



Western Australia

Building Act 2011

Building Regulations 2012

Building Regulations 2012

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Defined terms

Western Australia

Building Act 2011

Building Regulations 2012

Part 1 — Preliminary

1. Citation

These regulations are the *Building Regulations 2012*¹.

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 operation¹.

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 as referenced in the relevant edition of the Building Code;

AS 3959 means Australian Standard AS 3959 — Construction of buildings in bushfire-prone areas;

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;

building site, in relation to a building or incidental structure, means that part of a lot on which the building or incidental structure stands or is to be constructed;

bushfire attack level (BAL), in relation to a building or incidental structure, means the bushfire attack level for the building site for the building or structure determined in accordance with AS 3959;

bush fire performance requirement means —

- (a) in relation to a Class 2 or Class 3 building — the Building Code Volume 1 performance requirement GP5.1; and
- (b) in relation to a Class 1 or Class 10 building — the Building Code Volume 2 performance requirement P2.3.4;

bush fire prone area means an area of the State designated by an order made under the *Fire and Emergency Services Act 1998* section 18P as a bush fire prone area;

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;

FES Commissioner has the meaning given in the *Fire and Emergency Services Act 1998* section 3;

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;

relevant edition of the Building Code, in relation to a building, incidental structure, building work or application, means the edition of the Building Code referred to in Part 4 Division 1 as setting out the building standards that apply as applicable building standards to the building, incidental structure, building work or application;

section means section of the Act;

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

[Regulation 3 amended in Gazette 30 Nov 2012 p. 5782; 7 Dec 2015 p. 4897; 5 Apr 2016 p. 1015-16.]

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 |

| Section | Description |
|-------------|---|
| 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 |

5A. Authorised persons (s. 3)

For the purposes of paragraph (b) of the definition of **authorised person** in section 3 an authorised person includes a person who is authorised by a local government for the purposes of section 93(2)(d) as a person having the appropriate experience or qualifications, whether the authorisation is effective before or after the day on which the *Building Amendment Regulations (No. 2) 2012* regulation 4 comes into operation¹.

[Regulation 5A inserted in Gazette 18 Dec 2012 p. 6555-6.]

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

| Item | Class of building service practitioner | Type of building |
|-------------|---|---|
| 1. | Building surveying practitioner level 1 | Any type of building or incidental structure |
| 2. | Building surveying practitioner level 2 | A building or incidental structure — (a) with a floor area not exceeding 2 000 m ² ; 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 ² ; and (b) not higher than 2 storeys |

6A. Building work (s. 3)

For the purposes of paragraph (f) of the definition of **building work** in section 3, the installation of a roof mounted evaporative cooling unit on a building or incidental structure is prescribed work.

[Regulation 6A inserted in Gazette 5 Apr 2016 p. 1016.]

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.

[7-9. Deleted in Gazette 18 Dec 2012 p. 6556.]

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

- (1A) In this regulation, each of these terms has the meaning given in the *Land Administration Act 1997* section 3(1) —

managed reserve

management body

road

- (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.
- (2A) Despite subregulation (1), for the purposes of section 54(1)(b) in relation to an application mentioned in section 51(2) or (3), **owner**, in relation to land held in freehold, means —
- (a) a person whose name is registered as a proprietor of the land; and
 - (b) the State, if registered as a proprietor of the land; and

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- (c) an executor or administrator under the *Administration Act 1903* section 8 in whom is vested a freehold interest in the land.
- (2) For the purposes of paragraph (a) of the definition of **owner** in relation to Crown land in section 5(1), the following persons are prescribed —
 - (a) in relation to a managed reserve — the management body of the reserve;
 - (b) in relation to a road — whichever of the following persons who, under a written law, has the care, control and management of the road —
 - (i) the local government in whose district the road is situated;
 - (ii) the Commissioner of Main Roads;
 - (iii) the Minister as defined in the *Public Works Act 1902* section 2;
 - (c) in relation to Crown land that is vested in a person or body under a written law other than the *Land Administration Act 1997* — that person or body;
 - (d) in relation to Crown land that is subject to a lease, other than land referred to in paragraph (a), (b) or (c) — the Minister for Lands and the lessee;
 - (e) in relation to any other Crown land — the Minister for Lands.

[(3) deleted]

*[Regulation 10 amended in Gazette 18 Dec 2012
p. 6556-7; 15 Sep 2015 p. 3783-4.]*

**11A. Restriction on circumstances where person treated as owner
 (s. 5(2))**

- (1) For the purposes of section 16(b), in the circumstances where a person who holds an interest referred to in regulation 10(1)(a) has signed an application in respect of land on which a building

or incidental structure is, or is proposed to be, located no other person is to be treated as the owner of the land.

- (2) For the purposes of section 16(b), in the circumstances where a person who holds an interest referred to in regulation 10(1)(b) has signed an application in respect of land on which a building or incidental structure is, or is proposed to be, located no other person is to be treated as the owner of the land.

[Regulation 11A inserted in Gazette 15 Jun 2012 p. 2513.]

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 Act 1998* section 3 in the course of duty in connection with a situation in which the safety of a person is at risk.

[Regulation 13 amended in Gazette 30 Nov 2012 p. 5782.]

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.

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

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

*[Regulation 15A inserted in Gazette 18 Dec 2012 p. 6557;
amended in Gazette 24 Apr 2014 p. 1135.]*

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

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

[Regulation 17 inserted in Gazette 18 Dec 2012 p. 6558.]

18A. Certificate of design compliance — contents (s. 19(5))

- (1) For the purposes of section 19(5), a certificate of design compliance must contain the following things —
 - (a) a statement by the building surveyor signing the certificate identifying the edition of the Building Code that contained the requirements mentioned in regulation 31A(2)(a) or (b) applied by the building surveyor in respect of the building or incidental structure;

- (b) if a declaration under section 39 has been made in respect of the building that is the subject of the application, a statement to that effect;
- (c) if the certificate of design compliance is in respect of a Class 2 to Class 9 building or an incidental structure associated with such a building, a statement about each alternative solution to a building standard that applies to the building work and details of the assessment methods used to establish compliance with the building standard;
- (d) if the certificate of design compliance is in respect of a Class 2 to Class 9 building —
 - (i) details of any advice given by the FES Commissioner in respect of the plans and specifications provided under regulation 18B(1); and
 - (ii) details of any notification given by the building surveyor to the FES Commissioner under regulation 15A(1);
- (e) if the certificate of design compliance is in respect of a Class 1, Class 2 or Class 3 building or an associated Class 10a building or deck that is, or is proposed to be, located less than 6 metres from the Class 1, Class 2 or Class 3 building —
 - (i) a statement about whether the building or deck is, or is proposed to be, located in a bush fire prone area; and
 - (ii) if the building or deck is, or is proposed to be, located in an area that is a bush fire prone area and, in accordance with regulation 31BA(2), a bush fire performance requirement applies to the building or deck — the additional information referred to in subregulation (2).

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- (2) For the purposes of subregulation (1)(e)(ii), the additional information is —
- (a) in all cases —
 - (i) the BAL for the building site; or
 - (ii) if another measure has been used to assess compliance with a bush fire performance requirement — details of the measure used and the results of that assessment;
 - and
 - (b) in the case of a Class 1 building —
 - (i) a statement about each alternative solution to the bush fire performance requirement that is proposed to be used; and
 - (ii) details of the assessment method used to establish compliance with that requirement.

[Regulation 18A inserted in Gazette 18 Dec 2012 p. 6559; amended in Gazette 5 Apr 2016 p. 1016-17.]

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

- (1) For the purposes of section 19(6), at least 15 business days before signing a certificate of design compliance in respect of a Class 2 to Class 9 building, a building surveyor must provide to the FES Commissioner plans and specifications for the building in sufficient detail to allow assessment of compliance with the FES Commissioner's operational requirements.
- (2) A building surveyor does not have to comply with subregulation (1) if —
- (a) the certificate is in respect of a stand-alone single storey Class 5, 6, 7 or 8 building having a total floor area of 500 m² or less; and

- (b) no alternative solution is proposed to a building standard that relates to a performance requirement in the Building Code relating to fire safety.
- (3) A building surveyor does not have to comply with subregulation (1) if —
 - (a) the certificate is in respect of a Class 2 to Class 9 building that is being renovated, altered, improved or repaired; and
 - (b) no alternative solution is proposed to a building standard that relates to a performance requirement in the Building Code relating to fire safety.
- (4) A building surveyor does not have to comply with subregulation (1) if —
 - (a) the certificate is in respect of a stage of building work to a Class 2 to Class 9 building; and
 - (b) the following provisions of the Building Code Volume 1 do not apply to that stage —
 - (i) Section C concerning fire resistance;
 - (ii) Section E Part E1 concerning fire fighting equipment;
 - (iii) Section E Part E2 concerning smoke hazard management.

[Regulation 18B inserted in Gazette 18 Dec 2012 p. 6560-1.]

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

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

[Regulation 18C inserted in Gazette 18 Dec 2012 p. 6561.]

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.
- (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) deleted]

- (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 the FES Commissioner the plans and specifications specified in the certificate of design compliance accompanying the application unless the building surveyor does not have to comply with regulation 18B(1) because of regulation 18B(2), (3) or (4).

[Regulation 18 amended in Gazette 15 Jun 2012 p. 2514; 30 Nov 2012 p. 5783; 18 Dec 2012 p. 6561.]

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 —
 - (a) if the application relates to development as defined in the *Planning and Development Act 2005* section 4 and a planning scheme or interim development order that has effect under that Act provides that the development is not to be commenced or carried out without an approval being obtained upon the making of a development application —
 - (i) 25 business days, excluding any day that is after the day on which the development application is made and before the day on which that application is determined; or
 - (ii) such longer period as is agreed in writing between the applicant and the permit authority;
 - and
 - (b) otherwise, 25 business days, or such longer period as is agreed in writing between the applicant and the permit authority.

- (2) For the purposes of section 23(2)(a), the period for buildings of all classifications is 10 business days, or such longer period as is agreed in writing between the applicant and the permit authority.

[Regulation 20 amended in Gazette 15 Jun 2012 p. 2514-15.]

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.

[23A. Deleted in Gazette 21 Jun 2013 p. 2446.]

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) For the purposes of section 35(c), the owner of a building or incidental structure to which a permit applies may apply to the

relevant permit authority for approval of a new responsible person for the work to which the permit applies if the permit does not have effect for a reason mentioned in section 35(a) or (b).

- (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.

[Regulation 26 amended in Gazette 18 Dec 2012 p. 6562.]

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

Division 1 — Applicable building standards

[Heading inserted in Gazette 18 Dec 2012 p. 6562.]

Subdivision 1 — Building standards in relation to construction

[Heading inserted in Gazette 18 Dec 2012 p. 6562.]

31A. Applicable building standards generally (s. 3, 19(3) and 37(1))

- (1) For the purposes of the definition of ***applicable building standard*** in section 3, the building standards set out in subregulation (2) are prescribed as applicable building standards for the purposes of sections 19(3) and 37(1) in respect of all kinds of buildings and incidental structures, except to the extent that regulations 31BA, 31B, 31C and 31D otherwise provide.
- (2) For subregulation (1), the applicable building standards for a building or incidental structure are the requirements in relation to the technical aspects of the construction of a building or incidental structure of that building or incidental structure's classification that are —
 - (a) set out in the edition of the Building Code that is in effect at the time the application for the building permit is made; or
 - (b) set out in the edition of the Building Code that was in effect 12 months before the time the application for the building permit is made.

[Regulation 31A inserted in Gazette 18 Dec 2012 p. 6562-3; amended in Gazette 7 Dec 2015 p. 4898.]

31BA. Applicable building standards for buildings and incidental structures in bush fire prone areas (s. 3, 19(3), 37(1) and (2), 57(3), 49(b), 51(2) and (3))

(1A) In this regulation —

excluded building work means building work that is the renovation, alteration, extension, improvement or repair of a relevant building if —

- (a) the estimated value of the building work is less than \$20 000; or
- (b) the renovation, alteration, extension, improvement or repair does not increase the risk of ignition from bushfire attack for the relevant building;

renovation, alteration, extension, improvement or repair, in respect of a building, does not include the installation of a roof mounted evaporative air conditioning unit on the building;

relevant building means a building that —

- (a) is a Class 1, Class 2 or Class 3 building or an associated Class 10a building or deck that is located less than 6 metres from the Class 1, Class 2 or Class 3 building; and
- (b) when constructed, was not required to comply with a bush fire performance requirement.

- (1) For the purposes of the definition of ***applicable building standard*** in section 3, the building standards set out in subregulation (2) are prescribed as applicable building standards for the purposes of sections 19(3) and 37(1) in respect of all kinds of buildings or incidental structures located in a bush fire prone area.
- (2) For subregulation (1), the applicable building standards for a building or incidental structure are the requirements mentioned in regulation 31A(2) except that the bush fire performance requirements do not apply if —

- (a) the building or incidental structure is located in an area that has been a bush fire prone area for a period of less than 4 months at the time an application for a building permit is made; or
 - (b) the building or incidental structure is a relevant building and an application for a building permit for excluded building work in respect of the building or incidental structure is made before 1 May 2018.
- (3) For the purposes of the definition of ***applicable building standard*** in section 3, the building standards set out in subregulation (4) are prescribed as applicable building standards for the purposes of section 37(2) in respect of all kinds of buildings or incidental structures located in a bush fire prone area.
- (4) For subregulation (3), the applicable building standards for a building or incidental structure are the requirements mentioned in regulation 31E(2) except that the bush fire performance requirements do not apply if —
 - (a) the building or incidental structure is located in an area that has been a bush fire prone area for a period of less than 4 months at the time construction commenced; or
 - (b) the building or incidental structure is a relevant building and excluded building work in respect of the building or incidental structure commenced before 1 May 2018.
- (5) For the purposes of the definition of ***applicable building standard*** in section 3, the building standards set out in subregulation (6) are prescribed as applicable building standards for the purposes of section 57(3) for an application mentioned —
 - (a) in section 49(b) or 51(2) in respect of all kinds of buildings located in a bush fire prone area; or
 - (b) in section 51(3) in respect of all kinds of buildings and incidental structures located in a bush fire prone area.

- (6) For subregulation (5), the applicable building standards for a building or incidental structure are the requirements mentioned in regulation 31G(2), except that, for a building or incidental structure located in an area that has been a bush fire prone area for a period of less than 4 months at the time the application for an occupancy permit or building approval certificate is made, the bush fire performance requirements do not apply.
- (7) For the purposes of this regulation an area that is a bush fire prone area is to be taken to have been a bush fire prone area for a period of at least 4 months if immediately before commencement day the area was identified in any way under a local planning scheme as an area that is subject, or likely to be subject, to bush fires.
- (8) In subregulation (7) —

commencement day means the day on which the *Building Amendment Regulations (No. 3) 2015* regulation 6 comes into operation;

local planning scheme has the meaning given in the *Planning and Development Act 2005* section 4(1).

[Regulation 31BA inserted in Gazette 7 Dec 2015 p. 4898-900; amended in Gazette 5 Apr 2016 p. 1017-19.]

31B. Applicable building standards for alterations etc. before 1 May 2015 (s. 3, 19(3) and 37(1))

- (1) For the purposes of the definition of **applicable building standard** in section 3, the building standards set out in subregulation (2) are prescribed as applicable building standards for the purposes of sections 19(3) and 37(1) in respect of a building or incidental structure that is being renovated, altered, extended, improved or repaired before 1 May 2015.
- (2) For subregulation (1), the applicable building standards are the requirements mentioned in regulation 31A(2) except that —
- (a) in respect of Class 2 to Class 9 buildings and incidental structures —

- (i) the requirements set out in the Building Code Volume 1 Part JO do not apply; and
 - (ii) the requirements set out in the Building Code published on 1 May 2010 Volume 1 WA Part JO of Appendices (Variation and Additions) apply;
- and
- (b) in respect of Class 1 or Class 10 buildings and incidental structures —
 - (i) the requirements set out in the Building Code Volume 2 Parts 2.6 and 3.12 do not apply; and
 - (ii) the requirements set out in the Building Code published on 1 May 2009 Volume 2 Parts 2.6 and 3.12 apply.

[Regulation 31B inserted in Gazette 18 Dec 2012 p. 6563-4; amended in Gazette 24 Apr 2014 p. 1136.]

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

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

[Regulation 31C inserted in Gazette 18 Dec 2012 p. 6564.]

31D. Applicable building standards for relocated buildings and incidental structures (s. 3, 19(3) and 37(1) and (2))

- (1) For the purposes of the definition of *applicable building standard* in section 3, the building standards set out in subregulation (2) are prescribed as applicable building standards for the purposes of sections 19(3) and 37(1) and (2) in respect of the assembly, reassembly or securing of a relocated building or a relocated incidental structure.
- (2) For subregulation (1), the applicable building standards are the requirements mentioned in regulation 31A(2) except to the extent that subregulations (3), (4) and (5) of this regulation otherwise provide.
- (3) The building standards that relate to each of the performance requirements listed in the Table and set out in the edition of the Building Code —
 - (a) that is in effect at the time the application for the most recent building permit is made; or
 - (b) that was in effect 12 months before the time the application for the most recent building permit is made,apply to that classification of the building or incidental structure.

Table

| Section or part of Building Code | Performance requirements |
|---|---|
| Volume One, Section B — Structural provisions | BP1.1, BP1.2, BP1.3, BP1.4 |
| 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 |

| Section or part of Building Code | Performance requirements |
|---|---|
| Volume One, Section E — Services and equipment | EP1.1, EP1.2, EP1.3, EP1.4, EP1.5, EP1.6, EP2.1, EP2.2, EP4.1, EP4.2, EP4.3 |
| Volume One, Section G — Ancillary provisions | GP1.2(b), GP2.1, GP 2.2, GP5.1 |
| Volume Two, Part 2.1 — Structure | P2.1.1, P2.1.2 |
| Volume Two, Part 2.3 — Fire safety | P2.3.1, P2.3.2, P2.3.3, P2.3.4, P2.3.5 |
| Volume Two, Part 2.5 — Safe movement and access | P2.5.1, P2.5.2, P2.5.4 |

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

apply to that classification of the building or incidental structure.

Table

| Section or part of Building Code | Performance requirements |
|---|---------------------------------|
|---|---------------------------------|

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

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

[Regulation 31D inserted in Gazette 18 Dec 2012 p. 6564-7; amended in Gazette 24 Apr 2014 p. 1136.]

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

- (1) For the purposes of the definition of ***applicable building standard*** in section 3, the building standards set out in subregulation (2) are prescribed as applicable building standards for the purposes of section 37(2) in respect of all kinds of buildings and incidental structures, except to the extent that regulation 31BA otherwise provides.
- (2) For subregulation (1), the applicable building standards for a building or incidental structure are the requirements in relation to the technical aspects of the construction of a building or incidental structure of that building or incidental structure's classification that are set out in the edition of the Building Code that was in effect at the time construction commenced.

[Regulation 31E inserted in Gazette 18 Dec 2012 p. 6567; amended in Gazette 7 Dec 2015 p. 4900.]

31F. Applicable building standards for replacement occupancy permit for permanent change of building's use or for occupancy permit or building approval certificate for registration of strata scheme, plan of re subdivision (s. 3, 57(3), 49(a), 50(1)(a) and (b) and 50(2)(a) and (b))

- (1) For the purposes of the definition of *applicable building standard* in section 3, the building standards set out in subregulation (2) are prescribed as applicable building standards for the purposes of section 57(3) for an application mentioned in section 49(a), 50(1)(a) or (b) or 50(2)(a) or (b) in respect of all kinds of buildings.
- (2) For subregulation (1), the applicable building standards for a building are the requirements mentioned in regulation 31A(2)(a) or (b) applied by the building surveyor who signed the certificate of design compliance for the building but if there is no applicable certificate of design compliance, either —
 - (a) the building licence or other approval that was granted in respect of the construction of the building under the written law applicable at the time of its construction; or
 - (b) each requirement in relation to the technical aspects of the construction of the building applicable to the building at the time of its construction.

[Regulation 31F inserted in Gazette 18 Dec 2012 p. 6568; amended in Gazette 21 Jun 2013 p. 2446; 24 Apr 2014 p. 1136.]

31G. Applicable building standards for occupancy permit for unauthorised work to building, or for building approval certificate for unauthorised work to building or incidental structure (s. 3, 57(3) and 51(2) and (3))

- (1) For the purposes of the definition of *applicable building standard* in section 3, the building standards set out in subregulation (2) are, except to the extent that regulation 31BA otherwise provides, prescribed as applicable building standards

for the purposes of section 57(3) for an application mentioned —

- (a) in section 49(b) or 51(2) in respect of all kinds of buildings; or
 - (b) in section 51(3) in respect of all kinds of buildings and incidental structures.
- (2) For subregulation (1), the applicable building standards for a building or incidental structure are the requirements in relation to the technical aspects of the construction of a building or incidental structure of that building or incidental structure's classification that are set out in the edition of the Building Code that is in effect at the time the application for the occupancy permit or building approval certificate is made.

[Regulation 31G inserted in Gazette 18 Dec 2012 p. 6568-9; amended in Gazette 21 Jun 2013 p. 2446; 7 Dec 2015 p. 4901.]

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

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

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

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

[Regulation 31H inserted in Gazette 18 Dec 2012 p. 6569-70.]

Subdivision 2 — Building standards in relation to demolition

[Heading inserted in Gazette 18 Dec 2012 p. 6570.]

31I. Applicable building standards in relation to demolition work (s. 3 and 38)

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

- (iii) must be removed from the demolition site; and
 - (iv) must not be burned on the demolition site;
- (b) ensuring that each electrical, gas, telephone or water service to the building or incidental structure being demolished is disconnected by the provider of the service no later than the day on which the demolition work is completed.

[Regulation 31I inserted in Gazette 18 Dec 2012 p. 6570-1; amended in Gazette 24 Apr 2014 p. 1136-7.]

Division 2 — Demonstrating compliance with building standards

[Heading inserted in Gazette 18 Dec 2012 p. 6571.]

31J. Compliance with building standards — CodeMark certificates

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

[Regulation 31J inserted in Gazette 18 Dec 2012 p. 6571.]

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

[Heading inserted in Gazette 18 Dec 2012 p. 6571.]

31. Term used: application

In this Division —

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.

[Regulation 31 amended in Gazette 18 Dec 2012 p. 6572.]

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
- (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;

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- (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.

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

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

[Regulation 36A inserted in Gazette 18 Dec 2012 p. 6572.]

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;
 - (aa) if the certificate of building compliance is to accompany an application mentioned in section 49(b) and the change of classification of the building is to a Class 2 or Class 3 building —
 - (i) a statement about whether the building is located in a bush fire prone area; and
 - (ii) if the building has been located in a bush fire prone area for a period of 4 months or more at the time the application is made —
 - (I) the BAL for the building site; or
 - (II) if another measure has been used to assess compliance with a bush fire performance requirement — details of the measure used and the results of that assessment;

- (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;
- (ba) if the certificate of building compliance is to accompany an application mentioned in section 51(2) or (3) in respect of a Class 1, Class 2 or Class 3 building or an associated Class 10a building or deck located less than 6 metres from the Class 1, Class 2 or Class 3 building —
 - (i) a statement about whether the building or deck is located in a bush fire prone area; and
 - (ii) if the building has been located in a bush fire prone area for a period of 4 months or more at the time the application is made —
 - (I) the BAL for the building site; or
 - (II) if another measure has been used to assess compliance with a bush fire performance requirement — details of the measure used and the results of that assessment;
- (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.

[Regulation 36 amended in Gazette 5 Apr 2016 p. 1019-20.]

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(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.

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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 m²; 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 for which occupancy permit not required (s. 41(2))

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

- (a) a Class 1 or Class 10 building;
- (b) a building mentioned in regulation 41(1)(a) or (b);
- (c) a temporary office, shed or sanitary facility to be used by a builder in connection with building work carried out on the land on which the office, shed or sanitary facility is, or is proposed to be, located;
- (d) a building owned or occupied by, or under the control or management of the Crown in right of the State or a

department, agency or instrumentality of the Crown in right of the State for which building work —

- (i) commences before 31 December 2012; and
 - (ii) has, when it commences, an estimated value of less than \$100 000;
- (e) a building owned or occupied by, or under the control or management of the Crown in right of the State or a department, agency or instrumentality of the Crown in right of the State for which building work —
 - (i) commences before 30 June 2017; and
 - (ii) has, when it commences, an estimated value of less than \$50 000;
- (f) a building for which a building licence was not required under the former provisions if —
 - (i) building work for the building commenced before commencement day; or
 - (ii) a contract to do the building work was entered into before commencement day.

*[Regulation 43 inserted in Gazette 18 Dec 2012 p. 6573-4;
amended in Gazette 30 Jun 2015 p. 2328.]*

Part 7 — Work affecting other land

44A. Terms used

In this Part —

architectural feature includes a moulding, string course, cornice, coping, eave, window sill and fin;

public place means an area that is —

- (a) a reserve as defined in the *Land Administration Act 1997* section 3(1); or
- (b) a mall reserve as defined in the *Land Administration Act 1997* section 3(1);

road has the meaning given in the *Land Administration Act 1997* section 3(1).

[Regulation 44A inserted in Gazette 24 Apr 2014 p. 1137.]

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).

45A. Minor encroachments (s. 76(1)(c))

For the purposes of section 76(1)(c) the following encroachments are minor encroachments —

- (a) an architectural feature attached to a building if the feature encroaches on a road or a public place by not more than 250 mm;
- (b) a window or shutter that —
 - (i) when open encroaches on a road or a public place; and
 - (ii) is at least 2.75 m above the surface of the road or the ground level of the public place;

- (c) a window shutter that, when fully open, encroaches on a road or a public place by not more than 50 mm.

[Regulation 45A inserted in Gazette 24 Apr 2014 p. 1137.]

45B. Circumstances prescribed for purposes of section 76(1)(e)

- (1) For the purposes of section 76(1)(e) prescribed circumstances are the placement of an awning, verandah or thing attached to an awning or verandah that encroaches on a road or a public place if the awning, verandah or thing —
 - (a) is at least 2.75 m above the surface of the road or the ground level of the public place; and
 - (b) has no supports connecting it to the surface of the road or the public place; and
 - (c) is constructed in an approved manner.
- (2) For the purposes of subregulation (1)(c) an awning, verandah or thing attached to an awning or verandah is constructed in an approved manner if —
 - (a) the construction —
 - (i) is development as defined in the *Planning and Development Act 2005* section 4(1); and
 - (ii) is in accordance with the requirements of that Act that applied to the construction at the time of the construction;
 - or
 - (b) the construction is in accordance with a local law made under the *Local Government Act 1995* section 9.60 that applied to the construction at the time of the construction.

[Regulation 45B inserted in Gazette 24 Apr 2014 p. 1137-8.]

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. Deleted in Gazette 18 Dec 2012 p. 6574.]

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

(1A) In this regulation —

applicable technical aspects means —

- (a) the technical aspects of the construction of the building or incidental structure set out in the edition of the Building Code that is in effect at the time a written notice is given under subregulation (1); but
 - (b) does not include the bush fire performance requirements if —
 - (i) a building or incidental structure is located in a bush fire prone area; and
 - (ii) the area has been a bush fire prone area for a period of less than 4 months at the time the notice is given.
- (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

| Column 1 Item | Column 2 Existing classification | Column 3 Proposed classification |
|--------------------------|---|---|
| 1. | Classes 2 to 10 | Class 1 |

| Column 1 Item | Column 2 Existing classification | Column 3 Proposed classification |
|--------------------------|---|---|
| 2. | Class 1a | Class 1b |

Penalty: a fine of \$5 000.

- (2) The written notice must include or be accompanied by —
- (a) evidence that the building or incidental structure complies with the applicable technical aspects of the construction of a building or incidental structure of that building or incidental structure's proposed classification; and
 - (b) if the proposed classification of the building or incidental structure is Class 1 —
 - (i) a statement about whether the building or incidental structure is located in a bush fire prone area; and
 - (ii) if the building or incidental structure has been located in a bush fire prone area for a period of 4 months or more at the time the notice is given —
 - (I) the BAL for the building site; or
 - (II) if another measure has been used to assess compliance with the relevant performance requirement — details of the measure used and the results of that assessment.

*[Regulation 47 amended in Gazette 24 Apr 2014 p. 1138;
5 Apr 2016 p. 1020-1.]*

Division 2A — Maintenance

[Heading inserted in Gazette 24 Apr 2014 p. 1138.]

48A. Maintenance of buildings

(1) In this regulation —

relevant building standards, in relation to a part of a building,
means —

- (a) if one or more building permits have been granted in respect of the part — the building standards in the edition of the Building Code identified in the applicable certificate of design compliance for the most recent of those building permits; or
- (b) if paragraph (a) does not apply but one or more building licences were issued under the *Local Government (Miscellaneous Provisions) Act 1960* in respect of that part —
 - (i) the building standards in the edition of the Building Code that applied at the time the most recent building licence was issued; or
 - (ii) if no edition of the Building Code applied at the time the most recent building licence was issued — each requirement in relation to the technical aspects of the construction of the part applicable at that time;

or

- (c) otherwise — each requirement in relation to the technical aspects of the construction of the part applicable to the part at the time of its construction;

safety measures means measures relating to the following —

- (a) building fire integrity;
- (b) means of egress;
- (c) signs;

- (d) lighting;
 - (e) fire fighting services and equipment;
 - (f) air handling systems;
 - (g) automatic fire detection and alarm;
 - (h) occupant warning systems;
 - (i) lifts;
 - (j) standby power supply systems;
 - (k) building clearance and fire appliances;
 - (l) glazed assemblies, balconies, balustrades, refrigerated chambers, strong rooms, vaults;
 - (m) bushfire protection measures;
 - (n) building use and application.
- (2) The owner of an existing building that is a Class 2 to Class 9 building must ensure that —
- (a) the safety measures in each part of the building are capable of performing to a standard set out in the relevant building standards for the part; and
 - (b) the mechanical ventilation, hot water, warm water and cooling water systems are adequately maintained to safeguard people from illness or injury; and
 - (c) the building's services in each part of the building continue to perform to a standard of energy efficiency that is equal to or greater than the standard in the relevant building standards for the part.

Penalty: a fine of \$5 000.

*[Regulation 48A inserted in Gazette 24 Apr 2014 p. 1138-9;
amended in Gazette 30 Jun 2015 p. 2328-9.]*

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 exceed \$57.45.

*[Regulation 53 amended in Gazette 15 Jun 2012 p. 2515;
27 Jun 2014 p. 2309; 23 Jun 2015 p. 2162.]*

54A. Temporary pool enclosures

- (1) In this regulation —
person responsible has the meaning given in section 75;
work has the meaning given in section 75.
- (2) A person responsible for work that requires the removal of a fence, wall, gate or other barrier that is part of the enclosure for a private swimming pool must ensure that an alternative

enclosure that complies with regulation 50 is installed or provided for any period during which the fence, wall, gate or barrier is removed.

[Regulation 54A inserted in Gazette 24 Apr 2014 p. 1140.]

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 operation²;

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

[Regulation 54 amended in Gazette 18 Dec 2012 p. 6574.]

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.

- (4) Despite subregulation (2)(a) a dwelling is not required to meet a provision of the Building Code applicable at the time of installation of the alarms that requires smoke alarms to be interconnected if —
- (a) a building licence for the construction, erection, assembly or placement of the dwelling was issued under the *Local Government (Miscellaneous Provisions) Act 1960* before commencement day; or
 - (b) a building permit for the construction, erection, assembly or placement of the dwelling was granted on an application for a building permit made before 1 May 2015; or
 - (c) a building permit or a building licence was not required for the construction, erection, assembly or placement of the dwelling and the construction, erection, assembly or placement of the dwelling commenced before 1 May 2015.

[Regulation 60 amended in Gazette 24 Apr 2014 p. 1140; 30 Jun 2015 p. 2329.]

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 \$174.40.
- (4) The local government is to be taken to have refused approval if it has not made a decision whether to give approval within 35 days after the later of —
 - (a) the day on which the person made the application for approval; or
 - (b) the day on which the person complied with a, or the latest, request by the local government for further plans or information.

[Regulation 61 amended in Gazette 23 Jun 2015 p. 2162.]

62. Requirement to maintain certain smoke alarms

- (1) This regulation applies to a person who is the lessor of a dwelling, within the meaning given in the *Residential Tenancies Act 1987* section 3.
- (2) The lessor of a dwelling 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 — 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.

*[Regulation 62 amended in Gazette 18 Dec 2012 p. 6574;
24 Apr 2014 p. 1140-1.]*

[Part 9³ (r. 63-68) omitted under the Reprints Act 1984 s. 7(4)(e).]

Part 10 — Infringement notices

[Heading inserted in Gazette 18 Dec 2012 p. 6575.]

69. Prescribed offences and modified penalties

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

[Regulation 69 inserted in Gazette 18 Dec 2012 p. 6575.]

70. Approved officers and authorised officers

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

[Regulation 70 inserted in Gazette 18 Dec 2012 p. 6575-6.]

r. 71

71. Forms

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

[Regulation 71 inserted in Gazette 18 Dec 2012 p. 6576.]

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

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]

[Heading inserted in Gazette 23 Jun 2015 p. 2162.]

Division 1 — Applications for building permits, demolition permits

[Heading inserted in Gazette 23 Jun 2015 p. 2162.]

| Item | Application | Fee |
|------|--|---|
| 1. | Certified application for a building permit (s. 16(l)) — | |
| | (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 \$95.00 |
| | (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 \$95.00 |
| 2. | Uncertified application for a building permit (s. 16(l)) | 0.32% of the estimated value of the building work as determined by the relevant permit authority, but not less than \$95.00 |
| 3. | Application for a demolition permit (s. 16(l)) — | |
| | (a) for demolition work in respect of a Class 1 or Class 10 building or incidental structure | \$95.00 |
| | (b) for demolition work in respect of a Class 2 to Class 9 building | \$95.00 for each storey of the building |

Building Regulations 2012**Schedule 2** Fees**Division 2** Application for occupancy permits, building approval certificates

| Item | Application | Fee |
|-------------|--|------------|
| 4. | Application to extend the time during which a building or demolition permit has effect (s. 32(3)(f)) | \$95.00 |

[Division 1 inserted in Gazette 23 Jun 2015 p. 2162-3.]

Division 2 — Application for occupancy permits, building approval certificates

[Heading inserted in Gazette 23 Jun 2015 p. 2163.]

| Item | Application | Fee |
|-------------|---|---|
| 1. | Application for an occupancy permit for a completed building (s. 46) | \$95.00 |
| 2. | Application for a temporary occupancy permit for an incomplete building (s. 47) | \$95.00 |
| 3. | Application for modification of an occupancy permit for additional use of a building on a temporary basis (s. 48) | \$95.00 |
| 4. | Application for a replacement occupancy permit for permanent change of the building's use, classification (s. 49) | \$95.00 |
| 5. | Application for an occupancy permit or building approval certificate for registration of strata scheme, plan of re-subdivision (s. 50(1) and (2)) | \$10.50 for each strata unit covered by the application, but not less than \$104.65 |
| 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 \$95.00 |

| Item | Application | Fee |
|-------------|---|---|
| 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 \$95.00 |
| 8. | Application to replace an occupancy permit for an existing building (s. 52(1)) | \$95.00 |
| 9. | Application for a building approval certificate for an existing building where unauthorised work has not been done (s. 52(2)) | \$95.00 |
| 10. | Application to extend the time during which an occupancy permit or building approval certificate has effect (s. 65(3)(a)) | \$95.00 |

[Division 2 inserted in Gazette 23 Jun 2015 p. 2163.]

Division 3 — Other applications

[Heading inserted in Gazette 23 Jun 2015 p. 2164.]

| Item | Application | Fee |
|-------------|--|------------|
| 1. | Application as defined in regulation 31 (for each building standard in respect of which a declaration is sought) | \$2 100.00 |

[Division 3 inserted in Gazette 23 Jun 2015 p. 2164.]

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**

| Column 1 System to be tested | Column 2 When test to be conducted |
|--|---|
| Fire hose reel system required under EP1.1 and EP1.5 | On completion of the installation of the system |
| Fire hydrant system required under EP1.3 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 3 amended in Gazette 24 Apr 2014 p. 1141.]

Schedule 4 — Building work that does not require building permit

[r. 41]

1. Areas where building permit not required for certain work

Table

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

cl. 1

| Column 1 Local government district | Column 2 Area where building permit not required for building work for Class 10 building or incidental structure | Column 3 Area where building permit not required for building work for building other than Class 10 building or incidental structure |
|---|---|---|
| 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 | |

| Column 1 Local government district | Column 2 Area where building permit not required for building work for Class 10 building or incidental structure | Column 3 Area where building permit not required for building work for building other than Class 10 building or incidental structure |
|---|---|---|
| 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 | |
| Koorda | Whole district other than — (a) townsites; (b) Avon location 16386 | |

cl. 1

| Column 1 Local government district | Column 2 Area where building permit not required for building work for Class 10 building or incidental structure | Column 3 Area where building permit not required for building work for building other than Class 10 building or incidental structure |
|---|---|---|
| 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 | |
| Moora | Whole district other than townsites | |
| Morawa | Whole district other than townsites | |

| Column 1 Local government district | Column 2 Area where building permit not required for building work for Class 10 building or incidental structure | Column 3 Area where building permit not required for building work for building other than Class 10 building or incidental structure |
|---|---|---|
| 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 | |
| Perenjori | Whole district other than — (a) townsites; (b) areas subject to local planning schemes | |

cl. 1

| Column 1 Local government district | Column 2 Area where building permit not required for building work for Class 10 building or incidental structure | Column 3 Area where building permit not required for building work for building other than Class 10 building or incidental structure |
|---|---|---|
| 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 |
| Wagin | Whole district other than — (a) townsites in Town Ward; (b) Williams loc. 440, 507, 545, 618, 945, 1165 or 5330 | |

| Column 1 Local government district | Column 2 Area where building permit not required for building work for Class 10 building or incidental structure | Column 3 Area where building permit not required for building work for building other than Class 10 building or incidental structure |
|---|---|---|
| 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 |
| 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 | |

cl. 2

| Column 1 Local government district | Column 2 Area where building permit not required for building work for Class 10 building or incidental structure | Column 3 Area where building permit not required for building work for building other than Class 10 building or incidental structure |
|---|---|---|
| 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

| Item | Description of building work for which building permit is not required |
|-------------|--|
| 1. | Construction, erection, assembly or placement of a freestanding Class 10a building that — <ul style="list-style-type: none"> (a) has a floor area not exceeding 10 m²; and (b) is no more than 2.4 m in height; and (c) is not located in wind region C or D as defined in AS 1170.2. |
| 2. | Renovation, alteration, improvement, repair or maintenance of a building or incidental structure if the building work — <ul style="list-style-type: none"> (a) will not adversely affect the structural soundness of the building or incidental structure and does not include — <ul style="list-style-type: none"> (i) an increase or decrease in the floor area or height of the building or incidental structure; or (ii) underpinning or replacement of footings; or |

| Item | Description of building work for which building permit is not required |
|------|--|
| | <p>(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;</p> <p>and</p> <p>(b) is done using materials commonly used for the same purpose as the material being replaced; and</p> <p>(c) will not change the use or classification of the building or incidental structure; and</p> <p>(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</p> <p>(e) will not affect the way in which the building or incidental structure complies with each building standard that applies to the building or incidental structure; and</p> <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> |

cl. 2

| Item | Description of building work for which building permit is not required |
|-------------|--|
| | <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> |
| 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>(i) is no more than 2 m in height above the highest point of attachment to the building; and</p> <p>(ii) will not affect the way in which the building complies with each building standard that applies to the building;</p> <p>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> |

| Item | Description of building work for which building permit is not required |
|-------------|--|
| 7. | Construction, erection, assembly or placement of a pergola associated with a Class 1 building that — <ul style="list-style-type: none"> (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 m². |
| 8. | Construction, erection, assembly or placement of a water storage 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 — <ul style="list-style-type: none"> (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 — <ul style="list-style-type: none"> (a) commences before 30 June 2017; and (b) has, when it commences, an estimated value of less than \$50 000. |

cl. 2

| Item | Description of building work for which building permit is not required |
|-------------|--|
| 13. | <p>The installation of a roof mounted evaporative cooling unit on a building or incidental structure if —</p> <ul style="list-style-type: none">(a) the building or incidental structure is not located in a bush fire prone area; or(b) the building is a Class 4 to Class 9 building; or(c) the building or incidental structure is located in a bush fire prone area and the BAL for the building site is BAL-Low; or(d) the building or incidental structure —<ul style="list-style-type: none">(i) is located in a bush fire prone area; and(ii) the BAL for the building site is BAL-12.5, BAL-19 or BAL-29; and(iii) the installation of the evaporative cooling unit complies with the requirements for roof penetration in respect of the building or incidental structure set out in AS 3959. |

[Clause 2 amended in Gazette 15 Jun 2012 p. 2515; 18 Dec 2012 p. 6576; 24 Apr 2014 p. 1141; 5 Apr 2016 p. 1021.]

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

[r. 49]

| Table | |
|----------------------------------|---|
| Column 1 | Column 2 |
| Local government district | Areas of State where Part 8 Division 2 applies |
| 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 |

| Column 1 | Column 2 |
|----------------------------------|--|
| Local government district | Areas of State where Part 8 Division 2 applies |
| Dardanup | Whole district |
| 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 areas in Mullewa Ward that are not townsites |
| 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 |

| Column 1 | Column 2 |
|----------------------------------|---|
| Local government district | Areas of State where Part 8 Division 2 applies |
| Manjimup | Whole district |
| Melville | Whole district |
| 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 |

| Column 1 | Column 2 |
|----------------------------------|---|
| Local government district | Areas of State where Part 8 Division 2 applies |
| Swan | Whole district |
| Tammin | Townsite of Tammin |
| Trayning | Townsites of Trayning, Kununoppin, Yelbeni |
| Victoria Park | Whole district |
| Vincent | Whole district |
| Wagin | Whole district |
| Wandering | Whole district |
| Wanneroo | Whole district |
| Warooka | 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 |

[Schedule 5 amended in Gazette 24 Apr 2014 p. 1141.]

Schedule 6 — Prescribed offences and modified penalties

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

[Heading inserted in Gazette 18 Dec 2012 p. 6577.]

| Offences | | Modified penalty (\$) |
|-----------------|---|--------------------------------------|
| r. 50(1) | Enclosure of private swimming pool | 750 |
| r. 56 | Requirement to have smoke alarms or similar prior to transfer of dwelling | 1 000 |
| r. 58 | Requirement to have smoke alarms or similar prior to tenancy | 1 000 |
| r. 59 | Requirement to have smoke alarms or similar prior to hire of dwelling | 1 000 |

[Schedule 6 inserted in Gazette 18 Dec 2012 p. 6577; amended in Gazette 24 Apr 2014 p. 1141.]

Form 1

Schedule 7 — Forms

[r. 71]

[Heading inserted in Gazette 18 Dec 2012 p. 6577.]

Form 1 — Infringement notice

| | | | |
|--|-------------------------|--|--|
| <i>Building Act 2011</i> <i>Building Regulations 2012</i> INFRINGEMENT NOTICE | | Infringement notice no. | |
| Alleged offender | Name | | |
| | | | |
| | Address | | |
| | | | |
| Details of alleged offence | Date or period | | |
| | Place | | |
| | Written law contravened | Regulation of the <i>Building Regulations 2012</i> | |
| | Details of offence | | |
| Date | Date of notice | | |
| Issuing officer | Name | | |
| | Office | | |
| | Signature | | |
| Modified penalty | \$ _____ | | |
| Penalty | Individual | \$ _____ | You do not have to pay this amount. This is the maximum fine that can be imposed if you are prosecuted in a court and convicted of this offence. |
| | Body corporate | \$ _____ | |

| | | | |
|---------------------------|--|----------------|--|
| <p>TAKE NOTICE</p> | <p>It is alleged that you have committed the above offence.</p> <p>If you do not want to be prosecuted in court for the offence, pay the modified penalty to the Approved Officer within 28 days after the date of this notice.</p> <p>If you do not pay the modified penalty within 28 days, you may be prosecuted or enforcement action may be taken under the <i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i>. Under that Act, some or all of the following action may be taken — your driver's licence may be suspended; your vehicle licence may be suspended or cancelled; your details may be published on a website; your vehicle may be immobilised or have its number plates removed; and your property may be seized and sold.</p> <p>If you need more time to pay the modified penalty, you should contact the Approved Officer at the address below.</p> <p>Paying the modified penalty will not be regarded as an admission for the purposes of any civil or criminal court case.</p> <p>If you want this matter to be dealt with by prosecution in court, sign and date here:</p> <p>_____ / /20</p> <p>and post this notice to the Approved Officer at the address below within 28 days after the date of this notice.</p> <p>If you consider that you have good reason to have this notice withdrawn, you can write to the Approved Officer at the address below requesting that this notice be withdrawn and setting out why you consider that this notice should be withdrawn. Your letter must be received not later than 28 days after the date of this notice.</p> | | |
| <p>How to pay</p> | <table border="1"> <tr> <td data-bbox="502 1361 662 1650"> <p>By post</p> </td><td data-bbox="662 1361 1275 1650"> <p>Tick the relevant box below and post this notice to:</p> <p>Approved Officer — <i>Building Act 2011</i></p> <p>[Address]</p> <p><input type="checkbox"/> I want to pay the modified penalty. A cheque or money order (payable to 'Approved Officer' — <i>Building Act 2011</i>)</p> </td></tr> </table> | <p>By post</p> | <p>Tick the relevant box below and post this notice to:</p> <p>Approved Officer — <i>Building Act 2011</i></p> <p>[Address]</p> <p><input type="checkbox"/> I want to pay the modified penalty. A cheque or money order (payable to 'Approved Officer' — <i>Building Act 2011</i>)</p> |
| <p>By post</p> | <p>Tick the relevant box below and post this notice to:</p> <p>Approved Officer — <i>Building Act 2011</i></p> <p>[Address]</p> <p><input type="checkbox"/> I want to pay the modified penalty. A cheque or money order (payable to 'Approved Officer' — <i>Building Act 2011</i>)</p> | | |

[Form 1 inserted in Gazette 18 Dec 2012 p. 6577-80; amended in Gazette 20 Aug 2013 p. 3822.]

Form 2 — Withdrawal of infringement notice

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

Form 2

| | | | |
|--|---|-------------|--|
| Withdrawal of infringement notice <i>[*Delete whichever is not applicable]</i> | <p>The above infringement notice issued against you for the above alleged offence has been withdrawn.</p> <p>If you have already paid the modified penalty for the alleged offence, you are entitled to a refund.</p> <p style="padding-left: 40px;">* Your refund is enclosed</p> <p style="padding-left: 40px;"><i>or</i></p> <p style="padding-left: 40px;">* If you have paid the modified penalty but a refund is not enclosed, you may claim your refund by signing and dating this notice and posting it to:</p> <p style="padding-left: 40px;">Approved Officer — <i>Building Act 2011</i></p> <p style="padding-left: 40px;">[Address]</p> | | |
| Your signature | | Date | |

[Form 2 inserted in Gazette 18 Dec 2012 p. 6580-1.]

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Notes

- ¹ This is a compilation of *the Building Regulations 2012* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint ^{1a}.

Compilation table

| Citation | Gazettal | Commencement |
|--|----------------------------|--|
| <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) |
| <i>Building Amendment Regulations 2012</i> | 15 Jun 2012 p. 2513-15 | r. 1 and 2: 15 Jun 2012 (see r. 2(a)); Regulations other than r. 1 and 2: 16 Jun 2012 (see r. 2(b)) |
| <i>Building Amendment Regulations</i> (No. 3) 2012 | 30 Nov 2012 p. 5782-3 | r. 1 and 2: 30 Nov 2012 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Dec 2012 (see r. 2(b)) |
| <i>Building Amendment Regulations</i> (No. 2) 2012 | 18 Dec 2012 p. 6555-81 | r. 1 and 2: 18 Dec 2012 (see r. 2(a)); Regulations other than r. 1 and 2: 19 Dec 2012 (see r. 2(b) and <i>Gazette</i> 18 Dec 2012 p. 6585) |
| Reprint 1: The Building Regulations 2012 as at 24 May 2013 (includes amendments listed above) | | |
| <i>Building Amendment Regulations</i> (No. 2) 2013 | 21 Jun 2013 p. 2445-6 | r. 1 and 2: 21 Jun 2013 (see r. 2(a)); Regulations other than r. 1 and 2: 22 Jun 2013 (see r. 2(b)) |
| <i>Building Amendment Regulations 2013</i> | 20 Aug 2013 p. 3822 | r. 1 and 2: 20 Aug 2013 (see r. 2(a)); Regulations other than r. 1 and 2: 21 Aug 2013 (see r. 2(b) and <i>Gazette</i> 20 Aug 2013 p. 3815) |
| <i>Building Amendment Regulations 2014</i> | 24 Apr 2014 p. 1135-41 | r. 1 and 2: 24 Apr 2014 (see r. 2(a)); Regulations other than r. 1 and 2: 25 Apr 2014 (see r. 2(b)) |

| Citation | Gazettal | Commencement |
|--|---------------------------|---|
| <i>Building Amendment Regulations (No. 2) 2014</i> | 17 Jun 2014 p. 1957-8 | r. 1 and 2: 17 Jun 2014 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2014 (see r. 2(b)) |
| <i>Building Amendment Regulations (No. 3) 2014</i> | 27 Jun 2014 p. 2308-9 | r. 1 and 2: 27 Jun 2014 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2014 (see r. 2(b)(i)) |
| Reprint 2: The Building Regulations 2012 as at 21 Nov 2014 (includes amendments listed above) | | |
| <i>Building Amendment Regulations (No. 4) 2015</i> | 23 Jun 2015 p. 2161-4 | r. 1 and 2: 23 Jun 2015 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2015 (see r. 2(b)) |
| <i>Building Amendment Regulations (No. 2) 2015</i> | 30 Jun 2015 p. 2328-9 | r. 1 and 2: 30 Jun 2015 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2015 (see r. 2(b)) |
| <i>Building Amendment Regulations 2015</i> | 15 Sep 2015 p. 3783-4 | r. 1 and 2: 15 Sep 2015 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Oct 2015 (see r. 2(b)) |
| <i>Building Amendment Regulations (No. 3) 2015</i> | 7 Dec 2015 p. 4897-901 | r. 1 and 2: 7 Dec 2015 (see r. 2(a)); Regulations other than r. 1 and 2: 8 Dec 2015 (see r. 2(b) and <i>Gazette</i> 7 Dec 2015 p. 4881) |
| <i>Building Amendment Regulations 2016</i> | 5 Apr 2016 p. 1015-21 | r. 1 and 2: 5 Apr 2016 (see r. 2(a)); Regulations other than r. 1 and 2: 8 Apr 2016 (see r. 2(b)) |

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

| Citation | Gazettal | Commencement |
|-----------------|-----------------|---------------------|
|-----------------|-----------------|---------------------|

| Citation | Gazettal | Commencement |
|---|---------------------------|--------------------------|
| <i>Building Amendment Regulations (No. 2) 2016</i> r. 3-19 ⁴ | 15 Apr 2016 p. 1165-72 | 1 May 2016 (see r. 2(b)) |

- ² The *Building Act 2011* s. 153 came into operation on 2 April 2012.
- ³ Part 9 (r. 63-68) expired on the day that is one year after 2 April 2012. Part 9 was omitted under the *Reprints Act 1984* s. 7(4)(e).
- ⁴ On the date as at which this compilation was prepared, the *Building Amendment Regulations (No. 2) 2016* r. 3-19 had not come into operation. They read as follows:

3. Regulations amended

These regulations amend the *Building Regulations 2012*.

4. Regulation 3 amended

- (1) In regulation 3 delete the definition of **private swimming pool**.
- (2) In regulation 3 insert in alphabetical order:

approved barrier solution, in relation to a swimming pool, means an alternative solution used to comply with a Building Code pool barrier requirement that has been approved in accordance with regulation 51 by the permit authority for the swimming pool;

Building Code pool barrier requirements means —

- (a) in relation to a swimming pool associated with a Class 1 or Class 10 building — performance requirement P2.5.3 in the Building Code Volume 2 Part 2.5;
- (b) in relation to a swimming pool associated with a Class 2 to Class 9 building — performance requirement GP1.2(a) in the Building Code Volume 1 Part G1;

pre-May 2016 private swimming pool means a private swimming pool —

- (a) installed before 1 May 2016; or
- (b) installed on or after 1 May 2016 in accordance with plans, drawings and specifications submitted to a permit authority for approval before that day;

private swimming pool means a swimming pool —

- (a) that is associated with —
 - (i) a Class 1a building; or
 - (ii) less than 30 sole-occupancy units in a Class 2 building; or

- (iii) a Class 4 part of a building;
- and
- (b) which has the capacity to contain water that is more than 300 mm deep;

sole-occupancy unit has the meaning given in the Building Code Volume 1 Part A1;

swimming pool has the meaning given in the Building Code Volume 1 Part A1;

5. Regulation 15B inserted

At the end of Part 2 insert:

15B. Modifications to AS 1926.1-2012 (s. 150)

For the purposes of these regulations, AS 1926.1-2012 (Safety barriers for swimming pools) as referenced in the Building Code —

- (a) is modified in clause 2.3.5(a) to insert after “plane”:

and vertical members are spaced to provide a clear opening of not more than 10 mm

- (b) is modified in Figure 2.6 to delete “100 mm” and insert:

10 mm

6. Regulation 28 replaced

Delete regulation 28 and insert:

28. Required inspection: barrier to private swimming pool (s. 36(2)(a))

The inspection that is to be conducted at the completion of building work for a barrier to a private swimming pool is an inspection to assess whether the barrier complies with the applicable building standards for the barrier as set out in regulation 31C.

7. **Regulation 31C replaced**

Delete regulation 31C and insert:

31C. Applicable building standards for swimming pools (s. 3, 19(3) and 37(1) and (2))

- (1) For the purposes of the definition of *applicable building standard* in section 3, the building standards set out in the Table are prescribed as applicable building standards for the purposes of sections 19(3) and 37(1) in respect of a type of swimming pool referred to in the Table.

Table

| Type of swimming pool | Building standard |
|---|---|
| All swimming pools other than private swimming pools | The requirement mentioned in regulation 31A(2) except that the Building Code pool barrier requirements do not apply. |
| Private swimming pools other than pre-May 2016 private swimming pools | The requirement mentioned in regulation 31A(2)(a) except that an alternative solution cannot be used to comply with a Building Code pool barrier requirement unless the alternative solution is an approved barrier solution. |
| Pre-May 2016 private swimming pools | <p>The requirements mentioned in regulation 31A(2)(a) except that —</p> <p>(a) the requirements for a barrier to a private swimming pool set out in regulation 50 may be substituted for the Building Code pool barrier requirement; and</p> <p>(b) an alternative solution cannot be used to comply with a Building Code pool barrier requirement unless the alternative solution is an approved barrier</p> |

| Type of swimming pool | Building standard |
|-----------------------|-------------------|
| | solution. |

- (2) For the purposes of the definition of ***applicable building standard*** in section 3, the building standards set out in the Table are prescribed as applicable building standards for the purposes of section 37(2) in respect of a type of swimming pool referred to in the Table.

Table

| Type of swimming pool | Building standard |
|--|--|
| All swimming pools other than private swimming pools | The requirement mentioned in regulation 31E(2) other than the Building Code pool barrier requirements. |
| Private swimming pools | The requirement mentioned in regulation 31E(2) except that an alternative solution cannot be used to comply with a Building Code pool barrier requirement unless the alternative solution is an approved barrier solution. |

8. Regulation 31D amended

- (1) At the beginning of regulation 31D insert:
- (1A) This regulation does not apply to a swimming pool.
- (2) In regulation 31D(3) in the Table:
- (a) delete “GP1.2(b),”;
 - (b) delete “P2.5.2, P2.5.4” and insert:

P2.5.2

Note: The heading to amended regulation 31D is to read:
Applicable building standards for relocated buildings and incidental structures (other than swimming pools) (s. 3, 19(3) and 37(1) and (2))

9. Regulation 31E amended

In regulation 31E(1) delete “regulation 31BA otherwise provides.” and insert:

regulations 31BA and 31C otherwise provide.

10. Regulation 31G amended

In regulation 31G(2) delete “made.” and insert:

made, except that an alternative solution cannot be used to comply with a Building Code pool barrier requirement unless the alternative solution is an approved barrier solution.

11. Regulation 48 amended

In regulation 48 delete the definition of *access through a building* and insert:

access through a building means direct or indirect access to an area that contains a private swimming pool if the area is enclosed by a barrier that includes a wall of a building;

12. Regulation 50 replaced

Delete regulation 50 and insert:

50. Barrier to 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 a barrier that restricts access by young children to the pool and its immediate surrounds.

Penalty for this subregulation: a fine of \$5 000.

- (1A) A barrier to a private swimming pool is to be taken to be suitable for the purposes of subregulation (1) if —
- (a) it complies with a Building Code pool barrier requirement that was in effect —
 - (i) if a building permit applies to the construction of the pool — at the time the application for a

- building permit to construct the pool was made;
or
 - (ii) otherwise — at the time the construction of the pool commenced;
 - or
 - (b) the swimming pool is a pre-May 2016 private swimming pool and the barrier satisfies the requirements in paragraph (a) or complies with subregulations (2) to (5).
- (1B) For the purposes of subregulation (1A)(a), an alternative solution cannot be used to comply with a Building Code pool barrier requirement unless the alternative solution is an approved barrier solution.
- (2) The immediate surrounds of a pre-May 2016 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 barrier to a pre-May 2016 private swimming pool all external doors and windows in that building must satisfy the requirements of AS 1926.1.
- (4) A barrier to a pre-May 2016 private swimming pool —
- (a) may consist of a fence, wall, gate or other component, or a combination of them; and
 - (b) any fence, wall, gate or other component that is included in the barrier must be in accordance with —
 - (i) the requirements of AS 1926.1; or
 - (ii) approved alternative requirements;
- and
- (c) any wall comprising part of the barrier must have 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 barrier to a pre-May 2016 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.

13. Regulation 51 amended

After regulation 51(4) insert:

- (5) A permit authority may approve an alternative solution to a Building Code pool barrier requirement if the permit authority is satisfied that the alternative solution complies with the relevant performance requirement.

14. Regulation 52 amended

In regulation 52(3) delete “enclosure” and insert:

barrier

15. Regulation 53 amended

In regulation 53(1) delete “pool enclosure” and insert:

barrier to the private swimming pool

Note: The heading to amended regulation 53 is to read:

Inspection of barrier to private swimming pool

16. Regulation 54A amended

Delete regulation 54A(2) and insert:

- (2) A person responsible for work that requires the removal of a fence, wall, gate or other component that is part of a barrier to a private swimming pool must ensure that an alternative barrier that complies with regulation 50 is installed or provided for any period during which the fence, wall, gate or component is removed.

Note: The heading to amended regulation 54A is to read:

Temporary pool barriers

17. Regulation 54 amended

In regulation 54(2):

- (a) before “private swimming pool” insert:

a barrier to a

- (b) delete “enclosures”.

18. Schedule 4 amended

In Schedule 4 clause 2 in the Table item 4 delete “an enclosure for” and insert:

a barrier to

19. Schedule 6 amended

In Schedule 6 in the item relating to r. 50(1) delete “Enclosure of” and insert:

Barrier to

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) |
|---|--------------|
| 10 year life battery | 55(1) |
| access through a building..... | 48 |
| alternative solution..... | 3 |
| applicable technical aspects | 47(1A) |
| application..... | 31, 40(1) |
| approved alternative building solution..... | 55(1) |
| approved alternative requirement..... | 48 |
| approved door | 48 |
| architectural feature | 44A |
| AS | 3 |
| AS 1926.1 | 48 |
| AS 3959 | 3 |
| assessment method..... | 3 |
| builder work | 3 |
| Building Code | 3 |
| building product..... | 31J(1) |
| building site | 3 |
| bush fire performance requirement | 3 |
| bush fire prone area..... | 3 |
| bushfire attack level (BAL) | 3 |
| business day | 3 |
| Class..... | 3 |
| CodeMark certificate | 31J(1) |
| commencement day | 3, 31BA(8) |
| decision | 33(1) |
| dwelling | 55(1) |
| electrician..... | 55(1) |
| EP..... | Sch. 3 cl. 1 |
| estimated value | 3 |
| excluded building work | 31BA(1A) |
| expiry day | 23(1), 40(1) |
| FES Commissioner | 3 |
| former provisions..... | 3 |
| GST..... | Sch. 1 cl. 1 |
| Heritage Act..... | 3 |
| licensed surveyor | 39(1) |
| local planning scheme..... | 3, 31BA(8) |
| managed reserve | 10(1A) |
| management body | 10(1A) |

Defined terms

| | |
|--|---------------|
| new owner..... | 57(1) |
| owner | 10(2A), 55(1) |
| performance requirement | 3 |
| pergola | Sch. 4 cl. 2 |
| person responsible..... | 54A(1) |
| person with a disability | 51(1) |
| prior owner..... | 57(1) |
| private swimming pool | 3 |
| public place | 44A |
| relevant building | 31BA(1A) |
| relevant building standards | 48A(1) |
| relevant components | Sch. 1 cl. 1 |
| relevant day..... | 60(1) |
| relevant edition of the Building Code | 3 |
| renovation, alteration, extension, improvement or repair | 31BA(1A) |
| repeal day..... | 54(1) |
| repealed provisions | 54(1) |
| residential tenancy agreement..... | 55(1) |
| road | 10(1A) |
| road | 44A |
| safety measures | 48A(1) |
| section | 3 |
| Table | 41(2) |
| townsite | 3 |
| unit | 55(1) |
| work | 54A(1) |
| young child | 48 |