

SURVEYORS ACT.

Act No. 3, 1929.

An Act to provide for the registration of surveyors of land; to regulate the making of surveys of land; to amend the Real Property Act, 1900, and certain other Acts; and for purposes connected therewith. [Assented to, 15th March, 1929.]

George V.
No. 3, 1929.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Surveyors Act, 1929," and shall commence on a date to be appointed by the Governor and notified by proclamation published in the Gazette.

(2) As from the expiration of eighteen months after the commencement of this Act—

(a) section eleven of the Real Property Act, 1900, is repealed; and

(b) section one hundred and ninety-six of the Conveyancing Act, 1919, is amended by omitting from subsection two the following words:—"In the case of land under the provisions of the Real Property Act, 1900, the surveyor shall be specially licensed under that Act."

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(3) Where in any other Act, rule, regulation, ordinance or by-law reference is made to the Chief Surveyor, such reference shall be deemed to mean the Surveyor-General.

(4) Where in this Act or in any other Act, rule, regulation, ordinance, or by-law reference is made to a licensed surveyor, such reference shall, on and after the expiration of eighteen months from the commencement of this Act, be deemed to mean a surveyor registered under this Act.

Parts of Act

2. This Act is divided into Parts as follows:—

PART I.—PRELIMINARY—*ss.* 1-3.

PART II.—THE BOARD OF SURVEYORS—*ss.* 4-7.

PART III.—THE REGISTER—*ss.* 8, 9.

PART IV.—REGISTERED SURVEYORS—*ss.* 10-16.

PART V.—MISCELLANEOUS—*ss.* 17-26.

Inter-pretation.

3. In this Act, unless the context otherwise requires,—

“Board” means Board of Surveyors of New South Wales constituted under this Act.

“Institution” means Institution of Surveyors of New South Wales.

“Member” means member of the board.

“Practise” in relation to surveyor or surveying refers to practising surveying as a principal for fee or reward, or as an officer of the Public Service of New South Wales or as an employee of any statutory authority constituted for public purposes.

“Prescribed” means prescribed by this Act or by any regulation made thereunder.

“Reciprocating State” means any State, Colony, or Dominion within His Majesty’s Dominions with which reciprocal arrangements have been made or may hereafter be made by the board for the recognition of the status of surveyors.

“Register” means register of surveyors.

“Survey”

“Survey” means a survey of land authorised or required—

- (a) under any Act dealing with the alienation, leasing, and occupation of Crown lands, or with mining or affecting titles to land; or
- (b) by a proprietor, lessee, or mortgagee; or
- (c) in connection with a resumption or acquisition under the authority of any Act.

“Surveyor” means person registered under this Act as a surveyor.

PART II.

THE BOARD OF SURVEYORS.

4. (1) There is hereby constituted a board, consisting of the Surveyor-General, who shall ex officio be a member and president of the board, and five other members (being licensed surveyors) who shall be appointed by the Governor.

Incorporation of board.

(2) The board, under the name of the Board of Surveyors of New South Wales, shall be a body corporate, with power to hold lands, and to sue and be sued, and shall have a seal which shall be judicially noticed.

5. Within three months after the commencement of this Act and in the month of January in every year thereafter the Surveyor-General and the Registrar-General may each nominate to the Minister a licensed surveyor, and the council of the institution may so nominate three licensed surveyors to be members of the board.

Nomination and appointment of members

The persons to be nominated by the council of the Institution shall be elected, in the manner prescribed, to the first board by persons who hold subsisting licenses to survey issued before the commencement of this Act, and to the second and subsequent boards by surveyors registered under this Act.

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The Minister as soon as practicable after receipt of such nominations shall, if he approves thereof, recommend to the Governor the appointment of such persons as members of the board.

If the full number be not so nominated, or if any person nominated be not approved, the Minister shall recommend to the Governor the appointment of such other persons as shall be necessary to complete the board.

Tenure of
office by
members and
quorum.

6. (1) The members shall hold office until new members are appointed, and shall be eligible for reappointment.

(2) Any member may apply to resign his seat on the board by letter addressed to the Minister, and upon being notified by the Minister that the Governor has approved of his resignation, shall cease to be a member.

(3) The office of a member shall become vacant if such member—

- (a) becomes bankrupt or compounds with or assigns his estate for the benefit of his creditors ;
- (b) is absent without leave of the board from three consecutive meetings of which due notice has been given to him either personally or by post.

(4) The Governor may fill any vacancy by appointing a person nominated by the Surveyor-General or the Registrar-General, or in the manner hereinbefore indicated by the council of the Institution, according as the person whose place is to be filled was nominated by the Surveyor-General or the Registrar-General, or such council.

If no person is so nominated within twenty-eight days from the occurrence of the vacancy, or if the Minister does not approve of the person nominated, the Governor may appoint a person recommended by the Minister to fill the vacancy.

(5) Four members shall form a quorum.

The president of the board shall have an original and casting vote on any matter before the board.

In the absence of the president through sickness or otherwise the members present shall elect or appoint
for

for the time being one of their number to be acting-president, and the member so elected or appointed shall exercise all the powers conferred upon the president by this Act or the regulations.

(6) Each member shall be paid and be entitled to retain for his own use a fee of two guineas for each sitting of the board which he has attended: provided that the fees paid in respect of such sittings to any member during any year shall not exceed fifty guineas.

(7) No act or proceeding of the board shall be invalid in consequence only of the fact that there was at the time a vacancy if there was at the time of the act or proceeding a quorum of the board.

7. The Governor may, upon the recommendation of the Public Service Board, appoint a registrar of the Board and such officers as are necessary for the administration of this Act. The Registrar and officers shall receive such remuneration and allowances as shall be fixed by the Public Service Board, and shall be subject to the provisions of the Public Service Act, 1902, during their tenure of office.

PART III.

THE REGISTER.

8. (1) The board shall cause a register to be kept which shall contain the names, addresses, and qualifications of all surveyors, the respective dates on which they were registered, and such other matters as may be prescribed.

(2) The board shall cause a notification of the registration of every surveyor to be published in the Gazette.

(3) A copy of the register signed by the president shall, in the month of January in each year, be published by the board in the Gazette.

(4) A copy of the Gazette shall in all proceedings be prima facie evidence that the persons whose names are

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are therein contained, and no others, were surveyors registered under this Act at the time when the said copy of the register purported to have been so signed.

(5) A document purporting to be a copy of an entry in the register and to be signed by the president or the registrar shall, in all proceedings, be prima facie evidence of the existence of such an entry in the register at the time such document purports to have been so signed.

Certain entries to be removed.

9. The board shall remove or amend any entry in the register which is proved to its satisfaction to have been fraudulently made or procured, or to be incorrect.

The board may, if it thinks fit, in any case restore to the register any name removed therefrom without payment of fee or on payment of such fee, not exceeding the registration fee, as the board may direct.

PART IV.
REGISTERED SURVEYORS.

Persons entitled to be registered.

10. (1) No person shall be entitled to be registered as a surveyor unless he has attained the age of twenty-one years, and satisfies the board that he is of good fame and character.

(2) Subject to this Act, a person shall be entitled to be registered as a surveyor who—

- (a) holds a subsisting license to survey issued before the commencement of this Act by the Surveyor-General or Chief Surveyor of the Department of Lands; or
- (b) has obtained the prescribed certificate of competency after the prescribed examination; or
- (c) is entitled to practise as a surveyor in any reciprocating State, and has otherwise complied with the conditions of this Act; or
- (d) has passed in any country outside New South Wales, not being a reciprocating State, an examination approved of by the board, and has also

also passed such further examination or has completed such field service with a surveyor in New South Wales, or both of these, as the board may require :

Provided that—

- (i) the board may refuse to register any person who being the holder of a subsisting license to survey has been refused a special license to practice as a surveyor under the Real Property Act, 1900, or whose special license to so practice has been cancelled ;
- (ii) any person who does not hold a subsisting license to survey at the commencement of this Act but who has been engaged in the practice of surveying within the State of New South Wales as a principal for not less than five years continuously immediately before the commencement of this Act, or any person who has been engaged solely in the business of surveying within the State of New South Wales for a period of not less than eight years continuously immediately before the commencement of this Act may, within a period of eighteen months from such commencement, apply to be registered as a surveyor under this Act.

If such person satisfies the board by evidence that he is competent to survey, the board shall register such person as a surveyor without the necessity of passing the examination prescribed by this Act.

(3) An application to the board for registration shall—

- (a) be made as prescribed ;
- (b) be supported by such evidence as the board may require ; and
- (c) be accompanied by a fee in accordance with the prescribed scale.

(4) Every surveyor shall before or in the month of July in each year pay to the registrar the prescribed roll fee.

(5)

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(5) If any surveyor does not pay the prescribed roll fee before or in the month of July in any year the board may remove his name from the register.

(6) If the name of any surveyor is removed from the register under this section the board may restore his name to the register upon payment of the fees prescribed by the regulations.

Reciprocal
arrangement
by board
with other
States, &c.

11. (1) The board may enter into a reciprocal arrangement with the Surveyors' Board or other competent authority of any State, Colony, or Dominion within His Majesty's Dominions for the recognition of the status of any person authorised by such board or other authority to practise as a surveyor in such State, Colony, or Dominion, and for the registration of such person as a surveyor under this Act.

(2) Any such arrangement may contain a condition that any such person applying to be registered under this Act shall furnish additional evidence of character and competency to the satisfaction of the board.

Powers and duties of surveyors.

Right to
make
surveys.

12. (1) After the expiration of eighteen months from the commencement of this Act, no person unless registered under this Act shall practise as a surveyor, nor shall any person not so registered make any survey except under the supervision of a surveyor.

(2) Any person who acts in contravention of the provisions of this section, or who takes or uses any title, initials, addition, or description implying that he is registered under this Act when he is not so registered, shall be liable to a penalty not exceeding fifty pounds.

Power of
entry upon

13. (1) In making any survey or for any purpose relating thereto, a surveyor with his assistants, upon giving the prescribed notice, may enter any land, and for that purpose may open any fence.

This section shall not exempt any surveyor from liability for any damage he or his assistants may commit; but the employer of the surveyor shall be liable to reimburse the surveyor or the assistants if the act occasioning such damage was necessary for the due making of the survey.

(2)

(2) Any person who unlawfully and wilfully obliterates, removes, or defaces any survey mark, or obstructs a surveyor or his assistants in the exercise of the powers hereby conferred, shall be liable to a penalty not exceeding twenty pounds, and in addition may be ordered to pay the costs of re-establishing such mark.

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Charges against surveyors.

14. (1) Upon a charge made as hereinafter prescribed and after inquiry, if it is shown with respect to any surveyor that—

Power of board to deal with offences.

- (a) he has certified to the accuracy of any survey, knowing the same to be inaccurate, or without having taken reasonable precautions to verify its accuracy; or
- (b) he wilfully or by culpable negligence or through incompetence has made, or caused to be made under his supervision, any survey which is so inaccurate or defective as to be unreliable; or
- (c) his certificate of competency has been obtained by fraud; or
- (d) his certificate of competency has been issued in error; or
- (e) after registration, he has been convicted of any felony or misdemeanour, or of any offence which, if committed within this State, would be a felony or misdemeanour; or
- (f) he does not possess the qualification in respect of which he was registered,

the board may—

- (i) remove the name of such surveyor from the register; or
- (ii) suspend such surveyor from practice as a surveyor for any period not exceeding three years and the details of such suspension shall be entered in the register.

(2) The board may in addition to suspension or as an alternative thereto make all or any of the following orders:—

- (a) impose a fine on such surveyor not exceeding fifty pounds by way of penalty;
- (b) order such surveyor to pay the cost of the correction of his work;

(c)

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- (c) order such surveyor to pay such sum as the board thinks adequate as compensation to his client;
- (d) order such surveyor to pay a specified sum as costs in the case;
- (e) nothing in this section shall authorise the board to impose a fine in any case coming within paragraph (e) of subsection one of this section.

(3) The board may in the case of an order of the board not being complied with suspend the surveyor until the order is complied with or may remove his name from the register.

(4) The board may for sufficient cause reinstate a surveyor whose name has been removed from the register or who has been suspended from practice.

The removal of a surveyor's name from the register, his suspension from practice or his reinstatement shall be notified in the Gazette.

(5) Any person whose name has been removed from the register or who has been suspended from practice who practises as a surveyor before his reinstatement has been so notified in the Gazette shall be liable to a penalty not exceeding fifty pounds.

Charge
against a
surveyor.

15. (1) Every charge against a surveyor under the last preceding section shall be submitted to the board in writing, signed by the person making the charge; and, if it appears to the board that the charge is one into which an inquiry should be held, the board shall fix a time and place for that purpose.

(2) At least thirty days prior to the date fixed for such inquiry, notice in writing shall be sent to the last-known postal address of the person so charged, informing him of the time and place fixed for the inquiry, and supplying him with a copy of all charges proposed to be considered at such inquiry.

(3) At such inquiry, the person charged shall be entitled to be heard in his defence and to be represented by counsel or solicitor.

16. (1) Any person dissatisfied with any decision of the board upon any such inquiry may appeal therefrom to the Supreme Court or in accordance with rules of court to the metropolitan district court, or at his option to the district court of the district in which such person resides, and such appeal shall be in the nature of a rehearing, and the decision of the court shall be final and the board shall give effect thereto.

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Appeal.

(2) The costs of the appeal shall be in the discretion of the court.

PART V.

MISCELLANEOUS.

17. (1) The board may, for the purposes of this Act, examine any person on oath, or may require or accept evidence by statutory declaration from any person.

Power of board to examine on oath.

(2) If any person wilfully makes any false statement or declaration, or utters or attempts to utter, or put off as true before the board any false, forged, or counterfeit document, he shall on summary conviction be liable to imprisonment, with or without hard labour, for a term not exceeding twelve months.

18. (1) The board may by the registrar or any person thereunto authorised in writing under the hand of the president in the name of the board, summon any person to attend before the board for the purpose of being examined with respect to any matter within the jurisdiction of the board.

Power to summon witnesses.

(2) Every person duly summoned as aforesaid who does not attend after reasonable expenses have been paid or tendered to him, or who refuses to be sworn or to make a statutory declaration, or to be examined or to answer any relevant question, shall be liable to a penalty not exceeding twenty pounds.

19. Any person who wilfully makes or causes to be made any false entry in, or falsification of, the register, and any person who wilfully procures, or attempts to procure, himself, or any other person to be registered

Penalty for forging registration.

B

under

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under this Act, by making or producing, or causing to be made or produced any false or fraudulent representation, either verbally or in writing, and any person aiding or assisting therein, shall on summary conviction be liable to imprisonment, with or without hard labour, for a term not exceeding twelve months.

Examinations.

20. The board may appoint and pay fees to examiners and hold examinations, and shall give certificates of competency in surveying to persons who have fulfilled the conditions prescribed.

Members of the board may be appointed and paid fees as examiners under this section.

Fees to be paid into Consolidated Revenue.

21. (1) All moneys received by the board shall be paid into the Treasury to the account of the Consolidated Revenue Fund.

(2) The board shall furnish to the Minister such reports, accounts, vouchers, and documents relating to any matter entrusted to or performed by the board, as the Minister may require.

Recovery of fees and penalties.

22. Any penalty and all fees payable under this Act or any regulation thereunder, or any fine or sum of money ordered to be paid by the board in pursuance of section fourteen, may be recovered before any stipendiary or police magistrate or any two justices in petty sessions.

Regulations.

23. (1) The Governor may make regulations not inconsistent with this Act, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular and without limiting the generality of the foregoing power the Governor may make regulations concerning:—

- (a) the appointment of examiners, and the holding of and subjects of, and fees for examinations;
- (b) the meetings and procedure of the board;
- (c) the manner of keeping the register;
- (d) the forms to be used for the purposes of this Act;
- (e) the nature of the evidence to be produced upon an application for registration;
- (f) the granting of certificates of competency;
- (g)

- (g) the certificates, diplomas, degrees, licenses, or other documents, which will be recognised by the board;
- (h) the fees to be paid;
- (i) the requirement of and the registration of all indentures and contracts of apprenticeship;
- (j) proceedings in connection with inquiries;
- (k) matters for the information and guidance of surveyors in carrying out surveys, and matters incidental to or consequent on surveys;
- (l) the making of surveys;
- (m) the character and extent of supervision to be exercised by a surveyor over surveys.

(2) A regulation may impose a penalty not exceeding twenty pounds for any breach thereof.

(3) The regulations may prescribe a scale of roll fees to be paid by surveyors in active practice by surveyors in employment, and by other surveyors.

(4) Regulations made under this Act shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in such regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is then in session, and if Parliament is not then in session within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given within fifteen sitting days after such regulations have been laid before such House disallowing any regulation, or part thereof, such regulation or part shall thereupon cease to have effect.

24. (1) A copy of the Gazette purporting to contain any notification published under or for the purposes of this Act shall be prima facie evidence of the facts therein stated.

(2) Every court shall take judicial notice of the signature of the president or acting president of the board.

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Saving. **25.** Nothing in this Act shall affect surveyors employed by the owner, agent, or manager of any mine in giving effect to any provision of the Mines Inspection Act, 1901, or the Coal Mines Regulation Act, 1912, or of any Act amending such Acts relating to surveys in connection with mines.

Taxation of bill of surveyor.

Delivery of signed bill by surveyor. **26.** (1) No surveyor shall, unless by leave of the Land and Valuation Court, commence any action or suit for the recovery of any fee, charge, or disbursement for or in connection with work done by him as such surveyor until the expiration of one month after he has delivered to the party charged therewith personally or by registered post a bill of such fee, charge, or disbursement signed by him.

Taxation of bill. (2) On application to the registrar made within the said month, or at any time thereafter on the order of the court, the bill shall be taxed by the registrar, and the registrar shall issue to the parties a certificate of the amount allowed by him on such taxation. The scale of costs to be applied by the registrar shall be that in force for the time being and issued by the Institution of Surveyors and approved by the Governor.

Review of taxation. (3) The court may order the registrar, on application made within one month after the issue of his certificate, to review and correct his taxation of a bill.

(4) No surveyor shall be entitled to recover in respect of work charged for in any such bill an amount exceeding that allowed by the registrar on taxation of such bill.