

The competency framework for surveyors compared to other professions in Queensland

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Introduction

Surveying registrants would have recently received their notice of renewal of registration for 2007 and a letter from the Chair of the Surveyors Board describing the implementation of a competency framework for registration and endorsement for qualifying persons. Pursuant to the requirements established by the *Surveyors Act 2003* the board established a Competency framework working group for the purpose of developing a competency framework for all levels of registration and endorsement with the intent of implementation in 2008.

This paper will look at whether competency framework as an instrument for registration and endorsement applies to other professions regulated by government legislation. And now for a little POL101 revision, otherwise go to the government regulation section.

Overview of our parliamentary system

The current parliamentary system of government in Australia was established with the Australian Constitution of 1901 which established a federal system of government. Under a federal system, powers are distributed between a central government and regional governments. Under this system, powers are distributed between a federal government (the commonwealth), the six states and the self-government arrangements of the main territories. The commonwealth and each state are governed by elected legislative assemblies (the parliament). Each state, except Queensland, consist of two houses - the lower house and the upper house(senate) which is intended for the review of legislation proposed by the lower house. The constitution defines the boundaries for law-making powers between the commonwealth and the states/territories. A state parliament may make laws on any subject of relevance to the state however commonwealth law can override state law (as defined by the constitution, think Native Title).

The essential functions of a parliamentary system of government are:

- ✓ to legislate and establish laws;
- ✓ to provide a system for the formation of a government;
- ✓ to raise the funds necessary for government;
- ✓ to provide a forum for popular representation; and
- ✓ to provide accountability for the actions of government.

Separation of powers

The constitution confers the legislative, executive, and judicial powers of the commonwealth on three different bodies established by the constitution:

- ✓ the parliament - legislative power is the power to make laws.
- ✓ the commonwealth executive - executive power is the power to administer laws and carry out the business of government through such bodies as government departments, statutory authorities and defence forces; and
- ✓ the federal judicature - judicial power is the power exercised by the courts.

The legislative and executive powers of the commonwealth are closely intertwined as only the parliament can pass acts, but can confer on the commonwealth executive the power to make regulations, rules and by-laws in relation to matters relevant to any particular act.

As well as being a federation, Australia is a constitutional monarchy where the head of state of a country is a monarch whose functions are regulated by a constitution. The concept of the crown pervades the constitution and is a well entrenched in the psyche of the cadastral surveyor.

The states and legislative powers

Under the constitutions of each of the states, a state parliament can make laws on any subject of relevance to that particular state. Proposed legislation and laws (known as bills) have to be passed by both houses (Queensland does not have a senate) and be assented by the Governor-General before they can become an act of parliament. An act of parliament can have delegated or subordinate legislation (regulations) attached to the act.

Legislation and legal instruments

There are many legal instruments and other related documents available to implement government policy and fall into three categories:

- ✓ Acts (or bills);
- ✓ Regulations; and
- ✓ Administrative documents (for example, contracts, internal directives, bulletins, decision documents).

Both acts and regulations are forms of law, with the same legal effect. The authority to make regulations is contained in the relevant act. Administrative documents do not necessarily have legal effect.

In general, the principles and policies of the law are set out in acts of parliament. Parliament can delegate power to the executive to make subordinate legislation in the form of regulations. Regulations usually deal with matters of detail or implementation, matters of a technical nature or matters likely to require frequent alteration or updating.

There are two types of bills:

- ✓ Government bills which form the majority of a state's legislation; and

- ✓ Private members bills which can be introduced by an individual parliamentarian instead of the government.

A bill is identified by a **Long Title** which describes the purposes of the legislation and later for convenience is compressed into a **Short Title**, allowing easier recognition of the act eg. *Surveyors Act 2003*.

Before a bill is introduced into parliament, it undergoes a process of approval, drafting, coordination and advice. The original policy is formatted by the department; approved in substance by cabinet; scrutinised, approved and monitored by the Minister's legislation committee; coordinated, where necessary, across departments and with interest groups; drafted into bill form by the Office of Parliamentary Counsel; and the final imprimatur coming from cabinet and political parties (Queensland Government 2006).

Generally all bills are drafted and constructed to a particular format and include; the Short Title; Commencement Statement for the legislation's operational date; Interpretation Section providing definitions for key words; Clauses embodying the legislation's substantive provisions (clauses can be further divided into sub-Clauses, paragraphs etc. and termed sections when the Bill is enacted); Schedules detailing technical requirements; and Associated Memorandum such as notes and explanatory memorandum.

A bill's passage through the parliament is dictated by Westminster conventions reflected in the standing orders and involves the following procedures (Queensland Government 2006):

- ✓ Initiation and first reading
- ✓ Printing of the Bill - the bill is deemed to be printed after it is read a first time, signifying the distribution of the printed bill to Members in the Chamber and its availability to the public;
- ✓ Second Reading - the Minister moves that the Bill be read a second time and enunciates the Bill's principles in a second reading speech, and if adjourned allowing all Members time to study the bill's contents and for debate
- ✓ Third Reading - the Bill is read a third time. (Normally, this is a formality allowing complete passage of the bill through the parliament. However, debate upon the Bill or amendments can still be proposed at this final stage).
- ✓ Reading and Agreement of the Title - if agreed to, the Bill is ready to become an Act of Parliament
- ✓ Royal Assent - the Governor, acting as the Queen's representative, assents to the Bill by signing an official parchment copy.
- ✓ Act of Parliament - the Bill now becomes an Act of Parliament which has the force of law either from its Royal Assent date or from its commencement date of proclamation when published in the *Queensland Government Gazette*.

Once a new act has been created, administrative agencies or bodies may require regulations to implement the Act. Regulations are often created for an administrative agency or body, setting out the agency's purpose and powers. Regulations have the force of law, since they are adopted under authority granted by statute. Statutory Acts involve the parliamentary process while regulations are governed by the requirements of the *Statutory Instruments Act 1992*. As can be seen above the passage of a bill is a convoluted process and it can take two years for passage from draft to assent.

A regulation is a form of subordinate legislation which is used to implement a primary piece of legislation. Enacted legislation may not include details of how the law is to be enforced and regulations should precisely define what is and what is not legal under the law eg *Surveyors Regulation 2004*. In terms of change and time frames it is far easier to amend a regulation than to amend an act.

Government regulation of occupations/professions

Currently twenty-two relevant occupations and professions are regulated by Queensland government legislation and statutory provisions. Many of those have undergone an update of the acts governing regulation of those occupations and professions due to national competition policy review. The various professions and date of enacted legislation governing regulation are listed in Table 1 below.

Table 1: Occupations/professions regulated by Queensland government legislation

Occupation/Profession	Date of Assent
Veterinary Surgeons	1936
Nursing	1992
Valuers Registration	1992
Health Practitioners	1998
Dental Practitioners	2001
Medical Practitioners	2001
Medical Radiation Technologists	2001
Occupational Therapists	2001
Optometrists	2001
Osteopaths	2001
Pharmacists	2001
Physiotherapists	2001
Podiatrists	2001
Psychologists	2001
Speech Pathologists	2001
Electricians	2002
Architects	2002
Plumbing & Drainage	2002
Professional Engineers	2002
Surveyors	2003
Legal Profession	2004
Education	2005

Since 2001 there has been a rash of legislation regulating the occupations and professions listed in Table 1. The background to the changes in legislation pertaining to occupations and professions lies with the principles of national competition policy whereby in 1995, all Australian governments reached agreement on a plan to promote competition in Australia. The resulting National Competition Policy (NCP) is underpinned by three inter-governmental agreements: the Competition Principles Agreement; the Conduct Code Agreement; and the Agreement to Implement the National Competition Policy and Related Reforms (National Competition Council

2006). The three agreements outline the reforms which governments undertook to put in place under the NCP process and the Competition Principles Agreement can be summarised as follows (National Competition Council 2006):

- sets out the obligations in the areas of prices oversight of State and Territory government business enterprises (clause 2), competitive neutrality (clause 3), structural reform of public monopolies (clause 4) and legislation review and reform (clause 5);
- applies the reforms to local government (clause 7);
- sets out a (non-exhaustive) list of 'public interest' factors that governments should consider when assessing the costs and benefits of a particular policy or course of action (sub-clause 1(3)); and
- establishes arrangements for access by third parties to services provided by significant infrastructure facilities (clause 6 and Part IIIA of the Trade Practices Act).

The Queensland government undertook public benefit tests of the regulatory regimes governing the occupations and professions to identify any anti-competitive provisions contained in existing legislation thus resulting in legislative amendments.

Post National Competition Policy (NCP) legislation 2001 - 2004

2001

In 2001, eleven acts were drafted relating to regulation of occupations and professions. The sections outlining the functions of the regulating board are essentially identical and the provision reads “The board has the following functions – (a) To assess applications for registration” and subsequent provisions identify the procedural requirements for applications for registration.

There is no mention of competencies in these Acts.

2002

In 2002, four acts were drafted relating to regulation of occupations and professions. The sections outlining the functions of the regulating board are identical for architects and professional engineers and the provision reads “The functions of the board are as follows – (a) To assess applications made to it under this Act...” and subsequent provisions identify when an applicant is qualified for registration. Competencies are not mentioned as a function of the board but are included in the section dealing with when an applicant is qualified for registration and the provision states “An application for registration is eligible for registration if the applicant has (a) the qualifications provided for under a regulation and (b) the competencies in the practice of ...provided for under a regulation”.

Inspection of the regulations for both architects and professional engineers reveal that the competencies have not been addressed under a regulation. The boards of the respective professions have addressed competencies not under a regulation but as a requirement for registration pursuant to an administrative document operating as a legal instrument.

The Board of Architects appears to have addressed the issue of competency by use of the architectural practice examination. However, the architectural practice examination is a national scheme across all states as a requirement for registration and was already a requirement prior to the introduction of the *Architects Act 2002* and the NCP policy implementation. Extracts from the board requirements for registration as an architect are listed as follows:

In Queensland, as in each state and territory, use of the title "architect" and "registered architect" is reserved for those persons who are registered within the state. You will be eligible for registration as an architect in Queensland, if you:

1. have passed the Architectural Practice Examination (APE).
2. have previously been registered in Queensland and are able to satisfy the Board that you are entitled to be re-registered - Persons applying for restoration of their names to the register pursuant to section 23(3) of the *Architects Act 2002* where they have not been registered in Queensland for the last five years or more are advised:
 - that each of these applications will be considered by the Board on its merits;
 - that each application needs to include details of architectural work performed by the applicant over the last five years or since registration lapsed;
 - that architectural work details need to indicate what work had been performed in Queensland and Australia during that period;
 - that the architectural work details need to take the form at least of a curriculum vitae and that the description would need to be sufficiently detailed to enable the Board to identify the type and nature of the work done by the applicant personally not merely show their position in relation to a project;
 - that each applicant needs to provide the names and telephone (or other) contact details of one or two referees, at least one of whom should be a registered architect, who can verify the nature and extent of the work claimed to have been performed by the Architect in his application;

The Board of Professional; Engineers have not addressed the issue of competency and continue with the requirements for registration as existed prior to the assent of the *Professional Engineers Act 2002*. Extracts from the board requirements for registration as a professional engineer are listed as follows:

Individuals may register as registered professional engineers if they satisfy the Board that they are of good character and reputation and they hold:-

- a degree in engineering from an approved school of engineering or an approved faculty of engineering; or
- a qualification in engineering granted by a tertiary education institution which entitles them to be admitted to Engineers Australia as a graduate member in the 'Professional Engineer' occupational category.

Applicants must also have been engaged for five years or more in the engineering industry after obtaining their qualifications.

The remaining two profession/occupation acts assented in 2002 dealt with the trades of plumbing/drainage and electricians under the *Electrical Safety Act 2002*. In the

Plumbing and Drainage Act 2002 the functions of the regulating board included the provision “promote acceptable standards of competence for the trade”. The outline for competence was included in the *Plumbing and Drainage Regulations 2003* in a schedule outlining the qualifications, practical experience and scope of work for plumbers and drainers licences. The competencies for plumbers and drainers become an extension of the qualifications for licensing “the competencies in the plumbing and draining apprenticeship...”.

2003

In 2003, there was only one act drafted relating to regulation of occupations and professions - the *Surveyors Act 2003*. For the first time in any occupation/professional regulatory act in Queensland the word competency was included in the provisions for the functions of the regulating board and was included prior to the standard provisions dealing with assessing applicants. The provision reads “The board has the following functions – (a) to establish competency frameworks for qualifying persons for registration and registration endorsements, (b) to accredit entities for assessing the competency of persons under the competency frameworks; (c) to assess applicants for registration and registration endorsement...”.

Some relevant comments from members of parliament during the readings of the bill are as follows (Hansard 2003):

The registration system will require the mandatory registration of cadastral surveyors, because the state’s land titling system depends on the accuracy and reliability of their work. Registration of those with general competence in surveying and specialisations in particular non-cadastral field of surveying will remain voluntary.

Our economy relies on confidence in the state’s land and property market and for that we rely in part upon surveyors. By requiring registered surveyors to obtain endorsement from the Surveyors Board we are offering the people of Queensland the certainty and security to know that when they hire a surveyor that person is qualified and competent to do the job.

...a regulatory system that assesses and reassesses competency of the surveyors and recognises that an academic qualification is not automatically synonymous with competency. In particular, the provision allowing the board to require annual evidence of continuing competence recognises that a piece of paper alone cannot adequately test a surveyor’s ability to operate effectively.

The bill will formally allow the board to assess surveyors for registration based on competence, rather than the existing qualification’s system, in accordance with national trends in assessing those in professional and technical disciplines.

The surveying profession becomes the only regulated profession where an academic qualification is not a key cornerstone for the requirements for registration in enacted legislation, (eighteen acts) since 2001. Yet from the comments above there is a statement of a trend towards “competence, rather than the existing qualification’s system” and yet the surveying profession is the only profession that has moved

towards total removal of the qualifications system in eighteen separate pieces of legislation dealing with regulation of a profession/occupation/trade.

The competency trend does not exist as a dominant feature of regulation in Queensland legislation.

2004 and 2005

The confirmation for the non-existent trend in moving towards a competency system as against a qualifications system lies with the legislation enacted in 2004. The perceived trend for competency frameworks went from non-existence in 2001 to superficial mention in 2002 (but conveniently sidestepped by the respective boards) and full-blown implementation in 2003 pursuant to the *Surveyors Act*.

However in 2004/5, for acts regulating education (teachers) and legal professionals, neither of the acts pertaining to the regulation of teachers and legal professionals contains the word competency in the respective acts. In both acts the initial provision dealing with eligibility implies a person is eligible for registration “if the person has attained qualifications” followed by additional provisions. The requirement for qualifications as a keystone leading to registration is confirmed by comments made by members of parliament during the readings of the bills:

The bill implements the principle that admission as a legal practitioner will only occur following training in university.

...proposes to underpin the aims of the legislation by providing that: a legal practice is engaged in only by persons who are properly qualified...

The present

There are four professions dated with pre-2001 assent for regulation, namely veterinary surgeons, valuers, nurses and health practitioners. Of these, only the health practitioners currently are subject to proposed legislation in bill form and that is in the form of amendments only.

Professional regulation

The most commonly used forms of professional regulation are listed below (Deighton-Smith 2001):

- ✓ Entry qualifications
- ✓ Registration requirements
- ✓ Reservation of title
- ✓ Reservation of practice
- ✓ Disciplinary processes
- ✓ Conduct of business
- ✓ Business licensing

A regulatory system is commonly constructed from a combination of these restrictions (Deighton-Smith 2001). Entry qualifications seek to ensure that

practitioners possess minimum acceptable levels of competence, thus protecting consumers from the possibility of engaging the services of a sub-standard practitioner due to a failure in accurately assessing competence (Deighton-Smith 2001). It is reasonable to expect that consumers may struggle to distinguish between skill sets in a profession where there is a low frequency usage of those professional services. Minimum qualifications are thus likely to be important where consumers may not be reasonably able to distinguish themselves of the skills of different practitioners (Deighton-Smith 2001).

The setting of minimum entry qualifications acts as a barrier to entry and hence has the potential to be an anti-competitive measure. The regulator must determine the minimum necessary qualification standard that would be consistent with consumer protection based on acceptable levels of risk (Deighton-Smith 2001). Are we to believe that having absolutely no minimum qualification guarantees protection of consumer interests especially when “our economy relies on confidence in the state’s land and property market”?

A qualification may not guarantee competence but at least it gives you an entry point to assessing competence whereby the person is guaranteed of having at least some formal training in their particular area of expertise.

Conclusion

It is to the board’s credit that they have not sidestepped the issue (by maintaining the status quo) and have made a valid attempt at establishing a competency framework, unlike the architects and professional engineers. I fear the competency framework will become a financial burden upon the profession and may affect reciprocal arrangements for registration with other state boards and these are issues that should be of concern to the profession.

Recently I marked an assignment dealing with decision-making, the maintenance of the status quo where only the solution is remembered especially without questioning the rationale for the solution. Rather than accepting the status quo we should be lobbying for amendment and as Campbell said, “The change is not without risk” (Campbell 2006).

As is often stated “if it ain’t broke, don’t fix it”!

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