

BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL.

9° and 10° GEO. VI., No. XXVI.

No. 26 of 1945.

AN ACT to provide for the control of Building Operations and Building Materials.

[Assented to 15th January, 1946.]

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 Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Citation. 1. This Act may be cited as the *Building Operations and Building Materials Control Act, 1945.*

Arrangement. 2. This Act is divided into parts as follows:—

PART I., ss. 1-6—PRELIMINARY.

PART II., ss. 7-8—ADMINISTRATION.

PART III., ss. 9-19—RESTRICTIONS ON BUILDING OPERATIONS.

PART IV., ss. 20-25—RESTRICTIONS ON DISPOSAL AND ACQUISITION OF BUILDING MATERIALS.

Division 1, s. 20—License to be Obtained.

Division 2, ss. 21-24—Application for Granting Licenses and Conditions of Licenses.

Division 3, s. 25—Transfer, Revocation and Suspension of License.

PART V., ss. 26-28—POWERS OF ADMINISTRATION.

PART VI., ss. 29-32—OFFENCES AND PENALTIES.

PART VII., ss. 33-35—LEGAL PROCEEDINGS AND EVIDENCE.

PART VIII., ss. 36-38—MISCELLANEOUS.

Division 1, s. 36—Regulations.

Division 2, s. 37—Protection to Administration.

Division 3, s. 38—Duration.

SCHEDULE—BUILDING MATERIALS.

3. This Act shall be read and construed so as not to exceed the legislative power of the State, the intention being that where any enactment herein would but for this section, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power. Severability.

4. This Act shall bind the Crown. Application to the Crown

5. Every consent, permission, exemption, approval, license or other authority whatsoever which was granted and every direction, condition, order or requirement which concerned building operations or building materials and which was given or made under any regulations made pursuant to the National Security Act, 1939-1943, of the Commonwealth and which was in force immediately prior to the commencement of this Act shall, subject to the provisions of this Act, continue in force so far as practicable as if granted, given or made under the provisions of this Act. Transition.

6. In this Act unless the context otherwise requires— Definitions.
“Board” means the Workers’ Homes Board, constituted under the Workers’ Homes Act, 1911-1941, as reprinted in Volume 2 of The Reprinted Acts of the Parliament of Western Australia.

“Building materials” means any material mentioned in the Schedule to this Act but excluding building materials previously used. The Governor may by Order in Council vary such Schedule from time to time by adding thereto and deleting therefrom any material.

“Building operation” includes—

- (a) the erection of, any alteration of, any addition to, or the construction, reconstruction, rebuilding, re-erection, demolition, removal, renovation, repair, plastering, panelling, lining, decoration, painting, colouring, whitewashing or papering of, any structure (whether carried on at the site or elsewhere and whether above or below the surface);
- (b) the affixing to any structure of any fixtures or fittings; and
- (c) any work for the provision of water, gas, electricity, sewerage, drainage, heating, ventilation or air conditioning, or for the installation of a lift or an escalator.

“Business building” means a building which is used primarily for the manufacture, treatment, production or supply of goods or the rendering of services or entertainment to the public or any class of the public, whether for reward or otherwise, and includes a hospital.

“Cost,” in relation to any building operation, includes wages paid or due to permanent or temporary employees, sums paid or due to contractors or sub-contractors and the fair value of all materials used in connection with the building operation, including provisional and prime cost items, fixtures and installations incidental to the building operation (whether acquired for the purpose of the building operation in the course of which they are used or otherwise) and the fair value of all services rendered in connection with the building operation, but does not include the time or labour of the person for whom the building operation is carried out, unless it is

within the business of that person to carry out that building operation and the time or labour is expended by him on the building operation within ordinary business hours.

“Educational building” means a building used for educational purposes and includes a boarding school and residential college.

“License” means a license under this Act.

“Licensee” means any person who is licensed under this Act.

“Minister” means the Minister of the Crown for the time being charged with the administration of this Act.

“Public utility undertaking” means any of the following undertakings, the carrying on of which is authorised by or under any law, that is to say—

(a) any undertaking for the supply of electricity, gas, or water;

(b) any transport, dock, harbour or pier undertaking;

(c) any sewerage or sewage disposal undertaking, or any undertaking for the disposal of refuse; or

(d) any undertaking of a drainage authority and includes any such undertaking which is carried on by the Commonwealth or the State or by a local governing authority.

“Religious building” means a building used primarily for religious worship.

“Residential building” means a building which is used primarily for human habitation and includes a dwelling-house, boarding-house, block of flats, guest-house, lodging-house and a residence for clergy, but does not include an hotel.

“Structure” means structure of any kind, whether movable or immovable, and includes building, bridge, wall, fence, gate, road, drive, paving, path, terrace or concrete work.

“The financial year” in relation to a building operation, means the period of twelve months ending on the thirtieth day of June within which the building operation is commenced.

PART II.—ADMINISTRATION.

Administra-
tion.

7. Subject to the general control and direction of the Minister, the Board shall be charged with the administration of this Act.

Cost of ad-
ministration
of Act.

8. The cost of the administration of this Act shall be paid out of moneys to be appropriated by Parliament to the purposes of this Act.

PART III.—RESTRICTIONS ON BUILDING OPERATIONS.

Restriction
on building
operations.

9. (1) Subject to the provisions of section five, a person shall not, without the consent in writing of the Board, commence or continue to carry out any building operation.

(2) The provisions of the last preceding subsection shall not apply—

- (a) to any building operation carried out by or on behalf of any local governing authority or public utility undertaking, other than—
 - (i) the construction of, or any other building operation carried out on, a building; or
 - (ii) the connection of a building to a sewerage or drainage system;
- (b) to any work for the provision of fencing, drainage or irrigation for agricultural purposes or for the supply of water for mining purposes;
- (c) to the erection, alteration or demolition upon any factory premises of any structure consisting solely of equipment or machinery for the operations of the factory, if the total cost of such erection, alteration or demolition in the financial year does not exceed one hundred pounds;

- (d) to the painting, colouring, whitewashing or papering of a residential building, if the total cost of all painting, colouring, whitewashing or papering carried out on that building in the financial year does not exceed fifty pounds;
- (e) to any building operation which is carried out on or within the area appurtenant to a residential building (other than the painting, colouring, whitewashing or papering of that building) if the total cost of all building operations carried out on that building and within that area (other than the painting, colouring, whitewashing or papering of that building) in the financial year does not exceed fifty pounds;
- (f) to any building operation which is carried out on or within the area appurtenant to a business, educational or religious building, if the total cost of all building operations carried out on that building and within that area in the financial year does not exceed one hundred pounds;
- (g) to any building operation which is carried out on a structure which is not within the area appurtenant to a residential, business, educational or religious building, if—
 - (i) the total cost of all building operations carried out on that structure in the financial year does not exceed fifty pounds; and
 - (ii) the total cost of all building operations carried out in the financial year by or on behalf of the person for whom that building operation is carried out does not exceed one hundred pounds.
- (h) to any building operation urgently necessary to effect repair to any damaged structure, water, sewerage or electricity system in such circumstances that failing immediate repair life or property is endangered or is likely to be endangered: Provided that such building operation shall—
 - (i) be restricted to essential repair; and

(ii) forthwith on the commencement thereof be the subject of an application by the person effecting the same for the consent of the Board for the continuance or completion of such building operation.

Application for consent.

10. An application for consent under the last preceding section shall be in such form and contain such information as the Board directs.

Grant of consent.

11. Where application is made for the consent of the Board under this Act, the Board may refuse to grant consent, or may grant consent, either unconditionally or without limitation, or subject to such conditions or limitations as it thinks fit (including, in a case where the premises on which the building operation is to be carried out are required for purposes specified in the application, such conditions or limitations as to the letting or use of the premises as it considers necessary or convenient to ensure that the premises are used for those purposes) and, in particular, may consent to the execution of—

- (a) part only of any building operation, or of so much only of any building operation as does not involve the expenditure of more than a sum specified in the consent;
- (b) all building operations, or of any class or classes of building operations, to be carried out by the person making the application during any period specified in the consent; or
- (c) so much of any building operations, or of any class or classes of building operations, to be carried out by that person in that period as does not involve the expenditure of more than a sum specified in the consent.

Revocation, suspension, and variations of consent.

12. Where the consent of the Board has been granted under this Act, the Board may, at any time, by notice in writing revoke, suspend or vary the terms and conditions of the consent for such period as is specified in the notice.

Power to give directions.

13. (1) Where a building operation has been, or is about to be commenced or continued, whether the provisions of subsection (1) of section nine of this Act apply thereto or not, or whether the consent of the Board has been granted or refused, or has not been given, the Board

may, at any time and from time to time, by notice in writing, give to the person on whose behalf the building operation has been or is about to be commenced or continued, or to any architect, builder, contractor or engineer employed in any capacity, or to any other person employed in any advisory or supervisory capacity, in connection with that building operation, or to some or all of those persons, such directions in relation to the building operation or its suspension or discontinuance, or as to the furnishing to the Board or to any person specified by it of any information in relation to the building operations, as the Board thinks fit.

(2) A person to whom a notice is given under the last preceding subsection—

- (a) shall comply with any directions applicable to him;
- (b) shall furnish any information in his possession specified in the notice; and
- (c) shall not commence or continue the building operation, contrary to any directions contained in the notice.

14. An architect, builder, contractor or engineer employed in any capacity, and any person employed in any advisory or supervisory capacity, in connection with a building operation, shall not, unless the building operation is one to which the provisions of subsection (1) of section nine of this Act do not apply, commence or continue to carry out, or to assist in the carrying out of, that building operation unless the commencement or continuance of the carrying out of the building operation is authorised by a consent granted by the Board under this Act.

Duties of persons employed in connection with building operations.

15. A person to whom consent has been granted under this Act, and any architect, builder, contractor or engineer employed in any capacity, and any other person employed in an advisory or supervisory capacity, in connection with the execution of the building operation in respect of which the consent has been granted—

Compliance with conditions and keeping of records.

- (a) shall, whether or not the consent is revoked, comply with all conditions or limitations applicable to him to which the consent is subject;

- (b) shall not, if the consent is revoked, continue the building operation, or, if the consent is suspended, continue the building operation during the period of suspension;
- (c) shall make and keep proper and accurate books and accounts and stock and costing records, where applicable, in relation to the building operation, and shall preserve those books and accounts and stock and costing records, including all invoices, vouchers, agreements, correspondence, documents and copies thereof, until their destruction is authorised by the Board.

False information or records.

16. A person shall not—
- (a) in any application or in answer to any request made in pursuance of this Act, make any statement or furnish any information; or
 - (b) in relation to any matter dealt with under this Act, make any entry in any document,
- which he knows or has reasonable cause to believe to be false in a material particular.

Certain local governmental and judicial, etc., powers affected.

17. Notwithstanding anything contained in any law, where an application has been made by any person for the consent of the Board under this Act to commence or continue any building operation and that application has either been refused or has been granted subject to any condition or limitation, no notice given or order made by or on behalf of any local governing authority, or public utility undertaking, or any officer thereof or by any Court requiring that person to commence or continue that building operation shall be enforceable to the extent to which it is inconsistent with that refusal, condition, or limitation.

Co-operation of local governmental, etc., authorities.

18. The Board may make a written request to any local governing authority or public utility undertaking for assistance as hereinafter in this section provided, and thereafter such authority or undertaking, or any officer, empowered by or under any law to make orders in respect of, or to approve, all plans or specifications, or to grant permits in relation to any building operations shall, with respect to any building operation in respect

of which the consent of the Board is required under this Act—

- (a) refuse to make an order or to approve plans or specifications or to grant a permit until an application has been made for the consent of the Board under this Act;
- (b) make a return to the Board setting out particulars of any application for approval of plans or specifications or for the granting of any permit; and
- (c) make a report to the Board in any case where there is reason to believe that that building operation is being or has been carried out without the consent of the Board or contrary to any condition or limitation contained in that consent.

19. Where any building operation is being, or has been, carried out on any land or premises during the period of the operation of this Act, a person authorised by the Board to act under this section may, at any time, enter on and inspect the land or premises for the purpose of ascertaining whether the provisions of this Act are being, or have been, complied with.

Power of entry and search.

PART IV.—RESTRICTIONS ON DISPOSAL AND ACQUISITION OF BUILDING MATERIALS.

Division 1—License to be Obtained.

20. (1) Subject to the provisions of section five, a person shall not—

Restriction on transactions in building material.

- (a) dispose of or agree or offer to dispose of any building material;
- (b) acquire or agree or offer to acquire any building material,

except under the authority of and pursuant to the terms of a license.

Division 2—Application for Granting and Conditions of Licenses.

21. An application for a license shall be—

Application for license.

- (a) lodged with the Board in such form and contain such information as the Board directs;
- (b) in respect of one or several matters or transactions as the Board directs.

Grant of license.

22. The grant of a license shall be in the discretion of the Board.

Form of license.

23. A license shall be in such form as the Board having regard to the nature of the circumstances of each particular case may determine, and when granted shall subject as hereinafter provided be sufficient and have effect according to its tenor.

Conditions of license.

24. (1) A license may be granted subject to such terms and conditions as the Board specifies in the license.

(2) Every license shall contain a condition requiring the licensee to comply with the provisions of this Act insofar as they are applicable to him.

(3) Without prejudice to the generality of subparagraph (1) of this paragraph, a license may contain conditions to the effect that—

(a) the licensee may dispose of or deliver only such quantity or quota of the building material specified in the license as is set out in the license; and

(b) the licensee shall furnish to the Board from time to time such estimates, returns or particulars of orders, production, stocks, deliveries, disposals use or application of building materials or progress of building operations as are specified in the license.

Division 3—Transfer, Revocation and Suspension of License.

Transfer revocation and suspension of license.

25. (1) A license may be transferred upon application to and subject to the approval of the Board.

(2) The Board may, at any time, by notice in writing to the licensee, suspend or revoke any license, or vary the terms and conditions of any license, or impose new terms and conditions to which the license shall be subject.

PART V.—POWERS OF ADMINISTRATION.

Powers of administration.

26. (1) The Board may, by notice to any person engaged in the business of, or concerned in any transaction relating to building operations, or concerned in any disposal or acquisition of building material—

(a) require that person to produce any books, accounts and documents relating to that business to any person specified in the notice;

- (b) require that person to furnish at any time or from time to time, and in such manner as is specified in the notice, particulars relating to the business as are specified in the notice; and
- (c) give such directions or impose such conditions as the Board thinks fit in relation to the storage, delivery, disposal, use or application of any building material.

(2) A notice given under this section may be addressed to any person, to all persons included in any class of persons, to all persons in any part of the State or generally and may be given in writing to a person or published in the *Gazette*.

27. A person so authorised by the Board may—

- (a) enter and search any place or premises used for carrying on the business of storage, delivery, disposal, use or application of any building material;
- (b) make copies of or take extracts from any books, accounts, or documents relating to the business; and
- (c) stop any person engaged in the carriage of any building material, and search any vehicle or container used in connection with any such carriage.

Power of entry and search.

28. A person shall not fail to comply with any requirement made, direction given or condition imposed under this Act (whether in a license or otherwise) by the Board or a person authorised in that behalf by the Board, which is applicable to him.

Compliance with requirements, etc.

PART VI.—OFFENCES AND PENALTIES.

29. Any person who contravenes, or fails to comply with any provision of this Act or any regulation made in pursuance of this Act, shall be guilty of an offence against this Act.

Offences.

30. A person shall not in any manner resist, interfere with, hinder nor obstruct the Board in the exercise or discharge of any power, authority, function or duty under this Act or any person authorised by the Board to exercise or discharge any such power, authority, function or duty.

Obstruction.

Summary jurisdiction.

31. Any offence against this Act shall be heard and determined summarily by a stipendiary magistrate.

Penalties

32. The punishment for any offence against this Act or the regulations made pursuant to this Act shall be a fine not exceeding one hundred pounds or imprisonment for a term not exceeding six months or both, and in addition to any other punishment the court may on conviction order—

- (a) the forfeiture of any money or goods of or accruing to the convicted person and involved in the commission of the offence; and
- (b) the revocation of any consent or cancellation of any license given or issued under this Act to the convicted person.

PART VII.—LEGAL PROCEEDINGS AND EVIDENCE.

Authority to prosecute, evidence and proof.

33. (1) The Board may direct, either generally or in any particular case, proceedings to be taken for the recovery of penalties in respect of offences committed against the provisions of this Act or of any regulation.

(2) In any such proceedings, until evidence be given to the contrary, no proof shall be required—

- (a) of the constitution of the Board, or of the appointment of the persons constituting the Board or of the appointment of the chairman of the Board;
- (b) of any direction to take proceedings;
- (c) of any authority of any officer of the Board or any other person to take proceedings; or
- (d) of the presence of a quorum of the Board at the giving of any such direction or authority, or the doing of any act.

(3) In any such proceedings an averment in the complaint—

- (a) that the defendant was an architect, builder, contractor or engineer employed in connection with any particular building operation, or that the defendant was a person employed in an advisory or supervisory capacity in connection with a particular building operation;

(b) that any particular condition or limitation to which a consent is subject, or any direction given in relation to a building operation, is applicable to the defendant; shall be prima facie evidence of the matter or matters averred.

34. All Courts and all persons acting judicially shall take judicial notice of— Judicial notice.

(a) the official signature of any person who holds or has held the position of chairman of the Board;

(b) the fact that such person holds or has held such office,

if the signature purports to be appended to any judicial or official document.

35. The complaint in respect of an offence against this Act, or the regulations made pursuant to this Act, shall be made within twelve months after the offence thereby charged shall have been committed. Limitation of proceedings.

PART VIII.—MISCELLANEOUS.

Division 1—Regulations.

36. The Governor may make any regulations, not inconsistent with the provisions of this Act, which may be necessary or convenient for carrying into operation or for facilitating the operation of this Act. Authority to make regulations.

Division 2—Protection to Administration.

37. (1) No matter or thing done by the Minister or any person constituting the Board, or any person authorised by the Board, in good faith, in or about the purported exercise of any of the powers conferred upon and exercisable by such persons shall subject them or any of them to any liability in respect thereof. Protection to administrative authorities.

(2) Subject to the foregoing provisions of this section, no action or proceeding shall be brought against them or any of them—

(a) until after the expiration of one month's notice in writing specifying the name of the person intending to bring such action or proceeding,

the name of the person against whom it is intended to proceed, and particulars of the cause or grounds of such action or proceeding;

- (b) after the expiration of twelve months from the time when such cause or ground of action or proceeding arose.

Division 3—Duration.

Duration.

38. This Act shall continue in force until the thirty-first day of December, One thousand nine hundred and forty-six, and no longer.

THE SCHEDULE.

Timber.

Wire and wire products.

Asbestos cement products.

Cement and cement products.

Bricks.

Galvanised iron.

Water and gas pipes.

Ferrous castings for building purposes including cast iron, porcelain, enamelware, sanitary earthenware.