

SURVEY AND MAPPING INFRASTRUCTURE BILL 2003

EXPLANATORY NOTES

OBJECTIVES

The purpose of this Bill is to provide an appropriate level of legislative support for the development and maintenance of the state's survey and mapping infrastructure. The Bill consolidates into one Act, and updates where necessary, the relevant provisions of the *Survey Coordination Act 1952*, *Administrative Boundaries Terminology Act 1985* and the *Surveyors Act 1977*.

Definition and Purpose

The value of geographic information is seen in the expanding demand for spatial data and in the widening sectors of the community to which it is applied. Coordination mechanisms related to the delivery and management of spatial information have been established at national and state levels. These organisations emphasise the value of geographic (or spatial) information as infrastructure that contributes to the economic, environmental and social development of the Nation and the State.

A central component of the State's spatial information infrastructure is a group of core datasets on which the community relies for a broad range of activities related to the land. These core datasets provide:

1. the basis for describing location;
2. a description of the physical nature of the landscape; and
3. a description of the administrative nature of the landscape.

In Queensland, this information is provided as:

1. the state control survey – a system of survey marks and associated information, linked to the National and International systems for describing location;

2. the record of the physical landscape, in the form of topographic data, aerial photography and satellite imagery; and
3. a record of the location of land and administrative boundaries in the State, in the form of cadastral survey plans and the Digital Cadastral Database (DCDB).

This group of core datasets and survey marks, together with relevant institutional arrangements, standards and information access mechanisms, and the associated survey marks is referred to as the State's **survey and mapping infrastructure**. Establishment and maintenance of this infrastructure is generally the responsibility of governments, because of its importance to the whole community, and because typically it would not be provided by the private sector. In addition to providing general-purpose spatial information, elements of the survey and mapping infrastructure are used as a framework for integrating other types of spatial information.

The development and maintenance of certain aspects of the survey and mapping infrastructure requires legislative support. Prior to the enactment of this Bill, this has been provided by:

1. the *Survey Coordination Act 1952* for the state control survey, the aerial photography library, the record of land boundaries in the DCDB and other information of 'general value';
2. the *Administrative Boundaries Terminology Act 1985* for consistent terminology and interpretation in the location of administrative boundaries;
3. the *Surveyors Act 1977* for the standards of cadastral surveys that establish land boundaries.

This Bill consolidates into one Act, and updates where necessary, the relevant provisions of these Acts.

The national spatial data infrastructure has been described as consisting of four components: institutional framework, standards, datasets and information delivery systems. This Bill addresses aspects of these four components of the survey and mapping infrastructure in Queensland.

1. Institutional framework - it assigns responsibility to:
 - the chief executive – to arrange the capture, maintenance and dissemination of certain data;
 - agencies – to enable their activities to contribute to the infrastructure; and

- other persons – to permit their activities to contribute to the infrastructure.
2. Standards – it provides for the adoption, and in certain circumstances, prescription of standards:
 - for the state control survey;
 - for surveys and other processes involved in delimitation of interests in land;
 - for the marks and plans of such surveys; and•for the inclusion of the data arising from such surveys in the infrastructure.
 3. Infrastructure datasets – it provides a mechanism to define the base information required for inclusion in the infrastructure:
 - the network of control marks to facilitate integration of surveys;
 - the cadastral boundaries of the State;
 - the administrative boundaries of the State;
 - the library of photography and imagery over the State; and
 - other land related information as may be considered relevant by the chief executive.
 4. Information delivery systems - it establishes a system to allow certain details of the survey and mapping infrastructure to be recorded and made available.

The Bill also provides for the placement and protection of survey marks, that form the physical component of the infrastructure.

HOW POLICY OBJECTIVES WILL BE ACHIEVED

Integration of Surveys

The value of geographic information is significantly enhanced where the data from different sources can be matched together, eg. by integration through a unique reference system. Such an accurate spatial coordinate framework, tied into national and global systems, enables:

1. all surveys, even if not directly interconnected, to be integrated, eliminating unnecessary duplication;

2. geographic information to be fully integrated with navigation and satellite information systems; and
3. full use to be made of the technology of computerised geographic information systems, eg. in land planning and in analysis of environmental issues.

The principal mechanism of achieving this is the state control survey, for which the Act assigns responsibility to the chief executive.

The spatial coordinate framework is based on a defined mathematical surface called a 'datum' or 'geodetic reference framework'. The Bill provides for the regulations to define the official geodetic reference framework for geographic coordinates in Queensland. From time to time, the official geodetic reference framework may change, as better information becomes available and there is a need to alter the framework to accommodate that information. Generally, the adoption of a new geodetic reference framework is coordinated nationally to ensure consistency between jurisdictions (presently through the Intergovernmental Committee on Survey and Mapping).

Survey Monuments

Survey marks (monuments) placed on control surveys and cadastral surveys are important elements of the survey and mapping infrastructure. Essential characteristics of monuments are:

1. existence and details must be discoverable;
2. marks must be maintained and protected;
3. marks must be accessible for the connection of surveys; and
4. attached data must be discoverable and accessible.

The existence and details of survey control marks is recorded in the Survey Control Register described below, while records of cadastral marks are shown on cadastral plans lodged or deposited in the land registry. The Bill also provides for persons to have access to this information.

The Bill assigns responsibility for the maintenance of permanent survey marks to various agencies, and contains provisions for the protection of marks, with penalties for interference. The Bill provides mechanisms for dealing with cases when a permanent survey mark or other mark needs to be removed because of some development activity.

From time to time, surveyors need to enter private land to gain access to marks in order to properly undertake a survey. The Bill provides a power of access similar to that in the *Surveyors Act 1977*, with additional safeguards to protect the rights of the owners and occupiers.

The Bill recognises that the surveyor's work, particularly when reinstating and marking land boundaries, generally extends beyond their client's own land. Land boundary (cadastral) surveyors have obligations to the State, all adjoining owners of land, and their clients, when reinstating land boundaries. The extent of the survey depends on the evidence of existing land boundaries that the surveyor can find. While many marks will be on roads, some marks that are necessary to re-establish a boundary will be at the rear of land parcels. The Bill provides a power for surveyors to enter land for the purpose of undertaking a survey. The surveyor must first attempt to seek the occupier's consent. However, if the occupier is not present or consent is not given, this does not prevent the surveyor from exercising the power. General powers after entry are also provided in the Bill.

The Bill also provides that a person must not obstruct a surveyor from performing his work. These provisions have been drafted to conform with natural justice and fundamental legislative principles, recognising however that it is not practical and would be quite expensive for clients to require a surveyor to provide advance notice to all occupiers that entry to land will be required for a survey purpose.

Survey Control Register

The effectiveness of the survey control system relies on an appropriate system for recording and managing information about marks and their coordinates, and for providing access to information about marks to those conducting surveys. It is proposed to establish a survey control register to achieve this, encompassing the functions of the existing Survey Control Database (SCDB) and capable of holding information about additional categories of marks that are of value for a survey and mapping infrastructure purpose, such as those which assist in establishing the relationship between the state control survey and the cadastral boundary network.

The register will be able to record a range of information about marks including information about observations between these marks, and between control marks and cadastral marks. Provision will also be made for relevant information from other surveys to be recorded in the register.

Survey Standards

The Bill sets out the process by which the chief executive will develop the standards associated with survey and mapping activities. The standards framework will consist of underlying principles, the standards themselves and guidelines as to how the standards may be achieved.

The principles in the Regulations will outline the fundamental approach to be adopted in the standards and provide guidance as to what should be contained in the standards themselves. Standards will cover issues such as the geodetic reference frame to be used by surveyors, what survey information is required, how it is to be presented, accuracy or quality indicators and details about survey marking. Certain survey standards will apply only in nominated geographic areas. This will allow particular projects or particular survey issues to be dealt with by use of a specific survey standard.

The chief executive is able to consult appropriate sectors of the survey industry and relevant public authorities when developing standards. The making of a standard will be notified in the Gazette by the Minister, at which time the standard will take effect. The chief executive will also prepare guidelines for surveyors, which will provide assistance to surveyors on how the standards might be complied with.

While compliance with survey standards will be mandatory for surveyors, there will be ways for surveyors to apply for exemptions. The Bill provides for a process where surveyors may apply to the chief executive for an exemption, and a right of review on the decision that is made.

The chief executive or the registrar of titles may take action with a surveyor if a survey is found to not comply with the standards.

Cadastral Surveys

The Surveyors Bill 2003 and the Survey and Mapping Infrastructure Bill 2003 complement each other in their dealing with cadastral surveys. The Surveyors Bill 2003 deals with matters related to the professional regulation of surveyors, such as the competence of surveyors and disciplinary processes, and prohibits persons without the relevant endorsement from undertaking cadastral surveys. The Survey and Mapping Infrastructure Bill 2003 establishes the standards that apply to the carrying out of a cadastral surveys.

Surveyors will be required to supply to the chief executive a plan of any cadastral survey, within sixty days of the survey being performed. This is to ensure that information is available about marks that have been placed, even if the action arising from the survey has not been completed.

Where errors are detected in surveys lodged with the chief executive or registrar of titles, the Bill provides for correction notices to be issued to the surveyor. If the surveyor does not deal with the correction notice, the chief executive may refer the matter to the Surveyors Board of Queensland. Similarly where a surveyor becomes aware of an inconsistency between a current survey and a registered survey plan, the Bill obliges the surveyors involved to make reasonable efforts to resolve the differences. This process attempts to have survey differences resolved prior to the chief executive or registrar of titles having to deal with the matter in a more formal and perhaps more expensive way.

Cadastral surveys make a major contribution to the survey and mapping infrastructure. In addition to their role in titling and maintaining the cadastral boundary system, cadastral surveys provide information that, if properly managed, can be useful in a number of important applications related to the management of spatial information – for example, as a base for asset management systems of local governments. At present, the relationship between the cadastral boundary network and the state control survey is not well defined in many areas. For this reason, specific provision is made for the survey control register to record information related to the coordination of cadastral survey marks.

Cadastral Data

The Department of Natural Resources and Mines maintains a computerised map of cadastral and administrative boundaries in the State and relevant attributes of land parcels, called the Digital Cadastral Database (DCDB). The DCDB was developed to address a need of the Department and a perceived need in the wider community.

As the data from the DCDB is used as a base layer in the information systems of many public agencies, and there are significant benefits in having all agencies using a consistent base, the Bill retains the provisions of the *Survey Coordination Act 1952* requiring agencies to use coordinates approved by the chief executive.

State Remotely Sensed Image Library

Under the *Survey Coordination Act 1952*, the chief executive is responsible for maintaining a State aerial photography library on behalf of the State. The library holds aerial photography that is in considerable demand to help meet the information needs of the community. The provisions of the *Survey Coordination Act 1952* establishing the State aerial photography library have been retained, and broadened to include remotely sensed images obtained from satellites.

The evidence provisions regarding interpretation of imagery by the chief executive have been retained.

Administrative Boundaries

The *Administrative Boundaries Terminology Act 1985* provides a means of describing and interpreting the location of the boundaries of administrative areas established under any Act. The provisions of the *Administrative Boundaries Terminology Act 1985* have been incorporated in this Bill, with two exceptions:

The *Administrative Boundaries Terminology Act 1985* limits the liability of the Crown where an administrative boundary plan is used for the purpose other than that for which it was prepared. Such a limitation is unnecessary if the plan itself describes the quality of the information on it.

The *Administrative Boundaries Terminology Act 1985* provides for the chief executive to resolve disputes regarding administrative boundaries. Under this Bill, such disputes are to be resolved through the courts.

Coordination of Surveys

The *Survey Coordination Act 1952* establishes a mechanism for coordinating surveys considered to be of general value, through a system of liaison officers in each agency. This process is not operating effectively is not continued in this Bill.

During the undertaking of major public infrastructure projects, the existing survey and mapping infrastructure is used. Additional survey and mapping information is collected, and may or may not comply with the base level specified by the chief executive for inclusion in the survey and mapping infrastructure. If the information does not comply, it may be necessary at a later time to collect similar information over the same area, resulting in duplication.

In certain circumstances, the additional cost of capturing the data to the relevant base level quality would be marginal, particularly in the context of the cost of the overall project. Surveyors intending to undertake surveys that have the potential to contribute to the survey and mapping infrastructure are required to notify the chief executive, to provide the opportunity for negotiations to take place regarding the contribution of the surveys to the survey and mapping infrastructure.

If the chief executive considers that surveys conducted by public authorities will contribute to the enhancement of the survey and mapping infrastructure, agencies must provide the information, including any relevant survey observations, to the chief executive. The chief executive will be responsible for incorporating the information in the survey and mapping infrastructure.

Access to Information

With the development of electronic methods of communication and information dissemination, it is now becoming easier for persons to identify what information is available, regardless of which organisation holds the information. There is no demonstrated need for a directory of survey and mapping infrastructure information, except for survey control for which the survey control register is to be established.

The *Survey Coordination Act 1952* requires the chief executive to hold information considered to be of value for the state control survey. With the advent of satellite positioning technologies, such as Global Positioning System (GPS), there are many surveys being conducted that could be considered of general value to the ongoing development of the survey and mapping infrastructure (ie. coordinates of cadastral monuments and reference marks being determined). Much of this information is collected for a particular purpose, and of its own is of little value other than for that purpose, so is often discarded. The survey control register should provide for the holding of this type of information together with other survey control information, enabling the information to be aggregated and contribute to the enhancement of the infrastructure at an appropriate time.

ADMINISTRATIVE COST TO GOVERNMENT

There are no known financial implications arising from the Bill.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

The following provisions of the Bill may be considered not to comply with fundamental legislative principles.

Correction Notice under Part 3, Division 5

The Bill gives the chief executive or the registrar of titles the power to ask a surveyor to correct an error in a survey. The surveyor has the opportunity to make a submission in relation to the request, and the person must consider the submission before deciding whether to issue a correction notice requiring the surveyor to correct the error. There is no express provision for an appeal against the issuing of the notice. However, if the surveyor fails to comply with the notice and matter is referred to the Surveyors Board, and disciplinary action the Board may choose to impose as a result is subject to appeal.

Exemption from Survey Standard under Part 3, Division 2

If a surveyor applies to the chief executive for an exemption from complying with a survey standard, and the chief executive gives the exemption with conditions, or refuses to give the exemption, the surveyor may appeal to the Minister. The option of providing an appeal to the Magistrate's Court was considered. However, as this is a technical matter in which the Court may not have sufficient expertise, it was considered more appropriate to provide an avenue of appeal to the Minister. The Minister is in a position to seek independent technical advice before making the decision.

Authority to Interfere with Permanent Survey Mark under Part 4, Division 3

If a person applies to the chief executive for an authority to interfere with a recognised permanent survey mark, and the chief executive gives the authority with conditions, or refuses to give the authority, the person may appeal to the Minister. The option of providing an appeal to the Magistrate's Court was considered. However, as this is a technical matter in which the Court may not have sufficient expertise, it was considered more appropriate to provide an avenue of appeal to the Minister. The Minister is in a position to seek independent technical advice before making the decision.

Power of entry under Part 3, Division 3

The surveyor's work, particularly when reinstating and marking land boundaries, generally extends beyond their client's own land. Land

boundary surveyors have obligations to the State, all adjoining owners of land and their clients, when reinstating land boundaries. The extent of the survey depends on the evidence of existing land boundaries that the surveyor can find. While many marks will be on roads, some marks that are necessary to re-establish a boundary will be at the rear of land parcels. The Bill provides a power for surveyors to enter land for the purpose of undertaking a survey. The surveyor must first attempt to seek the occupier's consent. However, if the occupier is not present or consent is not given, this does not prevent the surveyor from exercising the power.

The usual requirement that occupiers be given notice of at least one day has not been included. The cost of making an additional trip to the site of the survey to issue notices, and the difficulty in knowing in advance which parcels are to be entered, makes such a requirement impractical. The surveyor is entering the land to undertake a survey, which for a cadastral survey involves measuring the location of survey marks and occupation such as fences or walls on or near boundaries. The significance of prior notice is low, as the surveyor is not there for the purpose of monitoring or enforcing compliance with a law.

The Bill includes a power for a surveyor to uncover buried marks. While this power may be exercised on private land, the need for such a power on land that is owned or leased is not common, particularly in urban areas. Buried marks are almost always placed within a road reserve. The Bill limits the power to uncover marks by requiring that the surveyor must cause as little damage as possible in uncovering the mark and must not cause any permanent damage to any property located on the land.

Loss or expense caused by a surveyor exercising a power under Part 3, Division 3

Part 3, Division 3 gives a surveyor the power to place permanent marks on land that is owned or occupied, and the power to enter places to undertake a survey. The Bill does not provide for compensation for owners or occupiers should any loss or damage be caused as a result of any survey activity, as these rights exist at common law or contract law depending on whether the loss or damage occurs on adjoining property or the surveyor's client's property.

Evidentiary matters – Clause 62

The Bill provides that a certificate purporting to be signed by the chief executive regarding imagery from the State remotely sensed image library is evidence of the matter, in the absence of evidence to the contrary, thereby

reversing the onus of proof on these matters. The matters to which this provision applies are listed in the clause, and are technical and non-contentions in nature, concerning the particulars and interpretation of images in the library. The clause does not make the certificate conclusive evidence, and provides the opportunity for it to be challenged by the production of other evidence.

CONSULTATION

An exposure draft of the Bill was released in January 2003, complemented by presentations to a number of seminars around the State. Written responses were received from surveying industry groups and a number of individual surveyors. The draft Bill was modified to address issues raised during the consultation process.

NOTES ON CLAUSES

PART 1—PRELIMINARY

Clause 1 Short title

This clause is the short title of the Act.

Clause 2 Commencement

This clause provides for the commencement of the provisions of this Act.

Clause 3 Purposes of Act

This clause sets out the purposes of the Act and how they are to be achieved.

The purposes are to provide for –

- developing, maintaining and improving the State survey and mapping infrastructure,

- maintaining and improving cadastral boundaries throughout the State and information about them held by the department,
- coordinating and integrating survey and mapping information,
- improving public access to survey and mapping information,
- defining administrative areas and describing and distinguishing the boundaries of those areas.

To achieve these purposes, the Act establishes a hierarchy of governance, through Regulations, standards and guidelines. The Act sets out a methodology for how the chief executive will develop the standards associated with survey and mapping activities. Standards will be underpinned by some key guiding principles, and will be developed within a framework that includes the standards themselves and the underlying guidelines.

The principles will be detailed in the Regulations and will outline the fundamental objectives and provide a stable reference point for how and what should be contained in the standards. The chief executive may also prepare guidelines for surveyors, which will provide assistance to surveyors on how the Standards might be complied with. There will be mandatory aspects to the standards, however compliance with the associated guidelines will not be mandatory. The guidelines will provide some alternatives for how the standards can be complied with.

Clause 4 Act binds all persons

This clause provides for the Act to be binding on all persons, including the State, but protects the State and Commonwealth from liability for prosecution for an offence under the Act.

Clause 5 Definitions

This clause defines certain terms used in the Act, by reference to the dictionary in the schedule.

PART 2—SURVEY STANDARDS AND SURVEY GUIDELINES

Clause 6 Survey standards

This clause enables the chief executive to establish standards for surveying, to achieve an acceptable level of survey quality. Survey standards must be consistent with the principles set in regulations, and state the locality and type of survey to which they apply.

A standard for surveying can be made about –

- the coordinate reference framework,
- the information to be collected and/or to be shown on the plan of survey,
- the level of accuracy to be achieved,
- the characteristics of the survey marks to be used.

Standards will cover issues as they relate to performing cadastral, geodetic or topographical surveying. Examples of such issues are the datum and geographic coordinate systems which are to be used, accuracy specifications for observations and equipment, legal traceability of measurements, and the placement and identification requirements for the various forms of survey marking. The chief executive can adopt national and industry standards already developed to address particular issues if the chief executive considers that they satisfy the principles detailed in the Regulations.

Surveyors use the term accuracy to describe the quality of the relationship between the survey and an external reference frame, and the term precision to describe the quality of the survey itself (its internal consistency). In this clause, the term accuracy refers to both aspects.

Certain parts of the survey Standards will have particular geographic areas of application. This will allow particular projects or particular survey issues to be dealt with by use of a specific survey standard.

Section 50 of the *Land Title Act 1994* (Requirements for registration of plan of subdivision) includes a requirement that a plan must comply with the *Surveyors Act 1977*. The purpose of that requirement is to ensure that surveys are conducted and plans prepared in accordance with cadastral surveying standards established under the *Surveyors Act 1977*, without

limiting the power of the registrar of titles to set standards that relate to the suitability of the plan as a titling instrument.

Standards for cadastral surveys will now be established under this Bill. These standards will deal with survey matters of direct relevance to the purpose of the plan as a titling instrument. The standards will also deal with other matters such as the requirements for marking the survey (important to the client), the record of the survey shown on the plan (required by other surveyors in the future), and the overall integrity of the land boundary system (of general interest to the community).

Mining tenure surveys in accordance with the *Mineral Resources Act 1989* are considered to be cadastral surveys and will be subject to the provisions of this Bill.

The clause also anticipates that the regulations will prescribe a geodetic reference framework for the State, and requires that any coordinate reference framework specified in a standard be consistent with that geodetic reference framework.

Clause 7 Survey guidelines

This clause enables the chief executive to make guidelines for surveying, stating ways of complying with survey standards. Survey guidelines will be statutory instruments and come under the provisions of the *Statutory Instruments Act 1992*, including allowing a guideline prepared by another entity to be adopted as a guideline by the chief executive. Survey guidelines must identify the standard to which they apply.

Survey guidelines will not carry mandatory compliance, but may offer one or a number of methods or means by which a standard can be satisfied. Guidelines will generally replace material in the current Survey Operations Manual and will be readily and easily updated to account for advances in technology and knowledge.

Clause 8 Consultation for survey standard or survey guideline

This clause enables the chief executive to consult with bodies that the chief executive considers appropriate before making a survey standard or survey guideline. These may include bodies that represent surveyors in the State, including the surveyors board, or local governments affected by a standard or guideline.

This clause will enable the chief executive to consult with the relevant authorities with an interest in a particular location, when the chief executive intends to introduce a survey standard or guideline for a particular geographic location. It does not require the chief executive to consult with every local authority when introducing a survey standard or guideline that will apply anywhere within Queensland.

The discretionary nature of this provision is not intended to suggest that consultation will not take place. Rather, it is designed to provide flexibility so that relevant organisations can be consulted on a case-by-case basis.

Clause 9 When survey standard and survey guidelines have effect

This clause requires a notice to be published in the government gazette, by the Minister, for a survey standard to have effect. The notice must state that a copy of the standard and any supporting documents are available for inspection at any of the department's offices and on the department's Internet web site.

Clause 10 Public access to survey standards and survey guidelines

This clause ensures that standards and guidelines are accessible to those who require them. It requires the chief executive to keep a copy of each survey standard and survey guideline and supporting documents and make them available for inspection at each department office and on the department's Internet web site. A person may obtain a copy of a survey standard or survey guideline on payment of a fee determined by the chief executive. A survey guideline becomes a statutory instrument upon being published.

Clause 11 Inconsistencies between survey standards and survey guidelines

This clause provides that a survey standard will prevail over a survey guideline if there is an inconsistency between them. This contributes to the hierarchy of governance structure established to provide for an acceptable level of survey quality.

Clause 12 Regulation may make provision about survey standard and survey guideline matters

This clause provides for regulations to be made about anything for which a survey standard or survey guideline may be made. It also provides that a regulation will prevail over a survey standard or survey guideline if there is an inconsistency between them. This clause also contributes to the hierarchy of governance structure established to provide for an acceptable level of survey quality.

PART 3—CARRYING OUT SURVEYS***Division 1—Obligations of surveyors, surveying associates and surveying graduates*****Clause 13 Compliance with survey standards**

This clause requires surveyors, surveying graduates and surveying associates to comply with each relevant survey standard when conducting a survey, unless the person has a reasonable excuse or is exempt under clauses 18 – 20. Survey standards can apply to a type of survey or to a location in which a survey is conducted.

The chief executive may refer a matter to the surveyors board, or for a surveyor that does not comply with the survey standards without reasonable excuse or an exemption, the chief executive or the registrar of titles may take action under clauses 28 – 31.

Clause 14 How to comply with survey standards

This clause provides that a surveyor, surveying graduate or surveying associate can comply with a survey standard by following the procedures and methods stated in a survey guideline relating to that standard or by any other means that achieves an equal or better level of compliance with that standard. Following a survey guideline is not compulsory but the procedures or methods used by the person must result in an outcome that satisfies the survey standard. This provides surveyors with the opportunity to exercise their professional judgement in determining the most appropriate means of complying with a standard.

Clause 15 Obligation on person placing permanent survey mark

This clause requires a surveyor, surveying graduate or surveying associate to give a copy of a plan to the chief executive within 40 business days of completing a survey, if the person places a permanent survey mark during that survey, unless the person has a reasonable excuse or it is a State survey. This ensures that there is a record of the permanent mark in the survey control register within a reasonable time after the mark is placed, so that other persons carrying out surveys in the area are aware of its existence and are able to locate it.

It is an offence to contravene this requirement. The maximum penalty for such an offence is 20 penalty units.

Clause 16 Obligation on cadastral surveyor

This clause requires a cadastral surveyor to give a copy of a survey plan to the chief executive within 40 business days of placing or supervising the placing of survey marks when carrying out a cadastral survey, unless the surveyor has a reasonable excuse. This ensures that a record of the survey is available within a reasonable time after the marks are placed, so that other persons carrying out surveys in the area are aware of their existence and are able to obtain information about the survey that placed the marks.

If the plan is lodged in the land registry within the required time, then the requirement of this clause is met. However, if the plan is not lodged within that time, the surveyor must provide a copy of the plan to the chief executive. There may be instances where a plan must be provided to the chief executive under this clause even if the survey has not been completed. This is to ensure that records are available about marks that have been placed.

Cadastral survey plans are generally submitted to the chief executive under the *Land Act 1994* and the registrar of titles under the *Land Title Act 1994*, but are also submitted under other legislation such as the *Building Units and Group Titles Act 1980* and the *Mixed Use Development Act 1993*, and specific enabling legislation such as *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980* and the *South Bank Corporation Act 1989*, etc.

If the surveyor uses a permanent survey mark as a reference point during that survey, the survey plan must show the relationship between the cadastral survey and the permanent survey mark.

It is an offence to contravene this requirement. The maximum penalty for such an offence is 20 penalty units.

Clause 17 Resolving inconsistencies between plans of survey

This clause requires cadastral surveyors to make reasonable efforts to resolve inconsistencies that arise in the identification of boundaries that are shown on 2 or more survey plans, if the surveyors responsible for the plans are aware of the inconsistency. The clause applies to plans that have been deposited, lodged or registered under the *Land Act 1994* or *Land Title Act 1994*, or provided to the chief executive to satisfy the requirements of clause 16.

This clause enables the chief executive or the registrar of titles to take action that they consider is necessary to resolve the inconsistency, including referring the matter to the surveyors board under clause 31, if the surveyors who conducted the surveys are unable to resolve the inconsistency themselves.

Boundaries identified on survey plans are those boundaries whose location has been determined, and includes the boundaries of the parcel being surveyed (the subject boundaries) or any other boundary used to support the determination of the subject boundaries.

Division 2—Exemption from survey standard

Clause 18 Application for exemption

This clause enables a surveyor, surveying associate or surveying graduate to apply to the chief executive for an exemption from all or part of a survey standard, if the surveyor, surveying associate or surveying graduate reasonably believes it is impractical to comply with a survey standard for a certain survey.

The request must be in writing and must state the provision of the survey standard and the extent of the survey for which the exemption is sought, and explain the reasoning as to why the surveyor, surveying associate or surveying graduate believes it is impractical to comply with the survey standard, as briefly as possible.

Clause 19 Decision on application

This clause permits the chief executive to give the exemption with or without conditions, or refuse to give the exemption. If the chief executive gives the exemption with conditions or refuses to give the exemption, then the chief executive must give the applicant a notice stating the decision and the reasons for it, and that the applicant can apply to the Minister within 30 business days for a review of the decision.

Clause 20 Review of decision

If a person applies to the chief executive for an exemption from a survey standard, and the person applies to the Minister for a review of the chief executive's decision, the Minister must as soon as practicable, review the chief executive's decision and decide whether to uphold or set aside the decision, and notify the applicant in writing about his/her decision and reasons for it.

Division 3—Surveyors' powers**Clause 21 Power to place a permanent survey mark**

This clause gives a surveyor, surveying associate or surveying graduate the power to install permanent survey marks on land that is road, unallocated State land, or land that is under the control of, or vested in, the State. (The dictionary defines the term 'surveyor', when used in this division, to include a surveying associate or surveying graduate.)

A surveyor, surveying associate or surveying graduate may install a permanent mark on freehold land or land subject to a lease, licence or permit under the *Land Act 1994*, with the consent of the owner or occupier of that land.

The power to place permanent survey marks on land includes the placement of marks on structures such as buildings, bridges, walls, etc. However, if a permanent mark is to be placed on a structure on freehold land or land that is subject to a lease, license or permit under the *Land Act 1994*, the owner's consent must be obtained.

Clause 22 Power to enter places

This clause provides a surveyor, surveying associate or surveying graduate with the power to enter on land at any reasonable time, subject to

notice requirements in clause 23, to conduct a survey or install a permanent survey mark. This clause does not include a power to enter a residence, but does include a power to enter a building that is not a residence. (The dictionary defines the term 'surveyor', when used in this division, to include a surveying associate or surveying graduate.)

Clause 23 Surveyor's notice of entry

This clause requires a surveyor, surveying associate or surveying graduate to make a reasonable attempt to identify himself/herself to an occupier of land for which entry is required, and tell such person the purpose of the entry and that they are permitted to do so under this Act. However, if the occupier is not present or consent is not given, this does not prevent the surveyor, surveying associate or surveying graduate from exercising this power. A person must not obstruct a surveyor, surveying associate or surveying graduate exercising this power, as they will be guilty of an offence under clause 27. (The dictionary defines the term 'surveyor', when used in this division, to include a surveying associate or surveying graduate.)

For the purposes of providing such identification and notice, a surveyor, surveying associate or surveying graduate may enter land without the occupiers consent, to an extent that is reasonable to contact the occupier or enter part of a place that the public are ordinarily allowed to enter to contact the occupier. An identity card issued by the surveyors board would be an appropriate means of identifying the surveyor to an occupier, but other methods could be used.

This clause does not exempt persons from complying with any other statutory requirement when they are on the land, for example compliance with workplace health and safety legislation or vegetation management legislation. Where particular issues arise in relation to the interaction between other legislation and the power of entry provisions of this Bill, and these can be dealt with administratively, then this will be done through either the standard setting power under this Bill or the code of practice under the Surveyors Bill 2003.

This clause provides a practical and effective approach to facilitating access to land by surveyors while still protecting the individual's rights, through surveyors being required to make personal contact with occupiers before entry onto land. Rights of individuals to lodge a complaint or to commence a civil action following any alleged interference caused by a surveyor are not diminished in any way by the entry power, as that right exists at law.

Clause 24 General powers after entering places

This clause enables a surveyor, surveying associate or surveying graduate to conduct a survey, place survey marks as part of a survey, place permanent survey marks if authorised by the owner or occupier under clause 21, inspect and/or maintain recognised permanent survey marks located on the land, and take any person, equipment or materials required for conducting a survey or installing a permanent survey mark, after entering land under clause 22. (The dictionary defines the term ‘surveyor’, when used in this division, to include a surveying associate or surveying graduate.)

Clause 25 Power to uncover buried survey mark

This clause enables a surveyor, surveying associate or surveying graduate to take action necessary to uncover a buried survey mark. The surveyor, surveying associate or surveying graduate, or a person acting under their direction or authority, must cause as little damage as possible in uncovering the mark and must not cause any permanent damage to any property located on the land. This power applies to either public land (such as on a road, where it may involve breaking up the surface of a footpath) or land that is owned or leased. The need for such a power on land that is owned or leased is not common, particularly in urban areas. (The dictionary defines the term ‘surveyor’, when used in this division, to include a surveying associate or surveying graduate.)

Division 4—Other matters about the exercise of surveyors’ powers**Clause 26 Notice of damage**

This clause requires a surveyor, surveying associate or surveying graduate to immediately repair or reinstate property if possible, if the property has been damaged by them or a person acting under their authority or direction, in accordance with clauses 21 – 25. (The dictionary defines the term ‘surveyor’, when used in this division, to include surveying associate or surveying graduate.)

The clause requires a surveyor, surveying associate or surveying graduate to immediately give notice of the damage to the apparent owner of the property, if it is not possible to immediately repair or reinstate property. The surveyor, surveying associate or surveying graduate may state in the notice if he/she believes that the damage was caused by an underlying

defect in the property or by circumstances beyond their control or beyond the control of a person authorised by them. The surveyor, surveying associate or surveying graduate must leave the notice in a reasonably secure and conspicuous position near the damage, if it is impractical to give notice to the apparent owner.

The requirement on a surveyor, surveying associate or surveying graduate to repair damage or to give notice to the owner does not apply to damage that they reasonably believe is trivial.

Clause 27 Obstructing a surveyor

This clause establishes that it is an offence for a person who obstructs, assaults, hinders, threatens, or attempts to obstruct a surveyor, surveying associate or surveying graduate without reasonable excuse. The maximum penalty for such an offence is 50 penalty units. (The dictionary defines the term ‘surveyor’, when used in this division, to include surveying associate or surveying graduate.)

A surveyor, surveying associate or surveying graduate who is obstructed by a person and proceeds with their power to conduct a survey, to place reference marks, or to install a permanent survey mark must warn the person that it is an offence to obstruct a surveyor, surveying associate or surveying graduate without reasonable excuse and that they consider the person to be obstructing them.

Division 5—Correcting survey errors

Clause 28 Correcting survey errors

This clause empowers the chief executive to request a surveyor, surveying associate or surveying graduate to correct an error at their own expense, if the person has made an error in conducting a survey and a copy of the plan has been provided to the chief executive. (The dictionary defines the term ‘surveyor’, when used in this division, to include surveying associate or surveying graduate.)

The clause also empowers the registrar of titles to request a cadastral surveyor to correct an error at the surveyor’s own expense, if the surveyor has made an error in a survey plan deposited or lodged under the *Land Title Act 1994* and the registrar cannot correct the error under Section 15 of that Act.

The dictionary defines ‘survey error’ to be an error capable of correction by conducting another survey, amending the survey plan, or lodging another survey plan, and includes performing a survey that does not comply with a survey standard.

The following three clauses set out the process that must be followed.

Clause 29 Show cause notice

This clause provides that if the chief executive or the registrar of titles proposes to ask a surveyor, surveying associate or surveying graduate to correct an error under these provisions, the chief executive or the registrar must notify the person of the proposed request to correct the error, giving them the opportunity to show cause why the request should not be made. The surveyor, surveying associate or surveying graduate must be given at least 20 business days in which to respond to the ‘show cause notice’.

Clause 30 Considering submissions

This clause requires the chief executive or the registrar of titles to consider a submission made within the nominated time in response to a show cause notice.

Clause 31 Giving correction notice

This clause permits the chief executive or the registrar of titles, after considering any submissions received within the nominated time, to issue a written correction notice requiring the surveyor, surveying associate or surveying graduate to correct the survey.

A correction notice must state a reasonable period of at least 20 business days after the notice is given, in which the correction must be made. The person who issued the correction notice may refer the matter to the surveyors board, if the surveyor, surveying associate or surveying graduate does not comply with the correction notice.

Division 6—Miscellaneous**Clause 32 Authority for cadastral surveyor to act for another in particular circumstances**

This clause allows a surveyor to authorise a second surveyor to act in his stead for the purposes of amending any surveys or survey plans at the request of a registering entity or for any purpose under the *Mineral Resources Act 1989*. The board must be notified of the authorisation.

In cases where the registering entity requests a surveyor to amend a plan or a survey, and the surveyor cannot be found, the chief executive may request the surveyors board to authorise another surveyor to act in the first surveyor's stead.

In both cases the authorised surveyor may take all actions for which the person is authorised to amend the plan or the survey, and those actions are taken to be the actions of the original surveyor, and the registering entity must accept it as such.

PART 4—SURVEY MARKS***Division 1—Establishing recognised permanent survey marks*****Clause 33 State surveys**

This clause enables the chief executive to have a high precision survey conducted for establishing recognised permanent survey marks throughout the State. This network of highly accurate permanent survey marks, including the information and systems used for recording, adjusting and disseminating that information, is the State control survey.

The clause also enables the chief executive to have other high precision surveys conducted for establishing recognised permanent survey marks in particular parts of the State. For example, this provision could be used to establish a dense network of control marks in an area, in preparation for a major construction project or to facilitate determining accurate coordinates of the cadastral corners in an area.

Clause 34 Chief executive may obtain information about survey marks placed other than in carrying out a State survey

This clause enables the chief executive to request a copy of a survey plan or other information necessary to establish a survey mark as a recognised permanent survey mark, from a surveyor, surveying associate, surveying graduate or public authority that placed a survey mark that the chief executive considers to be of value for survey and mapping infrastructure purposes. The request must be in writing, however the request for a copy of the survey plan does not apply if the person has given the chief executive a copy of the survey plan under clause 15 or 16. Other information that can be requested could include a permanent mark sketch plan and/or satellite positioning observation files.

The person or public authority must comply with the request within the reasonable period stated in the notice, unless they have a reasonable excuse. It is an offence to contravene this requirement. The maximum penalty for such an offence is 20 penalty units.

The chief executive may also have a survey conducted for establishing a survey mark as a recognised permanent survey mark if the chief executive considers the survey mark to be of value for survey and mapping infrastructure purposes. This power does not absolve a surveyor or public authority from their responsibility to supply information to the chief executive when requested.

Clause 35 Establishing survey marks as recognised permanent survey marks

This clause sets out the process by which a permanent survey mark becomes a 'recognised permanent survey mark' under this Bill. The clause requires the chief executive to record details in the survey control register about each permanent survey mark placed as part of a survey and classify it as a recognised permanent survey mark. The clause also enables the chief executive to record details about other survey marks and classify them as recognised permanent survey marks if he/she considers them to be suitable. The characteristics of survey marks that are accepted as recognised permanent survey marks will be defined in survey standards.

The information to be recorded in the survey control register about a recognised permanent survey mark is –

- the mark's unique identifying number,
- information identifying the mark's location,

- a brief description of the mark,
- the name of the surveyor, surveying associate, surveying graduate or public authority who placed the mark,
- the date when the mark was placed.

Clause 36 Removing or changing classification of recognised permanent survey mark

This clause allows the chief executive to review the status of any survey mark in the survey control register with respect its classification as a recognised permanent survey mark under this Act. This enables the chief executive to change the status of any mark, if appropriate, when information about that mark is provided or obtained.

Division 2—Maintaining recognised permanent survey marks

Clause 37 Responsibility for recognised permanent survey marks placed in carrying out State surveys

This clause places responsibility on the chief executive for maintaining the physical integrity of a recognised permanent survey mark placed as part of a State survey. Maintaining the physical integrity of a mark means actions that maintain the long-term stability and usefulness of the mark for its intended purpose.

Clause 38 Responsibility for recognised permanent survey marks on State-controlled roads

This clause places responsibility on the department that administers the *Transport Infrastructure Act 1994*, for maintaining the physical integrity of a recognised permanent survey mark that is located on land declared to be a road under that Act. This responsibility is exclusive of survey marks that are placed as part of a State survey. Maintaining the physical integrity of a mark means actions that maintain the long-term stability and usefulness of the mark for its intended purpose.

The department is also responsible for giving the chief executive updated information about the survey mark for the survey control register.

Clause 39 Responsibility for recognised permanent survey marks on local government controlled roads

This clause places responsibility on a local government for maintaining the physical integrity of a recognised permanent survey mark that is located on land that is a road under the control of that local government. This responsibility is exclusive of survey marks that are placed as part of a State survey. Maintaining the physical integrity of a mark means actions that maintain the long-term stability and usefulness of the mark for its intended purpose.

The local government is also responsible for giving the chief executive updated information about the survey mark for the survey control register.

Clause 40 Responsibility for recognised permanent survey marks on land, other than roads, controlled by a public authority

This clause places responsibility on a public authority for maintaining the physical integrity of a recognised permanent survey mark that is located on land, that is not a road, under the control of that public authority. This responsibility is exclusive of survey marks that are placed as part of a State survey. Maintaining the physical integrity of a mark means actions that maintain the long-term stability and usefulness of the mark for its intended purpose.

The public authority is also responsible for giving the chief executive updated information about the survey mark for the survey control register.

Clause 41 Notifying public authority about responsibility for recognised permanent survey marks

This clause requires the chief executive to provide each responsible entity under clauses 37, 38 and 39 a written notice informing the entity of its responsibilities under those clauses for maintaining the physical integrity of a recognised permanent survey mark and for giving the chief executive updated information about that mark.

The chief executive must also give each entity a copy of the current information recorded in the survey control register about all such marks.

The chief executive is able to create guidelines under clause 7 regarding the maintenance of a recognised permanent survey mark to offer guidance to responsible entities. Such guidelines could vary for different marks,

depending on the significance of the marks to the survey and mapping infrastructure.

Division 3—Interfering with survey marks

Clause 42 Offence about interfering with survey mark

This clause creates an offence for a person or entity who interferes with a survey mark without reasonable excuse, except in certain circumstances. The maximum penalty for such an offence is 100 penalty units. A survey mark includes all survey marks, ie boundary marks, survey reference marks whether visible or buried, and permanent survey marks.

For a cadastral boundary mark, the offence provision does not apply to a person who removes such a mark to place a fence, as long as the removed mark is not then put back, as such practice is considered to be placing a cadastral survey mark and only a cadastral surveyor is permitted to do so under clause 75 of the Surveyors Bill 2003.

For a recognised permanent survey mark, the offence provision does not apply to a person who interferes with such a mark if they have been authorised to do so under clause 43 of this Bill.

For any survey mark other than a recognised permanent survey mark, the offence provision does not apply to a person who interferes with such a mark if they have a survey conducted to record the relationship of the mark with at least 2 recognised permanent survey marks and give a copy of that survey plan to the chief executive.

The clause also clarifies that it is not a reasonable excuse to interfere with a mark if the activity which resulted in the interference of the mark was authorised or required under a law – for example, the removal of concrete kerbing containing survey marks in order to widen a road, or the excavation of a trench to place services such as water or telecommunications lines on a footpath.

This provision complements Section 476 of the criminal code, which states “Any person who wilfully and unlawfully, and with intent to defraud, removes or defaces any object or mark which has been lawfully erected or made as an indication of the boundary of any land is guilty of a misdemeanour, and is liable to imprisonment for 3 years.”

Clause 43 Authority to interfere with recognised permanent survey mark

This clause enables a person or entity to apply to the chief executive for authority to interfere with a recognised permanent survey mark.

This clause permits the chief executive to give the authority with or without conditions, or refuse to give the authority. If the chief executive gives the authority with conditions or refuses to give the authority, then the chief executive must give the applicant a notice stating the decision and the reasons for it, and that the applicant can apply to the Minister within 30 business days for a review of the decision.

The Minister must as soon as practicable, review the chief executive's decision and decide whether to uphold or set aside the decision, and notify the applicant in writing about his/her decision and reasons for it.

Clause 44 Reinstating recognised permanent survey mark

This clause enables the chief executive or an entity that is responsible for maintaining recognised permanent survey marks, to reinstate a mark's physical and survey integrity if the mark is interfered with in contravention of clause 42. Reinstating the survey integrity would include making any measurements and doing any calculations necessary to determine the relationship of the mark to the State control survey and to cadastral survey marks, if such relationships were known for the mark before it was interfered with.

The reasonable costs incurred by the chief executive or responsible entity in reinstating the mark are a debt payable to the State or the responsible entity by the person or entity who interfered with the mark. A court may order a person or entity to pay such an amount to the State or responsible entity in addition to imposing a penalty for an offence against clause 42.

*Division 4—Miscellaneous***Clause 45 Reporting and recording changes in recognised permanent survey mark**

This clause requires a surveyor, surveying associate or surveying graduate to notify the chief executive in writing as soon as practicable after becoming aware of an irregularity in the information recorded in the survey

control register about a recognised permanent survey mark or the disrepair, destruction or removal of such a mark. The chief executive must record details of such matters in the survey control register. The chief executive uses such information to review the status of a mark in the survey control register with respect to its status as a recognised permanent survey mark under this Act.

PART 5—RECORDING SURVEY AND MAPPING INFORMATION

Division 1—State datasets

Subdivision 1—State digital cadastral dataset

Clause 46 State digital cadastral dataset

This clause requires the chief executive to keep a digital graphic representation of each parcel of land, road and natural feature that forms a boundary in the State. The dataset is also to include details of each parcel's description and approximate coordinates of the parcel corners, and approximate coordinates of the roads and natural features that form boundaries.

The chief executive can obtain whatever information is necessary from the land registry to update the dataset. This information is to be supplied free of charge. The chief executive may also obtain information from sources other than the land registry.

The land parcels kept in the dataset do not include building format or volumetric format parcels.

Clause 47 Effect and use of information in State digital cadastral dataset

This clause provides that information within the land registry will prevail over information in the State digital cadastral dataset if there is an inconsistency between them. Incorporating information in the State digital cadastral dataset does not in any way create or affect an interest in land.

One of the purposes of the dataset is to perform the function performed for many years by parish and county maps – to depict the cadastral boundary pattern, and to act as a graphical index to land parcels. As such, it has no official status as a record of either the precise location of boundaries or the interests held in land parcels.

This clause also requires a public authority to use coordinates for describing the position of land boundaries within their own records that are consistent with those in the State digital cadastral dataset.

Subdivision 2—Other State datasets

Clause 48 Administrative area boundary dataset

This clause requires the chief executive to keep a dataset of information about the boundaries of administrative areas. This dataset is the administrative area boundary dataset.

Clause 49 Public authority may give chief executive information about administrative area boundaries

This clause enables a public authority to give information to the chief executive about the boundaries of an administrative area for inclusion in the administrative area boundary dataset.

For example, the *Local Government Act 1993* requires local governments to keep a map of their local government areas. This clause allows for the inclusion of such information in the administrative area boundary dataset, which will assist local governments to satisfy that requirement of the *Local Government Act 1993*.

Clause 50 State remotely sensed image library

This clause requires the chief executive to keep a library of the remotely sensed images of land and coastal waters of the State that the chief executive considers are of value for survey and mapping infrastructure purposes or for defining, describing or identifying an administrative area boundary. This library is the State remotely sensed image library. Remotely sensed images can be obtained from any remote means such as photography or infrared scanning from aircraft or space vehicles such as satellites.

This library has proven to be a valuable asset for the State, providing records of the changes that have occurred on the land over time, as well as records of particular activities that took place on the land.

Clause 51 Survey control register

This clause requires the chief executive to keep a register of information about survey marks. This register is the survey control register.

For each recognised permanent survey mark the register must contain the details stated under clause 35(3), the details regarding information irregularities or physical degradation given to the chief executive under clause 45(3), and the updated information given to the chief executive under clauses 37 to 39. The register must also contain information about the survey marks taken to form part of the register under clause 69.

The register may also contain other information about survey marks that the chief executive considers to be of value for a survey and mapping purpose. Such information may include the maintenance history of marks, contact information for marks on private land or buildings, or other administrative information that assists in using a mark for survey and mapping purposes.

Marks that are included in the register that are not recognised permanent survey marks could include:

- marks that have been placed in a conspicuous position and are recognisable as a survey mark, possibly with an identifying number, but are not considered by the chief executive to meet the requirements of a permanent survey mark – providing a record of the mark for anyone who wants to obtain information about it; or
- cadastral reference marks for which coordinates have been determined in relation to the State control survey, to support to ongoing strengthening of the relationship between the cadastre and the coordinate framework; or
- marks to which a number of surveys have been connected.

Clause 52 Other datasets

This clause enables the chief executive to keep other datasets for survey and mapping infrastructure purposes. For example, the chief executive could decide that topographic data of a certain accuracy and information content is of general value to the State.

The chief executive may also publish information about such datasets on the department's web site.

Subdivision 3—Other provisions about State datasets

Clause 53 Chief executive may arrange for another entity to keep a State dataset

This clause enables the chief executive to enter into an arrangement with an entity to keep a State dataset for the chief executive. The arrangement can provide for people to access the information in the dataset. This clause recognises that in some instances, a government chooses to purchase services from a commercial organisation to assist in performing its functions – and in this instance could have an arrangement for a commercial organisation to manage and maintain a State dataset on behalf of the State.

Clause 54 Access to information in State datasets

This clause provides for a person to inspect information in a State dataset held by the department on payment of a fee decided by the chief executive. It also provides for the person to obtain a copy of all or part of the information in a dataset on payment of a fee, which is either decided by the chief executive or under an agreement between the person and the chief executive.

The clause provides that when a State dataset is being kept by another entity, the same provisions apply for inspection and obtaining copies of information, except that the entity decides the fee for the reasonable cost of producing the copy or enters into an agreement with the person to decide the fee.

Division 2—Obligations of persons to provide information and data for survey and mapping infrastructure purposes

Clause 55 Surveyor's obligation

This clause requires a surveyor to notify the chief executive in writing if the surveyor intends to undertake a survey that may contribute to developing and improving the State survey and mapping infrastructure.

The notice must state the surveyor's intention to conduct the survey and must ask the chief executive for advice on specifications that the chief executive may require for the survey and on contributions that the chief executive may make towards the cost of the survey to meet the specifications.

This enables the chief executive to negotiate the specifications for the survey and/or any contributions by the chief executive towards the cost of the survey. The chief executive must advise the surveyor in writing as soon as possible after receiving the request. The surveyor must comply with the required specifications and if complied with, the chief executive must make the agreed contribution.

This clause could apply to either a survey for a public authority or a commercial project, where surveys are to be carried out and information collected that could contribute to the survey and mapping infrastructure. It applies to any of the types of infrastructure covered by this Bill, including survey control, imagery, cadastral data or any other.

Clause 56 Public authority's obligation

This clause requires a public authority to give the chief executive a copy of information or data that the chief executive considers may contribute to developing and improving the State survey and mapping infrastructure, after the chief executive has made written request to the public authority for such information or data and has paid the fee decided by the public authority for the reasonable cost of producing the copy of such information or data of a type specified by the chief executive under clause 52.

PART 6—ADMINISTRATIVE AREAS

Division 1—Defining administrative areas

Clause 57 Ways of defining an administrative area

This clause requires an administrative area to be defined by one or more of: a plan of the boundary; a description of the boundary; a list of land parcels in the area; or some other means.

If a plan is used, it must show the boundary in a distinctive way, such as using symbols, colouring or hachuring.

If the boundaries are described, this can be by one or more of the methods listed in the clause.

An administrative area defined in a way that is not listed is still validly established.

Division 2—Working out administrative area boundaries

Clause 58 Application of div 2

This division establishes the way in which certain words that are used in descriptions of administrative boundaries should be interpreted, and the way in which lines following natural or artificial features on plans of administrative boundaries should be interpreted. This clause causes the following clauses (58 – 60), which specify how these things are to be interpreted, to apply when they are used in an instrument or on a plan. However, the clauses do not apply if a contrary intention appears in the instrument or plan, or in the law under which either is made.

Clause 59 Meaning of particular words used in describing an administrative area boundary

This clause defines certain terms used in the description of an administrative area boundary.

The meaning of “bank” differs from the definition of “bed and banks” in the *Water Act 2000*. The former refers to the highest point in the channel covered by the watercourse water, while the latter refers to the “normal flow” of the water. *The Water Act 2000* definition refers to the common boundary of the land within a boundary watercourse (which is State land) and the land adjoining the watercourse, and is often within the physical watercourse. However, it is generally the case that an administrative area is intended to contain the entire width of the watercourse – hence the definition in this Bill. (There are situations where the width of a watercourse is divided between two adjoining administrative areas along the middle of the bed.)

The meaning of “high water mark” is the same as that in the *Land Act 1994*. This meaning has been interpreted by the Court to be the same as the meaning of “high water mark” that was used in the *Administrative*

Boundaries Terminology Act 1985 – “the mean high-water springs (that is, the mean high-water mark of spring tides) being the long-term average of the height of 2 successive high waters during each period of 24 hours when the range of the tide is greatest (which occurs approximately at full moon and new moon)”. Consequently, the new definition should not be taken to differ from the definition in the previous Act.

The meaning given for “low water mark” is along the same lines as the meaning given for “high water mark”, and similarly replaces a more detailed definition. The new definition should not be taken to differ from the definition in the previous Act.

Clause 60 References to features forming part of an administrative area boundary

This clause establishes the way in which references to natural or artificial features are to be interpreted in descriptions of administrative area boundaries, by specifying the part of the feature that the boundary follows.

Clause 61 Working out an administrative area boundary shown on a plan

This clause establishes the way in which lines following natural or artificial features on plans of administrative area boundaries are to be interpreted, by specifying the part of the feature that the boundary follows.

PART 7—MISCELLANEOUS

Clause 62 Evidentiary provisions about State remotely sensed image

This clause provides for the acceptance of a certificate from the chief executive as evidence in any legal proceeding. A certificate signed by the chief executive, or a person authorised by the chief executive, about a State remotely sensed image, is evidence of either the particulars or the interpretation of the image. However, it may be refuted by evidence to the contrary.

A person purporting to be authorised by the chief executive to sign a certificate on his/her behalf is to be presumed to be so authorised, unless there is evidence to the contrary.

If a party intends to challenge a matter regarding the certificate or a matter stated in the certificate, the party must give at least 28 days notice of their intention to do so.

Clause 63 Protection from liability

This clause provides for civil liability to attach to the State rather than any of the following persons: the chief executive, an employee of the department, a surveyor conducting a State survey, or a person under the supervision of a surveyor conducting a State survey, if the acts were done by the person, or the omissions were made by the person, honestly and without negligence.

Clause 64 Deciding fees

This clause stipulates that, if an entity is authorised to set a fee for a copy of a document or information within a dataset, the fee is to be no more than the reasonable cost to the entity of producing the copy.

Clause 65 Approval of forms

This clause provides that the chief executive may approve forms for use under this Act.

Clause 66 Regulation-making power

This clause provides the Governor in Council with the power to make regulations under this Act. A regulation may create an offence and prescribe penalties for such offences, but the penalty cannot be more than 20 penalty units.

PART 8—TRANSITIONAL PROVISIONS AND REPEALS***Division 1—Transitional provisions*****Clause 67 Existing State control survey**

This clause provides for the State control survey established by surveys under the *Survey Coordination Act 1952* to continue and to be taken to form part of the State control survey established under clause 33 of this Bill.

Clause 68 Existing established permanent marks

This clause provides for a permanent survey mark already established under the *Survey Coordination Act 1952* to be taken to be established as a recognised permanent survey mark under this Bill.

Clause 69 Existing survey control database

This clause provides for information about permanent survey marks held by the chief executive in the survey control database under the *Survey Coordination Act 1952* to be taken to form part of the survey control register under this Act

Clause 70 References to Administrative Boundaries Terminology Act 1985

This clause provides for a reference to the *Administrative Boundaries Terminology Act 1985* to be taken to be a reference to this Act.

Clause 71 References to repealed Survey Act

This clause provides for a reference to the *Survey Coordination Act 1952* to be taken to be a reference to this Act.

Division 2—Repeals**Clause 72 Acts repealed**

This clause provides for the *Administrative Boundaries Terminology Act 1985* and the *Survey Coordination Act 1952* to be repealed.

PART 9—OTHER ACTS AMENDED***Division 1—Land Title Act 1994*****Clause 73 Act amended in div 1**

This clause provides for this division to amend the *Land Title Act 1994*.

Clause 74 Amendment of s 30 (Registrar must register instruments)

This clause amends Section 30 to ensure that the compulsory registration requirements of that section do not contradict clauses 17 and 28 – 31 of this Bill, with respect to resolving inconsistencies between survey plans and correcting survey errors, when such plans have been lodged as instruments under the *Land Title Act 1994*. This amendment provides the registrar with the power to refuse to register a plan that is inconsistent with another plan, so that the inconsistency can be resolved. However, it does not prevent the registrar from registering the plan if he is satisfied that it is correct, although inconsistent with another plan.

Division 2—Mineral Resources Act 1989**Clause 75 Act amended in div 2**

This clause provides for this division to amend the *Mineral Resources Act 1989*.

Clause 76 Amendment of s 57 (Manner of marking out land proposed to be subject of mining claim)

This clause amends Section 57 to align the terminology used for a surveyor under the *Mineral Resources Act 1989* with the terminology used under the Surveyors Bill 2003 and the Survey and Mapping Infrastructure Bill 2003, for a surveyor who is registered and endorsed to perform cadastral surveys, to whom Section 57 refers.

Clause 77 Section 241 (Manner of marking out land proposed to be subject of mining lease)

This clause amends Section 241 to align the terminology used for a surveyor under the *Mineral Resources Act 1989* with the terminology used under the Surveyors Bill 2003 and the Survey and Mapping Infrastructure Bill 2003, for a surveyor who is registered and endorsed to perform cadastral surveys, to whom Section 241 refers.

Clause 78 Amendment of s 300 (Assignment, mortgage or sublease of mining lease)

This clause amends Section 300 to ensure that requirements for the way surveys are conducted under that section do not contradict clause 6 of this Bill, which assigns responsibility for setting survey standards to the chief executive of the department that administers the Survey and Mapping Infrastructure Bill 2003.

This clause also amends Section 300 to align the terminology used for a surveyor under the *Mineral Resources Act 1989* with the terminology used under the Surveyors Bill 2003 and the Survey and Mapping Infrastructure Bill 2003, for a surveyor who is registered and endorsed to perform cadastral surveys, to whom Section 300 refers.

Clause 79 Amendment of s 407 (Minister may require survey)

This clause amends Section 407 to ensure that requirements for the way surveys are conducted under that section do not contradict clause 6 of this Bill, which assigns responsibility for setting survey standards to the chief executive of the department that administers the Survey and Mapping Infrastructure Bill 2003.

This clause also amends Section 407 to align the terminology used for a surveyor under the *Mineral Resources Act 1989* with the terminology used

under the Surveyors Bill 2003 and the Survey and Mapping Infrastructure Bill 2003, for a surveyor who is registered and endorsed to perform cadastral surveys, to whom Section 407 refers.

Clause 80 Amendment of s 408 (Surveyor not to have interest)

This clause amends Section 408 to align the terminology used for a surveyor under the *Mineral Resources Act 1989* with the terminology used under the Surveyors Bill 2003 and the Survey and Mapping Infrastructure Bill 2003, for a surveyor who is registered and endorsed to perform cadastral surveys, to whom Section 408 refers.

Clause 81 Amendment of schedule (Dictionary)

This clause inserts the definition for a cadastral surveyor to mean a person registered as a cadastral surveyor under the Surveyors Bill 2003.