

No. , 1922.

A BILL

To provide for the registration of surveyors and assistant surveyors, and the making of surveys; to amend the Real Property Act, 1900, and certain other Acts; and for purposes connected therewith.

[MR. WEARNE;— *October, 1922.*]

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 **5** the same, as follows :—

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PART

PART I.

PRELIMINARY.

Short title
and repeal.

1. (1) This Act may be cited as the "Land Surveyors Act, 1922," and shall commence and come into force on the first day of January, one thousand nine hundred and twenty-three. 5

(2) Section eleven of the Real Property Act, 1900, is repealed.

(3) Wherever in any enactment reference is made to the Chief Surveyor, such reference shall be deemed to mean the Surveyor-General. 10

(4) Wherever in any enactment reference is made to a licensed surveyor, such reference shall, on and after the expiration of twelve months from the commencement of this Act, be deemed to mean a surveyor registered under this Act. 15

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. 20

PART IV.—REGISTERED SURVEYORS AND ASSISTANT SURVEYORS—*ss.* 10-17.

PART V.—MISCELLANEOUS—*ss.* 18-25.

Inter-
pretation.

3. In this Act, unless the context otherwise requires,— 25

"Assistant surveyor" means person registered under this Act as an assistant surveyor.

"Authorised survey" means a survey of land authorised or required under any Act dealing with the alienation, leasing, or occupation of Crown lands, or with mining. 30

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

"Institution of Surveyors" means Institution of Surveyors of New South Wales. 35

"Member" means member of the board.

"Minister" means Secretary for Lands.

"Prescribed"

- “ 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 and assistant surveyors.
- “ 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 four other members 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 third year after the year one thousand nine hundred and twenty-three, the Surveyor-General and the Registrar-General may each nominate to the Minister an officer in the Government service, and the council of the Institution of Surveyors may so nominate two full members of such institution, to be members of the board. The Minister, as soon as practicable after the 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.

Nomination and appointment of members.

Only persons registered as surveyors under this Act shall be appointed as members of the second or any subsequent board.

6.

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. 5

(3) The Governor may for sufficient cause remove any member, and such person shall thereupon cease to be a member. 10

(4) The Governor may fill any vacancy caused by the resignation, removal, or death of any member, by appointing a person nominated by the Surveyor-General, or the Registrar-General, or the council of the Institution of Surveyors, 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 resignation, removal, or death of a member, or if the Minister does not approve of the person so nominated, the Governor may appoint a person recommended by the Minister. 15 20

(5) Three members shall form a quorum. The president of the board shall have an original and casting vote on any matter before the board. 25

(6) The members shall be paid such fees as may be determined by the Governor.

Registrar and
other officers.

7. The Governor may from time to time appoint a registrar of the board and such other officers as the Governor may think fit for carrying out the provisions of this Act, and may at any time remove any of the same. 30

The fees of members, and the salaries and emoluments of the officers so appointed as aforesaid, and all other expenses necessary for carrying out the provisions of this Act, shall be paid out of moneys to be appropriated by Parliament for the purposes of this Act. 35

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 and assistant surveyors, the respective dates on which they were registered, and such other matters as the board may direct. Board to keep a register.

(2) The board shall cause particulars as aforesaid of the registration of every surveyor and assistant surveyor to be published in the Gazette.

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

(4) A copy of the register, purporting to be signed by the president, shall in all proceedings be prima facie evidence that the persons whose names are therein contained, and no others, were surveyors or assistant surveyors 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 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.

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

PART IV.

REGISTERED SURVEYORS AND ASSISTANT SURVEYORS.

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

(2)

(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 the chief surveyor of the Department of Lands; or 5
- (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 10
- (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 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; and 15
- (e) has made a declaration in the form of the Schedule: 20

Provided that the board may dispense with such of the certificates, examinations, or other conditions for registration required by this Act as to it may seem just in favour of any person who has commenced his apprenticeship or professional education in surveying in New South Wales or elsewhere before the commencement of this Act. 25

(3) Subject to this Act and to the conditions prescribed, the board may register as an assistant surveyor any person applying to be so registered. The board may dispense with any part of any prescribed examination in favour of a person so applying who has carried out surveys under the supervision of a licensed surveyor for not less than ten years immediately preceding the commencement of this Act. 35

(4) Applications to the board for registration shall—

- (a) be made as prescribed;
- (b) be supported by such evidence as the board may require; and 40
- (c) be accompanied by the prescribed fee:

Provided

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Provided that no fee for registration shall be payable by any person who holds a surveyor's license from the Surveyor-General or the Chief Surveyor of the Department of Lands.

5 **11.** The board may enter into a reciprocal arrangement with the Surveyor's 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
10 authority to practise as a surveyor in such State, Colony, or Dominion, and for the registration of such person as a licensed surveyor under this Act.

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

Powers and duties of surveyors.

12. (1) After the expiration of twelve months from the commencement of this Act, all authorised surveys
20 shall be made by a surveyor : Powers of surveyor.

Provided that a surveyor may, with the approval of the board, employ an assistant surveyor to carry out an authorised survey under his supervision, subject to such conditions as the board may impose.

25 (2) Any person who makes or attempts to make any authorised survey contrary to this section, or 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
30 exceeding *fifty* pounds.

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

This section shall not exempt any surveyor or assistant surveyor from liability for any damage he may commit ; but his employer shall reimburse him for any liability so incurred if the act occasioning such damage was
40 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 assistant surveyor in the exercise of the powers hereby conferred, shall be liable to a penalty not exceeding *ten* pounds, and may be required to pay the costs of re-establishing such mark. 5

Surveyors to correct errors at their own expense.

14. Every surveyor who makes an error in any authorised survey shall correct such error at his own expense; or shall pay to his employer the cost of such correction, if such error has been corrected by a surveyor authorised to make such correction. 10

Charges against surveyors.

Power of board to deal with offences.

15. (1) Upon a charge made as hereinafter prescribed and after inquiry, if it is shown with respect to any surveyor that— 15

- (a) he has certified to the accuracy of any authorised 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 has made, or caused to be made under his supervision, any authorised survey which is so inaccurate or defective as to be unreliable; or
- (c) his certificate of competency has been obtained by fraud; or
- (d) 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
- (e) he has been guilty of conduct which, in the opinion of the board, renders him unfit to practise as a surveyor; or
- (f) he does not possess the qualification in respect of which he was registered, 25

the board may— 35

- (i) remove the name of such surveyor from the register; or
- (ii) suspend him from practice as a surveyor for any period not exceeding three years, and the details of such suspension shall be entered in the register; or 40
- (iii)

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(iii) caution him and order him to pay the cost of the correction of an error due to his negligence or omission.

(2) 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, and his reinstatement shall be notified in the Gazette.

10 (3) Any person whose name has been removed from the register, or who has been suspended as aforesaid, 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.

15 (4) The provisions of this section shall apply *mutatis mutandis* to an assistant surveyor.

16. (1) Every charge against a surveyor or assistant 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.

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

17. (1) Any person dissatisfied with any decision of the board upon any such inquiry may appeal therefrom to the Supreme Court, and such appeal shall be in the nature of a rehearing.

(2) Such appeal shall be by notice of motion stating the grounds of appeal, and such notice of motion shall be filed in the Supreme Court within thirty days after the date of the decision appealed from. A copy of the notice of motion shall be served upon the board by the appellant within the said thirty days.

(3) The president of the board shall, at the request of any party to the proceedings before the board, make a note of any question raised in such proceedings and shall if required furnish a copy of such note or allow a copy of such note to be taken. 5

(4) The decision of the board if not appealed against shall be final, and shall be observed by every person concerned.

PART V.

MISCELLANEOUS.

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Power of board to examine on oath.

18. (1) The board may, for the purposes of this Act, examine any person on oath, or take a statutory declaration from any person.

(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 be liable to imprisonment, with or without hard labour, for a term not exceeding *twelve* months. 15

Power to summon witnesses.

19. (1) The president of the board or, by consent of the majority of the members present at any meeting of the board, a member may in writing under his hand 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. 25

(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. 30

Penalty for forging registration.

20. 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 under this Act, by making or producing, or causing to be 35

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be made or produced any false or fraudulent representation, either verbally or in writing, and any person aiding or assisting therein, shall be liable to imprisonment, with or without hard labour, for a term not exceeding *twelve* months.

21. 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.

10 **22.** (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.

23. All penalties and all fees payable under this Act or any regulation thereunder may be recovered before any stipendiary or police magistrate or any two justices in petty sessions.

20 **24.** (1) The board, with the approval of the Governor, may make regulations for all or any of the following purposes, namely:—

- 25 (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.
- 30 (e) The nature of the evidence to be produced upon an application for registration.
- (f) Regulating the granting of certificates of competency.
- 35 (g) Prescribing what certificates, diplomas, degrees, licenses, or other documents, will be recognised by the board.
- (h) Prescribing fees to be paid.
- (i) Requiring and regulating the registration of all indentures and contracts of apprenticeship.
- 40 (j) Regulating proceedings in connection with inquiries.

(k)

- (k) For the information and guidance of surveyors in carrying out surveys, and matters incidental to or consequent on surveys.
- (l) Generally for carrying into effect the objects of this Act. 5
- (2) A regulation may impose a penalty for any breach thereof, and may also impose different penalties in case of successive breaches ; but no such penalty shall exceed *twenty* pounds.
- (3) Any regulations relating to surveys required 10 for the purposes of any department of the Government shall be subject to the approval of the Minister of the department concerned.
- (4) Regulations made under this Act shall—
- (a) be published in the Gazette ; 15
- (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 days after publication if Parliament 20 is then in session, and if Parliament is not then in session within fourteen 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 25 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.
- Evidence.** 25. (1) A copy of the Gazette purporting to contain any notification published in the Gazette under or for 30 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 of the board and of the fact that such person holds or has held such office if 35 the signature purports to be attached to an official document.
- (3) In any proceeding by or on behalf of the board, it shall not be necessary to prove the appointment of the members or president. 40

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SCHEDULE.

Section 10.

I, A.B., do hereby solemnly and sincerely declare that I will, to the best of my ability, correctly survey any land I may be instructed or employed to survey.

5 Declared day of , 19 , before me, A.B.
J.K., Justice of the Peace.