

Building Legislation Amendment Bill 2000

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Western Australia

LEGISLATIVE ASSEMBLY

Building Legislation Amendment Bill 2000

A Bill for

An Act —

- **to amend the *Builders' Registration Act 1939*;**
- **to amend the *Home Building Contracts Act 1991*;**
- **to make a consequential amendment to the *Constitution Acts Amendment Act 1899*,**

and for related purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Building Legislation Amendment Act 2000*.

5 **2. Commencement**

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

s. 6

6. Section 4 amended

Section 4(1aa) is repealed and the following subsection is inserted instead —

“

- 5 (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.

”.

7. Section 4A amended

- 10 (1) Section 4A(1)(c) is amended as follows:

- (a) after subparagraph (i) by deleting “and”;
(b) in subparagraph (ii) by deleting “furnished the local government” and inserting instead —

“

15 satisfied the local government that he has furnished the Board

”;

- (c) after subparagraph (ii) by deleting the full stop and inserting —

“

20

; and

- (iii) the person to whom the building licence is issued has certified to the local government in the prescribed manner that the person has paid to the Board such fee as is determined by the Minister.

25

”.

- (2) Section 4A(2)(c) is amended by inserting after “any” —
“ registration or ”.

8. Section 4B inserted

After section 4A the following section is inserted —

5

“

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.
- (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) was issued —
- (a) furnish to the Board the prescribed particulars
in relation to that licence; and
- (b) remit to the Board the fee referred to in
subsection (1) less any amount the Board has
agreed to pay to the local government for
collection of the fee.
- ”.

10

15

20

9. Section 5B amended

Section 5B(1)(f) is amended by deleting “6” and inserting
instead —

“ 3 ”.

25

10. Section 6 amended

- (1) Section 6(2) is amended by deleting “, and in case of an equality
of votes, shall have a second or casting vote”.

s. 11

(2) After section 6(2) the following subsection is inserted —

“

(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) Section 6(3) is amended by deleting “Four” and inserting instead —

“ Subject to section 13(4), 4 ”.

11. Section 8 amended

Section 8(1) is amended as follows:

- (a) by deleting “and” after paragraph (f);
- (b) by inserting after paragraph (f) —

“

(fa) to carry out building information and educational activities; and

”.

12. Sections 8B and 8C inserted

After section 8A the following sections are inserted —

“

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 —
- 5 (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;
 - 10 (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.
- 15 (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.
- 20 (5) The Board may, with the approval of the Minister, revise a corporate plan at any time.

8C. Board to comply with corporate plan

25 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.

”.

s. 13

13. Section 9AA inserted

After section 9 the following section is inserted —

“

9AA. Notification of change of address

5 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.

10 Penalty: \$1 000.

”.

14. Section 9A amended

After section 9A(2) the following subsection is inserted —

“

15 (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).

”.

15. Section 10 amended

20 (1) Section 10(1) is amended by deleting “subsection (2a)” and
inserting instead —

“ subsections (2a) and (2b) ”.

(2) Section 10(2) is amended by deleting “as hereafter provided,”
and inserting instead —

25 “ to subsections (2a) and (2c), ”.

(3) After section 10(2a) the following subsections are inserted —

“

- 5 (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).
- 10 (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.

15

”.

(4) After section 10(3) the following subsections are inserted —

“

- 20 (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 —
- 25 (a) the partnership, company or body corporate; and
- (b) the partner, the director, or the member of that board of management,
- 30 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.

s. 16

(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,

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

Penalty: \$5 000.

”.

16. Section 10AA inserted

After section 10A the following section is inserted —

“
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.

”.

17. Section 10CA amended

Section 10CA is amended after “prescribed by” by inserting —

“ section 10AA, ”.

18. Section 10D amended

Section 10D is amended after “sections” by inserting —
“ 10AA, ”.

19. Section 12A amended

5 After section 12A(1c) the following subsections are inserted —

“

(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).

10 (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

15 (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).

20

”.

20. Section 12C inserted

After section 12B the following section is inserted —

“

12C. Orders for payment while case pending

25 (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

s. 21

amount of money to be paid to the Disputes Tribunal
by the person who carried out the building work.

- 5
- (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).
- 10
- (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.
- 15
- (5) If a person fails to comply with an order under
subsection (1) the Disputes Tribunal may strike out the
defence of that person.

”.

21. Section 13 amended

- 20
- (1) Section 13(1) is amended as follows:
- (a) by deleting paragraph (ca) and “or” after it and inserting
instead —
- “
- 25
- (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

”;

(b) after paragraph (d) by inserting —

“

(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

”;

(c) after paragraph (f) by inserting —

“

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

”.

(2) Section 13(1a) is amended by deleting “(c) or (d)”.

s. 21

(3) After section 13(1b) the following subsections are inserted —

“

5 (1ba) Where the registration under this Act of a partnership, company or body corporate has been cancelled or suspended by the Board after the holding of an inquiry into a matter or matters arising under subsection (1), the Board may, if in all the circumstances it considers it proper to do so, without further inquiry —

10 (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

15 (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.

20 (1bb) The Board shall not make a declaration under subsection (1ba)(a) in relation to a person unless it has —

25 (a) sent to the person a copy of the notice sent to the partnership, company or body corporate under subsection (3); and

(b) afforded that person an opportunity of giving an explanation personally at the inquiry or in writing.

”

(4) Section 13(1c) is amended by inserting after
“subsection (1a)” —
“ or impose a fine on a person under section 13A ”.

(5) Section 13(3) is amended as follows:

- 5 (a) by inserting after “subsection (1)” —
“ or imposing a fine on a builder under section 13A ”;
- (b) in paragraph (a) by deleting “by post or registered
letter,”.

(6) After section 13(3) the following subsection is inserted —

- 10 “
(4) An inquiry under this section may be held by a panel
comprising not less than 3 members of the Board, of
whom one member must be a person appointed under
section 5A(3)(aa) or (b)(ii) or (iv).
15 ”.

22. Section 13A inserted

After section 13 the following section is inserted —

“

13A. Fines

20 Where after the holding of a full inquiry in accordance
with section 13 the Board makes a finding that a
situation described in paragraph (a) or paragraphs (c)
to (f) of subsection (1) of that section exists or has
occurred in respect of a registered builder, the Board
25 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;

s. 23

- 5
- (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

- 10
- (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.

”.

20 **23. Section 14 amended**

Section 14(1) is amended by deleting “refusing, cancelling, or suspending his registration, or refusing to register him or to annul the cancellation or suspension of his registration, may” and inserting instead —

25

“

in relation to that person —

- (a) refusing, cancelling, or suspending registration;
- (b) refusing registration or annulment of the cancellation or suspension of registration;

- (c) making a declaration under section 13(1ba)(a) that the person is an ineligible person; or
- (d) imposing a fine under section 13A,

may

5

”.

24. Section 16 amended

- (1) Section 16 is amended by inserting before “Save” the subsection designation (1).
- (2) At the end of section 16 the following subsection is inserted —

10

“

- (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.

15

”.

25. Section 17 replaced

Section 17 is repealed and the following section is inserted instead —

“

20

17. Powers on investigation or inquiry

- (1) For the purpose of conducting any investigation or inquiry 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;

25

s. 25

- (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;
- 5 (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);
- 10 (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) Where after holding an inquiry under section 13 the Board has made a finding that a situation described in subsection (1) of that section exists or has occurred in respect of a registered builder, the Board may order the builder whose registration is cancelled or suspended under that section or the person upon whom a fine is imposed under section 13A, as the case requires, to pay to the Board such costs and expenses of and incidental to the investigation and determination of the matter inquired into as the Board thinks fit.
- 20
- (3) Where the Board makes an order for the payment of costs or expenses under subsection (2) or a fine under section 13A against a registered builder and the costs, expenses or fine are not or is not paid within the time fixed by the Board, the Board may suspend the registration of the builder until the costs, expenses or fine are or is paid, or for such period as the Board thinks fit.
- 25
- 30

(4) The power conferred on the Board by subsection (3) is not to be taken to limit the powers conferred on the Board by section 13.

(5) The amount of —

5

(a) any costs and expenses ordered to be paid under subsection (2); or

(b) any fine ordered to be paid under section 13A,

10

may be recovered by the Board as a judgment debt in a court of competent jurisdiction and for that purpose a certified copy of the Board's order specifying the costs and expenses or imposing the fine may be registered as a judgment debt in such a court.

”.

26. Section 20B inserted

15

After section 20A the following section is inserted —

“

20B. Infringement notices

20

(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.

25

(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.

s. 26

- (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 have a complaint of the alleged offence heard and determined by 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.

- 5
- (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.
- 10
- (8) If an infringement notice is withdrawn after the modified penalty has been paid, the amount is to be refunded.
- (9) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.
- 15
- (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.
- 20
- (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
- 25

”.

s. 27

27. Section 21 amended

After section 21(2) the following subsection is inserted —

“

(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) paragraph (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.

”.

28. Section 21A amended

Section 21A is amended by deleting “12 months” and inserting instead —

“ 3 years ”.

29. Section 21B inserted

After section 21A the following section is inserted —

“

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.

5

”.

30. Section 22 amended

- (1) Section 22(3) is amended by deleting “\$1,” and inserting instead —

10

“ \$25 or such other amount as the Minister determines, ”.

- (2) Section 22(4) is repealed and the following subsection is inserted instead —

“

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

15

20

”.

- (3) Section 22(5) is amended by deleting “and penalties” and inserting instead —

“ , costs, expenses and monetary penalties ”.

31. Section 23B amended

- (1) Section 23B(1) is amended as follows:

25

(a) by deleting “31 March” and inserting instead —

“ 30 September ”;

s. 32

(b) by deleting “31 December” and inserting instead —
“ 30 June ”.

(2) After section 23B(1) the following subsection is inserted —

“

5 (1a) The annual report is to contain separate reports on the
operations of the Board referred to in section 8B(4)(a)
and (b).

”.

32. Section 33 amended

10 Section 33 is amended by repealing subsections (2), (3), (4) and
(5).

33. Section 33A inserted

After section 33 the following section is inserted —

“

15 **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 —

20 (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,

25 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

5 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.

10 (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.

15 (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.

20 (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.

”.

25 **34. Section 34 replaced**

Section 34 is repealed and the following section is inserted instead —

s. 35

“

34. Administration and expenses of Disputes Tribunal

The Board is to —

5

(a) provide administrative support for the Disputes Tribunal, including the administration and collection of any fees payable to the Disputes Tribunal; and

10

(b) meet the expenditure necessary for the functioning of the Disputes Tribunal.

”.

35. Sections 34A, 34B, 34C, 34D and 34E inserted

After section 34 the following sections are inserted —

“

34A. Disputes Tribunal fees

15

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

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

20

(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 —

25

(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 —
- 5 (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
- 10 (b) to the applicant or complainant, a notice of the mediation setting out when and where the mediation is to be held.
- 15 (3) The chairperson or a deputy chairperson may, at any time, give to all parties to the dispute a notice cancelling the mediation.

34C. Settlement or failure to settle

- 20 (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.
- 25 (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.

s. 36

- (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.

5 **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.

10

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.

15

”.

36. Section 35 amended

- (1) Section 35(2) is amended by deleting “When” and inserting instead —

20

“ Subject to subsection (2a), when ”.

- (2) After section 35(2) the following subsection is inserted —

“

- (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

25

nothing in this subsection prevents any such proceedings from being dealt with by the Disputes Tribunal constituted in accordance with subsection (2).

”.

5 **37. Section 38 amended**

(1) Section 38(3) is amended by deleting “The” and inserting instead —

“ Subject to subsection (4), the ”.

(2) After section 38(3) the following subsections are inserted —

10 “

(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, the proceedings have been

15 frivolously or vexatiously instituted or defended, as the case requires, by the other party or are without substance.

(5) Subject to subsection (6), where —

20 (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;

25

and

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(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.

38. Section 41 amended

Section 41(2) is amended by deleting “Disputes Committee or the”.

39. Section 44 amended

Section 44(1) is amended by inserting after “sum” —

“

whether under this Act or the *Home Building Contracts Act 1991*

”.

40. Section 45A inserted

After section 45 the following section is inserted —

“

45A. Presentation of cases before Disputes Tribunal

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 legal practitioner;

- (b) where the party is a body corporate, the person is an officer or employee of the body corporate authorised to conduct the proceedings on its behalf; or
- 5 (c) the person is an interpreter for a party and the fee does not exceed the amount fixed by the Disputes Tribunal.

Penalty: \$5 000.

”.

10 **41. Section 46 amended**

Section 46(2) is amended by inserting after paragraph (c) the following paragraph —

“

- 15 (ca) make provision as to mediation and mediation proceedings;

”.

42. Various sections amended

20 The provisions referred to in the Table to this section are amended by deleting “Committee” in each place where it occurs and inserting instead the following —

“ Tribunal ”.

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Table

s. 7(1)	s. 36(3) (twice)
s. 12A(1) (4 times)	s. 36(4)
s. 12A(1a) (4 times)	s. 36(5)
s. 12A(1aa)	s. 37(1) (3 times)
s. 12A(1c)	s. 37(2)
s. 12A(4)	s. 37(3)
s. 12A(4a) (3 times)	s. 38(1) (9 times)
s. 12A(4b)	s. 38(2) (twice)
s. 12A(5)	s. 38(3)
s. 12A(6)	s. 39 (6 times)
s. 25 (twice)	s. 40(1) (4 times)
s. 26(1)	s. 40(2) (twice)
s. 26(2)	s. 41(1) (twice)
s. 27(1)	s. 41(3)
s. 27(2)	s. 41(5) (3 times)
s. 32	s. 42(1) (3 times)
s. 33(1)	s. 42(2) (twice)
s. 35(1)	s. 43 (twice)
s. 35(2)	s. 44(1)
s. 35(4) (4 times)	s. 44(2)
s. 36(1)	s. 45 (4 times)
s. 36(2)	s. 46(1)
	s. 46(2) (twice).

Part 3 — *Home Building Contracts Act 1991*

43. The Act amended

The amendments in this Part are to the *Home Building Contracts Act 1991**.

5 [* Reprinted as at 30 October 1998.]

44. Section 3 amended

Section 3(1) is amended as follows:

- (a) by deleting the definition of “Disputes Committee” and inserting the following definition instead —

10

“

“Disputes Tribunal” means the Building Disputes Tribunal established by section 26 of the *Builders’ Registration Act 1939*;

”;

15

- (b) in paragraph (b)(ii) and (iii) of the definition of “home building work contract” by inserting after “if the amount” in both places where it occurs —

“ stated in the contract as being ”;

20

- (c) by inserting in the appropriate alphabetical position the following definition —

“

“Builders’ Registration Board” means the Builders’ Registration Board constituted under the *Builders’ Registration Act 1939*.

”.

25

s. 45

45. Section 5 amended

Section 5(3) is amended by deleting “14 days” and inserting instead —

“ 10 working days ”.

5 **46. Section 8 amended**

(1) Section 8(2) is amended by deleting “14 days” and inserting instead —

“ 10 working days ”.

10 (2) Section 8(3) is amended by deleting “14 days” and inserting instead —

“ 10 working days ”.

47. Section 9 amended

(1) Section 9(1) is amended as follows:

15 (a) by deleting paragraph (b) and inserting the following paragraph instead —

“

20 (b) where a condition is attached to the licence which will result in a variation of the contract, the owner and the builder acknowledging in writing within that period that each of them accepts that condition;

”;

(b) by deleting paragraph (d) and inserting the following paragraph instead —

25 “

(d) where a direction is given under the Water Act by the Water Corporation (established by the

Water Corporation Act 1995) in connection with the carrying out of the work which will result in a variation of the contract, the owner and the builder acknowledging in writing within that period that each of them accepts that direction.

5

”.

- (2) Section 9(3) is amended by deleting “30 days” and inserting instead —

10

“ 20 working days ”.

48. Section 10 amended

After section 10(4) the following subsection is inserted —

“

15

- (5) A builder under a contract must not demand or receive from the owner any payment after the commencement of the home building work unless the payment is a genuine progress payment for the purposes of subsection (1)(b)(i) or of a prescribed kind under subsection (1)(b)(ii).

20

Penalty: \$10 000.

”.

49. Section 11 amended

- (1) Section 11(1) is amended by deleting “120 days” and inserting instead —

25

“ 4 months ”.

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(2) After section 11(1) the following subsection is inserted —

“

(1a) Nothing in subsection (1) prevents a contract from providing for a period greater than 4 months as the period within which the notification referred to in that subsection must be given.

”.

50. Section 15 amended

(1) Section 15(1)(a) is amended as follows:

(a) by inserting after “contract” —

“

or negotiations to vary a contract after execution

”;

(b) by deleting “it is” and inserting instead —

“ the contract or variation of contract is ”.

(2) Section 15(3)(c) is amended by deleting “10 days” in both places where it occurs and inserting instead —

“ 10 working days ”.

51. Section 15A inserted

After section 15 the following section is inserted —

“

15A. Misleading or deceptive conduct

A person who is a builder or an owner must not, in connection with —

(a) the formation or execution of a contract;

- (b) negotiations to vary a contract after execution;
or
- (c) the circumstances in which a contract or
variation of contract is entered into,

5 engage in conduct that is misleading or deceptive. ”.

52. Section 17 amended

(1) Section 17(3) is amended by inserting after “writing” —
“ in the prescribed form ”.

10 (2) After section 17(3) the following subsection is inserted —
“

(3a) A copy of the preliminary notice is to be given to the
Disputes Tribunal at the time an application is made
under subsection (1).

15 ”.

(3) After section 17(4)(b) the following paragraph is inserted —
“

(ba) by order declare that an amount is not payable
to a person under the contract and, if already
paid, order the repayment of that amount;

20 ”.

53. Section 18 amended

(1) Section 18(1) is repealed and the following subsection is
inserted instead —

25 “
(1) Where an owner or a builder has applied to the
Disputes Tribunal for relief under this Act the Disputes
Tribunal may, if it considers it just and expedient to do

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so, order an amount of money to be paid to the
Disputes Tribunal by either the owner or the builder or
by both of them.

”.

5 (2) After section 18(2) the following subsection is inserted —

“

(2a) The Disputes Tribunal may, at any time before a final
decision is made on the application for relief, review
and vary or cancel an order made under subsection (1).

10

”.

(3) After section 18(3) the following subsection is inserted —

“

(4) If a person fails to comply with an order under
subsection (1) the Disputes Tribunal may strike out the
application for relief or the defence, as the case
requires, of that person.

15

”.

54. Section 20 amended

Section 20(b) is deleted and the following paragraph is inserted
instead —

20

“

- (b) payment to the builder in respect of —
- (i) any materials supplied by the builder;
 - (ii) any home building work or other
services performed by the builder; or
 - (iii) costs, including overhead expenses and
loss of profit, incurred by the builder,
under or in relation to the contract.

25

”.

55. Section 25 repealed

Section 25 is repealed.

56. Sections 31A and 31B inserted

After section 31 the following sections are inserted —

5 “

31A. Penalties and costs

All penalties or costs paid or recovered under this Act shall be paid to the Builders' Registration Board.

31B. Infringement notices

- 10 (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.
- 15 (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.
- 20 (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 have a complaint of the alleged offence
- 25 heard and determined by a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to

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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.

5

- (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.

10

- (4a) The modified penalty that regulations may prescribe for an offence is not to exceed 20% of the maximum penalty for that offence.

15

- (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.

20

- (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.

25

- (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.

30

- 5
- (8) If an infringement notice is withdrawn after the modified penalty has been paid, the amount is to be refunded.
- (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
- (10) The Builders' Registration 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.
- 15
- (11) The Builders' Registration 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 or she has given or is about to give an
- 20
- infringement notice.
- ”.

57. Various sections amended

25

The provisions referred to in the Table to this section are amended by deleting “Committee” in each place where it occurs and inserting the following —

“ Tribunal ”.

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Table

s. 15(4)	s. 23(1) (twice)
s. 16(1)	s. 23(2) (twice)
s. 17(1)	s. 24(1) (twice)
s. 17(4) (twice)	s. 24(3) (twice)
s. 17(7)	s. 24(4)
s. 18(3) (twice)	s. 24(5)
s. 20	Schedule 1, clause 5(1)
s. 21(1)	Schedule 1, clause 5(3).
s. 21(3) (twice)	
s. 21(4) (twice)	
s. 22 (3 times)	

58. Schedule 1 amended

Schedule 1 is amended as follows —

- 5
- (a) in clause 2 by deleting “or either party terminates the contract in accordance with section 19”;
 - (b) in clause 3 by deleting “or either party terminates the contract in accordance with section 19”;
 - (c) in clause 5(3) by deleting “Committee’s” and inserting
10 “ Tribunal’s ”.

Part 4 — Transitional and consequential provisions

59. References to Committee in other written laws

5 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.

60. Transitional provision for annual report

- 10 (1) The Board shall make and submit to the Minister under section
23B of the *Builders' Registration Act 1939* a report of its
proceedings for the period from 1 January preceding the coming
into operation of section 29 of the *Building Legislation
Amendment Act 2000* (“**the commencement day**”) to the
following 30 June as if the period were a full year.
- 15 (2) The first annual report under section 23B of the *Builders'
Registration Act 1939* after the commencement day is to be
made in respect of the period from the 1 July after the
commencement day.

61. Constitution Acts Amendment Act 1899 amended

20 The *Constitution Acts Amendment Act 1899** is amended in
Part 3 of Schedule V by deleting “The Building Disputes
Committee” and inserting instead —

“ The Building Disputes Tribunal ”.

[* *Reprinted as at 15 April 1999.*

25 *For subsequent amendments see 1999 Index to Legislation of
Western Australia, Table 1, pp.49-50.]*

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Part 5 — Review

62. Review

- 5 (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.
- 10 (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.

