

South Australia

## Survey (Miscellaneous) Amendment Act 2003

An Act to amend the *Survey Act 1992*.

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**The Parliament of South Australia enacts as follows:**

### **Part 1—Preliminary**

#### **1—Short title**

This Act may be cited as the *Survey (Miscellaneous) Amendment Act 2003*.

#### **2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

#### **3—Amendment provisions**

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### **Part 2—Amendment of *Survey Act 1992***

#### **4—Amendment of section 4—Interpretation**

- (1) Section 4(1)—before the definition of *cadastral survey* insert:

*beneficiary* includes an object of a discretionary trust;

- (2) Section 4(1), definition of *company*—delete the definition

- (3) Section 4(1), definition of *director*—delete the definition and substitute:

*director* of a body corporate means a member of the board or committee of management of the body corporate, whether validly appointed or not;

- (4) Section 4(1), definitions of *prescribed relative* and *putative spouse*—delete the definitions and substitute:

*provide*, in relation to surveying services, means provide surveying services personally or through the instrumentality of another, and includes offer to provide;

- (5) Section 4(1), definition of *share*—delete the definition

- (6) Section 4(1)—after the definition of *Survey Advisory Committee* insert:

*surveying services provider* means a person (not being a surveyor) who provides surveying services through the instrumentality of a surveyor;

- (7) Section 4(1)—after the definition of *Surveyor-General* insert:

*trust*—a trust is considered for the purposes of this Act as a single entity consisting of the trustees and the beneficiaries;

*trust or corporate entity* means a trust or a body corporate;

- (8) Section 4—after subsection (4) insert:
- (5) Without limiting the generality of the expression, a person who is not a surveyor will, unless exempted by the regulations, be taken to *provide surveying services through the instrumentality of a surveyor if the person*, in the course of carrying on a business, provides services to the surveyor for which the person is entitled to receive a share in the profits or income of the surveyor's practice.
  - (6) For the purposes of this Act, a person *occupies a position of authority in a trust or corporate entity* if the person—
    - (a) in the case of a body corporate—
      - (i) is a director of the body corporate; or
      - (ii) exercises, or is in a position to exercise, control or substantial influence over the body corporate in the conduct of its affairs; or
      - (iii) manages, or is to manage, the business of the body corporate that consists of the provision of surveying services; or
      - (iv) where the body corporate is a proprietary company—is a shareholder in the body corporate; or
    - (b) in the case of a trust—is a trustee or beneficiary of the trust.
  - (7) However—
    - (a) a minor who is a shareholder in a proprietary company, or a beneficiary under a trust, is not, for that reason, to be regarded as a person occupying a position of authority; and
    - (b) a charitable organisation that is a beneficiary of a trust is not, for that reason, to be regarded as occupying a position of authority in the trust.
  - (8) For the purposes of this Act, a person who holds more than 10 per cent of the issued share capital of a public company will be regarded as a person *occupying a position of authority* in that company.

## **5—Amendment of section 12—Fees and levies**

Section 12(1)(b)—delete "calendar" and substitute:  
financial

## **6—Amendment of section 13—Annual report**

- (1) Section 13(1)—delete subsection (1) and substitute:
- (1) The Institution of Surveyors must, on or before 30 September in each year, deliver to the Minister a report on the performance of its functions under this Act during the financial year that ended on the preceding 30 June.

- (2) Section 13(2)—delete "calendar" and substitute:  
financial

## **7—Insertion of section 13A**

After section 13 insert:

### **13A—Delegations**

- (1) The Institution of Surveyors may, by instrument in writing, delegate any of its functions or powers under this Act other than this power of delegation.
- (2) A delegation—
  - (a) may be made—
    - (i) to a member of the Institution of Surveyors; or
    - (ii) to a committee established by the Institution of Surveyors; and
  - (b) may be made subject to conditions and limitations specified in the instrument of delegation; and
  - (c) is revocable at will and does not derogate from the power of the Institution of Surveyors to act in a matter.

## **8—Amendment of section 14—Obligation to be licensed to place survey mark**

Section 14—after "A person must not" insert:

personally

## **9—Amendment of section 15—Obligation to be licensed to carry out cadastral survey for fee or reward**

Section 15—after paragraph (b) insert:

- (ba) the survey is carried out through the instrumentality of a licensed surveyor or a person acting under the supervision of a licensed surveyor; or

## **10—Amendment of section 21—Applications**

Section 21(1)(b)—delete "1 October and not later than 30 November" and substitute:

3 months and not later than 1 month

## **11—Amendment of section 22—Grant of licence or registration**

Section 22(2)—delete subsection (2)

## **12—Amendment of section 24—Duration and renewal**

Section 24(1)—delete "31 December" wherever occurring and substitute in each case:

30 June

**13—Amendment of section 26—Continuing education**

Section 26(4)—delete "31 December" and substitute:  
30 June

**14—Substitution of Part 3 Division 3**

Part 3 Division 3—delete Division 3 and substitute

**Division 3—Special provisions relating to surveying services providers**

**28—Improper directions etc to surveyor by surveying services provider**

- (1) If a person who provides surveying services through the instrumentality of a surveyor directs or pressures the surveyor to act unlawfully, improperly, negligently or unfairly in relation to the provision of surveying services, the person is guilty of an offence.  
Penalty: Division 4 fine.
- (2) If a person who occupies a position of authority in a trust or corporate entity that provides surveying services through the instrumentality of a surveyor directs or pressures the surveyor to act unlawfully, improperly, negligently or unfairly in relation to the provision of surveying services, the person and the entity are each guilty of an offence.  
Penalty: Division 4 fine.

**15—Amendment of section 34—Proper cause for disciplinary action**

- (1) Section 34(1)(c)—after "survey" insert  
, establishing survey marks or in the preparation of a plan or record of a survey
- (2) Section 34(2)—delete subsection (2) and substitute:
  - (2) A surveying services provider is liable to be disciplined if—
    - (a) the provider has contravened or failed to comply with a provision of this Act; or
    - (b) in the case of a surveying services provider that is a trust or corporate entity—the occupier of a position of authority in the trust or corporate entity has contravened or failed to comply with a provision of this Act.
  - (3) The occupier of a position of authority in a trust or corporate entity that is a surveying services provider is liable to be disciplined if—
    - (a) the person has contravened or failed to comply with a provision of this Act; or

- (b) the trust or corporate entity has contravened or failed to comply with a provision of this Act (unless it is proved that the person could not, by the exercise of reasonable care, have prevented the commission of the offence by the entity).
- (4) Disciplinary action may be taken under this Division against—
  - (a) a person who was licensed or registered as a surveyor when the cause for disciplinary action arose but has since ceased to be licensed or registered as a surveyor; or
  - (b) a surveying services provider who was a provider when the cause for disciplinary action arose but has since ceased to be a surveying services provider; or
  - (c) the occupier of a position of authority in a trust or corporate entity that is a surveying services provider who was the occupier of the position of authority when the cause for disciplinary action arose but has since ceased to be the occupier of the position.

#### **16—Amendment of section 35—Complaints**

Section 35(1)—delete subsection (1) and substitute:

- (1) Any person may lodge with the Institution of Surveyors a complaint against—
  - (a) a surveyor or former surveyor; or
  - (b) a surveying services provider or former surveying services provider; or
  - (c) the occupier, or former occupier, of a position of authority in a trust or corporate entity that is a surveying services provider.

#### **17—Amendment of section 36—Investigations by Institution of Surveyors**

- (1) Section 36(1)—delete "by a person against a surveyor or former surveyor" and substitute:

against a person under this Division
- (2) Section 36(4)(a)—delete paragraph (a) and substitute:
  - (a) may require a person who is in a position to do so, to provide the name and address of—
    - (i) any person who personally, or through the instrumentality of another, provided the services the subject of the complaint; or
    - (ii) if the services the subject of the complaint were provided by a surveying services provider that is a trust or corporate entity, the persons occupying positions of authority in the trust or corporate entity; and

- (ab) may require any person who is in a position to provide other information relevant to the matter under investigation to answer any question put to him or her in relation to the matter; and
- (ac) may require any person who has possession of records or equipment relevant to the matter under investigation to produce those records or equipment for inspection, including written records that reproduce in a readily understandable form information kept by computer, microfilm or other process; and

### **18—Amendment of section 37—Consequence of investigation by Institution of Surveyors**

- (1) Section 37(1) and (2)—delete subsections (1) and (2) and substitute:
  - (1) After conducting an investigation under this Division, the Institution of Surveyors may lodge with the Court a complaint against the person setting out matters that are alleged to constitute proper cause for disciplinary action.
- (2) Section 37(3)—delete "exercises a power conferred by subsection (1)" and substitute:  
lodges a complaint with the Court

### **19—Amendment of section 38—Disciplinary powers of Court**

- (1) Section 38(1)—delete "against a surveyor or former surveyor" and substitute:  
under this Division
- (2) Section 38(6)—after paragraph (f) insert:
  - (g) it may prohibit the respondent from carrying on business as a surveying services provider;
  - (h) it may prohibit the respondent from occupying a position of authority in a trust or corporate entity that is a surveying services provider.

### **20—Amendment of section 40—Restrictions on disqualified persons**

Section 40(2)—delete subsection (2) and substitute:

- (2) Where a person is known to a surveyor, or to a surveying services provider, to be a disqualified person, and the surveyor or surveying services provider employs or engages that person in connection with a survey without the prior approval of the Court, the surveyor or surveying services provider is guilty of an offence.

Penalty: Division 5 fine

### **21—Amendment of section 44—Investigations by Surveyor-General**

Section 44(4)(a)—delete paragraph (a) and substitute:

- (a) require a person who is in a position to do so, to provide the name and address of—
  - (i) any person who personally, or through the instrumentality of another, provided the services the subject of the complaint;
  - or

- (ii) if the services the subject of the complaint were provided by a surveying services provider that is a trust or corporate entity, the persons occupying positions of authority in the trust or corporate entity; and
- (ab) require any person who is in a position to provide other information relevant to the matter under investigation to answer any question put to him or her in relation to the matter; and
- (ac) require any person who has possession of records or equipment relevant to the matter under investigation to produce those records or equipment for inspection, including written records that reproduce in a readily understandable form information kept by computer, microfilm or other process; and

## 22—Insertion of sections 55A and 55B

After section 55 insert:

### 55A—Victimisation

- (1) A person commits an act of victimisation against another person (the victim) if he or she causes detriment to the victim on the ground, or substantially on the ground, that the victim—
  - (a) has disclosed or intends to disclose information; or
  - (b) has made or intends to make an allegation,that has given rise, or could give rise, to proceedings against the person under this Act.
- (2) An act of victimisation under this Act may be dealt with—
  - (a) as a tort; or
  - (b) as if it were an act of victimisation under the *Equal Opportunity Act 1984*,but, if the victim commences proceedings in a court seeking a remedy in tort, he or she cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* and, conversely, if the victim lodges a complaint under that Act, he or she cannot subsequently commence proceedings in a court seeking a remedy in tort.
- (3) Where a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.
- (4) In this section—

**detriment** includes—

  - (a) injury, damage or loss; or
  - (b) intimidation or harassment; or



- (c) discrimination, disadvantage or adverse treatment in relation to the victim's employment or business; or
- (d) threats of reprisal.

### **55B—Vicarious liability for offences**

If a trust or corporate entity is guilty of an offence against this Act, each person occupying a position of authority in the entity is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the person could not, by the exercise of reasonable care, have prevented the commission of the offence by the entity.

### **23—Amendment of section 61—Summary offences**

Section 61(1) and (2)—delete subsections (1) and (2) and substitute:

- (1) Proceedings for a summary offence against this Act must be commenced—
  - (a) in the case of an expiable offence—within the time limits prescribed for expiable offences by the *Summary Procedure Act 1921*;
  - (b) in any other case—within 2 years of the date on which the offence is alleged to have been committed or such other period as the Minister may, in a particular case, authorise.

## **Schedule 1—Transitional provisions**

### **1—Companies**

A company that was, immediately before the commencement of this section, licensed or registered as a surveyor under the principal Act will be taken to have been removed from the register of surveyors.

### **2—Licences and registrations**

A licence or registration in force immediately before the commencement of this section remains in force until next 31 December and may then be renewed for a period of either 6 or 18 months to end on 30 June.

### **3—Annual reports**

The first annual report required to be delivered to the Minister by the Institution and Surveyors after the commencement of this section must be in relation to the period since the last annual report, being a period of either 6 or 18 months ending on 30 June.

## **Schedule 2—Statute law revision amendments of *Survey Act 1992***

<b>Provision amended</b>	<b>How amended</b>
Long title	Delete "to repeal the Surveyors Act 1975;"
Sections 2 and 3	Delete these sections

**Survey (Miscellaneous) Amendment Act 2003—No 61 of 2003**  
Schedule 2—Statute law revision amendments of *Survey Act 1992*

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<b>Provision amended</b>	<b>How amended</b>
Section 21(3)	Delete "notwithstanding" and substitute: despite the fact
Schedule 2	Delete the Schedule