

WESTERN AUSTRALIA

BUILDERS' REGISTRATION AMENDMENT ACT 1991

No. 60 of 1991

AN ACT to amend the *Builders' Registration Act 1939* and the
Constitution Acts Amendment Act 1899.

[Assented to 30 December 1991]

The Parliament of Western Australia enacts as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Builders' Registration Amendment Act 1991*.

Commencement

2. This Act shall come into operation on the day on which the *Home Building Contracts Act 1991* comes into operation.

PART 2—BUILDERS' REGISTRATION ACT 1939

Principal Act

3. In this Act the *Builders' Registration Act 1939** is referred to as the principal Act.

[*Reprinted as approved 10 February 1981 and amended by Acts Nos. 10 of 1982, 39 of 1983, 14 of 1984, 8 of 1986, 77 of 1987 and 93 of 1990.]

Long title amended

4. The long title to the principal Act is amended by deleting "thereto," and substituting the following—

" thereto; to establish a committee with jurisdiction in respect of certain building disputes, ".

Section 2 amended

5. Section 2 of the principal Act is amended by inserting after the definition of "Company" the following definition—

" "Disputes Committee" means the Building Disputes Committee established by section 26. ".

Section 3 amended and transitional provision

6. (1) Section 3 of the principal Act is amended—

(a) in subsection (1) by deleting "This Act applies" and substituting the following—

" Sections 4 to 24 apply ";

and

(b) by inserting after subsection (1) the following subsection—

“ (1a) Notwithstanding subsection (1), sections 12A and 12B apply throughout the State to building work that is home building work as defined in the *Home Building Contracts Act 1991*. ”.

(2) Notwithstanding subsection (1), section 12A of the principal Act does not apply to any home building work as defined in the *Home Building Contracts Act 1991* carried out before the coming into operation of this section outside the areas described in the Schedule to the principal Act.

Various sections amended

7. The principal Act is amended by deleting “chairman” in the provisions referred to in the Table to this section and substituting in each case the following—

“ chairperson ”.

TABLE

section 5A (1)	section 18 (1)
section 5B (2)	section 20
section 5C (1)	section 20A (1)
and (2)	section 21 (2)
section 6 (2)	

Section 5A amended

8. Section 5A of the principal Act is amended by repealing subsection (2) and substituting the following—

“ (2) The chairperson shall be a person who is a practitioner as defined by the *Legal Practitioners Act 1893* and who is nominated as chairperson by the Minister. ”.

Section 5AA inserted

9. After section 5A of the principal Act the following section is inserted—

Further provisions as to chairman

“ 5AA. (1) The appointment of the chairperson may be made either on a full-time or a part-time basis.

(2) Where, immediately before being appointed on a full-time basis as the chairperson, a person occupied an office under the *Public Service Act 1978*, that person shall—

(a) continue to retain existing and accruing rights, including rights under the *Superannuation and Family Benefits Act 1938* and the *Government Employees Superannuation Act 1987*, as if the person's service as chairperson were service as an officer under the *Public Service Act 1978*; and

(b) if the person resigns from the office of chairperson or that office ceases to exist or ceases to be held on a full-time basis, be entitled, if the person has not attained the age of 65 years, to be appointed to an office under the *Public Service Act 1978* not lower in status than the office that the person occupied immediately before being appointed as the chairperson. ”.

Section 5B amended

10. Section 5B of the principal Act is amended by inserting after subsection (2) the following subsection—

“ (3) A person may only be appointed as chairperson under this section if he is a practitioner as defined by the *Legal Practitioners Act 1893*. ”.

Section 5C amended

11. Section 5C of the principal Act is amended by inserting after subsection (1) the following subsection—

- “ (1a) The deputy chairperson of the Board—
- (a) need not be a practitioner as defined by the *Legal Practitioners Act 1893*; and
 - (b) notwithstanding subsection (1), does not have the powers, functions and duties of the chairperson under section 27. ”.

Section 7 amended

12. Section 7 of the principal Act is amended in subsection (1) by deleting “its duties and functions” and substituting the following—

“ the duties and functions of the Board and the Disputes Committee ”.

Section 12A amended and transitional provisions

13. (1) Section 12A of the principal Act is amended—

- (a) in subsection (1) by deleting “Where the Board is satisfied” and substituting the following—

“ Where on complaint being made to it by any person, including the Board, the Disputes Committee is satisfied ”;

- (b) by repealing subsection (4) and substituting the following subsection—

“ (4) A person shall not, without reasonable excuse, fail to comply with an order of the Disputes Committee under this section.

Penalty: \$10 000. ”;

(c) in subsection (4a)—

(i) after paragraph (a) by deleting “or”; and

(ii) by deleting paragraph (b);

(d) in subsection (5) by deleting “Board” where it appears first and substituting the following—

“ Disputes Committee ”;

(e) in subsection (6) by deleting “and any variation of such an order made by a magistrate under section 14 of this Act ”;

and

(f) by deleting “Board” wherever it appears (other than in subsection (5)) and substituting the following—

“ Disputes Committee ”.

(2) Any matter that is before the Builders' Registration Board immediately before this section comes into operation may be continued and completed as if subsection (1) had not come into operation.

(3) Where the Builders' Registration Board has made an order under section 12 (1) (a) or (1a) (a) of the principal Act before this section comes into operation and the Board is satisfied that the order (including an order that has been varied by a magistrate) has not been complied with or fully complied with, the Board continues to have the power set out in section 12A (4a) and (4b) of the principal Act as if subsection (1) had not come into operation.

**Sections 12AA, 12B and 12C repealed
and a section substituted**

14. Sections 12AA, 12B and 12C of the principal Act are repealed and the following section is substituted—

**Registrar may be requested to cause an inspection of
building work**

“ 12B. A builder who has performed building work or a person for whom building work has been carried out may request the Registrar to cause an inspection to be made of the building work and the Registrar may, if he thinks fit, give effect to the request. ”.

Section 13 amended

15. Section 13 of the principal Act is amended in subsection (1) by inserting after paragraph (a) the following—

“ (aa) when after such registration such builder has been convicted of an offence under the *Home Building Contracts Act 1991*; or ”.

Section 14 repealed and a section substituted

16. (1) Section 14 of the principal Act is repealed and the following section is substituted—

Appeal from decision or order of Board

“ 14. (1) A person who is dissatisfied with a decision of the Board refusing, cancelling, or suspending his registration, or refusing to register him or to annul the cancellation or suspension of his registration, may appeal to the District Court against the decision in the manner and in the time prescribed by rules made by the District Court.

(2) The decision of the District Court on the appeal is final.

(3) Where the District Court varies a decision of the Board or substitutes a decision for that of the Board, the decision of the District Court has effect for the purposes of this Act as if it were a decision of the Board. ”.

(2) The repeal of section 14 of the principal Act by subsection (1) does not affect any appeal commenced before the coming into operation of this Act and any such appeal may be continued and disposed of as if this section had not come into operation.

Section 22 amended

17. Section 22 of the principal Act is amended in subsection (4) by inserting after “fees” the following—

“ (including fees paid to the Disputes Committee) ”.

Section 23A repealed and a section substituted

18. Section 23A of the principal Act is repealed and the following section is substituted—

Audit

“ 23A. (1) 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.

(2) An auditor appointed under subsection (1) shall be a person who is registered as an auditor, or taken to be so registered, under Part 9.2 of the Corporations Law. ”.

Sections 23C and 23D inserted

19. After section 23B of the principal Act the following sections are inserted—

Directions by Minister

“ 23C. (1) Subject to subsection (2) the Minister may, after consulting with the Board, give directions in writing to the

Board with respect to the performance of its functions either generally or in relation to a particular matter, and the Board shall give effect to any such direction.

(2) The Minister shall not under subsection (1) direct the Board with respect to the performance of its functions in respect of—

- (a) a particular person; or
- (b) a particular application, complaint or proceeding.

(3) The text of any direction given under subsection (1) shall be included in the annual report submitted by the Board under section 23B.

Minister to have access to information

23D. (1) For parliamentary purposes or for the proper conduct of the Minister's public business, the Minister is entitled—

- (a) to have information in the possession of the Board; and
- (b) where the information is in or on a document, to have, and make and retain copies of, that document.

(2) For the purposes of subsection (1) the Minister may—

- (a) request the Board to furnish information to the Minister;
- (b) request the Board to give the Minister access to information;
- (c) for the purposes of paragraph (b) make use of the staff of the Board to obtain the information and furnish it to the Minister.

(3) The Board shall comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.

(4) In this section—

“document” includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

“information” means information specified, or of a description specified, by the Minister that relates to the functions of the Board;

“parliamentary purposes” means the purpose of—

- (a) answering a question asked in a House of Parliament; or
- (b) complying with a written law, or an order or resolution of a House of Parliament, that requires information to be furnished to a House of Parliament. ”.

Sections 25 to 46 inserted

20. After section 24 of the principal Act the following sections are inserted—

Interpretation

“ **25.** In this section and in sections 26 to 46, unless the contrary intention appears—

“chairperson” means the holder of the office of the chairperson of the Disputes Committee;

“deputy chairperson” means the holder of an office of deputy chairperson of the Disputes Committee.

Building Disputes Committee

26. (1) There shall be a tribunal to be known as the Building Disputes Committee.

(2) The Disputes Committee shall have a seal of which all courts and persons acting judicially shall take judicial notice.

Chairperson and deputies

27. (1) The chairperson of the Board by virtue of holding that office, also holds office as the chairperson of the Disputes Committee.

(2) The Minister may, in writing, appoint a person or persons, each of whom is a practitioner as defined by the *Legal Practitioners Act 1893*, to hold office as deputy chairperson or deputy chairpersons of the Disputes Committee.

Panels

28. (1) The Minister shall establish—

(a) a panel of persons representative of the interests of consumers; and

(b) a panel of persons representative of the interests of builders.

(2) A panel established under subsection (1) shall comprise such number of persons appointed in writing by the Minister as the Minister from time to time thinks fit.

(3) When it is necessary to appoint persons to the panel referred to in subsection (1) (b), the Minister shall request each of the Master Builders' Association of Western Australia and the Housing Industry Association Western Australian Division to nominate, within such time as is specified, a specified number of the Association's members as

candidates for appointment and shall appoint to the panel from those candidates an equal number of persons from each of the Associations.

Term of office

29. (1) Subject to this section, a person appointed to be a deputy chairperson, or to be a member of a panel established under section 28, shall hold office for such term not exceeding 3 years as is specified in the person's instrument of appointment and, upon the expiration of that term, is eligible for reappointment.

(2) The Minister may remove from office a person appointed to an office referred to in subsection (1) on the grounds of—

- (a) mental or physical incapacity to carry out satisfactorily the duties of the person's office;
- (b) neglect of duty; or
- (c) misconduct.

(3) A person appointed to an office referred to in subsection (1) may at any time resign from the office by notice in writing delivered to the Minister.

Fees and allowances

30. (1) Subject to subsection (2), a deputy chairperson and the members of a panel established under section 28 shall be paid, out of the funds of the Board, such remuneration and travelling and other allowances as are determined in each person's case by the Minister on the recommendation of the Public Service Commissioner.

(2) Subsection (1) does not apply to an officer employed in the Public Service.

Conditions of appointment

31. The appointment of a person as a deputy chairperson or as a member of a panel established under section 28 shall, subject to this Act, be in accordance with such terms and conditions as may be specified in the instrument appointing the person.

Powers not affected by vacancy

32. Without limiting the application of section 57 of the *Interpretation Act 1984*, the powers of the Disputes Committee are not affected by a vacancy in the membership of a panel established under section 28 nor shall the powers of a deputy chairperson be affected by the vacancy in the office of the chairperson.

Registrar

33. (1) The registrar of the Board is the registrar and executive officer of the Disputes Committee.

(2) The registrar may, with the written approval of the Disputes Committee or the chairperson, exercise such of the jurisdiction of the Disputes Committee as is prescribed in regulations and for that purpose has all of the powers of the Disputes Committee necessary to do so.

(3) Where in the exercise of jurisdiction conferred by subsection (2), the registrar makes a decision or an order, a party to the proceedings who is dissatisfied with the decision or order may request the Disputes Committee to review the decision or order and the Disputes Committee on receiving such a request, shall review the decision or order and confirm, vary, or quash the decision or order.

(4) The Disputes Committee may, on its own motion, review any decision or order made by the registrar, including

a decision or order made in the exercise of jurisdiction conferred by subsection (2), and may confirm, vary, or quash the decision or order.

(5) Nothing in this section prejudices any right of appeal that a person may have, but where the right of appeal is exercisable in respect of a decision or order made by the registrar in the exercise of jurisdiction conferred by subsection (2), it shall not be exercised until the right under subsection (3) to request a review of the decision or order has been exhausted.

Expenses of the Disputes Committee

34. The expenditure necessary for the functioning of the Disputes Committee shall be met by the Board.

Jurisdiction and constitution of the Disputes Committee

35. (1) Subject to this section, the jurisdiction to be exercised by the Disputes Committee is that conferred on it by section 12A and by the *Home Building Contracts Act 1991*.

(2) When exercising its jurisdiction the Disputes Committee shall be constituted by—

- (a) the chairperson or a deputy chairperson;
- (b) one person selected by the person mentioned in paragraph (a) from the panel referred to in section 28 (1) (a); and
- (c) one person selected by the person mentioned in paragraph (a) from the panel referred to in section 28 (1) (b).

(3) The selection under subsection (2) of a person from a panel shall be evidenced in writing.

(4) The Disputes Committee constituted in accordance with this section may sit and exercise the jurisdiction of the Disputes Committee notwithstanding that the Disputes Committee differently constituted in accordance with this section is at the same time sitting and exercising the jurisdiction of the Disputes Committee.

Sittings of the Disputes Committee

36. (1) At all its sittings the Disputes Committee shall act according to equity, good conscience, and the substantial merits of the case and without regard to technicalities and legal forms, and shall not be bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.

(2) At all sittings of the Disputes Committee the person referred to in section 35 (2) (a) shall preside and determine any question relating to the admissibility of evidence and any other question of law or procedure.

(3) Subject to subsection (2), the decision of a majority of members of the Disputes Committee shall be the decision of the Disputes Committee.

(4) The Disputes Committee shall cause a record to be kept of proceedings before it.

(5) To the extent that it is not prescribed by this Act or the regulations, the Disputes Committee shall determine its own procedure.

Hearings

37. (1) The Disputes Committee shall cause to be given to a person who is a party to proceedings before the Disputes Committee reasonable notice of the time when and place

where it intends to conduct those proceedings, and shall afford any such person a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses, and to make submissions to the Disputes Committee.

(2) If a person to whom notice has been given under subsection (1) does not attend at the time and place fixed by the notice, the Disputes Committee may conduct proceedings in the absence of the person.

(3) The Commissioner for Consumer Affairs referred to in section 15 of the *Consumer Affairs Act 1971* may appear personally in proceedings before the Disputes Committee or may be represented in those proceedings by counsel or an officer employed in the Public Service.

Powers of the Disputes Committee

38. (1) The Disputes Committee may—

- (a) by summons signed on behalf of the Disputes Committee by the registrar, require—
 - (i) the attendance before the Disputes Committee of any person;
 - (ii) the production before the Disputes Committee of any document;
- (b) inspect any document produced before it, and retain it for such reasonable period as it thinks fit, and make copies of the document or any of its contents;
- (c) require any person to swear to truly answer all questions relating to a matter being enquired into by the Disputes Committee that are put by or before the Disputes Committee (and for that purpose a member of the Disputes Committee may administer an oath or affirmation);

and

- (d) require any person to answer any relevant question put by a member of the Disputes Committee or by any other person appearing before the Disputes Committee.
- (2) In the course of any proceedings the Disputes Committee may—
- (a) receive in evidence any transcript of evidence in proceedings before a court or a person or body acting judicially and draw any conclusion of fact therefrom as it thinks fit; and
 - (b) adopt, as in its discretion it thinks fit, any finding, decision, or judgment of a court or person or body acting judicially that is relevant to the proceedings before the Disputes Committee.
- (3) The Disputes Committee may make such orders for costs as it thinks fit.

Offences

39. A person who—

- (a) having been served with a summons to attend the Disputes Committee, fails without reasonable excuse (proof of which lies upon the person) to attend in obedience to the summons;
- (b) having been served with a summons to produce before the Disputes Committee any document, fails without reasonable excuse (proof of which lies upon the person) to comply with the summons;
- (c) misbehaves before the Disputes Committee, wilfully insults the Disputes Committee or a member thereof, or interrupts the proceedings of the Disputes Committee; or

- (d) fails without reasonable excuse (proof of which lies upon the person) to be sworn, or to answer any question, when required to do so by the Disputes Committee,

commits an offence.

Penalty: \$2 000.

Reasons for decision

40. (1) Where a party to proceedings before the Disputes Committee has, within 14 days after the Disputes Committee has made a decision or order in those proceedings, requested the Disputes Committee to give reasons in writing for the decision or order, the Disputes Committee shall give that party reasons in writing for the decision or order.

(2) The Disputes Committee shall ensure that the parties are made aware of their right to request reasons for decision or order. Where a party requests an extension of time the Disputes Committee shall extend the period of time for requesting those reasons unless satisfied that the person was fully aware of the right and neglected to exercise it.

Appeal

41. (1) Subject to subsection (2), a party to proceedings before the Disputes Committee may appeal to the District Court against a decision of the Disputes Committee in the manner and in the time prescribed by rules made by the District Court.

(2) An appeal does not lie under subsection (1) unless the Disputes Committee or the District Court gives leave to appeal.

(3) Without limiting the rules of court, where an appeal under this section has been commenced, or application has been made for leave to appeal, against a decision of the Disputes Committee, the District Court—

(a) may suspend the operation or effect of the decision until the appeal is determined or the application for leave to appeal is withdrawn or dismissed; and

(b) may revoke any such suspension.

(4) A decision of the District Court under this section is final.

(5) Where the District Court varies a decision of the Disputes Committee or substitutes a decision for that of the Disputes Committee, the decision of the District Court has effect for the purposes of this Act or the *Home Building Contracts Act 1991* as if it were a decision of the Disputes Committee.

Case stated

42. (1) Where a question of law arises in proceedings before the Disputes Committee, the Disputes Committee may of its own motion state a case for the decision of the District Court on the question notwithstanding that the Disputes Committee has made a decision in the proceedings.

(2) Where the Disputes Committee has stated a case for the decision of the District Court, the Disputes Committee may indemnify any of the parties against the costs or part of the costs of any proceedings resulting from a case being stated and any moneys payable to a party by reason of that indemnity, when certified by the registrar as payable, shall be paid by the Board.

(3) The District Court has jurisdiction to consider and determine any case stated and to make such orders as it thinks fit with regard to the case and to the costs of and incidental to the consideration and determination of it.

Evidentiary provisions

43. In all courts and before all persons and bodies authorized to receive evidence—

- (a) a document purporting to be a copy of a decision or order of the Disputes Committee and purporting to be certified by the registrar to be such a copy shall be admitted as a true copy of a decision or order of the Disputes Committee;

and

- (b) judicial notice shall be taken of the signature of the registrar on a document referred to in paragraph (a).

Enforcement of payment of pecuniary sums

44. (1) Where an order of the Disputes Committee requires the payment of a pecuniary sum, the registrar shall, upon the application of a party to the proceedings in which the order was made, or a person claiming through or under such a party, issue a certified copy of the order.

(2) Where a certified copy of an order of the Disputes Committee is lodged with the clerk of a Local Court in accordance with the rules of court (which may include provision for the payment of a lodging fee), the clerk shall register the order and payment of the pecuniary sum thereunder may be enforced as if it were required by an order of that court.

Immunity

45. No liability attaches to the Disputes Committee or a member of the Disputes Committee or to the registrar for any act or omission of the Disputes Committee, member or registrar that occurs in good faith and in the performance, or the purported performance, of the functions under this or any other written law of the Disputes Committee, member or registrar.

Regulations

46. (1) The Governor may make regulations prescribing all matters that are required or permitted by sections 25 to 45 to be prescribed, or are necessary or convenient to be so prescribed, for enabling the Disputes Committee to exercise the jurisdiction conferred on it or otherwise for giving effect to those sections.

(2) The regulations may—

- (a) provide for the constitution of the panels established under section 28 and require consultation with persons in relation to the membership of such panels;
- (b) prescribe matters relating to the practice and procedure of the Disputes Committee;
- (c) provide for the enforcement of decisions and orders of the Disputes Committee (other than for the payment of pecuniary sums);
- (d) assign functions to the registrar and regulate the manner in which they are to be carried out;
- (e) make provision as to fees. ”.

PART 3—*CONSTITUTION ACTS AMENDMENT ACT 1899*

Schedule V amended

21. Schedule V of the *Constitution Acts Amendment Act 1899** is amended in Part 3 by inserting, after the item relating to the Builders' Registration Board, the following—

“ The Building Disputes Committee constituted under the *Builders' Registration Act 1939* including a member of a panel established under section 28 of that Act. ”.

[*Reprinted as at 16 March 1989 and amended by Acts Nos. 75 of 1988, 19 and 28 of 1989 and 6, 10, 16, 27, 38, 39, 73 and 104 of 1990.]
