



Western Australia

# **Building Act 2011**



# Building Act 2011

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## **Building Act 2011**

**An Act to provide for the following —**

- **permits for building work and demolition work;**
- **standards for the construction and demolition of buildings and incidental structures;**
- **the use and maintenance of, and requirements in relation to, existing buildings and incidental structures;**
- **work affecting land other than land on which the work is done;**
- **the amendment of the *Local Government (Miscellaneous Provisions) Act 1960* and various other Acts<sup>2</sup>;**
- **the repeal of the *Building Regulations 1989* and the *Local Government (Prohibition on Dealings in Land) Regulations 1973*<sup>3</sup>;**
- **related matters.**

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Building Act 2011*<sup>1</sup>.

### **2. Commencement**

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions<sup>1</sup>.

### **3. Terms used**

In this Act, unless the contrary intention appears —

***adult*** means a person who has reached 18 years of age, and in the absence of positive evidence as to age, means a person who is apparently 18 or more years of age;

***adversely affect land*** includes —

- (a) reduce the stability or bearing capacity of the land or a building or structure on the land; or
- (b) damage, or reduce the structural adequacy of, a building or structure on the land; or
- (c) the changing of the natural site drainage in a way that reduces the effectiveness of the drainage of the land or existing or future buildings or structures on the land;

***applicable building standard***, in a provision, means a building standard that is prescribed as an applicable building standard for the purposes of the provision in respect of a kind of building, incidental structure, building or demolition work or application to which the provision relates;

**applicable certificate of design compliance**, in relation to a building permit, means the certificate of design compliance —

- (a) that, as required by section 16(e), accompanied a certified application for the building permit; or
- (b) that was signed under section 17 on an uncertified application for the building permit,

as is relevant in the case;

**approved**, in relation to the manner or form of something, means approved —

- (a) by a prescribed person; or
- (b) in a prescribed way;

**authorised person** means a person designated under section 96 as an authorised person and includes, for the purposes of section 93(2)(d) —

- (a) a person who is prescribed as an authorised person for the purposes of section 93(2)(d); and
- (b) a person who is authorised by a local government in the manner prescribed for the purposes of section 93(2)(d);

**authority under a written law** includes an approval, licence, registration, right, permit or exemption granted under a written law;

**building** includes a part of a building;

**building approval certificate** means a building approval certificate granted on an application of a kind mentioned in Part 4 Division 2;

**Building Commissioner** has the meaning given in the *Building Services (Complaint Resolution and Administration) Act 2011* section 3;

**building order** means an order made under section 110(1);

**building order (emergency)** means a building order made in the circumstances mentioned in section 111(2);

**building permit** means a permit granted under section 20;

**building service contractor** has the meaning given in the Registration Act section 3;

**building standard** means a prescribed requirement in relation to the technical aspects of the construction or demolition of a building or an incidental structure;

**building surveyor** means a building service practitioner, as defined in the Registration Act section 3, who is registered in a class of building service practitioner that is prescribed for the purposes of this definition;

**building work** means —

- (a) the construction, erection, assembly or placement of a building or an incidental structure; or
- (b) the renovation, alteration, extension, improvement or repair of a building or an incidental structure; or
- (c) the assembly, reassembly or securing of a relocated building or a relocated incidental structure; or
- (d) the changing of ground levels of land for the purposes of work of a kind mentioned in paragraph (a), (b) or (c) to an extent that could adversely affect land beyond its boundaries; or
- (e) site work on any land for the purposes of, or required because of, work of a kind mentioned in —
  - (i) paragraph (a), (b), (c) or (d); or
  - (ii) paragraph (a) or (b) of the definition of **demolition work**;

or

- (f) other prescribed work,

but does not include work of a kind prescribed for the purposes of this definition as not being building work;

**classification**, in relation to a building or incidental structure, means the classification of the building or incidental structure under the regulations;



**commencement day** means the day on which section 9 comes into operation;

**Crown land** has the meaning given in the *Land Administration Act 1997* section 3(1);

**demolition permit** means a permit granted under section 21;

**demolition work** means —

- (a) the demolition, dismantling or removal of a building or an incidental structure; or
- (b) the changing of ground levels for the purposes of work of a kind mentioned in paragraph (a) to an extent that could adversely affect land owned by a person other than an owner of the land on which the building or incidental structure that is the subject of the demolition work is located; or
- (c) other prescribed work,

but does not include work of a kind prescribed for the purposes of this definition as not being demolition work;

**incidental structure** means a structure attached to or incidental to a building and includes —

- (a) a chimney, mast, swimming pool, fence, free-standing wall, retaining wall or permanent protection structure; and
- (b) a part of a structure;

**independent building surveyor** has the meaning given in section 4;

**land** includes a lot as defined in the *Strata Titles Act 1985* section 3(1);

**Minister for Lands** means the Minister as defined in the *Land Administration Act 1997* section 3(1);

**occupancy permit** means an occupancy permit granted or modified on an application of a kind mentioned in Part 4 Division 2;

**owner** has the meaning given in section 5;

**permit authority for a building** or **permit authority for an incidental structure** has the meaning given in section 6;

**prescribed** means prescribed by regulation;

**Registration Act** means the *Building Services (Registration) Act 2011*;

**specialist**, in relation to a technical certificate, means a person who belongs to a class of persons prescribed as persons who can sign the technical certificate for the purposes of this Act;

**survey** means a survey for the purpose of recording the condition of land including the existing cracks and defects in a building or structure on the land;

**technical certificate** means a certificate in relation to a specific building standard applicable to, or any other technical aspect of, the construction or demolition of a building or incidental structure that is the subject of an application for a building permit, demolition permit, occupancy permit or building approval certificate.

*[Section 3 amended: No. 37 of 2012 s. 4 and 33.]*

**4. Term used: independent building surveyor**

(1) In this section —

**application** means an application for a building permit or a demolition permit, or an application under Part 4 Division 2.

(2) A building surveyor is an **independent building surveyor** in relation to an application if —

- (a) the building surveyor is neither an owner of the land on which the building or incidental structure that is the subject of the application is, or is proposed to be, located, nor an employee of an owner of the land; and
- (b) the building surveyor is neither the person who proposes to be named as the builder or demolition contractor on the permit, nor an employee of that person.

**5. Term used: owner**

- (1) In this Act, unless the contrary intention appears —
- 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
  - (c) a person who holds a prescribed interest in the land;
- owner**, in relation to Crown land, means —
- (a) a prescribed person; or
  - (ba) the State, in prescribed circumstances; or
  - (b) a person who holds a prescribed interest in the land,
- and the regulations may specify whether **owner** means one or more of those persons for the purposes of a particular provision of this Act.
- (2) The regulations may impose restrictions on the circumstances in which a person will be treated as an owner for the purposes of a provision of this Act specified in the regulations.

*[Section 5 amended: No. 37 of 2012 s. 5.]*

**6. Permit authority for a building or incidental structure**

- (1) The permit authority for a building or an incidental structure is the State if, under section 124, the Minister has decided that the State is to be the permit authority for the building or incidental structure.
- (2) If —
- (a) subsection (1) does not apply; and
  - (b) under section 126, a special permit authority is designated by regulations as the permit authority for buildings or incidental structures in an area, or of a kind, specified in the regulations, the permit authority for a

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building or incidental structure in that area, or of that kind, is the special permit authority.

- (3) If neither subsection (1) nor (2) applies, the permit authority for a building or incidental structure is the local government in whose district the building or incidental structure is, or is proposed to be, located.

**7. Which permit authority to receive application**

- (1) A person who wishes to make an application for a building permit or a demolition permit, or an application under Part 4 Division 2 must make the application to the permit authority for the building or incidental structure that is the subject of the application.
- (2) A permit authority that is the State or a special permit authority —
- (a) that on an application, grants a building permit, demolition permit or building approval certificate or grants or modifies an occupancy permit, must give the relevant local government details of the permit, modification or certificate; or
  - (b) that receives a notice of completion under section 33 or a notice of cessation under section 34 must give the relevant local government details of the notice.
- (3) In subsection (2) —
- relevant local government** means the local government in whose district the building or incidental structure that is the subject of an application or notice is, or is proposed to be, located.

**8. Crown bound**

This Act binds the Crown.

## **Part 2 — Building and demolition permits**

### **Division 1 — Building or demolition permit generally required for building or demolition work**

#### **9. No building work without a building permit**

A person must not do building work unless —

- (a) a building permit is in effect for the building work; or
- (b) a building permit is not required for the building work under Part 5 or regulations or an order mentioned in Part 5 Division 1; or
- (c) the work is done in accordance with a building order; or
- (d) the work is done in the course of taking action under section 118(2).

Penalty:

- (a) for a first offence, a fine of \$50 000;
- (b) for a second offence, a fine of \$75 000;
- (c) for a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.

#### **10. No demolition work without a demolition permit**

A person must not do demolition work unless —

- (a) a demolition permit is in effect for the demolition work; or
- (b) the demolition is incidental to building work comprising the renovation, alteration, extension, improvement or repair of a building or an incidental structure, and a building permit is in effect for the building work; or
- (c) a demolition permit is not required for the demolition work under Part 5 or regulations or an order mentioned in Part 5 Division 1; or
- (d) the work is done in accordance with a building order; or

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- (e) the work is done in the course of taking action under section 118(2).

Penalty:

- (a) for a first offence, a fine of \$50 000;
- (b) for a second offence, a fine of \$75 000;
- (c) for a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.

**11. Defence if permit suspended**

It is a defence to a charge under section 9 or 10 in a case where a permit was not in effect because it was suspended under section 35 for the accused to prove that at the time of the alleged offence the accused —

- (a) was not aware that an event mentioned in section 35(a) or (b) had occurred in relation to the permit; and
- (b) could not reasonably be expected to have known that the event had occurred.

**12. Defence if emergency**

It is a defence to a charge under section 9 or 10 if —

- (a) the building or demolition work is done in the circumstances mentioned in section 78(1)(c), 79(1)(c) or 80(1)(c); and
- (b) section 78(3), 79(2)(b) or 80(2)(b), as is applicable to the case, is complied with; and
- (c) as soon as practicable after the work is done an application for a building permit or demolition permit is made in respect of the work done.

## **Division 2 — Applications for building or demolition permits**

### **13. Terms used**

In this Division —

***application*** means a certified application, an uncertified application, or an application for a demolition permit;

***certified application*** means an application made under section 14(1);

***uncertified application*** means an application made under section 14(2).

### **14. Certified applications for all buildings, uncertified application for buildings of certain classifications**

- (1) A person may, by way of a certified application, apply for a building permit —
  - (a) to do building work in respect of a building or an incidental structure of any classification; or
  - (b) to do one or more stages of building work in respect of a building or an incidental structure of any classification.
- (2) A person may, by way of an uncertified application, apply for a building permit —
  - (a) to do building work in respect of a building or an incidental structure of a classification that is prescribed for the purposes of this subsection; or
  - (b) to do one or more stages of building work in respect of a building or an incidental structure of a classification that is prescribed for the purposes of this subsection.

### **15. Application for demolition permit**

A person may apply for a demolition permit —

- (a) to do demolition work in respect of a building or an incidental structure; or

- (b) to do one or more stages of demolition work in respect of a building or an incidental structure.

**16. Making an application**

An application —

- (a) must be made in an approved manner and form; and
- (b) must name, and be signed by, each owner of the land on which the building or incidental structure is, or is proposed to be, located; and
- (c) must name, and be signed by, the person who proposes to be named as the builder on the building permit, or the demolition contractor on the demolition permit; and
- (d) must provide prescribed information about the building or incidental structure and the persons mentioned in paragraph (b) or (c); and
- (e) if a certified application, must be accompanied by a certificate of design compliance for the building or incidental structure that is the subject of the application, that is signed by a building surveyor and complies with section 19; and
- (f) if a certified application, must be accompanied by the plans and specifications that are specified in the certificate of design compliance for the building or incidental structure that is the subject of the application; and
- (g) if a certified application, must be accompanied by a copy of each technical certificate signed by a specialist that the building surveyor has relied on to sign the certificate of design compliance; and
- (h) if an uncertified application, must be accompanied by the plans and specifications for consideration by a building surveyor under section 17; and
- (i) must be accompanied by each technical certificate that is prescribed to accompany the application; and



- (j) must be accompanied by evidence that the applicable provisions of the *Home Building Contracts Act 1991* requiring insurance or corresponding cover have been satisfied; and
- (k) must be accompanied by evidence that the applicable provisions of the regulations mentioned in the *Building Services (Complaint Resolution and Administration) Act 2011* Part 7 Division 2 requiring payment of a building services levy have been satisfied; and
- (l) must be accompanied by the prescribed fee, if any, for the application; and
- (m) must be accompanied by each other thing that is prescribed to accompany the application.

**17. Uncertified application to be considered by building surveyor**

- (1) A permit authority must refer to a building surveyor an uncertified application if the application complies with section 16.
- (2) The building surveyor must decide whether to sign a certificate of design compliance for the building or incidental structure that is the subject of the application.
- (3) If the building surveyor signs a certificate of design compliance for the building or incidental structure the certificate must comply with section 19 and be accompanied by —
  - (a) the version of the plans and specifications that are specified in the certificate of design compliance for the building or incidental structure that is the subject of the application; and
  - (b) a copy of each technical certificate signed by a specialist that the building surveyor has relied on to sign the certificate of design compliance.

**18. Further information**

- (1) A permit authority to which an application is made may require the applicant to give the permit authority, within a specified time of not more than 21 days, any document or information that it requires to determine the application and may require the applicant to verify the information by statutory declaration.
- (2) The permit authority may refuse to consider an application if the applicant does not comply with a requirement under subsection (1) within the specified time.
- (3) A requirement under subsection (1) must be given in the prescribed manner.
- (4) The regulations may provide for how many separate requirements under subsection (1) may be made in relation to an application.
- (5) A requirement under subsection (1) may be in respect of a document or information required by the building surveyor to whom the permit authority has referred an uncertified application.

*[Section 18 amended: No. 37 of 2012 s. 31.]*

**19. Certificate of design compliance**

- (1) In this section —  
*certificate* means a certificate of design compliance for a building or an incidental structure that is the subject of a certified application or an uncertified application.
- (2) A certificate must be in an approved form.
- (3) A certificate must contain a statement of the building surveyor signing the certificate to the effect that if the building or incidental structure that is the subject of the application is completed in accordance with the plans and specifications that are specified in the certificate, the building (including each

incidental structure associated with the building) or incidental structure will comply with each applicable standard.

- (4) A building surveyor may, in a certificate, specify such of the inspections and tests listed in regulations mentioned in section 36(2)(b) that the building surveyor thinks should be conducted during or at the completion of the building work.
- (5) A certificate must contain each other thing that is prescribed to be in the certificate.
- (6) The regulations may provide for the things that a building surveyor is required to do before signing a certificate.

*[Section 19 amended: No. 37 of 2012 s. 6 and 34.]*

## **20. Grant of building permit**

- (1) A permit authority to which a certified application or an uncertified application is made must grant the building permit if it is satisfied —
  - (a) that the applicant has complied with section 16; and
  - (b) that the person mentioned in section 16(c) —
    - (i) is a building service contractor who is entitled under the Registration Act section 11 to be named as the builder on the building permit; or
    - (ii) has owner-builder approval under the Registration Act to carry out that work; or
    - (iiia) is a public authority as defined in the Registration Act section 3; or
    - (iii) is a person or in a class of persons prescribed for the purposes of the Registration Act section 7(2)(c) who may be named as the builder on the building permit,

unless the building work is of a kind specified by the regulations; and

- (c) that a certificate of design compliance for the building or incidental structure that is the subject of the application complies with section 19; and
- (d) that the building surveyor who signed the certificate of design compliance —
  - (i) is entitled under the Registration Act to sign certificates of design compliance for buildings or incidental structures of the kind that is the subject of the application; and
  - (ii) is an independent building surveyor in relation to the application;and
- (e) that the certificate of design compliance is issued by a person who —
  - (i) is a building service contractor who is entitled under the Registration Act section 11 to issue the certificate; or
  - (ia) is a public authority as defined in the Registration Act section 3; or
  - (ii) is a person or in a class of persons prescribed for the purposes of the Registration Act section 7(2)(c) who may issue the certificate;and
- (f) that each technical certificate mentioned in section 16(i) is —
  - (i) signed by a person prescribed as a person who may sign the certificate; and
  - (ii) issued by a person prescribed as a person who may issue the certificate;and
- (g) if a part of a building or incidental structure is proposed to be placed beyond the boundaries of the land on which

- the building work is proposed to be done, that there is compliance with section 76; and
- (h) if the building work may adversely affect land beyond the boundaries of the land on which the work is proposed to be done, that there is compliance with section 77; and
- (i) that either —
- (i) a policy of insurance is in force in respect of the building work under the *Home Building Contracts Act 1991* Part 3A Division 2; or
  - (ii) corresponding cover, as defined in the *Home Building Contracts Act 1991* section 25A, is provided in respect of the building work; or
  - (iii) the policy of insurance mentioned in subparagraph (i) or the cover mentioned in subparagraph (ii) is not required under the *Home Building Contracts Act 1991* in respect of the building work;
- and
- (j) that the applicant satisfies any other insurance requirements prescribed by regulation or under any other written law in respect of the building work; and
- (k) that any building services levy required to be paid in respect of the building permit under regulations mentioned in the *Building Services (Complaint Resolution and Administration) Act 2011* Part 7 Division 2 has been paid; and
- (l) if a levy is imposed by the *Building and Construction Industry Training Levy Act 1990* in respect of the building work, that the levy has been paid; and
- (m) that the permit authority has complied with the provisions of the *Heritage of Western Australia Act 1990* in relation to the application and that granting the building permit would not be inconsistent with an

order, agreement or permit under that Act except to the extent allowed by that Act; and

- (n) that the applicant has obtained in relation to the building work each authority under a written law that is prescribed for the purposes of this paragraph; and
  - (o) that the applicant has complied or is complying with each authority mentioned in paragraph (n); and
  - (p) that the applicant, in relation to the building work, has complied or is complying with each provision of a written law that is prescribed for the purposes of this paragraph; and
  - (q) that the applicant, in relation to the building work, has complied or is complying with each provision of a local government policy or requirement, not being a written law, that is prescribed for the purposes of this paragraph; and
  - (r) that each notification that is prescribed for the purposes of this paragraph to be given in relation to the building work has been given; and
  - (s) that the applicant has complied with each other prescribed requirement for the granting of a building permit on the application.
- (2) A permit authority to which an application is made must not grant the building permit unless it is satisfied as to each of the matters mentioned in subsection (1)(a) to (s).

*[Section 20 amended: No. 37 of 2012 s. 7.]*

**21. Grant of demolition permit**

- (1) The permit authority to which an application for a demolition permit is made must grant the demolition permit if it is satisfied —
- (a) that the applicant has complied with section 16; and
  - (b) if the person mentioned in section 16(c) is required under another written law to have an authority under that

- law to do the demolition work, that the person has that authority; and
- (c) that the demolition work will comply with each applicable building standard; and
  - (d) if the demolition work may adversely affect land beyond the boundaries of the land on which the work is proposed to be done, that there is compliance with section 77; and
  - (e) that any part of the building or incidental structure that is the subject of the application which is proposed to remain as a permanent retaining or other protection structure is suitable for that purpose; and
  - (f) that the applicant satisfies the insurance requirements prescribed by regulation or under any other written law in respect of the demolition work; and
  - (g) that any building services levy required to be paid in respect of the demolition permit under regulations mentioned in the *Building Services (Complaint Resolution and Administration) Act 2011* Part 7 Division 2 has been paid; and
  - (h) if a levy is imposed by the *Building and Construction Industry Training Levy Act 1990* in respect of the demolition work, that the levy has been paid; and
  - (i) that the permit authority has complied with the provisions of the *Heritage of Western Australia Act 1990* in relation to the application and that the demolition permit, if granted, would not be inconsistent with an order, agreement or permit under that Act except to the extent allowed by that Act; and
  - (j) that the applicant has obtained in relation to the demolition work each authority under a written law that is prescribed for the purposes of this paragraph; and
  - (k) that the applicant has complied or is complying with each authority mentioned in paragraph (j); and

- (l) that the applicant, in relation to the demolition work, has complied or is complying with each provision of a written law that is prescribed for the purposes of this paragraph; and
  - (m) that the applicant, in relation to the demolition work, has complied or is complying with each provision of a local government policy or requirement, not being a written law, that is prescribed for the purposes of this paragraph; and
  - (n) that each notification that is prescribed for the purposes of this paragraph to be given in relation to the demolition work has been given; and
  - (o) that the applicant has complied with each other prescribed requirement for the granting of a demolition permit.
- (2) A permit authority to which an application for a demolition permit is made must not grant the demolition permit unless it is satisfied as to each of the matters mentioned in subsection (1)(a) to (o).

*[Section 21 amended: No. 37 of 2012 s. 35.]*

**22. Further grounds for not granting an application**

- (1) A permit authority to which an application is made may refuse to grant the building permit or demolition permit applied for if it appears to the permit authority that there is an error in the information provided for the application or in a document that accompanied the application.
- (2) A permit authority to which an application is made must not grant a building permit or demolition permit if to do so would be inconsistent with —
  - (a) a function that the permit authority has under any other written law; or
  - (b) an agreement between the permit authority, or the local government in whose district the building or incidental



structure is, or is proposed to be, located and the applicant.

**23. Time for deciding application for building or demolition permit**

- (1) The permit authority to which an uncertified application is made must decide whether or not to grant the building permit —
  - (a) if there is no requirement under section 18(1), before the expiration of the period —
    - (i) that is prescribed for the purposes of this subsection for the classification of the building that is the subject of the application; and
    - (ii) starting on the day after the application is made;or
  - (b) if there is a requirement under section 18(1) that is complied with within the specified time, before the expiration of the balance of the period mentioned in paragraph (a)(i) starting on the day after the compliance.
- (2) The permit authority to which a certified application or an application for a demolition permit is made must decide whether or not to grant the building permit or demolition permit —
  - (a) if there is no requirement under section 18(1), before the expiration of the period —
    - (i) that is prescribed for the purposes of this subsection for the classification of the building that is the subject of the application; and
    - (ii) starting on the day after the application is made;or
  - (b) if there is a requirement under section 18(1) that is complied with within the specified time, before the expiration of the balance of the period mentioned in paragraph (a)(i) starting on the day after the compliance.

- (3) If the permit authority has not made a decision in the time mentioned in subsection (1) or (2) the permit authority is to be taken to have refused to grant the building permit or demolition permit.
- (4) If the permit authority has not made a decision within the time mentioned in subsection (1) or (2) —
  - (a) the permit authority must refund to the applicant the fee mentioned in section 16(1) that accompanied the application; and
  - (b) the amount of the fee paid is recoverable in any court of competent jurisdiction as a debt due to the applicant.
- (5) Subsection (4) does not apply —
  - (a) if the permit authority refuses to consider the application because the applicant has not complied with a requirement under section 18(1) within the specified time; or
  - (b) if the permit authority has referred the application in accordance with the *Heritage of Western Australia Act 1990* but the Heritage Council has not provided its advice within the time mentioned in subsection (1) or (2).
- (6) Despite subsection (3) and section 18(2), the permit authority may decide whether or not to grant the building permit or demolition permit, and may give the applicant written notice of its decision, after the period applicable under subsection (1) or (2), or the time specified under section 18(1), has expired, and the validity of the decision is not affected by the expiry.

*[Section 23 amended: No. 37 of 2012 s. 8.]*

**24. Notice of decision not to grant building or demolition permit**

A permit authority must —

- (a) record the grounds on which a decision to refuse to grant a building permit or demolition permit 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 person to whom the decision relates written notice of the decision, together with those grounds and reasons, and the person's right of review under section 119.

**Division 3 — Building or demolition permits**

**25. Form and content of building or demolition permit**

- (1) A building permit or demolition permit is to be in an approved form.
  - (2) A building permit or demolition permit may set out the period during which it has effect.
  - (3) A building permit must set out —
    - (a) the building or incidental structure to which it applies; and
    - (b) the classification of the building or incidental structure; and
    - (c) the use to which the building or incidental structure may be put and each restriction on the use; and
    - (d) in the case of a building permit for one or more stages of building work —
      - (i) each stage of the building work to which it applies; and
      - (ii) the effect of section 26;
- and

- (e) the prescribed details about the builder; and
  - (f) the prescribed details about each owner of the land on which the building or incidental structure is, or is proposed to be, located; and
  - (g) each condition imposed under section 27(1) that applies to the building permit; and
  - (h) each inspection and test that is to be conducted during or at the completion of the building work —
    - (i) as specified under section 19(4) in the applicable certificate of design compliance; or
    - (ii) under regulations mentioned in section 36(2)(a);and
  - (i) each other thing that is prescribed to be set out in the permit.
- (4) A demolition permit must set out —
- (a) the building or incidental structure to which it applies; and
  - (b) in the case of a demolition permit for one or more stages of demolition work —
    - (i) each stage of the demolition work to which it applies; and
    - (ii) the effect of section 26;and
  - (c) the prescribed details about the demolition contractor; and
  - (d) the prescribed details about each owner of the land on which the building or incidental structure is located; and
  - (e) each condition imposed under section 27(1) that applies to the demolition permit; and
  - (f) each inspection and test that must be conducted during or at the completion of the demolition work under regulations mentioned in section 36(2)(a); and

- (g) each other thing that is prescribed to be set out in the permit.

**26. Permit for staged works**

A building permit or demolition permit that is granted to do a stage of building or demolition work in respect of a building or an incidental structure does not entitle a person to be granted a further building permit or demolition permit for any other stage of the building work or demolition work.

**27. Conditions imposed by permit authority**

- (1) A permit authority may impose conditions on the grant of a building permit or demolition permit in addition to any provided for in the regulations.
- (2) A condition imposed by a permit authority —
  - (a) is to relate to the particular building work or demolition work to which the permit applies rather than to work of that kind generally; and
  - (b) cannot modify the applicable certificate of design compliance or the plans and specifications that are specified in that certificate.
- (3) The permit authority may add, vary or revoke conditions imposed under this section before the building work or demolition work is completed.
- (4) If the permit authority adds, varies or revokes a condition the addition, variation or revocation takes effect when an owner of the building or incidental structure or proposed building or incidental structure has been given written notice of it or at a later time specified by the permit authority in the notice.
- (5) A permit authority must ensure that a notice under subsection (4) informs the person of the person's right of review under section 119.

**28. To whom permit document issued**

- (1) A building permit document must be given to —
- (a) the person who is named as the builder on the building permit; and
  - (b) each owner of the land on which the building or incidental structure is, or is proposed to be, located; and
  - (c) the applicant, if the applicant is not a person mentioned in paragraph (a) or (b); and
  - (d) each other prescribed person.

(2A) If a building permit is granted on an uncertified application, a copy of the certificate of design compliance must also be given to the applicant.

- (2) A demolition permit document must be given to —
- (a) the person who is named as the demolition contractor on the demolition permit; and
  - (b) each owner of the land on which the building or incidental structure is located; and
  - (c) the applicant, if the applicant is not a person mentioned in paragraph (a) or (b); and
  - (d) each other prescribed person.

*[Section 28 amended: No. 37 of 2012 s. 9.]*

**29. Compliance with building or demolition permit**

- (1) The person named as the builder on a building permit must ensure that —
- (a) the building or incidental structure to which the permit applies is completed in accordance with the plans and specifications that are specified in the applicable certificate of design compliance; and

- (b) the building work otherwise complies with the building permit including each condition that applies to the permit.

Penalty:

- (a) for a first offence, a fine of \$50 000;
  - (b) for a second offence, a fine of \$75 000;
  - (c) for a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
- (2) The person named as the demolition contractor on a demolition permit must ensure that the demolition work complies with the demolition permit including each condition that applies to the permit.

Penalty:

- (a) for a first offence, a fine of \$50 000;
- (b) for a second offence, a fine of \$75 000;
- (c) for a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.

**30. Display of building or demolition permit details**

- (1) The person named as the builder on a building permit must ensure that information about, or contained in, the building permit is displayed in accordance with the regulations.

Penalty: a fine of \$10 000.

- (2) The person named as the demolition contractor on a demolition permit must ensure that information about, or contained in, the demolition permit is displayed in accordance with the regulations.

Penalty: a fine of \$10 000.

## **Division 4 — Duration of building or demolition permits**

### **31. Terms used**

In this Division —

**permit** means a building permit or a demolition permit;

**relevant permit authority**, in relation to a permit, means a current permit authority for the building or incidental structure for which the permit was granted;

**responsible person**, in relation to a permit, means —

- (a) in the case of a building permit, the person named as the builder on the permit; or
- (b) in the case of a demolition permit, the person named as the demolition contractor on the permit;

**work** means building work or demolition work.

### **32. Duration of building or demolition permit**

- (1) A permit has effect for —
  - (a) the period set out in the permit as the period during which it has effect; or
  - (b) such longer period that is approved on an application to extend the time during which the permit has effect.
- (2) If a permit does not set out the period during which it has effect, a permit has effect for —
  - (a) 2 years from the day on which it is granted; or
  - (b) such longer period that is approved on an application to extend the time during which the permit has effect.
- (3) The regulations may provide for —
  - (a) applications to extend the time during which a permit has effect; and
  - (b) the submission of information and documentation in support of an application; and



- (c) the grounds for extending the time during which a permit has effect; and
  - (d) the maximum period of extension of time during which a permit can have effect; and
  - (e) the imposition of conditions in relation to an extension of time; and
  - (f) fees for applications; and
  - (g) review by the State Administrative Tribunal of a decision of a permit authority made on an application; and
  - (h) any other matter relating to an application.
- (4) A permit ceases to have effect on the day on which a notice of completion in relation to the permit is received by the permit authority under section 33.

**33. Notice of completion**

- (1) The responsible person in relation to a permit must, within 7 days of completion of the work, or the stage of the work, for which the permit was granted, give notice of completion to a relevant permit authority.  
Penalty: a fine of \$10 000.
- (2) A notice of completion must —
- (a) be in an approved form; and
  - (b) state that the work, or the stage of the work, for which the permit was granted, is completed; and
  - (c) be accompanied by a copy of a certificate for each inspection or test mentioned in section 25(3)(h) or (4)(f) that applies to the permit.

**34. Notice of cessation**

- (1) The responsible person in relation to a permit may, before completion of the work, or the stage of the work, for which the

permit was granted, give notice of cessation to act as the responsible person to a relevant permit authority.

- (2) The notice of cessation has no effect unless it —
- (a) is in an approved form; and
  - (b) states that the work, or the stage of the work, for which the permit was granted, is not completed; and
  - (c) states that the person has ceased to act as the responsible person; and
  - (d) is accompanied by a copy of a certificate for each inspection or test mentioned in section 25(3)(h) or (4)(f) that applies to the permit and was to be obtained before the notice is given.
- (3) A responsible person must, within 7 days of giving a notice of cessation to a relevant permit authority, give a copy of the notice to an owner of the building or incidental structure to which the permit applies but the documents mentioned in subsection (2)(d) do not need to be given to an owner.

Penalty: a fine of \$10 000.

**35. Suspension of building or demolition permit**

A permit does not have effect during the period starting from the day on which —

- (a) a notice of cessation is received by the permit authority under section 34; or
- (b) the responsible person's registration, approval or authority under the Registration Act or any other written law, that entitles the person to be named as builder or demolition contractor on the permit, ceases to have effect,

and ending on the first of the following days —

- (c) the day that a relevant authority approves a new responsible person for the work to which the permit applies;

- (d) the day on which the permit ceases to have effect under section 32(1) or (2).

### **Division 5 — Inspections of building or demolition work**

#### **36. Regulations**

- (1) The regulations may provide for matters about inspecting or testing a building or an incidental structure, or building work or demolition work, to which a building permit or demolition permit applies.
- (2) Without limiting subsection (1) the regulations may —
  - (a) prescribe the inspections or tests that are to be conducted during or at the completion of building work or demolition work; and
  - (b) list the inspections and tests that may be specified by a building surveyor in a certificate of design compliance for a particular building or incidental structure as inspections or tests that are to be conducted during or at the completion of the building work; and
  - (c) provide for the persons or classes of persons who may conduct inspections or tests; and
  - (d) provide for the methods to be adopted in the inspection or testing process; and
  - (e) provide for the frequency of inspection or testing or the means for determining whether, when and how often an inspection or test must be conducted; and
  - (f) provide for persons undertaking building or demolition work to give notice of having reached, or completed, a stage of building or demolition work; and
  - (g) require an inspection certificate to be obtained; and
  - (h) make provision in relation to the form of an inspection certificate; and

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- (i) provide for the keeping of records in relation to matters mentioned in this section; and
- (j) provide for the reporting of information about matters mentioned in this section.

### **Part 3 — Building standards**

**37. All buildings to comply with applicable building standards**

- (1) The person who is named as the builder on a building permit must ensure, on completion of the building or incidental structure to which the permit applies, that the building or incidental structure complies with each applicable building standard.

Penalty:

- (a) for a first offence, a fine of \$50 000;
- (b) for a second offence, a fine of \$75 000;
- (c) for a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.

- (2) Each owner of a building or an incidental structure in respect of which building work is done without a building permit being in effect for the building work must ensure, on completion of the building or incidental structure, that the building or incidental structure complies with each applicable building standard.

Penalty:

- (a) for a first offence, a fine of \$50 000;
- (b) for a second offence, a fine of \$75 000;
- (c) for a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.

*[Section 37 amended: No. 37 of 2012 s. 36.]*

**38. All demolition work to comply with applicable building standards**

- (1) The person who is named as the demolition contractor on a demolition permit must ensure that the demolition work to which the permit applies complies with each applicable building standard.

Penalty:

- (a) for a first offence, a fine of \$50 000;

- (b) for a second offence, a fine of \$75 000;
  - (c) for a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
- (2) Each owner of a building or an incidental structure in respect of which demolition work is done without a demolition permit being in effect for the demolition work must ensure that the demolition work complies with each applicable building standard.

Penalty:

- (a) for a first offence, a fine of \$50 000;
- (b) for a second offence, a fine of \$75 000;
- (c) for a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.

*[Section 38 amended: No. 37 of 2012 s. 37.]*

**39. Non-application and modification of building standards**

- (1) In this section —  
***declaration*** means a declaration under subsection (2);  
***specified*** means specified in a declaration.
- (2) The Building Commissioner may, in writing and on the application of another person declare that —
- (a) a specified building standard does not apply to a specified building, specified incidental structure or specified demolition work; or
  - (b) a building standard that applies to a specified building, specified incidental structure or specified demolition work is modified in a specified way.
- (3) A declaration has effect in accordance with its terms.
- (4) The Building Commissioner must not make a declaration unless satisfied that the declaration would not result in an increased

risk to people, property or the environment and that making the declaration —

- (a) is in the public interest; or
  - (b) is consistent with the purpose of any other written law or a Commonwealth law.
- (5) A declaration may be made subject to specified conditions.
- (6) If a declaration is made subject to a specified condition, the declaration has no effect at any time when the condition is being contravened.
- (7) The Building Commissioner may, by notice in writing, revoke or amend a declaration at any time and must serve the applicant for the original declaration with a copy of the notice.
- (8) An application for a declaration must be made in an approved manner and form and accompanied by —
- (a) the prescribed fee, if any, for the application; and
  - (b) each other thing that is prescribed to accompany the application.
- (9) The regulations may provide for matters relating to —
- (a) dealing with applications including giving notice of the right of review under section 120; and
  - (b) the grounds for revoking or amending a declaration.
- (10) The Building Commissioner must keep a register of every declaration made and make the register available, without charge, for public inspection.

*[Section 39 amended: No. 37 of 2012 s. 10.]*

## **Part 4 — Occupancy permits and building approval certificates**

### **Division 1 — Occupancy permits**

**40. Term used: occupier**

In this Division —

*occupier*, in relation to a building, includes a person who occupies or uses the building, or the land on which the building is located, under a lease, tenancy agreement or licence.

**41. Certain buildings not to be occupied or used without an occupancy permit**

(1) In this section —

*temporary permit* means an occupancy permit granted on an application mentioned in section 47.

(2) An owner or occupier of a completed building must not occupy or use, or permit the occupation or use of, the building unless —

- (a) an occupancy permit, other than a temporary permit, is in effect for the building; or
- (b) a temporary permit for the building has effect for a period after the completion of the building and the occupation or use of the building is during that period; or
- (c) an occupancy permit is not required for the building under Part 5 or regulations or an order mentioned in Part 5 Division 1.

Penalty:

- (a) for a first offence, a fine of \$50 000;
- (b) for a second offence, a fine of \$75 000;
- (c) for a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.



- (3) An owner or occupier of an incomplete building must not occupy or use, or permit the occupation or use of, the building unless —
- (a) a temporary permit is in effect for the building; or
  - (b) an occupancy permit is not required for the building under Part 5 or regulations or an order mentioned in Part 5 Division 1.

Penalty:

- (a) for a first offence, a fine of \$50 000;
- (b) for a second offence, a fine of \$75 000;
- (c) for a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.

**42. Display etc. of, occupancy permit details**

Each owner of a building for which an occupancy permit is in effect must ensure that —

- (a) information about, or contained in, the occupancy permit is displayed in accordance with the regulations; or
- (b) information about, or contained in, the occupancy permit is otherwise brought, in accordance with the regulations, to the attention of the building's occupiers or other persons using the building.

Penalty: a fine of \$10 000.

**43. Occupation, use of buildings to comply with occupancy permits**

- (1) An owner of a building must not occupy or use, or permit the occupation or use of, the building in a way that is —
- (a) different from the use authorised by an occupancy permit that is in effect for the building; or

- (b) inconsistent with the building's classification that is set out in an occupancy permit that is in effect for the building.

Penalty:

- (a) for a first offence, a fine of \$50 000;
  - (b) for a second offence, a fine of \$75 000;
  - (c) for a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
- (2) An occupier of a building must not occupy or use, or permit the occupation or use of, the building in a way that is —
- (a) different from the use authorised by an occupancy permit that is in effect for the building; or
  - (b) inconsistent with the building's classification that is set out in an occupancy permit that is in effect for the building,

unless, at the time of the alleged offence, the relevant provisions of the occupancy permit had not been brought to the attention of the occupier in any way.

Penalty:

- (a) for a first offence, a fine of \$50 000;
- (b) for a second offence, a fine of \$75 000;
- (c) for a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.

**44. Compliance with occupancy permit generally**

- (1) Each owner of a building for which an occupancy permit is in effect must ensure that the occupancy permit is complied with including each condition that applies to the permit.

Penalty:

- (a) for a first offence, a fine of \$50 000;
- (b) for a second offence, a fine of \$75 000;

- (c) for a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
- (2) Subsection (1) does not apply to a matter to which section 43(1) applies.

**45. Regulations about safety and health matters in buildings requiring occupancy permits**

- (1) The regulations may provide for matters relating to —
  - (a) the safety or health of occupiers or other users of buildings requiring occupancy permits; and
  - (b) amenity or sustainability of buildings requiring occupancy permits.
- (2) Without limiting subsection (1) the regulations may —
  - (a) provide for the kind of equipment, machinery or systems required for a building for the safety or health of its occupiers or other users of the building, equipment, machinery or systems; and
  - (b) provide for the maintenance of equipment, machinery or systems; and
  - (c) require an owner or occupier of a building to arrange for a person belonging to a prescribed class of persons to inspect or test equipment, machinery or systems on a specified day, at specified intervals or when a specified event occurs; and
  - (d) require a permit authority to arrange for an authorised person to inspect or test equipment, machinery or systems, on a specified day, at specified intervals or when a specified event occurs; and
  - (e) provide for the keeping of records in relation to matters mentioned in this section; and
  - (f) provide for the reporting of information about matters mentioned in this section; and

- (g) provide for charges to be imposed on an owner or occupier of a building in respect of costs of inspections mentioned in paragraph (d).
- (3) Regulations mentioned in subsection (1) cannot provide for matters in relation to a building that would be in addition to the matters set out in an occupancy permit that is in effect for the building if the occupancy permit is one of the following kinds —
  - (a) a certificate of classification that, under section 181(2) or (3), is to be taken to be an occupancy permit;
  - (b) an occupancy permit granted for a building completed after commencement day under a building licence that, under section 178, is to be taken to be a building permit;
  - (c) an occupancy permit granted on an application mentioned in section 181(4).

**Division 2 — Kinds of applications for occupancy permits and building approval certificates**

**46. Application for occupancy permit for completed building**

A person may apply for an occupancy permit for a completed building.

**47. Application for temporary occupancy permit for incomplete building**

A person may apply for an occupancy permit for an incomplete building.

**48. Application for modification of occupancy permit for additional use of building on temporary basis**

A person may apply to modify the current occupancy permit for an existing building if —

- (a) the person proposes that in addition to the use authorised by the current occupancy permit, the building is to be used in another way; and

- (b) the person proposes that the building would be used in the additional way for no longer than one year; and
- (c) the additional use does not require building work of a kind for which a building permit is required.

**49. Application for replacement occupancy permit for permanent change of building's use, classification**

A person may apply for an occupancy permit to replace the current occupancy permit for an existing building if the person proposes either or both of the following —

- (a) that the building is to be used, on a permanent basis, in a way that is different from the use authorised by the current occupancy permit;
- (b) that the building's classification is to be different from that set out in the current occupancy permit.

**50. Application for occupancy permit or building approval certificate for registration of strata scheme, plan of re-subdivision**

- (1) A person who wishes to lodge a strata plan for registration under the *Strata Titles Act 1985* may apply for —
  - (a) an occupancy permit for a building that is a subject of the strata plan to accompany the strata plan as required under the *Strata Titles Act 1985* section 5B(2)(a); or
  - (b) a building approval certificate for a building that is a subject of the strata plan to accompany the strata plan as required under the *Strata Titles Act 1985* section 5B(2)(b).
- (2) A person who wishes to re-subdivide a lot in a strata scheme under the *Strata Titles Act 1985* may apply for —
  - (a) an occupancy permit for a building that comprises the whole or part of the lot to accompany the plan as required under the *Strata Titles Act 1985* section 8A(f)(i); or

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- (b) a building approval certificate for a building that comprises the whole or part of the lot to accompany the strata plan as required under the *Strata Titles Act 1985* section 8A(f)(ii).
- (3) An application for an occupancy permit under subsection (1)(a) or (2)(a) may be made if —
  - (a) an occupancy permit is in effect for the building; or
  - (b) the building is otherwise one which would require an occupancy permit under section 41(2).
- (4) An application for a building approval certificate under subsection (1)(b) or (2)(b) may be made if the building is not of a kind mentioned in subsection (3).

**51. Application for occupancy permit or building approval certificate for unauthorised work**

- (1) In this section —

**unauthorised work** means work —

  - (a) that was done without an authority under a written law that was required by the written law applicable at the time the work was done; or
  - (b) that did not comply with an authority under a written law that was in effect in respect of the work;

**work** means —

  - (a) building work; or
  - (b) demolition work in respect of a part of a building; or
  - (c) demolition work in respect of a part of an incidental structure.
- (2) A person may apply for an occupancy permit for a building in respect of which unauthorised work has been done.
- (3) A person may apply for a building approval certificate for a building or an incidental structure in respect of which unauthorised work has been done.

- (4) An application for an occupancy permit under subsection (2) may be made if the building is one which would require an occupancy permit under section 41(2).
- (5) An application for a building approval certificate under subsection (3) may be made if the building or incidental structure is not of a kind mentioned in subsection (4).

**52. Application for occupancy permit or building approval certificate for building with existing authorisation**

- (1) A person may apply for an occupancy permit to replace the current occupancy permit for a building, even if no change is proposed to the building's use or classification.
- (2) A person may apply for a building approval certificate for a building or an incidental structure that —
  - (a) was constructed in accordance with the written law applicable at the time of its construction; and
  - (b) on its completion, could be lawfully occupied or used without —
    - (i) an occupancy permit; or
    - (ii) a certificate of classification under the former provisions as defined in section 176; or
    - (iii) any other authority under a written law that was applicable at the time the building or incidental structure was completed.

**Division 3 — Making and dealing with applications for occupancy permits and building approval certificates**

**53. Terms used**

In this Division —

***application*** means an application of a kind mentioned in Division 2;

**modification**, in relation to an occupancy permit, means the modification of the occupancy permit on an application under section 48.

**54. Manner of application**

- (1) An application must be —
  - (a) made in an approved manner and form; and
  - (b) signed by each owner of the land on which the building or incidental structure is located.
- (2) An application mentioned in section 46 or 47 must be accompanied by a certificate of construction compliance that complies with section 56.
- (3) An application of any other kind must be accompanied by a certificate of building compliance that complies with section 57.
- (4) An application is also to be accompanied by —
  - (a) a copy of each technical certificate signed by a specialist that the building surveyor has relied on to sign the certificate of construction compliance or the certificate of building compliance; and
  - (b) each technical certificate that is prescribed to accompany the application; and
  - (c) evidence that the applicable provisions of the regulations mentioned in the *Building Services (Complaint Resolution and Administration) Act 2011* Part 7 Division 2 requiring payment of a building services levy have been satisfied; and
  - (d) the prescribed fee, if any, for the application; and
  - (e) each other thing that is prescribed to accompany the application.
- (5) Nothing in this Part prevents applications of different kinds being made together as long as the provisions applicable to each kind of application are complied with.



**55. Further information**

- (1) A permit authority to which an application is made may require the applicant to give the permit authority, within a specified time of not more than 21 days, any other document or information that it requires to determine the application and may require the applicant to verify the information by statutory declaration.
- (2) The permit authority may refuse to consider an application if the applicant does not comply with a requirement under subsection (1) within the specified time.
- (3) A requirement under subsection (1) must be given in the prescribed manner.
- (4) The regulations may provide for how many separate requirements under subsection (1) may be made in relation to an application.

*[Section 55 amended: No. 37 of 2012 s. 32.]*

**56. Certificate of construction compliance**

- (1) A certificate of construction compliance must be in an approved form and signed by a building surveyor.
- (2) A certificate of construction compliance that accompanies an application mentioned in section 46 must state that —
  - (a) the building has been completed in accordance with the plans and specifications that are specified in the applicable certificate of design compliance for each applicable building permit; and
  - (b) the building otherwise complies with each applicable building permit including each condition that applies to the permit; and
  - (c) the building in its current state is otherwise suitable to be used in the way proposed in the application.

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**Division 3** Making and dealing with applications for occupancy permits and building approval certificates

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- (3) A certificate of construction compliance that accompanies an application mentioned in section 47 must state that —
- (a) the building is incomplete; and
  - (b) occupying or using the building in its current state in the way proposed in the application would not adversely affect the safety and health of its occupants or other users; and
  - (c) the building in its current state is otherwise suitable to be used in the way proposed in the application.
- (4) In subsections (2) and (3) —  
**building** includes each incidental structure associated with the building.
- (5) A certificate of construction compliance must contain each other thing that is prescribed to be in the certificate.
- (6) The regulations may provide for the things that a building surveyor is required to do before signing a certificate of construction compliance.

*[Section 56 amended: No. 37 of 2012 s. 11.]*

**57. Certificate of building compliance**

- (1) A certificate of building compliance must be in an approved form and signed by a building surveyor.
- (2) A certificate of building compliance must —
- (a) state that occupying or using the building or incidental structure in its current state in the way proposed in the application would not adversely affect the safety and health of its occupants or other users; and
  - (b) state that the building or incidental structure in its current state is otherwise suitable to be used in the way proposed in the application; and

- (c) state that the building or incidental structure complies with each authority under a written law that is prescribed for the purposes of this paragraph; and
  - (d) contain each other thing that is prescribed to be in the certificate.
- (3) A certificate of building compliance that accompanies an application other than an application mentioned in section 48 or 52(1) or (2) must state that the building or incidental structure substantially complies with each applicable building standard.
- (4) A certificate of building compliance that accompanies an application mentioned in section 48 or 52(1) or (2) must state that —
  - (a) the building or incidental structure substantially complies with the building permit, 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) the building or incidental structure substantially complies with each applicable building standard or other prescribed requirement in relation to the technical aspects of the construction of the building or structure.
- (5) In subsections (2), (3) and (4) —  
**building** includes each incidental structure associated with the building.
- (6) A certificate of building compliance that accompanies an application mentioned in section 49(a) or (b) must state whether or not, and if so how, the change would affect the building's classification.
- (7) The regulations may provide for the things that a building surveyor is required to do before signing a certificate of building compliance.

*[Section 57 amended: No. 37 of 2012 s. 12 and 38.]*

**58. Grant of occupancy permit, building approval certificate**

- (1) A permit authority to which an application is made must grant or modify the occupancy permit or grant the building approval certificate applied for if it is satisfied —
- (a) that the applicant has complied with section 54; and
  - (b) that the building surveyor who signed the certificate of construction compliance or certificate of building compliance —
    - (i) is entitled under the Registration Act to sign certificates of construction compliance or certificates of building compliance for buildings or incidental structures of a kind that is the subject of the application; and
    - (ii) is an independent building surveyor in relation to the application;
- and
- (c) that the certificate of construction compliance or certificate of building compliance is issued by a person who —
    - (i) is a building service contractor who is entitled under the Registration Act section 11 to issue the certificate; or
    - (iia) is a public authority as defined in the Registration Act section 3; or
    - (ii) is a person or in a class of persons prescribed for the purposes of the Registration Act section 7(2)(c) who may issue the certificate;
- and
- (d) that each technical certificate required by regulations mentioned in section 54(4)(b) is —
    - (i) signed by a person prescribed as a person who may sign the certificate; and

- (ii) issued by a person prescribed as a person who may issue the certificate;
- and
- (e) if a part of the building or incidental structure encroaches beyond the boundaries of the land on which the building or structure is located, that each owner (within the meaning of section 76(2) where applicable) of the land into, onto, or over which the encroaching part is placed has consented to the encroaching part being so placed; and
  - (f) that there is no current legal proceeding that has been instituted by the permit authority or a local government for a breach or alleged breach of a written law relating to the building or incidental structure; and
  - (g) that each building order that has been made in relation to the building or incidental structure has been complied with; and
  - (h) that any building services levy required to be paid in respect of the occupancy permit or building approval certificate under regulations mentioned in the *Building Services (Complaint Resolution and Administration) Act 2011* Part 7 Division 2 has been paid; and
  - (i) if the application is made under section 51, that any levy that would have been imposed by the *Building and Construction Industry Training Levy Act 1990* in respect of the building work has been paid; and
  - (j) in relation to an application that is required to be accompanied by a certificate of building compliance, that the applicant has obtained in relation to the building or incidental structure each authority under a written law that is prescribed for the purposes of this paragraph; and
  - (k) that the applicant has complied or is complying with each authority mentioned in paragraph (j); and
  - (l) that the applicant has complied with each other prescribed requirement in relation to the granting or

modification of an occupancy permit or the granting of a building approval certificate on the application.

- (2) A permit authority to which an application is made must not grant or modify the occupancy permit or grant the building approval certificate applied for unless it is satisfied as to each of the matters mentioned in subsection (1)(a) to (l).
- (3) A permit authority to which an application is made may refuse to grant or modify the occupancy permit or grant the building approval certificate applied for if it appears to the permit authority that there is an error in the information or a document provided for the application.

*[Section 58 amended: No. 37 of 2012 s. 13.]*

**59. Time for granting occupancy permit or building approval certificate**

- (1) A permit authority to which an application is made must decide whether or not to grant or modify the occupancy permit or grant the building approval certificate —
  - (a) if there is no requirement under section 55(1), before the expiration of the period —
    - (i) that is prescribed for the purposes of this subsection for that kind of application; and
    - (ii) starting on the day after the application is made;or
  - (b) if there is a requirement under section 55(1) that is complied with within the specified time, before the expiration of the period mentioned in paragraph (a)(i) starting on the day after the compliance.
- (2) If the permit authority has not made a decision in the time mentioned in subsection (1) the permit authority is to be taken to have refused to grant or modify the occupancy permit or grant the building approval certificate.

- (3) If the permit authority has not made a decision in the time mentioned in subsection (1) —
- (a) the permit authority must refund to the applicant the fee mentioned in section 54(4)(d) that accompanied the application; and
  - (b) the amount of the fee paid is recoverable in any court of competent jurisdiction as a debt due to the applicant.
- (4) Subsection (3) does not apply if the permit authority refuses to consider the application because the applicant has not complied with a requirement under section 55(1) within the specified time.
- (5) Despite subsection (2) and section 55(2), the permit authority may decide whether or not to grant or modify the occupancy permit or grant the building approval certificate, and may give the applicant written notice of its decision, after the period applicable under subsection (1), or the time specified under section 55(1), has expired, and the validity of the decision is not affected by the expiry.

**60. Notice of decision not to grant occupancy permit or grant building approval certificate**

A permit authority must —

- (a) record the grounds on which is based a decision to refuse to grant or modify an occupancy permit or grant a building approval certificate, 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 person to whom the decision relates written notice of the decision, together with those grounds and reasons, and the person's right of review under section 121.

**61. Form and content of occupancy permit, building approval certificate**

- (1) An occupancy permit or modification or a building approval certificate must be in an approved form.
- (2) An occupancy permit or a form of modification or a building approval certificate must set out —
  - (a) the building or incidental structure to which it applies; and
  - (b) the classification of the building or incidental structure; and
  - (c) the use to which the building or incidental structure may be put and each restriction on the use; and
  - (d) if the occupancy permit, modification or building approval certificate is to have effect for a limited period only, that period; and
  - (e) each requirement in relation to inspection and testing that applies under regulations mentioned in section 45 to the particular building; and
  - (f) each condition imposed under section 62 that applies to the building or incidental structure; and
  - (g) each other thing that is prescribed to be set out in the occupancy permit, a form of modification or building approval certificate.

**62. Conditions imposed by permit authority**

- (1) A permit authority that, on an application, grants or modifies an occupancy permit or grants a building approval certificate, may impose conditions on the occupancy permit or modification or building approval certificate in addition to any provided for in the regulations.
- (2) A condition imposed under this section —
  - (a) must relate to the particular building or incidental structure that is the subject of the application rather than



- to buildings or incidental structures of that kind generally; and
- (b) cannot modify the certificate of construction compliance or certificate of building compliance that accompanied the application.
- (3) The permit authority may add, vary or revoke conditions imposed under this section while the occupancy permit or building approval certificate has effect.
- (4) If the permit authority adds, varies or revokes a condition, the addition, variation or revocation takes effect when an owner of the building or incidental structure has been given written notice of it or at a later time specified by the permit authority in the notice.
- (5) A permit authority must ensure that a notice under subsection (4) informs the person of the person's right of review under section 121(1).
- (6) Conditions cannot be imposed on an occupancy permit granted for a building completed after commencement day under a building licence that, under section 178, is to be taken to be a building permit.

**63. To whom form of permit, modification, certificate issued**

An occupancy permit or a form of modification or a building approval certificate must be given to —

- (a) each owner of the building or incidental structure in respect of which the permit, modification or certificate is granted; and
- (b) the applicant, if the applicant is not a person mentioned in paragraph (a).

**64. Duration of temporary permit, modification**

- (1) An occupancy permit granted on an application mentioned in section 47 has no effect after 30 days from the expiry of the building permit for the building.
- (2) The modification of an occupancy permit has no effect after one year from the day the modification took effect.

**65. Extension of period of duration**

- (1) A person may apply to extend the time in which the following can have effect —
  - (a) an occupancy permit that has been granted or modified to have effect for a limited period only; or
  - (b) a building approval certificate that has been granted to have effect for a limited period only.
- (2) An application must be —
  - (a) made in an approved manner and form; and
  - (b) signed by each owner of the land on which the building or incidental structure is located.
- (3) An application must be accompanied by —
  - (a) the prescribed fee, if any, for the application; and
  - (b) each other thing that is prescribed to accompany the application.
- (4) A permit authority to which an application is made may extend the period in which the occupancy permit or modification or the building approval certificate has effect and may do so even though the application was made after the expiration of the period.
- (5) The period in which an occupancy permit granted on an application mentioned in section 47 has effect cannot be extended beyond 30 days from the expiry of the building permit for the building.

- (6) The period during which the modification of an occupancy permit has effect cannot be extended beyond one year from the day the modification took effect.
- (7) The regulations may provide for matters relating to dealing with applications including giving notice of the right of review under section 121(2).

## **Part 5 — Circumstances in which building, demolition or occupancy permits not required**

### **Division 1 — Regulations and Ministerial orders**

#### **66. Regulations**

- (1) The regulations may provide that a building permit is not required for building work of a kind specified by the regulations.
- (2) Without limiting subsection (1), the regulations may provide that a building permit is not required for building work —
  - (a) that is low in value; or
  - (b) that has a low level of risk in relation to the safety of users of the building or members of the public; or
  - (c) that does not require monitoring by a permit authority; or
  - (d) in a rural or remote area.
- (3) The regulations may —
  - (a) for the purposes of subsection (2)(a), specify a monetary amount or other criteria for the assessment of whether particular building work is low in value; or
  - (b) for the purposes of subsection (2)(b), specify the criteria for the assessment of risk levels.
- (4) The regulations may provide that a demolition permit is not required for demolition work of a kind specified by the regulations.
- (5) The regulations may provide that an occupancy permit is not required for a building of a kind specified by the regulations.

**67. Ministerial order**

- (1) The Minister may by order exempt from the operation of section 9(a), 10(a) or (b) or 41(2)(a) or (b) or (3)(a) either unconditionally or on specified conditions —
- (a) building work of a kind specified in the order; or
  - (b) demolition work of a kind specified in the order; or
  - (c) a building specified in the order or of a kind specified in the order.
- (2A) The Minister may by order exempt from the operation of section 16(b) or (c) (but only as to the requirement for an application to be signed) or (d) either unconditionally or on specified conditions —
- (a) an application for a building permit or a demolition permit specified in the order; or
  - (b) an application for a building permit or a demolition permit of a kind specified in the order.
- (2) An order under subsection (1) or (2A) may be revoked or amended by the Minister.
- (3) The Minister must, within 14 days after an order under subsection (1), (2A) or (2) is made, cause the text of it to be laid before each House of Parliament or dealt with under section 148.

*[Section 67 amended: No. 37 of 2012 s. 14.]*

**Division 2 — Particular buildings, incidental structures**

**68. Terms used**

In this Division —

***permit*** means a building permit, a demolition permit or an occupancy permit;

***permit requirement provisions*** means sections 9(a), 10(a) and (b) and 41(2)(a) and (b) and (3)(a).

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**Part 5** Circumstances in which building, demolition or occupancy permits not required

**Division 2** Particular buildings, incidental structures

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**69. Temporary buildings**

- (1) A permit is not required for a building or an incidental structure that is to remain erected for no longer than one month.
- (2) However, the permit requirement provisions apply to a building or incidental structure of a kind mentioned in subsection (1) —
  - (a) that members of the public normally use; or
  - (b) to which members of the public are permitted access.

**70. Buildings incidental to infrastructure**

- (1) A permit is not required for a building or an incidental structure that is, or is proposed to be, used in the construction, operation or maintenance of road, rail, port, harbour, airport, water, sewerage, electricity, oil or gas supply infrastructure.
- (2) However, the permit requirement provisions apply to a building or an incidental structure of a kind mentioned in subsection (1) —
  - (a) that is, or is proposed to be, a residential facility or a recreational facility; or
  - (b) that members of the public normally use; or
  - (c) to which members of the public are permitted access.

**71. Buildings incidental to shipping and boating facilities**

- (1) A permit is not required for a building or an incidental structure that is, or is proposed to be, used in the construction, operation or maintenance of a facility of a kind mentioned in the *Marine and Harbours Act 1981* section 5(1)(i).
- (2) However, the permit requirement provisions apply to a building or an incidental structure of a kind mentioned in subsection (1) —
  - (a) that is, or is proposed to be, a residential facility or a recreational facility; or
  - (b) that members of the public normally use; or

(c) to which members of the public are permitted access.

**72. Buildings incidental to mining operations**

(1) In this section —

*mining operations* has the meaning given in the *Mines Safety and Inspection Act 1994* section 4(1).

(2) A permit is not required for a building or an incidental structure that is, or is proposed to be, used in the construction, operation or maintenance of a place at which mining operations are carried on.

(3) However, the permit requirement provisions apply to a building or an incidental structure of a kind mentioned in subsection (2) —

- (a) that is, or is proposed to be, a residential facility or a recreational facility; or
- (b) that members of the public normally use; or
- (c) to which members of the public are permitted access.

**73. Buildings incidental to exploiting petroleum and other resources**

(1) A permit is not required for a building or an incidental structure that is, or is proposed to be, used —

- (a) in connection with the exploration for, or exploitation of, petroleum resources, geothermal energy resources and other resources, to which the *Petroleum and Geothermal Energy Resources Act 1967* or *Petroleum (Submerged Lands) Act 1982* applies; or
- (b) in the construction, modification, reconstruction, operation or maintenance of a pipeline as defined in the *Petroleum Pipelines Act 1969* section 4(1).

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**Division 2** Particular buildings, incidental structures

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- (2) However, the permit requirement provisions apply to a building or an incidental structure of a kind mentioned in subsection (1) —
- (a) that is, or is proposed to be, a residential facility or a recreational facility; or
  - (b) that members of the public normally use; or
  - (c) to which members of the public are permitted access.

**74. Buildings incidental to industrial processing plant**

- (1) A permit is not required for a building or an incidental structure that is, or is proposed to be, used in the construction, operation or maintenance of a facility that is predominantly an industrial processing plant.
- (2) However, the permit requirement provisions apply to a building or an incidental structure of a kind mentioned in subsection (1) —
- (a) that is, or is proposed to be, a residential facility or a recreational facility; or
  - (b) that members of the public normally use; or
  - (c) to which members of the public are permitted access.



## Part 6 — Work affecting other land

### Division 1 — Terms used

#### 75. Terms used

In this Part —

***boundary retaining wall*** means a retaining wall on, or close to either side of, a boundary of works land;

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

***dividing fence*** means a dividing fence as defined in the *Dividing Fences Act 1961* section 5;

***party wall*** means a wall that is wholly or partly on a boundary of works land and that is a wall of a building on works land and a wall of a building beyond the boundary;

***person responsible***, in relation to work —

- (a) if a building permit is in effect for the work, means the person named as the builder on the permit; or
- (b) if a demolition permit is in effect for the work, means the person named as the demolition contractor on the permit; or
- (c) if neither a building permit nor a demolition permit is in effect for the work, means each owner of the land on which the work is done;

***protection structure*** means any thing placed into or onto land beyond the boundaries of works land the purpose of which is to prevent, or minimise the risk of, works land or any other land being adversely affected by the work;

***substantial dividing fence*** means a dividing fence, between works land and other land, that was constructed under a building permit, building licence or other approval that was granted in respect of the construction of the fence under the written law applicable at the time of its construction;

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**Part 6** Work affecting other land

**Division 2** Work affecting other land that requires consent, court order or other authority

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**work** means —

- (a) building work; or
- (b) demolition work; or
- (c) the changing of ground levels of land to an extent that could adversely affect other land;

**works land**, in relation to work, means land on which the work is done or is to be done.

*[Section 75 amended: No. 37 of 2012 s. 15.]*

**Division 2 — Work affecting other land that requires consent, court order or other authority**

*[Heading inserted: No. 37 of 2012 s. 16.]*

**76. No encroachment without consent, court order or other authority**

- (1) A person responsible for work must ensure that no part of a building or an incidental structure is placed beyond the boundaries of the works land —
  - (a) unless each owner of the land into, onto, or over which the encroaching part is placed consents to the encroaching part being so placed and the encroaching part is placed in accordance with the consent; or
  - (b) unless the encroaching part is placed in accordance with an order under section 86(2)(a); or
  - (c) unless the encroachment is prescribed as a minor encroachment; or
  - (d) unless the encroachment is into, onto, or over Crown land and the encroachment is authorised under the *Land Administration Act 1997*; or
  - (e) except in prescribed circumstances.

Penalty: a fine of \$25 000.

(2) In subsection (1)(a) —

**owner** —

- (a) in relation to Crown land that is a managed reserve, means the Minister for Lands and the management body of that reserve; and
  - (b) in relation to Crown land that is leased under a Crown lease, means the Minister for Lands and the holder of the Crown lease; and
  - (c) in relation to a road, means —
    - (i) the Minister for Lands; and
    - (ii) whichever of the local government in whose district the road is situated, the Commissioner of Main Roads, or the Minister as defined in the *Public Works Act 1902* section 2 who, under a written law, has the control and management of the road;
- and
- (d) in relation to Crown land that is vested in a person or body under a written law other than the *Land Administration Act 1997*, means the Minister for Lands and that person or body; and
  - (e) in relation to any other Crown land means the Minister for Lands only.

(3) In subsection (2) —

**Crown lease, management body, managed reserve** and **road** have the respective meanings given to those terms in the *Land Administration Act 1997* section 3(1).

*[Section 76 amended: No. 37 of 2012 s. 17.]*

**77. Other land not to be adversely affected without consent, court order or other authority**

A person responsible for work must ensure that the work does not adversely affect land beyond the boundaries of the works land —

- (a) unless each owner of the land that may be adversely affected consents to the work being done even though the land may be adversely affected in that way, and the work is done in accordance with the consent; or
- (b) unless the work is done in accordance with an order under section 86(2)(b); or
- (c) except in prescribed circumstances.

Penalty: a fine of \$25 000.

*[Section 77 inserted: No. 37 of 2012 s. 18.]*

**78. No protection structure in or on other land without consent, court order or other authority**

- (1) A person responsible for work must ensure that a temporary or permanent protection structure is not placed beyond the boundaries of the works land —
  - (a) unless each owner of the land into or onto which the protection structure is placed consents to the protection structure being so placed and the protection structure is placed in accordance with the consent; or
  - (b) unless the protection structure is placed in accordance with an order under section 86(2)(c) or a building order; or
  - (c) unless the protection structure is required as a matter of urgency to prevent imminent collapse of, or damage to, any land including a building or structure on the land; or
  - (d) except in prescribed circumstances.

Penalty: a fine of \$25 000.

- (2) A person responsible for work must ensure that, as soon as practicable after the placement of a temporary or permanent protection structure under subsection (1)(c), notice of the placement and the reason for it is given to each owner of the land into or onto which the protection structure is placed.

Penalty: a fine of \$10 000.

- (3) A person responsible for work must ensure that, as soon as practicable after the placement of a permanent protection structure under subsection (1)(c), notice of the placement and the reason for it is given to the permit authority for the protection structure.

Penalty: a fine of \$10 000.

*[Section 78 amended: No. 37 of 2012 s. 19.]*

**79. Certain work not to affect party walls etc. without consent, court order or other authority**

- (1) A person responsible for work must ensure that the work does not affect the structural, waterproofing, or noise insulation capacity of a party wall, a substantial dividing fence, or a boundary retaining wall that protects land beyond the boundaries of the works land —
- (a) unless each owner of the land that shares the party wall or the dividing fence, or that is protected by the boundary retaining wall, consents to the work being done, and the work is done in accordance with the consent; or
  - (b) unless the work is done in accordance with an order under section 86(2)(d); or
  - (c) unless the work is required as a matter of urgency to prevent imminent collapse of, or damage to, the wall or fence; or
  - (d) except in prescribed circumstances.

Penalty: a fine of \$25 000.

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- (2) A person responsible for work must ensure that, as soon as practicable after the completion of work mentioned in subsection (1)(c), notice of the work and the reason for it is given to —
- (a) each owner of the land that shares the party wall or the dividing fence, or that is protected by the boundary retaining wall; and
  - (b) the permit authority for the wall or fence, if the work is building work of a kind for which a building permit is required.

Penalty: a fine of \$10 000.

- (3) This section does not affect the application of the *Dividing Fences Act 1961* to and in relation to the repair of a substantial dividing fence.

*[Section 79 amended: No. 37 of 2012 s. 20.]*

**80. Fences etc. not to be removed without consent, court order or other authority**

- (1) A person responsible for work must ensure that no fence, gate or other barrier to land on or beyond the boundaries of the works land is removed —
- (a) unless each owner of the land that shares, or on which is located, the fence, gate or other barrier consents to the removal; or
  - (b) unless the removal is in accordance with an order under section 86(2)(g); or
  - (c) unless the removal is required as a matter of urgency to prevent imminent collapse of, or damage to, any land including a building or structure on the land; or
  - (d) unless each of the following applies —
    - (i) the removal is required for the construction of a close wall;
    - (ii) a building permit for the close wall is in effect;

- (iii) the person responsible for the work has given at least 7 business days' notice of the proposed removal to —
  - (I) each owner of the land mentioned in paragraph (a); and
  - (II) at least one adult occupier of the land, if the land is not occupied by any of its owners;

or

- (e) unless the land that shares, or on which is located, the fence, gate or other barrier is vacant land, or any building on that land is vacant; or
- (f) except in prescribed circumstances.

Penalty: a fine of \$10 000.

- (2A) In subsection (1)(d) —

**close wall** means a wall, fence, post or column, whether free-standing or attached to, or forming part of, a building or structure, that is so close to a boundary of the land on which the wall or fence is located that it is not reasonably practicable to build a separate dividing fence along the boundary.

- (2) A person responsible for work must ensure that, as soon as practicable after the removal under subsection (1)(c) of a fence, gate or barrier, notice of the removal and the reason for it is given to —
  - (a) each owner of the land that shares, or on which is located, the fence, gate or other barrier; and
  - (b) the permit authority for the fence, gate or other barrier, if the work is demolition work of a kind for which a demolition permit is required.

Penalty: a fine of \$5 000.

- (3) A person responsible for work that requires the removal of a fence, gate or other barrier to land on or beyond the boundaries of the works land must ensure that —

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- (a) if necessary, a temporary barrier is erected; and
- (b) the temporary barrier is adequate and suitable having regard to the use of the other land.

Penalty: a fine of \$5 000.

*[Section 80 amended: No. 37 of 2012 s. 21.]*

**81. No access to other land without consent or court order, and notification, or other authority**

- (1) In this section —

**occupier**, of land, includes any person who appears to have the control or management of the land;

**other land** means land beyond the boundaries of works land and includes, in relation to work that comprises placing a protection structure into or onto land other than the land on which the main work is done or is to be done, that other land.

- (2) A person responsible for work must ensure that in doing the work or conducting a survey in relation to that work a person does not go onto other land —
- (a) unless the access is consented to by an owner or adult occupier of the land and the access is in accordance with the consent; or
  - (b) unless the access is in accordance with an order under section 86(2)(e) or (f); or
  - (c) unless as a matter of urgency it is necessary to go onto the land to prevent imminent collapse of, or damage to, any land including a building or structure on the land; or
  - (d) unless the other land is vacant land, or any building on that land is vacant; or
  - (e) except in prescribed circumstances.

Penalty: a fine of \$10 000.

- (3) A person responsible for work must ensure that, as soon as practicable after a person goes onto other land under



subsection (2)(c), notice of the access and the reason for it is given to each owner of the other land.

Penalty: a fine of \$5 000.

- (4) A person responsible for work must ensure that —
- (a) each owner of the other land; and
  - (b) at least one adult occupier of the other land, if the other land is not occupied by any of its owners,

is given reasonable notice of each 24 hour period during which the land is intended to be accessed by consent or under an order under section 86(2)(e) or (f).

Penalty: a fine of \$5 000.

- (5) A person responsible for work must ensure that in doing the work or conducting a survey in relation to that work a person does not go onto other land that may be accessed by consent or under an order under section 86(2)(e) or (f) unless —
- (a) the access is at the times consented to by an owner or adult occupier of the land; or
  - (b) the access is at the times specified in an order under section 86(2)(e) or (f); or
  - (c) if neither paragraph (a) or (b) applies, the access is during the hours of 8.00 a.m. and 6.00 p.m..

Penalty: a fine of \$5 000.

- (6) A person who is entitled to go onto land under an order under section 86(2)(e) or (f) but who is obstructed or otherwise prevented from going onto the land must not go onto the land unless the person does so in accordance with the directions of a police officer in enforcing the order.

Penalty: a fine of \$5 000.

- (7) A person who is entitled to go onto land under an order under section 86(2)(e) or (f) may remove furniture and fittings that would otherwise impede the work or the survey.

- (8) Nothing in subsection (2)(d), or a regulation prescribing a matter for the purposes of subsection (2)(e), affects the exercise and enforcement of any right that a person has to stop, restrict or prevent a person going on to the other land.

*[Section 81 amended: No. 37 of 2012 s. 22.]*

**82. Removal of unauthorised encroachments, protection structures**

- (1) An owner of the land into, onto, or over which has been placed a part of a building or structure that is mainly located on other land —

- (a) contrary to section 76(1); or
- (b) without an authority under a written law that was required by the written law applicable at the time,

may, without a building permit or a demolition permit, remove the encroaching part as long as any damage caused by the removal is made good.

- (2) An owner of the land into or onto which a protection structure has been placed —

- (a) contrary to section 78(1); or
- (b) without an authority under a written law that was required by the written law applicable at the time,

may, without a building permit or a demolition permit, remove the protection structure as long as any damage caused by the removal is made good.

- (3) Subsections (1) and (2) —

- (a) do not apply to a party wall or dividing fence; and
- (b) do not affect any other right at law that the owner has in respect of the encroaching part or the protection structure; and
- (c) do not affect the operation of the *Land Administration Act 1997* section 270.

### **Division 3 — Obtaining consent or court orders to affect other land**

#### **83. Terms used**

In this Division —

***affected land***, in relation to a notifiable event, means land that is reasonably likely to be affected by the event;

***notice*** means a notice under section 84;

***notifiable event*** means any of the following —

- (a) a part of a building or structure is placed into, onto or over land beyond the boundaries of the works land;
- (b) land beyond the boundaries of the works land is adversely affected;
- (c) a protection structure is placed into or onto land beyond the boundaries of the works land;
- (d) the structural, waterproofing, or noise insulation capacity of a party wall or a substantial dividing fence shared with the works land, or a boundary retaining wall that protects land beyond the boundaries of the works land, is affected;
- (e) a fence, gate or other barrier to land on or beyond the boundaries of the works land is removed;
- (f) in doing the work a person goes onto other land as defined in section 81(1);

***specified*** means specified in a notice or court order.

#### **84. When notice about effect on other land required**

If it is reasonably likely that a notifiable event may occur if work proceeds, the person responsible for the work must give notice of the likely notifiable event to each owner of the affected land.

Penalty: a fine of \$10 000.

**85. Form and content of notice about effect on other land**

- (1) A notice must —
- (a) be in an approved form; and
  - (b) set out the prescribed information about the proposed work; and
  - (c) if relevant, give details of the part of a building or structure that would be placed into, onto or over the affected land, and seek the consent of each owner of the affected land to the encroachment; and
  - (d) if relevant, give details of how the affected land would be adversely affected, and seek the consent of each owner of the affected land —
    - (i) to the work being done even though the land may be adversely affected in that way; or
    - (ii) to the placement of a protection structure into or onto the affected land for the purpose of preventing, or minimising the risk of, the land being adversely affected;
- and
- (e) if relevant, give details of each protection structure that would be required to be placed into or onto the affected land including the reason for, and nature, location and duration of, the protection structure and the estimated time for doing the protection work, and seek the consent of each owner of the affected land to the placement of the protection structure as proposed; and
  - (f) if relevant, give details of how the structural, waterproofing, or noise insulation capacity of a party wall, a substantial dividing fence, or a boundary retaining wall that protects the affected land would be affected, and seek the consent of each owner of the affected land to do the work; and
  - (g) if relevant, specify the fence, gate or other barrier shared by, or located on, the affected land that would be

removed, the reasons for its removal and details of any temporary barrier that is proposed to be erected, and seek the consent of each owner of the affected land for the removal; and

- (h) if relevant, state that in doing work a person will be required to go onto the affected land and the reasons for the requirement, and seek the consent of each owner of the affected land to go on to the affected land to do the work; and
  - (i) be accompanied by a response notice, in an approved form, to be completed by or on behalf of each owner of the affected land and given to the person responsible for the work; and
  - (j) set out, or be accompanied by, each other thing that is prescribed to be set out in, or accompany, the notice.
- (2) A person responsible for work may, in a notice, request that a survey of the affected land be conducted, and seek the consent of each owner of the affected land for a person to go on to the affected land to conduct the survey.

**86. Application for court orders if no consent**

- (1) A person responsible for work who gives a notice to each owner of the affected land may, in accordance with subsection (2A), apply to the Magistrates Court for an order under subsection (2).
- (2A) An application may be made —
  - (a) if the consent sought in the notice is refused, any time after the refusal is given; or
  - (b) if the consent sought in the notice is neither refused nor given and no request for further information is made within the 28 day period after the notice is given, after that period has expired; or
  - (c) if the person responsible provides further information in response to the request of a person given the notice, 14 days after the further information is given.

- (2) On an application the court may order that —
- (a) a specified part of a specified building or structure may be placed into, onto or over specified land beyond the boundaries of the works land; or
  - (b) specified land beyond the boundaries of the works land may be adversely affected by the work in a specified way; or
  - (c) a specified protection structure may be placed into or onto specified land beyond the boundaries of the works land; or
  - (d) specified work may be done which may affect the structural, waterproofing, or noise insulation capacity of a specified party wall, a specified substantial dividing fence or a specified boundary retaining wall; or
  - (e) in doing specified work a specified person or a person who belongs to a specified class of person may go onto specified land and the court may specify the times of access; or
  - (f) a survey may be conducted of specified land beyond the boundaries of the works land and in conducting the survey a specified person or a person who belongs to a specified class of person may go onto the specified land, and the court may specify the times of access; or
  - (g) a specified fence, gate or other barrier to specified land may be removed for the purpose of going onto the land to do work or conduct a survey or for any other specified purpose.
- (3) In deciding whether to make an order under subsection (2) the court must have regard to —
- (a) the nature and likely extent of any burden or other detrimental effect to the affected land or inconvenience to an owner or user of the affected land if the order is made; and

- (b) whether there are reasonable and practicable alternative courses of action available to the person responsible for the work that do not involve the affected land.
- (4) If the court makes an order under subsection (2) in the absence of a person affected by the order, the person responsible for the work must ensure that the person is given a copy of the order as soon as practicable, but not more than 7 days, after the order is made.

Penalty: a fine of \$10 000.

*[Section 86 amended: No. 37 of 2012 s. 23.]*

**87. Requirement for building or demolition permit not affected by court order**

- (1) An order under section 86(2) that allows building or demolition work to be done without the consent of an owner of the affected land does not affect a requirement under section 9 or 10 for a building permit or demolition permit to be in effect for the work.
- (2) If —
  - (a) an order is made under section 86(2)(c) for the placement of a protection structure into or onto land beyond the boundaries of the works land; but
  - (b) an application for a building permit for the placement of the protection structure is not made within 30 days of the order,

the person responsible for work on the works land may apply for a building permit for the placement of the protection structure, and for that purpose section 16(b) applies as if the application must be signed by that person instead of each owner of the land into or onto which the protection structure is proposed to be placed.

**Division 4 — Other boundary matters**

**88. Finishes of walls close to boundaries**

(1) In this section —

**close wall** means a wall, fence, post or column —

- (a) whether free-standing or attached to, or forming part of, a building or structure, that is so close to a boundary of the land on which the wall or fence is located that it is not reasonably practicable to build a separate dividing fence along the boundary; and
- (b) in respect of which building work, of a kind for which a building permit is required, is done on or after commencement day;

**outward facing side** means the side of a close wall that faces land beyond the boundary of the land on which the wall is located.

(2) The regulations may provide for matters relating to the finish of the outward facing sides of close walls.

(3) A permit authority may, for the purpose of imposing a condition under section 27 or making a building order, specify the way in which an outward facing side of a particular close wall must be finished if —

- (a) there are no regulations as mentioned in subsection (2) that apply to the wall; and
- (b) the finish for the outward facing side of the wall is not set out in the plans and specifications that were specified in the applicable certificate of design compliance for the building permit for the wall.

*[Section 88 amended: No. 37 of 2012 s. 24.]*



**89. Obligation to maintain, repair encroachments, party walls, shared boundary retaining walls**

- (1) Unless otherwise agreed, each owner of land from which part of a building or incidental structure encroaches into, onto, or over, other land, is responsible for the costs of maintenance and repair of the encroaching part.
- (2) Unless otherwise agreed, if a party wall or a boundary retaining wall that is wholly or partly on the boundary of land needs maintenance or repair each owner of land on either side of the wall is liable to join in or contribute in equal proportions to the maintenance and repair of the wall.
- (3) This section does not affect the operation of the *Dividing Fences Act 1961* Part III.

**90. Liability for certain expenses**

Unless otherwise agreed, a person responsible for work must pay the expenses for —

- (a) conducting a survey of land beyond the boundaries of the works land; and
- (b) placing a protection structure beyond the boundaries of the works land; and
- (c) removing a fence, gate or other barrier to or on land beyond the boundaries of the works land; and
- (d) reinstating to its position and standard before removal a fence, gate or other barrier or furniture or a fitting to or on land beyond the boundaries of the works land.

**91. Liability for loss, damage not affected**

Neither section 89 nor 90 affects any liability that a person has for loss or damage —

- (a) to land beyond the boundaries of the works land caused by work; or
- (b) otherwise arising from work; or

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- (c) arising from a breach of an agreement entered into for the purposes of this Part; or
- (d) arising from a breach of an order made under section 86(2); or
- (e) arising from a breach of a building order.

## Part 7 — Existing buildings

### 92. Terms used

In this Part —

*event*, in relation to an existing building, means the sale, lease or hire of the building;

*existing building* means a completed building or incidental structure whether its construction was commenced or completed before or after commencement day;

*specified* means specified in the regulations.

### 93. Changing building standards, requirements, as to existing buildings

- (1) The regulations may provide for matters relating to —
  - (a) the safety or health of users of existing buildings whether or not an occupancy permit is required for the building; and
  - (b) amenity or sustainability of existing buildings whether or not an occupancy permit is required for the building.
- (2) Regulations mentioned in subsection (1) may —
  - (a) provide for a specified building standard to apply to an existing building from a specified day or when a specified event occurs; and
  - (b) provide for an owner or occupier of an existing building to comply with a specified requirement, including the provision of information to specified persons, in relation to the building from a specified day or when a specified event occurs; and
  - (c) require an owner or occupier of an existing building to arrange for a person belonging to a prescribed class of persons to inspect or test, on a specified day, at specified intervals, or when a specified event occurs, the building

for the purpose of monitoring whether a provision of the regulations is being complied with; and

- (d) require a permit authority to arrange for an authorised person to inspect or test, on a specified day, at specified intervals, or when a specified event occurs, an existing building for the purpose of monitoring whether a provision of the regulations is being complied with; and
- (e) provide for a person who buys, or takes on lease or hire, an existing building that does not comply with a specified building standard or requirement, to recover from an owner of the building the costs of making the building comply; and
- (f) provide for the keeping of records in relation to inspections mentioned in paragraph (c) or (d); and
- (g) provide for the reporting of information obtained from inspections mentioned in paragraph (c) or (d); and
- (h) provide for charges to be imposed on an owner of land in respect of costs of inspections mentioned in paragraph (d).

## Part 8 — Enforcement

### Division 1 — Preliminary

#### 94. Terms used

In this Part —

**compliance purposes** means any one or more of the following —

- (a) monitoring whether a provision of this Act has been, or is being, complied with;
- (b) investigating a suspected contravention of a provision of this Act;
- (c) conducting an inspection or test of equipment, machinery or a system, or an existing building, under arrangements mentioned in section 45(2)(d) or 93(2)(d);
- (d) ascertaining whether a building or an incidental structure is in a dangerous state or is unfit for human occupation;
- (e) taking action under section 118(2);

**entry warrant** means an entry warrant issued under Division 4;

**occupier**, of a place, includes any person who appears to have the control or management of the place;

**place** includes a vehicle;

**relevant record** means —

- (a) a building permit, demolition permit, occupancy permit or building approval certificate; or
- (b) a building record as defined in section 131(1); or
- (c) any other record or document that is granted, or required to be kept, under this Act; or
- (d) a record or document that contains information that is or may be relevant to a contravention of this Act.

## **Division 2 — Authorised persons**

### **95. Term used: designating permit authority**

In this Division —

*designating permit authority*, in relation to an authorised person, means the permit authority that designated the person as an authorised person.

### **96. Authorised persons**

- (1) If the State is a permit authority for a building or an incidental structure it may, by instrument in writing, designate a public service officer as an authorised person for the purposes of this Act in relation to the building or incidental structure.
- (2) If a special permit authority is a permit authority for a building or an incidental structure it may, by instrument in writing, designate an employee of the special permit authority, or an employee of one of the legal entities that comprise the special permit authority, as an authorised person for the purposes of this Act in relation to the building or incidental structure.
- (3) A local government may, by instrument in writing, designate a person employed by the local government under the *Local Government Act 1995* section 5.36, as an authorised person for the purposes of this Act in relation to buildings and incidental structures located, or proposed to be located, in the district of the local government.
- (4) The regulations may limit to persons belonging to prescribed classes of public service officers or employees the persons who may be designated as authorised persons under subsection (1), (2) or (3).
- (5) A person may be designated to be an authorised person for a fixed or indefinite period.
- (6) A permit authority may, by instrument in writing, revoke a designation at any time.

**97. Identity cards**

- (1) A permit authority must give an identity card to each person designated by it as an authorised person.
- (2) An identity card must —
  - (a) identify the person as an authorised person; and
  - (b) contain a recent photograph of the person.
- (3) A person must, within 14 days of ceasing to be an authorised person, return the person's identity card to the designating permit authority.  
Penalty: a fine of \$5 000.
- (4) Subsection (3) does not apply if the person has a reasonable excuse.
- (5) An authorised person must carry his or her identity card at all times when exercising powers or performing functions as an authorised person.

**98. Production or display of identity card**

- (1) An authorised person may exercise a power in relation to someone only if —
  - (a) the authorised person first produces the authorised person's identity card for the other person's inspection; or
  - (b) the authorised person has the identity card displayed so it is clearly visible to the other person.
- (2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the authorised person may exercise the power and then produce the identity card for inspection by the person at the first reasonable opportunity.

**99. Limitation on powers of authorised person**

- (1) An authorised person must act —

- (a) in accordance with the directions of the designating permit authority; and
  - (b) subject to any limitation on the powers of that person mentioned in subsection (2).
- (2) The powers of an authorised person may be limited —
- (a) under a regulation; or
  - (b) under a condition specified in the person’s instrument of designation as an authorised person; or
  - (c) by written notice given by the designating permit authority to the person.
- (3) The designating permit authority may, at any time, revoke or vary a condition of designation mentioned in subsection (2)(b) or a notice referred to in subsection (2)(c).

### **Division 3 — Powers of authorised persons**

#### **100. Entry powers**

- (1) For compliance purposes an authorised person may at any reasonable time enter and remain on the following places —
- (a) a place at which the authorised person has reasonable cause to believe that building work or demolition work is being done, or has been done in the past 12 months;
  - (b) a place to which a provision of this Act applies;
  - (c) a place at which the authorised person has reasonable cause to believe that there are relevant records;
  - (d) a place at which the authorised person has reasonable cause to believe that a breach of a provision of this Act has occurred, is occurring or is likely to occur;
  - (e) a place at which the authorised person is required to conduct an inspection or test of equipment, machinery or a system, or an existing building under arrangements mentioned in section 45(2)(d) or 93(2)(d);



- (f) a place at which is located a building or an incidental structure that the authorised person has reasonable cause to believe is in a dangerous state or is unfit for human occupation;
  - (g) a place that is the subject of a building order.
- (2) The authorised person is not entitled to enter a part of a place in use as a residence, except —
- (a) with the consent of an adult occupier; or
  - (b) under the authority of an entry warrant; or
  - (c) to take action under section 118(2) in relation to a building order (emergency).

**101. Powers after entry for compliance purposes**

- (1) An authorised person who enters a place under section 100(1) or under the authority of an entry warrant may, for compliance purposes, do any of the following —
- (a) inspect the place and any thing at the place;
  - (b) search the place and any thing at the place;
  - (c) examine, measure, test, photograph or film the place and any thing at the place;
  - (d) operate a computer or other thing at the place;
  - (e) take any thing, or a sample of or from any thing, at the place for analysis or testing;
  - (f) make a copy of, take an extract from, or download or print out, any record or document that the authorised person suspects on reasonable grounds is a relevant record;
  - (g) seize any thing that is or may afford evidence of a contravention of a provision of this Act;
  - (h) if a thing found on the place cannot be conveniently removed, secure it against interference;

- (i) seize a record or document that the authorised person suspects on reasonable grounds is a relevant record and retain it for as long as is necessary for the purposes of this Act;
  - (j) direct a person who is at the place to do any of the following —
    - (i) state the person’s full name, date of birth, the address of where the person is living and the address of where the person usually lives;
    - (ii) answer (orally or in writing) questions asked by the authorised person;
    - (iii) produce relevant records in the person’s custody or under the person’s control;
    - (iv) operate a computer or other thing at the place;
    - (v) provide access (free of charge) to photocopying equipment at the place to enable the copying of documents;
    - (vi) give the authorised person a translation, code, password or other information necessary to gain access to or interpret and understand a record or document;
    - (vii) give other assistance the authorised person reasonably requires;
  - (k) conduct an inspection or test of equipment, machinery or a system, or an existing building, under arrangements mentioned in section 45(2)(d) or 93(2)(d);
  - (l) take action under section 118(2);
  - (m) conduct a survey of a building or an incidental structure comprising or at the place.
- (2) In taking action under section 118(2) in respect of a building order that requires a person to cause a building or incidental structure to be evacuated, an authorised person may direct any person to leave the building or incidental structure.

- (3) If an authorised person takes any thing away from the place, the authorised person must give the occupier of the place a receipt for the thing.

**102. Obtaining information and documents**

- (1) An authorised person, for compliance purposes, may do any of the following —
- (a) direct a person —
    - (i) to give such information as the authorised person requires; or
    - (ii) to answer a question put to the person, in relation to any matter the subject of the compliance purposes;
  - (b) direct a person to produce a relevant record in the person's custody or under the person's control;
  - (c) examine and make a copy of a relevant record produced in response to a direction under paragraph (b).
- (2) A direction under subsection (1)(a) —
- (a) must specify the time at or within which the information or answer must be given; and
  - (b) may require that the information or answer —
    - (i) be given orally or in writing; or
    - (ii) be given at or delivered to a place specified in the direction; or
    - (iii) in the case of written information or a written answer, be delivered by means specified in the direction; or
    - (iv) be verified by statutory declaration.
- (3) A direction under subsection (1)(b) —
- (a) must be in writing given to the person required to produce the relevant record; and

- (b) must specify the time at or within which the relevant record must be produced; and
- (c) may require that the relevant record be produced —
  - (i) at a place specified in the direction; and
  - (ii) by any means specified in the direction.

**103. Use of force and assistance**

- (1) An authorised person may use assistance and force that is reasonably necessary in the circumstances when exercising a power under this Act but cannot use force against a person.
- (2) If the use of reasonable force is likely to cause significant damage to property, an authorised person is not entitled to use force unless —
  - (a) the person does so in accordance with the directions of a police officer in the particular case; or
  - (b) the force is reasonably required in the course of taking action under section 118(2).
- (3) An authorised person may request a police officer or other person to assist the authorised person in exercising powers under this Act.
- (4) In addition to the powers of a police officer, a police officer —
  - (a) has all the functions and powers of an authorised person under this Act; and
  - (b) may use reasonable force to remove from a building or incidental structure a person who fails to leave when directed to do so under section 101(2).
- (5) While a person is assisting an authorised person at the request of the authorised person and in accordance with this Act, the person —
  - (a) has the same powers; and
  - (b) is subject to the same responsibilities; and
  - (c) has the same protection from liability,

as in like circumstances would be conferred or imposed on the authorised person under this Act.

**104. Directions generally**

- (1) In this section —  
*direction* means a direction under section 101(1)(j) or (2) or 102(1).
- (2) A direction may be given orally or in writing unless section 102(3) applies.
- (3) A person must not without reasonable excuse fail to comply with a direction given to the person.  
Penalty: a fine of \$10 000.

**105. Obstruction of authorised persons etc.**

A person must not hinder or obstruct an authorised person, or a person assisting an authorised person, exercising a power conferred by this Act.

Penalty: a fine of \$10 000.

**Division 4 — Entry warrants**

**106. Entry warrant to enter place**

- (1) An authorised person may apply to a JP for an entry warrant authorising the entry of a place for a compliance purpose.
- (2) An authorised person may apply for an entry warrant for a place even if, under this Act, the authorised person may enter the place without an entry warrant.
- (3) The application must be made in accordance with the *Criminal Investigation Act 2006* section 13 and section 13(8) of that Act applies in relation to the entry warrant.
- (4) An application for a warrant must —

- (a) describe with reasonable particularity the place to be entered; and
- (b) state that the authorised person has reasonable grounds for believing that entry to the place is necessary for a compliance purpose; and
- (c) state the purposes for which entry to the place is required; and
- (d) include any other information that is prescribed to be in the warrant.

**107. Issue of warrant**

- (1) A JP to whom an application is made under section 106 may issue a warrant, if satisfied that there are reasonable grounds for believing that entry of the place is necessary for a compliance purpose.
- (2) An entry warrant must contain the following information —
  - (a) a reasonably particular description of the place to which it relates;
  - (b) a reasonably particular description of the purposes for which entry to the place is required;
  - (c) the period in which it may be executed, which is not to exceed 7 days except for action to be taken under section 118(2)(a) or (b);
  - (d) the name of the JP who issued it;
  - (e) the date and time when it was issued.

**108. Effect of entry warrant**

- (1) An entry warrant has effect according to its content and this section.
- (2) An entry warrant comes into force when it is issued by a JP.
- (3) An entry warrant authorises the authorised person executing the warrant —

- (a) to enter the place described in the warrant; and
  - (b) to exercise the powers referred to in section 101,
- at the times and during the period stated in the warrant.

**109. Execution of warrant**

- (1) A warrant may be executed by the authorised person to whom it is issued or any other authorised person.
- (2) An authorised person executing a warrant must, at the reasonable request of a person apparently in charge of the place, produce the warrant.

**Division 5 — Building orders**

**110. Building orders**

- (1) A permit authority may make an order (a ***building order***) in respect of one or more of the following —
  - (a) particular building work;
  - (b) particular demolition work;
  - (c) a particular building or incidental structure, whether completed before or after commencement day.
- (2) A building order must be in an approved form and must be directed to any one or more of the following persons as is appropriate in the case —
  - (a) if a building permit is in effect for the particular building work, the person named as the builder on the permit;
  - (b) if a demolition permit is in effect for the particular demolition work, the person named as the demolition contractor on the permit;
  - (c) a person who is an owner of the land on which the particular building or demolition work is being, or has been, done;

- (d) a person who is an owner or occupier of the land on which the particular building or incidental structure is located.

**111. Notice of proposed building order other than building order (emergency)**

- (1) Before making a building order a permit authority must —
  - (a) give each person to whom the order is proposed to be directed written notice of the terms of the proposed order and the reasons for it; and
  - (b) advise each person to whom the order is proposed to be directed that the person has 14 days from the day on which the notice is received in which to make submissions in relation to the proposed order; and
  - (c) consider each submission received within that period.
- (2) Subsection (1) does not apply if there is an imminent and high risk to people, property or the environment arising from building or demolition work or from the dangerous state of a building or incidental structure.

**112. Content of building order**

- (1) In this section —  
*specified* means specified in the building order.
- (2) A building order may require a person to whom the order is directed to do any one or more of the following within the specified time —
  - (a) to stop all or specified building or demolition work that is being done in suspected contravention of a provision of this Act;
  - (b) to demolish, dismantle or remove a building or incidental structure that has been, or is being, built or occupied in suspected contravention of a provision of this Act;



- (c) to do specified building or demolition work, or alter a building or incidental structure in a specified way, so as to prevent or stop a suspected contravention of this Act;
- (d) to cause a building or incidental structure to be evacuated, or remain unoccupied, so as to prevent or stop a suspected contravention of this Act;
- (e) to take or not take specified action so as to prevent or stop a suspected contravention of this Act;
- (f) to finish the outward facing side of a close wall in a way specified under section 88(3);
- (g) if a building or incidental structure is reasonably believed to be in a dangerous state or unfit for human occupation —
  - (i) to conduct a survey of the building or incidental structure;
  - (ii) to cause the building or incidental structure to be evacuated or remain unoccupied;
  - (iii) to stop all or specified building or demolition work that is causing or contributing to the state or condition of the building or incidental structure;
  - (iv) to shore up, fence or otherwise secure the building or incidental structure in a specified way for the protection of persons, of other property or of the environment;
  - (v) to renovate or repair the building or incidental structure to a specified standard or in a specified way so as to prevent or stop the building or incidental structure from being a danger to persons, to other property or to the environment or to render it fit for human occupation;
  - (vi) to demolish, dismantle or remove the building or incidental structure;

- (h) to take specified action that is reasonably incidental to doing a thing mentioned in any of paragraphs (a) to (g).
- (3) A building order —
- (a) that is to have effect for a limited period only must set out that period; and
  - (b) must set out the right of review under section 122; and
  - (c) must require a person to whom the order is directed to notify the permit authority in a specified manner when the person has done what the building order requires the person to do; and
  - (d) must contain each other thing that is prescribed to be in the order.

**113. Limitation on effect of building order**

- (1) A building order is of no effect to the extent that it is inconsistent with a court order made under section 86(2).
- (2) A building order is not to be made under section 112(2)(b), (c) or (d) for a building or incidental structure in respect of which unauthorised work, as defined in section 51(1), has been done if —
  - (a) an occupancy permit or a building approval certificate for the building or incidental structure has been granted; or
  - (b) an application for an occupancy permit or a building approval certificate for the building or incidental structure has been made but not decided by the permit authority; or
  - (c) the period in which to apply for a review under section 121 has not expired; or
  - (d) an application for a review under section 121 has been made but not decided by the State Administrative Tribunal.

**114. Service of building order**

- (1) A permit authority that makes a building order must serve, in accordance with the *Interpretation Act 1984* section 76, a copy of the order on each person to whom the order is directed.
- (2) If service of a building order other than a building order (emergency) cannot be effected in accordance with the *Interpretation Act 1984* section 76 within 7 days of the day on which the order was made, service may be effected on the person instead by affixing a copy of the order in a prominent position at the place to which the order relates.
- (3) If it is necessary, but not practicable, to serve a person with a building order (emergency) by immediate personal delivery, service may be effected on the person instead by affixing a copy of the order in a prominent position at the place to which the order relates.

**115. Compliance with building order**

A person who is served with a copy of a building order must not without reasonable excuse fail to comply with the order.

Penalty:

- (a) for a first offence, a fine of \$50 000;
- (b) for a second offence, a fine of \$75 000;
- (c) for a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.

**116. Obstruction in relation to building order**

A person must not hinder or obstruct a person who is complying, or attempting to comply, with a building order.

Penalty: a fine of \$10 000.

**117. Revocation of building order**

- (1) A permit authority may, by notice in writing, revoke a building order at any time and must serve each person to whom the order is directed with a copy of the notice.
- (2) A permit authority must, within 28 days of receiving a notification under section 112(3)(c) —
  - (a) decide whether the building order has been fully complied with; and
  - (b) either revoke the building order or inform each person to whom the order is directed that the building order remains in effect.

**118. Permit authority may give effect to building order if non-compliance**

- (1) In this section —

***non-compliance*** —

  - (a) in relation to a building order other than a building order (emergency), means that a person on whom the order is served has not complied fully with the order within the time specified in the order and has not applied for a review under section 122; or
  - (b) in relation to a building order (emergency), means that a person on whom the order is served has not complied fully with the order within the time specified in the order, whether or not a person has applied for review under section 122.
- (2) If there is non-compliance with an order the permit authority that made the relevant building order may cause an authorised person —
  - (a) to take any action specified in the order; or
  - (b) to commence or complete any work specified in the order; or

- (c) if any specified action was required by the order to cease, to take such steps as are reasonable in the circumstances to cause the action to cease.
- (3) The permit authority may, in a court of competent jurisdiction, recover as a debt from a person who has been served with a copy of a building order the reasonable costs and expenses incurred in doing anything under subsection (2) in relation to the order.
- (4) In a proceeding under subsection (3), a document apparently signed by an authorised certifier in relation to the permit authority, as defined by section 140(2), specifying details of the reasonable costs and expenses incurred is, in the absence of evidence to the contrary, proof of the details specified.

## **Part 9 — Review**

### **119. Building and demolition permits**

A person who applies for a building permit or demolition permit may apply to the State Administrative Tribunal for a review of the decision of the permit authority —

- (a) to refuse to grant a building permit or demolition permit; or
- (b) in relation to a condition imposed on the grant of a building permit or demolition permit; or
- (c) in relation to a condition added or varied under section 27(3).

### **120. Building standards**

A person who makes an application for a declaration as defined in section 39(1) may apply to the State Administrative Tribunal for a review of the decision of the Building Commissioner —

- (a) to not declare that a building standard does not apply; or
- (b) to not declare that a building standard is modified; or
- (c) as to the modification of a building standard.

*[Section 120 amended: No. 37 of 2012 s. 25.]*

### **121. Occupancy permits and building approval certificates**

- (1) A person who makes an application of a kind mentioned in Part 4 Division 2 may apply to the State Administrative Tribunal for a review of the decision of the permit authority —
  - (a) to refuse to grant or modify an occupancy permit or grant a building approval certificate; or
  - (b) in relation to a condition imposed on the grant or modification of an occupancy permit or the grant of a building approval certificate; or
  - (c) in relation to a condition added or varied under section 62(3).

- (2) A person who makes an application of a kind mentioned in section 65 may apply to the State Administrative Tribunal for a review of the decision of the permit authority —
  - (a) to not extend the period in which an occupancy permit, the modification of an occupancy permit or a building approval certificate has effect; or
  - (b) as to the period of extension.

**122. Building orders**

- (1) A person who is served with a copy of a building order may apply to the State Administrative Tribunal for a review of the decision of the permit authority —
  - (a) to make the building order; or
  - (b) in relation to a requirement of the order.
- (2) The institution of a proceeding for the review of a decision under subsection (1) in relation to a building order other than a building order (emergency) stays the operation of the order pending the determination of the proceeding.

**123. SAT may disapply or modify subsidiary legislation about building etc.**

- (1) In this section —

***building regulation or local law*** means —

  - (a) a regulation under this Act; or
  - (b) a local law made by a local government under the *Local Government Act 1995* about building work, demolition work, a standard for the construction or demolition of buildings or incidental structures, or the use and maintenance of, and requirements in relation to, existing buildings or incidental structures.
- (2) The State Administrative Tribunal may order that any provision of a building regulation or local law —
  - (a) does not apply in a particular case; or

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- (b) applies in a particular case as modified by the order.
- (3) An order under subsection (2) may be made —
  - (a) only for the purpose of enabling effect to be given to an order made by the Tribunal on an application under section 119, 121(1) or 122(1); and
  - (b) only if, in the opinion of the Tribunal, the circumstances of the case warrant the making of the order.
- (4) An order under subsection (2) has effect according to its tenor, despite anything in this Act or the *Local Government Act 1995*.
- (5) This section does not limit the powers given by the *State Administrative Tribunal Act 2004* to the Tribunal.



## **Part 10 — Permit authorities**

### **124. State of WA as a permit authority**

- (1) The State may perform the functions of a permit authority under this Act.
- (2) The Minister —
  - (a) may decide if the State is, or is no longer, to be the permit authority for a particular building or incidental structure or a building or an incidental structure of a particular kind; and
  - (b) must perform the functions of a permit authority on behalf of the State.
- (3) The Minister must inform each local government affected by a decision under subsection (2)(a) of the effect of the decision in relation to the local government.
- (4) A decision of the Minister that the State is, is not or is no longer, to be the permit authority for a building or an incidental structure is final and not subject to appeal or review.

### **125. Delegation of State's functions as permit authority**

- (1) The Minister may delegate any power or duty of the Minister under section 124(2)(a) or (b) to a public body or an office holder in a public body.
- (2) In subsection (1) —

**public body** means —

  - (a) a Minister of the State; or
  - (b) an agency or an organisation as those terms are defined in the *Public Sector Management Act 1994* section 3(1); or
  - (c) a body, or the holder of an office, post or position, established by the Governor or a Minister; or

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- (d) a body, whether incorporated or not, or the holder of an office, that is established or continued for a public purpose under a written law and that, under the authority of a written law, performs a statutory function on behalf of the State; or
- (e) any other body, or the holder of an office, post or position, that is prescribed as a public body for the purposes of this definition,

but does not include a local government, regional local government or regional subsidiary.

- (3) The delegation must be in writing executed by the Minister.
- (4) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (5) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (6) Nothing in this section limits the ability of the Minister to perform a function through an officer or agent.

*[Section 125 amended: No. 26 of 2016 s. 29.]*

**126. Special permit authorities**

- (1) The regulations may designate as a special permit authority a legal entity or a group of legal entities that —
  - (a) are established under a written law for a public purpose; and
  - (b) have the capacity and resources to perform the functions of a special permit authority under this Act.
- (2) The regulations are to specify —
  - (a) each area in which, and the kinds of buildings or incidental structures in that area for which, the special permit authority is to be the permit authority; or

- (b) the kinds of buildings or incidental structures for which the special permit authority is to be the permit authority.
- (3) The regulations may revoke the designation of a legal entity or a group of legal entities as a special permit authority.

**127. Delegation: special permit authorities and local governments**

- (1) A special permit authority or a local government may delegate any of its powers or duties as a permit authority under another provision of this Act.
- (2) A delegation of a special permit authority's powers or duties may be only to an employee of the special permit authority, or to an employee of one of the legal entities that comprise the special permit authority.
- (3) A delegation of a local government's powers or duties may be only to a local government employee.
- (4) The delegation must be in writing executed by or on behalf of the delegator.
- (5) Except as provided for in subsection (6A), a person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (6A) The CEO of a local government may delegate to any other local government employee a power or duty of the local government that has been delegated to the CEO under this section but in the case of such a power or duty —
  - (a) the CEO's power under this subsection to delegate the exercise of that power or the discharge of that duty; and
  - (b) the exercise of that power or the discharge of that duty by the CEO's delegate,

are subject to any conditions, qualifications, limitations or exceptions imposed by the local government on its delegation to the CEO.

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- (6) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (7) Nothing in this section limits the ability of the delegator to perform a function through an officer or agent.
- (8) In subsections (3) and (6A) —  
**CEO** means chief executive officer;  
**local government employee**, in relation to a local government, means a person employed by the local government under the *Local Government Act 1995* section 5.36.  
*[Section 127 amended: No. 37 of 2012 s. 26.]*

## **Part 11 — Building information**

### **128. Register of permits, building approval certificates, building orders**

- (1) A permit authority must keep a register of all building permits, demolition permits, occupancy permits and building approval certificates granted by it, and all building orders made by it.
- (2) The register must be kept in an approved manner and form.
- (3) A permit authority must amend the register to reflect —
  - (a) the variation or revocation of a condition of; or
  - (b) any other change relating to the effect of,a building permit, a demolition permit, an occupancy permit, a building approval certificate or a building order resulting from a decision of the permit authority or information given to the permit authority.
- (4) The State Administrative Tribunal must provide to a permit authority sufficient information to enable the permit authority to perform its functions under this section in respect of the register.

### **129. Inspection, copies of permits, building approval certificates in register**

- (1) A permit authority must make the register available for inspection by members of the public during normal office hours.
- (2) A permit authority may, on application by any person and on payment of the prescribed fee, if any, provide to the person a copy of a building permit, a demolition permit, an occupancy permit, a building approval certificate or a building order that is kept in the register.

### **130. Building records to be kept**

A permit authority must keep in the manner and for the prescribed period such of the prescribed documents that

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comprise, accompany, are provided for in, are issued as a result of, or otherwise relate to the building or incidental structure that is the subject of —

- (a) an application for a building permit or demolition permit; or
- (b) an application of a kind mentioned in Part 4 Division 2; or
- (c) an inspection of a prescribed kind.

**131. Inspection, copies of building records**

- (1) In this section —

*building record* means a document mentioned in section 130;

*interested person* means —

- (a) an owner of the building or incidental structure to which the building record relates; or
  - (b) a person who has the written consent of an owner mentioned in paragraph (a) to inspect, or receive a copy of, a building record relating to the owner; or
  - (c) a person, or a person belonging to a prescribed class of persons.
- (2) A permit authority may, on application by an interested person and on payment of the prescribed fee, if any —
- (a) allow the interested person to inspect a building record; and
  - (b) provide to the interested person a copy of a building record.

**132. Provision of information to Building Commissioner**

- (1) A permit authority must give the Building Commissioner prescribed information for inclusion in the annual report submitted under the *Financial Management Act 2006* Part 5 by the accountable authority, as defined in section 3 of that Act, of

the Department as defined in the *Building Services (Complaint Resolution and Administration) Act 2011* section 3.

- (2) The Building Commissioner may, for the purposes of performing the Commissioner's functions under the *Building Services (Complaint Resolution and Administration) Act 2011*, request a permit authority to provide to the Commissioner —
  - (a) a record kept by the permit authority under section 130;  
or
  - (b) other information of a prescribed kind that is relevant to the functions of the permit authority under this Act or the functions of the Commissioner.
- (3) A permit authority that is a special permit authority or a local government must provide a record or information requested under subsection (2) to the Building Commissioner in the prescribed manner.
- (4) Information to be given under this section must be given in a format approved by the Building Commissioner.

## **Part 12 — Legal proceedings**

### **Division 1 — General provisions about legal proceedings**

#### **133. Prosecutions**

- (1) A prosecution for an offence against this Act may be commenced by, and only by —
  - (a) a permit authority or a person authorised to do so by a permit authority; or
  - (b) a local government or a person authorised to do so by a local government.
- (2) Subsection (1) does not limit the functions of the Director of Public Prosecutions under the *Director of Public Prosecutions Act 1991* section 11.
- (3) A prosecution for an offence against section 9, 10, 29(1) or (2), 37(1) or (2), 38(1) or (2), 76(1), 77, 78(1), (2) or (3), or 79(1) or (2) may be commenced within 6 years after the offence was allegedly committed, but not later.
- (4) A prosecution for any other offence against this Act may be commenced within 3 years after the offence was allegedly committed, but not later.
- (5) All prosecutions for offences against this Act are to be heard in a court of summary jurisdiction constituted by a magistrate.

#### **134. Civil remedy not affected by proceedings for an offence**

The liability of a person in civil proceedings is not affected by the commencement of a prosecution, or the conviction, of the person for an offence against this Act.

#### **135. Incriminating information, questions or documents**

- (1) An individual is not excused from complying with a direction under section 101(1)(j) or 102(1) on the ground that the answer to a question or the production of a record or other thing might



tend to incriminate the individual or expose the individual to a criminal penalty.

- (2) If an individual complies with a requirement to answer a question or produce a record or other thing under section 101(1)(j) or 102(1) neither —
- (a) an answer given by the individual that was given to comply with the requirement; nor
  - (b) the fact that a record or other thing produced by the individual to comply with the requirement was produced,

is admissible in evidence in any criminal proceedings against the individual other than proceedings for perjury or for an offence against this Act arising out of the false or misleading nature of the information given.

**136. Legal professional privilege**

Nothing in this Act prevents a person from refusing to answer a question, provide information or produce a document or other thing because the answer or information would relate to, or the document or thing contains, information in respect of which the person claims legal professional privilege.

**Division 2 — Evidence in legal proceedings**

**137. Evidence Act 1906 not excluded**

This section is in addition to, and does not affect the operation of, the *Evidence Act 1906*.

**138. Allegations in prosecution notices**

- (1) In proceedings for an offence against this Act, an allegation in the prosecution notice of any of the following matters is, in the absence of evidence to the contrary, taken to be proved —
- (a) that at a specified time a building permit, a demolition permit, an occupancy permit, or a building approval

certificate was or was not in effect in relation to specified building or demolition work or to a specified building or incidental structure;

- (b) that at a specified time a person was named as the builder on a specified building permit, or as the demolition contractor on a specified demolition permit;
- (c) that at a specified time a specified person was an owner or occupier of specified land;
- (d) that at a specified time the State, a specified special permit authority or a specified local government was a, or the, permit authority for a specified building or incidental structure;
- (e) that at a specified time a specified building or incidental structure was located in a specified local government district or, if located as proposed, would have been located in a specified local government district;
- (f) that at a specified time a declaration under section 39(2) was or was not in effect;
- (g) that at a specified time a person held a specified office.

(2) In subsection (1) —

*specified* means specified in the prosecution notice.

**139. Presumptions about authority to do certain things**

- (1) In the absence of evidence to the contrary, proof is not required in any proceedings for an offence against this Act —
  - (a) that the prosecutor is authorised to commence the prosecution; or
  - (b) that a signature on the prosecution notice alleging the offence is the signature of a person authorised to commence the prosecution.
- (2) In the absence of evidence to the contrary, proof is not required in any proceedings under this Act that what purports to be a certificate under this Division is the certificate that it purports to

be, without proof of the signature or proof that the person signing was a person who could give the certificate.

**140. Proof of permits, certificates, building orders, declarations, obtained records, approved forms**

- (1) In any proceedings under this Act the contents, as at any date or during any period, of a building permit, demolition permit, occupancy permit or building approval certificate granted by a permit authority, or a building order made by a permit authority, including the conditions applying to any such thing, may be proved by tendering a copy of it certified by an authorised certifier to be a true copy of it as at that date or during that period.
- (2) In subsection (1) —  
*authorised certifier*, in relation to a permit authority —
  - (a) that is the State means the Minister or a person acting with the Minister’s authority;
  - (b) that is a special permit authority means a person acting with the special permit authority’s authority;
  - (c) that is a local government means the chief executive officer of the local government or a person acting with the chief executive officer’s authority.
- (3) In proceedings for an offence against this Act the contents, as at any date or during any period, of a declaration under section 39(2), including the conditions applying to it, may be proved by tendering a copy of it certified by the Building Commissioner to be a true copy of it as at that date or during that period.
- (4) In proceedings for an offence against this Act a copy of a record obtained by an authorised person under section 101(1)(i) or 102(1)(b) is admissible in evidence if it is certified by the authorised person as having been obtained under that section.

- (5) In the absence of evidence to the contrary, proof is not required in any proceedings under this Act that what purports to be an approved form is the approved form that it purports to be.

*[Section 140 amended: No. 37 of 2012 s. 27.]*

**141. Evidence of text adopted by regulations**

In any proceedings, whether under this Act or otherwise, evidence of the text adopted by regulations, as at any date or during any period, may be given by tendering a copy of the text certified by the Building Commissioner to be a true copy of the text adopted as at that date or during that period.

## **Part 13 — General provisions**

### **142. Authority to perform certain functions in relation to Crown land for purposes of this Act**

- (1) If the approval or signature of the owner of Crown land or freehold land in the name of the State is required for the purposes of this Act, the approval or signature may be given by —
  - (a) the Minister for Lands; or
  - (b) a public service officer of the Department, as defined in the *Land Administration Act 1997* section 3(1), who is authorised in writing by the Minister for Lands to do so.
- (2) Nothing in this section limits the ability of the Minister for Lands to otherwise perform a function through an officer or agent.
- (3) Nothing in this section affects —
  - (a) a right or obligation that any other person, as an owner of land mentioned in subsection (1), has under this Act in relation to that land; or
  - (b) how that right may be exercised or that obligation may be satisfied.

### **143. Protection from liability**

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act or a function to which an authority mentioned in section 142(1) applies.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), neither a permit authority nor the State is relieved of any liability that it might have for a person having done anything as described in that subsection.

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- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.
- (5) This section is in addition to the *Local Government Act 1995* section 9.56.

**144.    Extent of duties as to certificates**

- (1) This Act does not operate to create a duty of a permit authority —
  - (a) to check the accuracy of a fact, or the soundness of an opinion, asserted in a certificate of design compliance, a certificate of construction compliance, a certificate of building compliance, or a technical certificate signed by a specialist; or
  - (b) to form its own opinion on a matter mentioned in section 19(3), 56(2)(a), (b) or (c), 56(3)(a), (b) or (c), 57(2)(a), (b) or (c), (3), (4)(a) or (b) or (6), or on a matter that is the subject of a technical certificate signed by a specialist.
- (2) This Act does not operate to create a duty of a building surveyor —
  - (a) to check the accuracy of a fact, or the soundness of an opinion, asserted in a technical certificate signed by a specialist; or
  - (b) to form his or her own opinion on a matter that is the subject of a technical certificate signed by a specialist.
- (3) This section is in addition to the *Civil Liability Act 2002*.

**145A.   Local government functions**

- (1) A local government that is a permit authority, when referring an uncertified application under section 17(1), is not limited to referring the uncertified application to a building surveyor who is employed by the local government.

- (2) A local government may issue a certificate that complies with section 19, 56 or 57 and that is signed by a building surveyor who is employed by the local government, whether or not —
  - (a) the building or incidental structure that is the subject of the application is, or is proposed to be, located in the local government's district; or
  - (b) the applicant is an owner or occupier of land in the local government's district.
- (3) Nothing in this section affects the operation of —
  - (a) section 20(1)(d) or 58(1)(b); or
  - (b) the *Local Government Act 1995* section 3.18, 3.19 or 3.68 or any other relevant provision of that Act.

*[Section 145A inserted: No. 37 of 2012 s. 28.]*

**145. Protection for compliance with Act**

- (1) No civil or criminal liability attaches to a person for compliance, or purported compliance, in good faith, with a requirement of this Act.
- (2) In particular, if a person produces a record or other information as required under this Act, no civil liability attaches to the person for producing the record or information, whether the liability would arise under a contract or otherwise.

**146. Confidentiality**

A person who is or has been engaged in the performance of functions under this Act must not, directly or indirectly, record, disclose or make use of any information obtained in the performance of those functions except —

- (a) for the purpose of, or in connection with, performing functions under this Act or another written law; or
- (b) as required or allowed by this Act or another written law; or

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- (c) with the written consent of the Minister or the person to whom the information relates; or
- (d) for the purpose of any proceeding before a court, the State Administrative Tribunal or the Building Services Board arising out of the administration of this Act, the *Building Services (Complaint Resolution and Administration) Act 2011* or the Registration Act; or
- (e) in prescribed circumstances.

Penalty: a fine of \$25 000.

**147. False or misleading information**

- (1) A person must not do any of the things set out in subsection (2) —
  - (a) in relation to an application under this Act; or
  - (b) in relation to the compliance, or purported compliance, with any requirement or direction under this Act to give information to, or answer a question of, a permit authority, police officer or authorised person.

Penalty: a fine of \$25 000.

- (2) The things to which subsection (1) applies are —
  - (a) making a statement which the person knows is false or misleading in a material particular; or
  - (b) making a statement which is false or misleading in a material particular, with reckless disregard as to whether or not the statement is false or misleading in a material particular; or
  - (c) providing, or causing to be provided, information that the person knows is false or misleading in a material particular; or
  - (d) providing, or causing to be provided, information that is false or misleading in a material particular, with reckless disregard as to whether the information is false or misleading in a material particular.



**148. Laying documents before Parliament**

- (1) If section 67(3) requires the Minister to cause the text of a document to be laid before each House of Parliament, or dealt with under this section, within a period and —
- (a) at the commencement of the period, a House of Parliament is not sitting; and
  - (b) the Minister is of the opinion that the House will not sit during that period,

the Minister must transmit a copy of the document to the Clerk of that House.

- (2) A copy of a document transmitted to the Clerk of a House is to be regarded as having been laid before that House.
- (3) The laying of a copy of a document that is to be regarded as having occurred under subsection (2) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

## **Part 14 — Regulations**

### **149. Regulations**

- (1) The Governor may make regulations prescribing all matters that are —
  - (a) required or permitted by the Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out this Act.
- (2) Without limiting subsection (1), regulations may prescribe the fees to be paid for the purposes of this Act and the persons liable for payment.
- (3) The regulations may provide that contravention of a regulation is an offence, and provide, for an offence against the regulations, a penalty not exceeding a fine of \$5 000.

### **150. Regulations may refer to published documents**

- (1) Regulations made for the purposes of this Act may adopt the text of any published document specified in the regulations —
  - (a) as that text exists at a particular date; or
  - (b) as that text may from time to time be amended.
- (2) The text may be adopted —
  - (a) wholly or in part; or
  - (b) as modified by the regulations.
- (3) The adoption may be direct (by reference made in the regulations), or indirect (by reference made in the text that is itself directly or indirectly adopted).
- (4) The adoption of a text is of no effect unless —
  - (a) the adopted text; and
  - (b) if the text is adopted as it may be amended from time to time, either —
    - (i) the amendments to the text; or

- (ii) the text as amended,  
can at all reasonable times be inspected or purchased by the public.
- (5) The Building Commissioner must ensure that text mentioned in subsection (4)(a) and (b) —
  - (a) can be inspected by the public at the Commissioner's office during business hours; and
  - (b) can be purchased by the public.
- (6) Regulations that adopt the text of a published document may contain provisions that are necessary or convenient for dealing with transitional matters related to the provisions that change or cease to have effect in relation to the text.

*[Part 15 (s. 151-175) omitted under the Reprints Act 1984 s. 7(4)(e) and (f).]*

## **Part 16 — Transitional provisions**

### **Division 1 — Transitional provisions arising from the enactment of the *Building Act 2011***

**176. Terms used**

In this Division —

***commencement day*** means the day on which section 153(2) comes into operation;

***former provisions***, means the *Local Government (Miscellaneous Provisions) Act 1960* as in force before commencement day.

**177. *Interpretation Act 1984* not affected**

Except where the contrary intention appears, the provisions of this Division do not prejudice or affect the application of the *Interpretation Act 1984* to and in relation to the repeals effected by section 153(2).

**178. Building licences, pending applications, reviews**

(1) In this section —

***building licence*** means a building licence under section 374(1) of the former provisions.

(2) A building licence that was in effect immediately before commencement day is, on and from commencement day, to be taken to be a building permit on the conditions applying to the building licence immediately before commencement day.

(3) Despite section 32 a building licence that, under subsection (2), is to be taken to be a building permit, is of no effect if the building work to which it applies is not substantially commenced within 12 months of the date of its issue or review, or such longer period that the permit authority approves on an application under section 32.

- (4) An application for a building licence that had been made, but not decided by the local government, before commencement day is, on and from commencement day, to be taken to be an application for a building permit under section 14 for which the fee mentioned in section 16(1) has been paid.
- (5) A review under section 374AAD(1)(a) or (b) of the former provisions that was started, but not finalised, before commencement day must be dealt with as if the former provisions had not been amended by Part 15 Division 1, and a building licence that is issued or varied as a result of such a review is to be taken to be a building permit on the conditions applying to the building licence on its issue or variation.

**179. Demolition licences, pending applications, reviews**

- (1) In this section —  
*demolition licence* means a licence under section 374A(1) of the former provisions.
- (2) A demolition licence that was in effect immediately before commencement day is, on and from commencement day, to be taken to be a demolition permit on the conditions applying to the demolition licence immediately before commencement day.
- (3) Despite section 32 a demolition licence that, under subsection (2), is to be taken to be a demolition permit, is of no effect if the demolition work to which it applies is not commenced within 12 months of the date of its issue or review or such longer period that the permit authority approves on an application under section 32.
- (4) An application for a demolition licence that had been made, but not decided by the local government, before commencement day is, on and from commencement day, to be taken to be an application for a demolition permit under section 15 for which the fee mentioned in section 16(1) has been paid.
- (5) A review under section 374A(3) of the former provisions that was started, but not finalised, before commencement day must

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be dealt with as if the former provisions had not been amended by Part 15 Division 1, and a demolition licence that is varied as a result of such a review is to be taken to be a demolition permit on the conditions applying to the demolition licence on its variation.

**180. Building approval certificates (former provisions), pending applications, reviews**

(1) In this section —

*building approval certificate (former provisions)* means a building approval certificate under section 374AA(4) of the former provisions.

(2) A building approval certificate (former provisions) that was in effect immediately before commencement day is, on and from commencement day, to be taken to be a building approval certificate as defined in section 3 on the conditions applying to the building approval certificate (former provisions) immediately before commencement day.

(3) An application for a building approval certificate (former provisions) that had been made, but not decided by the local government, before commencement day is, on and from commencement day, to be taken to be an application for a building approval certificate under section 51 for which the fee mentioned in section 54(4)(d) has been paid.

(4) A review under section 374AAD(1)(c) or (d) of the former provisions that was started, but not finalised, before commencement day must be dealt with as if the former provisions had not been amended by Part 15 Division 1, and a building approval certificate (former provisions) that is issued or varied as a result of such a review is to be taken to be a building approval certificate on the conditions applying to the building approval certificate (former provisions) on its issue or variation.

**181. Certificates of classification, pending notifications of change of use**

- (1) In this section —  
*regulation*, with a designation, means the regulation of that designation in the *Building Regulations 1989*<sup>3</sup> as in force before commencement day.
- (2) A certificate of classification issued under regulation 20(1)(a) (for a completed building) that was in effect immediately before commencement day is, on and from commencement day, to be taken to be an occupancy permit granted on an application mentioned in section 46 on the conditions applying to the certificate of classification immediately before commencement day.
- (3) A certificate of classification issued under regulation 20(1)(b) (for an incomplete building) that was in effect immediately before commencement day is, on and from commencement day, to be taken to be an occupancy permit granted on an application mentioned in section 47 on the conditions applying to the certificate of classification immediately before commencement day.
- (4) If notification of a proposed change of use of a building had been given under regulation 22(3) but a new certificate of classification had not been issued before commencement day the notification is, on and from commencement day, to be taken to be an application for a replacement occupancy permit under section 49 for which the fee mentioned in section 54(4)(d) has been paid.

**182A. Occupancy permits for certain buildings and validation**

- (1) In this section —  
*OP application (transitional)* means an application mentioned in section 46 for an occupancy permit for a completed building in respect of which —
  - (a) a building permit applies because of the operation of section 178(2) or (4); and

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- (b) a certificate of classification of a kind mentioned in section 181(2) or (3) has not been issued.
- (2) Sections 54(2) and (4)(a) and (d) and 56(2) do not apply to an OP application (transitional).
- (3) On an OP application (transitional) —
  - (a) section 58(1)(b) is to be read as follows:
    - (b) the building in its current state is suitable to be used in the way proposed in the application;  
and
  - and
  - (b) section 58(1)(c) does not apply.
- (4) An occupancy permit for a completed building that was granted or purported to be granted before the commencement of the *Building Amendment Act 2012* section 29 is, and is taken always to have been, as valid and effective as it would have been if this section were in effect at the time the occupancy permit was granted or purported to be granted.

*[Section 182A inserted: No. 37 of 2012 s. 29.]*

**182. Hoardings etc. in public places**

Despite the *Interpretation Act 1984* section 37(1), on or after commencement day materials, matters and things removed by a local government under section 378(1) of the former provisions cannot be sold under section 378(2) of the former provisions unless an agreement for the sale of the materials, matter or things had been made before commencement day.

**183. Building party walls**

- (1) In this section —

***party wall building consent*** means the consent of the adjoining owner to the building of a party wall, as mentioned in section 383(3) of the former provisions.



- (2) A party wall building consent that was given before commencement day is, on and from commencement day, to be taken to be consent for the purposes of sections 76(1)(a) and 81(2)(a).
- (3) If, before commencement day, an adjoining owner gave party wall building consent, the building owner must bear or pay the expense of building the party wall, and from time to time, as and when the adjoining owner makes use of the wall, the adjoining owner must pay to the building owner such portion of that expense as is proportionate to the use which the adjoining owner makes of the wall.
- (4) Where the adjoining owner is liable to contribute to the expenses of building a party wall, until the contribution is paid, the building owner at whose expense it was built stands possessed of the sole property in the structure.
- (5) The adjoining owner is liable for expenses incurred by the building owner on the adjoining owner's requisition under section 386 of the former provisions, and if the adjoining owner does not pay them, the building owner may recover the amount of the expenses from the adjoining owner in a court of competent jurisdiction.

**184. Work on existing party walls**

- (1) In this section —  
*party wall work consent* means —
  - (a) a consent in writing of the adjoining owner as mentioned in section 387(1) of the former provisions; or
  - (b) the expression of the adjoining owner's agreement to comply with the requirements of a party wall notice given under section 387(1) of the former provisions,that was given or made during the period of 6 months before commencement day.

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- (2) A party wall work consent is, on and from commencement day, to be taken to be a consent for the purposes of sections 79(1)(a) and 81(2)(a) given on condition that the building owner complies with any requisition made under section 386 of the former provisions to the extent that compliance was required under that section 386.
- (3) Despite the *Interpretation Act 1984* section 37(1), sections 393, 394 and 395 of the former provisions do not apply in relation to work completed on or after commencement day, in which case sections 89 and 90 apply.

**185. Underpinning**

- (1) In this section —  
***underpinning consent*** means —
  - (a) a consent in writing of the adjoining owner in response to a notice under section 391(2) of the former provisions; or
  - (b) the requirement of the adjoining owner to underpin or strengthen the foundations of the adjoining owner's building as set out in a counter notice under section 391(3) of the former provisions.
- (2) An underpinning consent that was given before commencement day is, on and from commencement day, to be taken to be consent for the purposes of sections 76(1)(a), 78(1)(a) and 81(2)(a).
- (3) Despite the *Interpretation Act 1984* section 37(1), sections 391(4) and (5) and 397 of the former provisions do not apply in relation to work completed on or after commencement day, in which case sections 90(b) and 91 apply respectively.

**186. Settlement of differences in relation to party walls, underpinning**

- (1) Despite the *Interpretation Act 1984* section 37(1), on or after commencement day no application may be made under

section 389 of the former provisions for a determination in relation to a difference between a building owner and an adjoining owner.

- (2) However, the *Interpretation Act 1984* section 37(1) applies to such an application that had been made, but not decided by the State Administrative Tribunal, before commencement day.
- (3) A decision of the State Administrative Tribunal on an application mentioned in subsection (2) is to be taken to be an order for the purposes of such of section 76(1)(b), 78(1)(b), 79(1)(b) or 81(2)(b), as is relevant to the case.

**187. Settlement of differences in relation to security**

- (1) Despite the *Interpretation Act 1984* section 37(1), on or after commencement day no application may be made under section 392(1) or (2) of the former provisions for a determination in relation to a difference between a building owner and an adjoining owner.
- (2) However, the *Interpretation Act 1984* section 37(1) applies to such an application that had been made, but not decided by the State Administrative Tribunal, before commencement day.
- (3) Despite the *Interpretation Act 1984* section 37(1), on or after commencement day section 392(3) of the former provisions does not operate to affect a party wall requisition even if security is not given on a counter requisition.

**188. Inflammable materials**

- (1) A notice under section 399(2) of the former provisions that was served on the owner or the occupier of a building before commencement day is, on and from commencement day, to be taken to be a copy of a building order served on those persons.
- (2) Section 111 does not apply to a notice taken to be a building order under subsection (1).

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- (3) Despite the *Interpretation Act 1984* section 37(1), on or after commencement day the Magistrates Court, in proceedings under section 399(3) of the former provisions, is not to make an order that authorises a local government to do any of the things set out in that section, in which case section 118 applies.
- (4) It is a defence to a charge under section 9 for the accused to prove that the building work that is the subject of the alleged offence was authorised by —
  - (a) a licence under section 399(4)(a) of the former provisions; or
  - (b) a consent under section 399(4)(b) of the former provisions; or
  - (c) an order made on a review mentioned in section 399(5) of the former provisions.

**189. Encroachments over, on, or under streets**

- (1) In this section —

***encroachment permission*** means permission of a local government given under section 400(1)(a), (1b) or (2) of the former provisions.
- (2) Encroachment permission given before commencement day is, on and from commencement day, to be taken to be consent for the purposes of section 76(1)(a) given on each condition to which the permission was made subject when the permission was granted.
- (3) An application for encroachment permission that had been made, but not decided by the local government, before commencement day has no effect on and after commencement day.
- (4) Despite the *Interpretation Act 1984* section 37(1) if, immediately before commencement day —
  - (a) a notice under section 400(3) of the former provisions was in effect; but

- (b) there was not in effect a warrant granted by the Magistrates Court under section 400(3) of the former provisions,

then on and from commencement day the notice is to be taken to be a building order as if the reference in section 112(2)(c) to a contravention of this Act were a reference to a contravention of section 400 of the former provisions.

- (5) However, the *Interpretation Act 1984* section 37(1) applies if the Magistrates Court had granted a warrant under section 400(3) of the former provisions before commencement day except that in section 400(3) of the former provisions the passage that begins with “and the local government, by its agents” and ends with “jurisdiction,” does not apply in relation to a warrant or order made under section 400(3) of the former provisions on or after commencement day, in which case section 118 applies.
- (6) If, before commencement day there had been a contravention of section 400 of the former provisions but no notice had been given under section 400(3) of the former provisions, a building order may be issued on or after commencement day in respect of the contravention as if the reference in section 112(2)(c) to a contravention of this Act were a reference to a contravention of section 400 of the former provisions.

**190. Notices of required alterations**

- (1) A notice under section 401(1) of the former provisions that was given to a person before commencement day is, on and from commencement day, to be taken to be a copy of a building order served on that person.
- (2) Section 111 does not apply to a notice taken to be a building order under subsection (1).
- (3) A review under section 401(3) of the former provisions that was started, but not finalised, before commencement day must be dealt with as if the former provisions had not been amended by

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Part 15 Division 1, and if the decision to make the requisition is affirmed or varied on the review —

- (a) the notice is to be taken to be a building order on the terms applying to the requisition or the requisition on its variation; and
  - (b) section 118 applies in relation to non-compliance with an order made on the review.
- (4) Section 115 does not apply to a notice taken to be a building order under subsection (1) —
- (a) if no application for review was made before commencement day, until 35 days have elapsed since the notice was served; or
  - (b) if an application for review is made before commencement day, until 14 days have elapsed since the review was finalised.
- (5) A notice under section 401(4) of the former provisions that was served on a local government before commencement day is, on and from commencement day, to be taken to be notification for the purposes of section 112(3)(c).
- (6) An application under section 401(7) of the former provisions that was started, but not finalised, before commencement day must be dealt with as if the former provisions had not been amended by Part 15 Division 1.
- (7) Despite the *Interpretation Act 1984* section 37(1), section 401(8) of the former provisions does not apply in relation to an order made under section 401(7) of the former provisions on or after commencement day, in which case section 118 applies.

**191. Notices to stop unlawful work**

- (1) In this section —

***notice*** means a notice under section 401A(1) of the former provisions.

- (2) A notice that was served, or deemed to have been served, on a builder before commencement day is, on and from commencement day, to be taken to be a copy of a building order served on that person.
- (3) Section 111 does not apply to a notice taken to be a building order under subsection (2).
- (4) The local government that served the notice must, as soon as practicable after commencement day, cause a copy of the notice to be served on an owner of the land on which is located the building that is the subject of the notice if —
  - (a) the person on whom the notice was served is not an owner of the land; and
  - (b) section 401A(3) was not complied with before commencement day.
- (5) A review under section 401A(6) of the former provisions that was started, but not finalised, before commencement day must be dealt with as if the former provisions had not been amended by Part 15 Division 1, and if the notice is affirmed or varied on the review —
  - (a) the notice as affirmed or varied is to be taken to be a building order; and
  - (b) section 118 applies in relation to non-compliance with an order made on the review.

**192. Dangerous buildings**

- (1) In this section —

*notice* means a notice under section 403(4) of the former provisions.
- (2) A notice that was served on the owner and the occupier of a building before commencement day is, on and from commencement day, to be taken to be a copy of a building order served on those persons.

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- (3) Section 111 does not apply to a notice taken to be a building order under subsection (2).
- (4) A review under section 403(6) of the former provisions that was started, but not finalised, before commencement day must be dealt with as if the former provisions had not been amended by Part 15 Division 1, and if the decision to make the requisition is affirmed or varied on the review —
- (a) the notice is to be taken to be a building order on the terms applying to the requisition or the requisition on its variation; and
  - (b) section 118 applies in relation to non-compliance with an order made on the review.
- (5) An application under section 404 of the former provisions that was started, but not finalised, before commencement day must be dealt with as if the former provisions had not been amended by Part 15 Division 1.
- (6) Despite the *Interpretation Act 1984* section 37(1) —
- (a) in section 404 of the former provisions the passage “and if the order is not complied with by the person to whom it is directed, within the time so fixed, the local government may cause the building, or so much of it as is in a dangerous condition, to be taken down, repaired or otherwise secured in such manner as is necessary,”; and
  - (b) section 405(1) of the former provisions,
- do not apply in relation to an order made under section 404 of the former provisions on or after commencement day, in which case section 118 applies.
- (7) Despite the *Interpretation Act 1984* section 37(1), on or after commencement day a building cannot be sold under section 405(2) of the former provisions unless an agreement for the sale of the building had been made before commencement day.



**193. Neglected buildings**

- (1) In this section —  
*notice* means a notice under section 408(1) of the former provisions.
- (2) A notice that was served on the owner and the occupier of a building before commencement day is, on and from commencement day, to be taken to be a copy of a building order served on those persons.
- (3) Section 111 does not apply to a notice taken to be a building order under subsection (2).
- (4) A review under section 408(3) of the former provisions that was started, but not finalised, before commencement day must be dealt with as if the former provisions had not been amended by Part 15 Division 1, and if the decision to make the requisition is affirmed or varied on the review —
  - (a) the notice is to be taken to be a building order on the terms applying to the requisition or the requisition on its variation; and
  - (b) section 118 applies in relation to non-compliance with an order made on the review.
- (5) An application under section 408(4) of the former provisions that was started, but not finalised, before commencement day must be dealt with as if the former provisions had not been amended by Part 15 Division 1.
- (6) Despite the *Interpretation Act 1984* section 37(1), section 408(5) to (8) of the former provisions do not apply in relation to an order made under section 408(4) of the former provisions on or after commencement day, in which case section 118 applies.

**194. Dilapidated buildings**

- (1) In this section —  
*notice* means a notice under section 409(1) of the former provisions.
- (2) A notice that was served on the owner and the occupier of a building before commencement day is, on and from commencement day, to be taken to be a copy of a building order served on those persons.
- (3) Section 111 does not apply to a notice taken to be a building order under subsection (2).
- (4) A review under section 409(3) of the former provisions that was started, but not finalised, before commencement day must be dealt with as if the former provisions had not been amended by Part 15 Division 1, and if the decision to make the requisition is affirmed or varied on the review —
  - (a) the notice is to be taken to be a building order on the terms applying to the requisition or the requisition on its variation; and
  - (b) section 118 applies in relation to non-compliance with an order made on the review.
- (5) An application under section 409(4) of the former provisions that was started, but not finalised, before commencement day must be dealt with as if the former provisions had not been amended by Part 15 Division 1.
- (6) Despite the *Interpretation Act 1984* section 37(1) —
  - (a) in section 409(4) of the former provisions the passage “and if the order is not complied with by the owner or occupier to whom it is directed within the time so fixed the local government may do what he is directed by the order to do.”; and

- (b) section 409(5) of the former provisions,  
do not apply in relation to an order made under section 409(4)  
of the former provisions on or after commencement day, in  
which case section 118 applies.
- (7) Despite the *Interpretation Act 1984* section 37(1), on or after  
commencement day a building cannot be sold under  
section 409(6) of the former provisions unless an agreement for  
the sale of the building had been made before commencement  
day.

**195. Uncompleted buildings**

- (1) In this section —  
**order** means an order under section 409A(2)(a) of the former  
provisions.
- (2) An order that was served on an owner of a building before  
commencement day is, on and from commencement day, to be  
taken to be a copy of a building order served on that person.
- (3) Section 111 does not apply to an order taken to be a building  
order under subsection (2).
- (4) Despite the *Interpretation Act 1984* section 37(1),  
section 409A(2)(b) of the former provisions does not apply in  
relation to an order on or after commencement day, in which  
case section 118 applies.
- (5) A review under section 409A(3) of the former provisions that  
was started, but not finalised, before commencement day must  
be dealt with as if the former provisions had not been amended  
by Part 15 Division 1, and if the decision to make the order is  
affirmed or varied on the review —
- (a) the order is to be taken to be a building order on the  
terms applying to the order or the order on its variation;  
and
- (b) section 118 applies in relation to non-compliance with  
an order made on the review.

**196. Orders prohibiting building on land until payments made**

Despite the *Interpretation Act 1984* section 37(1), on or after commencement day the Magistrates Court, on an application under section 410(1) of the former provisions, is not to make an order that prevents a person building upon land.

**197. Agreements for repayment of costs, postponement of payment of costs**

(1) Despite the *Interpretation Act 1984* section 37(1), section 410A(4) and (5) of the former provisions do not apply in relation to —

- (a) any amount that, on commencement day, is owing under an agreement under section 410A(2) of the former provisions; or
- (b) any amount of costs the payment of which has been postponed under section 410A(3) of the former provisions that remains unpaid on commencement day,

in which case the *Local Government Act 1995* Part 6 Division 6 Subdivisions 5 and 6 apply as if the unpaid amount were unpaid rates.

(2) An action to recover an amount of costs mentioned in subsection (1)(b) may be commenced at any time.

**198. Action after conviction**

(1) In this section —

**notice** means a notice under section 411(1) of the former provisions.

(2) A notice that was served on the owner and occupier of a building before commencement day is, on and from commencement day, to be taken to be a copy of a building order served on that person.

(3) Section 111 does not apply to a notice taken to be a building order under subsection (2).

- (4) A review under section 411(3) of the former provisions that was started, but not finalised, before commencement day must be dealt with as if the former provisions had not been amended by Part 15 Division 1, and if the decision to make the requisition is affirmed or varied on the review —
- (a) the notice is to be taken to be a building order on the terms applying to the requisition or the requisition on its variation; and
  - (b) section 118 applies in relation to non-compliance with an order made on the review.
- (5) Despite the *Interpretation Act 1984* section 37(1), on or after commencement day the Magistrates Court, on an application under section 411(4) of the former provisions, is not to make an order that authorises a local government to do any of the things set out in that subsection, in which case section 118 applies.
- (6) If a person was convicted of an offence as mentioned in section 411(1) of the former provisions but no notice had been served before commencement day under section 411(2) of the former provisions, a building order may be issued on or after commencement day in respect of the contravention as if the reference in section 112(2)(c) to a contravention of this Act were a reference to a contravention of the former provisions.
- (7) Despite the *Interpretation Act 1984* section 37(1), on and from commencement day no memorial is to be registered and no endorsement or notation on the title is to be made under section 412A(1) of the former provisions.

**199. Fire escapes**

- (1) In this section —
- notice** means a notice under section 413(1) of the former provisions.
- (2) A notice that was served on the owner of a building before commencement day is, on and from commencement day, to be taken to be a copy of a building order served on that person.

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- (3) Section 111 does not apply to a notice taken to be a building order under subsection (2).
- (4) A review under section 413(3) of the former provisions that was started, but not finalised, before commencement day must be dealt with as if the former provisions had not been amended by Part 15 Division 1, and if the decision to make the requisition is affirmed or varied on the review —
  - (a) the notice is to be taken to be a building order on the terms applying to the requisition or the requisition on its variation; and
  - (b) section 118 applies in relation to non-compliance with an order made on the review.
- (5) Section 115 does not apply to a notice taken to be a building order under subsection (2) —
  - (a) if no application for review was made before commencement day, until 12 months have elapsed since the notice was served; or
  - (b) if an application for review is made before commencement day, until 12 months have elapsed since the review was finalised.
- (6) Despite the *Interpretation Act 1984* section 37(1), section 413(4) of the former provisions does not apply in relation to the installation or erection of fire escapes on or after commencement day.

**200. Public buildings**

- (1) In this section —

**notice** means a notice under section 415(1) of the former provisions.
- (2) A notice that was served on the owner or occupier of a public building before commencement day is, on and from commencement day, to be taken to be a copy of a building order served on that person.

- (3) Section 111 does not apply to a notice taken to be a building order under subsection (2).
- (4) Despite the *Interpretation Act 1984* section 37(1) if, immediately before commencement day a copy of a notice had not been published under section 415(3) of the former provisions, it is not necessary to publish the notice on or after commencement day.

**201. Removal of inflammable buildings**

- (1) In this section —  
**notice** means a notice under section 417(1) of the former provisions.
- (2) A notice a copy of which was published under section 417(2) of the former provisions before commencement day is, on and from commencement day, to be taken to be a copy of a building order served on each owner and occupier of the building that is the subject of the notice.
- (3) Section 111 does not apply to a notice taken to be a building order under subsection (2).
- (4) A review under section 417(3) of the former provisions that was started, but not finalised, before commencement day must be dealt with as if the former provisions had not been amended by Part 15 Division 1, and if the decision to make the requisition is affirmed or varied on the review —
  - (a) the notice is to be taken to be a building order on the terms applying to the requisition or the requisition on its variation; and
  - (b) section 118 applies in relation to non-compliance with an order made on the review.
- (5) Despite the *Interpretation Act 1984* section 37(1), on or after commencement day the Magistrates Court, on an application under section 418 of the former provisions, is not to make an

**Building Act 2011**

**Part 16** Transitional provisions

**Division 2** Transitional and validation provisions arising from the enactment of the Building Amendment Act 2012

**s. 202**

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order that authorises a local government to do any of the things set out in that section, in which case section 118 applies.

- (6) If a building is removed after commencement day the persons entitled are to be paid by the local government that served the notice the compensation agreed, or in the absence of agreement, the compensation stated in the notice or determined following a review mentioned in subsection (4), and if it is not paid by the local government, they may recover the amount of the compensation and costs from the local government in a court of competent jurisdiction.

**202. Orders about occupiers obstructing owners from complying with former provisions**

Despite the *Interpretation Act 1984* section 37(1), on or after commencement day the Magistrates Court, on an application under section 667(1) of the former provisions, is not to make an order under that provision.

**203. Regulations for transitional matters**

The regulations may contain provisions that are necessary or convenient for dealing with matters concerning the transition from the provisions of any written law applying before commencement day to the provisions of this Act, including regulations made under this Act, applying after commencement day.

**Division 2 — Transitional and validation provisions arising from the enactment of the *Building Amendment Act 2012***

*[Heading inserted: No. 37 of 2012 s. 30.]*

**204. Term used: amending Act**

In this Division —

**amending Act** means the *Building Amendment Act 2012*.

*[Section 204 inserted: No. 37 of 2012 s. 30.]*



**205. Requests for further information (building and demolition permits)**

- (1) In this section —

*commencement day* means the day on which section 31 of the amending Act comes into operation.

- (2) A requirement under section 18(1) in respect of an application made before commencement day must be dealt with on and after commencement day as if section 18(3) had not been inserted by section 31 of the amending Act.

*[Section 205 inserted: No. 37 of 2012 s. 30.]*

**206. Requests for further information (occupancy permits and building approval certificates)**

- (1) In this section —

*commencement day* means the day on which section 32 of the amending Act comes into operation.

- (2) A requirement under section 55(1) in respect of an application made before commencement day must be dealt with on and after commencement day as if section 55(3) had not been inserted by section 32 of the amending Act.

*[Section 206 inserted: No. 37 of 2012 s. 30.]*

**207. Time for deciding application for building or demolition permit**

- (1) In this section —

*commencement day* means the day on which section 8 of the amending Act comes into operation.

- (2) On and after commencement day, section 23(1) applies in respect of an uncertified application made before commencement day as if section 23(1)(b) had not been amended by section 8 of the amending Act.

- (3) On and after commencement day, section 23(2) applies in respect of a certified application made before commencement day as if section 23(2)(b) had not been amended by section 8 of the amending Act.

*[Section 207 inserted: No. 37 of 2012 s. 30.]*

**208. Validation of building permits naming, and compliance certificates issued by, public authorities**

- (1) In this section —

**public authority** means a public authority as defined in the Registration Act.

- (2) An application for a building permit that, before the commencement of section 7(1) of the amending Act, named and was signed by a public authority as the person proposing to be named as the builder on the building permit is, and is taken always to have been, as valid and effective as it would have been if section 20(1)(b)(iia) were in effect at the time of the naming and signing.
- (3) A building permit that, before the commencement of section 7(1) of the amending Act, named a public authority as the builder is, and is taken always to have been, as valid and effective as it would have been if section 20(1)(b)(iia) were in effect at the time of the naming.
- (4) A certificate issued or purported to be issued under section 19 by a public authority before the commencement of sections 7(2) and 28 of the amending Act is, and is taken always to have been, as valid and effective as it would have been if sections 20(1)(e)(iia) and 145A were in effect at the time of the issue or purported issue.
- (5) A certificate issued or purported to be issued under section 56 or 57 by a public authority before the commencement of sections 13 and 28 of the amending Act is, and is taken always to have been, as valid and effective as it would have been if

sections 58(1)(c)(iia) and 145A were in effect at the time of the issue or purported issue.

*[Section 208 inserted: No. 37 of 2012 s. 30.]*

**209. Regulations for transitional matters about applicable building standards**

- (1) In this section —  
***commencement day***, in relation to a provision in Part 4 of the amending Act, means the day on which that provision comes into operation;  
***provisions of this Act*** includes regulations made under this Act.
- (2) The regulations may contain provisions that are necessary or convenient for dealing with matters concerning the transition from the provisions of this Act applying before the commencement day of a provision in Part 4 of the amending Act to the provisions of this Act applying on and after that commencement day.

*[Section 209 inserted: No. 37 of 2012 s. 30.]*

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### Notes

<sup>1</sup> This is a compilation of the *Building Act 2011* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

#### Compilation table

Short title	Number and year	Assent	Commencement
<i>Building Act 2011</i>	24 of 2011	11 Jul 2011	s. 1 and 2: 11 Jul 2011 (see s. 2(a)); s. 3: 29 Aug 2011 (see s. 2(b) and <i>Gazette</i> 26 Aug 2011 p. 3476); Act other than s. 1-3: 2 Apr 2012 (see s. 2(b) and <i>Gazette</i> 13 Mar 2012 p. 1033)
<i>Building Amendment Act 2012</i>	37 of 2012	5 Nov 2012	s. 1 and 2: 5 Nov 2012 (see s. 2(a)); Act other than s. 1, 2 and Pt. 3 and 4: 6 Nov 2012 (see s. 2(c)); Pt. 3 and 4: 19 Dec 2012 (see s. 2(b) and <i>Gazette</i> 18 Dec 2012 p. 6585)
<b>Reprint 1: The <i>Building Act 2011</i> as at 7 Jun 2013</b> (includes amendments listed above)			
<i>Local Government Legislation Amendment Act 2016</i> Pt. 3 Div. 2	26 of 2016	21 Sep 2016	21 Jan 2017 (see s. 2(b) and <i>Gazette</i> 20 Jan 2017 p. 648)

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

#### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Heritage Act 2018</i> s. 183 <sup>4</sup>	22 of 2018	18 Sep 2018	To be proclaimed (see s. 2(b))
<i>Strata Titles Amendment Act 2018</i> Pt. 3 Div. 1 <sup>5</sup>	30 of 2018	19 Nov 2018	To be proclaimed (see s. 2(b))

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<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Community Titles Act 2018</i> Pt. 14 Div 1 <sup>6</sup>	32 of 2018	19 Nov 2018	To be proclaimed (see s. 2(b))

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- <sup>2</sup> The provisions in this Act amending these Acts have been omitted under the *Reprints Act 1984* s. 7(4)(e).
- <sup>3</sup> The provisions in this Act repealing the *Building Regulations 1989* and the *Local Government (Prohibition on Dealings in Land) Regulations 1973* have been omitted under the *Reprints Act 1984* s. 7(4)(f).
- <sup>4</sup> On the date as at which this compilation was prepared, the *Heritage Act 2018* s. 183 had not come into operation. It reads as follows:

**183. Building Act 2011 amended**

- (1) This section amends the *Building Act 2011*.
- (2) In section 20(1)(m) delete “*Heritage of Western Australia Act 1990*” and insert:

*Heritage Act 2018*

- (3) In section 21(1)(i) delete “*Heritage of Western Australia Act 1990*” and insert:

*Heritage Act 2018*

- (4) In section 23(5)(b) delete “*Heritage of Western Australia Act 1990*” and insert:

*Heritage Act 2018*

- <sup>5</sup> On the date as at which this compilation was prepared, the *Strata Titles Amendment Act 2018* Pt. 3 Div. 1 had not come into operation. It reads as follows:

**Part 3 — Other Acts amended**

**Division 1 — Building Act 2011 amended**

**120. Act amended**

This Division amends the *Building Act 2011*.

**121. Section 3 amended**

In section 3 insert in alphabetical order:

*strata lease* has the meaning given in the *Strata Titles Act 1985*;

**122. Section 5 amended**

Section 5(1) is amended in the definition of *owner* by deleting “freehold,” and inserting:

freehold or held in leasehold under a strata lease,

**123. Section 50 deleted**

Delete section 50.

<sup>6</sup> On the date as at which this compilation was prepared, the *Community Titles Act 2018* Pt. 14 Div. 1 had not come into operation. It reads as follows:

**Part 14 — Other Acts amended**

**Division 1 — *Building Act 2011* amended**

**191. Act amended**

This Division amends the *Building Act 2011*.

**192. Section 3 amended**

In section 3 in the definition of *land* after “defined in” insert:

the *Community Titles Act 2018* section 3(1) or

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
adult .....	3
adversely affect land .....	3
affected land.....	83
amending Act.....	204
applicable building standard .....	3
applicable certificate of design compliance .....	3
application.....	4(1), 13, 53
approved .....	3
authorised certifier .....	140(2)
authorised person .....	3
authority under a written law .....	3
boundary retaining wall .....	75
building.....	3, 56(4), 57(5)
building approval certificate .....	3
building approval certificate (former provisions) .....	180(1)
Building Commissioner .....	3
building licence.....	178(1)
building order.....	3, 110(1)
building order (emergency).....	3
building permit.....	3
building record.....	131(1)
building regulation or local law .....	123(1)
building service contractor.....	3
building standard.....	3
building surveyor .....	3
building work.....	3
business day .....	75
CEO .....	127(8)
certificate .....	19(1)
certified application .....	13
classification .....	3
close wall .....	80(2A), 88(1)
commencement day .....	3, 176, 205(1), 206(1), 207(1), 209(1)
compliance purposes.....	94
Crown land.....	3
Crown lease .....	76(3)
declaration.....	39(1)
demolition licence.....	179(1)
demolition permit.....	3
demolition work.....	3

Defined terms

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designating permit authority .....	95
direction .....	104(1)
dividing fence .....	75
encroachment permission.....	189(1)
entry warrant .....	94
event.....	92
existing building .....	92
former provisions .....	176
incidental structure .....	3
independent building surveyor.....	3, 4(2)
interested person .....	131(1)
land .....	3
local government employee .....	127(8)
managed reserve .....	76(3)
management body .....	76(3)
mining operations .....	72(1)
Minister for Lands .....	3
modification .....	53
non-compliance.....	118(1)
notice .....	83, 191(1), 192(1), 193(1), 194(1), 198(1), 199(1), 200(1), 201(1)
notifiable event .....	83
occupancy permit.....	3
occupier.....	40, 81(1), 94
OP application (transitional) .....	182A(1)
order.....	195(1)
other land .....	81(1)
outward facing side.....	88(1)
owner .....	3, 5(1), 76(2)
party wall .....	75
party wall building consent.....	183(1)
party wall work consent.....	184(1)
permit.....	31, 68
permit authority for a building.....	3
permit authority for an incidental structure.....	3
permit requirement provisions .....	68
person responsible.....	75
place.....	94
prescribed.....	3
protection structure .....	75
provisions of this Act.....	209(1)
public authority .....	208(1)
public body .....	125(2)
Registration Act .....	3
regulation .....	181(1)
relevant local government.....	7(3)



relevant permit authority .....	31
relevant record .....	94
responsible person.....	31
road .....	76(3)
specialist .....	3
specified .....	39(1), 83, 92, 112(1), 138(2)
substantial dividing fence .....	75
survey.....	3
technical certificate .....	3
temporary permit.....	41(1)
unauthorised work.....	51(1)
uncertified application .....	13
underpinning consent.....	185(1)
work .....	31, 51(1), 75
works land.....	75