

Presentation

Jim Liddle – Board Member

Thursday 25th March 2010

SURVEYORS BOARD OF QUEENSLAND



In its February Communiqué, the Board expressed some concerns about surveyor's understanding of disclaimers.

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BOARD COMMUNIQUE

2010 – Issue 1
February 2010



Site Visits

The need to regularly calibrate equipment to prove legal traceability to National Standards was not well understood by some practices. Section 21 of the Survey and Mapping Infrastructure Regulation spells out the necessary requirements.

There also appears to be a growing practice of using disclaimers without understanding when their use might be appropriate, and the legal implications of the use of disclaimers.

The use of unregistered or unsupervised staff in the carrying out of surveys is also of concern.

These matters are presently being discussed with SSSI with the intention of organising CPD activities to assist surveyors meet their requirements in these areas.

Career Episode Reports

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What is the problem?

1. Surveyors do not appear to understand the legal status of a disclaimer.
2. That some “disclaimers” may be inconsistent with their clients instructions.
3. That surveyors may be attempting to limit their responsibility for the correct placement of boundary marks in a way that is inconsistent with the form 13 declaration.

The purpose of the *Surveyors Act* is to protect the interests of the public.

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The Act requires consulting surveyors to hold Professional Indemnity Insurance. This is to ensure that, if a surveyor makes a mistake that has a negative impact on the public – there are at least some financial resources available to respond to the negative impact.

The Board is concerned that some surveyors may, through the inappropriate use of disclaimers, be taking actions which are not in the best interests of their clients.

The Board does not hold an opinion about whether disclaimers should be used.

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The Board does consider that the use of disclaimers needs to be discussed with the client at the time of engagement, to ensure that such disclaimers are not contrary to what the client requires.

If disclaimers are in conflict with the Form 13 certificate then the Form 13 has precedence.

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Surveyors need to think about what they are trying to achieve by the use of disclaimers.

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Surveyors need to ensure that the use of disclaimers

- are not contrary to the requirements of their client
- are not in conflict with form 13
- are not contrary to the best interests of the public.

Are there different standards for registered surveys and Identification Surveys?

NO!

What does the form 13 say?

1 _____ hereby certify that the land
comprised in this plan was surveyed by
2 _____ and that the plan is accurate,
that the said survey was performed in accordance
with the *Survey and Mapping Infrastructure Act
2003* and *Surveyors Act 2003* and associated
Regulations and Standards and that the said
survey was completed on

3 _____

4 _____

Cadastral Surveyor

5 _____

What does the form 13 mean?

1. That the surveyor signing the plan takes full responsibility for the survey.
2. That the survey is accurate.
3. That the survey was carried out in accordance with the relevant regulations and standards.
4. That the surveyor has acted professionally in the conduct of this survey.
5. That the surveyor has operated within the Code of Practice when carrying out this survey.

What does the Code of Practice say?

The Code of Practice

At section 2.3 Professional Conduct, states

- (b) Assume professional responsibility for all works carried out under their control and direction.
- (c) Where the surveyor becomes aware of a significant error in a survey undertaken by the surveyor, correct the error.

Disclaimer (IS187777)

The purpose of this survey is to reset the offset boundary marks placed by IS..... at the actual corner points defined by that survey. This survey is based wholly on IS..... Any queries regarding reinstatement of these boundaries should be directed to **insert name of another surveyor (IS.....)**

What responsibility was the surveyor accepting for the survey?

Is this disclaimer in direct conflict with the form 13 certificate?

A Disclaimer on Identification Survey (IS224024)

This plan is an Identification Survey only, and as such is not examined for registration. It is lodged with the Department of Environment and Resource Management (DERM) for survey information only, in accordance with *Survey and Mapping Infrastructure Act 2003*. No responsibility can therefore be accepted for any future difference in boundary definition, which may result from resurveys of adjoining lands or subsequent registration of any new survey plans.

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What is the disclaimer trying to imply?

Plan has not been examined. What is implied by this statement?

Surveyors would be aware that not many plans from accredited surveyors are examined. So what is different about Identification Surveys? Is the statement designed to imply that cadastral surveyors rely upon an examination by the registering authority to ensure that their survey is correct?

What is the disclaimer trying to imply?

Plan is lodged for information purposes in accordance with SMI Act. What is implied by this statement?

Is it suggested that this is a compliance action only, and serves no useful purpose?

Is this statement attempting to over-ride the form 13 certificate?

What is the disclaimer trying to imply?

No responsibility can be accepted for future differences in boundary definition. What is different about this to any plan of survey? Does not the same possibility arise with every registered survey plan?

The difference with Identification Surveys is that the surveyors may be trying to say that if, in future his survey is found to be in error, then he won't fix it. If the plan was registered, the registrar may force him to fix it.

Is this what the disclaimer is attempting to say? How does this fit with the Code of Practice?"

Disclaimer on IS221307

This plan is of an Identification Survey only, of the land as shown and as such is not a new survey of the title dimensions. This plan should not be used for any purpose other than to identify the parcel of land and its original dimensions. The dimensions shown hereon should not be used for building or structural design purposes without first verifying with *name of practice* that the dimensions are suitable for that purpose. *Name of practice* should be contacted to advise of any uncertainties that may exist in boundary dimensions.

What is the disclaimer trying to imply?

Name of practice should be contacted to advise any uncertainties that may exist in boundary dimensions. What is the disclaimer implying?

Is it trying to suggest there may be a problem with the boundary marking or reinstatement?

Section 18 of the Survey and Mapping Infrastructure Regulations 2004 (Reinstating existing boundaries) says

The cadastral surveyor must do each of the following

(d) If a doubt or discrepancy arises in relation to the placing of a survey mark, include in the survey records –

(i) A clear description of the survey mark: and

(ii) Sufficient information to show the doubt or discrepancy: and

(iii) If the plan of survey is to be registered under a registration Act – sufficient information to enable the registering entity to register the plan;

Disclaimer on IS226469

This plan is of an Identification Survey and, as such, should be used only for the purposes for which it was prepared. Owners or purchasers should be aware that in utilising or building, the author of the plan or consulting surveyor of choice should be first contacted in case boundary locations on this or adjoining Lots carries higher than normal risk. *Name of firm* therefore can accept no responsibility for failure to use this plan within the limitations intended.

What is the disclaimer trying to imply?

In case boundary locations on this or adjoining Lots carries higher than normal risk. What is this statement trying to imply?

Is this a “problem survey” area?

Can you imagine what the requirements of the client might have been?

What was the purpose for which the survey was undertaken?

Before using disclaimers, surveyors should:

1. Be clear about the requirements of their client
2. Recognise that there is only one standard for the conduct of cadastral surveys
3. Ensure that their disclaimer does not attempt to undermine
 - (a) the form 13, or
 - (b) the Code of Practice
 - (c) the interests of the public

Questions?

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