

EXPLANATORY MEMORANDUM

BUILDING BILL 2010

INTRODUCTION

The *Building Bill 2010* (the Bill) sets out the process for setting building standards and ensuring these standards are met through a system of certifying compliance, granting building, demolition and occupancy permits, inspecting building work and reporting on maintenance of essential services in buildings. It also regulates work affecting other land and standards that apply to existing buildings, and provides for enforcement of standards and processes by permit authorities.

Local government remains the permit authority for most buildings under the Bill. However, the State is also made a permit authority with jurisdiction across Western Australia. Provision is made for permit authorities that may need to become special permit authorities where necessary under the Bill.

The Bill replaces Parts VII, IX and XV of the *Local Government (Miscellaneous Provisions) Act 1960* that deal with:

- private swimming pool safety barriers;
- smoke alarm installation into existing dwellings;
- the setting of building standards;
- licences for the erection, modification or demolition of buildings and other structures;
- enforcement of building control;
- the accreditation of building surveyors; and
- the *Building Regulations 1989*.

The Bill consolidates the framework for prescribing design, construction and maintenance standards, approving building proposals, and certifying compliance with the relevant building standards and codes in the interests of community safety and health.

Abbreviations list

BCA.....	Building Code of Australia
BCITF.....	<i>Building Construction Industry Training Fund</i>
BCITF Act.....	<i>Building Construction Industry Training Fund and Levy Collection Act 1990 (WA)</i>
Board.....	Building Services Board
BR Act.....	<i>Builders' Registration Act 1939 (WA)</i>
Building Regulations.....	<i>Building Regulations 1989 (WA)</i>
CRA Bill.....	<i>Complaint Resolution and Administration Bill 2010</i>
FESA.....	Fire and Emergency Services Authority
HBC Act.....	<i>Home Building Contracts Act 1991 (WA)</i>
Heritage Act.....	<i>Heritage of Western Australia Act 1990 (WA)</i>
Interpretation Act.....	<i>Interpretation Act 1984 (WA)</i>
Levy.....	<i>Building Services Levy</i>
Levy Bill.....	<i>Building Services Levy Bill 2010</i>
Local Government Act.....	<i>Local Government Act 1995 (WA)</i>
Miscellaneous Provisions Act.....	<i>Local Government Miscellaneous Provisions Act 1960 (WA)</i>
Planning and Development Act.....	<i>Planning and Development Act 2005 (WA)</i>
Registration Bill.....	<i>Building Services (Registration) Bill 2010</i>
Retirement Villages Act.....	<i>Retirement Villages Act 1992 (WA)</i>
SAT.....	State Administrative Tribunal
The Bill.....	<i>Building Bill 2010</i>

CLAUSE NOTES

PART 1 – PRELIMINARY

This Part formally titles the Act, provides a means for setting a commencement date(s) for the Act or specific provisions of the Act and sets out the definition of key terms used in the Act.

Long Title The long title sets out the purpose of the Bill.

Clause 1 Short title

This clause formally names the Act.

Clause 2 Commencement

Provides for sections 1 and 2 (short title and commencement) to come into effect when the Bill is passed by State Parliament and receives Royal Assent. The rest of the Act commences on a day fixed by proclamation, allowing for staged introduction of various reforms where considered desirable.

The Bill is written on the assumption that the Building Bill, the Registration Bill the CRA Bill and the Levy Bill will be simultaneously enacted.

Clause 3 Terms used

This provision defines the terms used throughout the Bill. Definitions and terms are consistent with the definitions and terms in the proposed CRA Bill and Registration Bill.

“Building” is the physical object and includes part of a building. “Building” is left to be interpreted as the ordinary or “dictionary” definition. Guidance will be available from the classification of buildings and structures in the BCA, which will be prescribed by regulations under Part 3 of this Bill and under Part 8 of the CRA Bill.

“Building standard” the regulations will specify the BCA as the primary building standard. Western Australian and other local building standards that supplement the BCA can also be specified.

“Building surveyor” regulations under clause 9(1) of the Registration Bill will provide for classes of building surveyor: National Level 1 & 2, Building Surveyor Certificate of Qualification, and Building Surveyor Technician. Regulations under the Bill will link each class of building surveyor to functions under this Bill - for example sign a certificate of design compliance under 19.

“Building work” is the process of is the process of creating a building. In general, building work requires a building permit. Regulations can be used to refine the definition to include things that should be regulated under this Bill, or alternatively, to exclude things from being regulated through this Bill. Further fine-tuning through regulations is available for building permits (9(b)) and demolition permits (10(c)).

“Demolition work” is the process of demolishing a building. In general, demolition work requires a demolition permit. Regulations can be used to refine the definition to include things that should be regulated under this Bill, or alternatively, to exclude things from being regulated through this Bill.

“Incidental structure” means a structure attached to or incidental to a building. This includes retaining walls, fences, swimming pools, decks, etc., that are not buildings, but which form part of a building project or which are used in association with a building. Typically these will require building permits when they are on lots in urban or town planning areas, but will not require building permits when they are not incidental to a building or, where the risk from failure is low (e.g. in rural and remote areas).

“Specialist” means a person who belong to a class of persons who can sign technical certificates. The regulations will prescribe practitioners registered under appropriate legislation (e.g. architects, builders, engineers, etc) for this purpose. The Registration Bill is structured to facilitate the registration of specialists where required.

“Technical certificate” ” is a certificate given by a specialist that a specific part of the building meets a specific standard.

Clause 4 Meaning of independent building surveyor

An application under Part 4 Division 2 is for an occupancy permit or building approval certificate.

Building surveyors sign certificates on applications for building, demolition or occupancy permits or building approval certificates. To ensure independent scrutiny of building proposals the building surveyor cannot be the owner or builder, or be an employee of the owner or builder.

The permit authority checks the registration and independence of building surveyors under 20(1)(e) before issuing a building permit and under 58(1)(b) or (c) before issuing an occupancy permit or building approval certificate.

Breaches of independence by building surveyors may result in disciplinary action being taken against them by the Building Services Board under Part 5 of the Registration Bill. The Building Commissioner will be provided with powers under Part 4 of the CRA Bill to investigate alleged breaches of independence and report to the Building Services Board.

Clause 5 Meaning of owner

In most cases the owner of land will be the holder of the freehold title—this will include the State of Western Australia where it is registered as the owner on a freehold title. Regulations can recognise other interests such as long term leases allowing development rights or encroachments consented to under 76.

For Crown land, the owner will be a prescribed person in the relevant government agency that administers the *Land Administration Act 1997*. Regulations will provide flexibility to prescribe other agencies with management of land under Crown land titles or other interests such as:

- long term leases, including pastoral leases; and
- interests in land held by the Aboriginal Lands Trust, or derived from native title.

5(2) lets regulations restrict the meaning of “owner” such as when a long-term lease assigns to the lessee the rights to develop and build.

Clause 6 Permit authority for a building or incidental structure

Each building has a single permit authority to issue building, occupancy and demolition permits.

In most cases, the permit authority for a building will be the local government in whose area the building is located (the “relevant local government”) unless a special permit authority (6(2)) or the State (6(1)) is appointed.

Part 10 deals with permit authorities. The State will normally act as permit authority for buildings owned, operated or controlled by the State (e.g. public schools or where the State is obliged to give approvals under a State Agreement Act. The Minister may also decide that the State is to be the permit authority at the request of a local government or for a building (e.g. circus facilities) that will be re-erected in a number of local government areas (6(1), 124).

Special Permit Authorities may be created to allow local governments to group building approval services, or where a complex facility extends over one or more local government areas (6(2), 126).

Clause 7 Which permit authority to receive application

In most cases the permit authority will be the relevant local government.

The building surveyor who is engaged to give the relevant compliance certificate will guide the building owner if a special permit authority has been established or the State might be more appropriate.

7(2) and (3) ensure that the relevant local government is advised of building activity in its area. In due course, electronic lodgement of permit applications will automate this process and allow local governments and others to search permits online.

Clause 8 Crown bound

The Crown and public authorities must comply with this Bill. This will ensure that all buildings comply with the same standards and certification processes, and that building records are kept in a uniform way. This will facilitate transfer of ownership of buildings between the State and the private sector, as well as the development of electronic approval and record-keeping systems.

PART 2 – BUILDING AND DEMOLITION PERMITS

Part 2 sets out the processes for obtaining a building or demolition permit, exemptions from the permit process, specifies the application processes, and requirements for completion of building work and inspections during construction. This Bill applies across the whole State and covers habitable buildings, non-habitable buildings and incidental structures.

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

Clause 9 No building work without a building permit

9(a) prohibits the carrying out of building work unless a building permit has first been obtained. Building work carried out under a building permit will be tied to a requirement for the work to be performed by a building service contractor registered under Part 2 of the Registration Bill. The need for a building permit and a registered building service contractor ensures that for medium or high-risk buildings, compliance with the building standards and other approvals are checked before building work commences, and that the building work is supervised by an appropriately qualified person.

This places the onus on owners, subcontractors, specialist contractors and the like to ensure that a building permit, where required, has been issued before starting work. In due course, electronic lodgement will allow for online search of building permits.

9(b) allows for exemptions under Part 5 for buildings where the risk of non-compliance is low and approval before construction is not warranted (66(2) and 69) or buildings that are regulated under other processes (clauses 70 to 74) or, where there is sound public policy reason not to require a formal approval process (67).

Clause 10 No demolition work without a demolition permit

10(a) specifies that demolition permits are required to demolish a building or part of a building. This follows the same logic as the requirement for building permits under clause 9 and also places the onus on owners, subcontractors, specialist contractors and the like to ensure that a demolition permit, where required, has been issued before starting work.

Regulations under the *Occupational Safety and Health Act 1984* require persons who do certain kinds of demolition work to be licensed under those regulations.

10(b) allows for renovation and alteration of buildings where demolition work forms part of the building process and a building permit has been issued for the work. A separate demolition permit is not required, but a licensed demolition contractor may still be required for some kinds of demolition.

10(c) allows for exemptions under Part 5 for buildings where the risk of demolition is low. A licensed demolition contractor may still be required for some kinds of demolition.

Clause 11 Defence if permit suspended

35(a) and (b) provide for suspension of building or demolition permits. This means that a person commits an offence under 9(a) and 10(a) by continuing to do work on a project where the permit has been suspended.

11 provides a defence to a charge under 9 or 10 that an alleged offender was not aware of the suspension of a building or demolition permit under 35 and could not have reasonably been expected to know of the suspension. This protects subcontractors who may inadvertently continue work on a project, not knowing that the building or demolition permit had been suspended because of an action or inaction of the builder that was not drawn to their attention.

Clause 12 Defence if emergency

12 provides a defence to a charge under 9 or 10 in the event that an alleged offender was required to undertake such emergency works to protect land, buildings or structures without the necessary consent or permit.

78(1)(c) and 79(1)(c) allow a protection structure to be built as a matter of urgency to prevent imminent collapse of, or damage to, any land including a building or structure on the land. These structures could be temporary or permanent, both of which require the consent of the affected land owner and in the case of the latter requires a building permit. This means that a person also commits an offence under 9(a) and 10(a) by continuing to do work on a project without a permit.

78(3), 79(2)(b) and 80(2)(b) require a person doing emergency work to notify the affected land owner and the permit authority as soon as possible after doing the emergency work.

Division 2 — Applications for building or demolition permits

Clause 13 Terms used

Division 2 provides consistent processes for applications. 13 defines generic terms to cover certified applications for a building permit, uncertified applications for a building permit and applications for a demolition permit.

Clause 14 Certified applications for all buildings, uncertified applications for buildings of certain classifications

An application to a permit authority may be uncertified or certified. The usual application for a building permit will be a certified application. This requires a registered building surveyor to give a certificate of design compliance (19) before submitting the application.

14(1) allows a certified application to be made for a complete building (14(1)(a)) or for a stage or part of a building (14(1)(b)).

14(2) preserves the existing process of providing drawings and specifications to a local government for checking. An uncertified application requires the permit authority to undertake a compliance assessment of the proposed works and verify other relevant matters prior to issuing a permit. This allows local governments to provide a service to ratepayers who carry out their own designs for simple work or who will be owner builders.

Regulations can maintain the existing process in parallel with the certified application process for all classes of building during the introduction of this Bill but may then restrict uncertified applications to single residential buildings (Class 1) and non-habitable buildings or incidental structures (Class 10).

Clause 15 Application for demolition permit

An application for a demolition permit can be made for an entire building or for an incidental structure, and may apply to one or more stages of demolition rather than for the entire building.

Clause 16 Making an application

16 outlines the requirements for making either a certified or uncertified application for a building or demolition permit, including the information required for the application, any required supporting documentation, the payment of any levy and application fee, before a permit may be issued.

The key difference between a certified or uncertified application is that the former is accompanied by a certificate of design compliance given by a registered building surveyor, along with specialist technical certificates relied on by the certifying building surveyor.

The applicant may be the owner, or the builder, a designer or the building surveyor, on behalf of the owner. The Bill does not control *who* can engage a building surveyor. The only restriction is that the building surveyor must be independent (see 4)

16(a) the application is to be in a form determined by the Building Commissioner, which will be standard for all permit authorities.

16(b) naming of and signing by each owner ensures that owners are aware of building or demolition work to be carried out on their land.

16(c) naming of and signing by the builder reduces the possibility of fraud or other misrepresentation by naming a registered person in order to obtain a permit, but not engaging that person to undertake the work. Builders and demolition contractors have significant obligations under this Bill and other legislation, such as the *Occupational Safety and Health Act 1984*. Signing the application ensures that the named person is aware that they will be responsible for the building or demolition work once the permit is issued.

16(d) requires information such as an address to identify the building address and the contact details of the owner and builder. Regulations will also specify prior approvals (typically planning, heritage, health and FESA) that, if obtained in respect of the proposed building, must be declared on the application.

16(e) requires the certificate of design compliance for a certified application for a building permit. 19 sets out details of the certificate of design compliance.

16(f) requires the plans and specifications that are specified in the certificate of design compliance. These describe the building that will be approved by the issue of a building permit and are used for the purposes of mandatory inspections during construction (36) and certificates of construction compliance needed to obtain an occupancy permit (56).

16(g) requires any technical certificates relied upon by the building surveyor giving the certificate of design compliance. 16(g) relates to technical certificates requested by the building surveyor to enable the building surveyor to be satisfied that the building complies with one or more technically complex parts of the building standards. Technical certificates under 16(g) are distinguished from technical certificates lodged under 16(i) which are prescribed by regulations.

16(h) requires plans and specifications to be lodged as part of an uncertified application for a building permit. These plans will in due course be considered by a building surveyor engaged by the permit authority under 17. They are distinguished from the plans and specifications required under 16(f) for certified applications which have already been considered by a building surveyor.

16(i) requires any technical certificates prescribed by the regulations. Some technically complex parts of buildings may be required to be checked by a specialist, such as a structural engineer or fire engineer.

16(j) deals with the requirement under the HBC Act for some home building work to be covered by a home indemnity insurance policy.

16(k) requires the levy imposed under the CRA Bill to be lodged with the building permit application.

16(l) regulations will outline the fees for application, which will cover the permit authority's costs in issuing and enforcing the permit.

16(m) allows regulations to require any other documents or things that may prove necessary in future.

Clause 17 Uncertified application to be considered by building surveyor

17(1) and (2) require a permit authority to get a building surveyor to assess uncertified applications. Permit authorities (i.e. local governments) must arrange the services of an independent building surveyor of the appropriate registration level to provide this service. The permit authority is likely to refer the application to a building surveyor employed by the permit authority but this sub-section allows the permit authority to refer the application to any building surveyor in another permit authority or, in private practice. This does not affect the prescribed fee payable by the owner for an uncertified application.

17(3) requires the certificate of design compliance to include the plans and specifications equivalent to those required under 16(f) and technical certificates equivalent to those required under 16(g) for certified applications.

Clause 18 Further information

The permit authority can ask for information missing from an application, or any additional information, in order to issue a permit rather than be forced to refuse the application because it is not satisfied under 20 (building permit) or 21 (demolition permit). The permit authority may refuse an application if the applicant does not provide any document or information within 21 days of the request for either certified or uncertified applications.

Clause 19 Certificate of design compliance

The certificate of design compliance is the primary check that the proposed building or incidental structure, if completed in accordance with the plans and specifications lodged with the building permit application under 16, will comply with the building standards.

The building surveyor may choose to obtain specialist advice, and may obtain that advice in a technical certificate. In some cases regulations under 16(i) may prescribe that certain technical certificates must be obtained. In most cases the building standards that apply to the building will be the BCA and other State and local standards prescribed in regulations under Part 3 of this Bill.

The certificate of design compliance links to the certificate of construction compliance required under 56 for an occupancy permit, which confirms that the building or incidental structure has been completed in accordance with the plans and specifications.

19(2) requires the certificate of design compliance to be in a form approved by the Building Commissioner that will include details such as the building surveyor's name, registration status, registration number, signature and date

19(3) requires a statement from the building surveyor certifying that the proposed building and any incidental structures, if built in accordance with the plans and specifications, will comply with each building standard.

19(4) allows the building surveyor to require inspections and tests to be carried out during and at the completion of the building work

19(5) allows regulations to require the building surveyor to certify other things. This power can be used to allow building surveyors to certify compliance with acceptable development provisions of R Codes or compliance with other prescribed approvals to further streamline approval processes.

In limited cases the certificate of design compliance will be able to be issued by other appropriately authorised practitioners. This is mostly in respect of "incidental structures" such as masts, antennae, retaining walls, fences, swimming pools and the like that are able to be certified by engineers and other suitable practitioners.

Clause 20 Grant of building permit

A permit authority must issue a building permit if it is satisfied that the application conforms with 20. If not satisfied, it must refuse the application.

20(1)(a) 16 sets out the requirements for the form and contents of an application.

20(1)(b) The person mentioned in 16(c) is the builder. The permit authority must check that the builder is appropriately registered, or owner-builder approval has been granted, or a registered building contractor is not required under the regulations in 7(2)(c) of the Registration Bill. Exemptions can be used to transfer the current system of builder registration and building licences, where not all work requiring a building licence under Part XV of the Miscellaneous Provisions Act requires a builder to be registered under the BR Act.

20(1)(c) The certificate of design compliance is in the correct form.

20(1)(d) The building surveyor signing the certificate is suitably registered and independent. An independent building surveyor is defined in 4 as a person who is not the owner, the builder, or an employee of either the builder or the owner.

20(1)(e) The certificate of design compliance is issued through a registered building surveyor contractor or other prescribed person. This ensures that people relying on the certificate have access to professional indemnity insurance of the registered contractor employing the building surveyor, or the financial capacity of a local government or the State if the building surveyor is employed by a public authority.

20(1)(f) Technical certificates are signed by suitable specialists and issued through a registered contractor or public authority. The regulations will set out the qualifications for giving a technical certificate in each speciality.

20(1)(g) That consent of the adjoining owner or a court order has been obtained to authorise an encroachment under 76.

20(1)(h) That consent of the adjoining owner or a court order has been obtained to authorise impairment of adjoining land under 77.

20(1)(i) Where required home indemnity insurance cover is obtained.

20(1)(j) Where required, professional indemnity or other prescribed insurance cover is obtained.

20(1)(k) The Building Services Levy has been paid.

20(1)(l) The BCITF levy has been paid.

20(1)(m) The proposal complies with heritage requirements or orders.

20(1)(n) The applicant has obtained the prior approvals prescribed in the regulations. The regulations may prescribe prior approvals for Planning, Health and FESA compliance. See also regulations under 16(d) that will require an application to state whether any of these prior approvals have been obtained. Regulations under 19(5) may also require that the building surveyor to include in the certificate of design compliance a statement of compliance with the prior approvals.

20(1)(o) checks the applicant, in the current application, is complying with the prior approvals prescribed in the regulations.

20(1)(p) confirms the building work complies with relevant provisions of other written laws prescribed by the regulations. This allows for compliance with laws that do not require an approval or authority to be obtained such as deposits for damage to footpaths, protection for pedestrians, etc. that may justify refusal to grant a permit.

20(1)(q) confirms the building work complies with local government policies, etc. that are not written laws covered by 20(1)(m). These include things such as crossover, drainage and other local government engineering requirements and the like.

20(1)(r) confirms all necessary notifications are given to utilities such as electricity, water and gas suppliers.

20(1)(s) confirms the applicant complies with any other requirements prescribed by the regulations for granting a building permit. This allows for any issues that are not covered in the main parts of the clause above.

20(2) ensures that the permit authority must not grant a permit unless it is satisfied that each of these provisions is being complied with. 144 confirms that the permit authority does not have a duty to check the accuracy or facts in a certificate of design compliance or to form its own opinion on some matters before issuing a permit. Permit authorities will rely on certificates from appropriately registered people in processing permit applications.

Clause 21 Grant of demolition permit

A permit authority must issue a demolition permit if it is satisfied that the application conforms to 21. If not satisfied, it must refuse the application.

21(1)(a) Clause 16 sets out the requirements for the form and contents of an application.

21(1)(b) The person mentioned in 16(c) is the demolition contractor. This clause requires the permit authority to check whether the demolition contractor is required to be licensed under the *Occupational Safety and Health Regulations 1996* Part 3 Division 9 Subdivision 7. This clause is drafted generally to allow for introduction of national safety and health laws.

21(1)(c) requires compliance with standards that may apply to buildings undergoing demolition work.

21(1)(d) checks that consent of the adjoining owner or a court order has been obtained to authorise impairment of adjoining land under 77.

21(1)(e) checks that any remaining parts to be used as retaining walls or protection structures are suitable. This may require a technical certificate or a certificate of design compliance.

21(1)(f) Where required, professional indemnity, public liability or home indemnity insurance or other prescribed insurance cover is obtained.

21(1)(g) The Building Services levy has been paid.

21(1)(h) The BCITF levy has been paid.

21(1)(i) checks the proposal complies with heritage requirements or orders.

21(1)(j) checks the applicant has obtained the prior approvals prescribed in the regulations. The regulations may prescribe prior approvals in respect of Planning, Health and FESA. See also regulations under clause 16(d) that require an application to state whether any of these prior approvals have been obtained.

21(1)(k) checks the applicant, in the current application, is complying with the prior approvals prescribed in the regulations.

21(1)(l) confirms the demolition work complies with relevant provisions of other written laws prescribed by the regulations. This allows for compliance with laws that do not require an approval or authority to be obtained such as deposits for damage to footpaths, rat baiting, etc. That may justify refusal to grant a permit.

21(1)(m) confirms the building work complies with local government policies, etc. that are not written laws covered by 21(1)(i).

21(1)(n) confirms all necessary notifications are given to utilities such as electricity, water and gas suppliers.

21(1)(o) confirms the applicant complied with any other requirements prescribed by the regulations for granting a demolition permit. This allows for any issues that are not covered in the main parts of the clause above.

21(2) ensures that the permit authority must not grant a permit unless it is satisfied that each of these provisions is being complied with.

Clause 22 Further grounds for not granting an application

Gives the permit authority discretion to refuse to grant a permit if it considers that there is a significant error in the information or document associated with the application or that granting a permit would be inconsistent with any of its functions under any written law or an agreement with the owner. In most cases, errors or inconsistencies would be resolved informally between the applicant and the permit authority or by requesting further information under 18.

Clause 23 Time for deciding application for building or demolition permit

23(1) For uncertified applications, the permit authority has 35 days to grant a building permit. If the application is missing information, the permit authority may request it under 18(1) rather than reject it under 20 or 22. The request may specify up to 21 days for the information to be provided. The permit authority has another 14 days from the time that information became due to grant a permit. A person submitting a defective uncertified application risks rejection or the approval time extending to a maximum of 70 days.

23(2) For certified applications, the permit authority has 14 days to grant a building permit. If the application is missing information, the permit authority may request it under 18(1) rather reject it under 20 or 22. The request may specify up to 21 days for the information to be provided. The permit authority has another 14 days from the time that information became due to grant a permit. A person submitting a defective certified application risks rejection or the approval time extending to a maximum of 49 days.

23(3) The application is deemed refused if the permit authority has made no decision by the end of these periods. Deemed refusal is a “fail safe” provision. .

23(4) The permit authority must refund the permit fee if it fails to issue a permit or reject an application within the prescribed time. The fee can be recovered through court action if necessary

23(5) allows the permit authority not to have to refund the fee if it is not able to make a decision because the applicant has not provided information; or the land has been listed on the Register of Heritage Places while the permit authority has been considering the application.

23(6) allows the permit authority to make a decision that is out of time. This is similar to a provision proposed for the Planning and Development Act and may avoid the need for the applicant to appeal a deemed refusal to the SAT. Despite having made a decision out of time, the permit authority must still refund the permit fee under 23(4).

Clause 24 Notice of decision not to grant building or demolition permit

This requires the permit authority to give written notice of the decision to refuse a permit, along with the grounds and reasons it has relied on, within 5 days of making the decision. It also ensures the applicant is aware of its review rights under 119.

Division 3 — Building or demolition permits

Clause 25 Form and content of building or demolition permit

25(1) requires a building or demolition permit to be in a form determined by the Building Commissioner so that there is a standard form for use by all permit authorities.

25(2) states the period of validity of the building permit determined under Division 4. If no period is stated the permit will be valid for 2 years under 32(2).

25(3) requires the following information to be set out in a building permit:

- location or identification of the building;
- classification of the building under the building standards;

- the use of the building derived from planning, health, heritage or FESA approvals;
- for staged projects, the relevant stage or part, and notice to the owner that there is no guarantee that permits for future stages will be granted under 26;
- prescribed details of the builder responsible for the building work (name, address, contact details, registration number where applicable);
- prescribed details about the owner of the land;
- any required inspections and tests (carried forward from regulations and/or the certificate of design compliance—refer to Division 5);
- any conditions applying to the building work (for example, that the street is blocked during aspects of the building work); and
- any other thing required by regulations to be set out in the permit.

25(4) sets out the basic information on a demolition permit about the building or incidental structure, and the details of what is being permitted, such as:

- location or identification of the building;
- for staged projects, the relevant stage or part, and notice to the owner that there is no guarantee that permits for future stages will be granted under 26);
- Prescribed details of the demolition contractor responsible for the building work (name, address, contact details, registration number where applicable);
- prescribed details about the owner of the land;
- any required inspections and tests (carried forward from regulations. See Division 5);
- any conditions applying to the building work (for example, that the street is blocked during aspects of the building work);
- anything else required by regulations.

Clause 26 Permit for staged works

26 confirms that approval for a stage of building or demolition work does not automatically entitle approval of further stages. This is because the certificate of design compliance for an initial stage of a building will only confirm that the building at the end of that stage complies with the building standards that apply to that stage.

Clause 27 Conditions imposed by permit authority

27(1) allows the permit authority to impose conditions on the grant of a building permit to deal with matters that are not covered by regulations.

27(2) confirms that conditions are to deal with matters relating to the specific building proposal. Individual permit authorities are not to use this power to modify the approved form of permits by generating lists of “standard” conditions. In particular, permit authorities cannot impose conditions that alter the effect of the certificate of design compliance (for example, to issue a permit with a condition that a building material be changed) or that alter the effect of building standards (for example, to issue a permit that requires a higher ceiling height).

27(3) and (4) allow the permit authority to revoke or change conditions during the building process.

Clause 28 To whom permit document issued

The permit is issued to the nominated builder and the owner(s) , as well as the applicant, if the applicant is not the builder or owner. Builders and owners have obligations under building and demolition permits and, issue to them, ensures that they are aware that their obligations have now started. A builder may issue a notice of completion (33) or a notice of cessation (34) to terminate these obligations. The owner retains obligations for completed buildings or uncompleted buildings.

Clause 29 Compliance with building or demolition permit

29(1) establishes that the builder named on the building permit is responsible for the building being completed in accordance with the building permit, including the plans and specifications and the applicable building standards. Breach of this clause allows prosecution by the permit authority.

This obligation of the builder sits alongside contractual obligations to the owner that may be enforceable by a complaint lodged under clause 5 of the CRA Bill.

29(2) applies similar obligations on demolition contractors to comply with the demolition permit.

Clause 30 Display of building or demolition permit details

Prescribed information, such as the name of the builder or demolition contractor and the permit number, must be displayed at a building or demolition site. This will help contact the person responsible for the site in an emergency.

Division 4 — Duration of building or demolition permits

Clause 31 Terms used

Terms are defined are generic descriptions of building and demolition work.

Clause 32 Duration of building or demolition permit

32(1) lets the permit authority set any validity period for a permit. Some projects may take several years under a single building permit. If project takes longer than expected the permit authority can extend the permit.

32(2) establishes a default two year validity period for a building permit. The two years commences from the date of issue. Should the building project take longer than two years, the permit authority can extend the permit.

32(3) allows for regulations to deal with the processes for extending time.

32(4) makes the permit cease to have effect when a notice of completion is issued by the builder under 33.

Clause 33 Notice of completion

The builder named on the building permit or demolition contractor named on a demolition permit must issue a notice of completion to the permit authority within seven days of completion of the work. This establishes the end date of the building or demolition permit for compliance and record keeping purposes.

Clause 34 Notice of cessation

A notice of cessation notifies the permit authority that work has stopped and triggers suspension of the permit under 35.

34(1) lets the builder or demolition contractor issue a notice of cessation at any time while the building or demolition permit is in effect. This protects a person whose contract is terminated or who is unable to complete the building work.

34(2) requires any inspection certificates to be submitted to the relevant permit authority for verification and storage with building records.

34(3) requires the builder or demolition contractor to give the owner a copy of the notice of cessation to alert the owner to the cessation of work and suspension of the building permit. Copies of inspection certificates do not go to the owner, as these have been provided to the permit authority under 34(2)(d).

Clause 35 Suspension of building or demolition permit

A building or demolition permit is suspended if there is no nominated builder or demolition contractor responsible for the work. This may occur if:

- the responsible person is dismissed or walks away from the job, thereby triggering a notice of cessation under 34, or
- the responsible person ceases to be eligible under the Registration Bill, due to death of the nominated person or contractor, bankruptcy, or de-registration as a result of disciplinary action.

The building or demolition permit has no effect from the start of the suspension until the relevant permit authority approves a new builder or demolition contractor or, until the permit expires under 32.

Division 5 — Inspection of building or demolition work

Clause 36 Regulations

Regulations can be made requiring inspection or testing of critical elements during the construction or demolition process. Inspection certificates issued by registered practitioners confirm that high risk stages during the construction or demolition process meet minimum safety and health requirements.

Risk will be the basis for mandatory inspections prescribed in the regulations. The regulations will set out high risk building elements, the nature of inspection or test that is appropriate for the element, and who may carry out that particular inspection or test. Some tests will be required to be carried out for all buildings containing those elements.

36(1) provides for regulations to be made for inspections of buildings, incidental structures, building work or demolition work during the currency of a building or demolition permit.

36(2) sets out the scope of the inspections or tests that the regulations may cover. Some tests will be required by regulations to be carried out for all buildings containing those elements (36(2)(a)). The building surveyor issuing the certificate of design compliance can also require inspections for elements of a building that are not required to be inspected by the regulations (36(2)(b)).

All required inspections will be listed on the building permit to ensure the obligations of the relevant parties are clear from the outset.

A requirement for inspections under this clause does not prevent permit authorities from carrying out enforcement inspections under Part 8 at any time.

PART 3 – BUILDING STANDARDS

Part 3 requires all new buildings, when completed, to comply with the applicable building standards whether or not a building permit is required under this Bill. Similarly all demolition work must comply with the applicable demolition standards whether or not a demolition permit is required.

The regulations will specify the applicable codes and standards. The standards will include the BCA, as well as any other Western Australian or local standards that supplement the BCA.

The Building Commissioner can vary the application of codes and standards for specific cases to cater for new innovations or unjustifiable hardship.

There is a separate power in Part 8 of the CRA Bill for the Building Commissioner to issue Commissioner standards and codes. Commissioner standards and codes have no legal effect unless adopted as part of a contract or adopted as building or demolition standards or codes by regulations under this Bill.

Clause 37 All buildings to comply with applicable building standards

All new building work, when completed, must comply with the applicable standards whether or not a building permit is required under this Bill. Regulations under 149 will specify the building standards.

Where a building permit has been issued, 37(1) requires the person named as builder on the permit to ensure that the building or structure complies with the standards. In most cases this will be achieved by completing the building or structure in accordance with the plans and specifications specified in the certificate of design compliance. Where the plans and specifications do not detail every aspect of the building that must comply with the standards, the builder is responsible for determining how to comply. This will usually be by following the deemed-to-satisfy provisions of the BCA or equivalent.

Where a building permit has not been issued, 37(2) requires the owner of the building to ensure the building or structure complies with the standards. Owner is defined in 5.

A permit authority may use its enforcement powers in Part 8 to require a building that does not comply with the standards to be modified to bring it into compliance with the standards, or to have the building demolished.

Clause 38 All demolition work to comply with applicable building standards

All new demolition work, when completed, must comply with the applicable standards whether or not a demolition permit is required under this Bill. Regulations under 149 will specify the demolition standards.

Where a demolition permit has been issued, 38(1) requires the person named as demolition contractor on the permit to ensure that the demolition work complies with the standards.

Where a demolition permit has not been issued, 38(2) requires the owner of the building to ensure the demolition work complies with the standards. “Owner” is defined in 5.

Clause 39 Non application, modification of, building standards

39 provides flexibility to not apply building standards, or to modify building standards, in special cases. These may include:

- Work on a heritage building where compliance with normal standards would destroy important heritage qualities;
- Access to existing buildings where the work required to meet normal standards would trigger an “unjustifiable hardship” exemption under the *Disability Discrimination Act 1992* of the Commonwealth;
- Adaptation of non-buildings to building use, such as conversion of railway carriages or boats to holiday accommodation;
- Innovative or experimental building techniques;
- Imported buildings or building components that have been constructed under international or other another country’s standards.

39(2) allows the Building Commissioner to declare in writing that a particular building standard does not apply to a specified building, or modify the way a building standard applies to a specified building. This allows the building surveyor signing a certificate of design compliance under 19 to state that the proposed building will comply with the standards as exempted or modified by the Building Commissioner’s declaration. Similarly, a builder or owner will comply with the requirements of 37 by ensuring that building or demolition work complies with the standards as exempted or modified by the Building Commissioner.

A declaration under 39(2) only applies to a specified building or incidental structure. The regulations under 149 that apply building standards generally will be used when a building standard is not to apply, or is modified in application, to a class of buildings.

39(4) limits the power to exempt or modify standards so that people, property or the environment are not put at increased risk, and the exemption or modification is in the public interest, or supports the application of other laws, such as heritage or access. An exemption or modification cannot be granted simply to provide a benefit or convenience for the owner or builder.

39(8) provides for a formal process of application for a declaration by the Building Commissioner and provides for fees to cover the cost of examining applications and assessing alternative standards.

PART 4 – OCCUPANCY PERMITS AND BUILDING APPROVAL CERTIFICATES

Part 4 establishes requirements for occupancy permits and building approval certificates.

An occupancy permit is evidence that a building has been lawfully constructed and is safe to occupy for the use stated in the permit. Occupancy permits set out any maintenance and inspection requirements for equipment and services that are essential for the safety of the building and its occupants. Essential maintenance will apply predominantly to essential safety systems such as fire sprinklers, smoke exhaust fans and the like.

Occupancy permits supersede the existing certificate of classification and are required for multi-residential and commercial buildings. Building approval certificates are available for single-residential and non-habitable buildings and incidental structures where an occupancy permit is not appropriate. Occupancy and building approval permits can be used to manage a number of different circumstances, including:

- confirming compliance of a completed building;
- temporary or staged occupation of an incomplete building;
- approving a permanent or short-term change of use and/or classification;
- registration of strata scheme, plan of re-subdivision;
- retrospectively approving unauthorised buildings; and
- confirming compliance of an existing, authorised, building.

Division 1 — Occupancy permits

Clause 40 Terms used: occupier

While the owner is primarily responsible for ensuring compliance with occupancy permits, the occupier of the building is also required to use the building in accordance with the occupancy permit.

“**Occupier**” is defined to be a person who holds an interest in land (for example, a lease) or a licence to use the land except where the interest in the land is of the sort that would bring the occupier into the category of “owner” defined in 5.

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

41(2) makes it an offence to occupy a completed building without an occupancy permit unless the building is exempted under Part 5 (41(2)(c)). Single residential and non-habitable buildings will be exempted. An exemption also applies under 41(2)(b) for the first 30 days after completion when a temporary permit has been issued under 40(3) to allow an uncompleted building to be occupied (64(1)).

It may be appropriate to occupy some parts of a building where it is safe to do so before the whole building is completed and a certificate of construction compliance can be issued under 56. An owner may apply for a temporary permit under 47 to occupy an uncompleted building.

41(3) makes it an offence to occupy an incomplete building without a temporary permit, unless the building is exempted under Part 5 (41(3)(b)).

It may also be appropriate to vary the use of a completed building for a short period of time where it is safe to do so. An owner may apply to modify an occupancy permit on a temporary basis under 48 allow the building to be used in another way. A building can be occupied under a modified permit for up to 1 year from when the occupancy permit was modified (64(2)).

Clause 42 Display etc. of, occupancy permit details

Building owners must make occupiers aware of the requirements of the occupancy permit. Regulations will require the occupancy permit to be accessible either by displaying it in the building itself, publishing it on the internet, or by some other means that may become appropriate in future.

Clause 43 Occupation, use of buildings to comply with occupancy permits

The owner or owners of a building or its occupiers commit an offence if they use, or allow the building to be used, for a purpose contrary to the use or classification of the building in the occupancy permit (43(1)). Occupiers may rely on a defence if the occupier was not made aware of the relevant provisions of the occupancy permit at the time of the offence.

The classification of a building derives from the classes defined in the BCA and compliance with the standards that apply to that class. The use of a building will derive from planning and other prior approvals that may restrict the use to a narrower range than the classification.

Clause 44 Compliance with occupancy permit generally

44(1) makes the owner of a building responsible for ensuring that the occupancy permit is complied with. This includes arranging for mandatory testing or inspection of essential equipment (61(2)(e)).

44(2) prevents an owner from being prosecuted under both 43 (using the building contrary to the occupancy permit) and 44 (not complying with the permit) for the same matter.

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

45(1) allows for regulations to deal with health, safety, amenity and sustainability of buildings requiring occupancy permits. Occupancy permits regulate the ongoing use of occupied buildings, and may specify the maintenance, testing and inspection of equipment, machinery and systems in buildings. Part 7 that deals with existing buildings may also apply inspection and testing requirements to buildings that do not have occupancy permits.

Regulations may require all buildings containing specific building elements to be maintained or tested, or the building surveyor giving the certificate of design compliance to require specific building elements to be maintained or tested.

45(2) sets what the regulations may deal with, including the type of health and safety equipment required, the maintenance of equipment, what inspections are to be carried out by the owner, records that must be kept, etc.

44(3) prevents the retrospective application of new occupancy permit requirements under this Bill to buildings completed or commenced under the Miscellaneous Provisions Act where the certificate of classification is treated as the occupancy permit.

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

Clause 46 Application for occupancy permit for completed building

An occupancy permit can be issued for any completed building. Typically this will be for recently completed building work and the application would occur at the same time as the builder gives a notice of completion under 33.

For an application under 46, a certificate of construction compliance given under 56 is required to demonstrate compliance with the building permit.

Applications for occupancy permits for existing buildings can be made under 46 or under 52 for buildings with “existing authorisation.” For an application under 52, a certificate of building compliance given under 57 will relate to standards for existing buildings rather than the standards for a new building.

Clause 47 Application for temporary occupancy permit for incomplete building

A temporary occupancy permit can be issued for partial occupation of a building that is not fully completed but parts of it are safe to use pending completion of all of the work covered in the applicable building permit (see 41(3)).

A temporary occupancy permit can be used to allow for strata titles to be issued once a building shell is completed, but occupation cannot take place until the final occupancy permit is issued.

Clause 48 Application for modification of occupancy permit for additional use of building on a temporary basis

An occupancy permit can be modified to allow for short-term additional uses not allowed under the permanent occupancy permit, such as holding a function or exhibition in a building not originally designed or approved for that use. The permit authority can modify the permit for a period of up to one year providing that fabric of the building does not require changes that would require a building permit. If such changes are required, a building permit and new occupancy permit must be obtained.

Clause 49 Application for replacement occupancy permit for permanent change of building’s use, classification

An occupancy permit can be issued to allow for a permanent change of use or classification without building work that would require a building permit.

A change of use may require planning or other prior approvals even though no change to the building fabric is required.

Existing certificates of classification (that are deemed to be occupancy permits under 180) can be issued new occupancy permits issued under this Bill.

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

An occupancy permit or building approval certificate will confirm to Landgate that the building complies with the relevant building approvals, including where appropriate, those relating to strata titling.

50(1) allows an application for an occupancy permit or building approval certificate to accompany a strata plan for registration under the *Strata Titles Act 1985*.

50(2) allows an application for an occupancy permit or building approval certificate to accompany a plan to re-subdivide a lot in a strata scheme, under the *Strata Titles Act 1985*.

50(3) confirms that an application can be made for a new occupancy permit for this purpose even though an existing occupancy permit may be in effect.

50(4) allows a building approval certificate to be used when an occupancy permit is not appropriate.

An occupancy permit or building approval certificate issued after an application under clause 50 indicates that:

- the building complies with each building standard;
- the building will not adversely affect the safety and health of occupants/users;
- all required approvals have been obtained and are being complied with; and
- there is no current legal proceeding in respect of the building.

This requires the owner to get the necessary planning approvals and ensure that the building meets the current building standards for a strata-titled building. The permit authority will not issue the permit or certificate if there are outstanding enforcement notices on the building, or if there are unapproved encroachments.

This new process replaces all of the provisions of Sections 8A & 23 of the *Strata Titles Act 1985*, which are repealed under 174 and new provisions substituted.

A temporary occupancy permit may be used to allow strata titles to be issued before construction is completed, but the strata units cannot be occupied until a permanent occupancy permit is issued.

Clause 51 Application for occupancy permit or building approval certificate for unauthorised work

An occupancy permit or building approval certificate can be used to retrospectively approve unauthorised work after the building is completed. This does not remove the permit authority's powers to enforce under Part 8.

If unauthorised building work comes to light during construction, the owner can obtain a new or amended building permit for the building as proposed to be completed as an alternative to using an occupancy permit or building approval certificate to authorise the building.

Approval of unauthorised work does not remove the offence—a person can still be prosecuted for having built or occupied a building without first obtaining the required permits. As a deterrent, substantially higher fees and levies will apply to applications to approve previously unauthorised work. This approach is consistent with existing requirements in the Building Regulations.

51(1) confirms that “*unauthorised work*” covers construction that was done without obtaining approval at all (51(1)(a)) or that was not done in compliance with an approval (51(1)(b)).

51(2) and (4) allow for an application for an occupancy permit for a building that would require an occupancy permit under 41(2).

51(3) and (5) allow for an application for a building approval certificate for buildings or incidental structures. As only a building can be occupied, occupancy permits can only be issued for buildings (51(2)).

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

52(1) allows for a new or replacement occupancy permit for buildings that have been previously been issued with an occupancy permit. Note that certificates of classification under Part XV of the Miscellaneous Provisions Act become occupancy permits under this Bill through the transitional provisions (181).

52(2) allows for a building approval certificate to be issued for buildings or incidental structures that were lawfully constructed, but did not require an occupancy permit. This includes single residential and non-habitable buildings constructed with a building permit (certificates of classification and occupancy permits not required), State government buildings (previously exempted from approval under the Miscellaneous Provisions Act and some buildings in remote and rural areas (where the former Building Regulations did not apply).

Owners of existing buildings authorised under the previous legislation are not required to do anything when this Bill commences. The original approval relating to the building remains valid. Owners can choose to apply for an occupancy permit (Class 2-9 buildings) or building approval certificate (Class 1 and 10 buildings) should they wish to confirm or obtain evidence of the approval status of their building for insurance, settlement or other purposes. The issue of a permit demonstrates that an existing building complies with the relevant building standards and is safe to occupy, and confirms no enforcement action is underway.

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

Clause 53 Terms used

Defines the terms “*application*” and “*modification*” to allow a consolidated description of processes in this division.

Clause 54 Manner of application

54(1) allows for a standard occupancy permit and building approval certificate application form for consistency across permit authorities that contains:

- ownership details—name, address, signature, property title details;
- building details—location, plans/specifications, building classification;
- details of the applicant, if not the owner—name, address, signature;
- application type—a newly completed building; temporary permit change classification/use; strata title; unauthorised work; voluntary application;
- details of any required supporting technical certificate/inspection certificates.

54(2) requires a “*certificate of construction compliance*” (56) where the application is for a completed building (46) or for a temporary permit for an incomplete building (47).

54(3) requires a “*certificate of building compliance*” (57) where the application is for any other purpose (48 to 52).

54(4) sets out the detailed requirements of an application, including:

- technical certificates relied on by the building surveyor;
- technical certificates prescribed by the regulations;
- payment of the levy, where required;
- payment of application fees;
- other documents and things.

54(5) allows applications for permits for different purposes to be made at the same time.

Clause 55 Further information

This allows the permit authority to ask for information missing from an application, or any additional information, in order to issue a permit rather than be forced to refuse to grant the permit under 58(3). The permit authority may refuse an application if the applicant does not provide any document or information within 21 days of the request.

Clause 56 Certificate of construction compliance

A “*certificate of construction compliance*” confirms that the building assessed by a building surveyor at design stage and given a certificate of design compliance has been constructed in accordance with that certificate and the building permit.

The builder named on the building permit is responsible for constructing the building in accordance with the building permit (29). The building surveyor signing the certificate of construction compliance confirms that there are no obvious departures from the building permit and the building is safe to occupy.

56(1) requires a certificate of construction compliance to be signed by a building surveyor registered under the Registration Bill.

56(2) requires a certificate of construction compliance for a completed building (46) to confirm that the building:

- has been completed in accordance with the plans and specifications specified in the certificate of design compliance;
- complies with the building permit and conditions; and
- is otherwise suitable to be used as proposed.

56(3) requires a certificate of construction compliance for an incomplete building (47) to confirm that the building:

- (a) is incomplete;
- (b) can be safely occupied or used in its current state; and
- (c) is otherwise suitable to be used as proposed.

56(4) confirms that the certificate applies to incidental structures.

56(5) allows for additional matters to be checked, such as work for protection of neighbouring property being done or that a reasonable standard of construction and finish has been provided along the boundary line (see Part 6).

Clause 57 Certificate of building compliance

A “*certificate of building compliance*” confirms that an existing building complies with the relevant building standards. The standards will be set out in regulations under 149.

For an existing building whose construction was authorised under the laws of the time, the building standards will be those at applied at the time of construction. The building surveyor in giving the certificate of building compliance is confirming that there have been no obvious departures from the original building permit and that the building is safe to occupy.

For an existing but unauthorised building, or for a change of use or classification, building standards will be prescribed under Part 3 for existing buildings. Health and safety standards for existing buildings will be comparable to those prescribed in the BCA for new buildings. Performance standards in the BCA make it possible to check that an existing building performs to current health and safety standards when it does not comply with current deemed-to-satisfy requirements. In giving the certificate of building compliance, the building surveyor is confirming that the building will perform to the level set by the building standards for the proposed use and is safe to occupy.

57(1) requires a certificate of building compliance to be given by a building surveyor registered under the Registration Bill.

57(2) requires a certificate of building compliance for a completed building (46) to:

- confirm that the building can be safely occupied or used in its current state;
- confirm the building is otherwise suitable to be used as proposed;
- confirm the building complies with prescribed approvals;
- confirm the applicant has obtained and is complying with all prior approvals; and
- contain anything else required by the regulations.

57(3) requires a certificate of building compliance to confirm that the building complies with the current standards for existing or new buildings, except where the certificate is for an application to replace an existing occupancy permit or to cover an authorised building that did not previously have one (52).

57(4) requires a certificate of building compliance for an application to replace an existing occupancy permit or to cover an authorised building that did not previously have one (52) to confirm that the building:

- complies with its original building permit or authorisation; and
- that it complies with the building standards that applied at the time of construction.

57(5) ensures that certificates cover incidental structures as well as buildings.

57(6) requires the certificate of building compliance for a change of use or classification to state how the change affects the classification.

Clause 58 Grant of occupancy permit, building approval certificate

The process for granting occupancy permits and building approval certificates is analogous to the process for granting building and demolition permits under 20 and 21. Clause 58(1) sets out the requirements that must be met before a permit authority can issue an occupancy permit and includes that:

- the application conforms with clause 54 (i.e. in the approved manner, signed by the owner, etc) (58(1)(a));
- the building surveyor signing and issuing the certificate is registered under the Registration Act and independent (i.e. a person who is not the owner or the builder or, an employee of the owner or builder) (58(1)(b) and (c)). Registration of building surveyors also ensures that people relying on the certificate have access to the professional indemnity insurance of a registered contractor employing the building surveyor, or the financial capacity of a local government or the State, if the building surveyor is employed by a public authority;
- the technical certificates are provided by suitable specialists by prescribing who may sign and issue such certificates (58(1)(d));
- consent for any encroachments is obtained (58(1)(e));
- there are not enforcement actions under Part 8 under way in respect of the building (58(1)(f));
- any enforcement actions that have been started under Part 8 have been complied with (58(1)(g));
- the Building Services Levy and the BCITF levy has been paid (58(1)(h) and (i));
- the applicant has obtained and is complying with the prior approvals prescribed in the regulations (58(1)(j) and (k)). The regulations may prescribe prior approvals for Planning, Health and FESA compliance. See also regulations under 54(4)(e) that will require an application to state whether any of these prior approvals have been obtained. Regulations under 56(5) or 57(2)(d) may also require that the building surveyor to include in the certificate a statement of compliance with the prior approvals; and
- the applicant has complied with any other requirements prescribed by the regulations for granting an occupancy permit. This allows for any issues that are not covered in the main parts of the clause above.

58(2) ensures that the permit authority must not grant a permit unless it is satisfied that each of these provisions is being complied with. 144 confirms that the permit authority does not have a duty to check the accuracy or facts or soundness of opinions in a certificate of building compliance or to form its own opinion on some matters before issuing a permit. It is expected that permit authorities will rely on certificates from appropriately registered persons in processing permit applications.

58(3) gives the permit authority discretion to refuse to grant a permit if it considers that there is a significant error in the information or document associated with the application, granting a permit would be inconsistent with any of its functions under any written law, or an agreement with the permit authority. In most cases errors or inconsistencies would be resolved informally between the applicant and the permit authority during the approval periods specified in 59(1), or by making a request for further information under 55.

Clause 59 Time for granting occupancy permit or building approval certificate

Under 59(1), the permit authority has 14 days to grant an occupancy permit. If the application is missing information, the permit authority may request it under 55(1) rather reject it under 60. The request may specify up to 21 days for the information to be provided. The permit authority has another 14 days from the time that information became due to grant a permit. A person submitting a defective application risks rejection or the approval time extending to a maximum of 49 days.

The application is deemed refused if the permit authority has made no decision by the end of these periods (59(2)). Deemed refusal is a “fail safe” provision. .

The permit authority must refund the permit fee if it fails to issue a permit or reject an application within the prescribed time (59(3)). The fee can be recovered through court action if necessary.

59(4) allows the permit authority not to have to refund the fee if it is not able to make a decision because the applicant has not provided information.

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

The permit authority must give written notice of the decision to refuse a permit, along with the grounds and reasons it has relied on, within 5 days of making the decision and ensure the applicant is aware of its review rights under 121.

Clause 61 Form and content of occupancy permit, building approval certificate

61(1) requires an occupancy permit, a modification to an occupancy permit, or a building approval certificate to be in a form determined by the Building Commissioner so that there is a standard form for use by all permit authorities.

61(2) sets out the basic information on an occupancy permit, a modification to an occupancy permit or a building approval certificate about the building or incidental structure, and the details of what is being permitted, such as:

- location or identification of the building;
- classification of the building under the building standards;
- the use of the building approved by planning, health, heritage or FESA;
- the period of validity of the permit, if a period is specified; and
- any required inspections and tests (from regulations in 45).

Clause 62 Conditions imposed by permit authority

62(1) allows the permit authority to impose conditions on the grant of an occupancy permit, modification of an occupancy permit or a temporary permit to deal with matters that are not covered by regulations.

62(2) confirms that conditions are to deal with matters relating to the specific building. Individual permit authorities are not to use this power to modify the approved form of permits by generating lists of “standard” conditions. In particular permit authorities cannot impose conditions that alter the effect of the certificate of construction compliance or the certificate of building compliance (for example, to issue a permit with a condition that additional machinery or services be included in the building) or that alter the effect of building standards (for example, to require additional access).

62(3) allows the permit authority to revoke or change conditions while the building is occupied.

62(4) ensures that revocation or changes only have effect when the owner has been given written notice.

62(5) ensures that an owner is informed of the right to review.

62(6) does not allow conditions to be applied retrospectively to buildings with certificates of classification that are deemed to be occupancy permits under 144.

Clause 63 To whom form of permit, modification, certificate issued

The permit is issued to the owner or owners, as well as the applicant if the applicant is not the owner. This ensures those parties are aware their obligations have commenced.

Clause 64 Duration of temporary permit, modification

64(1) allows a temporary permit for an incomplete building to continue for 30 days following the expiry of the building permit for that building. This provides ample time for the owner to apply for a permanent occupancy permit when the notice of completion is issued under 32.

64(2) allows a modification of an occupancy permit to run for one year. After that time the owner must apply for a permanent occupancy permit.

Clause 65 Extension of period of duration

A permit authority can extend the validity of an occupancy permit or building approval certificate that has been granted or modified for a limited period. This provides owners with some flexibility should building completion be delayed, or to extend temporary uses.

There are limits to the period of extension. 65(5) limits the extension of a temporary occupancy permit for an incomplete building to 30 days after the building permit expires. After this the owner must have a permanent occupancy permit in place to continue to occupy the building.

65(6) limits to one year the extension of a modification to an occupancy permit for an existing building. After this the owner must apply for a permanent occupancy permit to continue the modified use.

PART 5 – CIRCUMSTANCES IN WHICH BUILDING, DEMOLITION OR OCCUPANCY PERMITS NOT REQUIRED

All buildings and incidental structures are required to comply with the building standards under Part 3. The fundamental responsibility for this lies with the owner and builder.

For most buildings the risk to the community from non-complying buildings outweighs the cost of prior checking by a building surveyor and issue of a permit by the permit authority. For this reason most buildings require building, demolition and occupancy permits under Parts 2 and 4.

Buildings with a low health and safety risk, whose effect on the community is limited, and where the cost of rectification of non-compliance is low, may not justify prior checking and issue of permits.

Buildings which form part of major infrastructure, mines, processing plants and the like can be checked as part of their own approval processes, and duplication of checking through issue of permits under the Bill is also not justified. Permits are not required for buildings associated with the construction, operation or maintenance of infrastructure (70); shipping and boating facilities (71); mining operations (72); exploiting petroleum and other resources (73); or industrial processing plants (74), unless the building is a residential or recreation facility or accessible by or normally used by the public. Buildings accessible by the public or not checked through other approval processes will require permits under this Bill.

Division 1—Regulations and Ministerial orders

Clause 66 Regulations

66(1) allows exemption from building permits for specific types of building work.

66(2) allows for risk to be used as the basis of exemption. Consideration of risk can take into account:

- low value, so that the cost to the owner of having to remove or modify the building if it does not comply with the standards is not ruinous. An owner concerned about compliance of a building that does not require a permit can elect to have it checked by a building surveyor or other technical specialist;
- low risk to occupiers or members of the public. This will allow things like fences, some retaining walls, garden sheds and the like to not require a permit;
- low concern to permit authorities. These are things that do not have planning or engineering implications, or where there is limited impact on neighbours; and,
- remote location. There are few people likely to be affected by the building and the cost of inspections, etc. is disproportionate to the risk.

66(3) allows regulations to prescribe value of building work or other risk criteria for exemption.

66(4) allows regulations to provide an exemption from demolition permits for specific types of demolition work, following similar principles to those for exemption from building permits.

66(5) allows regulations to provide a general exemption from occupancy permits for specific types of building, following similar principles to those for exemption from building permits.

Clause 67 Ministerial order

67(1) allows the Minister to order an exemption from requiring a building permit (9(a)), a demolition permit (10(a) or (b)), an occupancy permit for a completed building (41(2)(a) or (b)) or a temporary permit for an incomplete building (41(3)(a)) for:

- A specified kind of building work;
- A specified kind of demolition work; or
- A specific building or specific type of building.

67(2) allows the Minister to vary or revoke the order.

67(3) requires the Minister to table the order in Parliament. Tabling the order in Parliament places the order on the public record. 148 deals with the process of tabling the order in Parliament. Parliament is not given power to disallow the order as owners or builders may have acted on the order and disallowance would leave them acting unlawfully. Parliament is able to question the Minister about the order to ensure probity and transparency.

Division 2—Particular buildings, incidental structures

Clause 68 Terms used

Clause 68 defines “*permit*” and “*permit requirement provisions*” to allow for simpler wording in the rest of this division.

Clause 69 Temporary buildings

69(1) exempts buildings for private use that are in place for less than one month. Examples include marquees erected for private parties, accommodation for short term guests and the like.

69(2) confirms the exemption does not apply when members of the public are able to use the building—for example circus tents, market buildings and the like.

Clause 70 Buildings incidental to infrastructure

70(1) exempts buildings or incidental structures associated with most forms of infrastructure from the need for a building, demolition or occupancy permits. The buildings must still comply with building standards (37) and provisions dealing with work affecting other land (Part 6). Responsibility for ensuring compliance with these standards and provisions lies with the person or agency owning the infrastructure. Compliance may be checked through regulatory processes applicable to the infrastructure.

70(2) confirms that residential or recreational facilities, or buildings normally accessed or used by members of the public are not exempt and do require building, demolition and occupancy permits under this Bill.

Clause 71 Buildings incidental to shipping and boating facilities

71(1) exempts buildings or incidental structures associated with port facilities from the need for a building, demolition or occupancy permits. The buildings must still comply with building standards (37) and provisions dealing with work affecting other land (Part 6). Responsibility for ensuring compliance with these standards and provisions lies with the person or agency owning the port. Compliance may be checked through regulatory processes applicable to the port.

71(2) confirms that residential or recreational facilities, or buildings normally accessed or used by members of the public are not exempt and do require building, demolition and occupancy permits under this Bill.

Clause 72 Buildings incidental to mining operations

72(1) exempts buildings or incidental structures associated with mining operations from the need for a building, demolition or occupancy permits. The buildings must still comply with building standards (37) and provisions dealing with work affecting other land (Part 6). Responsibility for ensuring compliance with these standards and provisions lies with the person or agency owning the mine. Compliance may be checked through regulatory processes applicable to the mine.

72(2) confirms that residential or recreational facilities, or buildings normally accessed or used by members of the public are not exempt and do require building, demolition and occupancy permits under this Bill.

Clause 73 Buildings incidental to exploiting petroleum and other resources

73(1) exempts buildings or incidental structures associated with exploiting petroleum and other resources from the need for a building, demolition or occupancy permits. The buildings must still comply with building standards (37) and provisions dealing with work affecting other land (Part 6). Responsibility for ensuring compliance with these standards and provisions lies with the person or agency exploiting the petroleum or other resources. Compliance may be checked through regulatory processes applicable to the exploitation of petroleum and other resources.

73(2) confirms that residential or recreational facilities, or buildings normally accessed or used by members of the public are not exempt and do require building, demolition and occupancy permits under this Bill.

Clause 74 Buildings incidental to industrial processing plant

74(1) exempts buildings or incidental structures associated with industrial processing plant from the need for a building, demolition or occupancy permits. The buildings must still comply with building standards (37) and provisions dealing with work affecting other land (Part 6). Responsibility for ensuring compliance with these standards and provisions lies with the person or agency owning the processing plant. Compliance may be checked through regulatory processes applicable to the processing plant.

74(2) confirms that residential or recreational facilities, or buildings normally accessed or used by members of the public are not exempt and do require building, demolition and occupancy permits under this Bill.

PART 6 – WORK AFFECTING OTHER LAND

Building or demolition work may affect adjoining or nearby land by adversely affecting its bearing capacity or drainage, cause a need for protection structures such as underpinning or piling, change party walls or fences or require encroachments or access onto the other land.

This Part requires consent from the owners of affected land or a court order before any work affecting other land is commenced, or before any encroachment or access is made. This Part also complements the *Dividing Fences Act 1961*, which provides a mechanism for sharing the cost of dividing fences, with provisions for construction on boundaries, maintenance of shared structures on boundaries and liability for expenses.

Owners of land affected by building work can also lodge a complaint with the Building Commissioner under clause 5(2) of the CRA Bill and seek redress for damage or inconvenience caused by nearby building work.

Division 1—Terms used

Clause 75 Terms used

A “**boundary retaining wall**”, if not appropriately constructed, can reduce the safe bearing capacity of adjoining land, or interrupt the drainage of water from adjoining land.

A “**dividing fence**” is defined in the *Dividing Fences Act 1961*. Most dividing fences do not require building permits, but a “**substantial dividing fence**” does.

A “**party wall**” is typically found in terrace housing and the like where a single wall on the boundary provides structural support to both buildings.

A “**person responsible**” is the person nominated as the builder or demolition contractor on the building or demolition permit, or the owner if no permit is issued.

A “**protection structure**” includes temporary protection such as sheet piling or propping, and permanent protection such as underpinning, chemical grouting and the like.

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

Clause 76 No encroachment without consent or court order

76(1) requires that a person responsible for work cannot extend a building or incidental structure onto adjoining land without the consent of the owner of the land affected, or with a court order under 86(2)(a).

Regulations under 76(1)(c) will allow such things as signs, architectural decoration, lights and the like to encroach on public space without formal consent being required.

76(1)(c), 76(2) and 76(3) deal with encroachments onto Crown land and set out who may give consent.

Clause 77 Other land not to be adversely affected without consent or court order

It is an offence for a person responsible for work to adversely affect land beyond the boundaries without the consent of the adjoining owner or a court order under 89(2)(b).

“adversely affect land” is defined in 3 as including:

- reduce the stability or bearing capacity of the land or a building or structure on the land;
- damage, or reduce the structural adequacy of, a building or structure on the land; and
- 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.

Clause 78 No protection structure in or on other land without consent or court order

78(1) prevents a person responsible for work from extending a temporary or permanent protection structure beyond the boundaries into adjoining land without the consent of the owner of the adjoining land or in accordance with an court order under 89(2)(a).

78(1)(c) does not require consent or a court order is if the protection structure is required to prevent imminent collapse, or damage to, any land or building or structure.

78(2) requires a person responsible for placing a protection structure in an emergency under 78(1)(c) to notify the affected owner as soon as practicable. This applies even if the protection structure is temporary.

78(3) requires a person responsible for placing a permanent protection structure in an emergency under 78(1)(c) to notify the permit authority so that details of the permanent protection structure can be kept with the relevant building records.

Clause 79 Certain work not to affect party walls etc. without consent or court order

Clause 79 requires that a person responsible for work cannot effect the integrity or capacity of a party wall, substantial dividing fence or boundary retaining wall that protects land beyond the boundaries of the works without the consent of the owner of the land affected or in accordance with court order under 89(2)(a).

79(1)(c) does not require consent or a court order if the work is required to prevent imminent collapse, or damage to, the wall or fence.

79(2) requires a person responsible for doing work in an emergency under 79(1)(c) to notify the affected owner as soon as practicable. 79(2) also requires a person responsible for doing work in an emergency under 79(1)(c) where the work would normally require a building permit to notify the permit authority so that details of the work can be kept with the relevant building records.

Clause 80 Fences etc. not to be removed without consent or court order

A person responsible for work cannot remove a fence gate or other barrier on or beyond the boundaries of the works without the consent of the owner of the land affected or in accordance with court order under 89(2)(a).

80(1)(c) does not require consent or a court order if the work is required to prevent imminent collapse, or damage to, any land or building or structure.

80(2) requires a person responsible for doing work in an emergency under 80(1)(c) to notify the affected owner as soon as practicable. 80(2) also requires a person responsible for doing work in an emergency under 80(1)(c) where the work would normally require a building permit to notify the permit authority so that details of the work can be kept with the relevant building records.

80(3) requires a person responsible for doing work that requires removal of a fence, gate or other to ensure that a suitable temporary barrier is erected if needed.

Clause 81 No access to other land without consent or court order, and notification

81(1) defines “*occupier*” for the purposes of this section as someone who has apparent control of the land. Action under this section has immediate impact on people on the land, rather than the legal owner or occupier who may not be present.

“*Other land*” is defined to include land that may not be adjacent to the works land, but that has protection structures placed on it.

81(2) requires a person responsible for work to ensure that people do not go on other land without the consent of the owner of the other land or in accordance with court order under 89(2)(a).

Under 81(2)(c) consent or a court order is not required if going onto the other land is required to prevent imminent collapse, or damage to, any land or building or structure.

81(3) requires a person responsible for work where a person has gone on to land in an emergency under 81(2)(c) to notify the affected owner as soon as practicable. 80(3) requires a person responsible for doing work that requires removal of a fence, gate or other to ensure that a suitable temporary barrier is erected if needed.

81(4) requires a person responsible for work to ensure that each owner of the other land and an adult occupier of the other land is given reasonable notice of each day (“24 hour period”) when access is required.

81(5) requires a person responsible for work to ensure access is at the times consented to or specified in a court order under 86(2)(e), or if no times have been consented to or specified, only between 8.00am and 6.00pm.

81(6) confirms that even when a court order for access has been given under 86(2)(e), a person may not force entry. If a person cannot get entry, or is being obstructed the person must obtain the assistance of a police officer to enforce the order.

81(7) allows a person who has a court order under 86(2)(e) to have access to remove furniture and fittings to gain access to do the work or surveys authorised by the court order.

Clause 82 Removal of unauthorised encroachments, protection structures

82(1) allows a person to remove an unauthorised encroachment onto that person’s land, and the person does not require a building or demolition permit to do the removal work.

82(2) allows a person to remove an unauthorised protection structure placed on that person’s land, and the person does not require a building or demolition permit to do the removal work.

82(1) and (2) oblige the person doing the removal work to make good any damage caused by the removal.

82(3) do not allow a person to remove a party wall or dividing fence that encroaches onto that person’s land.

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

Clause 83 Terms used

“*Affected land*” and “*notifiable event*” are defined so that consent or a court order are required for actions likely to impact on adjoining or nearby owners, but that otherwise a person responsible for work is allowed to proceed without interference.

Clause 84 When notice about effect on other land required

A person responsible for work must give notice if it seems reasonably likely that the work will adversely affect other land.

Clause 85 Form and content of notice about effect on other land

85(1) outlines the specific provisions relevant to the form and content of a notice, which includes that it must:

- be in an approved form;
- detail the works that is prescribed by the regulations;
- detail the extent of works and seek consent from owners of effected lands;
- detail how the works would adversely affect the land and seek the consent of owners of that land for the work or for protection structures to mitigate the adverse affects;
- detail the proposed protection structure, give reasons for requiring the protection structure and seek consent from owners of the affected land;
- detail the effect on a party wall, substantial dividing fence, or boundary retaining wall and seek consent from owners of the affected land; and seek consent from owners of affected land;
- specify which fence or other barrier is to be removed, give reasons for the removal and seek consent from owners of affected land;
- state whether entry onto affected land is required and seek consent from owners of affected land;
- provide a response notice in an approved form for the use of each owner of affected land; and
- include anything prescribed by regulations.

85(2) allows a person responsible for work to request a survey of affected land and seek the consent of the adjoining owner to go on to the affected land to carry out the survey. It is normal practice for a person about to do building or demolition work to carry out a dilapidation survey of adjoining buildings and land to help determine whether any future damage is caused by the building or demolition work. If the owner of the affected land does not consent to the survey then that owner will have to provide evidence that any future damage was caused by the building or demolition work.

Clause 86 Application for court orders if no consent

Clause 86 allows a person responsible for work who gives notice or seeks consent under 85, to apply for a court order if consent is not obtained.

86(1) allows a court order to be sought if consent has not been given within 28 days of a notice, or 14 days after supplementary information was given.

86(2) allows the court to allow specific work or specific access.

86(3) requires the court to take into account the potential detriment to the owner of the affected land and whether the person responsible for the work has any reasonable alternatives.

86(4) requires the person responsible for the work to give the owner of the affected land a copy of the order as soon as possible, within 7 days.

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

87(1) confirms that a court order under 86(2) is not a substitute for a building or demolition permit. If the work that affected the adjoining land had been anticipated before an existing building or demolition permit had been issued, it is possible that the work is already covered by the existing building or demolition permit. Otherwise the person responsible for the work must obtain a building or demolition permit for the work affecting the adjoining land.

87(2) provides a mechanism for the person responsible for the work to get a building permit for protection structures placed on adjoining land when the owner of that land is unable or unwilling to apply for the permit. Normally a building permit application must be signed by the owner of the land. If a protection structure is to be placed on adjoining land the owner of that adjoining land would normally sign the building permit application as owner. This should occur without difficulty if the owner of the adjoining land has given consent, but may not occur if the owner of the adjoining land has refused consent and a court order has been obtained. The person responsible for the work must give the owner of the affected land 30 days in which to sign the building permit application, but then may sign the permit in the place of the owner.

Division 4—Other boundary matters

Clause 88 Finishes of walls close to boundaries

A reasonable standard of finish is required on walls or fences placed along or close to a boundary where it is not practical to erect a dividing fence straddling the boundary in the normal way.

88(1) defines a “*close wall*” to which this clause applies and defines the “*outward facing side*” as the side to have the reasonable finish.

88(2) allows for regulations to set out the details of appropriate finishes for different wall types and constructions.

88(3) allows the permit authority to specify the standard of finish for a close wall as a condition on a building permit (27) or as a building order (110) when the regulations under 88(2) do not provide a standard of finish, or the plans and specifications that were specified in certificate of design compliance did not show how the wall was to be finished.

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

Owners must maintain and repair encroachments, party walls and other shared structures. These provisions complement the *Dividing Fences Act 1961* that deals with sharing the cost of erecting and repairing dividing fences. Parties remain free to make their own agreements.

89(1) provides that an encroachment is owned and must be maintained and repaired by the owner of the land from which it encroaches.

89(2) provides that party walls and boundary retaining walls are jointly owned by the adjoining owners and must be maintained and repaired equally.

Clause 90 Liability for certain expenses

The person responsible for work must pay costs associated surveys, protection structures and the removal and reinstatement of fences unless otherwise agreed with the owner of the affected land.

Clause 91 Liability for loss, damage not affected

89 and 90 do not apply to liability for any loss or damage caused by work, a breach of or a breach of an order under 86(2) or a building order under 110.

PART 7 – EXISTING BUILDINGS

Part 7 covers requirements for existing buildings that apply in addition to building or demolition work covered in Part 2 or change of use or occupancy covered in Part 4. These requirements include existing provisions for swimming pool barriers and smoke alarms. Part 7 provides a framework for regulations to prescribe standards for existing buildings, and to define events, such as sale or lease, that trigger the need for compliance.

Clause 92 Terms used

An “*event*” is a trigger for compliance with a standard.

An “*existing building*” is defined to cover all buildings regardless of whether they were constructed before or after this Bill comes into effect.

Clause 93 Changing building standards, requirements, as to existing buildings

93(1) provides a head of power for regulations to deal with health and safety, amenity or sustainability of existing buildings. Health, safety, amenity and sustainability are the policy objectives of the BCA.

93(2) clarifies that regulations may provide for:

- a standard to apply to an existing building when a triggering event occurs;
- the owner or occupier of a building to do something (such as fit a smoke alarm) or provide information (such as an energy rating) when a triggering event occurs;
- the owner or occupier of a building to arrange for an inspection (such as inspecting a swimming pool barrier) by a qualified person;
- the permit authority to arrange for an inspection (such as inspecting a swimming pool barrier) by an authorised person;
- recovery of costs incurred by a subsequent buyer or lessee of a building in making a building comply with a standard;
- including information in the building records;
- reporting information obtained from inspections; and
- charging fees for inspections carried out by a permit authority.

PART 8 – ENFORCEMENT

Part 8 addresses compliance failures during and after building or demolition work or during occupancy. Different enforcement approaches are available to suit the nature of the failure and urgency of the situation. The permit authority that issued the permit may take enforcement action if building work contravenes a building, demolition or occupancy permit, is unfit for use or occupation, is a danger to occupants or adjoining owners, or is used in contravention of the Act or regulations.

The local government may take enforcement action when a building is built, or demolished without a building or demolition permit. Permit authorities defined under Part 10 have the necessary powers to ensure work complies with a building or demolition permit, that buildings are used in accordance with an occupancy permit, and that buildings comply with building codes and standards. An owner of builder will be able to appeal to the SAT against enforcement action.

Division 1 — Preliminary

Clause 94 Terms used

“Compliance purposes” is defined to cover the principle obligations of people under this Bill.

“Occupier” is defined so that an authorised person performing an enforcement function can rely on consent from or give a notice to a person who controls the relevant building at the time enforcement action is required.

Division 2 - Authorised persons

Clause 95 Terms used: designating permit authority

The *“designating permit authority”* is the permit authority that authorises a person to carry out enforcement functions. The permit authority that issues the building, demolition or occupancy permit for a building is responsible for enforcement of those permits.

Clause 96 Authorised persons

Authorised persons carry out enforcement functions for permit authorities. Authorised persons may have significant powers to enter buildings and obtain evidence and therefore are limited to being employees of the relevant permit authority.

96(1) limits the State to appointing public service officers, but these officers may be in any department or agency. This allows the State’s permit authority functions to be delegated to works agencies to ensure the compliance of buildings constructed under their authority.

96(2) limits special permit authorities to appointing employees of the special permit authority, or employees of the entities that make up the special permit authority. This allows a group of local governments to combine their permit authority functions into a single regional special permit authority that can appoint employees of the local governments to carry out enforcement functions.

96(3) limits local governments to appointing employees of the local government to carry out enforcement functions.

96(4) allows regulations to further limit the qualifications of authorised persons, such as to people with building surveying or law enforcement qualifications.

96(5) allows permit authorities to designate an authorised person for a limited time.

96(6) allows permit authorities to revoke a designation.

Clause 97 Identity card

A permit authority must give an authorised person an identity card and require that person to carry the identity card when carrying out enforcement functions.

Clause 98 Production or display of identity card

An authorised person must produce or display his or her identity card when carrying out enforcement functions.

Clause 99 Limitation on powers of authorised person

99(1) requires an authorised person to act within his or her powers and in accordance with the directions of the permit authority.

99(2) allows an authorised person's powers to be limited by regulations, a condition of designation, or by a written notice from the permit authority.

99(3) allows a permit authority to revoke or vary a designation as an authorised person.

Division 3 – Powers of authorised persons

Clause 100 Entry powers

100(1) limits the entry powers of an authorised person to places where the authorised person has reasonable grounds for entering to perform an enforcement function.

100(2) prevents an authorised person from entering a residence without consent of an adult occupier or an entry warrant, except to give effect to a building order in an emergency under 118(2).

Clause 101 Powers after entry for compliance purposes

101(1) gives an authorised person a general set of powers to inspect places and take evidence. These powers are consistent with those of officers of the Building Commission authorised by the Building Commissioner under the CRA Bill clause 67.

101(2) allows an authorised person to evacuate a dangerous building or direct a person to leave a dangerous place.

101(3) requires an authorised person to give a receipt for anything taken for enforcement purposes.

Clause 102 Obtaining information and documents

An authorised person has a general set of powers to obtain information. These powers are consistent with those of officers of the Building Commission authorised by the Building Commissioner under the clause 68 of the CRA Bill.

Clause 103 Use of force and assistance

An authorised person has a general set of powers to use force and get assistance. These powers are consistent with those of officers of the Building Commission authorised by the Building Commissioner under the clause 69 of the CRA Bill.

Clause 104 Directions generally

An authorised person has a general set of powers to give directions and to require people to comply with the directions. These powers are consistent with those of officers of the Building Commission authorised by the Building Commissioner under clause 71 of the CRA Bill.

Clause 105 Obstruction of authorised persons etc

It is an offence to obstruct an authorised person. This is consistent with clause 70 of the CRA Bill.

Division 4 – Entry warrants

Clause 106 Entry warrant to enter place

An authorised person can obtain an entry warrant from a Justice of the Peace. These powers are consistent with entry warrant powers of officers of the Building Commission under clause 72 of the CRA Bill.

Clause 107 Issue of warrant

A Justice of the Peace can issue an entry warrant. These powers are consistent with powers given to a Justice of the Peace under clause 73 of the CRA Bill.

Clause 108 Effect of entry warrant

An entry warrant allows an authorised person to enter a place and exercise powers under 101. This is consistent with the effects of entry warrants specified under clause 74 of the CRA Bill.

Clause 109 Execution of warrant

An entry warrant must be executed by an authorised person. These provisions are consistent with entry warrant execution provisions under clause 75 of the CRA Bill.

Division 5 – Building orders

Clause 110 Building orders

110(1) allows orders to be made in respect of building or demolition work (that is, work that is currently under way) or in respect of a building or incidental structure, whether completed or not, and whether completed before or after commencement day.

110(2) requires building orders to be in a consistent form and to be given to the person best able to respond to the order. Where building or demolition work is under way and a building or demolition permit is in place, the most appropriate person will be the builder or demolition contractor named on the permit. Where no permit is in place, or where the builder or demolition contractor is not available, the most appropriate person is the owner, or in some cases, the occupier.

Clause 111 Notice of proposed building order other than building order (emergency)

111(1) requires an authorised person to give 14 days notice of a proposed building order and why it is proposed to be issued. A person given notice can respond and the response must be considered before the building order has effect.

111(2) allows a building order to have immediate effect if there is an emergency or a dangerous building. A building order issued under 111(2) is defined in 3 as a “*building order (emergency)*.”

Clause 112 Content of building order

112(1) defines “*specified*” as being specified in a building order.

112(2) sets out that a building order can require a person to:

- stop suspected unauthorised building or demolition work;
- remove a suspected unauthorised building or incidental structure;
- do new building or demolition work to prevent or stop unauthorised work or an unauthorised building or incidental structure;
- evacuate a building that has been built or occupied without authorisation;
- take action to prevent breaching this Bill;
- provide an appropriate finish on a close wall;
- deal with a dangerous building or incidental structure; and
- take any other incidental action.

112(3) allows a building order to have effect for a limited period and requires a building order to say that it can be reviewed under 122 and that the person served with the order must notify the permit authority when the order has been complied with.

Clause 113 Limitation on effect of building order

113(1) confirms that a building order cannot override a court order given under 86(2) in respect of work affecting other land.

113(2) confirms that a building order to demolish, modify or evacuate a building cannot be given when:

- the building has a valid occupancy permit or building approval certificate;
- an application has been made for an occupancy permit or building approval certificate and the application is still under consideration;
- an application for an occupancy permit or building approval certificate has been refused but the period for application for a review has not expired;
- an application for review has been made and the SAT is still considering the review.

Clause 114 Service of building order

114(1) requires a building order to be served in accordance with section 76 of the Interpretation Act that requires a document to be served (i.e. give, deliver or send) and/or service of a document to be effected on the person.

114(2) allows a building order that cannot be served in accordance with section 76 of the Interpretation Act within 7 days can then be served by fixing a copy at the place where the building order applies.

114(3) allows that in an emergency, a copy of the building order (emergency) can be served by fixing a copy at the place where the building order (emergency) applies.

Clause 115 Compliance with building order

Requires a person served with a building order to comply with it.

Clause 116 Obstruction in relation to building order

Makes it an offence to obstruct a person who is complying with a building order.

Clause 117 Revocation of building order

117(1) allows a permit authority to revoke a building order.

117(2) requires the permit authority, when notified under 112(3)(c) that a building order has been complied with, to revoke it if it has been complied with.

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

118(1) defines “*non-compliance*” in respect to a building order.

118(2) allows the permit authority to do whatever is necessary to comply with a building order that has not been complied with.

118(3) allows the permit authority to recover the costs of complying with a building order from the person who was required to comply with it.

118(4) allows a statement of the costs of complying with the building order to be certified by the permit authority under 140(2) and for this statement to be allowed as evidence of costs in court proceedings.

PART 9 – REVIEW

Applicants who are aggrieved with decisions made by permit authorities can seek a review of those decisions by the SAT.

Clause 119 Building and demolition permits

The applicant can appeal to the SAT against a decision of the permit authority to refuse to grant a building or demolition permit or to impose a condition on the permit.

Clause 120 Building standards

A person, such as a building owner, designer or builder, who has asked the Building Commissioner to disapply or modify a building standard, can appeal to the SAT against a decision of the Building Commissioner to not disapply or modify the standard.

Clause 121 Occupancy permits and building approval certificates

The applicant can appeal to the SAT against a decision of the permit authority to refuse to grant an occupancy permit or building approval certificate, or to modify an occupancy permit, or to impose a condition on an occupancy permit or building approval certificate.

The applicant can also appeal to the SAT against a decision of the permit authority to refuse to extend the period of an occupancy permit at all, or for a particular period.

Clause 122 Building orders

A person who has been served with a building order by a permit authority can appeal to the SAT against a decision of the permit authority to make the order, or against any requirement in the order.

Except when a building order has been issued in an emergency under 111(2), an application for review under this clause stays the operation of the building order.

Clause 123 State Administrative Tribunal may disapply or modify subsidiary legislation about building etc.

123(1) defines “*building regulation or local law*” to cover all standards and laws likely to relate to buildings.

123(2) and (3) allows the SAT to disapply or modify the building regulations or local laws in a particular case if it considers it just to do so. Note 39 allows the Building Commissioner to disapply or modify building standards for an individual building.

123(4) confirms that an order of the SAT to disapply or modify the building regulations or local laws overrides the specific provisions of the Bill or the Local Government Act.

123(5) confirms that this clause does not override the powers of the SAT in the SAT Act.

PART 10 – PERMIT AUTHORITIES

Part 10 establishes permit authorities as the authorised body to carry out building approval functions, including:

- monitoring conflicts of interest;
- overseeing the registration status and general conduct of certifiers;
- carrying out compliance and enforcement of building control; and
- maintaining building records.

There are three types of permit authorities:

1. Local governments (the primary permit authority).
2. The State of Western Australia (mainly for State buildings and where it is in the public interest to do so, but the State can act as permit authority for any building in the State).
3. Special permit authorities (to allow flexibility and efficiency where regional local governments wish to centralise building approval in one locality, or for regulation of building work of specific types or in specific areas).

Local governments remain the primary regulator of building work within their local government area. People wishing to construct new buildings or change the use of existing buildings must apply to the local authority for a building permit or an occupancy permit.

Clause 124 State of WA as a permit authority

The State may perform the functions of a permit authority for any building in the State. The Minister will have the power to choose when the State will act as permit authority (124(2)). Normally the State will only regulate its own buildings, but it may agree with a local government or a private owner to take over regulation of specialist or unusual private buildings or structures when it is in the public interest to do so.

124(3) requires the Minister to inform the relevant local government that the State is to be the permit authority for a building or a particular kind of buildings so that the local government is aware the work is to happen and it does not have enforcement responsibilities for that building.

124(4) confirms that the Minister's decision is final and not subject to review.

Clause 125 Delegation of State's functions as permit authority

125(1) allows the Minister to delegate the State's powers as a permit authority to a public body or an office holder in a public body. This provision provides flexibility to the State Government to manage its own building approvals in a variety of ways, including:

- a neutral regulator, such as the Building Commissioner, issuing all permits on behalf of the State;
- each agency issuing its own permits for its own building works;
- a central works agency (such as Department of Treasury and Finance) issuing permits for all State Government works;

- works agencies (such as Public Transport Authority, Main Roads, Department of Treasury and Finance) issue permits for their own building work, with a central works agency (Department of Treasury and Finance) or a neutral regulator (Building Commissioner) issuing permits for the non-works agencies; or
- a mix of the above options.

125(2) defines “*public body*” to ensure that delegations are restricted to Ministers, State Government agencies or officers.

Clause 126 Special permit authority

126(1) allows the regulations to designate a body as a special permit authority. Designated bodies must be established for a public purpose and have the capacity to under take the role, such as:

- a group of regional local governments who wish to centralise building approval in one local government or a regional council;
- another regulator able to deal with building work of specific types; and
- entities with building responsibilities that extend across more than one local government, such as redevelopment authorities or universities.

126(2) requires the regulations to specify the areas, or the types of buildings, that the special permit authority can deal with.

126(3) confirms that designation as special permit authority can be revoked. In such a case the regulations will prescribe what other permit authority (typically the local government) will take over enforcement and administrative responsibility for buildings approved by the special permit authority while it was in existence.

Clause 127 Delegation: special permit authorities and local governments

127(1) allows a special permit authority or local government to delegate its functions.

127(2) allows delegations to be made only to employees of the local government or special permit authority. If the special permit authority is made up of a number or legal entities (for example a regional council) a delegation can be made to an employee of one of those entities (for example, one of the local governments that make up the regional council). This clause does not allow local governments or special permit authorities to delegate to private sector contractors the power to issue building permits.

127(3) clarifies the employment status of local government officers.

127(4) to (6) are procedural provisions common to delegation powers.

PART 11– BUILDING INFORMATION

This Part provides for permit authorities to store, maintain and make available specified building related information. Permit authorities must give specified information to the Building Commissioner to provide an activity report on the State’s built environment.

Clause 128 Register of permits, building approval certificates, building orders

Permit authorities must keep a register of permits, building approval certificates and orders made by the permit authority, in a manner approved by the Building Commissioner.

Clause 129 Inspection, copies of permits, building approval certificates in register

Neighbours and other interested persons must be informed about what building or demolition work has been approved, and for what purpose a building may be occupied. However, under 131, only people with specific interests are allowed to view the detailed building records.

Clause 130 Building records to be kept

Permit authorities must keep building records applying to buildings and incidental structures that have been lodged with the permit authority, such as applications for building and demolition permits (16), reports relating to inspections of building and demolition work (36), notices relating to the placement of a protection structure in an emergency (78), notices of work on a party wall in an emergency (79), etc.

Clause 131 Inspection, copies of building records

Only people with a legitimate interest can inspect or copy building records. Some building records may be confidential, such as the layout and security systems of banks and prisons. 131(1) defines an “*interested person*” as the owner, a person with the written consent of the owner (such as an architect preparing plans), or a person prescribed in the regulations (such as a builder with a building permit for an adjacent site assessing the need for protection work).

Clause 132 Provision of information to Building Commissioner

132(1) requires permit authorities to give the Building Commissioner the necessary information for the annual report of the department assisting the Minister in the administration of this Bill. This is expected to be the Department of Commerce.

131(2) allows the Building Commissioner to request records or information from permit authorities to enable the carrying out of that officer’s statutory functions. These are set out in the clause 86 of the CRA Bill, and include monitoring developments relevant to the regulation of building services in this state, administering the collection of the levy, advising the Minister, providing information, education and training on building standards, etc.

131(3) and (4) require local governments and special permit authorities to provide information and in the required format.

PART 12 – LEGAL PROCEEDINGS

The ability to commence proceedings for non compliance with the Bill is an integral part of the regulatory framework. This Part outlines the prosecution framework for court proceedings and the system of administering fines, penalties and infringement notices.

This Bill will be a prescribed Act under regulations made under the *Criminal Procedure Act 2004*, which allows for infringement noticers without prescribing them in this Bill

The Fines, Penalties and Infringement Notices Enforcement Act currently applies to the Miscellaneous Provisions Act and will continue to apply to this Bill.

Division 1 - General provisions about legal proceedings

Clause 133 Prosecutions

133(1) limits the power to prosecute offences under this Bill to a permit authority for a building, or a local government that is not acting as a permit authority for a building.

133(2) provides that the Director of Public Prosecutions may commence or take over a prosecution pursuant to section 11 of the *Director of Public Prosecutions Act 1991*.

133(3) places a 6 year limit to prosecute for:

- no building permit (9);
- no demolition permit (10);
- no building permit (9);
- building work not in compliance with a building permit (29(1));
- demolition work not in compliance with a demolition permit (29(2));
- building work not in compliance with applicable standards (37(1));
- buildings not in compliance with applicable standards (37(2));
- demolition work not in compliance with applicable standards whether done by a demolition contractor (38(1)) or by an owner (37(2));
- unauthorised building encroachments (76(1));
- adversely affected land without consent or court order (77);
- unauthorised protection works (78(1)) or failing to notify the affected owner (78(2)) or the permit authority (78(3));
- unauthorised works affecting a party wall, substantial dividing fence or boundary retaining wall (79(1)); or
- failing to provide the requisite notification to the affected owner (79(2)(a)) or the permit authority (79(2)(b)).

133(4) places a 3 year limit to prosecute any other offence in this Bill.

133(5) requires a magistrate to hear prosecutions for offences under this Bill.

Clause 134 Civil remedy not affected by proceedings for an offence

A prosecution or conviction under the Bill does not affect the liability of a person in civil proceedings.

Clause 135 Incriminating information, questions or documents

135(1) stops a person impeding an investigation by refusing to provide or produce information to, or assist, an authorised officer under 101(1)(j) or 102(1) by claiming that he or she would otherwise incriminate himself or herself.

135(2) protects a person who provides or produces information to, or assists, an authorised officer under 101(1)(j) or 102(1) against having that information used against him or her in any criminal proceedings except for perjury or an offence against this Bill that is a result of providing false or misleading information.

Clause 136 Legal professional privilege

Legal professional privilege is preserved.

Division 2 - Evidence in legal proceedings

Clause 137 *Evidence Act 1906* not excluded

Clarifies that the *Evidence Act 1906* is not impacted by this clause.

Clause 138 Allegations in prosecution notices

Court proceedings are streamlined by not requiring additional proof of matters contained in a prosecution notice, unless there is evidence to the contrary.

Clause 139 Presumptions about authority to do certain things

139(1) removes the need for proof that a prosecutor is authorised to commence prosecutions (139(1)(a)) and that a signature on the prosecution notice is that of the authorised officer (139(1)(b)).

139(2) removes the need for proof that certificates are signed by a person authorised to do so, unless there is evidence to the contrary.

Clause 140 Proof of permits, declarations, obtained records

140(1) allows an “*authorised certifier*” to certify a true copy of any permit or certificate granted under this Bill.

140(2) defines an “*authorised certifier*” of a permit authority to be:

- the Minister or person acting with the Minister’s authority on behalf of the State;
- a person acting with the authority of a Special Permit Authority;
- the Chief Executive Officer of a local government or a person acting on the Chief Executive Officer’s authority.

140(3) allows the Building Commissioner to certify a true copy of a declaration under 39(2) to not apply or modify a building standard.

140(4) allows an authorised officer to certify that a record has been obtained by entry powers under 101(1)(i) or obtained by a direction by under 102(1)(b).

Clause 141 Evidence of text adopted by regulations

The Building Commissioner can certify a true copy of text in regulations.

PART 13 – GENERAL PROVISIONS

Part 13 clarifies roles and responsibilities, and provides adequate protection for authorised persons operating within the scope of this Bill. It places a positive duty on persons dealing with information to ensure that information is kept confidential and makes it an offence to provide false and misleading information.

Clause 142 Authority to perform certain functions in relation to Crown land for purposes of this Act

142(1)(a) allows the Minister for Lands to approve or sign as the owner of Crown land for the purposes of this Bill.

142(1)(b) allows a public service officer authorised by the Minister for Lands to approve or sign as the owner of Crown land for the purposes of this Bill.

142(2) does not prevent the Minister for Lands from performing his or her duties through an officer or an agent.

142(3) confirms that whoever signs as owner on behalf of Crown land does not affect the rights and responsibilities of an owner under this Bill.

Clause 143 Protection from liability

143(1) protects a person performing a function under this Bill and confirms that it applies to the Minister for Lands or the public service officer for approving or signing as the owner of Crown land in 142(1).

143(2) confirms that this protection applies even though a person did not need authority under this Bill to perform the function.

143(3) confirms that a permit authority or the State remain vicariously liable for the actions of their servants.

143(4) confirms that protection applies for errors of omission.

143(5) confirms that 143 is in addition to any protection provided by section 9.59 of the Local Government Act to council members, local government employees, or persons appointed or engaged by a local government to perform specific functions.

Clause 144 Extent of duties as to certificates

144(1) confirms that permit authorities do not have a duty before issuing a permit to form an opinion or check the accuracy or facts in relation to certificates (e.g. certificate of design compliance, technical certificates, etc). Permit authorities will be able to rely on certificates from appropriately registered people when processing permit applications.

Similarly, 144(2) confirms that building surveyors are not required to check the accuracy of, to form an opinion on, or check the soundness of an opinion on, anything that is the subject of a technical certificate provided by a specialist.

144(3) confirms that this clause operates in addition to the provisions of the *Civil Liability Act 2002*.

Clause 145 Protection for compliance with Act

145(1) protects a person against civil or criminal actions if satisfying a requirement of this Bill in good faith.

145(2) protects a person against civil or criminal liability if they provide a record or information that may otherwise attract liability for breaching the provisions of a contract.

Clause 146 Confidentiality

It is an offence not to ensure information and records are kept confidential. Exceptions are provided where information is:

- required by an operation of this Bill or other written law;
- required or allowed by this Bill or other written law;
- subject to consent by the Minister or the person to whom the information relates;
- associated with formal proceedings of the courts, SAT , the Board operating under the Registration Bill or the CRA Bill ; and
- disclosed in a prescribed circumstance.

Clause 147 False or misleading information

147(1) makes it an offence to provide false or misleading information to a permit authority, police officer or authorised officer relating to an application or the compliance with any direction or requirement under this Bill.

146(2) specifies the conduct which 147(1) lists as an offence as:

- knowingly making a false or misleading statement;
- recklessly making a false or misleading statement;
- providing false or misleading statement; and
- recklessly providing false or misleading statement.

Clause 148 Laying documents before Parliament

148(1) requires the Minister to submit documents to each House of Parliament during or at the commencement of a sitting period or to the Clerk of each House when Parliament is not sitting.

148(2) confirms that submitting documents to the Clerk of a House meets the requirement of laying the documents before that House.

148(3) requires that documents provided to the Clerk of the House pursuant to 148(2) must be recorded on the first sitting day after the Clerk receives the documents.

PART 14 – REGULATIONS

This Part provides for regulations to assist with the proper administration of the provisions of the Bill, which will adopt relevant codes and standards, detail application and permit requirements, outline procedures, incorporate necessary qualification and accreditation requirements, as well as schedule prescribed fees and charges.

Clause 149 Regulations

149(1) provides a general head of power to make regulations required for the operation of the Bill.

149(2) confirms that the regulations can be used to set fees.

149(3) confirms that regulations can prescribe penalties for failure to comply with a regulation. The maximum penalty for failure to comply with a regulation is \$5,000.

Clause 150 Regulations may refer to published documents

150(1) confirms regulations can adopt the text of published documents. This is needed, for example, to prescribe standards such as the BCA and Australian Standards that are published by other bodies.

150(1)(a) allows a publication to be referenced as it is published at a given time, so that updated versions are not automatically adopted. 150(1)(b) allows a publication to be referenced as the text is amended from time to time, so that updated versions are automatically adopted.

150(2) allows the regulations to adopt all or part of a referenced document, or to modify the text of a referenced document. .

150(3) allows for situations where documents refer to other documents.

150(4) requires adopted documents or text to be readily available to the public so that the public can inform itself of applicable laws.

150(5) requires the Building Commissioner to have copies of referenced documents available for inspection by the public, and also ensure that copies can be purchased by the public. The Building Commissioner does not have to sell the referenced documents so long as they are freely available for purchase from publishers or retailers.

150(6) allows for the regulations to deal with transitional matters when the text or effect of a referenced document changes.

PART 15 – CONSEQUENTIAL AMENDMENTS TO OTHER ACTS, REPEAL OF CERTAIN REGULATIONS

This Part deals with necessary amendments to other legislation to give proper effect to the provisions of the Bill. The main change is to repeal Parts VII, IX and XV of the Miscellaneous Provisions Act that previously dealt with building control. Changes to other legislation are mainly to update references to the new building legislation.

Division 1 – *Local Government (Miscellaneous Provisions) Act 1960* and related regulations

Clause 151 Act amended

Division 1 amends the Miscellaneous Provisions Act.

Clause 152 Parts VIII and IX deleted

Part VIII “Private swimming pools” and Part IX “Smoke alarms in buildings” are repealed. These Parts are replaced with Part 7 “Existing buildings” of this Bill which provides heads of power to prescribe regulations to deal with the safety or health of users of existing buildings.

Clause 153 Part XV amended

Divisions of Part XV of the Miscellaneous Provisions Act that deal with buildings are repealed.

153(1) deletes Division 1 of Part XV.

153(2) deletes Division 2, 3, 4, 6, 7, 8, 9, 9A, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 20 of Part XV.

Divisions 5 and 19 of the Miscellaneous Provisions Act were deleted in 1984.

Clause 154 Sections 666 and 667 deleted

Section 666 of the Miscellaneous Provisions Act allowed the building occupier to act in default of the owner. This is replaced by 5 in this Bill that allows the definition of “*owner*” to include an occupier in appropriate circumstances.

Section 667 of the Miscellaneous Provisions Act allowed a court to order an occupier to permit a building owner to do what is necessary to comply with the requirements of the Miscellaneous Provisions Act. This is replaced by 116 in this Bill that prohibits a person from obstructing a person complying with a building order.

Clause 155 Section 684 amended

Section 684 of the Miscellaneous Provisions Act refers to sections 287(4)(b), 288(8) and 291(5)(b). These sections were deleted in amendments in 1997 but the reference in section 684 was not removed. Section 684 provides for arbitration and will continue to apply to section 364(8), which relates to a power to prescribe new street alignments.

Clause 156 Section 687 deleted

Section 687 of the Miscellaneous Provisions Act gave power to a court to declare that a structure is not a building. The provisions of Part 5 of this Bill allow regulations and the Minister to clarify what buildings or structures require permits under this Bill.

Clause 157 *Building Regulations 1989 repealed*

The Building Regulations are repealed. These regulations are made under the Miscellaneous Provisions Act and Local Government Act. This Bill provides for making necessary regulations under Part 14.

Clause 158 *Local Government (Prohibition on Dealings in Land) Regulations 1973 repealed*

The *Local Government (Prohibition on Dealings in Land) Regulations 1973* are made under the Miscellaneous Provisions Act. Part 8 of this Bill provides comprehensive powers for issuing and enforcing building orders and recovering costs incurred by local governments.

Division 2 – Other Acts amended

Clause 159 *Building and Construction Industry Training Fund and Levy Collection Act 1990 amended*

159(1) amends the BCITF Act and Levy Act

159(2) deletes “*building licence*” in the interpretation provisions. The expression “*permit*” is used in this Bill.

159(3), (5), (6), (8) change reference in the interpretation provision to a “*permit*”, which includes a building and demolition permit.

159(4) adopts the definition of building and construction work in this Bill.

159(7) confirms that a levy is not payable for a building licence or a demolition licence issued under the Miscellaneous Provisions Act prior to the BCITF and Levy Act coming into effect.

Clause 160 *Constitution Acts Amendment Act 1899 amended*

The *Constitution Acts Amendment Act 1899* is amended by deleting reference to the Advisory Committee appointed under section 435 of the Miscellaneous Provisions Act. Section 435 is repealed by 153(2).

Clause 161 *Health Act 1911 amended*

This clause amends sections 175 and 176 of the *Health Act 1911* to change references made to the Miscellaneous Provisions Act to, and to adopt the terminology used in, the Bill.

Clause 162 *Heritage of Western Australia Act 1990 amended*

The *Heritage of Western Australia Act 1990* is amended to change references made to the Miscellaneous Provisions Act to, and to adopt the terminology used in, the Bill.

162(2) modifies section 11(3) of the Heritage Act to remove the duty of a permit authority to refer an application to the Heritage Council in circumstances where it is clear that the Heritage Council has already been consulted and the application conforms to any Heritage Council requirements.

Section 11 of the Heritage Act requires “decision-making bodies” considering a proposal affecting a registered place to notify the Heritage Council, to give the Heritage Council sufficient time to advise the decision-making body, and ensure that any action is consistent with that advice.

This Bill requires applicants for a permit to obtain the necessary prescribed approvals, including planning and heritage, before submitting an application for a building or demolition permit. This amendment to section 11 allows the permit authority to process the permit application within the 14 day period prescribed under this Bill when it is clear from the application that appropriate consultation has taken place with the Heritage Council. This facilitates 20(1)(m) of the Bill, which requires a permit authority to be satisfied that the requirements of the Heritage Act have been complied with before issuing a building or demolition permit.

Clause 163 *Home Building Contracts Act 1991* amended

Various provisions in the HBC Act are amended to change references made to the Miscellaneous Provisions Act to, and to adopt the terminology used in, the Bill.

are amended to adopt the terminology in, or reference to, this Bill.

163(1) amends the HBC Act.

163(2) deletes the specific reference to a “**building surveyor**” making a lawful written direction. Terminology introduced under this Bill restricts the use of “**building surveyor**” to certification purposes, and allows an “**authorised person**” to issue orders. As amended, section 8(1)(a) of the HBC Act will now refer more generally to a direction given by “a person acting under a written law.”

163(3) deletes a definition of “**building surveyor**” in section 8(5) of the HBC Act that is neither needed nor accurate following the changes in 163(2).

163(4) replaces reference to a licence under the Miscellaneous Provisions Act with a reference to a permit under this Bill in section 9(1)(a) of the HBC Act.

163(5) replaces reference to a licence under the Miscellaneous Provisions Act with a reference to a permit under this Bill in section 9(1)(b) of the HBC Act.

163(6) replaces reference to a licence under the Miscellaneous Provisions Act with a reference to a permit under this Bill in the definition of “**cost of the building work**” in section 25A of the HBC Act.

163(7) replaces reference to a “licence issued” under the Miscellaneous Provisions Act with a reference to a “permit granted” under this Bill in section 25C(3)(b)(ii) of the HBC Act.

163(8) replaces reference to a “licence issued” under the Miscellaneous Provisions Act with a reference to a “permit granted” under this Bill in section 25J(3) of the HBC Act.

163(9) replaces reference to a licence for residential building work issued under the Miscellaneous Provisions Act with a reference to a permit for residential building work granted under this Bill in section 25J(5)(b) of the HBC Act.

Clause 164 *Land Tax Assessment Act 2002* amended

The *Land Tax Assessment Act 2002* is amended to change references made to the Miscellaneous Provisions Act to, and to adopt the terminology used in, the Bill.

Clause 165 *Liquor Control Act 1988* amended

The *Liquor Control Act 1988* is amended to change references made to the Miscellaneous Provisions Act to, and to adopt the terminology used in, the Bill.

Clause 166 *Local Government Act 1995* amended

The *Local Government Act 1995* is amended to change references made to the Miscellaneous Provisions Act to, and to adopt the terminology used in, the Bill.

166(2) confirms that section 3.5 of the Local Government Act gives a local government the power to make local laws about building work, standards for construction, or the use and maintenance of existing buildings. Note that section 3.7 of the Local Government Act provides that a local law is inoperative to the extent that it is inconsistent with any other written law, including this Bill, when enacted. This ensures that building standards issued under this Bill cannot be varied or overridden by local laws or standards.

166(3) inserts a new section 9.61(g) into the Local Government Act, which allows regulations to deal with transitional matters arising from repeal of the Miscellaneous Provisions Act relating to:

- notices given under section 375 of the Miscellaneous Provisions Act before commencing to build;
- depositing materials on the street, issue of licence to deposit material, and paying bonds to the local government under section 377 of the Miscellaneous Provisions Act;
- the removal of hoardings and materials under section 378 of the Miscellaneous Provisions Act;
- making good damage to footpaths, drains, and other local infrastructure under section 379 of the Miscellaneous Provisions Act; and
- the protection of the footpath during construction under section 380 of the Miscellaneous Provisions Act.

Clause 167 *Perry Lakes Redevelopment Act 2005* amended

The *Perry Lakes Redevelopment Act 2005* is amended to change references made to the Miscellaneous Provisions Act to, and to adopt the terminology used in, the Bill.

167(2) replaces the definition of “**building local laws**” in section 16(1) of the *Perry Lakes Redevelopment Act 2005* that previously referred solely to local laws made under the Miscellaneous Provisions Act with a new definition that also includes local laws made under section 3.5(4A) of the Local Government Act inserted by 166(2).

Under the *Perry Lakes Redevelopment Act 2005*, building local laws have no effect after resumption day (the day on which the redevelopment commences and control is transferred from the local government to the State) but do take effect again after completion day (point at which the development is returned to the local government).

Clause 168 *Planning and Development Act 2005* amended

The Planning and Development Act is amended to change references made to the Miscellaneous Provisions Act to, and to adopt the terminology used in, the Bill.

168(1) amends the Planning and Development Act.

168(2) removes an obsolete reference to legislation pre-dating the Miscellaneous Provision Act in sections 129(1)(a) and 129(2)(a) of the Planning and Development Act.

168(3) replaces a reference in section 131(1) of the Planning and Development Act to regulations dealing with building standards under the Miscellaneous Provisions Act with a reference to regulations dealing with building standards under this Bill and provides that if there is an inconsistency between a local planning scheme and a regulation made under the this Bill, the regulation prevails.

This reverses the current effect of section 131(1) of the Planning and Development Act that allowed local town planning schemes to override building standards. This was appropriate when local governments could set their own building standards, but with the development of a national set of building standards (the BCA) and national agreements not to vary the effect of the national code at local level it is now more appropriate for the building standards to have precedence.

168(4) complements the change in precedence caused by 168(3) and amends section 131(2) of the Planning and Development Act to require a local government to have regard for any regulations made under this Bill when it exercises any power conferred on it by a local town planning scheme. The heading of section 131 of the Planning and Development Act is also changed to confirm that building standards now prevail over local town planning schemes.

168(5) replaces reference to the Miscellaneous Provision Act and a reference to a “*building licence*” with a reference to this Bill and references to a “*building permit*” in section 136(3) of the Planning and Development Act.

Clause 169 *Port Authorities Act 1999* amended

The *Port Authorities Act 1999* is amended to change references made to the Miscellaneous Provisions Act to, and to adopt the terminology used in, the Bill.

169(3) removes reference in section 38(2)(b) of the *Port Authorities Act 1999* to an exemption from local government building control under the Miscellaneous Provisions Act. This Bill applies to all buildings, including those owned by port authorities, but clause 71 provides that building permits are not required for buildings incidental to shipping and boating facilities.

169(4) removes exemptions in relation to buildings and building work previously provided by section 373(3) of the Miscellaneous Provisions Act.

169(5) deletes provisions made redundant in the *Port Authorities Act 1999* by amendments in 169.

169(6) ensures that planning disputes are referred to the relevant Minister, since building related matters will be dealt with under the provisions of this Bill.

169(7) clarifies that the Minister mentioned in 38(7), who is referred planning disputes, is the Minister administering the Planning and Development Act 2005.

Clause 170 *Public Works Act 1902* amended

The *Public Works Act 1902* is amended to change references made to the Miscellaneous Provisions Act to, and to adopt the terminology used in, the Bill.

170(2) deletes section 114 of the *Public Works Act 1902* that exempted buildings on land taken for public works from being subject to local government building control. This Bill applies to all buildings, including those constructed as public works, but 124 allows the State to act as permit authority in place of a local government, if required.

Clause 171 *Retirement Villages Act 1992* amended

The *Retirement Villages Act 1992* is amended to change references made to the Miscellaneous Provisions Act to, and to adopt the terminology used in, the Bill.

Clause 172 *Rottnest Island Authority Act 1987* amended

The *Rottnest Island Authority Act 1987* is amended to change references made to the Miscellaneous Provisions Act to, and to adopt the terminology used in, the Bill.

172(2) deletes section 44 of the *Rottnest Island Authority Act 1987*, which exempted the Authority from conforming with laws relating to building standards and licensing. This Bill applies to all buildings, including those constructed on Rottnest Island, but clause 124 allows the State to act as permit authority in place of a local government if required.

Clause 173 *Soil and Land Conservation Act 1945* amended

The *Soil and Land Conservation Act 1945* is amended to change a reference to the Miscellaneous Provisions Act to the Bill.

Clause 174 *Strata Titles Act 1985* amended

Various provisions in the *Strata Titles Act 1985* are amended to change references made to the Miscellaneous Provisions Act to, and to adopt the terminology used in, the Bill.

174(2) amends section 5B(2) of the *Strata Titles Act 1985* to require that a strata or survey-strata plan being lodged shall be accompanied by either an occupancy certificate issued under 50(1)(a) or a building approval certificate issued under 50(1)(b).

174(3) amends section 8A(f) of the *Strata Titles Act 1985* so that a strata plan lodged for registration shall be accompanied by either an occupancy certificate issued under 50(2)(a) or a building approval certificate issued under 50(2)(b).

174(4) adds a reference to a building permit granted under this Bill to section 21R(1)(a) of the *Strata Titles Act 1985*, which requires a building approval to be in place before a resolution by a strata company to amend a strata plan to include any extension or alteration of a building shown on a plan (section 21Q(1)(a)) or to include a building not shown on the plan (section 21Q(1)(b)).

174(5) adds a reference to a building permit granted under this Bill to section 21U(2) of the *Strata Titles Act 1985*, which requires a certificate by a licensed surveyor that an extension, alteration or additional building has been approved.

174(6) deletes section 23 of the *Strata Titles Act 1985* that sets out details of a certificate by the local government that the building has been inspected and is consistent with the approved building plans and specifications. This process and certificate are replaced by an occupancy permit issued under Part 4 of this Bill.

174(7) deletes section 24(1) of the *Strata Titles Act 1985*, which requires a local government to determine if a proposed building is of a sufficient standard to be brought under the *Strata Titles Act 1985* as a building in a strata scheme. This process and the determination have been replaced by an occupancy permit issued under Part 4 of this Bill.

174(8) replaces a reference to the deleted section 23 of the *Strata Titles Act 1985* in section 24(2) of that Act and re-states the provisions that require a local government to be satisfied that in relation to the development:

- separate occupation of the proposed lots will not contravene any town planning scheme in force under the Planning and Development Act;
- all necessary consents and approvals have been given; and
- the proposal will not interfere with the existing or likely future amenity of the neighbourhood.

174(9) deletes section 26(1) paragraphs (a) to (i) of the *Strata Titles Act 1985* that refer to appeals against the certificate abolished under 174(6).

174(10) deletes references to sections 24(7) and (8) of the *Strata Titles Act 1985* that refer to the certificate abolished under clause 174(6) and changes a reference in section 26(1)(j) of that Act to now refer to the re-statement under 174(8) of provisions deleted by 174(6).

174(11) deletes a reference to paragraphs (c) to (l) in section 26(5)(a) of the *Strata Titles Act 1985* that refer to appeals abolished under 174(9) and re-states a reference to paragraphs (j) and (k).

174(12) inserts a new Part VIII into the *Strata Titles Act 1985* to deal with transitional provisions resulting from the enactment of this Bill:

- section 134 - applications for certificates of local government for strata plans required by section 5B(2) of the *Strata Titles Act 1985* must be dealt with under those provisions if the plan was not registered by commencement day of this Bill.
- section 135 - applications for certificates of local government for re-subdivision of a strata plan required by section 8A(f) of the *Strata Titles Act 1985* must be dealt with under those provisions if the plan was not registered by commencement day of this Bill.
- sections 136(1) to (4) - applications for review of a local government certificate, determination, or approvals associated with a proposed strata scheme under section 26 of the *Strata Titles Act 1985* must be dealt with under those provisions if the review was not finalised by commencement day of this Bill. However, where certificates are given by a local government for a strata plan under section 5B(2) or are subdivision plan under section 8A(f) those provisions are to be read as if that certificate must accompany the plan.

Clause 175 *Water Agencies (Powers) Act 1984* amended

Various provisions in the Water Agencies Act are amended to change references made to the Miscellaneous Provisions Act to, and to adopt the terminology used in, the Bill.

PART 16 – TRANSITIONAL PROVISIONS

Part 16 deals primarily with the effect of the repeal of Part XV of the Miscellaneous Provisions Act and the transition to equivalent, but not identical, processes under this Bill. Transitional arrangements are also provided to deal with Parts VIII (Private Swimming Pools) and IX (Smoke Alarms in Buildings).

The principles used in drafting the transitional provisions have been to:

- avoid leaving provisions in the repealed Act with continuing effect under section 37(1) of the Interpretation Act. If provisions need to have continuing effect they are re-enacted as a part of this Bill;
- allow licences, permits and authorities granted under the repealed Act to have effect as if they were the equivalent licences, permits and authorities created under this Bill;
- allow processes commenced under the repealed Act to continue under the provisions of the repealed Act, but for the outcome of the process (a licence, a permit or an authority) to be the granting of a licence, permit or authority under this Bill;
- extinguish a right obtained under the repealed Act by a public authority (typically a local government) to take or continue enforcement or recovery action. Where an equivalent right is created under this Bill the public authority is able to commence new action under the new provisions.
- preserve a right obtained under the repealed Act by a private individual.

Division 1 – Transitional provisions arising from the enactment of the *Building Act 2010*

Clause 176 Terms used

On “*commencement day*” all the Divisions (i.e. 2, 3, 4, 6, 7, 8, 9, 9A, 10, 11, 12, 13, 14, 15, 16, 17, 18, & 20) of Part XV of the Miscellaneous Provision Act, which are listed in clause 153(2), will be repealed.

These provisions are referred to as “*former provisions*”.

To avoid confusion, the former provisions will cease to apply when this Bill first comes into effect. This does not prevent Parts of this Bill being proclaimed at different dates to smooth transition of these reforms.

Clause 177 *Interpretation Act 1984 not affected*

Part V of the Interpretation Act applies to repeal of legislation.

177 ensures the Interpretation Act is not affected unless expressly stated in a clause under this division.

Clause 178 Building licences, pending applications, reviews

178(1) defines “*building licence*” as a licence issued under section 374(1) of the Miscellaneous Provisions Act.

178(2) gives a building licence issued under the former provisions before commencement day immediate effect as a building permit under 20.

178(3) confirms that a building licence taken to be a building permit lapses if the building work has not substantially commenced within 12 months of issue. The duration of a building licence taken to be a building permit can be extended under 32.

178(4) gives an application for a building licence made under the former provisions immediate effect as an uncertified application for a building permit under 14. The requirements for an uncertified application are substantially those for an application under the former provisions. No additional fee is required.

178(5) confirms that a review by SAT that is already under way under section 374AAD(1)(a) or (b) of the Miscellaneous Provisions Act is to be dealt with under those provisions but that any licence that is issued or varied is given effect as a building permit under this Bill.

Clause 179 Demolition licences, pending applications, reviews

179(1) defines “*demolition licence*” as a licence issued under section 374A(1) of the Miscellaneous Provisions Act.

179(2) gives a demolition licence issued under the former provisions before commencement day immediate effect as a demolition permit under 21.

179(3) confirms that a demolition licence taken to be a demolition permit lapses if the demolition work has not substantially commenced within 12 months of issue. The duration of a demolition licence taken to be a demolition permit can be extended under 32.

179(4) gives an application for demolition licence made under the former provisions immediate effect as an application for demolition permit under 14. No additional fee is required to be paid.

179(5) confirms that a review by SAT that is already under way under section 374A(3) of the Miscellaneous Provisions Act is to be dealt with under those provisions, but that any licence that is issued or varied has effect as a demolition permit granted under this Bill.

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

180(1) clarifies that a “*building approval certificate (former provisions)*” means a certificate issued under section 374AA(4) of the Miscellaneous Provisions Act to distinguish it from a “*building approval certificate*” granted under 58.

180(2) gives a building approval certificate granted before commencement day immediate effect as a building approval certificate granted under this Bill.

180(3) gives an application for a building approval certificate that was made and not decided before commencement day immediate effect as an application for a building approval certificate under 51 for unauthorised building work. No additional fee is required.

180(4) confirms that a review by SAT that is already underway under section 374AAD(1)(c) or(d) of the Miscellaneous Provisions Act is to be dealt with under those provisions, but that any certificate that is issued or varied has effect as a building approval certificate granted under this Bill.

Clause 181 Certificates of classification, pending notifications of change of use

Certificates of classification were issued under section 374C of the Miscellaneous Provisions Act. Under the former provisions a building could not be occupied contrary to its certificate of classification.

181(1) identifies which references to “*regulations*” are to the Building Regulations 1989, which were in force before commencement day.

181(2) gives a certificate of classification for a completed building immediate effect as an occupancy permit granted under 58 after an application under clause 46 for an occupancy permit for a completed building.

181(3) gives a certificate of classification for an incomplete building immediate effect as an occupancy granted under 58 after an application under 47 for an occupancy permit for an incomplete building.

181(4) gives a notification for a change of use submitted before commencement day under the former provisions immediate effect as an application under 49 for a replacement occupancy permit. No additional fee is required.

Clause 182 Hoardings etc. in public places

Section 378 of the Miscellaneous Provisions Act allowed a local government to remove unauthorised hoardings, etc. in public places and sell any material removed to cover the cost. 118 of this Bill allows a permit authority to give effect to a building order and to recover the costs. Cost recovery under this Bill generally does not allow seizure of property for sale without a court order.

182 prohibits a local government from selling material it has removed under section 378 of the Miscellaneous Provisions Act unless there was an agreement to do so prior to commencement day.

Clause 183 Building party walls

Sections 383(3) and 386 of the Miscellaneous Provisions Act provide for consent and agreement for building party walls along a boundary. These matters are covered in Part 6 of this Bill.

183(1) defines “*party wall building consent*” for this clause as the consent given under section 383(3) the former provisions.

183(2) gives a party wall building consent made before commencement day immediate effect as consent under this Bill for encroachment of a building or incidental structure (76(1)(a)) and access onto an adjoining property (81((2)(a)).

183(3) preserves, when consent was given before commencement day, the right under the former provisions that the person building a party wall can only recover the relevant share of the cost when the adjoining owner makes use of the wall. Under this Bill adjoining neighbours will agree on cost-sharing arrangements while gaining consent for an encroachment under clause 76.

183(4) confirms that the person building a party wall has sole property in the structure until a contribution is paid by an adjoining owner.

183(5) preserves the right of the person building a party wall to recover costs when an adjoining owner makes use of the wall.

Clause 184 Work on existing party walls

Sections 386 and 387 of the Miscellaneous Provisions Act deal with gaining consent to do work on an existing party wall, and the right of an adjoining owner to require works for future use. These matters are covered in Part 6 of this Bill.

184(1) defines “*party wall building consent*” as the consent given under section 387(1) of the Miscellaneous Provisions Act.

184(2) gives a party wall work consent made before commencement day immediate effect as consent under this Bill for work on a party wall (79(1)(a) and access onto an adjoining property (81(2)(a)).

184(3) extinguishes, for work finished after commencement day, the former provisions relating to rules for expenses and accounts between the parties (sections 393, 394 and 395 of the Miscellaneous Provisions Act) and replaces them with the provisions under this Bill (89 and 90).

Clause 185 Underpinning

Section 391 of the Miscellaneous Provisions Act sets out a requirement to underpin or strengthen adjoining buildings if excavations are to take place within 3 metres of the boundary. Section 397 provides for recovery of costs through the courts.

185(1)(a) defines “*underpinning consent*” as the consent given under section 391(1) of the Miscellaneous Provisions Act or a requirement from an adjoining owner to underpin under section 391(2).

185(2) gives underpinning consent made before commencement day immediate effect as consent under this Bill for encroachment (76(1)(a)), consent for a protection structure on adjoining land (78(1)(a)) and access onto an adjoining property (81(2)(a)).

185(3) extinguishes, for work finished after commencement day, the former provisions relating to compensation (sections 391(4) and (5), and section 397 of the Miscellaneous Provisions Act) and replaces them with the provisions under this Bill (90(b) and 91).

Clause 186 Settlement of difference in relation to party walls, underpinning

Section 389 of the Miscellaneous Provisions Act provides for settling a difference in relation to party walls or underpinning by application to the SAT.

186(1) prevents, after commencement day, an application being made to the SAT to settle a difference under section 389 of the former provisions. Any new application must be made under the provisions of 89.

186(2) allows an application under section 389 of the former provisions before commencement day to be decided by the SAT under the provisions of section 37(1) of the Interpretation Act.

186(3) gives a decision by the SAT on an application to settle a difference under section 389 of the former provisions effect as a court order under this Bill in respect of an encroaching part of a structure or building (76(1)(b)), a protection structure (78(1)(b)), for the waterproofing and soundproofing of a party wall (79(1)(b)); access to adjoining land (86(2)(e)) or conducting a survey (86(2)(f)).

Clause 187 Settlement of differences in relation to security

Section 392 of the Miscellaneous Provisions Act provides for the SAT to settle a difference in relation to security requested by an adjoining owner.

187(1) prevents, after commencement day, an application being made to the SAT to settle a difference under section 392(1) or (2) of the former provisions. Any new application must be made under the provisions of 89.

187(2) allows an application under section 392(1) or (2) of the former provisions before commencement day to be decided by the SAT under the provisions of section 37(1) of the Interpretation Act.

187(3) provides that a requirement of an adjoining owner to have work done on a party wall continues to have effect after commencement day, even though security has not been given (section 391(3) of the Miscellaneous Provisions Act). Any failure to provide security after commencement day is managed under 89.

Clause 188 Inflammable materials

Section 399 of the Miscellaneous Provisions Act prohibits construction of a building with external walls of inflammable material. Section 399(1) prohibits construction. Section 399(2) allows the local government to order removal of inflammable material. Section 399(3) allows the local government to get a court order to allow it to remove the inflammable material. Section 399(4) allows the local government to give a licence or its consent to use wood if it is in character with other buildings in the locality. Section 399(5) provides for review by SAT.

188(1) makes a notice to remove inflammable material have effect as a building order.

188(2) confirms that the building order has immediate effect and the notice period in 111 does not apply.

188(3) stops any court proceeding under the former provisions and substitutes the right under 118 for a permit authority give effect to a building order.

188(4) allows a licence or consent under the former provisions to be a defence against a charge of building without a building permit.

Clause 189 Encroachments over, on, or under streets

Section 400 of the Miscellaneous Provisions Act prohibits, except in specific circumstances, encroachments over, on or under streets.

189(1) defines permission to encroach over, on, or under streets (400(1)(a) of the Miscellaneous Provisions Act), or erect a building above or over a pedestrian way (section 400(1b) of the Miscellaneous Provisions Act), or to place an awning or veranda in front of a building (section 400(2) of the Miscellaneous Provisions Act) means “*encroachment permission*”.

189(2) confirms that encroachment permission given before commencement day has immediate effect as consent to the encroachment under this Bill.

189(3) confirms that if a local government has not given an encroachment permission by commencement day an application made under the former provisions ceases to have effect and the applicant must seek consent under 76.

189(4) makes a notice to remove or alter a building under section 400(3) of the Miscellaneous Provisions Act have effect as a building order under this Bill, so long as no warrant has been given by a Magistrate in respect of the notice.

189(5) allows a warrant given by a Magistrates under section 400(3) of the Miscellaneous Provisions Act have effect under section 37(1) of the Interpretation Act, except that the local government is no longer authorised to enter and take down an encroachment at the expense of the owner. 118 allows a permit authority to give effect to a building order will apply instead.

189(6) allows a building order to be issued under 112(2)(c) for any encroachment that occurred before commencement day that was not authorised under section 400(3) of the Miscellaneous Provisions Act.

Clause 190 Notices of required alterations

Section 401 of the Miscellaneous Provisions Act provides for issuing notices of required alterations for unsafe buildings or which are prejudicial to the public interest (section 401(1)(a)), buildings not in compliance with the approved plans (section 401(1)(b)), buildings constructed in contravention of the former provisions (section 401(1)(ba)), and unauthorised building work (section 401(1)(c)).

190(1) makes a notice issued under section 401(1) of the Miscellaneous Provisions Act have immediate effect as a building order under this Bill.

190(2) confirms that preliminary notice of a building order under 111 is not needed for the notice under section 401(1) of the Miscellaneous Provisions Act to have immediate effect as a building order.

190(3) requires a review initiated under section 401(3) of the Miscellaneous Provisions Act of a notice issued under the former provisions, but not finalised before commencement day, to be dealt with under the former provisions. Any confirmed or varied order has effect as a building order under this Bill and may be enforced under 118.

190(4) preserves a period to comply with a notice issued under section 401(1) of the Miscellaneous Provisions Act before the offence of failing to comply with a building order under 115 has effect.

190(4)(a) provides a period to comply with a notice of 35 days from when the notice was given if no appeal for review is made. If an application for review is made before commencement day, 190(4)(b) provides a period of 14 days from when the review is finalised.

190(5) makes a notice given before commencement day under section 401(4) of the Miscellaneous Provisions Act, that a person has complied with a notice given under section 401(1), have effect as a notice under 112(3)(c) that the person has complied with a building order.

190(6) confirms that an application made to a court by a local government before commencement day to order the owner to comply with the requirements of an order under section 401(1) of the Miscellaneous Provisions Act must be dealt with under the former provisions.

190(7) prevents a local government from exercising after commencement day the power under section 401(8) of the Miscellaneous Provisions Act to recover the costs from the building owner in a court under section 401(7). Instead, the local government can use the equivalent provisions under 118.

Clause 191 Notices to stop unlawful work

Section 401A of the Miscellaneous Provisions Act provides for local governments to serve notices to stop unlawful building work.

191(1) defines “*notice*” as one issued to a builder under section 401A(1) of the Miscellaneous Provisions Act to stop all work being done in contravention of the former provisions.

191(2) makes a notice served by a local government before commencement day under section 401A(1) of the Miscellaneous Provisions Act have immediate effect as a building order under this Bill.

191(3) confirms that preliminary notice of a building order under 111 is not needed for the notice under section 401A(1) of the Miscellaneous Provisions Act to have immediate effect as a building order.

191(4) requires the local government to give the owner a copy of the original notice served on the builder under section 401A(1) of the Miscellaneous Provisions Act if the owner has not already been given a copy of the notice as required under section 401A(3).

Clause 191 requires a review initiated under section 401A(6) of the Miscellaneous Provisions Act of a notice issued under the former provisions, but not finalised before commencement day, to be dealt with under the former provisions. Any confirmed or varied order has effect as a building order under this Bill and may be enforced under 118.

Clause 192 Dangerous buildings

Section 403 of the Miscellaneous Provisions Act provides for local governments to examine potentially dangerous buildings, and if considered dangerous, put protection in place and serve notice on an owner or occupier to take down, secure or repair the building.

192(1) defines “*notice*” as one issued under section 403(4) of the Miscellaneous Provisions Act to an owner or occupier of a building requiring him to take it down, secure, or repair it.

192(2) makes a notice served under section 403(4) of the Miscellaneous Provisions Act have immediate effect as a building order under this Bill.

192(3) confirms that preliminary notice of a building order under 111 is not needed for the notice under section 403(4) of the Miscellaneous Provisions Act to have immediate effect as a building order.

192(4) requires a review initiated under section 403(4) of the Miscellaneous Provisions Act of a notice issued under the former provisions, but not finalised before commencement day, to be dealt with under the former provisions. Any confirmed or varied order has effect as a building order under this Bill and may be enforced under 118.

192(5) confirms that an application made to a court by a local government before commencement day to order the owner to comply with the requirements of an order under section 404 of the Miscellaneous Provisions Act must be dealt with under the former provisions.

192(6) prevents a local government from exercising after commencement day the power under section 401(8) of the Miscellaneous Provisions Act to recover the costs from the building owner in a court under section 404(7) or 405(1). Instead the local government can use the equivalent provisions under 118.

192(7) prevents, after commencement day, the sale authorised under section 405(2) of the Miscellaneous Provisions Act of a building by the local government to recover costs. From commencement day local governments must use the normal court processes to recover costs. However, if the local government has entered into a contract of sale with a third party before commencement day, that sale may proceed.

Clause 193 Neglected buildings

Section 408 of the Miscellaneous Provisions Act provides for local governments to serve notices to an owner or occupier to improve or demolish a building that is dangerous or unfit for occupation.

193(1) defines “**notice**” as one issued under section 408(1) of the Miscellaneous Provisions Act to an owner or occupier of a building requiring him to take it down or repair it.

193(2) makes a notice served under section 408(1) of the Miscellaneous Provisions Act have immediate effect as a building order under this Bill.

193(3) confirms that preliminary notice of a building order under 111 is not needed for the notice under section 408(1) of the Miscellaneous Provisions Act to have immediate effect as a building order.

193(4) requires a review initiated under section 408(3) of the Miscellaneous Provisions Act of a notice issued under the former provisions, but not finalised before commencement day, to be dealt with under the former provisions. Any confirmed or varied order has effect as a building order under this Bill and may be enforced under 118.

193(5) confirms that an application made to a court by a local government before commencement day to order the owner to comply with the requirements of an order under section 408(1) of the Miscellaneous Provisions Act must be dealt with under the former provisions.

193(6) prevents a local government after commencement day from exercising the power under section 408(5) of the Miscellaneous Provisions Act to go onto land and execute an order granted under section 408(4). Instead the local government can use the equivalent provisions under 118.

Clause 194 Dilapidated buildings

Section 409 of the Miscellaneous Provisions Act provides for local governments to serve notice to an owner or occupier to improve the appearance of a building and bring it into conformity with the general standard in the locality. This Bill limits the power of a permit authority to issue building orders to when a building is unsafe or not fit to occupy (112(2)(g)).

194(1) defines “**notice**” as one issued under section 409(1) under the Miscellaneous Provisions Act to an owner or occupier of a building requiring him to take it down or repair it.

194(2) makes a notice served under the section 409(1) of the Miscellaneous Provisions Act have immediate effect as a building order under this Bill.

194(3) confirms that preliminary notice of a building order under 111 is not needed for the notice under the section 409(1) of the Miscellaneous Provisions Act to have immediate effect as a building order.

194(4) requires a review initiated under section 409(3) of the Miscellaneous Provisions Act of a notice issued under the former provisions, but not finalised before commencement day, to be dealt with under the former provisions. Any confirmed or varied order has effect as a building order under this Bill and may be enforced under 118.

194(5) confirms that an application made to a court by a local government before commencement day to order the owner to comply with the requirements of a notice under the section 409(1) of the Miscellaneous Provisions Act must be dealt with under the former provisions.

194(6) prevents a local government after commencement day from exercising the power under sections 409(4) or 409(5) of the Miscellaneous Provisions Act to recover the costs from the building owner in a court under sections 404(7) or 405(1). Instead, the local government can recover costs under 118.

194(7) prevents, after commencement day, the sale of a building by the local government to recover costs authorised under section 409(6) of the Miscellaneous Provisions Act. From commencement day local governments must use the normal court processes to recover costs. However, if the local government has entered into a contract of sale with a third party before commencement day, that sale may proceed.

Clause 195 Uncompleted buildings

Section 409A of the Miscellaneous Provisions Act provides for local governments to serve notices to the owner or builder to show cause why an uncompleted building should not be demolished or removed.

195(1) defines “*order*” as one issued under section 409A(2)(a) of the Miscellaneous Provisions Act to an owner of a building to have an uncompleted building demolished and removed.

195(2) makes an order under the section 409A(2)(a) of the Miscellaneous Provisions Act have immediate effect as a building order under this Bill.

195(3) confirms that preliminary notice of a building order under 111 is not needed for the notice under section 409A(2)(a) of the Miscellaneous Provisions Act to have immediate effect as a building order.

195(4) prevents a local government from exercising after commencement day the power under the section 409A(2)(b) of the Miscellaneous Provisions Act to demolish the building and recover the costs from the building owner. Instead the local government can recover costs under 118.

195(5) requires a review initiated under the section 409A(3) of the Miscellaneous Provisions Act of a notice issued under the former provisions, but not finalised before commencement day, to be dealt with under the former provisions. Any confirmed or varied order has effect as a building order under this Bill and may be enforced under 118.

Clause 196 Orders prohibiting building on land until payments made

Section 410A of the Miscellaneous Provisions Act allows a local government having difficulty recovering expenses, incurred in dealing with a building because a notice under the former provisions has not been complied with to get a court order preventing any further building on the land until the debt has been paid. Under this Bill, permit authorities must use normal processes through the courts to recover costs.

196 prohibits the Magistrates Court dealing with a matter being considered before commencement day from making an order after commencement day that would prevent a person from building on land under section 410(1) of the Miscellaneous Provisions Act.

Clause 197 Agreements for repayment of costs; postponement of payment of costs

Sections 410A of the Miscellaneous Provisions Act lets the local government postpone the payment of a debt owing to it, or to arrange for the debt to be paid in instalments. Section 410A(4) suspends the Limitation Act for any debt due. Section 410A(5) makes any debt due a charge on the land. Under this Bill permit authorities must use normal processes through the courts to recover costs.

197(1) converts any debt owing under an agreement under sections 410A(4) and (5) of the Miscellaneous Provisions Act to be the equivalent of unpaid rates and allows it to be recovered using existing provisions in the Local Government Act.

197(2) allows an action to recover costs at any time, which has the equivalent effect of suspending the Limitation Act.

Clause 198 Action after conviction

Section 411 of the Miscellaneous Provisions Act allows a local government to obtain a court order to demolish a non compliant building and sell materials to cover the costs when a person fails to comply with a notice to bring the building into compliance.

198(1) defines “*notice*” as one issued under section 411(1) of the Miscellaneous Provisions Act requiring a person to bring a building into compliance.

198(2) makes a notice under the section 411(1) of the Miscellaneous Provisions Act have immediate effect as a building order under this Bill.

198(3) confirms that preliminary notice of a building order under 111 is not needed for the notice under section 411(1) of the Miscellaneous Provisions Act to have immediate effect as a building order.

198(4) requires a review initiated under section 411(3) of the Miscellaneous Provisions Act of a notice issued under the former provisions, but not finalised before commencement day, to be dealt with under the former provisions. Any confirmed or varied order has effect as a building order under this Bill and may be enforced under 118.

198(5) prevents a Magistrates Court, after commencement day, from making an order authorising a local government to remove a building, which is subject to a notice under the section 411(4) of the Miscellaneous Provisions Act. Instead, the local government can use the equivalent provisions under 118.

198(6) allows a building order under 112(2)(c) to be issued to a person who was convicted of an offence under section 411(1) of the Miscellaneous Provisions Act but where a local government did not serve notice under section 411(2) before commencement day.

198(7) removes the requirement under section 412A(1) of the Miscellaneous Provisions Act for a local government to register a memorial on the title and for the Registrar of Titles to refuse to register certain dealings on the land when a notice has been given under section 411(1). Under this Bill, permit authorities must use normal processes through the courts to recover costs.

Clause 199 Fire escapes

Section 413 of the Miscellaneous Provisions Act provides for local governments to serve notices to require a building owner to install or erect fire escapes.

199(1) defines “*notice*” as one issued under section 413(1) of the Miscellaneous Provisions Act requiring a person to install or erect fire escapes.

199(2) makes a notice under section 413(1) of the Miscellaneous Provisions Act have immediate effect as a building order under this Bill.

199(3) confirms that preliminary notice of a building order under 111 is not needed for the notice under section 413(1) of the Miscellaneous Provisions Act have immediate effect as a building order.

199(4) requires a review initiated under section 413(3) of the Miscellaneous Provisions Act of a notice issued under the former provisions, but not finalised before commencement day, to be dealt with under the former provisions. Any confirmed or varied order has effect as a building order under this Bill and may be enforced under 118.

199(5) preserves a period to comply with a notice issued under the section 413(1) of the Miscellaneous Provisions Act before the offence of failing to comply with a building order under 115 has effect.

199(5)(a) provides a period of 12 months from when the notice was given if no appeal for review is made. If an application for review is made before commencement day, 199(5)(b) provides a period of 12 months from when the review is finalised.

199(6) extinguishes any residual right of an owner of a building served with a notice to install or erect fire escapes before commencement day under section 413(4) of the Miscellaneous Provisions Act to proceed to install them on or after commencement day without applying for a building permit.

Clause 200 Public buildings

Section 415 of the Miscellaneous Provisions Act allows the Minister to give a notice prohibiting the use of an unsafe public building.

200(1) defines “*notice*” as one issued under section 415(1) of the Miscellaneous Provisions Act prohibiting the use of an unsafe public building.

200(2) gives a notice under section 415(1) of the Miscellaneous Provisions Act immediate effect as a building order under this Bill.

200(3) confirms that preliminary notice of a building order under 111 is not needed for the notice under section 415(1) of the Miscellaneous Provisions Act to have immediate effect as a building order.

200(4) confirms that it is not necessary after commencement day to publish any notice or certificate required under section 415(3) of the Miscellaneous Provisions Act.

Clause 201 Removal of inflammable buildings

Section 417 of the Miscellaneous Provisions Act allowed a local government to give a notice requiring removal of inflammable material used in the construction of a building, and to pay compensation to the owner for requiring the removal.

201(1) defines “*notice*” as one issued under section 417(1) of the Miscellaneous Provisions Act requiring a person to install or erect fire escapes.

201(2) gives a notice under section 417(1) of the Miscellaneous Provisions Act immediate effect as a building order under this Bill.

201(3) confirms that preliminary notice of a building order under 111 is not needed for the notice under section 417(1) of the Miscellaneous Provisions Act to have immediate effect as a building order.

201(4) requires a review initiated under the section 417(3) of the Miscellaneous Provisions Act of a notice issued under the former provisions, but not finalised before commencement day, to be dealt with under the former provisions. Any confirmed or varied order has effect as a building order under this Bill and may be enforced under 118.

201(5) prevents a Magistrates Court, after commencement day, making an order under section 418 of the Miscellaneous Provisions Act authorising a local government to remove a building subject to a notice under section 417(1). Instead the local government can use the equivalent provisions under 118.

201(6) preserves the right to compensation under section 417(1) of the Miscellaneous Provisions Act when inflammable material is removed by a local government after commencement day and allows the owner to recover the compensation through the normal court process.

Clause 202 Orders about occupiers obstructing owners from complying with former provisions

Section 667 of the Miscellaneous Provisions Act allows an owner to obtain a court order to prevent an occupier from obstructing the owner in carrying out a requirement under the former provisions.

202 prevents a Magistrates Court giving an order after commencement day under section 667(1) of the Miscellaneous Provisions Act. 116 makes it an offence to obstruct a person complying with a building order under this Bill.

Clause 203 Regulations for transitional matters

203 provides a head of power for regulations to deal with unexpected issues that may arise from transition from the former provisions to the provisions of this Bill.

APPENDIX: PENALTIES

Introduction

The schedule below lists all penalties in the following bills

- *Building Bill*;
- *Building Services (Complaint Resolution and Administration) Bill*; and
- *Building Services (Registration) Bill*.

The penalties are based on Building Commission assessment of the severity of the offence, consistency with national licensing legislation, and in consideration of Parliamentary Counsel suggestions. A general guide to the penalties as assessed is provided in Table 1.

Penalties for offences are listed at the maximum level for an individual. The maximum levels for a corporation are 5 times that level under the provisions of the *Sentencing Act 1995*.

Parliamentary Counsel has advised that the State Administrative Tribunal and the courts have discretion to tailor penalties to fit the severity of the offence and the risk factors peculiar to the occupation. It is envisaged, therefore, that maximum penalties applied in relation to unregistered painting would be significantly less than offences by builders, given that breaches of the law by builders would be likely to have greater consequences on the public.

TABLE 1: Guide to Penalties:

Severity of Offence	Proposed Penalty
Low	<ul style="list-style-type: none">• \$5 000 fine.
Medium	<ul style="list-style-type: none">• \$10 000 fine.
High	<ul style="list-style-type: none">• \$25 000 fine.
Severe	<ul style="list-style-type: none">• For a first offence: \$50 000;• For a second offence: \$75 000; and• For a third or subsequent offence: a fine of \$100 000 and 12 months imprisonment (as per section 42 of the <i>Sentencing Act 1995</i>).

Infringement Notices

Some provisions of the bills will be enforced through the issuing of infringement notices in accordance with the *Criminal Procedure Act 2004* and the *Fines, Penalties and Infringement Notices Enforcement Act 1994*. Generally, infringement notices can be issued for non indictable or less serious offences and where guilt is a clear matter of fact, such as failure to display a sign. In such cases, a modified penalty of not more than 20% of the offence may be applied.

SCHEDULE

Building Bill

Clause No.	Clause Title	Severity of Offence	Penalty in Bill
9	<i>No building work without a building permit</i>	Severe	For a first offence, a fine of \$50 000. For a second offence, a fine of \$75 000. For a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
10	<i>No demolition work without a demolition permit</i>	Severe	For a first offence, a fine of \$50 000. For a second offence, a fine of \$75 000. For a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
29	<i>Compliance with building or demolition permit</i>	Severe	For a first offence, a fine of \$50 000. For a second offence, a fine of \$75 000. For a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
30	<i>Display of building or demolition permit details</i>	Medium	A fine of \$10 000.
33	<i>Notice of completion</i>	Medium	A fine of \$10 000.
34	<i>Notice of cessation</i>	Medium	A fine of \$10 000.
37	<i>All buildings to comply with applicable building standards</i>	Severe	For a first offence, a fine of \$50 000. For a second offence, a fine of \$75 000. For a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
38	<i>All demolition work to comply with applicable building standards</i>	Severe	For a first offence, a fine of \$50 000. For a second offence, a fine of \$75 000. For a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
41	<i>Certain buildings not to be occupied or used without an occupancy permit</i>	Severe	For a first offence, a fine of \$50 000. For a second offence, a fine of \$75 000. For a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
42	<i>Display etc. of, occupancy permit details</i>	Medium	A fine of \$10 000.

Clause No.	Clause Title	Severity of Offence	Penalty in Bill
43	<i>Occupation, use of buildings to comply with occupancy permits</i>	Severe	For a first offence, a fine of \$50 000. For a second offence, a fine of \$75 000. For a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
44	<i>Compliance with occupancy permit</i>	Severe	For a first offence, a fine of \$50 000. For a second offence, a fine of \$75 000. For a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
76	<i>No encroachment without consent or court order</i>	High	A fine of \$25 000.
77	<i>Other land not to be adversely affected without consent or court order</i>	High	A fine of \$25 000.
78(1), (2) & (3)	<i>No protection structure in or on other land without consent or court order</i>	78(1) High 78(2) & (3) Medium	A fine of \$25 000. A fine of \$10 000.
79(1) & (2)	<i>Certain work not to affect party walls etc, without consent or court order</i>	79(1) High 79(2) Medium	A fine of \$25 000. A fine of \$10 000.
80(1), (2) & (3)	<i>Fences etc, not to be removed without consent or court order</i>	80(1) Medium 80(2) & (3) Low	A fine of \$10 000. A fine of \$5 000.
81(2), (3) to (6)	<i>No access to other land without consent or court order, and notification</i>	81(2) Medium 81(3) to (6) Low	A fine of \$10 000. A fine of \$5 000.
84	<i>When notice about effect on other land required</i>	Medium	A fine of \$10 000.
86	<i>Application for court orders if no consent</i>	Medium	A fine of \$10 000.
97	<i>Identity cards</i>	Low	A fine of \$5 000.

Clause No.	<i>Clause Title</i>	Severity of Offence	Penalty in Bill
104	<i>Directions generally</i>	Medium	A fine of \$10 000.
105	<i>Obstruction of authorised persons etc</i>	Medium	A fine of \$10 000.
115	<i>Compliance with building order</i>	Severe	For a first offence, a fine of \$50 000. For a second offence, a fine of \$75 000. For a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
116	<i>Obstruction in relation to building order</i>	Medium	A fine of \$10 000.
146	<i>Confidentiality</i>	High	A fine of \$25 000.
147	<i>False or misleading information</i>	High	A fine of \$25 000.
149	<i>Regulations</i>	Low	A fine not exceeding \$5 000.

Building Services (Complaint Resolution and Administration) Bill

Clause No.	Clause Title	Severity of Offence	Penalty in Bill
25	<i>Attendance at conciliation proceeding</i>	Low	A fine of \$5 000.
47	<i>Provision of information and documents to Building Commissioner</i>	Medium	A fine of \$10 000.
53	<i>Failure to comply with order: offence</i>	Severe	For a first offence, a fine of \$50 000. For a second offence, a fine of \$75 000. For a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
61	<i>Identity cards</i>	Low	A fine of \$5 000.
70	<i>Obstruction</i>	Medium	A fine of \$10 000.
71	<i>Directions Generally</i>	Medium	A fine of \$10 000.
78	<i>Restricting access to dangerous situations</i>	Severe	For a first offence, a fine of \$50 000. For a second offence, a fine of \$75 000. For a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
80	<i>Remediation notice</i>	Severe	For a first offence, a fine of \$50 000. For a second offence, a fine of \$75 000. For a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
90	<i>Disclosure of material personal interest</i>	High	A fine of \$25 000.
103	<i>Confidentiality</i>	High	A fine of \$25 000.
104	<i>False or misleading information</i>	High	A fine of \$25 000.
109	<i>Regulations</i>	Low	A fine not exceeding \$5 000.

Building Services (Registration) Bill

Clause No.	Clause Title	Severity of Offence	Penalty
4	<i>Restriction on use of titles</i>	High	A fine of \$25 000.
5	<i>Claims as to registration</i>	High	A fine of \$25 000.
6	<i>Advertising entitlement to carry out prescribed building service when not registered</i>	High	A fine of \$25 000.
7	<i>Carrying out prescribed building service when not registered</i>	High	A fine of \$25 000.
8	<i>Advertisements by building service contractor</i>	Low	A fine of \$5 000.
22(1) & (3)	<i>Effect of not having nominated supervisor</i>	(1) High (3) Medium	A fine of \$25 000. A fine of \$10 000.
25	<i>Compliance with conditions</i>	High	A fine of \$25 000.
32	<i>Notification of change of address</i>	Medium	A fine of \$10 000.
33	<i>Notification of change in eligibility</i>	Medium	A fine of \$10 000.
34	<i>Notification of financial difficulty</i>	Medium	A fine of \$10 000.
35	<i>Notification of certain offences</i>	Medium	A fine of \$10 000.
36	<i>Notification of disciplinary action</i>	Medium	A fine of \$10 000.
37	<i>Return of registration certificate</i>	Low	A fine of \$5 000.
49	<i>Compliance with conditions</i>	High	A fine of \$25 000.
57	<i>Board may deal with certain complaints</i>	Low	A fine of a specified amount not exceeding \$5 000.
58	<i>Jurisdiction of State Administrative Tribunal</i>	High	A fine not exceeding \$25 000.
89	<i>Disclosure of interest</i>	High	A fine of \$25 000.
99	<i>False or misleading information</i>	High	A fine of \$25 000.

Clause No.	Clause Title	Severity of Offence	Penalty
100	<i>Confidentiality of information</i>	High	A fine of \$25 000.
104	<i>Regulations</i>	Low	A fine of \$5 000.