



Western Australia

## **Builders' Registration Act 1939**

Compare between:

[06 Jun 2008, 11-i0-02] and [01 Jul 2008, 11-j0-05]



## Builders' Registration Act 1939

**An Act relating to the qualifications and registration of builders; to constitute a board in relation thereto; to establish a tribunal with jurisdiction in respect of certain building disputes, and for other purposes connected therewith.**

*[Long title amended by No. 60 of 1991 s. 4; No. 76 of 2000 s. 4.]*

### 1. Short title and commencement

This Act may be cited as the *Builders' Registration Act 1939*, and shall come into operation on a day to be fixed by proclamation<sup>1</sup>.

### 2. Interpretation

In this Act, unless inconsistent with the context of subject matter —

**“Board”** means the Builders' Registration Board of Western Australia constituted under this Act;

**“builder”** means a person trading as a builder;

**“building”** means any building of a permanent nature used or intended to be used for residential, professional, manufacturing, trading, commercial, hospital, institutional, assemblage, or public purposes, but does not include a farm building, and the term used as an abstract noun means the erection or structural alteration of any such building;

**“building licence”** means a building licence issued under Part XV of the *Local Government (Miscellaneous Provisions) Act 1960*;

**“company”** means a company or a registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, other than a registered body specified, or of a kind specified, in the regulations;

**“Disputes Tribunal”** means the Building Disputes Tribunal established by section 26;

**“farm building”** means any building of a permanent nature, other than a building used or intended to be used for residential purposes, that is —

- (a) constructed or to be constructed, on land used primarily for agricultural purposes; and
- (b) itself used or intended to be used for agricultural purposes;

**“legal practitioner”** means a legal practitioner as defined in the *Legal Practice Act 2003*;

**“person trading as a builder”** means any person who, or any partnership or any company or other body corporate that, is engaged in constructing, altering, repairing, adding to or improving the walls and structural parts of buildings for a fixed sum, percentage, or valuable consideration, or reward other than wages;

**“Minister”** means the Minister for the time being charged with the administration of this Act;

**“register”** means the register of builders under this Act;

**“registrar”** means registrar appointed under this Act;

**“supervisor”** means a person, not being a builder, who oversees the execution or performance of building work, but does not include a foreman, leading hand or other person employed in a like or less responsible capacity in the building industry.

[Section 2 amended by No. 43 of 1940 s. 2; No. 54 of 1961 s. 3; No. 29 of 1966 s. 3; No. 41 of 1968 s. 3; No. 91 of 1979 s. 3; No. 10 of 1982 s. 28; No. 60 of 1991 s. 5; No. 14 of 1996 s. 4; No. 76 of 2000 s. 5; No. 10 of 2001 s. 29; No. 65 of 2003 s. 15(2).]

### 3. Area within which this Act applies

- (1) Sections 4 to 24 apply within any area described in the Schedule.
- (1a) Notwithstanding subsection (1) —
  - (a) section 4B applies throughout the State; and
  - (b) 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* section 3(1).
- (2) The Governor may make regulations amending the Schedule or deleting the Schedule and substituting a new Schedule.
- (3) Regulations made under subsection (2) may provide that this Act, as amended by those regulations, may be cited in the manner specified in those regulations.
- (4) Notwithstanding any increase in the area to which this Act applies effected by regulations made under subsection (2), 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.
- (5) Notwithstanding the repeal of the Second Schedule to the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*, by the *Metropolitan Water Supply, Sewerage, and Drainage Act Amendment Act 1967* (in this subsection called "**the amending Act**") and the provisions of this section 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 the *Builders' Registration Act Amendment Act (No. 3) 1979*<sup>1</sup> —

- (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 this Act to have been the area within which this 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) in purported exercise of any power conferred by this Act shall not be deemed to be invalid by reason only of that repeal and those provisions.
- (6) Notwithstanding the coming into operation of the *Builders' Registration Act Amendment Act (No. 3) 1979*<sup>1</sup>, any act or thing lawfully commenced, and not discontinued or abandoned, before that coming into operation 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 the *Builders' Registration Act Amendment Act (No. 3) 1979*<sup>1</sup>, had not come into operation.

*[Section 3 inserted by No. 91 of 1979 s. 4; amended by No. 39 of 1983 s. 3; No. 60 of 1991 s. 6(1); No. 69 of 2006 s. 4.]*

**4. Prohibition against unregistered builders carrying on business**

- (1) Subject to this section, a person who is not registered under this Act shall not —
  - (A)(a) construct either for himself or any other person, any building for the purpose of the immediate sale thereof;
  - (aa) construct for himself any building other than a dwelling house or a building comprising 2 dwellings on ground level, each being complete and self-contained, whether

- or not the building is so designed as to give an external appearance of a single dwelling;
- (b) enter into any contract or engagement to construct any building, or build any building for another in pursuance of any contract or engagement;
  - (c) be entitled to recover in any court any fee or charge under any such contract or engagement;
  - (d) hold himself out as trading as a registered builder, or, as the case may be, a journeyman builder, unless —
    - (i) the total fee or charge payable in respect of the carrying out of the same does not exceed \$6 000 or such other amount as may be prescribed by regulations made under section 24; or
    - (ii) under subsection (2) he is a person exempted from the necessity of obtaining registration;
- (B) assume, take or use (either alone or in combination with any other word, letter or device) the name or title of “registered builder” or, as the case may be, “journeyman builder”, or any name, title or description calculated to lead others to believe he is so registered, or by words or conduct hold himself out as being so registered.
- (1aa) A person who contravenes subsection (1) commits an offence and is liable to a penalty of \$10 000 and a daily penalty of \$250 for a continuing offence.
- (1a) Notwithstanding anything in subsection (1), the Board may, on the application in writing in the form approved by the Board of a person who is not registered under this Act, authorise in writing that person to construct for himself a building —
- (a) which is specified in that authority; and
  - (b) which is not a dwelling house or a building referred to in subsection (1)(A)(aa).

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- (1b) In subsections (1) and (1a) —
- “**construct**” includes add to, alter, improve, renovate and repair.
- (2) The persons exempted from the necessity of obtaining registration under this Act as mentioned in subsection (1)(A)(ii) are —
- (a) any person who is —
- [(i) and (ii) deleted]*
- (iii) an officer or servant of the Crown or of any Crown instrumentality, or of any local government, in so far as he directs or supervises the carrying out of any contract or engagement in the performance of his duties as such officer or servant;
- [(b) deleted]*
- (c) any local government.
- (3) The provisions of this section apply notwithstanding that a number of distinct contracts or engagements to perform work or render services are entered into in connection with the same building by the same person, where —
- (i) the moneys payable in respect of the performance of the contracts or engagements exceed \$6 000 or such other amount as may be prescribed by regulations made under section 24, in the aggregate but some or all of such contracts or engagements taken severally do not exceed that sum; or
- (ii) in any case where the Board is satisfied that they are substantially in respect of the one undertaking or that they were entered into with a view to evading the provisions of this Act.

*[Section 4 amended by No. 43 of 1940 s. 3; No. 24 of 1948 s. 3; No. 44 of 1953 s. 2; No. 63 of 1956 s. 2; No. 61 of 1959 s. 3; No. 54 of 1961 s. 4; No. 29 of 1966 s. 4; No. 97 of 1975 s. 3; No. 91 of 1979 s. 5; No. 93 of 1990 s. 4; No. 14 of 1996 s. 4; No. 76 of 2000 s. 6.]*



**4A. Local governments not to issue building permits to unregistered persons**

- (1) It shall be unlawful for any local government to issue to any person who is not registered under this Act a building licence to commence or proceed with any building on any block of ground in any area within which this Act applies —
- (a) unless the total fee or charge payable in respect of the carrying out of such building does not exceed \$6 000 or such other amount as may be prescribed by regulations made under section 24; or
  - (b) unless the person to whom such building licence is issued is a person exempted under section 4(2) from the necessity of obtaining registration; or
  - (c) unless the person to whom such a building licence is issued is proposing to construct the building to which the building licence relates for himself and not for the purpose of the immediate sale thereof, and —
    - (i) the building to which the building licence relates is a dwelling house or a building comprising 2 dwellings on ground level, each being complete and self-contained, whether or not the building is so designed as to give an external appearance of one dwelling or is a building which that person is authorised under section 4(1a) to construct;
    - (ii) the person to whom the building licence is issued has satisfied the local government that he has furnished the Board with a statutory declaration verifying the fact that he has not, within the last preceding 6 years, obtained from that or any other local government the issue of any other building licence pursuant to this paragraph; and
    - (iii) the person to whom the building licence is issued has certified to the local government in the

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prescribed manner that the person has paid to the Board such fee as is determined by the Minister.

- (1a) Subject to subsection (4), the Minister may order that, in relation to any particular application by a person for a building licence, subsection (1)(c)(ii) shall have effect as if instead of the period of 6 years referred to therein the subparagraph contained a reference to a lesser number of years specified in the order by the Minister.
- (1b) It shall be unlawful for any local government to issue to any person who is a journeyman builder under section 10A a building licence to commence or proceed with any building on any block of ground in any area within which this Act applies, if the cost of the work including the cost of supplying the necessary materials and rendering the necessary services is reasonably likely when the work is commenced to exceed \$30 000 whether that person contracts or engages to execute the work under one or more than one contract, unless subsection (1)(c) applies to that person.
- (2) A person who for the purposes of obtaining or attempting to obtain a building licence from a local government makes a representation or statement that is false in a material particular in relation to —
- (a) the value of a building to be erected under the building licence;
  - (b) the fee or charge payable in respect of the carrying out of the building work;
  - (c) any registration or qualifications held under this Act; or
  - (d) any exemption from the provisions of this Act,
- commits an offence.
- Penalty: \$10 000.
- (2a) A person who is constructing a building pursuant to a building licence issued to him in accordance with subsection (1)(c) shall

affix or erect on the site of the building a sign of reasonable dimensions showing in easily legible letters and figures —

- (a) his name; and
- (b) the number of the building licence.

Penalty: \$100.

- (3) Without affecting the provisions of section 4, a person who —
- (a) is not registered as a builder under this Act; and
  - (b) has constructed a building pursuant to a building licence lawfully issued to him under subsection (1)(c),

shall not without having first obtained the consent in writing of the Minister under subsection (4), sell or otherwise dispose, within 3 years of the date of issue to him of the building licence, of the land on which the building was constructed.

Penalty: \$10 000.

- (4) An application for an order under subsection (1a) or a consent under subsection (3) shall be made in writing to the Minister, and before he makes an order or gives a consent the Minister shall be satisfied that —
- (a) the application arises from a change in the circumstances of the applicant and not from an attempt on the part of the applicant to defeat the purposes of this section; and
  - (b) the applicant would suffer hardship if the application were refused.
- (5) The Minister may by writing signed by him delegate to the Commissioner as defined in section 4(1) of the *Consumer Affairs Act 1971* the functions conferred on the Minister by subsections (1a), (3) and (4).

*[Section 4A inserted by No. 24 of 1948 s. 4; amended by No. 44 of 1953 s. 3; No. 63 of 1956 s. 3; No. 54 of 1961 s. 5; No. 29 of 1966 s. 5; No. 41 of 1968 s. 4; No. 97 of 1975 s. 4; No. 91 of 1979 s. 6; No. 39 of 1983 s. 4; No. 8 of 1986 s. 4; No. 93 of 1990 s. 5; No. 14*

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*of 1996 s. 4; No. 57 of 1997 s. 39(10); No. 76 of 2000 s. 7; No. 28 of 2006 s. 52.]*

**4B. Building licence fee**

- (1) A person to whom a building licence is issued is to pay to the local government by which the licence is issued at the time of issue such fee as is determined by the Minister.

(1a) A person to whom a building approval certificate is issued under section 374AA of the *Local Government (Miscellaneous Provisions) Act 1960* must pay to the local government by which the certificate is issued (at the time of issue) such fee as is determined by the Minister.

(1b) Subsection (1a) applies if and only if the certificate is issued in respect of building work for which no building licence was issued.

- (2) A local government shall within the prescribed period after the end of the month in which a building licence ~~referred to in subsection (1)~~ or building approval certificate was issued —
- (a) furnish to the Board the prescribed particulars in relation to that licence or certificate; and
  - (b) remit to the Board the fee referred to in subsection (1) or (1a) less any amount the Board has agreed to pay to the local government for collection of the fee.

*[Section 4B inserted by No. 76 of 2000 s. 88; amended by No. 11 of 2007 s. 14.]*

**5. Constitution of Builders' Registration Board of Western Australia**

- (1) A body corporate is hereby constituted under the name of the Builders' Registration Board of Western Australia.
- (2) The Board shall have perpetual succession and a common seal, and shall be capable of suing and being sued.

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*[Section 5 amended by No. 15 of 1944 s. 2; No. 44 of 1953 s. 4; No. 61 of 1959 s. 4; No. 54 of 1961 s. 6; No. 41 of 1968 s. 5; No. 39 of 1983 s. 5.]*

**5A. Appointment of Board members**

- (1) The Board shall consist of a chairperson and 6 other members, appointed by the Governor in accordance with this section.
- (2) The chairperson shall be a legal practitioner nominated as chairperson by the Minister.
- (3) As to the other 6 members —
  - (a) one shall be a person nominated by the Minister whom the Minister considers to be qualified to represent the interests of consumers;
  - (aa) one shall be a person nominated by the Minister whom the Minister considers to be qualified to represent the interests of registered builders trading in an area within which this Act applies, other than the metropolitan area as described in item 1 of the Schedule; and
  - (b) 4 shall be persons nominated by the Minister, one such nomination being from each of the respective panels of names submitted by the following —
    - (i) The Royal Australian Institute of Architects (W.A. Chapter);
    - (ii) the Master Builders' Association of Western Australia, the panel submitted by which shall comprise only persons registered under this Act;
    - (iii) The Building Trades Association of Unions of Western Australia (Association of Workers); and
    - (iv) the Housing Industry Association Western Australian Division.
- (4) Whenever it is necessary for the purpose of a nomination under subsection (3)(b) or section 5B(2) or 5C(3), the Minister shall request a body referred to in subsection (3)(b) to submit a panel

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of 3 names to him for that purpose within a time specified by the Minister; and if the body fails to do so within the time so specified the Minister may nominate —

- (a) in the case of a failure to do so by the Master Builders' Association of Western Australia, a person registered under this Act; and
- (b) in any other case, such person as he thinks fit,

for the purposes of this section or of section 5B(2) or 5C(3) as the case may be.

- (5) Subject to section 5B, a member of the Board shall hold office for such term, not exceeding 3 years, as is specified in his instrument of appointment, but may from time to time be reappointed.

*[Section 5A inserted by No. 39 of 1983 s. 6; amended by No. 8 of 1986 s. 5; No. 60 of 1991 s. 7 and 8; No. 65 of 2003 s. 15(3).]*

**5AA. Further provisions as to chairperson**

- (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 Part 3 of the *Public Sector Management Act 1994*, that person shall —
  - (a) continue to retain existing and accruing rights, including rights under the *Superannuation and Family Benefits Act 1938*<sup>2</sup>, as if the person's service as chairperson were service as an officer under Part 3 of the *Public Sector Management Act 1994*; 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 to be appointed to an office under Part 3 of the *Public Sector Management Act 1994* not lower in status than the office that the person occupied immediately before being appointed as the chairperson.

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*[Section 5AA inserted by No. 60 of 1991 s. 9; amended by No. 32 of 1994 s. 3(2); No. 42 of 1997 s. 8; No. 43 of 2000 s. 33(1).]*

**5B. Vacancies**

- (1) The office of a member of the Board shall become vacant if the member —
- (a) dies;
  - (b) resigns his office by writing under his hand addressed to the Minister;
  - (c) becomes an undischarged bankrupt or has his affairs under liquidation by arrangement with his creditors;
  - (d) is convicted of an indictable offence;
  - (e) is a person in respect of whom an administration order is in force under Part 6 of the *Guardianship and Administration Act 1990*; or
  - (f) is absent without leave of the Board from 3 consecutive meetings of the Board,

and the Governor may thereupon, in accordance with subsection (2), appoint a person to be a member of the Board in place of the member whose office has become vacant, and any person so appointed shall hold office for the unexpired part of the term of office of that lastmentioned member.

- (2) An appointment under subsection (1) shall be made on the nomination of the Minister and, subject to section 5A(4), the nominee shall, except in the case of a vacancy in the office of chairperson or of the members referred to in subsection (3)(a) and (aa) of that section, be selected from a panel submitted to the Minister, in accordance with subsection (3)(b) of that section, by the body from whose panel the member whose office has become vacant was selected.
- (3) A person may only be appointed as chairperson under this section if he or she is a legal practitioner.

**s. 5C**

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*[Section 5B inserted as section 5A by No. 41 of 1968 s. 6; renumbered as 5B and amended by No. 39 of 1983 s. 7; No. 8 of 1986 s. 6; No. 24 of 1990 s. 123; No. 60 of 1991 s. 7 and 10; No. 76 of 2000 s. 9; No. 65 of 2003 s. 15(4).]*

**5C. Deputy of chairperson and members**

- (1) The Governor shall appoint a member to be deputy chairperson of the Board, and during any vacancy in the office of chairperson, or if he is unable to act by reason of sickness, absence or other cause, the deputy chairperson shall have and perform the powers, functions and duties of the chairperson.
- (1a) The deputy chairperson of the Board —
  - (a) need not be a legal practitioner; and
  - (b) notwithstanding subsection (1), does not have the powers, functions and duties of the chairperson under section 27.
- (2) The Governor may, in accordance with subsection (3), appoint a deputy for each member of the Board (other than the chairperson) 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) An appointment under subsection (2) shall be made on the nomination of the Minister, and, subject to section 5A(4), the nominee shall, except in the case of the members referred to in subsection (3)(a) and (aa) of that section, be selected from a panel submitted to the Minister, in accordance with subsection (3)(b) of that section, by the body from whose panel was selected the member for whom the nominee is to be deputy.

*[Section 5C inserted by No. 39 of 1983 s. 8; amended by No. 8 of 1986 s. 7; No. 60 of 1991 s. 7 and 11; No. 65 of 2003 s. 15(5).]*



**6. Board proceedings**

- (1) No act or proceeding of the Board shall be invalidated in consequence only of there being any vacancy in the number of members of the Board, or by reason of any defect in the appointment of any person who has acted as a member.
- (2) At any meeting of the Board the chairperson, or, in his absence, the deputy chairperson or, in the absence of both of them, any member elected to act as chairperson of such meeting by the members present, shall preside.
- (2a) At any meeting of the Board each member present and eligible to vote may cast a deliberative vote on any question and the question is to be decided by the majority, but if there is an equality of votes on any question, the question is to be taken to have been decided in the negative.
- (3) Four members of the Board shall be a quorum for the conduct of the business of the Board, and a quorum of the Board may lawfully exercise the powers vested in the Board, notwithstanding any vacancy or vacancies in its membership.
- (4) A member of the Board shall be paid, out of the funds of the Board, such remuneration and travelling and other allowances as are determined in his case by the Minister on the recommendation of the Minister for Public Sector Management.
- (5) The Board shall hold its first meeting on such day and such time and place as the Minister appoints, and on such day the Board shall be deemed and taken to be duly constituted.

*[Section 6 amended by No. 44 of 1953 s. 5; No. 63 of 1956 s. 4; No. 61 of 1959 s. 5; No. 33 of 1965 s. 2; No. 39 of 1983 s. 9; No. 8 of 1986 s. 8; No. 60 of 1991 s. 7; No. 76 of 2000 s. 10; No. 55 of 2004 s. 74.]*

**7. Appointment of officers**

- (1) The Board may appoint a registrar and such clerks and other employees as are necessary for the carrying out of the duties and functions of the Board and the Disputes Tribunal, and may pay to any person so appointed such salary or remuneration as the Board thinks fit.
- (2) The registrar shall be charged with the custody of the register.  
*[Section 7 amended by No. 60 of 1991 s. 12; No. 76 of 2000 s. 42.]*

**8. Duties and powers of Board**

- (1) The functions of the Board shall be —
  - (a) to determine the course of training (including practical experience in the work of a builder) and the examination mentioned in section 10(1)(b)(iv)(I);
  - (b) to compile and keep a register containing the names, addresses, qualifications, and other prescribed particulars of persons who are admitted to the register pursuant to this Act, and to publish a copy of the same, and of any supplementary list pursuant to this Act;
  - (c) to issue certificates of registration;
  - [(d), (e) deleted]*
  - (f) to take proceedings for offences against this Act;
  - (fa) to carry out building information and educational activities; and
  - (g) generally, to carry out the provisions of this Act.
- (2) The Board shall have such powers as are reasonably necessary or expedient for the purpose of enabling it to carry out its functions, and in particular may for that purpose —
  - (a) acquire, improve, and dispose of real and personal property; and

- (b) borrow money and charge all or any part of its property as security therefor.

*[Section 8 amended by No. 44 of 1953 s. 6; No. 39 of 1983 s. 10; No. 76 of 2000 s. 11; No. 55 of 2004 s. 75.]*

**8A. Indemnity against liability**

No liability attaches to the Board or a member or employee of the Board for any act done in good faith in the performance or purported performance of the respective functions of the Board, member or employee under this Act.

*[Section 8A inserted by No. 93 of 1990 s. 6.]*

**8B. Corporate plan**

- (1) The Board must in each financial year prepare, and submit to the Minister for approval, a corporate plan for that financial year.
- (2) Each corporate plan is to be submitted for approval not later than 2 months before the start of the next financial year, commencing with the 2001/2002 financial year.
- (3) A corporate plan is to include —
  - (a) a statement of the objectives of the Board;
  - (b) a statement of the policies and strategies that the Board intends to adopt in order to achieve the Board's objectives;
  - (c) an estimate of the Board's income and expenditure for the relevant financial year;
  - (d) the activities and improvements that the Board proposes to carry out; and
  - (e) the resources that the Board proposes to allocate to those activities and improvements.

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- (4) The corporate plan is to set out separate statements, estimates and details under subsection (3) for —
  - (a) the administrative functions of the Board; and
  - (b) the management by the Board of the disputes resolution procedures under this Act.
- (5) The Board may, with the approval of the Minister, revise a corporate plan at any time.

*[Section 8B inserted by No. 76 of 2000 s. 12.]*

**8C. Board to comply with corporate plan**

From 1 July 2001, the Board is to ensure that, to the extent that it is practicable to do so, the performance of its functions and the exercise of its powers are consistent with, and designed to give effect to, the current corporate plan.

*[Section 8C inserted by No. 76 of 2000 s. 12.]*

**9. Register of builders**

- (1) The Board shall keep in the prescribed form a register of persons registered under sections 9A, 10 and 10A to be known as the register of builders.
- (2) The Board shall include in each registration made under section 9A or 10 the qualification for registration of the person being registered.
- (3) The Board shall cause the register to be progressively amended in accordance with any list of amendments to the register approved by the Board at a meeting of the Board.
- (4) A revised register incorporating all amendments to 30 June last shall be prepared and brought into use by the Board by 1 August each year.
- (5) The register is to be open for inspection by any person without fee during the ordinary hours of business of the Board.

- (6) A person may, on payment of the prescribed fee, if any, obtain from the registrar —
- (a) a list of the names and addresses of all persons registered in the register;
  - (b) a certificate as to the registration or non-registration of a named person on a specified date or during a specified period.
- (7) A certificate purporting to be signed by the registrar certifying that a person was or was not registered under this Act on a specified date or during a specified period is admissible in any proceedings as evidence of the matters stated in the certificate.

*[Section 9 inserted by No. 93 of 1990 s. 7.]*

**9AA. Notification of change of address**

If there is a change in the residential or business address of a person registered under this Act, as it appears in the register, the person must notify the Board in writing of the new address not later than 14 days after the change occurs.

Penalty: \$1 000.

*[Section 9AA inserted by No. 76 of 2000 s. 13.]*

**9A. Registration of architects and engineers without necessity of completing course or passing examinations**

- (1) A person who is —
- (a) a member of The Royal Australian Institute of Architects (W.A. Chapter);
  - (b) registered under the *Architects Act 1921*;
  - (c) a member of The Institution of Engineers, Australia, Western Australia Division; or
  - (d) a member of The Australasian Institute of Mining and Metallurgy,

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and who applies to be registered under the Act shall, subject to subsection (2), be entitled to be so registered if and when —

- (e) he pays the prescribed fee for such registration; and
  - (f) he satisfies the Board that he has had 5 years' experience in supervising building construction or in assisting in the supervision of building construction.
- (2) Notwithstanding subsection (1), the Board may require an applicant under that subsection to satisfy it that he has sufficient material and financial resources available to enable him to meet his financial obligations as and when they become due, and may refuse to register an applicant who fails to so satisfy it.
- (3) Notwithstanding subsection (1), the Board is not required to register as a registered builder a person who is an ineligible person under section 13(1ba).

*[Section 9A inserted by No. 61 of 1959 s. 6; amended by No. 54 of 1961 s. 8; No. 97 of 1975 s. 5; No. 39 of 1983 s. 11; No. 14 of 1984 s. 3; No. 73 of 1994 s. 4; No. 76 of 2000 s. 14.]*

**10. Who may be registered**

- (1) Any person, not being a company or any other body corporate, who applies to be registered under this section as a registered builder shall, subject to subsections (2a) and (2b), be entitled to be so registered if and when —
- (a) he has paid the prescribed fees for such registration; and
  - (b) he has satisfied the Board that he —
    - (i) has attained the age of 21 years; and
    - [(ii) deleted]*
    - (iii) is a person of good character; and
    - (iv)(I) has completed the prescribed course of training, including practical experience for a period of at least 7 years, or for periods aggregating at least 7 years, in the work of a builder, or as a

supervisor of building work, and has passed the examination prescribed for applicants for registration as registered builders;

- (II) although not having complied with the requirements of item (I) has nevertheless had such experience in the work of a builder elsewhere than in the State, as to render him in the opinion of the Board, arrived at in such manner as the Board thinks fit, competent to carry out building;
- (III) although not having complied with the requirements of item (I) or item (II) has nevertheless had such experience in the work of a builder within the State, but outside the area to which this Act applied at the time he gained such experience, as to render him in the opinion of the Board, arrived at in such manner as the Board thinks fit, competent to carry out building;
- (IV) although not having complied with the requirements of item (I), (II) or (III) has nevertheless had at least 5 years' practical experience in the work of building construction and has obtained corporate membership of the Australian Institute of Building; or
- (V) although not having complied with the requirements of item (I), (II), (III) or (IV) has nevertheless had 5 years' experience in the work of building construction as a manager or supervisor and satisfies the Board that he is fit and competent to carry out building work,

but for the purpose of this subsection —

- (c) a person who relies in his application on the provisions of paragraph (b)(iv)(II) shall not be entitled to be so registered unless he satisfies the Board that he was not, on

the date of the coming into operation of the *Builders' Registration Act Amendment Act 1961*<sup>1</sup>, a resident of the State.

- (2) Any partnership or any company or other body corporate which applies to be registered under this Act shall, subject to subsections (2a) and (2c), be entitled to be so registered if and when —
- (a) it has paid the prescribed fees for such registration; and
  - (b) it has satisfied the Board that —
    - (i) it is duly authorised to engage in the business of trading as a builder; and
    - (ii) there is already registered under this Act at least one partner of the partnership or at least one director of the company or at least one member of the board of management of the body corporate, or a person employed in such a manner and with such duties and responsibilities by the partnership or the company or the body corporate to manage and supervise the building work undertaken by the partnership or the company or the body corporate as in the opinion of the Board will ensure the proper management and supervision of the building work.
- (2a) Notwithstanding subsection (1) or (2), the Board may require an applicant under that subsection to satisfy it that the applicant has sufficient material and financial resources available to enable the applicant to meet his or its financial obligations as and when they become due, and may refuse to register an applicant who fails to so satisfy it.
- (2b) Notwithstanding subsection (1), the Board is not required to register as a registered builder a natural person who is an ineligible person under section 13(1ba).
- (2c) Notwithstanding subsection (2), the Board may require an applicant under that subsection to satisfy it that no person who



is a partner, director, member of the board of management or otherwise involved in the management of the partnership, company or body corporate, as the case requires, is an ineligible person under section 13(1ba), and may refuse to register an applicant that fails to so satisfy it.

- (3) Notwithstanding anything to the contrary contained in this Act, the registration under this Act of a partnership or a company or other body corporate pursuant to subsection (2) shall continue and have effect only while at least one partner of the partnership or at least one director of the company or at least one member of the board of management of the body corporate, or a person employed as provided by subsection (2) by the partnership or the company or the body corporate aforesaid to manage and supervise the building work undertaken by it continues to be registered under this Act.

- (3aa) When a partner, a director, or a member of a board of management, whose registration has been used by a partnership, company or body corporate to satisfy the Board under subsection (2)(b)(ii) that it may manage and supervise the building work undertaken by the partnership, company or body corporate, ceases to carry out that management and supervisory function —
- (a) the partnership, company or body corporate; and
  - (b) the partner, the director, or the member of that board of management,

must notify the Board in writing of the cessation of that management and supervisory function not later than 14 days after it occurs.

Penalty: \$5 000.

- (3ab) When a person who was employed as provided by subsection (2) by a partnership, company or body corporate to manage and supervise the building work undertaken by the partnership, company or body corporate ceases to be so employed —
- (a) the partnership, company or body corporate; and
  - (b) the person,

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must notify the Board in writing of the cessation of employment not later than 14 days after it occurs.

Penalty: \$5 000.

- (3a) Notwithstanding item (III) of subsection (1)(b)(iv), the Board may attach such prescribed conditions as it thinks fit to the registration of a person who is qualified for registration under that item.
- (4) Every registered builder shall affix or erect on all works under his control a sign of reasonable dimensions showing in easily legible letters and figures his name and registered number.

Penalty: \$250.

*[Section 10 inserted by No. 43 of 1940 s. 4; amended by No. 14 of 1945 s. 2; No. 24 of 1948 s. 5; No. 44 of 1953 s. 7; No. 63 of 1956 s. 5; No. 54 of 1961 s. 9; No. 29 of 1966 s. 6; No. 41 of 1968 s. 7; No. 97 of 1975 s. 6; No. 91 of 1979 s. 7; No. 14 of 1984 s. 4; No. 8 of 1986 s. 9; No. 93 of 1990 s. 8; No. 76 of 2000 s. 15.]*

**10A. Conditional registration**

- (1) On and after the coming into operation of the *Builders' Registration Act Amendment Act 1961*<sup>1</sup>, no person shall be registered or continue to be registered as a registered builder — class B under the provisions of this section as enacted prior to the coming into operation of that Act.
- (2) Every person who immediately prior to the coming into operation of the *Builders' Registration Act Amendment Act 1961*<sup>1</sup>, was registered as a registered builder — class B under the provisions of this section as enacted prior to the coming into operation of that Act shall be and be deemed to be a journeyman builder, and unless he becomes registered as a registered builder under section 10, shall continue to be a journeyman builder under this section so long as in each year, the first of which shall commence on 1 January 1962, he —

- (a) pays the annual registration fee prescribed by section 22(3); and
  - (b) complies with the requirements of this Act in general so far as they relate to journeyman builders, and of subsections (3) and (4) in particular.
- (2a) Any person who at the time of the coming into operation of the *Builders' Registration Act Amendment Act 1961*<sup>1</sup>, has under the provisions of this section as enacted prior to the coming into operation of that Act —
- (a) passed the examination prescribed for applicants for registration as builders — class B, but is not registered under those provisions as a builder — class B; or
  - (b) taken in the month of November 1961, the examination prescribed for applicants for registration as builders — class B but the results of such examination are not yet known,

shall, if and when that person has completed the course of training prescribed for applicants for registration as builders — class B under those provisions, be and be deemed to be a person to whom the provisions of subsection (2) apply, subject however in the case of a person referred to in paragraph (b), to his passing the examination therein mentioned or any supplementary examinations granted in respect of that examination.

- (3) The conditions of registration under this section are that the person registered —
- (a) shall not, unless he does so for himself and not for the purpose of the immediate sale of the building, execute, or contract or engage to execute, in the area to which this Act applies the erection, construction, alteration, repair, addition to, or improvement of, a building if the cost of executing the work, including the cost of supplying the necessary materials and rendering the necessary services, is reasonably likely when the work is

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commenced to exceed \$30 000, whether he contracts or engages to execute the work under one or more than one contract or engagement; and

(b) shall comply with the requirements of notices served upon him under subsection (4).

(4)(a) By notice in writing served upon a person registered under this section, the Board may, from time to time, require him to supply to the Board within 7 days of the service of the notice upon him or such longer time as the Board specifies in the notice or allows, such particulars, relating to a contract or engagement entered into, or to work executed or being executed, by him in connection with a building in the area to which this Act applies, as the Board specifies in the notice.

(b) By the same or a subsequent notice the Board may require the person registered under this subsection to verify by statutory declaration all or any of the particulars he is required to supply under this subsection.

(c) A person who, having been required under this subsection to make a statutory declaration, makes in the declaration a statement which in any material particular is to his knowledge, false, commits an offence.

Penalty: \$400 or 12 months' imprisonment.

*[Section 10A inserted by No. 44 of 1953 s. 8; amended by No. 63 of 1956 s. 6; No. 61 of 1959 s. 7; No. 54 of 1961 s. 10; No. 29 of 1966 s. 7; No. 97 of 1975 s. 7.]*

**10AA. Management and supervision of building work**

Where any building work is carried out by a natural person who is registered under this Act that person shall —

- (a) personally manage and supervise the building work; or
- (b) ensure that the building work is managed and supervised.

Penalty: \$250.

*[Section 10AA inserted by No. 76 of 2000 s. 16.]*

**10B. Building work by partnership to be under management and supervision of registered builder**

Where any building work is carried out by a partnership, the partners therein shall cause —

- (a) the building work to be managed and supervised by one of the partners who is registered under this Act or by an employee of the partners who is so registered; and
- (b) the name and registered number of that partner or employee to appear —
  - (i) in all advertisements, if any, published by or on behalf of the partnership in respect of the building work; and
  - (ii) in any sign affixed or erected on the building work pursuant to section 10(4) or otherwise.

Penalty: \$250.

*[Section 10B inserted by No. 61 of 1959 s. 8; amended by No. 54 of 1961 s. 11; No. 29 of 1966 s. 8; No. 41 of 1968 s. 8; No. 97 of 1975 s. 8; No. 91 of 1979 s. 8; No. 93 of 1990 s. 9.]*

**10C. Details of person supervising and managing building work constructed by company to be supplied in advertisements and signs on building site**

Where any building work is carried out by a company or body corporate, the company or body corporate shall cause the building work to be managed and supervised by a director of the company or member of the board of management of the body corporate, as the case may be, who is registered under this Act or by an employee who is so registered and the company or body corporate shall cause the name and registered number of that person to appear —

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- (a) in all advertisements, if any, published by or on behalf of the company or body corporate in respect of the building work; and
- (b) in any sign affixed or erected on the building work pursuant to section 10(4) or otherwise.

Penalty: \$250.

*[Section 10C inserted by No. 61 of 1959 s. 8; amended by No. 54 of 1961 s. 12; No. 29 of 1966 s. 9; No. 41 of 1968 s. 9; No. 97 of 1975 s. 9; No. 91 of 1979 s. 9; No. 93 of 1990 s. 10.]*

**10CA. Standard of management and supervision**

The requirement for the management and supervision of any building work prescribed by section 10AA, section 10B and section 10C shall not have been complied with unless it can be shown that the management and supervision was sufficient to ensure that the whole of the building work was carried out in a proficient and workmanlike manner.

*[Section 10CA inserted by No. 97 of 1975 s. 10; amended by No. 76 of 2000 s. 17.]*

**10D. Sections 10AA, 10B and 10C not to derogate from other provisions of this Act**

The penalties imposed by the provisions of sections 10AA, 10B and 10C are in addition to and not in derogation of any penalty, suspension or cancellation of registration imposed under any other provisions of this Act.

*[Section 10D inserted by No. 61 of 1959 s. 8; amended by No. 76 of 2000 s. 18; No. 55 of 2004 s. 76.]*

*[11. Repealed by No. 14 of 1984 s. 5.]*

**12. Course of training and examinations to be prescribed by the Board**

- (1) The course of training including practical experience in the work of a builder and the examination mentioned in section 10(1)(b)(iv)(I) shall be prescribed by the Board, who shall conduct or supervise the conduct of such examinations at such times and places as the Board may appoint.
- (2) All costs and expenses connected with or incidental to the conduct of such examinations shall be paid by the Board.

*[Section 12 amended by No. 44 of 1953 s. 10.]*

**12A. Order to remedy unsatisfactory building work**

- (1) Where on complaint being made to it by any person, including the Board, the Disputes Tribunal is satisfied that any building work has not been carried out in a proper and workmanlike manner by reason that the building work is faulty or unsatisfactory the Disputes Tribunal may by order in writing served on the person who carried out the building work order him to —
  - (a) remedy the faulty or unsatisfactory building work within such reasonable time as is specified in the order; or
  - (b) pay to the owner of the building such costs of remedying the building work that is faulty or unsatisfactory as the Disputes Tribunal considers reasonable in which case any costs so ordered by the Disputes Tribunal constitute a debt to the owner and are recoverable by him in a court of competent jurisdiction.
- (1a) Where, on complaint being made to it by a person for whom building work has been carried out, the Disputes Tribunal is satisfied that in some respect (other than its being faulty or unsatisfactory) the building work has not been carried out in a proper and workmanlike manner the Disputes Tribunal may, having regard to the extent of the failure to carry out the building work in a proper and workmanlike manner in relation

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to the whole of the building work, by order in writing served on the person who carried out the building work order him to —

- (a) remedy the building work that has not been carried out in a proper and workmanlike manner within such reasonable time as is specified in the order; or
- (b) pay to the person for whom the building work was carried out —
  - (i) such costs of remedying the building work that has not been carried out in a proper and workmanlike manner as the Disputes Tribunal considers is reasonable; or
  - (ii) such sum of money as the Disputes Tribunal considers reasonable to compensate him for the failure to carry out the building work in a proper and workmanlike manner,

and any costs or sum of money so ordered to be paid constitutes a debt due to the person to whom it is so ordered to be paid and is recoverable by him in a court of competent jurisdiction.

- (1aa) The Disputes Tribunal shall not have power to make an order under this section in respect of any building work following a complaint in respect of that work, unless such complaint is made before the expiration of 6 years from the time when the building work was completed; and for the purposes of this subsection, building work is completed when the building to which the work relates becomes fit for occupation in a free and uninterrupted manner.
- (1b) The provisions of subsections (1) and (1a) apply to and in relation to building work carried out by any person, whether a builder or not, and whether registered under this Act or not.
- (1c) Nothing in section 4(1)(A) precludes a person who is not registered as a builder under this Act from carrying out an order of the Disputes Tribunal made pursuant to subsection (1)(a) or (1a)(a).



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- (2) A complaint under subsection (1) or (1a) cannot be made before the complainant has given to the other party a preliminary notice under subsection (3).
- (3) A preliminary notice is a notice in writing in the prescribed form setting out the matters of which the intending complainant complains and calling on the other party to —
- (a) rectify them; or
  - (b) otherwise attempt to settle any matters that are in dispute.
- (3a) A copy of the preliminary notice is to be given to the Disputes Tribunal at the time a complaint is made under subsection (1) or (1a).
- (4) A person shall not, without reasonable excuse, fail to comply with an order of the Disputes Tribunal under this section.  
Penalty: \$10 000.
- (4a) If the Disputes Tribunal is satisfied that an order to remedy building work —
- (a) made by the Disputes Tribunal under subsection (1)(a) or (1a)(a);
  - [(b) deleted]*
- 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 subsection (4), the Disputes Tribunal may —
- (c) revoke the order in relation to that building work or the part in question; and
  - (d) make an order under subsection (1)(b) or (1a)(b), as the case may be, in relation thereto.
- (4b) This section shall apply to, and in relation to, an order referred to in subsection (4a)(d) as if it were an order made by the Disputes Tribunal in the first instance.

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- (4c) The revocation of an order under subsection (4a)(c) shall not affect anything done under the order, or a punishment imposed under subsection (4), before the revocation.
- (5) The making of an order by the Disputes Tribunal under this section in respect of any building work carried out by a builder does not, irrespective of whether an application is made for a review of the order or of the manner in which the application is disposed of, limit or affect in any way the power of the Board or the State Administrative Tribunal to deal with that or any other builder in connection with the performance, carrying out or completion of the building work which the order required to be remedied.
- (6) Nothing in this section has the effect of limiting, restricting or otherwise affecting any right or remedy a person would have had had this section not been enacted but in hearing and determining any matter in which a builder or other person against whom or which an order has been made under this section and a person for whom building work has been carried out are parties a court may have regard to any order made by the Disputes Tribunal under this section.
- (7) To avoid doubt, it is declared that a reference in this section to building work includes plumbing work as defined in section 59I of the *Water Services Licensing Act 1995*.

*[Section 12A inserted by No. 58 of 1970 s. 2; amended by No. 97 of 1975 s. 11; No. 39 of 1983 s. 12; No. 14 of 1984 s. 6; No. 93 of 1990 s. 11; No. 60 of 1991 s. 13; No. 39 of 1999 s. 11(1); No. 76 of 2000 s. 19 and 42; No. 67 of 2003 s. 62; No. 55 of 2004 s. 77.]*

*[12AA. Repealed by No. 60 of 1991 s. 14.]*

**12B. Registrar may be requested to cause an inspection of building work**

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 12B inserted by No. 60 of 1991 s. 14.]*

**12C. Orders for payment while case pending**

- (1) Where a person has made a complaint to the Disputes Tribunal under section 12A the Disputes Tribunal may, if it considers it just and expedient to do so, order an amount of money to be paid to the Disputes Tribunal by the person who carried out the building work.
- (2) An order is not to be made under subsection (1) against a person merely on account of the poor financial position of that person.
- (3) The Disputes Tribunal may, at any time before a final decision is made on the complaint, review and vary or cancel an order made under subsection (1).
- (4) An amount paid to the Disputes Tribunal under this section is to be placed by it in such interest bearing account, as it thinks fit, and the amount and any interest is to, on the determination of the complaint, be paid in accordance with the order of the Disputes Tribunal.
- (5) If a person fails to comply with an order under subsection (1) the Disputes Tribunal may strike out the defence of that person.

*[Section 12C inserted by No. 76 of 2000 s. 20.]*

**12D. Allegation of cause for disciplinary action**

The Board may allege to the State Administrative Tribunal that there is proper cause for disciplinary action, as mentioned in section 13, against a builder who is registered under this Act.

*[Section 12D inserted by No. 55 of 2004 s. 78.]*

**13. Cancellation of registration for fraud or on other grounds**

- (1) In a proceeding commenced by an allegation under section 12D the State Administrative Tribunal may cancel or suspend the registration of any builder under this Act because there is proper cause for disciplinary action —
- (a) where such registration has been obtained by fraud or misrepresentation; or
  - (aa) when after such registration such builder has been convicted of an offence under the *Home Building Contracts Act 1991*; or
  - (b) when after such registration such builder has been convicted of any indictable offence or of any offence which, if committed in Western Australia, would be an indictable offence; or
  - (ba) where the builder does not have sufficient material and financial resources available to enable the builder to meet his or its financial obligations as and when they become due; or
  - (c) who has been guilty of any negligence or incompetence in connection with the performance of any building work or who has been convicted of any offence against this Act or any regulation; or
  - (ca) where the building work carried out by the builder has not been managed and supervised in accordance with section 10AA, 10B or 10C, as the case requires; or
  - (cb) who has made any statement or representation with respect to the provision of finance or the terms or charges therefor that is to his knowledge false in a material particular, for the purpose of inducing a person to enter into a contract for the carrying out or completion of any building work or for the purpose of inducing a person to purchase any land on which building work has been carried out by the builder; or

- (d) who has been guilty of any fraudulent conduct in regard to the carrying out or completion of any building work; or
- (da) who has been guilty of conduct that is harsh, unconscionable, oppressive, misleading or deceptive in relation to —
  - (i) a contract for the carrying out or completion of building work or a variation of that contract; or
  - (ii) the carrying out or completion of any building work;
- or
- (db) who has failed to comply with an order of the Disputes Tribunal; or
- (e) who, being a journeyman builder under this Act, does not comply with the conditions of his registration; or
- (ea) who being a builder registered under section 10(1)(b)(iv)(III), does not comply with any condition attached to his registration; or
- (f) where the builder is a partnership or a company or other body corporate and the registration of the partner or the director of the company or the member of the board of management of the body corporate (as the case may be) who is the registered builder, or of the registered builder who is employed by the partnership or the company or the body corporate to manage and supervise the building work undertaken by it, is cancelled or suspended; or
- (g) where the builder is a partnership, company or other body corporate and after such registration —
  - (i) a person who is an ineligible person under section 13(1ba) has been involved in the management of the partnership, company or body corporate; or
  - (ii) a person who is involved in the management of the partnership, company or body corporate is

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declared to be an ineligible person under section 13(1ba).

- (1a) Where the registration under this Act of a partnership, company or body corporate has been cancelled or suspended by the State Administrative Tribunal, the State Administrative Tribunal may, if in all the circumstances of the case it considers it proper so to do, 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 building work to which the inquiry related was, or was required by this Act to be, managed and supervised.
- (1b) Upon the making of an order of cancellation under subsection (1a), the person named in the order shall cease to be registered under this Act and upon the making of an order of suspension under that subsection, the person named in the order shall cease to be registered under this Act for the period specified in the order.
- (1ba) Where the registration under this Act of a partnership, company or body corporate has been cancelled or suspended by the State Administrative Tribunal, the State Administrative Tribunal may, if in all the circumstances it considers it proper to do so —
  - (a) declare a person who is a partner, director, member of the board of management or otherwise involved in the management of the partnership, company or body corporate, as the case requires, to be, for a period not exceeding 3 years, an ineligible person for the purposes of section 9A or 10; and
  - (b) on the application of a person referred to in paragraph (a) or on its own motion, vary or revoke a declaration made under that paragraph.
- (1bb) The State Administrative Tribunal shall not make a declaration under subsection (1ba)(a) in relation to a person unless it has —
  - [(a) deleted]*

- (b) afforded that person an opportunity of giving an explanation personally at the inquiry or in writing.
- (2) On the application of the Board or the builder whose registration is suspended or has been cancelled, the State Administrative Tribunal may order that the suspension of a registration is terminated or a registration that has been cancelled be reinstated.
- (3) An application for the termination of a suspension or the reinstatement of a registration that was cancelled cannot be made before the expiry of a period of 3 months after the day on which the registration was suspended or cancelled.

*[Section 13 amended by No. 44 of 1953 s. 11; No. 54 of 1961 s. 13; No. 41 of 1968 s. 10; No. 97 of 1975 s. 14; No. 14 of 1984 s. 7; No. 8 of 1986 s. 10; No. 93 of 1990 s. 12; No. 60 of 1991 s. 15; No. 76 of 2000 s. 21; No. 55 of 2004 s. 79; No. 70 of 2004 s. 82.]*

**13A. Fines**

Where the State Administrative Tribunal makes a finding that a situation described in section 13(1)(a) or (c) to (f) exists or has occurred in respect of a registered builder, the State Administrative Tribunal may, instead of, or in addition to, cancelling or suspending the registration of the builder under this Act impose a fine not exceeding the prescribed amount —

- (a) on the builder;
- (b) where the builder is a partnership, on one or more of the following persons —
  - (i) a partner;
  - (ii) an employee by whom the building work to which the inquiry related was, or was required by this Act to be, managed and supervised;

or

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- (c) where the builder is a company or other body corporate, on one or more of the following persons —
  - (i) a director of the company;
  - (ii) a member of the board of management of the body corporate;
  - (iii) an employee by whom the building work to which the inquiry related was, or was required by this Act to be, managed and supervised.

*[Section 13A inserted by No. 76 of 2000 s. 22; amended No. 55 of 2004 s. 80.]*

**14. Application for review**

- (1) A person aggrieved by a reviewable decision of the Board in relation to that person may apply to the State Administrative Tribunal for a review of the decision.
- (2) In subsection (1) —

**“person aggrieved”** means a person —

- (a) whose registration as a builder is affected by a reviewable decision; or
- (b) who applies for registration;

**“reviewable decision”** means a decision of the Board —

- (a) refusing or suspending registration; or
- (b) granting registration on a condition or conditions.

*[Section 14 inserted by No. 55 of 2004 s. 81.]*

**15. Fraudulently obtaining certificate, falsifying register, etc.**

Any person —

- (a) who procures or attempts to procure registration or a certificate under this Act by making or producing or causing to be made or produced any false and fraudulent declaration, certificate, or representation, either in writing or otherwise; or



- (b) who wilfully makes or causes to be made any falsification in or in any manner relating to the register,

commits an offence and is liable to a penalty of \$10 000.

*[Section 15 amended by No. 29 of 1966 s. 10; No. 93 of 1990 s. 13.]*

**16. Penalty for disobedience of order of Board or breach of regulations**

- (1) Save as otherwise expressly provided, any registered builder or journeyman builder who —
  - (a) fails, neglects, or refuses to comply with any lawful direction of the Board made pursuant to this Act or any regulation; or
  - (b) is guilty of a contravention of any regulation; or
  - (c) does not comply with the conditions of his registration,

commits an offence and is liable to a penalty of \$2 000.

- (2) A person who fails, neglects, or refuses to comply with any lawful order or requirement of the Board made under section 17 commits an offence and is liable to a penalty of \$2 000.

*[Section 16 amended by No. 44 of 1953 s. 12; No. 54 of 1961 s. 15; No. 29 of 1966 s. 11; No. 93 of 1990 s. 14; No. 76 of 2000 s. 24.]*

**17. Powers on investigation**

- (1) For the purpose of conducting any investigation authorised to be made under this Act, the Board may —
  - (a) require any person —
    - (i) to attend before the Board;
    - (ii) to produce any document before the Board;
  - (b) inspect any document produced before it, retain the document for such reasonable period as is required, and make copies of the document or any of its contents;

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- (c) require any person to swear to answer truly any relevant question put to that person by the Board (and for that purpose may administer any oath or affirmation);
- (d) require any person attending before the Board to answer any relevant question put to that person by the Board; and
- (e) require and take any statutory declaration.

*[(2)-(5) repealed]*

*[Section 17 inserted by No. 76 of 2000 s. 25; amended by No. 55 of 2004 s. 82.]*

**17A. Suspension of registration by State Administrative Tribunal**

- (1) Where the State Administrative Tribunal makes an order against a registered builder and payment is not made in accordance with the order or the order is otherwise not complied with or is breached, the State Administrative Tribunal may suspend the registration until the payment is made, or for such period or upon such event occurring as the State Administrative Tribunal thinks fit.
- (2) The power conferred on the State Administrative Tribunal by subsection (1) is in addition to, and does not derogate from, the powers conferred on it by the *State Administrative Tribunal Act 2004*.

*[Section 17A inserted by No. 55 of 2004 s. 83.]*

**18. Local governments to furnish information to the Board**

- (1) It shall be lawful for any member of the Board, or for any officer of the Board authorised in that behalf by writing under the hand of the chairperson of the Board, to enter the premises of any local government at any time when such premises are open for business, and to examine and make copies of or extracts from all books, papers, records, documents, and other entries of the local government relating to applications for and

the issue of building licences by the local government for the purpose of obtaining any information which the Board requires.

- (2) If any employee of, or member of the council of, a local government hinders or obstructs or attempts to hinder or obstruct any member or officer of the Board in the lawful exercise by him of the powers conferred by subsection (1), he shall be guilty of an offence.

Penalty: \$1 000.

*[Section 18<sup>3</sup> inserted as section 16A by No. 43 of 1940 s. 5; amended by No. 29 of 1966 s. 12; No. 41 of 1968 s. 11; No. 93 of 1990 s. 15; No. 60 of 1991 s. 7; No. 14 of 1996 s. 4.]*

**19. Return of certificates**

- (1) Any builder whose registration has been cancelled or suspended shall within 14 days from the notification to such builder of such cancellation or suspension surrender to the Board every certificate issued to such builder under this Act.
- (2) On failure to do so, such builder shall be liable to a penalty of not more than \$50.
- (3) The cancellation or suspension of the registration of any builder shall be effectual, notwithstanding such failure to surrender any certificate.

*[Section 19 amended by No. 24 of 1948 s. 6; No. 54 of 1961 s. 16; No. 29 of 1966 s. 13.]*

**19A. Surrender of registration or certificate**

Despite the surrender by a person of the person's registration, or a certificate issued to the person under this Act, this Act applies, for the purpose of enabling the person to be investigated or otherwise dealt with for a matter arising before the surrender, as if the registration or certificate had not been surrendered.

*[Section 19A inserted by No. 55 of 2004 s. 84.]*

**20. Signature of chairperson**

In any legal proceedings, any signature, which purports to be the signature of any person who is or has been chairperson or member of the Board or registrar shall, if such signature is attached to any certificate of registration or any document under this Act, and in the absence of proof to the contrary, be deemed to be the signature of such person.

*[Section 20 amended by No. 29 of 1966 s. 14; No. 60 of 1991 s. 7.]*

**20A. Right of entry and inspection**

- (1) Any member of the Board, or person authorised in writing in that behalf by the chairperson of the Board, may at any time enter upon any land on which any building work is being carried out and inspect the building work.
- (2) A person who in any way resists, obstructs, impedes or delays a member of the Board or other person authorised under subsection (1), in the exercise of his powers conferred by that subsection commits an offence.

*[Section 20A inserted by No. 58 of 1970 s. 3; amended by No. 60 of 1991 s. 7.]*

**20B. Infringement notices**

- (1) A reference in subsection (2), (3), (5) or (7) to an **“authorised person”** is a reference to a person appointed under subsection (10) to be an authorised person for the purposes of the subsection in which the term is used.
- (2) An authorised person who has reason to believe that a person has committed a prescribed offence against this Act may, within 21 days after the alleged offence is believed to have been committed, give an infringement notice to the alleged offender.
- (3) An infringement notice is to be in the prescribed form and is to —

- (a) contain a description of the alleged offence;
  - (b) advise that if the alleged offender does not wish to be prosecuted for the alleged offence in a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to an authorised person within a period of 28 days after the giving of the notice; and
  - (c) inform the alleged offender as to who are authorised persons for the purposes of receiving payment of modified penalties.
- (4) In an infringement notice the amount specified as being the modified penalty for the offence referred to in the notice must be the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.
- (4a) The modified penalty that regulations may prescribe for an offence is not to exceed 20% of the maximum penalty for that offence.
- (5) An authorised person may, in a particular case, extend the period of 28 days within which the modified penalty may be paid and the extension may be allowed whether or not the period of 28 days has elapsed.
- (6) Where the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn, the bringing of proceedings and the imposition of penalties are prevented to the same extent as they would be if the alleged offender had been convicted by a court of, and punished for, the alleged offence.
- (7) An authorised person may, whether or not the modified penalty has been paid, withdraw an infringement notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.
- (8) If an infringement notice is withdrawn after the modified penalty has been paid, the amount is to be refunded.

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- (9) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.
- (10) The Board may, in writing, appoint persons or classes of persons to be authorised persons for the purposes of subsection (2), (3), (5) or (7) but a person who is authorised to give infringement notices under subsection (2) is not eligible to be an authorised person for the purposes of any of the other subsections.
- (11) The Board shall issue to each person who is authorised to give infringement notices under this section a certificate stating that the person is so authorised, and the authorised person is to produce the certificate whenever required to do so by a person to whom he has given or is about to give an infringement notice.

*[Section 20B inserted by No. 76 of 2000 s. 26; amended by No. 84 of 2004 s. 80.]*

**21. Proceedings under this Act**

- (1) Any proceedings under this Act may be taken by the registrar or by any other person authorised by the Board, either generally or in any particular case; and in any such proceedings no proof shall, until evidence is given to the contrary, be required of any such authority having been given by the Board.
- (2) In any legal proceedings, civil or criminal, instituted by or under the direction of or against the Board, a certificate purporting to be signed by the chairperson of the Board and stating that —
  - (a) the persons named in that certificate constituted the Board on the date specified in that certificate;
  - (b) a resolution, order or act set out or described in that certificate was passed, made or done by the Board on the date specified in that certificate;
  - (c) the registrar or a clerk or other employee of the Board was appointed specially or generally by the Board on the

- date specified in that certificate to represent or to prosecute on behalf of the Board in those proceedings;
- (d) the registrar or a clerk or other employee of the Board was authorised to prosecute in those proceedings;
  - (e) any member of the Board or the registrar or a clerk or other employee of the Board was duly nominated or appointed as such on the date specified in that certificate; or
  - (f) a quorum of the Board was present at the passing of any resolution, making of any order or doing of any act by the Board,

shall be prima facie evidence of the facts so stated on its mere production by any person in those proceedings.

- (3) In any legal proceedings referred to in subsection (2) a certificate purporting to be signed by the registrar stating the facts referred to in —
  - (a) paragraphs (a), (b) and (f); and
  - (b) paragraphs (c), (d) and (e), but only where the certificate does not relate to an appointment, authorisation or nomination of the registrar,

shall, without proof of the authenticity of the signature, be prima facie evidence of the facts so stated on its production by any person in those proceedings.

*[Section 21 amended by No. 91 of 1979 s. 10; No. 60 of 1991 s. 7; No. 76 of 2000 s. 27.]*

**21A. Limitation period for prosecutions**

A prosecution for an offence under this Act must be commenced within 3 years after the date on which the offence was allegedly committed.

*[Section 21A inserted by No. 84 of 2004 s. 80.]*

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**21B. Liability of directors etc.**

- (1) Where a body corporate has committed an offence against this Act and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of, any person who was an officer or was purporting to act as an officer of the body corporate, that person, as well as the body corporate, commits that offence.
- (2) In subsection (1) **“officer”** has the same meaning as in the Corporations Law but does not include an employee of the body corporate unless he was concerned in the management of the body corporate.

*[Section 21B inserted by No. 76 of 2000 s. 29.]*

**22. Fees and expenses**

- (1) There shall be paid to the Board by every candidate for examination or applicant for registration, or for any certificate, such fees as the Board, with the approval of the Governor, prescribes.
- [(2) repealed]*
- (3) There shall also be paid to the Board on or before 1 February in each year by every registered builder or journeyman builder such fee as the Minister determines; and if any such builder in any year makes default in paying such fee, the registration of such builder may be suspended, but if the builder gives a satisfactory explanation of such default, the suspension of such registration shall be annulled on payment of such annual fee, together with such additional fee (if any), not exceeding \$25 or such other amount as the Minister determines, as the Board directs.
- (4) Subject to section 4B, all fees, costs and expenses (including fees, costs and expenses paid to the Disputes Tribunal), and monetary penalties (including modified penalties under section 20B but excluding penalties ordered by the State



Administrative Tribunal) paid or recovered under this Act are to be paid to the Board.

- (5) The Board shall apply such fees, costs, expenses and monetary penalties to —
- (a) the payment of expenses connected with or incidental to the examination of candidates and to the general expenses (including the payment of fees to members of the Board for attendance at meetings) of the Board in carrying this Act into execution;
  - (b) the provision of scholarships for the technical training of persons employed or to be employed in the building trade, or any trade incidental thereto; and
  - (c) with the approval of the Minister, the provision of any training scheme for persons referred to in paragraph (b).

*[Section 22 amended by No. 44 of 1953 s. 14; No. 61 of 1959 s. 9; No. 54 of 1961 s. 17; No. 29 of 1966 s. 15; No. 97 of 1975 s. 15; No. 39 of 1983 s. 15; No. 60 of 1991 s. 17; No. 76 of 2000 s. 30; No. 55 of 2004 s. 85.]*

**23. 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 23 inserted by No. 77 of 1987 s. 3.]*

**23A. Audit**

- (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.

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- (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 Act 2001* of the Commonwealth.

*[Section 23A inserted by No. 60 of 1991 s. 18; amended by No. 10 of 2001 s. 30.]*

**23B. Annual report**

- (1) The Board shall on or before 30 September in each year make and submit to the Minister an annual report of its proceedings for the preceding year ending on 30 June together with a copy of the financial statements and the auditor's report.

- (1a) The annual report is to contain separate reports on the operations of the Board referred to in section 8B(4)(a) and (b).

- (1b) The Board's annual report is to include details of —
- (a) the number, nature, and outcome, of —
    - (i) investigations and inquiries undertaken by, or at the direction of, the Board; and
    - (ii) matters that have been brought before the State Administrative Tribunal under this Act;
  - (b) the number and nature of matters referred to in paragraph (a) that are outstanding;
  - (c) any trends or special problems that may have emerged;
  - (d) forecasts of the workload of the Board in the year after the year to which the report relates; and
  - (e) any proposals for improving the operation of the Board.

- (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 23B inserted by No. 77 of 1987 s. 3; amended by No. 76 of 2000 s. 31; No. 55 of 2004 s. 86.]*

**23C. Directions by Minister**

- (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.

*[Section 23C inserted by No. 60 of 1991 s. 19.]*

**23D. Minister to have access to information**

- (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.

*[Section 23D inserted by No. 60 of 1991 s. 19.]*

**24. Power to make regulations**

(1) The Board, with the approval of the Governor, may make regulations for or with respect to —

*[(a) deleted]*

- (b) regulating the conduct of the business of the Board;
- (c) the register or registration therein and the issue and cancellation of certificates of registration;
- (d) the method of admission to the register of persons who at the commencement of this Act are bona fide carrying on the business of a builder;
- (e) the fees payable under this Act;
- (ea) requiring local governments to give notice in the prescribed manner of the issue of building licences;
- (f) the particulars required to be given in any notice under this Act;
- (g) any forms to be used under this Act, and any such form or forms to the like effect shall be sufficient in law;

- (h) any matters authorised by this Act to be prescribed;
  - (i) granting a temporary licence to any approved inter-State builder upon his satisfying the Board of his possessing the requisite qualifications; and
  - (j) generally any matters or things necessary or convenient to be prescribed for the due and proper carrying out of the provisions of this Act.
- (2) Any such regulations may without prejudice to any other method of revocation be revoked by order of the Governor in Council.

*[Section 24 amended by No. 54 of 1961 s. 18; No. 41 of 1968 s. 12; No. 39 of 1983 s. 16; No. 14 of 1996 s. 4.]*

## 25. Interpretation

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 Tribunal;

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

*[Section 25 inserted by No. 60 of 1991 s. 20; amended by No. 76 of 2000 s. 42.]*

## 26. Building Disputes Tribunal

- (1) There shall be a tribunal to be known as the Building Disputes Tribunal.
- (2) The Disputes Tribunal shall have a seal of which all courts and persons acting judicially shall take judicial notice.

*[Section 26 inserted by No. 60 of 1991 s. 20; amended by No. 76 of 2000 s. 42.]*

**27. Chairperson and deputies**

- (1) The chairperson of the Board by virtue of holding that office, also holds office as the chairperson of the Disputes Tribunal.
- (2) The Minister may, in writing, appoint a person or persons, each of whom is a legal practitioner, to hold office as deputy chairperson or deputy chairpersons of the Disputes Tribunal.

*[Section 27 inserted by No. 60 of 1991 s. 20; amended by No. 76 of 2000 s. 42; No. 65 of 2003 s. 15(5).]*

**28. Panels**

- (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.

*[Section 28 inserted by No. 60 of 1991 s. 20.]*

**29. Term of office**

- (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.

*[Section 29 inserted by No. 60 of 1991 s. 20.]*

### **30. Fees and allowances**

- (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 Minister for Public Sector Management.
- (2) Subsection (1) does not apply to an officer employed in the Public Service.

*[Section 30 inserted by No. 60 of 1991 s. 20.]*

### **31. Conditions of appointment**

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.

*[Section 31 inserted by No. 60 of 1991 s. 20.]*

**32. Powers not affected by vacancy**

Without limiting the application of section 57 of the *Interpretation Act 1984*, the powers of the Disputes Tribunal 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.

*[Section 32 inserted by No. 60 of 1991 s. 20; amended by No. 76 of 2000 s. 42.]*

**33. Registrar**

- (1) The registrar of the Board is the registrar and executive officer of the Disputes Tribunal.

*[(2)-(5) repealed]*

*[Section 33 inserted by No. 60 of 1991 s. 20; amended by No. 76 of 2000 s. 32 and 42.]*

**33A. Exercise of prescribed jurisdiction of the Disputes Tribunal**

- (1) Such of the jurisdiction of the Disputes Tribunal as is prescribed may be exercised by —
- (a) the registrar, with the written approval of the Disputes Tribunal or the chairperson; or
  - (b) an authorised person, with the written approval of the chairperson,

and for that purpose the registrar or authorised person has all the powers of the Disputes Tribunal necessary to do so.

- (2) Where in the exercise of jurisdiction conferred by subsection (1), the registrar or an authorised person makes a decision or order, a party to the proceedings who is dissatisfied with the decision or order may, within 10 working days of the decision or order being made, request the Disputes Tribunal to review the decision or order and the Disputes Tribunal on



receiving such a request, shall review the decision or order and confirm, vary or quash the decision or order.

- (3) The Disputes Tribunal may, on its own motion, review any decision or order made by the registrar or an authorised person in the exercise of jurisdiction conferred by subsection (1), and may confirm, vary or quash the decision or order.
- (4) 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 or an authorised person in the exercise of jurisdiction conferred by subsection (1), it shall not be exercised until the right under subsection (2) to request a review of the decision or order has been exhausted.
- (5) In this section —

**“authorised person”** means a person authorised under section 20A to enter upon land on which any building work is being carried out and inspect the building work.

*[Section 33A inserted by No. 76 of 2000 s. 33.]*

### **34. Administration and expenses of Disputes Tribunal**

The Board is to —

- (a) provide administrative support for the Disputes Tribunal, including the administration and collection of any fees payable to the Disputes Tribunal; and
- (b) meet the expenditure necessary for the functioning of the Disputes Tribunal.

*[Section 34 inserted by No. 76 of 2000 s. 34.]*

#### **34A. Disputes Tribunal fees**

A complaint or application made to the Disputes Tribunal by any person other than the Board shall be accompanied by the prescribed fee.

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*[Section 34A inserted by No. 76 of 2000 s. 35.]*

**34B. Chairperson or deputy chairperson may refer a matter to mediation**

- (1) After an application or complaint is made to the Disputes Tribunal under this Act or the *Home Building Contracts Act 1991* the chairperson or a deputy chairperson may —
  - (a) appoint a mediator from the panel of persons referred to in section 34D(1) to attempt to achieve a negotiated settlement of the matters in dispute (in this section and section 34C referred to as **“the dispute”**); and
  - (b) fix a time and a place for the holding of the mediation.
- (2) If a mediator is appointed under subsection (1) the registrar is to give —
  - (a) to any person against whom an order of the Disputes Tribunal is sought and to any other person specified by the chairperson or a deputy chairperson, a copy of the application or complaint, together with a notice of the mediation setting out when and where the mediation is to be held; and
  - (b) to the applicant or complainant, a notice of the mediation setting out when and where the mediation is to be held.
- (3) The chairperson or a deputy chairperson may, at any time, give to all parties to the dispute a notice cancelling the mediation.

*[Section 34B inserted by No. 76 of 2000 s. 35.]*

**34C. Settlement or failure to settle**

- (1) If the parties agree to settle the dispute as a result of mediation the mediator is to report the terms of the settlement to the Disputes Tribunal.
- (2) The Disputes Tribunal is to make an order giving effect to the settlement and such consequential orders as it considers necessary.

- (3) If, within such time as the Disputes Tribunal considers is reasonable, the mediator does not make a report under subsection (1) with respect to all the matters in dispute, section 37(1) applies to the dispute or to those matters remaining in dispute at that time.
- (4) Evidence of anything said or done in the course of the mediation of a dispute is not admissible in proceedings arising from the dispute before the Disputes Tribunal nor in any related proceeding.

*[Section 34C inserted by No. 76 of 2000 s. 35.]*

**34D. Qualifications and remuneration of mediators**

- (1) The Board is to establish a panel of persons who are, in the opinion of the Board, suitably qualified to be mediators.
- (2) A mediator is to be paid such remuneration and travelling and other allowances as are determined by the Board.

*[Section 34D inserted by No. 76 of 2000 s. 35.]*

**34E. Immunity of mediators**

A mediator appointed by the Disputes Tribunal under section 34B has the same protection as a member of the Disputes Tribunal.

*[Section 34E inserted by No. 76 of 2000 s. 35.]*

**35. Jurisdiction and constitution of Disputes Tribunal**

- (1) Subject to this section, the jurisdiction to be exercised by the Disputes Tribunal is that conferred on it by section 12A and by the *Home Building Contracts Act 1991*.
- (2) Subject to subsection (2a), when exercising its jurisdiction the Disputes Tribunal 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).
- (2a) When exercising its jurisdiction in interlocutory and procedural matters or in the resolution of simple disputes the Disputes Tribunal may, where the chairperson or deputy chairperson, as the case requires, considers it appropriate, be constituted by the chairperson or a deputy chairperson sitting alone, but nothing in this subsection prevents any such proceedings from being dealt with by the Disputes Tribunal constituted in accordance with subsection (2).
- (3) The selection under subsection (2) of a person from a panel shall be evidenced in writing.
- (4) The Disputes Tribunal constituted in accordance with this section may sit and exercise the jurisdiction of the Disputes Tribunal notwithstanding that the Disputes Tribunal differently constituted in accordance with this section is at the same time sitting and exercising the jurisdiction of the Disputes Tribunal.

*[Section 35 inserted by No. 60 of 1991 s. 20; amended by No. 76 of 2000 s. 36 and 42.]*

**36. Sittings of Disputes Tribunal**

- (1) At all its sittings the Disputes Tribunal 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 Tribunal 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 Tribunal shall be the decision of the Disputes Tribunal.
- (4) The Disputes Tribunal 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 Tribunal shall determine its own procedure.

*[Section 36 inserted by No. 60 of 1991 s. 20; amended by No. 76 of 2000 s. 42.]*

**37. Hearings**

- (1) The Disputes Tribunal shall cause to be given to a person who is a party to proceedings before the Disputes Tribunal 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 Tribunal.
- (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 Tribunal may conduct proceedings in the absence of the person.
- (3) The Commissioner as defined in section 4(1) of the *Consumer Affairs Act 1971* may appear personally in proceedings before the Disputes Tribunal or may be represented in those proceedings by counsel or an officer employed in the Public Service.

*[Section 37 inserted by No. 60 of 1991 s. 20; amended by No. 57 of 1997 s. 39(10); No. 76 of 2000 s. 42; No. 28 of 2006 s. 53.]*

**38. Powers of Disputes Tribunal**

- (1) The Disputes Tribunal may —
  - (a) by summons signed on behalf of the Disputes Tribunal by the registrar, require —
    - (i) the attendance before the Disputes Tribunal of any person;
    - (ii) the production before the Disputes Tribunal 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 Tribunal that are put by or before the Disputes Tribunal (and for that purpose a member of the Disputes Tribunal may administer an oath or affirmation); and
  - (d) require any person to answer any relevant question put by a member of the Disputes Tribunal or by any other person appearing before the Disputes Tribunal.
- (2) In the course of any proceedings the Disputes Tribunal 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 Tribunal.
- (3) Subject to subsection (4), the Disputes Tribunal may make such orders for costs as it thinks fit.
- (4) In any proceedings costs are not to be awarded to any party to the proceedings for the services of any legal practitioner or

other person representing or assisting in the representation of that party unless, in the opinion of the Disputes Tribunal, it is fair to do so, having regard to —

- (a) whether a party has conducted the proceeding in a way that unnecessarily disadvantaged another party to the proceeding by conduct such as —
    - (i) failing to comply with an order or direction of the Disputes Tribunal without reasonable excuse;
    - (ii) failing to comply with this Act or the *Home Building Contracts Act 1991*;
    - (iii) asking for an adjournment as a result of subparagraph (i) and (ii);
    - (iv) causing an adjournment;
    - (v) attempting to deceive another party or the Disputes Tribunal; or
    - (vi) vexatiously conducting the proceeding;
  - (b) whether a party has been responsible for prolonging unreasonably the time taken to complete the proceeding;
  - (c) the relative strengths of the claims made by each of the parties, including where a party has made a claim that has no tenable basis in fact or law;
  - (d) the nature and complexity of the proceedings; or
  - (e) any other matter the Disputes Tribunal considers relevant.
- (5) Subject to subsection (6), where —
- (a) in proceedings —
    - (i) under section 12A, a person who is not registered under this Act is the person who carried out the building work; or
    - (ii) under section 17 of the *Home Building Contracts Act 1991*, a person who is not registered under this Act is the builder;

and

- (b) a decision is made by the Disputes Tribunal against the person,

the Disputes Tribunal may, if it thinks fit, order that person to pay to the Disputes Tribunal such of the costs of and incidental to the consideration and determination of the matter being inquired into as it considers appropriate.

- (6) Subsection (5) does not apply to a person who, under section 4(1)(A)(aa) or (1a), is not required to be registered under this Act.

*[Section 38 inserted by No. 60 of 1991 s. 20; amended by No. 76 of 2000 s. 37 and 42.]*

**39. Offences**

A person who —

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

commits an offence.

Penalty: \$2 000.



*[Section 39 inserted by No. 60 of 1991 s. 20; amended by No. 76 of 2000 s. 42.]*

**40. Reasons for decision**

- (1) Where a party to proceedings before the Disputes Tribunal has, within 14 days after the Disputes Tribunal has made a decision or order in those proceedings, requested the Disputes Tribunal to give reasons in writing for the decision or order, the Disputes Tribunal shall give that party reasons in writing for the decision or order.
- (2) The Disputes Tribunal shall ensure that the parties are made aware of their right to request reasons for a decision or order. Where a party requests an extension of time the Disputes Tribunal 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.

*[Section 40 inserted by No. 60 of 1991 s. 20; amended by No. 73 of 1994 s. 4; No. 76 of 2000 s. 42.]*

**41. Review**

- (1) Subject to subsection (2), a party to proceedings before the Disputes Tribunal may apply to the State Administrative Tribunal for a review of a decision of the Disputes Tribunal.
- (2) An application for a review cannot be made under subsection (1) unless the State Administrative Tribunal gives leave.

*[(3), (4) repealed]*

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

*[Section 41 inserted by No. 60 of 1991 s. 20; amended by No. 76 of 2000 s. 38 and 42; No. 55 of 2004 s. 87.]*

**42. Case stated**

- (1) Where a question of law arises in proceedings before the Disputes Tribunal, the Disputes Tribunal may of its own motion state a case for the decision of the State Administrative Tribunal on the question notwithstanding that the Disputes Tribunal has made a decision in the proceedings.
- (2) Where the Disputes Tribunal has stated a case for the decision of the State Administrative Tribunal, the Disputes Tribunal 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 State Administrative Tribunal may determine any case stated and 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.
- (4) When dealing with the substance of a case stated under this section, the State Administrative Tribunal is to be constituted by a judicial member as defined in section 3(1) of the *State Administrative Tribunal Act 2004*.

*[Section 42 inserted by No. 60 of 1991 s. 20; amended by No. 76 of 2000 s. 42; No. 55 of 2004 s. 88.]*

**43. Evidentiary provisions**

In all courts and before all persons and bodies authorised to receive evidence —

- (a) a document purporting to be a copy of a decision or order of the Disputes Tribunal 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 Tribunal; and

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

*[Section 43 inserted by No. 60 of 1991 s. 20; amended by No. 76 of 2000 s. 42.]*

**44. Enforcement of payment of pecuniary sums**

- (1) Where an order of the Disputes Tribunal requires the payment of a pecuniary sum whether under this Act or the *Home Building Contracts Act 1991*, 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) A person to whom a sum is to be paid under such an order may enforce it by lodging a certified copy of it, and an affidavit stating to what extent it has not been complied with, with a court of competent jurisdiction.
- (3) When lodged, the order is to be taken to be a judgment of the court and may be enforced accordingly.

*[Section 44 inserted by No. 60 of 1991 s. 20; amended by No. 76 of 2000 s. 39 and 42; No. 59 of 2004 s. 141.]*

**45. Immunity**

No liability attaches to the Disputes Tribunal or a member of the Disputes Tribunal or to the registrar for any act or omission of the Disputes Tribunal, 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 Tribunal, member or registrar.

*[Section 45 inserted by No. 60 of 1991 s. 20; amended by No. 76 of 2000 s. 42.]*

**s. 45A**

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**45A. Presentation of cases before Disputes Tribunal**

- (1) Except as provided in this section, a party to any proceedings before the Disputes Tribunal, under this Act or under the *Home Building Contracts Act 1991*, must present his or her own case and may not be represented by another person.
- (2) All or any of the parties to any proceedings before the Disputes Tribunal may be represented by legal practitioners or any other persons if —
  - (a) all of the parties agree; or
  - (b) the monetary amount or value of work for which an order is sought by the applicant, as determined by the Disputes Tribunal, exceeds \$10 000 or such other amount as is prescribed; or
  - (c) the Disputes Tribunal is satisfied —
    - (i) that any party who is not so represented will not be unfairly disadvantaged; or
    - (ii) that one of the parties is unable to appear personally or conduct the proceedings properly himself or herself;or
  - (d) one of the parties is a legally qualified person; or
  - (e) one of the parties is a body corporate and any other party elects to be so represented.
- (3) This section does not prevent —
  - (a) a body corporate from being represented by an officer or employee of the body corporate (not being a legally qualified person) authorised to conduct the proceedings on its behalf (whether or not the person is remunerated by the body corporate for representing it in the proceedings); or

- (b) a person from acting as an interpreter for a party, if the person's fee does not exceed an amount fixed by the Disputes Tribunal.
- (4) A person must not demand or receive any fee or reward for representing, or assisting in the representation of, a party to proceedings before the Disputes Tribunal unless —
  - (a) the person is a certificated practitioner (within the meaning of the *Legal Practice Act 2003*);
  - (b) where the party is a body corporate, the person is an officer or employee of the body corporate representing it under subsection (3); or
  - (c) the person is an interpreter for a party and the fee does not exceed the amount fixed under subsection (3)(b).

Penalty: \$5 000.

- (5) In this section —

**“legally qualified person”** means a legal practitioner, an articulated clerk (as defined in the *Legal Practice Act 2003*), or any person who holds or had held legal qualifications under the laws of this State or any other place.

*[Section 45A inserted by No. 76 of 2000 s. 40; amended by No. 65 of 2003 s. 15(6) and (7).]*

#### 46. Regulations

- (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 Tribunal 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;

**s. 46**

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- (b) prescribe matters relating to the practice and procedure of the Disputes Tribunal;
- (c) provide for the enforcement of decisions and orders of the Disputes Tribunal (other than for the payment of pecuniary sums);
- (ca) make provision as to mediation and mediation proceedings;
- (d) assign functions to the registrar and regulate the manner in which they are to be carried out;
- (e) make provision as to fees.

*[Section 46 inserted by No. 60 of 1991 s. 20; amended by No. 76 of 2000 s. 41 and 42.]*

## 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 northernmost northern boundary of the district 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 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 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 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 Kalamunda; thence southerly along the easternmost eastern boundary of the district of Kalamunda to the prolongation east of the southern boundary of Canning Location 710, being a north-eastern corner of the district of Armadale; thence generally southerly, generally south-easterly, westerly and south-westerly along the boundaries of the district of Armadale to the 33 Mile Post on the north-eastern side of Albany Highway, being a north-eastern corner of the district of Serpentine-Jarrahdale; thence generally south-easterly, southerly, generally westerly and northerly along boundaries of the district of Serpentine-Jarrahdale to the north-eastern corner of Lot 3 of Cockburn Sound Location 16, as shown on Land Titles Office Diagram 2909<sup>11</sup>, being a south-eastern

corner of the district of Rockingham; thence generally westerly along the boundaries of the district of Rockingham to the south-western corner of Lot 236 as shown on Land Titles Office<sup>11</sup> 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 district 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<sup>11</sup> 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<sup>11</sup> 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 along 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<sup>11</sup> 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



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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.

3. The districts of Bunbury, Busselton, Collie, Dardanup, Harvey and Murray as constituted on 1 September 1986.
4. The districts of Geraldton, Greenough, Chapman Valley and Northampton.

- 4A. The areas constituted by —
- (a) the townsites of Kalgoorlie and Boulder, in the district of Kalgoorlie-Boulder;
  - (b) the townsites of Esperance, Salmon Gums, Grass Patch, Scaddan, Condingup, Coomalbidgup, Cascade and Gibson, in the district of Esperance;
  - (c) the townsites of Southern Cross, Marvel Loch, Moorine Rock, Bullfinch and Bodallin, in the district of Yilgarn;
  - (d) the townsites of Coolgardie, Kambalda and Kambalda West, in the district of Coolgardie;
  - (e) the townsite of Norseman, in the district of Dundas;
  - (f) the townsite of Laverton, in the district of Laverton;
  - (g) the townsite of Munglinup, in the district of Ravensthorpe;
  - (h) the townsites of Tom Price, Paraburdoo and Onslow, in the district of Ashburton;
  - (i) the townsites of Newman, Nullagine and Marble Bar, in the district of East Pilbara;
  - (j) the townsite of Exmouth in the district of Exmouth;
  - (k) the townsites of Port Hedland, South Hedland and Wedgefield in the district of Port Hedland;
  - (l) the townsites of Karratha, Roebourne, Point Samson, Dampier and Wickham, in the district of Roebourne;
  - (m) the townsites of Carnarvon, Coral Bay and Mauds Landing in the district of Carnarvon;
  - (n) the townsite of Halls Creek in the district of Halls Creek;
  - (o) the townsite of Broome in the district of Broome; and
  - (p) the townsites of Derby, Fitzroy Crossing and Camballin in the district of Derby-West Kimberley.
5. In addition to the areas set out in items 1 to 4A, all the remaining area in the South-West Division of Western Australia, as that Division is defined for the purposes of the *Land Administration Act 1997*, in Schedule 1 to that Act, other than the districts of Mukinbudin, Mt Marshall and Narembeen.

6. In this Schedule —

**“district”** means an area that has been declared to be a district under the *Local Government Act 1995*.

*[Schedule inserted by No. 39 of 1983 s. 17; amended by No. 8 of 1986 s. 11; No. 93 of 1990 s. 16; No. 73 of 1994 s. 4; No. 14 of 1996 s. 4; No. 81 of 1996 s. 153(3); No. 31 of 1997 s. 10; amended in Gazette 5 Jan 1993 p. 1; 25 Mar 1994 p. 1306; 20 May 1994 p. 2112; 9 Dec 1994 p. 6659-60; 1 Mar 1996 p. 797; No. 60 of 2006 s. 119.]*

### Notes

- <sup>1</sup> This is a compilation of the *Builders' Registration Act 1939* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

#### Compilation table

Short title	Number and year	Assent	Commencement
<i>Builders' Registration Act 1939</i>	29 of 1939	16 Dec 1939	1 May 1940 (see s. 1 and <i>Gazette</i> 26 Apr 1940 p. 597)
<i>Builders' Registration Act Amendment Act 1940</i>	43 of 1940	30 Dec 1940	30 Dec 1940
<b>Reprint of the <i>Builders' Registration Act 1939</i> in Vol. 2 of Reprinted Acts 1943</b> <sup>3</sup> (includes amendments listed above)			
<i>Builders' Registration Act Amendment Act 1944</i>	15 of 1944	8 Dec 1944	8 Dec 1944
<i>Builders' Registration Act Amendment Act 1945</i>	14 of 1945	9 Jan 1946	9 Jan 1946
<i>Builders' Registration Act Amendment Act 1948</i>	24 of 1948	9 Dec 1948	9 Dec 1948
<b>Reprint of the <i>Builders' Registration Act 1939</i> approved 17 Feb 1953 in Vol. 6 of Reprinted Acts</b> (includes amendments listed above)			
<i>Builders' Registration Act Amendment Act 1953</i>	44 of 1953	29 Dec 1953	29 Dec 1953
<i>Builders' Registration Act Amendment Act 1956</i>	63 of 1956	4 Jan 1957	4 Jan 1957
<i>Builders' Registration Act Amendment Act 1959</i>	61 of 1959	10 Dec 1959	5 Feb 1960 (see s. 2 and <i>Gazette</i> 5 Feb 1960 p. 254)
<b>Reprint of the <i>Builders' Registration Act 1939</i> approved 27 Jul 1961 (not in a Volume)</b> (includes amendments listed above)			
<i>Builders' Registration Act Amendment Act 1961</i>	54 of 1961	23 Nov 1961	2 Feb 1962 (see s. 2 and <i>Gazette</i> 2 Feb 1962 p. 324)
<b>Reprint of the <i>Builders' Registration Act 1939</i> approved 14 Jan 1963 in Vol. 16 of Reprinted Acts</b> (includes amendments listed above)			
<i>Builders' Registration Act Amendment Act 1965</i>	33 of 1965	21 Oct 1965	21 Oct 1965
<i>Builders' Registration Act Amendment Act 1966</i>	29 of 1966	27 Oct 1966	16 Dec 1966 (see s. 2 and <i>Gazette</i> 16 Dec 1966 p. 3316)

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Builders' Registration Act Amendment Act 1968</i>	41 of 1968	8 Nov 1968	1 Jan 1969 (see s. 2 and <i>Gazette</i> 13 Dec 1968 p. 3814)
<i>Builders' Registration Act Amendment Act 1970</i>	58 of 1970	5 Nov 1970	5 Nov 1970
<b>Reprint of the Builders' Registration Act 1939 approved 30 Mar 1971</b> (includes amendments listed above)			
<i>Builders' Registration Act Amendment Act 1975</i>	97 of 1975	1 Dec 1975	24 Dec 1975 (see s. 2 and <i>Gazette</i> 24 Dec 1975 p. 4637)
<i>Builders' Registration Act Amendment Act (No. 3) 1979</i>	91 of 1979	21 Dec 1979	18 Jan 1980 (see s. 2 and <i>Gazette</i> 11 Jan 1980 p. 37)
<i>Builders' Registration (Area of Application) Regulations 1980</i> published in <i>Gazette</i> 21 Mar 1980 p. 986-9			1 Apr 1980 (see r. 1(3))
<b>Reprint of the Builders' Registration Act 1939 approved 10 Feb 1981</b> (includes amendments listed above)			
<i>Companies (Consequential Amendments) Act 1982</i> s. 28	10 of 1982	14 May 1982	1 Jul 1982 (see s. 2(1) and <i>Gazette</i> 25 Jun 1982 p. 2079)
<i>Builders' Registration Amendment Act 1983</i>	39 of 1983	1 Dec 1983	s. 10: 30 Dec 1983 (see s. 2 and <i>Gazette</i> 30 Dec 1983 p. 5015); balance: 1 Jan 1984 (see s. 2 and <i>Gazette</i> 30 Dec 1983 p. 5015)
<i>Builders' Registration Amendment Act 1984</i>	14 of 1984	31 May 1984	1 Dec 1984 (see s. 2 and <i>Gazette</i> 30 Nov 1984 p. 3945)
<i>Builders' Registration Amendment Act 1986</i> <sup>4</sup>	8 of 1986	15 Jul 1986	1 Sep 1986 (see s. 2 and <i>Gazette</i> 29 Aug 1986 p. 3162)
<i>Acts Amendment (Financial provisions of regulatory bodies) Act 1987</i> s. 3	77 of 1987	26 Nov 1987	1 Jan 1988 (see s. 2)
<i>Guardianship and Administration Act 1990</i> s. 123	24 of 1990	7 Sep 1990	20 Oct 1992 (see s. 2 and <i>Gazette</i> 2 Oct 1992 p. 4811)
<i>Builders' Registration Amendment Act 1990</i> <sup>5</sup>	93 of 1990	17 Dec 1990	8 Feb 1991 (see s. 2 and <i>Gazette</i> 8 Feb 1991 p. 576)

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<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Builders' Registration Amendment Act 1991</i> Pt. 2 <sup>6</sup>	60 of 1991	30 Dec 1991	4 Apr 1992 (see s. 2 and <i>Gazette</i> 3 Apr 1992 p. 1461)
<i>Builders' Registration (Scheduled Areas) Regulations 1992</i> published in <i>Gazette</i> 5 Jan 1993 p. 1			5 Jan 1993
<b>Reprint of the Builders' Registration Act 1939 as at 3 May 1993</b> (includes amendments listed above)			
<i>Builders' Registration (Scheduled Areas) Regulations 1994</i> published in <i>Gazette</i> 25 Mar 1994 p. 1306			25 Mar 1994
<i>Builders' Registration (Scheduled Areas) Regulations (No. 2) 1994</i> published in <i>Gazette</i> 20 May 1994 p. 2112			20 May 1994
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 3(2)	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Statutes (Repeals and Minor Amendments) Act 1994</i> s. 4	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Builders' Registration (Scheduled Areas) Regulations (No. 3) 1994</i> published in <i>Gazette</i> 9 Dec 1994 p. 6659-60			1 Feb 1995 (see r. 2)
<i>Builders' Registration (Scheduled Areas) Regulations 1996</i> published in <i>Gazette</i> 1 Mar 1996 p. 797			1 Mar 1996 (see r. 2)
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Transfer of Land Amendment Act 1996</i> s. 153(3)	81 of 1996	14 Nov 1996	14 Nov 1996 (see s. 2)
<b>Reprint of the Builders' Registration Act 1939 as at 15 Apr 1997</b> (includes amendments listed above)			
<i>Acts Amendment (Land Administration) Act 1997</i> Pt. 8	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Equal Opportunity Amendment Act (No. 3) 1997</i> s. 8	42 of 1997	9 Dec 1997	6 Jan 1998 (see s. 2)

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Statutes (Repeals and Minor Amendments) Act 1997 s. 39(10)</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2)
<b>Reprint of the Builders' Registration Act 1939 as at 19 Mar 1999</b> (includes amendments listed above)			
<i>Water Services Coordination Amendment Act 1999 s. 11(1)</i>	39 of 1999	9 Nov 1999	19 Jun 2000 (see s. 2 and <i>Gazette</i> 16 Jun 2000 p. 2939)
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000 s. 33(1)</i>	43 of 2000	2 Nov 2000	17 Feb 2001 (see s. 2(2) and <i>Gazette</i> 16 Feb 2001 p. 903)
<i>Building Legislation Amendment Act 2000 Pt. 2<sup>7, 8</sup></i>	76 of 2000	7 Dec 2000	1 Aug 2001 (see s. 2 and <i>Gazette</i> 31 Jul 2001 p. 3907)
<i>Corporations (Consequential Amendments) Act 2001 Pt. 9</i>	10 of 2001	28 Jun 2001	28 Sep 2001 (see s. 2 and <i>Gazette</i> 28 Sep 2001 p. 5352)
<b>Reprint of the Builders' Registration Act 1939 as at 11 Jan 2002</b> (includes amendments listed above)			
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 15</i>	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Economic Regulation Authority Act 2003 s. 62</i>	67 of 2003	5 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5723)
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 14<sup>9</sup></i>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Law Amendment (Simple Offences) Act 2004 s. 82</i>	70 of 2004	8 Dec 2004	31 May 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)

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Short title	Number and year	Assent	Commencement
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<b>Reprint 11: The Builders' Registration Act 1939 as at 2 Sep 2005</b> (includes amendments listed above)			
<i>Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 4 Div. 2</i>	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<i>Land Information Authority Act 2006 s. 119</i>	60 of 2006	16 Nov 2006	1 Jan 2007 (see s. 2(1) and <i>Gazette</i> 8 Dec 2006 p. 5369)
<i>Consumer Protection Legislation Amendment and Repeal Act 2006 Pt. 2</i>	69 of 2006	13 Dec 2006	14 Jul 2007 (see s. 2 and <i>Gazette</i> 13 Jul 2007 p. 3453)
<a href="#"><u>Local Government (Miscellaneous Provisions) Amendment Act 2007 s. 14</u></a>	<a href="#"><u>11 of 2007</u></a>	<a href="#"><u>29 Jun 2007</u></a>	<a href="#"><u>1 Jul 2008 (see s. 2 and Gazette 6 Jun 2008 p. 2179)</u></a>

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<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

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Short title	Number and year	Assent	Commencement
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000 s. 33(2)</i> <sup>10</sup>	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))
<del><i>Local Government (Miscellaneous Provisions) Amendment Act 2007 s. 14</i></del> <sup>13</sup>	<del>11 of 2007</del>	<del>29 Jun 2007</del>	<del>1 Jul 2008 (see s. 2 and Gazette 6 Jun 2008 p. 2179)</del>
<i>Legal Profession Act 2008 s. 641</i> <sup>14</sup>	21 of 2008	27 May 2008	To be proclaimed (see s. 2(b))

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<sup>2</sup> The *Superannuation and Family Benefits Act 1938* was repealed by the *State Superannuation Act 2000* s. 39 but its provisions continue to apply to and in relation to certain schemes because of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 26 and those provisions may be amended by regulations under subsection (3) of that section. See also endnote 9.

<sup>3</sup> In this reprint the renumbering of sections effected in the 1943 reprint (in Volume 2 of the Reprinted Acts of the Parliament of Western Australia) and retained in subsequent reprints has again been retained. References to the original numbering are contained in the 1943 reprint.

<sup>4</sup> The *Builders' Registration Amendment Act 1986* s. 11(2) is a transitional provision that is of no further effect.

<sup>5</sup> The *Builders' Registration Amendment Act 1990* s. 16(2) and (3) are transitional provisions that are of no further effect.

<sup>6</sup> The *Builders' Registration Amendment Act 1991* s. 16(2) is a transitional provision that is of no further effect.

<sup>7</sup> The *Building Legislation Amendment Act 2000* s. 59 and 62 read as follows:

“

**59. References to Committee in other written laws**

A reference in any written law to the Building Disputes Committee constituted under the *Builders' Registration Act 1939* is to be read and construed as a reference to the Building Disputes Tribunal under that Act as amended by this Act.

**62. Review**

- (1) The Minister is to carry out a review of the operation and effectiveness of the amendments made by this Act as soon as is practicable after the expiration of 3 years from the commencement of section 1 of this Act.
- (2) The Minister is to prepare a report based on the review made under subsection (1) and, as soon as is practicable after the report is prepared, is to cause it to be laid before each House of Parliament.

”.

<sup>8</sup> The *Building Legislation Amendment Act 2000* s. 60 is a transitional provision that is of no further effect.

<sup>9</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

<sup>10</sup> On the date as at which this compilation was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 33(2) had not come into operation. It reads as follows:

“

- (2) Section 5AA(2)(a) of the *Builders' Registration Act 1939* is amended by deleting “, including rights under the *Superannuation and Family Benefits Act 1938*,”.

”.

<sup>11</sup> Lands Titles Office diagrams and plans are now being held by the Western Australian Land Information Authority (see the *Land Information Authority Act 2006* s. 100).

<sup>12, 13</sup> Footnote no longer applicable.

~~<sup>13</sup> On the date as at which this compilation was prepared, the *Local Government (Miscellaneous Provisions) Amendment Act 2007* s. 14 had not come into operation. It reads as follows:~~

“

~~**14. Consequential amendments to the *Builders' Registration Act 1939***~~

~~(1) The amendments in this section are to the *Builders' Registration Act 1939*.~~

~~(2) After section 4B(1) the following subsections are inserted—~~

“

~~(1a) A person to whom a building approval certificate is issued under section 374AA of the *Local Government (Miscellaneous Provisions) Act 1960* must pay to the local government by which the certificate is issued (at the time of issue) such fee as is determined by the Minister.~~

~~(1b) Subsection (1a) applies if and only if the certificate is issued in respect of building work for which no building licence was issued.~~

”.

~~(3) Section 4B(2) is amended as follows:~~

~~(a) by deleting “referred to in subsection (1)” and inserting instead—~~

~~“ or building approval certificate ”;~~

~~(b) in paragraph (a) by inserting after “licence”—~~

~~“ or certificate ”;~~

~~(c) in paragraph (b) by inserting after “subsection (1)—~~

~~“ or (1a) ”.~~

”.

<sup>14</sup> On the date as at which this compilation was prepared, the *Legal Profession Act 2008* s. 641 had not come into operation. It reads as follows:

“

**641. Builders' Registration Act 1939 amended**

- (1) The amendments in this section are to the *Builders' Registration Act 1939*.
- (2) Section 2 is amended as follows:
  - (a) by deleting the definition of “legal practitioner” and inserting instead —

“

**“lawyer”** means an Australian lawyer within the meaning of that term in the *Legal Profession Act 2008* section 3;

”.

- (b) by inserting in the appropriate alphabetical position —

“

**“legal practitioner”** means an Australian legal practitioner within the meaning of that term in the *Legal Profession Act 2008* section 3;

”.

- (3) Sections 5A(2), 5B(3), 5C(1a)(a) and 27(2) are amended by deleting “legal practitioner” in each place where it occurs and inserting instead —

“ lawyer ”.

- (4) Section 45A is amended as follows:

- (a) in subsection (4)(a) by deleting “a certificated practitioner (within the meaning of the *Legal Practice Act 2003*),” and inserting instead —

~~“ a legal practitioner; ”;~~

- (b) in subsection (5) by deleting “legal practitioner, an articled clerk (as defined in the *Legal Practice Act 2003*),” and inserting instead —

“ lawyer ”.

”.