

Western Australia

# **Licensed Surveyors Act 1909**

**Reprinted as at 1 January 1999**



Western Australia

## Licensed Surveyors Act 1909

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**Notes**

## Licensed Surveyors Act 1909

**An Act to provide for the Registration and Licensing of Land Surveyors; to control the Practice of such Surveyors, and for other purposes incidental thereto.**

### 1. Short title and commencement

This Act may be cited as the *Licensed Surveyors Act 1909*<sup>1</sup>, and shall come into operation on 1 January 1910.

### 2. References to licensed surveyor

*[Paragraph omitted under s.7(4)(e) and (f) of the Reprints Act 1984.]*

Wherever in any enactment reference is made to a licensed surveyor, such reference shall be deemed to mean a surveyor licensed under this Act.

*[Section 2 amended by No. 79 of 1996 s.4.]*

### 3. Interpretation

- (1) In this Act, unless the context otherwise indicates, the following terms have the meanings set against them respectively: —

**“Authorised Survey”** — A survey of land authorised or required —

- (a) under any Act dealing with the alienation, leasing or occupation of Crown lands, or under the *Transfer of*

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*Land Act 1893*, or any other Act affecting titles to land; or

- (b) by the proprietor, lessee or mortgagee under any Act affecting titles to land,

including —

- (c) a survey of land which re-establishes the boundaries previously established by a survey of land so authorised or required, if that re-establishment —

- (i) involves the placement, replacement or relocation of any survey mark; or
- (ii) is followed by advice for the purpose of enabling the boundaries of the land in question to be located,

or both so involves and is so followed; and

- (d) the lodgment of a plan with a Government department for acceptance or adoption by that department —

- (i) as a plan of an authorised survey, if that plan is certified or otherwise held out as having been created from the result of an authorised survey, or as describing the boundaries of land within or the subject of that plan, which land is to be the subject of an authorised survey before that plan is approved under section 18; or
- (ii) as a compiled plan, if that plan is certified or otherwise held out as having been created from one or more authorised surveys recorded on plans approved under section 18, from field records that have been lodged, or from both.

**“Board”** — The Land Surveyors Licensing Board constituted under this Act.

**“Institute”** — The Institution of Surveyors, Australia, Western Australia Division Inc.

**“License”** — A license issued under this Act.

**“Licensed Surveyor”** — A surveyor licensed under this Act.

**“Practising Certificate”** — A practising certificate issued under section 11A.

**“Prescribed”** — Prescribed by this Act or the regulations made thereunder.

**“Reciprocating State”** — Any State, Colony, or Dominion within Her Majesty’s Dominions with which reciprocal arrangements have been made by the Board for the recognition of the status of surveyors.

**“Register”** — The register of licensed surveyors directed by this Act to be kept.

**“Secretary”** — The Secretary to the Board.

**“Standard Period”**, in relation to a practising certificate, means such period or periods, each not exceeding 3 years and expiring at the end of a calendar year, as is or are prescribed.

**“Survey Mark”** — A cairn, beacon, structure, post, peg, block, plug, tube, pipe, spike, pole or other mark of whatsoever material composed which is or has been placed, sunk or set up in such manner and by such persons as are prescribed.

**“Surveyor General”** — The professional officer charged with the general control of surveyors under the department principally assisting the Minister in the administration of this Act.

**“This Act”** — This Act and any regulations made thereunder.

- (2) A reference in this Act to practising as a licensed surveyor includes a reference to certifying plans, diagrams, maps and other documents which are required under this Act or any other written law to be certified by licensed surveyors.

*[Section 3 amended by No. 16 of 1940 s.2; No. 107 of 1976 s.3; No. 79 of 1996 s.5.]*

**4. Constitution of Board**

- (1) There shall be a Land Surveyors Licensing Board which shall consist of —
  - (a) the Surveyor General who shall be *ex officio* a member of the Board and the chairman thereof;
  - (b) two members, at least one of whom shall be a licensed surveyor, appointed by the Governor on the nomination of the Surveyor General;
  - (c) two members, who shall be licensed surveyors, appointed by the Governor on the nomination of the Institute;
  - (d) one member, who shall be a member of the teaching staff of the course of surveying of an educational institution in this State, appointed by the Governor on the nomination of the educational institution being a nomination made in accordance with subsection (4a) of this section.
- (1a) *[Omitted under section 7(4)(e) of the Reprints Act 1984.]*
- (2) The members of the Board, other than the Surveyor General, shall go out of office on 31 December in every year but shall be eligible for reappointment and shall be deemed to hold office until the appointment of their successors.
- (3) The Governor may, on the recommendation of a majority of the members of the Board, remove any member other than the Surveyor General, from the Board.
- (4) Whenever a vacancy occurs on the Board by reason of the removal, death, or resignation of any member other than the Surveyor General, the Governor shall, after nomination, appoint a member to fill the vacancy. If the member whose seat has become vacant was nominated by the Institute, the person to fill the vacancy shall be nominated by the Institute, and, if by the Surveyor General, he shall be nominated by the Surveyor



General, and, if by an educational institution in this State, he shall be nominated by the educational institution.

- (4a) In relation to the appointment of a member pursuant to subsection (1)(d), the Surveyor General shall —
- (a) in respect of the occasion of the first appointment of a member as soon as practicable after the coming into operation of section 4 of the *Licensed Surveyors Act Amendment Act 1976*; and
  - (b) prior to each occasion thereafter when the office becomes vacant by effluxion of time but not later than 1 November in every year,

by notice in writing request an educational institution in this State providing a course in surveying to nominate a member of the teaching staff of the course of surveying of the institution who is willing to act as member of the Board.

- (5) Subject to subsection (5a), whenever the Surveyor General, the Institute or an educational institution neglects or omits to nominate for appointment —
- (a) on or before 1 December in every year the members or member of the Board, as the case requires, whom the Surveyor General, the Institute or that institution, as the case may be, is entitled under the provisions of subsection (1)(b), (c) or (d) to nominate for the then ensuing year;
  - (b) within one month from the date of the removal, death or resignation of a member of the Board, a person whom the Surveyor General, the Institute or that institution, as the case may be, is entitled under the provisions of subsection (4) to nominate to fill the vacancy caused thereby,

the Governor may appoint as members or a member of the Board for the then ensuing year, or to fill such vacancy, the persons or person nominated by a majority of the existing Board.

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- (5a) The Surveyor General shall, in the request made pursuant to subsection (4a)(a), specify the date on or before which the nomination shall be made and where the educational institution neglects or omits to nominate a member of the Board on or before that date the Governor may appoint as member of the Board for the then ensuing year the person nominated by a majority of the existing Board.
- (6) All nominations for membership of the Board shall be in writing.
- (7) All appointments of members shall be notified in the *Government Gazette*.

*[Section 4 amended by No. 107 of 1976 s.4.]*

**5. Rules**

The rules set forth in the Second Schedule shall apply to the business, conduct, and proceedings of the Board.

**6. Secretary and other officers**

- (1) The Board may from time to time appoint a secretary and such examiners and other officers as they think necessary for giving effect to this Act.
- (2) All such persons shall hold office during the pleasure of the Board.
- (3) The Board, with the approval of the Governor, may pay the secretary and other officers such salaries, fees, or allowances as they think fit.
- (4) The members of the Board may receive such fees as the Governor may approve.

**7. Persons entitled to be licensed**

Subject to this Act, a person is entitled to a license if the person applies for a license in the prescribed form and in so doing transmits to the Board the prescribed application fee, and proves to the satisfaction of the Board that he —

- (a) has attained the age of 18 years and is of good fame and character;

- (b) has obtained the prescribed certificate of competency, or is qualified to practise as a surveyor in any reciprocating State and has complied with all the requirements of this Act for the issue of a license except for the requirement to obtain a certificate of competency; and
- (c) has made a declaration before a justice in the form set out in the Third Schedule.

*[Section 7 inserted by No. 79 of 1996 s.6.]*

**8. Board may require the attendance of certain persons**

- (1) The Board may require the attendance of any person —
  - (a) who applies for the issue of a license under this Act;
  - (b) who applies for the renewal of a practising certificate under this Act and in respect of whom the Board wishes to determine whether or not a requirement made under section 11B(1) has been complied with; or
  - (c) in respect of whom an inquiry is to be held under section 22,

and of any other person, and may examine or question any such persons or any witnesses who may attend before the Board, upon oath, affirmation, or otherwise, and for any such purpose the chairman may administer an oath or affirmation.

- (2) Every summons issued by the Board requiring the attendance of any person or the production of any documents shall have the same effect as a subpoena issued by the Supreme Court in a civil action; and the obedience thereto or non-observance thereof may be enforced and punished by a Judge of the said Court sitting in chambers in the same manner as in the case of the disobedience or non-observance of a subpoena issued by the said Court.

*[Section 8 amended by No. 79 of 1996 s.7.]*

**9. Certificates of competency**

- (1) Subject to this section, the Board shall issue a certificate of competency to —
- (a) a person who has passed the prescribed examination and fulfilled all the prescribed conditions; or
  - (b) a person who holds a degree, diploma, certificate or license granted in or outside this State by some university, institute of technology, college or other public educational institution that is recognised by the Board as providing, together with such other qualifications (if any) by way of examination or field service, or both, as may be prescribed, sufficient evidence of the possession by the holder thereof of the requisite knowledge and skill for the efficient practice of the profession of surveying.
- (1a) A person is not eligible to be issued with a certificate of competency under subsection (1)(a) unless —
- (a) he has, before the coming into operation of section 6 of the *Licensed Surveyors Act Amendment Act 1976*, entered into articles of apprenticeship or pupilage pursuant to the regulations; or
  - (b) he —
    - (i) has, after the coming into operation of section 6 of the *Licensed Surveyors Act Amendment Act 1976* but on or before the prescribed date, entered into articles of apprenticeship or pupilage pursuant to the regulations; and
    - (ii) satisfies the Board that he had, before the coming into operation of section 6 of the *Licensed Surveyors Act Amendment Act 1976*, agreed, arranged or contracted with a licensed surveyor to enter into articles of apprenticeship or pupilage pursuant to the regulations.

- (lb) In subsection (1a) “**prescribed date**” means 31 March 1979 or such later date as is prescribed.
- (2) No person shall be admitted to the final examinations prescribed for the purposes of subsection (1)(a) unless he has attained the age of 18 years, and has fulfilled all the conditions prescribed.
- (3) The Board, instead of requiring any person to pass an examination prescribed for the purposes of subsection (1)(a) may accept in substitution for that examination a certificate of examination in any subject or subjects granted by any Australasian university or any university recognised by an Australasian university, or by any public educational institution now or hereafter to be established in Western Australia.

Such certificate of examination shall have the like force and effect as if such examination had been held by the Board.

*[Section 9 amended by No. 107 of 1976 s.6; No. 79 of 1996 s.8.]*

## 10. Reciprocity

- (1)
  - (a) The Board may enter into a reciprocal arrangement with the Surveyor’s Board or other competent authority of any State, Colony, or Dominion within Her Majesty’s Dominions for the recognition of the status of any person authorized by such Board or other authority to practise as a surveyor in such State, Colony, or Dominion and for the issue to that person of a license under this Act.
  - (b) Any such arrangement may contain a condition that any such person applying for the issue of a license under this Act shall furnish additional evidence of character and competency to the satisfaction of the Board.
- (2) In order to avoid any doubt which but for the enactment of this subsection might arise, it is also enacted that without limiting the generality of the expression “**Dominion within Her Majesty’s Dominions**”, that expression shall be deemed to include and during the operation of this Act to have included the United Kingdom.

*[Section 10 amended by No. 14 of 1958 s.2; No. 79 of 1996 s.9.]*

**11. Licenses**

Every license issued under this Act shall be in the prescribed form and shall be signed by not less than 2 members of the Board and countersigned by the secretary.

**11A. Practising certificates**

- (1) Subject to this Act, a licensed surveyor is entitled to a practising certificate if the licensed surveyor applies for a practising certificate in the prescribed form and in so doing transmits to the Board the prescribed application fee.
- (2) A person who was, immediately before the commencement of section 10 of the *Licensed Surveyors Amendment Act 1996*, a licensed surveyor is to be regarded as holding a practising certificate which expires on 31 December following that commencement.
- (3) Subject to this section, a practising certificate issued to or renewed by a licensed surveyor under this Act, on or after the commencement referred to in subsection (2), takes effect for the standard period for which the prescribed fee has been paid —
  - (a) on the day of that issue or renewal; or
  - (b) on the day of expiry of any existing practising certificate held by the licensed surveyor,whichever is the later.
- (4) Subject to subsection (5), a licensed surveyor who wishes to renew his practising certificate shall apply for that renewal in the form approved by the Board not more than 90 days, and not less than 30 days, before the day of expiry of that practising certificate and shall in doing so transmit to the Board the prescribed renewal fee.
- (5) If an application for the renewal of a practising certificate is made less than 30 days before the expiry of the practising certificate or on or after that expiry, the Board may, if it considers that there is a satisfactory explanation for the late

making of that application, deal with that application under subsection (6) and may in so doing subject the practising certificate to such conditions as the Board thinks fit to impose.

- (6) Subject to section 11B, if the Board is, on receiving —
- (a) an application for the renewal of a practising certificate;
  - (b) the prescribed renewal fee; and
  - (c) if that application is an application referred to in subsection (5), the prescribed late renewal fee,

satisfied that the applicant remains entitled to a practising certificate, the Board shall, subject to any regulations referred to in section 26A, renew the practising certificate held by the applicant for the standard period for which the prescribed renewal fee has been paid.

*[Section 11A inserted by No. 79 of 1996 s.10.]*

**11B. Continuing education**

- (1) The Board may require licensed surveyors holding practising certificates to attend specified courses, to gain specified experience, or to take other specified action, within a specified period for the purpose of maintaining or improving their knowledge and skills in the practice of the profession of surveying.
- (2) If the Board is not satisfied that a licensed surveyor has complied with requirements specified under subsection (1), the Board may —
- (a) suspend the practising certificate of the licensed surveyor until specified conditions are fulfilled;
  - (b) renew the practising certificate of the licensed surveyor subject to specified conditions, which may include a condition specifying the standard period for which that practising certificate is renewed;
  - (c) refuse to renew the practising certificate of the licensed surveyor until specified conditions are fulfilled; or

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- (d) refuse to renew the practising certificate of the licensed surveyor.
- (3) If the Board refuses to renew a practising certificate until specified conditions are fulfilled, the practising certificate is, on the fulfilment of those conditions, to be renewed for the standard period specified by the Board or, if no standard period is so specified, the standard period for which the prescribed fee has been paid.
- (4) The Board may charge such fees as are approved by the Minister in relation to the provision of courses or other services for the purposes of this section.
- (5) In this section —  
“**specified**” means specified in writing by the Board.

*[Section 11B inserted by No. 79 of 1996 s.10.]*

**12. Register of licensed surveyors**

- (1) The Board shall cause a register to be kept which shall contain names, addresses, and qualifications of all licensed surveyors, the respective dates on which they were registered, and such other particulars as may be prescribed.
- (2) The register shall be open to inspection by any person on payment of the prescribed fee.

**13. Copy of register to be published**

- (1) The Board shall, in the month of January in each year publish in the *Government Gazette* a list of the names of all licensed surveyors, indicating whether or not each licensed surveyor listed holds a practising certificate, and shall within one month of the issue, cancellation, or suspension of any license or practising certificate, publish a notice thereof in the *Government Gazette*.
- (2) A copy of any entry in the register, purporting to be certified by the chairman or secretary as a true copy, shall in all proceedings whatsoever be *prima facie* evidence that the person therein named —
  - (a) is a licensed surveyor;



- (b) holds or does not hold a practising certificate;
- (c) possesses the qualifications therein mentioned;
- (d) has had his license cancelled or suspended; or
- (e) has had his practising certificate cancelled or suspended,

as the case requires.

*[Section 13 amended by No. 79 of 1996 s.11.]*

**14. Certain entries to be erased or corrected**

- (1) The Board shall from time to time erase any entry in the register which is proved to their satisfaction to have been fraudulently or incorrectly made.
- (2) Every licensed surveyor on changing his place of address shall forthwith give notice of the fact by post to the secretary.
- (3) Every district registrar of deaths in Western Australia on registering the death of any licensed surveyor shall forthwith give notice thereof by post to the secretary.
- (4) The secretary shall from time to time erase the names of all surveyors whose names appear on the register and who have died, and shall make such alterations and amendments in the register as the Board may from time to time direct, for the purpose of making the same an accurate record of the names, addresses, and qualifications of the surveyors whose names appear on the register for the time being.
- (5) Any name erased from the register under this section may be restored by the Board.

*[Section 14 amended by No. 79 of 1996 s.12.]*

*[15. Repealed by No. 79 of 1996 s.13.]*

**16. Powers of licensed surveyors**

- (1) A surveyor duly licensed under this Act shall be entitled to practise his profession and, if he holds a practising certificate, to make authorized surveys.

*[(2) repealed]*

- (3) A person shall not practise as a licensed surveyor unless he is the holder of a license.

- (3a) A person shall not make or attempt to make any authorised survey unless he is a licensed surveyor and the holder of a practising certificate.

- (4) Any person who practises as a licensed surveyor or makes or attempts to make any authorized survey, contrary to this section, commits an offence and is liable to a penalty not exceeding \$10 000.

*[Section 16 amended by No. 113 of 1965 s.8; No. 107 of 1976 s.7; No. 79 of 1996 s.14.]*

**17. Surveyor may enter upon lands**

- (1) In making any authorized survey or for any purpose relating thereto, a licensed surveyor who holds a practising certificate may, with his assistants, open any fence and may enter upon any land.

- (2) This section shall not, however, exempt any licensed surveyor from liability for any damage he may commit; but the employer of such licensed surveyor shall be liable at the suit of the licensed surveyor to reimburse him if the act occasioning such damage was necessary for the due making of the survey.

- (3) Any person obstructing a licensed surveyor or his assistants in the exercise of the powers hereby conferred commits an offence and is liable to a penalty of \$2 000.

*[Section 17 amended by No. 113 of 1965 s.8; No. 79 of 1996 s.15.]*

**18. Plan to be approved by Surveyor General**

An authorised survey, other than a survey referred to in paragraph (c) of the definition of “Authorised Survey” in section 3(1), shall not be accepted or adopted by any Government department unless a plan of such survey has been lodged with and approved by the Surveyor General or other person appointed by the Governor to approve plans of authorized surveys.

*[Section 18 amended by No. 32 of 1994 s.19; No. 79 of 1996 s.16.]*

**19. Surveyors to correct errors at their own expense**

- (1) The Surveyor General, and any other person appointed by the Governor to approve plans, may by notice in writing call on —
  - (a) any licensed surveyor holding a practising certificate to correct at his own expense within a time specified in that notice any error made by him in an authorised survey; or
  - (b) any person who is or was a licensed surveyor (“**the person at fault**”) to pay the cost of correction by a licensed surveyor —
    - (i) holding a practising certificate; and
    - (ii) instructed by the Surveyor General or the other person appointed by the Governor, as the case requires,

of any error made by the person at fault in an authorised survey.
- (2) In the event of any licensed surveyor refusing or omitting within the time specified in the notice to correct any such error or of any person who is or was a licensed surveyor omitting to pay the cost of the correction of any such error when called upon to do so, the Surveyor General or other authority may recover the cost of any such correction as a debt due to the Crown by action in a court of competent jurisdiction.

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Provided that any request for the correction of a survey shall be made within 12 years from the date of the lodgment of the plan of such survey with the Surveyor General or other authority.

*[Section 19 amended by No. 79 of 1996 s.17.]*

**20. Surveyor not to be interested**

It shall be unlawful for any licensed surveyor, directly or indirectly, to acquire any interest in any land open for selection under any Act relating to the alienation, leasing, and occupation of Crown lands, if he has been or is concerned in the survey thereof, unless before acquiring such interest he obtains the permission of the Governor to do so.

**20A. Cancellation of license or practising certificate at request of licensed surveyor**

- (1) A licensed surveyor whose conduct is not the subject of an inquiry under section 22 may —
  - (a) give notice in writing signed by him and delivered to the secretary requesting that his license or practising certificate be cancelled; and
  - (b) surrender his license or practising certificate to the secretary.
- (2) The secretary shall, on receipt of that notice and that license or practising certificate, cancel that license or practising certificate.
- (3) A person whose license or practising certificate has been cancelled under subsection (2) may apply on a form approved by the Board for a new license or practising certificate.
- (4) On payment to the Board of the prescribed fee and on being satisfied in respect of the applicant of the relevant matters set out in section 7, the Board shall issue a new license or practising certificate to the applicant and may in so doing subject that license or practising certificate to such conditions as the Board thinks fit to impose.

*[Section 20A inserted by No. 79 of 1996 s.18.]*

**21. Power of Board to deal with misconduct**

- (1) Upon a charge duly made and after inquiry, if it is shown with respect to any person who was at the relevant time a licensed surveyor that —
- (a) he has falsely or negligently certified in respect of an authorised survey; or
  - (aa) he has falsely or negligently certified in respect of any plan, diagram, map or other document required or authorised under this Act or any other written law to be certified by a licensed surveyor; or
  - (b) he wilfully or by negligence has made, or caused to be made under his supervision, any survey which is so inaccurate or defective as to be unreliable; or
  - (ba) he has, in the course of surveying practice, been guilty of incompetence or negligence; or
  - (c) his certificate of competency, license or practising certificate has been obtained by fraud; or
  - (d) after being licensed under this Act, or any repealed Act relating to the licensing of surveyors, he has been convicted of any misdemeanour or crime, or offence under this Act or under regulations made under section 26; or
  - (e) he has been guilty of a contravention or attempted contravention of section 20; or
  - (f) he has been guilty of unprofessional conduct; or
  - (fa) he has disobeyed any order made under this subsection; or
  - (g) his certificate, license, practising certificate or registration in any reciprocating State or in any other country has been suspended or cancelled in such reciprocating State or country,

the Board, after finding him guilty of misconduct, may make an order —

- (h) reprimanding or cautioning that person;

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- (i) imposing on that person a fine not exceeding \$1 000 payable to the Board;
- (j) imposing conditions on the license or practising certificate, or both, of that person, if that person is —
  - (i) still a licensed surveyor; or
  - (ii) an applicant for a license or practising certificate, or both, or for the renewal of a practising certificate;
- (k) suspending the license or practising certificate of a person who is still a licensed surveyor and his entitlement to apply for a renewal of that practising certificate, if any, or for another license or practising certificate —
  - (i) for such period not exceeding 3 years as is specified by the Board; or
  - (ii) until any condition referred to in paragraph (j) has been complied with,whichever is the shorter period;
- (l) suspending the entitlement of a person who is no longer a licensed surveyor to apply for another license —
  - (i) for such period not exceeding 3 years as is specified by the Board; or
  - (ii) until any condition referred to in paragraph (j) has been complied with,whichever is the shorter period;
- (m) if that person is still a licensed surveyor, cancelling his license;
- (n) if that person is not still a licensed surveyor, cancelling his entitlement to apply for another license; or
- (o) if that person is still a licensed surveyor, cancelling —
  - (i) his practising certificate; or

- (ii) his entitlement to apply for a renewal of his expired practising certificate or for another practising certificate,

or make in relation to that person any 2 or more of the orders referred to in paragraphs (h) to (o) and applicable to that person and, if the Board thinks fit, make any one or more of the orders specified in subsection (1a) in relation to that person.

- (1a) The orders specified in this subsection are —
  - (a) an order that the person concerned correct any error within such reasonable period as is specified by the Board;
  - (b) an order that the person concerned pay to the Board or to any other person specified in that order the cost of correcting any error;
  - (c) an order that the person concerned provide the Board with a performance bond or bank guarantee to meet the anticipated cost of correcting any error; and
  - (d) an order that the person concerned pay to the Board the whole or any part of the cost of the relevant inquiry.
- (1b) An order referred to in subsection (1)(i) or (1a)(b) or (d) shall be entered as a judgment in a Local Court on presentation by the secretary to the clerk of the Local Court of a copy of that order signed by the Chairman in the name of the Board, and on that entry judgment of the Local Court is to be taken to have been given in terms of that order.
- (1c) An order referred to in subsection (1)(i) or (1a)(b) or (d) may, once entered as a judgment in a Local Court, be enforced in the same manner as a judgment or order of the Local Court to the same effect.
- (2) A licensed surveyor charged with having certified in the manner set out in either paragraph (a) or (aa) of subsection (1) may be found guilty of having certified in the manner set out in the other of those paragraphs, if such are the facts proved.

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- (3) For the purposes of subsection (1)(ba), surveying practice includes the creation of plans, diagrams and maps from the results of, or for the purposes of, an authorised survey.
- (4) The Board shall erase from the register the name of a person whose license, or whose entitlement to apply for another license, is cancelled under subsection (1)(m) or (n).
- (5) A person whose license, or whose entitlement to apply for another license, is cancelled under subsection (1)(m) or (n) is not entitled to apply under section 7 for the issue of a license.
- (6) The Board may, on the application of a person —
  - (a) who holds a license or practising certificate suspended, and whose entitlement to apply for a renewal of that practising certificate, if any, or for another license or practising certificate is suspended, under subsection (1)(k), terminate those suspensions;
  - (b) whose entitlement to apply for another license is suspended under subsection (1)(l), terminate that suspension;
  - (c) who held a licence cancelled under subsection (1)(m), issue a fresh license to that person;
  - (d) whose entitlement to apply for another license has been cancelled under subsection (1)(n), issue a fresh license to that person; or
  - (e) who held a practising certificate cancelled under subsection (1)(o) or whose entitlement to apply for the renewal of an expired practising certificate or for another practising certificate has been cancelled under that subsection, issue a fresh practising certificate to that person,

and may in so doing subject a license or practising certificate, or both, held or to be held by that person to such conditions as the Board thinks fit to impose.



- (7) The Board shall cause to be notified in the *Gazette*—
  - (a) any action taken against a person under one or more of subsection (1)(h) to (o); and
  - (b) the granting of any application referred to in subsection (6).
- (8) A licensed surveyor whose practising certificate is suspended under this section is not obliged to renew that practising certificate while it is suspended.
- (9) If a licensed surveyor whose practising certificate is suspended under this section wishes to make authorised surveys when that suspension ceases, that licensed surveyor shall, unless he has already paid the amount of the prescribed fee payable for the issue or renewal of that practising certificate for the standard period in which that cessation takes place, transmit the amount of the prescribed fee for a standard period to the Board before making or attempting to make an authorised survey.
- (10) A licensed surveyor whose practising certificate is cancelled or is suspended under this section for a period of not less than 30 days shall, within 14 days after that cancellation or suspension, return that practising certificate to the secretary.  
Penalty: \$1 000.

*[Section 21 amended by No. 79 of 1996 s.19.]*

**21A. Alteration and removal of license or practising certificate conditions**

The Board may, on the application of a licensed surveyor, alter or remove any condition to which the license or practising certificate of the applicant is subject.

*[Section 21A inserted by No. 79 of 1996 s.20.]*

**22. Charge against surveyor, how dealt with**

- (1) Every charge of misconduct against a person under section 21 shall be submitted to the Board in writing signed by the person making the charge; and, if it appears to the Board that the

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- charge is one into which an inquiry should be held, the Board shall fix a time and place for that purpose.
- (2) At least 14 days prior to the date fixed for such inquiry, notice in writing shall be sent by the secretary to the last known postal address of the person charged under section 21, informing him of the time and place fixed for the inquiry, and supplying him with a copy of all charges made.
- (3) At an inquiry held under this section —
- (a) the person charged is entitled to be heard in his defence; and
  - (b) the Board —
    - (i) is to act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms; and
    - (ii) is not bound by the rules of evidence, but may inform itself on any matter in such manner as it thinks fit.
- (4) The finding and decision of the Board on such inquiry shall be given in writing, and shall be signed by at least 2 members of the Board and shall be countersigned by the secretary, and such writing shall be evidence of the matters therein contained and of the decision of the Board.
- (5) The Board may and, on request by a person in respect of whom an inquiry has been held under this section, shall give reasons for its decision given under subsection (4).

*[Section 22 amended by No. 79 of 1996 s.21.]*

**22A. Appeals**

- (1) A person aggrieved by an order or decision of the Board under section 21 or 22 is, subject to this section, entitled to appeal to the District Court against that order or decision.

- (2) An appeal shall be instituted within a period of 30 days of the making of the order or decision appealed against, but the District Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, allow the appeal to be instituted after the expiry of that period.
- (3) On an appeal the District Court is to have regard to —
- (a) the finding and decision of the Board on its inquiry and to any other written material created by the Board during its inquiry; and
  - (b) such other evidence, whether oral or written, as —
    - (i) the District Court considers necessary or desirable for the just determination of the appeal; or
    - (ii) its rules of court permit.
- (4) The District Court may, on an appeal —
- (a) affirm, vary or quash the order or decision appealed against, or substitute, or make in addition, any order or decision that should have been made in the first instance;
  - (b) remit the subject matter of the appeal to the Board for further hearing or consideration or for re-hearing; or
  - (c) make any further or other order for costs or any other matter that the case requires,
- or exercise any 2 or more of those powers.
- (5) When an appeal has been instituted, the District Court may —
- (a) suspend the operation or effect of the order or decision appealed against until the appeal is determined; and
  - (b) revoke any suspension made under this subsection.

*[Section 22A inserted by No. 79 of 1996 s.22.]*

**23. Offences**

Any person, not being a licensed surveyor, who —

- (a) falsely pretends that he is a licensed surveyor; or
- (b) takes or uses the name or title of a licensed surveyor, or any name, title, addition, or description implying that he is a licensed surveyor; or
- (c) practises, charges, or receives a fee for work done as a licensed surveyor; or
- (d) certifies in respect of the performance of an authorised survey; or
- (e) certifies or, purporting to be a licensed surveyor, signs any survey, plan, diagram, map or other document required under this Act or any other written law to be certified or signed by a licensed surveyor,

shall be guilty of an offence against this Act, and liable upon conviction for every such offence to a penalty not exceeding \$10 000.

*[Section 23 amended by No. 113 of 1965 s.8; No. 107 of 1976 s.8; No. 79 of 1996 s.23.]*

**24. Board may sue and be sued**

The Board may, by the secretary or any person thereunto authorized in writing under the hand of the Chairman, in the name of the Board, institute, carry on, prosecute, and defend any action, complaint, or proceeding whatsoever.

**24A. Protection from liability for wrongdoing**

- (1) In this section, a reference to the doing of anything includes a reference to the omission to do anything.
- (2) An action in tort does not lie against a person who is the Minister or a member of the Board or the secretary or another officer of the Board for anything that the person has, in good

faith, done in the performance or purported performance of a function under this Act.

- (3) The protection given by this section applies even though the thing done in the performance or purported performance of a function under this Act may have been capable of being done whether or not this Act had been enacted.

*[Section 24A inserted by No. 79 of 1996 s.24.]*

**25. Application of funds**

The funds of the Board shall be applied by them towards the payment of all expenses necessarily incurred in carrying this Act into execution, and in doing and performing acts and things which the Board are by this Act empowered or required to do or perform, and the Board may pay out of their funds any sum recovered against the Board by process of law.

**25A. Accounts**

- (1) The Board shall cause to be kept proper accounts and records of the transactions and affairs of the Board and shall prepare financial statements in accordance with Australian Accounting Standards.
- (2) The financial statements shall be prepared on an accrual basis unless the Board determines otherwise.

*[Section 25A inserted by No. 77 of 1987 s.3.]*

**25B. Audit**

The accounts and financial statements of the Board shall be audited at least once a year, at the expense of the Board, by an auditor appointed by the Board with the prior approval of the Minister.

*[Section 25B inserted by No. 77 of 1987 s3.]*

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**25C. Annual report**

- (1) The Board shall on or before 30 June in each year make and submit to the Minister an annual report of its proceedings for the preceding year ending on 31 December together with a copy of the financial statements and the auditor's report.
- (2) The Minister shall cause a copy of each annual report, financial statements and auditor's report submitted under subsection (1) to be laid before each House of Parliament within 14 sitting days of that House after receipt of the report by the Minister.

*[Section 25C inserted by No. 77 of 1987 s.3.]*

**26. Regulations**

- (1) The Board may, with the approval of the Governor, make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act, and, in particular —
  - (a) regulating the meetings and proceedings of the Board and the conduct of the business thereof; the election of a member to perform the duties of the Chairman and act as Deputy Chairman during the illness or absence of the Chairman;
  - (b) prescribing the duties of the secretary and other officers of the Board;
  - (c) regulating the manner of keeping the register, and the particulars to be entered therein;
  - (d) prescribing forms to be used for the purposes of this Act;
  - (e) determining the evidence to be produced and conditions to be fulfilled by any person applying for the issue of a license or the issue or renewal of a practising certificate under this Act;
  - (f) prescribing the course of study, professional practice, conditions of service, and training and examination of

- persons desirous of obtaining certificates of competency entitling them to apply for the issue to them of licenses;
- (g) regulating the issue of certificates of competency and licences and the issue and renewal of practising certificates;
  - (h) prescribing what certificates of examination will be recognised by the Board as a substitute for the examinations of the Board;
  - (i) prescribing what certificates, diplomas, memberships, degrees, licenses, letters testimonial, or other titles, status, or documents, will be recognised by the Board as qualifying persons holding them or any of them for the issue to them of licenses, whether immediately or after further examination or field service, or both;
  - (ia) enabling the Board to issue certificates of recognition to retired surveyors, who have given long service as surveyors, in recognition of the contributions made by those surveyors to the profession of surveying;
  - (j) prescribing a scale of fees to be charged and paid in respect, of any application, examination, certificate, license, inspection, or other proceeding, act or thing provided or required under this Act; prescribing the fees payable to examiners; and to members of the Board for attendance at meetings;
  - (k) requiring and regulating the registration in the office of the secretary of all contracts and articles of apprenticeship or pupilage under which apprentices or pupils in surveying are serving;
  - (l) regulating the conduct of proceedings in connection with charges of misconduct against licensed surveyors and other persons;
  - (m) for the direction and guidance of licensed surveyors in carrying out the provisions of the Acts relating to authorized surveys.

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- (2) Regulations made under subsection (1) may create offences and provide in respect of each such offence a penalty not exceeding \$1 000.
- (3) A certificate issued under regulations referred to in subsection (1)(ia) does not entitle its holder to practise as a surveyor or to make authorised surveys.
- (4) Nothing in regulations referred to in subsection (1)(ia) or in subsection (3) prevents the holder of a certificate issued under those regulations who has ceased to be a licensed surveyor from again becoming a licensed surveyor in accordance with this Act.
- (5) Regulations made under subsection (1) and prescribing a period or periods for the purposes of the definition of “standard period” in section 3(1) may confer on the Board power, subject to that definition, to determine the length of the period or periods.

*[Section 26 amended by No. 113 of 1965 s.8; No. 107 of 1976 s.9; No. 79 of 1996 s.25.]*

**26A. Professional indemnity insurance**

- (1) The Board may, with the approval of the Governor, make regulations under section 26 concerning indemnity against loss arising from claims in respect of any description of civil liability incurred by —
  - (a) a licensed surveyor or former licensed surveyor in connection with the practice of the licensed surveyor or former licensed surveyor;
  - (b) an employee or former employee of a licensed surveyor or former licensed surveyor in connection with the practice of the licensed surveyor or former licensed surveyor; or
  - (c) a licensed surveyor or former licensed surveyor in the course of practising as a licensed surveyor.



- (2) For the purpose of providing the indemnity referred to in subsection (1), regulations referred to in that subsection may —
- (a) authorize or require the Institute to make arrangements with one or more insurers for the provision to licensed surveyors and former licensed surveyors of professional indemnity insurance and may authorize the Institute to do such acts and things as may be necessary or expedient for giving effect to those arrangements; and
  - (b) require licensed surveyors or former licensed surveyors, or any prescribed category of licensed surveyor or former licensed surveyor, to take out and maintain professional indemnity insurance in accordance with —
    - (i) the requirements of those regulations; and
    - (ii) the arrangements made under those regulations or a scheme or policy of insurance approved by or under those regulations.
- (3) Without limiting the generality of subsections (1) and (2), regulations referred to in subsection (1) may —
- (a) specify the terms and conditions on and subject to which professional indemnity insurance is to be provided, including the amounts of insurance cover to be taken out and maintained by —
    - (i) licensed surveyors or former licensed surveyors; or
    - (ii) prescribed categories of licensed surveyor or former licensed surveyor,and the periods during which that insurance cover is to be maintained;
  - (b) specify classes or categories of licensed surveyor or practice to which different provisions or obligations under those regulations may apply;
  - (c) provide for and regulate the approval of insurers and the issue of certificates of insurance to persons covered by

**s. 26A**

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- professional indemnity insurance and prescribe the form of those certificates;
- (d) empower the Board to refuse to renew a practising certificate except to a licensed surveyor who —
    - (i) satisfies the Board that the licensed surveyor holds a valid current certificate of insurance for the category of practice in which the licensed surveyor intends to engage; or
    - (ii) is exempt under those regulations;
  - (e) empower the Board to suspend the license of a licensed surveyor until the licensed surveyor —
    - (i) satisfies the Board that the licensed surveyor holds a valid current certificate of insurance for the category of practice in which the licensed surveyor intends to engage; or
    - (ii) is exempt under those regulations;
  - (f) specify circumstances in which licensed surveyors or former licensed surveyors are exempt from those regulations or empower the Board to exempt any licensed surveyor or former licensed surveyor or class of licensed surveyor or former licensed surveyor in whole or in part from any provision of those regulations either for a specified or indefinite period or subject to any condition which may be imposed by the Board;
  - (g) empower the Board to vary or revoke any exemption made by the Board under those regulations;
  - (h) empower the Board to take such steps as it considers necessary or expedient to ascertain whether or not those regulations are being complied with; and
  - (i) contain incidental, procedural and supplementary provisions.

*[Section 26A inserted by No. 79 of 1996 s.26.]*

**27. Evidence**

- (1) The production of a copy of the *Government Gazette* purporting to contain any notification required to be published therein, relating to any appointment, register, registration, erasure, suspension, reinstatement, regulations, or any other matter under or for the purpose of this Act shall be received in all Courts as *prima facie* evidence of the facts therein published.
- (2) Every Court shall take judicial notice of the signature of the Chairman of the Board.
- (3) In any proceeding by or on behalf of the Board, it shall not be necessary to prove the appointment of the members, Chairman, or secretary.

[28. *Repealed by No. 79 of 1996 s.27.*]

[29. *Repealed by No. 79 of 1996 s.27.*]

**30. Proceedings for offences**

Proceedings for an offence against this Act shall be dealt with summarily in a court of summary jurisdiction.

[Section 30 inserted by No. 78 of 1995 s.64.]

**First Schedule**

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**First Schedule**

[Section 2.]

*[Omitted under s.7(4)(e) and (f) of the Reprints Act 1984.]*

**Second Schedule**

[Section 5.]

**Rules for the Conduct of the Board**

1. The Chairman shall be the executive officer of the Board.
2. Every appointment and every order, notice, certificate or other document of the Board relating to the execution of this Act shall be sufficiently authenticated if signed by the Chairman or any 2 members of the Board.
3. No business shall be transacted at any meeting of the Board unless at least 3 of the members are present when such business is transacted.
4. The Chairman shall preside at all meetings at which he is present. In the absence of the Chairman, the members present shall elect from their number a Chairman for the day.

The Chairman, or, in his absence, the Chairman for the day, shall have a vote, and, when there is an equal division of votes upon any question, shall have a second or casting vote.

5. All powers vested in the Board may be exercised by the majority of the members present at any meeting duly held, and all questions shall be decided by a majority and by open voting.

At all meetings, save as herein otherwise provided, all members present shall vote.

If a member refuses to vote, his vote shall be counted for the negative.

6. The members present at a meeting may, from time to time, adjourn the meeting.

If a quorum is not present within half-an-hour after the time appointed for a meeting, the members present, or any one member if only one is present, or the secretary if no member is present, may adjourn such meeting to any time not later than 7 days from the date of such adjournment:

Provided that nothing herein contained shall be construed to prevent the adjournment of any meeting to a later hour of the same day on which such meeting was appointed to be held.

**Second Schedule**

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7. All notices of any meeting shall be in writing, and shall be delivered or sent by post or otherwise to the address of each of the members previous to the meeting.
8. If any member refuses or neglects to act or to attend any duly convened meeting of the Board, all lawful acts and proceedings of the Board shall be as valid and effectual as if they had been done or authorized by the full Board.
9. No proceedings of the Board shall be invalidated by reason of any defect in any appointment, or by reason of there being any vacancy in the number of members at the time of such proceedings, provided that the number is not reduced below 3.



## Notes

<sup>1</sup> This reprint is a compilation as at 1 January 1999 of the *Licensed Surveyors Act 1909* and includes all amendments effected by the other Acts referred to in the following Table.

### Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Licensed Surveyors Act 1909</i>	25 of 1909	29 October 1909	1 January 1910	
<i>Licensed Surveyors Act Amendment Act 1940</i>	16 of 1940	12 November 1940	12 November 1940	
<i>Licensed Surveyors Act Amendment Act 1958</i>	14 of 1958	6 October 1958	6 October 1958	
<i>Licensed Surveyors Act Amendment Act 1976</i>	107 of 1976	17 November 1976	Other than sections 7, 8 and 9 on assent. Sections 7, 8 and 9 came into operation on 1 January 1977. (See <i>Gazette</i> 31 December 1976 pp.5127-8)	
<i>Acts Amendment (Financial Provisions of Regulatory Bodies) Act 1987</i>	77 of 1987	26 November 1987	1 January 1988 (see section 2)	
<i>Acts Amendment (Public Sector Management) Act 1994, Part 4</i>	32 of 1994	29 June 1994	1 October 1994 (see <i>Gazette</i> 30 September 1994 p.4948)	
<i>Sentencing (Consequential Provisions) Act 1995, Part 45</i>	78 of 1995	16 January 1996	4 November 1996 (see section 2 and <i>Gazette</i> 25 October 1996 p.5632)	



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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Licensed Surveyors Amendment Act 1996, Other than section 28</i>	79 of 1996	14 November 1996	5 April 1997 (see section 2 and <i>Gazette</i> 4 April 1997 p.1750)	Section 10(2) transitional <sup>3</sup>

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<sup>2</sup> At the time of this reprint the *Acts Amendment (Land Administration) Act 1987* (No. 126 of 1987) was not in operation. Part IX (sections 40 to 44) of that Act reads as follows —

“

**Part IX — *Licensed Surveyors Act 1909***

**40. Principal Act**

In this Part the *Licensed Surveyors Act 1909*\* is referred to as the principal Act.

[\* *Reprinted as approved 1 September 1975 and amended by Act No. 107 of 1976.*]

**41. Section 3 amended**

Section 3 of the principal Act is amended by deleting the definition of “Surveyor General”.

**42. Section 4 amended**

- (1) Section 4 of the principal Act is amended —
- (a) in subsection (1) by deleting —
    - (i) paragraph (a); and
    - (ii) “Surveyor General” in paragraph (b) and substituting the following —
 

“ Minister ”;
  - (b) by repealing subsection (1a);
  - (c) in subsection (2) by deleting “, other than the Surveyor General,”;

- (d) in subsection (3) by deleting “other than the Surveyor General.”;
- (e) in subsection (4) by deleting —
  - (i) “other than the Surveyor General”; and
  - (ii) “Surveyor General”, where it occurs for the second and third times, and substituting in each case the following —  
“ Minister ”;
- (f) in subsection (4a) by deleting —
  - (i) “Surveyor General” and substituting the following —  
“ Minister ”;
  - (ii) paragraph (a) and substituting the following paragraph —  
“
    - (a) in respect of the occasion of the first appointment of the member after the commencement of section 42 of the *Acts Amendment (Land Administration) Act 1987*, as soon as is practicable after that commencement; and”;
- (g) in subsection (5) by deleting “Surveyor General”, wherever it occurs, and substituting in each case the following —  
“ Minister ”;
- (h) in subsection (5a) by deleting “Surveyor General” and substituting the following —  
“ Minister ”; and

- (i) by inserting after subsection (5a) the following subsection —

“

(5b) The Governor shall, on the nomination of the Minister, appoint one of the members of the Board who is a licensed surveyor to be the chairman of the Board.

”.

- (2) Notwithstanding anything in subsection (1) —

- (a) the members of the Board who were in office immediately before the commencement of this section, except for the member referred to in section 4(1)(a) of the principal Act, shall —

- (i) if that commencement occurred before 1 January 1988, continue in office until 31 December 1987; or
- (ii) if that commencement occurred on or after 1 January 1988 but before 1 January 1989, continue in office until 31 December 1988;

and

- (b) if the commencement of this section occurred —
- (i) before 1 January 1988, any vacancy in the office of member of the Board which occurred after that commencement but before 1 January 1988; or
- (ii) on or after 1 January 1988 but before 1 January 1989, any vacancy in the office of member of the Board which occurred after that commencement but before 1 January 1989,

shall be filled, subject to subsection (3), in the manner provided by the principal Act as in force immediately before that commencement.

- (3) A vacancy referred to in subsection (2) caused by the going out of office of a member of the Board appointed before the commencement of this section under section 4(1)(b) of the principal Act shall be filled by the appointment by the Governor on the nomination of the Minister of a new member of the Board.
- (4) In subsections (2) and (3) “Board” has the meaning given by the principal Act.

**43. Section 18 amended**

Section 18 of the principal Act is amended by deleting “Surveyor General” and substituting the following —

“ Registrar of Titles ”.

**44. Section 19 amended**

Section 19 of the principal Act is amended by deleting “Surveyor General”, wherever it occurs, and substituting in each case the following —

“ Registrar of Titles ”.

”.

<sup>3</sup> Section 10(2) of the *Licensed Surveyors Amendment Act 1996* (Act No. 79 of 1996) reads as follows —

“

- (2) During the period beginning on the commencement of this section and ending on 31 December following that commencement, section 11B of the principal Act does not apply to a licensed surveyor until he or she begins to make an authorised survey.

”.

<sup>4</sup> At the time of this reprint the *Acts Repeal and Amendment (Births, Deaths and Marriages Registration) Act 1998* (No. 40 of 1998) was not in operation. Section 15 of that Act reads as follows —

“

**15. *Licensed Surveyors Act 1909* amended**

Section 14(3) of the *Licensed Surveyors Act 1909*\* is amended by deleting “Every district registrar of deaths in Western Australia” and substituting the following —

“ The Registrar of Births, Deaths and Marriages ”.

[\* *Reprinted as approved 1 September 1995.*

*For subsequent amendments see 1996 Index to Legislation of Western Australia, Table 1, p. 132 and Act No. 79 of 1996.]*

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