

NATIONAL COMPETITION POLICY REVIEW OF SURVEY ACT 1992

1. INTRODUCTION

1.1 Scope of Review

Surveying is a term used to describe a number of activities related to measuring and positioning features on, under, or above the surface of the earth. It encompasses a number of different and discreet fields such as mine surveying, engineering surveying, hydrographic surveying, construction surveying, geodetic surveying, topographic surveying and cadastral surveying.

This is not a review of the surveying industry in its entirety. It focuses on a narrow segment of the industry containing those surveyors licensed or registered under the Survey Act 1992.

Licensed surveyors have the exclusive right to carry out land boundary or cadastral surveys.

In South Australia cadastral surveying is a regulated activity controlled by the Survey Act 1992. The Act establishes a licensing regime and imposes a number of statutory controls on those licensed to carry out cadastral surveys.

Registered surveyors have no exclusive rights of practice. Registration is recognition that a surveyor has achieved an acceptable level of competence in a field of surveying other than cadastral surveying.

The primary focus of this review is on the legislative restrictions imposed upon licensed surveyors.

1.2 The Cadastral System

The cadastre is a methodically arranged public inventory of information concerning properties.

It has a number of components, including:

- A sound survey system which allows the location of properties to be accurately determined
- A land titling system which provides details of property ownership and interests
- A valuation system that records the value of the property.

In Australia, the cadastral survey system comprises an accurate record of all the State's land parcels, both freehold and Crown land. In the main, these land parcels have been defined by licensed surveyors and depicted on survey plans deposited with the Registrar-General and Surveyor-General. This

record underpins the State's Torrens Titling and Crown Lease systems, which consist of Certificates of Title and Crown Leases detailing ownership and legal interest in each parcel.

A sound cadastral system is essential to the economic development of a jurisdiction. Most economic activity is based, either directly or indirectly, on the use of land and property ownership represents a large proportion of a community's wealth.

Ensuring the accuracy and integrity of the cadastre are maintained are fundamental to the effective management of the State's land administration system. The licensed surveyor plays a key role in this process.

1.3 Role of the Licensed Surveyor

The primary role of the licensed surveyor is to determine the size, location and boundaries of parcels of land.

The Real Property Act, Crown Lands Act, Community Titles Act, Strata Titles Act and numerous other statutes require a cadastral survey certified by a licensed surveyor to determine or re-establish land boundaries as part of the process to subdivide or otherwise develop land.

The accuracy of the surveyor's work is critical to the integrity of the government guaranteed land title that is issued following a land development process.

The community also relies on the licensed surveyor to accurately determine the limits of their property entitlement to ensure buildings and other improvements are properly sited.

Licensed surveyors are in a unique position as they have a responsibility not only to the client who has engaged them to undertake a survey, but also to the adjoining landowners and the Government.

The surveyor is an impartial arbiter when determining the location of a property boundary. When establishing a client's property boundary, the surveyor is also determining the boundary of the adjoining property, and must be fair and impartial to all parties. The survey, once lodged in the Lands Titles Office, becomes an official record that will be relied upon by the government when issuing title and by other surveyors when determining the positions of property boundaries in the future.

1.4 Legislative Constraints on Licensed Surveyors

Within Australia, all jurisdictions have adopted strict regulatory systems to control cadastral surveying. In South Australia, a person can not carry out a cadastral survey unless they are licensed as a surveyor pursuant to the Survey Act 1992. Other States have similar legislation.

To ensure transportability of qualification and to maintaining nationally competitive markets for the cadastral surveying industry, States and territories have had formal reciprocal agreements in place for many years through a national agreement consistent with the principles of mutual recognition.

The Surveyors Boards of Australia and New Zealand hold a joint meeting every four years, interspersed with meetings of presiding officers/State Surveyors-General to ensure the principles of mutual recognition are maintained.

1.5 Regulation in Other Countries

New Zealand, South Africa, Canada and a number of Commonwealth countries that operate a Torrens Title registration system regulate the cadastral surveying industry in a similar manner to Australia.

1.6 The Survey Industry in South Australia

The Survey Industry in South Australia provides a wide range of services including cadastral surveys, engineering surveys, urban planning, land and geographic information, surveys for mineral exploration, mining surveys etc. The Survey Act only controls surveyors licensed to carry out cadastral surveys; there are no statutory controls over the other classes of surveying.

The industry in South Australia is broadly split into two sectors. One operates exclusively in the non-cadastral arena with the main area of work being in the engineering, mining and exploration fields. In the past the members of this group tended to hold technical (non-degree level) qualifications in surveying. There are now an increasing number of degree qualified surveyors working exclusively in this area. There are approximately thirty firms in South Australia providing this service, in addition to surveyors employed by government, local government and mining and exploration companies.

The second sector provides a cadastral survey service as well as competing for the other fields of survey work.

There are approximately 40 firms containing licensed surveyors that provide a cadastral surveying service to clients. Firm size varies from around 40 staff to the sole practitioner. It is estimated that in total the firms collect somewhere between \$12 and \$15 million per year in fees from cadastral surveys.

There are 153 surveyors and 24 companies licensed, and 7 surveyors registered under the Survey Act 1992

1.7 The Institution of Surveyors, Australia, South Australia Div. Inc (ISA)

The Institution of Surveyors is the professional body representing licensed and registered surveyors at a State and national level.

In South Australia it has a membership of 235.

The Survey Act 1992 delegates to the Institution of Surveyors the responsibility to license and register surveyors in South Australia.

The vast majority of the State's licensed and registered surveyors are members of Institution of Surveyors, however membership is not a prerequisite for licensing or registration.

2.0 COMPETITION PRINCIPLES AGREEMENT

The Competition Principles Agreement between the States and Commonwealth requires by the year 2000, the review, and where appropriate, reform of all legislation that restricts competition

The Survey Act 1992 is included in this process as it specifically restricts entry into the field of cadastral surveying to persons licensed under the Act, and through Regulations and Directions, imposes certain restrictions on cadastral survey practice.

2.1 Review Team

A Review Team was established to examine and make recommendations concerning the anti-competitive provisions of the legislation.

The Team comprised:

Mr Peter Kentish, Surveyor-General,
Mr Ray Feller, Institution of Surveyors, Australia, South Australia Division Inc. (ISA)
Mr Chris Millett, Association of Consulting Surveyors South Australia Incorporated (ACS),
Mr Neil Edwards Institution of Engineering and Mining Surveyors (IEMSA)
Mrs Judith Carr, non surveying industry representative

2.2 Terms of Reference

The Terms of Reference of the Review is to examine the Survey Act 1992 and Regulations to:

- identify and consider the objectives of the Survey Act 1992
- identify and consider changes needed to ensure the legislation remains relevant and appropriate to the interests of all stakeholders.
- examine and consider the outcomes of interstate surveying legislation reviews.
- identify and consider the nature of restrictions on competition contained within the Survey Act 1992.

- analyse the likely effect of the restrictions within the Survey Act 1992 on competition and the economy generally.
- assess and balance the costs and benefits of the restrictions within the Survey Act 1992, and
- consider alternative means for achieving the same result including non-legislative approaches.

3.0 COMPETITION AND THE SURVEY ACT 1992

3.1 What is meant by “Restricting Competition”

As part of the National Competition Policy, the Commonwealth, States and Territories have agreed that legislation should not restrict competition unless it can be demonstrated that:

- (a) the benefits of the restriction to the community as a whole outweigh the costs
- (b) the objectives of the legislation can only be achieved by restricting competition.

There are three broad categories of restriction to competition:

- those which restrict entry to the market
- those that restrict competitive conduct by persons in the market
- those that discriminate between competitors in the same market

The Survey Act clearly falls into the first category; it creates a statutory monopoly as only surveyors licensed under the Act can carry out cadastral surveys.

3.2 The Survey Act 1992 - Background

The proclamation of the Survey Act 1992 saw the culmination of a five-year review of surveying in South Australia. The new Act introduced major changes in the administration of the system of licensing surveyors and the practice of cadastral surveying in the State.

The broad objects of the Act are “to provide for the licensing and registration of surveyors and to make provisions relating to surveying and land boundaries.....”. It also establishes a clear distinction between the roles and responsibilities of the Institution of Surveyors and the Surveyor-General. The latter is responsible, through the Minister, for providing a cadastral surveying system to meet the needs of the State.

The Act introduced a model of co-regulation and assigned responsibility for licensing, registering and disciplining surveyors to the Institution of Surveyors. Previously a statutory Surveyors Board carried out these functions.

3.3 Objectives of Survey Act 1992

The objectives of the legislation were first developed in a Green Paper published in February 1989 and were reviewed and revised as the legislation was developed. The objectives of the legislation are to:

- ensure that appropriate standards of competency and professional conduct are maintained by the State's licensed and registered surveyors.
- devolve responsibility for licensing, registering and disciplining licensed and registered surveyors to the Institution of Surveyors, Australia, South Australia Division Incorporated.
- provide the statutory controls required for the efficient development and maintenance of the State's cadastral survey system and, in particular, to ensure the proper definition of boundaries for freehold and Crown lands
- promote improvements to the State's cadastral survey system by:
 - (i) providing for the introduction of a coordinated cadastre
 - (ii) allowing for the resurvey of confused boundaries

3.4 Analysis of Restrictions on Competition in the Survey Act 1992

In broad terms the restrictions imposed by the Survey Act fall into one of the following three categories:

- title and practice restrictions
- professional standards and codes
- powers of the Institution of Surveyors

The Crown Solicitor's Office has identified a number of restrictions within these categories in the Survey Act and associated regulations and directions, these are detailed and commented on at Appendix A.

The Review Team has considered the restrictions and has assessed the following as having an intermediate impact on competition and worthy of further comment. The remainder were considered to be minor and to have a minimal impact on competition.

3.4.1 Title and Practice Restrictions

This includes restrictions that occur as a result of the licensing process and include:

- Individual qualification and experience

- Controls on companies and partnerships
- Limiting cadastral survey practice to licensed surveyors

1. Qualification and experience

Regulations under the Survey Act require that a person must possess a Bachelor of Surveying degree from the University of South Australia or equivalent qualification before being eligible to make an application for a licence to undertake cadastral surveys.

An equivalent qualification is taken as being an interstate degree accepted by that State's licensing authority or an overseas surveying qualification assessed by the Bureau of Assessment for Overseas Qualification as being equivalent to an Australian degree.

As a precondition to licensing an applicant must also have not less than two years practical experience in surveying under the supervision of a licensed surveyor and approved by the Institution of Surveyors. Eighteen months of this two years must be in cadastral surveying.

A licence is granted when the applicant has completed to the satisfaction of the Institution of Surveyors a cadastral surveying project of moderate complexity. The Regulations require the person who assesses the surveying project to be appointed by the Institution of Surveyors with the approval of the Minister.

The Institution of Surveyors imposes fees to cover administrative costs associated with the licensing process. The fees are subject to ministerial approval. They currently total \$315 with an ongoing annual renewal fee of \$95.

The licensing system operating in South Australia mirrors those in place in the other States and Territories and New Zealand.

Very few applicants obtain a licence at the end of the two-year period of training. Statistics show the average period of practical experience is closer to four years. This can be for a variety of reasons, ranging from inability to obtain appropriate experience to lack of commitment from the applicant.

There are no artificial restrictions or quotas imposed to deny suitably qualified candidates the opportunity to obtain a licence to practice cadastral surveying. Like all service industries, entry into cadastral surveying is market driven. In times of a sluggish economy with little development or demand for vacant land, employers are reluctant to employ graduate surveyors and sponsor them through the training required for them to obtain a licence. When things are buoyant graduates are in demand and readily obtain employment.

An alternative to supervised experience is available in Queensland where candidates may choose to undertake a 12 month Graduate Diploma in Surveying Practice from the Queensland University of Technology.

Figures published by the Graduate Careers Council of Australia in 1996 show that Australia wide, almost 90% of surveying graduates obtain employment shortly after graduation, with 26.3% having full time employment during the final year of their studies.

In the past most graduates embarked upon a career in cadastral surveying. This is no longer the case and graduates now have opportunities for employment in the wider surveying and spatial information arena. Many of these are more highly paid than cadastral surveying and are increasingly attracting more graduates. The licensing process appears to have limited impact on the entrance of new participants into the cadastral surveying industry. There are many other choices of employment available within the surveying industry and it seems surveyors obtain a licence because they choose to, not because it is the only avenue of employment open to surveying graduates.

This is supported by the research of Professor Ian Williamson of the University of Melbourne and published in his paper "The future of the Surveying Profession – An Australian Profession". He cites that in the 1970's approximately 90% of surveying graduates became licensed surveyors, by the 1980's this had reduced to 50% and by the 1990's 30% and still declining.

Currently across Australia the numbers of students being attracted to a career in surveying is decreasing. At the same time the average age of licensed surveyors is steadily increasing (approximately 48 years in South Australia). This should result in increasing demands for graduate surveyors to service the local cadastral surveying market and could potentially lead to higher salaries and more people being attracted to a career in surveying.

The qualification and experience restrictions appear to have little impact on the ability of an appropriately qualified applicant to become licensed as a surveyor.

Conclusion: Qualification and experience restrictions support the quality of the cadastral system and should be retained.

2. Controls on companies and partnerships

The controls on companies, partnerships and business names contained within the Survey Act and regulations conform to legislative standards of the late 1980's and early 1990's. The controls were imposed to enable surveying companies to be licensed and subjected to the same controls as individual licensed surveyors.

Section 22 (2) and sections 28 to 33 of the Act specifically deal with company licensing and registration and special obligations the legislation imposes upon companies.

The Act imposes controls on amongst other matters:

- Qualification of Directors
- Voting Rights
- Company articles of association
- Employment of surveyors

The Review Team consider that these restrictions have little to do with the practice of cadastral surveying and are an unnecessary intrusion into the business operations of firms that employ licensed surveyors and provide cadastral surveying services.

Similar provisions are contained within other legislation controlling the practice of professional groups. The Review of the Medical Practitioners Act 1983 has addressed this matter in some detail and has recommended such restrictions be removed from that legislation. A copy of the relevant pages of this report are attached as Appendix 2.

Given the similarity between the provisions relating to controls of companies, partnerships and business or trading names in the Survey Act and this legislation the Review Team conclude that the recommendations from the Review of the Medical Practitioners Act are equally applicable to the Survey Act.

Conclusion: The current restrictions on companies and partnerships should be removed and new provisions added to the Act making it an offence for any person to exert undue influence over a licensed surveyor to provide a service in an inappropriate or unprofessional manner.

3. Limiting cadastral survey practice to licensed surveyors

Only licensed surveyors can:

- place survey marks
- carry out a cadastral survey (a survey of land boundaries)
- use the expression "licensed surveyor"

Government regulations support this requirement and directions issued by the Surveyor-General impose minimum standards that must be achieved by surveyors when carrying out cadastral surveys.

The Surveyor-General's Directions are technical in nature and relate to cadastral survey practice. The Act requires the Surveyor-General to consult with the Survey Advisory Committee (a committee established in the Act) prior to issuing a Direction. The Directions are published in the Gazette and incorporated in practice manuals prepared by Surveyor-General and provided without cost to licensed surveyors.

The importance of a secure survey system is discussed elsewhere in this report. While this restriction provides a level of consumer protection, the over

riding benefit is the protection it affords the state's cadastral and land titling systems.

Conclusion: Cadastral survey Regulations, Instructions and Directions provide an effective framework for carrying out cadastral surveys. Adequate safeguards appear to be in place to ensure they are not used in an anti competitive manner. The current process should be retained.

Conclusion: Restricting cadastral surveying practice to licensed surveyors is an integral component of the State's cadastral system. South Australia should retain a licensing scheme for surveyors who wish to practice cadastral surveying.

3.4.2 Professional Standards and Codes

Maintaining professional standards and codes may impose restrictions on the way surveyors' practice.

Potentially the Institution of Surveyors Code of Ethics could be seen as a restriction to competition. In particular the Code prevents a licensed or registered surveyor from:

- seeking to supplant another surveyor who has been appointed
- seeking a fee that would preclude the surveyor from providing adequate and appropriate professional service
- advertising in a fraudulent or misleading manner or in any way not in the public interest

It is submitted that the restrictions imposed by the Code of Ethics are more in perception than fact.

The Code of Ethics is not a statutory document and is not mandated under the legislation. The worst penalty a surveyor can face from breaching the Code of Ethics is to have his or her membership of the Institution of Surveyors terminated. This does not impact on their capacity to operate as a licensed surveyor.

Section 63(3)(b) of the Survey Act allows for the adoption or incorporation of a "code standard or other document" in regulations. In theory it would be possible therefore to regulate the Institution of Surveyors Code of Ethics.

Before considering such a proposal, a competition review should be conducted and clauses should not be included in regulations unless the benefits outweigh any restrictions imposed. In such a scenario, breach of a "Code of Ethics" regulation should not be a factor that might justify any disciplinary proceedings against surveyors.

Conclusion: Should a move be made to regulate any code, standard or document, pursuant to the Survey Act 1992, any anti competition provisions should first be identified and justified to satisfy the NCP test.

Breach of a “Code of Ethics” clause should not be grounds for taking disciplinary proceedings against a surveyor.

3.4.3 Powers of the Institution of Surveyors

The Institution of Surveyors, as the regulating authority has significant statutory powers conferred upon it by the Survey Act. There are however constraints and controls on the exercise of those powers.

For example, matters relating to setting of fees and charges and the appointment of assessors to approve projects required for obtaining a licence are subject to Ministerial approval.

An appeal can be made to the District Court against a decision of the Institution of Surveyors in relation to:

- an application for a licence or registration,
- an application to renew a licence or registration
- reprimand issued to a surveyor following an investigation to the District Court.

Conclusion: There is a balance between the powers conferred on the Institution of Surveyors and the protection afforded by Ministerial oversight and appeal rights to the District Court. The Institution of Surveyors requires the authority provided by the legislation to effectively administer the Survey Act.

3.5 Advantages of continuing to licence surveyors

The current licensing regime provides a number of advantages to both the government and the community. The more significant of these are briefly discussed.

1. It ensures only appropriately qualified and experienced people carry out cadastral surveys

There are similar processes in place in jurisdictions across Australia for licensing and/or registering surveyors. The two-year period of practical experience does not appear to be a significant barrier to gaining a licence. In South Australia the average period an applicant takes to obtain a licence is over 3 years.

2. It contributes to maintaining the integrity of the land titling system

In South Australia land tenure is based on the Torrens Title System, with the Government guaranteeing all titles to land. One of the contributing factors to this guarantee is a reliable survey before a title is issued.

Restricting responsibility for cadastral surveys to licensed surveyors provides the Government with a significant level of confidence in the quality of survey work carried out for transactions under the Real Property Act. Setting and

policing cadastral survey standards also protects and improves the integrity of the land titling system.

One measure of the success of the system is the low level of litigation within the State related to the position of property boundaries.

3 It provides a level of public confidence

Few members of the public appreciate the work carried out by surveyors. Restricting the survey of land boundaries to licensed surveyors and protecting the use of the expression "licensed surveyor" provides a level of protection to the un-informed.

4 It imposes a number of obligations on licensed surveyors to protect the public

While the surveyor's licence provides an exclusive right to carry out cadastral surveys, it also imposes a number of obligations on licensed surveyors, significant amongst these being:

- to have an appropriate level of Professional Indemnity Insurance (Section 19), thus ensuring that the public is indemnified against a mistake made by a surveyor. The cost of remedying an error made by a surveyor can be significant, for example boundaries can be incorrectly marked and buildings and improvements erected on the wrong property
- to participate in a continuing education program (Section 26). The purpose of this provision is to ensure surveyors once licensed, maintain and improve their skills in surveying practice.

These provisions could in themselves be considered anti-competitive as some may discriminate against country surveyors (for example by meeting the costs of continuing education requirements) and they have the potential to increase the overheads of operating a survey practice, this in turn could result in increased survey fees

5. It imposes a disciplinary regime on licensed surveyors

The Survey Act imposes a strict disciplinary regime upon licensed surveyors. The Institution of Surveyors is obliged to investigate any complaints made by the Surveyor-General and may investigate complaints lodged against licensed surveyors by members of the public. Since 1992, the Institution of Surveyors has investigated 8 complaints against surveyors for breach of accepted practice, 5 of these have resulted in disciplinary proceedings before the Court.

3.5 Disadvantages of the Licensing system

The current system also has a number of disadvantages, the more significant of which are discussed below.

1. It restricts competition by limiting entry into the market place

The academic qualification and postgraduate training program restricts entry to the market. Qualification and training restrictions similar to those of the Survey Act are the norm in both regulated and non-regulated professions and industries. There are no quotas on the number of new cadastral surveyors entering the market place.

2. It imposes additional financial overheads on licensed surveyors

Licensed surveyors operate in the commercial environment and it is reasonable to expect them to recover the costs associated with holding a licence. This could in turn impact on the cost of surveying services provided to clients.

These costs however are minimal. The current licensing fee (annual) required for a surveyor to carry out cadastral surveys is \$95.

3.7 Impacts on Registered Surveyors

The Survey Act also restricts the use of the title registered surveyor to persons registered under the Act.

Registered surveyors have achieved a recognised level of competence in a field of surveying other than cadastral surveying. They must possess the same academic qualification as their licensed counterparts, and have completed to the satisfaction of the Institution of Surveyors two years postgraduate experience plus a major project in their field of competence before being registered.

Registration is strictly voluntary, registered surveyors do not enjoy any special privileges and are subject to the same conditions and obligations as those imposed on licensed surveyors.

3.8 Effects of Restrictions on Competition

The overriding reason for licensing surveyors is to protect the State's cadastral survey and titling systems. The consumer of cadastral surveying services is also a beneficiary of the system.

There is no evidence to suggest the restrictions have in any way influenced the price to consumers of surveying services. In recent years there has been an increase in the number of firms offering cadastral surveying services and a

decrease in the level of activity in the property development arena. As a result prices are extremely competitive and are acknowledged by members of the industry to have declined in real terms since fees were de-regulated in the early 1990's.

3.9 Costs and Benefits of the restrictions

3.9.1 To the Community

It costs the Institution of Surveyors approximately \$80 000 per annum to meet the obligations imposed upon it by the Survey Act. This money is raised from an annual licence renewal fee (currently \$95) and from users of the system by a levy (currently \$35) collected on surveys certified by licensed surveyors and lodged in the Lands Titles Office. This model ensures that the costs are being borne by the users of the system, not from the public purse.

There are a number of benefits to the community. It has the confidence that when a licensed surveyor is engaged to survey property boundaries, that person is qualified, has the skill and experience required for the task and carries an appropriate level of insurance to indemnify them against any loss caused by an error in the survey. The investigatory and disciplinary powers of the Institution of Surveyors provides a further level of public protection as a mechanism is in place to monitor standards and take action against surveyors who act either negligently or incompetently.

3.9.2 To the Government

There are significant benefits to the Government in maintaining the current regulatory regime.

All cadastral surveys prepared for actions under government statutes that result in the changes to the position of a boundary (eg the Crown Lands Act, Real Property Act, Strata Titles Act, Community Titles Act, Roads (Opening and Closing) Act, Local Government Act) are lodged with Lands Titles Office.

Approximately 2200 survey plans are lodged annually. All are thoroughly checked in the office to ensure they meet statutory and Lands Titles Office requirements. Approximately 50 per year are also field checked.

The direct costs (salary plus overheads) of the examination process are approximately \$1.1 million annually, with revenue from examination fees (currently \$520 per survey) of the same order.

Cadastral surveying and preparing survey plans for lodgement in the Lands Titles Office can be a complex process. Restricting the practice of cadastral surveying to licensed surveyors has concentrated the skills and knowledge within a finite and easily recognisable group. Even with this expertise a number of survey plans are returned to the surveyor for amendment or clarification before they are accepted.

It is feared that opening the cadastral survey market to the broader surveying community would increase the level of financial risk to the government resulting from an error in a certificate of title. To counter this it would be necessary to increase the level of checking currently applied to surveys lodged in the Lands Titles Office. This would result in longer examination times; greater processing backlogs and higher costs to Government. These costs would flow to the consumer through increased survey examination fees. Without a licensing system it would also be extremely difficult to effectively discipline practitioners who had acted negligently or incompetently.

There is also ample evidence to indicate the system has and continues to serve the State well. South Australia has a land titling and survey system that is internationally recognised and has been engaged in numerous overseas projects to advise on the implementation and development of such systems.

One of the State's strengths is the level of confidence the public have in the land titling system as demonstrated by the comparatively few disputes and litigation related to land ownership and the location of property boundaries. This can in part be attributed to maintaining strict controls over cadastral surveying standards and on whom can operate within the State's cadastre.

3.10 Economic Analysis

The cadastral surveying industry in South Australia is relatively small with total revenue at most of around \$15 million and 300 to 400 people working in either a full or part time capacity. In itself it has a minimal impact on the State's economy.

The industry however plays an integral part in the land development process and in the ongoing maintenance of the State's land administration and titling systems.

Most economic activity is based either directly or indirectly on the use of land with the result that land and property tenure represents a large portion of the wealth of the community.

In South Australia, as a direct result of the surveyor's efforts approximately 4000 new allotments are created annually. These allotments are sold, houses and units are built resulting in significant economic development and growth for the State.

In comparison to the revenue generated from the cadastral surveying industry, the economic impact on consumers of the restrictions identified at Appendix A are minimal.

Annual licence renewal fees for surveyors are modest at \$95 compared to a newly licensed surveyor's salary of around \$35 000.

3.11 Alternative Models

South Australia's surveying legislation was subjected to a major review during the latter part of the 1980's culminating with the proclamation of the Survey Act 1992 on 1 January 1993.

During this review three alternatives were examined for controlling cadastral surveying in South Australia.

One alternative was to de-regulate the cadastral surveying industry and allow anyone to carry out a cadastral survey and lodge survey plans in the Lands Titles Office.

This was not supported at the time by either the government or cadastral surveying industry and has little support today.

Both the Registrar-General and Surveyor-General believe such a system would have a detrimental effect on the State's land titling system and the operations of the Lands Titles Office. A likely result of such a move would be increased litigation and compensation costs due to boundary disputes. These costs would easily outweigh the costs currently incurred in administering the existing regulatory system. It would also make it extremely difficult for South Australian cadastral surveyors to practice in other jurisdictions that maintain a system of licensing.

The second alternative was to maintain the status quo, which at that time was regulation by a Statutory Board. This was dismissed by the government of the day as it was keen to remove Statutory Boards where alternatives were appropriate and to distance itself from regulating professional standards.

At that time all Australian States and Territories licensed or registered surveyors through statutory boards.

The third model investigated was co-regulation. This was adopted and is the system currently operating in South Australia.

To date three States have published National Competition Policy Reports. All recommend that cadastral surveying should continue to be regulated and licensing of cadastral surveyors continued. Each have investigated alternative regulatory models and each has reached a different conclusion

Western Australian proposes to continue regulation and licensing of surveyors through a statutory board.

Tasmania recommends the Surveyors Board be abolished and replaced by a co-regulatory system.

The Australian Capital Territory Review recommends that the Surveyors Board be abolished and the Chief Surveyor be made an independent statutory position and provided greater authority over the cadastral system. It

recommends that licensing of surveyors be continued and suggests a form of industry certification could be adopted to supplement this process.

Victoria is also considering a co-regulatory system for licensing cadastral surveyors.

It is clear that there is no longer a uniform view amongst States and Territories of the most appropriate model for licensing or registering surveyors. Jurisdictions are implementing systems that best suit their particular political and industry drivers.

The regulatory system operating in South Australia has been in force since January 1993 and is meeting its objectives. There have been no significant changes in the environment since that time and while the model was not unanimously supported, no new or compelling reasons were presented that would warrant making a change.

5. CONCLUSION

The cost of the licensing restrictions imposed on the cadastral surveying industry is minimal and has little impact on competition.

The industry is extremely competitive. Industry figures from a survey published by the Association of Consulting Surveyors in March 1997, show that, Australia wide, 31% of surveyors average gross earnings of less than \$40 000 per annum with a further 43% grossing between \$40 000 and \$80 000. This profile suggests surveyor's fees are comparatively modest.

The statutory requirement for licensed surveyors to comply with certain standards has a significant positive impact on the quality of cadastral surveys and the ongoing maintenance and integrity of the State's land administration and titling systems.

The cadastral surveying industry is small and there is little understanding within the community at large of the role played by licensed surveyors. The public tend not to distinguish a cadastral surveyor from a surveyor working in one of the other fields of surveying.

There is a view by some members of the Review Team that the current legislation is not specific in its definitions and that the uninformed could gain the impression that all those working in the surveying industry must be licensed. Clearly this is not the intent of the legislation.

On balance the Review Team concludes that it is in the public and government interest to continue to regulate the cadastral surveying industry. The review Team has considered alternative regulatory models and can see no compelling justification to change the current system.

The Review Team has considered the Terms of Reference and:

- Consider the objects of the legislation are still appropriate
- Believe the legislation is still appropriate and relevant
- Have examined the status of interstate reviews of surveying legislation
- Identified and considered the nature of restrictions to competition contained within the Survey Act
- Analysed the effect of the restrictions on competition and the economy generally
- Assessed and balanced the costs and benefits of the restrictions
- Considered alternative means of achieving the same result

In particular the Review Team makes the following recommendations concerning the anti-competitive provisions of the Survey Act 1992:

- Recommendation 1: South Australia should continue to license surveyors who choose to practice cadastral surveying;
- Recommendation 2: The qualification and experience restrictions in the Survey Act 1992 should be maintained;
- Recommendation 3: The current restrictions on companies and partnerships should be removed and new provisions added to the Act making it an offence for any person to exert undue influence over a licensed surveyor to provide a service in an inappropriate or unprofessional manner.
- Recommendation 4: The current regime of Regulations, Instructions and Directions provides an effective framework for controlling cadastral survey practice and should be retained;
- Recommendation 5: Prior to any code standard or document being adopted under the Survey Act 1992, it be subject to review to identify and justify anti competitive provisions to satisfy the NCP test. Breach of a "Code of Ethics" clause should not be grounds for taking disciplinary proceedings against a surveyor;
- Recommendation 6: The powers conferred by the legislation on the Institution of Surveyors are required for the effective administration of the Survey Act 1992 and should be retained.

1. TITLE AND PRACTICE PROTECTION

APPENDIX 1

Section	Restriction	Comment
Section 14	Only a licensed surveyor or a person under the supervision of a licensed surveyor can place survey marks.	Survey marks in the form of survey pegs, Permanent Survey Marks and State Survey Marks are the physical evidence left behind by a surveyor when establishing land boundaries. They form the cornerstone of our surveying system and are relied upon by both the public and other surveyors. Wrongly sited survey marks can cause long term damage to the State's cadastre and impose unnecessary costs and hardship on property owners.
Section 15	A person who is carrying out a cadastral survey for fee or reward must be licensed as a surveyor	Licensed surveyors have the skill and experience necessary to determine property boundaries. This provision provides a level of protection to consumers of surveying services and to the cadastral system.
Section 16	A person can not hold out to be a licensed surveyor unless licensed under the Survey Act	While there are numerous fields of surveying, this provides a level of consumer protection by restricting the use of the title licensed surveyor to surveyors with the qualifications and experience required to carry out the survey of property boundaries.
Section 17	A person can not hold out to be a registered surveyor unless registered under the Survey Act	Registration of surveyors is a carry over from the 1972 Surveyors Act. There is no statutory need for registered surveyors.
Section 18	A person must not use the expressions registered surveyor or licensed surveyor unless registered or licensed under the Survey Act.	Similar to comments above re holding out.

Section 22 (1)	<p>Imposes various conditions upon a person wishing to be licensed or registered, in particular:</p> <ul style="list-style-type: none"> • Must be a fit and proper person • Have necessary qualification or combination of qualifications and experience specified in the regulations • Have the experience specified in the regulations • Fulfil all other requirements of the regulations 	<p>The general intent of this Section is to provide a safeguard against licensing a person as a surveyor who does not have the appropriate academic qualifications and experience nor the level of personal integrity deemed acceptable to become a licensed surveyor.</p> <p>While qualifications and experience levels are detailed in regulations, there is no definition of "fit and proper". The intent of this requirement is to provide a safeguard against licensing or registering persons as surveyors who have a previous record of professional misconduct or particular criminal activities that would make it inappropriate for them to provide surveying services to the public.</p>
Section 22(2)	<p>Imposes conditions on companies wishing to be licensed or registered, including:</p> <ul style="list-style-type: none"> • At least half the directors must be licensed or registered surveyors • Conditions on who can own shares and voting rights of shareholders 	<p>Seem to be standard clauses in legislation which allows companies to be licensed or registered in a particular field- similar provisions apply in Legal Practitioners and Medical Practitioners legislation.</p> <p>These provisions are viewed as anti competitive and should be repealed</p>
Section 23	Enables the Institution of Surveyors to grant a conditional licence	Provides the flexibility to allow persons who do comply with all the requirements for licensing to work in the cadastre and gain experience.

Section 26	Imposes a condition of continuing education on surveyors and gives the Institution of Surveyors power to refuse to renew a license or registration or renew subject to specified conditions.	The intent of this Section is to require surveyors to keep abreast of changes in law and technology etc to ensure they continue to provide appropriate advice and services to the public and a quality product to the Lands Titles Office.
Section 30	Does not allow a company licensed or registered under the Survey Act to practice in partnership with any other person without the approval of the institution of Surveyors	These provisions are viewed as anti competitive and should be repealed
Section 31	Does not allow a company licensed or registered under the Act to employ more surveyors than twice the number of practicing surveyors who are directors of the company	See above
Sections 40 & 41	Place restrictions on disqualified persons practicing as surveyors	Ensures the public is protected from a "disqualified" surveyor working in the cadastre
Part 2 of the Survey Regulations 1992	Require certain academic qualifications and practical experience from persons wishing to be licensed or registered as surveyors	Details the requirements of Section 22(1) of the Act

2. PROFESSIONAL STANDARDS AND CODES

Section	Restriction	Comment
Section 19	A surveyor can only practise surveying if he or she has professional indemnity insurance	Provides the public with the assurance that they can be compensated if a surveyor makes an error when carrying out a cadastral survey.
Section 26	The Institution of Surveyors may impose continuing education requirements on surveyors.	See previous comments
Section 27	A contravention of a condition under the Act is an offence and attracts a fine	Fines can only be issued by the Court after legal proceedings.
Sections 28-33	Imposes various conditions on companies and their conduct, and relate to the enforcement of professional standards	See previous comment re corporate licensing/registration
Section 43	Allows the Governor to issue survey instructions in relation to cadastral surveys and records of cadastral surveys	Survey Instructions provide the technical requirements and standards that surveyors must follow when carrying out a cadastral survey.
Section 45	Allows the Surveyor-General to require a surveyor responsible for a survey to rectify a defect in a cadastral survey, record or plan	Surveyors are responsible for cadastral surveys even after they are lodged in the LTO. This provision allows the Surveyor-General to ensure that any errors found by subsequent surveyors are corrected.

Regulation 11	Provides a surveyor can only use a company name, business name or trading name in connection with a surveying business if the name has been approved by the Institution of Surveyors	Ensures consistency and sets a standard for the use of business names.
Survey Instructions in Part 4 of regulations	Place strict requirements on the performance of surveyors when carrying out cadastral surveys	Cadastral surveys provide the basis for the issue of a certificate of title that is guaranteed by the state.
Section 63	Institution of Surveyors has the authority to establish regulated code of ethics	The Crown Solicitor has advised against regulating the Code of Ethics. Before any code is adopted it should be subject to a review to ensure it is not introducing anti competitive provisions.

3. POWERS OF THE INSTITUTION OF SURVEYORS

Section	Restriction	Comment
Section 10	Enables the Institution of Surveyors to carry out its overseeing and monitoring role	The Institution of Surveyors represents over 90% of licensed and registered surveyors in the State and it is appropriate that they should have this responsibility.
Section 11	Enables the Institution of Surveyors to make administrative arrangements for the oversight of surveying	As the registering authority it is necessary to provide the Institution of Surveyors with this authority.
Section 34 – 38	Investigatory and disciplinary powers of the Institution of Surveyors	Ensures an appropriate structure is in place to investigate complaints made against surveyors and if necessary take disciplinary action.
Section 58	Allows the Institution of Surveyors to charge a levy on each plan certified by a licensed surveyor and lodged in the Lands Titles Office	Funds the licensing regime – user pays where those who use the services of a surveyor pay for the administration of the licensing/registration process. Subject to Ministerial approval.
Part 2 of regulations	Provides that the Institution of Surveyors may approve the practical experience required for a licence as a surveyor or registration as a surveyor	Ensures applicants for a licence or registration have appropriate practical experience in surveying before they are able to carry out survey work without appropriate supervision.
Part 3 of Regulations	Requires the Institution of Surveyors to approve company names, business names or trading names used by surveying businesses	Ensures consistency and sets standards acceptable to the surveying profession.