

BUILDERS' REGISTRATION.

No. 39 of 1983.

AN ACT to amend the Builders' Registration Act 1939-1982.

[Assented to 1 December 1983.]

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

1. (1) This Act may be cited as the *Builders' Registration Amendment Act 1983*.

Short title
and citation.

(2) In this Act the Builders' Registration Act 1939-1982 is referred to as the principal Act.

Reprinted as
approved
16 February
1981;
amended by
Act No. 10
of 1982.

(3) The principal Act as amended by this Act may be cited as the Builders' Registration Act 1939-1983.

Commence-
ment.

2. The provisions of this Act shall come into operation on such day or days as is or are respectively fixed by proclamation.

Section 3
amended.

3. Section 3 of the principal Act is amended—

(a) in subsection (1) by deleting “the” and substituting the following—

“ any ”; and

(b) by repealing subsection (2) and substituting the following subsection—

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

Section 4A
amended.

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

(a) in paragraph (c) (ii) of subsection (1), by deleting “two” and substituting the following—

“ 6 ”;

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

“ (1a) Subject to subsection (4) of this section, the Minister may order that, in relation to any particular application by a person for a building licence, subparagraph (ii) of paragraph (c) of subsection (1) of this section 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. ”;

(c) by renumbering subsection (1a) as (1b);

- (d) by inserting after subsection (2) the following subsection—

“ (2a) A person who is constructing a building pursuant to a building licence issued to him in accordance with subsection (1) (c) of this section 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: Fifty dollars. ”;

- (e) in subsection (3)—

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

“ Minister under subsection (4) of this section ”; and

- (ii) by deleting “eighteen months” and substituting the following—

“ 3 years ”; and

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

“ (4) An application for an order under subsection (1a) or a consent under subsection (3) of this section 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. ”.

Section 5
amended and
transitional
provisions.

5. (1) Section 5 of the principal Act is amended by repealing subsections (3), (4) and (5).

(2) Each person holding office as the chairman or other member of the Builders' Registration Board of Western Australia immediately before the coming into operation of this section shall continue to hold office as such until the expiry of his term, subject to the principal Act and the terms of his appointment, and shall be eligible for reappointment.

(3) For the purposes of the appointment of a successor to, or a deputy of, a member (other than the chairman) referred to in subsection (2) of this section, such member shall—

- (a) in the case of the representative nominated, pursuant to the repealed section 5 (3) of the principal Act, by The Royal Australian Institute of Architects (W.A. Chapter), be deemed to have been appointed under section 5A (1) of the principal Act, as inserted by section 6 of this Act, following nomination by the Minister from a panel submitted by that body pursuant to section 5A (3) (b) (i) of the principal Act;
- (b) in the case of the representative appointed, pursuant to the said section 5 (3), by the Master Builders' Association of Western Australia, be deemed to have been appointed under the said section 5A (1) following nomination by the Minister from a panel submitted by that body pursuant to subsection (3) (b) (ii) of the said section 5A;

- (c) in the case of the representative of the workers engaged in the building trade nominated, pursuant to the said section 5 (3), by the Governor, be deemed to have been appointed under the said section 5A (1) following nomination by the Minister from a panel submitted by The Building Trades Association of Unions of Western Australia (Association of Workers) pursuant to subsection (3) (b) (iii) of the said section 5A; and
- (d) in the case of the person appointed by the Governor pursuant to the said section 5 (3), as being a registered builder, be deemed to have been appointed under the said section 5A (1) following nomination by the Minister from a panel submitted by the Housing Industry Association Western Australian Division pursuant to subsection (3) (b) (iv) of the said section 5A.

6. After section 5 of the principal Act, the following section is inserted—

Section 5A
inserted.

“ 5A. (1) The Board shall consist of a chairman and 5 other members, appointed by the Governor in accordance with this section.

Appointment
of Board
members.

(2) The chairman shall be a person nominated as such by the Minister.

(3) As to the other 5 members—

- (a) one shall be a person nominated by the Minister whom the Minister considers to be qualified to represent the interests of consumers; 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) of this section or section 5B (2) or 5C (3) of this Act, the Minister shall request a body referred to in subsection (3) (b) of this section to submit a panel 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 of this Act, 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 re-appointed. ”.

7. Section 5A of the principal Act is amended—

Section 5A
renumbered
as 5B and
amended.

- (a) by deleting "5A." and substituting the following—

" 5B. (1) ";

- (b) in subsection (1), by inserting after "may thereupon" the following—

" , in accordance with subsection (2), "; and

- (c) by inserting, after subsection (1), the following subsection—

" (2) An appointment under subsection (1) shall be made on the nomination of the Minister and, subject to subsection (4) of section 5A, the nominee shall, except in the case of a vacancy in the office of chairman or of the member referred to in subsection (3) (a) 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. "

8. After section 5B of the principal Act, the following section is inserted—

Section 5C
inserted.

- " 5C. (1) The Governor shall appoint a member to be deputy chairman of the Board, and during any vacancy in the office of chairman, or if he is unable to act by reason of sickness, absence or other cause, the deputy chairman shall have and perform the powers, functions and duties of the chairman.

Deputy of
chairman and
members.

(2) The Governor may, in accordance with subsection (3) of this section, appoint a deputy for each member of the Board (other than

the chairman) and such a deputy is entitled, in the event of the absence from a meeting of the Board of the member for whom he is deputy, to attend that meeting, and, when so attending, shall be deemed to be a member of the Board.

(3) An appointment under subsection (2) shall be made on the nomination of the Minister, and, subject to subsection (4) of section 5A, the nominee shall, except in the case of the member referred to in subsection (3) (a) 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 6
amended.

9. Section 6 of the principal Act is amended—

(a) in subsection (2), by inserting after “in his absence,” the following—

“ the deputy chairman or, in the absence of both of them, ”; and

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

“ (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 Public Service Board. ”.

Section 8
amended.

10. Section 8 of the principal Act is amended—

(a) by deleting “8. Subject to this Act the duties and powers” and substituting the following—

“ 8. (1) The functions ”; and

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

“ (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. ”

11. Section 9A of the principal Act is amended—

Section 9A
amended.

- (a) in paragraph (a), by deleting “West Australian” and substituting the following—

“ W.A. ”; and

- (b) in paragraph (c), by deleting “(Perth Division)” and substituting the following—

“ Western Australian Division ”.

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

Section 12A
amended
and
transitional
provision.

- (a) by inserting after subsection (1a) the following subsection—

“ (1aa) The Board 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. ”; and

(b) by inserting after subsection (4) the following subsections—

“ (4a) If the Board is satisfied that an order to remedy building work—

(a) made by the Board under subsection (1) (a) or (1a) (a) of this section; or

(b) so made by the Board, and varied by a magistrate under subsection (3) of this section,

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) of this section, the Board 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) of this section, 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) of this section as if it were an order made by the Board in the first instance.

(4c) The revocation of an order under subsection (4a) (c) of this section shall not affect anything done under the order, or a punishment imposed under subsection (4) of this section, before the revocation. ”.

(2) The power conferred on the Builders' Registration Board by section 12A (4a) of the principal Act, as inserted by subsection (1) of this section, shall not apply to any case in which an order to remedy building work has been made by the Board before the coming into operation of subsection (1) of this section.

13. After section 12A of the principal Act, the following section is inserted—

Section 12AA
inserted.

“ 12AA. (1) The Board may, by instrument, delegate to the registrar any of its powers under section 12A of this Act.

Board may
delegate
power under
section 12A
to registrar.

(2) Where a power has been exercised under this section by the registrar it shall be deemed to have been exercised by the Board.

(3) A delegation under this section may—

(a) be made subject to such conditions, qualifications and exceptions as are set out in the instrument of delegation;

(b) by instrument, be revoked or varied by the Board.

(4) The Board may exercise any power conferred on it by section 12A of this Act notwithstanding that it has delegated the exercise of the power under this section.

(5) For the purposes of the exercise by the registrar of a power delegated to him under this section, references in section 12A of this

Act to the Board being satisfied as to any matter or considering costs or a sum of money to be reasonable, shall be read as references to the registrar being so satisfied or considering the costs or sum of money to be reasonable. ”.

Section 14
amended.

14. Section 14 of the principal Act is amended by inserting, after subsection (2), the following subsection—

“ (3) The magistrate may award costs to the successful party. ”.

Section 22
amended.

15. Section 22 of the principal Act is amended in subsection (5)—

(a) by deleting “shall—

(a) apply such fees and penalties to— ”
and substituting the following—

“ shall apply such fees and penalties
to— ”;

(b) by renumbering subparagraphs (i) and (ii)
as paragraphs (a) and (b) respectively;

(c) in paragraph (b), by deleting the full stop
and substituting the following—

“ ; and ”; and

(d) by inserting, after paragraph (b), the fol-
lowing paragraph—

“ (c) with the approval of the Minister,
the provision of any training
scheme for persons referred to
in paragraph (b) of this sub-
section. ”.

16. Section 24 of the principal Act is amended in subsection (1) by deleting paragraph (a).

Section 24
amended.

17. (1) The Schedule to the principal Act is deleted and the following schedule is substituted—

Substitution
of Schedule
and
transitional
provision.

“

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 the Shire of Wanneroo, and extending easterly, generally southerly, again easterly, again generally southerly and again easterly along the boundaries of that district to the intersection of the prolongation northerly of the eastern boundary of Location 1584 with the prolongation westerly of the northern boundary of Location 2478, being a north-western corner of the district of the Shire of Swan; thence generally easterly, generally northerly, generally easterly, southerly, easterly and again southerly along the boundaries of that district to the easternmost south-eastern corner of Location 1817, being a point on the northernmost northern boundary of the district of the Shire of Mundaring; thence easterly, generally southerly, again easterly, again generally southerly, generally westerly, again southerly, again easterly, again southerly and again westerly and generally north-westerly along boundaries of the district of the Shire of Mundaring to the intersection of the left bank of the Darkan River with the prolongation northerly of the western boundary of late Pre-emptive Poison Right 8/228, being the easternmost north-eastern corner of the district of the Shire of Kalamunda; thence southerly along the easternmost eastern boundary of the district of the Shire of Kalamunda to the prolongation east of the southern boundary of Canning Location 710, being a north-eastern corner of the district of the Town of Armadale; thence generally southerly, generally south-easterly, westerly and south-westerly along the boundaries of the district of the Town of Armadale to the 33 Mile Post on the north-eastern side of Albany Highway, being a north-eastern corner of the

district of the Shire of Serpentine-Jarrahdale; thence generally south-easterly, southerly, generally westerly and northerly along boundaries of the district of the Shire of Serpentine-Jarrahdale to the north-eastern corner of Lot 3 of Cockburn Sound Location 16, as shown on Land Titles Office Diagram 2909, being a south-eastern corner of the district of the Shire of Rockingham; thence generally westerly along the boundaries of the district of the Shire of Rockingham to the south-western corner of Lot 236 as shown on Land Titles Office Plan 7931 (2), (South Latitude 32 degrees 27 minutes 24.586 seconds, East Longitude 115 degrees 44 minutes 52.324 seconds); thence west 17 820.4 metres to East Longitude 115 degrees 33 minutes 30 seconds; thence north 110 932.1 metres to South Latitude 31 degrees 27 minutes 23.105 seconds and thence east 148 metres to the starting point.

2. *The Shire of Mandurah.*

That is to say, all that portion of the State which lies within the area bounded by a line starting at the intersection of the low water mark of the Indian Ocean with the prolongation westerly of the northern boundary of Lot 3 of Cockburn Sound Location 16, as shown on Land Titles Office Plan 3064 and extending easterly to and along that boundary and onwards to the north-western corner of Lot 1, as shown on Land Titles Office Plan 12382; thence easterly along the northern boundary of that lot and onwards to an eastern side of Stock Road; thence generally southerly, generally south-easterly, generally south-westerly, south-easterly, southerly and again south-easterly along sides of that road to a north-eastern side of Lakes Road; thence south-easterly that side to the right bank of the Serpentine River; thence generally south-westerly downwards along that bank to the northernmost northern boundary of Location 2459; thence westerly and south-westerly along boundaries of that location and south-westerly along the north-western boundary of Lot 217 of Location 16, as shown on Land Titles Office Plan 2087 Sheet 1 and onwards to a south-western side of Hougham Road; thence south-easterly along that side to the right bank of the Serpentine River; thence generally southerly, generally westerly, generally south-westerly, generally south-easterly and again generally south-westerly downwards along that bank to the low water mark of Peel Inlet; thence generally north-westerly along that mark to the prolongation southerly of the western side of Kurdal Road; thence south-westerly to the low water mark at the eastern extremity of Creery Island; thence generally south-westerly along that mark to the southern extremity of Creery Island; thence west

to the low water mark of Peel Inlet; thence generally south-westerly along that mark and generally south-easterly and generally northerly along the low water mark of Harvey Estuary to the left bank of the Harvey River; thence generally southerly upwards along that bank to a point situate east of the easternmost north-eastern corner of Murray Location 1209; thence west to and generally south-westerly, generally north-westerly and westerly along boundaries of the last mentioned location to the north-eastern corner of the north-eastern severance of Location 793; thence westerly along the northern boundary of that severance and onwards to and along the northernmost northern boundary of the central severance of that location and onwards to the north-eastern corner of the western severance of the last mentioned location; thence westerly along the northern boundary of that severance and westerly and south-easterly along boundaries of Location 1591 to a north-western corner of the western severance of Location 793; thence south-easterly, south-westerly and generally south-easterly along boundaries of that severance to the north-western corner of Wellington Location 535; thence south-easterly along the south-western boundary of that location to its south-western corner; thence westerly along the prolongation westerly of the southern boundary of the last mentioned location to an eastern boundary of the eastern severance of Location 4981; thence generally south-easterly, generally south-westerly and westerly along boundaries of that severance and onwards to the south-eastern corner of the south-western severance of the last mentioned location; thence westerly along the southern boundary of that severance and westerly, northerly and again westerly along boundaries of Location 3045 and onwards to the low water mark of the Indian Ocean and thence generally northerly, generally north-easterly, generally easterly crossing the entrance to Peel Inlet and generally southerly along that mark to the starting point. ”.

(2) Notwithstanding the coming into operation of subsection (1) of this section, 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 subsection (1) of this section had not come into operation.