

## BUILDERS' REGISTRATION.

No. 29 of 1939.

[As amended by No. 43 of 1940\*, No. 15 of 1944†, No. 14 of 1945‡, and No. 24 of 1948§, and reprinted for the second time pursuant to the Amendments Incorporation Act, 1938.]

**AN ACT relating to the qualifications and registration of Builders; to constitute a Board in relation thereto, and for other purposes connected therewith.**

[Assented to 16th December, 1939.]

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

1. This Act may be cited as the *Builders' Registration Act, 1939-1948*, and shall come into operation on a day to be fixed by proclamation.||

Short title and commencement.  
No. 29 of 1939, s. 1, amended by No. 24 of 1948, s. 2.

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

Interpretation.  
No. 29 of 1939, s. 2, amended by No. 43 of 1940, s. 2.

“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,

\* Assented to 30th December, 1940. † Assented to 8th December, 1944.

‡ Assented to 9th January, 1946. § Assented to 9th December, 1948.

|| Proclaimed to come into operation on 1st May, 1940, see Gazette, 26th April, 1940.

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trading, commercial, hospital, institutional, assemblage, or public purposes, and the term used as an abstract noun means the erection or structural alteration of any such building.

No. 43 of  
1940, s. 2.

“Company” means a company incorporated or registered under the Companies Act, 1893-1938,\* or which, being a foreign company, has complied with the provisions of Part VIII. of the said Act.

No. 43 of  
1940, s. 2.

“Local Authority” means a municipal council or road board.

“Person trading as a builder” means any person who 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 buildings under this Act.

“Registrar” means registrar appointed under this Act.

Areas under  
the Act.

No. 29 of  
1939, s. 3.  
See No 41 of  
1951, s. 4.

3. This Act shall apply within the metropolitan area as defined in the Second Schedule of the Metropolitan Water Supply, Sewerage, and Drainage Act, 1909-1951.

Provided that the Governor may from time to time by proclamation declare that the Act shall apply in any other place or places, and thereupon the same shall apply accordingly: Provided that the Governor may by further proclamation revoke any such proclamation.

Prohibition  
against un-  
registered  
builders  
carrying on  
business.  
No. 29 of  
1939, s. 4,  
amended by  
No. 43 of  
1940, s. 3,  
and No. 24 of  
1948, s. 3.

4. (1) No person who is not registered under this Act shall—

(A) (a) construct either for himself or any other person, any building for the purpose of the immediate sale thereof;

\* Repealed by No. 36 of 1943, s. 4. For corresponding provisions of the repealed Act see Companies Act, 1943-1951.

- (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,

unless—

- (i) the total fee or charge payable in respect of the carrying out of the same does not exceed eight hundred pounds; or
  - (ii) under subsection (2) of this section 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 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.

No. 24 of  
1948, s. 3.

Penalty.

Penalty: For a first offence, not exceeding twenty pounds; for a second or subsequent offence, not less than twenty pounds or more than forty pounds and in either case if the offence consists of a contravention of subparagraph (b) of paragraph (A) of this subsection a further penalty not exceeding two pounds for every day or part of a day during which such offence continues to be committed after any conviction.

No. 24 of  
1948, s. 3.

(2) The persons exempted from the necessity of obtaining registration under this Act as mentioned in sub-subparagraph (ii) of paragraph (A) of subsection (1) of this section are—

Exemption  
No. 43 of  
1940, s. 3.

(a) any person who is—

- (i) a member of the Royal Institute of the Architects of Western Australia or of the Institution of Engineers of Australia (Perth Division), or of the Australasian Institute of Mining and Metallurgy;

- (ii) registered under the Architects Act, 1921;
- (iii) an officer or servant of the Crown or of any Crown instrumentality, or of any local authority, 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) any partnership, when not more than one of the partners is not registered under this Act;
- (c) any local authority; and
- (d) any company and any other body corporate whose building work is managed and supervised by a person registered under this Act or exempted from the necessity of obtaining registration under this Act.

Splitting contracts.

(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 eight hundred pounds 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.

No. 24 of 1948, s. 3.

Local Authorities not to issue building permits to unregistered persons.  
New section inserted by No. 24 of 1948, s. 4.  
See No. 41 of 1951, s. 7.  
See No. 41 of 1951, s. 8.

4A. (1) It shall be unlawful for any local authority to issue to any person who is not registered under this Act a permit, under section two hundred and ninety-eight of the Municipal Corporations Act, 1906-1951, or under the Building Regulations for the time being in force under the Road Districts Act, 1919-1951, to commence or proceed with any building on any block of ground in any area within which this Act applies unless—

- (a) the total fee or charge payable in respect of the carrying out of such building does not exceed eight hundred pounds; or
- (b) the person to whom such permit is issued is a person exempted under subsection (2) of section four of this Act from the necessity of obtaining registration; or
- (c) the person to whom such a permit is issued is proposing to construct the building to which the permit relates for himself and not for the purpose of the immediate sale thereof.

(2) Any person who, in order to obtain from any local authority any building permit makes any false and fraudulent declaration, representation or statement, either in writing or otherwise, relating to the total fee or charge payable in respect of the carrying out of any proposed building or relating to the qualifications as to either the registration or the right to exemption from registration of the person proposing to carry out the building, shall be guilty of an offence and shall be liable to a fine not exceeding fifty pounds or be imprisoned for any term of not more than twelve months.

5. (a) A body corporate is hereby constituted under the name of the Builders' Registration Board of Western Australia.

Constitution  
of the Build-  
ers' Registra-  
tion Board of  
Western  
Australia.

(b) The Board shall have perpetual succession and a common seal, and shall be capable of suing and being sued.

No. 29 of  
1939, s. 5,  
amended by  
No. 15 of  
1944, s. 2.

(c) The Board shall consist of five members, namely, the President of the West Australian Chapter of the Royal Australian Institute of Architects, the Principal Architect (Government) who shall be chairman, a representative appointed by Master Builders' Association of Western Australia, a representative of the workers engaged in the building trade nominated by the Governor, and a representative appointed by the Western Australian Builders' Guild (Incorporated).

Board.  
Proceedings  
validated.  
No. 29 of  
1939, s. 6.

6. (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.

Chairman of  
meeting;  
casting vote.

(2) At any meeting of the Board the chairman, or, in his absence, any member elected to act as chairman of such meeting by the members present, shall preside, and in case of an equality of votes, shall have a second or casting vote.

Quorum.

(3) Three 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.

Fees to  
members.

(4) Each member of the Board (including the chairman) shall receive such fee out of the funds of the Board as the Minister approves, not exceeding one pound one shilling for each sitting of the Board attended by such member. No such member shall be entitled to receive or be paid in any one year more than twelve pounds twelve shillings.

First meeting  
of the Board.

(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.

Appointment  
of officers.  
No. 29 of  
1939, s. 7.

7. (1) The Board may appoint a registrar and such clerks and other employees as are necessary for the carrying out of its duties and functions, 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.

Duties and  
powers of  
Board.  
No. 29 of  
1939, s. 8.

8. Subject to this Act the duties and powers of the Board shall be:—

- (a) to determine the course of training (including practical experience in the work of a builder) to be pursued and undertaken by the examination of persons desiring to be registered under this Act;

- (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 or cancel certificates of registration;
- (d) to cancel or suspend the registration of any person under this Act;
- (e) to annul such cancellation or suspension;
- (f) to take proceedings for offences against this Act; and
- (g) generally, to carry out the provisions of this Act.

9. (1) The Board shall cause to be kept a register of builders (to be called the Register of Builders), which shall be in the prescribed form.

Builders' Register. No. 29 of 1939, s. 9.

(2) The entry in the register shall in such case indicate the qualifications or other matters in virtue of which the entry was made.

Entries.

(3) The Board shall, in the month of January in the year following the expiration of a period of twelve months from the commencement of this Act, and thereafter in the month of January in every year in which the Minister so directs, cause a copy of the register, corrected to the thirty-first day of December then last past to be published in the *Government Gazette*.

Register to be gazetted.

(4) In the month of January in each year in which a copy of the register is not published, the Board shall publish in the *Government Gazette* a supplementary list showing all alterations, additions, revisions, and removals made in the register during the twelve months ended on the thirty-first day of December then last past.

Supplementary lists.

(5) Every supplementary list so published shall be deemed to be part of the last published copy of the register, and such last published copy shall be read and construed as subject to every such list.

Published copies and lists to be read together.

## Evidence.

(6) Any copy of the register, or of any such supplementary list published as aforesaid, shall be *prima facie* evidence of the facts therein stated, and the absence of the name of any person from such published copy shall be *prima facie* evidence that such person is not or was not registered under this Act (as the case may be).

## Certificate.

(7) A certificate that any person is or is not or was or was not registered under this Act shall, if signed by the registrar, be *prima facie* evidence of the facts therein stated.

Who may be registered.  
No. 29 of 1939, s. 10, repealed and new s. 10 inserted by No. 43 of 1940, s. 4 as amended by No. 14 of 1945, s. 2 and No. 24 of 1948, s. 5.

10. (1) Any person, not being a company or any other body corporate, who applies to be registered under this Act shall 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 twenty-one years; and
  - (ii) is a natural born or naturalised British subject; and
  - (iii) is a person of good character; and
  - (iv) (a) has completed the prescribed course of training and has passed the prescribed examination; or
  - (b) subject as hereinafter provided, had at the time of the passing of this Act been trading as a builder or had been a supervisor of building work for not less than two years and is competent to carry out and supervise building work.

No. 14 of 1945, s. 2.

Provided that the alternative condition contained in this sub-subparagraph (b) shall be a qualification for registration under this Act, in the case of a person other than a person who is or was a member of the Defence Forces of the Commonwealth during the war in which His Majesty is or was recently engaged and which commenced on the third day of September one thousand nine hundred and thirty-nine, until the thirtieth day of June one thousand



nine hundred and forty-six, and in the case of a person who is or was a member of such Defence Forces, until the thirtieth day of June one thousand nine hundred and forty-six or the expiration of nine months from such person ceasing to be a member of such Defence Forces, whichever is the later.

(2) Any company or other body corporate which is not exempted under subsection (2) of section four of the Act and which applies to be registered under this Act shall, subject as hereafter provided, 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 or exempt from registration under this Act 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 by the company or other body corporate to manage and supervise the building work undertaken by the company or the body corporate aforesaid.

(3) Provided that, and notwithstanding anything to the contrary contained in this Act, the registration under this Act of a company or other body corporate pursuant to subsection (2) of this section shall continue and have effect only while 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 by the company or the body corporate aforesaid to manage and supervise the building work undertaken by the company or the body corporate aforesaid continues to be registered under this Act.

(4) A 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.

Subsection  
(4) added by  
No. 24 of  
1948, s. 5.

Appeal  
against  
refusal of  
Board to  
register.  
No. 43 of  
1940, s. 6.  
Cf. section  
14 of this  
reprint.

11.\* (1) Any applicant under section ten of this Act whose application has been refused by the Board shall be entitled, on demand, to be furnished in writing with the reason or reasons for such refusal.

(2) Within fourteen days of receipt by the applicant of such reasons, he or it may appeal to the magistrate of the nearest local court against the decision of the Board by notice in writing of his or its intention so to do, at a day not less than ten days after service of such notice on the Board.

(3) The magistrate of the local court may allow such appeal or dismiss same, and, in the event of allowing such appeal, may direct the Board to register the appellant under this Act, in accordance with the provisions thereof.

(4) The magistrate of the local court may award costs to the successful party.

(5) The appellant may adduce all such evidence at the hearing of the appeal of which he has given the Board seven days' notice before the date fixed for the hearing, but not further or otherwise.

Course of  
training and  
examinations  
to be pre-  
scribed by  
the Board.  
No. 29 of  
1939, s. 11.

12. (1) The course of training to be pursued and undertaken by and the examination of persons desiring to be registered under this Act 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.

Cancellation  
of registra-  
tion for fraud  
or on other  
grounds.  
No. 29 of  
1939, s. 12.

13. (1) The Board may cancel or suspend registration of any person under this Act—

(a) where such registration has been obtained by fraud or misrepresentation; or

(b) when after such registration such person has been convicted of any crime or misdemeanour or of any offence which, if committed in Western Australia, would be a crime or misdemeanour; or

\* The provisions of this section were enacted by section 6 of No. 43 of 1940 and were incorporated and numbered as section 11 in the Builders' Registration Act, 1939-1940, as reprinted and published in Volume 2 of the Reprinted Acts of the Parliament of Western Australia, 1943.

- (c) who has been guilty of any negligence or incompetence in connection with the performance of any contract in connection with any building or who has been convicted of any offence against this Act or any regulation; or
- (d) who has been guilty of any fraudulent conduct in regard to the carrying out or completion of any building which he has contracted to build,

and upon the making of the order of cancellation, or (as the case may be) during the period specified in the order of suspension, such person shall cease to be registered under this Act.

(2) By order of the Board the cancellation or suspension of the registration of any person may at any time, and for such reason and upon such terms as the Board thinks fit, be annulled. A person whose registration has been suspended or cancelled may at any time after the expiration of three months from the date of such cancellation apply to the Board to annul such cancellation.

(3) Before cancelling or suspending the registration of any person the Board shall—

- (a) send to such person by post or registered letter, notice in writing of the complaint against him; and
- (b) hold full inquiry into the matter and afford such person an opportunity of giving an explanation personally or in writing.

14. (1) Any person who feels aggrieved by any decision of the Board in withholding or refusing, cancelling, or suspending his registration, or in refusing to annul the cancellation or suspension of his registration, may appeal therefrom to a stipendiary magistrate within one month after the date of such decision.

Appeal from  
decision of  
Board.  
No. 29 of  
1939, s. 13.  
Cf. s. 11 of  
this reprint.

(2) Such magistrate may decide the appeal on any notes of evidence taken by the Board, or may deal with the matter by way of rehearing, and for that purpose may take evidence on oath or affirma-

tion, in the same manner and to the same extent as he is empowered to do in the exercise of his ordinary jurisdiction. The decision of the magistrate shall be final and conclusive.

Fraudulently obtaining certificate, etc., falsifying register, etc.  
No. 29 of 1939, s. 14.

15. 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,

shall be guilty of an offence, and shall be liable to a fine not exceeding fifty pounds, or be imprisoned for any term of not more than twelve months.

Penalty for disobedience of order of Board or breach of regulations.  
No. 29 of 1939, s. 15.

16. Save as otherwise expressly provided, any registered 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,

shall be liable to a penalty of not more than twenty pounds.

Powers conferred on Board in conducting investigation.  
No. 29 of 1939, s. 16.

17. (1) For the purpose of conducting any investigations or inquiry authorised to be made under this Act, the Board shall have power to compel the attendance of witnesses, and may administer oaths and affirmations.

(2) Without limiting the generality of subsection (1) of this section the Board may for the purposes of any such investigation or inquiry take a statutory declaration from any witness or other person.

18. (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 chairman of the Board, to enter the premises of any local authority 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 authority relating to applications for and the issue of building permits by the local authority for the purpose of obtaining any information which the Board requires.

Local authorities to furnish information to the Board. No. 29 of 1939, s. 16A, as inserted by No. 43 of 1940, s. 5.

(2) If any member or officer or servant of a local authority 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) of this section, he shall be guilty of an offence.

Penalty: Fifty pounds.

19. (1) Any person whose registration has been cancelled or suspended shall within fourteen days from the notification to such person of such cancellation or suspension surrender to the Board every certificate issued to such person under this Act.

Return of certificates. No. 29 of 1939, s. 17, amended by No. 24 of 1948, s. 6.

(2) On failure to do so, such person shall be liable to a penalty of not more than twenty pounds.

(3) The cancellation or suspension of the registration of any person shall be effectual, notwithstanding such failure to surrender any certificate.

20. In any legal proceedings, any signature, which purports to be the signature of any person who is or has been president 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.

Signature of chairman. No. 29 of 1939, s. 18.

21. 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,

Proceedings under this Act. No. 29 of 1939, s. 19.

until evidence is given to the contrary, be required of any such authority having been given by the Board.

Fees and  
expenses.  
No. 29 of  
1939, s. 20.

22. (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) Such fees shall not exceed—

- (a) for examination—three pounds three shillings;
- (b) for registration—ten shillings and sixpence;
- (c) for any certificate—two shillings and sixpence.

(3) There shall also be paid to the Board on or before the first day of February in each year by every registered builder a fee of one pound one shilling; and, if any registered 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 ten shillings, as the Board directs.

(4) All fees and penalties paid or recovered under this Act shall be paid to the Board.

(5) The Board shall—

(a) apply such fees and penalties to—

- (i) 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;
- (ii) the provision of scholarships for the technical training of persons employed or to be employed in the building trade, or any trade incidental thereto.

23. (1) The Board shall as soon as practicable after the thirty-first day of December in each year, and not later than the last day of February next following, prepare a financial statement made up to that date, showing the assets and liabilities and the receipts and expenditure of the Board during the preceding twelve months, which statement shall be audited by a qualified auditor.

Financial statement and audit thereof and annual report.  
No. 29 of 1939, s. 21.

(2) The Board shall—

- (a) submit a copy of the statement so audited to the Minister; and
- (b) present to the Minister on or before the thirty-first day of March in each year, a report of its proceedings under this Act up to the preceding thirty-first day of December.

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

Power to make regulations.  
No. 29 of 1939, s. 22.

- (a) the time for and mode of nominating members of the Board;
- (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 fee payable under this Act;
- (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;

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- (i) granting a temporary license 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.

Power of  
Governor in  
Council to  
revoke  
regulations.

(2) Any such regulations may without prejudice to any other method of revocation be revoked by Order of the Governor in Council.