

Western Australia

Building Amendment Act 2012

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No. 37 of 2012

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Building Amendment Act 2012

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Western Australia

Building Amendment Act 2012

No. 37 of 2012

An Act to amend the *Building Act 2011* and validate certain actions and for related matters.

[Assented to 5 November 2012]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Building Amendment Act 2012*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent (*Assent day*);
- (b) Parts 3 and 4 — on a day fixed by proclamation, and different days may be fixed for different provisions;
- (c) the rest of the Act — on the day after Assent day.

3. Act amended

This Act amends the *Building Act 2011*.

Part 2 — General amendments

4. Section 3 amended

In section 3 in the definition of *authorised person* delete “person;” and insert:

person and includes, for the purposes of section 93(2)(d) —

- (a) a person who is prescribed as an authorised person for the purposes of section 93(2)(d); and
- (b) a person who is authorised by a local government in the manner prescribed for the purposes of section 93(2)(d);

5. Section 5 amended

In section 5(1) in the definition of *owner*, in relation to Crown land, after paragraph (a) insert:

- (ba) the State, in prescribed circumstances; or

6. Section 19 amended

After section 19(5) insert:

- (6) The regulations may provide for the things that a building surveyor is required to do before signing a certificate.

7. Section 20 amended

(1) After section 20(1)(b)(ii) insert:

- (iiia) is a public authority as defined in the Registration Act section 3; or

(2) After section 20(1)(e)(i) insert:

(iia) is a public authority as defined in the
Registration Act section 3; or

8. Section 23 amended

In section 23(1)(b) and (2)(b) after “of the” insert:

balance of the

9. Section 28 amended

After section 28(1) insert:

(2A) If a building permit is granted on an uncertified application, a copy of the certificate of design compliance must also be given to the applicant.

10. Section 39 amended

Delete section 39(2) and insert:

- (2) The Building Commissioner may, in writing and on the application of another person declare that —
- (a) a specified building standard does not apply to a specified building, specified incidental structure or specified demolition work; or
 - (b) a building standard that applies to a specified building, specified incidental structure or specified demolition work is modified in a specified way.

11. Section 56 amended

After section 56(5) insert:

- (6) The regulations may provide for the things that a building surveyor is required to do before signing a certificate of construction compliance.

12. Section 57 amended

- (1) In section 57(3) delete “section 52(1) or (2) must state that the building or incidental structure” and insert:

section 48 or 52(1) or (2) must state that the building or incidental structure substantially

- (2) In section 57(4):

- (a) delete “section 52(1) or (2)” and insert:

section 48 or 52(1) or (2)

- (b) in paragraph (a) before “complies” insert:

substantially

- (c) in paragraph (a) delete “construction; and” and insert:

construction; or

- (d) in paragraph (b) before “complies” insert:

substantially

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(3) After section 57(6) insert:

(7) The regulations may provide for the things that a building surveyor is required to do before signing a certificate of building compliance.

13. Section 58 amended

After section 58(1)(c)(i) insert:

(ia) is a public authority as defined in the Registration Act section 3; or

14. Section 67 amended

(1) After section 67(1) insert:

(2A) The Minister may by order exempt from the operation of section 16(b) or (c) (but only as to the requirement for an application to be signed) or (d) either unconditionally or on specified conditions —

- (a) an application for a building permit or a demolition permit specified in the order; or
- (b) an application for a building permit or a demolition permit of a kind specified in the order.

(2) In section 67(2) delete “subsection (1)” and insert:

subsection (1) or (2A)

- (3) In section 67(3) delete “subsection (1)” and insert:

subsection (1), (2A)

15. Section 75 amended

In section 75 insert in alphabetical order:

business day means a day other than Saturday, Sunday
or a public holiday;

16. Part 6 Division 2 heading replaced

Delete the heading to Part 6 Division 2 and insert:

**Division 2 — Work affecting other land that requires
consent, court order or other authority**

17. Section 76 amended

Delete section 76(1) and insert:

- (1) A person responsible for work must ensure that no part of a building or an incidental structure is placed beyond the boundaries of the works land —
- (a) unless each owner of the land into, onto, or over which the encroaching part is placed consents to the encroaching part being so placed and the encroaching part is placed in accordance with the consent; or
 - (b) unless the encroaching part is placed in accordance with an order under section 86(2)(a); or

s. 18

- (c) unless the encroachment is prescribed as a minor encroachment; or
- (d) unless the encroachment is into, onto, or over Crown land and the encroachment is authorised under the *Land Administration Act 1997*; or
- (e) except in prescribed circumstances.

Penalty: a fine of \$25 000.

Note: The heading to amended section 76 is to read:

No encroachment without consent, court order or other authority

18. Section 77 replaced

Delete section 77 and insert:

77. Other land not to be adversely affected without consent, court order or other authority

A person responsible for work must ensure that the work does not adversely affect land beyond the boundaries of the works land —

- (a) unless each owner of the land that may be adversely affected consents to the work being done even though the land may be adversely affected in that way, and the work is done in accordance with the consent; or
- (b) unless the work is done in accordance with an order under section 86(2)(b); or
- (c) except in prescribed circumstances.

Penalty: a fine of \$25 000.

19. Section 78 amended

Delete section 78(1) and insert:

- (1) A person responsible for work must ensure that a temporary or permanent protection structure is not placed beyond the boundaries of the works land —
 - (a) unless each owner of the land into or onto which the protection structure is placed consents to the protection structure being so placed and the protection structure is placed in accordance with the consent; or
 - (b) unless the protection structure is placed in accordance with an order under section 86(2)(c) or a building order; or
 - (c) unless the protection structure is required as a matter of urgency to prevent imminent collapse of, or damage to, any land including a building or structure on the land; or
 - (d) except in prescribed circumstances.

Penalty: a fine of \$25 000.

Note: The heading to amended section 78 is to read:

No protection structure in or on other land without consent, court order or other authority

20. Section 79 amended

Delete section 79(1) and insert:

- (1) A person responsible for work must ensure that the work does not affect the structural, waterproofing, or noise insulation capacity of a party wall, a substantial dividing fence, or a boundary retaining wall that

protects land beyond the boundaries of the works
land —

- (a) unless each owner of the land that shares the party wall or the dividing fence, or that is protected by the boundary retaining wall, consents to the work being done, and the work is done in accordance with the consent; or
- (b) unless the work is done in accordance with an order under section 86(2)(d); or
- (c) unless the work is required as a matter of urgency to prevent imminent collapse of, or damage to, the wall or fence; or
- (d) except in prescribed circumstances.

Penalty: a fine of \$25 000.

Note: The heading to amended section 79 is to read:

Certain work not to affect party walls etc. without consent, court order or other authority

21. Section 80 amended

Delete section 80(1) and insert:

- (1) A person responsible for work must ensure that no fence, gate or other barrier to land on or beyond the boundaries of the works land is removed —
 - (a) unless each owner of the land that shares, or on which is located, the fence, gate or other barrier consents to the removal; or
 - (b) unless the removal is in accordance with an order under section 86(2)(g); or
 - (c) unless the removal is required as a matter of urgency to prevent imminent collapse of, or damage to, any land including a building or structure on the land; or

- (d) unless each of the following applies —
 - (i) the removal is required for the construction of a close wall;
 - (ii) a building permit for the close wall is in effect;
 - (iii) the person responsible for the work has given at least 7 business days' notice of the proposed removal to —
 - (I) each owner of the land mentioned in paragraph (a); and
 - (II) at least one adult occupier of the land, if the land is not occupied by any of its owners;

or

- (e) unless the land that shares, or on which is located, the fence, gate or other barrier is vacant land, or any building on that land is vacant; or
- (f) except in prescribed circumstances.

Penalty: a fine of \$10 000.

(2A) In subsection (1)(d) —

close wall means a wall, fence, post or column, whether free-standing or attached to, or forming part of, a building or structure, that is so close to a boundary of the land on which the wall or fence is located that it is not reasonably practicable to build a separate dividing fence along the boundary.

Note: The heading to amended section 80 is to read:

Fences etc. not to be removed without consent, court order or other authority

22. Section 81 amended

- (1) Delete section 81(2) and insert:
- (2) A person responsible for work must ensure that in doing the work or conducting a survey in relation to that work a person does not go onto other land —
- (a) unless the access is consented to by an owner or adult occupier of the land and the access is in accordance with the consent; or
 - (b) unless the access is in accordance with an order under section 86(2)(e) or (f); or
 - (c) unless as a matter of urgency it is necessary to go onto the land to prevent imminent collapse of, or damage to, any land including a building or structure on the land; or
 - (d) unless the other land is vacant land, or any building on that land is vacant; or
 - (e) except in prescribed circumstances.

Penalty: a fine of \$10 000.

- (2) After section 81(7) insert:
- (8) Nothing in subsection (2)(d), or a regulation prescribing a matter for the purposes of subsection (2)(e), affects the exercise and enforcement of any right that a person has to stop, restrict or prevent a person going on to the other land.

Note: The heading to amended section 81 is to read:

No access to other land without consent or court order, and notification, or other authority

23. Section 86 amended

Delete section 86(1) and insert:

- (1) A person responsible for work who gives a notice to each owner of the affected land may, in accordance with subsection (2A), apply to the Magistrates Court for an order under subsection (2).
- (2A) An application may be made —
 - (a) if the consent sought in the notice is refused, any time after the refusal is given; or
 - (b) if the consent sought in the notice is neither refused nor given and no request for further information is made within the 28 day period after the notice is given, after that period has expired; or
 - (c) if the person responsible provides further information in response to the request of a person given the notice, 14 days after the further information is given.

24. Section 88 amended

In section 88(1) in the definition of *close wall* delete “wall or fence —” and insert:

wall, fence, post or column —

25. Section 120 amended

Delete section 120(b) and insert:

- (b) to not declare that a building standard is modified; or

26. Section 127 amended

- (1) Delete section 127(3), (4) and (5) and insert:
- (3) A delegation of a local government's powers or duties may be only to a local government employee.
 - (4) The delegation must be in writing executed by or on behalf of the delegator.
 - (5) Except as provided for in subsection (6A), a person to whom a power or duty is delegated under this section cannot delegate that power or duty.
 - (6A) The CEO of a local government may delegate to any other local government employee a power or duty of the local government that has been delegated to the CEO under this section but in the case of such a power or duty —
 - (a) the CEO's power under this subsection to delegate the exercise of that power or the discharge of that duty; and
 - (b) the exercise of that power or the discharge of that duty by the CEO's delegate,are subject to any conditions, qualifications, limitations or exceptions imposed by the local government on its delegation to the CEO.
- (2) Delete section 127(7) and insert:
- (7) Nothing in this section limits the ability of the delegator to perform a function through an officer or agent.
 - (8) In subsections (3) and (6A) —
CEO means chief executive officer;

local government employee, in relation to a local government, means a person employed by the local government under the *Local Government Act 1995* section 5.36.

27. Section 140 amended

After section 140(4) insert:

- (5) In the absence of evidence to the contrary, proof is not required in any proceedings under this Act that what purports to be an approved form is the approved form that it purports to be.

Note: The heading to amended section 140 is to read:

**Proof of permits, certificates, building orders, declarations,
obtained records, approved forms**

28. Section 145A inserted

After section 144 insert:

145A. Local government functions

- (1) A local government that is a permit authority, when referring an uncertified application under section 17(1), is not limited to referring the uncertified application to a building surveyor who is employed by the local government.
- (2) A local government may issue a certificate that complies with section 19, 56 or 57 and that is signed by a building surveyor who is employed by the local government, whether or not —
- (a) the building or incidental structure that is the subject of the application is, or is proposed to be, located in the local government's district; or

- (b) the applicant is an owner or occupier of land in the local government's district.
- (3) Nothing in this section affects the operation of —
 - (a) section 20(1)(d) or 58(1)(b); or
 - (b) the *Local Government Act 1995* section 3.18, 3.19 or 3.68 or any other relevant provision of that Act.

29. Section 182A inserted

After section 181 insert:

182A. Occupancy permits for certain buildings and validation

- (1) In this section —
OP application (transitional) means an application mentioned in section 46 for an occupancy permit for a completed building in respect of which —
 - (a) a building permit applies because of the operation of section 178(2) or (4); and
 - (b) a certificate of classification of a kind mentioned in section 181(2) or (3) has not been issued.
- (2) Sections 54(2) and (4)(a) and (d) and 56(2) do not apply to an OP application (transitional).
- (3) On an OP application (transitional) —
 - (a) section 58(1)(b) is to be read as follows:
 - (b) the building in its current state is suitable to be used in the way proposed in the application; and

and

(b) section 58(1)(c) does not apply.

- (4) An occupancy permit for a completed building that was granted or purported to be granted before the commencement of the *Building Amendment Act 2012* section 29 is, and is taken always to have been, as valid and effective as it would have been if this section were in effect at the time the occupancy permit was granted or purported to be granted.

30. Part 16 Division 2 inserted

At the end of Part 16 insert:

**Division 2 — Transitional and validation provisions
arising from the enactment of the *Building Amendment
Act 2012***

204. Term used: amending Act

In this Division —

amending Act means the *Building Amendment Act 2012*.

205. Requests for further information (building and demolition permits)

- (1) In this section —

commencement day means the day on which section 31 of the amending Act comes into operation.

- (2) A requirement under section 18(1) in respect of an application made before commencement day must be dealt with on and after commencement day as if section 18(3) had not been inserted by section 31 of the amending Act.

206. Requests for further information (occupancy permits and building approval certificates)

- (1) In this section —
commencement day means the day on which section 32 of the amending Act comes into operation.
- (2) A requirement under section 55(1) in respect of an application made before commencement day must be dealt with on and after commencement day as if section 55(3) had not been inserted by section 32 of the amending Act.

207. Time for deciding application for building or demolition permit

- (1) In this section —
commencement day means the day on which section 8 of the amending Act comes into operation.
- (2) On and after commencement day, section 23(1) applies in respect of an uncertified application made before commencement day as if section 23(1)(b) had not been amended by section 8 of the amending Act.
- (3) On and after commencement day, section 23(2) applies in respect of a certified application made before commencement day as if section 23(2)(b) had not been amended by section 8 of the amending Act.

208. Validation of building permits naming, and compliance certificates issued by, public authorities

- (1) In this section —
public authority means a public authority as defined in the Registration Act.
- (2) An application for a building permit that, before the commencement of section 7(1) of the amending Act, named and was signed by a public authority as the

person proposing to be named as the builder on the building permit is, and is taken always to have been, as valid and effective as it would have been if section 20(1)(b)(iia) were in effect at the time of the naming and signing.

- (3) A building permit that, before the commencement of section 7(1) of the amending Act, named a public authority as the builder is, and is taken always to have been, as valid and effective as it would have been if section 20(1)(b)(iia) were in effect at the time of the naming.
- (4) A certificate issued or purported to be issued under section 19 by a public authority before the commencement of sections 7(2) and 28 of the amending Act is, and is taken always to have been, as valid and effective as it would have been if sections 20(1)(e)(iia) and 145A were in effect at the time of the issue or purported issue.
- (5) A certificate issued or purported to be issued under section 56 or 57 by a public authority before the commencement of sections 13 and 28 of the amending Act is, and is taken always to have been, as valid and effective as it would have been if sections 58(1)(c)(iia) and 145A were in effect at the time of the issue or purported issue.

209. Regulations for transitional matters about applicable building standards

- (1) In this section —
commencement day, in relation to a provision in Part 4 of the amending Act, means the day on which that provision comes into operation;
provisions of this Act includes regulations made under this Act.

- (2) The regulations may contain provisions that are necessary or convenient for dealing with matters concerning the transition from the provisions of this Act applying before the commencement day of a provision in Part 4 of the amending Act to the provisions of this Act applying on and after that commencement day.

Part 3 — Amendments about further information

31. Section 18 amended

After section 18(2) insert:

- (3) A requirement under subsection (1) must be given in the prescribed manner.
- (4) The regulations may provide for how many separate requirements under subsection (1) may be made in relation to an application.
- (5) A requirement under subsection (1) may be in respect of a document or information required by the building surveyor to whom the permit authority has referred an uncertified application.

32. Section 55 amended

After section 55(2) insert:

- (3) A requirement under subsection (1) must be given in the prescribed manner.
- (4) The regulations may provide for how many separate requirements under subsection (1) may be made in relation to an application.

Part 4 — Amendments about applicable building standards

33. Section 3 amended

In section 3 insert in alphabetical order:

applicable building standard, in a provision, means a building standard that is prescribed as an applicable building standard for the purposes of the provision in respect of a kind of building, incidental structure, building or demolition work or application to which the provision relates;

34. Section 19 amended

In section 19(3) delete “building standard that applies to the building or incidental structure.” and insert:

applicable standard.

35. Section 21 amended

Delete section 21(1)(c) and insert:

(c) that the demolition work will comply with each applicable building standard; and

36. Section 37 amended

(1) In section 37(1) delete “ensure that the building or incidental structure to which the permit applies complies, when completed,

with each building standard that applies to the building or incidental structure.” and insert:

ensure, on completion of the building or incidental structure to which the permit applies, that the building or incidental structure complies with each applicable building standard.

- (2) In section 37(2) delete “ensure that the building or incidental structure complies, when completed, with each building standard that applies to the building or incidental structure.” and insert:

ensure, on completion of the building or incidental structure, that the building or incidental structure complies with each applicable building standard.

37. Section 38 amended

In section 38(1) and (2) delete “building standard that applies to the demolition work.” and insert:

applicable building standard.

38. Section 57 amended

- (1) Delete section 57(3) and insert:

- (3) A certificate of building compliance that accompanies an application other than an application mentioned in section 48 or 52(1) or (2) must state that the building or incidental structure substantially complies with each applicable building standard.

(2) Delete section 57(4)(b) and insert:

- (b) the building or incidental structure substantially complies with each applicable building standard or other prescribed requirement in relation to the technical aspects of the construction of the building or structure.

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