

Regulation and Discipline for Cadastral Surveyors A Case Study in the Australasian Reciprocating Region

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SUMMARY

The nine cadastral jurisdictions that function in Australia and New Zealand operate Torrens title systems that offer guaranteed titles to land and which are supported by accurate and reliable land survey data. There is little if any litigation over boundaries as a result of the maintenance of both the survey system and standards of technical and professional competence amongst cadastral surveyors. Statutory boards in each jurisdiction accredit those surveyors who have proven their competence in cadastral surveying and allow their plans to be lodged in the national registration system. Such surveyors are also required to renew their accreditation annually (by a licence or registration renewal process) in order to retain that right of access to add to the cadastre. Boards have in place disciplinary processes (Coutts, 2008; Coutts & Grant 2009; Coutts, 2009; Coutts, 2010a) to deal with complaints that any particular surveyor has acted in a way that demonstrates incompetence, negligence or unethical behaviour with respect to the cadastre. An Accord for mutual recognition of each others qualified surveyors has existed since 1892 that facilitates the exchange and mobility of locally qualified personnel.

This paper examines the use that is made of the reciprocal agreement by cadastral surveyors with the appropriate qualifications and the distribution, origins, frequency and nature of disciplinary actions taken in the last decade (2000-2009) by the boards against surveyors accredited to work within the cadastre, and comments on its effectiveness. It further develops the theme of recent contributions to Commission 1 on the regulation and disciplining of cadastral surveyors by the author.

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1. INTRODUCTION

Along with New Zealand, the eight Australian states and territories (the Australian Capital Territory (ACT), New South Wales (NSW), the Northern Territory (NT), Queensland (Qld), South Australia (SA), Tasmania (Tas), Victoria (Vic), Western Australia(WA)) have operated a reciprocal licensing arrangement of mutual recognition for cadastral surveyors since 1892 under what was termed the Melbourne Accord. The 1892 accord was re-written and agreed to in May 2010. This permits any surveyor holding a cadastral licence (in some jurisdictions his is referred to as “registration”, (see Coutts, 2010a for greater explanation of this system), but for the purposes of this paper will be collectively referred to as licences, to gain entry to the register of cadastral surveyors of any other jurisdiction without further examination. In general, those cadastral surveyors recognised in one jurisdiction will be accepted in any other.

As pointed out in Coutts (2010a) each state has its own cadastral legislation, its own regulatory and disciplinary board and its own standards and rules. The agreement to reciprocate recognition stems from a time when all of the aspiring surveyors sat exactly the same examinations at the same time, set in turn by each board, and the only difference was the professional interview with the board itself relating to a set of defined projects that followed successful completion of the written examinations. With the advent of university qualifications from the 1950s, the absolute consistency of examinations has disappeared, and the system now relies on each board accrediting appropriate university courses in their own jurisdictions, or recognising those of other jurisdictions.

While the Chairpersons of the boards meet as the Council of Reciprocating Surveyors Boards of Australia and New Zealand (CRSBANZ) once a year as a body with a mid year teleconference, and there is some exchange of information on policy matters, there is little detailed information available on how the system works in practice. The purpose of this paper is to explore some of those details so that there is a clearer appreciation of the current use and value of the reciprocating agreement, and to provide information on a model that may be of value to other regions of the world where common land title systems are in operation.

2. METHODOLOGY

In order to gain data on which to base this paper and its conclusions, a questionnaire was circulated to all boards which subscribed to the reciprocal agreement as it was operating in 2010. The questionnaire consisted of 11 questions and covered a period of 10 years, from 2000 to 2009 inclusive. As there were only nine questionnaires to analyse, that task has been relatively simple, although in some instances the author needed to go back to the respondent

for clarification of some answers. For a variety of reasons, some questionnaires were returned incomplete. In some case the legislation had changed and boards had been replaced during the study period, and in some cases records of actions taken by previous administrations were not retained. Some boards appeared to have little information on previous actions and were therefore unable to supply data. There have also been instances where fundamental change has been made to the eligibility to continue to hold a licence, and so, as in the case of Victoria, there was, in one year, a dramatic drop in the number of licensees.

3. TOTAL LICENCES ISSUED

The reciprocal agreement is based now on fully qualified cadastral surveyors being considered equivalent rather than their education being the same. In most cases boards still carry out professional interviews with individual candidates before issuing them with a licence or have recognised “professional training agreements” (PTAs) in which practitioners have delegated authority to certify that candidates have met the standards required by the board. All boards are required to produce standards that aspiring cadastral surveyors must meet, to have a means of assuring themselves that applicants for licences have met these standards, mechanisms to ensure ongoing competence, and processes for dealing with complaints of misconduct or incompetence.

The jurisdictions vary considerably in size and Table 1 shows the number of cadastral surveyors who have been practicing over the last ten years in each of the locations. The figures should be treated as approximate as some jurisdictions include a non-practicing or emeritus category.

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Ave: last 5 yrs
ACT	84	81	77	72	62	57	65	66	71	72	66
NSW				1068	1051	1044	1066	1061	1061	1076	1062
NT	91	93	84	88	84	80	80	77	75	76	78
NZ	609	603	686	699	701	714	707	727	731	727	721
Qld	714	704	690	662	642	530	626	613	617	605	598
SA	142	139	138	141	139	145	141	145	144	146	144
Tas	84	81	77	72	62	57	65	66	71	72	66
Vic	1020	1043	1056	1034	1074	579	535	514	514	504	529
WA	285	275	270	247	244	244	237	245	248	251	245
TOTAL	3029	3019	3078	4083	4059	3450	3522	3514	3532	3529	3509

Table 1: Number of licences by jurisdiction

However, an indication of the relative sizes of the contingents of cadastral surveyors in each area can be appreciated. A change in legislation in Victoria affected the numbers in 2005 and in New South Wales in 2002. Despite fears expressed by Blanchfield (as discussed in Coutts (2010b) that the number of cadastral surveyors is diminishing in Australia, or at least aging such that they would diminish significantly in the foreseeable future, Table 1 indicates that the

total number appears to be growing. While the rate of growth may not be keeping pace with the demand, Blanchfield's predictions (made in 2005) may have been impacted by the recent global financial crisis. It must be noted, however, that Australia and to a lesser extent New Zealand, have fared reasonably well through the crisis relative to most of the rest of the world, largely due to Australia's extensive mineral wealth and the continued strong demand for trade in these resources, and Australia's ownership of most New Zealand banks.

It does not mean that Australia can be complacent about the recruitment of new candidates to the profession. As explained at the FIG Congress in Sydney in 2010 (Iredale and Roberts, 2010; Esbitt and Werner, 2010), both New South Wales and Victoria have increased their marketing, with indications of some success. Table 1 shows an increase of 500 surveyors in the decade, despite the large loss in Victoria in 2005 (over 45%) due to changes in eligibility to retain a licence (requiring continuing professional development and payment of a fee).

4. RECIPROCATION

Table 2 shows the number of times surveyors from other jurisdiction have requested a licence in another jurisdiction. The total number over 10 years is 189, or just less than 20 per annum over a 10 year period. Table 2 shows the origin of the original licences, and not surprisingly the largest number of requests comes from New South Welsh surveyors, as this is the most populous area with the largest number of surveyors,.

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	TOTAL
ACT					1					1	2
NSW	4	4	1	5	2	1	9	16	17	10	69
NT			1		1		1				3
NZ		1		3	3		1	3	3	7	21
Qld	10	2	1	6	7	1	2	4	3	3	39
SA	4	1			1	1	1		3		11
Tas					1		1	2		1	5
Vic	3	1		2	3	2	4	5	3	6	29
WA	2	2	1	2	1				2		10
TOTAL	23	11	4	18	20	5	19	30	31	28	189

Table 2: Number and origin of requests for reciprocatation

There is a direct correlation between the number of surveyors in any one jurisdiction and the number of requests it generates. No account is taken of the number of surveyors who hold licences in more than one jurisdiction. Table 2 indicates how many surveyors have been "exported" from each jurisdiction. Table 3 indicates how many times each jurisdiction has been required to issue a licence on the request of a surveyor from elsewhere. The numbers are generated from the same responses, but have been collated differently. That is, Table 3 shows how many surveyors have been "imported" into each jurisdiction.

ACT	NSW	NT	NZ	Qld	SA	Tas	Vic	WA	TOTAL
34	28	24	1	35	16	9	32	10	189

Table 3. Number of licences issued by reciprocity per jurisdiction

There are some similarities in Table 2 to Table 3, the larger and more populous jurisdiction receiving the most requests, with one significant difference. While the number of New Zealand surveyors seeking reciprocal licences in Australia correlates with the population of surveyors there, the number of requests received by New Zealand to recognise Australian surveyors is minimal, there being only one in the entire 10 years covered by the questionnaire.

The use being made of the reciprocal agreement is limited, on average 19 times per year out of approximately 3500 surveyors, or about 0.5% of the total number. It is apparent that while there is mobility within Australia, it is predominantly one way traffic from New Zealand. While this would not be surprising over the last several years, since the global downturn work is more abundant in Australia, it is a little more surprising over the longer term.

5. COMPLAINTS

5.1 Overview

Table 4 indicates the number of complaints that have been processed by each jurisdiction in the 10 year time frame of the study. There is little to note other than that the number is generally low. The total number of licences issued in the 10 years is 34,815 from which there have been a total of 212 complaints. This represents about 6 complaints per thousand licenses over the period of the study.

	ACT	NSW	NT	NZ	Qld	SA	Tas	Vic	WA	TOTAL
Complaints	1	43	3	11	70	22	2	37	23	212
Ave licences/yr	71	1061	83	690	598	142	71	529	255	3500

Table 4. Number of complaints by jurisdiction over 10 years

The figures for Queensland seem to stand out as significantly higher than in other jurisdictions. There could be several causes for this. The Queensland Board may be more assiduous in policing its licensees, their legislation may allow them to deal with a wider range of matters, or the quality of training given to Queensland surveyors may not correlate well with the standards the Queensland Board sets. The survey did not enquire into any of these matters, although the study of Coutts (2010a) does suggest that the second of these options, , may be the cause.

5.2 Origin of complaints

Complaints may come from a variety of quarters. The questionnaire identified four possible sources of complaints, namely; the Surveyor-General of the jurisdiction, other official sources such as another agency of government, the survey profession and the general public.

	ACT	NSW	NT	NZ	Qld	SA	Tas	Vic	WA
Surveyor General			3	14	nd	2	2	5	2
Other Official		4			nd				2
Profession		6			nd	2			2

Public | 1 33 19 nd 18 32 17

*no data

Table 5. Origin of Complaints

The most common source is the public, presumably clients of surveyors, though this is an assumption. The other possibility is the neighbours of clients who may have been affected by a survey undertaken on behalf of those with whom they share a boundary. The other common sources are the Surveyors General, who appear to be active in most jurisdictions. In all jurisdictions it is very uncommon for other members of the profession to lodge complaints about their colleagues, though not without precedent, as is the case with other officials.

5.3 Actions taken on complaints

Complaints may be dealt with in a number of ways, depending on the jurisdiction. Each has developed its own process, has one defined by its legislation or by the existing court or tribunal system. Table 6 indicates what has occurred following the lodging of a complaint to the board.

	ACT	NSW	NT	NZ	Qld	SA	Tas	Vic	WA
Received	1	43	3	33	70	22	2	37	23
Accepted	1	43	3	11	68	22	2	36	19
Hearing	1	9	3	11	17	2	2	13	17
Upheld	1	9	3	9	nd	2	1	9	13

*nd =no data

Table 6. Action on complaints

The distinction between “received” and “accepted” is where a board may have “received” a complaint in the mail, which is a physical fact, but finds that the matter complained about does not fall within its jurisdiction. For example, a complaint may be about a fees dispute. These are more appropriately dealt with by the surveyor’s professional body. In this case the complaint is received but cannot be accepted. This is not an uncommon occurrence in New Zealand and it very occasionally happens in Queensland and Western Australia.

The number of cases that then proceed to a hearing is variable. In some jurisdictions, once accepted a hearing always follows (ACT, NT, NZ, Tas) whereas in other jurisdictions it is patchy. The extreme is in Victoria where only 13 out of 36 (36%) of complaints have gone to a hearing, but also in Queensland only 17 out of 68 (25%) and in New South Wales where only 9 out of 43 (21%) of accepted cases have proceeded to a hearing.

The final aspect that is discernable from Table 6 is the number of cases that are upheld once they have reached a hearing by the board. Western Australia have declined 4 out of 17, Victoria 4 out of 13 and New Zealand 2 out of 11. Within the other six jurisdictions it seems that once a complaint reaches the hearing stage, there is little chance of it being dismissed. This suggests that the stages before going to a hearing are sufficiently rigorous in all jurisdictions that the chances of the complaint not being substantiated at a hearing are low.

Question 9 enquired as to the number of repeat offenders the board had been required to deal with. Most jurisdictions had instances of disciplining the same person on more than one occasion, with only the smallest jurisdictions giving a nil return. While it is gratifying that this number is extremely low in all parts of the region, it is concerning that there are any at all. It may be concluded that, on the whole, surveyors who find themselves in this position on one occasion, are sufficiently chastened that they do not suffer the same experience again.

	ACT	NSW	NT	NZ	Qld	SA	Tas	Vic	WA	TOTAL
Repeat offenders	1	1	0	2	nd	1	0	2	2	9

Table 7: Number of surveyors disciplined more than once

The responses to Q.10 indicate that no jurisdiction, within the 10 year study period has imposed any penalty on a surveyor found guilty of misconduct in another jurisdiction.

5.4 Penalties imposed

All jurisdictions are constrained by their legislation as to what penalties they can, and not all of the jurisdictions can impose all of those options that have been listed. The numbers in Table 8 do not always add up to the total number of complaints upheld because in some cases more the one option is imposed on a single practitioner. For example, a surveyor may receive a reprimand and also be required to undergo training.

	ACT	NSW	NT	NZ	Qld	SA	Tas	Vic	WA
cancellation				1					
suspension			1	1					1
supervision			1	3					
reprimand	1	5	2			2		2	6
training		1		1					
conditions		3		1		1		2	4
fine		1				1		6	7
costs		1		9		1			12
other				4				3*	
Upheld Complaints	1	9	3	9		2	1	9	13

*caution

Table 8: Penalties imposed by boards

The cancellation of a licence is the most severe penalty, and has been imposed on only one occasion in 10 years. Suspension, which is the next most severe, has only been used 3 times. These are considered to be the most severe as they have the potential to eliminate or constrain the ability of a practitioner to earn a livelihood. The fact that cancellation has only been used once and suspension 3 times in 10 years by all jurisdictions suggests that the offending generally has not been at the extremely serious end of the scale.

The most consistently used penalty across the region has been a reprimand. Since repeat

offending is very low, this may be considered effective. Victoria and New South Wales have used the penalty of imposing a fine, but this is not available in all jurisdictions. The rationale for not using fines is that the disciplinary system is a mechanism for protecting the cadastre, rather than a punitive tool against errant cadastral surveyors. The New Zealand Board has used the full range of options that it has available to it in the exercise of its powers. Additionally, the New Zealand Board has imposed costs in every case that it has heard, while the only other jurisdiction to show a serious interest in recovering the cost of its proceedings is Western Australia.

The survey did not ask about the publication of the names or details of offences of those who had been disciplined. For many practitioners, especially in relatively small communities, this may be the most effective punishment, and it is known that this does occur in some places.

5.5 The Nature of Offences

The final question in the questionnaire related to what sort of matters were being complained about in these cases. Unfortunately the responses were either generally non-specific, referred to sections of legislation, or in some cases the question was not answered.

6. CONCLUSION

The number of cadastral surveyors in the region is not increasing at a great rate. This has proved to be of concern particularly in parts of Australia and is being directly addressed in both Victoria and New South Wales. The global recession in 2008 has probably diminished the urgency of dealing with this issue, and the constant supply of graduates out of New Zealand who have been struggling to find employment at home also disguises any shortfall. The reciprocal agreement, in terms of transfer of skilled people is working, appears to be effective, but is not greatly used. The main traffic appears to be from New Zealand to Australia generally, although there is mobility between the Australian jurisdictions.

The number of complaints against cadastral surveyors is very low. When complaints against cadastral surveyors arise, they mostly come either directly from the public or from a Surveyor General. It is presumed that the Surveyors General pick up technical errors as new surveys are lodged into the system and throw up conflicts with existing data sets. This leads to an investigation and will expose errors or incompetencies. Most complaints, if they are accepted and reach the hearing stage, are likely to be upheld. Offences are generally at the less serious end of the spectrum. As there is very little in the way of repeat offending, it might be concluded that the disciplinary processes are generally effective.

In general, Australia and New Zealand have an effective if under-utilised system of mutual recognition that is in place and working, and which has stood the test of 120 years during which almost a total change of circumstances has occurred. The Accord has survived the change from common correspondence examinations to university education that is different in every jurisdiction, legislation that has evolved separately in each state, particularly in the last decade, as well as the revolution in technology that has swept through the land surveying profession in the last 60 years. There appears to be no reason why it should not continue to operate successfully and facilitate the movement of cadastral surveyors within the region.

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Brian Coutts was the Chairman of the Cadastral Surveyors Licensing Board of New Zealand (CSLB), from 2002 until February 2010. A former president of the New Zealand Institute of Surveyors (NZIS), he served as president of the Commonwealth Association of Surveyors and Land Economists (CASLE) from 2004 to 2007, and has been a member of the Royal Institution of Chartered Surveyors (RICS) Geomatics International Professional Group Board. He has recently been appointed as a Vice Chair of Commission 1 of FIG. He is Deputy Head (Undergraduate) of the National School of Surveying at the University of Otago in New Zealand and teaches introductory planning and New Zealand planning and resource management practice. His research interests include professional regulation, surveying education, mediation, and the definition of a surveyor in the 21st century.

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