

Building Bill 2010

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Defined Terms

Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

Building Bill 2010

A Bill for

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;**
- **the repeal of the *Building Regulations 1989* and the *Local Government (Prohibition on Dealings in Land) Regulations 1973*;**
- **related matters.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Building Act 2010*.

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.

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 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;

- 1 **approved**, in relation to the manner or form of something,
2 means approved —
- 3 (a) by a prescribed person; or
- 4 (b) in a prescribed way;
- 5 **authorised person** means a person designated under section 96
6 as an authorised person;
- 7 **authority under a written law** includes an approval, licence,
8 registration, right, permit or exemption granted under a written
9 law;
- 10 **building** includes a part of a building;
- 11 **building approval certificate** means a building approval
12 certificate granted on an application of a kind mentioned in
13 Part 4 Division 2;
- 14 **Building Commissioner** has the meaning given in the *Building*
15 *Services (Complaint Resolution and Administration) Act 2010*
16 section 3;
- 17 **building order** means an order made under section 110(1);
- 18 **building order (emergency)** means a building order made in the
19 circumstances mentioned in section 111(2);
- 20 **building permit** means a permit granted under section 20;
- 21 **building service contractor** has the meaning given in the
22 Registration Act section 3;
- 23 **building standard** means a prescribed requirement in relation to
24 the technical aspects of the construction or demolition of a
25 building or an incidental structure;
- 26 **building surveyor** means a building service practitioner, as
27 defined in the Registration Act section 3, who is registered in a
28 class of building service practitioner that is prescribed for the
29 purposes of this definition;
- 30 **building work** means —
- 31 (a) the construction, erection, assembly or placement of a
32 building or an incidental structure; or

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- 1 (b) the renovation, alteration, extension, improvement or
2 repair of a building or an incidental structure; or
- 3 (c) the assembly, reassembly or securing of a relocated
4 building or a relocated incidental structure; or
- 5 (d) the changing of ground levels of land for the purposes of
6 work of a kind mentioned in paragraph (a), (b) or (c) to
7 an extent that could adversely affect land beyond its
8 boundaries; or
- 9 (e) site work on any land for the purposes of, or required
10 because of, work of a kind mentioned in —
- 11 (i) paragraph (a), (b), (c) or (d); or
- 12 (ii) paragraph (a) or (b) of the definition of
13 **demolition work**;
- 14 or
- 15 (f) other prescribed work,
- 16 but does not include work of a kind prescribed for the purposes
17 of this definition as not being building work;
- 18 **classification**, in relation to a building or incidental structure,
19 means the classification of the building or incidental structure
20 under the regulations;
- 21 **commencement day** means the day on which section 9 comes
22 into operation;
- 23 **Crown land** has the meaning given in the *Land Administration*
24 *Act 1997* section 3(1);
- 25 **demolition permit** means a permit granted under section 21;
- 26 **demolition work** means —
- 27 (a) the demolition, dismantling or removal of a building or
28 an incidental structure; or
- 29 (b) the changing of ground levels for the purposes of work
30 of a kind mentioned in paragraph (a) to an extent that
31 could adversely affect land owned by a person other
32 than an owner of the land on which the building or

- 1 incidental structure that is the subject of the demolition
2 work is located; or
- 3 (c) other prescribed work,
- 4 but does not include work of a kind prescribed for the purposes
5 of this definition as not being demolition work;
- 6 ***incidental structure*** means a structure attached to or incidental
7 to a building and includes —
- 8 (a) a chimney, mast, swimming pool, fence, free-standing
9 wall, retaining wall or permanent protection structure;
10 and
- 11 (b) a part of a structure;
- 12 ***independent building surveyor*** has the meaning given in
13 section 4;
- 14 ***land*** includes a lot as defined in the *Strata Titles Act 1985*
15 section 3(1);
- 16 ***Minister for Lands*** means the Minister as defined in the *Land*
17 *Administration Act 1997* section 3(1);
- 18 ***occupancy permit*** means an occupancy permit granted or
19 modified on an application of a kind mentioned in Part 4
20 Division 2;
- 21 ***owner*** has the meaning given in section 5;
- 22 ***permit authority for a building*** or ***permit authority for an***
23 ***incidental structure*** has the meaning given in section 6;
- 24 ***prescribed*** means prescribed by regulation;
- 25 ***Registration Act*** means the *Building Services (Registration)*
26 *Act 2010*;
- 27 ***specialist***, in relation to a technical certificate, means a person
28 who belongs to a class of persons prescribed as persons who can
29 sign the technical certificate for the purposes of this Act;
- 30 ***survey*** means a survey for the purpose of recording the
31 condition of land including the existing cracks and defects in a
32 building or structure on the land;

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

7 **4. Meaning of independent building surveyor**

8 (1) In this section —

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

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

13 (a) the building surveyor is neither an owner of the land on
14 which the building or incidental structure that is the
15 subject of the application is, or is proposed to be,
16 located, nor an employee of an owner of the land; and

17 (b) the building surveyor is neither the person who proposes
18 to be named as the builder or demolition contractor on
19 the permit, nor an employee of that person.

20 **5. Meaning of owner**

21 (1) In this Act, unless the contrary intention appears —

22 ***owner***, in relation to land held in freehold, means —

23 (a) a person whose name is registered as a proprietor of the
24 land; and

25 (b) the State, if registered as a proprietor of the land; and

26 (c) a person who holds a prescribed interest in the land;

27 ***owner***, in relation to Crown land, means —

28 (a) a prescribed person; or

29 (b) a person who holds a prescribed interest in the land,

30 and the regulations may specify whether ***owner*** means one or
31 more of those persons for the purposes of a particular provision
32 of this Act.

- 1 (2) The regulations may impose restrictions on the circumstances in
2 which a person will be treated as an owner for the purposes of a
3 provision of this Act specified in the regulations.

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

- 5 (1) The permit authority for a building or an incidental structure is
6 the State if, under section 124, the Minister has decided that the
7 State is to be the permit authority for the building or incidental
8 structure.

- 9 (2) If —

- 10 (a) subsection (1) does not apply; and
11 (b) under section 126, a special permit authority is
12 designated by regulations as the permit authority for
13 buildings or incidental structures in an area, or of a kind,
14 specified in the regulations, the permit authority for a
15 building or incidental structure in that area, or of that
16 kind, is the special permit authority.

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

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

- 22 (1) A person who wishes to make an application for a building
23 permit or a demolition permit, or an application under Part 4
24 Division 2 must make the application to the permit authority for
25 the building or incidental structure that is the subject of the
26 application.

- 27 (2) A permit authority that is the State or a special permit
28 authority —

- 29 (a) that on an application, grants a building permit,
30 demolition permit or building approval certificate or
31 grants or modifies an occupancy permit, must give the

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- 1 relevant local government details of the permit,
2 modification or certificate; or
3 (b) that receives a notice of completion under section 33 or
4 a notice of cessation under section 34 must give the
5 relevant local government details of the notice.
- 6 (3) In subsection (2) —
7 ***relevant local government*** means the local government in
8 whose district the building or incidental structure that is the
9 subject of an application or notice is, or is proposed to be,
10 located.
- 11 **8. Crown bound**
12 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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- 1 (e) the work is done in the course of taking action under
2 section 118(2).

3 Penalty:

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

8 **11. Defence if permit suspended**

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

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

17 **12. Defence if emergency**

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

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

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

2 **13. Terms used**

3 In this Division —

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

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

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

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

12 (1) A person may, by way of a certified application, apply for a
13 building permit —

14 (a) to do building work in respect of a building or an
15 incidental structure of any classification; or

16 (b) to do one or more stages of building work in respect of a
17 building or an incidental structure of any classification.

18 (2) A person may, by way of an uncertified application, apply for a
19 building permit —

20 (a) to do building work in respect of a building or an
21 incidental structure of a classification that is prescribed
22 for the purposes of this subsection; or

23 (b) to do one or more stages of building work in respect of a
24 building or an incidental structure of a classification that
25 is prescribed for the purposes of this subsection.

26 **15. Application for demolition permit**

27 A person may apply for a demolition permit —

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

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

3 **16. Making an application**

4 An application —

- 5 (a) must be made in an approved manner and form; and
6 (b) must name, and be signed by, each owner of the land on
7 which the building or incidental structure is, or is
8 proposed to be, located; and
9 (c) must name, and be signed by, the person who proposes
10 to be named as the builder on the building permit, or the
11 demolition contractor on the demolition permit; and
12 (d) must provide prescribed information about the building
13 or incidental structure and the persons mentioned in
14 paragraph (b) or (c); and
15 (e) if a certified application, must be accompanied by a
16 certificate of design compliance for the building or
17 incidental structure that is the subject of the application,
18 that is signed by a building surveyor and complies with
19 section 19; and
20 (f) if a certified application, must be accompanied by the
21 plans and specifications that are specified in the
22 certificate of design compliance for the building or
23 incidental structure that is the subject of the application;
24 and
25 (g) if a certified application, must be accompanied by a
26 copy of each technical certificate signed by a specialist
27 that the building surveyor has relied on to sign the
28 certificate of design compliance; and
29 (h) if an uncertified application, must be accompanied by
30 the plans and specifications for consideration by a
31 building surveyor under section 17; and
32 (i) must be accompanied by each technical certificate that is
33 prescribed to accompany the application; and

- 1 (j) must be accompanied by evidence that the applicable
2 provisions of the *Home Building Contracts Act 1991*
3 requiring insurance or corresponding cover have been
4 satisfied; and
- 5 (k) must be accompanied by evidence that the applicable
6 provisions of the regulations mentioned in the *Building*
7 *Services (Complaint Resolution and Administration)*
8 *Act 2010* Part 7 Division 2 requiring payment of a
9 building services levy have been satisfied; and
- 10 (l) must be accompanied by the prescribed fee, if any, for
11 the application; and
- 12 (m) must be accompanied by each other thing that is
13 prescribed to accompany the application.
- 14 **17. Uncertified application to be considered by building**
15 **surveyor**
- 16 (1) A permit authority must refer to a building surveyor an
17 uncertified application if the application complies with
18 section 16.
- 19 (2) The building surveyor must decide whether to sign a certificate
20 of design compliance for the building or incidental structure that
21 is the subject of the application.
- 22 (3) If the building surveyor signs a certificate of design compliance
23 for the building or incidental structure the certificate must
24 comply with section 19 and be accompanied by —
- 25 (a) the version of the plans and specifications that are
26 specified in the certificate of design compliance for the
27 building or incidental structure that is the subject of the
28 application; and
- 29 (b) a copy of each technical certificate signed by a specialist
30 that the building surveyor has relied on to sign the
31 certificate of design compliance.

1 **18. Further information**

2 (1) A permit authority to which an application is made may require
3 the applicant to give the permit authority, within a specified
4 time of not more than 21 days, any document or information
5 that it requires to determine the application and may require the
6 applicant to verify the information by statutory declaration.

7 (2) The permit authority may refuse to consider an application if the
8 applicant does not comply with a requirement under
9 subsection (1) within the specified time.

10 **19. Certificate of design compliance**

11 (1) In this section —

12 *certificate* means a certificate of design compliance for a
13 building or an incidental structure that is the subject of a
14 certified application or an uncertified application.

15 (2) A certificate must be in an approved form.

16 (3) A certificate must contain a statement of the building surveyor
17 signing the certificate to the effect that if the building or
18 incidental structure that is the subject of the application is
19 completed in accordance with the plans and specifications that
20 are specified in the certificate, the building (including each
21 incidental structure associated with the building) or incidental
22 structure will comply with each building standard that applies to
23 the building or incidental structure.

24 (4) A building surveyor may, in a certificate, specify such of the
25 inspections and tests listed in regulations mentioned in
26 section 36(2)(b) that the building surveyor thinks should be
27 conducted during or at the completion of the building work.

28 (5) A certificate must contain each other thing that is prescribed to
29 be in the certificate.

1 **20. Grant of building permit**

2 (1) A permit authority to which a certified application or an
3 uncertified application is made must grant the building permit if
4 it is satisfied —

5 (a) that the applicant has complied with section 16; and

6 (b) that the person mentioned in section 16(c) —

7 (i) is a building service contractor who is entitled
8 under the Registration Act section 11 to be
9 named as the builder on the building permit; or

10 (ii) has owner-builder approval under the
11 Registration Act to carry out that work; or

12 (iii) is a person or in a class of persons prescribed for
13 the purposes of the Registration Act
14 section 7(2)(c) who may be named as the builder
15 on the building permit;

16 and

17 (c) that a certificate of design compliance for the building
18 or incidental structure that is the subject of the
19 application complies with section 19; and

20 (d) that the building surveyor who signed the certificate of
21 design compliance —

22 (i) is entitled under the Registration Act to sign
23 certificates of design compliance for buildings or
24 incidental structures of the kind that is the
25 subject of the application; and

26 (ii) is an independent building surveyor in relation to
27 the application;

28 and

29 (e) that the certificate of design compliance is issued by a
30 person who —

31 (i) is a building service contractor who is entitled
32 under the Registration Act section 11 to issue the
33 certificate; or

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- 1 (ii) is a person or in a class of persons prescribed for
2 the purposes of the Registration Act
3 section 7(2)(c) who may issue the certificate;
4 and
5 (f) that each technical certificate mentioned in section 16(i)
6 is —
7 (i) signed by a person prescribed as a person who
8 may sign the certificate; and
9 (ii) issued by a person prescribed as a person who
10 may issue the certificate;
11 and
12 (g) if a part of a building or incidental structure is proposed
13 to be placed beyond the boundaries of the land on which
14 the building work is proposed to be done, that there is
15 compliance with section 76; and
16 (h) if the building work may adversely affect land beyond
17 the boundaries of the land on which the work is
18 proposed to be done, that there is compliance with
19 section 77; and
20 (i) that either —
21 (i) a policy of insurance is in force in respect of the
22 building work under the *Home Building*
23 *Contracts Act 1991* Part 3A Division 2; or
24 (ii) corresponding cover, as defined in the *Home*
25 *Building Contracts Act 1991* section 25A, is
26 provided in respect of the building work; or
27 (iii) the policy of insurance mentioned in
28 subparagraph (i) or the cover mentioned in
29 subparagraph (ii) is not required under the *Home*
30 *Building Contracts Act 1991* in respect of the
31 building work;
32 and

- 1 (j) that the applicant satisfies any other insurance
2 requirements prescribed by regulation or under any
3 other written law in respect of the building work; and
- 4 (k) that any building services levy required to be paid in
5 respect of the building permit under regulations
6 mentioned in the *Building Services (Complaint*
7 *Resolution and Administration) Act 2010* Part 7
8 Division 2 has been paid; and
- 9 (l) if a levy is imposed by the *Building and Construction*
10 *Industry Training Levy Act 1990* in respect of the
11 building work, that the levy has been paid; and
- 12 (m) that the permit authority has complied with the
13 provisions of the *Heritage of Western Australia*
14 *Act 1990* in relation to the application and that granting
15 the building permit would not be inconsistent with an
16 order, agreement or permit under that Act except to the
17 extent allowed by that Act; and
- 18 (n) that the applicant has obtained in relation to the building
19 work each authority under a written law that is
20 prescribed for the purposes of this paragraph; and
- 21 (o) that the applicant has complied or is complying with
22 each authority mentioned in paragraph (n); and
- 23 (p) that the applicant, in relation to the building work, has
24 complied or is complying with each provision of a
25 written law that is prescribed for the purposes of this
26 paragraph; and
- 27 (q) that the applicant, in relation to the building work, has
28 complied or is complying with each provision of a local
29 government policy or requirement, not being a written
30 law, that is prescribed for the purposes of this paragraph;
31 and
- 32 (r) that each notification that is prescribed for the purposes
33 of this paragraph to be given in relation to the building
34 work has been given; and

1 (s) that the applicant has complied with each other
2 prescribed requirement for the granting of a building
3 permit on the application.

4 (2) A permit authority to which an application is made must not
5 grant the building permit unless it is satisfied as to each of the
6 matters mentioned in subsection (1)(a) to (s).

7 **21. Grant of demolition permit**

8 (1) The permit authority to which an application for a demolition
9 permit is made must grant the demolition permit if it is
10 satisfied —

- 11 (a) that the applicant has complied with section 16; and
12 (b) if the person mentioned in section 16(c) is required
13 under another written law to have an authority under
14 that law to do the demolition work, that the person has
15 that authority; and
16 (c) that the demolition work will comply with each building
17 standard that applies to the demolition work; and
18 (d) if the demolition work may adversely affect land beyond
19 the boundaries of the land on which the work is
20 proposed to be done, that there is compliance with
21 section 77; and
22 (e) that any part of the building or incidental structure that
23 is the subject of the application which is proposed to
24 remain as a permanent retaining or other protection
25 structure is suitable for that purpose; and
26 (f) that the applicant satisfies the insurance requirements
27 prescribed by regulation or under any other written law
28 in respect of the demolition work; and
29 (g) that any building services levy required to be paid in
30 respect of the demolition permit under regulations
31 mentioned in the *Building Services (Complaint*
32 *Resolution and Administration) Act 2010* Part 7
33 Division 2 has been paid; and

- 1 (h) if a levy is imposed by the *Building and Construction*
2 *Industry Training Levy Act 1990* in respect of the
3 demolition work, that the levy has been paid; and
- 4 (i) that the permit authority has complied with the
5 provisions of the *Heritage of Western Australia*
6 *Act 1990* in relation to the application and that the
7 demolition permit, if granted, would not be inconsistent
8 with an order, agreement or permit under that Act except
9 to the extent allowed by that Act; and
- 10 (j) that the applicant has obtained in relation to the
11 demolition work each authority under a written law that
12 is prescribed for the purposes of this paragraph; and
- 13 (k) that the applicant has complied or is complying with
14 each authority mentioned in paragraph (j); and
- 15 (l) that the applicant, in relation to the demolition work, has
16 complied or is complying with each provision of a
17 written law that is prescribed for the purposes of this
18 paragraph; and
- 19 (m) that the applicant, in relation to the demolition work, has
20 complied or is complying with each provision of a local
21 government policy or requirement, not being a written
22 law, that is prescribed for the purposes of this paragraph;
23 and
- 24 (n) that each notification that is prescribed for the purposes
25 of this paragraph to be given in relation to the
26 demolition work has been given; and
- 27 (o) that the applicant has complied with each other
28 prescribed requirement for the granting of a demolition
29 permit.
- 30 (2) A permit authority to which an application for a demolition
31 permit is made must not grant the demolition permit unless it is
32 satisfied as to each of the matters mentioned in subsection (1)(a)
33 to (o).

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 period mentioned in paragraph (a)(i) starting on the day after the compliance.

- 1 (2) The permit authority to which a certified application or an
2 application for a demolition permit is made must decide whether
3 or not to grant the building permit or demolition permit —
- 4 (a) if there is no requirement under section 18(1), before the
5 expiration of the period —
- 6 (i) that is prescribed for the purposes of this
7 subsection for the classification of the building
8 that is the subject of the application; and
- 9 (ii) starting on the day after the application is made;
10 or
- 11 (b) if there is a requirement under section 18(1) that is
12 complied with within the specified time, before the
13 expiration of the period mentioned in paragraph (a)(i)
14 starting on the day after the compliance.
- 15 (3) If the permit authority has not made a decision in the time
16 mentioned in subsection (1) or (2) the permit authority is to be
17 taken to have refused to grant the building permit or demolition
18 permit.
- 19 (4) If the permit authority has not made a decision within the time
20 mentioned in subsection (1) or (2) —
- 21 (a) the permit authority must refund to the applicant the fee
22 mentioned in section 16(1) that accompanied the
23 application; and
- 24 (b) the amount of the fee paid is recoverable in any court of
25 competent jurisdiction as a debt due to the applicant.
- 26 (5) Subsection (4) does not apply —
- 27 (a) if the permit authority refuses to consider the application
28 because the applicant has not complied with a
29 requirement under section 18(1) within the specified
30 time; or
- 31 (b) if the permit authority has referred the application in
32 accordance with the *Heritage of Western Australia*
33 *Act 1990* but the Heritage Council has not provided its

1 advice within the time mentioned in subsection (1)
2 or (2).

3 (6) Despite subsection (3) and section 18(2), the permit authority
4 may decide whether or not to grant the building permit or
5 demolition permit, and may give the applicant written notice of
6 its decision, after the period applicable under subsection (1)
7 or (2), or the time specified under section 18(1), has expired,
8 and the validity of the decision is not affected by the expiry.

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

10 A permit authority must —

- 11 (a) record the grounds on which a decision to refuse to grant
12 a building permit or demolition permit is based, and the
13 reasons for the decision; and
14 (b) as soon as is practicable, but in any case not later than
15 5 days after making the decision, give to the person to
16 whom the decision relates written notice of the decision,
17 together with those grounds and reasons, and the
18 person's right of review under section 119.

19 **Division 3 — Building or demolition permits**

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

21 (1) A building permit or demolition permit is to be in an approved
22 form.

23 (2) A building permit or demolition permit may set out the period
24 during which it has effect.

25 (3) A building permit must set out —

- 26 (a) the building or incidental structure to which it applies;
27 and
28 (b) the classification of the building or incidental structure;
29 and

- 1 (c) the use to which the building or incidental structure may
2 be put and each restriction on the use; and
- 3 (d) in the case of a building permit for one or more stages of
4 building work —
- 5 (i) each stage of the building work to which it
6 applies; and
- 7 (ii) the effect of section 26;
- 8 and
- 9 (e) the prescribed details about the builder; and
- 10 (f) the prescribed details about each owner of the land on
11 which the building or incidental structure is, or is
12 proposed to be, located; and
- 13 (g) each condition imposed under section 27(1) that applies
14 to the building permit; and
- 15 (h) each inspection and test that is to be conducted during or
16 at the completion of the building work —
- 17 (i) as specified under section 19(4) in the applicable
18 certificate of design compliance; or
- 19 (ii) under regulations mentioned in section 36(2)(a);
- 20 and
- 21 (i) each other thing that is prescribed to be set out in the
22 permit.
- 23 (4) A demolition permit must set out —
- 24 (a) the building or incidental structure to which it applies;
25 and
- 26 (b) in the case of a demolition permit for one or more stages
27 of demolition work —
- 28 (i) each stage of the demolition work to which it
29 applies; and
- 30 (ii) the effect of section 26;
- 31 and

- 1 (c) the prescribed details about the demolition contractor;
2 and
3 (d) the prescribed details about each owner of the land on
4 which the building or incidental structure is located; and
5 (e) each condition imposed under section 27(1) that applies
6 to the demolition permit; and
7 (f) each inspection and test that must be conducted during
8 or at the completion of the demolition work under
9 regulations mentioned in section 36(2)(a); and
10 (g) each other thing that is prescribed to be set out in the
11 permit.

12 **26. Permit for staged works**

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

18 **27. Conditions imposed by permit authority**

- 19 (1) A permit authority may impose conditions on the grant of a
20 building permit or demolition permit in addition to any provided
21 for in the regulations.
- 22 (2) A condition imposed by a permit authority —
23 (a) is to relate to the particular building work or demolition
24 work to which the permit applies rather than to work of
25 that kind generally; and
26 (b) cannot modify the applicable certificate of design
27 compliance or the plans and specifications that are
28 specified in that certificate.
- 29 (3) The permit authority may add, vary or revoke conditions
30 imposed under this section before the building work or
31 demolition work is completed.

- 1 (4) If the permit authority adds, varies or revokes a condition the
2 addition, variation or revocation takes effect when an owner of
3 the building or incidental structure or proposed building or
4 incidental structure has been given written notice of it or at a
5 later time specified by the permit authority in the notice.
- 6 (5) A permit authority must ensure that a notice under
7 subsection (4) informs the person of the person's right of review
8 under section 119.

9 **28. To whom permit document issued**

- 10 (1) A building permit document must be given to —
11 (a) the person who is named as the builder on the building
12 permit; and
13 (b) each owner of the land on which the building or
14 incidental structure is, or is proposed to be, located; and
15 (c) the applicant, if the applicant is not a person mentioned
16 in paragraph (a) or (b); and
17 (d) each other prescribed person.
- 18 (2) A demolition permit document must be given to —
19 (a) the person who is named as the demolition contractor on
20 the demolition permit; and
21 (b) each owner of the land on which the building or
22 incidental structure is located; and
23 (c) the applicant, if the applicant is not a person mentioned
24 in paragraph (a) or (b); and
25 (d) each other prescribed person.

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

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

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

4 Penalty:

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

- 9 (2) The person named as the demolition contractor on a demolition
10 permit must ensure that the demolition work complies with the
11 demolition permit including each condition that applies to the
12 permit.

13 Penalty:

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

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

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

22 Penalty: a fine of \$10 000.

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

27 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

- 1 (c) the grounds for extending the time during which a
2 permit has effect; and
- 3 (d) the maximum period of extension of time during which
4 a permit can have effect; and
- 5 (e) the imposition of conditions in relation to an extension
6 of time; and
- 7 (f) fees for applications; and
- 8 (g) review by the State Administrative Tribunal of a
9 decision of a permit authority made on an application;
10 and
- 11 (h) any other matter relating to an application.
- 12 (4) A permit ceases to have effect on the day on which a notice of
13 completion in relation to the permit is received by the permit
14 authority under section 33.
- 15 **33. Notice of completion**
- 16 (1) The responsible person in relation to a permit must, within
17 7 days of completion of the work, or the stage of the work, for
18 which the permit was granted, give notice of completion to a
19 relevant permit authority.
20 Penalty: a fine of \$10 000.
- 21 (2) A notice of completion must —
- 22 (a) be in an approved form; and
- 23 (b) state that the work, or the stage of the work, for which
24 the permit was granted, is completed; and
- 25 (c) be accompanied by a copy of a certificate for each
26 inspection or test mentioned in section 25(3)(h) or (4)(f)
27 that applies to the permit.

1 **34. Notice of cessation**

- 2 (1) The responsible person in relation to a permit may, before
3 completion of the work, or the stage of the work, for which the
4 permit was granted, give notice of cessation to act as the
5 responsible person to a relevant permit authority.
- 6 (2) The notice of cessation has no effect unless it —
- 7 (a) is in an approved form; and
- 8 (b) states that the work, or the stage of the work, for which
9 the permit was granted, is not completed; and
- 10 (c) states that the person has ceased to act as the responsible
11 person; and
- 12 (d) is accompanied by a copy of a certificate for each
13 inspection or test mentioned in section 25(3)(h) or (4)(f)
14 that applies to the permit and was to be obtained before
15 the notice is given.
- 16 (3) A responsible person must, within 7 days of giving a notice of
17 cessation to a relevant permit authority, give a copy of the
18 notice to an owner of the building or incidental structure to
19 which the permit applies but the documents mentioned in
20 subsection (2)(d) do not need to be given to an owner.
- 21 Penalty: a fine of \$10 000.

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

- 23 A permit does not have effect during the period starting from
24 the day on which —
- 25 (a) a notice of cessation is received by the permit authority
26 under section 34; or
- 27 (b) the responsible person's registration, approval or
28 authority under the Registration Act or any other written
29 law, that entitles the person to be named as builder or
30 demolition contractor on the permit, ceases to have
31 effect,

- 1 and ending on the first of the following days —
- 2 (c) the day that a relevant authority approves a new
- 3 responsible person for the work to which the permit
- 4 applies;
- 5 (d) the day on which the permit ceases to have effect under
- 6 section 32(1) or (2).

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

8 **36. Regulations**

- 9 (1) The regulations may provide for matters about inspecting or
- 10 testing a building or an incidental structure, or building work or
- 11 demolition work, to which a building permit or demolition
- 12 permit applies.
- 13 (2) Without limiting subsection (1) the regulations may —
- 14 (a) prescribe the inspections or tests that are to be
- 15 conducted during or at the completion of building work
- 16 or demolition work; and
- 17 (b) list the inspections and tests that may be specified by a
- 18 building surveyor in a certificate of design compliance
- 19 for a particular building or incidental structure as
- 20 inspections or tests that are to be conducted during or at
- 21 the completion of the building work; and
- 22 (c) provide for the persons or classes of persons who may
- 23 conduct inspections or tests; and
- 24 (d) provide for the methods to be adopted in the inspection
- 25 or testing process; and
- 26 (e) provide for the frequency of inspection or testing or the
- 27 means for determining whether, when and how often an
- 28 inspection or test must be conducted; and
- 29 (f) provide for persons undertaking building or demolition
- 30 work to give notice of having reached, or completed, a
- 31 stage of building or demolition work; and
- 32 (g) require an inspection certificate to be obtained; and

- 1 (h) make provision in relation to the form of an inspection
- 2 certificate; and
- 3 (i) provide for the keeping of records in relation to matters
- 4 mentioned in this section; and
- 5 (j) provide for the reporting of information about matters
- 6 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 that the building or incidental structure to which the permit applies complies, when completed, with each building standard that applies to the building or incidental structure.

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 that the building or incidental structure complies, when completed, with each building standard that applies to the building or incidental structure.

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.

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 building standard that applies to the demolition work.

Penalty:

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

- 1 (b) for a second offence, a fine of \$75 000;
- 2 (c) for a third or subsequent offence, a fine of \$100 000
- 3 and imprisonment for 12 months.
- 4 (2) Each owner of a building or an incidental structure in respect of
- 5 which demolition work is done without a demolition permit
- 6 being in effect for the demolition work must ensure that the
- 7 demolition work complies with each building standard that
- 8 applies to the demolition work.
- 9 Penalty:
- 10 (a) for a first offence, a fine of \$50 000;
- 11 (b) for a second offence, a fine of \$75 000;
- 12 (c) for a third or subsequent offence, a fine of \$100 000
- 13 and imprisonment for 12 months.
- 14 **39. Non-application, modification of, building standards**
- 15 (1) In this section —
- 16 *declaration* means a declaration under subsection (2);
- 17 *specified* means specified in a declaration.
- 18 (2) The Building Commissioner may, in writing and on the
- 19 application of another person —
- 20 (a) declare that a specified building standard does not apply
- 21 to a specified building, specified incidental structure or
- 22 specified demolition work; or
- 23 (b) modify in a specified way a building standard that
- 24 applies to a specified building, specified incidental
- 25 structure or specified demolition work.
- 26 (3) A declaration has effect in accordance with its terms.
- 27 (4) The Building Commissioner must not make a declaration unless
- 28 satisfied that the declaration would not result in an increased
- 29 risk to people, property or the environment and that making the
- 30 declaration —
- 31 (a) is in the public interest; or

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

**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.

- 1 (3) An owner or occupier of an incomplete building must not
2 occupy or use, or permit the occupation or use of, the building
3 unless —
- 4 (a) a temporary permit is in effect for the building; or
- 5 (b) an occupancy permit is not required for the building
6 under Part 5 or regulations or an order mentioned in
7 Part 5 Division 1.
- 8 Penalty:
- 9 (a) for a first offence, a fine of \$50 000;
- 10 (b) for a second offence, a fine of \$75 000;
- 11 (c) for a third or subsequent offence, a fine of \$100 000
12 and imprisonment for 12 months.
- 13 **42. Display etc. of, occupancy permit details**
- 14 Each owner of a building for which an occupancy permit is in
15 effect must ensure that —
- 16 (a) information about, or contained in, the occupancy
17 permit is displayed in accordance with the regulations;
18 or
- 19 (b) information about, or contained in, the occupancy
20 permit is otherwise brought, in accordance with the
21 regulations, to the attention of the building's occupiers
22 or other persons using the building.
- 23 Penalty: a fine of \$10 000.
- 24 **43. Occupation, use of buildings to comply with occupancy**
25 **permits**
- 26 (1) An owner of a building must not occupy or use, or permit the
27 occupation or use of, the building in a way that is —
- 28 (a) different from the use authorised by an occupancy
29 permit that is in effect for the building; or

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

4 Penalty:

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

9 (2) An occupier of a building must not occupy or use, or permit the
10 occupation or use of, the building in a way that is —

- 11 (a) different from the use authorised by an occupancy
12 permit that is in effect for the building; or
13 (b) inconsistent with the building's classification that is set
14 out in an occupancy permit that is in effect for the
15 building,

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

19 Penalty:

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

24 **44. Compliance with occupancy permit generally**

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

28 Penalty:

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

- 1 (c) for a third or subsequent offence, a fine of \$100 000
2 and imprisonment for 12 months.
- 3 (2) Subsection (1) does not apply to a matter to which section 43(1)
4 applies.
- 5 **45. Regulations about safety and health matters in buildings**
6 **requiring occupancy permits**
- 7 (1) The regulations may provide for matters relating to —
8 (a) the safety or health of occupiers or other users of
9 buildings requiring occupancy permits; and
10 (b) amenity or sustainability of buildings requiring
11 occupancy permits.
- 12 (2) Without limiting subsection (1) the regulations may —
13 (a) provide for the kind of equipment, machinery or systems
14 required for a building for the safety or health of its
15 occupiers or other users of the building, equipment,
16 machinery or systems; and
17 (b) provide for the maintenance of equipment, machinery or
18 systems; and
19 (c) require an owner or occupier of a building to arrange for
20 a person belonging to a prescribed class of persons to
21 inspect or test equipment, machinery or systems on a
22 specified day, at specified intervals or when a specified
23 event occurs; and
24 (d) require a permit authority to arrange for an authorised
25 person to inspect or test equipment, machinery or
26 systems, on a specified day, at specified intervals or
27 when a specified event occurs; and
28 (e) provide for the keeping of records in relation to matters
29 mentioned in this section; and
30 (f) provide for the reporting of information about matters
31 mentioned in this section; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 18 (1) A person who wishes to lodge a strata plan for registration
19 under the *Strata Titles Act 1985* may apply for —
20 (a) an occupancy permit for a building that is a subject of
21 the strata plan to accompany the strata plan as required
22 under the *Strata Titles Act 1985* section 5B(2)(a); or
23 (b) a building approval certificate for a building that is a
24 subject of the strata plan to accompany the strata plan as
25 required under the *Strata Titles Act 1985*
26 section 5B(2)(b).
27 (2) A person who wishes to re-subdivide a lot in a strata scheme
28 under the *Strata Titles Act 1985* may apply for —
29 (a) an occupancy permit for a building that comprises the
30 whole or part of the lot to accompany the plan as
31 required under the *Strata Titles Act 1985*
32 section 8A(f)(i); or

- 1 (b) a building approval certificate for a building that
2 comprises the whole or part of the lot to accompany the
3 strata plan as required under the *Strata Titles Act 1985*
4 section 8A(f)(ii).
- 5 (3) An application for an occupancy permit under subsection (1)(a)
6 or (2)(a) may be made if —
7 (a) an occupancy permit is in effect for the building; or
8 (b) the building is otherwise one which would require an
9 occupancy permit under section 41(2).
- 10 (4) An application for a building approval certificate under
11 subsection (1)(b) or (2)(b) may be made if the building is not of
12 a kind mentioned in subsection (3).
- 13 **51. Application for occupancy permit or building approval**
14 **certificate for unauthorised work**
- 15 (1) In this section —
16 **unauthorised work** means work —
17 (a) that was done without an authority under a written law
18 that was required by the written law applicable at the
19 time the work was done; or
20 (b) that did not comply with an authority under a written
21 law that was in effect in respect of the work;
22 **work** means —
23 (a) building work; or
24 (b) demolition work in respect of a part of a building; or
25 (c) demolition work in respect of a part of an incidental
26 structure.
- 27 (2) A person may apply for an occupancy permit for a building in
28 respect of which unauthorised work has been done.
- 29 (3) A person may apply for a building approval certificate for a
30 building or an incidental structure in respect of which
31 unauthorised work has been done.

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1 (4) An application for an occupancy permit under subsection (2)
2 may be made if the building is one which would require an
3 occupancy permit under section 41(2).

4 (5) An application for a building approval certificate under
5 subsection (3) may be made if the building or incidental
6 structure is not of a kind mentioned in subsection (4).

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

9 (1) A person may apply for an occupancy permit to replace the
10 current occupancy permit for a building, even if no change is
11 proposed to the building's use or classification.

12 (2) A person may apply for a building approval certificate for a
13 building or an incidental structure that —

14 (a) was constructed in accordance with the written law
15 applicable at the time of its construction; and

16 (b) on its completion, could be lawfully occupied or used
17 without —

18 (i) an occupancy permit; or

19 (ii) a certificate of classification under the former
20 provisions as defined in section 176; or

21 (iii) any other authority under a written law that was
22 applicable at the time the building or incidental
23 structure was completed.

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

26 **53. Terms used**

27 In this Division —

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

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

4 **54. Manner of application**

5 (1) An application must be —

- 6 (a) made in an approved manner and form; and
7 (b) signed by each owner of the land on which the building
8 or incidental structure is located.

9 (2) An application mentioned in section 46 or 47 must be
10 accompanied by a certificate of construction compliance that
11 complies with section 56.

12 (3) An application of any other kind must be accompanied by a
13 certificate of building compliance that complies with section 57.

14 (4) An application is also to be accompanied by —

- 15 (a) a copy of each technical certificate signed by a specialist
16 that the building surveyor has relied on to sign the
17 certificate of construction compliance or the certificate
18 of building compliance; and
19 (b) each technical certificate that is prescribed to
20 accompany the application; and
21 (c) evidence that the applicable provisions of the
22 regulations mentioned in the *Building Services*
23 *(Complaint Resolution and Administration) Act 2010*
24 Part 7 Division 2 requiring payment of a building
25 services levy have been satisfied; and
26 (d) the prescribed fee, if any, for the application; and
27 (e) each other thing that is prescribed to accompany the
28 application.

29 (5) Nothing in this Part prevents applications of different kinds
30 being made together as long as the provisions applicable to each
31 kind of application are complied with.

1 **55. Further information**

2 (1) A permit authority to which an application is made may require
3 the applicant to give the permit authority, within a specified
4 time of not more than 21 days, any other document or
5 information that it requires to determine the application and may
6 require the applicant to verify the information by statutory
7 declaration.

8 (2) The permit authority may refuse to consider an application if the
9 applicant does not comply with a requirement under
10 subsection (1) within the specified time.

11 **56. Certificate of construction compliance**

12 (1) A certificate of construction compliance must be in an approved
13 form and signed by a building surveyor.

14 (2) A certificate of construction compliance that accompanies an
15 application mentioned in section 46 must state that —

16 (a) the building has been completed in accordance with the
17 plans and specifications that are specified in the
18 applicable certificate of design compliance for each
19 applicable building permit; and

20 (b) the building otherwise complies with each applicable
21 building permit including each condition that applies to
22 the permit; and

23 (c) the building in its current state is otherwise suitable to
24 be used in the way proposed in the application.

25 (3) A certificate of construction compliance that accompanies an
26 application mentioned in section 47 must state that —

27 (a) the building is incomplete; and

28 (b) occupying or using the building in its current state in the
29 way proposed in the application would not adversely
30 affect the safety and health of its occupants or other
31 users; and

1 (c) the building in its current state is otherwise suitable to
2 be used in the way proposed in the application.

3 (4) In subsections (2) and (3) —
4 ***the building*** includes each incidental structure associated with
5 the building.

6 (5) A certificate of construction compliance must contain each
7 other thing that is prescribed to be in the certificate.

8 **57. Certificate of building compliance**

9 (1) A certificate of building compliance must be in an approved
10 form and signed by a building surveyor.

11 (2) A certificate of building compliance must —

12 (a) state that occupying or using the building or incidental
13 structure in its current state in the way proposed in the
14 application would not adversely affect the safety and
15 health of its occupants or other users; and

16 (b) state that the building or incidental structure in its
17 current state is otherwise suitable to be used in the way
18 proposed in the application; and

19 (c) state that the building or incidental structure complies
20 with each authority under a written law that is
21 prescribed for the purposes of this paragraph; and

22 (d) contain each other thing that is prescribed to be in the
23 certificate.

24 (3) A certificate of building compliance that accompanies an
25 application other than an application mentioned in section 52(1)
26 or (2) must state that the building or incidental structure
27 complies with each building standard that applies to the building
28 or incidental structure at the time the application is made.

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- 1 (4) A certificate of building compliance that accompanies an
2 application mentioned in section 52(1) or (2) must state that —
- 3 (a) the building or incidental structure complies with the
4 building permit, building licence or other approval that
5 was granted in respect of the construction of the
6 building or incidental structure under the written law
7 applicable at the time of its construction; and
- 8 (b) the building or incidental structure complies with each
9 building standard, or other requirement in relation to the
10 technical aspects of the construction of the building or
11 structure, applicable to the building or incidental
12 structure at the time of its construction.
- 13 (5) In subsections (2), (3) and (4) —
14 *the building* includes each incidental structure associated with
15 the building.
- 16 (6) A certificate of building compliance that accompanies an
17 application mentioned in section 49(a) or (b) must state whether
18 or not, and if so how, the change would affect the building's
19 classification.
- 20 **58. Grant of occupancy permit, building approval certificate**
- 21 (1) A permit authority to which an application is made must grant
22 or modify the occupancy permit or grant the building approval
23 certificate applied for if it is satisfied —
- 24 (a) that the applicant has complied with section 54; and
- 25 (b) that the building surveyor who signed the certificate of
26 construction compliance or certificate of building
27 compliance —
- 28 (i) is entitled under the Registration Act to sign
29 certificates of construction compliance or
30 certificates of building compliance for buildings
31 or incidental structures of a kind that is the
32 subject of the application; and

- 1 (ii) is an independent building surveyor in relation to
2 the application;
- 3 and
- 4 (c) that the certificate of construction compliance or
5 certificate of building compliance is issued by a person
6 who —
- 7 (i) is a building service contractor who is entitled
8 under the Registration Act section 11 to issue the
9 certificate; or
- 10 (ii) is a person or in a class of persons prescribed for
11 the purposes of the Registration Act
12 section 7(2)(c) who may issue the certificate;
- 13 and
- 14 (d) that each technical certificate required by regulations
15 mentioned in section 54(4)(b) is —
- 16 (i) signed by a person prescribed as a person who
17 may sign the certificate; and
- 18 (ii) issued by a person prescribed as a person who
19 may issue the certificate;
- 20 and
- 21 (e) if a part of the building or incidental structure
22 encroaches beyond the boundaries of the land on which
23 the building or structure is located, that each owner
24 (within the meaning of section 76(2) where applicable)
25 of the land into, onto, or over which the encroaching
26 part is placed has consented to the encroaching part
27 being so placed; and
- 28 (f) that there is no current legal proceeding that has been
29 instituted by the permit authority or a local government
30 for a breach or alleged breach of a written law relating to
31 the building or incidental structure; and
- 32 (g) that each building order that has been made in relation to
33 the building or incidental structure has been complied
34 with; and

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- 1 (h) that any building services levy required to be paid in
2 respect of the occupancy permit or building approval
3 certificate under regulations mentioned in the *Building*
4 *Services (Complaint Resolution and Administration)*
5 *Act 2010* Part 7 Division 2 has been paid; and
6 (i) if the application is made under section 51, that any levy
7 that would have been imposed by the *Building and*
8 *Construction Industry Training Levy Act 1990* in respect
9 of the building work has been paid; and
10 (j) in relation to an application that is required to be
11 accompanied by a certificate of building compliance,
12 that the applicant has obtained in relation to the building
13 or incidental structure each authority under a written law
14 that is prescribed for the purposes of this paragraph; and
15 (k) that the applicant has complied or is complying with
16 each authority mentioned in paragraph (j); and
17 (l) that the applicant has complied with each other
18 prescribed requirement in relation to the granting or
19 modification of an occupancy permit or the granting of a
20 building approval certificate on the application.
21 (2) A permit authority to which an application is made must not
22 grant or modify the occupancy permit or grant the building
23 approval certificate applied for unless it is satisfied as to each of
24 the matters mentioned in subsection (1)(a) to (l).
25 (3) A permit authority to which an application is made may refuse
26 to grant or modify the occupancy permit or grant the building
27 approval certificate applied for if it appears to the permit
28 authority that there is an error in the information or a document
29 provided for the application.

- 1 **59. Time for granting occupancy permit or building approval**
2 **certificate**
- 3 (1) A permit authority to which an application is made must decide
4 whether or not to grant or modify the occupancy permit or grant
5 the building approval certificate —
- 6 (a) if there is no requirement under section 55(1), before the
7 expiration of the period —
- 8 (i) that is prescribed for the purposes of this
9 subsubsection for that kind of application; and
- 10 (ii) starting on the day after the application is made;
- 11 or
- 12 (b) if there is a requirement under section 55(1) that is
13 complied with within the specified time, before the
14 expiration of the period mentioned in paragraph (a)(i)
15 starting on the day after the compliance.
- 16 (2) If the permit authority has not made a decision in the time
17 mentioned in subsection (1) the permit authority is to be taken
18 to have refused to grant or modify the occupancy permit or
19 grant the building approval certificate.
- 20 (3) If the permit authority has not made a decision in the time
21 mentioned in subsection (1) —
- 22 (a) the permit authority must refund to the applicant the fee
23 mentioned in section 54(4)(d) that accompanied the
24 application; and
- 25 (b) the amount of the fee paid is recoverable in any court of
26 competent jurisdiction as a debt due to the applicant.
- 27 (4) Subsubsection (3) does not apply if the permit authority refuses to
28 consider the application because the applicant has not complied
29 with a requirement under section 55(1) within the specified
30 time.
- 31 (5) Despite subsection (2) and section 55(2), the permit authority
32 may decide whether or not to grant or modify the occupancy

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1 permit or grant the building approval certificate, and may give
2 the applicant written notice of its decision, after the period
3 applicable under subsection (1), or the time specified under
4 section 55(1), has expired, and the validity of the decision is not
5 affected by the expiry.

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

8 A permit authority must —

- 9 (a) record the grounds on which is based a decision to
10 refuse to grant or modify an occupancy permit or grant a
11 building approval certificate, and the reasons for the
12 decision; and
13 (b) as soon as is practicable, but in any case not later than
14 5 days after making the decision, give to the person to
15 whom the decision relates written notice of the decision,
16 together with those grounds and reasons, and the
17 person's right of review under section 121.

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

- 20 (1) An occupancy permit or modification or a building approval
21 certificate must be in an approved form.
22 (2) An occupancy permit or a form of modification or a building
23 approval certificate must set out —
24 (a) the building or incidental structure to which it applies;
25 and
26 (b) the classification of the building or incidental structure;
27 and
28 (c) the use to which the building or incidental structure may
29 be put and each restriction on the use; and
30 (d) if the occupancy permit, modification or building
31 approval certificate is to have effect for a limited period
32 only, that period; and

- 1 (e) each requirement in relation to inspection and testing
2 that applies under regulations mentioned in section 45 to
3 the particular building; and
- 4 (f) each condition imposed under section 62 that applies to
5 the building or incidental structure; and
- 6 (g) each other thing that is prescribed to be set out in the
7 occupancy permit, a form of modification or building
8 approval certificate.

9 **62. Conditions imposed by permit authority**

- 10 (1) A permit authority that, on an application, grants or modifies an
11 occupancy permit or grants a building approval certificate, may
12 impose conditions on the occupancy permit or modification or
13 building approval certificate in addition to any provided for in
14 the regulations.
- 15 (2) A condition imposed under this section —
- 16 (a) must relate to the particular building or incidental
17 structure that is the subject of the application rather than
18 to buildings or incidental structures of that kind
19 generally; and
- 20 (b) cannot modify the certificate of construction compliance
21 or certificate of building compliance that accompanied
22 the application.
- 23 (3) The permit authority may add, vary or revoke conditions
24 imposed under this section while the occupancy permit or
25 building approval certificate has effect.
- 26 (4) If the permit authority adds, varies or revokes a condition, the
27 addition, variation or revocation takes effect when an owner of
28 the building or incidental structure has been given written notice
29 of it or at a later time specified by the permit authority in the
30 notice.

1 (5) A permit authority must ensure that a notice under
2 subsection (4) informs the person of the person's right of review
3 under section 121(1).

4 (6) Conditions cannot be imposed on an occupancy permit granted
5 for a building completed after commencement day under a
6 building licence that, under section 178, is to be taken to be a
7 building permit.

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

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

11 (a) each owner of the building or incidental structure in
12 respect of which the permit, modification or certificate
13 is granted; and

14 (b) the applicant, if the applicant is not a person mentioned
15 in paragraph (a).

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

17 (1) An occupancy permit granted on an application mentioned in
18 section 47 has no effect after 30 days from the expiry of the
19 building permit for the building.

20 (2) The modification of an occupancy permit has no effect after one
21 year from the day the modification took effect.

22 **65. Extension of period of duration**

23 (1) A person may apply to extend the time in which the following
24 can have effect —

25 (a) an occupancy permit that has been granted or modified
26 to have effect for a limited period only; or

27 (b) a building approval certificate that has been granted to
28 have effect for a limited period only.

29 (2) An application must be —

30 (a) made in an approved manner and form; and

- 1 (b) signed by each owner of the land on which the building
2 or incidental structure is located.
- 3 (3) An application must be accompanied by —
- 4 (a) the prescribed fee, if any, for the application; and
- 5 (b) each other thing that is prescribed to accompany the
6 application.
- 7 (4) A permit authority to which an application is made may extend
8 the period in which the occupancy permit or modification or the
9 building approval certificate has effect and may do so even
10 though the application was made after the expiration of the
11 period.
- 12 (5) The period in which an occupancy permit granted on an
13 application mentioned in section 47 has effect cannot be
14 extended beyond 30 days from the expiry of the building permit
15 for the building.
- 16 (6) The period during which the modification of an occupancy
17 permit has effect cannot be extended beyond one year from the
18 day the modification took effect.
- 19 (7) The regulations may provide for matters relating to dealing with
20 applications including giving notice of the right of review under
21 section 121(2).

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

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

4 **66. Regulations**

- 5 (1) The regulations may provide that a building permit is not
6 required for building work of a kind specified by the
7 regulations.
- 8 (2) Without limiting subsection (1), the regulations may provide
9 that a building permit is not required for building work —
10 (a) that is low in value; or
11 (b) that has a low level of risk in relation to the safety of
12 users of the building or members of the public; or
13 (c) that does not require monitoring by a permit authority;
14 or
15 (d) in a rural or remote area.
- 16 (3) The regulations may —
17 (a) for the purposes of subsection (2)(a), specify a monetary
18 amount or other criteria for the assessment of whether
19 particular building work is low in value; or
20 (b) for the purposes of subsection (2)(b), specify the criteria
21 for the assessment of risk levels.
- 22 (4) The regulations may provide that a demolition permit is not
23 required for demolition work of a kind specified by the
24 regulations.
- 25 (5) The regulations may provide that an occupancy permit is not
26 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.
- (2) An order under subsection (1) may be revoked or amended by the Minister.
- (3) The Minister must, within 14 days after an order under subsection (1) or (2) is made, cause the text of it to be laid before each House of Parliament or dealt with under section 148.

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).

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.

1 **70. Buildings incidental to infrastructure**

2 (1) A permit is not required for a building or an incidental structure
3 that is, or is proposed to be, used in the construction, operation
4 or maintenance of road, rail, port, harbour, airport, water,
5 sewerage, electricity, oil or gas supply infrastructure.

6 (2) However, the permit requirement provisions apply to a building
7 or an incidental structure of a kind mentioned in
8 subsection (1) —

9 (a) that is, or is proposed to be, a residential facility or a
10 recreational facility; or

11 (b) that members of the public normally use; or

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

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

14 (1) A permit is not required for a building or an incidental structure
15 that is, or is proposed to be, used in the construction, operation
16 or maintenance of a facility of a kind mentioned in the *Marine*
17 *and Harbours Act 1981* section 5(1)(i).

18 (2) However, the permit requirement provisions apply to a building
19 or an incidental structure of a kind mentioned in
20 subsection (1) —

21 (a) that is, or is proposed to be, a residential facility or a
22 recreational facility; or

23 (b) that members of the public normally use; or

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

25 **72. Buildings incidental to mining operations**

26 (1) In this section —

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

29 (2) A permit is not required for a building or an incidental structure
30 that is, or is proposed to be, used in the construction, operation

1 or maintenance of a place at which mining operations are
2 carried on.

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

6 (a) that is, or is proposed to be, a residential facility or a
7 recreational facility; or

8 (b) that members of the public normally use; or

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

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

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

14 (a) in connection with the exploration for, or exploitation
15 of, petroleum resources, geothermal energy resources
16 and other resources, to which the *Petroleum and*
17 *Geothermal Energy Resources Act 1967* or *Petroleum*
18 *(Submerged Lands) Act 1982* applies; or

19 (b) in the construction, modification, reconstruction,
20 operation or maintenance of a pipeline as defined in the
21 *Petroleum Pipelines Act 1969* section 4(1).

22 (2) However, the permit requirement provisions apply to a building
23 or an incidental structure of a kind mentioned in
24 subsection (1) —

25 (a) that is, or is proposed to be, a residential facility or a
26 recreational facility; or

27 (b) that members of the public normally use; or

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

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

30 (1) A permit is not required for a building or an incidental structure
31 that is, or is proposed to be, used in the construction, operation

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- 1 or maintenance of a facility that is predominantly an industrial
2 processing plant.
- 3 (2) However, the permit requirement provisions apply to a building
4 or an incidental structure of a kind mentioned in
5 subsection (1) —
- 6 (a) that is, or is proposed to be, a residential facility or a
7 recreational facility; or
- 8 (b) that members of the public normally use; or
- 9 (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;

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;

work means —

- (a) building work; or

- 1 (b) demolition work; or
- 2 (c) the changing of ground levels of land to an extent that
- 3 could adversely affect other land;
- 4 **works land**, in relation to work, means land on which the work
- 5 is done or is to be done.

6 **Division 2 — Work affecting other land that requires consent**

7 **or court order**

8 **76. No encroachment without consent or court order**

- 9 (1) A person responsible for work must ensure that no part of a
- 10 building or an incidental structure is placed beyond the
- 11 boundaries of the works land unless —
- 12 (a) each owner of the land into, onto, or over which the
- 13 encroaching part is placed consents to the encroaching
- 14 part being so placed and the encroaching part is placed
- 15 in accordance with the consent; or
- 16 (b) the encroaching part is placed in accordance with an
- 17 order under section 86(2)(a); or
- 18 (c) the encroachment is prescribed as a minor
- 19 encroachment; or
- 20 (d) the encroachment is into, onto, or over Crown land and
- 21 the encroachment is authorised under the *Land*
- 22 *Administration Act 1997*.
- 23 Penalty: a fine of \$25 000.
- 24 (2) In subsection (1)(a) —
- 25 **owner** —
- 26 (a) in relation to Crown land that is a managed reserve,
- 27 means the Minister for Lands and the management body
- 28 of that reserve; and
- 29 (b) in relation to Crown land that is leased under a Crown
- 30 lease, means the Minister for Lands and the holder of
- 31 the Crown lease; and

- 1 (c) in relation to a road, means —
- 2 (i) the Minister for Lands; and
- 3 (ii) whichever of the local government in whose
- 4 district the road is situated, the Commissioner of
- 5 Main Roads, or the Minister as defined in the
- 6 *Public Works Act 1902* section 2 who, under a
- 7 written law, has the control and management of
- 8 the road;
- 9 and
- 10 (d) in relation to Crown land that is vested in a person or
- 11 body under a written law other than the *Land*
- 12 *Administration Act 1997*, means the Minister for Lands
- 13 and that person or body; and
- 14 (e) in relation to any other Crown land means the Minister
- 15 for Lands only.

- 16 (3) In subsection (2) —
- 17 ***Crown lease, management body, managed reserve*** and ***road***
- 18 have the respective meanings given to those terms in the *Land*
- 19 *Administration Act 1997* section 3(1).

20 **77. Other land not to be adversely affected without consent or**

21 **court order**

22 A person responsible for work must ensure that the work does

23 not adversely affect land beyond the boundaries of the works

24 land unless —

- 25 (a) each owner of the land that may be adversely affected
- 26 consents to the work being done even though the land
- 27 may be adversely affected in that way, and the work is
- 28 done in accordance with the consent; or
- 29 (b) the work is done in accordance with an order under
- 30 section 86(2)(b).

31 Penalty: a fine of \$25 000.

- 1 **78. No protection structure in or on other land without consent**
2 **or court order**
- 3 (1) A person responsible for work must ensure that a temporary or
4 permanent protection structure is not placed beyond the
5 boundaries of the works land unless —
- 6 (a) each owner of the land into or onto which the protection
7 structure is placed consents to the protection structure
8 being so placed and the protection structure is placed in
9 accordance with the consent; or
- 10 (b) the protection structure is placed in accordance with an
11 order under section 86(2)(c) or a building order; or
- 12 (c) the protection structure is required as a matter of
13 urgency to prevent imminent collapse of, or damage to,
14 any land including a building or structure on the land.
- 15 Penalty: a fine of \$25 000.
- 16 (2) A person responsible for work must ensure that, as soon as
17 practicable after the placement of a temporary or permanent
18 protection structure under subsection (1)(c), notice of the
19 placement and the reason for it is given to each owner of the
20 land into or onto which the protection structure is placed.
- 21 Penalty: a fine of \$10 000.
- 22 (3) A person responsible for work must ensure that, as soon as
23 practicable after the placement of a permanent protection
24 structure under subsection (1)(c), notice of the placement and
25 the reason for it is given to the permit authority for the
26 protection structure.
- 27 Penalty: a fine of \$10 000.
- 28 **79. Certain work not to affect party walls etc. without consent**
29 **or court order**
- 30 (1) A person responsible for work must ensure that the work does
31 not affect the structural, waterproofing, or noise insulation
32 capacity of a party wall, a substantial dividing fence, or a

- 1 boundary retaining wall that protects land beyond the
2 boundaries of the works land, unless —
- 3 (a) each owner of the land that shares the party wall or the
4 dividing fence, or that is protected by the boundary
5 retaining wall, consents to the work being done, and the
6 work is done in accordance with the consent; or
- 7 (b) the work is done in accordance with an order under
8 section 86(2)(d); or
- 9 (c) the work is required as a matter of urgency to prevent
10 imminent collapse of, or damage to, the wall or fence.
- 11 Penalty: a fine of \$25 000.
- 12 (2) A person responsible for work must ensure that, as soon as
13 practicable after the completion of work mentioned in
14 subsection (1)(c), notice of the work and the reason for it is
15 given to —
- 16 (a) each owner of the land that shares the party wall or the
17 dividing fence, or that is protected by the boundary
18 retaining wall; and
- 19 (b) the permit authority for the wall or fence, if the work is
20 building work of a kind for which a building permit is
21 required.
- 22 Penalty: a fine of \$10 000.
- 23 (3) This section does not affect the application of the *Dividing*
24 *Fences Act 1961* to and in relation to the repair of a substantial
25 dividing fence.
- 26 **80. Fences etc. not to be removed without consent or court**
27 **order**
- 28 (1) A person responsible for work must ensure that no fence, gate
29 or other barrier to land on or beyond the boundaries of the
30 works land is removed unless —
- 31 (a) each owner of the land that shares, or on which is
32 located, the fence, gate or other barrier consents to the
33 removal; or

- 1 (b) the removal is in accordance with an order under
2 section 86(2)(g); or
3 (c) the removal is required as a matter of urgency to prevent
4 imminent collapse of, or damage to, any land including
5 a building or structure on the land.

6 Penalty: a fine of \$10 000.

- 7 (2) A person responsible for work must ensure that, as soon as
8 practicable after the removal under subsection (1)(c) of a fence,
9 gate or barrier, notice of the removal and the reason for it is
10 given to —

- 11 (a) each owner of the land that shares, or on which is
12 located, the fence, gate or other barrier; and
13 (b) the permit authority for the fence, gate or other barrier,
14 if the work is demolition work of a kind for which a
15 demolition permit is required.

16 Penalty: a fine of \$5 000.

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

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

23 Penalty: a fine of \$5 000.

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

- 26 (1) In this section —

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

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

- 1 (2) A person responsible for work must ensure that in doing the
2 work or conducting a survey in relation to that work a person
3 does not go onto other land unless —
- 4 (a) each owner of the other land consents to the access and
5 the access is in accordance with the consent; or
- 6 (b) the access is in accordance with an order under
7 section 86(2)(e) or (f); or
- 8 (c) as a matter of urgency it is necessary to go onto the land
9 to prevent imminent collapse of, or damage to, any land
10 including a building or structure on the land.
- 11 Penalty: a fine of \$10 000.
- 12 (3) A person responsible for work must ensure that, as soon as
13 practicable after a person goes onto other land under
14 subsection (2)(c), notice of the access and the reason for it is
15 given to each owner of the other land.
- 16 Penalty: a fine of \$5 000.
- 17 (4) A person responsible for work must ensure that —
- 18 (a) each owner of the other land; and
- 19 (b) at least one adult occupier of the other land, if the other
20 land is not occupied by any of its owners,
- 21 is given reasonable notice of each 24 hour period during which
22 the land is intended to be accessed by consent or under an order
23 under section 86(2)(e) or (f).
- 24 Penalty: a fine of \$5 000.
- 25 (5) A person responsible for work must ensure that in doing the
26 work or conducting a survey in relation to that work a person
27 does not go onto other land that may be accessed by consent or
28 under an order under section 86(2)(e) or (f) unless —
- 29 (a) the access is at the times consented to by an owner or
30 adult occupier of the land; or
- 31 (b) the access is at the times specified in an order under
32 section 86(2)(e) or (f); or

- 1 (c) if neither paragraph (a) or (b) applies, the access is
2 during the hours of 8.00 a.m. and 6.00 p.m..

3 Penalty: a fine of \$5 000.

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

9 Penalty: a fine of \$5 000.

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

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

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

18 (a) contrary to section 76(1); or

19 (b) without an authority under a written law that was
20 required by the written law applicable at the time,

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

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

26 (a) contrary to section 78(1); or

27 (b) without an authority under a written law that was
28 required by the written law applicable at the time,

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

- 1 (3) Subsections (1) and (2) —
- 2 (a) do not apply to a party wall or dividing fence; and
- 3 (b) do not affect any other right at law that the owner has in
- 4 respect of the encroaching part or the protection
- 5 structure; and
- 6 (c) do not affect the operation of the *Land Administration*
- 7 *Act 1997* section 270.

8 **Division 3 — Obtaining consent or court orders to affect**

9 **other land**

10 **83. Terms used**

11 In this Division —

12 ***affected land***, in relation to a notifiable event, means land that is

13 reasonably likely to be affected by the event;

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

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

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

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

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

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

6 Penalty: a fine of \$10 000.

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

8 (1) A notice must —

- 9 (a) be in an approved form; and
- 10 (b) set out the prescribed information about the proposed
11 work; and
- 12 (c) if relevant, give details of the part of a building or
13 structure that would be placed into, onto or over the
14 affected land, and seek the consent of each owner of the
15 affected land to the encroachment; and
- 16 (d) if relevant, give details of how the affected land would
17 be adversely affected, and seek the consent of each
18 owner of the affected land —
- 19 (i) to the work being done even though the land may
20 be adversely affected in that way; or
- 21 (ii) to the placement of a protection structure into or
22 onto the affected land for the purpose of
23 preventing, or minimising the risk of, the land
24 being adversely affected;

25 and

- 26 (e) if relevant, give details of each protection structure that
27 would be required to be placed into or onto the affected
28 land including the reason for, and nature, location and
29 duration of, the protection structure and the estimated
30 time for doing the protection work, and seek the consent
31 of each owner of the affected land to the placement of
32 the protection structure as proposed; and

- 1 (f) if relevant, give details of how the structural,
2 waterproofing, or noise insulation capacity of a party
3 wall, a substantial dividing fence, or a boundary
4 retaining wall that protects the affected land would be
5 affected, and seek the consent of each owner of the
6 affected land to do the work; and
- 7 (g) if relevant, specify the fence, gate or other barrier shared
8 by, or located on, the affected land that would be
9 removed, the reasons for its removal and details of any
10 temporary barrier that is proposed to be erected, and
11 seek the consent of each owner of the affected land for
12 the removal; and
- 13 (h) if relevant, state that in doing work a person will be
14 required to go onto the affected land and the reasons for
15 the requirement, and seek the consent of each owner of
16 the affected land to go on to the affected land to do the
17 work; and
- 18 (i) be accompanied by a response notice, in an approved
19 form, to be completed by or on behalf of each owner of
20 the affected land and given to the person responsible for
21 the work; and
- 22 (j) set out, or be accompanied by, each other thing that is
23 prescribed to be set out in, or accompany, the notice.
- 24 (2) A person responsible for work may, in a notice, request that a
25 survey of the affected land be conducted, and seek the consent
26 of each owner of the affected land for a person to go on to the
27 affected land to conduct the survey.

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

- 29 (1) A person responsible for work who gives a notice to each owner
30 of the affected land may apply to the Magistrates Court for an
31 order if the consent sought in the notice has not been given —
- 32 (a) if no request for further information is made, 28 days
33 after the notice is given; or

- 1 (b) if the person responsible provides further information in
2 response to a request, 14 days after the further
3 information is given.
- 4 (2) On an application the court may order that —
- 5 (a) a specified part of a specified building or structure may
6 be placed into, onto or over specified land beyond the
7 boundaries of the works land; or
- 8 (b) specified land beyond the boundaries of the works land
9 may be adversely affected by the work in a specified
10 way; or
- 11 (c) a specified protection structure may be placed into or
12 onto specified land beyond the boundaries of the works
13 land; or
- 14 (d) specified work may be done which may affect the
15 structural, waterproofing, or noise insulation capacity of
16 a specified party wall, a specified substantial dividing
17 fence or a specified boundary retaining wall; or
- 18 (e) in doing specified work a specified person or a person
19 who belongs to a specified class of person may go onto
20 specified land and the court may specify the times of
21 access; or
- 22 (f) a survey may be conducted of specified land beyond the
23 boundaries of the works land and in conducting the
24 survey a specified person or a person who belongs to a
25 specified class of person may go onto the specified land,
26 and the court may specify the times of access; or
- 27 (g) a specified fence, gate or other barrier to specified land
28 may be removed for the purpose of going onto the land
29 to do work or conduct a survey or for any other
30 specified purpose.
- 31 (3) In deciding whether to make an order under subsection (2) the
32 court must have regard to —
- 33 (a) the nature and likely extent of any burden or other
34 detrimental effect to the affected land or inconvenience

- 1 to an owner or user of the affected land if the order is
2 made; and
- 3 (b) whether there are reasonable and practicable alternative
4 courses of action available to the person responsible for
5 the work that do not involve the affected land.
- 6 (4) If the court makes an order under subsection (2) in the absence
7 of a person affected by the order, the person responsible for the
8 work must ensure that the person is given a copy of the order as
9 soon as practicable, but not more than 7 days, after the order is
10 made.
- 11 Penalty: a fine of \$10 000.
- 12 **87. Requirement for building or demolition permit not affected**
13 **by court order**
- 14 (1) An order under section 86(2) that allows building or demolition
15 work to be done without the consent of an owner of the affected
16 land does not affect a requirement under section 9 or 10 for a
17 building permit or demolition permit to be in effect for the
18 work.
- 19 (2) If —
- 20 (a) an order is made under section 86(2)(c) for the
21 placement of a protection structure into or onto land
22 beyond the boundaries of the works land; but
- 23 (b) an application for a building permit for the placement of
24 the protection structure is not made within 30 days of
25 the order,
- 26 the person responsible for work on the works land may apply
27 for a building permit for the placement of the protection
28 structure, and for that purpose section 16(b) applies as if the
29 application must be signed by that person instead of each owner
30 of the land into or onto which the protection structure is
31 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 or fence —

- (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.

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.

1 (2) Unless otherwise agreed, if a party wall or a boundary retaining
2 wall that is wholly or partly on the boundary of land needs
3 maintenance or repair each owner of land on either side of the
4 wall is liable to join in or contribute in equal proportions to the
5 maintenance and repair of the wall.

6 (3) This section does not affect the operation of the *Dividing*
7 *Fences Act 1961* Part III.

8 **90. Liability for certain expenses**

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

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

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

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

- 23 (a) to land beyond the boundaries of the works land caused
24 by work; or
- 25 (b) otherwise arising from work; or
- 26 (c) arising from a breach of an agreement entered into for
27 the purposes of this Part; or
- 28 (d) arising from a breach of an order made under
29 section 86(2); or
- 30 (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

- 1 for the purpose of monitoring whether a provision of the
2 regulations is being complied with; and
- 3 (d) require a permit authority to arrange for an authorised
4 person to inspect or test, on a specified day, at specified
5 intervals, or when a specified event occurs, an existing
6 building for the purpose of monitoring whether a
7 provision of the regulations is being complied with; and
- 8 (e) provide for a person who buys, or takes on lease or hire,
9 an existing building that does not comply with a
10 specified building standard or requirement, to recover
11 from an owner of the building the costs of making the
12 building comply; and
- 13 (f) provide for the keeping of records in relation to
14 inspections mentioned in paragraph (c) or (d); and
- 15 (g) provide for the reporting of information obtained from
16 inspections mentioned in paragraph (c) or (d); and
- 17 (h) provide for charges to be imposed on an owner of land
18 in respect of costs of inspections mentioned in
19 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.

1 **97. Identity cards**

2 (1) A permit authority must give an identity card to each person
3 designated by it as an authorised person.

4 (2) An identity card must —

5 (a) identify the person as an authorised person; and

6 (b) contain a recent photograph of the person.

7 (3) A person must, within 14 days of ceasing to be an authorised
8 person, return the person's identity card to the designating
9 permit authority.

10 Penalty: a fine of \$5 000.

11 (4) Subsection (3) does not apply if the person has a reasonable
12 excuse.

13 (5) An authorised person must carry his or her identity card at all
14 times when exercising powers or performing functions as an
15 authorised person.

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

17 (1) An authorised person may exercise a power in relation to
18 someone only if —

19 (a) the authorised person first produces the authorised
20 person's identity card for the other person's inspection;
21 or

22 (b) the authorised person has the identity card displayed so
23 it is clearly visible to the other person.

24 (2) However, if for any reason it is not practicable to comply with
25 subsection (1) before exercising the power, the authorised
26 person may exercise the power and then produce the identity
27 card for inspection by the person at the first reasonable
28 opportunity.

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

- 2 (1) An authorised person must act —
- 3 (a) in accordance with the directions of the designating
- 4 permit authority; and
- 5 (b) subject to any limitation on the powers of that person
- 6 mentioned in subsection (2).
- 7 (2) The powers of an authorised person may be limited —
- 8 (a) under a regulation; or
- 9 (b) under a condition specified in the person's instrument of
- 10 designation as an authorised person; or
- 11 (c) by written notice given by the designating permit
- 12 authority to the person.
- 13 (3) The designating permit authority may, at any time, revoke or
- 14 vary a condition of designation mentioned in subsection (2)(b)
- 15 or a notice referred to in subsection (2)(c).

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

17 **100. Entry powers**

- 18 (1) For compliance purposes an authorised person may at any
- 19 reasonable time enter and remain on the following places —
- 20 (a) a place at which the authorised person has reasonable
- 21 cause to believe that building work or demolition work
- 22 is being done, or has been done in the past 12 months;
- 23 (b) a place to which a provision of this Act applies;
- 24 (c) a place at which the authorised person has reasonable
- 25 cause to believe that there are relevant records;
- 26 (d) a place at which the authorised person has reasonable
- 27 cause to believe that a breach of a provision of this Act
- 28 has occurred, is occurring or is likely to occur;
- 29 (e) a place at which the authorised person is required to
- 30 conduct an inspection or test of equipment, machinery

- 1 or a system, or an existing building under arrangements
2 mentioned in section 45(2)(d) or 93(2)(d);
- 3 (f) a place at which is located a building or an incidental
4 structure that the authorised person has reasonable cause
5 to believe is in a dangerous state or is unfit for human
6 occupation;
- 7 (g) a place that is the subject of a building order.
- 8 (2) The authorised person is not entitled to enter a part of a place in
9 use as a residence, except —
- 10 (a) with the consent of an adult occupier; or
11 (b) under the authority of an entry warrant; or
12 (c) to take action under section 118(2) in relation to a
13 building order (emergency).

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

- 15 (1) An authorised person who enters a place under section 100(1) or
16 under the authority of an entry warrant may, for compliance
17 purposes, do any of the following —
- 18 (a) inspect the place and any thing at the place;
19 (b) search the place and any thing at the place;
20 (c) examine, measure, test, photograph or film the place and
21 any thing at the place;
22 (d) operate a computer or other thing at the place;
23 (e) take any thing, or a sample of or from any thing, at the
24 place for analysis or testing;
25 (f) make a copy of, take an extract from, or download or
26 print out, any record or document that the authorised
27 person suspects on reasonable grounds is a relevant
28 record;
29 (g) seize any thing that is or may afford evidence of a
30 contravention of a provision of this Act;

- 1 (h) if a thing found on the place cannot be conveniently
2 removed, secure it against interference;
- 3 (i) seize a record or document that the authorised person
4 suspects on reasonable grounds is a relevant record and
5 retain it for as long as is necessary for the purposes of
6 this Act;
- 7 (j) direct a person who is at the place to do any of the
8 following —
- 9 (i) state the person's full name, date of birth, the
10 address of where the person is living and the
11 address of where the person usually lives;
- 12 (ii) answer (orally or in writing) questions asked by
13 the authorised person;
- 14 (iii) produce relevant records in the person's custody
15 or under the person's control;
- 16 (iv) operate a computer or other thing at the place;
- 17 (v) provide access (free of charge) to photocopying
18 equipment at the place to enable the copying of
19 documents;
- 20 (vi) give the authorised person a translation, code,
21 password or other information necessary to gain
22 access to or interpret and understand a record or
23 document;
- 24 (vii) give other assistance the authorised person
25 reasonably requires;
- 26 (k) conduct an inspection or test of equipment, machinery
27 or a system, or an existing building, under arrangements
28 mentioned in section 45(2)(d) or 93(2)(d);
- 29 (l) take action under section 118(2);
- 30 (m) conduct a survey of a building or an incidental structure
31 comprising or at the place.
- 32 (2) In taking action under section 118(2) in respect of a building
33 order that requires a person to cause a building or incidental

1 structure to be evacuated, an authorised person may direct any
2 person to leave the building or incidental structure.

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

6 **102. Obtaining information and documents**

7 (1) An authorised person, for compliance purposes, may do any of
8 the following —

9 (a) direct a person —

10 (i) to give such information as the authorised person
11 requires; or

12 (ii) to answer a question put to the person,
13 in relation to any matter the subject of the compliance
14 purposes;

15 (b) direct a person to produce a relevant record in the
16 person's custody or under the person's control;

17 (c) examine and make a copy of a relevant record produced
18 in response to a direction under paragraph (b).

19 (2) A direction under subsection (1)(a) —

20 (a) must specify the time at or within which the information
21 or answer must be given; and

22 (b) may require that the information or answer —

23 (i) be given orally or in writing; or

24 (ii) be given at or delivered to a place specified in
25 the direction; or

26 (iii) in the case of written information or a written
27 answer, be delivered by means specified in the
28 direction; or

29 (iv) be verified by statutory declaration.

- 1 (3) A direction under subsection (1)(b) —
2 (a) must be in writing given to the person required to
3 produce the relevant record; and
4 (b) must specify the time at or within which the relevant
5 record must be produced; and
6 (c) may require that the relevant record be produced —
7 (i) at a place specified in the direction; and
8 (ii) by any means specified in the direction.

9 **103. Use of force and assistance**

- 10 (1) An authorised person may use assistance and force that is
11 reasonably necessary in the circumstances when exercising a
12 power under this Act but cannot use force against a person.
- 13 (2) If the use of reasonable force is likely to cause significant
14 damage to property, an authorised person is not entitled to use
15 force unless —
16 (a) the person does so in accordance with the directions of a
17 police officer in the particular case; or
18 (b) the force is reasonably required in the course of taking
19 action under section 118(2).
- 20 (3) An authorised person may request a police officer or other
21 person to assist the authorised person in exercising powers
22 under this Act.
- 23 (4) In addition to the powers of a police officer, a police officer —
24 (a) has all the functions and powers of an authorised person
25 under this Act; and
26 (b) may use reasonable force to remove from a building or
27 incidental structure a person who fails to leave when
28 directed to do so under section 101(2).

- 1 (2) An authorised person may apply for an entry warrant for a place
2 even if, under this Act, the authorised person may enter the
3 place without an entry warrant.
- 4 (3) The application must be made in accordance with the *Criminal*
5 *Investigation Act 2006* section 13 and section 13(8) of that Act
6 applies in relation to the entry warrant.
- 7 (4) An application for a warrant must —
- 8 (a) describe with reasonable particularity the place to be
9 entered; and
- 10 (b) state that the authorised person has reasonable grounds
11 for believing that entry to the place is necessary for a
12 compliance purpose; and
- 13 (c) state the purposes for which entry to the place is
14 required; and
- 15 (d) include any other information that is prescribed to be in
16 the warrant.

17 **107. Issue of warrant**

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

- (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.

- (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.

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;

- 1 (b) if a demolition permit is in effect for the particular
2 demolition work, the person named as the demolition
3 contractor on the permit;
- 4 (c) a person who is an owner of the land on which the
5 particular building or demolition work is being, or has
6 been, done;
- 7 (d) a person who is an owner or occupier of the land on
8 which the particular building or incidental structure is
9 located.

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

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

25 **112. Content of building order**

- 26 (1) In this section —
27 *specified* means specified in the building order.

- 1 (2) A building order may require a person to whom the order is
2 directed to do any one or more of the following within the
3 specified time —
- 4 (a) to stop all or specified building or demolition work that
5 is being done in suspected contravention of a provision
6 of this Act;
- 7 (b) to demolish, dismantle or remove a building or
8 incidental structure that has been, or is being, built or
9 occupied in suspected contravention of a provision of
10 this Act;
- 11 (c) to do specified building or demolition work, or alter a
12 building or incidental structure in a specified way, so as
13 to prevent or stop a suspected contravention of this Act;
- 14 (d) to cause a building or incidental structure to be
15 evacuated, or remain unoccupied, so as to prevent or
16 stop a suspected contravention of this Act;
- 17 (e) to take or not take specified action so as to prevent or
18 stop a suspected contravention of this Act;
- 19 (f) to finish the outward facing side of a close wall in a way
20 specified under section 88(3);
- 21 (g) if a building or incidental structure is reasonably
22 believed to be in a dangerous state or unfit for human
23 occupation —
- 24 (i) to conduct a survey of the building or incidental
25 structure;
- 26 (ii) to cause the building or incidental structure to be
27 evacuated or remain unoccupied;
- 28 (iii) to stop all or specified building or demolition
29 work that is causing or contributing to the state
30 or condition of the building or incidental
31 structure;
- 32 (iv) to shore up, fence or otherwise secure the
33 building or incidental structure in a specified

- 1 way for the protection of persons, of other
2 property or of the environment;
- 3 (v) to renovate or repair the building or incidental
4 structure to a specified standard or in a specified
5 way so as to prevent or stop the building or
6 incidental structure from being a danger to
7 persons, to other property or to the environment
8 or to render it fit for human occupation;
- 9 (vi) to demolish, dismantle or remove the building or
10 incidental structure;
- 11 (h) to take specified action that is reasonably incidental to
12 doing a thing mentioned in any of paragraphs (a) to (g).
- 13 (3) A building order —
- 14 (a) that is to have effect for a limited period only must set
15 out that period; and
- 16 (b) must set out the right of review under section 122; and
- 17 (c) must require a person to whom the order is directed to
18 notify the permit authority in a specified manner when
19 the person has done what the building order requires the
20 person to do; and
- 21 (d) must contain each other thing that is prescribed to be in
22 the order.

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

- 24 (1) A building order is of no effect to the extent that it is
25 inconsistent with a court order made under section 86(2).
- 26 (2) A building order is not to be made under section 112(2)(b), (c)
27 or (d) for a building or incidental structure in respect of which
28 unauthorised work, as defined in section 51(1), has been done
29 if —
- 30 (a) an occupancy permit or a building approval certificate
31 for the building or incidental structure has been granted;
32 or

- 10 **114. Service of building order**

- 25 **115. Compliance with building order**

28 Penalty:

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

2 A person must not hinder or obstruct a person who is
3 complying, or attempting to comply, with a building order.
4 Penalty: a fine of \$10 000.

5 **117. Revocation of building order**

6 (1) A permit authority may, by notice in writing, revoke a building
7 order at any time and must serve each person to whom the order
8 is directed with a copy of the notice.

9 (2) A permit authority must, within 28 days of receiving a
10 notification under section 112(3)(c) —

11 (a) decide whether the building order has been fully
12 complied with; and

13 (b) either revoke the building order or inform each person to
14 whom the order is directed that the building order
15 remains in effect.

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

18 (1) In this section —
19 ***non-compliance*** —

20 (a) in relation to a building order other than a building order
21 (emergency), means that a person on whom the order is
22 served has not complied fully with the order within the
23 time specified in the order and has not applied for a
24 review under section 122; or

25 (b) in relation to a building order (emergency), means that a
26 person on whom the order is served has not complied
27 fully with the order within the time specified in the
28 order, whether or not a person has applied for review
29 under section 122.

- 1 (2) If there is non-compliance with an order the permit authority
2 that made the relevant building order may cause an authorised
3 person —
- 4 (a) to take any action specified in the order; or
5 (b) to commence or complete any work specified in the
6 order; or
7 (c) if any specified action was required by the order to
8 cease, to take such steps as are reasonable in the
9 circumstances to cause the action to cease.
- 10 (3) The permit authority may, in a court of competent jurisdiction,
11 recover as a debt from a person who has been served with a
12 copy of a building order the reasonable costs and expenses
13 incurred in doing anything under subsection (2) in relation to
14 the order.
- 15 (4) In a proceeding under subsection (3), a document apparently
16 signed by an authorised certifier in relation to the permit
17 authority, as defined by section 140(2), specifying details of the
18 reasonable costs and expenses incurred is, in the absence of
19 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 modify a building standard; or
- (c) as to the modification of a building standard.

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).

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

8 **122. Building orders**

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

18 **123. State Administrative Tribunal may disapply or modify**
19 **subsidiary legislation about building etc.**

- 20 (1) In this section —
21 *building regulation or local law* means —
- 22 (a) a regulation under this Act; or
23 (b) a local law made by a local government under the *Local*
24 *Government Act 1995* about building work, demolition
25 work, a standard for the construction or demolition of
26 buildings or incidental structures, or the use and
27 maintenance of, and requirements in relation to, existing
28 buildings or incidental structures.
- 29 (2) The State Administrative Tribunal may order that any provision
30 of a building regulation or local law —
31 (a) does not apply in a particular case; or

- 1 (b) applies in a particular case as modified by the order.
- 2 (3) An order under subsection (2) may be made —
- 3 (a) only for the purpose of enabling effect to be given to an
- 4 order made by the Tribunal on an application under
- 5 section 119, 121(1) or 122(1); and
- 6 (b) only if, in the opinion of the Tribunal, the circumstances
- 7 of the case warrant the making of the order.
- 8 (4) An order under subsection (2) has effect according to its tenor,
- 9 despite anything in this Act or the *Local Government Act 1995*.
- 10 (5) This section does not limit the powers given by the *State*
- 11 *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

- 1 (d) a body, whether incorporated or not, or the holder of an
2 office, that is established or continued for a public
3 purpose under a written law and that, under the authority
4 of a written law, performs a statutory function on behalf
5 of the State; or
6 (e) any other body, or the holder of an office, post or
7 position, that is prescribed as a public body for the
8 purposes of this definition,
9 but does not include a local government or regional local
10 government.
- 11 (3) The delegation must be in writing executed by the Minister.
- 12 (4) A person to whom a power or duty is delegated under this
13 section cannot delegate that power or duty.
- 14 (5) A person exercising or performing a power or duty that has been
15 delegated to the person under this section is to be taken to do so
16 in accordance with the terms of the delegation unless the
17 contrary is shown.
- 18 (6) Nothing in this section limits the ability of the Minister to
19 perform a function through an officer or agent.

20 **126. Special permit authorities**

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

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1 (b) the kinds of buildings or incidental structures for which
2 the special permit authority is to be the permit authority.

3 (3) The regulations may revoke the designation of a legal entity or a
4 group of legal entities as a special permit authority.

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

7 (1) A special permit authority or a local government may delegate
8 any of its powers or duties as a permit authority under another
9 provision of this Act.

10 (2) A delegation of a special permit authority's powers or duties
11 may be only to an employee of the special permit authority, or
12 to an employee of one of the legal entities that comprise the
13 special permit authority.

14 (3) A delegation of a local government's powers or duties may be
15 only to a person employed by the local government under the
16 *Local Government Act 1995* section 5.36.

17 (4) The delegation must be in writing executed by or on behalf of
18 the special permit authority or by the local government.

19 (5) A person to whom a power or duty is delegated under this
20 section cannot delegate that power or duty.

21 (6) A person exercising or performing a power or duty that has been
22 delegated to the person under this section is to be taken to do so
23 in accordance with the terms of the delegation unless the
24 contrary is shown.

25 (7) Nothing in this section limits the ability of the permit authority
26 to perform a function through an officer or agent.

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

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

131. Inspection, copies of building records

10 (1) In this section —

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

12 *interested person* means —

- 13 (a) an owner of the building or incidental structure to which
14 the building record relates; or
- 15 (b) a person who has the written consent of an owner
16 mentioned in paragraph (a) to inspect, or receive a copy
17 of, a building record relating to the owner; or
- 18 (c) a person, or a person belonging to a prescribed class of
19 persons.

20 (2) A permit authority may, on application by an interested person
21 and on payment of the prescribed fee, if any —

- 22 (a) allow the interested person to inspect a building record;
23 and
- 24 (b) provide to the interested person a copy of a building
25 record.

132. Provision of information to Building Commissioner

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

- 1 the Department as defined in the *Building Services (Complaint*
2 *Resolution and Administration) Act 2010* section 3.
- 3 (2) The Building Commissioner may, for the purposes of
4 performing the Commissioner's functions under the *Building*
5 *Services (Complaint Resolution and Administration) Act 2010*,
6 request a permit authority to provide to the Commissioner —
- 7 (a) a record kept by the permit authority under section 130;
8 or
- 9 (b) other information of a prescribed kind that is relevant to
10 the functions of the permit authority under this Act or
11 the functions of the Commissioner.
- 12 (3) A permit authority that is a special permit authority or a local
13 government must provide a record or information requested
14 under subsection (2) to the Building Commissioner in the
15 prescribed manner.
- 16 (4) Information to be given under this section must be given in a
17 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

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

3 (2) If an individual complies with a requirement to answer a
4 question or produce a record or other thing under
5 section 101(1)(j) or 102(1) neither —

6 (a) an answer given by the individual that was given to
7 comply with the requirement; nor

8 (b) the fact that a record or other thing produced by the
9 individual to comply with the requirement was
10 produced,

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

15 **136. Legal professional privilege**

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

21 **Division 2 — Evidence in legal proceedings**

22 **137. Evidence Act 1906 not excluded**

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

25 **138. Allegations in prosecution notices**

26 (1) In proceedings for an offence against this Act, an allegation in
27 the prosecution notice of any of the following matters is, in the
28 absence of evidence to the contrary, taken to be proved —

29 (a) that at a specified time a building permit, a demolition
30 permit, an occupancy permit, or a building approval

- 1 certificate was or was not in effect in relation to
2 specified building or demolition work or to a specified
3 building or incidental structure;
- 4 (b) that at a specified time a person was named as the
5 builder on a specified building permit, or as the
6 demolition contractor on a specified demolition permit;
- 7 (c) that at a specified time a specified person was an owner
8 or occupier of specified land;
- 9 (d) that at a specified time the State, a specified special
10 permit authority or a specified local government was a,
11 or the, permit authority for a specified building or
12 incidental structure;
- 13 (e) that at a specified time a specified building or incidental
14 structure was located in a specified local government
15 district or, if located as proposed, would have been
16 located in a specified local government district;
- 17 (f) that at a specified time a declaration under section 39(2)
18 was or was not in effect;
- 19 (g) that at a specified time a person held a specified office.

- 20 (2) In subsection (1) —
21 *specified* means specified in the prosecution notice.

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

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

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

3 **140. Proof of permits, declarations, obtained records**

4 (1) In any proceedings under this Act the contents, as at any date or
5 during any period, of a building permit, demolition permit,
6 occupancy permit or building approval certificate granted by a
7 permit authority, or a building order made by a permit authority,
8 including the conditions applying to any such thing, may be
9 proved by tendering a copy of it certified by an authorised
10 certifier to be a true copy of it as at that date or during that
11 period.

12 (2) In subsection (1) —

13 *authorised certifier*, in relation to a permit authority —

- 14 (a) that is the State means the Minister or a person acting
15 with the Minister's authority;
16 (b) that is a special permit authority means a person acting
17 with the special permit authority's authority;
18 (c) that is a local government means the chief executive
19 officer of the local government or a person acting with
20 the chief executive officer's authority.

21 (3) In proceedings for an offence against this Act the contents, as at
22 any date or during any period, of a declaration under
23 section 39(2), including the conditions applying to it, may be
24 proved by tendering a copy of it certified by the Building
25 Commissioner to be a true copy of it as at that date or during
26 that period.

27 (4) In proceedings for an offence against this Act a copy of a record
28 obtained by an authorised person under section 101(1)(i)
29 or 102(1)(b) is admissible in evidence if it is certified by the
30 authorised person as having been obtained under that section.

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

2 In any proceedings, whether under this Act or otherwise,
3 evidence of the text adopted by regulations, as at any date or
4 during any period, may be given by tendering a copy of the text
5 certified by the Building Commissioner to be a true copy of the
6 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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1 (4) In this section, a reference to the doing of anything includes a
2 reference to an omission to do anything.

3 (5) This section is in addition to the *Local Government Act 1995*
4 section 9.56.

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

6 (1) This Act does not operate to create a duty of a permit
7 authority —

8 (a) to check the accuracy of a fact, or the soundness of an
9 opinion, asserted in a certificate of design compliance, a
10 certificate of construction compliance, a certificate of
11 building compliance, or a technical certificate signed by
12 a specialist; or

13 (b) to form its own opinion on a matter mentioned in
14 section 19(3), 56(2)(a), (b) or (c), 56(3)(a), (b)
15 or (c), 57(2)(a), (b) or (c), (3), (4)(a) or (b) or (6), or on a
16 matter that is the subject of a technical certificate signed
17 by a specialist.

18 (2) This Act does not operate to create a duty of a building
19 surveyor —

20 (a) to check the accuracy of a fact, or the soundness of an
21 opinion, asserted in a technical certificate signed by a
22 specialist; or

23 (b) to form his or her own opinion on a matter that is the
24 subject of a technical certificate signed by a specialist.

25 (3) This section is in addition to the *Civil Liability Act 2002*.

26 **145. Protection for compliance with Act**

27 (1) No civil or criminal liability attaches to a person for
28 compliance, or purported compliance, in good faith, with a
29 requirement of this Act.

30 (2) In particular, if a person produces a record or other information
31 as required under this Act, no civil liability attaches to the

1 person for producing the record or information, whether the
2 liability would arise under a contract or otherwise.

3 **146. Confidentiality**

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

- 8 (a) for the purpose of, or in connection with, performing
9 functions under this Act or another written law; or
- 10 (b) as required or allowed by this Act or another written
11 law; or
- 12 (c) with the written consent of the Minister or the person to
13 whom the information relates; or
- 14 (d) for the purpose of any proceeding before a court, the
15 State Administrative Tribunal or the Building Services
16 Board arising out of the administration of this Act, the
17 *Building Services (Complaint Resolution and*
18 *Administration) Act 2010* or the Registration Act; or
- 19 (e) in prescribed circumstances.

20 Penalty: a fine of \$25 000.

21 **147. False or misleading information**

22 (1) A person must not do any of the things set out in
23 subsection (2) —

- 24 (a) in relation to an application under this Act; or
- 25 (b) in relation to the compliance, or purported compliance,
26 with any requirement or direction under this Act to give
27 information to, or answer a question of, a permit
28 authority, police officer or authorised person.

29 Penalty: a fine of \$25 000.

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- 1 (2) The things to which subsection (1) applies are —
- 2 (a) making a statement which the person knows is false or
- 3 misleading in a material particular; or
- 4 (b) making a statement which is false or misleading in a
- 5 material particular, with reckless disregard as to whether
- 6 or not the statement is false or misleading in a material
- 7 particular; or
- 8 (c) providing, or causing to be provided, information that
- 9 the person knows is false or misleading in a material
- 10 particular; or
- 11 (d) providing, or causing to be provided, information that is
- 12 false or misleading in a material particular, with reckless
- 13 disregard as to whether the information is false or
- 14 misleading in a material particular.

15 **148. Laying documents before Parliament**

- 16 (1) If section 67(3) requires the Minister to cause the text of a
- 17 document to be laid before each House of Parliament, or dealt
- 18 with under this section, within a period and —
- 19 (a) at the commencement of the period, a House of
- 20 Parliament is not sitting; and
- 21 (b) the Minister is of the opinion that the House will not sit
- 22 during that period,
- 23 the Minister must transmit a copy of the document to the Clerk
- 24 of that House.
- 25 (2) A copy of a document transmitted to the Clerk of a House is to
- 26 be regarded as having been laid before that House.
- 27 (3) The laying of a copy of a document that is to be regarded as
- 28 having occurred under subsection (2) must be recorded in the
- 29 Minutes, or Votes and Proceedings, of the House on the first
- 30 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

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

1 **Part 15 — Consequential amendments to other Acts,**
2 **repeal of certain regulations**

3 **Division 1 — *Local Government (Miscellaneous Provisions)***
4 ***Act 1960* and related regulations**

5 **151. Act amended**

6 This Division amends the *Local Government (Miscellaneous*
7 *Provisions) Act 1960*.

8 **152. Parts VIII and IX deleted**

9 Delete Parts VIII and IX.

10 **153. Part XV amended**

11 (1) Delete Part XV Division 1.

12 (2) Delete Part XV Divisions 2, 3, 4, 6, 7, 8, 9, 9A, 10, 11, 12, 13,
13 14, 15, 16, 17, 18 and 20.

14 **154. Sections 666 and 667 deleted**

15 Delete sections 666 and 667.

16 **155. Section 684 amended**

17 In section 684 delete “287(4)(b), 288(8), 291(5)(b) or”.

18 **156. Section 687 deleted**

19 Delete section 687.

20 **157. *Building Regulations 1989* repealed**

21 The *Building Regulations 1989* are repealed.

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1 **158. *Local Government (Prohibition on Dealings in Land)***
2 ***Regulations 1973* repealed**

3 The *Local Government (Prohibition on Dealings in Land)*
4 *Regulations 1973* are repealed.

5 **Division 2 — Other Acts amended**

6 **159. *Building and Construction Industry Training Fund and Levy***
7 ***Collection Act 1990* amended**

8 (1) This section amends the *Building and Construction Industry*
9 *Training Fund and Levy Collection Act 1990*.

10 (2) In section 3(1) delete the definition of ***building licence***.

11 (3) In section 3(1) insert in alphabetical order:

12
13 ***permit***, except in section 5(2)(e), means a building
14 permit or a demolition permit as defined in the
15 *Building Act 2010* section 3;
16

17 (4) In section 3(1) in the definition of ***construction work*** delete
18 paragraph (b) and insert:

19
20 (b) that is building work or demolition work as
21 defined in the *Building Act 2010* section 3,
22

23 (5) In section 3(1) in the definition of ***project owner*** paragraph (a)
24 delete “building licence” and insert:

25
26 permit
27

1 (6) In section 3(2)(a) delete “building licence” (each occurrence)
2 and insert:

3

4 permit
5

6 (7) In section 3(3) delete “has been” and insert:

7

8 or a demolition licence under the *Local Government*
9 *(Miscellaneous Provisions) Act 1960* was
10

11 (8) In section 21(1)(a) and (b) delete “building licence” (each
12 occurrence) and insert:

13

14 permit
15

16 **160. Constitution Acts Amendment Act 1899 amended**

17 (1) This section amends the *Constitution Acts Amendment Act 1899*.

18 (2) In Schedule V Part 3 delete the item relating to the Advisory
19 Committee appointed under section 435 of the *Local*
20 *Government (Miscellaneous Provisions) Act 1960*.

21 **161. Health Act 1911 amended**

22 (1) This section amends the *Health Act 1911*.

23 (2) In section 175 delete “*Local Government (Miscellaneous*
24 *Provisions) Act 1960*” and insert:

25

26 *Building Act 2010*
27

28 (3) In section 176(5) delete “the construction, extension or
29 alteration of a public building in relation to which construction,

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Division 2 Other Acts amended

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1 extension or alteration a licence is issued under section 374 of
2 the *Local Government (Miscellaneous Provisions) Act 1960*.”
3 and insert:
4

5 building work, as defined in the *Building*
6 *Act 2010* section 3, for which a building
7 permit is required under that Act.
8

9 **162. *Heritage of Western Australia Act 1990* amended**

10 (1) This section amends the *Heritage of Western Australia*
11 *Act 1990*.

12 (2) After section 11(3) insert:
13

14 (4A) Subsections (2) and (3)(a) and (b) do not apply to an
15 application for a building permit or demolition permit
16 under the *Building Act 2010* if it appears from the
17 application that that applicant has already referred the
18 proposal to the Council and the Council has given its
19 advice in relation to the proposal.
20

21 (3) In section 11(4)(b) delete “permission,” and insert:
22

23 permission (including a building permit
24 or demolition permit under the *Building*
25 *Act 2010*),
26

27 (4) In section 34(2) delete “*Local Government (Miscellaneous*
28 *Provisions) Act 1960*” (each occurrence) and insert:
29

30 *Building Act 2010*
31

- 1 (5) In section 75(2) after “permission” insert:
2
3 (including a building permit or demolition permit under
4 the *Building Act 2010*)
5
- 6 (6) In section 75(3)(a)(i) delete “*Local Government (Miscellaneous*
7 *Provisions) Act 1960;*” and insert:
8
9 *Building Act 2010*;
10
- 11 (7) Delete section 78(1)(c) and insert:
12
13 (c) applications under the *Building Act 2010* for a
14 building permit or demolition permit;
15
- 16 (8) In section 78(2):
17 (a) delete “approval or licence” and insert:
18
19 approval, building permit or demolition permit
20
- 21 (b) delete “licence or” and insert:
22
23 permit or
24
- 25 (9) In section 78(3):
26 (a) delete “licences” and insert:
27
28 permits
29

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1 (b) delete “licence” and insert:

2

3 permit

4

5 **163. Home Building Contracts Act 1991 amended**

6 (1) This section amends the *Home Building Contracts Act 1991*.

7 (2) In section 8(1)(a) delete “building surveyor or other”.

8 (3) Delete section 8(5).

9 (4) In section 9(1)(a) delete “licence being issued,” and insert:

10

11 permit being granted,

12

13 (5) In section 9(1)(b) delete “licence” and insert:

14

15 permit

16

17 (6) In section 25A in the definition of ***cost of the building work***
18 delete “licence under Part XV of the *Local Government*
19 *(Miscellaneous Provisions) Act 1960*,” and insert:

20

21 permit;

22

23 (7) In section 25C(3)(b)(ii) delete “licence issued” and insert:

24

25 permit granted

26

- 1 (8) In section 25J(3) delete “licence issued” and insert:
2
3 permit granted
4
- 5 (9) In section 25J(5)(b) delete “licence for the residential building
6 work is issued,” and insert:
7
8 permit for the residential building work is granted,
9
- 10 **164. *Land Tax Assessment Act 2002* amended**
- 11 (1) This section amends the *Land Tax Assessment Act 2002*.
- 12 (2) In section 39(b) delete “Part XV of the *Local Government*
13 *(Miscellaneous Provisions) Act 1960*” and insert:
14
15 the *Building Act 2010*
16
- 17 (3) In the Glossary clause 1 in the definition of ***commencement***
18 ***date*** paragraph (b) delete “building licence for the construction or
19 refurbishment is issued under Part XV of the *Local Government*
20 *(Miscellaneous Provisions) Act 1960*,” and insert:
21
22 building permit for the work is granted under the
23 *Building Act 2010*;
24
- 25 **165. *Liquor Control Act 1988* amended**
- 26 (1) This section amends the *Liquor Control Act 1988*.

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- 1 (2) In section 39(2)(a)(iv) delete “*Local Government*
2 *(Miscellaneous Provisions) Act 1960*,” and insert:
3
4 *Building Act 2010*;
5
6 (3) In section 69(8)(c) delete “*Local Government (Miscellaneous*
7 *Provisions) Act 1960*,” and insert:
8
9 *Building Act 2010*,
10
11 **166. *Local Government Act 1995* amended**
12 (1) This section amends the *Local Government Act 1995*.
13 (2) After section 3.5(3) insert:
14
15 (4A) Nothing in the *Building Act 2010* prevents a local
16 government from making local laws under this Act
17 about building work, demolition work, a standard for
18 the construction or demolition of buildings or
19 incidental structures, or the use and maintenance of,
20 and requirements in relation to, existing buildings or
21 incidental structures, as those terms are defined in
22 section 3 of that Act.
23
24 (3) In section 9.61:
25 (a) in paragraph (f) delete “recovered.” and insert:
26
27 recovered;
28
29 (b) after paragraph (f) insert:
30
31 (g) contain provisions that are necessary or
32 convenient for dealing with matters concerning

the transition from the *Local Government (Miscellaneous Provisions) Act 1960* sections 375, 377, 378, 379 and 380, before they were deleted by the *Building Act 2010* section 153(2), to the provisions of this Act, including the regulations.

167. Perry Lakes Redevelopment Act 2005 amended

- (1) This section amends the *Perry Lakes Redevelopment Act 2005*.
- (2) In section 16(1) delete the definition of ***building local laws*** and insert:

building local laws means any of the following —

- (a) local laws made under the *Local Government (Miscellaneous Provisions) Act 1960* section 433 (deleted by the *Building Act 2010* section 153(2));
- (b) local laws made under the *Local Government Act 1995* about matters mentioned in section 3.5(4A) of that Act.

168. Planning and Development Act 2005 amended

- (1) This section amends the *Planning and Development Act 2005*.
- (2) In section 129(1)(a) and (2)(a) delete “1960 or any written law for which the latter Act is in substitution; and” (each occurrence) and insert:

1960; and

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1 (3) In section 131(1) delete “section 433A of the *Local Government*
2 *(Miscellaneous Provisions) Act 1960*, the local planning
3 scheme” and insert:

4
5 the *Building Act 2010*, the regulation
6

7 (4) In section 131(2):

8 (a) delete “not”;

9 (b) delete “section 433A of the *Local Government*
10 *(Miscellaneous Provisions) Act 1960*.” and insert:

11
12 the *Building Act 2010*.
13

14 Note: The heading to amended s. 131 is to read:

15 **Building standards etc. to prevail**

16 (5) In section 136(3) in the definition of **land** paragraph (a) delete
17 “or under an Act repealed by that Act, or a building licence to
18 construct the building is in force under that section; and” and
19 insert:

20
21 (deleted by the *Building Act 2010*
22 section 153(2)) or a building permit granted
23 under the *Building Act 2010*, or a building
24 permit, occupancy permit or building
25 approval certificate is in effect under the
26 *Building Act 2010* in respect of the building;
27 and
28

29 **169. Port Authorities Act 1999 amended**

30 (1) This section amends the *Port Authorities Act 1999*.

- 1 (2) In section 38(1) delete the definitions of:
2 *Building Code*
3 *performance requirements*
4 *responsible Minister*
- 5 (3) In section 38(1) in the definition of *port authority* delete
6 “section 35(2);” and insert:
7
8 section 35(2).
- 9
10 (4) Delete section 38(2) and insert:
11
12 (2) For the purposes of port works and port facilities, the
13 *Planning and Development Act 2005* section 6 applies
14 to a port authority as if it were an agency of the Crown
15 in right of the State.
16
- 17 (5) In section 38(3) delete “subsection (2)(a).” and insert:
18
19 subsection (2).
- 20
21 (6) Delete section 38(4) and (5).
- 22 (7) In section 38(6) delete “or building”.
- 23 (8) In section 38(7) delete “responsible Minister,” and insert:
24
25 Minister administering the *Planning and Development*
26 *Act 2005*,
27
- 28 **170. *Public Works Act 1902* amended**
- 29 (1) This section amends the *Public Works Act 1902*.

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1 (2) Delete section 114.

2 **171. *Retirement Villages Act 1992* amended**

3 (1) This section amends the *Retirement Villages Act 1992*.

4 (2) In section 15(5)(b) after “1960,” insert:

5

6 or for which a building permit was granted
7 under the *Building Act 2010*,
8

9 **172. *Rottnest Island Authority Act 1987* amended**

10 (1) This section amends the *Rottnest Island Authority Act 1987*.

11 (2) Delete section 44.

12 **173. *Soil and Land Conservation Act 1945* amended**

13 (1) This section amends the *Soil and Land Conservation Act 1945*.

14 (2) In the Schedule delete “*Local Government (Miscellaneous*
15 *Provisions) Act 1960*” and insert:

16

17 *Building Act 2010*
18

19 **174. *Strata Titles Act 1985* amended**

20 (1) This section amends the *Strata Titles Act 1985*.

21 (2) In section 5B(2) delete “by a certificate given by the local
22 government in accordance with section 23.” and insert:

23

24 by —

25 (a) an occupancy permit granted under an
26 application mentioned in the *Building Act 2010*
27 section 50(1)(a); or

- 1 (b) a building approval certificate granted under an
2 application mentioned in the *Building Act 2010*
3 section 50(1)(b).
4
- 5 (3) In section 8A(f) delete “by a certificate given by the local
6 government containing, subject to appropriate and necessary
7 modifications, the same particulars as are required by section 23
8 and the local government shall not issue a certificate for the
9 purposes of this paragraph unless satisfied, subject to
10 appropriate and necessary modifications, in respect of the
11 matters referred to in section 23(2);” and insert:
12
- 13 by —
- 14 (i) an occupancy permit granted under an
15 application mentioned in the *Building*
16 *Act 2010* section 50(2)(a); or
17 (ii) a building approval certificate granted
18 under an application mentioned in the
19 *Building Act 2010* section 50(2)(b);
20
- 21 (4) In section 21R(1)(a) after “subject of” insert:
22
- 23 a building permit under the *Building Act 2010* or
24
- 25 (5) In section 21U(2):
26 (a) in paragraph (a) after “subject of” insert:
27
- 28 a building permit under the *Building Act 2010* or
29
- 30 (b) at the end of paragraphs (a) and (b) insert:
31
- 32 and
33

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Division 2 Other Acts amended

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- 1 (6) Delete section 23.
- 2 (7) Delete section 24(1).
- 3 (8) In section 24(2) delete “satisfied that the proposed development
4 will not be contrary to any of the requirements referred to in
5 section 23(2)(a), (b) and (c).” and insert:
6
- 7 satisfied, in relation to the proposed development,
8 that —
- 9 (a) separate occupation of the proposed lots will
10 not contravene the provisions of any local
11 planning scheme in force under the *Planning*
12 *and Development Act 2005*; and
- 13 (b) any consent or approval required under any
14 such local planning scheme or under the
15 provisions of the last-mentioned Act relating to
16 any interim development order, has been given
17 in relation to the separate occupation of the
18 proposed lots; and
- 19 (c) the development of the parcel as a whole, the
20 building and the proposed subdivision of the
21 parcel into lots for separate occupation will not
22 interfere with the existing or likely future
23 amenity of the neighbourhood, having regard to
24 the circumstances of the case and to the public
25 interest.
26
- 27 (9) Delete section 24(7) and (8).
- 28 (10) In section 26(1):
29 (a) delete paragraphs (a) to (i);

(b) in paragraph (j) delete “a proposed development will not be contrary to any of the matters referred to in section 23(2)(a), (b) and (c);” and insert:

the local government is satisfied as to the matters referred to in section 24(2)(a), (b) and (c) in relation to a proposed development;

(c) delete paragraph (l).

(11) In section 26(5)(a) delete “(1)(c), (e), (f), (g), (j), (k), (l)(ii),” and insert:

(1)(j), (k),

(12) After section 132 insert:

Part VIII — Transitional provisions for amendments made to this Act

Division 1 — Transitional provisions arising from certain amendments made by the *Building Act 2010*

133. Terms used

In this Division —

amendments means the amendments made by the *Building Act 2010* section 174;

commencement day means the day on which the *Building Act 2010* section 174 comes into operation.

- 1 **134. Certificates of local government required by**
2 **s. 5B(2)**
- 3 A strata plan that was lodged for registration, but not
4 registered, before commencement day must be dealt
5 with as if the amendments had not been made.
- 6 **135. Certificates of local government required by s. 8A(f)**
- 7 An application to register a plan of re-subdivision of a
8 lot in a strata scheme that was started, but not finalised,
9 before commencement day must be dealt with as if the
10 amendments had not been made.
- 11 **136. Applications for certificates of local government**
12 **and review of related decisions**
- 13 (1) In this section —
14 *application* means an application as defined in
15 section 26(1) as in force immediately before
16 commencement day.
- 17 (2) An application that was started, but not finalised,
18 before commencement day must be dealt with as if the
19 amendments had not been made.
- 20 (3) A review under section 26 of an application mentioned
21 in subsection (2) must be dealt with as if the
22 amendments had not been made.
- 23 (4) A review under section 26 that was started, but not
24 finalised, before commencement day must be dealt
25 with as if the amendments had not been made.
- 26 (5) If a certificate that had been required by section 5B(2)
27 and 8A(f) before the amendments is given by a local
28 government as a consequence of —
29 (a) an application mentioned in subsection (2); or

1 (b) a review mentioned in subsection (3) or (4),
2 sections 5B(2) and 8A(f) are to be read as if that
3 particular certificate must accompany the plan.
4

5 **175. *Water Agencies (Powers) Act 1984* amended**

6 (1) This section amends the *Water Agencies (Powers) Act 1984*.

7 (2) In section 65(1) in the definition of ***planning condition***
8 paragraph (b) delete “Part XV of the *Local Government*
9 *(Miscellaneous Provisions) Act 1960* to the granting of a
10 building licence;” and insert:
11

12 the *Building Act 2010* to the granting of a building permit;
13

14 (3) In section 67(4) delete “Part XV of the *Local Government*
15 *(Miscellaneous Provisions) Act 1960* for the grant of a building
16 licence” and insert:
17

18 the *Building Act 2010* for the grant of a building permit
19

20 (4) In section 67(7):

21 (a) delete “licence being issued” and insert —
22

23 permit being granted
24

25 (b) delete “licence not issued or the proposal” and insert:
26

27 permit is not granted or the proposal is
28

- 1 **Part 16 — Transitional provisions**
- 2 **Division 1 — Transitional provisions arising from the**
- 3 **enactment of the *Building Act 2010***
- 4 **176. Terms used**
- 5 In this Division —
- 6 ***commencement day*** means the day on which section 153(2)
- 7 comes into operation;
- 8 ***former provisions***, means the *Local Government*
- 9 (*Miscellaneous Provisions*) *Act 1960* as in force before
- 10 commencement day.
- 11 **177. Interpretation Act 1984 not affected**
- 12 Except where the contrary intention appears, the provisions of
- 13 this Division do not prejudice or affect the application of the
- 14 *Interpretation Act 1984* to and in relation to the repeals effected
- 15 by section 153(2).
- 16 **178. Building licences, pending applications, reviews**
- 17 (1) In this section —
- 18 ***building licence*** means a building licence under section 374(1)
- 19 of the former provisions.
- 20 (2) A building licence that was in effect immediately before
- 21 commencement day is, on and from commencement day, to be
- 22 taken to be a building permit on the conditions applying to the
- 23 building licence immediately before commencement day.
- 24 (3) Despite section 32 a building licence that, under subsection (2),
- 25 is to be taken to be a building permit, is of no effect if the
- 26 building work to which it applies is not substantially
- 27 commenced within 12 months of the date of its issue or review,
- 28 or such longer period that the permit authority approves on an
- 29 application under section 32.

- 1 (4) An application for a building licence that had been made, but
2 not decided by the local government, before commencement
3 day is, on and from commencement day, to be taken to be an
4 application for a building permit under section 14 for which the
5 fee mentioned in section 16(l) has been paid.
- 6 (5) A review under section 374AAD(1)(a) or (b) of the former
7 provisions that was started, but not finalised, before
8 commencement day must be dealt with as if the former
9 provisions had not been amended by Part 15 Division 1, and a
10 building licence that is issued or varied as a result of such a
11 review is to be taken to be a building permit on the conditions
12 applying to the building licence on its issue or variation.
- 13 **179. Demolition licences, pending applications, reviews**
- 14 (1) In this section —
15 *demolition licence* means a licence under section 374A(1) of
16 the former provisions.
- 17 (2) A demolition licence that was in effect immediately before
18 commencement day is, on and from commencement day, to be
19 taken to be a demolition permit on the conditions applying to
20 the demolition licence immediately before commencement day.
- 21 (3) Despite section 32 a demolition licence that, under
22 subsection (2), is to be taken to be a demolition permit, is of no
23 effect if the demolition work to which it applies is not
24 commenced within 12 months of the date of its issue or review
25 or such longer period that the permit authority approves on an
26 application under section 32.
- 27 (4) An application for a demolition licence that had been made, but
28 not decided by the local government, before commencement
29 day is, on and from commencement day, to be taken to be an
30 application for a demolition permit under section 15 for which
31 the fee mentioned in section 16(l) has been paid.
- 32 (5) A review under section 374A(3) of the former provisions that
33 was started, but not finalised, before commencement day must

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

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

8 (1) In this section —

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

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

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

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

- 1 **181. Certificates of classification, pending notifications of change**
2 **of use**
- 3 (1) In this section —
- 4 **regulation**, with a designation, means the regulation of that
5 designation in the *Building Regulations 1989* as in force before
6 commencement day.
- 7 (2) A certificate of classification issued under regulation 20(1)(a)
8 (for a completed building) that was in effect immediately before
9 commencement day is, on and from commencement day, to be
10 taken to be an occupancy permit granted on an application
11 mentioned in section 46 on the conditions applying to the
12 certificate of classification immediately before commencement
13 day.
- 14 (3) A certificate of classification issued under regulation 20(1)(b)
15 (for an incomplete building) that was in effect immediately
16 before commencement day is, on and from commencement day,
17 to be taken to be an occupancy permit granted on an application
18 mentioned in section 47 on the conditions applying to the
19 certificate of classification immediately before commencement
20 day.
- 21 (4) If notification of a proposed change of use of a building had
22 been given under regulation 22(3) but a new certificate of
23 classification had not been issued before commencement day
24 the notification is, on and from commencement day, to be taken
25 to be an application for a replacement occupancy permit under
26 section 49 for which the fee mentioned in section 54(4)(d) has
27 been paid.
- 28 **182. Hoardings etc. in public places**
- 29 Despite the *Interpretation Act 1984* section 37(1), on or after
30 commencement day materials, matters and things removed by a
31 local government under section 378(1) of the former provisions
32 cannot be sold under section 378(2) of the former provisions

1 unless an agreement for the sale of the materials, matter or
2 things had been made before commencement day.

3 **183. Building party walls**

4 (1) In this section —

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

8 (2) A party wall building consent that was given before
9 commencement day is, on and from commencement day, to be
10 taken to be consent for the purposes of sections 76(1)(a)
11 and 81(2)(a).

12 (3) If, before commencement day, an adjoining owner gave party
13 wall building consent, the building owner must bear or pay the
14 expense of building the party wall, and from time to time, as
15 and when the adjoining owner makes use of the wall, the
16 adjoining owner must pay to the building owner such portion of
17 that expense as is proportionate to the use which the adjoining
18 owner makes of the wall.

19 (4) Where the adjoining owner is liable to contribute to the
20 expenses of building a party wall, until the contribution is paid,
21 the building owner at whose expense it was built stands
22 possessed of the sole property in the structure.

23 (5) The adjoining owner is liable for expenses incurred by the
24 building owner on the adjoining owner's requisition under
25 section 386 of the former provisions, and if the adjoining owner
26 does not pay them, the building owner may recover the amount
27 of the expenses from the adjoining owner in a court of
28 competent jurisdiction.

1 **184. Work on existing party walls**

2 (1) In this section —

3 *party wall work consent* means —

4 (a) a consent in writing of the adjoining owner as
5 mentioned in section 387(1) of the former provisions; or

6 (b) the expression of the adjoining owner's agreement to
7 comply with the requirements of a party wall notice
8 given under section 387(1) of the former provisions,

9 that was given or made during the period of 6 months before
10 commencement day.

11 (2) A party wall work consent is, on and from commencement day,
12 to be taken to be a consent for the purposes of sections 79(1)(a)
13 and 81(2)(a) given on condition that the building owner
14 complies with any requisition made under section 386 of the
15 former provisions to the extent that compliance was required
16 under that section 386.

17 (3) Despite the *Interpretation Act 1984* section 37(1), sections 393,
18 394 and 395 of the former provisions do not apply in relation to
19 work completed on or after commencement day, in which case
20 sections 89 and 90 apply.

21 **185. Underpinning**

22 (1) In this section —

23 *underpinning consent* means —

24 (a) a consent in writing of the adjoining owner in response
25 to a notice under section 391(2) of the former
26 provisions; or

27 (b) the requirement of the adjoining owner to underpin or
28 strengthen the foundations of the adjoining owner's
29 building as set out in a counter notice under
30 section 391(3) of the former provisions.

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1 (2) An underpinning consent that was given before commencement
2 day is, on and from commencement day, to be taken to be
3 consent for the purposes of sections 76(1)(a), 78(1)(a)
4 and 81(2)(a).

5 (3) Despite the *Interpretation Act 1984* section 37(1),
6 sections 391(4) and (5) and 397 of the former provisions do not
7 apply in relation to work completed on or after commencement
8 day, in which case sections 90(b) and 91 apply respectively.

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

11 (1) Despite the *Interpretation Act 1984* section 37(1), on or after
12 commencement day no application may be made under
13 section 389 of the former provisions for a determination in
14 relation to a difference between a building owner and an
15 adjoining owner.

16 (2) However, the *Interpretation Act 1984* section 37(1) applies to
17 such an application that had been made, but not decided by the
18 State Administrative Tribunal, before commencement day.

19 (3) A decision of the State Administrative Tribunal on an
20 application mentioned in subsection (2) is to be taken to be an
21 order for the purposes of such of section 76(1)(b), 78(1)(b),
22 79(1)(b) or 81(2)(b), as is relevant to the case.

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

24 (1) Despite the *Interpretation Act 1984* section 37(1), on or after
25 commencement day no application may be made under
26 section 392(1) or (2) of the former provisions for a
27 determination in relation to a difference between a building
28 owner and an adjoining owner.

29 (2) However, the *Interpretation Act 1984* section 37(1) applies to
30 such an application that had been made, but not decided by the
31 State Administrative Tribunal, before commencement day.

- 1 (3) Despite the *Interpretation Act 1984* section 37(1), on or after
2 commencement day section 392(3) of the former provisions
3 does not operate to affect a party wall requisition even if
4 security is not given on a counter requisition.

5 **188. Inflammable materials**

- 6 (1) A notice under section 399(2) of the former provisions that was
7 served on the owner or the occupier of a building before
8 commencement day is, on and from commencement day, to be
9 taken to be a copy of a building order served on those persons.
- 10 (2) Section 111 does not apply to a notice taken to be a building
11 order under subsection (1).
- 12 (3) Despite the *Interpretation Act 1984* section 37(1), on or after
13 commencement day the Magistrates Court, in proceedings under
14 section 399(3) of the former provisions, is not to make an order
15 that authorises a local government to do any of the things set out
16 in that section, in which case section 118 applies.
- 17 (4) It is a defence to a charge under section 9 for the accused to
18 prove that the building work that is the subject of the alleged
19 offence was authorised by —
- 20 (a) a licence under section 399(4)(a) of the former
21 provisions; or
- 22 (b) a consent under section 399(4)(b) of the former
23 provisions; or
- 24 (c) an order made on a review mentioned in section 399(5)
25 of the former provisions.

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

- 27 (1) In this section —
- 28 **encroachment permission** means permission of a local
29 government given under section 400(1)(a), (1b) or (2) of the
30 former provisions.
- 31 (2) Encroachment permission given before commencement day is,
32 on and from commencement day, to be taken to be consent for

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- 1 the purposes of section 76(1)(a) given on each condition to
2 which the permission was made subject when the permission
3 was granted.
- 4 (3) An application for encroachment permission that had been
5 made, but not decided by the local government, before
6 commencement day has no effect on and after commencement
7 day.
- 8 (4) Despite the *Interpretation Act 1984* section 37(1) if,
9 immediately before commencement day —
- 10 (a) a notice under section 400(3) of the former provisions
11 was in effect; but
- 12 (b) there was not in effect a warrant granted by the
13 Magistrates Court under section 400(3) of the former
14 provisions,
- 15 then on and from commencement day the notice is to be taken
16 to be a building order as if the reference in section 112(2)(c) to a
17 contravention of this Act were a reference to a contravention of
18 section 400 of the former provisions.
- 19 (5) However, the *Interpretation Act 1984* section 37(1) applies if
20 the Magistrates Court had granted a warrant under
21 section 400(3) of the former provisions before commencement
22 day except that in section 400(3) of the former provisions the
23 passage that begins with “and the local government, by its
24 agents” and ends with “jurisdiction,” does not apply in relation
25 to a warrant or order made under section 400(3) of the former
26 provisions on or after commencement day, in which case
27 section 118 applies.
- 28 (6) If, before commencement day there had been a contravention of
29 section 400 of the former provisions but no notice had been
30 given under section 400(3) of the former provisions, a building
31 order may be issued on or after commencement day in respect
32 of the contravention as if the reference in section 112(2)(c) to a
33 contravention of this Act were a reference to a contravention of
34 section 400 of the former provisions.

1 **190. Notices of required alterations**

- 2 (1) A notice under section 401(1) of the former provisions that was
3 given to a person before commencement day is, on and from
4 commencement day, to be taken to be a copy of a building order
5 served on that person.
- 6 (2) Section 111 does not apply to a notice taken to be a building
7 order under subsection (1).
- 8 (3) A review under section 401(3) of the former provisions that was
9 started, but not finalised, before commencement day must be
10 dealt with as if the former provisions had not been amended by
11 Part 15 Division 1, and if the decision to make the requisition is
12 affirmed or varied on the review —
- 13 (a) the notice is to be taken to be a building order on the
14 terms applying to the requisition or the requisition on its
15 variation; and
- 16 (b) section 118 applies in relation to non-compliance with
17 an order made on the review.
- 18 (4) Section 115 does not apply to a notice taken to be a building
19 order under subsection (1) —
- 20 (a) if no application for review was made before
21 commencement day, until 35 days have elapsed since
22 the notice was served; or
- 23 (b) if an application for review is made before
24 commencement day, until 14 days have elapsed since
25 the review was finalised.
- 26 (5) A notice under section 401(4) of the former provisions that was
27 served on a local government before commencement day is, on
28 and from commencement day, to be taken to be notification for
29 the purposes of section 112(3)(c).
- 30 (6) An application under section 401(7) of the former provisions
31 that was started, but not finalised, before commencement day
32 must be dealt with as if the former provisions had not been
33 amended by Part 15 Division 1.

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- 1 (7) Despite the *Interpretation Act 1984* section 37(1),
2 section 401(8) of the former provisions does not apply in
3 relation to an order made under section 401(7) of the former
4 provisions on or after commencement day, in which case
5 section 118 applies.

6 **191. Notices to stop unlawful work**

- 7 (1) In this section —
8 **notice** means a notice under section 401A(1) of the former
9 provisions.
- 10 (2) A notice that was served, or deemed to have been served, on a
11 builder before commencement day is, on and from
12 commencement day, to be taken to be a copy of a building order
13 served on that person.
- 14 (3) Section 111 does not apply to a notice taken to be a building
15 order under subsection (2).
- 16 (4) The local government that served the notice must, as soon as
17 practicable after commencement day, cause a copy of the notice
18 to be served on an owner of the land on which is located the
19 building that is the subject of the notice if —
20 (a) the person on whom the notice was served is not an
21 owner of the land; and
22 (b) section 401A(3) was not complied with before
23 commencement day.
- 24 (5) A review under section 401A(6) of the former provisions that
25 was started, but not finalised, before commencement day must
26 be dealt with as if the former provisions had not been amended
27 by Part 15 Division 1, and if the notice is affirmed or varied on
28 the review —
29 (a) the notice as affirmed or varied is to be taken to be a
30 building order; and
31 (b) section 118 applies in relation to non-compliance with
32 an order made on the review.

1 **192. Dangerous buildings**

2 (1) In this section —

3 **notice** means a notice under section 403(4) of the former
4 provisions.

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

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

11 (4) A review under section 403(6) of the former provisions that was
12 started, but not finalised, before commencement day must be
13 dealt with as if the former provisions had not been amended by
14 Part 15 Division 1, and if the decision to make the requisition is
15 affirmed or varied on the review —

16 (a) the notice is to be taken to be a building order on the
17 terms applying to the requisition or the requisition on its
18 variation; and

19 (b) section 118 applies in relation to non-compliance with
20 an order made on the review.

21 (5) An application under section 404 of the former provisions that
22 was started, but not finalised, before commencement day must
23 be dealt with as if the former provisions had not been amended
24 by Part 15 Division 1.

25 (6) Despite the *Interpretation Act 1984* section 37(1) —

26 (a) in section 404 of the former provisions the passage “and
27 if the order is not complied with by the person to whom
28 it is directed, within the time so fixed, the local
29 government may cause the building, or so much of it as
30 is in a dangerous condition, to be taken down, repaired
31 or otherwise secured in such manner as is necessary,”;
32 and

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- 1 (b) section 405(1) of the former provisions,
2 do not apply in relation to an order made under section 404 of
3 the former provisions on or after commencement day, in which
4 case section 118 applies.
- 5 (7) Despite the *Interpretation Act 1984* section 37(1), on or after
6 commencement day a building cannot be sold under
7 section 405(2) of the former provisions unless an agreement for
8 the sale of the building had been made before commencement
9 day.
- 10 **193. Neglected buildings**
- 11 (1) In this section —
12 **notice** means a notice under section 408(1) of the former
13 provisions.
- 14 (2) A notice that was served on the owner and the occupier of a
15 building before commencement day is, on and from
16 commencement day, to be taken to be a copy of a building order
17 served on those persons.
- 18 (3) Section 111 does not apply to a notice taken to be a building
19 order under subsection (2).
- 20 (4) A review under section 408(3) of the former provisions that was
21 started, but not finalised, before commencement day must be
22 dealt with as if the former provisions had not been amended by
23 Part 15 Division 1, and if the decision to make the requisition is
24 affirmed or varied on the review —
- 25 (a) the notice is to be taken to be a building order on the
26 terms applying to the requisition or the requisition on its
27 variation; and
- 28 (b) section 118 applies in relation to non-compliance with
29 an order made on the review.
- 30 (5) An application under section 408(4) of the former provisions
31 that was started, but not finalised, before commencement day

1 must be dealt with as if the former provisions had not been
2 amended by Part 15 Division 1.

3 (6) Despite the *Interpretation Act 1984* section 37(1),
4 section 408(5) to (8) of the former provisions do not apply in
5 relation to an order made under section 408(4) of the former
6 provisions on or after commencement day, in which case
7 section 118 applies.

8 **194. Dilapidated buildings**

9 (1) In this section —

10 **notice** means a notice under section 409(1) of the former
11 provisions.

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

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

18 (4) A review under section 409(3) of the former provisions that was
19 started, but not finalised, before commencement day must be
20 dealt with as if the former provisions had not been amended by
21 Part 15 Division 1, and if the decision to make the requisition is
22 affirmed or varied on the review —

23 (a) the notice is to be taken to be a building order on the
24 terms applying to the requisition or the requisition on its
25 variation; and

26 (b) section 118 applies in relation to non-compliance with
27 an order made on the review.

28 (5) An application under section 409(4) of the former provisions
29 that was started, but not finalised, before commencement day
30 must be dealt with as if the former provisions had not been
31 amended by Part 15 Division 1.

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- 1 (6) Despite the *Interpretation Act 1984* section 37(1) —
- 2 (a) in section 409(4) of the former provisions the passage
- 3 “and if the order is not complied with by the owner or
- 4 occupier to whom it is directed within the time so fixed
- 5 the local government may do what he is directed by the
- 6 order to do,”; and
- 7 (b) section 409(5) of the former provisions,
- 8 do not apply in relation to an order made under section 409(4)
- 9 of the former provisions on or after commencement day, in
- 10 which case section 118 applies.
- 11 (7) Despite the *Interpretation Act 1984* section 37(1), on or after
- 12 commencement day a building cannot be sold under
- 13 section 409(6) of the former provisions unless an agreement for
- 14 the sale of the building had been made before commencement
- 15 day.
- 16 **195. Uncompleted buildings**
- 17 (1) In this section —
- 18 **order** means an order under section 409A(2)(a) of the former
- 19 provisions.
- 20 (2) An order that was served on an owner of a building before
- 21 commencement day is, on and from commencement day, to be
- 22 taken to be a copy of a building order served on that person.
- 23 (3) Section 111 does not apply to an order taken to be a building
- 24 order under subsection (2).
- 25 (4) Despite the *Interpretation Act 1984* section 37(1),
- 26 section 409A(2)(b) of the former provisions does not apply in
- 27 relation to an order on or after commencement day, in which
- 28 case section 118 applies.
- 29 (5) A review under section 409A(3) of the former provisions that
- 30 was started, but not finalised, before commencement day must
- 31 be dealt with as if the former provisions had not been amended

- 1 by Part 15 Division 1, and if the decision to make the order is
2 affirmed or varied on the review —
- 3 (a) the order is to be taken to be a building order on the
4 terms applying to the order or the order on its variation;
5 and
- 6 (b) section 118 applies in relation to non-compliance with
7 an order made on the review.
- 8 **196. Orders prohibiting building on land until payments made**
9 Despite the *Interpretation Act 1984* section 37(1), on or after
10 commencement day the Magistrates Court, on an application
11 under section 410(1) of the former provisions, is not to make an
12 order that prevents a person building upon land.
- 13 **197. Agreements for repayment of costs, postponement of**
14 **payment of costs**
- 15 (1) Despite the *Interpretation Act 1984* section 37(1),
16 section 410A(4) and (5) of the former provisions do not apply in
17 relation to —
- 18 (a) any amount that, on commencement day, is owing under
19 an agreement under section 410A(2) of the former
20 provisions; or
- 21 (b) any amount of costs the payment of which has been
22 postponed under section 410A(3) of the former
23 provisions that remains unpaid on commencement day,
- 24 in which case the *Local Government Act 1995* Part 6 Division 6
25 Subdivisions 5 and 6 apply as if the unpaid amount were unpaid
26 rates.
- 27 (2) An action to recover an amount of costs mentioned in
28 subsection (1)(b) may be commenced at any time.

1 **198. Action after conviction**

2 (1) In this section —

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

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

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

11 (4) A review under section 411(3) of the former provisions that was
12 started, but not finalised, before commencement day must be
13 dealt with as if the former provisions had not been amended by
14 Part 15 Division 1, and if the decision to make the requisition is
15 affirmed or varied on the review —

16 (a) the notice is to be taken to be a building order on the
17 terms applying to the requisition or the requisition on its
18 variation; and

19 (b) section 118 applies in relation to non-compliance with
20 an order made on the review.

21 (5) Despite the *Interpretation Act 1984* section 37(1), on or after
22 commencement day the Magistrates Court, on an application
23 under section 411(4) of the former provisions, is not to make an
24 order that authorises a local government to do any of the things
25 set out in that subsection, in which case section 118 applies.

26 (6) If a person was convicted of an offence as mentioned in
27 section 411(1) of the former provisions but no notice had been
28 served before commencement day under section 411(2) of the
29 former provisions, a building order may be issued on or after
30 commencement day in respect of the contravention as if the
31 reference in section 112(2)(c) to a contravention of this Act
32 were a reference to a contravention of the former provisions.

- 1 (7) Despite the *Interpretation Act 1984* section 37(1), on and from
2 commencement day no memorial is to be registered and no
3 endorsement or notation on the title is to be made under
4 section 412A(1) of the former provisions.

5 **199. Fire escapes**

- 6 (1) In this section —
7 **notice** means a notice under section 413(1) of the former
8 provisions.
- 9 (2) A notice that was served on the owner of a building before
10 commencement day is, on and from commencement day, to be
11 taken to be a copy of a building order served on that person.
- 12 (3) Section 111 does not apply to a notice taken to be a building
13 order under subsection (2).
- 14 (4) A review under section 413(3) of the former provisions that was
15 started, but not finalised, before commencement day must be
16 dealt with as if the former provisions had not been amended by
17 Part 15 Division 1, and if the decision to make the requisition is
18 affirmed or varied on the review —
- 19 (a) the notice is to be taken to be a building order on the
20 terms applying to the requisition or the requisition on its
21 variation; and
- 22 (b) section 118 applies in relation to non-compliance with
23 an order made on the review.
- 24 (5) Section 115 does not apply to a notice taken to be a building
25 order under subsection (2) —
- 26 (a) if no application for review was made before
27 commencement day, until 12 months have elapsed since
28 the notice was served; or
- 29 (b) if an application for review is made before
30 commencement day, until 12 months have elapsed since
31 the review was finalised.

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- 1 (6) Despite the *Interpretation Act 1984* section 37(1),
2 section 413(4) of the former provisions does not apply in
3 relation to the installation or erection of fire escapes on or after
4 commencement day.

5 **200. Public buildings**

- 6 (1) In this section —
7 **notice** means a notice under section 415(1) of the former
8 provisions.
9 (2) A notice that was served on the owner or occupier of a public
10 building before commencement day is, on and from
11 commencement day, to be taken to be a copy of a building order
12 served on that person.
13 (3) Section 111 does not apply to a notice taken to be a building
14 order under subsection (2).
15 (4) Despite the *Interpretation Act 1984* section 37(1) if,
16 immediately before commencement day a copy of a notice had
17 not been published under section 415(3) of the former
18 provisions, it is not necessary to publish the notice on or after
19 commencement day.

20 **201. Removal of inflammable buildings**

- 21 (1) In this section —
22 **notice** means a notice under section 417(1) of the former
23 provisions.
24 (2) A notice a copy of which was published under section 417(2) of
25 the former provisions before commencement day is, on and
26 from commencement day, to be taken to be a copy of a building
27 order served on each owner and occupier of the building that is
28 the subject of the notice.
29 (3) Section 111 does not apply to a notice taken to be a building
30 order under subsection (2).

- 1 (4) A review under section 417(3) of the former provisions that was
2 started, but not finalised, before commencement day must be
3 dealt with as if the former provisions had not been amended by
4 Part 15 Division 1, and if the decision to make the requisition is
5 affirmed or varied on the review —
- 6 (a) the notice is to be taken to be a building order on the
7 terms applying to the requisition or the requisition on its
8 variation; and
- 9 (b) section 118 applies in relation to non-compliance with
10 an order made on the review.
- 11 (5) Despite the *Interpretation Act 1984* section 37(1), on or after
12 commencement day the Magistrates Court, on an application
13 under section 418 of the former provisions, is not to make an
14 order that authorises a local government to do any of the things
15 set out in that section, in which case section 118 applies.
- 16 (6) If a building is removed after commencement day the persons
17 entitled are to be paid by the local government that served the
18 notice the compensation agreed, or in the absence of agreement,
19 the compensation stated in the notice or determined following a
20 review mentioned in subsection (4), and if it is not paid by the
21 local government, they may recover the amount of the
22 compensation and costs from the local government in a court of
23 competent jurisdiction.

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

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

30 **203. Regulations for transitional matters**

31 The regulations may contain provisions that are necessary or
32 convenient for dealing with matters concerning the transition
33 from the provisions of any written law applying before

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1 commencement day to the provisions of this Act, including
2 regulations made under this Act, applying after commencement
3 day.

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

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