

Surveyors Bill, 1923.

EXPLANATORY NOTE.

THE object of this Bill is to establish a Board which will supersede the existing Surveyors' Board and the Real Property Act Board; to enable the Board to control all matters relating to the profession of surveyors of land, with power to admit surveyors to practice, to register persons as assistant surveyors under certain conditions, and to govern or control the surveyors or assistant surveyors who are admitted; and to prevent unregistered persons from practising as surveyors.

20451

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1923.

A BILL

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

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, 1923," and shall commence and come into force on the 10 first day of January, one thousand nine hundred and twenty-four.

(2) Section eleven of the Real Property Act, 1900, is repealed.

(3) 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."

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

(5) Wherever in any enactment or this Act 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.

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.

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

"Institution of Surveyors" means Institution of Surveyors of New South Wales. 30

"Member" means member of the board.

"Minister" means Secretary for Lands.

"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 of the Commonwealth, 35

Commonwealth, or as an employee of any statutory authority constituted for public purposes.

5 "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.

10 "Register" means register of surveyors and assistant surveyors.

"Surveyor" means person registered under this Act as a surveyor.

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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 (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 third year after the year one thousand nine hundred and twenty-four, 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

Nomination and appointment of members.

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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. 5

Only persons registered as surveyors under this Act shall be appointed as members of the second or any subsequent board. 10

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. 15

(3) The Governor may for sufficient cause remove any member, and such person shall thereupon cease to be a member. 20

(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. 25 30

(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. In the absence of the president through sickness or otherwise the remaining members shall elect or appoint 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. 35 40

(6)

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(6) Each member not being an officer in the Public Service shall be paid and be entitled to retain for his own use a fee of two guineas for each meeting of the board which he has attended: provided that the fees paid in respect of such meetings to any member during any year shall not exceed thirty guineas.

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.

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.

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 may be prescribed.

(2) The board shall cause a notification of the registration of every surveyor and assistant 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 therein contained, and no others, were respectively surveyors or assistant surveyors, as the case may be, at the time when the said copy of the register purported to have been so signed.

(5)

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(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. 5

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 10 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 AND ASSISTANT SURVEYORS. 15

Persons entitled to be registered.

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.

(2) Subject to this Act, a person shall be entitled 20 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 25
- (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 30
- (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 35 in New South Wales, or both of these, as the board may require. (3)

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Surveyors.

(3) 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
5 apprenticeship or professional education in surveying in New South Wales or elsewhere before the commencement of this Act.

(4) Subject to this Act and the conditions prescribed, the board may register as an assistant surveyor any person applying to be so registered, who
10 satisfies the board that he has carried out surveys under the supervision of a licensed surveyor for not less than ten years immediately preceding the commencement of this Act.

(5) An assistant surveyor shall be eligible without the production of indentures to sit as a candidate for registration as a surveyor.

The board may dispense with any part of any prescribed examination in favour of such person.

(6) Applications 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 the prescribed fee.

(7) No fee for registration shall be payable by any person who holds a license to survey from the Surveyor-General or Chief Surveyor of the Department of Lands.

(8) Every person who applies to be registered shall make a declaration in the form contained in the Schedule to this Act.

11. (1) The board may enter into a reciprocal arrangement with the Surveyors' Board or other competent
35 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
40 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.

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Powers and duties of surveyors.

Right to
make
surveys.

12. (1) After the expiration of twelve months from the commencement of this Act, no person who is not registered under this Act shall practise as a surveyor or, save as in this section provided, make or attempt to make any survey for fee or reward.

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(2) A survey may be made by an assistant surveyor who is employed by and makes the survey under the supervision of a surveyor subject to such conditions as the board may prescribe.

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(3) A surveyor shall not have in his employ more than one person as an assistant surveyor at any one time except with the sanction of the board.

(4) Any person who makes or attempts to make any survey or otherwise acts in contravention of the provisions of 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 exceeding *fifty* pounds.

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Power of
entry upon
lands.

13. (1) In making any 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 fence.

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

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(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 in addition may be ordered to pay the costs of re-establishing such mark.

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14. Every surveyor who makes an error in any survey shall correct such error at his own expense; or shall be liable to pay to his employer the cost of such correction.

Surveyors to correct errors at their own expense.

5 *Charges against surveyors.*

15. (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.

- 10 (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
- 15 (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
- 20 (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
- 25 (f) he has been guilty of conduct which, in the opinion of the board, renders him unfit to practise as a surveyor; or
- (g) he does not possess the qualification in respect of which he was registered,

30 the board may—

- (i) remove the name of such surveyor from the register either absolutely or for such period not exceeding three years as to the board may think fit;
- 35 (ii) 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 restore to the register the name of a surveyor which has been removed from the register.

The removal of a surveyor's name from the register and its restoration shall be notified in the Gazette.

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

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

Charge
against a
surveyor.

16. (1) Every charge against a surveyor or assistant surveyor under the last preceding section shall be sub-10 mitted 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 15 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. 20

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

Appeal.

17. (1) Any person dissatisfied with any decision of the board upon any such inquiry may appeal there-25 from 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 30 shall give effect thereto.

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

PART V.

MISCELLANEOUS.

- 18.** (1) The board may, for the purposes of this Act, examine any person on oath, or take a 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.
- 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. 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.
- 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 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. Penalty for forging registration.
- 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. Examinations.
- 22.** (1) All moneys received by the board shall be paid into the Treasury to the account of the Consolidated Revenue Fund. Fees to be paid into Consolidated Revenue.

(2)

(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.

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. **5**

Regulations.

24. (1) The board, with the approval of the Governor, may make regulations for all or any of the following purposes, namely:— **10**

- (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. **15**
- (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) Regulating the granting of certificates of competency. **20**
- (g) Prescribing what certificates, diplomas, degrees, licenses, or other documents, will be recognised by the board.
- (h) Prescribing fees to be paid. **25**
- (i) Requiring and regulating the registration of all indentures and contracts of apprenticeship.
- (j) Regulating proceedings in connection with inquiries.
- (k) For the information and guidance of surveyors in carrying out surveys, and matters incidental to or consequent on surveys. **30**
- (l) Prescribing any other matter which by this Act is to be prescribed.
- (m) Generally for carrying into effect the objects of this Act. **35**

(2) A regulation may impose a penalty for any breach thereof, and also distinct penalties in case of successive breaches; but no such penalty shall exceed *twenty* pounds. **40**

- (3) 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.

25. (1) A copy of the Gazette purporting to contain any notification published in the Gazette 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, if the signature purports to be attached to an official document.

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SCHEDULE.

Section 10 (8).

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.

A.B.

30 Declared day of , 19 , before me,

J.K., Justice of the Peace.