



Western Australia

## **Building Regulations 1989**

Compare between:

[02 Sep 2009, 06-d0-02] and [01 Oct 2009, 06-e0-02]



## **Building Regulations 1989**

### **Part 1 — Preliminary**

#### **1. Citation**

These regulations may be cited as the *Building Regulations 1989*<sup>1</sup>.

#### **2. Commencement**

These regulations shall come into operation on the day that they are published in the *Government Gazette*<sup>1</sup>.

#### **2A. Application**

- (1) To the extent to which they apply to buildings that are Class 10 Buildings for the purposes of the Building Code these regulations apply in each local government district in the area specified for that district in Column 2 in Schedule 2 but not elsewhere.
- (2) Part 10 of these regulations and Part G1.1 of the Building Code apply in each local government district in the area specified for that district in Column 3 in Schedule 2 but not elsewhere.
- (3) Subject to subregulations (1) and (2) these regulations apply in each local government district in the area specified for that district in Column 4 in Schedule 2 but not elsewhere.

*[Regulation 2A inserted in Gazette 8 May 1998 p. 2369;  
amended in Gazette 19 Jun 1998 p. 3282.]*

**3. Terms used**

- (1) In these regulations unless the contrary intention appears —

**Act** means the *Local Government (Miscellaneous Provisions) Act 1960*;

**approved** means approved by the local government except where used in relation to plans, drawings and specifications submitted for approval under section 374 of the Act, in which case **approved** has a meaning consistent with the provisions of that section;

**builder** means a person employed to construct any building or to demolish, alter or execute any work on a building already constructed, and includes the owner or occupier of the land upon which any such building is intended to be constructed, or other person for whom, or by whose order or under whose direction and control such alteration or work was done or is intended to be done, as the case may be;

**Building Code** means the latest edition of the Building Code of Australia published from time to time by, or on behalf of, the Australian Building Codes Board, as amended from time to time, but not including explanatory information published with that Code;

**district** means the local government district in which a building is constructed or proposed to be constructed;

**Fire Brigades Board** means the Western Australian Fire Brigades Board as constituted under the *Fire Brigades Act 1942*;

**footing** means the construction by which the weight of the building is transferred to the foundations;

**Form** means a form in Schedule 1;

**local government** means the local government of the district in which a building is, or is proposed to be, constructed;

**owner** includes any person in possession or receipt of the whole or any part of the rents or profits of any land or tenement or in occupation of any land or tenement otherwise than as a tenant from year to year, or for any less term, or as a tenant at will;

**performance requirements** means the provisions of the Building Code which set out the technical requirements in accordance with which buildings must be built;

**repair** means the reconstruction or renewal of any part of an existing building for the purpose of its maintenance but does not include alteration.

[(2) *deleted*]

- (3) A reference in these regulations or in the Building Code to a code or standard shall, unless the contrary intention appears in these regulations or in the Building Code, include a reference to that code or standard as amended from time to time.
- (4) Without derogating from section 32(1) of the *Interpretation Act 1984*, the headings of Parts, divisions and subdivisions of these regulations form part of these regulations.
- (5) Notwithstanding section 32(2) of the *Interpretation Act 1984*, the heading to a regulation in these regulations or to a portion of a regulation in these regulations forms part of these regulations.

*[Regulation 3 amended in Gazette 26 Jun 1992 p. 2758; 23 Jun 1995 p. 2442; 20 Jun 1997 p. 2821-2 and p. 2826.]*

#### **4. Exemptions**

- (1) These regulations do not apply to the following buildings and work —
  - (a) any building that is exempted by Statute;
  - (b) temporary offices and sheds used by builders, on or about the site of any building being constructed, repaired, altered or reinstated, or used by contractors in carrying out works for any public body or corporation

on or about the site of the work and used exclusively for the purpose of that building or work; but that exemption shall, however, continue only during the time occupied in completing the building or work, and in any case shall not exceed the duration of building operations, except by special permission of the local government; and

*[(c) deleted]*

- (d) any building the plans, drawings and specifications of which —
- (i) were approved before these regulations came into operation in the district or in that part of the district in which the building is situated; or
  - (ii) are approved pursuant to regulation 6 if that building is completed in accordance with and subject to the provisions of the by-laws as in force before those regulations came into operation in relation to which that approval was given.

- (2) For the purposes of these regulations the re-erection of a building that has been removed and transported from another site or from another location on the same site shall be regarded as being the erection of a new building.

*[Regulation 4 amended in Gazette 11 Jan 1991 p. 58; 20 Jun 1997 p. 2826 and 2837.]*

## **5. Building Code adopted**

- (1) Subject to these regulations, the Building Code applies to and in relation to any building that can be classified according to use under Part A3 of Volume One of the Building Code and to any work referred to in Part XV of the Act and in the Building Code.
- (2) Any alteration, addition, restoration or repair to a building shall conform with these regulations but where the local government is of the opinion that any such work consists only of minor work

and does not adversely affect the safety of persons accommodated in or resorting to a building or property in or in the vicinity of a building the local government may determine that the Building Code does not apply in relation to such work and that the work shall conform to only such of the provisions of the Building Code as are specified by the local government.

*[Regulation 5 amended in Gazette 11 Jan 1991 p. 58;  
20 Jun 1997 p. 2822 and 2826.]*

## **6. Savings and transitional provisions**

### *Savings*

- (1) Where plans, drawings and specifications relating to the construction or alteration of a building on a site have been submitted to the local government for its approval and, before the local government has finally disposed of the matter —
  - (a) these regulations come into operation in the district or in that part of the district in which the site is located; or
  - (b) an amendment to these regulations or the Building Code comes into operation in the district or in that part of the district in which the site is located,

the local government shall deal with the matter in accordance with the local laws, regulations and the Building Code as in operation in the district or that part of the district at the time when the plans, drawings and specifications were submitted.

### *Transitional period to follow coming into operation of these regulations or amendments thereto*

- (2) Where plans, drawings and specifications relating to the construction or alteration of a building on a site are submitted to the local government for its approval then, notwithstanding that those plans, drawings and specifications do not comply with these regulations or the Building Code as in operation, at the time of their submission, in the district or in that part of the district in which the site is located, the local government may

approve of those plans, drawings and specifications if the local government is satisfied that —

- (a) if those same plans, drawings and specifications had been submitted to the local government at some time during the period of 12 months prior to the date of their actual submission they would have complied with the local laws, regulations and the Building Code as in operation in the district or that part of the district; and
- (b) no undue delay has been occasioned in the submission of those plans, drawings and specifications to the local government.

*[Regulation 6 amended in Gazette 20 Jun 1997 p. 2822 and 2826; 16 Dec 2005 p. 6079.]*



## **Part 2 — Legal proceedings and notices**

[7. Deleted in Gazette 20 Jun 1997 p. 2822.]

### **8. Notices to other authorities**

#### *Builder to give notice*

- (1) Every builder who intends to construct, alter, add to, underpin, demolish or remove any building shall, prior to the commencement of any work, give notice of that intention to any body, authority or instrumentality which is authorised under a law of the State to direct, regulate or approve the carrying out of any part of that building work.

#### *Powers of local government*

- (2) The local government may refuse to issue a building licence under the provisions of Part 4 unless or until satisfied that the provisions of subregulation (1) have been complied with, and that the approval of such of the authorities therein mentioned as may apply to the particular case has been obtained, or may issue a building licence or demolition licence subject to compliance with the requirements of those authorities.
- (3) Notwithstanding the provisions of subregulation (2) the local government shall before issuing a building licence liaise with the Fire Brigades Board for the purposes of the fire prevention and public safety requirements of the Building Code.
- (4) Subregulation (3) does not apply to Class 1 and Class 10 Buildings of the Building Code.

*[Regulation 8 amended in Gazette 6 Jun 2008 p. 2185.]*

*[Part 3 (r. 9) deleted in Gazette 20 Jun 1997 p. 2822.]*

**Part 4 — Building applications and applications for building approval certificates**

*[Heading amended in Gazette 6 Jun 2008 p. 2180.]*

**10. Application for licence**

- (1) Every builder intending to construct a building or alter, add to, repair or underpin, demolish or remove an existing building shall before commencing —
- (a) that construction, alteration, addition, repair or underpinning, demolition or removal; or
  - (b) any earthworks necessary for, or incidental to, that construction, alteration, addition, repair or underpinning, demolition or removal,

make written application to the local government for a licence to commence that work.

*Form and lodging of application*

- (2) Applications made under subregulation (1) shall be in the form of Form 2 or 3, whichever is appropriate, and shall be lodged at the office of the building surveyor of the local government.

*[Regulation 10 amended in Gazette 20 Jun 1997 p. 2826; 6 Jun 2008 p. 2185.]*

**11. Particulars to accompany application**

*Builder to submit drawings etc.*

- (1) Every builder making application for a building licence shall deposit with the building surveyor of the local government —

*Building details*

- (a) 2 complete sets of drawings (to scale not less than 1:100) showing —
  - (i) a plan of every storey;

- (ii) at least 2 elevations of external fronts;
- (iii) one or more sections, transverse or longitudinal;
- (iv) the heights of each storey;
- (v) depth of foundations;
- (vi) underpinnings;
- (vii) levels of ground;
- (viii) construction of the walls, floors and roofs; and
- (ix) any other information that the building surveyor may require, all clearly figured and dimensioned;

*Block details*

- (b) a block and drainage plan (to a scale not less than 1:500) showing —
  - (i) street names, lot number, and title reference to the site with the north point clearly marked;
  - (ii) the size and shape of the site;
  - (iii) the dimensioned position of proposed new building and of any existing buildings on the site;
  - (iv) the relative levels of the site with respect to the street or way adjoining;
  - (v) the position and size of any existing sewers and existing stormwater drains;
  - (vi) the position of street trees, if any, between the site and the roadway;

*Specifications*

- (c) 2 copies of specifications describing materials to be used in the construction and, where not indicated on the drawings, the sizes thereof together with all other information not shown on the drawings, which is necessary to show that the building will, if constructed in accordance with the specifications, comply with the provisions of the Building Code;

*Performance levels and requirements*

- (d) when required by the building surveyor —
  - (i) a list of the performance requirements applicable to that building which will be satisfied by a method other than that set out in the Deemed-to-Satisfy Provisions of the Building Code;
  - (ii) details of assessment methods to be used to establish compliance with those listed requirements;
  - (iii) details of any expert certificates relied on to establish compliance with those listed requirements, including the extent of the reliance and the qualifications of the expert;
  - (iv) details of any tests or calculations used to establish compliance with those listed requirements; and
  - (v) details of any standards or other documents relied on to establish compliance with those listed requirements;
- (da) any other details required by the building surveyor to establish compliance with the Building Code; and

*Cost estimate*

- (e) the estimated value (calculated in the manner set out in regulation 24(2)) of the proposed construction and, when so required by the local government, the name and address of any registered architect, practising structural engineer or other person under whose supervision the construction is to be carried out.

*CodeMark certificates*

- (1a) For the purposes of the application, 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.

(1b) In subregulation (1a) —

**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, method, design, component or system complies with the specified provisions of the Building Code.

*Compliance with fire requirements*

(2) Notwithstanding the provision of subregulation (1) every builder making application for a building licence, excluding Classes 1 and 10 of the Building Code, shall deposit with the Fire Brigades Board plans and specifications of sufficient detail to enable the Fire Brigades Board to assess their compliance with the Fire Requirements of the Building Code of Australia.

*Requirements as to drawings*

(3) The drawings referred to in subregulation (1) shall be legible and durable and shall be not less in size than sheet A4.

*New and existing work*

(4) All new work shall be clearly delineated on the drawings as distinct from existing work by colouring or other suitable means.

*Particulars to accompany application for demolition licence*

(5) An application for a licence to demolish or remove a building shall be accompanied by particulars of the location of the building, and such other particulars as the local government may require.

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*Particulars of levels to be supplied where earthworks involved*

- (6) Without limiting the generality of subregulation (1)(a)(vii) where any alteration is proposed to the existing conformation of the ground on the site involving earthworks of any description the local government may require the drawings referred to in that paragraph to show all levels, both new and old, clearly marked or indicated by contour lines or in such other manner as the building surveyor of the local government may direct.

*[Regulation 11 amended in Gazette 23 Jun 1995 p. 2442-3; 20 Jun 1997 p. 2823 and 2826; 16 Dec 2005 p. 6079; 6 Jun 2008 p. 2180 and 2185.]*

**11A. Application for building approval certificate**

- (1) An application to a local government for a building approval certificate in relation to unauthorised building work shall be made in the form of Form 8.
- (2) An application for a building approval certificate in relation to unauthorised building work shall be accompanied by —
- (a) 2 complete sets of drawings (to scale not less than 1:100) showing the following —
    - (i) a plan of every storey;
    - (ii) at least 2 elevations of external fronts;
    - (iii) one or more sections, transverse or longitudinal;
    - (iv) the heights of each storey;
    - (v) depth of foundations;
    - (vi) underpinnings;
    - (vii) levels of ground;
    - (viii) construction of the walls, floors and roofs;
    - (ix) any other information that the local government may require, all clearly figured and dimensioned;
- and

- (b) a block and drainage plan (to a scale not less than 1:500) showing the following —
    - (i) street names, lot number and title reference to the site with the north point clearly marked;
    - (ii) the size and shape of the site;
    - (iii) the dimensioned position of the unauthorised building work and of any other buildings on the site;
    - (iv) the relative levels of the site with respect to the street or way adjoining;
    - (v) the position and size of any existing sewers and existing stormwater drains;
    - (vi) the position of street trees, if any, between the site and the roadway;and
  - (c) a description of the unauthorised building work including the materials used in the work and such information as is necessary to show that the unauthorised building work substantially conforms with the requirements of the Act; and
  - (d) any further details required by the local government to show that the unauthorised building work substantially conforms with the requirements of the Act; and
  - (e) the value or the estimated current value (calculated in the manner set out in regulation 24A(2)) of the unauthorised building work.
- (3) An owner of a building making an application for a building approval certificate shall deposit with the Fire and Emergency Services Authority of Western Australia a description of the unauthorised building work, including the materials used in the work, of sufficient detail to enable the Authority to assess compliance of the work with the Fire Requirements of the Building Code of Australia.

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- (4) Subregulation (3) does not apply in respect of a building of Class 1 or 10 according to the Building Code.
- (5) The unauthorised building work shall be clearly delineated on the drawings by colouring or other suitable means.
- (6) The drawings referred to in subregulation (2) shall be legible and durable and shall be not less in size than sheet A4.
- (7) Without limiting subregulation (2)(a)(vii), if any alteration has been carried out to the conformation of the ground on the site, the local government may require the drawings referred to in that paragraph to show all levels, both new and old, clearly marked or indicated by contour lines or in such other manner as the local government may direct.
- (8) If a local government refuses to issue a building approval certificate, the local government shall give the applicant for the certificate notice in writing of —
  - (a) the refusal; and
  - (b) the reasons for the refusal; and
  - (c) the applicant's rights under section 374AAD(1) of the Act to apply to the State Administrative Tribunal for a review of the refusal.
- (9) A building approval certificate issued under section 374AA(4) of the Act shall be in the form of Form 9.
- (10) If a local government issues a certificate subject to conditions specified in it, the local government shall give the applicant for the certificate notice in writing of —
  - (a) the reasons for issuing the certificate subject to conditions; and
  - (b) the applicant's rights under section 374AAD(1) of the Act to apply to the State Administrative Tribunal for a review of those conditions.

*[Regulation 11A inserted in Gazette 6 Jun 2008 p. 2180-2.]*



**12. Copies for records**

*Copies to be retained*

- (1) One copy of every drawing, plan, specification or calculation shall remain in the office of the building surveyor of the local government as a permanent record.

*Plans etc. may be inspected by or with consent of owner*

- (2) The owner or mortgagee of any building or any person authorised in writing by the owner or mortgagee may, during the normal office hours of the local government, inspect any plan or other document relating to that building retained pursuant to subregulation (1).

*Inspection by police officer*

- (3) This regulation does not prevent a police officer from being permitted to inspect a plan or other document in the course of duty in connection with a situation in which the safety of a person is at risk.

*[Regulation 12 amended in Gazette 26 Jun 1992 p. 2758;  
20 Jun 1997 p. 2826; 6 Jun 2008 p. 2185.]*

**13. Commencement of work**

*Buildings or alterations*

- (1) A builder shall not commence to construct, alter, add to or underpin any building and shall not commence any earthworks, necessary for, or incidental to, that construction, alteration, addition or underpinning until —
- (a) the plans, drawings and specifications have been approved;
  - (b) the building surveyor of the local government has stamped the plans, drawings and specifications with the official stamp showing the number of the approval and the date of approval;

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- (c) the builder has paid the appropriate fee prescribed in the Table to regulation 24; and
- (d) a licence has been issued in the form of Form 4 or 5.

*Demolition*

- (2) A builder shall not commence to demolish or remove any building until —
  - (a) he has paid the appropriate fee prescribed in the Table to regulation 24; and
  - (b) a licence has been issued in the form of Form 7.

*[Regulation 13 amended in Gazette 6 Jun 2008 p. 2185.]*

**14. Examination of drawings etc.**

*Building surveyor of the local government to examine*

- (1) The building surveyor of the local government shall examine all plans, drawings, and specifications deposited with him or her, but if any such plans, drawings or specifications are, in the building surveyor's opinion not in conformity with the requirements of this Part or not clear or not easily legible, or do not contain sufficient information, he or she may, within 15 days of their deposit with him or her, return them to the builder for amendment, and in that case the plans, drawings and specifications shall be considered as not having been deposited with the building surveyor until re-submitted by the builder.

*Disapproval of drawings etc.*

- (2) If —
  - (a) the local government; or
  - (b) a person acting pursuant to a delegation under section 374AAB(1) of the Act,

refuses to approve any plan, drawing or specification, notice of the refusal to approve shall be given in writing to the builder and the reasons for the refusal to approve shall be stated in the

notice, together with details of the builder's rights under Part XV of the Act to apply to the State Administrative Tribunal for a review of the refusal.

*[Regulation 14 amended in Gazette 20 Jun 1997 p. 2823 and 2826; 30 Dec 2004 p. 6949; 6 Jun 2008 p. 2182 and 2185.]*

**15. Duration of licence***Building licence*

- (1) A building licence in the form of Form 4 is void if the work covered by the licence (the building) is not substantially commenced within 12 months of the date of the issue of the licence; but at any time after the expiry of 12 months the approval of the local government to the plans, drawings and specifications previously approved may, if those plans, drawings and specifications are still in conformity with these regulations, be again obtained subject to the payment of any further fees and the lodging of such further plans, drawings and specifications as the local government may at its discretion require.

*Demolition licence*

- (2) A demolition licence in the form of Form 7 is void if the work covered by the licence is not commenced within 12 months of the date of the issue of the licence.

*[Regulation 15 amended in Gazette 20 Jun 1997 p. 2826; 6 Jun 2008 p. 2183.]*

**16. Building left incomplete***Time for completion*

- (1) Where a licence is issued under these regulations for the construction of a building that building shall be completed within 24 months of the date of the issue of the licence, or such other time as approved by the building surveyor of the local government.

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*Consequences of failure to complete*

- (2) Where work on the construction of a building is commenced but is not completed within the time prescribed by subregulation (1) the provisions of section 409A of the Act apply.

*[Regulation 16 amended in Gazette 20 Jun 1997 p. 2826; 6 Jun 2008 p. 2183.]*

**17. Departure from approved plans**

No variation from or alteration of approved plans, drawings and specifications shall be made by any builder without the consent of the local government in writing having been first obtained, and any alteration or departure from the approved plans, drawings and specifications shall, on the consent of the local government therefor being notified, be drawn, described, and endorsed on and in the plans, drawings and specifications.

*[Regulation 17 amended in Gazette 6 Jun 2008 p. 2185.]*

**18. Preliminary plans and provisional approvals**

*Plans may be lodged with owner's consent*

- (1) Notwithstanding anything contained in this Part any person having paid the fees prescribed in item 2 of the Table to regulation 24 may submit to the building surveyor of the local government preliminary plans, drawings and specifications of any building proposed to be constructed, accompanied by the written consent of the owner of the site of the proposed building to the lodging of those plans, drawings and specifications for examination and report as to whether such proposal is capable of being executed in conformity with these regulations.

*Application for provisional approval*

- (2) Without limiting the operation of subregulation (1) a person may apply to the local government for its provisional approval of a proposed building, by lodging with the application —

- (a) the fee prescribed in item 2 of the Table to regulation 24;
- (b) preliminary plans, elevations and sections of the proposed buildings; and
- (c) such concise specifications or descriptions as the local government may require to satisfy itself as to the nature of the building and its intended use.

*Consideration by local government*

- (3) The local government may after considering the report of the building surveyor of the local government on an application made pursuant to subregulation (2) give its provisional approval for the construction of the proposed building, if, when constructed, it would conform to these regulations as in force, at the time of the making of the application, in the district or in that part of the district in which the building is proposed to be constructed.

*Duration of provisional approval*

- (4) A provisional approval given pursuant to subregulation (3) shall remain in force for a period of 12 months from the date on which it is given.

*Effect of provisional approval*

- (5) A provisional approval given pursuant to subregulation (3) has the effect, notwithstanding any provision of these regulations to the contrary, of enabling the person to whom it is given, during the period that it is in force, to procure the issue of a licence for the commencement of work on the proposed building, if the final plans, drawings and specifications are in conformity with the provisional approval and the fees prescribed in the Table to regulation 24 are paid.

*[Regulation 18 amended in Gazette 12 Jul 1991 p. 3458; 20 Jun 1997 p. 2823 and 2826; 6 Jun 2008 p. 2185.]*

## **Part 5 — Certificate of classification**

### **19. Classification of buildings**

Every building shall be classified by the local government in accordance with Part A3 of Volume One of the Building Code.

*[Regulation 19 inserted in Gazette 20 Jun 1997 p. 2823.]*

### **20. Certificate of classification**

#### *Preparation*

- (1) Where approval is given for the erection of a building the local government shall —
  - (a) on completion of the building; or
  - (b) where it consents in writing to the occupation of portion of the building concerned before the completion of the entire building concerned,

prepare a certificate of classification, in duplicate, in the form, or to the effect, of Form 1.

- (1a) Where approval has not been given for the erection of a building and a building approval certificate is issued in relation to the unauthorised building work, subregulation (1) applies as if the local government had approved the erection of the building.

#### *Issue*

- (2) The original of the certificate shall be issued to the person on whose behalf the building was erected.

#### *Inspection of certificates*

- (3) The duplicate shall be retained in the local government's office and shall be open to inspection free of charge by any person during the normal office hours of the local government.

*No occupation until certificate is issued*

- (4) A person shall not occupy any portion of a building until a certificate of classification has been issued in accordance with these regulations.

*Non-application to Class 1 or Class 10 building*

- (5) This regulation does not apply to a Class 1 or 10 building of the Building Code.

*[Regulation 20 amended in Gazette 20 Jun 1997 p. 2824 and 2826; 6 Jun 2008 p. 2183.]*

**21. Certificate for a building occupied in stages**

- (1) Where a certificate of classification has been issued for portion of an uncompleted building and the local government approves the occupation of a further portion of the building, it shall —
- (a) revoke that certificate; and
  - (b) issue a further certificate of classification in accordance with regulation 20 covering all portions of the building for which approval to occupy has been given by the local government.
- (2) Where —
- (a) a certificate of classification has been issued for a portion of an uncompleted building; and
  - (b) a building approval certificate is issued in relation to unauthorised building work on the building; and
  - (c) the local government approves the occupation of a further portion of the building,
- it shall —
- (d) revoke that certificate; and
  - (e) issue a further certificate of classification in accordance with regulation 20 covering all portions of the building

for which approval to occupy has been given by the local government.

*[Regulation 21 amended in Gazette 20 Jun 1997 p. 2826; 6 Jun 2008 p. 2183.]*

**22. Change of use**

*Application of regulation*

- (1) This regulation applies to any building, whether erected before or after the commencement of these regulations.
- (2) The use of a building shall not be changed from that of one Class to that of another Class unless —
  - (a) the building complies with the requirements of the Building Code applicable to the new Class; and
  - (b) the change of use has been approved by the local government.

*Change of use to be notified*

- (3) Before making any change in the use of a building which would result in a change of classification under these regulations, the person proposing to make that change shall notify the local government in writing, setting out the nature of the proposed change of use.

*New certificate*

- (4) Upon approving a change of use the local government shall —
  - (a) revoke any certificate of classification already in existence for the building; and
  - (b) prepare a certificate of classification in accordance with regulation 20 in respect of the new use; and
  - (c) issue the original of that certificate to the person proposing the change of use.

*[Regulation 22 amended in Gazette 20 Jun 1997 p. 2826.]*



**23. Offences**

A person who uses or occupies or permits the use or occupation of a building in contravention of regulation 20(4) or 22 is guilty of an offence.

Penalty: \$5 000 and in addition a daily penalty of \$100 for each day during which the offence continues.

*[Regulation 23 amended in Gazette 20 Jun 1997 p. 2824.]*

## **Part 6 — Fees**

### **24. Scale of fees**

- (1) The scale of fees set out in the Table to this regulation shall be chargeable by and received by a local government on an application for any licence, or for services to be rendered or provided under these regulations.
- (2) For the purposes of item 1 of the Table to this regulation —
  - (a) where the construction work is to be carried out under a contract, the estimated value of the construction work shall be the contract price, where that price includes value for at least each of the components referred to in paragraph (b); and
  - (b) where the construction work is carried out other than under a contract or under a contract the contract price for which does not include value for each of the following components, the estimated value of the construction work shall be the sum of the value of all goods (including manufactured goods) forming part of the construction work, labour, services necessary, fees payable, overheads to be met and profit margin.
- (3) For the purposes of subregulation (2)(a), if the contract price includes the value of plant or equipment to be housed in, on or around the proposed building and that plant or equipment is not for the purpose of providing services to or maintaining the building, the estimated value of the construction work does not include the value of the plant or equipment.
- (4) For the purposes of subregulation (2)(b), the estimated value of the construction work does not include the value of plant or equipment to be housed in, on or around the proposed building if the plant or equipment is not for the purpose of providing services to or maintaining the building.

**Table  
Scale of fees**

<b>Item</b>	<b>Description</b>	<b>Fee</b>
1.	Building licence —	
(a)	For the issue of a building licence for a new building of Class 1 or 10 or for alterations or additions to an existing building of Class 1 or 10.	0.35% of $\frac{10}{11} \frac{10}{11}$ of the estimated value of the proposed construction as determined by the local government, but not less than \$85.
(b)	For the issue of a building licence for a new building of a Class other than Class 1 or 10 or for alterations or additions to an existing building of a Class other than Class 1 or 10.	0.2% of $\frac{10}{11} \frac{10}{11}$ of the estimated value of the proposed construction as determined by the local government, but not less than \$85.
2.	Preliminary plans For the examination of, and a report on, preliminary plans.	25% of the fee for the issue of a building licence to carry out the proposed construction described in the plans.
3.	Materials on, or excavation of, a street For the issue of a licence for the deposit of materials on, or the excavation of, a street.	\$1 per month or part of a month for each m <sup>2</sup> of the area of the street enclosed by any hoarding or fence.
4.	Demolition For the issue of a licence to demolish a building.	\$50 for each storey.
<p><i>[Regulation 24 amended in Gazette 12 Jul 1991 p. 3457-8; erratum in Gazette 19 Jul 1991 p. 3625; amended in Gazette 23 Jun 1995 p. 2443; 20 Jun 1997 p. 2824 and 2826; 28 Jul 2000 p. 4014; 6 Jun 2008 p. 2184.]</i></p>		

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**24A. Scale of fees: application for building approval certificate for unauthorised building work**

- (1) The scale of fees set out in the Table to this regulation shall be chargeable by and received by a local government in relation to an application for a building approval certificate.
- (2) For the purposes of the Table to this regulation the estimated current value of the unauthorised building work shall be the sum of the current value of all goods (including manufactured goods) forming part of the construction work, labour, services necessary, fees payable, overheads to be met and profit margin.
- (3) In subregulation (2) the estimated current value of the unauthorised building work does not include the value of plant or equipment housed in, on or around the building if the plant or equipment is not for the purpose of providing services to or maintaining the building.

**Scale of fees**

<b>Description</b>	<b>Fee</b>
For the issue of a building approval certificate in relation to a building of Class 1 or 10.	0.7% of 10/11 of the estimated current value of the unauthorised building work as determined by the local government, but not less than \$170.
For the issue of a building approval certificate in relation to a building other than a building of Class 1 or 10.	0.4% of 10/11 of the estimated current value of the unauthorised building work as determined by the local government, but not less than \$170.

*[Regulation 24A inserted in Gazette 6 Jun 2008 p. 2184-5.]*

## **Part 7 — Precautions during construction**

### **25. Licences under section 377 of the Act**

A licence issued under section 377 of the Act shall be in the form of Form 6.

### **26. Hoardings**

#### *General*

- (1) The erection, maintenance, lighting and removal of hoardings and fences shall be carried out in accordance with the provisions of Part XV of the Act and with such other requirements as the building surveyor of the local government may specify in order to ensure the safety and convenience of the public.

#### *Limit of encroachment*

- (2) A hoarding or fence erected pursuant to Part XV of the Act, or under a licence issued under section 377 of the Act shall not encroach at pavement level past half the width of the public footway or such other width as determined by the local government.

*[Regulation 26 amended in Gazette 20 Jun 1997 p. 2826; 6 Jun 2008 p. 2185.]*

### **27. Protection of adjacent property**

#### *Shoring and underpinning*

- (1) Where an excavation or demolition is to be made in proximity to an existing building that building shall be protected to ensure stability.

#### *Additional precautions*

- (2) Where the foundation of an existing building is of material likely to become unstable as a result of the excavation of adjoining ground, additional precautions, to the satisfaction of

the building surveyor of the local government shall be taken to ensure its stability.

*Building work affecting building of adjoining owner*

- (3) The provisions of section 391 of the Act apply in relation to building work described in subsection (1) of that section.

*Damage by vibration*

- (4) Where any building operations or earthworks involve the use of equipment that may, in the opinion of the local government, cause damage by vibration to the property of an owner of land in the vicinity of the land on which such operations or earthworks are carried out, the local government may impose requirements as to the manner of carrying out such operations or earthworks for the purpose of minimising such damage, and effect shall be given thereto.

*[Regulation 27 amended in Gazette 20 Jun 1997 p. 2826; 6 Jun 2008 p. 2185.]*

**28.      Protection of excavation**

Every excavation for a building shall be properly guarded and protected and shall, where necessary, be sheet piled so as to prevent caving in of the adjoining earth or pavement, and in any case required by the building surveyor of the local government, sheet piling of an approved type shall be utilized to protect the subsoil from damage by scour of subsoil or surface waters.

*[Regulation 28 amended in Gazette 6 Jun 2008 p. 2185.]*

**29.      Storage of material on streets etc.**

*Permissible in certain circumstances only*

- (1) A builder shall not deposit or store any material on a street, way, or other public place except for the purpose of immediate transportation of that material onto the building site or ground being used for the purposes of building operations, and the

deposit and transportation shall be carried out as expeditiously as possible, and at such times, as in special circumstances the building surveyor of the local government may direct, so as to cause the least possible obstruction to traffic on the street or way, and with due precautions for the public safety and convenience.

*No restriction where licence has been obtained*

- (2) Any part of the street or way for which the builder has procured a licence for use and enclosure by a hoarding, shall be deemed part of the building site for the purposes of this Part for the period covered by that licence.

*[Regulation 29 amended in Gazette 6 Jun 2008 p. 2185.]*

## **Part 8 — Precautions during demolition**

### **30. Licence to take down buildings**

A licence issued under section 374A of the Act shall be in the form of Form 7.

### **31. Demolition of buildings**

(1) Any person demolishing or removing any building or part of a building shall ensure that —

(a) before any demolition work commences —

(i) notification shall be given to —

(A) Telstra (within the meaning given in the *Telstra Corporation Act 1991* (Commonwealth) section 3) and arrangements made for disconnection of its services; and

(B) the relevant electricity corporation, Gas Corporation <sup>2</sup> or other supply authority and arrangements shall be made for the disconnection of energy services to the building, or the part of the building to be demolished; and

(C) Water Corporation (established by the *Water Corporation Act 1995* section 4) and arrangements made for disconnection of its services;

and

(ii) a certificate shall be obtained from the Health Surveyor of the local government certifying that the building to be demolished has been treated so as to ensure that it is not infested by rodents;

(b) where the building to be demolished comprises more than 1 storey, the demolition shall be effected by the



- complete removal of 1 storey after another, commencing with the uppermost storey and proceeding with the successive removal of the storeys in descending order, or other method approved by the local government;
- (c) no part of an external wall abutting on a street or road shall be demolished, except during such hours as are permitted by the building surveyor of the local government;
  - (d) unless otherwise authorised by the building surveyor of the local government, any material removed or displaced from the building shall not be placed upon a floor of the building but shall be immediately lowered to the ground and thereafter removed from the site, but in no case shall loading be such as to cause a floor to collapse;
  - (e) materials removed or displaced from the building shall not be placed in any street, road or right of way and, before commencing work, as the case may require, shall be kept sprayed with water so as to prevent any nuisance from dust;
  - (f) materials removed or displaced from the building being demolished or materials left standing shall not be burned on the demolition site;
  - (g) the local government shall be notified of the existence of any septic tank(s) on the demolition site 7 days prior to the emptying and filling of such tank(s);
  - (h) any septic tank(s) on the demolition site shall be emptied and filled with clean sand or removed entirely and any soakwells, leach drains or similar apparatus shall be removed or filled with clean sand;
  - (i) where the building being demolished is more than 1 storey in height, a hoarding and an overhead gantry shall be provided to protect pedestrians;
  - (j) where required by the local government, a footpath deposit shall be lodged with the local government to

cover the cost of any damage caused to footpaths during the demolition operation, against which the actual cost of repairing any damage will be charged and any unexpended balance refunded to the person taking out the licence. In the event of the cost of repairs being in excess of the deposit lodged, the person holding the licence shall, on demand, pay the amount of the excess to the local government;

- (k) where necessary, the holder of a licence shall construct a temporary crossing place over the footpath as specified by the local government;
  - (l) the demolition site shall be cleared, and left clean and tidy to the satisfaction of the building surveyor of the local government within 90 days of the date of commencement of the demolition or such other time as agreed by the local government;
  - (m) the fee for this licence has been paid being the fee set out in item 4 of the Table to regulation 24; and
  - (n) the provisions of the *Occupational Safety and Health Regulations 1996* are complied with in relation to the demolition work.
- (2) In subregulation (1)(a)(i)(B) —

***relevant electricity corporation*** means the Electricity Networks Corporation, the Electricity Retail Corporation or the Regional Power Corporation, established by section 4 of the *Electricity Corporations Act 2005*, as the case requires.

*[Regulation 31 amended in Gazette 11 Jan 1991 p. 58; 12 Jul 1991 p. 3458; 20 Jun 1997 p. 2824-5 and 2826; 31 Mar 2006 p. 1342; 5 Oct 2007 p. 5327-8; 6 Jun 2008 p. 2185.]*

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## Part 9 — Projection beyond street alignments

### 32. Construction of projections

#### *Footings*

A footing shall not project beyond the street alignment except that where the top of the footing —

- (a) is more than 750 mm and less than 3 m below the pavement level, the footing may extend 300 mm beyond the street alignment; and
- (b) is 3 m or more below the pavement level, the footing may extend 750 mm beyond the street alignment.

### 33. Minimum height above pavement

A projection shall not extend beyond the street alignment at any height less than 2 750 mm from the level of the public footway but the provisions of this regulation do not apply to —

- (a) footings constructed in accordance with the provisions of regulation 32; or
- (b) mouldings which do not project more than 12 mm beyond the street alignment in any portion of a shop front.

*[Regulation 33 amended in Gazette 20 Jun 1997 p. 2825.]*

*[34. Deleted in Gazette 12 Nov 1993 p. 6151.]*

### 35. Windows, balconies etc.

A balcony shall not encroach over a street, way or public place to a greater distance than that provided by section 400(2) of the Act, and a balcony or window shall not project more than 900 mm beyond the street alignment in a street over 12 m in width, or more than 600 mm in a street from 10 m to 12 m in width, and —

- (a) any part of a projection where it overhangs a street shall be not less than 2 750 mm above the level of the street and be not nearer than 1 200 mm to the centre of the

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nearest party wall or to any adjoining building or allotment not in the same occupation;

- (b) the aggregate length of any projections shall not exceed one-half of the length of the wall of the building on the level of the floor on which the projections are made;
- (c) a projecting window shall not exceed a total overall width of 3 600 mm and the distance between any 2 projecting windows shall not be less than one-half of the aggregate width of those windows;
- (d) projecting windows shall not be connected by a balcony having any portion projecting beyond the street alignment.

*[Regulation 35 amended in Gazette 20 Jun 1997 p. 2825.]*

**36. Gates, doors etc. abutting on street**

A person shall not construct or hang any gate, door, window, or shutter in such a manner that any part of the gate, door, window or shutter when being opened projects over any street or way at a height less than 2 750 mm above the level of the pavement.

*[Regulation 36 amended in Gazette 20 Jun 1997 p. 2825; 28 Jul 2000 p. 4014.]*

**37. Window shutters**

Notwithstanding the provisions of this Part, window shutters are permitted if they project not more than 50 mm beyond the street alignment when in the fully open position.

## **Part 10 — Private swimming pools**

*[Heading inserted in Gazette 26 Jun 1992 p. 2758.]*

### **38. Certain provisions of the Building Code not to apply**

The following provisions of the Building Code do not apply —

- (a) in Volume One —
  - (i) Objective G01(c);
  - (ii) Functional Statement GF1.2; and
  - (iii) Performance Requirement GP1.2;and
- (b) in Volume Two —
  - (i) Objective O2.5(b);
  - (ii) Functional Statement F2.5.2; and
  - (iii) Performance Requirement P2.5.3.

*[Regulation 38 inserted in Gazette 20 Jun 1997 p. 2825.]*

### **38A. Terms used**

In this Part —

***access through a building*** means access between the area within an enclosure and a part of a building to which there is direct or indirect access from outside the enclosure;

***Australian Standard AS 1926.1*** means Australian Standard AS 1926.1 — 1993 incorporating Amendment No. 1 only;

***swimming pool*** means a swimming pool, within the meaning of section 245A(1) of the Act, in which there is water that is more than 300 mm deep;

***young child*** means a child under the age of 5 years.

*[Regulation 38A inserted in Gazette 26 Jun 1992 p. 2758;  
amended in Gazette 12 Nov 1993 p. 6151; 20 Jun 1997 p. 2826;  
19 Oct 2001 p. 5610; 14 Dec 2001 p. 6399; 4 May 2007  
p. 1965.]*

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**38B. Enclosure of pool**

- (1) Except as provided in subregulation (2) and regulation 38D(2), the owner or occupier of premises on which there is a swimming pool is to install or provide around the pool an enclosure suitable to restrict access by young children to it and its immediate surrounds.  
Penalty: \$5 000 and a daily penalty of \$250.
- (2) If the pool is at the rear of the premises, a person does not contravene subregulation (1) only because the area enclosed includes, as well as the pool and its immediate surrounds, any other part of the rear portion of the premises.
- (3) Despite subregulation (2), an enclosure is not suitable for the purposes of subregulation (1) if a building other than a Class 10a building under the Building Code is included within the area enclosed unless all external doors and windows in that building satisfy the requirements of Australian Standard AS 1926.1, but a Class 10a building may be included within the area enclosed even though any external door or window in it does not satisfy those requirements.
- (4) Except as provided by this Part, the enclosure is not suitable for the purposes of subregulation (1) unless —
  - (a) it consists of a fence, wall, gate or other barrier, or a combination of them;
  - (b) any fence, wall, gate or other barrier included in the enclosure is in accordance with the requirements of Australian Standard AS 1926.1 or alternative requirements that the local government approves; and
  - (c) any wall that it includes contains no means of access through a building other than —
    - (i) a window that is in accordance with the requirements of Australian Standard AS 1926.1; or

- (ii) a door that is approved by the local government under regulation 38C.
- (5) The local government is not to approve alternative requirements under subregulation (4)(b) unless it is satisfied that the requirements will restrict access by young children to the swimming pool as effectively as Australian Standard AS 1926.1.
- (6) If a boundary fence of the premises is a part of the enclosure of a pool, the boundary fence satisfies the requirements of clauses 2.3, 2.6 and 2.7 of Australian Standard AS 1926.1 if all those requirements are satisfied in relation to either side of the fence.

*[Regulation 38B inserted in Gazette 14 Dec 2001 p. 6400; amended in Gazette 5 Apr 2002 p. 1827; 4 May 2007 p. 1965.]*

**38C. Approval of doors by local government**

- (1) The local government may approve a door for the purposes of regulation 38B(4)(c)(ii) if the door is in accordance with the requirements of Australian Standard AS 1926.1 and —
  - (a) in the opinion of the local government, to install between the building and the pool a fence or barrier satisfying regulation 38B would involve —
    - (i) a sufficient problem of a structural nature; or
    - (ii) a sufficient problem of any other nature, the cause of which is neither within the control of the owner nor occupier;
  - (b) the pool is totally enclosed by a building; or
  - (c) in the opinion of the local government, the existence between the building and the pool of a fence or barrier satisfying regulation 38B would create a sufficient problem for a person with a disability who is resident at the premises and wishes to have access to the pool.

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(2) In deciding whether to give approval under subregulation (1) a local government is to place particular weight on whether or not a young child resides at the premises.

(3) In this regulation —

***person with a disability*** means a person who is able to produce a certificate given by ACROD Limited (Western Australian Division) (ACN 008445485), registered under the *Corporations Act 2001* of the Commonwealth, certifying that the person has a disability that makes it difficult for the person to use a gate of the kind that would be required by these regulations in a swimming pool fence.

*[Regulation 38C inserted in Gazette 14 Dec 2001 p. 6401.]*

**38D. Concessions for pre-November 2001 pools**

(1) This regulation applies to a swimming pool —

- (a) installed before 5 November 2001; or
- (b) installed on or after 5 November 2001 in accordance with plans, drawings and specifications submitted to the local government for approval before that day.

(2) Even though the pool is not one to which regulation 38B(2) applies, a person does not contravene regulation 38B(1) only because the area enclosed includes, as well as the pool and its immediate surrounds, any other part of the premises.

(3) The enclosure required by regulation 38B(1) may include a wall that contains a door permitting access through a building if that door satisfies the requirements of Australian Standard AS 1926.1.

*[Regulation 38D inserted in Gazette 14 Dec 2001 p. 6401-2.]*

*[38E. Deleted in Gazette 12 Nov 1993 p. 6153.]*



**38F. Maximum inspection charge**

For the purposes of section 245A(8)(b) of the Act, the maximum charge is \$55.

*[Regulation 38F inserted in Gazette 26 Jun 1992 p. 2760; amended in Gazette 28 Jul 2000 p. 4014.]*

**38G. Transitional**

Regulation 6(2) does not apply in relation to the requirements of this Part.

*[Regulation 38G inserted in Gazette 26 Jun 1992 p. 2760.]*

**38H. Infringement notices**

- (1) The offence of failing to enclose a swimming pool as required by regulation 38B(1) is prescribed for the purposes of [the Local Government Act 1995](#) section 9.16(1) ~~of the Act.~~
- (2) The modified penalty that is to be specified in an infringement notice given for that offence is —
  - (a) if a notice under section 245A(5)(b) of the Act has been served, \$200;
  - (b) if a notice under section 245A(5)(b) of the Act has not been served, \$100.

*[Regulation 38H inserted in Gazette 24 Jun 1996 p. 2863; amended in Gazette 20 Jun 1997 p. 2825; 14 Dec 2001 p. 6402; 31 Jul 2009 p. 3017.]*

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**Part ~~10A (s. 38I) deleted~~ — Smoke alarms in certain buildings**

*[Heading inserted in Gazette ~~18 Apr 2008~~ 31 Jul 2009  
p. ~~1481~~3018.]*

**38I. Terms used**

(1) In this Part, unless the contrary intention appears —

***approved alternative building solution*** means a building solution that was approved in accordance with the Building Code by the local government of the district in which the dwelling is located on the basis that the solution met the performance requirement in the Building Code relating to fire detection and early warning (other than the requirements relating to evacuation lighting);

***dwelling*** means —

- (a) a class 1 building; or
- (b) a unit in a class 2 building; or
- (c) a class 4 dwelling;

***electrician*** has the meaning given in the *Electricity (Licensing) Regulations 1991* regulation 3(1);

***owner***, of a dwelling, means a person who holds an interest in land that entitles the person to the ownership of the dwelling;

***residential tenancy agreement*** means a residential tenancy agreement to which the *Residential Tenancies Act 1987* applies;

***unit***, in the definition of ***dwelling***, means a room or suite of rooms, and any associated parts of the building, constituting a single dwelling for the exclusive occupation of the occupant;

***10 year life battery*** means a battery that is capable of powering a smoke alarm for at least 10 years without the alarm indicating the battery power is low.

(2) For the purposes of this Part, a smoke alarm —

- (a) is connected to the mains power supply if it is electrically connected to a permanent supply of electricity to the dwelling; and
- (b) is permanently connected if an electrician would ordinarily be required to connect or disconnect the alarm.
- (3) For the purposes of this Part, an owner of a dwelling transfers the ownership of it if —
- (a) the owner executes an instrument of transfer or conveyance of the interest in land that entitles the owner to the ownership of the dwelling; and
- (b) the person to whom the interest is to be transferred or conveyed obtains possession of the dwelling under or in anticipation of the transfer or conveyance.
- (4) For the purposes of the definition of *dwelling*, the class of a building or a part of a building is its class according to —
- (a) its certificate of classification under regulation 20; or
- (b) if there is no certificate of classification for the building or part — the Building Code.

[Regulation 38I inserted in Gazette 31 Jul 2009 p. 3018-19.]

**38J. Requirement to have smoke alarms or similar prior to transfer of a dwelling**

If an owner of a dwelling transfers the ownership of it, the owner must, to the extent practicable, ensure that at the time of the transfer —

- (a) the dwelling has smoke alarms installed so that the dwelling and the alarms comply with the requirements of regulation 38N(1); or
- (b) if an approved alternative building solution applies in relation to the dwelling — the solution is in effect.

Penalty: a fine of \$5 000.

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*[Regulation 38J inserted in Gazette 31 Jul 2009 p. 3019.]*

**38K. New owner must install smoke alarms or similar, and right to recover costs**

(1) If an owner of a dwelling (the *prior owner*) transfers the ownership of it and fails to comply with regulation 38J, the person to whom the ownership is transferred (the *new owner*) must, within 12 months of the ownership being transferred, ensure that —

(a) the dwelling has smoke alarms installed so that the dwelling and the alarms comply with the requirements of regulation 38N(1); or

(b) if an approved alternative building solution applies in relation to the dwelling — the solution is in effect.

Penalty: a fine of \$5 000.

(2) The new owner may recover, in a court of competent jurisdiction, the reasonable costs of complying with subregulation (1) as a debt due from the prior owner.

*[Regulation 38K inserted in Gazette 31 Jul 2009 p. 3019.]*

**38L. Requirement to have smoke alarms or similar prior to tenancy**

(1) If an owner of a dwelling lets the dwelling under a residential tenancy agreement, the owner must, to the extent practicable, ensure that, within 14 days after the day on which a person is entitled to enter into occupation of the dwelling under the agreement —

(a) the dwelling has smoke alarms installed so that the dwelling and the alarms comply with the requirements of regulation 38N(1); or

(b) if an approved alternative building solution applies in relation to the dwelling — the solution is in effect.

Penalty: a fine of \$5 000.

- (2) Subregulation (1) does not apply in relation to residential tenancy agreements entered into with at least one person who was already in occupation of the dwelling as a tenant.
- (3) The owner of a dwelling rented under a residential tenancy agreement, or made available for such rent, must, to the extent practicable, ensure that —
- (a) the dwelling has smoke alarms installed so that the dwelling and the alarms comply with the requirements of regulation 38N(3); or
- (b) if an approved alternative building solution applies in relation to the dwelling — the solution is in effect.
- Penalty: a fine of \$5 000.
- (4) Subregulation (3) does not have effect before 1 October 2011, and subregulations (1) and (2) cease to have effect on that day.  
[Regulation 38L inserted in Gazette 31 Jul 2009 p. 3019-20.]

**38M. Requirement to have smoke alarms or similar prior to hire of a dwelling**

- (1) The owner of a dwelling must not make the dwelling available for hire unless —
- (a) the dwelling has smoke alarms installed so that the dwelling and the alarms comply with the requirements of regulation 38N(3); or
- (b) if an approved alternative building solution applies in relation to the dwelling — the solution is in effect.
- Penalty: a fine of \$5 000.
- (2) Subregulation (1) does not have effect before 1 October 2011.  
[Regulation 38M inserted in Gazette 31 Jul 2009 p. 3020.]

**38N. Requirements for smoke alarms**

- (1) The requirements for the purposes of regulation 38J(a), 38K(1)(a) and 38L(1)(a) are that —

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- (a) the dwelling meets the requirements of the deemed-to-satisfy provisions about smoke alarms or smoke hazard management (other than the provisions about evacuation lighting) of the Building Code applicable at the time of installation of the alarms; and
  - (b) each smoke alarm necessary to meet those requirements was installed less than 10 years before the transfer day; and
  - (c) each smoke alarm referred to in paragraph (b) is in working order; and
  - (d) if a smoke alarm referred to in paragraph (b) was, at the time of its installation, required to be connected to the mains power supply to meet those requirements —
    - (i) the alarm is permanently connected to the mains power supply; or
    - (ii) if the alarm is to be installed at a location in the dwelling where there is no hidden space in which to run the necessary electrical wiring and there is no appropriate alternative location — the alarm has a 10 year life battery that cannot be removed; or
    - (iii) if, in relation to the alarm, the use of a battery powered smoke alarm has been approved under regulation 38O — the alarm has a 10 year life battery that cannot be removed.
- (2) For the purposes of subregulation (1)(a), if the dwelling has 2 or more smoke alarms installed and they were not all installed at the same time, the provisions of the Building Code applicable to the dwelling and the alarms are the provisions applicable at the time that the last alarm necessary to meet the requirements referred to in subregulation (1)(a) and (b) was installed.
- (3) The requirements for the purposes of regulation 38L(3)(a) and 38M(1)(a) are that —

- (a) the dwelling meets the requirements of the deemed-to-satisfy provisions about smoke alarms or smoke hazard management (other than the provisions about evacuation lighting) of the Building Code applicable at the time of installation of the alarms; and
- (b) each smoke alarm referred to in paragraph (a) is in working order; and
- (c) if a smoke alarm referred to in paragraph (a) was, at the time of its installation, required to be connected to the mains power supply to meet those requirements —
  - (i) the alarm is permanently connected to the mains power supply; or
  - (ii) if the alarm is to be installed at a location in the dwelling where there is no hidden space in which to run the necessary electrical wiring and there is no appropriate alternative location — the alarm has a 10 year life battery that cannot be removed; or
  - (iii) if, in relation to the alarm, the use of a battery powered smoke alarm has been approved under regulation 38O — the alarm has a 10 year life battery that cannot be removed.

(4) For the purposes of subregulation (3), if the dwelling has 2 or more smoke alarms installed and they were not all installed at the same time, the provisions of the Building Code applicable to the dwelling and the alarms are the provisions applicable at the time that the last alarm necessary to meet the requirements referred to in subregulation (3)(a) was installed.

(5) In subregulation (1)(b) —

*transfer day* means the day on which —

- (a) the owner transfers the ownership of the dwelling; or
- (b) a person is entitled to enter into occupation of the dwelling under a residential tenancy agreement.

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*[Regulation 38N inserted in Gazette 31 Jul 2009 p. 3020-2.]*

**380. Local government approval of battery powered smoke alarms**

(1) The local government of the district in which a dwelling is located may approve of the use, in the dwelling or a part of the dwelling, of a battery powered smoke alarm (rather than one that is connected to the mains power supply) if satisfied that, at the time of giving the approval, installing a smoke alarm connected to the mains power supply would involve —

(a) a sufficient problem of a structural nature; or

(b) a sufficient problem of any other nature, the cause of which is not within the control of the owner.

(2) The local government may give its approval in relation to an alarm that was installed before the approval is to be given.

(3) An application for approval must be made in the manner and form approved by the local government, and must include or be accompanied by —

(a) the plans and information required by the local government; and

(b) the fee set by the local government, which cannot exceed \$170.

(4) The local government is to be taken to have refused approval if it has not made a decision whether to give approval within 35 days after the later of —

(a) the day on which the person made the application for approval; or

(b) the day on which the person complied with a, or the latest, request by the local government for further plans or information.

*[Regulation 380 inserted in Gazette 31 Jul 2009 p. 3022-3.]*



**38P. Requirement to maintain certain smoke alarms**

(1) This regulation applies to an owner of a dwelling —

(a) who is also an owner, in relation to the dwelling, within the meaning given in the *Residential Tenancies Act 1987* section 3; or

(b) who makes the dwelling available for hire.

(2) The owner must, to the extent practicable —

(a) ensure that each alarm installed in the dwelling is in working order; and

(b) if an alarm was, at the time of its installation, required to be connected to the mains power supply, ensure that the alarm —

(i) is permanently connected to the mains power supply; or

(ii) if the alarm is to be installed at a location in the dwelling where there is no hidden space in which to run the necessary electrical wiring and there is no appropriate alternative location — the alarm has a 10 year life battery that cannot be removed; or

(iii) if, in relation to the alarm, the use of a battery powered smoke alarm has been approved under regulation 38O — has a 10 year life battery that cannot be removed;

and

(c) ensure that each alarm installed in the dwelling —

(i) has not reached its expiry date if one is provided on the alarm; or

(ii) is not more than 10 years old if no expiry date is provided on the alarm.

**r. 38Q**

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(3) An authorised person may inspect a dwelling referred to in subregulation (1) to determine whether the owner is complying with subregulation (2).

(4) If the authorised person is satisfied that the owner has failed to comply with subregulation (2), he or she may give the owner a rectification notice.

(5) A decision to give a rectification notice is a decision to which the *Local Government Act 1995* Part 9 Division 1 applies and the owner is an affected person for the purposes of that Division.

(6) A rectification notice must —

(a) be in the approved form; and

(b) specify the failure to comply; and

(c) specify the time within which the failure to comply must be rectified; and

(d) set out the effect of subregulation (5).

(7) A rectification notice may set out what the owner must do to rectify the failure to comply.

(8) A person given a rectification notice must comply with it.  
Penalty: a fine of \$5 000.

(9) A local government may authorise a person with appropriate experience and qualifications to be an authorised person for the purposes of this regulation.

[Regulation 38P inserted in Gazette 31 Jul 2009 p. 3023-4.]

**38Q. Infringement notices**

(1) The offences of failing to comply with regulation 38J, 38L(1) or (3), 38M(1) or 38P(8) are prescribed for the purposes of the *Local Government Act 1995* section 9.16(1).

(2) The modified penalty that is to be specified in an infringement notice given in relation to an alleged offence under one of those provisions is —

(a) for an alleged offence under regulation 38P(8) —  
\$1 000;

(b) in any other case — \$750.

*[Regulation 38Q inserted in Gazette 31 Jul 2009 p. 3024.]*

## **Part 11 — Miscellaneous**

### **39. Loading notice plates to be posted on completion of certain buildings**

- (1) On completion of any Class 5, 6, 7 or 8 building and before occupation of any such building, any floor or part of a floor which has been designed to sustain a uniformly distributed live load exceeding 5kPa shall have a notice conspicuously and permanently posted adjacent thereto in the form hereunder indicating the actual loadings for which the floor or part of the floor has been structurally designed.

Designed Floor Loading	
Distributed .....	kg/m <sup>2</sup>
Concentrated .....	kg

*Design and position of notice plates*

- (2) The lettering of a notice posted pursuant to subregulation (1) shall be embossed or cast into a metal tablet not less than 230 mm square and located not less than 1 m above floor level.

[40. Deleted in Gazette 11 Nov 1994 p. 5707.]

[41. Deleted in Gazette 20 Jun 1997 p. 2825.]

### **42. Offences and penalties**

*Offences*

- (1) Where, by these regulations anything is directed, or forbidden, to be done, or authority is given to any person to direct, or forbid, anything to be done and that authority is exercised, any person failing or neglecting to do anything so directed, or doing anything so forbidden, commits an offence.

*Penalties*

- (2) A person who commits an offence against these regulations is liable to the penalty expressly mentioned in relation to the offence, or, if no penalty is expressly mentioned, to a penalty not exceeding \$5 000.

*[Regulation 42 amended in Gazette 20 Jun 1997 p. 2825.]*

*[43. Omitted under the Reprints Act 1984 s. 7(4)(f).]*

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**Schedule 1 — Forms**

**Form 1. Certificate of classification**

*Local Government (Miscellaneous Provisions) Act 1960, s. 374C*  
*Building Regulations 1989, reg 20(1)*

**CERTIFICATE OF BUILDING  
CLASSIFICATION**

**Local Government:**

<b>Building</b>	Address	No.:	Street name:
		Suburb:	Postcode:
	Lot/location No.:		

<b>Classification</b>	Storey or portion of building	Classification(s)

<b>Chief Executive Officer</b>	Name:	
	Signature:	Date:

*[Form 1 inserted in Gazette 20 Jun 1997 p. 2826.]*

**Form 2. Application for building licence**

*Local Government (Miscellaneous Provisions) Act 1960, s. 374*  
*Building Regulations 1989, reg. 10(2)*

**Building licence application**

<b>Property where building to be built</b>	Street address	No.:	Street name:		
		Suburb:	Postcode:		
	Lot/location No.:		Is lot free of improvements?: yes/no		
<b>Property owner(s) (attach separate page if more than 2)</b>	Name:			Phone:	
	Address:				
	Name:			Phone:	
	Address:				
<b>Details of work (tick box or boxes)</b>	Type of building to be constructed:				
	<input type="checkbox"/> Single dwelling <input type="checkbox"/> Patio <input type="checkbox"/> Swimming pool <input type="checkbox"/> Warehouse <input type="checkbox"/> Grouped dwelling <input type="checkbox"/> Outbuilding <input type="checkbox"/> Retaining wall <input type="checkbox"/> Office <input type="checkbox"/> Pergola <input type="checkbox"/> Factory <input type="checkbox"/> Shop <input type="checkbox"/> Other (specify):				
	Estimated floor area of building (m <sup>2</sup> ):				
Estimated value of construction work (including the GST): \$					
<b>Applicant (if applicant is not builder)</b>	Name:				
	Address:				
	Postal address:				
	Phone (H):		(W):	(Mob):	
	Fax:		Email:		
	Signature:			Date:	

**Building Regulations 1989**  
**Schedule 1      Forms**

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<b>Applicant (if applicant is builder or owner builder)</b>	Name:		
	Address:		
	Postal address:		
	Phone (H):	(W):	(Mob):
	Fax:	Email:	
	Applicant's registration number under the <i>Builders' Registration Act 1939</i> :		
	Contact name:		
	Signature:		Date:

*[Form 2 inserted in Gazette 30 Sep 2003 p. 4257-8.]*



**Form 3. Application for demolition licence**

*Local Government (Miscellaneous Provisions) Act 1960, s. 374A*  
*Building Regulations 1989, reg. 10(2)*

**APPLICATION FOR DEMOLITION LICENCE**

(Office use)  
Application no.:

\_\_\_\_\_

<b>Local Government:</b>			
<b>Building to be demolished</b>	Address	No.:	Street name:
		Suburb:	Postcode:
	Lot/location No.:		
	Certificate of Title	Volume:	Folio:
	To be demolished:		
	<input type="checkbox"/> Whole of building <input type="checkbox"/> Part only of building. Give details:		
	Type of construction (e.g. brick & tile):		
	Number of storeys:		
Previous use or classification:			
<b>Owner</b>	Name:		
	Address:		
<b>Demolition contractor</b>	Name:		
	Address:		
	Phone number:	Fax number:	
<b>Applicant</b>	Name:		
	Address:		
	Phone numbers (H):	(W):	
	Fax number:	Email:	
	Signature:	Date:	

*[Form 3 inserted in Gazette 20 Jun 1997 p. 2828.]*

**Form 4. Building licence**

*Local Government (Miscellaneous Provisions) Act 1960, s. 374*  
*Building Regulations 1989, reg. 13(1)(d)*

Licence no.:

**BUILDING LICENCE**

**Local Government:**

<b>Licensee</b>	Name:
	Address:

<b>Property where building to be built</b>	Address	No.:	Street name:
		Suburb:	Postcode:
	Lot/location No.:		
	Certificate of Title	Volume:	Folio:

<b>Details of work</b>	<input type="checkbox"/> New building Type of building (e.g.: residential, shop, factory, warehouse):
	<input type="checkbox"/> Alteration or addition to existing building Type of alteration or addition (e.g.: carport, bedroom, second storey, store room, office, toilet, games room):

The building work permitted by this licence —

- must be carried out in accordance with the plans, drawings and specifications submitted with Application for Building Licence no. \_\_\_\_\_; and
- must be carried out in accordance with the conditions set out on the back of this licence.

If the building work permitted by this licence is not substantially commenced within 12 months of the date of this licence, the licence will become void.

The building has been assessed as being of Class(es) \_\_\_\_\_

<b>Building surveyor of the local government</b>	Name:
	Signature: _____ Date: _____

**Note:** The licensee must produce this licence and the approved plans, drawings and specifications whenever requested by the building surveyor of the local government.

**Back of Form 4**

**CONDITIONS**

This licence is subject to the following conditions.

If you are dissatisfied with these conditions you may apply to the State Administrative Tribunal for a review under section 374AAD of *Local Government (Miscellaneous Provisions) Act 1960*.

*[Form 4 inserted in Gazette 20 Jun 1997 p. 2829-30; amended in Gazette 30 Dec 2004 p. 6949; 6 Jun 2008 p. 2185.]*

**Form 5. Special building licence**

*Local Government (Miscellaneous Provisions) Act 1960, s. 399(4)*  
*Building Regulations 1989, reg. 13(1)(d)*

Licence no.: \_\_\_\_\_

**SPECIAL BUILDING LICENCE**

**Local Government:** \_\_\_\_\_

<b>Licensee</b>	Name: _____
	Address: _____

<b>Property where building to be built</b>	Address	No.:	Street name:	
		Suburb:	Postcode:	
	Lot/location No.:			
	Certificate of Title		Volume:	Folio:

<b>Details of work</b>	<input type="checkbox"/> New building Type of building (e.g.: residence, shop, factory, warehouse): _____
	<input type="checkbox"/> Alteration or addition to existing building Type of alteration or addition (e.g.: carport, bedroom, second storey, store room, office, toilet, games room): _____
	<input type="checkbox"/> Temporary building Type of building (e.g.: marquee, grandstand, stage): _____

The building work permitted by this licence must be carried out in accordance with —

- the plans, drawings and specifications submitted with Application for Building Licence no \_\_\_\_\_ ; and
- the conditions set out on the back of this licence.

The building has been assessed as being of Class(es) \_\_\_\_\_

<b>Building surveyor of the local government</b>	Name: _____
	Signature: _____ Date: _____

**Note:** The licensee must produce this licence and the approved plans, drawings and specifications whenever requested by the building surveyor of the local government.

**Back of Form 5**

**CONDITIONS**

This licence is subject to the following conditions.

If you are dissatisfied with these conditions you may apply to the State Administrative Tribunal for a review under section 399 of *Local Government (Miscellaneous Provisions) Act 1960*.

*[Form 5 inserted in Gazette 20 Jun 1997 p. 2831-2; amended in Gazette 30 Dec 2004 p. 6949; 6 Jun 2008 p. 2186.]*

**Form 6. Licence to deposit building material on, or excavate near, a street**

*Local Government (Miscellaneous Provisions) Act 1960, s. 377*  
*Building Regulations 1989, reg. 25*

**LICENCE TO DEPOSIT BUILDING  
 MATERIAL ON, OR EXCAVATE NEAR,  
 A STREET**

Licence no.:

\_\_\_\_\_

**Local Government:**

<b>Licensee</b>	Name:
	Address:

<b>Property where building to be built or excavation to be carried out</b>	Address	No.:	Street name:
		Suburb:	Postcode:
	Lot/location No.:		
	Certificate of Title		Volume:

<b>Details of deposit or excavation</b>	<input type="checkbox"/> Deposit of building material on a street Type of material: _____ Name of street: _____ Part of street (e.g.: outside No. 10): _____
	<input type="checkbox"/> Excavation near a street Reason for excavation: _____ Name of street: _____ Part of street likely to be affected (e.g.: outside No. 10): _____
	Period during which part of street may be enclosed: _____ to _____
	Maximum area of the street which may be enclosed: Frontage: _____ m Width: _____ m Height: _____ m.

The deposit of building material or excavation permitted by this licence must be carried out in accordance with the conditions set out on the back of this licence.

<b>Deposit</b>	The local government acknowledges receipt of a deposit of \$ _____ paid by the licensee under section 377(4) of the Act.
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<b>Building surveyor of the local government</b>	Name:
	Signature: _____ Date: _____

**Back of Form 6**

**CONDITIONS**

This licence is subject to the following conditions.

1. Every excavation must be securely fenced off from the street to the satisfaction of the building surveyor of the local government.
2. When building materials are deposited on a street the licensee must install and maintain —
  - (a) hoardings around the deposited material;
  - (b) gangways to allow vehicular and pedestrian access along the street; and
  - (c) water channels to allow water to drain from the area,which are constructed from materials, and to a design, approved by the building surveyor of the local government.
3. The licensee must ensure that the area around any excavation or deposited material is sufficiently lit during darkness to ensure the safety of persons using the street.
4. On or before the last day on which this licence permits the licensee to enclose part of the street, the licensee must —
  - remove all hoardings, gangways, channelling, building material and debris from the street; and
  - repair, to the satisfaction of the building surveyor of the local government, any damage caused to the street (including the road surface, kerbing and footpaths).

If you are dissatisfied with these conditions you may, within 14 days of the granting of this licence, apply to the State Administrative Tribunal for a review under section 377 of the *Local Government (Miscellaneous Provisions) Act 1960*.

*[Form 6 inserted in Gazette 20 Jun 1997 p. 2833-4; amended in Gazette 30 Dec 2004 p. 6950; 6 Jun 2008 p. 2186.]*

**Form 7. Demolition licence**

*Local Government (Miscellaneous Provisions) Act 1960, s. 374A*  
*Building Regulations 1989, regs. 13(2) and 30*

Licence no.:

\_\_\_\_\_

**DEMOLITION LICENCE**

**Local Government:**

<b>Licensee</b>	Name:
	Address:

**Demolition contractor:**

<b>Building to be demolished</b>	Address	No.:	Street name:		
		Suburb:		Postcode:	
	Lot/location No.:				
	Certificate of Title		Volume:	Folio:	
	To be demolished:				
	<input type="checkbox"/> Whole of building <input type="checkbox"/> Part only of building. Details:				
	Type of construction (e.g. brick & tile):				
	Number of storeys:				
Previous use or classification:					

The demolition work permitted by this licence must be —

- carried out in accordance with the details set out in Application for Demolition Licence no. \_\_\_\_\_ ;
- carried out in accordance with the conditions set out on the back of this licence; and
- commenced within 12 months of the date of this licence.

<b>Building surveyor of the local government</b>	Name:
	Signature:



**Back of Form 7**

**CONDITIONS**

This licence is subject to the following conditions.

If you are dissatisfied with these conditions you may be able to apply to the State Administrative Tribunal for a review under section 374A of *Local Government (Miscellaneous Provisions) Act 1960*.

*[Form 7 inserted in Gazette 20 Jun 1997 p. 2835-6; amended in Gazette 30 Dec 2004 p. 6950; 6 Jun 2008 p. 2186.]*

**Form 8. Application for building approval certificate**

*Local Government (Miscellaneous Provisions) Act 1960, s. 374AA*  
*Building Regulations 1989, r. 11A*

**BUILDING APPROVAL CERTIFICATE  
 APPLICATION**

<b>Property where building is built</b>	Street	No.:	Street name:
	Address	Suburb:	Postcode:
	Lot/Location No.:		

<b>Applicant (must be owner of building)</b>	Name:		
	Address:		
	Postal address:		
	Phone (H):	(W):	(Mob):
	Fax:	Email:	
	Signature:	Date:	

<b>Details of building (tick box or boxes)</b>	Type of building constructed:
	<input type="checkbox"/> Single dwelling <input type="checkbox"/> Patio <input type="checkbox"/> Swimming pool <input type="checkbox"/> Warehouse <input type="checkbox"/> Grouped dwelling <input type="checkbox"/> Outbuilding <input type="checkbox"/> Retaining wall <input type="checkbox"/> Office <input type="checkbox"/> Pergola <input type="checkbox"/> Factory <input type="checkbox"/> Shop <input type="checkbox"/> Other (specify):
	Floor area of the building in m <sup>2</sup> (including the width of all walls):
	Estimated current value of unauthorised building work (including GST): \$

*[Form 8 inserted in Gazette 6 Jun 2008 p. 2186.]*

**Form 9. Building approval certificate**

*Local Government (Miscellaneous Provisions) Act 1960,  
s. 374AA(4)(a)  
Building Regulations 1989, r. 11A(9)*

Certificate no.:

\_\_\_\_\_

**BUILDING APPROVAL CERTIFICATE**

**Local Government:** \_\_\_\_\_

<b>Owner</b>	Name:		
	Address:		

<b>Property where building is built</b>	Address	No.:	Street name:	
		Suburb:	Postcode:	
	Lot/Location No.:			
	Certificate of Title		Volume:	Folio:

<b>Description of building covered by this certificate</b>				
<p>The documentation provided by other building professionals, supporting substantial conformity of the building with the requirements of the Act, is listed at the back of this certificate.</p> <p>The building has been assessed as being of Class(es) _____</p>				

<b>Building surveyor of the local government</b>	Name:			
	Signature:		Date:	

**Back of Form 9**

**DOCUMENTATION**

List documentation provided by other building professionals, supporting substantial conformity of the building with the requirements of the Act.

**CONDITIONS**

This certificate is subject to the following conditions.

If you are dissatisfied with these conditions you may apply to the State Administrative Tribunal for a review under section 374AAD(1)(d) of *Local Government (Miscellaneous Provisions) Act 1960*.

*[Form 9 inserted in Gazette 6 Jun 2008 p. 2187-8.]*

## Schedule 2 — Application

[r. 2A]

<b>Column 1 District</b>	<b>Column 2 Class 10 Buildings</b>	<b>Column 3 Part 10</b>	<b>Column 4 Rest of regulations</b>
Albany	Whole district	Whole district	Whole district
Armadale	Whole district	Whole district	Whole district
Augusta- Margaret River	Whole district	Whole district	Whole district
Bassendean	Whole district	Whole district	Whole district
Bayswater	Whole district	Whole district	Whole district
Belmont	Whole district	Whole district	Whole district
Beverley	Whole district	Whole district	Whole district
Bridgetown- Greenbushes	Whole district	Whole district	Whole district
Brookton	Whole district	Whole district	Whole district
Broome	Whole district	All townsites	Whole district
Broomehill	All townsites and area described in Note 1	All townsites	Whole district
Bruce Rock	All townsites	All townsites	Whole district
Bunbury	Whole district	Whole district	Whole district
Busselton	Whole district	Whole district	Whole district
Cambridge	Whole district	Whole district	Whole district
Canning	Whole district	Whole district	Whole district
Capel	Whole district	Whole district	Whole district
Carnamah	All townsites	All townsites	Whole district
Carnarvon	Whole district except Gascoyne-Minilya Ward	Whole district	Whole district
Claremont	Whole district	Whole district	Whole district
Cockburn	Whole district	Whole district	Whole district

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<b>Column 1 District</b>	<b>Column 2 Class 10 Buildings</b>	<b>Column 3 Part 10</b>	<b>Column 4 Rest of regulations</b>
Collie	Whole district	Whole district	Whole district
Coorow	All townsites	Whole district	Whole district
Corrigin	Townsite of Corrigin	All townsites	Whole district
Cottesloe	Whole district	Whole district	Whole district
Cranbrook	All townsites	All townsites	Whole district
Cuballing	Whole district	All townsites	Whole district
Cue	All townsites	All townsites	Whole district
Cunderdin	All townsites	All townsites	Whole district
Dalwallinu	All townsites	All townsites	Whole district
Dandaragan	All townsites	All townsites	Whole district
Dardanup	Whole district	Whole district	Whole district
Denmark	Whole district	All townsites	Whole district
Derby-West Kimberley	All townsites	Whole district	Whole district
Dowerin	All townsites	All townsites	Whole district
Dumbleyung	Townsites of Dumbleyung, Kukerin	Whole district	Whole district
East Fremantle	Whole district	Whole district	Whole district
Esperance	All townsites and lots measuring 10 ha or less	All townsites and lots measuring 10 ha or less	Whole district
Fremantle	Whole district	Whole district	Whole district
Geraldton- Greenough	Whole district	Whole district	Whole district
Gnowangerup	All townsites	All townsites	Whole district
Gosnells	Whole district	Whole district	Whole district

<b>Column 1 District</b>	<b>Column 2 Class 10 Buildings</b>	<b>Column 3 Part 10</b>	<b>Column 4 Rest of regulations</b>
Hall's Creek	Whole district	All townsites and area subject to Halls Creek Town Planning Scheme	Whole district
Harvey	Whole district	All townsites and area zoned Special Residential or Special Rural by Shire of Harvey Town Planning Scheme	Whole district
Jerramungup	Whole district except areas zoned rural by a town planning scheme	Whole district except areas zoned rural by a town planning scheme	Whole district
Joondalup	Whole district	Whole district	Whole district
Kalamunda	Whole district	Whole district	Whole district
Kalgoorlie-Boulder	Whole district	Whole district	Whole district
Katanning	Whole district	Whole district	Whole district
Kellerberrin	Townsites of Kellerberrin, Doodlakine and Baandee	Townsites of Kellerberrin, Doodlakine and Baandee	Whole district
Kent	Townsites of Nyabing, Pingrup	Townsites of Nyabing, Pingrup	Townsites of Nyabing, Pingrup
Kojonup	All townsites	All townsites	Whole district
Koorda	All townsites and Avon location 16386	Whole district	Whole district
Kwinana	Whole district	Whole district	Whole district
Lake Grace	All townsites	All townsites	Whole district
Laverton	All townsites	All townsites	All townsites

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<b>Column 1 District</b>	<b>Column 2 Class 10 Buildings</b>	<b>Column 3 Part 10</b>	<b>Column 4 Rest of regulations</b>
Leonora	All townsites	All townsites	Whole district
Mandurah	Whole district	Whole district	Whole district
Manjimup	Whole district	Whole district	Whole district
Meekatharra	All townsites	All townsites	All townsites
Melville	Whole district	Whole district	Whole district
Menzies	All townsites	All townsites	All townsites
Merredin	Townsites of Burracoppin, Hines Hill, Korbel, Merredin, Muntadgin, Nangeenan, Nokaning, Nukarni	Townsites of Burracoppin, Hines Hill, Korbel, Merredin, Muntadgin, Nangeenan, Nokaning, Nukarni	Whole district
Mingenew	All townsites	Whole district	Whole district
Moora	All townsites	All townsites	Whole district
Morawa	All townsites	All townsites	Whole district
Mosman Park	Whole district	Whole district	Whole district
Mt Marshall	All townsites	All townsites	Whole district
Mt Magnet	All townsites	All townsites	All townsites
Mukinbudin	All townsites	All townsites	Whole district
Mullewa	All townsites	All townsites	Whole district
Mundaring	Whole district	Whole district	Whole district
Murchison	None	None	None
Murray	Whole district except areas zoned rural by local laws or a town planning scheme	Whole district	Whole district
Narembeen	All townsites	All townsites	Whole district



<b>Column 1 District</b>	<b>Column 2 Class 10 Buildings</b>	<b>Column 3 Part 10</b>	<b>Column 4 Rest of regulations</b>
Narrogin (Shire)	Whole district except areas zoned for farming purposes by a town planning scheme	All townsites	Whole district
Narrogin (Town)	Whole district	Whole district	Whole District
Nedlands	Whole district	Whole district	Whole district
Northam	Whole district	Whole district	Whole district
Northampton	Whole district	Whole district	Whole district
Nungarin	All townsites	All townsites	Whole district
Peppermint Grove	Whole district	Whole district	Whole district
Perenjori	All townsites and areas subject to town planning schemes	All townsites	Whole district
Perth	Whole district	Whole district	Whole district
Pingelly	Whole district	Whole district	Whole district
Plantagenet	Whole district	Whole district	Whole district
Port Hedland	All townsites	All townsites	Whole district
Quairading	Whole district	Whole district	Whole district
Ravensthorpe	Whole district except areas zoned general agricultural by a town planning scheme	Whole district except areas zoned general agricultural by a town planning scheme	Whole district
Rockingham	Whole district	Whole district	Whole district
Sandstone	All townsites in Sandstone Ward	Sandstone Ward	Sandstone Ward
Serpentine-Jarrahdale	Whole district	Whole district	Whole district

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<b>Column 1 District</b>	<b>Column 2 Class 10 Buildings</b>	<b>Column 3 Part 10</b>	<b>Column 4 Rest of regulations</b>
South Perth	Whole district	Whole district	Whole district
Stirling	Whole district	Whole district	Whole district
Subiaco	Whole district	Whole district	Whole district
Swan	Whole district	Whole district	Whole district
Tammin	Townsite of Tammin	Townsite of Tammin	Whole district
Three Springs	All townsites	All townsites	Whole district
Trayning	Townsites of Trayning, Kununoppin, Yelbeni	Townsites of Trayning, Kununoppin, Yelbeni	Townsites of Trayning, Kununoppin, Yelbeni
Victoria Park	Whole district	Whole district	Whole district
Victoria Plains	Whole district	All townsites	Whole district
Vincent	Whole district	Whole district	Whole district
Wagin	All townsites in Town Ward or Williams loc. 440, 507, 545, 618, 945, 1165 or 5330	Whole district	Whole district
Wandering	Townsite of Wandering and areas zoned rural residential by local laws or a town planning scheme	Whole district	Whole district
Wanneroo	Whole district	Whole district	Whole district
Waroon	Whole district	Whole district	Whole district
West Arthur	All townsites	Whole district	Whole district
Wickepin	All townsites	All townsites	Whole district
Williams	All townsites	Whole district	Whole district
Wiluna	Townsite of Wiluna	Townsite of Wiluna	Townsite of Wiluna

<b>Column 1 District</b>	<b>Column 2 Class 10 Buildings</b>	<b>Column 3 Part 10</b>	<b>Column 4 Rest of regulations</b>
Wongan-Ballidu	Townsites of Wongan Hills, Ballidu, Cadoux, Kondut, Burakin	Townsites of Wongan Hills, Ballidu, Cadoux, Kondut, Burakin	Townsites of Wongan Hills, Ballidu, Cadoux, Kondut, Burakin
Woodanilling	Townsite of Woodanilling	Whole district	Whole district
Wyalkatchem	Whole district	Whole district	Whole district
Wyndham-East Kimberley	Whole district	Whole district	Whole district
Yalgoo	All townsites	All townsites	Whole district
Yilgarn	All townsites	All townsites	All townsites
York	Whole district	Whole district	Whole district
All other districts	Whole district	All townsites	Whole district

**Note 1 — Broomehill**

- (a) Broomehill Suburban Lots 362, 363, 372 to 423, 427 to 432, 438, 445, 446, 603 to 605, 609 and 610.
- (b) Lot 17 to 24 being portion of Kojonup Location 256.
- (c) Kojonup Location 1671.
- (d) Reserves 8163, 10285, 10431 and 17230.

*[Schedule 2 inserted in Gazette 5 Apr 2002 p. 1827-32; amended in Gazette 4 Apr 2003 p. 1026-7; 13 Aug 2004 p. 3251; 18 May 2007 p. 2257; 4 March 2008 p. 739; 22 Jul 2008 p. 3354; 19 May 2009 p. 1663; 4 Aug 2009 p. 3101; 1 Sep 2009 p. 3394.]*

### Notes

- <sup>1</sup> This is a compilation of the *Building Regulations 1989* and includes the amendments made by the other written laws referred to in the following table<sup>1a</sup>. The table also contains information about any reprint.

#### Compilation table

Citation	Gazettal	Commencement
<i>Building Regulations 1989</i>	28 Jul 1989 p. 2261-93	28 Jul 1989 (see r. 2)
<i>Building Amendment Regulations 1991</i>	11 Jan 1991 p. 58-9	11 Jan 1991
<i>Building Amendment Regulations (No. 2) 1991</i>	12 Apr 1991 p. 1638	12 Apr 1991 (see r. 2)
<i>Building Amendment Regulations (No. 3) 1991</i>	31 May 1991 p. 2682-3	31 May 1991
<i>Building Amendment Regulations (No. 4) 1991</i>	12 Jul 1991 p. 3457-8 (erratum 19 Jul 1991 p. 3625)	1 Aug 1991 (see r. 2)
<i>Building Amendment Regulations 1992</i>	26 Jun 1992 p. 2757-60	1 Jul 1992 (see r. 2)
<i>Building Amendment Regulations 1993</i>	12 Nov 1993 p. 6151-3	12 Nov 1993
<i>Building Amendment Regulations 1994</i>	11 Nov 1994 p. 5706-7	11 Nov 1994
<i>Building Amendment Regulations 1995</i>	23 Jun 1995 p. 2442-3	23 Jun 1995
<b>Reprint of the <i>Building Regulations 1989</i> as at 22 Nov 1995</b> (includes amendments listed above)		
<i>Building Amendment Regulations 1996</i>	24 Jun 1996 p. 2863	1 Jul 1996 (see r. 2)
<i>Building Amendment Regulations 1997</i>	20 Jun 1997 p. 2821-36	1 Jul 1997 (see r. 2)
<i>Building Amendment Regulations (No. 2) 1997</i>	20 Jun 1997 p. 2837	1 Jul 1997 (see r. 2)
<b>Reprint of the <i>Building Regulations 1989</i> as at 18 Jul 1997</b> (includes amendments listed above)		

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Building Amendment Regulations 1998</i>	8 May 1998 p. 2369-73	8 May 1998
<i>Building Amendment Regulations (No. 2) 1998</i>	19 Jun 1998 p. 3282-6	19 Jun 1998
<i>Building Amendment Regulations 1999</i>	12 Feb 1999 p. 479-85	12 Feb 1999
<i>Building Amendment Regulations (No. 2) 1999</i>	24 Sep 1999 p. 4666-7	24 Sep 1999
<i>Building Amendment Regulations 2000</i>	28 Jul 2000 p. 4013-14	28 Jul 2000
<b>Reprint of the Building Regulations 1989 as at 2 Mar 2001</b> (includes amendments listed above)		
<i>Building Amendment Regulations 2001</i>	19 Oct 2001 p. 5609-12	5 Nov 2001 (see r. 2)
<i>Building Amendment Regulations (No. 2) 2001</i> <sup>3</sup>	14 Dec 2001 p. 6399-402	18 Mar 2002 (see r. 2)
<i>Building Amendment Regulations 2002</i> <sup>4</sup>	5 Apr 2002 p. 1826-32	5 Apr 2002
<i>Building Amendment Regulations 2003</i>	4 Apr 2003 p. 1026-7	4 Apr 2003
<i>Building Amendment Regulations (No. 2) 2003</i>	30 Sep 2003 p. 4256-8	30 Sep 2003
<i>Building Amendment Regulations 2004</i>	13 Aug 2004 p. 3250-1	13 Aug 2004
<i>Building Amendment Regulations (No. 2) 2004</i>	30 Dec 2004 p. 6949-50	1 Jan 2005 (see r. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<b>Reprint 4: The Building Regulations 1989 as at 11 Mar 2005</b> (includes amendments listed above)		
<i>Building Amendment Regulations 2005</i>	16 Dec 2005 p. 6078-9	16 Dec 2005
<i>Electricity Corporations (Consequential Amendments) Regulations 2006</i> r. 68	31 Mar 2006 p. 1299-357	1 Apr 2006 (see r. 2)
<i>Building Amendment Regulations 2007</i>	4 May 2007 p. 1964-5	4 May 2007

## Building Regulations 1989

Citation	Gazettal	Commencement
<i>Building Amendment Regulations (No. 2) 2007</i>	18 May 2007 p. 2256-7	18 May 2007
<i>Building Amendment Regulations (No. 3) 2007</i>	21 Aug 2007 p. 4174-8	r. 1 and 2: 21 Aug 2007 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Sep 2007 (see r. 2(b))
<i>Building Amendment Regulations (No. 4) 2007</i>	5 Oct 2007 p. 5327-8	r. 1 and 2: 5 Oct 2007 (see r. 2(a)); Regulations other than r. 1 and 2: 6 Oct 2007 (see r. 2(b))
<b>Reprint 5: The Building Regulations 1989 as at 4 Jan 2008</b> (includes amendments listed above)		
<i>Building Amendment Regulations 2008</i>	4 Mar 2008 p. 738-9	r. 1 and 2: 4 Mar 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 5 Mar 2008 (see r. 2(b))
<i>Building Amendment Regulations (No. 2) 2008</i>	18 Apr 2008 p. 1481	r. 1 and 2: 18 Apr 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 1 May 2008 (see r. 2(b))
<i>Building Amendment Regulations (No. 3) 2008</i>	6 Jun 2008 p. 2179-88	r. 1 and 2: 6 Jun 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2008 (see r. 2(b) and <i>Gazette</i> 6 Jun 2008 p. 2179)
<i>Building Amendment Regulations (No. 4) 2008</i>	22 Jul 2008 p. 3353-4	r. 1 and 2: 22 Jul 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 23 Jul 2008 (see r. 2(b))
<i>Building Amendment Regulations (No. 2) 2009</i>	19 May 2009 p. 1663	r. 1 and 2: 19 May 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 20 May 2009 (see r. 2(b))
<b>Reprint 6: The Building Regulations 1989 as at 22 May 2009</b> (includes amendments listed above)		
<a href="#"><i>Building Amendment Regulations 2009</i></a>	<a href="#">31 Jul 2009 p. 3017-24</a>	<a href="#">1 Oct 2009 (see r. 2(b)(i))</a>
<i>Building Amendment Regulations (No. 3) 2009</i>	4 Aug 2009 p. 3101	r. 1 and 2: 4 Aug 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 5 Aug 2009 (see r. 2(b))

Citation	Gazettal	Commencement
<i>Building Amendment Regulations (No. 4) 2009</i>	1 Sep 2009 p. 3393-4	r. 1 and 2: 1 Sep 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 2 Sep 2009 (see r. 2(b))

~~<sup>4a</sup> — On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.~~

**Provisions that have not come into operation**

Citation	Gazettal	Commencement
<del><i>Building Amendment Regulations 2009 r. 3-5<sup>5</sup></i></del>	<del>31 Jul 2009 p. 3017-24</del>	<del>1 Oct 2009 (see r. 2(b)(i))</del>

<sup>2</sup> The Gas Corporation does not exist. The Act that established it was repealed by the *Gas Corporation (Business Disposal) Act 1999* s. 93.

<sup>3</sup> The *Building Amendment Regulations (No. 2) 2001* r. 7 reads as follows:

**7. Transitional**

(1) In this regulation —

***access through a building not of Class 10a*** means access between the area within an enclosure and a part of a building, other than a Class 10a building under the Building Code, to which there is direct or indirect access from outside the enclosure;

***pre-July 1992 pool*** means a swimming pool that —

- (a) was installed before 1 July 1992; or
- (b) was installed on or after 1 July 1992 in accordance with plans, drawings and specifications that were submitted to the local government for approval before that day;

***transitional period*** means the period beginning on the day on which these regulations come into operation and —

- (a) unless paragraph (b) applies, ending on 17 December 2006; or
- (b) if the swimming pool is on premises sold within the period referred to in paragraph (a), ending on the day 3 months after the settlement day for that sale.

- (2) During the transitional period an enclosure for a pre-July 1992 pool may, for the purposes of regulation 38B(1) of the *Building Regulations 1989*, include a wall containing a door or window permitting access through a building not of Class 10a even though —
  - (a) the door or window may not satisfy the requirements of Australian Standard AS 1926.1; and
  - (b) the door may not have been approved by the local government.
- (3) If a swimming pool was installed before 28 July 1989, during the transitional period a gate in its enclosure may open in any direction.

<sup>4</sup> The *Building Amendment Regulations 2002* r. 5 reads as follows:

**5. Transitional**

- (1) In this regulation —

*pre-July 1992 pool* means a swimming pool that —

  - (a) was installed before 1 July 1992; or
  - (b) was installed on or after 1 July 1992 in accordance with plans, drawings and specifications that were submitted to the local government for approval before that day;

*transitional period* means the period beginning on the day on which these regulations come into operation and —

  - (a) unless paragraph (b) applies, ending on 17 December 2006; or
  - (b) if the swimming pool is on premises sold within the period referred to in paragraph (a), ending on the day 3 months after the settlement day for that sale.
- (2) During the transitional period, despite regulation 38B(3) of the *Building Regulations 1989* a building may be included within the area enclosed for a pre-July 1992 pool even though —
  - (a) the building is not a Class 10a building under the Building Code; and
  - (b) any external door or window in the building does not satisfy the requirements of Australian Standard AS 1926.1.

<sup>5</sup> ~~On the date as at which this compilation was prepared, the *Building Amendment Regulations 2009* r. 3-5 had not come into operation. They read as follows:~~



~~3. Regulations amended~~

~~— These regulations amend the *Building Regulations 1989*.~~

~~4. Regulation 38H amended~~

~~— In regulation 38H(1) delete “section 9.16(1) of the Act.” and insert —~~

~~— the *Local Government Act 1995* section 9.16(1).~~

~~5. Part 10A inserted~~

~~— After regulation 38H insert:~~

**Part 10A — Smoke alarms in certain buildings**

**38I. Terms used**

~~(1) In this Part, unless the contrary intention appears —~~

~~— **approved alternative building solution** means a building solution that was approved in accordance with the Building Code by the local government of the district in which the dwelling is located on the basis that the solution met the performance requirement in the Building Code relating to fire detection and early warning (other than the requirements relating to evacuation lighting);~~

~~— **dwelling** means —~~

~~— (a) a class 1 building; or~~

~~— (b) a unit in a class 2 building; or~~

~~— (c) a class 4 dwelling;~~

~~— **electrician** has the meaning given in the *Electricity (Licensing) Regulations 1991* regulation 3(1);~~

~~— **owner**, of a dwelling, means a person who holds an interest in land that entitles the person to the ownership of the dwelling;~~

~~— **residential tenancy agreement** means a residential tenancy agreement to which the *Residential Tenancies Act 1987* applies;~~

~~— **unit**, in the definition of **dwelling**, means a room or suite of rooms, and any associated parts of the building, constituting a single dwelling for the exclusive occupation of the occupant;~~

~~— **10-year life battery** means a battery that is capable of powering a smoke alarm for at least 10 years without the alarm indicating the battery power is low.~~

- ~~— (2) For the purposes of this Part, a smoke alarm —
  - ~~— (a) is connected to the mains power supply if it is electrically connected to a permanent supply of electricity to the dwelling; and~~
  - ~~— (b) is permanently connected if an electrician would ordinarily be required to connect or disconnect the alarm.~~~~
- ~~— (3) For the purposes of this Part, an owner of a dwelling transfers the ownership of it if —
  - ~~— (a) the owner executes an instrument of transfer or conveyance of the interest in land that entitles the owner to the ownership of the dwelling; and~~
  - ~~— (b) the person to whom the interest is to be transferred or conveyed obtains possession of the dwelling under or in anticipation of the transfer or conveyance.~~~~
- ~~— (4) For the purposes of the definition of *dwelling*, the class of a building or a part of a building is its class according to —
  - ~~— (a) its certificate of classification under regulation 20; or~~
  - ~~— (b) if there is no certificate of classification for the building or part — the Building Code.~~~~

**38J. Requirement to have smoke alarms or similar prior to transfer of a dwelling**

- ~~— If an owner of a dwelling transfers the ownership of it, the owner must, to the extent practicable, ensure that at the time of the transfer —
  - ~~— (a) the dwelling has smoke alarms installed so that the dwelling and the alarms comply with the requirements of regulation 38N(1); or~~
  - ~~— (b) if an approved alternative building solution applies in relation to the dwelling — the solution is in effect.~~~~
- ~~— Penalty: a fine of \$5 000.~~

**38K. New owner must install smoke alarms or similar, and right to recover costs**

- ~~— (1) If an owner of a dwelling (the *prior owner*) transfers the ownership of it and fails to comply with regulation 38J, the person to whom the ownership is transferred (the *new owner*) must, within 12 months of the ownership being transferred, ensure that —
  - ~~— (a) the dwelling has smoke alarms installed so that the dwelling and the alarms comply with the requirements of regulation 38N(1); or~~~~

~~—(b) if an approved alternative building solution applies in relation to the dwelling — the solution is in effect.~~

~~— Penalty: a fine of \$5 000.~~

~~—(2) The new owner may recover, in a court of competent jurisdiction, the reasonable costs of complying with subregulation (1) as a debt due from the prior owner.~~

**38L. Requirement to have smoke alarms or similar prior to tenancy**

~~—(1) If an owner of a dwelling lets the dwelling under a residential tenancy agreement, the owner must, to the extent practicable, ensure that, within 14 days after the day on which a person is entitled to enter into occupation of the dwelling under the agreement —~~

~~—(a) the dwelling has smoke alarms installed so that the dwelling and the alarms comply with the requirements of regulation 38N(1); or~~

~~—(b) if an approved alternative building solution applies in relation to the dwelling — the solution is in effect.~~

~~— Penalty: a fine of \$5 000.~~

~~—(2) Subregulation (1) does not apply in relation to residential tenancy agreements entered into with at least one person who was already in occupation of the dwelling as a tenant.~~

~~—(3) The owner of a dwelling rented under a residential tenancy agreement, or made available for such rent, must, to the extent practicable, ensure that —~~

~~—(a) the dwelling has smoke alarms installed so that the dwelling and the alarms comply with the requirements of regulation 38N(3); or~~

~~—(b) if an approved alternative building solution applies in relation to the dwelling — the solution is in effect.~~

~~— Penalty: a fine of \$5 000.~~

~~—(4) Subregulation (3) does not have effect before 1 October 2011, and subregulations (1) and (2) cease to have effect on that day.~~

**38M. Requirement to have smoke alarms or similar prior to hire of a dwelling**

~~—(1) The owner of a dwelling must not make the dwelling available for hire unless —~~

~~—(a) the dwelling has smoke alarms installed so that the dwelling and the alarms comply with the requirements of regulation 38N(3); or~~

~~—(b)— if an approved alternative building solution applies in relation to the dwelling— the solution is in effect.~~

~~—Penalty: a fine of \$5 000.~~

~~—(2)— Subregulation (1) does not have effect before 1 October 2011.~~

**38N. Requirements for smoke alarms**

~~—(1)— The requirements for the purposes of regulation 38J(a), 38K(1)(a) and 38L(1)(a) are that—~~

~~—(a)— the dwelling meets the requirements of the deemed to satisfy provisions about smoke alarms or smoke hazard management (other than the provisions about evacuation lighting) of the Building Code applicable at the time of installation of the alarms; and~~

~~—(b)— each smoke alarm necessary to meet those requirements was installed less than 10 years before the transfer day; and~~

~~—(c)— each smoke alarm referred to in paragraph (b) is in working order; and~~

~~—(d)— if a smoke alarm referred to in paragraph (b) was, at the time of its installation, required to be connected to the mains power supply to meet those requirements—~~

~~—(i)— the alarm is permanently connected to the mains power supply; or~~

~~—(ii)— if the alarm is to be installed at a location in the dwelling where there is no hidden space in which to run the necessary electrical wiring and there is no appropriate alternative location— the alarm has a 10 year life battery that cannot be removed; or~~

~~—(iii)— if, in relation to the alarm, the use of a battery powered smoke alarm has been approved under regulation 38O— the alarm has a 10 year life battery that cannot be removed.~~

~~—(2)— For the purposes of subregulation (1)(a), if the dwelling has 2 or more smoke alarms installed and they were not all installed at the same time, the provisions of the Building Code applicable to the dwelling and the alarms are the provisions applicable at the time that the last alarm necessary to meet the requirements referred to in subregulation (1)(a) and (b) was installed.~~

~~—(3)— The requirements for the purposes of regulation 38L(3)(a) and 38M(1)(a) are that—~~

- ~~— (a) — the dwelling meets the requirements of the deemed to satisfy provisions about smoke alarms or smoke hazard management (other than the provisions about evacuation lighting) of the Building Code applicable at the time of installation of the alarms; and~~
- ~~— (b) — each smoke alarm referred to in paragraph (a) is in working order; and~~
- ~~— (c) — if a smoke alarm referred to in paragraph (a) was, at the time of its installation, required to be connected to the mains power supply to meet those requirements —
  - ~~— (i) — the alarm is permanently connected to the mains power supply; or~~
  - ~~— (ii) — if the alarm is to be installed at a location in the dwelling where there is no hidden space in which to run the necessary electrical wiring and there is no appropriate alternative location — the alarm has a 10 year life battery that cannot be removed; or~~
  - ~~— (iii) — if, in relation to the alarm, the use of a battery powered smoke alarm has been approved under regulation 380 — the alarm has a 10 year life battery that cannot be removed.~~~~
- ~~— (4) — For the purposes of subregulation (3), if the dwelling has 2 or more smoke alarms installed and they were not all installed at the same time, the provisions of the Building Code applicable to the dwelling and the alarms are the provisions applicable at the time that the last alarm necessary to meet the requirements referred to in subregulation (3)(a) was installed.~~
- ~~— (5) — In subregulation (1)(b) —
  - ~~— *transfer day* means the day on which —~~
    - ~~— (a) — the owner transfers the ownership of the dwelling; or~~
    - ~~— (b) — a person is entitled to enter into occupation of the dwelling under a residential tenancy agreement.~~~~

**380. — Local government approval of battery powered smoke alarms**

- ~~— (1) — The local government of the district in which a dwelling is located may approve of the use, in the dwelling or a part of the dwelling, of a battery powered smoke alarm (rather than one that is connected to the mains power supply) if satisfied that, at the time of giving the approval, installing a smoke alarm connected to the mains power supply would involve —
  - ~~— (a) — a sufficient problem of a structural nature; or~~~~

- ~~—(b)— a sufficient problem of any other nature, the cause of which is not within the control of the owner.~~
- ~~—(2)— The local government may give its approval in relation to an alarm that was installed before the approval is to be given.~~
- ~~—(3)— An application for approval must be made in the manner and form approved by the local government, and must include or be accompanied by —~~
  - ~~—(a)— the plans and information required by the local government; and~~
  - ~~—(b)— the fee set by the local government, which cannot exceed \$170.~~
- ~~—(4)— The local government is to be taken to have refused approval if it has not made a decision whether to give approval within 35 days after the later of —~~
  - ~~—(a)— the day on which the person made the application for approval; or~~
  - ~~—(b)— the day on which the person complied with a, or the latest, request by the local government for further plans or information.~~

**38P. — Requirement to maintain certain smoke alarms**

- ~~—(1)— This regulation applies to an owner of a dwelling —~~
  - ~~—(a)— who is also an owner, in relation to the dwelling, within the meaning given in the *Residential Tenancies Act 1987* section 3; or~~
  - ~~—(b)— who makes the dwelling available for hire.~~
- ~~—(2)— The owner must, to the extent practicable —~~
  - ~~—(a)— ensure that each alarm installed in the dwelling is in working order; and~~
  - ~~—(b)— if an alarm was, at the time of its installation, required to be connected to the mains power supply, ensure that the alarm —~~
    - ~~—(i)— is permanently connected to the mains power supply; or~~
    - ~~—(ii)— if the alarm is to be installed at a location in the dwelling where there is no hidden space in which to run the necessary electrical wiring and there is no appropriate alternative location— the alarm has a 10 year life battery that cannot be removed; or~~

- ~~— (iii) — if, in relation to the alarm, the use of a battery powered smoke alarm has been approved under regulation 38O — has a 10 year life battery that cannot be removed;~~
- ~~— and~~
- ~~— (c) — ensure that each alarm installed in the dwelling —~~
  - ~~— (i) — has not reached its expiry date if one is provided on the alarm; or~~
  - ~~— (ii) — is not more than 10 years old if no expiry date is provided on the alarm.~~
- ~~— (3) — An authorised person may inspect a dwelling referred to in subregulation (1) to determine whether the owner is complying with subregulation (2).~~
- ~~— (4) — If the authorised person is satisfied that the owner has failed to comply with subregulation (2), he or she may give the owner a rectification notice.~~
- ~~— (5) — A decision to give a rectification notice is a decision to which the *Local Government Act 1995* Part 9 Division 1 applies and the owner is an affected person for the purposes of that Division.~~
- ~~— (6) — A rectification notice must —~~
  - ~~— (a) — be in the approved form; and~~
  - ~~— (b) — specify the failure to comply; and~~
  - ~~— (c) — specify the time within which the failure to comply must be rectified; and~~
  - ~~— (d) — set out the effect of subregulation (5).~~
- ~~— (7) — A rectification notice may set out what the owner must do to rectify the failure to comply.~~
- ~~— (8) — A person given a rectification notice must comply with it.~~
  - ~~— Penalty: a fine of \$5 000.~~
- ~~— (9) — A local government may authorise a person with appropriate experience and qualifications to be an authorised person for the purposes of this regulation.~~

**38Q. — Infringement notices**

- ~~— (1) — The offences of failing to comply with regulation 38J, 38L(1) or (3), 38M(1) or 38P(8) are prescribed for the purposes of the *Local Government Act 1995* section 9.16(1).~~
- ~~— (2) — The modified penalty that is to be specified in an infringement notice given in relation to an alleged offence under one of those provisions is —~~

~~(a) for an alleged offence under regulation 38P(8) \$1 000;~~  
~~(b) in any other case \$750.~~