

SURVEYORS BILL 2003

EXPLANATORY NOTES

OBJECTIVES

The principal purpose of this Bill is to protect the public who commission surveys, through a system of registration for surveyors. The Bill replaces those parts of the *Surveyors Act 1977* that provide for the system of registration and discipline of surveyors in Queensland. The Bill arises from an NCP review of the *Surveyors Act 1977*, addressing a number of issues raised in that review and also dealing with a range of other administrative issues.

This Bill is complemented by the Survey and Mapping Infrastructure Bill 2003 that incorporates the remaining parts of the *Surveyors Act 1977*. The Survey and Mapping Infrastructure Bill will also replace a number of other Acts related to surveying and mapping.

The principal purpose of this Bill is the protection of the public. Surveyors provide the positional control for most engineering projects, ensuring that roads, railways and bridges are constructed to their design specifications. Surveyors enable our ports and rivers to be navigated in safety through the information they provide on the terrain that exists under the water. They are crucial to the safety of underground mining operations by controlling the location of shafts and tunnels. They also collect mapping information that provides the basis for the proper planning and development of the State.

Surveyors are also central to the freehold and State land registration system on which Queensland's land and property market is dependent. It is in this area that Queensland's registration system for surveyors had its genesis. When cadastral surveyors survey the boundaries of land, they have a number of responsibilities. They must serve the interests of their client, and also the interests of the owners of adjacent land, which often includes the State. They also have a responsibility to preserve and enhance the integrity of the overall cadastral boundary system, as an asset for future landholders and in support of the land titling system that is important to the economy of the State. The registration system for cadastral surveyors is focussed on ensuring that the public interest in the land boundary system is

protected, by ensuring that cadastral surveyors are competent and act professionally.

HOW POLICY OBJECTIVES WILL BE ACHIEVED

The general structure and operation of the registration and disciplinary system in the *Surveyors Act 1977* is continued in this Bill. However, the Bill is drafted to reflect current drafting practice and style. The components of this system are described below, with the changes from the current system identified.

Surveyors Board of Queensland

The Surveyors Board of Queensland administers the registration system. The Board and its chairperson are appointed by the Governor in Council, and may include nominations made by the chief executive and industry bodies.

The following changes have been made regarding the appointment of the eight member Board:

1. There will be one less surveyor and one more community representative (currently one).
2. The structure of nominations from industry bodies has changed, to cater for possible changes in the way the industry bodies are organised and to recognise that the Board may offer a broader range of specialist endorsements to surveyors.
3. Half of the Board members will be appointed each year, to remove the possibility that an entire Board might be replaced at one time, which could lead to business continuity problems for the Board.

Registration of surveyors

The Bill retains the current system of registration, under which persons with general competence in surveying can be registered as surveyors and registered surveyors with special competence in particular fields of surveying can obtain endorsements on that registration. A corporation may be registered as a surveyor.

The Bill makes specific provision for an endorsement for cadastral surveyors and for a consulting endorsement for carrying on a surveying business that undertakes surveys. Persons undertaking a cadastral survey must have a cadastral endorsement, and persons carrying on a business that undertakes cadastral surveys must have a consulting endorsement and a

cadastral endorsement. Registration of cadastral surveyors is mandatory, because they undertake work that contributes to the issuing of land titles. The Government is responsible for the State's land titling system. The stability and integrity of, and the level of public confidence in, the State's land titling system depends in part on the competence of cadastral surveyors.

The Board may issue endorsements in fields of surveying other than cadastral, but there is no requirement that persons undertaking those other types of surveys be registered or hold any particular endorsement.

In addition to registration as a surveyor, the Board may also issue registrations in the following categories: surveying graduate, surveying associate and emeritus surveyor.

The changes to the system of registration are as follows:

1. Registration is to be based on competency rather than academic qualifications. This recognises that qualifications alone cannot adequately test an applicant's ability to operate as a professional surveyor. The Bill provides for the Board to approve or adopt an appropriate competency and assessment framework for the various categories of registration and endorsement.
2. Corporations may be registered in a particular category if they employ a person who holds registration in that category and if the corporation meets other prescribed requirements, such as holding a specified level of insurance. This addresses an issue raised in the National Competition Policy review of the *Surveyors Act 1977*, where it was identified that it was a restrictive practice to require that, for a company to be registered as a surveyor, a majority of corporation directors must be registered as a surveyor.
3. The Board may appoint other entities to assess competency.
4. The Board may require evidence of continuing competence, annually. This will help ensure registrants continue to stay abreast of technological and professional advancements relevant to their work.
5. Reforms identified in the Red Tape Reduction Rationalisation project will be implemented. The registration system is structured around three categories of registration (surveying graduate, surveying associate and surveyor) with endorsements

for surveyors, allowing the Board to reduce the number of forms associated with the registration renewal system.

6. There are no restrictions on the use of the title 'surveyor' or any of its derivatives, but persons claiming to be registered when they are not will commit an offence.

Professional Conduct

The Board is required to develop a code of practice to provide guidance as to what is appropriate professional conduct. The code also provides the basis for assessing whether or not there has been professional misconduct, as part of a disciplinary process. Persons may make a complaint to the Board in relation to the conduct of a registered person.

The Board uses a tiered approach to its disciplinary function, with a range of processes that reflect the degrees of seriousness of such matters. The Bill formalises these processes and makes the options available to the Board more transparent to all parties. The three processes that will be available to the Board also ensure that complaint handling is carried out expeditiously and efficiently and that penalty provisions will be appropriate. The processes are:

1. The Board may ask a registered person to meet with one or more Board members, and may caution or reprimand the person and may reach agreement with the person for the person to correct a survey or undertake further training.
2. If the matter is more serious, the Board may authorise an investigation, and following that may refer the matter to either a professional conduct review panel or a disciplinary committee.
3. A professional conduct review panel consists of four or more Board members. If the Board refers a matter to a panel following an investigation, the panel must decide whether the person has engaged in professional misconduct, and if so what disciplinary action to take in relation to the matter, including cautioning or reprimanding the person, requiring the person to correct a survey or undertake further training, or imposing a fine.
4. If the Board refers a matter to a disciplinary committee following an investigation, a disciplinary committee must be appointed by the Governor in Council, consisting of a District Court judge and two surveyors appointed by the Minister. The committee must conduct a hearing and decide whether the person has engaged in professional misconduct. The committee must decide what

disciplinary action to take in relation to the matter, including one or more of the following: caution or reprimand the person, require the person to correct a survey, impose a fine, place conditions on the persons registration, or suspend or cancel the person's registration.

Investigations

The Bill specifies the powers and responsibilities of investigators who are authorised by the Board to conduct an investigation. These align with contemporary processes of this nature and are consistent with natural justice principles.

Other NCP Issues

The NCP review also identified the two other anti-competitive provisions in the *Surveyors Act 1977*. These have not been reproduced in the Bill. There is no need for business names to be regulated by the Board, as the *Business Names Act 1962* provides a means of assessing and approving them. The provision for the Board to set fees has not been used by the Board for several years and is not required.

Survey Standards

Under the *Surveyors Act 1977*, the Board has responsibility for setting standards for surveys. This responsibility is not included in the Bill, as it has been placed in the Survey and Mapping Infrastructure Bill 2003 under which the chief executive will be responsible for establishing the standards.

ADMINISTRATIVE COST TO GOVERNMENT

There are no known financial implications arising from the Bill for the Surveyors Board of Queensland or the chief executive.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

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

Investigations about eligibility for appointment – Clause 17

The Bill authorises the chief executive to make enquiries about a person nominated for appointment to the Board, including obtaining a criminal history report from the commissioner of police. The purpose of this provision is to ensure that nominees are eligible for appointment under the

provisions of the Bill. The information obtained by the chief executive is safeguarded by restricting its disclosure and by requiring that it be destroyed as soon as practicable.

Board may ask chief executive for statistical information – Clause 55(6)

When a surveyor lodges a survey plan for registration in the land registry, the department checks certain aspects of the plan to ensure that it is suitable for registration, and keeps a record of any errors identified on the plan. The Bill provides for the chief executive to provide, on request from the Board, statistical information about the quality of surveys carried out by a registrant – for example, the proportion of plans lodged by a surveyor that were not suitable for registration. Such information can provide the Board with an indication as to whether the person is competent to perform cadastral surveys, and the Board could use this as a trigger to take remedial action at an early stage.

Evidentiary matters – Clause 176

The Bill provides that a certificate purporting to be signed by the chairperson of the Board regarding one of a number of specified matters 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-contentious in nature, which concern the status of documents or the status of the register on a particular date. The clause does not make the certificate conclusive evidence, and provides the opportunity for it to be challenged by the production of other evidence.

Responsibility for acts of corporations and their representatives – Clauses 180 & 181

These clauses provide for persons (including corporations) to be guilty of offences committed by their representatives, and that if a corporation commits an offence, each executive officer of the corporation also commits an offence. Although the provisions reverse the onus of proof, they provide defences if the person took reasonable steps to ensure compliance or to prevent the offending act or omission, or if the person was not in a position to influence the conduct of the relevant person. These clauses adopt the same approach as other recent legislation in dealing with this complex issue, for example the *Chiropractors Registration Act 2001*, *Pharmacists Registration Act 2001* and *Psychologists Registration Act 2001*.

Transitional provisions for Board membership – Clause 195

The clause provides for the existing Board members to operate as members of the Board under the new Act for an interim period of 6 months, after which they go out of office. This is to provide sufficient time for a new Board to be appointed in accordance with the provisions of the Bill.

Because of the anticipated timing of commencement of this Bill, Board members are not likely to lose financial benefits they would otherwise have obtained for attendance at Board meetings. This Bill is likely to commence late in 2003, following preparation of Regulations. The current members of the Board were appointed until 22 August 2003. If this Bill has not commenced by that date, it is probable that the current Board members will remain in office from 22 August 2003 until the Bill commences, under the provisions of Section 11(2) of the *Surveyors Act 1977*. The new Act will then keep the members in office for a further 6 months.

CONSULTATION

The Surveyors Board of Queensland was extensively consulted prior to and during the preparation of the Surveyors Bill.

An exposure draft of the Bill was released in August 2002, complemented by presentations at 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 Bill.

Clause 2 Commencement

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

Clause 3 Purposes of Act

This clause sets out the purposes of the Bill. Principally, the Bill aims to provide a level of protection to the public when obtaining professional services from surveyors, through a system that addresses the competence and professionalism of surveyors. It is also aimed at ensuring that the standards of practice within the profession are such that public confidence in the profession is maintained. The Bill will achieve these purposes through several mechanisms. A Surveyors Board of Queensland is established, with the responsibility of administering a registration system. That system involves assessment of competence of persons seeking registration and establishing standards of practice and professionalism to which registered persons must adhere. The Board will be empowered to conduct investigations into the conduct of registered persons and undertake a disciplinary function. The Board will also be empowered to enforce compliance with the Bill.

Clause 4 Act binds all persons

This clause confirms that all persons and the State are bound by the provisions contained in the Bill, however, nothing in the Bill can lead to the State being liable to be prosecuted for an offence.

Clause 5 Mutual recognition legislation not affected

This clause prevents the Bill from affecting the operation of mutual recognition legislation. The mutual recognition legislation, and agreements between the Surveyors Boards of Australian states and territories and New Zealand, provide for mobility of registered persons between those jurisdictions.

Clause 6 Definitions

This clause provides for a dictionary of particular words or phrases that are used in the Bill. This is detailed in Schedule 3 of the Bill and defines those words or terms that do not accord with the common usage of those

words, as found in the Macquarie Dictionary. Other common words or terms in the Bill take their meanings from the *Acts Interpretation Act 1954*.

PART 2—SURVEYORS BOARD OF QUEENSLAND

Division 1—Establishment, functions and powers

Clause 7 Establishment of board

This clause establishes the Surveyors Board of Queensland with a body corporate structure. This means the Board has a common seal and may sue and be sued as an entity.

Clause 8 Board's relationship with the State

This clause makes it explicit that the Board does not represent the State, although it is responsible to Parliament through the Minister.

Clause 9 Functions of board

This clause sets out the functions of the Board. These functions specify how the Board is to achieve the purposes of the Bill. The Board must establish the competency frameworks for all the categories of registration and endorsement defined under the Bill and for those additional endorsements that the Board decides to introduce. The Board may assess applicants against these competency frameworks itself or accredit other entities to perform the assessments. Applicants that are satisfactorily assessed shall be registered and endorsed as appropriate and be provided with a certificate attesting to this fact. The Board must keep a register of persons awarded registration or endorsements. The Board must receive complaints against registrants, which have been brought to its attention by complainants or initiated by the Board through information that is in the Board's hands. If appropriate, the Board must deal with the matter. It may do this through an informal disciplinary process, or conduct a formal investigation and then conduct formal disciplinary proceedings or refer matters to a disciplinary committee. The Board also provides administrative support to the disciplinary committee and must necessarily

monitor any outcomes imposed on registrants from those disciplinary processes. Also, the Board must perform any other function given to it under legislation.

Clause 10 Board's independence etc.

This clause confirms that the Board has a duty to perform its functions in the public interest, and to operate and make decisions in an independent and impartial way.

Clause 11 Powers of board

This clause confirms that the Board has the powers of an individual, and provides a list of examples of such powers. Notwithstanding this, the Board does these things as a corporate entity.

Division 2—Membership

Clause 12 Membership of board

This clause provides for the Board to be made up of eight members appointed by the Governor in Council. The members must include three cadastral surveyors, a surveyor involved in teaching surveying and three persons nominated by the chief executive. This composition reflects the cross-section of expertise required by the Board to undertake its functions and the range of different types of surveying undertaken by registrants. The nominees of the chief executive provide for representation of community interests and direct representation from the department.

Clause 13 Nominations for appointment to board

This clause requires the Minister to ask relevant entities that represent the interests of surveyors in the State to make nominations for the Board. Nominees must be eligible for appointment under the requirements contained in clause 12. The Governor in Council makes the appointments from the nominees provided by the Minister, however nothing prevents the Governor in Council from appointing other persons.

Clause 14 Chairperson of board

This clause states that the Governor in Council must appoint a cadastral surveyor who is a member of the Board, as chairperson. These appointments may occur simultaneously. The chairperson ceases to hold the position if the person ceases to be a member or ceases to be a cadastral surveyor. The chairperson may also be re-appointed to the position. A chairperson may resign from the position but retain membership of the Board.

Clause 15 Term of appointment

This clause sets out the term of appointment for Board members, which is generally for two years. However on the first composition of the Board, half the Board will be appointed for two years while the other half will be appointed for one year. This sets in place the process by which half of the board members will be appointed each year, rather than all members being appointed every second year, to provide greater continuity of Board business. The term of each member's appointment must be stated in the appointment notice.

In order that the Board is able to continue to operate if a successor has not been appointed when a member's term expires, the person's membership continues until a replacement member has been appointed.

Clause 16 Disqualification from membership

This clause specifies that a person is not eligible for membership of the Board if they are an insolvent under administration as defined within the Corporations Acts. This captures any persons affected by bankruptcy. Further, persons are not eligible if they have been convicted of an indictable offence (including being summarily dealt with), provided that any conviction is not a spent conviction under the *Criminal Law (Rehabilitation of Offenders) Act 1986*. These provisions prevent unsuitable persons from being Board members. The bankruptcy provision is applies only to an action by the person themselves, and not an action by their client or associate.

Clause 17 Investigations about eligibility for appointment

This clause allows the chief executive to make enquiries for the purpose of determining the eligibility of nominees to the Board, including obtaining

a criminal history report from the commissioner of police. If such a report is requested, it must be supplied, but is limited to the criminal history information in the possession of the commissioner.

Clause 18 Criminal history is confidential document

This clause protects the confidentiality of a criminal history report provided under the previous clause. No person associated with the department must allow a criminal history report of a nominee to be disclosed to anyone, except where such disclosure is authorised by the chief executive for the purposes of this Bill, or is otherwise required or permitted by another law. As soon as the person's eligibility has been determined, the chief executive must destroy the report.

Clause 19 Vacation of office

This clause deals with the situations under which Board members vacate their office. The clause includes a provision that if a member is absent from three or more consecutive ordinary meetings without the Board's permission, the person is taken to have vacated their office. This is to prevent persons who are either unable or unwilling to attend Board meetings without a reasonable excuse, from being Board members. If a member who was appointed because they were a cadastral surveyor stops being a cadastral surveyor, the member's office is vacated only if this results in there being insufficient Board members who are cadastral surveyors – i.e. less than three.

Clause 20 When notice of resignation takes effect

This clause specifies the time at which notices of resignation by the chairperson or a Board members are taken to have effect.

Clause 21 Casual vacancy in member's office

This clause permits casual vacancies occurring during the term of a member to be filled by an appointee of the Minister, for the sake of expediency. If the vacating member was required to be of a particular type (i.e. a surveyor, a cadastral surveyor, a teacher at an educational institution, an employee of the department, or a community representative) the appointee must be of the same type.

Clause 22 Leave of absence for a member

If a person is not able to undertake their duties as a member of the Board for a period of more than three months, this clause permits the Minister to approve a leave of absence and appoint another person to act for the member. The acting member must satisfy the criteria under which the member on leave was appointed and be eligible for appointment.

Clause 23 Effect of vacancy or irregularity in membership of Board

This clause provides that the Board's powers are not diminished or the performance of its functions reduced because of a vacancy or any other short- or long-term irregularity in the membership of the Board.

Clause 24 Remuneration and other entitlements of members

This clause provides that Board members are entitled to receive fees and allowances as approved by the Governor in Council, and other reasonable expenses as approved by the Board for expenses incurred in performing Board duties. This recognises that while Board members are undertaking their duties as members of the Board, they are prevented from doing their normal work and it is reasonable for them to receive some remuneration for the duties they perform.

Division 3—Board business**Clause 25 Conduct of business**

Division 3 specifies certain matters about the way the Board should conduct its business. This clause provides that apart from these matters, the Board has the flexibility to conduct its business in the way it considers appropriate. This gives the Board broad scope to administer the Bill in accordance with good practice and according to all relevant laws.

Clause 26 Times and places of meetings

This clause specifies that the chairperson is responsible for setting the time and place of Board meetings. However, the chairperson must call a meeting if the Minister or two or more members request so in writing.

Clause 27 Quorum

This clause specifies that a quorum of the Board is four members.

Clause 28 Presiding at meetings

This clause specifies that the chairperson must preside at all meetings, unless the chairperson is absent or the office is vacant, in which case the meeting must be chaired by a member chosen by the remaining members.

Clause 29 Conduct of meetings

This clause deals with the manner in which the Board makes decisions. Decisions are made by majority vote. However if the vote is tied, the person chairing the meeting has an additional casting vote. As members of the Board may not reside in the centre where a meeting is conducted, the Board may conduct meetings using any technology that provides continuous communications such as teleconferencing or videoconferencing. Members are taken to be present at the meeting if participating using such media. The Board can make a decision out of session by obtaining the written agreement of a majority of the members, provided that notice of the resolution is provided to members in a way that has been previously approved by the Board.

Clause 30 Minutes

This clause requires the Board to keep minutes of meetings and records of any decisions made by the Board out of session under the previous clause. The minutes must record the names of those present. If the Board makes a decision at a meeting, and a member who voted against the motion asks that their vote be recorded in the minutes, this must be done.

Division 4—Disclosure of interests by members**Clause 31 Disclosure of interests**

This clause sets out the process that shall be followed when a member has a direct or indirect interest in any matter being considered by the Board, where that interest could conflict with the proper and impartial

consideration of the matter by the member. This provision is to protect the Board from being influenced, or being seen to be influenced, by a person who has an interest in the matter.

The clause makes it clear a member does not have an interest in a Board matter simply because the member is a surveyor.

Division 5—Directions by Minister

Clause 32 Minister's power to give directions in the public interest

This clause gives the Minister the power to give the Board a direction consistent with the purpose of the Bill and in the public interest and the Board must comply with the direction despite clause 10, which requires the Board to act independently. However, the Minister cannot give a direction on any matters relating to applications for registration or endorsement, the registration or endorsement of surveyors, or on any disciplinary matter.

Division 6—Annual report

Clause 33 Matters to be included in annual report

This clause requires the Board to publish an annual report in accordance with the requirements of the *Financial and Administration Audit Act 1977*. The report must include a copy of any Ministerial directions and the numbers of registrants in the financial year. The Board cannot publish any information that might identify any person mentioned in a Ministerial direction.

Division 7—Other provisions about the board

Clause 34 Board is a statutory body under the Financial Administration and Audit Act 1977

This clause confirms that the Board is a statutory body under the *Financial and Administration Audit Act 1977*.

**Clause 35 Board is a statutory body under the Statutory Bodies
Financial Arrangements Act 1982**

This clause confirms that the Board is a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*. Part 2B of that Act sets out the way that Act affects the Board's powers.

**PART 3—REGISTRATION AND REGISTRATION
ENDORSEMENTS**

Division 1—Eligibility

**Clause 36 Eligibility for registration or registration endorsement—
individuals**

This clause sets out the structure of the registration system, for individuals. These arrangements are different to those applying to corporations. The primary category of registration is as a surveyor, for a person who has general competence in surveying and is a suitable person to hold a registration. Persons registered as surveyors may obtain an endorsement on their registration certifying competence in a particular field of surveying, beyond that which would be expected of a registered surveyor.

Persons may be registered as a surveying graduate or surveying associate if they satisfy the relevant competency and suitability criteria.

This clause introduces a new category of registration – emeritus surveyor – to provide recognition to previously registered persons who are no longer practising as surveyors. Applicants for emeritus surveyor cannot be simultaneously registered under another surveyor category.

The clause prescribes the criteria for registration endorsement as a consulting surveyor, for persons who intend to conduct a business that provides surveying services. These criteria include a requirement for insurance cover to the level specified in regulations.

Persons who hold an equivalent registration under a corresponding law (for example, legislation dealing with registration of surveyors in another Australian state) do not need to be assessed for the relevant competency, but are taken to have that competency on the basis of their registration.

Clause 37 Suitability of individual for registration or registration endorsement

This clause provides for the things that the Board must consider in deciding a person's suitability for registration or registration endorsement. This continues the requirements of the *Surveyors Act 1977* that requires applicants to be of a suitable character, particularly in regard to reputation, honesty and integrity. For example, this requirement reflects the obligations on cadastral surveyors and their responsibility to the State and other landholders when doing cadastral surveys, that is, responsibilities that extend beyond the surveyor-client relationship.

Clause 38 Eligibility for registration and registration endorsement— corporations

This clause specifies the criteria for registration of a corporation as a surveyor. Registration of a corporation combines registration and a consulting endorsement, and may also include other endorsements. This reflects the situation that a corporation seeking registration as a surveyor will have the intention of carrying on a business that provides surveying services, even if the corporation's business operates by sub-contracting to other surveyors.

Corporations are eligible for registration if they are registered under Australian company law, intend to carry on a surveying business, and hold the insurances prescribed under regulation.

Corporations must also employ a surveyor with the category of registration and endorsement(s) required for the type of registration sought by the company. If the corporation seeks registration as a cadastral surveyor, the corporation must employ a surveyor with a cadastral endorsement. Other examples are:

1. If the corporation seeks registration as a surveyor, the corporation must employ a registered surveyor who may also hold, but is not required to hold, other endorsements.
2. If the corporation seeks registration as a surveyor with a hydrographic surveying endorsement, the corporation must employ a registered surveyor with a hydrographic surveying endorsement who may also hold, but is not required to hold, other endorsements.

This alters the requirement that existed under the *Surveyors Act 1977*, where a corporation was required to have a majority of directors with the registration or endorsement held by the corporation. This change provides more flexibility in how surveying companies set up their businesses and allows easier establishment of multi-disciplined firms, while still providing for the surveying services to be delivered or supervised by an appropriately registered person.

Division 2—Competency assessment

Subdivision 1—Competency frameworks

Clause 39 Establishing competency frameworks

This clause requires the Board to establish or adopt an existing competency framework for each of the categories of registration and registration endorsements it offers. Competency frameworks will be statutory instruments and come under the provisions of the *Statutory Instruments Act 1992*, including permitting the Board to adopt a competency framework developed by another entity. In preparing competency frameworks, the Board must consider the qualifications, skills, knowledge and experience needed in the relevant type of surveying, and must consult with entities with knowledge in that field. The competency framework establishes the basis for the operation of the registration system, as registration provides evidence of competency. While it is likely that most people obtaining registration will have completed tertiary training, it is possible for persons to obtain the same level of knowledge without tertiary training. The focus of the competency framework is on the qualifications, skills, knowledge and experience that the person is required to have, and not on how they obtained them.

Clause 40 Publishing competency frameworks

This clause requires the Board to make those competency frameworks available by publishing them on their web site, or making them available for searching or purchase at their office.

Subdivision 2—Accredited entities**Clause 41 Accreditation of entities for assessing competency**

This clause permits the Board to contract with other entities and accredit them to assess the competency of persons. These contracts may incorporate any amounts payable by the Board to the entity for carrying out such assessments. This provision recognises that an organisation or individual may have the capacity to assess whether or not a person satisfies the competency framework established by the Board – for example a professional institution, or an independent assessment body. If such an entity exists, then the Board can use the services of that entity to undertake competency assessments. Alternatively, a person could independently obtain an assessment from the accredited entity, and then seek registration from the Board.

Clause 42 Record of accredited entities

This clause requires the Board to maintain a record of all those entities that it has approved to carry out competency assessments, and make that information available.

Subdivision 3—Assessing competency**Clause 43 Who may assess competency**

This clause stipulates that either the Board or an accredited assessing entity may assess the competency of applicants for registration or registration endorsement. The assessing entity must decide a procedure for the assessment of applicants and make those details available to applicants if requested.

Clause 44 Application for competency assessment

This clause provides that applicants may apply to the Board or an accredited entity to have their competency assessed, in the way prescribed and with payment of any fee prescribed under regulation.

Division 3—Applications for registration and registration endorsement**Clause 45 Procedural requirements for application**

This clause sets out the procedural requirements for applicants after their competency has been satisfactorily assessed. Applications to the Board need to be made on the prescribed forms and include any application fees, registration fees and any documents or evidence required by the Board. Evidence required includes any relevant competency assessment or if the applicant is registered in another jurisdiction, details of the registration and any conditions that apply to the registration. Applications by individual persons for the surveyor consulting endorsement must include evidence of an intention to carry on a surveying business and evidence that the prescribed insurance covers is held. If the approved form for an application specifies that information must be verified by statutory declaration, then that verification must be provided. Applicants also need to advise the Board in their application if they object to their address being made available in the publicly accessible part of the register.

As the Board is obliged to publish a register of surveyors, this provision observes privacy principles by restricting public access to personal address information, where desired by the applicant.

Clause 46 Additional requirements for application by corporation

This clause requires that if a corporation applies for registration, the corporation must also supply information demonstrating that it is eligible for registration under clause 38. This includes any evidence that the corporation employs a surveyor with the appropriate endorsement(s) for the surveying services being provided and that the surveyor holds that registration and endorsement.

Clause 47 Additional requirements for application for registration as an emeritus surveyor

This clause requires that if a person applies for registration as an emeritus surveyor, the person must also supply information demonstrating that the person is eligible for registration under clause 36 and any other information reasonably required by the Board and identified in the approved application form as being required.

Clause 48 Board's powers before deciding application

This clause provides that if the Board considers that it requires further information before deciding an application, it may issue a notice requiring the applicant to supply the information within a reasonable period of at least 10 business days. The Board must issue such a notice within 10 business days of receiving the application. The applicant is taken to have withdrawn an application if the applicant does not supply the information requested within the period stipulated by the Board.

Clause 49 Deciding application

This clause requires the Board to grant the application if it is satisfied that the applicant is eligible. If the applicant is not eligible the Board must refuse the application.

Clause 50 Steps to be taken after application decided

This clause requires the Board to issue a certificate for the registration or registration endorsement to the applicant as soon as possible after deciding to grant an application. If the Board refuses to grant the application it must give the applicant an information notice and refund any registration fees paid in advance of the person becoming registered, but not the application fee. The contents of an information notice are specified in the dictionary in Schedule 3.

Clause 51 Term of registration or registration endorsement

This clause provides for flexibility in setting the start dates for the term of registration. A registration or endorsement has a term of 12 months, starting on the day decided by the Board and expiring at the end of the term. Details of the starting date must be provided to registrants in writing and published on the Board web site. Endorsements must run with the registration term of the surveyor. The Board may decide to alter a term start date, to provide flexibility in administering the registration renewal process. If this occurs, any existing registrations or registration endorsements are unaffected until the registrant applies for renewal in which case the new term will run only to the next renewal date. If a registrant renews a registration or registration endorsement prior to the expiry of the current term, the existing registration continues until such time as the application is decided.

Clause 52 Registration certificate

This clause requires the Board to issue registration certificates in the approved form. The certificate must state the individual's name or the corporation's name and ACN. The certificates must also state the issue date. Certificates are issued separately for registration and each endorsement held by the registrant.

Clause 53 Failure to decide application

This clause provides that if the Board fails to decide an application within 40 business days after receiving the application, it is taken to have refused the application. This is to prevent an application remaining undecided for a long period of time. If the Board has requested further information and the Board fails to decide the application within 40 business days of receipt of that information, the application is taken to have been refused. The Board must refund any prepaid registration fees as soon as it is taken to have made the decision.

Division 4—Renewing registration and registration endorsement**Clause 54 Application for renewal**

This clause requires registrants who wish to renew their registration to apply to the Board for renewal of registrations or registration endorsements prior to the current term expiring. Applications must be on the approved form, and be accompanied by evidence of the registrant's competency and the annual registration fee. The requirement of evidence of continuing competence provides the Board with a means of assessing whether registered persons continue to meet the competency requirements of the relevant registration category or categories.

Clause 55 Board's powers before deciding application

This clause provides that if the Board considers that it requires further information before deciding an application for renewal, it may issue a notice requiring the applicant to supply the information within a reasonable period of at least 10 business days. The Board must issue such a notice within 10 business days of receiving the application. The applicant is taken to have withdrawn an application if the applicant does not supply the information requested within the period stipulated by the Board.

This clause provides the Board with the power to request the chief executive to provide statistical information held by the chief executive regarding the quality of surveys by the applicant, to assist the Board in making its decision. The chief executive must supply the information requested. The purpose of this provision is to assist in identifying shortcomings at an early stage, so that remedial action can be taken, rather than waiting for problems to be identified through a complaint when a serious problem arises.

Clause 56 Deciding application

This clause stipulates that the Board must grant the application for renewal only if the applicant is eligible, or else refuse the application.

Clause 57 Steps to be taken after application decided

If the Board decides to grant an application for renewal, the Board must give the applicant written notice of the decision and the term of renewal. Such notice may be by automated means such as by email.

However if the Board decides to refuse the renewal application, the Board must give the applicant an information notice about the decision and refund any registration fees paid in advance, as soon as practicable. The contents of an information notice are specified in the dictionary in Schedule 3. This requirement does not apply if the Board fails to decide the application.

Clause 58 Failure to decide application

This clause provides that if the Board fails to decide an application for renewal within 40 business days of receipt, or if the Board has requested more information from the applicant and fails to decide the application within 40 business days of receipt of the information, the application is taken to have been refused. In this case the Board must as soon as practicable refund any registration fees paid in advance.

Division 5—Restoring expired registrations and registration endorsements

Clause 59 When application to restore registration or registration endorsement may be made

A registrant may apply to the Board for the person's registration and registration endorsements to be restored to the register, if that person failed to renew the registration prior to the expiry of the term. This must be done within 3 months of the expiry. However the Board may consider applications for restoration after this period if the Board considers it reasonable to do so under the circumstances.

Clause 60 Procedural requirements for applications to restore registration or registration endorsement

Application under this division must be in the form prescribed by the Board and be accompanied by any documents and fees prescribed under regulation, and if the form requires, any statutory declarations verifying particulars in the application.

Clause 61 Previous conditions continue for expired registration or registration endorsement

Any conditions attaching to a registration prior to expiry, must, if an application for restoration is successful, also apply to the renewed registration.

Clause 62 How division 4 applies for applying to restore registration or registration endorsement

An applicant and a registrant's application for restoration to the register shall be treated in the same way as if the application by the registrant were for a renewal prior to expiry, with the exception that the application is not being lodged within the normal period.

Division 6—Amending, suspending, cancelling and surrendering registrations and registration endorsements

Clause 63 Amending, suspending or cancelling registration or registration endorsement

This clause sets out the Board's powers in amending, suspending or cancelling a registration or registration endorsement.

If the Board reasonably believes that a registration or registration endorsement was obtained through incorrect or misleading information, it may amend, suspend or cancel the registration or endorsement.

The Board may also take one of these actions if a person has, as a result of disciplinary action under this Bill, had conditions imposed on the registration and has contravened those conditions.

A registration may be amended, suspended or cancelled if the registrant is convicted of an offence against this Bill.

The Board may also amend, suspend or cancel a registration or registration endorsement if the registrant's equivalent registration is affected similarly under laws in another jurisdiction. This applies if the person first obtained registration in Queensland and subsequently obtained registration in the other jurisdiction, or if the person obtained registration first in another jurisdiction and then obtained registration in Queensland based on the first registration.

The Board can also apply these powers where a registrant or former registrant fails to pay amounts owing to the Board from penalties applied to the registrant or former registrant from disciplinary procedures. This gives to the Board a means of enforcing payment of such penalties.

Clause 64 Procedure for amendment, suspension or cancellation

This clause sets out the process to be followed for the amendment, suspension or cancellation of a registration or endorsement, to ensure that natural justice applies. If the Board proposes to amend, suspend or cancel a registration or registration endorsement, the Board must provide written notice of the proposed action to the registrant, including the basis for the proposed action. The notice must invite the registrant to show why the Board should not proceed with the proposed action. The registrant should be given at least 20 business days in which to respond.

If, after considering all submissions made within the given period, the Board considers that grounds still exist to proceed with the proposed action, the Board may implement the proposed amendment, suspension or cancellation of the registration or registration endorsement, or take a lesser action than that proposed. The Board must inform the registrant of the decision taken and if the proposed action is proceeded with, this shall be by way of an information notice.

The effective date of the amendment, suspension or cancellation shall be the later of the date given in the notice or the date of receipt of the notice by the registrant.

Clause 65 Effect of suspension on renewal

This clause permits registrants to renew a registration or registration endorsement whilst that registration or registration endorsement may be suspended, however the suspension continues to have effect for the entire period of the suspension. This allows a person's registration or endorsement to revive at the end of the suspension period, if it would otherwise have expired before the end of the suspension period.

Clause 66 Returning registration certificate on cancellation of registration or registration endorsement

This clause requires that if a registration or registration endorsement is cancelled, the registrant must return the registrant's certificate to the Board within 10 business days after notification, unless there is a reasonable excuse. A penalty of up to 20 penalty units applies to this provision as it is important that the registrant cannot continue to hold invalid evidence of a registration or registration endorsement.

Clause 67 Surrendering registration or registration endorsement

This clause permits registrants to voluntarily surrender their registration or registration endorsement by returning their certificate and providing written notice to the Board.

Division 7—Register**Clause 68 Register**

This clause requires the Board to maintain a register for all categories of registration and endorsement, in a way that the Board considers appropriate. A regulation may detail any particulars required to be recorded in the register. The register can be inspected at no cost or a copy may be obtained for a fee set by the Board. In order to preserve the privacy of registrants, their addresses may only be listed in the publicly available part of the register with the registrant's permission. The publicly available parts of the register may also be published in a way decided by the Board.

Division 8—Offences about registrations, registration endorsements and registers**Clause 69 False or misleading information given by applicant**

This clause provides that applicants for registration or registration endorsement must not knowingly make false statements. The maximum penalty for this offence is 50 penalty units.

Clause 70 False or misleading documents given by applicant

This clause applies the principle in clause 69 to documents an applicant provides to the Board. A penalty provision of 50 penalty units applies if such documents are false or misleading, unless the applicant informs the Board that the document may be false or misleading in a particular way and gives to the Board the correct information if it is available.

Clause 71 Offences about register

This clause protects the integrity of information in, or obtained from, the register. It is an offence to participate in the recording of incorrect information in the register. It is also an offence to produce a document that falsely purports to contain information from the register. As the integrity of the register is central to the operation of this Bill, the maximum penalty for an offence is 50 penalty units.

Clause 72 Notice of change in circumstances

This clause requires registrants to keep the Board informed of changes in their circumstances that affect the integrity of the register. There is a maximum penalty of 20 penalty units to reflect the importance of keeping the public register current and accurate.

The clause contains a definition of the word “change” which excludes a change in business name under which a registrant provides surveying services. However, the exclusion does not apply to the name of a corporation if the corporation is registered, as the name of the corporation is integral to the register. If a registered person or corporation changes the name under which they trade, they are not required to comply with this provision. However, they are required to comply with clause 79 (Notification of business name).

Clause 73 Claims by persons as to registration

This clause makes it an offence to falsely claim to hold, or hold out as having a registration or registration endorsement of any type, if that registration is not properly held by the registrant or a person who is not a registrant. This same provision applies where disciplinary action has amended, suspended or cancelled a registration or registration endorsement, or imposed conditions on it, and the person falsely claims otherwise.

This is an important provision as it provides protection for the public, so that only persons who are registered may claim to be so. The maximum penalty for this offence is 100 penalty units, reflecting the seriousness of such an offence. As it is not necessary for a person to hold a registration in order to undertake a survey, other than a cadastral survey, the clause makes it clear that a person does not contravene this clause simply by performing a survey.

Clause 74 Claims by persons as to other persons’ registration

This clause makes it an offence for a person to hold out another person as holding a registration or registration endorsement. The test is that the person must reasonably know that the other person does not hold the registration. In line with the previous clause, the maximum penalty is 100 penalty units.

Clause 75 Carrying out a cadastral survey

This clause deals with cadastral or land boundary surveys. A significant element of the registration system is the cadastral endorsement, and only a registered surveyor with a cadastral endorsement may undertake cadastral surveys. Cadastral surveys contribute to the issuing of land titles. The stability and integrity of, and the level of public confidence in, the State's land titling system depends in part on cadastral surveys being performed by competent persons.

The clause makes it an offence for a cadastral survey to be carried out by a person who is not a registered cadastral surveyor. An exception applies if the person is a registered surveyor, surveying associate or surveying graduate under the personal supervision of a registered cadastral surveyor who accepts responsibility for the quality of the survey. An offence against this provision carries a maximum penalty of 100 penalty units.

A person must hold a registration endorsement as a consulting surveyor in order to charge a fee for carrying out a cadastral survey. The maximum penalty for this offence is 50 penalty units.

Clause 76 Carrying on a business providing cadastral surveying services

This clause makes it mandatory for a business that provides cadastral surveying services to be a registered surveyor with a cadastral endorsement and a consulting endorsement. The maximum penalty for the offence is 50 penalty units. Businesses providing other types of surveying services may, but are not required to, hold a consulting endorsement.

Clause 77 Compliance with disciplinary conditions

This clause makes it an offence for a person not to comply with any conditions placed on the registration as a result of a disciplinary process. The maximum penalty for the offence is 50 penalty units.

Division 9—Miscellaneous**Clause 78 Replacement or duplication of registration certificate**

This clause permits persons to apply to the Board for a replacement or duplicate registration certificate, by application on the required form and on the payment of a prescribed fee.

PART 4—OBLIGATIONS OF REGISTRANTS AND OTHER PERSONS***Division 1—General*****Clause 79 Notification of business name**

This clause requires registrants who carry out a business providing surveying services to advise the Board of the business name that the registrant intends to use, if that name is not the registrant's own name. This applies regardless of whether the business name is registered under the *Business Names Act 1962*. A penalty of up to 20 penalty units may apply if this requirement is not satisfied.

If a registrant's business name changes, the registrant must advise the Board within 10 business days of that changed name, or a penalty of up to 10 penalty units may apply. This provision complements clause 72 (Notice of change in circumstances) by requiring the Board to be advised of the change. However, as the business name is incidental to the register, a lower penalty applies.

Division 2—Code of practice and other matters about professional conduct**Clause 80 Board must develop a code of practice**

This clause requires the Board to develop a code of practice to provide guidance to registrants about appropriate professional conduct. The code may make use of other codes of practice, for example a national code or the

code of a professional body, either by incorporating them in the Board's code or by the Board's code stating that the other code applies to registrants.

In developing the code, the Board must consult with the chief executive, entities that the Board considers represent the interests of surveyors, Queensland educational institutions that teach surveying, and any other entity that the Minister considers appropriate. The Board must review the code regularly to ensure that it remains relevant.

Clause 81 When code of practice has effect

The code or any amendment of the code must be gazetted by the Minister to have effect.

Clause 82 Inspection and notification of code

This clause requires the Board to inform all registrants of the approved code of practice and to keep copies of the code available for inspection at the Board's office and to publish it on the Internet.

Clause 83 Use of code of practice in disciplinary proceedings

This clause allows the code to be admitted in disciplinary proceedings as evidence of appropriate professional conduct or practice by registrants. However, this does not limit the matters that may be considered as evidence of professional conduct in a disciplinary proceeding. In other words, the fact that the code is silent on a matter does not mean that the matter may not be considered.

Clause 84 Certificates etc. not to be false or misleading

This clause prohibits a registrant, when acting in the registrant's professional capacity, from giving or signing a certificate, notice, report or other document that the registrant knows to be false or misleading. The maximum penalty for this offence is 50 penalty units.

PART 5—COMPLAINTS AND INVESTIGATIONS ABOUT REGISTRANTS’ PROFESSIONAL CONDUCT

Division 1—Complaints and investigation

Clause 85 Complaints about registrant’s professional conduct

This clause provides for complaints to be made to the Board about a registrant’s professional conduct whilst carrying out a survey. This is the initial step in processes that may lead to investigations or disciplinary action. Complaints must be in writing. Any conduct that falls within the definition of professional misconduct, defined in Schedule 3, is a matter about which a complaint can be made. However the Board may reject complaints that are frivolous, vexatious or trivial. This gives discretion to the Board to dismiss inappropriate complaints.

The Survey and Mapping Infrastructure Bill 2003 sets the standards for surveys, particularly cadastral surveys. The department that administers that Bill is involved with checking the quality of cadastral survey plans. The chief executive of that department or the registrar of titles may refer matters to the Board, if either person believes that a surveyor has not complied with survey standards.

Clause 86 Board’s power to deal with matter without investigation of the registrant’s professional conduct

This Bill establishes a three-tiered approach to disciplinary actions, depending on the severity of the matter.

At the lowest level, the Board may ask the registrant to meet with one or more of the Board members, for the purpose of deciding what action should be taken in relation to the matter, which may result in the registrant agreeing to take action to address the matter.

At the second level, the Board may establish a professional conduct review panel consisting of at least four Board members to deal with the matter and, if appropriate, take action against the registrant.

At the highest level, a special disciplinary committee chaired by a District Court judge may be appointed by the Governor in Council to

conduct a hearing and, if appropriate, take action against the registrant, which may include suspension or cancellation of the person's registration.

It is not mandatory that matters progress through each of the levels. The Board may choose the most appropriate level to address the matter.

This clause describes the process for the lowest level of disciplinary action. If the Board believes a registrant has engaged in professional misconduct, whether or not a complaint has been made, the Board may ask the registrant to attend before one or more of its members acting for and on behalf of the Board, to provide information or documents, and to answer questions. In deciding whether or not to ask the person to attend such a meeting, the Board can obtain information from the chief executive.

The registrant is not compelled to attend the meeting. If the registrant does attend, the Board (through its representatives) may decide that the matter can be dealt with adequately without undertaking a formal investigation, by either (i) cautioning, advising or reprimanding the registrant, or (ii) reaching agreement that the registrant will take action to address the matter by correcting the survey or undergoing further training or competency assessment, at the registrant's expense. Alternatively, the Board may decide to authorise a formal investigation, which could lead to one of the higher levels of disciplinary action being taken.

The registrant may during the course of the discussion with the Board members, refuse to answer a question or refuse to supply a document or information if such a response could tend to incriminate the registrant.

Clause 87 Board may authorise investigation of registrant's professional conduct

This clause sets out the basis on which the Board may authorise an investigation of a registrant's professional conduct. This may occur if the Board believes a registrant has engaged in professional misconduct, or if the registrant has not met with the Board when asked to do so under clause 86.

Division 2—Action following investigation***Subdivision 1—Investigator’s report and board’s decision on investigation*****Clause 88 Investigator’s report about investigation**

This clause requires an investigator to provide the Board with a written report as soon as possible after completing the investigation into a registrant’s professional conduct. The provisions regarding an investigator’s powers and the investigation process are in Part 7.

Clause 89 Board’s decision on investigation

This clause sets out the process to be followed after receipt of a report from an investigator, and describes the setting up of a ‘professional conduct review panel’.

After receiving a report from an investigator, the Board must decide whether it believes the registrant has engaged in professional misconduct. If it considers this to be the case, then the Board must decide which course of action to take, having regard to both the Bill’s purpose to protect the public and the seriousness of the matter.

The Board may decide to deal with the matter under the informal process set out in clause 86, if it reasonably believes the professional misconduct is not of a serious nature and that corrective action is reasonably likely under an agreed outcome between the Board and the registrant. Alternatively, the Board may refer the matter to a professional conduct review panel or, for more serious matters, to a disciplinary committee.

A professional conduct review panel consists of at least four members of the Board, chosen having regard to both the nature of the matter and the qualifications and experience of the members constituting the panel.

Clause 90 Board’s notice, and implementation, of its decision on investigation

This clause requires that if the Board decides to refer a matter to a professional conduct review panel, it must advise the registrant in writing of that fact, and where the investigation originated from a complaint, also advise the complainant. The Board must also implement the decision.

Subdivision 2—Taking disciplinary action**Clause 91 Disciplinary action by professional conduct review panel**

This clause sets out the powers and functions of a professional conduct review panel to which the Board has referred a matter.

The panel must decide whether to take disciplinary action, and if so, what action. The decision must be decided in the way the panel considers appropriate, but the decision-making process must observe natural justice. Although it is not prescribed, it is likely that some form of hearing would be conducted to allow the person to respond to the findings of the investigator and to provide an explanation to the panel.

If the panel decides to take action it may do one or more of the following: caution or reprimand the registrant, order the registrant to correct a survey that is the subject of the complaint, order the registrant to undergo further training or competency assessment, or order the registrant to pay to the Board a fine of up to 100 penalty units. In addition, the panel may also order the registrant to pay the costs of the Board in bringing the action, including any associated investigation costs. Any fines or costs ordered to be paid to the Board are a debt payable by the registrant to the Board, and as such can be recovered under legislation governing the recovery of debts.

After making its decision, the panel must advise the registrant, and also the complainant where the investigation was the result of a complaint. If the decision was to require the correction of a survey or payment of a fine or costs, the advice to the registrant must be by way of an information notice, the contents of which are set out in the Dictionary in Schedule 3.

Clause 92 Protection against self-incrimination

This clause provides protection against self-incrimination by providing that a registrant is not obliged to produce a document to, or answer a question from, a professional conduct review panel where that may incriminate the registrant.

Clause 93 Disciplinary action by disciplinary committee

This clause provides that if under clause 89 the Board decides to refer a matter to a disciplinary committee, the process for hearing and deciding the matter is set out in Part 6.

PART 6—SURVEYORS DISCIPLINARY COMMITTEE***Division 1—Establishment and functions of surveyors disciplinary committee*****Clause 94 Establishment**

This clause requires a disciplinary committee to be established as soon as possible after the Board decides to refer a matter to a committee. A new committee is established each time the Board makes such a decision, because the composition of the committee must reflect the nature of the matter.

Clause 95 When disciplinary committee ceases to exist

This clause provides that a disciplinary committee ceases to exist when it has completed the function it was established to perform, or it is no longer able to perform that function.

Clause 96 Functions

This clause specifies the functions of the disciplinary committees – to conduct a hearing and to make decisions about the matter referred to it by the Board.

Division 2—Membership of disciplinary committee**Clause 97 Membership**

This clause provides for the members of a disciplinary committee to be appointed by the Governor in Council. A disciplinary committee comprises a District Court Judge who is the chairperson, and two surveyors who are not Board members and are considered by the Minister to be appropriate given the nature of the matter being heard by the committee. The two surveyors must each have held their registration for at least ten years and either hold a registration and appropriate endorsement in the area of surveying that is the subject of the action, or be an emeritus surveyor. The surveyors are on the committee to provide expert advice regarding the practice of surveying.

Clause 98 Payment of members

This clause provides that members of a disciplinary committee are entitled to be paid the remuneration and allowances decided by the Governor in Council.

Division 3—Proceedings of disciplinary committee**Clause 99 Notice of intention to conduct disciplinary proceedings by hearing**

This clause requires the Board to notify the registrant, and if appropriate the complainant, about a proposed hearing by a disciplinary committee. The notice must specify that the grounds for the proceeding are that the registrant has engaged in professional misconduct, and must explain the basis of the grounds. The meaning of professional misconduct is set out in the Dictionary in Schedule 3. The notice must also specify the time and place of the hearing, which must be at least 10 business days after the registrant receives the notice, and that the registrant may be accompanied by a lawyer. If relevant, the notice must advise that if the complainant is to be required to provide evidence to the committee, the complainant may be excluded from the hearing under clause 106.

Due to the seriousness of the matters being considered at this level of the disciplinary process, and the penalties that can be imposed by the committee, including suspension or cancellation of a registration or endorsement, the registrant is entitled to legal representation, and must be advised of this in the notice.

Clause 100 Substituted service on registrant and complainant

This clause provides that if the hearing notice under clause 99 cannot be served personally on the registrant or complainant, it can be served in a way ordered by the committee, for example by way of facsimile or telephone.

Clause 101 Procedure for hearing by disciplinary committee

This clause prescribes the manner in which the disciplinary committee should conduct a hearing. Subject to the requirements of this division of the Bill, the chairperson may decide the procedures for the hearing. The hearing must be conducted as expeditiously, informally and with as little technicality as possible, but must be fair and comply with natural justice.

The committee is not bound by rules of evidence, allowing it to proceed with less formality than would be required if it were bound by these rules. The committee may decide the manner in which it obtains information.

Certain obligations are placed on the committee, to ensure that the process is conducted in a fair and reasonable manner, and to ensure that the registrant understands the process. The committee must inform the registrant of all the facts and circumstances for bringing the action against the registrant and also the possible disciplinary actions the committee is empowered to take under this Bill. At the request of the registrant, the committee must explain any aspect of the proceedings, including any decisions or rulings the committee makes. The registrant must be given full opportunity to be heard by the committee, so that the person is able to provide the committee with an explanation regarding the matters being considered by the committee and any evidence that has been presented to it.

Clause 102 Time and place of hearing

This clause makes the chairperson responsible for deciding the time and place for the hearing.

Clause 103 Evidence by telephone, video link or another form of communication

This clause provides the committee with flexibility in the ways it can receive evidence, provided that the method used allows for a reasonable level of simultaneous communication between the participants. The manner in which such a method is used is at the discretion of the committee.

Clause 104 Hearing open to the public

This clause requires a disciplinary hearing to be open to the public, unless the committee decides otherwise.

Clause 105 Attendance and appearance at hearing

This clause permits the registrant to be accompanied and represented by a lawyer or another person, due to the seriousness of the matters that would be considered at this level of the disciplinary process, and penalties that can

be imposed by the committee, including suspension or cancellation of a registration or endorsement.

The complainant may also attend the hearing subject to clause 106.

Clause 106 Disciplinary committee may exclude complainant or witness from hearing

This clause permits the committee to exclude a complainant or a witness from the hearing until the person gives evidence, to ensure that the fairness of the hearing is not affected by the person's presence.

Clause 107 Disciplinary committee may exclude disruptive person from hearing

This clause permits the committee to exclude a disruptive person from the hearing.

Clause 108 Witnesses

This clause gives the committee the power to require a witness to attend a hearing, to give evidence, answer questions or produce an item to the committee. The witness' evidence may be taken under oath administered by a member of the committee who is permitted to do so by the chairperson. The registrant may request the committee to require a witness to attend the hearing, and the committee must do so unless it believes it is unnecessary or inappropriate.

Clause 109 Disciplinary committee may proceed in absence of registrant or may adjourn hearing

This clause permits the committee to conduct a hearing in the absence of a registrant, if the registrant has been given proper notice of the hearing. The clause also permits the committee to adjourn the hearing at its choosing.

Clause 110 Questions to be decided by majority of disciplinary committee members

This clause prescribes the manner in which the committee makes its decisions. The chairperson must decide matters of law, and such a decision

is taken to be a decision of the committee. Other decisions are made by majority vote, with the chairperson having a casting vote.

Clause 111 Procedure if committee member unable to participate further in the disciplinary proceedings

This clause deals with those situations where a committee member is unable to continue on the committee after the hearing has commenced but before the committee has made its decision. If the committee member who cannot continue is the chairperson, a new committee must be established. In other cases, the hearing may continue with the remaining committee members, if the registrant consents, otherwise a new committee must be established. The new committee may contain persons from the previous committee.

Clause 112 Inspection of things

This clause allows a disciplinary committee to inspect things produced at a hearing and, if the committee considers it to be relevant to the hearing, the committee may photograph the thing, copy or take an extract of the thing if it is a document, or keep the thing during the hearing. Where the committee holds the thing, the owner may photograph the thing, or copy or take an extract of the thing if it is a document at a reasonable place and time decided by the committee. The thing must be returned to its owner after the hearing.

Clause 113 Disciplinary committee to keep record of proceedings

This clause requires the committee to keep records of evidence given to a hearing, in the manner decided by the committee. The committee is not required to keep a transcript of the hearing, but must give the record of evidence to the Board at the end of the hearing. The Board is bound by the *Public Records Act 2002* in relation to the way and length of time that records shall be kept.

Division 4—Offences about disciplinary proceedings dealt with by disciplinary committee

Clause 114 Offences about attending hearing, answering questions and related matters

This clause sets out a number of offences in relation to the conduct of registrants and witnesses at a proceeding of the committee, including when a registrant or person is required to attend but fails to attend or fails to continue to attend, or fails to take an oath. It is also an offence for a witness to fail to answer a question or produce a thing, unless doing so might incriminate the witness. The maximum penalty for each offence is 50 penalty units.

Clause 115 False or misleading information

This clause provides a penalty of up to 50 penalty units for persons knowingly making a false or misleading statement to a disciplinary committee.

Clause 116 False or misleading documents

This clause provides a penalty of up to 50 penalty units for persons who knowingly provide a document containing false information to a disciplinary committee, unless the person informs the committee how the information is incorrect and if possible, provides the correct information.

Clause 117 Contempt of disciplinary committee

This clause provides a penalty of up to 50 penalty units for persons acting in contempt of the committee, as described in the clause.

Division 5—Decision on completion of disciplinary proceedings

Clause 118 Decision about whether ground for disciplinary action is established

This clause requires that after the disciplinary committee has completed the hearing, it must decide whether the registrant has engaged in professional misconduct – the matter that the committee was established to

consider. In particular, the committee must make its decision having regard to the Board's code of practice for registrants and relevant survey standards made under the Survey and Mapping Infrastructure Bill 2003.

In certain circumstances, a registrant may have done a series of things, any of which may not have been serious enough for a committee to decide that the person had engaged in professional misconduct. However, the committee might decide that some or all of the things, when considered together, constitute professional misconduct. For this reason, the committee is also required to consider previous decisions by a disciplinary body if they are relevant or any other matter the committee deems relevant. Such considerations might also affect the severity of the action taken against the registrant under the following clause.

Clause 119 Decision about disciplinary action against registrant, other than former registrant

This clause sets out the disciplinary action that the committee can take against a registrant, other than a former registrant, if the committee has decided that the registrant has engaged in professional misconduct. These range from issuing advice or a caution to the registrant, through to suspension or cancellation of the registrant's registration or endorsement.

Certain options available to the committee allow a deficiency in the person's competence or conduct to be rectified without taking away the person's ability to earn a livelihood. For example, the registrant can be prevented from carrying out a particular type of survey, or can be restricted to a particular type of survey, until that person demonstrates to the Board that they have the relevant competency.

Similarly, if the committee cancels a registration or registration endorsement, it may set conditions upon which the registrant may be able to re-apply for registration, giving some scope or opportunity for the registrant to regain a livelihood from surveying.

Any amounts ordered to be paid by the registrant are debts payable to the Board.

Clause 120 Decision about disciplinary action against former registrant

This clause sets out the disciplinary action that the committee can take against a former registrant, if the committee has decided that the former registrant has engaged in professional misconduct. The options available

to the committee are the same as for a current registrant under clause 119, except that the person's registration cannot be suspended or cancelled. However, if the committee would have suspended or cancelled the registration if the person had been registered, the committee must decide a period of time before which the person cannot reapply to be registered.

Clause 121 Matters disciplinary committee must consider in making decision about disciplinary action

This clause requires that when the disciplinary committee makes its decision about a registrant or a former registrant, it must give consideration of the purposes this Bill and any previous decisions about the registrant made by any other disciplinary committee or any other matter the committee considers is relevant.

Clause 122 Disciplinary committee's power to order costs

This clause permits the disciplinary committee to make orders about costs associated with the disciplinary proceedings to be paid by the registrant or former registrant. Such a decision is to be guided by the rules governing the determination of costs for proceedings in the District Court and may also include the costs incurred by the Board that are associated with the conducting of the investigation into the person's professional misconduct.

Division 6—Action after decision about disciplinary action

Clause 123 Notification of disciplinary committee's decision

This clause requires the disciplinary committee to notify the registrant and the Board of its decision. The clause prescribes the contents of the notice, including the decision itself and the grounds and reasons for that decision, and advice that the Board or the registrant may appeal on a question of law.

The committee's decisions take effect either on the day the notice is given to the registrant or the date stated in the notice, whichever is later.

Clause 124 Board may notify other persons

This clause permits the Board to publish the nature and outcome of the proceeding in the Board's annual report, website or other form of publication. The clause also permits publication of the identity of the registrant or former registrant. The Board may also advise the complainant of the decision made by the disciplinary committee, if the action related to a complaint. This does not affect the Board's responsibility to record in the register any change about the registrant's registration resulting from the disciplinary action.

Division 7—Effect of decision**Clause 125 Effect of disciplinary committee's decision**

This clause specifies that the disciplinary committee's decision is binding on the Board and the registrant.

Clause 126 Implementation of decision

This clause requires the Board to give effect to the decisions of the disciplinary committee unless the decision is stayed on application by a registrant or former registrant to the Court of Appeal.

Clause 127 Disciplinary action to be recorded in register

This clause requires the Board to record in the register any decisions by the disciplinary committee if those decisions affect the registrant's registration or registration endorsements. Such information might include any conditions on registration imposed by the committee, any periods of suspension, or cancellation, and the effective dates of these. As the register is a public register, any person searching it can become aware of a change in the status of a registrant's registration.

PART 7—INVESTIGATORS

Division 1—Functions and powers generally

Clause 128 Functions of investigator

This clause specifies that an investigator appointed by the Board to carry out an investigation has two functions – to carry out the investigation and to provide a report to the Board.

Clause 129 Powers of investigator

This clause provides the investigator with the powers given to investigators under this Bill for carrying out the investigator's functions.

Division 2—Appointment of investigators and other matters

Clause 130 Appointment

This clause stipulates that the Board appoints investigators on a case-by-case basis. An investigator can be a surveyor who is not a Board member.

Clause 131 Appointment conditions and limit on powers

This clause stipulates that an investigator holds office on conditions set by the Board and specified either in the instrument of appointment or in a signed notice given to the investigator by the Board. The instrument or notice may limit the powers of the investigator that are otherwise provided for in this Bill.

Clause 132 Issue of identity card

This clause requires the Board to give an investigator an identity card, so that the investigator can produce it to demonstrate that the Board has appointed the person as an investigator. An identity card may serve other purposes. The use of the card is set out in the following clause.

Clause 133 Production or display of identity card

This clause requires an investigator to produce their identity card and to keep it displayed when carrying out their investigatory roles and exercising the investigatory powers. However if this is not practicable in the first instance, the identity card should be produced at the first available opportunity. The clause clarifies that an investigator is not exercising a power under this Bill simply by entering a place that is reasonable for the public to do to contact the occupier.

Clause 134 Resignation

This clause permits an investigator to resign by notifying the Board in writing. The person is required to provide the Board with a report of the investigation, so that the work done by the investigator does not need to be repeated by another investigator, and so that any evidence collected by the investigator is not lost.

If the person holds another office on the condition that the person is an investigator, the person must resign from that other position as well.

Clause 135 Return of identity card

If an investigator stops being an investigator, this clause requires the person to return the identity card to the Board with 15 business days unless there is a reasonable excuse. This prevents continued use of the card when the person is not an investigator. A penalty of up to 10 penalty units may be incurred.

Division 3—Particular powers of investigators***Subdivision 1—Power to obtain information*****Clause 136 Power to require information or attendance**

Investigators generally need to acquire information from persons in order to conduct an investigation. This clause gives an investigator the power to obtain the information by consent or by issuing a written notice to a person requiring them to provide the information or meet with the investigator to answer questions or produce a specified thing. The

investigator must allow a reasonable time for the person to comply with any requirement contained in the notice.

Clause 137 Offences

This clause makes it an offence for a person to refuse to provide the information or produce a thing requested by an investigator. A maximum penalty of 50 penalty units applies to this offence.

If a notice has been issued under clause 136, the person must attend and continue attending as required or until excused by the investigator, and must answer any question put by the investigator and produce any thing required by the investigator. A maximum penalty of 50 penalty units applies to this requirement.

It is reasonable for a person to refuse to give the information, answer a question or produce a thing if the person reasonably believes that doing so could incriminate the person.

Clause 138 Inspection of produced things

This clause gives an investigator the power to inspect things produced to the investigator. If the investigator reasonably believes the thing to be relevant to the investigation, the inspector may photograph the thing, copy or take an extract of the thing if it is a document or keep the thing during the investigation. However, if the investigator keeps the thing, the owner must be allowed reasonable access to it, in the manner specified in the clause.

Subdivision 2—Entry of places

Clause 139 Power to enter places

This clause gives an investigator the power to enter places for the purposes of carrying out an investigation. If the place is a public place, the investigator may enter it when the place is open to the public. In other instances, including privately owned premises or a public place when the place is not open, the investigator may enter a place if the occupier consents, or if the entry is authorised by a warrant. For the purposes of contacting an occupier, it is lawful for an investigator to enter land or those places where the public ordinarily go, without a warrant or the owner's

consent. This clause provides an appropriate balance between the rights of owners or occupiers and the need for an investigator to enter private property in order to properly conduct an investigation. The following subdivision sets out the procedure to be followed for entry to places.

Subdivision 3—Procedure for entry

Clause 140 Entry with consent

This clause sets out the procedures an investigator must follow in obtaining the consent of an occupier to enter a place. This provision recognises the rights of an occupier to consent to entry or otherwise restrict entry.

The investigator must inform the occupier why entry to the place is required and that the occupier has the right to refuse that entry. If consent is given, the investigator may require the occupier to sign an acknowledgement form stating that the occupier has been told the purpose of entry and has been told that the occupier is not required to consent, and also stating the purpose of entry, and stating that the occupier's consents to the investigator entering the place and the time and date that the consent was given. If the occupier signs the consent, the investigator must provide a copy of the consent to the occupier.

If the question arises at a later date as to whether or not the consent was given, it is up to the person relying on the consent to provide the written acknowledgement or otherwise prove that the occupier consented.

Clause 141 Application for warrant

This clause permits an investigator to apply to a magistrate for a warrant to enter a place, so as to gain access to those places where an investigator reasonably suspects that there is evidence and when consent cannot be obtained from the occupier. The magistrate is not compelled to issue the warrant and may require further information before considering the application.

Clause 142 Issue of warrant

This clause provides for a magistrate to issue a warrant for an investigator to enter a place, only if there are reasonable grounds for

suspecting that there is a particular thing or activity that could provide evidence in a disciplinary matter being investigated by the investigator and that the evidence is or may be at the place within the next 7 days. The warrant must contain the information specified in the clause, to inform the occupier of the basis for the warrant and any limitations on it such as the hours of entry or the evidence that may be seized.

Clause 143 Warrants—procedure before entry

This clause sets out the procedure that an investigator must follow when entering a place with a warrant. The investigator must identify himself or herself to the occupier by producing the investigator's identification card issued by the Board or other document evidencing the investigator's authority. The occupier must be given a copy of the warrant. The investigator must inform the occupier that the investigator has the right under the warrant to enter the place. The investigator must give the occupier reasonable opportunity to allow the investigator to enter the place without using force, so as to prevent an investigator from using force unnecessarily.

However, if investigator believes that taking the above steps will lead to the purpose of the entry being frustrated, for example evidence being destroyed or removed, the investigator may make immediate entry to the place.

Subdivision 4—Powers after entry

Clause 144 General powers after entering places

This clause sets out the powers that an investigator has after entering a place with the occupier's consent or under some other authority, for example with a warrant. The clause specifies a number of things that the investigator can do for the purpose of finding and collecting evidence. As the investigation may involve the carrying out of a survey, the investigator is permitted to take a person and equipment onto the place and is permitted to place survey marks (A person and equipment may be taken onto the place also for purposes other than the undertaking of a survey.)

The investigator may require the occupier or person at the place to assist the investigator to exercise the investigator's powers, or to provide

information to the investigator. In doing so, the investigator must warn the occupier or person at the place that it is an offence to not assist unless there is a reasonable excuse. The following clause makes failing to help the investigator an offence.

Clause 145 Failure to help investigator

This clause makes it an offence for a person to refuse to give the assistance that an investigator requests under clause 144, unless the person has a reasonable excuse. It is a reasonable excuse to not comply if the assistance might incriminate the person. A penalty of up to 50 penalty units may be imposed for this offence.

Clause 146 Failure to give information

This clause makes it an offence for a person to refuse to give the information that an investigator requests under clause 144, unless the person has a reasonable excuse. It is a reasonable excuse to not comply if giving the information might incriminate the person. A penalty of up to 50 penalty units may be imposed for this offence.

Subdivision 5—Power to seize evidence

In certain circumstances, evidence cannot be obtained without taking an item from a place, or an item needs to be protected or taken from a place to prevent evidence being removed or destroyed. This subdivision sets out the manner in which such items can be seized by an investigator.

Clause 147 Seizing evidence at public place if entry made when place open

This clause gives an investigator the power to seize a thing at a public place, when the place is open to the public, if the investigator believes the thing is relevant to the investigation and that the evidence is unable to be obtained in another way. A computer or some surveying equipment may need to be removed because data on the computer cannot be copied at the premises.

Clause 148 Seizing evidence at a place that may only be entered with consent or warrant

This clause gives an investigator the power to seize a thing at a place that the investigator enters with the consent of the occupier or with a warrant, including at a public place when the place is not open to the public.

If the investigator enters with the consent of the occupier, the investigator may seize a thing if the investigator believes that the thing is relevant to the investigation, provided that the seizure of the thing is consistent with the information given to the occupier about the purpose of the entry when seeking the occupier's consent.

If the investigator enters with a warrant, the investigator may seize evidence for which the warrant was issued or any other thing at the premises that is relevant to the investigation.

A further power to seize things is provided if the investigator believes it is necessary to seize a thing to prevent evidence from being lost, destroyed or hidden.

The investigator must not seize a thing under this clause if the evidence can be obtained or copied from it at the premises without seizing the thing.

Clause 149 Securing seized things

This clause provides for the securing of things seized by an investigator, to protect the evidence. This can be done either by removing the thing from the premises, or by restricting access to it in such a way that it is obvious that access to the thing is restricted.

Clause 150 Tampering with seized things

This clause makes it an offence with a penalty up to 50 penalty units for a person to tamper with a thing to which access has been restricted by an investigator.

Clause 151 Receipt for seized things

This clause requires an investigator to give a receipt to the person from whom a thing was taken or, if this is not practicable, leave it for the person at the place where the thing was seized, in a conspicuous and secure place.

The receipt must adequately describe each thing seized. An investigator is not obliged to give a receipt if it is impracticable to do so because of the nature of the thing.

Clause 152 Forfeiture of seized things

This clause provides that things that have been seized by an investigator may be forfeited if the owner cannot be found after making reasonable enquires or the thing cannot be returned to its owner after making reasonable efforts to return it. The investigator must have regard to the nature, condition and value of the seized thing when considering the effort required to find the owner or return the thing.

Clause 153 Dealing with forfeited things

This clause permits the Board to deal with a forfeited thing as if it were its own property and allows the Board to sell, destroy or otherwise dispose of the thing.

Clause 154 Return of seized things

This clause requires an investigator to return a seized thing to its owner after 6 months or if proceedings have been started within the 6 months, the thing must be returned at the end of any proceedings and any subsequent appeal from those proceedings. However, the investigator must return the thing if it is no longer required as evidence, if it is not forfeited.

Clause 155 Access to seized things

This clause permits an owner of a thing to be able to inspect a thing or copy a thing if it is a document that has been seized and not forfeited, provided that the inspection or copying is not unreasonable or impracticable.

Division 4—General investigation matters**Clause 156 Investigator’s obligation not to cause unnecessary damage**

This clause requires an investigator to take all reasonable steps to ensure that no damage is caused to any property when exercising the investigator’s powers.

Clause 157 Notice of damage

This clause specifies the responsibilities of an investigator when property is damaged. If an investigator, or a person acting under the investigator’s direction, damages property during an investigation, the investigator must immediately notify the person who appears to be the owner. If the owner cannot be advised personally, the advice may be way of a notice left in a reasonably secure yet conspicuous place near the damage. These provisions do not apply to damage that the investigator reasonably believes is trivial. If the investigator believes the damage was caused by an inherent defect in the property or was caused by circumstances that were beyond the control of the investigator, this should be stated in the notice.

Clause 158 Compensation

This clause makes the Board responsible for compensation if a person suffers loss as a result of an investigator exercising the investigator’s powers given in this Bill. This clause also applies to losses or expenses incurred by a person when that person is complying with a requirement under the subdivision. The person who suffered loss may seek compensation through the relevant court. The court may only order compensation if it is satisfied that is it fair to make the order in the circumstances.

Clause 159 False or misleading information given to investigator

This clause makes it an offence, with a penalty of up to 50 penalty units, for a person to state anything to an investigator knowing that such information is false or misleading.

Clause 160 False or misleading documents given to investigator

This clause makes it an offence, with a penalty of up to 50 penalty units, for a person to provide a document to an investigator knowing that the document contains false or misleading information, unless the person informs the investigator how the information in the document is false or misleading and provides to the investigator the correct information if it is reasonably available to the person.

Clause 161 Obstruction of investigator

This clause makes it an offence, with a penalty of up to 100 penalty units, for a person to obstruct an investigator who is carrying out the duties of an investigator, unless the person has a reasonable excuse. Where there is an obstruction and the investigator proceeds with the investigation, the investigator must warn the person that it is an offence to obstruct the investigator without reasonable excuse and that the investigator considers the person is causing an obstruction. For the purposes of this clause, obstruction is taken to include hindering or attempting to obstruct or hinder.

Clause 162 Impersonation of investigator

This clause makes it an offence, with a penalty of up to 50 penalty units, for a person to pretend to be an investigator.

PART 8—APPEALS TO DISTRICT COURT**Clause 163 Who may appeal**

This clause specifies the persons who are entitled to appeal a decision in the District Court. This includes those persons who have been given an information notice by the Board or a professional conduct review panel. These instances have been summarised in Schedule 1 of the Bill. Under clauses 53 and 58, the Board is taken to have made a decision to refuse an application if the Board has not made a decision within a specified time. Applicants affected by such a decision may also appeal to the District Court. The clause upholds natural justice by providing a right of appeal against decisions made under powers contained in the Bill.

Clause 164 How to start an appeal

This clause sets out the process for starting an appeal to the District Court. The Uniform Civil Procedure Rules apply to the process. A notice of appeal must be filed with the registrar of the court within 28 days of the person receiving an information notice informing them of the decision. If the person does not receive an information notice, the person may appeal within 28 days of becoming aware of the decision.

The Bill provides flexibility for starting appeals, by allow persons to start an appeal at any District Court and by allowing the court to extend the time in which an appeal can be filed.

Clause 165 Hearing procedures

This clause specifies the manner in which the District Court deals with appeals. The appeal is to be a rehearing, based on the material that the entity used to make the decision and any other material that the Court wishes to use. This provides an independent review of the decision and shall be made as if the Court has the same powers as the original decision making entity.

Clause 166 Stay of operation of decision

This clause allows the court to suspend the operation of the decision that is being appealed against. This prevents a person from being required to do, or cease doing, something, until such time as the requirement is reviewed in the appeal process. If the Court does not stay the decision, the appeal has no effect on the implementation of the decision.

Clause 167 Powers of court on appeal

This clause sets out the decisions that the Court can make in deciding an appeal against a decision. The Court may confirm or amend the decision that was the subject of the appeal or substitute another decision and that is then taken to be the decision of the original decision making entity.

Clause 168 Appointment of advisors

This clause allows the court to appoint specialist advisors in cases where the court requires special knowledge or skills to decide the appeal. As the matters that may be appealed to the District Court involve decisions about a

person's competence or professional conduct, the Court may require specialist advice about these matters before making its decision.

However the court itself must decide all questions of fact and law, giving the advice whatever weight it considers is appropriate.

PART 9—APPEALS TO COURT OF APPEAL FROM DECISIONS OF DISCIPLINARY COMMITTEE

Clause 169 Appealable decisions

This clause provides for the Court of Appeal to hear appeals from persons about decisions made pursuant to clauses 118, 119 and 120, that is, decisions made by a disciplinary committee as to whether a registrant has engaged in professional misconduct, and the disciplinary action taken against the person. This is an appropriate court for appeals of this nature to be heard.

Clause 170 Who may appeal

This clause permits the Board, or the registrant or former registrant about whom the decision was made, to appeal to the Court of Appeal.

Clause 171 Appeal on questions of law only

This clause stipulates that the Court of Appeal may decide on questions of law only.

Clause 172 How to start an appeal

This clause sets out the process for starting an appeal to the Court of Appeal. The Uniform Civil Procedure Rules apply to the process. A notice of appeal must be filed with the registrar of the court and must comply with the rules of court applying to the appeal. The Bill provides flexibility for starting appeals, by allowing the court to extend the time in which an appeal can be filed.

Clause 173 Appellant to give notice of appeal to particular persons

This clause requires the appellant to give the respondent a copy of the notice of appeal within 14 days of filing the notice. If a registrant has made the appeal, the respondent is the Board. If the Board has made the appeal, the respondent is the registrant.

Clause 174 Stay of operation of appealable decision

This clause allows the court to suspend the operation of the decision that is being appealed against. This prevents a person from being required to do, or cease doing, something, until such time as the requirement is reviewed in the appeal process. If the Court does not stay the decision, the appeal has no effect on the implementation of the original decision.

Clause 175 Hearing procedures

This clause requires the Court of Appeal to follow the procedures of the relevant rules of the courts. If the rules do not adequately cover a situation, the appeal must follow the directions of the Court of Appeal.

Clause 176 Powers of court on appeal

This clause provides for the Court of Appeal to decide the appeal in any of the following ways; to confirm, change or set aside the decision, to set aside the decision and replace it with another decision, or to send the matter back to the disciplinary committee with any directions that the Court considers to be appropriate.

PART 10—LEGAL PROCEEDINGS*Division 1—Evidence***Clause 177 Application of div 1**

This clause causes this division to apply to a proceeding under this Bill, including a proceeding before a disciplinary body. The following clauses in this division deal with matters of evidence, and are included to simplify

the process of a proceeding, by setting out matters that can be taken at face value.

Clause 178 Appointments and authority

This clause stipulates that it is not necessary to prove the appointments of the persons or entities listed or to prove the authority of the listed entities to do anything under this Bill.

Clause 179 Signatures

This clause stipulates that a signature that purports to be that of one the persons specified in the clause shall be taken to be the signature of that person.

Clause 180 Evidentiary matters

This clause stipulates that a certificate purporting to be signed by the chairperson of the Board in regarding one of the listed matters shall be taken to be evidence of the matter.

Division 2—Proceedings

Clause 181 Summary proceedings for offences

This clause provides that a proceeding that is taken for an offence against this Bill must be taken as a summary proceeding under the *Justices Act 1886*. The clause also specifies the timeframes within which the proceeding must be started, providing a reasonable period in which a potential complainant may bring a charge.

Clause 182 Allegations of false or misleading information or documents

This clause provides that if there is a proceeding for an offence that involves in some way ‘false or misleading’ information, or a ‘false or misleading’ document, it is not necessary to distinguish between the terms ‘false’ and ‘misleading’ or to specify which of the terms applies. It is sufficient for a person to state that the document or information was, to their knowledge, ‘false or misleading’.

Clause 183 Penalties to be paid to board

This clause requires that if a penalty is imposed for an offence against this Bill, then the entity imposing the penalty must order that the penalty be paid to the Board. This provides a means by which some of the Board's costs in pursuing the action may be recouped, and reduces the likelihood that the Board will be deterred from pursuing an action because of the cost of doing so.

Clause 184 Responsibility for acts or omissions of representatives

This clause deals with considerations regarding acts or omissions by a representative of an individual or corporation, in any proceeding for an offence against this Bill. Two situations are dealt with – determining the state of mind of an individual or corporation regarding an act that is done or omitted by a representative; and determining the responsibility of an individual or corporation regarding an act that is done, or is omitted to be done, for them by a representative.

The state of mind of a corporation or individual regarding a particular act or omission by a representative is determined by showing that the representative was acting within their authority and showing the representative's state of mind.

If a representative does an act, or omits to do an act, for an individual or corporation, and the representative is acting within their authority, the act is taken to have been done, or is taken to have been omitted to be done, also by the individual or corporation. This does not apply if the individual or corporation proves that they could not have reasonably prevented the act or omission.

It is necessary to provide such a statement of clarification because corporations are usually represented by an individual in carrying out the functions of the corporation, and in the case of individuals, are often represented by employees and agents of the individual.

Clause 185 Executive officers must ensure corporation complies with Act

This clause deals with the role of executive officers of corporations in complying with provisions of the Bill. The clause provides that the executive officers of a corporation have a responsibility to ensure the corporation complies with the Bill.

If a corporation is proved to commit an offence against the Bill, each executive officer also commits the offence of failing to ensure that the corporation complies with the relevant provision. Complementing this, the clause provides that evidence that a corporation has committed an offence is also evidence that the executive officers have also committed the offence of failing to ensure that the corporation complies with the relevant provision.

It is a defence for an executive officer to show that they exercised reasonable diligence to ensure the corporate complied with the division, or the executive officer was not in a position to influence the conduct of the corporation.

PART 11—MISCELLANEOUS

Clause 186 Board's power to decide fee for producing a copy of a document

This clause gives the Board the power to set a fee for producing a copy of a document, but the fee must not be more than the reasonable cost of supplying the copy.

Clause 187 Board may authorise investigation of compliance by persons, other than registrants, with Act

This clause gives the Board the power to authorise investigations into suspected contraventions of certain provisions of the Bill by persons who are not registered, or persons who are not appropriately registered. This clause relates to those provisions that prohibit people from claiming to be registered or require a person to hold a cadastral endorsement to carry out a cadastral survey or require a person to hold a cadastral and a consulting endorsement to carry on a business or charge a fee for a cadastral survey.

Clause 188 Board's power to correct work and recover costs

This clause gives the Board the power to correct a survey if a registrant or former registrant does not comply with a disciplinary body's order to correct the survey. The Board may recover the reasonable costs of the survey from the registrant or former registrant.

Clause 189 Protecting officials from liability

This clause protects officials from civil liability, provided that the person has acted honestly and without negligence. However, to provide recourse for persons who suffer loss or damage as a result of the actions of an official, the liability that would have attached to the official attaches to the State or the Board, depending on who the official is.

Clause 190 Confidentiality

This clause protects the confidentiality of information about a person's affairs that is obtained in the course of performing functions under this Bill. Such information may not be disclosed to another person unless specific provision is made for that disclosure. An offence against this clause incurs a maximum penalty of 100 penalty units. The clause contains a list of how the information may be disclosed. One of these provisions allows the Minister to disclose information about a person's affairs if the Minister considers this to be in the public interest. If this occurs and the information is about a registrant, the Minister must inform the Board.

Clause 191 Approval of forms

This clause gives the Board the power to approve forms for purposes under this Bill.

Clause 192 Regulation-making power

This clause provides for the Governor in Council to make regulations under this Bill and lists those things that can be provided for by regulation. A regulation may also prescribe a penalty of up to 20 penalty units for any contravention of a regulation.

PART 12—TRANSITIONAL PROVISIONS

Division 1—Transitional references

Clause 193 Application of div 1

The clause clarifies that the use of the word ‘reference’ in this subdivision means a reference in Acts or documents.

Clause 194 References to repealed Act

This clause specifies that a reference to the *Surveyors Act 1977* means a reference to this Bill (when it is enacted).

Clause 195 References to president appointed under repealed Act

This clause makes it clear that a reference to the president of the Board appointed under the former Act means where it is appropriate, a reference to the chairperson of the Board under this Bill (when it is enacted).

Clause 196 References to authorised surveyors

References to an authorised surveyor means, where appropriate, a reference to a cadastral surveyor. Authorised surveyor was the term used in the Act that preceded the *Surveyors Act 1977* to refer to the equivalent of a cadastral surveyor in this Bill.

Clause 197 References to surveyor-general

References to the surveyor-general mean, where appropriate, a reference to the chief executive.

Clause 198 References to persons holding column 1 registrations

References to persons listed in column 1 of the table in clause 200 means, if appropriate, a reference to the persons mentioned in column 2. This deals with the use of terms that were defined under the *Surveyors Act 1977* where different terms are used in this Bill – for example a “licensed

surveyor” under the *Surveyors Act 1977* means a “cadastral surveyor” under this Bill.

Division 2—Other transitional provisions

Clause 199 Continuation of existing members’ membership

This clause provides for the continuity of the operation of the Board while the process for appointing a new Board under this Bill is followed. The existing members and president of the Board will continue to serve during an interim period of 6 months, and they go out of office at the end of that time. If a casual vacancy occurs in the interim period, including the President, the Minister must appoint another person to fill the vacancy. To deal with the situation where the process for appointment of the new Board has not been completed at the end of the 6-month interim period, reference is made to clause 15(3), which provides that members continue to hold office until their successor is appointed.

Clause 200 Existing registrations

This clause provides for the transfer of registrations under the *Surveyors Act 1977* to registrations under this Bill, for the remainder of their term. If a condition had been imposed on a registration or registration endorsement by a disciplinary process under the former Act, that condition continues to apply to the registration for the remainder of the term of the condition set down by the disciplinary committee.

Clause 201 Existing applications for column 1 registrations

This clause provides for applications for registration or registration endorsement made under the former Act but not decided before the commencement of this Bill, to be dealt with as applications under this Bill. The requirements of this Bill regarding the criteria for registration or endorsement and the offences regarding applications apply to the assessment of the application. The fees under this Bill do not need to be paid for such applications, as the relevant fee would have been paid under the former Act.

Clause 202 Suspended registrations

This clause stipulates that a suspension of registration or registration endorsement under a disciplinary process under the former Act continues to apply to the comparable registration or registration endorsement under this Bill, for the term of the suspension.

Clause 203 Approval of business names under repealed Act

This clause provides that if a person continues to carry on a business whose name was approved under Section 47A of the *Surveyors Act 1977*, the person is taken to have provided the notice as required under clause 79 of this Bill.

Clause 204 Existing code of professional conduct of surveyors

This clause stipulates that the code of professional conduct of surveyors under the *Surveyors Act 1977* continues in force and is taken to be the code of practice for this Bill, for up to 6 months only. During this period, the code under the former Act is to be read as if it has been changed to make it consistent with this Bill and to apply it to the provisions of this Bill.

PART 13—REPEAL AND AMENDMENTS**Clause 205 Repeal of Surveyors Act 1977**

The *Surveyors Act 1977* is repealed.

Clause 206 Other Acts amended

Schedule 2 amends the Acts so mentioned in the way prescribed.

SCHEDULE 1

DECISIONS FOR WHICH INFORMATION NOTICES MUST BE GIVEN

Schedule 1 provides a list of decisions made under this Bill where an information notice must be given. The contents of the information notice are specified in the Dictionary in Schedule 3.

SCHEDULE 2

CONSEQUENTIAL AND MINOR AMENDMENTS OF OTHER ACTS

ACQUISITION OF LAND ACT 1967

These changes reflect the new term “cadastral surveyor” where “authorised surveyor” is used in the Act. The title of chief executive (surveys) is updated to chief executive of the department reflecting contemporary drafting practice.

BEACH PROTECTION ACT 1968

This change recognises that survey standards will be developed under the Survey and Mapping Infrastructure Bill 2003.

BUILDING UNITS AND GROUP TITLE ACT 1980

These changes reflect the new term “cadastral surveyor” where “licensed surveyor” is used in the Act. The change also recognises that survey standards will be developed under the Survey and Mapping Infrastructure Bill 2003.

COAL MINING AND HEALTH ACT 1999

The change reflects the title of this Bill.

DIVIDING FENCES ACT 1953

These changes reflect the new term “cadastral surveyor” where “registered surveyor” is used in the Act. These changes also recognise that survey standards will be developed under the Survey and Mapping Infrastructure Bill 2003. Another change also makes it clear that non-surveyors may only place marks that cannot be confused with those types of marks placed by cadastral surveyors.

EVIDENCE ACT 1977

The change in a definition reflects the title of this Bill.

LAND ACT 1994

The changes reflect the new term “cadastral surveyor” where “licensed surveyor” is used in the Act. The changes also recognise that survey standards will be developed under the Survey and Mapping Infrastructure Bill 2003.

LAND SALES ACT 1984

The changes reflect the new term “cadastral surveyor” where “licensed surveyor” is used in the Act.

LAND TITLE ACT 1994

The changes reflect the new term “cadastral surveyor” where “licensed surveyor” is used in the Act. The changes also recognise that survey standards will be developed under the Survey and Mapping Infrastructure Bill 2003.

MINING AND QUARRYING SAFETY AND HEALTH ACT 1999

The change reflects the title of this Bill.

MIXED USE DEVELOPMENT ACT 1993

The change recognises that survey standards will be developed under the Survey and Mapping Infrastructure Bill 2003.

QUEENSLAND INTERNATIONAL TOURIST CENTRE AGREEMENT ACT REPEAL ACT 1989

The change reflects the title of this Bill.

REGISTRATION OF PLANS (H.S.P. (NOMINEES) PTY. LIMITED) ENABLING ACT 1980

The changes reflect the new term “cadastral surveyor” where “licensed surveyor” is used in the Act and also reflects the title of this Bill.

REGISTRATION OF PLANS (STAGE 2) (H.S.P. (NOMINEES) PTY. LIMITED) ENABLING ACT 1984

The changes reflect the new term “cadastral surveyor” where “licensed surveyor” is used in the Act and also reflects the title of this Bill.

SOUTHBANK CORPORATION ACT 1989

The changes reflect the new term “cadastral surveyor” where “licensed surveyor” is used in the Act and also reflects the title of this Bill.

SCHEDULE 3**DICTIONARY**

Schedule 3 provides a dictionary of meanings for words used in this Bill that have particular meanings for this Bill. Other words or terms take their meanings from the Macquarie Dictionary or the *Acts Interpretation Act 1954* as appropriate to the context.

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