

Western Australia

Street Alignment Act 1844

As at 01 Jul 2006

Version 01-d0-06

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Street Alignment Act 1844

An Act to provide for the alignment of streets in the several towns in the Colony of Western Australia.

Preamble

Whereas by the first section of an Act of Council passed in the fourth and fifth year of the reign of Her present Majesty Queen Victoria, intituled “An Act to provide for the improvement of Towns in the Colony of Western Australia,”² the right of property in all streets, paths, canals, towing-paths, ferries, bridges and other thoroughfares within the limits of any townsite is vested in the respective trustees of each such town; and whereas in several instances a difficulty has been experienced in recognising the exact lines of the streets, because many of the surveyors’ marks by which such lines were originally defined have been either removed, destroyed or obliterated in the course of time; and whereas it is highly expedient to ascertain the precise limits of the streets so vested in each Town Trust respectively and to define the same by conspicuous and permanent marks, so as to enable the said Trustees to preserve the regularity of the streets and to prevent any encroachment thereon:

1. Governor may direct surveys to be made of towns

Be it therefore enacted by His Excellency the Governor of Western Australia, by and with the advice and consent of the Legislative Council thereof, that immediately after the passing of this Act it shall be lawful for the Governor to direct an authorised land officer at his earliest convenience to cause a survey to be made of every town laid out by the Government of this Colony as nearly as possible in accordance with the survey originally made of such town, except in any case where a deviation therefrom may have been previously directed and sanctioned by any Governor of this Colony, or may during the progress of such survey be found

necessary for the rectification of any street so as not to interfere with any substantial brick or stone building already erected, and which deviation may be sanctioned by the Governor in Executive Council, in which case the survey is to be made in accordance with such sanctioned alteration, which the Governor is hereby authorised to make: Provided nevertheless that no such alteration shall be so made as to lessen the quantity of land contained in any allotment granted in fee-simple by the Crown without compensation being given for the portion so taken away.

[Section 1 amended by No. 126 of 1987 s. 11.]

[2. *Deleted by No. 8 of 1924 s. 8.]*

3. Authorised land officer may enter allotments etc.

And be it enacted that it shall be lawful for an authorised land officer or any person or persons assisting him from time to time, to enter upon any allotment for the purposes of this Act, and to erect such post or posts or construct such other mark or marks, as may be deemed necessary, and for that purpose to dig holes or to remove such parts of fences, walls or other erections as may be in the way, and any person who shall wilfully obstruct or hinder him or them in the execution of such duty shall forfeit and pay a sum not exceeding \$20.

[Section 3 amended by No. 113 of 1965 s. 8(1); No. 126 of 1987 s. 12.]

[4. *Deleted by No. 8 of 1924 s. 8.]*

5. Structures in the way of boundary posts may be marked instead

Provided always and be it enacted that if it shall so happen that any house, wall or other substantial erection shall be found to be correctly placed at the corner of any block of allotments so that it is impracticable to erect in that position one of such posts as aforesaid, then in that case it shall be sufficient to mark or otherwise affix the said letters in such permanent manner as

may be deemed advisable in their proper places in the manner aforesaid upon such house, wall or other substantial erection.

6. Boundary posts, ownership and effect of

And be it enacted that the said boundary posts and marks so placed as aforesaid, shall be deemed and taken to be the property of the Town Trust, and shall indicate and define the position, direction and breadth of the several streets and lines of communication vested in the Trustees of each town respectively.

7. Survey to be given to Governor

And be it enacted that whensoever and so soon as the several streets and lines of communication within any townsite shall have been ascertained and marked as aforesaid, the chief executive officer of the Department within the meaning of the *Land Administration Act 1997* shall report the same and lay before the Governor in Executive Council a map or plan of such town in duplicate, having the streets and lines of communication delineated accordingly thereon, both of which plans shall be signed by the Governor in Executive Council, and one shall be retained in that Department or some other convenient place and the other shall be delivered to the Chairman or Acting-Chairman of the Town Trust, either of which plans so signed by the Governor or any copy thereof duly certified by the chief executive officer of that Department, shall and may be given in evidence of such streets or lines of communication in any cause or suit regarding the same.

[Section 7 amended by No. 126 of 1987 s. 13; No. 31 of 1997 s. 141; No. 28 of 2006 s. 452(2).]

8. Streets may be aligned in accordance with the survey

And be it enacted that immediately after such plan shall have been delivered to the Chairman or Acting-Chairman of the Town Trust aforesaid, it shall be lawful for such Chairman or Acting-Chairman, and he is hereby authorised and required, to

proceed forthwith to adjust and regulate the lines of streets between the posts or marks as aforesaid according to such plan, and for that purpose to remove any material or erection whatsoever which may project into the lines of streets so defined as aforesaid, and to place the same upon the immediately adjacent land, and any person who shall wilfully obstruct or hinder him or any one employed by him in the execution of such duty, shall forfeit and pay a sum not exceeding \$20.

[Section 8 amended by No. 113 of 1965 s. 8(1).]

9. Nothing to be fastened to the boundary posts

And be it enacted that it shall not be lawful to mortice into or nail or fasten in any other way to the said boundary posts or marks so placed as aforesaid, any rail, post, paling or other material whatsoever, and any person who is summarily convicted of having done so, or of having wilfully injured, defaced or disturbed any such boundary post or mark as aforesaid, shall be liable to a fine not exceeding \$40.

[Section 9 amended by No. 113 of 1965 s. 8(1); No. 59 of 2004 s. 141.]

[10. Deleted by No. 70 of 2004 s. 82.]

11. Boundary posts to be inspected annually

And be it enacted that the Chairman or Acting-Chairman of the Town Trust shall in the month of December of each year examine and inspect the said posts and marks, and make a written report of their state and condition to the Governor, and if it shall appear from the said report, or if at any time it shall be discovered in any other manner that any of the said posts or marks require to be renewed, repaired or adjusted, it shall be lawful for the Governor to direct the same to be renewed, repaired or adjusted, in the same way as they were originally made, but at the cost and expense of the said Town Trust.

12. Plans of new streets and allotments

And be it enacted that when and so often as any fresh blocks of allotments are required to be laid out, by which any new lines of communication shall be formed, an authorised land officer shall lay before the Governor in Executive Council duplicate maps or plans of the same, both of which plans shall be signed by the Governor in Council, and one shall be retained in the Department within the meaning of the *Land Administration Act 1997*, or some other convenient place, and the other shall be delivered to the Chairman or Acting-Chairman of the Town Trust, either of which plans, so signed by the Governor, or any copy thereof duly certified by an authorised land officer, shall and may be given in evidence of such streets in any cause or suit regarding the same, and such additional lines of communication and blocks of allotments may be added to or delineated upon the original maps or plans, and the additional part authenticated in the same manner as the original maps or plans by the signature of the Governor in Council, and such part so authenticated may also be given in evidence as aforesaid.

[Section 12 amended by No. 126 of 1987 s. 14; No. 31 of 1997 s. 141.]

13. Limitation of actions

And be it enacted that no action, suit, or proceedings shall be commenced or prosecuted against any person or persons for anything done in pursuance of this Act until 30 days' notice thereof shall be given to such person or persons, nor after sufficient satisfaction or tender of amends hath been made to the part or parties aggrieved, nor after the expiration of 6 calendar months next after the fact committed; and the defendant or defendants in every such action, suit, or prosecution, shall and may, at his or their election, plead specially, or the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this Act; and if it shall appear that the matter on which the cause of action arose was done in pursuance and by

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authority of this Act, or that such action or suit shall have been brought before 30 days' notice thereof was given as aforesaid, or after a sufficient satisfaction made or tendered as aforesaid, or after the time limited for bringing the same as aforesaid, then the Court or Jury shall find for the defendant or defendants; and upon such verdict or finding, or if the plaintiff or plaintiffs shall be nonsuited, or shall discontinue his, her, or their action, suit, or prosecution, after the defendant or defendants shall have appeared, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs, defendant or defendants shall recover double costs, and have such remedy for the same as any defendant or defendants hath or have in other cases of costs given by law, and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant unless the Judge before whom the trial shall be shall certify his approbation of the action and of the verdict obtained thereon.

[Section 13 partly repealed by No. 35 of 1935 s. 48A(2)³.]

14. Limitation of prosecutions

And be it enacted that all prosecutions for the recovery of any of the forfeitures and penalties imposed by this Act must be commenced within one calendar month after the offence committed for which such penalty or forfeiture shall be incurred.

15. Offences to be dealt with summarily

- (1) Proceedings for an offence against this Act shall be dealt with summarily in a court of summary jurisdiction.
- (2) Any penalty or forfeiture imposed under this Act shall be paid to the Town Trust of the town in which the offence was committed.

[Section 15 inserted by No. 78 of 1995 s. 125.]

[16.] Deleted by No. 59 of 2004 s. 141.]

17. Interpretation

In this Act —

authorised land officer has the meaning given by the *Land Administration Act 1997*.

[Section 17 inserted by No. 126 of 1987 s. 15; amended by No. 31 of 1997 s. 141.]

18. Short title

This Act may be cited as the *Street Alignment Act 1844*¹.

[Section 18 inserted by No. 10 of 1970 s. 3.]

Notes

¹ This is a compilation of the *Street Alignment Act 1844* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
Untitled ⁴	8 Vict., No. 8	22 Aug 1844	22 Aug 1844
<i>Standard Survey Marks Act 1924 s. 8</i>	8 of 1924	25 Nov 1924	25 Nov 1924
<i>Limitation Act 1935 s. 48A(2)</i>	35 of 1935 (as amended by No. 73 of 1954 s. 5)	14 Jan 1955	Relevant amendments (see s. 48A ³) took effect on 1 Mar 1955 (see No. 73 of 1954 s. 2 and <i>Gazette</i> 18 Feb 1955 p. 343)
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	s. 4-9: 14 Feb 1966 (see s. 2(2)); balance: 21 Dec 1965 (see s. 2(1))
<i>Statute Law Revision Act 1970 s. 3</i>	10 of 1970	29 Apr 1970	29 Apr 1970
<i>Acts Amendment (Land Administration) Act 1987 Pt. III</i>	126 of 1987	31 Dec 1987	16 Sep 1988 (see s. 2 and <i>Gazette</i> 16 Sep 1988 p. 3637)
<i>Criminal Law Amendment Act (No. 2) 1992 s. 16(1)</i>	51 of 1992	9 Dec 1992	6 Jan 1993
<i>Sentencing (Consequential Provisions) Act 1995 Pt. 75</i>	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Acts Amendment (Land Administration) Act 1997 s. 141</i>	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
Reprint of the <i>Street Alignment Act 1884</i> as at 21 Dec 2001 (includes amendments listed above)			
<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)

Short title	Number and year	Assent	Commencement
<i>Criminal Law Amendment (Simple Offences) Act 2004</i> s. 82	70 of 2004	8 Dec 2004	31 May 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 78	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))
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> s. 452(2) ⁵	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)

² 4 & 5 Vict. No. 18 (1841) repealed by 14 Vict. No. 15 (1850).

³ The *Limitation Act 1935* s. 48A(2) reads as follows:

“

- (2) The provisions of any Act which enact that in an action to which section forty-seven A of this Act applies,
- (a) the action is to be commenced within a particular time; or
 - (b) notice of action is to be given within a particular time or otherwise,
- are repealed.

”.

⁴ Now known as the *Street Alignment Act 1844*; short title inserted (see note under s. 18).

⁵ The *Machinery of Government (Miscellaneous Amendments) Act 2006* section 454 provides general transitional provisions concerning references to chief executive officers that are amended or repealed by that Act.