (a) it may impose conditions on the surveyor's registration, including conditions requiring the surveyor to undergo further training or to practise only under supervision,
  - (b) it may suspend the surveyor's registration for a period of not more than 5 years,
  - (c) it may cancel the surveyor's registration.
- (2) Action is not to be taken under this section unless the Board:
- (a) has caused notice of the proposed action to be given to the registered surveyor, and
  - (b) has given the registered surveyor at least 28 days within which to make written submissions to the Board in relation to the proposed action, and
  - (c) has taken any such submissions into consideration.

## **13 Professional misconduct**

- (1) The Board may take any one or more of the following kinds of action against a registered surveyor who is guilty of professional misconduct:
- (a) it may administer a caution to the surveyor,
  - (b) it may impose conditions on the surveyor's registration, including conditions requiring the surveyor to undergo further training or to practise only under supervision,
  - (c) it may order the surveyor to take specified steps to correct or complete any survey in respect of which the misconduct has occurred,
  - (d) it may order the surveyor to pay compensation, totalling not more than \$10,000, to any person towards any loss or damage suffered by that person as a consequence of the misconduct,
  - (e) it may order the surveyor to pay a penalty to the Board of not more than \$10,000,

- (f) it may suspend the surveyor's registration for a period of not more than 5 years,
  - (g) it may cancel the surveyor's registration.
- (2) Action is not to be taken under this section unless the Board:
- (a) has caused notice of the proposed action to be given to the registered surveyor, and
  - (b) has given the registered surveyor at least 28 days within which to make written submissions to the Board in relation to the proposed action, and
  - (c) has taken any such submissions into consideration.
- (3) An order for compensation referred to in subsection (1) (d) is enforceable by the person to whom the compensation is ordered to be paid as if it were a judgment of a Local Court exercising jurisdiction under the *Local Courts (Civil Claims) Act 1970*.
- (4) In this section, **professional misconduct**, in relation to a registered surveyor, means:
- (a) any contravention of the conditions of the surveyor's registration, or
  - (b) any failure to comply with the standards imposed by this Act or the regulations with respect to the carrying out of surveys, or
  - (c) any failure to comply with an order referred to in subsection (1) (c), (d) or (e), or
  - (c1) any failure to comply with a notice under section 9A, or
  - (d) any failure to comply with the requirements of the *Licensing and Registration (Uniform Procedures) Act 2002*, or
  - (e) any contravention of this Act or the regulations, or
  - (f) any contravention of the *Coal Mines Regulation Act 1982* or the *Mines Inspection Act 1901*, or the regulations under those Acts, with respect to the conduct of surveys, or
  - (g) any act or omission that demonstrates that the surveyor is not a fit and proper person to be registered as a surveyor, or
  - (h) any act or omission that the regulations declare to be professional misconduct for the purposes of this Act.

#### **14 Applications to Administrative Decisions Tribunal for review of determinations**

Any registered surveyor against whom action is taken under this Part may apply to the Administrative Decisions Tribunal for a review of the Board's determination to take such action.

## 15 Register of surveyors

- (1) The Registrar of the Board is to establish and maintain a register of surveyors for the purposes of this Act, and for the purposes of Part 3 of the *Licensing and Registration (Uniform Procedures) Act 2002*, as applied by this Act.
- (2) The Registrar of the Board is to ensure that the register of surveyors is made available to the public, free of charge, at the Board's offices.
- (3) The regulations may make provision with respect to:
  - (a) the particulars to be recorded in the register of surveyors, and
  - (b) the manner and form in which the register of surveyors is to be maintained.

### Note—

See also section 49 of the *Licensing and Registration (Uniform Procedures) Act 2002* with respect to the particulars to be recorded in the register of surveyors.

## 16 Evidentiary certificates

A certificate:

- (a) that is signed by the Registrar of the Board, and
- (b) that certifies that, on a specified date or during a specified period, the particulars contained in the register of surveyors as to specified matters were as so specified,

is admissible in any proceedings and is evidence of the matters so certified.

### Note—

See also section 55 of the *Licensing and Registration (Uniform Procedures) Act 2002* with respect to evidentiary certificates.

## 16A Certain provisions of this Part apply also to former surveyors

For the avoidance of doubt, the provisions of this Part relating to professional misconduct extend to any person who was a registered surveyor at the time that any professional misconduct allegedly occurred but who is no longer a registered surveyor.

## Part 4 Entry to land for survey purposes

### 17 Surveyor-General

- (1) The Surveyor-General, and any person authorised by the Surveyor-General for the purposes of this section:
  - (a) may enter any land, including any building or structure on which a survey mark is located, and
  - (b) may take measurements in or from any such land, and

(c) may search for and, if necessary, uncover any existing survey marks in or on any such land, and

(d) may insert new survey marks in or on any such land,

for the purpose of carrying out any survey under this Act or for the purpose of maintaining or repairing any permanent survey marks.

(2) This section does not entitle the Surveyor-General, or any person so authorised, to enter any building or structure on land, other than a building or structure referred to in subsection (1) (a).

## **18 Registered surveyors**

(1) A registered surveyor, together with his or her assistants:

(a) may enter any land, including any building or structure on which a survey mark is located, and

(b) may take measurements in or from any such land, and

(c) may search for and, if necessary, uncover any existing survey marks in or on any such land, and

(d) may insert new survey marks in or on any such land,

for the purpose of carrying out any land survey or mining survey.

(2) Subject to subsection (3), this section does not entitle a registered surveyor, or any such assistant, to enter any building or structure, other than a building or structure referred to in subsection (1) (a).

(3) In the case of a survey for the purpose of determining the position of a wall, or for defining a boundary that is otherwise inaccessible, a registered surveyor may enter any building or structure.

## **19 Manner in which power of entry to be exercised**

(1) The powers conferred on a person by this Part may not be exercised in relation to any land unless the occupier of the land has been given at least 24 hours' notice that those powers are to be exercised.

(2) Reasonable force may be used for the purpose of effecting entry under this Part.

(3) Entry under this Part may be effected only during daylight hours.

## **20 Damage to land**

(1) In exercising the powers conferred by this Part, a person must do as little damage as possible.



- (2) A registered surveyor is not exempt from liability for any damage caused to land, including any building or structure on the land, as a consequence of the exercise of the powers conferred by this Part by the registered surveyor or his or her assistants.

## **Part 5 Offences**

### **21 Unregistered persons not to practise land surveying**

- (1) A person must not:

- (a) carry out a land survey for fee or reward, or
- (b) advertise that he or she is willing to carry out a land survey for fee or reward, unless the person is a registered land surveyor.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) does not prevent a survey drafter:

- (a) from preparing a survey plan for a registered land surveyor, or
- (b) from advertising that he or she is willing to prepare a survey plan for a registered land surveyor, for fee or reward.

- (3) Subsection (1) (a) does not apply to:

- (a) any student of surveying, or any surveyor's assistant, who carries out a land survey under the general supervision of a registered land surveyor, or
- (b) any other person who carries out a land survey under the immediate supervision of a registered land surveyor.

### **22 Unregistered persons not to practise mining surveying**

- (1) A person must not:

- (a) carry out a mining survey for fee or reward, or
- (b) advertise that he or she is willing to carry out a mining survey for fee or reward, unless the person is a registered mining surveyor.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) does not prevent a survey drafter:

- (a) from preparing a survey plan for a registered mining surveyor, or
- (b) from advertising that he or she is willing to prepare a survey plan for a registered

mining surveyor,  
for fee or reward.

(3) Subsection (1) (a) does not apply to:

- (a) any student of surveying, or any surveyor's assistant, who carries out a mining survey under the general supervision of a registered mining surveyor, or
- (b) any other person who carries out a mining survey under the immediate supervision of a registered mining surveyor.

### **23 Obstruction of registered surveyors**

A person must not obstruct or hinder the Surveyor-General, a registered surveyor or any other person in the exercise of that other person's functions under this Act.

Maximum penalty: 25 penalty units.

### **24 Removal etc of survey marks**

(1) A person must not remove, damage, destroy, displace, obliterate or deface any survey mark unless authorised to do so by the Surveyor-General.

Maximum penalty: 25 penalty units.

(2) A court that finds a person guilty of an offence under this section may, in addition to any penalty it imposes, make either or both of the following orders:

- (a) it may order the person to pay compensation, totalling not more than \$10,000, to the Surveyor-General towards the cost of reinstating the survey mark,
- (b) it may order the person to pay compensation, totalling not more than \$10,000, to any other person towards any loss or damage suffered by that person as a consequence of the offence.

(3) An order for compensation referred to in subsection (2) is enforceable by the person to whom the compensation is ordered to be paid as if it were a judgment of a Local Court exercising jurisdiction under the *Local Courts (Civil Claims) Act 1970*.

### **25 Marks in the form of permanent survey marks not to be used without authority**

A person must not insert in any land any mark resembling a permanent survey mark unless authorised to do so by the regulations.

Maximum penalty: 15 penalty units.

### **26 Exercising powers of entry without certificate of authority**

At all times while exercising the powers conferred by Part 4, a person must carry, and produce on demand, a certificate of authority in the form prescribed by the regulations.

Maximum penalty: 5 penalty units.

## **Part 6 The Board of Surveying and Spatial Information**

### **27 Constitution of Board**

- (1) There is constituted by this Act a corporation with the corporate name “Board of Surveying and Spatial Information”.
- (2) The Board is to consist of between 10 and 12 members, of whom:
  - (a) one is to be the Surveyor-General, and
  - (b) one is to be a registered surveyor, being an officer of the Department, appointed by the Minister, and
  - (c) three are to be persons appointed by the Minister on the nomination of such professional association of land surveyors as is prescribed by the regulations for the purposes of this section, and
  - (d) one is to be a person appointed by the Minister on the nomination of such professional association of mining surveyors as is prescribed by the regulations for the purposes of this section, and
  - (e) between one and three are to be persons appointed by the Minister from persons nominated by such relevant professional associations of persons involved in the spatial information industry as the Minister determines, and
  - (f) one is to be a person appointed by the Minister on the nomination of the Minister administering the *Coal Mines Regulation Act 1982*, and
  - (g) one is to be a person appointed by the Minister on the nomination of the Minister administering the *Fair Trading Act 1987*, and
  - (h) one is to be a person appointed by the Minister on the basis of his or her qualifications and experience in the training of surveyors.
- (3) The Surveyor-General is to be the President of the Board.
- (4) Schedule 1 has effect with respect to the constitution and procedure of the Board.
- (5) The Board is, for the purposes of any Act, a statutory body representing the Crown.

### **28 Functions of Board**

- (1) The principal functions of the Board are as follows:
  - (a) the registration of surveyors,
  - (b) the investigation of surveyors’ registration and licensing schemes in other States

and Territories, and the provision of advice to the Minister in connection with the recognition of the qualifications and experience of surveyors registered or licensed under such schemes,

- (c) the investigation of complaints against registered surveyors,
- (d) the taking of disciplinary action against registered surveyors,
- (e) the investigation of matters referred to it by the Minister for advice or report in relation to surveying or any other aspect of the spatial information industry,
- (f) the investigation of, and the provision of advice to the Minister with respect to, the practice to be followed in the conduct of surveys or in the collection, collation and dissemination of any other kinds of spatial information,
- (g) the provision of advice to the Minister with respect to any other matter in connection with the administration of this Act.

- (2) The Board has such other functions as are conferred or imposed on it by or under this or any other Act or law.

### **29 Registrar and other staff**

- (1) A Registrar of the Board and such other staff as are necessary to enable the Board to exercise its functions are to be appointed and employed under Chapter 2 of the *Public Sector Employment and Management Act 2002*.
- (2) The Board may arrange for the use and services of any staff or facilities of any government department or public authority.

### **30 Committees**

- (1) The Board may establish advisory and other committees to assist it in the exercise of its functions, and may abolish any committee so established.
- (2) A committee must include at least 2 Board members, but may include other persons who are not Board members.
- (3) The regulations may make provision with respect to the constitution and procedure of a committee.
- (4) A committee may exercise such of the Board's functions as are delegated to it by the Board.

### **31 Delegation of functions**

- (1) The Board may delegate to any person the exercise of any of its functions, other than this power of delegation.

(2) Despite subsection (1):

- (a) the Board's functions under section 11 may be delegated only to a registered surveyor, and
- (b) the Board's functions under sections 12 and 13 may be delegated only to a committee whose members are all Board members.

### **32 Exclusion of personal liability**

Anything done or omitted to be done:

- (a) by the Board, a Board member or a person acting under the direction of the Board or a Board member, or
- (b) by a committee established by the Board, a committee member or a person acting under the direction of any such committee or committee member,

does not subject the Board member, committee member or person so acting personally to any action, liability, claim or demand if the thing was done, or omitted to be done, in good faith for the purpose of executing this Act.

## **Part 6A Appeals against decisions of Tribunal**

### **32A Definitions**

In this Part:

**surveyor decision** means an order or other decision of the Tribunal made in proceedings commenced by an application made under section 14 of this Act.

**Tribunal** means the Administrative Decisions Tribunal.

### **32B Application of [Administrative Decisions Tribunal Act 1997](#)**

The provisions of Part 1 of Chapter 7 of the [Administrative Decisions Tribunal Act 1997](#) do not apply to a surveyor decision.

**Note—**

Part 1 of Chapter 7 of the [Administrative Decisions Tribunal Act 1997](#) provides that certain decisions of the Tribunal may be appealed to an Appeal Panel of the Tribunal.

### **32C Right to appeal to Supreme Court**

- (1) A party to any proceedings in which the Tribunal has made a surveyor decision may appeal to the Supreme Court against the decision of the Tribunal.
- (2) An appeal under this Part to the Supreme Court:
  - (a) may be made on any question of law, and

- (b) with the leave of the Supreme Court, may extend to a review of the merits of the decision concerned.
- (3) Despite subsections (1) and (2), an appeal does not lie to the Supreme Court under this Part against any of the following decisions of the Tribunal except by leave of the Supreme Court:
  - (a) an interlocutory decision,
  - (b) a decision made with the consent of the parties,
  - (c) a decision as to costs.
- (4) The Tribunal (or any of the members constituting the Tribunal) cannot be made a party to an appeal under this Part. Rules of court made under the *Supreme Court Act 1970* may make provision for the parties to any such appeal (including the designation of a respondent where the only party in the proceedings from which the appeal is brought was the appellant).
- (5) An appeal to the Supreme Court under this Part must be made:
  - (a) within such time and in such manner as is prescribed by rules of court made under the *Supreme Court Act 1970*, or
  - (b) within such further time as the Supreme Court may allow.

### **32D Appeals on questions of law**

- (1) If an appeal under this Part is restricted to questions of law, the Supreme Court is to determine the appeal and may make such orders as it thinks appropriate in light of its determination.
- (2) The orders that may be made by the Supreme Court on appeal include (but are not limited to):
  - (a) an order affirming or setting aside the decision of the Tribunal, and
  - (b) an order remitting the case to be heard and decided again by the Tribunal (either with or without the hearing of further evidence) in accordance with the directions of the Supreme Court.

### **32E Appeals on the merits**

- (1) If an appeal under this Part extends to a review of the merits of a surveyor decision, the Supreme Court is to decide what the correct and preferable decision is having regard to the material then before it, including the following:
  - (a) any relevant factual material,
  - (b) any applicable written or unwritten law.

- (2) The Supreme Court may exercise all the functions that are conferred or imposed by or under this Act or the [Administrative Decisions Tribunal Act 1997](#) on the Tribunal to make the decision concerned.
- (3) In determining any such appeal, the Supreme Court may decide:
  - (a) to affirm the decision, or
  - (b) to vary the decision, or
  - (c) to set aside the decision and make a decision in substitution for the decision it set aside.

### **32F Appeal does not stay decision appealed against**

Subject to any interlocutory order made by the Supreme Court, an appeal under this Part does not affect the operation of the surveyor decision appealed against or prevent the taking of action to implement the decision.

## **Part 7 Miscellaneous**

### **33 Annual report**

The annual report prepared for the Department under the [Annual Reports \(Departments\) Act 1985](#) is to include a report on the Surveyor-General's work and activities under this Act for the period to which the report relates.

### **33A Delegation**

- (1) The Surveyor-General may delegate the exercise of any function of the Surveyor-General under this or any other Act (other than this power of delegation) to:
  - (a) any member of staff of the Department, or
  - (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.
- (2) This section does not apply to any function of the Surveyor-General as an Electoral Districts Commissioner under Part 2 of the [Parliamentary Electorates and Elections Act 1912](#).

### **34 Act binds Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, in all its other capacities.

### **35 Recovery of money**

Any fee payable under this Act, and any penalty imposed by the Board under this Act, may be recovered in any court of competent jurisdiction as a debt due to the Crown.

### **35A Unlawful disclosure of information**

A person who discloses any information obtained in the administration of this Act is guilty of an offence unless the disclosure:

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

Maximum penalty: 50 penalty units.

### **36 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the following:
  - (a) the practices to be followed in the conduct of surveys,
  - (b) the form in which survey plans are to be prepared,
  - (c) the competencies, qualifications and experience that a person must have to be eligible for registration as a surveyor,
  - (d) the conduct of tests and examinations by or on behalf of the Board,
  - (e) the functions of the Surveyor-General,
  - (f) the form and construction of permanent survey marks and other survey marks used in connection with the carrying out of surveys,
  - (g) the form in which certificates of authority are to be issued for the purposes of section 26,
  - (h) the conditions to be imposed on a surveyor's registration under this Act, including conditions with respect to continuing professional development,
  - (i) the manner and form in which complaints may be made to the Board with respect to the conduct of a registered surveyor and the manner in which those complaints are to be dealt with,
  - (j) the fees payable under this Act.



- (3) A regulation under subsection (2) (a), (b), (c) or (d) with respect to mining surveys or formal mining survey plans may only be made following consultation between the Minister administering this Act and the Minister or Ministers administering the following Acts:
- (a) the *Coal Mines Regulation Act 1982*,
  - (b) the *Mines Inspection Act 1901*,
  - (c) the *Coal Mine Health and Safety Act 2002*,
  - (d) the *Mine Health and Safety Act 2004*.
- (4) A regulation may apply, adopt or incorporate any publication as in force from time to time.

### **37 Repeals**

The following Acts and instrument are repealed:

- (a) the *Survey Co-ordination Act 1949*,
- (b) the *Survey (Geocentric Datum of Australia) Act 1999*,
- (c) the *Survey Marks Act 1902*,
- (d) the *Surveyors Act 1929*,
- (e) the *Surveyors (General) Regulation 1999*.

### **38 (Repealed)**

### **39 Savings, transitional and other provisions**

Schedule 3 has effect.

### **40 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## Schedule 1 The Board of Surveying and Spatial Information

(Section 27)

### Part 1 Constitution

#### 1 Definition

In this Schedule, **appointed member** means a member referred to in section 27 (2) (c)-(h).

#### 2 Term of office

Subject to this Schedule, an appointed member holds office for such period (not exceeding 2 years) as is specified in the relevant instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

#### 3 Remuneration

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

#### 4 Vacancy in office of appointed member

(1) The office of an appointed member becomes vacant if the member:

- (a) dies, resigns or is removed from office, or
- (b) absents himself or herself from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, unless:
  - (i) the Board has granted the member leave to be absent from those meetings, or
  - (ii) within 4 weeks after the last of those meetings, the member is excused by the Board for having been absent from those meetings, or
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (d) becomes a mentally incapacitated person, or
- (e) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove an appointed member from office at any time.

## **5 Filling of vacancy in office of member**

If the office of an appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **6 Disclosure of pecuniary interests**

(1) A Board member who has a direct or indirect pecuniary interest:

(a) in a matter that is being considered, or is about to be considered, at a meeting of the Board, or

(b) in a thing being done or about to be done by the Board,

must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure at such a meeting that the member:

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or a specified person,

is taken to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person that may arise after the date of the disclosure.

(3) The Board must cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book must be open at all reasonable hours to the inspection, free of charge, of any person.

(4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing under subclause (1) or (2), the member must not, unless the Minister otherwise determines:

(a) be present during any deliberation, or take part in any decision, of the Board with respect to that matter, or

(b) exercise any functions under this Act with respect to that thing,

as the case requires.

(5) A contravention of this clause does not invalidate any decision of the Board or the exercise of any function under this Act.

(6) A reference in this clause to a meeting of the Board includes a reference to a meeting of any of its committees.

## **7 Effect of certain other Acts**

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of an appointed member and the office of such a member is not, for the purposes of any Act, an office or place of profit under the Crown.
- (2) If by or under any other Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,that provision does not operate to disqualify the person from holding that office and also the office of an appointed member, or from accepting and retaining any remuneration payable to the person under this Part as such a member.

## **Part 2 Procedure**

### **8 General procedure**

Except as otherwise provided by this Act or the regulations:

- (a) meetings of the Board are to be held at such times and places as are fixed by the President, and
- (b) the procedure for the convening of meetings and for the conduct of business at those meetings is to be as determined by the President.

### **9 Quorum**

At a meeting of the Board, a majority of the Board members constitutes a quorum.

### **10 Presiding member**

The President (or, in the absence of the President, one of the other members chosen by the members present at the meeting) is to preside at a meeting of the Board.

### **11 Decisions**

- (1) A decision of the Board has effect if it is supported by a majority of the votes cast at a meeting at which a quorum is present.
- (2) In the event of an equality of votes, the presiding member has a second, or casting, vote.

## **12 Record of proceedings**

- (1) The presiding member at a meeting of the Board must cause a record of the proceedings at the meeting to be made.
- (2) Records made for the purposes of this clause may be destroyed after the expiry of the period prescribed by the regulations.

## **13 Authentication of documents**

Any document requiring authentication by the Board is sufficiently authenticated if it is signed by:

- (a) the member who presided at the meeting that dealt with the proceedings with respect to which the document was prepared, or
- (b) in the absence of that member, any other member who was present at that meeting.

## **14 First meeting**

The first meeting of the Board is to be called by the Minister in such manner as the Minister considers appropriate.

## **Schedule 2 (Repealed)**

## **Schedule 3 Savings, transitional and other provisions**

(Section 39)

## **Part 1 Preliminary**

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

This Act

- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that

publication.

## **Part 2 Provisions consequent on enactment of this Act**

### **2 Definitions**

In this Part:

**the 1929 Act** means the *Surveyors Act 1929*.

**the 1949 Act** means the *Survey Co-ordination Act 1949*.

**the 1999 Act** means the *Survey (Geocentric Datum of Australia) Act 1999*.

**the former Board** means the Board of Surveyors constituted under the 1929 Act.

**the new Board** means the Board of Surveying and Spatial Information constituted under this Act.

### **3 Electronic applications for registration**

(1) Despite Part 3 of the *Licensing and Registration (Uniform Procedures) Act 2002* (as applied by section 10 of this Act), an application referred to in section 41 of that Act may not be made by means of electronic communication.

(2) Subclause (1) does not limit the effect of the *Electronic Transactions Act 2000*.

(3) This clause ceases to have effect on a day to be appointed by proclamation.

### **4 Continuation of Board**

(1) The new Board is taken to be a continuation of, and the same legal entity as, the former Board.

(2) The members of the former Board cease to hold office on the repeal of the 1929 Act.

### **5 State triangulation survey**

The State control survey under this Act is a continuation of the State triangulation survey under the 1949 Act.

### **6 Central plan register**

The central plan register kept under the 1949 Act is taken to be the register of public surveys kept under this Act.

### **7 Notices under section 15 of 1949 Act**

Any notice given under section 15 (1) of the 1949 Act is taken to be a notice given under section 9 (1) of this Act.

## **8 Register of surveyors**

The register kept under the 1929 Act is taken to be the register of surveyors kept under this Act.

## **9 Registered surveyors**

Any person who, immediately before the repeal of the 1929 Act, was a registered surveyor under that Act is taken to have been registered as a land surveyor under this Act, subject to the same conditions as those to which he or she was then subject.

## **10 Continuation of certain regulations**

The *Surveyors (Practice) Regulation 2001* and the *Survey Co-ordination Regulation 1998* are taken to be regulations under this Act, and may be amended and repealed accordingly.

## **11 Construction of certain references**

In any Act or instrument:

- (a) a reference to the 1929 Act, the 1949 Act or the 1999 Act extends to this Act, and
- (b) a reference to a registered surveyor under the 1929 Act extends to a registered land surveyor under this Act.

## **12 General saving**

Subject to this Schedule and the regulations:

- (a) anything begun before the appointed day under a provision of the 1929 Act or 1949 Act for which there is a corresponding provision in this Act may be continued and completed under the 1929 Act or 1949 Act as if this Act had not been enacted, and
- (b) subject to paragraph (a), anything done under a provision of the 1929 Act or 1949 Act for which there is a corresponding provision in this Act (including anything arising under paragraph (a)) is taken to have been done under the corresponding provision of this Act.