

Circular Memorandum No. 4 / 2022

TOPIC: **Compliance with Requirements of the Surveyors Act 2002**

DATE: 15 November 2022

All Registered Land Surveyors

Fundamental requirements applying to surveys of land under the Surveyors Act 2002

The *Surveyors Act 2002* (the Act) replaced the *Land Surveyors Act 1909* following a review of that act stemming from the 1995 inter-governmental agreement to implement national competition policy and related reforms. Reviews in all Australian jurisdictions found that the continuing restriction of the execution of “surveys of land” was warranted **based on the net public benefit**, not only for the immediate interests of consumers **but also to preserve the future integrity of the real property boundary fabric**, relied upon as a cornerstone of social cohesion and economic development.

The restrictions reflect the specialised skills and knowledge required for surveying the location of real property interests and since only another registered land surveyor can generally identify errors or issues in the location depiction of those interest’s incorrect land surveys for one client may impact multiple subsequent and adjacent landowners. As detection of anomalies is often dependant on a re-survey of the land, issues often don’t become apparent, or the negative impacts realised, for many years and disputes and loss due to errors in a land survey are not uncommon decades, or even a century, after its execution.

At s15 of the Act, the Surveyor-General may issue directions as to the technical specifications and standards to be observed in the conduct of any survey for any statutory purpose. An aim of the survey standards is to promote accurate, fit for purpose property boundary surveys that satisfy the requirements of the public and government now and into the future.

At s16, a person who is not a registered land surveyor, or acting directly under the supervision of a registered land surveyor, must not survey land.

At s18, a registered land surveyor must exercise such oversight over the work of any person acting under their supervision as may be necessary to ensure the work is completed in accordance with the Act and any other Act e.g., requirements of the Recorder of Titles under the *Land Titles Act 1980*.

At s21 (vide s26), a registered surveyor must ensure that a survey carried out, and a plan with all supporting documents prepared, by or under his supervision complies with all applicable directions under section 15.

Penalty: Fine not exceeding 100 penalty units.

S26, dealing with the certification and adequacy of surveys, is reproduced in full below :

26. Certification and adequacy of surveys

(1) A survey carried out for any statutory purpose by, or under the supervision of, a registered surveyor must be certified correct by that surveyor before being lodged for registration or acted on.

(2) If any such survey is conducted wholly or in part by a person under the supervision of a registered surveyor, the supervising surveyor remains responsible for the adequacy of the survey as certified.

(3) A registered surveyor must implement, or ensure the implementation of, any checking procedures necessary to confirm the technical accuracy and adequacy of the survey as certified.

(4) The certification is to be in accordance with the regulations or directions issued under [section 15](#) and is to confirm that the survey and associated documentation complies with all relevant requirements, including survey directions issued by the Surveyor-General, and is correct for the purpose required.

Supervision

I refer practitioners to Circular Memorandum 2/2022 for recent advice regarding supervision. I make the following additional observations.

The legal requirement for a land surveyor to wholly accept personal responsibility for all aspects of a land survey, including one carried out under his / her supervision, is common to all Australian jurisdictions and New Zealand. The Council of Reciprocating Surveyors Boards of Australia and New Zealand (CRSBANZ) was established in 1922 to ensure commonality of standards for land

surveys in support of reciprocity. The common standards include requirements of the land surveyor for supervision of unregistered persons performing a survey.

Each Australian accreditation body publishes guidelines or requirements for supervision of candidates for registration (and other unregistered persons) and they all reflect national principles developed by CRSBANZ between 1996 and 2000. The national principles include :

- a) The supervisor should fully brief the supervised person – directly, and not through an intermediary - on the purpose and details of the survey before work commences.
- b) The supervisor should discuss all aspects of the survey with the supervised person at the completion of the work i.e., before certifying it is correct for the purpose required.

The national principles do allow for different levels of supervision of unregistered persons during the execution of a survey, reflecting their experience and competency, the circumstances applying to the survey and the distinct elements which comprise a survey of property boundaries. The circumstances include the supervisor's assessment of the ability of the supervised person to :

- c) accurately measure the ‘...position, dimension, extent or relativity of points, lines and things on, above or below the surface of the earth, for any purpose authorised by any Act’, including evidence relevant to the re-instatement of existing boundaries and description of new boundaries; and
- d) identify all evidence relevant to the re-establishment of the location of existing real property interests of land under survey that requires measurement; and
- e) accurately report to the supervisor on the location of real property rights, restrictions, and responsibilities by the application of survey practices and legal principles to the assessment of all relevant intrinsic and extrinsic evidence.

S15 of the Act at ss(1)(c) specifically mentions the example of directions dealing with “the supervision of persons assisting registered surveyors in the conduct of surveys”. Whilst in Tasmania there have been no directions issued that explicitly address supervision requirements, the *Survey Directions, Tasmania* include a statement at clause 2.1.1(b) Duties and Responsibilities of Surveyors that “where no express provision is made in these directions, [a surveyor must] comply with nationally recognised practice standards”.

The 'Prescribed Institute', who under the Act is responsible for the training, examination, and accreditation of persons seeking to establish their competency to practise as registered land surveyors in Tasmania, publish Tasmanian supervision guidelines in part 6 of the Guidelines for Supervising Surveyors included with the [Professional Training Agreement](#) published by the Tasmanian Land Surveyors Accreditation Board. These supervision guidelines reflected nationally recognised practice standards when they were originally prepared.

Professional Performance Feedback to Land Surveyors

Staff in my office regularly present in seminars providing feedback and examples highlighting issues of concern in land survey practice detected by the audit and investigation programs, and LTO plan requisition histories. In recent times workshops were held in July 2018, November 2018, May 2019 (in conjunction with the Deputy Recorder of Titles), April 2021 and November 2021 (in conjunction with the LTO plan examination staff) that focussed almost entirely on these matters. Common critical and fundamental elements of survey practice found non-compliant with the Survey Directions, Tasmania and the Act were highlighted at all these seminars, included the following (specific sections of the Directions or the Act listed in bold italic text) :

- f) Must accurately locate, measure, and consider all evidence that may be relevant to the re-establishment of an existing boundary (***3.2.2.1, 3.2.2.3***)
- g) Must accurately locate and correctly document all occupation (e.g., fences, buildings) adjacent to all surveyed boundaries (***3.2.1.2, 3.2.2.1, 3.2.2.2, 3.3.2.1***)
- h) Must mark all boundaries and corners of the land under survey, and correctly document the marks, in accordance with requirements (***3.2.1.1, 3.2.2.7, 3.5.1***)
- i) Must ensure that a survey carried out, and a plan with all supporting documents prepared, by or under his supervision, complies with all applicable directions and the requirements of the Recorder of Titles (***s18, s21, s26***).

These same non-compliances have again been observed to date in the 2022 audit and investigation program at unacceptable occurrence levels.

Requirements of the Recorder of Titles

At the SSSI cadastral seminar in May 2019 the Deputy Recorder of Titles presented on the purpose of plan and survey notes examination undertaken on survey plans lodged with the LTO, highlighting

the pending release of [LTO Circular No. 5/2019](#) which outlined the basis for the requisition class issued against every survey and plan examined by the LTO.

The necessity for strict compliance with the [Plan and Survey Notes Drafting Specifications](#) was also stressed at this workshop, noting that non-compliance with only these requirements generally results in a Class 2 requisition, even where the nature of such a non-compliance completely halts the plan examination process until corrections are provided.

Class 3 and 4 requisitions are those which have serious deficiencies that may create uncertainty about the extent of estates and interests and so may compromise the Register. Class 2 requisitions, whilst regarded as a less serious non-compliance, never-the-less render the survey unsuitable for acceptance by the LTO and cause unnecessary delays to the registration of time critical dealings – ranging from days for simple transcription errors or omissions to months in cases where the sheer number of errors and non-compliances results in entire new plan and survey note sheets being required.

Regardless of severity, every requisition for survey or plan errors creates inefficiencies and delays across the entire LTO plan examination program, resulting in unnecessary registration delays for members of the community whose surveyor does comply with the legal requirements for surveys and plan documentation.

Land Surveyor Plan Examination Performance Statistics from 2020 - 2022

The Recorder of Titles recently released the results of a statistical evaluation of the initial 12 months of operation of the Priority Final Plan scheme introduced in November 2020 – refer [LTO Office Circular No. 10/2022](#). The assessment found :

- 29.8% of plans purportedly lodged under the PFP scheme were not compliant with the scheme. Those plans therefore did not enjoy the benefits of the PFP scheme and were examined in the normal course of business; and
- In addition, 37.2% of examinations resulted in the issuing of a requisition Class 2, 3 or 4, with 5.3% of those requisitions being for the more serious Class 3 or 4.

The full requisition history (for SP and P plans of survey) maintained in the Surveyors Register for the same period – 1 November 2020 to 1 November 2021 – pursuant to s40 of the Act reveals the Class 3 and 4 requisitions of all survey plans examined (not including strata) as 6.6%, whilst for the period 1 November 2021 to 1 November 2022 the rate jumps to 9.7%. The percentage figure for Class 2 requisitions issued for an examination is not readily produced by the Surveyors Register

but a quick review of the raw requisition figures for a range of individual surveyors suggests a similar increase from the number of Class 2 requisitions issued in 2021.

The result is all these plans experience some delay at registration, ranging from hours but more commonly days or weeks through to, in one known case, over a year.

Concluding Comments

Despite the extensive education outreach of staff in my office and the LTO and the resource material published on the NRE Tasmania website, the OSG survey audit and investigation programs in conjunction with the LTO plan examination statistics, indicate there has been no appreciable positive change in the number of surveys complying with the requirements of the Survey Directions and the Recorder of Titles' requirements over the period 2018 to 2022, and in particular 2020 to 2022.

The current numbers of non-compliant surveys and / or survey plans is unacceptable. Accordingly, I will soon be issuing further advice on polices to improve the number of complying surveys and plans.



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