

PAINTERS' REGISTRATION.

No. 33 of 1983.

**AN ACT to amend the Painters' Registration Act
1961-1976, and for related purposes.**

[Assented to 1 December 1983.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Painters' Registration Amendment Act 1983*. Short title and citation.

(2) In this Act the Painters' Registration Act 1961-1976 is referred to as the principal Act. Reprinted as approved 14 July 1977.

(3) The principal Act as amended by this Act may be cited as the Painters' Registration Act 1961-1983.

Commence-
ment.

2. This Act shall come into operation on a day to be fixed by proclamation.

Section 3
repealed and
substituted;
and
validation
and
transitional
provisions.
Area within
which this
Act applies.

3. (1) Section 3 of the principal Act is repealed and the following section is substituted—

“ 3. (1) This Act applies within any area described in the Schedule to this Act.

(2) The Governor may make regulations amending the Schedule or deleting the Schedule and substituting a new Schedule.

(3) Notwithstanding any increase in the area to which this Act applies effected by regulations made under subsection (2) of this section, any act or thing lawfully commenced, and not discontinued or abandoned, before the coming into operation of those regulations in an area to which this Act did not apply before that coming into operation but to which this Act applies after that coming into operation may be continued and completed as if those regulations had not come into operation. ”.

(2) Notwithstanding the repeal of the Second Schedule to the Metropolitan Water Supply, Sewerage, and Drainage Act 1909-1965, by the Metropolitan Water Supply, Sewerage, and Drainage Act Amendment Act 1967 (in this subsection called “the amending Act”) and the provisions of section 3 of the principal Act, as those provisions existed during the period commencing with the coming into operation of the amending Act and ending immediately before the coming into operation of this Act—

(a) the area within the boundaries (as from time to time defined, altered or extended during that period) of the Metropolitan

Water, Sewerage, and Drainage Area, constituted by the Metropolitan Water Supply, Sewerage, and Drainage Act 1909, shall be deemed for all purposes of the principal Act to have been the area within which the principal Act applied during that period; and

- (b) any act or thing done during that period in the area within the boundaries referred to in paragraph (a) of this subsection in purported exercise of any power conferred by the principal Act shall not be deemed to be invalid by reason only of that repeal and those provisions.

(3) Notwithstanding the coming into operation of this Act, any act or thing lawfully commenced, and not discontinued or abandoned, before that coming into operation in an area to which the principal Act did not apply before that coming into operation but to which the principal Act applies after that coming into operation may be continued and completed as if this Act had not come into operation.

4. Section 4 of the principal Act is amended— Section 4 amended.

(a) in subsection (1)—

- (i) by deleting “exceeds one hundred dollars” and substituting the following—

“ exceeds the prescribed amount ”; and

- (ii) by deleting the penalty provision at the foot of the subsection and substituting the following—

“ Penalty: \$2 000, and if the offence of which he is convicted is continued after the conviction he commits a further offence

and is liable to a fine not exceeding \$20 for every day on which the offence is so continued. ”;

- (b) in subsection (1a) by deleting “one hundred dollars” and substituting the following—

“ the prescribed amount ”;

- (c) in subsection (2) by deleting “one hundred dollars” in each place where it appears and substituting the following—

“ the prescribed amount ”; and

- (d) by inserting after subsection (3) the following subsection—

“ (4) In this section “the prescribed amount” means \$200 or such amount as may be prescribed in lieu thereof by Order in Council made by the Governor and published in the *Gazette*. ”.

Section 7
amended.

5. Section 7 of the principal Act is amended—

- (a) in subsection (1)—

- (i) by deleting “three” and substituting the following—

“ 5 ”;

- (ii) in paragraph (b) (ii) by inserting after “by the” the following—

“ Minister from the panel of names submitted by the ”;

- (iii) in paragraph (c) by inserting after “of the Board” the following—

“ by the Minister from the panel of names submitted ”;

- (iv) by deleting the full stop at the end of paragraph (c) and substituting a semi-colon; and
- (v) by inserting after paragraph (c) the following paragraphs—
 - “ (d) a person who is nominated for appointment as a member of the Board by the Minister from the panel of names submitted by the Union, in accordance with this section; and
 - (e) a person who is nominated for appointment as a member of the Board by the Minister, such nominee being a person whom the Minister considers to be qualified to represent the interests of consumers. ”;
- (b) by repealing subsection (2) and substituting the following subsection—
 - “ (2) If within 14 days after being requested in writing by the Minister to do so, a body referred to in subsection (1) of this section has failed to submit a panel of 3 names to him for the purposes of subsection (1) or (5) of this section or of section 7A (2) of this Act, the Minister may nominate for that purpose—
 - (a) in the case of a failure to do so by the Association, a member of that Association;
 - and
 - (b) in any other case, such person as he thinks fit. ”;

- (c) in subsection (3) by inserting after "member of the Board", in both places where it appears, the following—

" , other than the Chairman, ";

- (d) in subsection (5) by deleting "the Governor may appoint some other person (to be recommended where applicable by the same body who had previously recommended the member whose place he is taking)" and substituting the following—

" , other than in the office of Chairman, the Governor may appoint some other person "; and

- (e) by inserting after subsection (5) the following subsection—

" (6) A person appointed under subsection (5) of this section shall, subject to subsection (2) of this section, be nominated in the same manner as the member whose place he is taking was nominated. "

Section 7A
inserted.

6. After section 7 of the principal Act, the following section is inserted—

Deputy of
chairman
and
members.

" 7A. (1) The Governor shall appoint a member to be deputy chairman of the Board, and during any vacancy in the office of chairman, or if he is unable to act by reason of sickness, absence or other cause, the deputy chairman shall have and perform the powers, functions and duties of the chairman.

(2) The Governor may, in accordance with subsection (3) of this section, appoint a deputy for each member of the Board (other than the chairman) and such a deputy is entitled, in the event of the absence from a meeting of the Board of the member for

whom he is deputy, to attend that meeting, and, when so attending, shall be deemed to be a member of the Board.

(3) A person appointed under subsection (2) of this section shall, subject to section 7 (2) of this Act, be nominated in the same manner as the member for whom he is to be deputy was nominated. ”.

7. Section 8 of the principal Act is repealed and the following section is substituted—

Section 8
repealed and
substituted.

“ 8. A member of the Board shall be paid, out of the funds of the Board, such remuneration and allowances as are determined in his case by the Minister on the recommendation of the Public Service Board. ”.

Remunera-
tion of
Board
members.

8. Section 12 of the principal Act is amended in subsection (1)—

Section 12
amended.

(a) in paragraph (a), by inserting after “trade;” the following—

“ or ”;

(b) in paragraph (aa)—

(i) by deleting “Arbitration Act, 1912” and substituting the following—

“ Training Act 1975 ”; and

(ii) by inserting after “persons;” the following—

“ or ”;

(c) by deleting paragraph (b); and

(d) in paragraph (c) by deleting “in some place other than Western Australia”.

Section 14A
repealed and
substituted.

9. Section 14A of the principal Act is repealed and the following section is substituted—

Signs and
advertisements.

“ 14A. Every registered painter shall—

(a) affix to or erect on all works under the control of that registered painter, and keep so affixed or erected while the painting is in progress, a sign of reasonable dimensions showing in easily legible letters and figures the registered name and registered number of that painter; and

(b) cause the registered name and registered number of that painter to appear in any advertisement published by or on behalf of the registered painter in respect of painting.

Penalty: \$400. ”.

Section 14B
amended.

10. Section 14B of the principal Act is amended—

(a) in subsection (1), by deleting paragraph (b) and substituting the following—

“ (b) the name and registered number of that partner or employee to appear in any sign affixed or erected on the work pursuant to section 14A (a) of this Act. ”; and

(b) in subsection (2), by deleting paragraph (b) and substituting the following—

“ (b) the name and registered number of that director, member or employee to appear in any sign affixed or erected on the work pursuant to section 14A (a) of this Act. ”.

11. Section 16 of the principal Act is repealed and the following sections are substituted—

Section 16
repealed and
sections 16,
16A and 16B
substituted.

“ 16. (1) The Board may by order cancel, or suspend for any period, the registration of a painter where—

Cancellation
and
suspension of
registration.

- (a) the registration was obtained by fraud or misrepresentation;
- (b) the painter has been guilty of fraudulent conduct, negligence or incompetence in carrying out painting;
- (c) the painter has been convicted of an offence against section 16G of this Act;
- (d) the painter, being a partnership or company or other body corporate, has failed to comply with any provision of section 14E of this Act; or
- (e) the painter, being a partnership, company or other body corporate, has ceased to have registered under this Act at least one partner of the partnership, or one director of the company, or one member of the board of management of the body corporate or a person employed by the partnership, company or body corporate whose duty or part of whose duty it is to manage or supervise painting carried out by such partnership, company or other body corporate.

(2) Where the registration under this Act of a partnership, company or body corporate has been cancelled or suspended by the Board after the holding of any inquiry into a matter or matters arising under paragraph (b) or (c) of subsection (1) of this section, the Board

may, if in all the circumstances of the case it considers it proper so to do, without further inquiry, by order cancel or suspend the registration under this Act of the partner, director, member of the board of management or employee by whom the painting to which the inquiry related was, or was required by this Act to be, managed and supervised.

(3) Upon the making of an order cancelling the registration of a painter he shall cease to be registered under this Act, and upon the making of an order suspending the registration of a painter he shall cease to be registered under this Act for the period specified in the order.

(4) A painter whose registration has been cancelled or suspended shall, within 14 days after being notified of such cancellation or suspension, surrender to the Board his current certificate of registration, and if he fails to do so he commits an offence and is liable to a fine not exceeding \$100.

Painter to
be notified of
allegations.

16A. (1) Before it cancels or suspends the registration of a painter under section 16 (1) of this Act, the Board shall—

- (a) serve on him a notice in writing containing details of the acts or omissions of the painter into which it intends to inquire and stating the date, time and place for the holding of the inquiry; and
- (b) hold a full inquiry into those acts or omissions, at which it shall afford him a reasonable opportunity of giving either personally or in writing such explanation as he may wish to give.

(2) Before it cancels or suspends the registration of a partner, director, member of the board of management or employee under section 16 (2) of this Act the Board shall—

- (a) serve on him a copy of the notice sent under subsection (1) (a) of this section to the partnership, company or body corporate; and
- (b) afford him a reasonable opportunity of giving either personally or in writing such explanation as he may wish to give.

16B. (1) A painter whose registration has been cancelled or suspended may at any time after the expiration of 3 months from the date of such cancellation or suspension request the Board to re-register him or to annul such suspension.

Re-registra-
tion of
painter.

(2) The Board may at any time, either of its own motion or upon application made under subsection (1) of this section, re-register any painter whose registration it has cancelled, or annul any suspension of registration imposed by it, for such reason and upon such terms as it thinks fit. ”.

12. Section 16A of the principal Act is amended—

Section 16A
re-numbered
and
amended.

- (a) by being re-numbered as section 16C; and
- (b) in the penalty provision at the foot of subsection (4) by deleting “Forty dollars” and substituting the following—

“ \$1 000 ”.

Sections 16D
to 16J
inserted;
and
transitional
provision.

13. (1) After section 16C of the principal Act, the following sections are inserted—

Order to
remedy
unsatis-
factory
painting
work.

“ 16D. (1) Where the Board is satisfied that any painting has not been carried out in a proper and workmanlike manner on any building or other structure the Board may, by order in writing served on the person who carried out the painting, order him to—

- (a) remedy it within such reasonable time as is specified in the order; or
- (b) pay to the owner of the building or other structure such costs of remedying the painting as the Board considers reasonable, in which case any costs so ordered by the Board constitute a debt to the owner and are recoverable by him in a court of competent jurisdiction.

(2) Subsection (1) of this section applies to and in relation to painting carried out by any person, whether a painter or not, and whether registered under this Act or not.

(3) Nothing in section 4 of this Act precludes a person who is not a registered painter from carrying out an order of the Board made pursuant to paragraph (a) of subsection (1) of this section.

(4) In subsection (1) of this section “building or other structure” means the whole or any part of a building or other structure of a kind recognized by law as a fixture, other than a floor, path or drive-way composed of concrete or other similar substance.

Order may
be revoked
and
substituted.

16E. (1) If the Board is satisfied that an order to remedy painting—

- (a) made by the Board under section 16D (1) (a); or

- (b) so made by the Board, and varied by a magistrate under section 18 of this Act,

has not been complied with, or has been complied with in part only, by the person on whom it was served, whether or not he has on that account been convicted of an offence under section 16G of this Act, the Board may—

- (c) revoke the order in relation to that painting or the part in question; and
- (d) make an order under subsection 16D (1) (b) in relation thereto.

(2) The revocation of an order under subsection (1) (c) of this section shall not affect anything done under the order, or a punishment imposed under section 16G of this Act, before the revocation.

16F. Before it makes an order under section 16D or 16E of this Act the Board shall—

Person to be
afforded
opportunity
to be heard.

- (a) serve on the person who carried out the painting, a notice in writing containing details of the alleged failure on his part—
 - (i) to carry out the painting in a proper and workmanlike manner; or
 - (ii) to comply with the order to remedy painting,as the case may be; and
- (b) afford him a reasonable opportunity of giving either personally or in writing such explanation in respect of such allegations as he may wish to give.

Offence to
fail to
comply with
order.

16G. Any person who fails to comply
with—

- (a) the terms of an order of the Board made under section 16D or 16E of this Act in any case where no appeal was duly brought under section 18 of this Act against the making of the order, or where such an appeal was brought but the order was not set aside or varied at the hearing of the appeal; or
- (b) the terms of an order of the Board made under section 16D or 16E of this Act as varied by a magistrate at the hearing of an appeal under section 18 of this Act brought against the making of the order,

commits an offence.

Penalty: \$500.

Saving of
other
remedies.

16H. (1) The making of an order by the Board under section 16D or 16E of this Act in respect of any painting carried out by a registered painter does not, irrespective of whether an appeal under section 18 of this Act is brought against the making of the order or of the manner in which the appeal is disposed of, limit or affect in any way the power of the Board to deal with that or any other registered painter under section 16 of this Act in connection with that painting.

(2) Nothing in sections 16D to 16G (inclusive) of this Act has the effect of limiting or otherwise affecting any right or remedy available to a person, apart from this section, against another in respect of painting carried out by that other person; but in any proceedings in relation to such right or remedy a

court may have regard to any order made by the Board under section 16D or 16E of this Act and any variation of such an order made by a magistrate under section 18 of this Act.

16I. Where—

- (a) a person for whom painting has been carried out by a painter complains to the Board that the painting was not carried out in a proper and workmanlike manner; and
- (b) the Board is satisfied after investigating the matter (whether or not the Board also conducts a formal inquiry under section 16 of this Act) that the complaint was frivolous or was not made in good faith,

Board may recover costs of investigation of frivolous or vexatious complaints.

the Board may order the person who made the complaint to pay to it the Board's reasonable costs of investigating the matter; and the amount certified by the Board to be its reasonable costs of investigation may be recovered by the Board from that person as a debt due to the Board in any court of competent jurisdiction.

16J. Any registered painter may request the Board to examine any painting carried out by him, and the Board may, if it thinks fit, comply with such a request. ”.

Painter may request Board to investigate work.

(2) The powers conferred on the Board by sections 16D and 16E, inserted in the principal Act by subsection (1) of this section, shall not be exercisable in respect of painting work completed before that subsection came into operation; nor shall the power conferred on the Board by section 16I, inserted as above-mentioned, be exercisable in respect of a complaint made before that coming into operation.

14. Section 17 of the principal Act is repealed.

Section 17 repealed.

Section 18
repealed and
substituted.

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

Appeal
from
decision of
Board.

- “ 18. (1) A person who feels aggrieved by—
- (a) a decision of the Board refusing, cancelling, or suspending his registration, or refusing to re-register him or to annul the suspension of his registration; or
 - (b) an order of the Board under section 16D or 16E of this Act,

may appeal therefrom to a stipendiary magistrate of the Local Court nearest to the place where he resides, by causing notice of appeal in the prescribed form to be lodged with the clerk of that Court and served on the Registrar within 28 days after he is notified of the decision or order.

(2) The appeal shall be by way of rehearing, and for that purpose the magistrate may take evidence on oath or affirmation in the same manner and to the same extent as he is empowered to do in the exercise of his ordinary jurisdiction.

(3) The magistrate may confirm, reverse or modify the decision or order appealed from and make such order as to the costs of the appeal as he thinks fit; and any amount payable by one person to another by virtue of the magistrates' order is recoverable as a debt in any court of competent jurisdiction.

(4) The decision of the magistrate on the appeal is final ”.

Section 20
amended.

16. Section 20 of the principal Act is amended by—

- (a) inserting after the section designation “20.” the subsection designation “(1)”; and

(b) inserting the following subsection—

“ (2) A complaint for an offence against this Act shall be made within 18 months from the time when the matter of complaint arose. ”.

17. Section 24 of the principal Act is amended in paragraph (3) by deleting “representation” and substituting the following—

Section 24
amended.

“ registration ”.

18. Section 26 of the principal Act is amended by deleting “forty dollars” and substituting the following—

Section 26
amended.

“ \$500 ”.

19. After section 26A of the principal Act, the following section is inserted—

Section 26B
inserted.

“ 26B. Where in a complaint for an offence against this Act, it is averred that any conduct prohibited by this Act occurred within an area within which this Act applies, the fact that the conduct occurred within that area shall be deemed to be proved, in the absence of evidence to the contrary. ”.

Averment
as to
application
of Act.

20. The principal Act is amended by adding, at the end, the following Schedule—

Schedule
added.

“ SCHEDULE. [Section 3]

AREAS WITHIN WHICH THIS ACT APPLIES.

1. *The Metropolitan area.*

That is to say, all that portion of the State which lies within the area bounded by a line starting from the south-western corner of Swan Location 2745 (South Latitude 31 degrees 27 minutes 23.105 seconds, East Longitude 115 degrees 33 minutes 35.604 seconds), being a point on the northermost northern boundary of the

district of the Shire of Wanneroo, and extending easterly, generally southerly, again easterly, again generally southerly and again easterly along the boundaries of that district to the intersection of the prolongation northerly of the eastern boundary of Location 1584 with the prolongation westerly of the northern boundary of Location 2478, being a north-western corner of the district of the Shire of Swan; thence generally easterly, generally northerly, generally easterly, southerly, easterly and again southerly along the boundaries of that district to the easternmost south-eastern corner of Location 1817, being a point on the northernmost northern boundary of the district of the Shire of Mundaring; thence easterly, generally southerly, again easterly, again generally southerly, generally westerly, again southerly, again easterly, again southerly and again westerly and generally north-westerly along boundaries of the district of the Shire of Mundaring to the intersection of the left bank of the Darkan River with the prolongation northerly of the western boundary of late Pre-emptive Poison Right 8/228, being the easternmost north-eastern corner of the district of the Shire of Kalamunda; thence southerly along the easternmost eastern boundary of the district of the Shire of Kalamunda to the prolongation east of the southern boundary of Canning Location 710, being a north-eastern corner of the district of the Town of Armadale; thence generally southerly, generally south-easterly, westerly and south-westerly along the boundaries of the district of the Town of Armadale to the 33 Mile Post on the north-eastern side of Albany Highway, being a north-eastern corner of the district of the Shire of Serpentine-Jarrahdale; thence generally south-easterly, southerly, generally westerly and northerly along boundaries of the district of the Shire of Serpentine-Jarrahdale to the north-eastern corner of Lot 3 of Cockburn Sound Location 16, as shown on Land Titles Office Diagram 2909, being a south-eastern corner of the district of the Shire of Rockingham; thence generally westerly along the boundaries of the district of the Shire of Rockingham to the south-western corner of Lot 236 as shown on Land Titles Office Plan 7931(2), (South Latitude 32 degrees 27 minutes 24.586 seconds, East Longitude 115 degrees 44 minutes 52.324 seconds); thence west 17 820.4 metres to East Longitude 115 degrees 33 minutes 30 seconds; thence north 110 932.1 metres to South Latitude 31 degrees 27 minutes 23.105 seconds and thence east 148 metres to the starting point.

2. *The Shire of Mandurah.*

That is to say, all that portion of the State which lies within the area bounded by a line starting at the intersection of the low water mark of the Indian Ocean with

the prolongation westerly of the northern boundary of Lot 3 of Cockburn Sound Location 16, as shown on Land Titles Office Plan 3064 and extending easterly to and along that boundary and onwards to the north-western corner of Lot 1, as shown on Land Titles Office Plan 12382; thence easterly along the northern boundary of that lot and onwards to an eastern side of Stock Road; thence generally southerly, generally south-easterly, generally south-westerly, south-easterly, southerly and again south-easterly along sides of that road to a north-eastern side of Lakes Road; thence south-easterly that side to the right bank of the Serpentine River; thence generally south-westerly downwards along that bank to the northernmost northern boundary of Location 2459; thence westerly and south-westerly along boundaries of that location and south-westerly along the north-western boundary of Lot 217 of Location 16, as shown on Land Titles Office Plan 2087 Sheet 1 and onwards to a south-western side of Hougham Road; thence south-easterly along that side to the right bank of the Serpentine River; thence generally southerly, generally westerly, generally south-westerly, generally south-easterly and again generally south-westerly downwards along that bank to the low water mark of Peel Inlet; thence generally north-westerly along that mark to the prolongation southerly of the western side of Kurdal Road; thence south-westerly to the low water mark at the eastern extremity of Creery Island; thence generally south-westerly along that mark to the southern extremity of Creery Island; thence west to the low water mark of Peel Inlet; thence generally south-westerly along that mark and generally south-easterly and generally northerly along the low water mark of Harvey Estuary to the left bank of the Harvey River; thence generally southerly upwards along that bank to a point situate east of the easternmost north-eastern corner of Murray Location 1209; thence west to and generally south-westerly, generally north-westerly and westerly along boundaries of the last mentioned location to the north-eastern corner of the north-eastern severance of Location 793; thence westerly along the northern boundary of that severance and onwards to and along the northernmost northern boundary of the central severance of that location and onwards to the north-eastern corner of the western severance of the last mentioned location; thence westerly along the northern boundary of that severance and westerly and south-easterly along boundaries of Location 1591 to a north-western corner of the western severance of Location 793; thence south-easterly, south-westerly and generally south-easterly along boundaries of that severance to the north-western corner of Wellington Location 535; thence south-easterly along the south-

western boundary of that location to its south-western corner; thence westerly along the prolongation westerly of the southern boundary of the last mentioned location to an eastern boundary of the eastern severance of Location 4981; thence generally south-easterly, generally south-westerly and westerly along boundaries of that severance and onwards to the south-eastern corner of the south-western severance of the last mentioned location; thence westerly along the southern boundary of that severance and westerly, northerly and again westerly along boundaries of Location 3045 and onwards to the low water mark of the Indian Ocean and thence generally northerly, generally north-easterly, generally easterly crossing the entrance to Peel Inlet and generally southerly along that mark to the starting point. ”.
