

SURVEYORS (AMENDMENT) ACT.

Act No. 46, 1964.

An Act to make further provision with respect to the constitution and the powers, authorities, duties and functions of the Board of Surveyors of New South Wales, the registration of surveyors of land and the rights of surveyors to enter on land; to extend the circumstances in which surveyors may be suspended from practice or have their registration cancelled; for these and other purposes to amend the Surveyors Act, 1929-1946; and for purposes connected therewith. [Assented to, 27th November, 1964.]

Elizabeth II,
No. 46, 1964

BE it enacted by the Queen'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:—

1. (1) This Act may be cited as the "Surveyors (Amendment) Act, 1964".

Short title,
citation
and com-
mencement.

(2) The Surveyors Act, 1929, as amended by subsequent Acts and by this Act, may be cited as the Surveyors Act, 1929-1964.

(3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. The Surveyors Act, 1929-1946, is amended—

Amendment
of Act No.
3, 1929.

(a) (i) by omitting from the matter relating to Part III in section two the letters and figures "ss. 8, 9." and by inserting in lieu thereof the letters and figures "ss. 8-9B.";

Sec. 2.
(Parts of
Act.)

(ii) by omitting from the matter relating to Part V in the same section the letters and figures "ss. 17-26." and by inserting in lieu thereof the letters and figures "ss. 17-29.";

(b)

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Sec. 3.
(Interpre-
tation.)

- (b) (i) by inserting in section three immediately before the definition of "Board" the following new definition :—

"Articles" means an indenture or writing containing a contract or an agreement whereby a surveyor agrees to give instruction and provide experience in the principles and practice of surveying to a person who in consideration of such instruction and experience binds himself to serve the surveyor for the term of the contract or agreement.

- (ii) by omitting from the same section the definition of "Institution" and by inserting in lieu thereof the following definition :—

"Institution" means Institution of Surveyors, New South Wales, Incorporated, or its successors.

- (iii) by omitting from the definition of "Practise" in the same section the words "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" and by inserting in lieu thereof the words "for fee or reward";

- (iv) by omitting from the same section the definition of "Reciprocating State" and by inserting in lieu thereof the following definition :—

"Reciprocating State" means any country, as defined in section eleven of this Act, with the Surveyors' Board or other competent authority of which reciprocal arrangements have been made pursuant to that section.

- (v) by omitting from the same section the definition of "Survey" and by inserting in lieu thereof the following definitions :—

"Registrar" means registrar of the board.

"Survey"

“Survey” means a measurement or delimitation of land authorised or required—

- (a) under any Act dealing with the alienation, leasing or occupation of Crown lands or lands of the Crown or affecting titles to land; or
- (b) subject to section twenty-five of this Act, under any Act dealing with mining; or
- (c) by the Crown, the proprietor, lessee or mortgagee of the land or a prospective proprietor, lessee or mortgagee thereof; or
- (d) in connection with the dedication, reservation, resumption or disposal thereof for any purpose under the authority of any Act,

and includes all matters prescribed which are incidental to or consequent upon such measurement or delimitation, and “surveying” has a meaning corresponding with that of “survey”.

- (c) (i) by omitting from section five the words “Within three months after the commencement of this Act and in the month of January in every year thereafter” and by inserting in lieu thereof the words “In the month of January following the commencement of the Surveyors (Amendment) Act, 1964, and in the month of January in every second year thereafter”;
- (ii) by omitting from the same section the word “licensed” wherever occurring;
- (iii) by omitting from the same section the words “The persons to be nominated by the council of the Institution shall be elected, in the manner

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(Nomination and appointment of members.)

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Sec. 6.
(Tenure of
office by
members
and
quorum.)

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.”;

- (d) (i) by omitting from subsection four of section six the words “in the manner hereinbefore indicated by”;
- (ii) by omitting from subsection six of the same section the words “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” and by inserting in lieu thereof the words “such fees as the Governor may from time to time determine”;
- (iii) by inserting at the end of the same section the following new subsections:—

(8) A resolution signed by all members of the board holding office for the time being shall be as valid and effective as if it had been passed at a meeting of the board and any such resolution shall be recorded in the minutes of the board’s proceedings.

(9) (a) The board may from time to time by resolution delegate to the president of the board such of the powers, authorities, duties and functions of the board (other than this power of delegation) as may be prescribed by the regulations and as are specified in the resolution.

(b) Any such delegation—

- (i) may be revoked by the board by resolution;
- (ii) shall not preclude the board from exercising the powers, authorities, duties or functions delegated; and
- (iii) may be made either generally or for any particular case or class of cases.

(c)

(c) When acting within the scope of ~~No. 46, 1964~~ any such delegation to him, the president of the board shall be deemed to be the board.

(e) by inserting in subsection one of section eight after the word "matters" the words "as the board may think fit or";

Sec. 8.
(Board to keep a register.)

(f) by omitting section nine and by inserting in lieu thereof the following sections:—

Subst. sec. 9, new secs. 9A, 9B.

9. The board may remove from the register the name of any person—

Removal from register.

(a) who dies; or

(b) who becomes a mentally ill person, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, as amended by subsequent Acts; or

(c) who notifies the registrar that he desires that his name be removed; or

(d) whose entitlement to practise as a surveyor in some place outside the State of New South Wales is revoked or cancelled in accordance with the law in force in that place except where such revocation or cancellation is at his own request.

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

Amendment of entry.

9B. (1) The board—

(a) may, if it thinks fit, in any case; and

(b) shall, where the surveyor affected has been reinstated pursuant to subsection four of section fourteen of this Act,

Restoration of name removed from register.

restore

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restore to the register any name removed therefrom and such restoration may be made without payment of a fee or on payment of such fee, not exceeding the prescribed roll fee, as the board may direct.

(2) Nothing in subsection one of this section shall affect the provisions of subsection six of section ten of this Act.

Sec. 10.
(Persons
entitled
to be
registered.)

(g) by omitting subsections five and six of section ten and by inserting in lieu thereof the following subsections :—

(5) If any surveyor does not pay the prescribed roll fee before or in the month of July in any year, the board shall notify him, by letter addressed to him at the address appearing in the register, that if the fee is not paid before the thirty-first day of October next following his name will be removed from the register. If any surveyor who has been so notified fails to pay such fee before the said thirty-first day of October, the board shall remove his name from the register.

(6) If the name of any surveyor is removed from the register under this section, the board shall restore his name to the register upon payment of such fees as are prescribed.

(7) A surveyor who changes his address as appearing in the register shall, within three months thereafter, notify the board of his new address and the board shall thereupon alter the entry in the register relating to that surveyor accordingly.

(8) A surveyor who fails to comply with the provisions of subsection seven of this section shall be liable to a penalty not exceeding five pounds.

(h)

- (h) (i) by omitting from subsection one of section **No. 46, 1964** eleven the words "State, Colony, or Dominion within His Majesty's Dominions" and by inserting in lieu thereof the word "country";
- (ii) by omitting from the same subsection the words "State, Colony, or Dominion" where secondly occurring and by inserting in lieu thereof the word "country";

Sec. 11.
(Reciprocal
arrange-
ment by
board
with other
States, etc.)

- (iii) by inserting next after subsection two of the same section the following new subsections :—

(3) Any reciprocal arrangement entered into by the board for the purposes specified in subsection one of this section and subsisting immediately before the commencement of the Surveyors (Amendment) Act, 1964, shall be deemed to have been entered into pursuant to the provisions of that subsection.

(4) In this section "country" means the United Kingdom of Great Britain and Northern Ireland, the Dominion of New Zealand, any State or Territory of the Commonwealth of Australia and any other prescribed country, state, territory or place.

- (i) (i) by omitting subsection one of section **twelve** and by inserting in lieu thereof the following subsection :—

Sec. 12.
(Right to
make
surveys.)

(1) No person, unless registered under this Act, shall practise as a surveyor.

- (ii) by omitting from subsection two of the same section the words "fifty pounds" and by inserting in lieu thereof the words "one hundred and fifty pounds";

(iii)

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(iii) by inserting next after subsection two of the same section the following new subsection :—

(3) This section shall not extend to—

(a) a pupil who, under the supervision of a surveyor, is receiving instruction or acting in the course of his duties, as required by his articles; or

(b) a surveyor's assistant or draftsman acting in the course of the duties usually performed by surveyors' assistants or draftsmen, as the case may be.

Sec. 13.
(Power of entry upon lands.)

(j) (i) by inserting in subsection one of section thirteen after the word "fence" the words ", may insert any survey mark and may enter any building for the purpose of determining the position of a wall or for defining a boundary which is otherwise inaccessible";

(ii) by omitting from subsection two of the same section the words "twenty pounds" and by inserting in lieu thereof the words "fifty pounds";

Sec. 14.
(Power of board to deal with offences.)

(k) (i) by inserting at the end of paragraph (f) of subsection one of section fourteen the following word and new paragraphs :—

“; or

(g) he has failed to comply with any of the provisions of this Act or the regulations made thereunder; or

(h) he has been convicted of an offence relating to the duties and functions of surveyors, the carrying out of surveys or matters incidental to or consequent upon

upon surveys, under any Act or regulation, other than this Act and the regulations made thereunder, or under any ordinance or by-law; or

(i) he has been guilty of misconduct in a professional respect,";

(ii) by inserting next after the same subsection the following new subsection :—

(1A) Without limiting the meaning of the expression "misconduct in a professional respect" in paragraph (i) of subsection one of this section, a surveyor shall be deemed guilty of such misconduct if—

(a) after the expiration of twelve months from the commencement of the Surveyors (Amendment) Act, 1964, and except where this Act otherwise provides or the board permits, he practises surveying—

(i) on his own account under a name other than his own name; or

(ii) in partnership or association under a name other than his own name and the name of each other person in partnership or association with whom he is so practising;

(b) in connection with the practice of surveying he uses or allows the use of his name at premises at or from which, in the opinion of the board, he or his partners or associates, if any, do not regularly practise surveying;

(c)

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- (c) without the permission of the board, he allows his name to be joined in connection with the practice of surveying with the name of a person not registered under this Act, except where the name is that of a deceased or retired partner who was a surveyor at the time of his death or retirement, and the registrar has been so notified;
 - (d) he uses or publishes, or allows the use or publication of, any title, name, words, or letters which are capable of being understood to indicate that he is qualified in surveying, or as a surveyor, other than such title, name, words, or letters as truly indicate a qualification in surveying or as a surveyor which he in fact holds or possesses; or
 - (e) he directly or indirectly gives or offers, or agrees to give or offer, any person any commission, gratuity, service or other consideration whatever for securing or attempting to secure for him any instructions to make surveys or any work in connection with surveys.
- (iii) by omitting from paragraph (a) of subsection two of the same section the words "fifty pounds" and by inserting in lieu thereof the words "one hundred and fifty pounds";
- (iv) by omitting paragraph (e) of the same subsection;

(v)

- (v) by inserting next after the same subsection No. 46, 1964 the following new subsections :—

(2A) Nothing in this section shall authorise the board to impose a fine—

- (a) in any case coming within paragraph (e) or (h) of subsection one of this section; or
- (b) where a surveyor has been convicted by a court as a result of his failure to comply with the particular provision of this Act or the regulations made thereunder in respect of which a charge has been made pursuant to paragraph (g) of subsection one of this section.

(2B) In any case coming within paragraph (g) or (h) of subsection one of this section, no person shall be liable to have his name removed from the register or be suspended from practice if his failure to comply with the Act, regulation, by-law or ordinance concerned does not, either from its trivial nature or the circumstances under which it took place, render such person unfit in the public interest to practise surveying.

(2C) The board may suspend from practice any surveyor whose entitlement to practise in a reciprocating State is suspended under the law in force in the reciprocating State. The board shall not impose a period of suspension under this subsection which expires later than the period of suspension imposed by the Surveyors' Board or other competent authority of the reciprocating State.

- (vi) by inserting in subsection five of the same section after the word "Gazette" the words "and his name, if removed from the register, has been restored thereto";

(vii)

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(vii) by omitting from the same subsection the words "fifty pounds" and by inserting in lieu thereof the words "one hundred and fifty pounds, and a further penalty not exceeding ten pounds for every day during which the offence is continued";

Sec. 15.
(Charge
against a
surveyor.)

(1) (i) by inserting in subsection one of section fifteen after the word "charge" where secondly occurring the words ", and shall, except where the charge is made by a person authorised in writing to make such charge by the council of the Institution or by an officer of any Government department or statutory authority constituted for public purposes, be accompanied by a deposit of ten pounds";

(ii) by inserting in subsection two of the same section after the word "sent" the words "by certified or registered mail";

(iii) by omitting from subsection three of the same section the words "or solicitor" and by inserting in lieu thereof the words ", solicitor or agent";

(iv) by inserting next after the same subsection the following new subsection :—

(4) Where the board is of the opinion that the charge is vexatious or frivolous it shall so declare and thereupon the sum deposited shall be forfeited. In the absence of any such declaration the sum so deposited shall be refunded to the complainant.

Sec. 16.
(Appeal.)

(m) by inserting in subsection one of section sixteen after the word "may" the words ", within three months of such decision,";

Sec. 18.
(Power to
summon
witnesses.)

(n) by omitting from subsection two of section eighteen the words "twenty pounds" and by inserting in lieu thereof the words "fifty pounds";

(o)

- (o) (i) by omitting from paragraph (i) of subsection No. 46, 1964 one of section twenty-three the words “indentures and contracts of apprenticeship” and by inserting in lieu thereof the word “articles”; Sec. 23. (Regulations.)
- (ii) by omitting paragraph (1) of the same subsection and by inserting in lieu thereof the following paragraph :—
- (1) the making and marking of surveys, and matters incidental to or consequent on the making and marking of surveys;
- (iii) by inserting next after paragraph (m) of the same subsection the following new paragraphs :—
- (n) standards of measurement and accuracy to be adopted for the purpose of surveys;
- (o) advertising by surveyors.
- (iv) by omitting from subsection two of the same section the words “twenty pounds” and by inserting in lieu thereof the words “fifty pounds”;
- (p) (i) by omitting from subsection two of section twenty-six the words “of Surveyors”; Sec. 26. (Delivery of signed bill by surveyor.)
- (ii) by inserting next after subsection four of the same section the following new subsection :—
- (5) In this section, “registrar” means registrar of the Land and Valuation Court.
- (q) by inserting next after section twenty-six the following new sections :— New secs. 27-29.
27. (1) The board may order a surveyor to produce or make available for its inspection any document in his possession, custody or control relating to the making of any survey or to any matter arising under this Act or the regulations made

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made thereunder, and any member of the board or the registrar may make extracts therefrom or copies thereof.

(2) Any such document shall be retained by the board only for such period as may reasonably be required for the purpose of inspection and making extracts or copies or, if its production is ordered during the conduct and for the purposes of an inquiry under section fourteen of this Act, until the completion of the inquiry.

(3) Except as provided in subsection four of this section, no information contained in any document produced or made available pursuant to subsection one of this section or any extract therefrom or copy thereof shall be disclosed by the members of the board or the registrar to any other person without the permission of the surveyor producing the document or making it available.

(4) Information contained in a document produced or made available pursuant to this section during the conduct of and for the purposes of an inquiry under section fourteen of this Act may be disclosed by the board in the course of the inquiry if it is relevant to the charge being investigated, but if the nature of the document is such that it is not possible to obtain relevant information therefrom without disclosing other information, that other information may be disclosed to the extent that it is necessary to obtain relevant information.

(5) Any order made by the board pursuant to this section shall be in or to the effect of the form prescribed and a copy of the order under the hand of the registrar shall be delivered to the surveyor personally or sent to him by letter sent by certified or registered mail addressed to his last-known postal address.

(6)

(6) The surveyor to whom the order refers No. 46, 1964 shall comply with the terms thereof within seven days of its receipt or such further time as the board may allow.

(7) In this section, "document" includes any field book, field notes, plan or record.

28. Notwithstanding any other provision in this Act, upon the death of a surveyor the board may authorise his executor, administrator or trustee to carry on, for such period as the board may determine and in the name of such deceased surveyor, the practice formerly carried on by him provided the practice is so carried on under the personal supervision of a surveyor, who may be such executor, administrator or trustee, and provided the name of such supervising surveyor is registered with the board as superintendent of the practice.

Continuation of name of deceased surveyor.

29. No matter or thing done or suffered by the board, or any member of the board, or the registrar, or any person duly authorised under any provision of this Act, bona fide in the execution or intended execution of such Act, or the exercise or discharge or intended exercise or discharge of any of its or his powers, authorities, duties or functions, shall subject the board or any member of the board, or the registrar, or such person, or the Crown, to any liability in respect thereof.

Protection of board and members and others from liability.