



Government of **Western Australia**
Department of **Commerce**

Building
Commission

EXPLANATORY MEMORANDUM

***Building Amendment
Bill 2012***

Building Amendment Bill 2012

Long Title

The long title sets out the purposes of the Amending Act.

Part 1 – Preliminary

Clause 1. Short title

Clause 1 formally names this as the *Building Amendment Act 2012*.

Clause 2. Commencement

Clause 2 provides that:

- (a) Sections 1 and 2 [short title and commencement provisions] come into effect on the day on which the amending Act is given the Royal Assent;
- (b) Parts 3 [Amendments about further information] and 4 [Amendments about applicable building standards] must come into effect on the same day as regulations needed to support the relevant provisions. The amendments in clause 12 to section 57 have been drafted to come into effect prior to the amendments in clause 38 to section 57.
- (c) The rest of the amending Act comes into effect on the day after it is given the Royal Assent so that the rest of the new provisions commence as quickly as possible.

Clause 3. Act amended

The amending Act amends the *Building Act 2011* (the Building Act).

Clause 4. Section 3 amended

As currently enacted, section 93(2)(d) and the definition of ***authorised person*** in section 3 only allows a local government to authorise a local government employee to inspect an existing building. This prevents the former practice of authorising swimming pool inspectors employed by non government organisations such as the Royal Life Saving Society to carry out inspections of pool fences.

Clause 4 amends the definition of ***authorised person*** in section 3 to include a head of power for regulations to—

- (a) prescribe an authorised person; and
- (b) prescribe a way for a local government to authorise a person,

who is not an employee of the local government for inspections under section 93(2)(d). This provides more flexibility to appoint inspectors of existing buildings for

compliance with regulations prescribing swimming pool fencing, smoke alarms and other requirements for existing buildings.

Clause 5. Section 5 amended

By requiring each owner to be named on and to sign a permit application, the Act ensures that owners are aware of building or demolition work to be carried out on their land. However as currently enacted the meaning of **owner** in section 5 does not include the State as an owner for the purposes of Crown land.

Clause 5 of the Bill amends section 5(1) to include the State as an owner for the purposes of Crown land in prescribed circumstances. It is likely that those prescribed circumstances will be where the State is the owner of Crown land for which a land title has not been issued.

Clause 6. Section 19 amended

Section 19 sets out requirements for a certificate of design compliance. However section 19 as enacted does not contain a specific head of power to enable regulations to require the building surveyor to do specified things *prior* to signing the certificate, such as liaise with FESA about the plans and specifications for prescribed types of commercial buildings in relation to FESA's operational requirements.

Clause 6 inserts new subsection (6) in section 19 to allow regulations to require the building surveyor to do specified things before signing the certificate. This requirement matches the amendments in clause 11 and clause 12(3) in relation to certificates of construction compliance and building compliance.

Clause 7. Section 20 amended

Section 20 requires a permit authority to grant a building permit if it is satisfied that the application conforms to section 20(1). Section 20(1)(b) as enacted requires the person named as builder to be a registered building services contractor, an approved owner-builder, or a person or class of person prescribed in regulations under section 7(2)(c) of the *Building Services (Registration) Act 2011* (Registration Act). Section 20(1)(e) as enacted requires the certificate of design compliance for the application to be issued by a registered building surveyor contractor or a person or class of person prescribed in regulations under section 7(2)(c) of the Registration Act.

However due to a mismatch in wording between the Building Act and the Registration Act:

- section 20(1)(b) does not put beyond doubt the original intent that a **public authority**, which as defined by section 3 of the Registration Act includes a local government) may be named as the builder on a building permit application for the purposes of this section;
- section 20(1)(e) does not put beyond doubt the original intent that a public authority (including a local government) may issue a certificate of design compliance for the purposes of this section;

Subclause (1) of clause 7 inserts new subsection (1)(b)(iiia) to enable a **public authority** to be named as builder on a building permit.

Subclause (2) of clause 7 inserts new subsection (1)(e)(iia) to enable a **public authority** to issue a certificate of design compliance.

Clause 8. Section 23 amended

Sections 23(1) and 23(2) enable the regulations to prescribe the time limit in which a permit authority must decide an application for a building permit. This is currently prescribed as 25 business days for uncertified applications and 10 business days for certified applications. If the application is missing information, the permit authority may require it under section 18(1) rather than refuse a permit under section 20 or 22.

As currently enacted section 23 does not disadvantage permit authorities that ask for missing information, rather than refusing the permit, by resetting the processing time to the full value once the missing information is provided. The housing industry has raised concerns that this “clock resetting” mechanism is being used multiple times for individual applications and this is unreasonably extending the effective processing time for applications.

Clause 8 amends section 23(1)(b) and (2)(b) to “stop the clock” for an uncertified application and a certified application respectively once a permit authority has received further information under section 18(1). That is, the permit authority will only have the *balance* of the 25 business days or 10 business days (as the case may be) to make a decision, rather than a *further* 25 business days or 10 business days.

Clause 9. Section 28 amended

Section 28 as currently enacted requires the permit authority to give the building permit document to the nominated builder and the owner(s), as well as the applicant, if the applicant is not the builder or owner. A building permit document does not include the certificate of design compliance because for certified applications this is provided by the applicant. However for an uncertified application, where the permit authority arranges the certificate of design compliance, there is no expressed mechanism for the permit authority to provide a copy to the applicant.

Clause 9 inserts a new subsection (2A) in section 28 to require the permit authority to give a copy of the certificate of design compliance to the applicant for an uncertified application.

Clause 10. Section 39 amended

Section 39 allows the Building Commissioner to not apply a building standard or modify the way a building standard applies. The wording of section 39(2) as enacted does not make clear that a declaration by the Building Commissioner can apply to both non-application and modification.

Clause 10 amends section 39 to put beyond doubt that the Building Commissioner can, in writing and on the application of another person, declare that:

- (a) a specified building standard does not apply to a specified building, specified incidental structure or specified demolition work; or

- (b) a building standard that applies to a specified building, specified incidental structure or specified demolition work is modified in a specified way.

A matching consequential amendment is made to section 120 by clause 25.

Clause 11. Section 56 amended

Section 56 sets out the requirements for a certificate of construction compliance for a completed building. However section 56 as enacted does not contain a specific head of power to enable regulations to require the building surveyor to do specified things *prior* to signing the certificate.

Clause 11 inserts new subsection (5) into section 56 to enable regulations to require the building surveyor to do specified things before signing a certificate of construction compliance. This requirement matches the amendments in clause 6 and clause 12(3) in relation to certificates of design compliance and building compliance.

Clause 12. Section 57 amended

Section 57 sets out the process for granting an occupancy permit or a building approval certificate.

Section 48 requires an occupancy permit for a temporary change of use. Section 49 requires an occupancy permit for a permanent change of use or classification. Section 57 as enacted requires an application for a temporary or permanent change of use to have a certificate of building compliance that certifies compliance with each building standard that applies at the time the application is made. When considering applicable building standards (see Part 4) it became clear that the relevant standards for additional temporary changes under section 48 should be the same as for buildings with existing authorisation under section 57(4).

Requiring building surveyors to sign a certificate of building compliance that states unequivocally that an existing building or incidental structure complies with each building standard that applies to it implies that the building surveyor rather than the builder is responsible for ensuring a building complies with the building standards. Section 374AA of the repealed *Local Government (Miscellaneous Provisions) Act 1960* referred to “unauthorised building work which substantially conforms with the requirements of this Act” and this wording is preferred.

A certificate of building compliance must state that the building complies with the building permit or approval (section 57(4)(a)) and meets each applicable building standard (section 57(4)(b)). Some building surveyors have suggested that this is too onerous to check and may lead to delays in the granting of occupancy permits and building approval certificates;

Section 57 as enacted does not contain a specific head of power for regulations to require the building surveyor to do specified things prior to signing the certificate.

Sub-clause (1) amends section 57(3) to require a certificate of building compliance for an application other than an application mentioned in section 48 or 52(1) to state that the building or incidental structure **substantially** complies with each building standard at the time the application is made.

Sub-clause (2) amends section 57(4) to reflect the amendments to section 57(3) by requiring that a certificate of building compliance for an application mentioned in section 48 or 52(1) or (2) to state that:

- if paragraph (a) applies, the building **substantially** complies with the building permit, building licence or other approval that was granted in respect of the construction of the building under the written law applicable at the time of its construction; or (rather than and)
- if paragraph (b) applies, the building **substantially** complies with each applicable building standard, or other prescribed requirement in relation to the technical aspects of the construction of the building applicable to the building or incidental structure at the time of its construction.

Sub-Clause (3) inserts new subsection (7) into section 56 to enable regulations to require the building surveyor to do specified things before signing a CBC. This requirement matches the amendments in clause 6 and clause 11 in relation to certificates of design compliance and certificates of construction compliance.

These amendments have been drafted to come into effect prior to the amendments to section 57 in clause 38.

Clause 13. Section 58 amended

Section 58 requires a permit authority to grant an occupancy permit or building approval certificate if satisfied that the application conforms with this section. Section 58(1)(c) requires that the certificate of construction compliance or certificate of design compliance for the application is issued through a registered building surveyor contractor or is a person or class of person prescribed under the regulations in 7(2)(c) of the Registration Act.

However due to a mismatch in wording between the Building Act and the Registration Act, section 58(1)(c) does not put beyond doubt the original intent that a **public authority**, which as defined by section 3 of the Registration Act includes a local government, may issue a certificate of construction compliance or a certificate of building compliance for the purposes of this section.

Clause 13 inserts new paragraph (iia) in section 58(1)(c) to enable a **public authority** to issue certificates of construction compliance and building compliance.

Clause 14. Section 67 amended

Section 16(b) requires a building or demolition permit application to name and be signed by each owner. Section 16(c) requires a building or demolition permit to name and be signed by the builder or demolition contractor. Section 16(d) requires a building or demolition permit to contain information such as an address to identify the building address and the contact details of the owner and builder/demolition contractor.

Getting owner signatures has caused some difficulties for home builders and commercial property managers where the owner is absent or not otherwise available to sign forms.

As a short-term measure and to smooth transition to new processes, a Ministerial Order can be used to waive the need for signatures for certain applications or types of applications. Ministerial orders were designed to provide an appropriate mechanism to deal with such emergency situations.

Sub-clause (1) inserts new subsection 2A in section 67 to enable the Minister to exempt by order the need for an owner's signature under section 16(b), a builder's or demolition contractor's signature under section 16(c) or provision of prescribed information under section 16(d).

Sub-clause (2) amends section 67(2) to include reference to new subsection (2A).

Sub-clause (3) amends section 67(3) to include a reference to new subsection (2A).

Clause 15. Section 75 amended

The Building Act as enacted does not include the term **business day**. This term is introduced in new section 80(1)(d)(iii) by clause 20.

Clause 15 inserts a new definition of **business day** into section 75. The wording reflects the definition of **business day** in regulation 3 of the *Building Regulations 2012*.

Clause 16. Part 6 Division 2 heading replaced

Clause 16 replaces the heading to Part 6 Division 2 to insert a reference to **other authority**. The term **other authority** refers to the circumstances inserted by clauses 17 to 22 into sections 76 to 81 to provide further exemptions from the need for consent before doing work affecting other land. These circumstances are either specified in the Act as amended or may be prescribed in regulations made under a new head of power.

Clause 17. Section 76 amended

Section 76(1) makes it an offence to encroach buildings into adjoining land without the consent of the owner of the land, or a court order under section 86(2)(a).

Clause 17 deletes section 76(1) as enacted and replaces it with a new section 76(1) that includes a new paragraph (e) to enable regulations to fine tune circumstances when consent may not be required. While no regulations are planned at this stage, this head of power provides flexibility to address difficulties that may arise in future.

Clause 18. Section 77 replaced

Section 77 makes it an offence to adversely affect adjoining land without the consent of the owner of the land, or a court order under section 86(2)(b).

Clause 18 deletes section 77 as enacted and replaces it with a new section 77 that includes a new paragraph (e) to enable regulations to fine tune circumstances when consent may not be required. While no regulations are planned at this stage, this head of power provides flexibility to address difficulties that may arise in future.

Clause 19. Section 78 amended

Section 78(1) makes it an offence to place protection structures in adjoining land without the consent of the owner of the land, or a court order under section 86(2)(c).

Clause 19 deletes section 78(1) as enacted and replaces it with a new section 78(1) that includes a new paragraph (e) to enable regulations to fine tune circumstances when consent may not be required. While no regulations are planned at this stage, this head of power provides flexibility to address difficulties that may arise in future.

Clause 20. Section 79 amended

Section 79(1) makes it an offence to adversely affect party walls without the consent of the adjoining owner, or a court order under section 86(2)(d).

Clause 20 deletes section 79(1) as enacted and replaces it with a new section 79(1) that includes a new paragraph (e) to enable regulations to fine tune circumstances when consent may not be required. While no regulations are planned at this stage, this head of power provides flexibility to address difficulties that may arise in future.

Clause 21. Section 80 amended

Section 80 makes it an offence to remove fences on or beyond the works land without the consent of the adjoining owner, or a court order under section 86(2)(g).

A lack of flexibility in the Building Act means that consent is required where a fence must be removed to allow construction of a “zero lot wall” directly up to the boundary, even when a building permit has authorised the wall to be constructed. Difficulties in getting consent have delayed house builders applying for permits for small lots where planning schemes support efficient land use by encouraging zero lot walls.

Clause 21 deletes section 80(1) as enacted and replaces it with a new section 80(1) that:

- carries over existing provisions in section 80(1)(a) to (c);
- inserts new paragraph (d) to remove the need for consent where a fence must be removed to allow construction of a close wall for which a building permit is in effect and where the person responsible for the work has given at least 7 business days notice prior to removal;
- inserts a new paragraph (e) to remove the need for consent if the adjoining land is vacant or any building on it is vacant;
- inserts a new paragraph (e) to enable regulations to fine tune circumstances when consent may not be required. While no regulations are planned at this stage, this head of power provides flexibility to address difficulties that may arise in future.

Clause 21 inserts new subsection (2A) in section 80 to define **close wall**. This matches the definition of **close wall** in paragraph (a) of section 88(1) as amended to include a fence, post or column placed along or close to a boundary where it is not practical to erect a dividing fence straddling the boundary in the normal way. Clause 24 makes a matching amendment to the definition of **close wall** in section 88(1).

NB: Section 80(3) will continue to apply so that even if the fence is removed in these circumstances; the person responsible for work must ensure that if necessary, a temporary barrier is erected.

Clause 22. Section 81 amended

Section 81(2) makes it an offence to go onto other land to carry out construction work or a survey without the consent of the owner of the land or a court order under section 86(2)(e) or (f).

A lack of flexibility in the Building Act means that consent is required where the adjoining land is vacant, or the owners cannot be readily contacted. This occurs on new subdivisions where the land may not have been sold, or ownership changes rapidly. Access over vacant land is not likely to cause a nuisance in most cases.

Clause 22(1) deletes section 81(2) as enacted and replaces it with a new section 81(2) that:

- replaces paragraph (a) with a new paragraph (a) that allows consent to be obtained from *an adult occupier* or an owner of the neighbouring land. This is more flexible than requiring consent from each owner of the land as currently enacted;
- carries over existing provisions in section 81(2)(b) and (c) as enacted;
- inserts new paragraph (d) to remove the need for consent where the adjoining land is vacant or any building on it is vacant;
- inserts a new paragraph (e) to enable regulations to fine tune circumstances when consent may not be required. While no regulations are planned at this stage, this head of power provides flexibility to address difficulties that may arise in future.

Clause 22(2) inserts new section 81(8) to clarify that although consent is not required under the Building Act in some circumstances, the owner of the neighbouring land retains all normal legal rights to require the builder to quit the land if the owner objects to the access.

Clause 23. Section 86 amended

Section 86 lets a person who seeks consent under section 85, to apply for a court order if consent is not obtained. Section 86(1) as enacted 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.

This means the builder has to wait the full 28 days before seeking a court order, even if consent has already been refused.

Clause 23(1) replaces section 86(1) with a new section 86(1) that sets out the time requirements for getting a court order in new subsection (2A).

New subsection (2A) enables the person responsible for work to apply to the court for an order as soon as refusal is given, or if there is no response, 28 days after the notice is given.

Clause 24. Section 88 amended

Section 88(1)(a) as enacted defines **close wall** to be a wall, or fence placed along or close to a boundary where it is not practical to erect a dividing fence straddling the boundary in the normal way.

However erection of a fence may not be practical if a post or column is also built along or close to a boundary.

Clause 24 amends the definition of **close wall** in section 88(1) to include a fence, a post or column. Clause 21 inserts a matching definition of **close wall** in section 80(2A)(a).

Clause 25. Section 120 amended

Section 120 allows an appeal to the SAT against a decision of the Building Commissioner not to dis-apply or modify a building standard under section 39.

Clause 25 amends paragraph (b) of section 120 to clarify that the SAT can review decisions by the Building Commissioner to not declare that a building standard is modified. This consequential amendment matches the amendments in clause 10 to section 39.

Clause 26. Section 127 amended

Section 127 allows delegations by a local government of its powers or duties as a permit authority to a person who is an employee of the local government, but does not allow a power of sub-delegation.

Section 127 as enacted differs from the delegation process under the *Local Government Act 1995* sections 5.42 to 5.44, which allow a delegation to be made to the local government CEO, and the CEO then has the power of sub-delegation to a local government employee.

Clause 26(1) replaces section 127(3), (4) and (5) with new subsections (3), (4), (5) and (6A) to match the provisions in the Local Government Act.

New subsection (3) restricts delegations of a local government's powers or duties as a permit authority to only a local government employee.

New subsection (4) requires the delegation by or on behalf of the delegator to be made in writing.

New subsection (5) precludes a delegate (except for the Chief Executive Officer (CEO) of the local government under subsection (6A)) from sub delegating a power or duty.

Clause 26(2) replaces section 127(7) with new subsections (7) and (8),

New subsection (7) clarifies that the new delegation provisions do not restrict the ability of the delegator to perform powers or duties through an officer or agent.

New subsection (8) defines **CEO** and **local government employee**.

Clause 27. Section 140 amended

Section 3 defines **approved**, in relation to the manner or form of something, to mean approved by a prescribed person. Regulation 4 of the *Building Regulations 2012* prescribes the Building Commissioner as a person who may approve the manner and form of things, including forms which may be used in legal proceedings for an offence against the Act.

There is no clear provision in the Act to prove that a form has been approved, and that this may hamper prosecutions and court processes.

Clause 27 inserts new subsection (5) in section 140 to confirm that proof is not required in the absence of evidence that the form has not been approved.

Clause 28. Section 145A inserted

Section 17 requires a permit authority to arrange for a building surveyor to assess uncertified applications. Local governments can refer the application to a building surveyor employed by the local government or to any building surveyor in another permit authority or in private practice.

Parliamentary Counsel's Office and the State Solicitor's Office have advised that due to a mismatch of wording between sections 20(1)(e) and 58(1)(c) and the *Building Services (Registration) Act 2011*, it is not beyond doubt that local government functions include:

- referring an uncertified application to a building surveyor employed by another local government or in private practice, for the purpose of arranging a certificate of design compliance for an uncertified application for the purposes of section 17;
- issuing a certificate of design compliance for the purposes of section 20(1)(e);
- issuing a certificate of construction compliance and a certificate of building compliance for the purposes of section 58(1)(c);
- a local government issuing a certificate of design compliance in relation to an uncertified building permit application referred to it by another local government for the purposes of meeting the requirements of section 20(1)(e); and,
- choosing to provide a "private" compliance certification service to persons within or outside its own local government district.

Clause 28 creates new section 145A to put beyond doubt that a local government has the functions listed above. Specifically:

Subsection (1) enables a local government that is a permit authority to refer an uncertified application to a building surveyor who is not employed by the local government.

Subsection (2) enables a local government to issue a compliance certificate even if the building or the applicant is in another local government district. This makes it clear that a local government may provide a “private” compliance certification service.

Subsection (3) makes clear that:

- (a) the building surveyor signing the compliance certificate is appropriately registered and independent; and
- (b) a local government will still need to comply with the relevant provisions of the Local Government Act, such as those relating to arrangements with another local government, or those that require a local government to be satisfied that a commercial service does not inappropriately duplicate services provided by the private sector.

Clause 29. Section 182A inserted

Section 54 sets out the requirements for an application for an occupancy permit or a building approval certificate. Section 56(2) sets out requirements for a certificate of construction compliance for a completed building. Section 58(1) requires a permit authority to be satisfied about the certificate of construction compliance.

Under the repealed Part XV of the *Local Government (Miscellaneous Provisions) Act 1960* local governments were required to provide commercial buildings with a certificate of classification. The Building Act introduces the occupancy permit that replaces the certificate of classification.

The Building Act requires buildings that had started construction under the repealed legislation to have an occupancy permit under the Building Act, and that this requires a certificate of construction compliance. Because the fee paid for the building licence under the repealed legislation covered the cost of local government assessment at the end of construction in order to issue a certificate of compliance it was expected that local government building surveyors would issue a certificate of construction compliance at no extra charge. This has not always happened in practice, thus causing confusion in how to deal with these transitional buildings.

Clause 29 inserts new section 182A to create a transitional provision which enables an occupancy permit to be granted for buildings dealt with under the previous legislation.

New subsection (1) defines an ***OP application (transitional)*** as an application under section 46 for a completed building which:

- (a) is covered by a building licence or building licence application under the repealed legislation which is deemed to be a building permit or an application for a building permit under the Building Act; and
- (b) has not got a certificate of classification under the repealed legislation.

New subsection (2) provides that the following do not apply to an ***OP application (transitional)***:

- the need to obtain a certificate of construction compliance under section 54(2);
- the need to provide technical certificates under section 54(4)(a);
- the need to pay a fee for an occupancy permit under section 54(4)(d); and,
- the need to have a certificate of construction compliance under section 56(2).

New subsection (3) provides that the permit authority must be satisfied that the building in its current state is suitable to be used in the way proposed in the occupancy permit application instead of having to rely on a certificate of construction compliance issued by a registered building surveyor.

New subsection (4) validates any occupancy permit granted before the commencement of this transitional provision as if it were granted in accordance these new transitional provisions.

Clause 30. Part 16 Division 2 inserted

Part 16 of the Act sets out various arrangements for the transition of the matters under the previous building legislation to the new Building Act.

Transitional and validation provisions are needed to make clear how the following provisions should be dealt with if a thing was done prior to commencement of the relevant amendment provision in the amending Act: requests for further information in relation to applications for building and demolition permits, and occupancy permits and building approval certificates, the time for deciding applications for building and demolition permits; compliance certificates issued by public authorities. In addition, a provision is needed to allow regulations to make transitional provisions about applicable building standards.

Clause 30 inserts a new Division 2 into Part 16 containing transitional and validation provisions required as a result of the Building Amendment Bill being enacted.

204. Terms used

New section 204 defines the term ***amending Act*** to mean the *Building Amendment Act 2012*.

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

Subsection (1) of new section 205 defines **commencement day** to mean the day on which section 31 of the amending Act comes into operation [section 31 is the clause that inserts new section 18(3) in relation to requests for further information about building and demolition permit applications].

Subsection (2) of new section 205 confirms that a request for further information about building or demolition permit applications made before commencement day remains valid even though it may not comply with new regulations that prescribe the manner of requests.

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

Subsection (1) of new section 206 defines **commencement day** to mean the day on which section 32 of the amending Act comes into operation [section 32 is the clause that inserts new section 18(3) in relation to requests for further information about building permit applications].

Subsection (2) of new section 206 confirms that a request for further information about occupancy permits or building approval certificates made before commencement day remains valid even though it may not comply with new regulations that prescribe the manner of requests.

207. Time for deciding application for building or demolition permit

Subsection (1) of new section 207 defines **commencement day** to mean the day on which section 8 of the amending Act comes into operation [section 8 is the clause of the Bill that amends sections 23(1)(b) and (2)(b) to replace the “clock resetting” mechanism with a “clock stopping” mechanism].

Subsection (2) of new section 207 confirms that a request for further information about a certified application made before commencement day continues to re-set the clock.

Subsection (3) of new section 207 confirms that a request for further information about an uncertified application made before commencement day continues to re-set the clock.

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

Subsection (1) of new section 208 defines **public authority** as that term is defined in the Registration Act.

Subsection (2) validates any *application* that named and was signed by a public authority prior to the commencement of section 7(1) of the amending Act [section 7(1) is the clause of the bill which inserts section 20(1)(b)(iia) to clarify that a public authority can be named as builder on a building permit].

Subsection (3) validates any *building permit* that named a public authority as the builder prior to the commencement of section 7(1) of the amending Act [section 7(1)

is the clause of the bill which inserts section 20(1)(b)(iiia) to clarify that a public authority can be named as builder on a building permit].

Subsection (4) validates any certificate of design compliance issued under section 19 by a public authority prior to commencement of sections 7(2) and 28 [these sections insert sections 20(1)(e)(iia) and 145A to clarify that a public authority can issue a certificate of design compliance].

Subsection (5) validates any certificate of construction compliance or building compliance issued under section 56 or 57 by a public authority prior to commencement of sections 13 and 28 [these sections insert sections 58(1)(c)(iia) and 145A to clarify that a public authority can issue such certificates].

209. Regulations for transitional matters about applicable building standards

Subsection (1) of new section 209 defines:

- **commencement day** in relation to a provision in Part 4 [Amendments about applicable building standards] to mean the day that the particular provision comes into operation; and
- **provisions of this Act** to include regulations.

Subsection (2) enables the regulations deal with transitional matters relating to the transition from previous provisions in the Act to the new provisions inserted by the amending Act.

Clause 31. Section 18 amended

To help applicants where there are minor deficiencies in applications for building and demolition permits, section 18 of the Building Act allows the local government to request missing information as an alternative to refusing the application. As enacted the Act does not disadvantage permit authorities that ask for missing information because the processing time is reset to the full value once the missing information is provided. The housing industry has raised concerns that this “clock resetting” mechanism is being used multiple times for individual applications and this is unreasonably extending the effective processing time for applications. Note changes to section 23 by clause 8 of the amendment Bill change the “clock resetting” mechanism to a “clock stopping” mechanism.

Some local governments are treating any request for information while assessing a permit application as a formal request under section 18 which extends the processing time, while others treat requests made by telephone or email as informal requests that do not affect the processing time. This lack of consistency is causing confusion about what constitutes a formal request, and the time consequences.

A request under section 18 relates to information needed to satisfy the permit authority of the matters listed in section 20(1). It is not beyond doubt that a permit authority can also request further information under section 18(1) which may be required by a building surveyor to whom an uncertified application has been referred by the permit authority under section 17 to provide a certificate of design compliance.

Clause 31 inserts new subsections (3), (4) and (5) into section 18.

New subsection (3) allows regulations to prescribe the manner of requests for further information. Regulations can provide that a request must be in writing and state that it is a request under section 18. This will distinguish an informal request that does not have time consequences from a formal request that does.

New subsection (4) allows regulations to prescribe how many separate requests for further information may be made under section 18(1) by a permit authority. This can be used to restrict multiple requests if necessary.

New subsection (5) provides that a permit authority may require information under section 18(1) that is needed by a building surveyor to which an uncertified application was referred by the permit authority under section 17.

Clause 32. Section 55 amended

To help applicants where there are minor deficiencies in applications for occupancy permits and building approval certificates, section 55(1) of the Building Act allows the local government to request missing information as an alternative to refusing the application. This is equivalent to the process for building and demolition permits set out in section 18 and amendments to section 18 should be reflected in section 55(1).

Clause 32 inserts new subsections (3) and (4) into section 55(1).

New subsection (3) allows regulations to prescribe the manner of requests for further information. Regulations can provide that a request must be in writing and state that it is a request under section 55(1). This will distinguish an informal request that does not have time consequences from a formal request that does.

New subsection (4) allows regulations to prescribe how many separate requests for further information may be made under section 55(1) by a permit authority. This can be used to restrict multiple requests if necessary.

Clause 33. Section 3 amended

Section 3 of the Act defines **building standard** to be a prescribed requirement in relation to the technical aspects of the construction or demolition of a building or an incidental structure. The *Building Regulations 2012* prescribe the Building Code as the primary building standard. Western Australian and other local building standards that supplement the Building Code can also be specified.

As originally enacted the Act mentions **building standard** in different ways—

- Sections 19(3), and 37(1) mention “...*each building standard that applies to the building or incidental structure.*”
- Sections 21(1)(c) and 38(1) and (2) mention “...*each building standard that applies to the demolition work.*”
- Section 57(3) mentions “...*each building standard that applies to the building or incidental structure at the time the application is made.*”
- Section 57(4)(b) mentions “...*each building standard...applicable to the building or incidental structure at the time of its construction.*”

During the drafting of the *Building Regulations 2012*, Parliamentary Counsel's Office advised that the different ways of mentioning building standards restrict the way regulations can prescribe appropriate building standards to different circumstances.

Clause 33 inserts a new definition of ***applicable building standard*** in section 3 of the Act to provide a consistent description that will enable the regulations to prescribe appropriate building standards to apply to different circumstances.

Clauses 34 to 38 replace various types of references to ***building standards*** with a consistent reference to ***applicable building standard***. Together these amendments allow comprehensive regulations about building standards. These amendments have been drafted to come into effect after the amendments to section 57 in clause 12.

Clause 34. Section 19 amended

Section 19 sets out requirements for a certificate of design compliance.

Clause 34 amends section 19(3) to replace the requirement for the certificate of design compliance to state that the building will comply with (each) '*building standard that applies to the building*' with a requirement for the certificate to state that the building will comply with (each) '***applicable building standard***'.

Clause 35. Section 21 amended

Section 21(1)(c) as enacted requires compliance with each building standard that applies to the demolition work.

Clause 35 deletes section 21(1)(c) and replaces it with a requirement that the demolition work complies with each ***applicable building standard***.

Clause 36. Section 37 amended

Section 37(1) as enacted requires the builder to ensure that all new buildings for which a building permit is granted, when completed, comply with ***each building standard*** that applies to the building or incidental structure.

Section 37(2) as enacted requires the owner to ensure that all new buildings for which a building permit is not granted, when completed, comply with ***each building standard*** that applies to the building or incidental structure.

Clause 36 amends section 37(1) to require the builder to ensure that on completion the building or incidental structure complies with each ***applicable building standard***.

Clause 36 amends section 37(2) to require the owner to ensure '*that the building or incidental structure complies with each ***applicable building standard***.*'

Clause 37. All demolition work to comply with applicable building standards

Section 38(1) as enacted requires the demolition contractor named on a demolition permit to ensure that the demolition work complies with **each building standard** that applies to the demolition work.

Section 38(2) as enacted requires the owner of a building in respect of which demolition work is done without a demolition permit to ensure that the demolition work complies with **each building standard** that applies to the demolition work.

Clause 37 amends section 38(1) and (2) by replacing the reference to '(each) **building standard that applies to the demolition work**' with a reference to '(each) **applicable building standard**.'

Clause 38. Section 57 amended

Section 57(3) as enacted mentions "*....each building standard that applies to the building or incidental structure at the time the application is made.*"

Section 57(4)(b) as enacted mentions "*....each building standard....applicable to the building or incidental structure at the time of its construction.*"

Clause 38(1) deletes section 57(3) and replaces it with requirement for a certificate of building compliance to state that the building or incidental structure **substantially complies with each applicable building standard**.

Clause 38(2) deletes section 57(4)(b) and replaces it with a requirement that the building or incidental structure **substantially complies with each applicable building standard** or other prescribed requirements.