

## Circular Memorandum No. 2 / 2022

TOPIC:	<b>Legal Implications of 'Direct' Supervision Section 16(2) Surveyors Act 2002</b>
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DATE:	21 October 2022
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### All Registered Land Surveyors

#### Section 16(2) Surveyors Act 2002

This section of the Act states:

**16. Only registered land surveyors to survey land or practise as land surveyors**

(1) A person who is not a registered land surveyor must not carry on business or hold himself or herself out as a land surveyor or registered land surveyor.

Penalty: Fine not exceeding 200 penalty units and a further penalty not exceeding 5 penalty units for each day during which the offence continues after conviction.

(2) A person who is not a registered land surveyor, or acting directly (my emphasis) under the supervision of a registered land surveyor, must not survey land.

Penalty: Fine not exceeding 200 penalty units.

(3) A person who is not a registered land surveyor must not give a certificate that under any law is required to be given by a registered land surveyor.

Penalty: Fine not exceeding 200 penalty units.

(4) In this section,

**Survey** includes deciding, for fee or reward, whether improvements are, or are not, within the boundaries of any land.

The OSG has recently sought legal advice to clarify the meaning of 'directly' as it pertains to supervision of persons who are not registered land surveyors. That advice has led me to form the view that 'directly' is to be interpreted as meaning 'immediately, personally and directly overseen by a registered land surveyor'.

Further, the received legal advice has led me to form the view that the meaning of 'directly' is not open to interpretation by the Surveyor-General.

In other words, it is my view that in order to comply with section 16 of the Act a registered land surveyor must be present and immediately and personally direct and oversee all non-registered persons undertaking field surveys.

Practitioners will recognise that this interpretation is not what was intended when the Surveyors Act 2002 was constructed, and that the convention intended to be carried forward from the Land Surveyors Act 1909 was for varying levels of immediate personal supervision of non-registered persons depending on their skills and experience and the complexity of the survey.

I advise that other jurisdictions have addressed supervision in a variety of ways, such as the issuing of 'Supervision Directions' or determinations by the Surveyor-General or the relevant Surveyors Board. In each instance, such Directions must be consistent with the relevant Act.

I therefore foreshadow it is my expectation that amendments will need to be introduced to the Act to allow for clarification of supervision requirements, and consequent Supervision Directions issued. These processes have prescribed procedures and timeframes associated with them and require interaction with the relevant Minister and parliamentary activities.

### **Discussion on Supervision**

Notwithstanding my comments in the previous paragraph, it is useful to provide some additional context in relation to the question of supervision. It has been noted for some time by the OSG through the audit and investigation program that lack of supervision is a significant contributing factor to instances of non-compliance of surveys with the Survey Directions and requirements of the Recorder of Titles, resulting in surveys that do not correctly re-instate existing title boundaries and / or produce substandard plan and survey note documentation that cannot be accepted by the Land Titles Office.

Whilst survey practices have changed over recent decades and restrictions on the number of graduates under supervision have been removed, it is nevertheless a legal requirement for a registered land surveyor to personally implement such supervision and checks required to ensure each and every survey certified complies with all legal requirements, including those of the Recorder of Titles.

The lack of supervision leading to instances of serious non-compliances is a matter that the OSG is already investigating in some detail, and I expect to provide some further analysis of this issue at upcoming forums. As recently as today, the Council of Reciprocating Surveyors Boards of Australia and New Zealand (CRSBANZ) held a meeting at which the issues around supervision were discussed at length. It is appropriate to note that other jurisdictions are working towards substantially more explicit specifications for supervision, including the requirement to maintain records of the supervision applied to each individual survey which may be assessed during audits.

The Professional Training Agreement documents overseen by the Tasmanian Land Surveyors Accreditation Board (TLSAB) specifically prescribe supervision requirements but at present the Surveyors Act 2002 specifies 'direct' supervision as a legal minimum requirement and not as an option. I will be engaging further and more deeply with you during the coming months as we work to address this matter.



Michael Giudici  
SURVEYOR-GENERAL