

Western Australia

Building Act 2011

## **Building Regulations 2012**



## Building Regulations 2012

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Western Australia

Building Act 2011

## Building Regulations 2012

### Part 1 — Preliminary

#### 1. Citation

These regulations are the *Building Regulations 2012*.

#### 2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day the *Building Act 2011* Part 14 comes into operation.

#### 3. Terms used

In these regulations —

***alternative solution*** has the meaning given in the Building Code Volume 1 Part A1;

***AS*** followed by a designation refers to the Australian Standard having that designation that is published by Standards Australia;

***assessment method*** has the meaning given in the Building Code Volume 1 Part A1;

***builder work*** has the meaning given in the *Building Services (Registration) Regulations 2011* regulation 13(1);

***Building Code*** means the Building Code of Australia which is volumes 1 and 2, as amended from time to time, of the National

Construction Code series published by, or on behalf of, the Australian Building Codes Board;

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

**Class**, followed by a number or a number and a letter, refers to the classification of a building or incidental structure under regulation 6;

**commencement day** has the meaning given in section 176;

**estimated value**, in relation to building work, means the value of the work estimated in accordance with Schedule 1;

**FESA** means the Fire and Emergency Services Authority of Western Australian established by the *Fire and Emergency Services Authority of Western Australia Act 1998* section 4;

**former provisions** has the meaning given in section 176;

**Heritage Act** means the *Heritage of Western Australia Act 1990*;

**local planning scheme** means a local planning scheme in force under the *Planning and Development Act 2005*;

**performance requirement** has the meaning given in the Building Code Volume 1 Part A1;

**private swimming pool** means a place or premises, including a spa-pool but not a spa-bath, provided for the purpose of swimming, wading or like activities —

- (a) which the public are not entitled to use; and
- (b) which has the capacity to contain water that is more than 300 mm deep;

**section** means section of the Act;

**townsite** means a townsite constituted under the *Land Administration Act 1997* section 26(2).

## Part 2 — General matters

### 4. Approval of manner or form of things (s. 3)

For the purposes of paragraph (a) of the definition of ***approved*** in section 3 the Building Commissioner is a person who may approve the things set out in the Table.

**Table**

Section	Description
s. 16(a)	The manner and form of an application for a building permit or a demolition permit
s. 19(2)	The form of a certificate of design compliance
s. 25(1)	The form of a building permit or a demolition permit
s. 33(2)(a)	The form of a notice of completion
s. 34(2)(a)	The form of a notice of cessation
s. 39(8)	The manner and form of an application for a declaration
s. 54(1)(a)	The manner and form of an application for an occupancy permit or a building approval certificate
s. 56(1)	The form of a certificate of construction compliance
s. 57(1)	The form of a certificate of building compliance

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<b>Section</b>	<b>Description</b>
s. 61(1)	The form of an occupancy permit or modification or a building approval certificate
s. 65(2)(a)	The manner and form of an application to extend the period of duration of certain occupancy permits or building approval certificates
s. 85(1)(a)	The form of a notice about effect on other land
s. 85(1)(i)	The form of a response notice to accompany a notice about effect on other land
s. 110(2)	The form of a building order
s. 128(2)	The manner and form in which a register is to be kept

**5. Building surveyors (s. 3)**

For the purposes of the definition of *building surveyor* in section 3, a class of building service practitioner listed in an item in the Table is prescribed in respect of a type of building or incidental structure corresponding to the same item.

**Table**

<b>Item</b>	<b>Class of building service practitioner</b>	<b>Type of building</b>
1.	Building surveying practitioner level 1	Any type of building or incidental structure

Item	Class of building service practitioner	Type of building
2.	Building surveying practitioner level 2	A building or incidental structure — (a) with a floor area not exceeding 2 000 m <sup>2</sup> ; and (b) not higher than 3 storeys
3.	Building surveying practitioner technician	A building or incidental structure — (a) with a floor area not exceeding 500 m <sup>2</sup> ; and (b) not higher than 2 storeys

**6. Classification of buildings and incidental structures (s. 3)**

For the purposes of the definition of *classification* in section 3, a building or incidental structure has the classification that it has under the Building Code.

**7. Building standards in relation to construction (s. 3)**

- (1) For the purposes of the definition of *building standard* in section 3, the requirements in relation to the technical aspects of the construction of a building or incidental structure of a particular classification are the requirements set out in the Building Code applicable to that classification of building or incidental structure.
- (2) Despite subregulation (1), for the purposes of the definition of *building standard* in section 3, until 1 May 2012 —
  - (a) the requirements set out in Volume 1 Part JO and Volume 2 Parts 2.6 and 3.12 of the Building Code are not applicable; and

- (b) the requirements set out in Volume 1 WA Part JO of Appendices (Variation and Additions) of the Building Code published on 1 May 2010 are applicable to Class 2 to Class 9 buildings and incidental structures; and
  - (c) the requirements set out in Volume 2 Parts 2.6 and 3.12 of the Building Code published on 1 May 2009 are applicable to Class 1 or Class 10 buildings and incidental structures.
- (3) Despite subregulation (1), for the purposes of the definition of ***building standard*** in section 3, in relation to a building or incidental structure that is being renovated, altered, extended, improved or repaired, until 1 May 2013 —
  - (a) the requirements set out in Volume 1 Part JO and Volume 2 Parts 2.6 and 3.12 of the Building Code are not applicable; and
  - (b) the requirements set out in Volume 1 WA Part JO of Appendices (Variation and Additions) of the Building Code published on 1 May 2010 are applicable to Class 2 to Class 9 buildings and incidental structures; and
  - (c) the requirements set out in Volume 2 Parts 2.6 and 3.12 of the Building Code published on 1 May 2009 are applicable to Class 1 or Class 10 buildings and incidental structures.
- (4) Despite subregulation (1), for the purposes of the definition of ***building standard*** in section 3, the requirements in relation to the technical aspects of the construction of a private swimming pool are —
  - (a) each requirement, other than performance requirements GP1.2(a) and P2.5.3, set out in the Building Code applicable to private swimming pools; and
  - (b) each requirement for the enclosure of a private swimming pool set out in regulation 50.
- (5) Despite subregulation (1), for the purposes of the definition of ***building standard*** in section 3, the requirements in relation to

the technical aspects of the assembly, reassembly or securing of a relocated building or a relocated incidental structure are the requirements set out in the Building Code that relate to each of the performance requirements listed in the Table that is applicable to that classification of the building or incidental structure.

**Table**

<b>Section or part of Building Code</b>	<b>Performance requirements</b>
Volume One, Section B — Structural provisions	BP1.1, BP1.2, BP1.3
Volume One, Section C — Fire resistance	CP1, CP2, CP3, CP4, CP5, CP6, CP7, CP8, CP9
Volume One, Section D — Access and egress	DP2, DP3, DP4, DP5, DP6
Volume One, Section E — Services and equipment	EP1.1, EP1.2, EP1.3, EP1.4, EP1.5, EP1.6, EP2.1, EP2.2, EP4.1, EP4.2, EP4.3
Volume One, Section G — Ancillary provisions	GP1.2(b), GP2.1, GP 2.2, GP5.1
Volume Two, Part 2.1 — Structure	P2.1
Volume Two, Part 2.3 — Fire safety	P2.3.1, P2.3.2, P2.3.3, P2.3.4, P2.3.5
Volume Two, Part 2.5 — Safe movement and access	P2.5.1, P2.5.2, P2.5.4

**8.        Building standards in relation to demolition (s. 3)**

For the purposes of the definition of *building standard* in section 3, the requirements in relation to the technical aspects of the demolition of a building or incidental structure are as follows —

- (a) before demolition work commences each electrical, gas, telephone or water service to the building or incidental structure must be disconnected;
- (b) material removed or displaced from a building or incidental structure —
  - (i) must not be placed in such a way as to cause a floor of the building or incidental structure to collapse; and
  - (ii) must be sprayed with water or otherwise treated to prevent any nuisance from dust; and
  - (iii) must be removed from the demolition site; and
  - (iv) must not be burned on the demolition site.

**9.        Compliance with building standards — CodeMark certificates**

- (1) In this regulation —

*building product* includes a building product, method, design, component and system;

*CodeMark certificate* means a certificate, issued under the CodeMark Scheme administered by the Australian Building Codes Board, which certifies that a building product complies with the provisions of the Building Code specified in the certificate.

- (2) For the purposes of demonstrating compliance with a building standard, a CodeMark certificate issued for a building product is sufficient evidence that the building product complies with the provisions of the Building Code specified in the certificate.



**10. Owners of land (s. 5(1))**

- (1) For the purposes of paragraph (c) of the definition of **owner**, in relation to land held in freehold in section 5(1) the following interests are prescribed —
- (a) a leasehold interest in land if the terms of the lease allow the lessee to undertake building work without the consent of each person whose name is registered as a proprietor of the land;
  - (b) an interest as purchaser under a contract to purchase an estate in fee simple in the land;
  - (c) a freehold interest in land vested in an executor or administrator under the *Administration Act 1903* section 8.
- (2) For the purposes of paragraph (a) of the definition of **owner** in relation to Crown land in section 5(1) a person who is a proprietor of the land within the meaning of paragraph (b) of the definition of **proprietor** in the *Transfer of Land Act 1893* section 4(1) is prescribed.

**11. Fees**

The fee for an application of a kind mentioned in an item set out in Schedule 2 is the fee specified in that item in relation to the application.

**12. Building records to be kept (s. 130)**

For the purposes of section 130, the following documents are prescribed —

- (a) the certificate of design compliance, including the plans and specifications that are specified in the certificate, relating to an application for a building permit;
- (b) the certificate of construction compliance that accompanies an application of a kind mentioned in section 46 or 47;

- (c) the certificate of building compliance that accompanies an application of a kind mentioned in Part 4 Division 2 of the Act, other than an application of a kind mentioned in section 46 or 47;
- (d) the notice of completion given under section 33(1) in relation to a building permit;
- (e) if a notice of cessation in relation a building permit is given under section 34(1), the notice of cessation.

**13. Inspection, copies of building records (s. 131)**

For the purposes of paragraph (c) of the definition of *interested person* in section 131(1) the following classes of persons are prescribed —

- (a) a police officer in the course of duty in connection with a situation in which the safety of a person is at risk;
- (b) a member of staff as defined in the *Fire and Emergency Services Authority of Western Australia Act 1998* section 3 in the course of duty in connection with a situation in which the safety of a person is at risk.

**14. Provision of information to Building Commissioner (s. 132)**

- (1) For the purposes of section 132(1) a permit authority must give the Building Commissioner the following information, in respect of the period covered by an annual report —
  - (a) the number of building permits, demolition permits and occupancy permits granted by the permit authority;
  - (b) the number of building approval certificates granted by the permit authority;
  - (c) the total estimated value of building work for which building permits were granted by the permit authority;
  - (d) the number of building orders made by the permit authority;
  - (e) the number of prosecutions for an offence against the Act commenced by the permit authority;

- (f) the number and outcome of prosecutions commenced by the permit authority that have been finalised in the period.
- (2) For the purposes of section 132(3) information requested under section 132(2) must be provided to the Building Commissioner electronically.

## **Part 3 — Building and demolition permits**

### **15. Uncertified applications (s. 14(2))**

For the purposes of section 14(2)(a) and (b), buildings and incidental structures of the following classifications are prescribed —

- (a) Class 1a;
- (b) Class 10.

### **16. Application for building and demolition permits (s. 16)**

- (1) For the purposes of section 16(d), the following information about a building or incidental structure is prescribed —
  - (a) the address of the property on which the building or incidental structure is, or is to be, located;
  - (b) if the application is an application for a building permit, the intended use of the building or incidental structure;
  - (c) if the application is an application for a demolition permit —
    - (i) the classification of the building or incidental structure; and
    - (ii) the occupancy permit number (if any) of the building or incidental structure.
- (2) For the purposes of section 16(d), the following information about the person who proposes to be named as the builder on the building permit, or as the demolition contractor on the demolition permit is prescribed —
  - (a) the postal address of the person;
  - (b) the telephone number or other contact details for the person;
  - (c) if the application is an application for a building permit to carry out builder work —

- (i) the registration number of the person as a building service contractor under the *Building Services (Registration) Act 2011*; or
  - (ii) the number of the owner-builder approval given under the *Building Services (Registration) Act 2011*.
- (3) For the purposes of section 16(m), the following things must accompany an application —
  - (a) evidence that the relevant consents, or court orders, have been obtained under Part 6 Division 3 of the Act if the plans and specifications accompanying an uncertified application or the plans and specification specified in the certificate of design compliance accompanying a certified application show that —
    - (i) part of a building or structure will be placed into, onto or over land beyond the boundaries of the work area; or
    - (ii) land beyond the boundaries of the work area will be adversely affected;
  - (b) if the application is a certified application for a building permit, evidence that each authority referred to in regulation 18(2) that is relevant to the building work has been obtained and is in force;
  - (c) if the application is in respect of a Class 1 or Class 10 building or incidental structure, details of each alternative solution to a building standard that is proposed to be used in the building work;
  - (d) if the application is an application for a demolition permit, evidence of the following —
    - (i) that the approval referred to in regulation 19(1) (if relevant) has been obtained and is in force;
    - (ii) that the notifications referred to in regulation 19(2) (if relevant) have been given.

**17. Certificate of design compliance (s. 19)**

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

- (a) if a declaration under section 39 has been made in respect of the building that is the subject of the application, a statement to that effect;
- (b) if the certificate of design compliance is in respect of a Class 2 to Class 9 building or an incidental structure associated with such a building, a statement about each alternative solution to a building standard that applies to the building work and details of the assessment methods used to establish compliance with the building standard;
- (c) a statement identifying any work that adversely affects land beyond the boundaries of the works land;
- (d) a statement of the building surveyor signing the certificate to the effect that if the building work that is the subject of the application is done in accordance with the plans and specifications that are specified in the certificate, the building work will comply with each authority under a written law listed in regulation 18(2) that applies to the building work;
- (e) if the certificate of design compliance is in respect of a Class 2 to Class 9 building, a statement by the building surveyor signing the certificate —
  - (i) that plans and specifications in sufficient detail to allow assessment of compliance with FESA operational requirements were provided to FESA at least 15 business days before the certificate of design compliance was signed; and
  - (ii) setting out the details of any advice given by FESA in respect of the plans and specifications; and

- (iii) noting any part of the advice given by FESA that the building surveyor does not intend to follow; and
- (iv) that FESA has been advised of any decision not to follow advice given by FESA in respect of the plans and specification and the reasons for that decision.

**18. Grant of building permit (s. 20)**

- (1) For the purposes of section 20(1)(b), building work that is not builder work is specified.
- (2) For the purposes of section 20(1)(n), the following authorities under written laws are prescribed —
  - (a) if the building work involves the construction or installation of any apparatus for the treatment of sewage as defined in the *Health Act 1911* section 3(1), the approval required under section 107(2)(a) or (b) of that Act;
  - (b) if the building work is development as defined in the *Planning and Development Act 2005* section 4, each approval required under that Act in relation to the work;
  - (c) if the building work involves the construction, alteration or extension of an aquatic facility as defined in the *Health (Aquatic Facilities) Regulations 2007* regulation 4, the approval required under Part 2 Division 1 of those regulations;
  - (d) if the building work involves the construction by the owner of private land of a crossing giving access from a public thoroughfare to the private land or to a private thoroughfare serving the private land, the approval required under the *Local Government (Uniform Local Provisions) Regulations 1996* regulation 12(2);
  - (e) if the building work involves the construction of a building in the vicinity of water mains or sewers, the

consents required under the following laws in relation to the work —

- (i) the *Country Areas Water Supply Act 1947* section 43B;
- (ii) the *Country Towns Sewerage Act 1948* section 42;
- (iii) the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909* section 50A(1) or 66(1).

(3) For the purposes of section 20(1)(r), the following notifications are prescribed —

(a) notification of the name, address and contact number of the applicant for a building permit and the name of the permit authority to which the application is made is to be given to the Heritage Council of Western Australia if the place to which the application relates —

- (i) is subject to a Heritage Agreement made under the Heritage Act section 29; or
- (ii) is entered in the Register of Heritage Places established under the Heritage Act section 46; or
- (iii) is subject to a Conservation Order under the Heritage Act section 59; or
- (iv) is subject to an Order in Council made under the Heritage Act section 80;

(b) the notifications required under the following laws —

- (i) the *Country Areas Water Supply Act 1947* section 43A;
- (ii) the *Country Towns Sewerage Act 1948* section 41A;
- (iii) the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909* section 148.

(4) For the purposes of section 20(1)(s), it is a requirement that if the application relates to building work for a Class 2 to Class 9



building the applicant has deposited with FESA the plans and specifications specified in the certificate of design compliance accompanying the application.

**19. Grant of demolition permit (s. 21)**

- (1) For the purposes of section 21(1)(j), if the demolition work is development as defined in the *Planning and Development Act 2005* section 4, each approval required under that Act in relation to the work is prescribed.
- (2) For the purposes of section 21(1)(n) the following notifications are prescribed —
  - (a) notification of the name, address and contact number of the applicant for a demolition permit and the name of the permit authority to which the application is made to be given to the Heritage Council of Western Australia if the place to which the application relates —
    - (i) is subject to a Heritage Agreement made under the Heritage Act section 29; or
    - (ii) is entered in the Register of Heritage Places established under the Heritage Act section 46; or
    - (iii) is subject to a Conservation Order under the Heritage Act section 59; or
    - (iv) is subject to an Order in Council made under the Heritage Act section 80;
  - (b) the notification required under the *Occupational Safety and Health Regulations 1996* regulation 3.119;
  - (c) notification of the intended demolition work to each person who provides electricity, gas, telephone or water services to the place that is the subject of the application.
- (3) For the purposes of section 21(1)(o) it is a requirement for the granting of a demolition permit that the applicant has provided evidence to the local government of the local government district in which the demolition work is to be carried out that the

building or incidental structure to be demolished has been treated so as to ensure that it is not infested by rodents at the time of the demolition.

**20. Time for deciding application for building or demolition permit (s. 23)**

- (1) For the purposes of section 23(1)(a), the period for buildings of all classifications is 25 business days.
- (2) For the purposes of section 23(2)(a), the period for buildings of all classifications is 10 business days.

**21. Form and content of building permit (s. 25)**

For the purposes of section 25(3)(e), the following details about the builder are prescribed —

- (a) the name of the builder;
- (b) if the building permit is for builder work —
  - (i) the registration number of the builder as a building service contractor under the *Building Services (Registration) Act 2011*; or
  - (ii) the number of the owner-builder approval given to the builder under the *Building Services (Registration) Act 2011*.

**22. Form and content of demolition permit (s. 25)**

For the purposes of section 25(4)(c), the following details about the demolition contractor are prescribed —

- (a) the name of the contractor;
- (b) if a licence has been issued to the contractor under the *Occupational Safety and Health Regulations 1996* regulation 3.116(2), the number of that licence.

**23. Application to extend time during which permit has effect (s. 32)**

- (1) In this regulation —  
*expiry day*, in relation to a permit, means the day on which the permit ceases to have effect.
- (2) An application to extend the time during which a permit has effect —
  - (a) must be made to the relevant permit authority in a manner and form approved by the Building Commissioner; and
  - (b) must set out —
    - (i) the reference number of the permit; and
    - (ii) the grounds for requesting the extension; and
    - (iii) the period for which the extension is sought.
- (3) A permit authority may, by written notice, refuse to accept an application made after the expiry day for the permit if —
  - (a) the permit authority is satisfied that the delay in making the application was unreasonable in the circumstances; or
  - (b) the application is made more than 12 months after the expiry date for the permit.
- (4) If an application is made before the expiry day for a permit and has not been determined by the expiry day, the permit continues to have effect on and from expiry day —
  - (a) until the permit authority extends, or refuses to extend the time during which the permit has effect; or
  - (b) until the applicant withdraws the application or gives notice of completion in relation to the permit,

except for any period when the permit does not have effect under section 35.

- (5) If an application made after the expiry date for a permit is accepted by the permit authority, the permit is to be taken to have had effect on and from the day immediately following the expiry day —
- (a) until the permit authority extends, or refuses to extend, the time during which the permit has effect; or
  - (b) until the applicant withdraws the application or gives notice of completion in relation to the permit,

except for any period when the permit does not have effect under section 35.

**24. Extension of time during which permit has effect (s. 32(3))**

- (1) The relevant permit authority may extend the time during which a permit has effect if the permit authority is satisfied that —
- (a) the work, or stage of work, for which the permit was granted has not been completed; or
  - (b) the extension is necessary to allow rectification of defects in the work, or the stage of work, for which the permit was granted.
- (2) If a relevant permit authority extends the time during which a permit has effect the permit authority may impose any condition on the permit that the permit authority could have imposed under section 27.

**25. Review of decision to refuse to extend time during which permit has effect (s. 32(3))**

A person who applies for the extension of the time during which a permit has effect may apply to the State Administrative Tribunal for a review of the decision of the permit authority —

- (a) to refuse to accept an application made after the day on which the permit ceases to have effect; or
- (b) to refuse to extend the time during which the permit has effect; or

- (c) in relation to a condition imposed on the permit when the permit authority extends the time during which the permit has effect.

**26. Approval of new responsible person (s. 35(c))**

- (1) If the responsible person in relation to a permit gives a notice of cessation in accordance with section 34, the owner of a building or incidental structure to which a permit applies may apply to the relevant permit authority for approval of a new responsible person for the work to which the permit applies.
- (2) An application must name, and be signed by, the new person who proposes to be named —
  - (a) as the builder on the building permit; or
  - (b) the demolition contractor on the demolition permit.
- (3) On an application under subregulation (1), a permit authority must —
  - (a) approve a new person to be named as the builder on the building permit if the permit authority is satisfied of the matters mentioned in section 20(1)(b)(i) to (iii) in relation to the person; or
  - (b) approve a new person to be named as the demolition contractor on the demolition permit if the permit authority is satisfied of the matters mentioned in section 21(1)(b) in relation to the person.
- (4) If a permit authority approves a new responsible person in relation to a permit, the permit authority must amend the details set out in the permit accordingly.

**27. Required inspection and tests: Class 2 to Class 9 buildings (s. 36(2)(a))**

- (1) Inspections and tests that are to be conducted during or at the completion of building work for a Class 2 to Class 9 building are tests to assess compliance with the building standards of

each system referred to in column 1 of the Table in Schedule 3 that is required by the building standards to be installed in the building.

- (2) The inspections and tests are to be conducted at the time set out in respect of the system in column 2 of the Table in Schedule 3.

**28. Required inspection: enclosure of private swimming pool (s. 36(2)(a))**

The inspection that is to be conducted at the completion of building work for an enclosure of a private swimming pool is an inspection to assess whether the pool enclosure complies with the requirements in regulation 50.

**29. Inspection certificates (s. 36(2)(h) and (j))**

- (1) A person who conducts an inspection or test referred to in regulation 27 or 28 must complete an inspection certificate in respect of the inspection or test that contains the following information —
  - (a) the number of the building permit for the building work inspected or tested;
  - (b) a description of the purpose, extent and outcome of the inspection or test;
  - (c) the date and time the inspection or test was conducted;
  - (d) the name, contact details and qualifications of the person conducting the inspection or test;
  - (e) any other document or other evidence of the outcome of the inspection or test that the person conducting the inspection or test considers relevant.
- (2) The person who completes an inspection certificate in respect of an inspection or test must provide the certificate to the person named as the builder on the building permit as soon as is reasonably practicable.

**30. Transitional provisions (s. 203)**

- (1) Section 17 applies in respect of an application for a building licence that is to be taken to be an application for a building permit under section 178(4) as if the application were an uncertified application.
- (2) Section 23(1) applies in respect of an application for a building licence that is to be taken to be an application for a building permit under section 178(4) as if the application was an uncertified application made on commencement day.

## **Part 4 — Building standards**

### **31. Term used: application**

In this Part —

**application**, in relation to a building standard, means —

- (a) an application for a declaration that the building standard does not apply to the building, incidental structure or demolition work that is the subject of the application; or
- (b) an application for a declaration that the building standard applies in a modified way to the building, incidental structure or demolition work that is the subject of the application.

### **32. Statements to accompany application (s. 39(8)(b))**

- (1) An application in relation to a building standard must be accompanied by —
  - (a) a statement by an independent building surveyor setting out —
    - (i) each risk to people, property or the environment that the building standard, if applied, prevents or minimises; and
    - (ii) how each risk is quantified and measured for the building, incidental structure or demolition work that is the subject of the application; and
    - (iii) if, and the extent to which, a risk would be increased if the building standard did not apply, or was modified in the way proposed by the applicant;
  - and
  - (b) a statement of a second independent building surveyor, who has been approved by the Building Commissioner for the purposes of this paragraph, confirming that the



second independent building surveyor has reviewed, and agrees with, the statement referred to in paragraph (a); and

- (c) a statement of the applicant setting out the reasons for the applicant's opinion that making the declaration on the application —
  - (i) is in the public interest; or
  - (ii) is consistent with the purpose of a written law or a Commonwealth law specified in the applicant's statement.
- (2) For the purposes of subregulation (1) a building surveyor is an independent building surveyor in relation to an application if —
  - (a) the building surveyor is neither an owner, nor an employee of the owner, of the land on which —
    - (i) the building or incidental structure that is the subject of the application is, or is proposed to be, located; or
    - (ii) the demolition work is proposed to be done;
  - and
  - (b) the building surveyor is neither the person, nor an employee of the person, who is or proposes to be —
    - (i) named as the builder on a building permit to do building work in respect of the building or incidental structure; or
    - (ii) named as the demolition contractor on a demolition permit to do the demolition work.

**33. Decisions on applications (s. 39(9)(a))**

- (1) In this regulation —

**decision** means a decision of the Building Commissioner, on an application in relation to a building standard —

  - (a) to not declare that a building standard does not apply; or

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- (b) to not modify a building standard; or
  - (c) to modify a building standard in a way different from that proposed by the applicant.
- (2) The Building Commissioner must —
  - (a) record the grounds on which a decision is based and the reasons for the decision; and
  - (b) as soon as is practicable, but in any case not later than 5 days after making the decision, give to the applicant written notice of the decision together with those grounds and reasons, and the person's right of review under section 120.

**34. Revoking or amending declarations (s. 39(9)(b))**

If the Building Commissioner makes a declaration on an application in relation to a building standard, the Building Commissioner may revoke or amend the declaration if he or she becomes aware of any of the following —

- (a) an appropriate building solution that meets the building standard;
- (b) a change to the building standard;
- (c) a change to the risk to people, property or the environment that the building standard, if applied, prevents or minimises;
- (d) a change to the written law or Commonwealth law the purpose of which had been consistent with the declaration;
- (e) an error in a statement that accompanied the application under regulation 32(1).

## **Part 5 — Occupancy permits and building approval certificates**

### **35. Display of occupancy permit details (s. 42(a))**

For the purposes of section 42(a) the following information about, or contained in, an occupancy permit must be displayed at or near the principal entrance to each part of the building to which the occupancy permit relates in a manner that is clearly visible to occupiers and other persons using the building —

- (a) the name or other description of the building;
- (b) the classification of the building;
- (c) the use authorised by the occupancy permit;
- (d) the name of the permit authority for the building.

### **36. Certificate of building compliance (s. 57)**

- (1) For the purposes of section 57(2)(c), the following authorities under written laws, as relevant to the building or incidental structure, are prescribed —
  - (a) an approval required under the *Health Act 1911* section 107(2)(a) or (b);
  - (b) an approval required under the *Planning and Development Act 2005*;
  - (c) an approval required under the *Health (Aquatic Facilities) Regulations 2007* Part 2 Division 1;
  - (d) an approval required under the *Local Government (Uniform Local Provisions) Regulations 1996* regulation 12(2).
- (2) For the purposes of section 57(2)(d) a certificate of building compliance must contain the following things —
  - (a) if a declaration under section 39 has been made in respect of the building, a statement to that effect;

- (b) if the certificate of building compliance is to accompany an application mentioned in section 51(2) or (3), plans and specifications that show how the building complies with each building standard that applies to the building or incidental structure;
- (c) if an alternative solution was used to comply with a building standard, a statement about the alternative solution and details of the assessment methods used to establish compliance with the building standard.

**37.      Grant of occupancy permit or building approval certificate (s. 58)**

For the purposes of section 58(1)(j), the following authorities under written laws, as relevant to the building or incidental structure, are prescribed —

- (a) an approval required under the *Health Act 1911* section 107(2)(a) or (b);
- (b) an approval required under the *Planning and Development Act 2005*;
- (c) an approval required under the *Health (Aquatic Facilities) Regulations 2007* Part 2 Division 1;
- (d) an approval required under the *Local Government (Uniform Local Provisions) Regulations 1996* regulation 12(2).

**38.      Time for granting occupancy permit or building approval certificate (s. 59)**

For the purposes of section 59(1)(a)(i) the period for deciding whether or not to grant or modify an occupancy permit or grant a building approval certificate is 10 business days.

**39.      Occupancy permit and building approval certificates  
          (s. 61(2))**

- (1) In this regulation —  
*licensed surveyor* has the meaning given in the *Licensed Surveyors Act 1909* section 3(1).
- (2) For the purposes of section 61(2)(g) an occupancy permit, a form of modification or a building approval certificate that is applied for under section 50(1) or (2) must set out the details of any part of the building or incidental structure that encroaches beyond the boundaries for the land on which the building or incidental structure is located in the form of a survey plan prepared by a licensed surveyor.

**40.      Extension of period of duration of time limited occupancy  
          permit or building approval certificate (s. 65)**

- (1) In this regulation —  
*application* means an application made under section 65(1);  
*expiry day*, in relation to an occupancy permit or a building approval certificate, means the day on which the permit or certificate ceases to have effect.
- (2) A permit authority may, by written notice, refuse to accept an application made after the expiry day for the occupancy permit or building approval certificate if —
  - (a) the permit authority is satisfied that the delay in making the application was unreasonable in the circumstances;  
or
  - (b) the application is made more than 30 days after the expiry date for the permit.

- (3) If an application is made before the expiry day for an occupancy permit or a building approval certificate and has not been determined by the expiry day, the permit or certificate continues to have effect on and from expiry day until —
  - (a) the permit authority extends or refuses to extend the permit or certificate; or
  - (b) the applicant withdraws the application; or
  - (c) a notice of completion in respect of the building to which the permit or certificate relates is given to the permit authority; or
  - (d) a period of 30 days has elapsed since the expiry of the building permit for the building.
- (4) If an application made after the expiry day for an occupancy permit or a building approval certificate is accepted by the permit authority, the permit or certificate is to be taken to have had effect on and from the day immediately following the expiry day until —
  - (a) the permit authority extends or refuses to extend the permit or certificate; or
  - (b) the applicant withdraws the application; or
  - (c) a notice of completion in respect of the building to which the permit or certificate relates is given to the permit authority; or
  - (d) a period of 30 days has elapsed since the expiry of the building permit for the building.
- (5) If a permit authority refuses to extend the time during which an occupancy permit or a building approval certificate has effect or extends the permit or certificate for a shorter period than the period requested by the applicant, the permit authority must —
  - (a) record the grounds on which the decision is based and the reasons for the decision; and
  - (b) as soon as is practicable, but in any case not later than 5 business days after making the decision, give to the

applicant written notice of the decision together with those grounds and reasons, and the person's right of review under section 121(2).

**Part 6 — Circumstances in which building, demolition or occupancy permits not required**

**41. Building work for which building permit is not required (s. 9(1)(b))**

- (1) A building permit is not required for the following building work —
  - (a) building work for a Class 10 building or incidental structure that is located, or to be located, in a local government district specified in column 1 of the Table in the area specified for that district in column 2 of the Table;
  - (b) building work for a building or incidental structure that is not a Class 10 building or incidental structure and that is located, or to be located, in a local government district specified in column 1 of the Table in the area (if any) specified for that district in column 3 of the Table.
- (2) In subregulation (1)(a) and (b) —  
**Table** means the Table in Schedule 4 clause 1.
- (3) A building permit is not required for building work of a kind described in the Table in Schedule 4 clause 2.
- (4) A builder who constructs, erects, assembles or places a temporary office, shed or sanitary facility in the circumstances described in item 3 in the Table in Schedule 4 clause 2 must not, without the written approval of the permit authority, allow the office, shed or sanitary facility to remain on the land after the completion of the building work in connection with which it was constructed, erected, assembled or placed.

Penalty: a fine of \$5 000.



**42. Demolition work for which demolition permit not required (s. 10(c))**

A demolition permit is not required for the following demolition work —

- (a) demolition of a Class 10 building or incidental structure if —
  - (i) the floor area of the building does not exceed 40 m<sup>2</sup>; and
  - (ii) the demolition work will not adversely affect the safety and health of the occupants or other users of the building or incidental structure or of the public; and
  - (iii) the building or incidental structure is not the subject of an order, agreement or permit under the Heritage Act;
- (b) demolition work for which a demolition licence was not required under the former provisions if —
  - (i) the demolition work commenced before commencement day; or
  - (ii) a contract to do the demolition work was entered into before commencement day.

**43. Buildings and incidental structures for which occupancy permit not required (s. 41(2))**

An occupancy permit is not required for —

- (a) a Class 1 or Class 10 building or incidental structure; or
- (b) a building for which a building licence was not required under the former provisions if —
  - (i) building work for the building commenced before commencement day; or
  - (ii) a contract to do the building work was entered into before commencement day.

## **Part 7 — Work affecting other land**

### **44. Owner of land for purposes of Part 6 of Act**

For the purposes of Part 6 of the Act, owner, in relation to land held in freehold, means a person referred to in paragraph (a) or (b) of the definition of *owner*, in relation to land held in freehold in section 5(1).

### **45. Content of notice about effect on other land (s. 85)**

- (1) For the purposes of section 85(1)(b) a notice is to set out the proposed time frame within which the notifiable event may occur (if known).
- (2) For the purposes of section 85(1)(j) a notice is to be accompanied by plans and specifications for any work, building or structure that may affect the affected land that contain sufficient detail to show how the notifiable event will affect the land.

## **Part 8 — Existing buildings**

### **Division 1 — General**

**46. Building standards to apply to relocated buildings and incidental structures**

If an existing building or incidental structure is relocated, the building or incidental structure, when reassembled or secured at the new location, must comply with —

- (a) the building standards referred to in regulation 7(5); and
- (b) to the extent that there is not a building standard referred to in regulation 7(5) that is relevant — the requirements of the written law applicable at the time of its construction.

**47. Notification of change of classification of certain buildings and incidental structures**

- (1) The owner of an existing building or incidental structure that is of a classification listed in column 2 of an item in the Table must not permanently change the classification of the building or incidental structure to a classification listed in column 3 of that item unless the owner has given written notice to the relevant permit authority at least 10 business days before the proposed change.

**Table**

<b>Column 1 Item</b>	<b>Column 2 Existing classification</b>	<b>Column 3 Proposed classification</b>
1.	Class 10a	Class 1
2.	Class 1a	Class 1b

Penalty: a fine of \$5 000.

- (2) The written notice must include or be accompanied by evidence that the building or incidental structure complies with the building standards applicable to the proposed classification of the building or incidental structure.

### **Division 2 — Private swimming pools**

#### **48. Terms used**

In this Division —

***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;

***approved alternative requirement*** means a requirement that has been approved in accordance with regulation 51(2) by the permit authority for the private swimming pool;

***approved door*** means a door that has been approved in accordance with regulation 51(3) by the permit authority for the private swimming pool;

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

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

#### **49. Application of this Division**

This Division applies in respect of a private swimming pool that is located in a local government district specified in column 1 of the Table in Schedule 5 in the area specified for that district in column 2 of that Table.

#### **50. Enclosure of private swimming pool**

- (1) Each owner and occupier of premises on which there is a private swimming pool containing water that is more than 300 mm deep must ensure that there is installed or provided around the pool an enclosure that restricts access by young children to the pool and its immediate surrounds.

Penalty: a fine of \$5 000.

- (2) For the purposes of subregulation (1), the immediate surrounds of a private swimming pool that is at the rear of premises may include any part of the rear portion of the premises.
- (3) If a building other than a Class 10 building is included within the enclosure around a private swimming pool all external doors and windows in that building must satisfy the requirements of AS 1926.1.
- (4) An enclosure is suitable for the purposes of subregulation (1) if —
  - (a) it consists of a fence, wall, gate or other barrier, or a combination of them; and
  - (b) any fence, wall, gate or other barrier included in the enclosure is in accordance with —
    - (i) the requirements of AS 1926.1; or
    - (ii) approved alternative requirements;and
  - (c) any wall comprising the enclosure has no means of access through a building other than —
    - (i) a window that is in accordance with the requirements of AS 1926.1; or
    - (ii) an approved door.
- (5) If a boundary fence of the premises is a part of the enclosure of a private swimming pool, the boundary fence satisfies the requirements of clauses 2.3, 2.6 and 2.7 of AS 1926.1 if all those requirements are satisfied in relation to either side of the fence.

**51. Approvals by permit authority**

- (1) In this regulation —  
***person with a disability*** means a person who has been issued a certificate given by the National Disability Services (ACN 008445485), registered under the *Corporations Act 2001*

(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.

- (2) A permit authority may approve requirements alternative to the requirements of regulation 50(4)(b) if it is satisfied that the alternative requirements will restrict access by young children to the private swimming pool as effectively as if there were compliance with AS 1926.1.
- (3) A permit authority may approve a door for the purposes of regulation 50(4)(c)(ii) if the door is in accordance with the requirements of AS 1926.1 and —
  - (a) in the opinion of the permit authority, a fence or barrier satisfying regulation 50 between the building and the private swimming pool would cause —
    - (i) a significant problem of a structural nature; or
    - (ii) a significant problem of any other nature, the cause of which is not within the control of the owner or occupier;
  - or
  - (b) the private swimming pool is totally enclosed by a building; or
  - (c) in the opinion of the permit authority, a fence or barrier satisfying regulation 50 between the building and the private swimming pool would create a significant problem for a person with a disability who is resident at the premises and wishes to have access to the pool.
- (4) In deciding whether to give approval under subregulation (3) a permit authority is required to have regard to whether or not a young child resides at the premises.

**52. Concessions for pre-November 2001 private swimming pools**

- (1) This regulation applies to a private 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) For the purposes of regulation 50(1), the immediate surrounds of a private swimming pool to which this regulation applies may include any part of the premises on which the pool is located.
- (3) The enclosure required by regulation 50 may include a wall that contains a door permitting access through a building if that door satisfies the requirements of AS 1926.1.

**53. Inspections of pool enclosures**

- (1) The local government for the district in which a private swimming pool containing water that is more than 300 mm deep is located must arrange for an authorised person to inspect the pool enclosure at intervals of no more than 4 years for the purpose of monitoring whether the provisions in regulations 50 and 52 are being complied with.
- (2) A local government may, for a financial year, fix the charge to be imposed on each owner or occupier of land on which there is a private swimming pool containing water that is more than 300 mm deep, to meet the estimated cost in that financial year of carrying out the inspections mentioned in subregulation (1), but the charge fixed —
  - (a) must not exceed the estimated average cost to the local government of carrying out inspections in that year; and
  - (b) must not to exceed \$55.

**54. Transitional provisions — persons authorised to carry out inspections of private swimming pools**

- (1) In this regulation —

**repeal day** means the day on which section 153 comes into operation;

**repealed provisions** means the *Local Government (Miscellaneous Provisions) Act 1960* as in force immediately before repeal day.

- (2) For the purposes of section 93(2)(d) any of the following persons is to be taken to be an authorised person in relation to the inspection of private swimming pool enclosures for the period commencing on repeal day and ending on the day that is 5 years after that day —

- (a) a person who was an authorised person for the purposes of section 245A of the repealed provisions immediately before repeal day;
- (b) a person with appropriate experience or qualifications authorised by the local government for the purposes of this regulation.

**Division 3 — Smoke alarms**

**55. Terms used**

- (1) In this Division —

**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;

**approved alternative building solution** means a building solution that has been approved by the local government of the district in which the dwelling is located on the basis that the solution meets 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 one or more occupants.

- (2) For the purposes of this Division, 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 Division, 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.

**56. Requirement to have smoke alarms or similar prior to transfer of 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 60(2); 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.

**57. 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 56, 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 60(2); 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.

**58. Requirement to have smoke alarms or similar prior to tenancy**

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 60(2); 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.

**59. Requirement to have smoke alarms or similar prior to hire of dwelling**

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 60(2); 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.

**60. Requirements for smoke alarms**

- (1) In this regulation —  
***relevant day*** —

- (a) in relation to a dwelling the ownership of which is transferred, means the day on which the owner transfers the ownership of the dwelling;
- (b) in relation to a dwelling that is rented under a residential tenancy agreement, means the day on which a person is entitled to enter into occupation of the dwelling under the agreement;

- (c) in relation to a dwelling that is made available for hire, means the day on which the building is hired.
- (2) The requirements for the purposes of regulation 56(a), 57(1)(a), 58(a) and 59(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 relevant 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 61 — the alarm has a 10 year life battery that cannot be removed.
- (3) For the purposes of subregulation (2)(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 (2)(a) and (b) was installed.

**61. 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.

**62. 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 61 — 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.

## **Part 9 — Transitional provisions relating to *Local Government (Miscellaneous Provisions) Act 1960***

**63. Notice to be given before commencing building or demolition work**

- (1) A person who intends to commence any building work or demolition work or do any other thing by which a street, way or other public place in a district may be obstructed or rendered dangerous or inconvenient to persons passing over or near must —
- (a) give written notice to the local government of the district at least 3 days before commencing the work or doing the thing; and
  - (b) put up such hoardings, fences, footway or other protective structures as the local government reasonably requires for the purpose of public safety.

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

- (2) A person who intends to demolish or remove a building in a city, town or townsite must give written notice to the local government for the district in which the building is located at least 7 days before commencing the demolition or removal.

**64. No materials to be deposited on streets without licence**

- (1) A person must not deposit stones, bricks, lime, rubbish, timber, iron, or other materials on a street, way or other public place, or make an excavation on land abutting or adjoining a street, way or other public place, unless —
- (a) the person is authorised to do so under a written law; or
  - (b) the person —
    - (i) does so in accordance with a licence in writing from the local government in whose district the street, way, public place or land is situated; and

**r. 64**

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- (ii) in the case of an excavation, has securely fenced off the place where the excavation is to be made from the street, way or other public place.

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

- (2) A licence must set out the purpose for which it is granted.
- (3) The local government may grant a licence subject to such conditions as the local government reasonably requires, including conditions relating to the erection of hoardings, fences, walkways or other protective structures for public safety.
- (4) The local government may charge a licence fee of \$1 per month or part of a month for each m<sup>2</sup> of the street, way or public place that is enclosed by a hoarding or fence.
- (5) The local government may, before granting the licence, require the applicant to deposit with the local government a sum sufficient in the opinion of the CEO of the local government to cover the cost of repairing damage caused by the licensee to the street, footpath or kerb, to be retained by the local government until the damage, if any, is made good by the licensee.
- (6) If the repair work is not done by the licensee within such time as the CEO of the local government thinks reasonable, the local government may do the work and deduct the cost from the deposit or, if the deposit is insufficient to meet the cost, apply the deposit in part payment of the cost, and recover the balance in a court of competent jurisdiction.
- (7) If the local government refuses to grant the licence or in granting the licence imposes conditions, a person dissatisfied with the refusal or the conditions may apply to the State Administrative Tribunal for a review of the decision with which the person is dissatisfied.
- (8) A person who, in accordance with a licence, erects a hoarding, fence, walkway or other protective structure must keep and



maintain it in good condition, to the satisfaction of the CEO of the local government, during such time as the CEO thinks necessary for the public safety and convenience.

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

- (9) A person who, in connection with an excavation, erects a hoarding, fence or other obstruction in a street, way or other public place must —
- (a) cause it to be sufficiently lighted every night from sunset to sunrise to prevent mishaps; and
  - (b) within a reasonable time after being required in writing to do so by the local government —
    - (i) remove the hoarding, fence or other obstruction; and
    - (ii) fill in the excavation; and
    - (iii) repair any damage that the person has done to the street, footpath or kerb.

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

**65. Hoardings erected and materials deposited otherwise than as permitted by licence may be removed**

If a person —

- (a) erects or sets up in or on a street, way or other public place in a district, a hoarding, fence, scaffold or enclosure; or
- (b) makes an excavation on land abutting or adjoining a street, way or other public place except where the excavation is securely fenced off from the street, way or other public place; or

**r. 66**

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- (c) deposits stone, bricks, lime, rubbish, timber, iron, or other materials in or on a street, way or other public place —
  - (i) without a licence from the local government; or
  - (ii) having obtained a licence —
    - (I) does so otherwise than in accordance with the licence; or
    - (II) permits any of those things to remain beyond the time stated in the licence;
- or
- (d) fails to keep a hoarding, fence or other protective structure in good repair,

the local government may do any of the following —

- (e) fill in the excavation;
- (f) pull down the hoarding, fence, scaffold or enclosure;
- (g) remove the materials comprising a hoarding, fence, scaffold or enclosure or any stone, bricks, mortar, lime, or other building materials contained within the enclosure or deposited in or on the street, way or other public place and deposit the materials in such place as the local government thinks fit;
- (h) by written notice served on the person require the person to pay to the local government the expenses of doing any of the things referred to in paragraphs (e) to (g) and recover the expenses in a court of competent jurisdiction.

**66. Damage done to footpaths, drains etc. to be made good**

- (1) A person who, in erecting or setting up in a street, way or other public place in a district, a hoarding, fence, or scaffolding, damages a footpath or roadway of the street, way or other public place, or a kerb, water-table or drain, must make good the

damage to the satisfaction of the CEO of the local government for that district.

- (2) If the person who owns or erects the hoarding, fence or scaffold does not, to the satisfaction of the CEO, make good and repair the footpath, roadway, kerb, water-table or drain, the local government may —
- (a) cause the repairs and reinstatement to be done; and
  - (b) by written notice served on the person require the person to pay to the local government the expenses of doing so, together with such further costs, charges and expenses, if any, as are incurred by reason of the omission, and may recover the expenses, costs and charges in a court of competent jurisdiction.

**67. While building is in progress footpath to be covered**

- (1) A local government may, by written notice served on a person, require the person to cover a footpath to prevent inconvenience to the public or danger from falling materials during any period in which the person —
- (a) erects in a district the ground floor of a building abutting a footpath of a street, way or other public place; or
  - (b) carries out plastering, painting or decorating operations above the ground floor of a building abutting a footpath of a street, way or other public place.
- (2) A person must comply with a notice under subregulation (1).  
Penalty: a fine of \$5 000 and a daily penalty of \$100 for each day during which the offence continues.
- (3) A person who is dissatisfied with the requisition of the local government may apply to the State Administrative Tribunal for a review of the decision to make the requisition.

**68. Expiry of Part**

This Part expires on the day that is one year after the day on which the rest of these regulations come into operation under regulation 2(b).

## **Schedule 1 — Estimated value of building work**

[r. 3]

**1. Terms used**

In this Schedule —

**GST** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth);

**relevant components** means —

- (a) all goods (including manufactured goods forming part of the work); and
- (b) labour; and
- (c) services necessary; and
- (d) fees payable; and
- (e) overheads to be met; and
- (f) profit margin.

**2. Estimated value of building work**

(1) For the purposes of estimating the value of building work —

- (a) where the work is to be carried out under a contract and the contract price includes value for at least each of the relevant components — the estimated value of the work is the contract price (including the GST); and
- (b) where the work is to be carried out —
  - (i) other than under a contract; or
  - (ii) under a contract the contract price for which does not include value for each of the relevant components,the estimated value of the work is the sum of the value (including the GST) of the relevant components.

(2) If building work includes building work in respect of which a building permit is in effect, the estimated value of the building work is reduced by the estimated value of the building work to which the building permit applies.

**cl. 3**

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**3.      Estimated value of unauthorised building work**

The estimated value of unauthorised building work is the sum of the estimated current value (including GST) of the relevant components.

## Schedule 2 — Fees

[r. 11]

### Division 1 — Applications for building permits, demolition permits

Item	Application	Fee
1.	Certified application for a building permit (s. 16(1)) —	
	(a) for building work for a Class 1 or Class 10 building or incidental structure	0.19% of the estimated value of the building work as determined by the relevant permit authority, but not less than \$90
	(b) for building work for a Class 2 to Class 9 building or incidental structure	0.09% of the estimated value of the building work as determined by the relevant permit authority, but not less than \$90
2.	Uncertified application for a building permit (s. 16(1))	0.32% of the estimated value of the building work as determined by the relevant permit authority, but not less than \$90
3.	Application for a demolition permit (s. 16(1)) —	
	(a) for demolition work in respect of a Class 1 or Class 10 building or incidental structure	\$90
	(b) for demolition work in respect of a Class 2 to Class 9 building	\$90 for each storey of the building
4.	Application to extend the time during which a building or demolition permit has effect (s. 32(3)(f))	\$90

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**Division 2 — Application for occupancy permits,  
building approval certificates**

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<b>Item</b>	<b>Application</b>	<b>Fee</b>
1.	Application for an occupancy permit for a completed building (s. 46)	\$90
2.	Application for a temporary occupancy permit for an incomplete building (s. 47)	\$90
3.	Application for modification of an occupancy permit for additional use of a building on a temporary basis (s. 48)	\$90
4.	Application for a replacement occupancy permit for permanent change of the building's use, classification (s. 49)	\$90
5.	Application for an occupancy permit or building approval certificate for registration of strata scheme, plan of re-subdivision (s. 50(1) and (2))	\$10 for each strata unit covered by the application, but not less than \$100
6.	Application for an occupancy permit for a building in respect of which unauthorised work has been done (s. 51(2))	0.18% of the estimated value of the unauthorised work as determined by the relevant permit authority, but not less than \$90



<b>Item</b>	<b>Application</b>	<b>Fee</b>
7.	Application for a building approval certificate for a building in respect of which unauthorised work has been done (s. 51(3))	0.38% of the estimated value of the unauthorised work as determined by the relevant permit authority, but not less than \$90
8.	Application to replace an occupancy permit for an existing building (s. 52(1))	\$90
9.	Application for a building approval certificate for an existing building where unauthorised work has not been done (s. 52(2))	\$90
10.	Application to extend the time during which an occupancy permit or building approval certificate has effect (s. 65(3)(a))	\$90

**Division 3 — Other applications**

<b>Item</b>	<b>Application</b>	<b>Fee</b>
1.	Application as defined in regulation 31 (for each building standard in respect of which a declaration is sought)	\$2 000

**Schedule 3 — Inspections or tests of systems**

[r. 27]

**1. Term used: EP**

In this Schedule —

**EP**, followed by a number, means the performance requirement of that description set out in the Building Code.

**Table**

<b>Column 1</b> <b>System to be tested</b>	<b>Column 2</b> <b>When test to be conducted</b>
Fire hose reel system required under EP1.1 and EP1.5	On completion of the installation of the system
Fire hydrant system required under EP1.1 and EP1.5	On completion of the installation of the system
Automatic fire suppression system required under EP1.4	On completion of the installation of the system
Fire detection, warning, control and intercom systems required under EP2.1 and EP2.2	On completion of the installation of the system
Air handling systems that incorporate smoke control provisions required under EP2.2	On completion of the building work
Smoke/heat venting systems required under EP2.2	On completion of the installation of the system
Sound systems and intercom systems for emergency purposes required under EP4.3	On completion of the installation of the system

**Schedule 4 — Building work that does not require building permit**

[r. 41]

**1. Areas where building permit not required for certain work**

**Table**

<b>Column 1</b> <b>Local government district</b>	<b>Column 2</b> <b>Area where building permit not required for building work for Class 10 building or incidental structure</b>	<b>Column 3</b> <b>Area where building permit not required for building work for building other than Class 10 building or incidental structure</b>
Broomehill	<p>Whole district other than —</p> <p>(a) townsites;</p> <p>(b) Broomehill Suburban Lots 362, 363, 372 to 423, 427 to 432, 438, 445, 446, 603 to 605, 609 and 610;</p> <p>(c) Lot 17 to 24 being portion of Kojonup Location 256;</p> <p>(d) Kojonup Location 1671;</p> <p>(e) Reserves 8163, 10285, 10431 and 17230</p>	
Bruce Rock	Whole district other than townsites	

**cl. 1**

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<b>Column 1</b> <b>Local government district</b>	<b>Column 2</b> <b>Area where building permit not required for building work for Class 10 building or incidental structure</b>	<b>Column 3</b> <b>Area where building permit not required for building work for building other than Class 10 building or incidental structure</b>
Carnarvon	Gascoyne-Minilya Ward	
Corrigin	Whole district other than townsite of Corrigin	
Cranbrook	Whole district other than townsites	
Cue	Whole district other than townsites	
Cunderdin	Whole district other than townsites	
Dalwallinu	Whole district other than townsites	
Dandaragan	Whole district other than townsites	
Derby-West Kimberley	Whole district other than townsites	
Dowerin	Whole district other than townsites	
Dumbleyung	Whole district other than townsites of Dumbleyung, Kukerin	

<b>Column 1</b> <b>Local government district</b>	<b>Column 2</b> <b>Area where building permit not required for building work for Class 10 building or incidental structure</b>	<b>Column 3</b> <b>Area where building permit not required for building work for building other than Class 10 building or incidental structure</b>
Esperance	Whole district other than — (a) townsites; (b) lots measuring 10 ha or less	
Gnowangerup	Whole district other than townsites	
Greater Geraldton	Mullewa Ward other than townsites	
Jerramungup	Areas zoned rural by a local planning scheme	
Kellerberrin	Whole district other than townsites of Kellerberrin, Doodlakine and Baandee	
Kent	Whole district other than townsites of Nyabing, Pingrup	Whole district other than townsites of Nyabing, Pingrup
Kojonup	Whole district other than townsites	

**cl. 1**

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<b>Column 1</b> <b>Local government district</b>	<b>Column 2</b> <b>Area where building permit not required for building work for Class 10 building or incidental structure</b>	<b>Column 3</b> <b>Area where building permit not required for building work for building other than Class 10 building or incidental structure</b>
Koorda	Whole district other than — (a) townsites; (b) Avon location 16386	
Lake Grace	Whole district other than townsites	
Laverton	Whole district other than townsites	Whole district other than townsites
Leonora	Whole district other than townsites	
Meekatharra	Whole district other than townsites	Whole district other than townsites
Menzies	Whole district other than townsites	Whole district other than townsites
Merredin	Whole district other than townsites of Burracoppin, Hines Hill, Korbel, Merredin, Muntadgin, Nangeenan, Nokaning, Nukarni	
Mingenew	Whole district other than townsites	

<b>Column 1</b> <b>Local government district</b>	<b>Column 2</b> <b>Area where building permit not required for building work for Class 10 building or incidental structure</b>	<b>Column 3</b> <b>Area where building permit not required for building work for building other than Class 10 building or incidental structure</b>
Moora	Whole district other than townsites	
Morawa	Whole district other than townsites	
Mt Marshall	Whole district other than townsites	
Mt Magnet	Whole district other than townsites	Whole district other than townsites
Mukinbudin	Whole district other than townsites	
Murchison	Whole district	Whole district
Murray	Areas zoned rural by local laws or a local planning scheme	
Narembeen	Whole district other than townsites	
Narrogin (Shire)	Areas zoned for farming purposes by a local planning scheme	
Nungarin	Whole district other than townsites	

**cl. 1**

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<b>Column 1</b> <b>Local government district</b>	<b>Column 2</b> <b>Area where building permit not required for building work for Class 10 building or incidental structure</b>	<b>Column 3</b> <b>Area where building permit not required for building work for building other than Class 10 building or incidental structure</b>
Perenjori	Whole district other than — (a) townsites; (b) areas subject to local planning schemes	
Port Hedland	Whole district other than townsites	
Ravensthorpe	Areas zoned general agricultural by a local planning scheme	
Sandstone	Whole district other than townsites in Sandstone Ward	Whole district other than Sandstone Ward
Tammin	Whole district other than townsite of Tammin	
Three Springs	Whole district other than townsites	
Trayning	Whole district other than townsites of Trayning, Kununoppin, Yelbeni	Whole district other than townsites of Trayning, Kununoppin, Yelbeni



<b>Column 1</b> <b>Local government district</b>	<b>Column 2</b> <b>Area where building permit not required for building work for Class 10 building or incidental structure</b>	<b>Column 3</b> <b>Area where building permit not required for building work for building other than Class 10 building or incidental structure</b>
Wagin	Whole district other than — (a) townsites in Town Ward; (b) Williams loc. 440, 507, 545, 618, 945, 1165 or 5330	
Wandering	Whole district other than — (a) townsite of Wandering; (b) areas zoned rural residential by local laws or a local planning scheme	
West Arthur	Whole district other than townsites	
Wickepin	Whole district other than townsites	
Williams	Whole district other than townsites	
Wiluna	Whole district other than townsite of Wiluna	Whole district other than townsite of Wiluna

**cl. 2**

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<b>Column 1</b> <b>Local government district</b>	<b>Column 2</b> <b>Area where building permit not required for building work for Class 10 building or incidental structure</b>	<b>Column 3</b> <b>Area where building permit not required for building work for building other than Class 10 building or incidental structure</b>
Wongan-Ballidu	Whole district other than townsites of Wongan Hills, Ballidu, Cadoux, Kondut, Burakin	Whole district other than townsites of Wongan Hills, Ballidu, Cadoux, Kondut, Burakin
Woodanilling	Whole district other than townsite of Woodanilling	
Yalgoo	Whole district other than townsites	
Yilgarn	Whole district other than townsites	Whole district other than townsites

**2. Kinds of building work for which a building permit is not required**

In this clause —

**pergola** means an open structure that does not have a roof but may have a covering of open weave permeable material.

**Table**

<b>Item</b>	<b>Description of building work for which building permit is not required</b>
1.	<p>Construction, erection, assembly or placement of a freestanding Class 10a building that —</p> <ul style="list-style-type: none"> <li>(a) has a floor area not exceeding 10 m<sup>2</sup>; and</li> <li>(b) is no more than 2.4 m in height; and</li> <li>(c) is not located in wind region C or D as defined in AS 1170.2.</li> </ul>
2.	<p>Renovation, alteration, improvement, repair or maintenance of a building or incidental structure if the building work —</p> <ul style="list-style-type: none"> <li>(a) will not adversely affect the structural soundness of the building or incidental structure and does not include — <ul style="list-style-type: none"> <li>(i) an increase or decrease in the floor area or height of the building or incidental structure; or</li> <li>(ii) underpinning or replacement of footings; or</li> <li>(iii) the removal or alteration of any element of the building or incidental structure that is contributing to the support of any other element of the building or incidental structure;</li> </ul> <p>and</p> </li> <li>(b) is done using materials commonly used for the same purpose as the material being replaced; and</li> <li>(c) will not change the use or classification of the building or incidental structure; and</li> <li>(d) will not adversely affect the safety and health of the occupants or other users of the building or incidental structure or of the public; and</li> <li>(e) will not affect whether the building or incidental structure complies with each building standard that applies to the building or incidental structure; and</li> </ul>

**cl. 2**

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<b>Item</b>	<b>Description of building work for which building permit is not required</b>
	<p>(f) is not work of a kind to which section 76, 77, 78 or 79 relates; and</p> <p>(g) is not subject to an order, agreement or permit under the Heritage Act.</p>
3.	Construction, erection, assembly or placement of a temporary office, shed or sanitary facility to be used by a builder in connection with building work carried out on the land on which the office, shed or sanitary facility is, or is proposed to be, located.
4.	<p>Construction, erection, assembly or placement of a fence, screen or similar structure, other than a fence forming part of an enclosure for a private swimming pool, if —</p> <p>(a) the fence, screen or similar structure is constructed in accordance with a local law made under the <i>Local Government Act 1995</i> section 9.60 that applies to the construction of the fence, screen or similar structure in the district in which the fence, screen or similar structure is, or is to be, located; or</p> <p>(b) the fence, screen or similar structure is, or is to be, located in a district in which there is no local law of a type referred to in paragraph (a) and the fence, screen or similar structure —</p> <p>(i) if constructed of masonry, is no more than 0.75 m in height; and</p> <p>(ii) if constructed of a material other than masonry, is no more than 1.8 m in height; and</p> <p>(iii) is not located in wind region C or D as defined in AS 1170.2.</p>

<b>Item</b>	<b>Description of building work for which building permit is not required</b>
5.	<p>Construction, erection, assembly or placement of a mast, antenna or similar structure that —</p> <p>(a) is not located in wind region C or D as defined in AS 1170.2; and</p> <p>(b) if attached to a building —</p> <p style="padding-left: 40px;">(i) is no more than 2 m in height above the highest point of attachment to the building; and</p> <p style="padding-left: 40px;">(ii) will not affect the way in which the building complies with each building standard that applies to the building;</p> <p style="padding-left: 40px;">and</p> <p>(c) if not attached to a building, is no more than 3 m in height.</p>
6.	<p>Construction, erection, assembly or placement of a retaining wall that —</p> <p>(a) retains ground no more than 0.5 m in height; and</p> <p>(b) is not associated with other building work or with the protection of land adjoining the land on which the retaining wall is located; and</p> <p>(c) is not work of a kind to which section 76, 77, 78 or 79 relates.</p>

**cl. 2**

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<b>Item</b>	<b>Description of building work for which building permit is not required</b>
7.	Construction, erection, assembly or placement of a pergola associated with a Class 1 building that — (a) is no more than 2.4 m in height; and (b) is not located in wind region C or D as defined in AS 1170.2; and (c) covers an area not exceeding 20 m <sup>2</sup> .
8.	Construction, erection, assembly or placement of a rainwater tank with a capacity of 5 000 L or less.
9.	Building work for a park home or annexe as those terms are defined in the <i>Caravan Parks and Camping Grounds Act 1995</i> section 5(1).
10.	Attachment of photovoltaic panels or solar hot water systems to the roof of a Class 1 or Class 10a building that is not located in wind region C or D as defined in AS 1170.2.
11.	Building work for which a building licence was not required under the former provisions if, before commencement day — (a) the on-site building work had commenced; or (b) a contract to carry out the building work was entered into.
12.	Building work for buildings owned or occupied by, or under the control or management of the Crown in right of the State or a department, agency or instrumentality of the Crown in right of the State that — (a) commences before 31 December 2012; and (b) has an estimated value of less than \$100 000.

**Schedule 5 — Areas of State where Part 8  
Division 2 applies**

[r. 49]

**Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Local government district</b>	<b>Areas of State where Part 8 Division 2 applies</b>
Albany	Whole district
Armadale	Whole district
Augusta-Margaret River	Whole district
Bassendean	Whole district
Bayswater	Whole district
Belmont	Whole district
Beverley	Whole district
Boddington	All townsites and areas zoned residential, special residential, rural residential or special use by a local planning scheme
Bridgetown-Greenbushes	Whole district
Brookton	Whole district
Bunbury	Whole district
Busselton	Whole district
Cambridge	Whole district
Canning	Whole district
Capel	Whole district
Carnarvon	Whole district
Claremont	Whole district
Cockburn	Whole district
Collie	Whole district
Coorow	Whole district
Cottesloe	Whole district
Dardanup	Whole district

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<b>Column 1</b>	<b>Column 2</b>
<b>Local government district</b>	<b>Areas of State where Part 8 Division 2 applies</b>
Derby-West Kimberley	Whole district
Donnybrook-Balingup	Whole district
Dumbleyung	Whole district
East Fremantle	Whole district
Esperance	All townsites and lots measuring 10 ha or less
Fremantle	Whole district
Gosnells	Whole district
Greater Geraldton	Whole district except townsites in Mullewa Ward
Hall's Creek	All townsites and area subject to the Shire of Halls Creek local planning scheme
Harvey	All townsites and area zoned special residential or special rural in the Shire of Harvey local planning scheme
Jerramungup	Whole district except areas zoned rural by a local planning scheme
Joondalup	Whole district
Kalamunda	Whole district
Kalgoorlie-Boulder	Whole district
Katanning	Whole district
Kellerberrin	Townsites of Kellerberrin, Doodlakine and Baandee
Kent	Townsites of Nyabing, Pingrup
Koorda	Whole district
Kwinana	Whole district
Mandurah	Whole district
Manjimup	Whole district
Melville	Whole district



<b>Column 1</b>	<b>Column 2</b>
<b>Local government district</b>	<b>Areas of State where Part 8 Division 2 applies</b>
Merredin	Townsites of Burracoppin, Hines Hill, Korbel, Merredin, Muntadgin, Nangeenan, Nokaning, Nukarni
Mingenew	Whole district
Mosman Park	Whole district
Mundaring	Whole district
Murchison	None
Murray	Whole district
Narrogin (Town)	Whole district
Nedlands	Whole district
Northam	Whole district
Northampton	Whole district
Peppermint Grove	Whole district
Perth	Whole district
Pingelly	Whole district
Plantagenet	Whole district
Quairading	Whole district
Ravensthorpe	Whole district except areas zoned general agricultural by a local planning scheme
Rockingham	Whole district
Sandstone	Sandstone Ward
Serpentine-Jarrahdale	Whole district
South Perth	Whole district
Stirling	Whole district
Subiaco	Whole district
Swan	Whole district
Tammin	Townsite of Tammin
Trayning	Townsites of Trayning, Kununoppin, Yelbeni

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<b>Column 1</b>	<b>Column 2</b>
<b>Local government district</b>	<b>Areas of State where Part 8 Division 2 applies</b>
Victoria Park	Whole district
Vincent	Whole district
Wagin	Whole district
Wandering	Whole district
Wanneroo	Whole district
Waroon	Whole district
West Arthur	Whole district
Williams	Whole district
Wiluna	Townsite of Wiluna
Wongan-Ballidu	Townsites of Wongan Hills, Ballidu, Cadoux, Kondut, Burakin
Woodanilling	Whole district
Wyalkatchem	Whole district
Wyndham-East Kimberley	Whole district
York	Whole district
All other districts	All townsites

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**Notes**

- <sup>1</sup> This is a compilation of the *Building Regulations 2012*. The following table contains information about those regulations.

**Compilation table**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Building Regulations 2012</i>	13 Mar 2012 p. 1055-137	r. 1 and 2: 13 Mar 2012 (see r. 2(a)) Regulations other than r. 1 and 2: 2 Apr 2012 (see r. 2(b) and <i>Gazette</i> 13 Mar 2012 p. 1033)