

Western Australia

Building Services (Complaint Resolution and Administration) Act 2011

**Building Services (Complaint Resolution and
Administration) Regulations 2011**

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Building Services (Complaint Resolution and Administration) Regulations 2011

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Building Services (Complaint Resolution and Administration) Regulations 2011

Part 1 — Preliminary

1. Citation

These regulations are the *Building Services (Complaint Resolution and Administration) Regulations 2011*.

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) Part 3 Divisions 1 and 3 — on the day on which section 94 of the Act comes into operation;
- (c) regulation 7(a) and Part 3 Division 2 — on the day on which the *Building Act 2011* Part 2 comes into operation;
- (d) the rest of the regulations — on the day on which Part 2 of the Act comes into operation.

r. 3

3. Terms used

(1) In these regulations —

building licence means a building licence issued under the *Local Government (Miscellaneous Provisions) Act 1960* section 374;

permit means —

- (a) a building permit; or
- (b) a demolition permit; or
- (c) an occupancy permit.

(2) Each of the following terms has the meaning given to it in the *Building Act 2011* section 3 —

building approval certificate

building permit

building work

demolition permit

demolition work

occupancy permit

4A. Building services: building surveying work

(1) In this regulation —

building surveying work means —

- (a) the examination of plans and specifications for a building or incidental structure to assess the safety, accessibility and energy efficiency of a building or incidental structure if the building or incidental structure is built in accordance with the plans and specifications; and
- (b) the examination of an existing building or incidental structure to assess the safety, accessibility and energy efficiency of the building or incidental structure.

- (2) Building surveying work is prescribed for the purposes of the definition of **building service** in section 3 of the Act.

[Regulation 4A inserted in Gazette 12 Mar 2012 p. 986.]

4. Building services: painting work

- (1) In this regulation —

paint includes varnish and stain;

painting work means the application of paint, wall paper or a similar substance or material to a building or fixture, but does not include the following —

- (a) the application of paint to a floor, path or driveway composed of concrete or a similar material;
 - (b) the application of a protective coating to a building which has first been treated by abrasive blasting or mechanical cleaning, if both processes are undertaken by the same contractor;
 - (c) signwriting.
- (2) Painting work is prescribed for the purposes of the definition of **building service** in section 3 of the Act.

5A. Regulated building service: unauthorised work

- (1) In this regulation —

unauthorised work has the meaning given in the *Building Act 2011* section 51(1).

- (2) Unauthorised work is prescribed for the purposes of the definition of **regulated building service** in section 3 of the Act.

[Regulation 5A inserted in Gazette 14 Aug 2012 p. 3827-8.]

Part 2 — Complaints

Division 1 — Building service complaints and HBWC complaints

5. Who can make building service complaint

A building service complaint about the carrying out of a regulated building service may only be made by a person whose interests are being, or have been, adversely affected by the carrying out of the regulated building service.

6. Preliminary action

(1) In this regulation —

complainant means a person proposing to make a building service complaint or HBWC complaint, as the case requires.

(2) At least 14 days before making a complaint under section 5(1) or (2) of the Act, the complainant must give to the person who will be the respondent written notice that the complainant proposes to make the complaint together with such description as the complainant is reasonably able to give of —

- (a) the remedy the complainant proposes to seek; and
- (b) the evidence on which the complainant proposes to rely.

(3) A complaint under section 5(1) or (2) of the Act must be accompanied by proof that notice has been given as required under this regulation.

(4) The Building Commissioner may waive or modify the requirement to comply with subregulation (2) or (3) if the Building Commissioner is satisfied that, in the particular circumstances, the complainant has given adequate notice about the proposed complaint.

7. Criteria for determining date of completion of regulated building service

For the purposes of section 6(1) of the Act the following criteria apply when determining the date of completion of a regulated building service —

- (a) in the case of building work or demolition work carried out under a building permit or a demolition permit —
 - (i) if, under the *Building Act 2011* section 34(1), the responsible person in relation to the permit gives notice of cessation to act as the responsible person to a relevant permit authority, the work, in relation to that person, is completed when the notice is given;
 - (ii) otherwise, the work is completed when a notice of completion of the work is given to a relevant permit authority under the *Building Act 2011* section 33(1);
- (b) in the case of a regulated building service that —
 - (i) is not carried out under a building permit or demolition permit; and
 - (ii) is carried out under a home building work contract or other contract that provides for a date of practical completion; and
 - (iii) has been brought to practical completion, the building service is completed on the date practical completion is achieved.

8. Fees

- (1) In this regulation —
Centrelink means the Commonwealth agency known as Centrelink;

financially disadvantaged person means a person who produces, or in respect of whom there is produced, evidence that satisfies the Building Commissioner that the person holds —

- (a) a Health Care Card issued by Centrelink; or
 - (b) a Pensioner Concession Card issued by Centrelink; or
 - (c) a Commonwealth Seniors Health Card issued by Centrelink; or
 - (d) a Repatriation Health Card issued by the Commonwealth Department of Veterans' Affairs; or
 - (e) a State Concession Card issued under the *Rates and Charges (Rebates and Deferments) Act 1992* section 6; or
 - (f) an entitlement to the rate of pension provided for in the *Veterans' Entitlements Act 1986* (Commonwealth) section 24.
- (2) Subject to regulation 9, a building service complaint or HBWC complaint must be accompanied by —
- (a) in the case of a complaint by a financially disadvantaged person — a fee of \$50.00; and
 - (b) otherwise — a fee of \$100.00.
- (3) If complaints under both section 5(1) and (2) of the Act are made in the same complaint form, the fee specified in subregulation (2) is payable in respect of each complaint.

[Regulation 8 amended in Gazette 14 Aug 2012 p. 3828.]

9. Building Commissioner may remit complaint fees

- (1) The Building Commissioner may, in a particular case for financial hardship or if the Building Commissioner considers it is just to do so, direct in relation to a fee under regulation 8(2) —
- (a) that payment of the fee be waived; or

- (b) that the fee be reduced or that the whole or part of a fee be refunded; or
 - (c) that the payment of the whole or part of the fee be deferred until the time, and upon the conditions, if any, the Building Commissioner thinks fit.
- (2) For the purposes of assessing financial hardship, the Building Commissioner must have regard to the applicant's income, day-to-day living expenses, liabilities and assets.
 - (3) Except as otherwise directed by the Building Commissioner, an application for a fee to be waived, reduced, refunded or deferred must be in a form approved by the Building Commissioner.
 - (4) Before determining an application under this regulation, the Building Commissioner may require the applicant to provide the Commissioner with further information the Building Commissioner requires either orally or in writing.
 - (5) A fee, payment of which has been deferred until an event occurs, becomes payable when that event occurs.

Division 2 — Disciplinary complaints

10. Who can make a disciplinary complaint

A disciplinary complaint may only be made by a person who has reasonable cause to believe that a disciplinary matter has occurred or is occurring.

Part 3 — Building services levy

[Division 1 (r. 11) deleted in Gazette 12 Mar 2012 p. 986.]

Division 2 — Levy in respect of building approval certificates and permits

12. Levy payable: building approval certificates and permits

(1) In this regulation —

applicant, in relation to a permit or building approval certificate, means the person named on the application for the permit or certificate as the owner of the land on which the relevant building or incidental structure is, or is proposed to be, located;

building work includes any demolition work that is incidental to building work;

value, in relation to building work or demolition work for which an application for a building permit or demolition permit is made under the *Building Act 2011*, means the value of the work specified in the application.

(2) An applicant for a building permit must pay to the permit authority to which the application is made a building services levy —

- (a) of \$40.50 if the value of the building work is not more than \$45 000; or
- (b) otherwise, at the rate of 0.09% of the value of the building work.

(3) An applicant for a demolition permit must pay to the permit authority to which the application is made a building services levy —

- (a) of \$40.50 if the value of the demolition work is not more than \$45 000; or

- (b) otherwise, at the rate of 0.09% of the value of the demolition work.
- (4) An applicant for an occupancy permit, or building approval certificate, under the *Building Act 2011* section 47, 49, 50 or 52 must pay to the permit authority to which the application is made a building services levy of \$40.50.
- (5) An applicant for an occupancy permit, or building approval certificate, under the *Building Act 2011* section 51 in respect of unauthorised work within the meaning of that section must pay to the permit authority to which the application is made a building services levy —
 - (a) of \$91.00 if the value of the unauthorised work, as determined by the permit authority, is not more than \$45 000; or
 - (b) otherwise, at the rate of 0.18% of the current value of the work as determined by the permit authority.
- (6) The building services levy is payable when the application is made.
- (7) If there is more than one applicant for a permit or building approval certificate, each applicant named on the application is jointly and severally liable for payment of the building services levy.

13. Adjustment of levy: under statement of value

- (1) If, on the completion of building work or demolition work for which a building permit or demolition permit has been granted, the Building Commissioner is satisfied that the value of the work varies by an additional amount of \$25 000 or more (after adjustment has been made for inflation as set out in regulation 14(1)) from the value of that work as set out in the application for the permit, the person who applied for the permit must pay to the Building Commissioner an amount equal to the extra amount of building services levy that would have been

payable if the value of the work set out in the application had been the actual value of the work that has been completed.

- (2) The amount referred to in subregulation (1) is payable within 30 days after the person who paid the levy receives written notice from the Building Commissioner that the amount is payable.

14. Adjustment for inflation: regulation 13

- (1) Adjustment must be made for inflation for the purposes of regulation 13 by calculating interest on the value of the building work or demolition work as stated in the application for the building permit or demolition permit at the CPI rate as determined by the Building Commissioner under subregulation (2).
- (2) The CPI rate to be used under subregulation (1) must be determined by the Building Commissioner in accordance with the following —
 - (a) the rate is the percentage by which the Index for the quarter ending in March immediately prior to the determination is greater than the CPI for the quarter ending in March of the previous year;
 - (b) if the CPI for the quarter ending in March immediately prior to the determination is not greater than the CPI for the quarter ending in March of the previous year, the CPI rate is nil.
- (3) In subregulation (2) —

CPI means the all groups consumer price index for Perth published by the Australian Statistician referred to in the *Australian Bureau of Statistics Act 1975* (Commonwealth) section 5.

15. Waiver or reduction of levy

- (1) The Building Commissioner may, by notice published in the *Gazette*, waive or reduce the amount of building services levy

payable in respect of a permit or building approval certificate granted for building work or demolition work to be carried out, or carried out, because of damage caused by a natural disaster specified in the notice in an area specified in the notice.

- (2) In subregulation (1) —
natural disaster means a cyclone, earthquake, flood, storm, tsunami or other natural event.
- (3) If, in a particular case, the Building Commissioner is satisfied that the circumstances warrant the reduction or waiver of a building services levy, the Building Commissioner may, in writing, waive or reduce the amount of levy payable.
- (4) If a person pays a building services levy that is later reduced or waived, the Building Commissioner must refund from the Building Services Fund to that person the amount appropriate to that reduction or waiver.

16. Refund of levy

- (1) If a permit authority refuses to grant a permit or building approval certificate to an applicant, the permit authority must refund to the applicant the amount of the building services levy paid in respect of the permit or building approval certificate.
- (2) The permit authority must include the refund with the written notice of the decision to refuse given under the *Building Act 2011* section 24 or 60.
- (3) The Building Commissioner may refund all or part of an amount of building services levy that has been paid in a particular case if the Building Commissioner is satisfied that exceptional circumstances warrant the refund being given in that case.

Division 3 — General provisions

17. Terms used

In this Division —

permit includes a building licence;

permit authority includes, in relation to an amount of levy paid or payable in respect of a building licence, the local government that issued the building licence.

18. Permit authority must remit levy, less payment, to Building Commissioner

- (1) A permit authority must, within 14 days after the end of the month in which it issues or grants a permit or building approval certificate for which it receives an amount of building services levy, remit the amount to the Building Commissioner.
- (2) The Building Commissioner is to pay to a local government a fee of \$5.00 for each amount of building services levy remitted by the local government in accordance with subregulation (1).
- (3) The payment referred to in subregulation (2) may be deducted by the local government from the amount remitted in accordance with subregulation (1).

19. Failure to remit levy

If a permit authority does not remit an amount of levy to the Building Commissioner in accordance with regulation 18(1), the unpaid amount may be recovered from the permit authority in a court of competent jurisdiction as a debt due.

20. Penalty for overdue amounts

If an amount of building services levy or an amount payable under regulation 13(1) remains unpaid after the day on which it becomes due for payment, there is payable to the Building Commissioner by way of penalty, in addition to the amount of the levy, an amount calculated (pro rata) at the rate prescribed under the *Civil Judgments Enforcement Act 2004* section 8(1)(a) upon the amount of the levy from time to time remaining unpaid.

21. Recovery of levy and other amounts

The Building Commissioner may recover —

- (a) an amount of building services levy that is due for payment; and
- (b) an amount due under regulation 13 or 20,

as a debt due in any court of competent jurisdiction.

22. Provision of information to Building Commissioner

- (1) A permit authority must, when it remits an amount of levy for permits and approval certificates granted in any month to the Building Commissioner, include the following information in a form approved by the Building Commissioner —
 - (a) the name of the permit authority;
 - (b) the amount of levy collected, including the amount collected for each permit and building approval certificate;
 - (c) the number of permits and building approval certificates granted;
 - (d) the amount retained by way of payment for collection and remittance;
 - (e) the period for which the amount was collected.
- (2) A permit authority must provide to the Building Commissioner such further information as the Building Commissioner requires in relation to amounts of building services levy received by the permit authority.
- (3) The information must be provided in a form approved by the Building Commissioner and at such times as are directed in writing by the Building Commissioner.

Part 4 — Transitional provisions

23. Terms used

In this Part —

current proceeding has the meaning given in section 134(1) of the Act;

former registrar means the registrar under the repealed Act;

former Tribunal means the Building Disputes Tribunal constituted under the repealed Act;

repealed Act means the *Builders' Registration Act 1939* repealed by the *Building Services (Registration) Act 2011* section 107.

24. Inspection of building work

- (1) A party to a current proceeding may request the Building Commissioner to cause an inspection to be made of building work and the Building Commissioner may, if of the opinion that it is appropriate to do so, authorise an authorised officer to make the inspection.
- (2) Part 4 of the Act applies to an inspection authorised under subregulation (1) as if the inspection were an inspection under that Part.

25. Building Commissioner may exercise powers of registrar

The Building Commissioner may exercise any of the powers of the former registrar under the repealed Act for the purposes of a current proceeding or the enforcement of an order made by the former Tribunal, including the taking of proceedings under section 12A(4) of the repealed Act.

26. Building levy for deemed applications

- (1) In this regulation —

deemed application means an application for a building licence that is to be taken to be an application for a building permit under the *Building Act 2011* section 178(4).

- (2) A person named as the builder on a building permit that is granted on a deemed application must pay to the permit authority that grants the building permit a building services levy of \$41.50.
- (3) The building services levy is payable when the building permit is granted.

[Regulation 26 inserted in Gazette 12 Mar 2012 p. 986-7.]

27. Enforcement of decisions of former Tribunal

- (1) In this regulation —
former Tribunal has the meaning given in section 132 of the Act;
repealed Act has the meaning given in section 132 of the Act.
- (2) If a person fails to comply in whole or in part with an order of the former Tribunal or the Registrar of the former Tribunal under section 12A(1)(a) or (1a)(a) of the repealed Act, the Building Commissioner or the State Administrative Tribunal may deal with the matter as if the order were a building remedy order to which section 51 of the Act applied.
- (3) For the purposes of subregulation (2) —
 - (a) if the amount claimed is not more than \$100 000, the Building Commissioner is taken to be the responsible adjudicator under section 51 of the Act;
 - (b) otherwise, the State Administrative Tribunal is taken to be the responsible adjudicator.

[Regulation 27 inserted in Gazette 14 Aug 2012 p. 3828.]

Notes

- ¹ This is a compilation of the *Building Services (Complaint Resolution and Administration) Regulations 2011* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Citation	Gazettal	Commencement
<i>Building Services (Complaint Resolution and Administration) Regulations 2011</i>	26 Aug 2011 p. 3453-71	r. 1 and 2: 26 Aug 2011 (see r. 2(a)); Pt. 3 Div. 1 and 3: 29 Aug 2011 (see r. 2(b) and <i>Gazette</i> 26 Aug 2011 p. 3475); r. 3, 4, Pt. 2 (other than r. 7(a)) and Pt. 4: 29 Aug 2011 (see r. 2(d) and <i>Gazette</i> 26 Aug 2011 p. 3475); r. 7(a) and Pt. 3 Div. 2: 2 Apr 2012 (see r. 2(c) and <i>Gazette</i> 13 Mar 2012 p. 1033)
<i>Building Services (Complaint Resolution and Administration) Amendment Regulations 2012</i>	12 Mar 2012 p. 985-7	r. 1 and 2: 12 Mar 2012 (see r. 2(a)); r. 3 and 4: 13 Mar 2012 (see r. 2(b)); Regulations other than r. 1-4: 2 Apr 2012 (see r. 2(c) and <i>Gazette</i> 13 Mar 2012 p. 1033)
<i>Building Services (Complaint Resolution and Administration) Amendment Regulations (No. 3) 2012</i>	14 Aug 2012 p. 3827-8	r. 1 and 2: 14 Aug 2012 (see r. 2(a)); Regulations other than r. 1 and 2: 15 Aug 2012 (see r. 2(b))

Defined Terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined Term	Provision(s)
applicant.....	12(1)
building approval certificate	3(2)
building licence.....	3(1)
building permit.....	3(2)
building surveying work	4A(1)
building work.....	3(2), 12(1)
Centrelink.....	8(1)
complainant.....	6(1)
CPI	14(3)
current proceeding	23
deemed application	26(1)
demolition permit.....	3(2)
demolition work	3(2)
financially disadvantaged person	8(1)
former registrar	23
former Tribunal.....	23, 27(1)
natural disaster	15(2)
occupancy permit.....	3(2)
paint	4(1)
painting work	4(1)
permit.....	3(1), 17
permit authority.....	17
repealed Act	23, 27(1)
unauthorised work.....	5A(1)
value.....	12(1)