



Queensland

# Surveyors Regulation 2004

## Regulatory Impact Statement for SL 2004 No. 128

made under the

*Surveyors Act 2003*

---

### 1 TITLE

*Surveyors Regulation 2004.*

### 2 BACKGROUND

The surveying industry is relatively small but provides a critical and essential function to any land planning, infrastructure and development process. Surveyors provide positional control for most civil engineering projects, mining operations, mapping projects and generally all planning and development within Queensland. Surveyors are also central to the freehold and State land registration system on which Queensland's land and property market is dependent.

Cadastral surveyors have obligations to the State, adjoining property owners and their clients when performing land boundary surveys. It is essential due to the critical nature of these responsibilities that the surveying industry is regulated. This finding was reinforced in the Public Benefits Test conducted for the review of surveying legislation, in 1997.

The Government accepted certain recommendations emanating from that review and after significant public consultation decided to retain the existing regulatory mechanisms. New legislation was drafted that addressed all identified National Competition Policy matters and also rectified several administrative, red tape and machinery issues that were apparent in the existing legislation.

It is anticipated that the *Surveyors Act 2003* will commence in the second quarter 2004 and the present *Surveyors Act 1977* will be repealed at that time. This is new legislation and while still maintaining similar purposes to the existing Act, has been substantially revised in terms of function and scope. New regulations are required to provide the necessary machinery and allow for effective administrative of the new legislation. The regulations also need to be available for the commencement of the *Surveyors Act 2003*.

The *Surveyors Regulation 1992* (the Regulation) commenced on 10 April 1992. These regulations were made under the *Surveyors Act 1977* and were due to expire on 1 September 2003. Under section 56A(2) of the Statutory Instruments Act 1992, which provides for an exemption to the expiry of the regulations, they will now expire on 1 September 2004. This extension has allowed the process for drafting the regulations to occur together with the associated consultation process and be available for commencement of the Act.

### **3 AUTHORISING LAW**

The *Surveyors Act 2003*.

The key authorising provisions are as follows:

- Section 36(2)(c)(iii) and Section 38(2)(d) prescribe the insurance cover required by consulting surveyors when applying for registration.
- Section 36(3)(c) prescribes additional eligibility criteria for applicants for Emeritus surveyor.
- Section 45(1)(c)(i) provides for all application fees for applicants for registration and endorsement.
- Section 54(2)(c)(ii) provides for all registrant renewal fees.
- Section 68(3) provides for regulations to prescribe the particulars to be included on the register of surveyors.
- Section 192 provides a general regulation making power.

Other relevant authorising sections are:

- Section 44(2) provides for the evidence and competency assessment application—including the method and fee.
- Section 45(1)(c)(ii) provides other associated registration fees.

- Section 45(3)(b) and Section 46(1)(d) provide for the detail and evidentiary provisions for insurance requirements for individuals and corporations.
- Section 54(3) provides for fees for late applications for renewal.
- Section 60(1)(b)(i) provides for restoration fees for restoration of former registrants to the register.
- Section 72(1) provides for those notifiable things when a surveyor should advise the Board of a change in circumstances.
- Section 78(2)(b) provides for fees for obtaining duplicate certificates.

#### **4 POLICY OBJECTIVES**

The main purpose of the *Surveyors Act 2003* is to protect the public who commission surveys, through a system of registration for surveyors administered by the Surveyors Board of Queensland. The regulation supports the Act in achieving this policy objective.

The Act achieves these purposes by creating a Surveyors Board of Queensland and providing for its membership and functions, assessing applicants and registering surveyors and providing a disciplinary process for registrants.

Consistent with this, the Act provides for

- Part 1—Preliminary—Short title, purposes, mutual recognition and definition and use of particular words;
- Part 2—Surveyors Board of Queensland—establishment, functions, membership, board business, member interests, and annual reporting;
- Part 3—Registration and registration endorsements—eligibility, competency assessment, applications for registration and endorsement, renewals of registration, restoration of registration, amending any aspect of a registration, the register and offences concerning registrations;
- Part 4—Obligations on registrants;
- Part 5—Complaints and investigations—dealing with and taking action;

- Part 6—Surveyors Disciplinary Committee—establishment, functions, membership, proceedings, offences, decisions, actions and effect;
- Part 7—Investigators—functions and powers, appointments and obligations;
- Part 8—Appeals to District Court;
- Part 9—Appeals to Court of Appeal from decisions of Disciplinary Committee;
- Part 10—Legal proceedings;
- Part 11—Miscellaneous—Board’s power concerning fees and general regulation making power;
- Part 12—Transitional provisions;
- Part 13—Repeal and Amendments.

The general policy objectives of the present Act will continue with the major exception that the setting of survey standards will be removed to the new *Survey and Mapping Infrastructure Act 2003*.

## **5 LEGISLATIVE INTENT**

The policy objectives of the Act are supported by the new regulation, which will set out in some detail requirements for applicants for registration to the Board. Fee structures for applicants and registrants seeking annual renewals of registration will also be detailed. The regulations will also detail the insurance requirements of consulting surveyors so that users of these services will have some level of protection.

Regulation of this kind is an accepted way of achieving policy objectives in an area where professional registration and consumer protection is required.

Not making the regulation would leave the administrative requirements for the registration function of the Board only partly described. Also without the fees adequately defined, the functioning of the Board may be compromised as a significant proportion of the Board’s income is derived from those sources.

Therefore when the Act is commenced it is impractical to adopt any other approach than to provide for those administrative arrangements by way of the Regulation. It is relevant that the Act has undergone a significant industry consultation process prior to introduction and the need for the

Regulation as called for in the Act, was quite evident and achieved accord within the industry during that process.

## **6 CONSISTENCY WITH AUTHORISING LAW**

The making of the Regulation is consistent with the objectives of the principal Act, particularly with the heads of power for making and levying fees and providing for those requirements of applicants for registration or endorsement.

## **7 CONSISTENCY WITH OTHER LEGISLATION**

The proposed regulation is not inconsistent with other legislation. The principal Act does however link closely with the *Survey and Mapping Infrastructure Act 2003*. Whereas the *Surveyors Act 2003* deals with the registration of surveyors and the functioning of the Queensland Surveyors Board, the *Survey and Mapping Infrastructure Act 2003* deals with principles and standards about surveying. This latter Act is also administered by the chief executive with the Act operating independently of the *Surveyors Act 2003* and the responsibilities of the Board.

## **8 ALTERNATIVES**

The first area of issue that needs to be assessed concerns the setting of fees and the quantum of fees applied by the Board. The second issue concerns the level of professional indemnity insurance cover that consultant surveyors must hold to both apply for and operate in that sector of the industry.

The *Surveyors Act 1977* has provided a power for regulations to prescribe a level of compulsory professional indemnity (PI) insurance cover to be held by consulting surveyors. Those regulations delegate that power to set a level of cover to the Board. The Board decides a required amount of PI insurance be retained by consulting surveyors. The Government considered that this (insurance) requirement should continue and the *Surveyors Act 2003* provides a power for regulations to set a level of insurance cover. The setting of the level of insurance cover will not however continue to be delegated to the Board.

PI insurance provides a level of protection to consumers in the event that a consultant causes a fault or loss to a consumer. The holding of PI insurance allows consumers to claim against a supplier of services, with the insurer then assuming control of the claim once it is notified. Surveyors also derive

substantial benefit from holding insurance cover. There are various costs and benefits of such an approach and these will be detailed below. However, it does make good business sense for any business to hold PI cover and to not expose the business and its owners to claims, without any support mechanisms.

The supply of PI insurance to the survey industry in Australia is characterised by a major supplier and other smaller suppliers. As such it is difficult due to commercial confidentiality to source specific details about numbers of claims, payouts or settlement arrangements concerning claims and the costs of insurance premiums. Notwithstanding this, premiums for insured consultants are usually based on several factors including:

- Level of cover required,
- Any excess specified or required with the cover,
- Annual turnover of the surveyor,
- Any previous claim history by the surveyor,
- Type of work conducted by the surveyor,
- Any variations or exclusions negotiated with the policy cover.

Premiums are therefore structured for surveyors, very much on an individual basis depending on all the factors above. Annual premiums can typically vary widely from \$3,500 up to \$300,000. This range reflects the extremes such as a very small one person survey operation providing limited services with small turnovers to large firms with extensive turnovers. High risk claim histories obviously have a large bearing on premiums. It would be most unusual for PI insurance cover to be refused by suppliers of this type of insurance in the Australian marketplace, notwithstanding that premiums may appear large in some cases.

Suppliers of PI insurance may assist their clients about managing risks and loss prevention generally. This provides a good background for surveyors to improve or manage their businesses in a way that best serves the interests of their firm and their clients. Insurers are also most familiar with the management of insurance claims. This process tends to work towards achieving solutions of a win/win outcome rather than an “all or nothing approach” generally involving substantial legal costs. The latter type of scenario can only serve to reduce the remedy that may otherwise be negotiated through a properly managed claim process.

Another approach to minimizing risks to consumers of surveying services is to ensure consultant surveyors have made appropriate risk analyses

within their businesses. Having made those assessments, it could be argued that a suitable level of consumer protection can be provided where appropriate management approaches are adopted that minimize or remove opportunities for problems with survey contracts. Such an approach could be assessable if a defined set of criteria could be supplied upon which the Queensland Surveyors Board could decide if such an approach to risk management was acceptable (for the purpose of protecting consumers of surveying services).

This alternative would require an examination at a policy level. The legislation is quite specific in referring to “insurance cover” which is consistent with the intention when that legislation was drafted. Any variation from using the traditional insurance approach to employing identifiable risk management and minimisation strategies as an alternative to protecting surveying clients, would therefore necessitate a change to the *Surveyors Act 2003*, an action which is not possible at this point in time.

A variation on both approaches could employ an auditable risk analysis approach in order to gauge the level of insurance cover required to address identified risks. Given appropriate criteria, the Board could oversight such analysis in order to confirm adequate insurance cover is held. This alternative may be better than setting a minimum amount of cover for all registered consulting surveyors and overcome any opportunities for over or under insurance to eventuate as a result of a single specified value of cover. As with the alternative above, such an approach would require a legislative change to the Act. This is not being contemplated at this stage. Comments would be welcome now however on either of these two approaches.

Consequently, only two options concerning the setting of fees and insurance cover have been considered in detail as below.

### **Option 1: No Regulation**

This is a ‘do nothing’ option, allowing the Act to operate without regulatory support. This would mean that:

- Fees for application, renewals and restorations of registration would not be prescribed. This could compromise the functioning of the Board as a substantial amount of the Board’s operating revenue is derived from these sources.
- Eligibility criteria for some surveyor categories may not be available thus hindering potential applicants from proceeding through to registration.

- Insurance cover requirements to be held by consulting surveyors would not be prescribed thus compromising the intent of the Act in this area.
- The particular details that should be recorded in the register of surveyors would not be prescribed.
- Those non-exclusive titles that may be used by surveyors would not be prescribed.

Under these circumstances, apart from the financial aspects, several of the primary functions of the Board would become unworkable due to the absence of the machinery detail that would otherwise be provided for in the Regulation.

In order to make the Act workable in this scenario, several changes would need to be made to the Act to incorporate those matters of administrative detail for dealing with applications, renewals and restorations of registration. This is not a reasonable solution to the policy problem of operational issues not being addressed by Regulation, given also the complex legislative processes for amending legislation. Notwithstanding this, the *Surveyors Act 2003* has only just been developed through this rigorous process and this has incorporated an extensive consultative process which has acknowledged and supported the intended approach to the regulatory requirements foreshadowed in the Act.

Consequently, this option was rejected.

### **Option 2: Make the Regulations in accord with the calls in the Surveyors Act 2003**

Option 2 is the current proposal. It proposes the re-making of current regulatory provisions with amendments to bring the wording and scope in line with the Surveyors Act 2003 and the adjustment of fees to reflect Consumer Price Index (CPI), in line with Government policy. The following sections are proposed in the Regulation:

- Section 3 (Insurance covers required by Consulting Surveyors)—This provision will set out the value, risk cover profile and evidence requirements of professional indemnity cover required by Consulting Surveyors in order to apply for or retain their registration endorsement in this category.
- Section 4 (Eligibility criteria for Emeritus Surveyors)—This Section will set out the additional criteria (apart from the base



criteria in the Act) to be satisfied by applicants for Emeritus Surveyor.

- Section 5 (Application for competency assessment)—this provision will set out the manner in which applications for competency assessment and the associated fees, may be made.
- Section 6 (Application fees for registration and registration endorsement)—These fees will be set out in Schedule 1 of the Regulation.
- Section 7 (Application fees for registration and registration endorsement—renewals)—These fees will be set out in Schedule 1 of the Regulation.
- Section 8 (Application fees for registration and registration endorsement—restoration)—These fees are for persons who are no longer registered but are seeking restoration to the register and comply with the conditions of restoration. The fees will be set out in Schedule 1 of the Regulation.
- Section 9 (Application fees for those registrants applying for renewal but have made application later than the expiry date for renewal)—These fees are for persons who are registered but are seeking renewal of their registration beyond the expiry date for renewal. The fees will be set out in Schedule 1 of the Regulation.
- Section 10 (Register particulars)—will set out the details that must be contained for each registrant, on the register of surveyors.
- Section 11 (Titles that may be held by registrants)—will provide for the non-exclusive titles that may be used by registered surveyors with or without particular endorsements.
- Section 12 (Fees generally)—will provide for those general fees for other services provided by the Board to applicants, registrants or the community.

## **Schedule 1—Fees**

## **Current      Proposed**

### **1. Initial registration and endorsements—**

#### **(a) as a surveying associate—**

(i) application fee	\$59.20	\$60.60
(ii) registration fee	\$81.45	\$83.40

<b>Schedule 1—Fees</b>	<b>Current</b>	<b>Proposed</b>
(b) as a surveying graduate—		
(i) application fee	\$70.85	\$72.55
(ii) registration fee	\$87.80	\$89.90
(c) as a surveyor—		
(i) application fee	\$93.05	\$95.30
(ii) registration fee	\$103.65	\$106.10
(iii) cadastral endorsement	\$52.90	
(iv) consulting endorsement registration	\$206.25	
(i) application fee		\$96.40
(ii) registration fee		\$213.70
(v) each technical endorsement (inc cadastral)	\$52.90	
(i) application fee		\$25.00
(ii) registration fee		\$54.80
(d) of a body corporate as a surveyor		
(i) application fee	\$214.65	\$219.80
(ii) registration fee	\$249.60	
(iii) cadastral endorsement	\$207.25	
(iv) consulting endorsement	\$835.40	\$1,111.00
(v) each technical endorsement (inc cadastral)	\$207.25	
(i) application fee		\$50.00
(ii) registration fee		\$214.70
2. Renewal of registration and endorsements—		
(a) as a surveying associate—		
(i) ordinary fee	\$81.45	\$83.40
(ii) late registration fee	\$122.20	\$125.10
(b) as a surveying graduate—		
(i) ordinary fee	\$87.80	\$89.90
(ii) late registration fee	\$131.70	\$134.90
(c) as a surveyor—		
(i) ordinary fee	\$103.65	\$106.10
(ii) late registration fee	\$155.50	\$159.20

<b>Schedule 1—Fees</b>	<b>Current</b>	<b>Proposed</b>
(d) as a surveyor with any technical endorsement—		
(i) ordinary fee	\$10.55	
(ii) late registration fee	\$15.80	
(e) of each technical endorsement for a surveyor—individual)		
(i) ordinary fee		\$10.80
(ii) late registration fee		\$16.20
(f) of a surveyor with consulting endorsement		
(i) ordinary fee	\$207.25	
(ii) late registration fee	\$310.85	
(g) of a consulting endorsement for a surveyor—(individual)		
(i) ordinary fee		\$100.00
(ii) late registration fee		\$150.00
(h) as a surveyor with cadastral endorsement	\$114.20	
(i) as a surveyor with consulting and cadastral endorsement—		
(i) ordinary fee	\$217.80	
(ii) late registration fee	\$326.70	
(j) of a body corporate as a surveyor (inc consulting endorsement)—		
(i) ordinary fee	\$460.10	
(ii) late registration fee	\$690.15	
(k) of a body corporate as a surveyor with cadastral endorsement—		
(i) ordinary fee	\$470.70	\$482.00
(ii) late registration fee	\$706.05	\$723.00
(l) of each technical endorsement for a body corp.—		
(i) ordinary fee		\$100.00
(ii) late registration fee		\$150.00
(m) as an emeritus surveyor—		
(i) ordinary fee	\$55.00	\$56.30

<b>Schedule 1—Fees</b>	<b>Current</b>	<b>Proposed</b>
(n) decision notices (new fees created by 2003 Act)		
(i) registration—initial		\$20.00
(ii) registration—renewal		\$20.00
(iii) endorsement (each)—initial		\$20.00
(iv) endorsement (each)—renewal		\$10.00
3. Other fees		
(a) for a professional training agreement		
(i) application fee	\$21.10	\$21.60
(ii) registration fee	\$98.85	\$101.20
(iii) re-lodgement fee	\$32.25	\$33.00
(iv) variation fee	\$32.25	\$33.00
(v) report fee	\$32.25	\$33.00
(b) assessment of professional assessment project—per examiner	\$308.85	\$316.30
(i) application fee		\$20.00
(c) reassessment of professional assessment project—per examiner.	\$61.35	\$62.80
(d) assessment of competence—per examiner	\$308.85	\$316.30
(i) application fee		\$50.00
(e) assessment of competence equivalence—per examiner		\$600.00
(i) application fee		\$100.00
(f) duplicate or copy of registration certificate	\$49.15	\$50.30
(g) inspection of register	\$49.15	
h) restoration of name to register (excluding late fee and historical fees)—	\$78.75	\$80.60
(i) additional information request		\$50.00

The proposed fee increases, described above, are generally in line with CPI from 1 July 2003, which is in accordance with Government policy in this area. The only exceptions are new fees that have been created by the Act to replace some services that have been discontinued, or have been introduced through structural changes to the registration and renewal processes in the *Surveyors Act 2003*.

Given the implications of Option 1, it is not practicable to adopt any other approach other than to make these Regulations in conformance with the *Surveyors Act 2003*. Option 2 addresses the operational needs through appropriate fee structures to assist in financing Board operations and recompenses the Board for other services provided to applicants, registrants and the community. These fee structures also support the Board in providing an appropriate surveyor registration regime that facilitates community and Government support in the provision of surveying services. The Board also provides for an effective investigatory and disciplinary framework for cases where alleged professional misconduct has occurred.

## **9 QUALITATIVE IMPACT ASSESSMENT**

The surveying industry is a relatively small industry and is characterised by a small number of large suppliers and a much larger number of very small and mostly one-person operations. Several of the larger suppliers are formed into multi-disciplined firms incorporating land planning, environmental, engineering, spatial sciences and information technology services.

A quantitative assessment of the impacts on the industry based on accurate industry information is not possible to achieve because of the lack of readily available or proprietary nature of the data and the many intangible costs and benefits.

The rating categories of H+, H-, M+, M-,L+ and L- have been adopted similar to the RIS Assistant Software provided by BRRU. These ratings are indicative only and the relativities between the categories should be considered when interpreting these data qualitative assessments.

## **STAKEHOLDERS**

The stakeholders affected by the proposal to make the Regulations have been categorised into 4 broad categories:

- Government—vested interest in the maintenance of the integrity of the survey cadastre, Queensland Surveyors Board, employer of surveyors and service provider,
- Survey professionals—survey service providers and users of survey information,
- Development and Property Businesses—users of integrated surveying and information services

- General Community—user of surveying services

The interests in surveying services and/or application of surveying information by these groups is detailed in Table 1.

Table 1: Stakeholders—interest in surveying services

Stakeholder Group	Interest
<i>Government:</i>	
• State Government	<ul style="list-style-type: none"> <li>• Department of Natural Resources and Mines is charged with maintaining the integrity of the State's cadastre and relies on quality surveys performed by registered surveyors to achieve this. The Registrar of Titles uses survey plans (instruments) to create and register interests in land. The Department provides the State Geodetic Survey, which is used by all surveyors, mappers and spatial information professionals to accurately position natural and built features on the earth's surface. The Department of Main Roads employs many specialist surveyors to manage the maintenance and development of Queensland's declared road network.</li> <li>• The Queensland Surveyors Board assesses applicants and registers surveyors, and provides a disciplinary regime for upholding professional conduct by surveyors for protection of the public interest.</li> </ul>
<i>Survey professionals</i>	
• Surveyors	<ul style="list-style-type: none"> <li>• Perform and provide survey services to organisations and the public for land development, infrastructure development, mining operations, all forms of construction, natural resource monitoring and the associated information management of these data.</li> </ul>

---

## **Stakeholder Group      Interest**

### *Land and Property Development Businesses*

- Developers, constructions companies, miners, property market, planners, lawyers, environmental managers, mapping agencies
- This group uses surveyors to manage the planning, development, construction and post construction activities particularly in relation to the spatial characteristics, positioning and the land titling aspects of any development or resource monitoring project.

### *General Community*

- Property owners, purchasers
- Employ surveyors to survey property boundaries, perform detail surveys, and provide plans over the extent of various interests in land. Usually only occasional users of these services.

## **Cost—Benefit Assessment**

The impacts on these stakeholders of the previously described options, are outlined below.

### **Option 1: No Regulations (no fees or insurance prescription option)**

This is considered the ‘base case’ scenario against which the regulatory alternative will be analysed and rated. This option proposes that the regulations not be made. Under this scenario the Board could still function however no fees would apply to any of the functions that the Surveyors Act 2003 provides a head of power for. The PI insurance requirements for consultants will likewise not be prescribed. The impacts on the different stakeholders of this option are analysed below in Table 2. There would also be other impacts under a “no regulation” scenario, which will also be discussed.

### **Summary—Option 1**

The level of impact of not having fees or a level of prescription about PI insurance and how that would apply to these stakeholder groups is

summarised below. The relativities between the groups was taken into account to obtain an overall assessment of (L-) Low Negative Impact for removal of fees applying to services provided by the Board and not providing any level of PI insurance prescription.

<b>Stakeholder Group</b>	<b>Predicted Impact</b>
Government	L-
Survey Professionals	L+
Land Property Development Businesses	L-
General Community	L-
<b>Overall Assessment</b>	<b>L- (Low Negative Impact)</b>

Given the overall low negative impact of removing fees, this option was rejected.

Table 2: Stakeholder Impacts—Option 1 (Not making the regulations)

*Government:*

- State Government      Should the regulations not be made the Queensland Surveyors Board would continue to function and provide for the essential functions under the Act. There would however be several implications as outlined below.

The stakeholders in this group are the Department of Natural Resources and Mines and the Department of Main Roads. MRD is a significant employer of engineering surveyors. For NR&M the option of no fees would mean that government would need to fund the Queensland Surveyors Board. The Board collected \$226,920 in 2002/04 from application and renewal fees. Alternative funding might be achieved through an increase in the “survey plan levy” on each lodged plan, which is currently the



other source used to fund the Board. The levy is currently set at \$10 per plan lodged with the Registrar of Titles. In 2002/03 this levy raised \$81,120 to assist in funding the Board's activities. The levy would need to increase to approximately \$38 per plan under a no fee scenario. Alternatively the government would need to fund the Board from consolidated revenue.

In regard PI Insurance there would be little impact on the agency as it rarely engages consulting surveyors itself. If it did however, NR&M would ensure that any consultants it engaged did hold an adequate level of PI insurance cover.

The Queensland Surveyors Board provides a range of functions which support the Government's role in upholding the integrity of the titling system and also the general community expectation in being able to source surveying services of a high standard. The Board conducts these roles through providing approved competency frameworks for registered surveyors and assessing and registering appropriately competent persons. The Board maintains a public register of those registered persons and also manages a disciplinary process that aims to pre-empt, or in cases of more blatant professional misconduct, to deal with those cases in a transparent and constructive manner. The Board has financed these services through the charging of fees to registered surveyors and also the remittance of funds that are levied by NR&M on all cadastral survey plans lodged with the department. The Board obtains revenue from registration fees from initial applications and renewals of registrations. The Board would need

to source an equivalent level of funding from government if fees could not be prescribed.

In regard PI insurance, where no level of prescription existed the Board would be relieved of seeking evidence of same when registering or renewing surveyor registrations. The Board may however be subject to more complaints from users of surveying services should claims against surveyors become stymied through a lack of adequate cover being taken by consultant surveyors. This circumstance is expected to be a small but real possibility. Prudent consulting surveyors would normally hold sufficient PI cover.

There are other issues that would impact on government should regulations not be made. Additional criteria for eligibility to registration as an emeritus surveyor could not be prescribed. Applicants would therefore be required to only comply with those standard criteria already set out in the Act. This would not present an issue for government. The setting of fees for late applications for renewal and restoration to the register of surveyors would not be made. These are minor sources of revenue to the Board and therefore of minimal impact on government in terms of it providing funding for the Board's operations. Should these fees not be prescribed and therefore not provide any disincentive for surveyors to promptly apply for their registration renewals, surveyors may take advantage of this by making late applications or requests for restoration to the register, in greater numbers. Such a scenario could increase the administrative workload of the Board.

The notifiable things concerning a change in circumstances, that a surveyor should inform the Board about of would not be prescribed under a no regulation scenario. This could cause the register of surveyors to not be kept entirely accurate—though the fundamental information as controlled through processes defined in the Act, would remain accurate. Non-exclusive titles that surveyors may use would also not be prescribed. This could pose an issue for government. By regulating the profession, some standardisation of terminology is required so that users of surveying services can recognise those persons that are indeed registered. The government role of protecting the community may be compromised in these circumstances.

The overall impact to State Government of not prescribing regulations is estimated as a (L-) Low Negative Impact.

#### *Survey professionals*

- Surveyors

Surveyors (including companies) pay application fees and registration renewal fees to the Board. Should these fees not be prescribed, surveyors would be advantaged to the extent that their costs in holding an annual registration would be minimised. The existing annual fee for a registered consulting surveyor is \$220 or \$460 (individual or body corporate). The Board would still be obliged to ensure that surveyors maintained their professional competencies and made those appropriate registration assessments when applications for renewals were made.

In regard PI insurance and a mandatory level of cover not being prescribed, consulting surveyors would need to make a commercial decision on whether they procured PI insurance cover. That cover would normally be at a level that was independently appropriate for their practices, and for the type, value and risks involved in the services provided. In the case of commercial clients, levels of insurance cover may well be specified contractually and individually with each contract of engagement. Should surveyors not seek to acquire any PI cover or choose to under insure, they would leave their practices and very likely their personal assets at risk from claims, however would save that operating expense in the running of their business. This would be an undesirable position from the surveyors point of view, but overall of limited impact on the survey industry as a whole.

The overall impact to Surveyors is estimated as (L+) Low Positive Impact.

#### *Land and Property Development Businesses*

There would be little impact on this group under a no regulation scenario. Members in this group would generally have little awareness or knowledge of fees paid by surveyors to the Board. If surveyors were however to marginally reduce fees to acknowledge slightly lower operating overheads, the business community may benefit in a very small way. It is not possible to make this assessment but the quantum of fees paid by surveyors to maintain registrations as a percentage of revenue would generally be extremely small (eg \$460 annual registration as a percentage of \$460,000 in fees for a small consultancy is 0.1%).

Prudent business users of surveying services would only engage those surveyors that held adequate insurance cover deemed appropriate for the scope and extent of those projects that are being undertaken. Other business users may build insurance covers into their contractual arrangements with surveyors. This would be irrespective of any prescription by regulations in this area. Smaller or inexperienced business users of surveying services may however rely on a prescriptive level of cover being held by surveyors and in these cases a negative impact may result if that prescription did not exist. It should be understood that the provision of survey services quite often has many downstream effects on how a project progresses. Survey errors caused early in a project may necessitate project redesign or re-engineering to be required. Survey services may often times lie on the critical path of a project's development phase. These characteristics have a propensity to amplify any damages that may result from errors caused by surveyors.

The overall impact to the Business Community is estimated as (L-) Low Negative Impact.

#### *General Community*

In the absence of regulations prescribing fees for surveyors, there would generally be little impact on this group. The community generally has no knowledge of any fees paid by surveyors to the Board. If surveyors were to marginally reduce fees to acknowledge slightly lower operating overheads, the community may benefit in a very small way. This is difficult to predict and despite competitive principles applying, a realistic outcome would be no change in fees being charged by surveyors.

The community would benefit by suppliers of surveying services holding an adequate level of PI insurance cover. If a level of cover was not prescribed under regulation, there would be greater risk exposure to the community. If some suppliers of surveying services did not take any PI cover or retained an inadequate level of cover due to a lack of regulation, the community may suffer losses through not succeeding in achieving remunerative remedy should a legitimate claim for damages arise. Private individuals rarely if ever engage consulting surveyors and therefore are inexperienced in understanding what an appropriate level of insurance cover might be for the surveyor and for the project being contemplated. This suggests that it is more important from the general community perspective, for insurance covers to be prescribed.

The register of surveyors not being kept current during a registration period could lead to a lack of credibility by the community in the publicly available particulars of certain surveyors. This is a low risk as surveyors are obliged to update their particulars on a regular basis with their annual registrations.

By not prescribing those alternative titles that surveyors might use could lead to some confusion in the marketplace, when seeking the services of surveyors. A low risk will exist with surveyors using many variations of title with the general community not being able to properly differentiate the particular services being offered by each practitioner.

The overall impact to the General Community is estimated as (L-) Low Negative Impact.

**Option 2: Make the Regulations with appropriate amendments (from existing Regulations) to accommodate new provisions contained in the Surveyors Act 2003.**

This option will be assessed against the ‘base case’ scenario of not providing regulations and thus no fees and no level of prescription for PI insurance cover.

**Summary—Option 2**

The level of impact of holding and amending fees and prescribing a level of PI cover for consulting surveyors and how that would apply to these stakeholder groups is summarised below. The relativities between the groups was taken into account to obtain an overall assessment of (L+) Low Positive Impact for making the regulations with a retention of fees applying to services provided by the Board.

<b>Stakeholder Group</b>	<b>Predicted Impact</b>
Government	L+
Survey Professionals	L-
Land Property Development Businesses	L+
General Community	L+
Overall Assessment	L+ (Low Positive Impact)

Given the overall positive impact of retaining a fee structure with appropriate amendments to accord with the Act and prescribing PI insurance requirements for consulting surveyors, this option was accepted.

Table 3: Stakeholder Impacts—Option 2 (Making the regulations)

*Government:*

- State Government For NR&M the option of applying fees would mean that the department would not need to fund the Queensland Surveyors Board from internal sources or other sources, as a large part of the revenue raised by the Board is achieved through application of fees for services.

There would be no impact on NR&M if a required level of PI Insurance was prescribed in regulation. For those other government departments that employ surveying services, the prescription in regulation of a required level of insurance would provide a level of protection as is stressed in the purpose of the Act.

The Board provides a range of functions which support the Government's role in upholding the integrity of the titling system and also the general community expectation in being able to source surveying services of a high standard. The Board conducts these roles through providing approved competency frameworks for registered surveyors and assessing and registering appropriately competent persons. The Board maintains a public register of those registered persons and also manages a disciplinary process that aims to pre-empt, or in cases of more blatant professional misconduct, to deal with those cases in a transparent and constructive manner. Should the collection of revenue by application of fees continue to be available to the Board, it would be able to continue to finance its operations independent of funding from the State. The Board would not be compromised in fulfilling its roles if it were able to charge fees for the services it provides.



With respect to the issue of prescription requirements for PI insurance the Board has in the past been delegated a responsibility in regulations to prescribe a certain value of PI insurance cover for consulting surveyors. The Surveyors Act 2003 states that the level of insurance prescription must now be prescribed in regulation. An issue exists that prescription of a fixed amount of PI insurance cover ignores the relative risks that would be apparent between large and small surveying firms and the types of survey business that is carried out. Fixing an insurance cover amount could also mean that some consulting surveyors may be under or over insured. Prescription of a set figure may also make it difficult in the present insurance environment where certain types of surveying practices maybe unable to secure PI insurance cover at accessible rates or not at all.

The overall impact to State Government is estimated as (L+) Low Positive Impact.

#### *Survey professionals*

- Surveyors

Surveyors (including companies) have traditionally paid application fees and registration renewal fees to the Board. Should these fees continue at the same or similar levels with the making of the regulations, the situation for surveyors would remain unchanged. The range of annual fees paid by registered surveyors can range from \$207 to \$460 for individual or consulting land surveyors. As a proportion of other professional fees that surveyors might pay and in the context of other operating overheads, these fees by comparison do not pose a high burden on surveyors. Notwithstanding this, there is a slight disadvantage to surveyors in having to pay any fees to maintain their registrations.

Prudent consulting surveyors would always take adequate PI insurance cover so that any insurance taken using a risk analysis approach would match or exceed the regulatory requirement. Consulting surveyors would in any case be making informed decisions based on the risk profile of the surveying firm. PI insurance protects the firm from claims against error, poor performance or malicious claims in any business or contractual relationship. It provides an avenue for claims to be handled by third parties so that the surveying practice can continue in most cases without the distractions of claimant negotiations or legal actions. PI insurance therefore, regardless of a regulatory requirement, provides a business benefit to consulting surveyors.

Any level of prescription might also be viewed as a financial imposition on those less professional surveyors who would otherwise choose to not carry any PI cover if possible, or only a modest level of cover that might be classed as under-insurance. PI premiums can vary widely depending on many factors but can range from \$3500pa up to \$300,000pa. Should a surveyor choose to not hold PI insurance or under insure the public might be exposed to some risk, should a problem arise during the course of a consultancy.

The board currently requires consulting surveyors to hold \$1M of professional indemnity insurance. This would be regarded as a minimum level of cover and many firms would hold levels of cover much higher than this. The insurance industry is characterised by its competitiveness with both products and premiums. A regulatory requirement for consulting surveyors to hold PI insurance is not likely to cause an increase or decrease in the premiums sought by the insurance industry.

The overall impact on Surveyors is estimated as (L-) Low Negative Impact.

#### *Land and Property Development Businesses*

There would be no impact on this group as regards fees paid by consulting surveyors. Fees generally would be a very small proportion of overhead costs of consulting surveyors. It is unlikely that consulting fees decided by individual contract when negotiating terms of engagement would alter with any change to the fees paid by surveyors to the Board. Fees paid by surveyors to the Board do however return a benefit to business consumers by the provision of the surveyor investigatory and disciplinary processes.

In regard PI insurance, land developers would benefit by some compulsory prescription of cover being retained by consulting surveyors. This would afford professional users of surveying services a level of comfort and reduce business risk when undertaking development projects. Prudent business users however would always look for adequate levels of cover being held by their consultants in order to protect their development project from damages caused by a surveying problem.

The overall impact to the Business Community is estimated as (L+) Low Positive Impact.

### *General Community*

There would be little to no impact on this group. It is unlikely that consulting fees charged by surveyors would change as a result of regulations continuing with fees (and for fees generally increasing by CPI) for surveyors. Fees are a very small component of surveyors operating overheads. Fees are used by the board to administer the surveyor registration system and provide an investigatory and disciplinary function. These services are ultimately of benefit to consumers and the community.

In regard insurance, the community does benefit by some compulsory level of PI insurance cover being retained by consulting surveyors. Consumer experience in this group in dealing with surveyors is generally low. A level of prescription of insurance cover would afford users of surveying services a level of comfort and reduce commercial or contractual risk to community based users when engaging surveyors. The holding of PI insurance by consulting surveyors protects the community by providing a medium for dealing with errors or poor performance caused by the surveyor and an avenue for financial compensation or remediation. Where the regulations prescribe in this area, the community will benefit with a level of protection against unforeseen circumstances relating to the use of surveying services.

Costs of insurance premiums are however passed on to consumers as a proportion of overheads built into fees paid. Individual surveyor insurance premiums can range from \$3500pa to \$350,000pa. Fees paid by the general community for surveying services would usually be very low compared to fees paid by industry clients. Insurance covers held by surveyors would generally be structured towards their higher risk clients. Therefore it would be reasonable to suggest that the general community would not pay lower fees due to any variation in the quantum of insurance cover held by surveyors.

The overall impact to the General Community is estimated as (L+) Low Positive Impact.

## **10 Fundamental legislative Principles**

The making of the Regulations will be consistent with Fundamental Legislative Principles.

## **11 National Competition Policy**

There were several national competition policy (NCP) issues that were identified in the review of the head legislation (*Surveyors Act 1977*), however all these matters have been dealt with satisfactorily in the *Surveyors Act 2003*. On balance the PBT concluded that it was beneficial to the community to retain regulation in the surveying industry. There are no NCP matters that are generated through the making of the proposed Regulation.

## **12 Risk Assessment**

The main risks associated with not making the Regulation are;

- The Board would be obliged to seek alternative funding sources from the government in order to function.
- The intent and functioning of the *Surveyors Act 2003* would be compromised to some extent by the lack of supporting

prescription about registration of some categories of surveyors and the renewals of registration.

- Users of land surveying services could be exposed to unnecessary risks where surveyors chose to not hold any or adequate levels of insurance.

Other minor risks through not making the Regulation include;

- Some confusion might exist within the community due to a lack of uniformity with non-exclusive titles that surveyors of different categories or endorsements, might use.
- The register of surveyors might not be complete or be able to be maintained in a current status—with some adverse impacts on the integrity of the register and reliance on it by the community.

Ultimately not making the Regulation could lead to a substantially greater reliance on the government to fund the Board's activities. The community could also be left exposed should the insurance requirements of consulting surveyors not be dealt in a prescriptive way. This could result in a higher level of complaint being dealt with by the Board with no clear avenue being available in some adverse cases, for remedial actions to be funded. This could leave those affected members of the community in quite compromised situations. The making of the Regulation will address these adverse outcomes.

The *Surveyors Act 2003*, *Surveyors Regulation 2004* and the *Survey and Mapping Infrastructure Act 2003* and associated regulations are a package of legislative reform that has been designed to deal with competition issues, upgrade the regulatory framework for surveyors to be consistent with contemporary practice, recognize the change to competency based training and registration regimes, recognise and implement appropriate responsibility splits between professional and technical standards in the new legislative arrangements, and improve the disciplinary processes for registrants. The commencing of *Surveyors Act 2003* will complete this reform agenda and together with the *Surveyors Regulation 2004* will deliver benefits to both surveyors and the community.

---

#### ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Natural Resources, Mines and Energy.

© State of Queensland 2004