



Australian Capital Territory

Surveyors Act 2007

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Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Surveyors Act 2007* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 2 February 2009. It also includes any amendment, repeal or expiry affecting the republished law to 2 February 2009.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



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Australian Capital Territory

Surveyors Act 2007

An Act to regulate the practice of land surveying, and for other purposes

Part 1 Preliminary

1 Name of Act

This Act is the *Surveyors Act 2007*.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*advisory committee member*—see section 64.' means that the term 'advisory committee member' is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Registration of surveyors

Division 2.1 Registration

Note about application of the Mutual Recognition Act 1992 (Cwlth) and the Trans-Tasman Mutual Recognition Act 1997 (Cwlth) (the Commonwealth Acts)

The Commonwealth Acts allow people registered in certain occupations in a State, the ACT, Northern Territory or New Zealand (a *local jurisdiction*) to carry on the occupations in another local jurisdiction and provide another way of applying for registration in the ACT or another local jurisdiction. Because of the Self-Government Act, s 28, the requirements for registration under this Act cannot validly require anything of people being registered in accordance with the Commonwealth Acts that would be inconsistent with those Acts. Accordingly, provisions of this part, such as the requirements for applications, do not apply to the registration of people in accordance with the Commonwealth Acts. Also, the Commonwealth Acts set out when conditions may be placed on people registered in accordance with those Acts. For more information, see the Commonwealth Acts.

6 Application for registration

- (1) A person may apply to the chief surveyor for registration as a surveyor.

Note 1 If a form is approved under s 81 for the application, the form must be used.

Note 2 A fee may be determined under s 80 for this provision.

- (2) The chief surveyor may, in writing, require the applicant to give the chief surveyor additional information in writing or documents that the chief surveyor reasonably needs to decide the application.
- (3) If the applicant does not comply with a requirement under subsection (2), the chief surveyor may refuse to consider the application further.

7 Eligibility for registration

- (1) A person is eligible to be registered as a surveyor if—
- (a) the person has previously been registered in the ACT; and
 - (b) the chief surveyor is satisfied that the person has a working knowledge of current surveying practices and any practice directions; and
 - (c) the person's registration was not cancelled other than in accordance with a request by the surveyor.

Note Under the *Mutual Recognition Act 1992* (Cwlth) and the *Trans-Tasman Mutual Recognition Act 1997* (Cwlth) the chief surveyor will also register as surveyors people who are registered, licensed or otherwise authorised to carry out surveys in a State, the Northern Territory or New Zealand, if the surveys authorised to be carried out are substantially the same.

- (2) However, a person who would be eligible under subsection (1) but for the cancellation of the person's registration, is eligible to be registered as a surveyor if the chief surveyor is satisfied, after considering the reason for the cancellation and anything relevant that the person has done since the cancellation, that the person should be registered.

Examples

- 1 the cancellation was because of a failure to pay a registration fee and the fee is paid
- 2 the cancellation was because the surveyor carried out a survey that was inaccurate because the surveyor lacked knowledge of current surveying practices, but since cancellation, the surveyor has acquired sufficient knowledge of current surveying practices

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

8 Decision on registration application

- (1) On application by a person for registration as a surveyor, the chief surveyor must—
 - (a) if the person is eligible for registration—register the person; or
 - (b) if the person is not eligible for registration—refuse to register the person.
- (2) If the chief surveyor registers the person, the chief surveyor must—
 - (a) give the person a unique identifying number (a *registration number*); and
 - (b) give the person a certificate (a *registration certificate*), signed by the chief surveyor, that states—
 - (i) the person's name; and
 - (ii) the date of registration; and
 - (iii) the person's registration number.

9 Registration condition

- (1) It is a condition of a surveyor's registration that the surveyor undertakes continuing professional development in accordance with any guidelines under subsection (2).
- (2) The chief surveyor may make guidelines about continuing professional development for surveyors.
- (3) However, the chief surveyor must consult the advisory committee about a proposed guideline before making the guideline.
- (4) A guideline is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

10 When does registration end?

A person's registration ends—

- (a) if the registration is cancelled under section 22 (Cancellation after s 20 suspension)—when the cancellation takes effect under section 22 (2); or
- (b) if the registration is cancelled under section 23 (Cancellation of registration for incapacity)—when the cancellation takes effect under section 23 (4); or
- (c) if the registration is cancelled by the ACAT—when the cancellation takes effect; or
- (d) if the registration is cancelled under section 41 (Voluntary cancellation of registration)—when the chief surveyor cancels the registration; or
- (e) if the person dies.

Note If a person's registration is suspended or cancelled in another State, the person's registration in the ACT may be affected in the same way (see *Mutual Recognition Act 1992* (Cwlth), s 33).

Division 2.2 Surveyors register

11 Keeping surveyors register

- (1) The chief surveyor must ensure a surveyors register is kept in accordance with this Act.
- (2) The surveyors register—
 - (a) may be kept in any form, including electronically; and
 - (b) must be made available to the public.
- (3) However, subsection (2) (b) does not apply to details in the surveyor's register about—
 - (a) a surveyor's date of birth; and

- (b) if a surveyor's registration has been suspended—the grounds for suspension; and
 - (c) anything else prescribed by regulation.
- (4) Any mistake, error or omission in the surveyors register may be corrected.

12 Details to be entered in surveyors register

- (1) The following details must be entered in the surveyors register in relation to a surveyor:
- (a) the surveyor's name;
 - (b) the address of each place (a *registered business address*) where the surveyor carries on the practice of surveying or, if the surveyor does not have a registered business address, the surveyor's home address;
 - (c) the surveyor's date of birth;
 - (d) the surveyor's registration number;
 - (e) the date of registration;
 - (f) if the surveyor's registration has been suspended—
 - (i) the grounds for suspension; and
 - (ii) the period of suspension;
 - (g) any other details prescribed by regulation.
- (2) The surveyors register may contain other details.

13 Register information may be shared

Information in the register, including information that is not available to the public, may be given to a local registering authority to assist in the regulation of surveyors in the local jurisdiction.

14 Changes to surveyors register

- (1) If a person's registration ends, details of the person's registration must be removed from the surveyors register.

Note For when a person's registration ends, see s 10.

- (2) If a surveyor tells the chief surveyor about a change of address under section 15, the change must be entered in the surveyors register.
- (3) To remove any doubt, nothing in this section prevents the keeping of a record of—
- (a) registration details removed from the register under subsection (1); or
 - (b) a previous address under subsection (2).

15 Surveyors to notify change of address

- (1) A surveyor commits an offence if—
- (a) the surveyor has a registered business address; and
 - (b) any of the following changes happen:
 - (i) the address changes;
 - (ii) the address stops being a business address of the surveyor; and
 - (c) the surveyor fails to tell the chief surveyor, in writing, about the change as soon as practicable but not later than 21 days after the day the change happens.

Maximum penalty: 5 penalty units.

- (2) A surveyor commits an offence if—
- (a) the surveyor does not have a registered business address; and
 - (b) either of the following changes happen:
 - (i) the surveyor's home address changes;
 - (ii) the surveyor gets a business address; and
 - (c) the surveyor fails to tell the chief surveyor, in writing, about the change as soon as practicable but not later than 21 days after the day the change happens.

Maximum penalty: 5 penalty units.

- (3) An offence against this section is a strict liability offence.

Part 3 **Regulatory action**

Division 3.1 **Continuing registration**

16 **Meaning of *continuation notice*—div 3.1**

In this division:

continuation notice—see section 19.

17 **Continuation notice fee**

- (1) This section applies if a fee is determined under section 80 for giving a continuation notice.
- (2) To remove any doubt, a continuation notice is taken not to have been given unless the fee is paid.

18 **Continuation notice reminders**

- (1) Before the beginning of a financial year, the chief surveyor may send a notice (a *continuation notice reminder*) to a surveyor.
- (2) A continuation notice reminder must—
 - (a) be addressed to the surveyor; and
 - (b) include information to the following effect:
 - (i) that the surveyor must give the chief surveyor a continuation notice before the beginning of the financial year if the surveyor intends to continue to be registered in the financial year;
 - (ii) that the surveyor's registration will be automatically suspended on 1 September in the financial year if the surveyor does not give the chief surveyor a continuation notice for the financial year by 31 August in the financial year;

- (iii) that the surveyor's registration will be automatically cancelled on the day after the end of the financial year if the surveyor does not give the chief surveyor a continuation notice for the financial year before the end of the financial year; and
- (c) set out any fee determined for giving a continuation notice, including any higher fee for—
 - (i) late payment before 1 September; and
 - (ii) late payment on or after 1 September.
- (3) If the chief surveyor fails to send a continuation notice reminder for a surveyor's registration, or the notice is not received by the surveyor, the failure or nonreceipt does not affect—
 - (a) any suspension or cancellation of the registration; or
 - (b) the obligation of the surveyor to give a continuation notice for a financial year if the surveyor intends to continue to be registered in the financial year.

19 Annual continuation notice for registration

Before the beginning of a financial year, a surveyor must give the chief surveyor written notice (a *continuation notice*) that the surveyor intends to continue to be registered in the financial year.

Note 1 If a form is approved under s 81 for this provision, the form must be used.

Note 2 A fee may be determined under s 80 for this provision.

Note 3 For how documents may be served, see the Legislation Act, pt 19.5.

20 No continuation notice by 31 August

- (1) This section applies if a surveyor has not given the chief surveyor a continuation notice for a financial year by 31 August in the financial year.
- (2) The surveyor's registration is automatically suspended on 1 September in the financial year.

21 Lifting s 20 suspension

- (1) This section applies if a surveyor's registration is suspended under section 20 in a financial year.
- (2) If, before the financial year ends, the surveyor gives the chief surveyor a continuation notice for the financial year, the suspension ends.
- (3) The suspension ends when the surveyor gives the chief surveyor the notice.

Note 1 If a form is approved under s 81 for this provision, the form must be used.

Note 2 A fee may be determined under s 80 for this provision.

Note 3 For when documents are taken to be served, see the Legislation Act, s 250.

22 Cancellation after s 20 suspension

- (1) This section applies if a surveyor does not give the chief surveyor a continuation notice for a financial year before the end of the financial year.
- (2) The surveyor's registration is automatically cancelled on the day after the end of the financial year.

Division 3.2 Cancellation of registration for incapacity

23 Cancellation of registration for incapacity

- (1) This section applies if the chief surveyor believes on reasonable grounds that—
 - (a) a surveyor has become mentally or physically incapacitated; and
 - (b) the incapacity substantially affects the surveyor's ability to practise surveying.
- (2) The chief surveyor may cancel the surveyor's registration.
- (3) However, the chief surveyor must not cancel the surveyor's registration unless—
 - (a) the chief surveyor—
 - (i) gives the surveyor written notice under section 24 of the chief surveyor's intention to cancel the registration; and
 - (ii) takes into consideration any response received from the surveyor in accordance with the notice; and
 - (b) the chief surveyor is satisfied that—
 - (i) the surveyor is mentally or physically incapacitated; and
 - (ii) the incapacity substantially affects the surveyor's ability to practise surveying; and
 - (c) at least 15 business days have passed since the day the notice was given under section 24.

- (4) Cancellation of a person's registration under this section takes effect—
- (a) when written notice of the cancellation is given to the person; or
 - (b) if the written notice of the cancellation states a later date—on the stated date.

24 Notice of intention to cancel registration for incapacity

A notice under this section given to a surveyor must—

- (a) state that the chief surveyor intends to cancel the surveyor's registration; and
- (b) explain why the chief surveyor intends to cancel the registration; and
- (c) state that the surveyor may, within 12 business days after the day the surveyor is given the notice, give a written response to the chief surveyor about the matters in the notice.

Note For how documents may be served, see the Legislation Act, pt 19.5.

Division 3.3 Occupational discipline—surveyors

25 Meaning of *surveyor*—div 3.3

In this division:

surveyor—

- (a) in relation to an act or omission, means—
 - (i) a registered person; or
 - (ii) a person who was registered at the time of the act or omission; and
- (b) in any other case—includes a person whose registration has been cancelled.

26 Grounds for occupational discipline

- (1) Each of the following is a *ground for occupational discipline* in relation to a surveyor:
- (a) the surveyor gave information in relation to the application for registration that was false or misleading in a material particular;
 - (b) the surveyor has certified to the accuracy of a survey knowing it to be inaccurate;
 - (c) the surveyor has, deliberately or through carelessness or incompetence, carried out a survey that is so inaccurate or defective as to be unreliable;
 - (d) a survey has been carried out, or a plan prepared, by or under the supervision of the surveyor, that contravenes section 58 (Surveys and plans to comply with practice directions);
 - (e) the surveyor has contravened, or is contravening, this Act, whether or not the surveyor has been convicted of an offence for the contravention;
- Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).
- (f) both of the following apply:
 - (i) the surveyor has been convicted or found guilty in Australia of an offence involving fraud, dishonesty or violence that is punishable by imprisonment for 1 year or longer;
 - (ii) the chief surveyor is satisfied that committing the offence affects the surveyor's suitability to practise surveying;
 - (g) both of the following apply:
 - (i) the surveyor has been convicted or found guilty outside Australia of an offence involving fraud, dishonesty or

violence that, if it had been committed in the ACT, would be punishable by imprisonment for 1 year or longer;

- (ii) the chief surveyor is satisfied that committing the offence affects the surveyor's suitability to practise surveying.
- (2) A ground for occupational discipline applies to a surveyor who is no longer registered if the ground applied to the surveyor while registered.

27 Chief surveyor may apply to ACAT for occupational discipline

If the chief surveyor believes on reasonable grounds that a ground for occupational discipline exists in relation to a surveyor, the chief surveyor may apply to the ACAT for an occupational discipline order in relation to the surveyor.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 66 sets out occupational discipline orders the ACAT may make.

28 Giving local registering authorities information about cancelling or suspending registration

- (1) This section applies if the ACAT cancels or suspends a surveyor's registration or disqualifies a surveyor from applying for registration.
- (2) The chief surveyor must give each local registering authority the following information about the surveyor:
 - (a) the name and any other identifying details of the surveyor;
 - (b) a short description of the ground for occupational discipline on which the occupational discipline order was based;
 - (c) whether the registration has been cancelled or suspended or the surveyor disqualified;
 - (d) if the registration has been suspended—the period of suspension;

- (e) if the surveyor has been disqualified—the period of disqualification.
- (3) This section does not limit any other requirement or power, under this Act or another law in force in the ACT, to give information to a local registering authority.

Division 3.4 Other regulatory action

41 Voluntary cancellation of registration

The chief surveyor must cancel a surveyor's registration if—

- (a) the surveyor asks, in writing, for the cancellation; and
- (b) the surveyor gives the surveyor's registration certificate to the chief surveyor or satisfies the chief surveyor that the certificate has been lost, stolen or destroyed; and
- (c) the chief surveyor has no ground for believing that the surveyor has contravened, or is contravening, this Act.

42 Inquiries about registered addresses

- (1) The chief surveyor may, by written notice, ask a surveyor—
 - (a) if the surveyor's address in the surveyors register is correct; and
 - (b) for a surveyor without a registered business address—if the surveyor has a business address.
- (2) A notice under subsection (1) must state the consequences under subsection (3) of failing to respond to the notice.
- (3) If the chief surveyor does not receive an answer to a notice sent to a surveyor under subsection (1) by the end of the period of 2 months after the day the notice is sent to the surveyor, the chief surveyor may cancel the surveyor's registration.

43 Return of registration certificate on cancellation and suspension

- (1) This section applies to a person whose registration is suspended or cancelled.
- (2) The chief surveyor may, by written notice, require the person to return to the chief surveyor, as soon as practicable but not later than 14 days after the day the person receives the notice, the person's registration certificate.
- (3) A person must comply with a requirement made of the person under subsection (2).

Maximum penalty: 5 penalty units.

- (4) An offence against this section is a strict liability offence.

Part 4 The practice of surveying

Division 4.1 Interpretation—pt 4

44 Definitions—pt 4

In this part:

survey mark includes a beacon, concrete block, chisel mark, galvanised iron pipe, lockspit, metal pin or plaque, drill hole and wings, peg or stone cairn, placed on land for a survey.

surveyor does not include a person whose registration is suspended.

Division 4.2 Power of entry and damage

45 Power of entry generally

- (1) For the purpose of carrying out a survey, a surveyor or someone assisting a surveyor (an *assistant*) may at any reasonable time, in accordance with this section—
 - (a) enter land, including land that is not to be surveyed; and
 - (b) open a door, gate or fence; and
 - (c) place a survey mark on the ground of land entered; and
 - (d) make a hole in the ground to uncover or expose a survey mark; and
 - (e) enter a building; and
 - (f) trim a tree or bush obstructing a survey.

- (2) A surveyor or assistant may enter land that is not owned by the person for whom the survey is being carried out only if, before entering the land, the surveyor gives the owner of the land reasonable notice, whether oral or written, of the surveyor's or assistant's intention to enter the land.
- (3) A surveyor or assistant may enter a building or part of a building that is not occupied by the person for whom the survey is being carried out only—
- (a) if the occupier has consented, in writing, to the entry; or
 - (b) in accordance with an order of the Magistrates Court.
- (4) To remove any doubt, an assistant may only exercise a function under this section in relation to land or a building—
- (a) if the assistant is with the surveyor; or
 - (b) if the assistant is not with the surveyor—if the owner or occupier has consented, in writing, to the exercise of the function.
- (5) In this section:
- occupier**, of a building, includes—
- (a) a person believed on reasonable grounds to be an occupier of the building; and
 - (b) a person apparently in charge of the building.
- owner**, of land, includes the lessee or occupier of the land.

46 Application for order to enter building etc

- (1) A surveyor or person for whom a survey is being, or is to be, carried out, may apply to the Magistrates Court for an order under section 45 (3) (b) allowing entry to a building or part of a building.
- (2) The Magistrates Court must make the order if satisfied that the survey can not reasonably be carried out unless the surveyor, or person assisting the surveyor, enters the building or part of the building.
- (3) An order under this section may be subject to a condition.

47 Damage by surveyors and assistants—generally

- (1) This section applies if someone exercises or purports to exercise a function under section 45.
- (2) The person must take reasonable steps to ensure that the person causes as little inconvenience, detriment and damage as is practicable when exercising or purporting to exercise the function.
- (3) If the person damages anything when exercising or purporting to exercise the function, the person must immediately give written notice of the details of the damage to someone the person believes on reasonable grounds is the owner of the thing.
- (4) However, if it is not practicable to comply with subsection (3), the person must leave the notice, in a reasonably secure way and in a conspicuous position, at the place where the damage happened.
- (5) The person is liable to pay compensation for the damage to the owner of the thing.

48 Damage by surveyors and assistants—compensation

- (1) Compensation mentioned in section 47 (5) may be claimed and ordered in a proceeding for compensation brought in a court of competent jurisdiction.
- (2) A court may order the payment of reasonable compensation for the damage only if satisfied it is just to make the order in the circumstances of the particular case.
- (3) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.
- (4) The amount of compensation that a person is ordered to pay that is reasonably and necessarily caused in carrying out the survey is an amount owing to the person by the person for whom the survey is being, or was, carried out.

Note An amount owing under a law may be recovered as a debt in a court of competent jurisdiction (see Legislation Act, s 177).

Division 4.3 Offences

49 Only surveyors to carry out surveys

A person commits an offence if—

- (a) the person is not a surveyor; and
- (b) the person carries out a survey; and
- (c) the person is reckless about whether the person is carrying out a survey.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

50 **Certificates to be given only by surveyors**

- (1) A person commits an offence if—
- (a) the person is not a surveyor; and
 - (b) the person gives, or purports to give, a certificate that, under a territory law, is required to be given by a surveyor.

Maximum penalty: 30 penalty units.

- (2) An offence against this section is a strict liability offence.

51 **Pretending to be surveyor**

A person commits an offence if—

- (a) the person is not a surveyor; and
- (b) the person—
 - (i) pretends to be qualified to carry out a survey; or
 - (ii) otherwise pretends to be a surveyor.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Example—par (b)

using ‘registered surveyor’ on letterhead or in an advertisement

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

52 **Hindering and obstructing surveyor and assistant**

A person commits an offence if—

- (a) the person knows someone is—
 - (i) a surveyor; or
 - (ii) assisting a surveyor (an *assistant*); and

- (b) the person hinders or obstructs the surveyor or assistant in the exercise of the surveyor's or assistant's powers under section 45 (1) (Power of entry generally).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

53 Destruction of, and damage to, survey marks

- (1) A person commits an offence if—
 - (a) the person interferes with, changes or removes a mark; and
 - (b) the mark is a survey mark; and
 - (c) the person is reckless about whether the mark is a survey mark.

Maximum penalty: 20 penalty units.

- (2) However, subsection (1) does not apply to a person—
 - (a) who removes a survey mark if the mark is removed to put up a fence or do construction work on or near the boundary of a property; or
 - (b) if the person otherwise has a reasonable excuse.

Example—s (2) (b)

A person has a reasonable excuse if the removal of a survey mark has been authorised in writing by the chief surveyor.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

54 Surveyors to give evidence of field procedures to chief surveyor

- (1) The chief surveyor may, in writing, require a surveyor to give the chief surveyor stated evidence of field procedures that the chief surveyor reasonably needs to exercise the chief surveyor's functions under this Act or another territory law.

Note Territory laws that give functions to the chief surveyor include the *Districts Act 2002*, s 7 and s 17 and the *Land Titles Act 1925*, s 64.

- (2) A surveyor must comply with a requirement made of the surveyor under subsection (1).

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant took reasonable steps to comply with subsection (2).
- (5) The chief surveyor may keep material produced under this section for the time reasonably necessary to make a copy of it.
- (6) In this section:

field procedure means any field procedure that a surveyor is required to keep under a practice direction.

Division 4.4 Chief surveyor practice directions

55 Chief surveyor practice directions

- (1) The chief surveyor may issue directions in relation to the practice of surveying, including, for example—
 - (a) the preparation of plans showing the results of surveys; and
 - (b) the preparation and keeping of field procedures relating to surveys; and

- (c) the supervision of people assisting surveyors in carrying out or preparing surveys; and
- (d) the nature and position of survey marks; and
- (e) the achievement of accuracy in surveying; and
- (f) the provision of information by surveyors for inclusion in the digital cadastral database.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) Before issuing a practice direction, the chief surveyor must consult the advisory committee about the proposed direction.

- (3) A practice direction is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (4) In this section:

digital cadastral database—see the *Districts Act 2002*, section 17.

56 Exemptions from practice directions

- (1) The chief surveyor may, in writing, exempt a surveyor from a stated requirement of a practice direction if satisfied on reasonable grounds that it is not practicable for the surveyor to comply with the direction.
- (2) An exemption may be subject to any condition decided by the chief surveyor.
- (3) An exemption that is subject to a condition does not have effect if the condition is not complied with.

57 Surveyors to comply with practice directions

A surveyor must comply with each practice direction that applies to the surveyor.

58 Surveys and plans to comply with practice directions

A surveyor must ensure that a survey carried out, or a plan prepared, by or under the supervision of the surveyor—

- (a) is in accordance with each practice direction that applies in relation to the survey or plan; and
- (b) states any exemption under section 56(1) for a practice direction that applies in relation to the survey or plan; and
- (c) states the conditions (if any) the exemption is subject to.

Part 5 Chief surveyor

59 Appointment of chief surveyor

- (1) The chief executive must appoint a public servant as the Chief Surveyor.
- (2) However, the chief executive must not appoint a person under subsection (1) unless satisfied that the person is, or is eligible to be, registered as a surveyor.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

60 Functions of chief surveyor

- (1) The chief surveyor has the following functions:
 - (a) to investigate trends in surveying and to ensure the practice of surveying is current in the ACT and aligned with best practice;
 - (b) to consult with entities (including organisations that represent surveyors in the ACT) on major policy issues affecting the practice of surveying;
 - (c) to liaise and enter into arrangements on behalf of the Territory with any entity that, in Australia or elsewhere, is concerned with surveyors and the practice of surveying, for—
 - (i) developing or reviewing standards for the practice of surveying; and
 - (ii) reviewing the qualifications and professional development of surveyors; and

(iii) the exercise of the chief surveyor's functions under this Act or another territory law.

(2) The chief surveyor has any other function given to the chief surveyor under this Act or another territory law.

Note 1 Territory laws that give functions to the chief surveyor include the *Districts Act 2002*, s 7 and s 17 and the *Land Titles Act 1925*, s 64.

Note 2 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act*, s 104).

Note 3 A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see *Legislation Act*, s 196 and dict, pt 1, def *entity*).

61 Delegation by chief surveyor

The chief surveyor may delegate the chief surveyor's functions under this Act or another territory law to a public servant who is a surveyor.

Note For the making of delegations and the exercise of delegated functions, see the *Legislation Act*, pt 19.4.

Part 6 Advisory committee

62 Establishment of advisory committee

The survey practice advisory committee is established.

63 Advisory committee functions

- (1) The advisory committee has the following functions of advising the chief surveyor:
 - (a) in relation to anything about the practice of surveying if asked by the chief surveyor;
 - (b) whether a new practice direction is needed or a direction needs revising;
 - (c) about any proposed guidelines for continuing professional development or if a guideline needs revising.
- (2) The advisory committee has any other function given to it under this Act.

Note 1 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

Note 2 A provision of a law that gives an entity a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

64 Advisory committee membership

- (1) The advisory committee must have at least 5, but not more than 7, members (each of whom is an *advisory committee member*).

- (2) The advisory committee is made up of the following people:
- (a) the chief surveyor;
 - (b) at least 3 other surveyors, 2 of whom are professional entity representatives;
 - (c) at least 1 member who is not a surveyor.

Note Section 66 sets out how professional entity representatives are chosen for appointment under s 65.

- (3) To remove any doubt, in this section:
surveyor does not include a person whose registration is suspended.

65 Minister to appoint advisory committee members

- (1) The Minister must appoint the advisory committee members (other than the chief surveyor).

Note For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

- (2) The Legislation Act, division 19.3.3 (Appointments—Assembly consultation) does not apply to an appointment of an advisory committee member under this section.
- (3) The Minister must not appoint a professional entity representative for longer than 3 years.
- (4) The Minister must not reappoint a person as a professional entity representative if the person would be a professional entity representative for longer than 3 consecutive years.

66 Appointment of professional entity representatives

- (1) This section applies if, whether because of a vacancy or otherwise, the Minister must appoint 1 or 2 professional entity representatives to the advisory committee.

- (2) The Minister must ask a professional entity to nominate the prescribed number of potential representatives—
 - (a) that the entity is satisfied will adequately represent the views of the entity on the advisory committee; and
 - (b) who are surveyors.
- (3) The Minister must, under section 65, appoint 1 or 2 representatives from the people nominated.
- (4) In this section:

prescribed number, of potential representatives, means—

- (a) if the Minister must appoint 1 professional entity representative—2; or
- (b) if the Minister must appoint 2 professional entity representatives—3.

professional entity means an entity that the Minister is satisfied was established to represent the interests of surveyors in the ACT.

67 Disclosure of interests by advisory committee members

- (1) If an advisory committee member has a relevant interest in an issue being considered, or about to be considered, by the committee, the member must disclose the nature of the interest at a meeting of the committee as soon as practicable after the relevant facts come to the member's knowledge.
- (2) The disclosure must be recorded in the advisory committee's minutes and, unless the committee otherwise decides, the advisory committee member must not—
 - (a) be present when the committee considers the issue; or
 - (b) take part in a decision of the committee on the issue.

- (3) Any other advisory committee member who also has a relevant interest in the issue must not—
 - (a) be present when the committee considers whether to make a decision under subsection (2); or
 - (b) take part in the decision.
- (4) The advisory committee must, not later than 7 days after the end of each financial year, give the chief surveyor a statement that sets out the details of all disclosures under this section made during the financial year.
- (5) In this section:
relevant interest, in an issue, means a direct or indirect financial or other interest in the issue.

68 Advisory committee—chair

The chief surveyor is the chair of the advisory committee.

69 Advisory committee—general procedure

- (1) Meetings of the advisory committee are to be held when and where it decides.
- (2) However—
 - (a) the advisory committee must meet at least twice each year; and
 - (b) the chief surveyor may, by reasonable written notice given to the other advisory committee members, call a meeting.
- (3) The advisory committee may conduct its proceedings (including its meetings) as it considers appropriate.

70 Minimum number for advisory committee meetings

Business may be carried on at an advisory committee meeting only if at least 3 advisory committee members are present.

71 Voting at advisory committee meetings

At a meeting of the advisory committee, a question is decided by a majority of the votes of the advisory committee members present and voting.

72 Advisory committee to keep minutes

The advisory committee must keep minutes of its meetings.

73 Protection of advisory committee members

- (1) An advisory committee member is not personally liable for conduct engaged in honestly and not recklessly—
 - (a) in the exercise of a function under this Act; or
 - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act.
- (2) Any civil liability that would, apart from this section, attach to a person attaches instead to the Territory.
- (3) In this section:

advisory committee member includes anyone acting under the direction or authority of the advisory committee.

conduct means an act or an omission to do an act.

74 Ending appointment of advisory committee members

- (1) This section applies to an advisory committee member other than the chief surveyor.
- (2) The Minister must end the appointment of an advisory committee member if—
 - (a) the Minister becomes aware that the member—
 - (i) has failed to comply with section 67 (Disclosure of interests by advisory committee members) without reasonable excuse; or
 - (ii) has at any time been convicted, in Australia, of an offence punishable by imprisonment for 1 year or longer; or
 - (iii) has at any time been convicted, outside Australia, of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for 1 year or longer; or
 - (b) satisfied that the member is no longer qualified to be appointed to the member's position.
- (3) The Minister may end the appointment of an advisory committee member—
 - (a) if the member is absent from 3 consecutive meetings of the advisory committee other than on approved leave; or
 - (b) if the member contravenes a territory law; or
 - (c) for misbehaviour; or
 - (d) for physical or mental incapacity, if the incapacity substantially affects the exercise of the member's functions.

Note A person's appointment also ends if the person resigns (see Legislation Act, s 210).

Part 7 Notification and review of decisions

75 Meaning of *reviewable decision*—pt 7

In this part:

reviewable decision means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

76 Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

Note 1 The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

77 Applications for review

The following may apply to the ACAT for a review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

Part 8 Miscellaneous

78 Evidentiary certificates

- (1) The chief surveyor may give a signed certificate—
 - (a) stating that on a stated date or during a stated period a named person was or was not registered; and
 - (b) if the person was registered—including details of the person's registration.
- (2) A certificate under this section is evidence of the matters stated in it.
- (3) Unless the contrary is proved, a document that purports to be a certificate under this section is taken to be a certificate.

79 Secrecy

- (1) In this section:

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

divulge includes communicate.

person to whom this section applies means a person who—

- (a) is or has been—
 - (i) a member of the advisory committee; or
 - (ii) anyone acting under the direction or authority of the advisory committee; or
- (b) exercises, or has exercised, a function under this Act.

produce includes allow access to.

protected information means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise, or purported exercise, of a function under this Act by the person or someone else.

- (2) A person to whom this section applies commits an offence if—
- (a) the person—
 - (i) makes a record of protected information about someone else; and
 - (ii) is reckless about whether the information is protected information about someone else; or
 - (b) the person—
 - (i) does something that divulges protected information about someone else; and
 - (ii) is reckless about whether—
 - (A) the information is protected information about someone else; and
 - (B) doing the thing would result in the information being divulged to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsection (2) does not apply if the record is made, or the information is divulged—
- (a) under this Act or another territory law; or
 - (b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law; or
 - (c) in a court proceeding; or

- (d) to a person administering or enforcing a corresponding law of a local jurisdiction.

Note **Corresponding law**—see the dictionary.

- (4) Subsection (2) does not apply to the divulging of protected information about someone with the person's consent.

80 Determination of fees

- (1) The Minister may determine fees for this Act.

Note The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

81 Approved forms

- (1) The chief surveyor may approve forms for this Act.
- (2) If the chief surveyor approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

82 Regulation-making power

The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Schedule 1 Reviewable decisions

(see pt 7)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	8	refuse to register person	applicant for registration
2	23	cancel person's registration	person whose registration is cancelled
3	41	refuse to cancel surveyor's registration	surveyor
4	42 (3)	cancel person's registration	person whose registration is cancelled
5	56	refuse to give surveyor exemption	surveyor
6	56	give surveyor an exemption subject to condition	surveyor

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- appoint
- business day
- exercise
- found guilty
- function
- occupational discipline order
- public servant
- reviewable decision notice
- State
- territory law.

advisory committee means the survey practice advisory committee established under section 62.

advisory committee member—see section 64.

business address, for a surveyor, means an address of a place from which the surveyor carries on the practice of surveying.

chief surveyor means the Chief Surveyor appointed under section 59.

continuation notice, for division 3.1 (Continuing registration)—see section 19.

corresponding law means any law of a local jurisdiction that regulates surveyors in the jurisdiction.

field procedures means field notes, records, measurements or calculations.

ground for occupational discipline—see section 26.

local jurisdiction means the Commonwealth, a State or New Zealand.

local registering authority means the entity responsible for regulating the surveying profession under a corresponding law.

practice direction means a direction issued under section 55.

registered means registered under this Act.

registered business address—see section 12 (Details to be entered in surveyors register).

registration certificate—see section 8 (Decision on registration application).

registration number—see section 8.

reviewable decision, for part 7 (Notification and review of decisions)—see section 75.

survey means the survey of land for the purpose of—

- (a) defining, redefining or marking the boundaries of land divided or to be divided under the *Districts Act 2002*; or
- (b) deciding whether improvements are or are not within the boundaries of any land; or
- (c) defining, redefining or marking the boundaries of a public place or public road within the meaning of the *Roads and Public Places Act 1937*; or
- (d) defining, redefining or marking the boundaries of land in relation to which an interest has been, or is to be, created; or
- (e) defining, redefining or marking the boundaries of land to be resumed under a law of the Territory or Commonwealth.

survey mark, for part 4 (The practice of surveying)—see section 44.

surveyor—

- (a) for this Act generally—means a person registered under this Act; and
- (b) for division 3.3 (Occupational discipline—surveyors)—see section 25.
- (c) for part 4 (The practice of surveying)—see section 44.

surveyors register means the surveyors register mentioned in section 11.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

Surveyors Act 2007 A2007-33

notified LR 25 October 2007

s 1, s 2 commenced 25 October 2007 (LA s 75 (1))

remainder commenced 14 November 2007 (s 2 and CN2007-15)

as amended by

ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 A2008-36 sch 1 pt 1.48

notified LR 4 September 2008

s 1, s 2 commenced 4 September 2008 (LA s 75 (1))

sch 1 pt 1.48 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

4 Amendment history

Commencement

s 2 om LA s 89 (4)

Dictionary

s 3 am A2008-36 amdt 1.616

When does registration end?

s 10 am A2008-36 amdt 1.617

Occupational discipline—surveyors

div 3.3 hdg sub A2008-36 amdt 1.618

Meaning of *surveyor*—div 3.3

s 25 sub A2008-36 amdt 1.618

def ***disciplinary notice*** om A2008-36 amdt 1.618

def ***inquiry*** om A2008-36 amdt 1.618

def ***surveyor*** sub A2008-36 amdt 1.618

Grounds for occupational discipline

s 26 sub A2008-36 amdt 1.618

Chief surveyor may apply to ACAT for occupational discipline

s 27 sub A2008-36 amdt 1.618

Giving local registering authorities information about cancelling or suspending registration

s 28 sub A2008-36 amdt 1.618

Suspension during inquiry

s 29 om A2008-36 amdt 1.618

End of suspension for inquiry

s 30 om A2008-36 amdt 1.618

Inquiry to be held

s 31 om A2008-36 amdt 1.618

Inquiry procedure

s 32 om A2008-36 amdt 1.618

Evidence at inquiry

s 33 om A2008-36 amdt 1.618

Legal representation at inquiry

s 34 om A2008-36 amdt 1.618

Chief surveyor may require appearance, information and documents

s 35 om A2008-36 amdt 1.618

Failing to attend and failing to produce document or thing

s 36 om A2008-36 amdt 1.618

Confidentiality and client communications

s 37 om A2008-36 amdt 1.618

Witness expenses

s 38 om A2008-36 amdt 1.618

Disciplinary action

s 39 om A2008-36 amdt 1.618

Giving local registering authorities information about some disciplinary action

s 40 om A2008-36 amdt 1.618

Notification and review of decisions

pt 7 hdg sub A2008-36 amdt 1.619

Meaning of *reviewable decision*—pt 7

s 75 sub A2008-36 amdt 1.619

Reviewable decision notices

s 76 sub A2008-36 amdt 1.619

Applications for review

s 77 sub A2008-36 amdt 1.619

Legislation amended—sch 1

s 83 om LA s 89 (3)

Transitional

pt 9 hdg exp 14 November 2008 (s 95)

Endnotes

4 Amendment history

Definitions—pt 9

s 84 exp 14 November 2008 (s 95)
def **commencement day** exp 14 November 2008 (s 95)
def **repealed Act** exp 14 November 2008 (s 95)

Legislation repealed

s 85 om LA s 89 (3)

Survey practice directions

s 86 exp 14 November 2008 (s 95)

Surveyors registered under repealed Act

s 87 exp 14 November 2008 (s 95)

Suspended registration

s 88 exp 14 November 2008 (s 95)

Action under repealed Act etc

s 89 exp 14 November 2008 (s 95)

Inquiry under repealed Act

s 90 exp 14 November 2008 (s 95)

Grounds for disciplinary action—s 26

s 91 exp 14 November 2008 (s 95)

Evidentiary certificates—repealed Act

s 92 exp 14 November 2008 (s 95)

Redistribution committee—Electoral Act 1992

s 93 exp 14 November 2008 (s 95)

Transitional regulations

s 94 exp 14 November 2008 (s 95)

Expiry—pt 9

s 95 exp 14 November 2008 (s 95)

Reviewable decisions

sch 1 om LA s 89 (3)
ins A2008-36 amdt 1.622

Dictionary

dict am A2008-36 amdt 1.623, amdt 1.624
def **disciplinary action** om A2008-36 amdt 1.625
def **disciplinary notice** om A2008-36 amdt 1.625
def **ground for disciplinary action** om A2008-36 amdt 1.626
def **ground for occupational discipline** ins A2008-36
amdt 1.626
def **inquiry** om A2008-36 amdt 1.627
def **reviewable decision** sub A2008-36 amdt 1.628
def **surveyor** am A2008-36 amdt 1.629

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 14 Nov 2007	14 Nov 2007– 14 Nov 2008	not amended	new Act
R2 15 Nov 2008	15 Nov 2008– 1 Feb 2009	<u>A2008-36</u>	commenced expiry

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