

SURVEYORS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Surveyors Act 1966.

Clause 1 relates to the Short Title.

Clause 2: Subclause (1) substitutes a new section 7 in the principal Act (which relates to the qualifications for registration as a surveyor under the Act). The new section is principally a restatement of the qualifications for registration which at present are partly prescribed in the Act and partly prescribed in regulations made thereunder.

Subclause (2) makes a consequential amendment.

Clause 3 increases the maximum fine for wrongfully procuring registration from \$200 to \$500.

Clause 4: Subclause (1) extends the powers of the Board by inserting the words "or unprofessional" in section 21 (1) (b) of the principal Act (which at present provides that the Board may cause the name of any registered surveyor to be removed from the register if it is satisfied that he has been guilty of such improper conduct as renders him, in the opinion of the Board, unfit to be a registered surveyor). The effect of this amendment is to empower the Board to remove the name of a registered surveyor from the register if it is satisfied that he has been guilty of unprofessional (as distinct from improper) conduct.

Subclause (2) clarifies the meaning of section 21 (1) (c) of the principal Act.

Subclause (3) makes an amendment that is consequential upon *clause 5* of the Bill.

Clause 5: Subclauses (1) to (3) amend section 22 of the principal Act (which relates to inquiries by the Board into charges of misconduct) to provide that the Institute may investigate and report to the Board on a complaint that a registered surveyor has been guilty of improper or unprofessional conduct and that, if it does so, the Chief Surveyor need not investigate and report on that complaint.

Subclause (4) substitutes a new subsection (6) in section 22 of the principal Act. The new subsection is in similar terms to the present subsection except that it also provides that the Board may order that the whole or any part of

the cost to the Board of an inquiry be paid by the registered surveyor concerned, and that any amount so paid shall be paid to the Board.

Subclause (5) makes a drafting amendment.

Clause 6 increases the maximum penalty that the Board may impose on a registered surveyor from \$200 to \$1,000.

Clause 7: Subclause (1) substitutes a new section 24 in the principal Act, which provides that appeals from decisions of the Board shall be made to the Administrative Division of the Supreme Court. The present section 24 provides that such appeals shall be to a Board of Appeal (consisting of a Magistrate and 2 assessors) specially constituted for the appeal.

Subclause (2) is a savings provision which provides that all appeals that have been commenced before the coming into force of this clause shall be dealt with in accordance with the present provisions.

Clause 8: Subclause (1) substitutes a new section 28 (5) in the principal Act (which relates to the exemption from membership of the Institute of registered surveyors who have conscientious objection to membership thereof). The new subsection differs from the present subsection in that it does not provide for a surveyor exempted from membership to hold an annual practising certificate and it does not apply the rules of the Institute relating to the conduct and discipline of members to surveyors so exempted. The new subsection does, however, provide for conditions to be imposed in respect of exemptions and requires surveyors exempted from membership to pay to the Board all fees and payments that they would have been required to pay to the Institute if they were members thereof. Surveyors so exempted remain subject to the disciplinary powers of the Board.

Subclause (2) provides that, where a registered surveyor has been exempted from membership of the Institute pursuant to the present section 28 (5) of the principal Act, the Board may from time to time impose in respect of that exemption such conditions as it thinks fit.

Clause 9 amends section 29 (11) of the principal Act (which provides that the Council of the Institute may appoint a retiring President as a councillor for a period ending with the next annual election of councillors). The effect of the amendment is that, after that next annual election of councillors, the Council may reappoint such a person as a councillor for one further year.

Clause 10: Subclause (1) amends section 32 of the principal Act (which relates to rules of the Institute) to provide that the Institute may make rules for the purpose of regulating the form and content of the memoranda and articles of association of companies that provide surveying services and that have as a member at least one member of the Institute, and for the purpose of providing that members of the Institute shall not be members of any such company unless the memorandum and articles of association thereof have been approved by the Council as being in accordance with the rules of the Institute.

Subclause (2) increases from \$20 to \$1,000 the maximum fine that the Institute may prescribe in its rules for the breach of any of its rules.

Subclause (3) makes an amendment that is consequential upon *clause 11*.

Clause 11 inserts a new section 32A in the principal Act, which provides a right of appeal to the Board against a fine imposed by the Institute.

Clause 12: Subclause (1) amends section 33 of the principal Act (which provides that registered surveyors shall have annual practising certificates) to provide that a registered surveyor who is exempt from membership of the Institute pursuant to section 28 (5) of the principal Act and who has paid to the Board all fees and payments that he would be required to pay to the Institute if he were a member thereof and if he held an annual practising certificate, need not hold an annual practising certificate.

Subclause (2) increases the maximum fine for breach of section 33 of the principal Act from \$10 for every day during which the offence has continued to \$25 for every such day.

Clause 13 amends section 36 of the principal Act by increasing the maximum amount of otherwise unauthorised expenditure from \$100 to \$500.

Clause 14 amends section 38 of the principal Act (which provides that the Institute shall contribute to the Board's funds) to provide that the maximum amount payable by the Institute to the Board each year shall be such amount as is agreed by the Board and the Council of the Institute. At present the maximum amount is \$300.

Clause 15: Subclause (1) increases from \$200 to \$500 the maximum fine that may be imposed on a person who, not being a registered surveyor, acts as a registered surveyor.

Subclause (2) amends section 39 of the principal Act to provide that a person (not being a registered surveyor) who does any act of a registered surveyor shall not commit an offence under that section if he is under the personal supervision of a registered surveyor while doing that act.

Clause 16: Subclause (1) exempts companies which have at least one member who is a registered surveyor from the prohibition on persons who are not registered surveyors describing themselves as or leading other people to believe that they are registered surveyors.

Subclause (2) increases the maximum fine for improper use of terms implying registration or membership of the Institute from \$200 and \$10 for every day during which the offence has continued to \$500 and \$25 for every such day.

Clause 17: Subclause (1) amends section 41 of the principal Act (which empowers the Governor-General to make regulations) by substituting new empowering provisions relating to the requirements for certificates of competency and practical experience, the subject-matter and conduct of examinations conducted by the Board, and exemptions and dispensations from the regulations or the requirements of the Board; the conduct of surveys and the examination and approval of plans by a Chief Surveyor; and offences and fines.

Subclause (2) repeals section 41 (h) of the principal Act (which empowers the Governor-General to make regulations providing for the appointment of assessors and regulating the conduct of appeals). This repeal is consequential upon *clause 7* of the Bill.

Clause 18 amends section 184 of the Land Act 1948 to provide that regulations may be made providing for the lodging and checking of plans required to be deposited under the Land Transfer Act 1952 or any other enactment, the searching of plans, and the fees payable in respect thereof. Some of these fees were formerly prescribed in the Land Transfer Regulations 1966.

Hon. V. S. Young

SURVEYORS AMENDMENT

ANALYSIS

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1. Short Title	11. Appeal against imposition of fine by Institute
2. Qualifications for registration	12. Registered surveyors to have annual practising certificates
3. Penalty for wrongfully procuring registration	13. Unauthorised expenditure
4. Removal of name from register if registered surveyor guilty of grave misconduct	14. Institute to contribute to Board's funds
5. Inquiry by Board into charges of misconduct	15. Unregistered persons not to act as registered surveyors
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A BILL INTITULED

An Act to amend the Surveyors Act 1966

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. **Short Title**—This Act may be cited as the Surveyors Amendment Act 1976, and shall be read together with and deemed part of the Surveyors Act 1966* (hereinafter referred to as the principal Act).

*1966, No. 15

Amendments: 1971, No. 135; 1972, No. 106

2. Qualifications for registration—(1) The principal Act is hereby amended by repealing section 7, and substituting the following section:

“7. (1) Every person who is not less than 21 years of age shall be entitled to be registered under this Act if he satisfies the Board that he is of good character and reputation and that— 5

“(a) He has obtained a certificate of competency as a surveyor in accordance with regulations made under this Act; or 10

“(b) He is the holder of a recognised certificate granted in a reciprocating country; or

“(c) He is the holder of a recognised certificate granted in a country that is not a reciprocating country, and he has such experience in New Zealand of the duties of a surveyor as is prescribed by regulations made under this Act. 15

“(2) For the purposes of this section, the term ‘recognised certificate’ means a certificate, diploma, degree, or licence granted by a university, college, board, or other authority and recognised by the Board as furnishing sufficient evidence of the possession by its holder of the requisite knowledge and skill for the efficient practice of the profession of surveying. 20

“(3) For the purposes of this section, the term ‘reciprocating country’ means any country, state, or other territory— 25

“(a) In which, in the opinion of the Board, the profession of land surveying is established on a basis similar to that in New Zealand and satisfactory official control is exercised over the profession; and

“(b) Which recognises, to such extent as the Board considers reasonable, the qualifications of New Zealand surveyors.” 30

(2) Section 20 (1) of the principal Act is hereby consequentially amended by inserting, after the words “paragraph (b)”, the words “or paragraph (c)”. 35

3. Penalty for wrongfully procuring registration—Section 14 of the principal Act (as amended by section 7 (1) of the Decimal Currency Act 1964) is hereby further amended by omitting the words “two hundred dollars”, and substituting the expression “\$500”. 40

4. Removal of name from register if registered surveyor guilty of grave misconduct—(1) Section 21 (1) (b) of the principal Act is hereby amended by inserting, after the word “improper”, the words “or unprofessional”.

5 (2) Section 21 (1) of the principal Act is hereby further amended by repealing paragraph (c), and substituting the following paragraphs:

10 “(c) That he has certified to the accuracy of any survey or of any plan in relation to a survey without having personally carried out or supervised that survey and the field operations connected therewith:

15 “(ca) That he has certified to the accuracy of any survey or of any plan in relation to a survey without having checked the accuracy of the entries in any field book and the accuracy of all calculations, working plans, and other survey records that may have been made by any person employed by him in connection therewith:”.

20 (3) Section 21 (3) of the principal Act is hereby amended by inserting, after the words “Chief Surveyor”, the words “or the Institute”.

5. Inquiry by Board into charges of misconduct—

(1) Section 22 (1) of the principal Act is hereby amended by adding the following proviso:

25 “Provided that the Institute may investigate and report in writing to the Board on a complaint that a registered surveyor has been guilty of an act or default specified in paragraph (b) of the said subsection (1) and, if it does so, the Chief Surveyor need not investigate the matter or report
30 thereon to the Board.”

(2) Section 22 (2) of the principal Act is hereby consequentially amended by inserting, after the words “Chief Surveyor”, the words “or the Institute”.

35 (3) Section 22 (5) of the principal Act is hereby consequentially amended by omitting the words “The Chief Surveyor who makes the”, and substituting the words “A Chief Surveyor who makes an”.

(4) Section 22 of the principal Act is hereby further amended by repealing subsection (6), and substituting the
40 following subsection:

“(6) At the inquiry the Board may determine that an amount to be specified by the Board, being the whole or any portion of the cost to the Board of the inquiry and the whole

or any portion of the cost of any field inspections undertaken by direction of the Surveyor-General for the purpose of testing the accuracy of any survey that is found to be defective, may be recovered from the registered surveyor concerned as a debt due to the Crown, and the amount so specified shall thereupon become recoverable accordingly. Any amount representing the whole or any portion of the cost to the Board of an inquiry that is recovered from a registered surveyor shall be paid to the Board.” 5

(5) Section 22 (7) of the principal Act is hereby amended by omitting the words “in the first instance”. 10

6. Further disciplinary powers of Board—Section 23 (1) of the principal Act (as amended by section 7 (1) of the Decimal Currency Act 1964) is hereby further amended by omitting the words “two hundred dollars”, and substituting the expression “\$1,000”. 15

7. Appeals from decisions of Board—(1) The principal Act is hereby amended by repealing section 24, and substituting the following section:

“24. (1) Any person who is dissatisfied with a decision of the Board relating to— 20

“(a) An application by him for registration; or

“(b) The removal of his name from the register; or

“(c) The suspension of his registration; or

“(d) His suspension from practice; or 25

“(e) The recovery from him of any money; or

“(f) The imposition on him of any penalty; or

“(g) An appeal by him under section 32A of this Act—

may, within 3 months after the date on which notice of the decision has been communicated to him by the Secretary, appeal to the Administrative Division of the Supreme Court against the whole or any part of the decision. 30

“(2) At the hearing of the appeal, the Court shall hear all evidence tendered and representations made by or on behalf of the appellant, the Board, and other persons which the Court considers relevant to the subject-matter of the appeal. 35

“(3) The Court may at the hearing receive as evidence any statement, document, information, or matter that may in its opinion assist it to deal effectually with the matters before it, whether or not it would be otherwise admissible in a Court of law. 40

“(4) The Court in its discretion may, having regard to the interests of all parties concerned and to the public interest, order that the hearing or any part of it shall be held in private.

5 “(5) Subject to the provision of this section, the procedure in respect of any appeal shall be in accordance with rules of Court.

“(6) After hearing the appeal, the Court may confirm, modify, or reverse the decision or part of the decision appealed
10 against and may make such orders as the Court thinks fit:

“Provided that nothing in this subsection shall be construed to give the Court power to review any part of the Board’s decision other than the part against which the appellant has appealed.”

15 (2) Notwithstanding subsection (1) of this section and section 17 (2) of this Act, where notice of an appeal has been given in accordance with section 24 (1) of the principal Act before the day on which this Act receives the Governor-General’s assent, that appeal shall be dealt with in accordance
20 with the provisions of the principal Act and the regulations made thereunder that were in force on the day on which notice of appeal was so given.

8. Membership of Institute—(1) Section 28 of the principal Act is hereby amended by repealing subsection (5), and substituting the following subsection:

25 “(5) Notwithstanding subsection (4) of this section, if any registered surveyor satisfies the Board that he has conscientious objection to membership of the Institute, the Board may exempt him from membership on such conditions (if any)
30 as the Board may from time to time impose; and a registered surveyor so exempted shall not be a member of the Institute while his exemption is in force and all conditions imposed in respect thereof are complied with. Every registered surveyor who, by reason only of an exemption granted under
35 this subsection, is not a member of the Institute shall pay to the Board all fees and payments that he would be required to pay to the Institute if he were a member thereof and if he held a current annual practising certificate, and such fees and payments shall be paid to the Board at the times and
40 on the conditions that would apply if they were payable to the Institute.”

(2) Where a registered surveyor has been exempted from membership of the Institute pursuant to section 28 (5) of the principal Act before the day on which this Act receives the Governor-General's assent, the Board may from time to time impose in respect of that exemption such conditions as it thinks fit. 5

9. Council of Institute—Section 29 (11) of the principal Act is hereby amended by adding the words “After that next annual election the Council may reappoint any such person as a councillor in addition to the councillors otherwise provided for in this section. Any person so reappointed shall hold office as such only until the next annual election of councillors and, unless he again becomes President of the Council, shall not be further reappointed as a councillor under this subsection”. 10 15

10. Rules of Institute—(1) Section 32 (1) of the principal Act is hereby amended by inserting, after paragraph (m), the following paragraph:

“(ma) Regulating the form and content of the memoranda and articles of association of companies that provide surveying services and the members of which include at least one member of the Institute; and providing that members of the Institute shall not be members of any such company unless the memorandum and articles of association thereof have been approved by the Council as being in accordance with the rules of the Institute.” 20 25

(2) Section 32 (1) (n) of the principal Act (as amended by section 7 (1) of the Decimal Currency Act 1964) is hereby further amended by omitting the words “twenty dollars”, and substituting the expression “\$1,000”. 30

(3) Section 32 (3) of the principal Act is hereby amended by adding the following proviso:

“Provided that no such fine shall be recoverable while an appeal against the decision imposing the fine is awaiting determination.” 35

11. Appeal against imposition of fine by Institute—The principal Act is hereby amended by inserting, after section 32, the following section:

“32A. (1) Any person on whom a fine has been imposed under any rule made under section 32 of this Act may, within 3 months after the date on which notice of the imposition of the fine has been communicated to him and by written notice
5 of appeal to the Board and the Institute, appeal to the Board against the imposition of the fine.

“(2) At the hearing of the appeal, the Board shall hear all evidence tendered and representations made by or on behalf of the appellant, the Institute, and other persons which the
10 Board considers relevant to the subject-matter of the appeal.

“(3) The Board may at the hearing receive as evidence any statement, document, information, or matter that may in its opinion assist it to deal effectually with the matter before it, whether or not it would be otherwise admissible in a Court of
15 law.

“(4) Subject to the provisions of this section, the procedure in respect of any appeal shall be as determined by the Board.

“(5) After hearing the appeal, the Board may confirm, modify, or reverse the decision imposing the fine appealed
20 against.”

12. Registered surveyors to have annual practising certificates—(1) Section 33 (2) of the principal Act is hereby amended by adding the following proviso:

“Provided that a registered surveyor who does not hold an
25 annual practising certificate for a year may act as a registered surveyor at any time during that year if he is exempt from membership of the Institute pursuant to section 28 (5) of this Act at the time he so acts and he has paid to the Board all fees and payments that he would be required to pay to the
30 Institute if he were a member thereof throughout that year and if he held an annual practising certificate for that year.”

(2) Section 33 (3) of the principal Act (as amended by section 7 (1) of the Decimal Currency Act 1964) is hereby
35 further amended by omitting the words “ten dollars”, and substituting the expression “\$25”.

13. Unauthorised expenditure—Section 36 of the principal Act (as amended by section 7 (1) of the Decimal Currency Act 1964) is hereby further amended by omitting the words
40 “one hundred dollars”, and substituting the expression “\$500”.

14. Institute to contribute to Board's funds—Section 38 (1) of the principal Act (as amended by section 7 (1) of the Decimal Currency Act 1964) is hereby further amended by omitting the words “, not exceeding three hundred dollars in any financial year ending with the thirty-first day of March,” and substituting the words “(not exceeding, in any financial year ending with the 31st day of March, such amount as is agreed by the Board and the Council as the maximum amount payable by the Council under this section for that financial year)”.

15. Unregistered persons not to act as registered surveyors—(1) Section 39 (1) of the principal Act (as amended by section 7 (1) of the Decimal Currency Act 1964) is hereby further amended by omitting the words “two hundred dollars”, and substituting the expression “\$500”.

(2) Section 39 of the principal Act is hereby further amended by repealing subsection (2), and substituting the following subsection:

“(2) Notwithstanding subsection (1) of this section, a person who does any act referred to in that subsection shall not commit an offence under that subsection if—

“(a) Pursuant to the provisions of any other enactment, whether express or implied, that act may be done by persons who are not registered surveyors; or

“(b) He is under the personal supervision of a registered surveyor while doing that act.”

16. Improper use of terms implying registration, or membership of Institute—(1) Section 40 (1) of the principal Act is hereby amended by inserting, after the words “not being a registered surveyor”, the words “or a company of which at least one member is a registered surveyor”.

(2) Section 40 (3) of the principal Act (as amended by section 7 (1) of the Decimal Currency Act 1964) is hereby further amended—

(a) By omitting the words “two hundred dollars”, and substituting the expression “\$500”;

(b) By omitting the words “ten dollars”, and substituting the expression “\$25”.

17. Regulations—(1) Section 41 of the principal Act is hereby amended by repealing paragraphs (d), (f), and (j), and substituting, in their appropriate order, the following paragraphs:

- 5 “(d) Prescribing the requirements that a person must fulfil
in order to obtain a certificate of competency and
the experience in New Zealand that a person must
have for the purposes of section 7 (1) (c) of this
Act; prescribing the subject-matter of examinations
to be conducted by the Board and the standards
required to be obtained by successful candidates,
and regulating the conduct of such examinations;
10 and providing that exemptions and dispensations
from any of the requirements of the regulations
or of the Board in relation to certificates of com-
petency, examinations, or professional experience
may be granted on such conditions (if any) as are
specified in the regulations:
- 15 “(f) Regulating the conduct of surveys, including special
provisions for specified types of plans prepared by
registered surveyors or surveys and provisions for
ensuring the accuracy of plans prepared by
registered surveyors and surveys under any Act
20 relating to or affecting surveys of land; providing
that plans prepared by registered surveyors and all
sources of information necessary for the prepar-
ation thereof shall be submitted to a Chief
Surveyor for examination or approval before their
use for any purpose or purposes; providing for
25 amendments and additions to plans prepared by
registered surveyors in accordance with requis-
itions in that behalf made by a Chief Surveyor or
other person authorised to make them; and pro-
viding for the delivery to a Chief Surveyor or other
30 person authorised to receive them and the custody
of plans and information prepared by registered
surveyors:
- 35 “(j) Prescribing offences in respect of the contravention of
or non-compliance with any regulations made under
this Act; and prescribing the fines, not exceeding
\$1,000, that may be imposed in respect of any such
offence:”
- (2) Section 41 (h) of the principal Act is hereby repealed.

18. Amendment to Land Act 1948—Section 184 (2) of the Land Act 1948 is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) Providing for the lodging and checking of plans required to be deposited under the Land Transfer Act 1952 or lodged with or checked by any officer of the Department under any other enactment, and the searching of any plans by members of the public, and prescribing fees payable in respect thereof:”.

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