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Building Act 2011

Building Amendment Regulations (No. 2) 2012

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Building Amendment Regulations (No. 2) 2012*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day on which the *Building Amendment Act 2012* Parts 3 and 4 come into operation.

3. Regulations amended

These regulations amend the *Building Regulations 2012*.

4. Regulation 5A inserted

After regulation 4 insert:

5A. Authorised persons (s. 3)

For the purposes of paragraph (b) of the definition of *authorised person* in section 3 an authorised person

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includes a person who is authorised by a local government for the purposes of section 93(2)(d) as a person having the appropriate experience or qualifications, whether the authorisation is effective before or after the day on which the *Building Amendment Regulations (No. 2) 2012* regulation 4 comes into operation.

5. Regulations 7, 8 and 9 deleted

Delete regulations 7, 8 and 9.

6. Regulation 10 amended

(1) After regulation 10(1) insert:

(2A) Despite subregulation (1), for the purposes of section 54(1)(b) in relation to an application mentioned in section 51(2) or (3), **owner**, in relation to land held in freehold, means —

- (a) a person whose name is registered as a proprietor of the land; and
- (b) the State, if registered as a proprietor of the land; and
- (c) an executor or administrator under the *Administration Act 1903* section 8 in whom is vested a freehold interest in the land.

(2) After regulation 10(2) insert:

(3) For the purposes of paragraph (ba) of the definition of **owner**, in relation to Crown land, in section 5(1) the State is the owner of land for which neither a certificate

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of Crown land title nor a qualified certificate of Crown land title has been created and registered.

7. Regulation 15A inserted

At the end of Part 2 insert:

15A. Provision of information to FES Commissioner (s. 149)

- (1) Within 10 days of receiving the FES Commissioner's advice in respect of plans and specifications provided under regulation 18B(1), the building surveyor must notify the FES Commissioner in writing of —
 - (a) any part of the FES Commissioner's advice that is not incorporated in the plans and specifications that are specified in the certificate of design compliance for the building; and
 - (b) the reasons for not incorporating that advice.
- (2) The permit authority that grants an occupancy permit must give to the FES Commissioner a copy of the occupancy permit.
- (3) The permit authority that modifies an occupancy permit must give to the FES Commissioner a copy of the form of modification.

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8. Regulation 17 replaced

Delete regulation 17 and insert:

17. Further information (s. 18(3) and (4))

- (1) For the purposes of section 18(3), a requirement under section 18(1) —
 - (a) must be in writing; and
 - (b) must be clearly identified as a requirement under section 18(1); and
 - (c) must set out the specified time mentioned in section 18(1) and when it commences; and
 - (d) must indicate the consequences under section 18(2) of not complying with the requirement within the specified time; and
 - (e) must specify the information, if any, that the applicant must verify by statutory declaration; and
 - (f) must state the period within which the permit authority must decide whether or not to grant the building or demolition permit in the event that the applicant complies with the requirement within the specified time.
- (2) For the purposes of section 18(4), only one set of requirements may be made in relation to an application.

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(s. 19(5))**

For the purposes of section 19(5), a certificate of design compliance must contain the following things —

- (a) a statement by the building surveyor signing the certificate identifying the edition of the Building Code that contained the requirements mentioned in regulation 31A(2)(a) or (b) applied by the building surveyor in respect of the building or incidental structure;
- (b) if a declaration under section 39 has been made in respect of the building that is the subject of the application, a statement to that effect;
- (c) if the certificate of design compliance is in respect of a Class 2 to Class 9 building or an incidental structure associated with such a building, a statement about each alternative solution to a building standard that applies to the building work and details of the assessment methods used to establish compliance with the building standard;
- (d) if the certificate of design compliance is in respect of a Class 2 to Class 9 building —
 - (i) details of any advice given by the FES Commissioner in respect of the plans and specifications provided under regulation 18B(1); and
 - (ii) details of any notification given by the building surveyor to the FES Commissioner under regulation 15A(1).

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18B. Certificate of design compliance — preliminary action (s. 19(6))

- (1) For the purposes of section 19(6), at least 15 business days before signing a certificate of design compliance in respect of a Class 2 to Class 9 building, a building surveyor must provide to the FES Commissioner plans and specifications for the building in sufficient detail to allow assessment of compliance with the FES Commissioner's operational requirements.
- (2) A building surveyor does not have to comply with subregulation (1) if —
 - (a) the certificate is in respect of a stand-alone single storey Class 5, 6, 7 or 8 building having a total floor area of 500 m² or less; and
 - (b) no alternative solution is proposed to a building standard that relates to a performance requirement in the Building Code relating to fire safety.
- (3) A building surveyor does not have to comply with subregulation (1) if —
 - (a) the certificate is in respect of a Class 2 to Class 9 building that is being renovated, altered, improved or repaired; and
 - (b) no alternative solution is proposed to a building standard that relates to a performance requirement in the Building Code relating to fire safety.
- (4) A building surveyor does not have to comply with subregulation (1) if —
 - (a) the certificate is in respect of a stage of building work to a Class 2 to Class 9 building; and

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- (b) the following provisions of the Building Code Volume 1 do not apply to that stage —
 - (i) Section C concerning fire resistance;
 - (ii) Section E Part E1 concerning fire fighting equipment;
 - (iii) Section E Part E2 concerning smoke hazard management.

18C. Certificate of design compliance — things to accompany (s. 149)

- (1) It is sufficient compliance with regulation 18A(d)(i) to attach to the certificate of design compliance a copy of the advice given by the FES Commissioner.
- (2) It is sufficient compliance with regulation 18A(d)(ii) to attach to the certificate of design compliance a copy of the notification.

9. Regulation 18 amended

In regulation 18(4) delete “application.” and insert:

application unless the building surveyor does not have to comply with regulation 18B(1) because of regulation 18B(2), (3) or (4).

10. Regulation 23A inserted

After regulation 22 insert:

23A. To whom permit document issued (s. 28)

For the purposes of section 28(1)(d) a building permit document must be given to the FES Commissioner.

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11. Regulation 26 amended

Delete regulation 26(1) and insert:

- (1) For the purposes of section 35(c), the owner of a building or incidental structure to which a permit applies may apply to the relevant permit authority for approval of a new responsible person for the work to which the permit applies if the permit does not have effect for a reason mentioned in section 35(a) or (b).

12. Part 4 Divisions 1 and 2 inserted

At the beginning of Part 4 insert:

Division 1 — Applicable building standards**Subdivision 1 — Building standards in relation to construction****31A. Applicable building standards generally (s. 3, 19(3) and 37(1))**

- (1) For the purposes of the definition of *applicable building standard* in section 3, the building standards set out in subregulation (2) are prescribed as applicable building standards for the purposes of sections 19(3) and 37(1) in respect of all kinds of buildings and incidental structures, except to the extent that regulations 31B, 31C and 31D otherwise provide.
- (2) For subregulation (1), the applicable building standards for a building or incidental structure are the requirements in relation to the technical aspects of the construction of a building or incidental structure of that

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building or incidental structure's classification that are —

- (a) set out in the edition of the Building Code that is in effect at the time the application for the building permit is made; or
- (b) set out in the edition of the Building Code that was in effect 12 months before the time the application for the building permit is made.

31B. Applicable building standards for alterations etc. before 1 May 2014 (s. 3, 19(3) and 37(1))

- (1) For the purposes of the definition of *applicable building standard* in section 3, the building standards set out in subregulation (2) are prescribed as applicable building standards for the purposes of sections 19(3) and 37(1) in respect of a building or incidental structure that is being renovated, altered, extended, improved or repaired before 1 May 2014.
 - (2) For subregulation (1), the applicable building standards are the requirements mentioned in regulation 31A(2) except that —
 - (a) in respect of Class 2 to Class 9 buildings and incidental structures —
 - (i) the requirements set out in the Building Code Volume 1 Part JO do not apply; and
 - (ii) the requirements set out in the Building Code published on 1 May 2010 Volume 1 WA Part JO of Appendices (Variation and Additions) apply;
- and

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- (b) in respect of Class 1 or Class 10 buildings and incidental structures —
 - (i) the requirements set out in the Building Code Volume 2 Parts 2.6 and 3.12 do not apply; and
 - (ii) the requirements set out in the Building Code published on 1 May 2009 Volume 2 Parts 2.6 and 3.12 apply.

31C. Applicable building standards for private swimming pools (s. 3, 19(3) and 37(1))

- (1) For the purposes of the definition of *applicable building standard* in section 3, the building standards set out in subregulation (2) are prescribed as applicable building standards for the purposes of sections 19(3) and 37(1) in respect of the construction of a private swimming pool.
- (2) For subregulation (1), the applicable building standards in respect of the construction of a private swimming pool are —
 - (a) each requirement, other than performance requirements GP1.2(a) and P2.5.3, set out in the Building Code applicable to private swimming pools; and
 - (b) each requirement for the enclosure of a private swimming pool set out in regulation 50.

31D. Applicable building standards for relocated buildings and incidental structures (s. 3, 19(3) and 37(1))

- (1) For the purposes of the definition of *applicable building standard* in section 3, the building standards set out in subregulation (2) are prescribed as applicable building standards for the purposes of sections 19(3)

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and 37(1) in respect of the assembly, reassembly or securing of a relocated building or a relocated incidental structure.

- (2) For subregulation (1), the applicable building standards are the requirements mentioned in regulation 31A(2) except to the extent that subregulations (3), (4) and (5) of this regulation otherwise provide.
- (3) The building standards that relate to each of the performance requirements listed in the Table and set out in the edition of the Building Code —
 - (a) that is in effect at the time the application for the most recent building permit is made; or
 - (b) that was in effect 12 months before the time the application for the most recent building permit is made,

apply to that classification of the building or incidental structure.

Table

Section or part of Building Code	Performance requirements
Volume One, Section B — Structural provisions	BP1.1, BP1.2, BP1.3
Volume One, Section C — Fire resistance	CP1, CP2, CP3, CP4, CP5, CP6, CP7, CP8, CP9
Volume One, Section D — Access and egress	DP2, DP3, DP4, DP5, DP6

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Section or part of Building Code	Performance requirements
Volume One, Section E — Services and equipment	EP1.1, EP1.2, EP1.3, EP1.4, EP1.5, EP1.6, EP2.1, EP2.2, EP4.1, EP4.2, EP4.3
Volume One, Section G — Ancillary provisions	GP1.2(b), GP2.1, GP 2.2, GP5.1
Volume Two, Part 2.1 — Structure	P2.1
Volume Two, Part 2.3 — Fire safety	P2.3.1, P2.3.2, P2.3.3, P2.3.4, P2.3.5
Volume Two, Part 2.5 — Safe movement and access	P2.5.1, P2.5.2, P2.5.4

- (4) The building standards that relate to each of the performance requirements listed in the Table and set out in —
- (a) the edition of the Building Code in effect at the time of, or 12 months before, the first application for a building permit to assemble the building or incidental structure (whichever was applied by the building surveyor in respect of the building or incidental structure); and
 - (b) the provisions of that edition relevant to the geographical area where the building or incidental structure was first assembled,
- apply to that classification of the building or incidental structure.

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Table

Section or part of Building Code	Performance requirements
Volume One, Section J — Energy Efficiency	JP1, JP2, JP3
Volume Two, Part 3.12 — Energy Efficiency	P2.6.1, P2.6.2

- (5) To the extent that there is not a building standard referred to in regulation 31A(2) that is relevant — the applicable building standards are the requirements of the written law applicable at the time the building or incidental structure was first assembled.

31E. Applicable building standards for building work done without a permit (s. 3 and 37(2))

- (1) For the purposes of the definition of *applicable building standard* in section 3, the building standards set out in subregulation (2) are prescribed as applicable building standards for the purposes of section 37(2) in respect of all kinds of buildings and incidental structures.
- (2) For subregulation (1), the applicable building standards for a building or incidental structure are the requirements in relation to the technical aspects of the construction of a building or incidental structure of that building or incidental structure's classification that are set out in the edition of the Building Code that was in effect at the time construction commenced.

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- 31F. Applicable building standards for replacement occupancy permit for permanent change of building's use, classification or for occupancy permit or building approval certificate for registration of strata scheme, plan of re-subdivision (s. 3, 57(3), 49(a) and (b) and 50(1)(a) and (b))**
- (1) For the purposes of the definition of *applicable building standard* in section 3, the building standards set out in subregulation (2) are prescribed as applicable building standards for the purposes of section 57(3) for an application mentioned in section 49(a) or (b) or 50(1)(a) or (b) in respect of all kinds of buildings.
 - (2) For subregulation (1), the applicable building standards for a building are the requirements mentioned in regulation 31A(2)(a) or (b) applied by the building surveyor who signed the certificate of design compliance for the building but if there is no applicable certificate of design compliance, either —
 - (a) the building licence or other approval that was granted in respect of the construction of the building under the written law applicable at the time of its construction; or
 - (b) each requirement in relation to the technical aspects of the construction of the building applicable to the building at the time of its construction.
- 31G. Applicable building standards for occupancy permit for unauthorised work to building, or for building approval certificate for unauthorised work to building or incidental structure (s. 3, 57(3) and 51(2) and (3))**
- (1) For the purposes of the definition of *applicable building standard* in section 3, the building standards

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set out in subregulation (2) are prescribed as applicable building standards for the purposes of section 57(3) for an application mentioned —

- (a) in section 51(2) in respect of all kinds of buildings; or
 - (b) in section 51(3) in respect of all kinds of buildings and incidental structures.
- (2) For subregulation (1), the applicable building standards for a building or incidental structure are the requirements in relation to the technical aspects of the construction of a building or incidental structure of that building or incidental structure's classification that are set out in the edition of the Building Code that is in effect at the time the application for the occupancy permit or building approval certificate is made.

31H. Applicable building standards for modification of occupancy permit for additional use of building on temporary basis, for occupancy permit for building with existing authorisation or for building approval for building or incidental structure with existing authorisation (s. 3, 57(4)(b), 48 and 52(1) and (2))

- (1) For the purposes of the definition of *applicable building standard* in section 3, the building standards set out in subregulation (2) are prescribed as applicable building standards for the purposes of section 57(4)(b) for an application mentioned —
- (a) in section 48 or 52(1) in respect of all kinds of buildings; or
 - (b) in section 52(2) in respect of all kinds of buildings and incidental structures.
- (2) For subregulation (1), the applicable building standards for a building are the requirements mentioned in regulation 31A(2)(a) or (b) applied by the building

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surveyor who signed the certificate of design compliance for the building or incidental structure but if there is no applicable certificate of design compliance, either —

- (a) the building licence or other approval that was granted in respect of the construction of the building or incidental structure under the written law applicable at the time of its construction; or
- (b) each requirement in relation to the technical aspects of the construction of the building or structure applicable to the building or incidental structure at the time of its construction.

Subdivision 2 — Building standards in relation to demolition**31I. Applicable building standards in relation to demolition work (s. 3 and 38)**

- (1) For the purposes of the definition of *applicable building standard* in section 3, the building standards set out in subregulation (2) are prescribed as applicable building standards for the purposes of section 38(1) and (2) in respect of demolition work.
- (2) For subregulation (1), the applicable building standards in respect of demolition work are as follows —
 - (a) material removed or displaced from a building or incidental structure being demolished —
 - (i) must not be placed in such a way as to cause a floor of the building or incidental structure to collapse; and
 - (ii) must be sprayed with water or otherwise treated to prevent any nuisance from dust; and

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- (iii) must be removed from the demolition site; and
- (iv) must not be burned on the demolition site;
- (b) ensuring the disconnection of each electrical, gas, telephone or water service to the building or incidental structure being demolished.

Division 2 — Demonstrating compliance with building standards**31J. Compliance with building standards — CodeMark certificates**

- (1) In this regulation —
building product includes a building product, method, design, component and system;
CodeMark certificate means a certificate, issued under the CodeMark Scheme administered by the Australian Building Codes Board, which certifies that a building product complies with the provisions of the Building Code specified in the certificate.
- (2) For the purposes of demonstrating compliance with a building standard, a CodeMark certificate issued for a building product is sufficient evidence that the building product complies with the provisions of the Building Code specified in the certificate.

13. Part 4 Division 3 heading inserted

Before regulation 31 insert:

Division 3 — Non-application, modification, of building standards

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14. Regulation 31 amended

In regulation 31 delete “Part —” and insert:

Division —

15. Regulation 36A inserted

After regulation 35 insert:

36A. Further information (s. 55(3) and (4))

- (1) For the purposes of section 55(3), a requirement under section 55(1) —
 - (a) must be in writing; and
 - (b) must be clearly identified as a requirement under section 55(1); and
 - (c) must set out the specified time mentioned in section 55(1) and when it commences; and
 - (d) must indicate the consequences under section 55(2) of not complying with the requirement within the specified time; and
 - (e) must specify the information, if any, that the applicant must verify by statutory declaration.
- (2) For the purposes of section 55(4), only one set of requirements may be made in relation to an application.

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r. 16**16. Regulation 43 replaced**

Delete regulation 43 and insert:

43. Buildings for which occupancy permit not required (s. 41(2))

An occupancy permit is not required for any of the following —

- (a) a Class 1 or Class 10 building;
- (b) a building mentioned in regulation 41(1)(a) or (b);
- (c) a temporary office, shed or sanitary facility to be used by a builder in connection with building work carried out on the land on which the office, shed or sanitary facility is, or is proposed to be, located;
- (d) a building owned or occupied by, or under the control or management of the Crown in right of the State or a department, agency or instrumentality of the Crown in right of the State for which building work —
 - (i) commences before 31 December 2012; and
 - (ii) has, when it commences, an estimated value of less than \$100 000;
- (e) a building owned or occupied by, or under the control or management of the Crown in right of the State or a department, agency or instrumentality of the Crown in right of the State for which building work —
 - (i) commences before 30 June 2014; and
 - (ii) has, when it commences, an estimated value of less than \$50 000;

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- (f) a building for which a building licence was not required under the former provisions if—
 - (i) building work for the building commenced before commencement day;
or
 - (ii) a contract to do the building work was entered into before commencement day.

17. Regulation 46 deleted

Delete regulation 46.

18. Regulation 54 amended

Delete regulation 54(2) and insert:

- (2) For the purposes of section 93(2)(d) a person who was an authorised person for the purposes of section 245A of the repealed provisions immediately before repeal day is to be taken to be an authorised person in relation to the inspection of private swimming pool enclosures for the period commencing on repeal day and ending on the day that is 5 years after that day.

19. Regulation 62 amended

In regulation 62(2)(b)(ii) delete “the alarm has” and insert:

has

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r. 20**20. Part 10 inserted**

After regulation 68 insert:

Part 10 — Infringement notices**69. Prescribed offences and modified penalties**

- (1) The offences specified in Schedule 6 are offences for which an infringement notice may be issued under the *Criminal Procedure Act 2004* Part 2.
- (2) The modified penalty specified opposite an offence in Schedule 6 is the modified penalty for that offence for the purposes of the *Criminal Procedure Act 2004* section 5(3).

70. Approved officers and authorised officers

- (1) A permit authority that is a local government may, in writing, appoint to be an approved officer for the purposes of the *Criminal Procedure Act 2004* section 6(a), a person appointed under the *Local Government Act 1995* section 9.10(1) and authorised for the purpose of performing functions under section 9.19 or 9.20 of that Act.
- (2) A permit authority that is a local government may, in writing, appoint to be an authorised officer for the purposes of the *Criminal Procedure Act 2004* section 6(b), a person appointed under the *Local Government Act 1995* section 9.10(1) and authorised for the purpose of performing functions under section 9.16 of that Act.
- (3) A permit authority that is a local government must issue each of its authorised officers a certificate of the person's appointment, and the person must produce the

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certificate whenever required to do so by a person who has been or is about to be affected by any exercise of authority by the authorised person.

71. Forms

For the purposes of the *Criminal Procedure Act 2004* Part 2, the forms set out in Schedule 7 are prescribed in relation to the matters specified in those forms.

21. Schedule 4 amended

- (1) In Schedule 4 clause 2 in the Table item 8 delete “rainwater” and insert:

water storage

- (2) In Schedule 4 clause 2 in the Table delete item 12 and insert:

12.	Building work for buildings owned or occupied by, or under the control or management of the Crown in right of the State or a department, agency or instrumentality of the Crown in right of the State that — (a) commences before 30 June 2014; and (b) has, when it commences, an estimated value of less than \$50 000.
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Building Amendment Regulations (No. 2) 2012**r. 22****22. Schedules 6 and 7 inserted**

After Schedule 5 insert:

Schedule 6 — Prescribed offences and modified penalties

[r. 69(1) and (2)]

Offences		Modified penalty (\$)
r. 50(1)	Enclosure of private swimming pool	100
r. 56	Requirement to have smoke alarms or similar prior to transfer of dwelling	750
r. 58	Requirement to have smoke alarms or similar prior to tenancy	750
r. 59	Requirement to have smoke alarms or similar prior to hire of dwelling	750

Schedule 7 — Forms

[r. 71]

Form 1 — Infringement notice

<i>Building Act 2011</i> <i>Building Regulations 2012</i>		Infringement notice no.
INFRINGEMENT NOTICE		
Alleged offender	Name	
	Address	

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Details of alleged offence	Date or period		
	Place		
	Written law contravened	Regulation _____ of the <i>Building Regulations 2012</i>	
	Details of offence		
Date	Date of notice		
Issuing officer	Name		
	Office		
	Signature		
Modified penalty	\$ _____		
Penalty	Individual	\$ _____	You do not have to pay this amount. This is the maximum fine that can be imposed if you are prosecuted in a court and convicted of this offence.
	Body corporate	\$ _____	
TAKE NOTICE	<p>It is alleged that you have committed the above offence.</p> <p>If you do not want to be prosecuted in court for the offence, pay the modified penalty to the Approved Officer within 28 days after the date of this notice.</p> <p>If you do not pay the modified penalty within 28 days, you may be prosecuted or enforcement action may be taken under the <i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i>. Under that Act your driver's licence or vehicle licence may be suspended.</p> <p>If you need more time to pay the modified penalty, you should contact the Approved Officer at the address below.</p> <p>Paying the modified penalty will not be regarded as an admission for the purposes of any civil or criminal court case.</p>		

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	In person	Pay the cashier at: [Address]	
Method of service		Date of service	

Form 2 — Withdrawal of infringement notice

<i>Building Act 2011</i> <i>Building Regulations 2012</i> WITHDRAWAL OF INFRINGEMENT NOTICE		Withdrawal no.
Alleged offender	Name	
	Address	
Details of infringement notice	Infringement notice no.	
	Date of issue	
Details of alleged offence	Date or period	
	Place	
	Written law contravened	Regulation _____ of the <i>Building Regulations 2012</i>
	Details of offence	
Approved Officer withdrawing notice	Name	
	Office	
	Signature	

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Date	Date of withdrawal	
Withdrawal of infringement notice <i>[*Delete whichever is not applicable]</i>	<p>The above infringement notice issued against you for the above alleged offence has been withdrawn.</p> <p>If you have already paid the modified penalty for the alleged offence, you are entitled to a refund.</p> <ul style="list-style-type: none"> * Your refund is enclosed <p><i>or</i></p> <ul style="list-style-type: none"> * If you have paid the modified penalty but a refund is not enclosed, you may claim your refund by signing and dating this notice and posting it to: <p>Approved Officer — <i>Building Act 2011</i> [Address]</p> 	
Your signature		Date

By Command of the Governor,

G. MOORE, Clerk of the Executive Council.