



# SURVEYORS AMENDMENT ACT 1991

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# Queensland



## **Surveyors Amendment Act 1991**

### **Act No. 59 of 1991**

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*An Act to amend the Surveyors Act 1977*

*[Assented to 18 September 1991]*

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows.

**Short title**

1. This Act may be cited as the *Surveyors Amendment Act 1991*.

**Commencement**

2. Section 12 commences on a day to be fixed by proclamation.

**Amended Act**

3. The *Surveyors Act 1977* is amended as set out in this Act.

**Omission of s.3 (Arrangement of Act)**

4. Section 3—  
*omit.*

**Amendment of s.5 (Meaning of terms)**

- 5.(1) Section 5 (definition “investigator”)—  
*omit ‘58’, insert ‘53B’.*
- (2) Section 5 (definition “Minister”)—  
*omit.*

**Amendment of s.19 (Officers of Board)**

- 6.(1) Section 19(2)—  
*omit ‘Public Service Act 1922-1973’, insert ‘Public Service Management and Employment Act 1988’.*
- (2) Section 19(3)—  
*omit ‘assign any officer of the Department of Mapping and Surveying’,*

*insert* ‘, with the approval of the chief executive, assign any officer of the department’.

### **Amendment of s.20 (Funds of Board)**

**7.(1)** Section 20(2)(a)—

*omit.*

**(2)** Section 20(3)—

*omit, insert—*

‘**(3)** There are to be paid from the general fund all expenses of the Board incurred in the administration of this Act.’.

### **Insertion of new Part IVA (Complaints and Investigation)**

**8.** After section 53, *insert—*

## **‘PART IVA—COMPLAINTS AND INVESTIGATION**

### **‘Complaints**

‘**53A.(1)** A person who is aggrieved by the conduct of a registered person may complain to the Board.

‘**(2)** A complaint must be in writing.

### **‘Board may authorise investigation**

‘**53B.(1)** The Board may—

(a) of its own motion, or on a complaint made under section 53A, authorise in writing a surveyor who is not a member of the Board to carry out an investigation of the conduct of a registered person on behalf of the Board; or

(b) if it suspects on reasonable grounds that a person—

(i) who is not registered has contravened section 47 or 48; or

(ii) who is not a licensed surveyor has contravened section 49;

authorise in writing a surveyor who is not a member of the Board to carry out an investigation in relation to the suspected contravention on behalf of the Board.

‘(2) The investigator must give the Board a written report on the investigation.

‘(3) The Board must not authorise the investigation of a complaint that in its opinion is frivolous or vexatious.

### **‘Powers of investigator**

‘53C.(1) An investigator may—

- (a) under section 67, enter and survey any land; or
- (b) ask any questions; or
- (c) require the production of any document or thing;

that appears to the investigator to be relevant to the investigation.

‘(2) When a document or thing is produced to an investigator, the investigator may—

- (a) inspect the document or thing; and
- (b) make copies of, photograph, or take extracts from the document or thing if it is relevant to the investigation.

‘(3) A person must not fail, without reasonable excuse—

- (a) to answer a question asked by the investigator; or
- (b) to produce to the investigator a document or thing requested by the investigator.

Penalty: 8 penalty units.

‘(4) Despite subsection (3), a person is not required—

- (a) to produce to an investigator any document or thing; or
- (b) to answer a question asked by an investigator;

if the person objects to its production or to answering the question on the ground that it may tend to incriminate the person.

**‘Entry and search—evidence of offences**

**‘53D.(1)** Subject to subsection (3), if an investigator has reasonable grounds for suspecting that there is in premises a particular thing (in this section called “**the evidence**”) that may afford evidence of the commission of an offence against this Act, the investigator may, with such assistance and by such force as is necessary and reasonable—

- (a) enter the premises; and
- (b) exercise the powers set out in section 53E.

**‘(2)** If the investigator enters the premises and finds the evidence, the following provisions have effect—

- (a) the investigator may seize the evidence;
- (b) the investigator may keep the evidence for 60 days, or, if a prosecution for an offence against this Act in the commission of which the evidence may have been used or otherwise involved is instituted within that period, until the completion of the proceedings for the offence and of any appeal from the decision in relation to the proceedings;
- (c) if the evidence is a document—while the investigator has possession of the document, the investigator may take extracts from and make copies of the document but must allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the investigator’s possession.

**‘(3)** The investigator must not enter the premises or exercise a power under subsection (1) unless—

- (a) the occupier of the premises consents to the entry or exercise of the power; or
- (b) a warrant under section 53F that was issued in relation to the evidence authorises the entry or exercise of the power.

**‘(4)** If in the course of searching the premises under subsection (1) pursuant to a warrant under section 53F the investigator—

- (a) finds a thing that the investigator believes, on reasonable grounds to be—
  - (i) a thing (other than the evidence) that will afford evidence of

- the commission of the offence mentioned in subsection (1); or
- (ii) a thing that will afford evidence of the commission of another offence against this Act; and
- (b) the investigator believes, on reasonable grounds, that it is necessary to seize the thing to prevent—
- (i) its concealment, loss or destruction; or
  - (ii) its use in committing, continuing or repeating the offence mentioned in subsection (1), or the other offence, as the case may be;

subsection (2) applies to the thing as if it were the evidence.

#### **‘General powers of investigator in relation to premises**

**‘53E.** The powers an investigator may exercise under section 53D(1)(b) in relation to premises are as follows—

- (a) to search any part of the premises;
- (b) to inspect or examine anything in the premises;
- (c) to take extracts from, and make copies of any documents in the premises;
- (d) to take into the premises such equipment and materials as the investigator requires for the purpose of exercising any powers in relation to the premises;
- (e) to require the occupier or any person in the premises to give to the investigator reasonable assistance in relation to the exercise of the investigator’s powers mentioned in paragraphs (a), (b), (c) and (d).

#### **‘Warrants**

**‘53F.(1)** An investigator may apply to a Magistrate for a warrant under this section in relation to particular premises.

**‘(2)** Subject to subsection (3), the Magistrate may issue the warrant if the Magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, in the premises a particular document or thing (in this section called

“**the evidence**”) that may afford evidence relevant to the investigator’s investigation.

‘(3) If the Magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the Magistrate must not issue the warrant unless the investigator has given the information to the Magistrate in the form (either orally or by affidavit) that the Magistrate requires.

‘(4) The warrant must—

- (a) authorise the investigator, with such assistance and by such force as is necessary and reasonable—
  - (i) to enter the premises; and
  - (ii) to exercise the powers set out in section 53E; and
- (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (c) specify the day (not more than 7 days after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purposes for which the warrant is issued.

### ‘**Consideration of report**

‘**53G.(1)** The Board must consider an investigator’s report and may—

- (a) take disciplinary action against a registered person by charging the person; or
- (b) deal with a registered person under section 65A; or
- (c) commence proceedings under section 73; or
- (d) take no further action;

as appears to the Board to be appropriate.

‘(2) If a registered person is charged under subsection (1)(a), the Board must refer the charge to a Committee for its hearing and determination under section 59(2).

‘(3) A charge must contain or be accompanied by sufficient particulars to inform a Committee and the person charged of the nature of the charge.’

**Omission of sections 58, 58A, 58B and 58C**

**9.** Sections 58, 58A, 58B and 58C—

*omit.*

**Amendment of s.59 (Proceedings before Committee)**

**10.(1)** After section 59(4)(c)—

*insert—*

‘;and

(d) if the charge is brought after an investigation—the investigator is entitled to give evidence in a manner acceptable to the Committee of the findings and his or her opinions based on those findings.’.

**(2)** Section 59(5)—

*omit.*

**Insertion of new ss.59A to 59E**

**11.** After section 59—

*insert—*

**‘Procedure**

**‘59A.(1)** A proceeding before a Committee is to be conducted with as little formality and technicality, and with as much expedition, as is practicable to permit a proper consideration of the matters before the Committee.

**‘(2)** In a proceeding, a Committee is not bound by the rules of evidence but may inform itself of any matter in such manner as it thinks appropriate.

**‘(3)** Subject to subsections (1) and (2), the chairperson may give directions as to the procedure to be followed in a proceeding.

**‘Powers of Committee**

**‘59B.(1)** In a proceeding, a Committee may—

- (a) require a person to give evidence on oath and, for that purpose, the chairperson may administer an oath; and
- (b) proceed in the absence of the person charged; and
- (c) by written notice, require a person to attend before the Committee at a specified time and place—
  - (i) to give evidence; or
  - (ii) to produce a specified document or thing.

**‘(2)** A Committee may adjourn the proceeding from time to time.

**‘Inspection of documents**

**‘59C.(1)** When a document or thing is produced to a Committee, the Committee may—

- (a) inspect the document or thing; and
- (b) make copies of, photograph, or take extracts from, the document or thing if it is relevant to the proceeding.

**‘(2)** A Committee may, for the purposes of a proceeding, take and retain for as long as is necessary possession of a document or thing produced to the Committee.

**‘(3)** While it retains possession of a document or thing, a Committee must permit a person otherwise entitled to possession of the document or thing to inspect, make copies of, photograph, or take extracts from, the document or thing, at such place and time as the chairperson determines.

**‘Offences—proceedings**

**‘59D.(1)** A person served with a notice under section 59B(1)(c) must not fail, without reasonable excuse—

- (a) to attend a proceeding as required by the notice; or
- (b) to appear from time to time in the course of the proceeding as required by the chairperson of a Committee; or

(c) to produce a document or thing that is specified in the notice.

Penalty: 8 penalty units.

**‘(2)** A person appearing as a witness in a proceeding must not fail, without reasonable excuse—

(a) to be sworn; or

(b) to answer a question that the person is required by a member of a Committee to answer.

Penalty: 8 penalty units.

### **‘Self incrimination**

**‘59E.** A person is not required—

(a) to produce to a Committee a document or thing; or

(b) to answer a question asked by a member of a Committee;

if the person objects to its production or to answering the question on the ground that it may tend to incriminate the person.’.

### **Replacement of s.76 (Certificate in lieu of declaration by licensed surveyor on map or plan)**

**12.** Section 76—

*omit, insert—*

### **‘Surveyors’ certificates**

**‘76.(1)** A licensed surveyor’s certificate on a registerable plan ceases to have effect 1 year after the day on which the certificate is made or given unless—

(a) the plan or a copy of the plan has been deposited with the department for examination; or

(b) the plan has been lodged with the Registrar of Titles, registrar of dealings or any other registering authority.

**‘(2)** Subsection (1) does not apply to a certificate made or given before

the commencement of this section.’.

**Replacement of s.79 (Surveyor-General and Deputy Surveyor-General)**

**13.** Section 79—

*omit, insert—*

**‘Surveyor-General and Deputy Surveyor-General**

**‘79.** The Governor in Council may, under the *Public Service Management and Employment Act 1988*, appoint—

- (a) a person to be the Surveyor-General; and
- (b) persons to be Deputy Surveyors-General.’.

**Amendment of s.80 (Delegation by Surveyor-General)**

**14.** Section 80(9)—

*omit.*