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REGISTRAR'S OVERVIEW

FORMAT OF THIS REPORT

In August 2001 Government approved a raft of amendments to the *Builders' Registration Act*, including a change to the annual reporting period. Whereas the Annual Reports have been produced for a calendar year since inception in 1939, the amendments provide for fiscal year reporting. The last report covered up to 31 December 2000. In this report some tables and statistics are therefore in 2 parts:

1 January 2001 – 30 June 2001
 1 July 2001 – 30 June 2002

STATE OF THE INDUSTRY

Despite the GST bringing forward demand, the building industry has continued to demonstrate strong growth in all areas and is one of WA's largest employer and contributor to economic growth in the State.

Gross turnover of building approvals in WA for the first half of 2001 was \$1.93 billion, and \$3.5 billion in 2001/02.

The 2001/02 figure is 3% up on the 2001 reporting year and equates as follows:

	<u>2001 (half year)</u>	<u>2001/02</u>
Residential	\$0.97 billion	\$2.36 billion
Commercial	\$0.80 billion	\$0.90 billion
Residential Alterations & Additions	\$0.16 billion	\$0.24 billion

KEY FACTORS IN THE REPORTING PERIOD

Some significant incidents have impacted on industry and the Board over this 18-month period warranting comment.

- Collapse of HIH Insurance – a major provider of compulsory Home Indemnity Insurance (HII) to Western Australians.
- The withdrawal from the market of Dexta Insurance – a company that entered the Western Australian market in late 2001 after the demise of HIH.
- Amendments to the *Builders' Registration Act* and *Home Building Contracts Act* that provide the Board with additional funding and “teeth” with which to administer the provisions of the Acts.
- National and State Reviews of Consumer Protection Boards and Committees.

HII Insurance Providers

The collapse of HIH in March 2001 significantly impacted builders, owners and Governments. Subsequent events of September 11 also aggravated the insurance market. In March 2002 this culminated in a new provider of HII (DEXTA) withdrawing from the market however it will still honour its policies. In Western Australia, this has resulted in the following:

- delays in building commencements due to builders being unable to acquire insurance with alternative providers;
- increased home building costs for consumers due to rising insurance premiums;
- less competition from insurers prepared to provide Home Indemnity Insurance;
- an increase in owner-builder activity that requires investigation to determine if there is an attempt to evade the provisions of HII in the *Home Building Contracts Act*;
- agreement by the State Government to financially assist home owners who have a claim of faulty or incomplete work against HIH; and
- as a result of submissions made to Government by HII insurers, the Act was amended and provides for withdrawal of cover for home buyers purchasing home units in buildings of 4 storeys or more.

Unfortunately the crisis for some small to medium sized builders in obtaining HII is still evident and there is continued unrest by insurers in this market. Further amendments are being considered by Government.

Legislative Amendments

The amendments to the *Builders' Registration Act* and *Home Building Contracts Act* have had immediate benefits for home builders and owners in Western Australia.

Since 1995, the Board has sought additional revenue and powers to enable it to adequately undertake its legislative responsibilities and also provide an expedient building dispute resolution process. It has faced two major financial crises during this time, in which Tribunal hearings were being delayed for up to 12 months.

On proclamation of the amendments, the Board moved to increase its staffing and resources to address flaws in its operations and services.

However, some amendments were put on hold by Government pending the National Competition Policy review and the Board is seeking these now be promoted.

REVIEWS

National Competition Policy

Reviews of the *Builders' Registration Act* and *Home Building Contracts Act* were undertaken during 1997-1999. A subsequent report prepared by an independent consultant employed by the Ministry of Fair Trading was presented to the Minister in 2001.

The recommendations were approved by Cabinet but are unlikely to be implemented until a more holistic review has been considered by Government.

***Home Building Contracts Act* – Home Indemnity Insurance**

The statutory review was completed by the Department of Consumer and Employment Protection (previously Ministry of Fair Trading) and submitted to the then Minister, the Hon Doug Shave MLA in August 2000.

The majority of recommendations have been put on hold pending further review and submissions made as a result of the collapse of HIH and subsequent problems with the major insurers.

A Review of Consumer Protection Statutory Boards and Committees

In February 2002 the Department of Consumer and Employment Protection released an issues paper resulting from a review of Consumer Protection statutory Boards and Committees. The Machinery of Government Taskforce recommended the review in June 2001.

The stated purpose of the issues paper was to provide an overview of existing Consumer Protection Boards and Committees (including the BRB and the BDT) and describes a range of options for the future roles and functions of those Boards and Committees.

The time for public submissions in relation to the issues paper closed on 5 April 2002. The Board is not aware of what further action the Department of Consumer and Employment Protection has taken in relation to the review.

State Administrative Tribunal – Taskforce Report

The latest review, requested by the Minister, which includes the Builders' Registration Board and Building Disputes Tribunal, was undertaken as a part of the review of all statutory authorities as recommended by the Machinery of Government Taskforce.

As part of the State Government's program of law and justice reforms the Attorney General established a taskforce in March 2001 to develop a model of a civil and administrative review tribunal for consideration of government.

The taskforce was chaired by Michael Barker QC and released its report in May 2001.

In broad terms, the various implications for the future roles and functions of the BRB and BDT as foreshadowed are as follows:

The Builder's Registration Board

- retain most of its functions including summary disciplinary powers;
- disciplinary functions and appeals against BRB decisions move to the State Administrative Tribunal (SAT); and

The Building Disputes Tribunal

- some or all primary/review functions transferred to a State Administrative Tribunal;
- existing functions involving mediation, conciliation and negotiation carried out by the BRB or Registrar before a matter is referred to the Building Disputes Tribunal to remain with the BRB and Registrar.

National Review of Home Builders Warranty Insurance and Consumer Protection

The review was undertaken by Professor Percy Allen and his report released in June 2002. The Report highlighted the need for government to put less emphasis on insurance and more emphasis on strengthening the regulatory framework for home building. Many of the current Western Australian provisions featured well in his report.

FUNDING

The Board's funding primarily consists of registration fees paid by builders. Such funding was sufficient from inception in 1939 until the mid-1990's, when additional costs evolved with the introduction of the Building Disputes Tribunal in 1992.

Consequently, a submission to Government was made for amendments to provide for alternative funding but this was delayed, resulting in the Board seeking special grants from Government to enable it to continue to provide a reasonable service. Grants of \$700,000 and \$200,000 were approved in 1996 and 2000 respectively.

Notwithstanding the grants, the Board continued to exhaust its resources in order to service its obligations, resulting in the Board acquiring external loans of \$990,000 at the end of 2000.

The amendments were finally proclaimed in August 2001 and income generated by them, in the form of a modest levy on all building licences issued and owner-builder applications, provided instant relief.

COMPLIANCE & SURVEILLANCE

The Board has reported for many years that it had insufficient resources with which to administer and enforce the provisions of the *Builders' Registration Act* and *Home Building Contracts Act*.

The additional income generated from the amendments has enabled the Board to address some of the shortcoming that result from a lack of funding. For example, to assist its sole compliance officer, the Board has recruited 3 additional officers in the areas of education, investigation and prosecution.

CORPORATE SERVICES

This is another area that has suffered over the years due to inadequate resources. Planning is now underway to review the adequacies of the Information Technology and Human Resources systems and procedures.

The accounting system has already been completely modified to enable the Board to accurately assess the real costs of each major service centre.

REGISTRATION & EDUCATION

Applications for registration, especially from companies, continue to rise. This is partly due to more vigilance by HII providers when assessing applications or renewals of registered individuals or partnerships.

During the forthcoming year this section will undertake an education program aimed at improving the quality of submissions included with applications, thereby expediting the application process.

BUILDING DISPUTES TRIBUNAL

The additional revenue from the building licence and owner-builder levies has seen a turnaround, with the Tribunal now being in a position to consider holding urgent hearings on 24-hour notice. This is most important where complaints concerning inappropriate building practices and materials not in accordance with the contract are received. Many such matters can be hidden under subsequent building trades work and be costly and time consuming to resolve or remedy.

ELECTORAL ACT 1907

In October 1996 this Act was amended to require all public agencies to annually publish information on expenditure incurred in relation to payment of advertising, market research, polling, direct mail and media advertising.

In accordance with these requirements, I make the following statement as principal officer of the Board in respect of expenditure incurred by the Board.

No expenditure was spent on items that are required to be reported upon as provided in the Electoral Act 1907.

NIGEL LILLEY,
REGISTRAR & PRINCIPAL OFFICER

STRATEGIC PLAN

MISSION

To obtain the highest possible standards in the building industry by the maintenance of appropriate levels of entry skills for builders, the fostering of continuous professional development and the provision of a cost efficient and impartial service to the community.

FOI/2

ROLE

The Builders' Registration Board is a body corporate established under the *Builders' Registration Act*. Its primary functions, as determined by the Act, are to ensure that those who are professionally engaged in building are competent, and to provide consumers with a means of recourse via the Building Disputes Tribunal, if building work is found to be faulty or unsatisfactory.

The Board is responsible for the registering of builders and the Act prohibits unregistered builders from carrying out building work valued in excess of \$12,000 within the area of the Board's jurisdiction.

The Board's activities are financed almost exclusively by the building industry through the payment of registration, a building licence levy and other fees.

Legislation provides that consumers and industry are represented on both the Builders' Registration Board and the Building Disputes Tribunal.

FOI/6

OBJECTIVES

In fulfilling its Role and pursuing its Mission, the Board and its staff are committed to the following Objectives:

- to administer the *Builders' Registration Act* and the *Home Building Contracts Act* in a consistent, reasoned and lawful manner;
- to administer the *Builders' Registration Act* and the *Home Building Contracts Act* in a financially responsible manner;
- to ensure that qualifications for registration address contemporary needs;
- to foster the best possible level of efficiency in the Board's operations;
- to assist in the consensual resolution of building disputes;
- to undertake Board inquiries and prosecutions for offences against the Acts in a consistent and timely manner; and
- to liaise with stakeholders on a regular basis.

FOI/3

STRATEGIC APPROACH

In order to achieve the Objectives above, the Board and its staff have identified the following strategies as being most relevant and achievable within a three year time frame.

Legislative and Policy Improvements

1. Undertake a complete review of all relevant legislation and regulations and make recommendations, so that the legislation reflects current needs, is easy to use and written in plain English. Where appropriate, recommend the introduction of alternative or regulatory measures.
2. Undertake review of the requirements for registration, to meet current needs and the best interests of the industry.

Service Improvements

1. Undertake educational activities which promote a better understanding of the provisions of the *Builders' Registration* and *Home Building Contracts Acts*, the role of the Builders' Registration Board and the rights and responsibilities of consumers and builders.
2. Improve liaison with industry bodies, educators and consumer groups to better meet the needs of all stakeholders.
3. Investigate current processes and procedures with a view to providing a more timely and cost effective service to clients.

Management Improvements

1. Investigate and, if appropriate, implement the introduction of a corporate management structure and philosophy.
2. Establish formal planning and performance evaluation systems (including effective internal audit) within the organisation.

STRUCTURE & FUNCTIONS OF THE BOARD

FOI/3

BOARD MEMBERSHIP

FOI/6

Section 5A of the Act provides for a Chairperson who is to be a legal practitioner and six other members to be appointed by the Governor. All Members are part-time appointees nominated by the Minister.

Members of the Board are nominees of the Minister and represent the interests of:

- consumers;
- registered Builders within the area of the Act other than the Metropolitan area;
- the Royal Australian Institute of Architects (W.A. Chapter);
- the Master Builders' Association of Western Australia;
- the Building Trades Association of Unions of Western Australia (Association of Workers); and
- the Housing Industry Association Western Australian Division.

Provision is made for the appointment of Deputy Board Members.

The composition of the Board is as follows:

Chairperson, a Practitioner as defined by the Legal Practitioners Act 1893. Nominee of the Minister.

Paul Marsh

First appointed April 1992, current term expires March 2003.

Nominee of the Master Builders' Association of Western Australia.

Darryll Retallack

Deputy Chairperson. First appointed in 1991, current term expires December 2002.

Deputy - Murray Lilleyman. Appointed until December 2002.

Nominee of the Royal Australian Institute of Architects (WA Chapter).

Phil Faigen

Appointed in April 1999 until March 2002.

Deputy - Pat Pinder. Appointed until December 2002. (Formerly Maxine Canning, resigned March 2001)

Pat Pinder

Appointed in April 2002, current term expires March 2005.

Deputy - Harry Schubert. Appointed until March 2005.

Nominee of the Minister to represent the interests of consumers.

Jan Thomson

Appointed until March 2002.

Deputy – Mark Cornell. Appointed until March 2002.

Bronwyn Davies Taylor

Appointed in April 2002, and term expires March 2003.

Deputy – Michael Schaper. Appointed until March 2003.

Nominee of the Minister to represent the interests of registered builders trading in an area within the Act other than the Metropolitan area.

Kevin Giudice

First appointed 1996 and current term expires December 2002.

Deputy – Ron Slobe. Appointed until December 2002.
(Formally Greg Leeder until March 2001)

Nominee of the Building Trades Association of Unions of Western Australia.

Fred Smith

First appointed August 2000 and current term expires March 2003.

Deputy – Kevin Reynolds. Appointed until March 2003.

Nominee of the Housing Industry Association, Western Australian Division.

Neville Harrison

First appointed August 2000 and current term expires December 2002.

Deputy – Sue Churn. Appointed until December 2002.
(Formally Peter Mittonette until March 2001)

MEETINGS OF THE BOARD

Section 4 of the Builders' Registration Regulations requires that a meeting of the Board shall be held at least once in every month.

Minutes of general meetings are available at cost in an edited form.

FOI/7a

ATTENDANCES - JANUARY 2001 – 30 JUNE 2001				
	MONTHLY MEETINGS	COMMITTEE MEETINGS	DISCIPLINARY INQUIRIES	DEPUTY ATTENDED
Paul Marsh	6	1	12	N/A
Darryll Retallack	6	1	16	-
Phil Faigen	3	1	9	6
Jan Thomson	6	1	16	-
Kevin Giudice	5	1	-	-
Fred Smith	6	1	14	-
Neville Harrison	5	1	14	3

ATTENDANCES - 1 JULY 2001 – 30 JUNE 2002				
	MONTHLY MEETINGS	COMMITTEE MEETINGS	DISCIPLINARY INQUIRIES	DEPUTY ATTENDED
Paul Marsh	12	4	24	-
Darryll Retallack	11	2	21	1
Pat Pinder (Appt April 2002)	2	-	1	1
(P Faigen member until March 2002)	8	-	11	7
B Davies Taylor (Appt April 2002)	2	-	2	-
(J Thomson member until March 2002)	8	-	17	4
Kevin Giudice	9	-	5*	1
Fred Smith	10	-	24	-
Neville Harrison	8	3	22	5

* one telephone conference.

In addition to the above, the Chairman is involved in preparing *Reasons for Decision*, submissions to the Minister and providing other documents and reports.

CODES OF CONDUCT AND ETHICS

The Public Sector Standards Commission (PSCC) Code of Ethics became operative 1 July 1996. All staff were issued with a copy of the Code and advised of its implementation and the need to embrace its principles.

A Code of Conduct for Board Members was adopted in 1999 and is attached at **Appendix D**.

A separate Code of Conduct for inspectors was introduced in 2001 and is attached at **Appendix E**.

MAJOR FUNCTIONS AND POWERS OF THE BOARD

FOI/5

The Act provides that the Board's functions are :

- to determine the course of training required for a builder to be registered;
- to maintain a register of registered builders;
- to issue/cancel certificates of registration;
- to cancel/suspend the registration of any builder;
- to annul such cancellation or suspension;
- to take proceedings for any offences against the Act;
- to carry out the provisions of the *Builders' Registration Act 1939*; and
- to carry out building information and educational activities (added August 2001).

Directions by Minister (s23C BRA)

The Minister may, after consulting with the Board, give directions in writing to it with respect to the performance of its functions either generally or in relation to a particular matter, and the Board shall give effect to any such direction.

(Does not apply to matters in relation to a particular person, application, complaint or proceeding).

Any direction given shall be included in the annual report.

In the reporting period no such directions were given.

Responsible Minister

At the commencement of the year under review, the Minister charged with the administration of the *Builders' Registration Act* was the Minister for Fair Trading, the Hon Doug Shave MLA.

Following a change of Government, the Hon. John Kobelke MLA, Minister for Consumer and Employment Protection, assumed responsibility.

Area of Jurisdiction

The Boards' area of jurisdiction encompasses 125 of the 144 Local Governments in the State, albeit in some instances only major townsites.

The Building Disputes Tribunal has Statewide jurisdiction under the *Home Building Contracts Act* and some workmanship matters under the provision of Section 12A of the *Builders' Registration Act*.

LEGISLATIVE AMENDMENTS

Home Building Contracts Regulations

- Home Building Contracts Amendment Regulations Commenced 1/8/01
- Home Building Contracts (Home Indemnity Insurance – Multi-Storey Multi-Unit Developments Exemption) Regulations Commenced 19/8/02

Builders’ Registration Regulations

- Builders’ Registration Amendment Regulations (No.2) Commenced 31/7/01
- Builders’ Registration Amendment Regulations (No.3) Commenced 28/8/01

Builders’ Registration Act

- *Building Legislation Amendment Act 2000* Commenced 1/8/01
- *Corporations (Consequential Amendments) Act 2001* Commenced 28/9/01

Home Building Contracts Act

- *Building Legislation Amendment Act 2000* Commenced 1/8/01
- *Corporations (Consequential Amendments) Act 2001* Commenced 15/7/01

The Building Legislation Amendment Act

The *Building Legislation Amendment Act* (the Act) commenced operation on 1 August 2001.. The Act significantly amended the *Builders’ Registration Act* and the *Home Building Contracts Act*. Some of the major amendments are as follows:

- ❑ changing the name of the Building Disputes Committee to the Building Disputes Tribunal;
- ❑ changing the procedures and fees applicable to becoming an owner-builder;
- ❑ establishing a Building Licence levy;
- ❑ allowing the Board to carry out building information and educational activities;
- ❑ amending some procedures and powers of the Building Disputes Tribunal;
- ❑ establishing new grounds upon which the registration of a builder may be cancelled or suspended;
- ❑ granting the Board the power to declare persons “ineligible” in certain circumstances;
- ❑ granting the Board the power to fine a builder following a disciplinary inquiry under section 13 of the *Builders’ Registration Act*;
- ❑ extending the powers of the Board to summons persons to give evidence before it;
- ❑ allowing the Board to deal with certain offences by way of infringement notice;
- ❑ extending the liability of a company for prosecution to the company’s directors in certain circumstances;
- ❑ establishing a “complaint fee” in the Building Disputes Tribunal;
- ❑ establishing a mediation system to operate within the Building Disputes Tribunal framework;

CORPORATE PLAN

In accordance with Section 8B of the Act, an amendment was made in August 2001 and a Corporate Plan was submitted to the Minister for approval on 29 April 2002.

OVERSEAS AND INTERSTATE CONFERENCES

Overseas

The Board sent a delegation of four to the 9th International Housing & Home Warranty Conference in Banff, Canada.

The Chairman, Paul Marsh, presented two papers on Indemnity/Warranty.

Interstate

The Registrar attended one of two interstate meetings of State Regulatory Authorities convened in the reporting period. The initial agenda was to further develop national standards for licensing and HII but the timing warranted urgent national debate and input on the future of Australian warranty schemes.

ADMINISTRATION & SUPPORT

STAFF

Section 7 of the Act provides that the Board may appoint a Registrar and such other employees as are necessary for the carrying out of its duties and functions. **FOI/5**
FOI/4

Since the amendments to the *Builders' Registration Act* and the *Home Building Contracts Act*, the Board has revised its structure to provide for additional staff to carry out new roles such as Education and Training and to expand upon areas of Surveillance and Enforcement and general administration.

The Board will implement the new structure in various stages. A copy of the revised structure is contained at **Appendix C**.

EQUAL EMPLOYMENT OPPORTUNITY

The Board is committed to the promotion of Equal Employment Opportunities (EEO) for all its employees and staff has been allocated to ensure the Board's program is maintained. Ongoing awareness is an integral element of staff meetings and EEO advice is contained within the Board's induction process.

OCCUPATIONAL HEALTH AND SAFETY (WORKSAFE)

The Board and staff have maintained a safe working environment.

Regular meetings are held to maintain a strong awareness in this area.

WORKERS COMPENSATION

There were no claims for lost time during the year.

	1999	2000	01/01/01- 30/06/01	01/07/01- 30/06/02
(a) Frequency Rate	Nil	Nil	Nil	Nil
(b) Estimated Cost of Claims \$	Nil	Nil	Nil	Nil
(c) Contribution Rate %	0.932	1.720	1.404	1.087

- (a) Frequency Rate: the number of lost time incidents where one or more days were lost for every million hours worked;
 (b) Estimated Cost of Claims: cost incurred per \$100 of Builders' Registration Board's annual payroll;
 (c) Contribution Rate: calculated as a proportion of Builders' Registration Board's annual payroll.

LANGUAGE SERVICES STRATEGY

The Board has adopted Cabinet's recommendation that all Government Agencies develop and implement a language services plan.

The Board has trained its staff to deal with language difficulties effectively. Appropriate signs are displayed.

The cost associated with the engagement of an interpreter for inquiries is covered by the Board.

ENTERPRISE BARGAINING AGREEMENT (EBA)

The Board's second Enterprise Bargaining Agreement expired 4 August 2000. The Agreement continued to have effect until it was replaced by the Governments Wages and Parity Policy, which took effect 1 January 2002.

The policy provides that:

- the Government's strategy is to provide a labour relations system that balances the rights and interests of employers and employees; and
- wage increases and core employment conditions amongst like public sector employees will be available through general agreements, negotiated with public sector unions.

Key objectives of the public sector labour relations policy are:

- the restoration of parity of pay and conditions amongst like employees;
- introduction of collective employment arrangements; and
- discontinuance of workplace agreements.

All staff at the Board reverted back to the Government Officers Conditions and Allowances (GOSAC) Award and whilst this has resulted in a small increase in wages for some staff, the remainder will await 1 January 2003 before they receive an increase in their salaries.

CUSTOMER FOCUS

The Board decided that its initiative in providing survey forms to be completed by builders and consumers did not serve its purpose, as the majority of recipients were not returning the forms.

The Board considers all complaints received relating to the Board, its staff and the Tribunal at its monthly meetings.

In response to demand, the Annual Report is now sent electronically to those who have elected to have it in that form.

DISABILITY SERVICES

To provide easier access to persons with disabilities, the Board has relocated its reception area to the ground floor.

FREEDOM OF INFORMATION**FOI/1****Freedom of Information Operations****FOI/1**

It is the aim of the Board to make information available promptly at the least possible cost and wherever possible, documents will be provided outside the Freedom of Information (FOI) process.

If information is not routinely available, the *Freedom of Information Act 1992* provides for the right to apply for documents held by the Board enabling the public to ensure that personal information in documents is accurate, complete, up to date and not misleading.

Applications**FOI/8**

Access applications have to:

- be in writing;
- give enough information so that the documents can be identified;
- give an Australian address to which notices can be sent; and
- be lodged at the Board with any application fee payable.

Applications and enquiries should be addressed to the Freedom of Information Co-ordinator on telephone (08) 9476 1200; 10/18 Harvest Terrace, West Perth.

Applications will be acknowledged in writing and the parties will be notified of a decision within 45 days.

Charges

A scale of fees and charges is set under the FOI Act Regulations. Apart from the application fee for non personal information, all charges are discretionary. The charges are as follows:

• <i>Personal information about the applicant</i>	<i>No fee</i>
• <i>Application fee (for non personal information)</i>	<i>\$30.00</i>
• <i>Charge for time dealing with the application (per hour, or pro rata)</i>	<i>\$30.00</i>
• <i>Access time supervised by staff (per hour, or pro rata)</i>	<i>\$30.00</i>
• <i>Photocopying staff time (per hour, or pro rata)</i>	<i>\$30.00</i>
• <i>Per photocopy</i>	<i>.20</i>
• <i>Transcribing from tape, film or computer (per hour, or pro rata)</i>	<i>\$30.00</i>
• <i>Duplicating a tape, film or computer information (other than Board Inquiries and BDC hearings that are not available.)</i>	<i>Actual Cost</i>
• <i>Delivery, packaging and postage</i>	<i>Actual Cost</i>

Deposits

- Advance notice may be required of the estimated charges 25%
- Further advance deposit may be required to meet the charges for dealing with the applications 75%

For financially disadvantaged applicants or those issued with prescribed pensioner concession cards, the charge payable is reduced by 25%.

Access Arrangements

Access to documents can be granted through inspection, or by provision of a copy of a document, an audio or video tape, a computer disk, a transcript of a recorded Inquiry, shorthand or encoded document from which words can be reproduced. Where the tape is of a hearing or inquiry, a transcription may only be provided.

Viewing Documents

Documents made available for viewing may be viewed at the Board's office during normal working hours. A fee will be charged for the supervised viewing of non-personal documents.

Notice of Decision

As soon as possible, but no later than 45 days after the application is received, the applicant will be provided with a notice of decision which will include the following details:

- the date when the decision was made;
- the name and position of the officer who made the decision;
- if the document is an exempt document, the reasons for classifying the matter exempt; or the fact that access is given to an edited document; and
- information on the right to review and the procedures to be followed in exercising those rights.

Refusal of Access

Applicants who are dissatisfied with a decision of the Board's officer are entitled to ask for an **internal review** by the Registrar. Application may be made in writing within 30 days of receiving the notice of decision.

Applicants are notified of the outcome of the review within 15 days.

Applicants who disagree with the result can apply to the Information Commissioner for an **external review**, and details will be passed on to applicants when the internal review decision is issued.

Freedom of Information Applications

One application was received between 1 January 2001 and 30 June 2001. Two applications were received between 1 July 2001 and 30 June 2002.

CLIENT LIAISON AND INFORMATION

Information Materials

FOI/7a

The Board provides information about the provisions of the *Home Building Contracts Act* and *Builders' Registration Act*.

Pamphlets are prepared by the Board and available free of charge.

- *Site Investigations Before Buying a Block of Land or Building a House.*
- *So You Want to be a Builder (amended 1996).*
- *Thinking of Building Your Own Home (amended 2001).*
- *Resolving Building Disputes (re-written in 2001).*

In addition, the Board circulates to all registered builders the Annual *BRB Update*, which contains articles by staff that provide information of interest on the Acts, amendments and technical data on building-related matters.

Statutory Forms

Various prescribed forms used by applicants for registration, persons lodging complaints, owner-builders and persons seeking advice on Freedom of Information requests are available at no cost.

Internal Documents

Internal documents such as policy statements, registration guidelines, administrative procedures, technical guidelines for use by inspectors in assessing matters on site are available on application at cost.

Internet Site www.brb.org.au

The Board's internet site was commissioned in the latter part of 1999.

Topics covered on the web-site include:

- information on the mission and role of the Board;
- details of Board membership;
- contact information;
- facility to provide feedback on the staffs' performance;
- how to apply for registration as a builder including the facility to download application forms;
- searchable Register of Builders';
- the Board's Prosecution Policy;
- annual reports; and
- technical newsletters.

BOARD CONTACT WITH OTHER ORGANISATIONS

During 2001/02 the Chairman/Registrar/or other staff attended:

- Master Builders' Association (MBA) monthly housing meetings.
- Regional and metropolitan meetings of Local Authority Building Surveyors (AIBS).
- MBA and Housing Industry Association (HIA) Executive meetings.
- Architects Board of WA Awards.
- City of Stirling – Forum for builders and developers.
- Central Metropolitan College of TAFE.
- Bradys Building Products (Plastering forums).
- WA Solid Plastering Association (Plastering forums).
- National Meeting of Builders Licensing Australia in Adelaide.

Media

- Master Builders Association – Housing Magazine.

REGISTRATION AND EDUCATION

THE REGISTER

The Board compiles and keeps a Register containing the names, addresses and qualifications of builders admitted to the register pursuant to the Act.

The Register is open for inspection by any person without fee during the normal **FOI/7a** hours of business of the Board and on the Board's website. It is available for purchase in a printed or electronic format.

Sections 9A and 10 of the Act provide an avenue of registration for the categories of applicant, shown in the following table.

SUMMARY OF REGISTRATION AT 30/6/02		
Individuals by category		
Registered at Commencement of Act	1	
Upgraded to Full Registration 1962-69	40	
Examinations	1,479	
Architects	168	
Engineers	243	
Experience Outside Board's area	852	
Mutual Recognition	75	
Australian Institute of Building	29	
Manager/Supervisor	823	
Journeyman Builders	<u>1</u>	3,711
Partnerships		300
Companies		<u>968</u>
TOTAL		<u>4,979</u>

REGISTRATION

Staff aim for applications to be processed and presented to the Board for a decision to be made within 4-6 weeks of an application being lodged. The application process involves addressing whether or not the applicant meets the registration criteria under the specific category of Section 9A and 10. Assessments are conducted for those applying under Manager or Supervisor, experience gained outside the Board's area of jurisdiction and for those seeking upgrade to full registration.

With a large number of insolvent builder's registrations being cancelled or suspended every year, the financial viability of a builder to successfully operate post registration became a target area for improvement.

The year under review saw a more comprehensive approach being taken in assessing an applicant's financial position. For example, by seeking records of any current court actions, past financial trading history, and whether a partner or director has been involved in the operation of any past business that became insolvent, the Board has been able to make more informed decisions.

Applications for Registration

From January to June 2001 the Board considered 199 applications. The outcome is shown below.

1 JANUARY 2001 – 30 JUNE 2001			
CATEGORY	APPROVED	REFUSED	TOTAL
Examinations	31	4	35
Architects	2	-	2
Engineers	3	3	6
Experience Outside the State	5	2	7
Mutual recognition	2	-	2
Experience Outside Board's Area.	-	2	2
Australian Institute of Building	1	2	3
Manager/Supervisor	12	13	25
Partnerships	34	-	34
Companies	66	3	69
Temporary Licence	1	-	1
SUB-TOTALS	<u>157</u>	<u>29</u>	<u>186</u>
Pending			13
TOTAL			<u>199</u>

BRB- Annual Report

During July to June 2002 the Board considered 301 applications. The outcome is shown below.

1 JULY 2001 – 30 JUNE 2002			
CATEGORY	APPROVED	REFUSED	TOTAL
Examinations	32	5	37
Architects	6	2	8
Engineers	4	3	7
Experience Outside the State	3	1	4
Mutual recognition	10	-	10
Experience Outside Board's Area.	1	4	5
Australian Institute of Building	1	1	2
Manager/Supervisor	19	25	44
Partnerships	34	1	35
Companies	90	5	95
Temporary Licences	1	-	1
SUB-TOTALS	<u>201</u> (172)	<u>47</u> (47)	<u>248</u>
Pending			53
TOTAL			<u>301</u>
(Comparable figures for 2000 are in brackets)			

Applicants' files are personal and confidential and are retained in the Board's offices.

FOI/7b

INELIGIBILITY

The August 2001 amendments provide for where the registration of a partnership, company or body corporate has been cancelled or suspended by the Board after holding an inquiry into matters arising under Section 13(1), for example:

- Registration obtained by fraud/misrepresentation.
- A registered builder has been convicted of an offence under HBCA.
- Convicted of a crime or misdemeanour in Western Australia.
- Lack of material and financial resources.
- Guilty of negligence and incompetence in the performance of building work.
- Lack of management and supervision of building work.
- False statement or representation for the purpose of inducing a person to enter into a contract.
- Guilty of any fraudulent conduct in regard to carrying out or completion of any building work.
- Guilty of harsh, unconscionable, oppressive, misleading or deceptive conduct.
- Failure to comply with BDT order.
- Failure to comply with conditions of registration.

The Board may 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 for a period not exceeding 3 years, to be an ineligible person for the purposes of Section 9A or 10 of the Act.

If the person deemed to be ineligible is involved in the management of a partnership, company or body corporate that is registered as a builder, or becomes involved, during the person's period of ineligibility that entities registration may be cancelled or suspended by the Board under Section 13(1)(g) of the Act.

PERSONS DECLARED INELIGIBLE FOR THE PURPOSE OF SECTION 9A & 10 OF THE <i>BUILDERS' REGISTRATION ACT</i>			
NAME	ADDRESS	DATE DECLARED INELIGIBLE	PERIOD OF INELIGIBILITY
BROWN, Gavin	14 Storrs Place Winthrop	18/10/01	3 years from 18/10/01
FERTCH, Gary	52 Akebia Way Forrestfield	28/6/02	3 years from 28/6/02
CUMMING, Robert John	32 Hanley Street Stoneville	28/6/02	18 months from 18/10/01 *

* Backdated to the commencement of Board Inquiries into that Company

The Act requires that the register of ineligible persons be published at least twice per year in a newspaper circulated generally in the State.

APPEALS

An applicant for registration who is dissatisfied with a Board decision may appeal to the District Court.

Between 1 January 2001 and 30 June 2001, one registration appeal was lodged. It remains ongoing. No registration appeals were lodged between 1 July 2001 and 30 June 2002.

One registration appeal was carried through from 2000. It was discontinued in August 2001.

FOI/7a

REASONS FOR DECISION (BRB)

When requested by an applicant, the Board provides written reasons for decisions at no cost. From 1 January 2001 to 30 June 2001, 16 sets of reasons were provided. From 1 July 2001 to 30 June 2002, 13 sets of reasons were provided.

CONDITIONAL AND/OR LIMITED REGISTRATION

The Builders' Registration Regulations enable the Board to attach conditions to a certificate of registration for a period of three years, or such other period as the Board thinks fit, from the day of registration. This mainly applies to those applicants who have gained their experience as builders within the State but are outside the area of the Board's jurisdiction. In other instances, where deemed appropriate, the Board imposes limitations on the number and type of building work, which can be undertaken by a builder.

From 1 January 2001 to 30 June 2001, the Board granted conditional registration to 10 builders. From 1 July 2001 to 30 June 2002, the Board granted conditional registration to 23 builders.

The Board also upgraded to full registration, 7 builders during 1 January 2001 to 30 June 2001 and to 13 builders during 1 July 2001 to 30 June 2002, who had previously operated on a conditional basis.

BUILDING AUDITS

Board Inspectors conduct random inspections of building work carried out by conditionally registered builders. This assists the Board by providing a record of their work if they make application for the removal of any conditions on their registration at a later date.

MUTUAL RECOGNITION

In December 1995 Western Australia adopted the *Mutual Recognition (Western Australia) Act*. This Act provides for the recognition within each State or Territory of regulatory standards adopted elsewhere in Australia regarding goods and occupations.

Parliament extended the termination date of this Act to 28 February 2001. On its expiration, the Board ceased to consider any applications under this provision until the Mutual Recognition (Western Australia) Act 2001 received Royal Assent on 29 June 2001 thereby continuing Western Australia's participation in the Australian Mutual Recognition Scheme. The 2001 Act will expire on 28 February 2011.

Two applications were approved between 1 January 2001 and 30 June. Twelve applications were received between 1 July 2001 and 30 June 2002 (of which 10 were accepted). Two applications are pending for further information to be submitted.

The Board is concerned that the *Mutual Recognition (Western Australia) Act* obliges it to grant registration to persons who may not otherwise satisfy the West Australian requirements.

TECHNICAL SERVICES

ROLE

The Technical Services section undertakes inspections pursuant to Section 12B of the *Builders' Registration Act*. It also provides technical support to the Board in administering the provisions of the Act regarding the registering of builders, the maintenance of good building standards and building disputes.

Technical Services staff liaise with industry bodies on a regular basis to ensure an understanding of contemporary technical problems facing builders is constantly maintained and brought to the attention of the Board. Where possible, education information is provided to builders via hard copy Newsletters. This information is also available on the Internet).

AIM

- To report to the Builders' Registration Board on compliance levels currently being achieved by the building industry with respect to Australian Standards and the Building Code of Australia requirements in a timely manner.
- To assist the Building Disputes Tribunal by providing expert reports in response to complaints.

DEFECTS IDENTIFIED IN BUILDING DISPUTES TRIBUNAL ORDERS	1999	2000	2001/2002
Wallframing	1.1	0.9	1.1
Concrete Paving	2.1	3.5	3.0
Earthwork & Footings	1.8	1.4	1.4
Concrete Floor Slabs	2.3	1.9	2.9
Timber Floors	2.4	0.9	1.8
Brickwork	8.0	8.3	8.7
Flashings	4.9	4.7	5.0
Doors & Windows	5.7	6.7	7.1
Ceiling & Roof Framing	6.7	5.2	5.2
Roof Cover	6.5	7.2	6.6
Plumbing	5.8	5.7	6.1
Solid Plastering	8.8	9.5	9.1
Ceiling & Wall Sheeting	8.5	7.8	7.4
Fixing & Joinery	7.3	7.7	7.1
Wall & Floor Tiling	8.6	7.6	8.2
Water Ingress/Egress	8.6	8.2	8.2
Painting	7.2	8.7	8.2
House & Site Cleaning	1.3	1.8	1.4
Swimming Pools	1.5	1.7	1.0
Termite Control	0.9	0.6	0.5
	100%	100%	100%

REPRESENTATION

The Builders' Registration Board is represented by its technical services staff on the Master Builders Association's Housing Council and upon invitation by the Housing Industry Association's Technical Committee.

Technical Services staff also attend regional meetings convened by the South-West Council of Building Surveyors.

Input in relation to Australian Standards is maintained by the Board as a participating member of the Domestic Construction Standards Co-ordination Group.

Technical Services staff have also contributed to a proposed revision of Plastering Standard CA 27, as hard-wall plastering continues to be a problem in the housing sector mainly due to inconsistent application coupled with insufficient skilled operators.

Inadequate ordering regimes by builders and invoices of major processors and suppliers of treated pine also became an issue during the year. Staff alerted the Forest Industries Federation (WA) Inc to this, who subsequently undertook an education program with their members. An underlying problem being that treated pine was not ordered for a specific purpose and therefore an incorrect grading could be supplied. In addition, invoices were sparse in detail, only showing "treated pine" without reference to the grade of treatment applied. The result being that pine suitable only for above ground environment could be placed in the ground and be subject to premature rot.

ASSESSMENTS OF BUILDING WORK COMPLAINTS

During the period January 2001 to June 2002 results were as follows:

Number of inspections	626
Average time between receipt of a formal complaint and inspection (target 11 days)	10 days
Average time between receipt of complaint and assessment (target 22 days)	21 days
Average time between receipt of complaint and Building Disputes Tribunal Order by Registrar (target 36 days)	32 days

Technical Services has no control over the issuing of orders made by the Tribunal.

Ratio of complaints lodged to Building Licence applications

	1999	2000	1/01/01-30/06/01	1/07/01-30/06/02 **
Building Licence Applications *	22,697	16,912	7,956	22,534
Complaints	770	905	446	579
Ratio	1:29	1:19	1:18	1:40

* Estimate only of all new dwellings and extensions.

** From 1 Jan 2002 the applications include swimming pools and other associated works.

The Board noted in its 2000 Annual Report that the incidence of complaints was rising and it was reassuring to note a reversal of that trend in this reporting period.

BOARD INVESTIGATIONS

During the reporting period, the technical services section conducted 37 investigations into allegations of negligence against registered builders. The results of such appear at pages 39-43.

GENERAL ENQUIRIES

Telephone support for owners and builders on building related matters has risen to the point that employment of a full time General Enquiries Officer is being considered.

OWNER-BUILDERS

From August 2001, pursuant to section 4A(a)(c)(iii) of the *Builders' Registration Act*, unregistered persons seeking a building licence where the fee or charge payable in relation to the building work is in excess of \$12,000 are required to pay to the Board a prescribed fee.

During the period 1 August 2001 to 30 June 2002, 2630 certificates were processed by staff and provided to owner-builders making application to carry out residential building work in excess of \$12 000.

STAFFING

Staff employed in the Technical Section during the period:

- Technical Services Manager
- Senior Inspector
- One full time Inspector
- Six part time Consultant Inspectors
- Three support staff

COMPLIANCE AND SURVEILLANCE

ROLE

A primary statutory function of the Board is its compliance and surveillance role. The Surveillance & Enforcement section performs a range of educational and enforcement activities designed to foster awareness of and compliance with the relevant law by builders and the wider community.

The Registrar, in accordance with the Board's *Prosecution Policy*, deals with detected offences under the Acts and may initiate prosecution action through the courts. In addition, the Board conducts formal inquiries into registered builders and may cancel or suspend a builder's registration in specified circumstances, such as negligence, incompetence or fraudulent conduct. The role of the Surveillance & Enforcement section in these matters is to provide investigation support and collect evidence.

RESOURCES

For a number of years, severe financial constraints did not allow this Section to be adequately resourced as to undertake the necessary legislative responsibilities of the Act. However, with an increase in funding from August 2001, the Board has corrected this deficiency.

In March 2002, staff in the Surveillance and Enforcement section were increased from 1 permanent to 3 permanent and 1 temporary staff member.

ACHIEVEMENTS

With additional staff and the newly acquired ability to issue infringement notices, a stronger emphasis has been given to building site surveillance, which has been an area of concern for several years. Building sites displaying incorrect building signs have been targeted. Correct signage assists the Board and other government agencies to readily identify the builder carrying out the work.

Surveillance & Enforcement officers have noted an improvement in builder compliance with respect to site signage and statutory obligations generally.

During the reporting period, Surveillance & Enforcement officers have issued 357 sign infringement notices comprising 272 against registered builders and 85 against owner-builders. Written warnings were issued to 115 builders during the infringement phasing-in period. Illegally constructed and unsafe buildings have been detected.

The backlog of matters awaiting investigation has been reduced. In the 12 months ending 30 June 2002, formal investigations were commenced into 91 matters, compared with 67 for the previous 12-month period.

REGISTRATIONS CANCELLED OR SUSPENDED UNDER SECTION 13 OF THE ACT

Section 13 of the Act provides the grounds upon which the Board may cancel or suspend the registration of a builder. The Act requires that an inquiry be held and that the builder be advised of the allegations and given the opportunity of attending the inquiry or making written submissions. **FOI/5**

Cancellation or suspension of registrations during 2001-2002 are set out at Pgs 39-43.

REASONS FOR DECISION

Upon request, the Board provides written reasons for its decision to cancel or suspend registration. During the reporting period, 5 such sets of reasons were provided. **FOI/7a**

APPEALS

Section 14 of the Act provides that a person who is dissatisfied with a decision of the Board cancelling or suspending their registration, may appeal to the District Court.

The following appeals resulting from decisions of the Board to cancel or suspend the registration of a builder under Section 13 of the Act were determined during the reporting period.

APPEALS AGAINST DECISIONS OF THE BOARD TO CANCEL OR SUSPEND THE REGISTRATION OF A BUILDER UNDER SECTION 13 OF THE ACT		
Name of Builder	Date of Determination	Outcome
1 Jan 2001 – 30 June 2001		
Longo Construction P/L (3662)	18 January 2001	Upheld
1 July 2001 – 30 June 2002		
Flowers, G (S.742)	4 September 2001	Discontinued
Somoff, A (6591)	2 October 2001	Dismissed
Hawk Construction Services P/L (10608)	23 November 2001	Partially upheld
Taddei, M (7699)	23 November 2001	Partially upheld

PREROGATIVE WRIT

In 2001, a builder who was subject to an inquiry under section 13 of the Act applied to the Supreme Court for a Writ of Prohibition, which if successful, would have prevented the Board from proceeding further with the inquiry. The application was heard in March 2002 and was not successful. As at 30 June 2002, the builder had applied for leave to appeal the decision of the Supreme Court to the High Court of Australia. That application has not yet been determined.

PROSECUTION POLICY

Section 21 of the Builders' Registration Act (BRA) authorises the Registrar to prosecute for offences against the Act. Prosecutions had to be commenced within 12 months of the time of the offence and proved to be too restrictive for effective action to be taken. Amendment of the Act has extended the limitation period to 3 years.

Section 31 of the Home Building Contracts Act (HBCA) authorises prosecution for offences against the Act by the Registrar of the Builders' Registration Board.

Prosecutions may be commenced within 3 years after the commission of the alleged offence. The Board has adopted a prosecution policy that is available for viewing at the Board's office or on the Board's website.

PROSECUTIONS IN 2001/2002					
	ACT	SECTION	FINE(\$)	COSTS(\$)	
01 January 2001 to					
30 June 2001					
Maza Pty Ltd	BRA	12A(4)	500.00	206.30	
Zimarino A R	BRA	4A(2)(d)	2000.00	232.80	
Fotios A H	BRA	4A(3)	350.00	232.80	
Forde Constructions Pty	HBCA	25C(2)	500.00	355.60	
Iloski S	BRA	4A(2)(d)	500.00	190.60	
Iloski L	BRA	4A(2)(d)	500.00	190.60	
Herson H C	HBCA	4(4)	500.00	234.00	(5 charges)
Herson H C	HBCA	25C(2)	2000.00	234.00	
Herson H C	BRA	4(1)(A)(b)	3000.00	234.00	
Herson H C	BRA	4(1)(A)(b)	3000.00	234.00	
Herson H C	HBCA	4(4)	700.00	234.00	
Fibre Technics Pty Ltd	HBCA	4(4)	200.00	340.60	(2 charges)
Fibre Technics Pty Ltd	HBCA	10(1)(A)(I)	800.00	340.60	
Forde Constructions Pty	BRA	12(4)	500.00	355.60	
Burns B	HBCA	25C(2)	500.00	500.00	(3 charges)
Burns B	HBCA	10(1)(a)(I)	500.00	0.00	
Burns B	HBCA	4(4)	200.00	225.60	
Lemari Pty Ltd	BRA	12A(4)	300.00	265.60	
Shellbrook Holdings Pty Ltd	HBCA	25C(1)	300.00	225.60	(2 charges)
Shellbrook Holdings Pty Ltd	HBCA	4(4)	200.00	225.60	
(carried forward p.37)					

PROSECUTIONS IN 2001/2002 B/F.					
Both J	BRA	4(1)(A)(b)	1000.00	160.90	(9 charges)
Both J	BRA	4(1)(A)(b)	1000.00	160.90	
Both J	BRA	4(1)(A)(b)	1000.00	160.90	
Both J	HBCA	10(1)(a)(I)	1000.00	160.90	
Both J	HBCA	4(4)	200.00	160.90	
Both J	HBCA	4(4)	200.00	160.90	
Both J	HBCA	10(1)(a)(I)	500.00	160.90	
Both J	HBCA	4(4)	200.00	160.90	
Both J	HBCA	4(4)	200.00	160.90	
Marcola Pty Ltd	HBCA	4(4)	100.00	160.90	(3 charges)
Marcola Pty Ltd	HBCA	4(4)	100.00	160.90	
Marcola Pty Ltd	HBCA	10(1)(a)(I)	500.00	160.90	
Innes S	HBCA	4(4)	400.00	252.60	
Innes S	HBCA	4(4)	400.00	252.60	
1 July 2001 – 30 June 2002					
Murphy T	HBCA	10(1)(a)(I)	250.00	190.60	(2 charges)
Murphy T	BRA	12A(4)	250.00	190.60	
Mason L	HBCA	10(1)(a)(I)	2000.00	163.60	(3 charges)
Mason L	HBCA	4(4)	500.00	163.60	
Mason L	HBCA	4(4)	500.00	163.60	
Upton B	HBCA	25C(1)	100.00	155.60	(3 charges)
Upton B	HBCA	4(4)	100.00	155.60	
Upton B	HBCA	4(4)	100.00	155.60	
Nicholis M	HBCA	10(1)(a)(I)	1000.00	180.60	
Radelic K	BRA	4(A)(2)(d)	1500.00	700.60	
Total Roofing Services P/L	HBCA	4(4)	300.00	215.60	(3 charges)
Total Roofing Services P/L	HBCA	4(4)	300.00	215.60	
Total Roofing Services P/L	HBCA	10(1)(a)(I)	750.00	215.60	
Lindsay-Smith D	HBCA	4(4)	100.00	155.60	(3 charges)
Lindsay-Smith D	HBCA	10(1)(a)(I)	200.00	155.60	
Lindsay-Smith D	HBCA	4(4)	100.00	155.60	
Jadd Projects Pty Ltd	HBCA	14(1)	500.00	295.60	
Gallacher D	BRA	4(1)(A)(b)	500.00	295.60	(2 charges)
Gallacher D	BRA	4(1)(A)(b)	500.00	345.60	
Kaitapu D	HBCA	10(1)(a)(I)	1000.00	119.96	(3 charges)
Kaitapu D	HBCA	4(4)	200.00	119.96	
Kaitapu D	HBCA	4(4)	200.00	119.96	
Shaikh G	HBCA	4(4)	1000.00	255.60	(4 charges)
Tesari Pty Ltd	HBCA	10(1)(a)(I)	75.00	212.60	
Shaikh G	HBCA	4(4)	1000.00	255.60	(3 charges)
Shaikh G	HBCA	4(4)	1000.00	255.60	
Shaikh G	HBCA	4(4)	1000.00	255.60	
Tesari Pty Ltd	HBCA	4(4)	750.00	212.00	
Shipway W	HBCA	4(4)	200.00	200.60	(3 charges)
Shipway W	BRA	4(1)(B)	1000.00	200.60	
Shipway W	HBCA	4(4)	200.00	200.60	
(carried forward p.38)					

PROSECUTIONS IN 2001/2002 B/F					
Tesari Pty Ltd	HBCA	4(4)	75.00	212.60	
Butler T	HBCA	25C(2)	250.00	0.00	(4 charges)
Butler T	HBCA	25C(1)	250.00	44.20	
Butler T	HBCA	4(4)	100.00	160.60	
Butler T	HBCA	4(4)	100.00	160.60	
Jadelake Holdings Pty Ltd	HBCA	7(3)	200.00	187.40	(3 charges)
Jadelake Holdings Pty Ltd	HBCA	7(3)	200.00	187.40	
Jadelake Holdings Pty Ltd	HBCA	7(3)	200.00	187.40	
Finlan J	HBCA	4(4)	300.00	195.70	(2 charges)
Crannigan J	HBCA	14(1)	500.00	293.70	
Finlan J	HBCA	4(4)	300.00	195.70	
TOTAL FINES/COSTS					
1 January 2001-30 June 2001			\$23, 850.00	\$7493.90	
1 July 2001 – 30 June 2002			\$18,875.00	\$8329.10	
(1999)			(\$47,000.00)	(\$11,341.19)	

APPEALS TO THE SUPREME COURT FROM CONVICTIONS IN COURT OF PETTY SESSIONS

Between 1 January 2001 and 30 June 2001, there were two appeals against decisions of magistrates of the Court of Petty Sessions. One appeal (brought by the Board) was successful and one appeal (brought by a defendant against his conviction) was dismissed. No appeals were lodged between 1 July 2001 and 30 June 2002.

**REGISTRATION CANCELLED OR SUSPENDED
UNDER SECTION 13 OF THE *BUILDERS' REGISTRATION ACT***

1 JANUARY 2001 – 30 JUNE 2001

INDIVIDUALS

R Hall (6737)	**	Cancelled	Financial Grounds
S J Rowe (10521)		Cancelled	Financial Grounds
A Parapat (9125)		Suspended	Financial Grounds
G W Owen (10383)		Cancelled	Financial Grounds
J Baverstock (6903)		Cancelled	Financial Grounds
S Geha (3718)		Suspended	Financial Grounds
B K Maine (6199)		Cancelled	Financial Grounds
S L James (7515)		Cancelled	Financial Grounds
A Todoro (8486)		Suspended	Financial Grounds
N Ferrinda (6945)		Cancelled	Financial Grounds
G Plant (7502)		Cancelled	Financial Grounds
A Somoff (6591)		Cancelled	Negligence & Incompetence
G L Flowers (S.742)		Suspended	Negligence & Incompetence
K Emery (5472)		Suspended	Fraudulent Conduct
S Leopold (10133)	**	Suspended	Negligence & Incompetence (as nominated supervisor)
C K Cheong (6283)		Cancelled	Fraudulent Conduct
M Rathbone (8249)		Suspended	Fraudulent Conduct (as nominated supervisor)
H O'Brien (4678)		Suspended	Fraudulent Conduct
L Lubowicki (S.572)	**	Suspended	Negligence & Incompetence
V Longo (9398)		Cancelled	Negligence & Incompetence

PARTNERSHIP

Graham Plant Homes (9316)		Cancelled	Financial Grounds
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**REGISTRATION CANCELLED OR SUSPENDED
UNDER SECTION 13 OF THE *BUILDERS' REGISTRATION ACT***

1 JANUARY 2001 – 30 JUNE 2001
CONT.

COMPANIES

Harmony Construction Pty Ltd (10121)	Cancelled	Financial Grounds
Hall Constructions (Aust P/L) (10305)	Cancelled	Financial Grounds
Sandalwood Homes (WA) P/L (10522)	Cancelled	Financial Grounds
Pinejet Holdings P/L (10474)	Cancelled	Financial Grounds
S Geha & Co P/L (3474)	Cancelled	Financial Grounds
WA Specialised Products P/L (9676)	Cancelled	Financial Grounds
Park Lane Const. P/L (10166)	Cancelled	Financial Grounds
Lincoln Constructions (WA) P/L (8457)	Cancelled	Financial Grounds
Kenrob Pty Ltd (10135)	Cancelled	Financial Grounds
Bacton Pty Ltd (8417) **	Suspended	Financial Grounds
Nero Nominees P/L (5863) **	Suspended	Financial Grounds
Lemari Pty Ltd (9809)	Cancelled	Negligence & Incompetence
SJ & W Leopold Nominees Pty Ltd (10140) **	Suspended	Negligence & Incompetence
O'Mark Constructions P/L (9167)	Suspended	Fraudulent Conduct

* **Subject to appeal to the District Court**

** **Subsequently annulled with condition imposed**

*** **Determination made after original decision of the Board was overturned on appeal and matter returned to the Board for rehearing.**

**REGISTRATION CANCELLED OR SUSPENDED
UNDER SECTION 13 OF THE *BUILDERS' REGISTRATION ACT***

1 JULY 2001 – 30 JUNE 2002

INDIVIDUALS

G Hayes (8539)		Cancelled	Financial Grounds
J Spaanderman (9686)	**	Suspended	Financial Grounds
A J Bain (9977)	**	Cancelled	Financial Grounds
N B Pannett (8182)		Cancelled	Financial Grounds
M A Cleary (8326)	**	Suspended	Financial Grounds
M Merrim (9373)		Suspended	Financial Grounds
G Clinton-Burns (9403)		Suspended	Financial Grounds
T Paparusis (4044)	**	Suspended	Financial Grounds
T R Jones (S.345)		Cancelled	Financial Grounds
D Hodges (7390)		Cancelled	Financial Grounds
P Butcher (3953)		Cancelled	Financial Grounds
A Cox (2860)		Suspended	Financial Grounds
S Leopold (10133)		Suspended	Financial Grounds
R Jones (8065)		Cancelled	Financial Grounds
C Conti (10352)		Suspended	Financial Grounds
S Debono (9281)	** ***	Suspended	Fraudulent Conduct
W Eades (6985)	**	Suspended	Fraudulent Conduct
R Zupanovich (8173)		Cancelled	Convicted of an offence
A Lake (6710)		Cancelled	Fraudulent Conduct
R Schoonens (6549)	**	Suspended	Negligence & Incompetence
L Hotker (S.390)		Cancelled	Negligence & Incompetence

**REGISTRATION CANCELLED OR SUSPENDED
UNDER SECTION 13 OF THE *BUILDERS' REGISTRATION ACT***

1 JULY 2001 – 30 JUNE 2002
CONT.

PARTNERSHIPS

Pannett Homes (9063)	Cancelled	Financial Grounds
Bushlore Building & Joinery (10397) *	Cancelled	Financial Grounds

COMPANIES

Bacton Pty Ltd (8417)	Cancelled	Financial Grounds
Pandaragan Pty Ltd (8537)	Cancelled	Financial Grounds
Western Australian Shed Commercial P/L (10490) **	Cancelled	Financial Grounds
Barry Morgan Nominees P/L (10806)	Suspended	Financial Grounds
Primo Constructions WA P/L (10053)	Cancelled	Financial Grounds
Carlino Enterprises Pty Ltd (9613) **	Cancelled	Financial Grounds
Spaanderman Homes Pty Ltd (10907) **	Cancelled	Financial Grounds
ABI Constructions P/L (10442)	Cancelled	Financial Grounds
Guardian Homes P/L (10165) ** (revoked 1/2/02)	Suspended	Financial Grounds
Brown & Joy Industries Pty Ltd (8330)	Cancelled	Financial Grounds
Geraldton Building Co. Pty Ltd (7205)	Cancelled	Financial Grounds
Cleary Constructions (WA) P/L (8387)	Suspended	Financial Grounds
Merrim Homes Pty Ltd (10082)	Suspended	Financial Grounds
Windmere Holdings Pty Ltd (9986)	Suspended	Financial Grounds

**REGISTRATION CANCELLED OR SUSPENDED
UNDER SECTION 13 OF THE *BUILDERS' REGISTRATION ACT***

**1 JULY 2001 – 30 JUNE 2002
CONTD.**

COMPANIES cont.

Vogue Homes Pty Ltd (5814) **	Cancelled	Financial Grounds
Linton & Rose Builders Pty Ltd (6853) **	Cancelled	Financial Grounds
AGA Constructions P/L (11038)	Suspended	Financial Grounds
SJ & W Leopold Nominees P/L (10140)	Suspended	Financial Grounds
The Maitland Building Co. P/L (9558)	Suspended	Financial Grounds
Carbone Karro Master Builders P/L (10098)	Suspended	Financial Grounds
Conti Constructions WA Pty Ltd (10935)	Suspended	Financial Grounds
Challenge Enterprise (Australia) Pty Ltd (10225) ** ***	Suspended	Fraudulent Conduct
Yawony Building Co Pty Ltd (8463)	Cancelled	Failure to manage & supervise
K Mountain and Co Pty Ltd **	Cancelled	Fraudulent Conduct

* **Subject to appeal to the District Court**

** **Subsequently annulled with condition imposed**

*** **Determination made after original decision of the Board was overturned on appeal and matter returned to the Board for rehearing.**

OWNER-BUILDERS

Owner-builders are permitted to construct for themselves, but not for the purpose of immediate sale, a dwelling house or a building comprising two dwellings on ground level (commonly referred to as a duplex).

Upon application, the Board may authorise a person to construct a building which is not a dwelling.

The restrictions imposed on owner-builders by the Act are:

- (i) the land on which the building is constructed shall not be sold or otherwise disposed of within 3 years of the date of issue of the building licence; and
- (ii) the person applying for the building licence must make a Statutory Declaration verifying that no other building licence has been obtained from any local authority within the preceding six years.

Item (ii) above was amended from 1 August 2001. Owner-builders are now required to forward the Statutory Declaration to the Board (rather than direct to the local government as was previously the case), and to pay the Board a fee of \$100. The owner-builder is then required to certify to the local government that the fee has been paid to the Board and that the Statutory Declaration has been lodged with the Board, before the local government can issue the building licence.

The Minister or delegate may, on receipt of an application in writing, give consent to vary either of the restrictions, if satisfied that the following conditions apply:-

- (a) the application arises from a change in the circumstances of the applicant and does not constitute an attempt on the part of the applicant to defeat the purposes of the Section of the Act; and
- (b) the applicant would suffer hardship if the application were to be refused.

During the 18-month period of review, 237 applications were received from owner-builders seeking relief from the above-mentioned requirements. Results are shown in the table below.

Board staff undertake a preliminary search of current records to establish certain facts and then pass the file to the Department of Consumer and Employment Protection, for further assessment and recommendation to the Commissioner for Fair Trading.

Details relating to the applications are personal and the files that are retained in the Board's offices are only available to individual applicants. **FOI/7b**

TABLE OF OWNER-BUILDER APPLICATIONS						
	To Sell within 3 years			To Build Another within 6 years		
	1999	2000	2001/2002	1999	2000	2001/2002
Approved	83	102	193	73	56	103
Rejected	0	1	1	3	2	5
Withdrawn	7	1	8	8	5	8
Did Not Proceed	7	9	6	8	1	1
Pending	5	14	5	11	17	1
No Response	-	-	13	-	-	9
TOTAL	102	127	226	103	81	127

From 1 January 2001 to 30 June 2002, owner-builders made 3049 applications for building licences (covering all values of work), accounting for 10% of all residential building licences issued.

BUILDING COMPLAINTS AND DISPUTE RESOLUTION

Section 12A of the *Builders' Registration Act* and Section 17 of the *Home Building Contracts Act* provides that building disputes may be determined by the Building Disputes Tribunal as established under Section 26 of the *Builders' Registration Act*.

FOI/5

The Builders Registration Board and the Building Disputes Tribunal are quasi-judicial bodies, each being independent of the other.

The Board is responsible for the licensing of builders, disciplinary procedures and inspections.

The Tribunal provides a straightforward, inexpensive forum for adjudicating building disputes arising from claims concerning building work that has not been carried out to a proper standard; either party breaking the terms of the Contract as well as disputes arising out of breaches of the provisions of Part II of the *Home Building Contracts Act*.

BUILDING DISPUTES TRIBUNAL

Section 23B of the *Builders' Registration Act* was introduced in August 2001 and requires the Board to report separately on the management by the Board of the disputes resolution procedures under the Act.

Staff and administrative facilities to support the Tribunal are provided by the Board.

The Tribunal is appointed by the Minister and comprises a panel of persons representative of the interests of builders and consumers. Similarly, the Chairperson and Deputy Chairs, each of whom is a legal practitioner, are appointed to the Tribunal by the Minister.

The amendments to the legislation governing the powers of the Tribunal now enable the Chairperson or Deputy Chairperson of the Tribunal to refer matters to mediation. The amendments also permit the Tribunal to be constituted by the Chairperson or Deputy Chairperson sitting alone.

Effectively, the amendments have led to an increase of funds available to expend on Tribunal hearings, reducing the waiting period to have a complaint heard from around nine months to four weeks of the clients' referral.

In exceptional circumstances the Tribunal can convene on 24 hours notice.

MANAGEMENT OF DISPUTE RESOLUTION PROCEDURES

For the period 1 January 2001 to 30 June 2001, the Tribunal sat on 40 days to hear 251 complaints including 14 preliminary/directions hearings and 59 part heard matters.

For the period 1 July 2001 to 30 June 2002, the Tribunal sat on 171 days to hear 471 complaints including 37 preliminary/directions hearings and 80 part heard matters.

DELEGATION OF AUTHORITY

Pursuant to Section 33 of the Act, the Chairperson has delegated to the Registrar the authority to exercise some of the jurisdiction of the Tribunal.

Orders and decisions made by the Registrar shall be reviewed by the Tribunal upon application by either party within 10 working days of the order or decision being made.

Forty eight such applications were made in the six month period ending 30 June 2001. As a result:

- 13 orders were varied;
- 4 orders were affirmed;
- 21 orders were revoked by the BDT and converted to Orders to Pay;
- 2 complaints were resolved prior to review by the BDT;
- 3 complaints were adjourned sine die; and
- 5 applications for review were carried over.

Fifty five applications for review were made in the period 1 July 2001 to 30 June 2002. As a result:

- 6 orders were varied;
- 4 orders were affirmed;
- 14 orders were revoked by the BDT and converted to Orders to Pay;
- 3 complaints were dismissed;
- 13 complaints were adjourned sine die; and
- 15 applications for review were carried over.

REASONS FOR DECISION OF THE TRIBUNAL

FOI/7A

The Act requires that the parties to the proceeding before the Building Disputes Tribunal are made aware of their right to request reasons for decision.

Reasons for Decision are public documents and are available to other parties at cost.

There were 33 requests for reasons sought and published from 1 January 2001 to 30 June 2001; and 72 requests for reasons from 1 July 2001 to 30 June 2002.

Financial Statement of the Costs of Managing the Dispute Resolution Process 2001/2002

	\$
<u>Income</u>	
Tape Transcription	9,669.00
Complaint Fees	9,525.00
Total	19,194.00
 <u>Expenditure</u>	
Hearings	491,795.00
Salaries/superannuation	265,878.00
Inspections	156,897.00
Office Support Costs	529,002.00
Total	1,443,572.00

SCHEDULE OF COMPLAINTS

Complaints Received	1998	1999	2000	1/01/01- 30/06/01	1/07/01- 30/06/02
Against Registered Builders	487	580	691	339	456
Against Unregistered Persons	102	116	144	64	80
Against Owners	24	65	51	42	42
Against Owner-Builders	5	4	4	1	1
Against Trades from Owners	1	5	15	-	-
TOTAL	619	770	905	446	579

Comparison of Orders Issued	1998	1999	2000	1/01/01- 30/06/01	1/07/01- 30/06/02
Orders to Remedy (BDT)	37	61	62	26	43
Orders to Remedy (Registrar)	369	464	436	229	264
Orders to Pay (BDT)	107	156	152	77	164
Orders to Pay (Registrar)	39	23	26	14	24
TOTAL	552	704	676	346	495
Value of Orders to Pay					
BDT (\$)	640,786	1,141,319	1,063,646	426,458	1,076,835
Registrar (\$)	102,942	26,245	37,833	9,316	35,417

Allocation of Orders to Pay		
	1/01/01- 30/06/01	1/07/01- 30/06/02
Owners to pay Builders:	\$75,650	\$110,846
Builders to pay Owner:	\$360,124	\$1,001,407

CATEGORIES OF COMPLAINTS				
	1999	2000	1/01/01- 30/06/01	1/07/01- 30/06/02
Contractual Only	99	174	81	81
Workmanship Only	558	603	289	416
Contractual and Workmanship	113	128	76	82
TOTAL	770	905	446	579

Ratio of appeals against the Decisions/Orders of the Tribunal to the total numbers of Decisions/Orders issued

	1999	2000	1/01/01- 30/06/01	1/07/01- 30/06/02
Orders Made	217	214	121	218
Appeals	13	4	5	6
Ratio	1:17	1:50	1:24	1:35

Cost of complaints dealt with by the Tribunal

	1999	2000	1/01/01- 30/06/01	1/07/01- 30/06/02
Direct costs of BDT	323,190	276,397	118,047	311,771
Total complaints heard in year	354	332	233	471
Average cost/complaint	\$913	\$832	\$506	\$662

The Board set a goal in which workmanship orders, made by the Registrar under delegated authority, should be made after the complaint file has been started. A target of 80% within 36 days (reviewed 1999) was set.

	1999	2000	1/01/01- 30/06/01	1/07/01- 30/06/02
Achievement	80%	77%	77%	84%
	(36 days)	(36 days)	(36 days)	(36 days)

APPEALS TO THE DISTRICT COURT FROM DECISIONS OF THE BUILDING DISPUTES TRIBUNAL IN 2001 & 2002

Section 41 of the *Builders' Registration Act* provides that a person who is dissatisfied with a decision of the Building Disputes Tribunal may, with leave, appeal to the District Court.

Prior to 1 August 2001, both the District Court and the Building Disputes Tribunal heard applications for leave to appeal. As a result of the *Building Legislation Amendment Act 2000*, the District Court hears all such applications.

STATE OMBUDSMAN

The Ombudsman has jurisdiction to investigate complaints made to him with respect to acts done or omitted by the Board or the Building Disputes Tribunal that relate to matters of administration.

Builders' Registration Board

2001/2002	5 complaints were made of which 1 was withdrawn and the other matters are continuing.
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Building Disputes Tribunal

2001/2002	8 complaints were made of which 6 were dismissed. One remains current and the other was sustained but did not mean the agency was at fault.
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FINANCIAL STATEMENTS

Section 23A of the Act requires that the accounts and financial statements of the Board shall be audited at the expense of the Board by an auditor appointed by the Board with prior approval of the Minister.

Butler Settineri was appointed and approved to audit the 2001/2 accounts.

As a result of the *Building Legislation Amendment Act 2000*, Section 23B of the Act now requires that the Board shall on or before 30 September in each year make and submit to the Minister an annual report of its proceedings for the preceding year ending on 30 June together with a copy of the financial statements and the auditor's report.

To give effect to this provision as the previous reporting date related to the period ended 31 December 2000, the submitted financial statements and the auditor's report relate to the period 1 January 2001 to 30 June 2002 (18 months).

Section 23B (1a) of the Act requires that the annual report is to contain separate reports on the operations of the Board referred to in section 8B (4) (a) and (b). Financial Statements detailing the administrative functions of the Board and the management of dispute resolution procedures are appended to this report at Appendix "A".

BOARD STATEMENT ON ITS FINANCES

The introduction in August 2001 of additional sources of revenue arising from the *Building Legislation Amendment Act 2000* has had a significant impact on the Board's financial viability.

The Board is confident that it will have financial resources to develop its statutory functions and to address the basic concerns in its financial position, which were cited in its previous annual report. Debt reduction has already been implemented with a reduction in the loan from the Adelaide Bank (\$797,694 to \$397,682). The Board intends to repay the remaining non-current debt of \$591,812 in the near future. Further to this the Board will consider the specific funding of its annual leave and long service leave liabilities, and the development of its physical assets.

.....
Paul Marsh
CHAIRMAN

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Nigel Lilley
REGISTRAR