

# NORTHERN TERRITORY OF AUSTRALIA

## LICENSED SURVEYORS ACT

As in force at 1 July 1996

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 July 1996

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## LICENSED SURVEYORS ACT

**An Act to provide for the registration of land boundary surveyors and for the regulation of the practice of land boundary surveying, and for other purposes**

### **Part I Preliminary**

#### **1 Short title**

This Act may be cited as the *Licensed Surveyors Act*.

#### **2 Commencement**

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

#### **3 Repeal**

The Ordinances specified in the Schedule are repealed.

#### **4 Definitions**

In this Act, unless the contrary intention appears:

***applicant*** means a person who applies under section 23 for registration.

***approved*** means approved by the Board.

***Board*** means the Surveyors Board of the Northern Territory of Australia established by section 8.

***certificate of registration*** means a certificate of registration issued under section 24(3).

***Chairman*** means the Chairman of the Board.

***Department*** means the Department of the Public Service of the Territory primarily responsible to the Minister for the administration of this Act.

**Deputy Chairman** means the Deputy Chairman of the Board appointed under section 12(2).

**graduate surveyor** means a person who possesses the approved educational qualifications for registration as a licensed surveyor but has not satisfied the Board that he has the additional qualifications for registration referred to in section 25(1)(a).

**Institution** means the Institution of Surveyors, Australia, Northern Territory Division.

**land** includes land covered by water.

**licensed surveyor** means:

- (a) a person whose name was immediately before the commencement of this Act entered in the Register kept under the repealed Act; or
- (b) a person whose name, or a body corporate the name of which, is, for the time being, entered in the Register.

**member** means a member of the Board appointed under section 9(2) and includes a person appointed to act as a member.

**reciprocating board** means the surveyors board or other competent authority of a reciprocating State.

**reciprocating State** means a part of the Commonwealth or another country with the surveyors board or other competent authority of which the Board has entered into a reciprocal arrangement under section 27.

**Register** means the Register of Licensed Surveyors kept under section 22.

**repealed Act** means the Ordinances repealed by section 3, as in force immediately before the commencement of this Act.

**survey** means a measurement or delimitation of land boundaries authorized or required:

- (a) under an Act dealing with the alienation, leasing or occupation of Crown land or land of the Crown, or affecting titles to land;
- (b) by the Crown or the proprietor, lessee or mortgagee of the land or a prospective proprietor, lessee or mortgagee; or
- (c) in connection with the dedication, reservation, resumption or disposal of land for any purpose under the authority of an Act,

and includes all matters incidental to or consequent upon such measurement or delimitation.

**survey mark** includes a beacon, concrete block, metal pin or plaque, peg, post, stone cairn or any other approved marker placed on land for the purposes of a survey or indicating a boundary.

**Surveyor-General** means the person appointed under section 5, and includes a person appointed under section 7 to act as the Surveyor-General while so acting.

**Tribunal** means the Licensed Surveyors Appeal Tribunal established by section 40.

## **Part II                      Surveyor-General**

### **5                      Surveyor-General**

The Minister may, by instrument in writing, appoint a person who is a licensed surveyor to be the Surveyor-General for the Territory.

### **6                      Delegation**

- (1) The Surveyor-General may, by instrument in writing, delegate to a licensed surveyor any of his powers and functions under this or any other Act, other than the *Electoral Act*, except this power of delegation.
- (2) A power or function delegated in pursuance of this section, when exercised or performed by the delegate, shall be deemed to have been exercised or performed by the Surveyor-General.
- (3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Surveyor-General.

### **7                      Acting appointment**

- (1) The Minister may appoint a licensed surveyor to act as the Surveyor-General:
  - (a) during a vacancy in the office of Surveyor-General, whether or not an appointment has previously been made to the office; or
  - (b) during a period, or during all periods, when the Surveyor-General is absent from duty or from the Territory or is, for any reason, unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for a period in excess of 12 months.

- (2) The appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
- (3) Where a person is acting as the Surveyor-General in accordance with this section and the office of Surveyor-General becomes vacant while that person is so acting then, subject to subsection (2), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first occurs.
- (4) The Minister may, at any time, terminate the appointment of a person appointed to act in accordance with this section.
- (5) The appointment of a person under this section ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Minister.
- (6) The validity of anything done by a person purporting to act under subsection (1) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

## **Part III                      Surveyors Board**

### **8                      Surveyors Board**

- (1) There is established by this Act a board by the name of the Surveyors Board of the Northern Territory of Australia.
- (2) The Board:
  - (a) is a body corporate with perpetual succession;
  - (b) shall have a common seal; and
  - (c) is capable, in its corporate name, of suing and being sued.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Board affixed to a document and shall presume that it was duly affixed.

### **9                      Composition of Board and appointment of members**

- (1) The Board shall consist of the Surveyor-General and 4 members.



- (2) Subject to section 10 the Minister shall, by notice in the *Gazette*, appoint:
  - (a) 2 persons from a panel of 3 licensed surveyors nominated by the Institution; and
  - (b) 2 other licensed surveyors,to be the members of the Board.
- (3) The exercise of a power or the performance of a function of the Board is not affected by reason only of there being a vacancy in the membership of the Board.

#### **10 Institution to nominate panel**

- (1) Where the occasion for the appointment of a member referred to in section 9(2)(a) arises or is about to arise, the Minister shall serve the Institution with notice in writing of that fact by posting it by a letter addressed to its secretary and request the Institution to nominate a panel for the purposes of that paragraph.
- (2) If within 28 days after service on it of a notice referred to in subsection (1) the Institution does not, in writing, advise the Minister of the panel nominated by it for the purposes of section 9(2)(a), the Minister may appoint as a member, instead of a member referred to in that paragraph, any licensed surveyor.

#### **11 Period of appointment**

- (1) Subject to this Act, a member appointed by the Minister holds office for such period, not exceeding 4 years, as is specified in the instrument of appointment, but is eligible for re-appointment.
- (2) Where a period of appointment is not specified in the instrument of appointment of a member, the member holds office, subject to this Act, for 4 years.
- (3) Where the office of a member becomes vacant before the expiration of his period of appointment, the Minister shall appoint a person, with the same qualifications for appointment as the member whose office has become vacant, to fill the vacancy for the remainder of the period of the appointment of the member whose office he is appointed to fill.
- (4) Section 10 applies to and in relation to an appointment to fill a casual vacancy in the office of a member referred to in section 9(2)(a) as if it were a permanent appointment, except that the panel to be nominated by the Institution shall be a panel of 2 licensed surveyors only.

**12 Chairman**

- (1) The Surveyor-General shall be the Chairman of the Board.
- (2) The Board shall appoint one of its members to be the Deputy Chairman of the Board.

**13 Resignation of members**

A member may resign his office by writing signed by him and delivered to the Minister.

**14 Dismissal of members**

- (1) The Minister may terminate the appointment of a member for inability, inefficiency, misbehaviour or physical or mental incapacity.
- (2) Where a member:
  - (a) is absent, except on leave granted by the Board, from 2 consecutive meetings of the Board;
  - (b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
  - (c) is convicted, whether in the Territory or elsewhere, of an offence punishable by imprisonment for 12 months or longer or of any offence which, in the opinion of the Board, renders him unfit to practise as a licensed surveyor,

the Minister shall terminate the appointment of the member.

**15 Acting appointment**

- (1) Where a member is or is expected to be absent from duty as a member (including where he is or is expected to be acting as the Surveyor-General) or from the Territory or is for any reason temporarily unable to perform the duties of his office, the Minister may appoint a licensed surveyor to act as a member during the absence or temporary inability.
- (2) The Minister may, at any time, terminate an appointment made under this section.
- (3) The validity of a decision of the Board shall not be questioned in any proceedings on a ground arising from the fact that the occasion for the appointment of a person purporting to be appointed under this section had not arisen or that an appointment under this section

had ceased to have effect.

## **16 Powers and functions of Board**

The Board has such powers and functions as are given to or imposed on it by or under this or any other Act of the Territory.

## **17 Meeting of Board**

- (1) Subject to subsection (2), the Chairman shall, by reasonable notice given to all members, call such meetings of the Board as are necessary for the exercise of its powers and the performance of its functions, but so that the interval between one meeting and the next does not exceed 12 months.

- (2) At any time:

- (a) the Minister may direct; or
- (b) a majority of the members may request,

the Chairman to convene a meeting of the Board and the Chairman shall convene a meeting in accordance with the direction of the Minister or may convene a meeting in accordance with the request of the members.

- (3) At a meeting of the Board:

- (a) the Chairman or, in the absence of the Chairman, the Deputy Chairman and 2 members constitute a quorum;
- (b) questions arising shall be determined by a majority of the votes of the Chairman and members present and voting;
- (c) the Chairman or Deputy Chairman presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote; and
- (d) subject to this Act, the Board shall determine the procedure to be followed at or in connection with the meeting.

- (4) The Board shall keep records of its meetings.

## **18 Delegation by Board**

- (1) The Board may, by instrument in writing, delegate to the Chairman or a member any of its powers and functions under this Act, other than this power of delegation.

- (2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Board.
- (3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Board.

## **19 Liability for acts of Board, &c.**

Where the Board, the Chairman or a member commits an act or makes an omission in good faith:

- (a) in the exercise or purported exercise of a power; or
- (b) in the performance or purported performance of a function,

under this Act for the purpose of giving effect to the provisions or objects of this Act, or for discharging an obligation placed on the Board, the Chairman or a member by this Act, no action, claim or demand, either civil or criminal, in respect of that act or omission lies, or shall be commenced or allowed, against the Territory, the Board, the Chairman or a member.

## **20 Setting of fees**

Subject to sections 26 and 28 and the Regulations, the Board may, by notice in the *Gazette*, prescribe the fees payable in respect of any application to, or matter or thing required by or under this Act to be done by or in relation to, the Board or the Tribunal, and a fee so set shall be payable accordingly.

## **21 Audit, &c., provisions**

- (1) The Board shall, within the period of 6 months immediately following the end of the financial year or such other period as the Minister determines, prepare a report on its operations during the financial year and forward it to the Minister.
- (2) The Minister shall table the report under subsection (1), together with the financial statement and report of the Auditor-General on the financial statement required pursuant to subsection (3), in the Legislative Assembly within 6 sitting days of the Assembly after the delivery of the later of the reports to the Minister.
- (3) Subject to subsection (2), section 10 of the *Financial Management Act* applies to and in relation to the Board as if its activities were a Government Business Division within the meaning of that Act.

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- (4) For the purposes of the application of section 10 of the *Financial Management Act* as referred to in subsection (3), the Surveyor-General is the Accountable Officer.

## **Part IV                      Registration and qualifications**

### **22                      Register**

- (1) The Board shall keep a register to be known as the Register of Licensed Surveyors.
- (2) The Board shall, as soon as practicable after 1 January in each year, publish in the *Gazette* the name, and address referred to in section 24(1)(a) and (b), of each licensed surveyor, as at that date.

### **23                      Application for registration**

- (1) A person may apply in the approved form to be registered as a licensed surveyor.
- (2) An application under subsection (1) shall be accompanied by the prescribed fee.

### **24                      Registration**

- (1) Where the Board has received an application for registration and the prescribed fee, and has authorized the registration of the applicant as a licensed surveyor, it shall, subject to section 39, cause to be entered in the Register:
- (a) the applicant's name;
  - (b) his professional address or addresses, if any, in the Territory or, if he has no such professional address, his place of residence, whether in the Territory or elsewhere;
  - (c) particulars of his qualifications;
  - (d) the registration number allotted to him;
  - (e) the date of his registration; and
  - (f) such other particulars, if any, as are prescribed.
- (2) An entry in the Register shall be signed by the Chairman or the Deputy Chairman.
- (3) Where a person is registered as a licensed surveyor the Board shall cause to be issued to him a certificate of registration, under the hand of the Chairman or Deputy Chairman.

**25 Qualification for registration**

- (1) Subject to subsection (2), the Board shall authorize the registration of a person as a licensed surveyor if he satisfies the Board that he is a fit and proper person to be so registered and:
  - (a) he has approved educational qualifications and:
    - (i) has completed, in accordance with the directions of the Board, approved training and field service with a licensed surveyor; or
    - (ii) has completed training and field service outside the Territory which, by itself or together with further training or field service in the Territory, is, in the opinion of the Board, equivalent to the training and field service referred to in subparagraph (i),and has passed such examinations, if any, as are required by the Board;
  - (b) he is registered, licensed or authorized to practise as a surveyor of land boundaries by a reciprocating board; or
  - (c) he holds a letter of accreditation issued by a reciprocating board certifying that he is qualified, under the relevant law, to be registered, licensed or authorized to practise as a surveyor of land boundaries.
- (2) The Board may require an applicant for registration to attend personally before it and, if he fails to attend as required, may refuse to authorize his registration.

**26 Examinations**

- (1) For the purpose of determining whether an applicant for registration is qualified to be registered as a licensed surveyor, the Board may conduct such examinations, either written or oral, as it thinks fit and for that purpose may appoint examiners and supervisors of examinations and pay to them such fees as are approved.
- (2) An application to sit for an examination referred to in subsection (1) shall be in the approved form and be accompanied by the approved fee.

**27 Reciprocal arrangements**

The Board may enter into a reciprocal arrangement with a surveyors board or other competent authority in any part of the Commonwealth or another country, for the recognition of the status

of a person registered, licensed or authorized by the surveyors board or other competent authority to practise as a surveyor of land boundaries in that part of the Commonwealth or other country, and for his registration as a licensed surveyor under this Act.

## **28 Payment of annual registration fee**

- (1) A licensed surveyor shall, before 1 December in each year, pay to the Board the prescribed annual registration fee for the ensuing year of registration commencing 1 January and ending 31 December.
- (2) If a licensed surveyor fails to pay the prescribed annual registration fee for the ensuing year of registration before the commencement of that year of registration the Board may remove his name from the Register.
- (3) A person whose name has been removed under subsection (2) from the Register may apply to the Board to have his name restored to the Register and, on payment of the prescribed fee and any prescribed annual registration fee remaining unpaid by him as the Board thinks fit, the Board may restore his name accordingly.
- (4) Subject to the Regulations, the Minister may, by notice in the *Gazette*, prescribe fees for the purposes of this section.

## **29 Notice of decision to refuse registration**

Where the Board refuses to authorize the registration of a person as a licensed surveyor, it shall:

- (a) record the reasons for its decision;
- (b) serve on the applicant personally or by posting it by prepaid letter addressed to him at the address shown as his address in the application, within 7 days after so deciding, notice of its decision; and
- (c) if the applicant so requests, supply him with a copy of its reasons.

## **30 Proof of registration**

- (1) A certificate of registration is evidence that the person specified in the certificate was registered under this Act on the date specified in the certificate.
- (2) A document purporting to be a certificate under the hand of the Chairman or Deputy Chairman and stating that a person was or was not registered on the date or dates or during the period

mentioned in the document is, in all courts and before all persons and bodies authorized to receive evidence, evidence of the matter so stated.

**31      Fraudulent registration**

A person shall not, in connection with an application for registration under this Act, make a false or misleading statement or produce a false certificate, testimonial or other document.

Penalty:      \$1,000.

**32      Alteration of Register**

The Board shall cause to be removed from the Register the name of a licensed surveyor who dies or who requests his name to be removed and may cause to be made such alterations to the particulars recorded in the Register as are necessary.

**33      Cancellation or suspension of registration**

- (1) Subject to section 34, the Board may order the removal from the Register of the name of a licensed surveyor:
  - (a) whose registration has been obtained by fraud or misrepresentation;
  - (b) who is found guilty, whether in the Territory or elsewhere, of an offence which, in the opinion of the Board, renders him unfit to practise as a licensed surveyor;
  - (c) who is found guilty of an offence against this Act;
  - (d) who is found guilty of an offence against any other law in force in the Territory relating to the duties and functions of licensed surveyors or matters incidental to surveys;
  - (e) whose name is, otherwise than for non-payment of fees or at his own request, removed from a register of surveyors, or like records, kept by a reciprocating board;
  - (f) who becomes of unsound mind;
  - (g) who in the opinion of the Board is guilty of:
    - (i) habitual drunkenness or addiction to a narcotic drug;
    - (ii) allowing a person, other than a licensed surveyor or a person employed under his direct supervision, to practise in his name as a licensed surveyor; or



- (iii) directly or indirectly giving or offering or agreeing to give or offer to a person a valuable consideration for securing or attempting to secure for the licensed surveyor employment or work as a licensed surveyor;
  - (h) who certifies to the accuracy of a survey knowing it to be inaccurate;
  - (j) who wilfully or by culpable negligence or through incompetence makes, or causes to be made under his supervision, a survey that is so inaccurate or defective as to be unreliable; or
  - (k) who contravenes, or fails to comply with, a direction given under section 47 by the Board.
- (2) The Board may, instead of ordering the removal of the name of a licensed surveyor from the Register on a ground referred to in subsection (1)(c), (d), (g), (h), (j) or (k), reprimand him or suspend his registration for a period, not exceeding 3 years, as it thinks fit.
- (3) Where the entitlement of a licensed surveyor to practise in a reciprocating State or another Territory of the Commonwealth is suspended, the Board may suspend his registration for a period not extending beyond the period of suspension imposed by the reciprocating board.

#### **34 Inquiry to be held**

- (1) Before taking action under section 33(1)(a), (b), (f), (g), (h), (j) or (k) in relation to a licensed surveyor, the Board shall, as soon as practicable, hold an inquiry after giving not less than 10 days notice to the licensed surveyor of the matters to be inquired into and of the time and place at which the inquiry is to be held.
- (2) At an inquiry under subsection (1) the licensed surveyor may be represented by a legal practitioner or an agent, who may examine witnesses and address the Board on the licensed surveyor's behalf.
- (3) In conducting an inquiry under subsection (1) the Board is not bound by rules of evidence or legal procedure, but may inform itself in such manner as it thinks fit.
- (4) Pending the holding of an inquiry under subsection (1), the Board may, if it appears to it that the circumstances justify it in so doing, suspend the registration of the licensed surveyor.

**35 Notice of decision to reprimand, &c.**

Where the Board reprimands a licensed surveyor, suspends his registration or orders the removal from the Register of his name, the Board shall:

- (a) record the reasons for its decision;
- (b) serve on the licensed surveyor, within 7 days after so deciding, notice of its decision; and
- (c) supply him with a copy of those reasons.

**36 Effect of suspension of registration**

- (1) A person whose registration as a licensed surveyor is suspended shall, during the period for which the registration is suspended, be deemed to be a person who is not registered as a licensed surveyor under this Act.
- (2) The Board may, by notice in writing, remove a suspension referred to in subsection (1) from a date specified in the notice.
- (3) Where the Board removes under subsection (2) a suspension, the Board shall forthwith return the certificate of registration surrendered under section 37.

**37 Surrender of certificate**

- (1) Where the Board orders the removal from the Register of the name of a licensed surveyor or the suspension of his registration, it may, by notice in writing, require him, within 14 days after the service on him of the notice, to deliver his certificate of registration to the Board.
- (2) A person referred to in subsection (1) shall not fail to comply with a notice served on him under that subsection.

Penalty: \$100 and \$10 for each day during which the offence continues.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant satisfies the court that:
  - (a) the certificate has been destroyed; or
  - (b) after diligent search, he has been unable to find the certificate.

**38 Application for re-registration**

- (1) A person whose name has been removed from the Register in pursuance of section 33 may again apply for registration as a licensed surveyor.
- (2) The Board may, in its discretion, authorize the registration of an applicant referred to in subsection (1) or refuse to authorize the registration.

**39 Registration of bodies corporate**

Where the Regulations prescribe the manner of registration of a body corporate as a licensed surveyor and the conditions subject to which bodies corporate may be so registered, the Board may authorize its registration as a licensed surveyor subject to and in accordance with the Regulations.

**Part V Appeals****40 Licensed Surveyors Appeal Tribunal**

- (1) There is hereby established a tribunal by the name of the Licensed Surveyors Appeal Tribunal.
- (2) The Tribunal shall consist of:
  - (a) a legal practitioner of not less than 7 years standing, appointed by the Attorney-General, who shall be the Chairman; and
  - (b) 2 licensed surveyors, appointed by the Minister, neither of whom are members of the Board and one of whom shall, subject to subsection (3), be appointed on the nomination of the Institution.
- (3) Section 10, with the necessary changes, applies to and in relation to the appointment of a licensed surveyor under subsection (2)(b) to represent the Institution as if that appointment were an appointment of a member referred to in section 9(2).
- (4) A member of the Tribunal is not civilly or criminally liable in respect of an act done or omission made by him in good faith in carrying out a function imposed or exercising a power conferred under this Act on him or the Tribunal.

**41 Secretary of Tribunal**

The Minister shall appoint a person to be the secretary of the Tribunal.

**42 Powers and procedures of Tribunal**

- (1) In and in relation to an appeal under this Part the Tribunal has such powers and shall comply with such practices and procedures as are prescribed and, in the absence of a practice or procedure in relation to a particular matter or thing being prescribed, shall adopt such procedures as it thinks fit.
- (2) The Judges appointed under section 32(1) of the *Supreme Court Act* who are not additional Judges, or a majority of those Judges, may make rules, not inconsistent with this Act:
  - (a) for regulating the practice and procedure of the Tribunal;
  - (b) conferring on the Tribunal additional powers necessary or convenient for carrying out its functions, including the power to impose a penalty, not exceeding a fine of \$200, for a breach of the rules; and
  - (c) making such other provisions as are necessary or convenient for carrying into effect the provisions of this Part.

**43 Appeals**

- (1) Where the Board:
  - (a) refuses an application for the registration of a person;
  - (b) orders the removal from the Register of the name of a licensed surveyor;
  - (c) reprimands a licensed surveyor; or
  - (d) suspends, otherwise than under section 33(3), the registration of a licensed surveyor,

the person or licensed surveyor may, within 21 days after the notice of the decision is served on him, appeal to the Tribunal against the decision of the Board by lodging with the secretary of the Tribunal an application in the prescribed form.

- (2) Jurisdiction to hear and determine appeals under this Part is vested in the Tribunal.
- (3) An appeal under this Part is in the nature of a rehearing.

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- (4) In an appeal under this Part the Tribunal shall be bound by the rules of evidence.
  - (5) The Board shall be the respondent in an appeal under this Part.
  - (6) A party to an appeal under this Part may appear before the Tribunal in person or may be represented at the hearing of the appeal by a legal practitioner or an agent.
  - (7) In an appeal under this Part the Tribunal may:
    - (a) affirm, set aside or vary a decision appealed against;
    - (b) give such judgment as it thinks fit; and
    - (c) make such other order, as to costs or otherwise, as it thinks fit.
  - (8) Where, in an appeal under this section, the Tribunal sets aside or varies a decision of the Board, the Tribunal shall set out in its decision its reasons.

#### **44 Removal of suspension pending determination of appeal**

Where a person appeals under section 43(1) against the suspension of his registration he shall, from the time that the appeal is lodged with the Tribunal until the determination of the appeal, be deemed to continue to be registered as a licensed surveyor.

#### **45 Action consequent on allowance of appeal**

Where the Tribunal allows an appeal under section 43, the Board shall, subject to any order of the Tribunal:

- (a) in a matter referred to in section 43(1)(a) – forthwith cause the appellant to be registered;
- (b) in a matter referred to in section 43(1)(b) – forthwith cause the name of the appellant to be restored to the Register and return his certificate of registration to him;
- (c) in a matter referred to in section 43(1)(c) – cause a record of the decision to be entered in the prescribed register; and
- (d) in a matter referred to in section 43(1)(d) – forthwith remove the suspension and return the appellant's certificate of registration to him,

and do such other things as are necessary to give effect to the decision or the order of the Tribunal.

**46 Decision of Tribunal final**

The decision of the Tribunal in an appeal under this Part is final and shall not be challenged in a court by prerogative writ or otherwise.

**Part VI Practice of land boundary surveying****47 Board may give directions**

- (1) The Board may give directions with respect to the practice to be followed by licensed surveyors in making land boundary surveys and preparing plans showing the results of such surveys.
- (2) Directions given under subsection (1) shall:
  - (a) be notified in the *Gazette*; and
  - (b) take effect on the date on which they are notified or, if another date being a date after the first-mentioned date is specified in the direction, on the date so specified.
- (3) A notice referred to in subsection (2)(a) shall indicate the place where copies of the directions to which it relates may be purchased or otherwise obtained.

**48 Unauthorized surveys etc.**

- (1) A person other than a licensed surveyor or a person employed under the supervision of a licensed surveyor shall not, for fee or reward, survey land boundaries in the Territory.
- (2) Where, by an Act or other law in force in the Territory, provision is made requiring a certificate or other document to be made or given by a licensed surveyor, a person other than a licensed surveyor shall not give or purport to give such a certificate or document.
- (3) A person other than a licensed surveyor shall not take, or use, either alone or in combination with any other words or letters:
  - (a) the title of "licensed surveyor"; or
  - (b) a name, title, addition or description (including initials or letters placed after his name) indicating or implying that he is a licensed surveyor or that he is authorized under this Act to survey land boundaries in the Territory.

Penalty for an offence against this section: \$1,000.

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## **Part VII                      Survey plans**

### **49                      Submitting and approving of plans**

- (1) A licensed surveyor shall cause to be submitted to the Surveyor-General in the prescribed manner all plans of land boundary surveys prepared by him (other than plans of survey required under the *Real Property (Unit Titles) Act* to be submitted to the Registrar-General) which are or may be required in relation to the legal title to, or legal rights in or obligations in respect of, land and his field notes from which those plans were prepared.
- (2) A plan submitted under subsection (1) to the Surveyor-General shall be in the prescribed form.
- (3) Where a plan submitted under subsection (1) is found to be correct, the Surveyor-General shall approve it.
- (4) A plan approved under subsection (3), or a copy certified by the Surveyor-General to be a true copy of the plan, shall be accepted as correct in all questions relating to the boundaries delineated in the plan.

### **50                      Plan to be approved by Surveyor-General**

A survey shall not be accepted or adopted by the Territory unless a plan of the survey has been approved under section 49(3) by the Surveyor-General.

### **51                      Surveyor to correct survey at own expense**

- (1) The Surveyor-General may, by notice in writing, require a licensed surveyor to correct at his own expense, within the time specified in the notice, an error or omission made by him in a survey.
- (2) Where a licensed surveyor fails within the time specified in a notice under subsection (1) to correct an error or omission to which the notice relates, the Surveyor-General may instruct any other licensed surveyor to make the correction and the costs incurred by the Surveyor-General in having the correction made is a debt due and payable to the Territory by the licensed surveyor who made the error or omission.
- (3) Notwithstanding subsections (1) and (2), the Surveyor-General may, without notice to the licensed surveyor who made the error or omission, instruct a licensed surveyor to make the correction and the costs incurred shall be borne by the Territory.

**Part VIII                      Miscellaneous****52                      Legal assistance**

The Attorney-General may appoint a legal practitioner to assist the Board at an inquiry under section 34 or in any matters before the Tribunal.

**53                      Power to summon witnesses**

The Chairman or Chairman of the Tribunal may, by writing under his hand, summon a person to attend before the Board or the Tribunal, as the case may be, at a time and place specified in the summons and then and there to give evidence and produce such books, documents or writings in his custody or control as he is required by the summons to produce.

**54                      Power to examine on oath**

A member of the Board or the Tribunal may administer an oath to a person appearing as a witness before the Board or the Tribunal, as the case may be, whether the witness has been summoned or appears without being summoned, and the witness may be examined on oath.

**55                      Affirmation in lieu of oath**

Where a witness to be examined before the Board or the Tribunal conscientiously objects to taking an oath, he may make an affirmation that he conscientiously objects to taking an oath, and that he will state the truth, the whole truth and nothing but the truth, in answering all questions that may be asked of him.

**56                      Failure to attend or produce documents**

- (1) A person served with a summons to attend before the Board or the Tribunal shall not refuse or fail, without reasonable excuse, to attend in accordance with the summons or to produce books, documents or writings in his custody or control that he is required by the summons to produce.

Penalty:            \$500.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the book, document or writing to which the summons relates was not relevant to the matter the subject of the proceedings of the Board or the Tribunal, as the case may be.



**57 Refusal to be sworn or give evidence**

- (1) A person appearing as a witness before the Board or the Tribunal shall not refuse to be sworn or to answer a question relevant to the proceedings put to him by a member of the Board or the Tribunal.

Penalty: \$500.

- (2) A statement or disclosure made before the Board or the Tribunal by a witness is not, except in an appeal under Part V to the Tribunal, in the case of a statement or disclosure made before the Board or in proceedings for giving false testimony before the Board or the Tribunal, admissible in evidence against him in civil or criminal proceedings in a court.

**58 Protection of witnesses**

A witness before the Board or the Tribunal has the same protection as a witness in a matter before the Supreme Court.

**59 Fees and expenses to witnesses**

- (1) A person who attends for the purpose of giving evidence before the Board or the Tribunal is entitled to receive such fees and travelling expenses in accordance with the scale in the High Court Rules as the Chairman or Chairman of the Tribunal, as the case may be, determines.
- (2) Fees and expenses payable under subsection (1) are payable:
- (a) if the person attended before the Board or the Tribunal, whether on summons or not, by reason of a request by a person other than the Chairman or the Chairman of the Tribunal or an officer of the Department – by the person at whose request the first-mentioned person attended; or
  - (b) in any other case – by the Territory.

**60 Board may inspect books, &c.**

The Board may inspect books, documents or writings before it and may retain them for such reasonable period as it thinks fit and may make copies of such portions of them as are relevant to a matter before the Board.

**61 Power of entry upon land, &c.**

- (1) Notwithstanding anything contained in any other Act, a licensed surveyor and such assistants as he considers necessary may, at all reasonable times, after giving notice of his intention so to do, enter

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upon land, whether the land is the land to be surveyed or other land, for the purpose of making a survey and may, for that purpose, open a fence, place a survey mark on the land and enter a building on the land to determine the position of a wall or to define a boundary.

- (2) In addition to the powers conferred by subsection (1), a licensed surveyor and his assistants may, with as little damage as possible, trim, lop or cut down trees or bushes that may obstruct a survey.
- (3) A person shall not, without reasonable cause, hinder or obstruct a licensed surveyor or his assistants in exercising the powers conferred by this section.

Penalty: \$200.

- (4) A licensed surveyor shall be liable to pay compensation to the owner of land entered for damage caused in the exercise of the powers conferred by this section.
- (5) Where, under subsection (4), the damage so caused is necessary for the purposes of the survey, the person who engaged or employed the licensed surveyor shall reimburse the licensed surveyor the amount he is required to pay as compensation for the damage.
- (6) A notice of intention to enter land under this section may be given:
  - (a) in writing or orally to the owner personally;
  - (b) in writing by posting it by prepaid letter addressed to the owner at his usual or last-known place of residence or business; or
  - (c) in writing to a person apparently living or employed at that place of residence or business and who has apparently attained the age of 16 years.
- (7) In this section, **owner** includes:
  - (a) in the case of land held under lease from the Territory – the person who is the lessee of the land;
  - (b) in the case of land which is held in fee simple – the person in whom the fee simple is vested or a lessee or tenant of the land; and
  - (c) in the case of land occupied under a tenancy from the Territory – the person who occupies the land.

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**62       Destruction of survey marks**

- (1) A person shall not, without lawful authority, destroy, obliterate, remove, injure or deface a survey mark.

Penalty:       \$1,000.

- (2) Where a person is found guilty of an offence against subsection (1), the court may, in addition to any penalty imposed under that subsection, order him to pay the costs of re-establishing the survey mark so destroyed, obliterated, removed, injured or defaced.

**63       Evidence of certified map, &c.**

In any legal proceedings under a law in force in the Territory a map, plan or copy of a map or plan relating to the Territory or a part of the Territory or a certificate relating to a location in the Territory purporting to be certified by the Surveyor-General as correct shall be accepted as evidence of the matters to which they relate without the production of original records and without the personal attendance of the Surveyor-General or proof of his signature.

**64       Judicial notice**

Judicial notice shall be taken of the signature of the Chairman or Deputy Chairman appearing on a certificate issued under this Act or the Regulations by the Board and of the fact that the person by whom the certificate purports to have been signed was, at the time the certificate was signed, the Chairman or Deputy Chairman.

**65       Service of summons or notice**

The service on a person by the Board or the Tribunal of a summons or notice under this Act shall be deemed to have been duly effected if the summons or notice is:

- (a) delivered to the person personally;
- (b) posted by prepaid letter addressed to him at his place of residence, or at his professional address or one of his professional addresses, last known to the Chairman or Chairman of the Tribunal, as the case may be; or
- (c) delivered to his place of residence or left at his professional address with a person apparently living or employed at that place and who has apparently attained the age of 16 years.

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**66 Regulations**

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, providing for and in relation to:

- (a) the fees, if any, payable in respect of an application, registration, certificate or other proceeding, act or thing provided for or required under this Act or the Regulations;
- (b) the manner of registering bodies corporate as licensed surveyors and the conditions subject to which such bodies corporate may be registered;
- (c) the form, manner of submitting and number of copies of plans of land boundary surveys required to be submitted to the Surveyor-General;
- (d) the certification of, and manner of certifying, plans of survey;
- (e) the registration of and manner of registering graduate surveyors and the qualifications and experience of such graduates;
- (f) particulars relating to a licensed surveyor which may be entered in the Register; and
- (g) the imposition of penalties, not exceeding a fine of \$100, for offences against the Regulations.

**67 Savings and transitional**

- (1) Regulations made under the repealed Act and in force immediately before the commencement of this Act shall, except to the extent that they are inconsistent with this Act, continue in force as if they had been made under this Act and as if every reference in those Regulations to a provision repealed by this Act were a reference to a corresponding provision of this Act.
- (2) The Regulations continued in force by subsection (1) may be repealed or amended by regulations made under this Act.
- (3) The Board shall, as soon as practicable after the commencement of this Act, enter in the Register the particulars referred to in section 24(1) in respect of each person whose name was, immediately before that commencement, entered in the Register kept under the repealed Act.

- (4) Notwithstanding section 28, a person whose name was, immediately before the commencement of this Act, entered in the Register kept under the repealed Act shall not be required to pay the first annual registration fee after that commencement that, but for this subsection, would be payable by him under section 28(1) and the Board shall not, under section 28(2), remove his name from the Register as a result of his not paying that fee.

**Schedule      Ordinances repealed**

section 3

*Licensed Surveyors Ordinance 1933 (No. 6 of 1933)*

*Licensed Surveyors Ordinance 1937 (No. 6 of 1937)*

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## ENDNOTES

### 1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
<i>Gaz</i> = <i>Gazette</i>	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

### 2 LIST OF LEGISLATION

***Licensed Surveyors Act 1983 (Act No. 49, 1983)***

Assent date	12 October 1983
Commenced	1 January 1984 ( <i>Gaz</i> S41, 22 December 1983)

***Statute Law Revision Act (No. 2) 1987 (Act No. 59, 1987)***

Assent date	31 December 1987
Commenced	31 December 1987

***Financial Management (Consequential Amendments) Act 1995 (Act No. 5, 1995)***

Assent date	21 March 1995
Commenced	1 April 1995 (s 2, s 2 <i>Financial Management 1995</i> (Act No. 4, 1995) and <i>Gaz</i> S13, 31 March 1995)

***Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)***

Assent date	19 April 1996
Commenced	1 July 1996 (s 2, s 2 <i>Sentencing Act 1995</i> (Act No. 39, 1995) and <i>Gaz</i> S15, 13 June 1996)

### 3 LIST OF AMENDMENTS

s 21	sub No. 5, 1995, s 19
s 33	amd No. 17, 1996, s 6
s 49	amd No. 59, 1987, s 5
s 62	amd No. 17, 1996, s 6