

Western Australia

**Local Government (Building Surveyors)
Regulations 2008**

As at 22 Jun 2011

Version 00-d0-02

Extract from www.slp.wa.gov.au, see that website for further information

Local Government (Building Surveyors) Regulations 2008

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Local Government (Building Surveyors) Regulations 2008

Part 1 — Preliminary

1. Citation

These regulations are the *Local Government (Building Surveyors) Regulations 2008*.

2. Commencement

These regulations come into operation as follows:

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day on which the *Local Government (Miscellaneous Provisions) Amendment Act 2007* section 5 comes into operation.

3. Terms used in these regulations

In these regulations, unless the contrary intention appears —

BSCQ means a Building Surveyors Certificate of Qualification granted under regulation 21;

Building Surveyor Level 1 certificate means a Building Surveyor Level 1 certificate granted under regulation 21;

Building Surveyor Level 2 certificate means a Building Surveyor Level 2 certificate granted under regulation 21;

Building Surveyor Technician certificate means a Building Surveyor Technician certificate granted under regulation 21;

CEO means the chief executive officer of the department;

certificate of qualification means a certificate granted under regulation 21;

commencement day means the day on which the *Local Government (Miscellaneous Provisions) Amendment Act 2007* section 5 comes into operation;

Committee means the Building Surveyors Qualifications Committee established by regulation 7;

department means the department of the Public Service principally assisting in the administration of the *Local Government (Miscellaneous Provisions) Act 1960* Part XV;

MBSCQ means a Building Surveyors Certificate of Qualification issued by the Municipal Building Surveyors Qualifications Committee under regulation 12(1) or (2) of the repealed regulations;

repealed regulations means the *Local Government (Qualification of Municipal Officers) Regulations 1984*;

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

Training Accreditation Council means the Training Accreditation Council established under the *Vocational Education and Training Act 1996* section 25(1);

transition period means the period of 5 years beginning on the commencement day.

Part 2 — Qualifications for appointment to the office of building surveyor

4. Qualifications

- (1) For the purpose of section 373A of the Act, during the transition period a person must hold one of the following before the person is appointed to the office of building surveyor of a local government —
 - (a) a Building Surveyor Level 1 certificate;
 - (b) a Building Surveyor Level 2 certificate;
 - (c) a MBSCQ;
 - (d) a BSCQ;
 - (e) a Building Surveyor Technician certificate.
- (2) For the purpose of section 373A of the Act, after the transition period a person must hold one of the following before the person is appointed to the office of building surveyor of a local government —
 - (a) a Building Surveyor Level 1 certificate;
 - (b) a Building Surveyor Level 2 certificate.

Part 3 — Delegation of authority to approve plans of buildings or unauthorised building work

5. Limitation on delegation of authority to approve plans of buildings or unauthorised building work

- (1) Subject to regulation 6, a person to whom a local government may delegate the authority to approve or refuse to approve —
- (a) plans and specifications submitted under section 374 of the Act; or
 - (b) unauthorised building work,
- must be a person employed under a contract of service by the local government or another local government.
- (2) If a delegation of an authority is made under section 374AAB(1) of the Act to a person (the *delegate*), the delegation is subject to the following conditions —
- (a) the delegate must not exercise the authority in relation to —
 - (i) plans and specifications submitted by the delegate under section 374 of the Act; or
 - (ii) an application made by the delegate for the issue of a building approval certificate under section 374AA of the Act;
 - (b) the delegate must not exercise the authority if the delegate —
 - (i) is to be the builder in relation to the building work to be carried out under plans and specifications submitted under section 374 of the Act; or
 - (ii) was the builder in relation to unauthorised building work which is the subject of an application for the issue of a building approval certificate under section 374AA of the Act;

- (c) the delegate must not exercise the authority in relation to a matter in relation to which the delegate has or had an interest of a type referred to in the *Local Government Act 1995* section 5.60(c) or (d).

6. Prescribed qualifications that must be held by delegate of authority to approve plans of buildings or unauthorised building work

- (1) For the purposes of section 374AAB(2) of the Act, during the transition period, the authority to approve or refuse to approve plans and specifications submitted under section 374 of the Act or unauthorised building work in relation to any building must not be delegated to a person unless that person holds one of the following —
 - (a) a Building Surveyor Level 1 certificate;
 - (b) a MBSCQ;
 - (c) a BSCQ.
- (2) For the purposes of section 374AAB(2) of the Act, after the transition period, the authority to approve or refuse to approve plans and specifications submitted under section 374 of the Act or unauthorised building work in relation to any building must not be delegated to a person unless that person holds a Building Surveyor Level 1 certificate.
- (3) Despite subregulations (1) and (2), for the purposes of section 374AAB(2) of the Act, the authority to approve or refuse to approve plans and specifications submitted under section 374 of the Act or unauthorised building work in relation to a building with a maximum floor area of 2 000 m² and not more than 3 storeys may be delegated to a person if that person holds a Building Surveyor Level 2 certificate.
- (4) Despite subregulations (1) and (2), for the purposes of section 374AAB(2) of the Act, the authority to approve or refuse to approve plans and specifications submitted under section 374 of the Act or unauthorised building work in relation

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to a building with a maximum floor area of 500 m² and not more than 2 storeys may be delegated to a person if that person holds a Building Surveyor Technician certificate.

- (5) If a delegation to an individual under section 374(1b) of the Act (as in force before the commencement day) to approve or refuse to approve plans and specifications under section 374 of the Act has not ceased to have effect immediately before the commencement day, that delegation continues to have effect on or after that day as if it had been made under section 374AAB(1)(a) of the Act.

Part 4 — Building Surveyors Qualifications Committee

7. Building Surveyors Qualifications Committee established

The Minister is to establish a committee called the Building Surveyors Qualifications Committee.

8. Membership of Committee

The Committee consists of 5 members appointed by the Minister, of whom —

- (a) one is to be the CEO or an officer of the department, nominated by the CEO; and
- (b) 3 are to be persons who are practising as a building surveyor; and
- (c) one is to be a person with knowledge of building surveyor education and training.

9. Chairperson of the Committee

The CEO or the officer appointed under regulation 8(a) is the chairperson of the Committee.

10. Functions of the Committee

The functions of the Committee are as follows —

- (a) to assess applications for certificates of qualification;
- (b) to grant certificates of qualification;
- (c) to perform the other functions that are conferred on the Committee by these regulations.

11. Term of office

- (1) A member of the Committee appointed under regulation 8(b) or (c) holds office for the term, not exceeding 3 years, specified in the member's instrument of appointment.

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- (2) A member of the Committee appointed under regulation 8(b) or (c) is not to hold office for more than 9 years, consecutively or otherwise.

12. Deputy members

- (1) The Minister may appoint a person to be a deputy of a member and may terminate such an appointment at any time.
- (2) The provisions of regulation 8 that apply in relation to the appointment of a member apply, with any necessary modification, in relation to the appointment of the deputy of that member.
- (3) A deputy of a member may perform the functions of the member when the member is unable to do so by reason of illness, absence or other cause.
- (4) Despite anything in these regulations, a deputy of a member may continue to act as a member, after the occasion for so acting has ceased, for the purpose of completing any function.
- (5) A deputy of a member, while acting as a member, has all the functions of a member.
- (6) No act or omission of a person acting in place of another under this clause is to be questioned on the ground that the occasion for so acting had not arisen or had ceased.

13. Vacation of office by member

- (1) A member of the Committee may resign from office by notice in writing given to the Minister.
- (2) A member of the Committee may be removed from office by the Minister if the member —
- (a) becomes permanently incapable of performing his or her duties; or
 - (b) becomes a person who would not be qualified to be appointed a member; or

- (c) carries out any act or omission that in the opinion of the Minister may cause prejudice or injury to the Committee.

14. Remuneration

A member of the Committee is to be paid such remuneration and allowances (if any) as the Minister, on the recommendation of the Public Sector Commissioner, determines from time to time.

[Regulation 14 amended in Gazette 11 Feb 2011 p. 506-7.]

15. Leave of absence

The Minister may grant leave of absence to a member of the Committee, or a deputy of a member, for such period and upon such terms and conditions as the Minister determines.

16. Secretary

The Committee is to have a secretary, nominated by the CEO from time to time, who must be an officer of the department.

17. Meetings

- (1) The Committee is to hold such meetings as it considers necessary for conducting its affairs.
- (2) At a meeting of the Committee —
 - (a) 3 members form a quorum; and
 - (b) the chairperson, or in his or her absence the person appointed his or her deputy, must preside, or if both are absent or there is no deputy so appointed, the members present at the meeting must elect one of their number to act as chairperson at that meeting; and
 - (c) all questions must be decided by a majority of votes of the members present and voting; and

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- (d) the chairperson, or other person presiding as chairperson, at the meeting has a deliberate vote but no casting vote, and in the event of an equality of votes, the motion must be declared “not carried”.

Part 5 — Certificate of qualification

18. Types of certificate of qualification

The following types of certificate of qualification may be granted by the Committee —

- (a) Building Surveyor Level 1 certificate;
- (b) Building Surveyor Level 2 certificate;
- (c) a Building Surveyors Certificate of Qualification;
- (d) Building Surveyor Technician certificate.

19. Prescribed qualifications

- (1) Under sections 373A(1) and 374AAB(3) of the Act, the qualification for a Building Surveyor Level 1 certificate is —
 - (a) completion of a course of study comparable to that required by the Central Queensland University for the grant by it in 2007 of a Bachelor of Building Surveying and Certification; and
 - (b) 3 years' experience as a building surveyor.
- (2) Under sections 373A(1) and 374AAB(3) of the Act, during the transition period, the following qualifications are also qualifications for a Building Surveyor Level 1 certificate —
 - (a) a BSCQ or a MBSCQ and 5 years' unrestricted experience as a building surveyor for a local government in the period of 10 years immediately before the commencement day;
 - (b) an Advanced Diploma in Building Surveying awarded in relation to a course accredited by the Training Accreditation Council and 5 years' unrestricted experience as a building surveyor for a local government in the period of 10 years immediately before the commencement day.
- (3) Under sections 373A(1) and 374AAB(3) of the Act, the qualification for a Building Surveyor Level 2 certificate is —

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- (a) an Advanced Diploma in Building Surveying awarded in relation to a course accredited by the Training Accreditation Council; and
 - (b) 2 years' experience as a building surveyor.
- (4) Under sections 373A(1) and 374AAB(3) of the Act, during the transition period, the following qualifications are also qualifications for a Building Surveyor Level 2 certificate —
 - (a) a Diploma in Building Surveying awarded in relation to a course accredited by the Training Accreditation Council and 4 years' unrestricted experience as a building surveyor for a local government in the period of 10 years immediately before the commencement day;
 - (b) 6 years' unrestricted experience as a building surveyor for a local government in the period of 10 years immediately before the commencement day.
- (5) Under sections 373A(1) and 374AAB(3) of the Act, during the transition period, the qualification for a BSCQ is —
 - (a) an Advanced Diploma in Building Surveying awarded in relation to a course accredited by the Training Accreditation Council; and
 - (b) 2 years' experience as a building surveyor for a local government.
- (6) Under sections 373A(1) and 374AAB(3) of the Act, during the transition period, the following qualifications are a qualification for a Building Surveyor Technician certificate —
 - (a) a Diploma in Building Surveying awarded in relation to a course accredited by the Training Accreditation Council;
 - (b) 12 months' experience as a building surveyor for a local government in the period of 12 months immediately before the commencement day.

20. Application for certificate of qualification

An application for a certificate of qualification is to be —

- (a) for one and only one type of certificate; and
- (b) in the form approved in writing by the Committee; and
- (c) accompanied by the fee prescribed by regulation 26 for that type of certificate.

21. Grant of certificate of qualification

- (1) The Committee must grant a certificate of qualification of the type applied for if the Committee determines that the applicant has —
 - (a) a prescribed qualification for that type of certificate; or
 - (b) an equivalent interstate or overseas qualification; or
 - (c) sufficient knowledge and experience to qualify the applicant to carry out the functions of persons who hold a certificate of that type.
- (2) For the purpose of making a determination about an applicant's qualifications or knowledge and experience, the Committee may require that an applicant's qualifications or knowledge and experience be assessed by another person or body specified by the Committee and the Committee is not required to make the determination until the assessment has been completed.

22. Certificate

A certificate of qualification granted by the Committee is to be in or substantially in a form approved in writing by the Committee.

23. Cancellation of certificate

- (1) The Committee may at any time cancel the certificate of qualification issued to a person —
 - (a) who has obtained such certificate by fraud or misrepresentation; or

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- (b) who is a bankrupt as defined in the Commonwealth *Bankruptcy Act 1966* or has a substantially similar status under a law applicable in a place where that Act does not apply; or
 - (c) if the Committee is satisfied that the person is no longer capable of exercising, because of mental defect, the duties to which the certificate of qualification relates; or
 - (d) who has been convicted in this State of any crime or misdemeanour or who has been convicted in any place outside this State of any offence which, if committed in this State, would be a crime or misdemeanour; or
 - (e) who is proved to the Committee to have been guilty of fraudulent or dishonest conduct.
- (2) The cancellation takes effect when a notice of the decision is given to the person under regulation 24.

24. Reason for cancellation to be in writing

If the Committee cancels a certificate of qualification, it is to record the grounds on which the decision was based, and its reasons, and is as soon as is practicable, but in any case not later than 30 days after making the decision, to give written notice of the decision, together with those grounds and reasons, to the person to whom the decision relates.

25. Surrender of certificate

- (1) If a person's certificate of qualification is cancelled under these regulations, the person is, within 14 days after the day on which the person is notified by the Committee of the cancellation, to surrender his or her certificate to the Committee.

Penalty: a fine of \$1 000.

- (2) It is a defence to a prosecution for an offence against subregulation (1) if the accused satisfies the court that the failure to surrender the certificate was due to its loss or destruction.

- (3) The cancellation of a certificate of qualification has effect despite any failure to surrender the certificate.

26. Fee

The fee specified in column 2 of the Table to this regulation is payable by a person who applies for a certificate of a type specified in column 1 of the Table opposite that fee.

Fees

Type of certificate	Fee
	\$
Building Surveyor Level 1 certificate	200
Building Surveyor Level 2 certificate	200
BSCQ	150
Building Surveyor Technician certificate	150

Part 6 — Review by State Administrative Tribunal

27. Review

A person whose —

- (a) application for a certificate of qualification is refused by the Committee; or
- (b) certificate of qualification is cancelled by the Committee,

may apply to the State Administrative Tribunal for a review of that refusal or cancellation.

Part 7 — *Local Government (Qualification of Municipal Officers) Regulations 1984 repealed*

28. *The Local Government (Qualification of Municipal Officers) Regulations 1984 repealed*

The Local Government (Qualification of Municipal Officers) Regulations 1984 are repealed.

Notes

¹ This is a compilation of the *Local Government (Building Surveyors) Regulations 2008* and includes the amendments made by the other written laws referred to in the following table ^{1a}.

Compilation table

Citation	Gazettal	Commencement
<i>Local Government (Building Surveyors) Regulations 2008</i>	6 Jun 2008 p. 2205-24	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>Public Sector Reform (Consequential Amendments) Regulations 2011</i> r. 20	11 Feb 2011 p. 502-7	12 Feb 2011 (see r. 2(d))

^{1a} 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

Short title	Number and year	Assent	Commencement
<i>Building Services (Registration) Act 2011</i> s. 112 ²	19 of 2011	22 Jun 2011	To be proclaimed (see s. 2(b))

² On the date as at which this compilation was prepared, the *Building Services (Registration) Act 2011* s. 112 had not come into operation. It reads as follows:

112. *Local Government (Building Surveyors) Regulations 2008* repealed
The *Local Government (Building Surveyors) Regulations 2008* are repealed.