

Building Amendment Bill 2012

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Western Australia

LEGISLATIVE COUNCIL

Building Amendment Bill 2012

A Bill for

**An Act to amend the *Building Act 2011* and validate certain actions
and for related matters.**

The Parliament of Western Australia enacts as follows:

1

Part 1 — Preliminary

2

1. Short title

3

This is the *Building Amendment Act 2012*.

4

2. Commencement

5

This Act comes into operation as follows —

6

(a) sections 1 and 2 — on the day on which this Act
receives the Royal Assent (*Assent day*);

7

8

(b) Parts 3 and 4 — on a day fixed by proclamation, and
different days may be fixed for different provisions;

9

10

(c) the rest of the Act — on the day after Assent day.

11

3. Act amended

12

This Act amends the *Building Act 2011*.

Part 2 — General amendments

4. Section 3 amended

In section 3 in the definition of *authorised person* delete “person;” and insert:

person and includes, for the purposes of section 93(2)(d) —

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

5. Section 5 amended

In section 5(1) in the definition of *owner*, in relation to Crown land, after paragraph (a) insert:

- (ba) the State, in prescribed circumstances; or

6. Section 19 amended

After section 19(5) insert:

- (6) The regulations may provide for the things that a building surveyor is required to do before signing a certificate.

7. Section 20 amended

- (1) After section 20(1)(b)(ii) insert:

- (iiia) is a public authority as defined in the Registration Act section 3; or

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1 **11. Section 56 amended**

2 After section 56(5) insert:

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- 4 (6) The regulations may provide for the things that a
5 building surveyor is required to do before signing a
6 certificate of construction compliance.

7

8 **12. Section 57 amended**

- 9 (1) In section 57(3) delete “section 52(1) or (2) must state that the
10 building or incidental structure” and insert:

11

12 section 48 or 52(1) or (2) must state that the building or
13 incidental structure substantially

14

- 15 (2) In section 57(4):

- 16 (a) delete “section 52(1) or (2)” and insert:

17

18 section 48 or 52(1) or (2)

19

- 20 (b) in paragraph (a) before “complies” insert:

21

22 substantially

23

- 24 (c) in paragraph (a) delete “construction; and” and insert:

25

26 construction; or

27

- 28 (d) in paragraph (b) before “complies” insert:

29

30 substantially

31

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1 (3) After section 57(6) insert:

2

3 (7) The regulations may provide for the things that a
4 building surveyor is required to do before signing a
5 certificate of building compliance.

6

7 **13. Section 58 amended**

8 After section 58(1)(c)(i) insert:

9

10 (ia) is a public authority as defined in the
11 Registration Act section 3; or

12

13 **14. Section 67 amended**

14 (1) After section 67(1) insert:

15

16 (2A) The Minister may by order exempt from the operation
17 of section 16(b) or (c) (but only as to the requirement
18 for an application to be signed) or (d) either
19 unconditionally or on specified conditions —

- 20 (a) an application for a building permit or a
21 demolition permit specified in the order; or
22 (b) an application for a building permit or a
23 demolition permit of a kind specified in the
24 order.

25

26 (2) In section 67(2) delete “subsection (1)” and insert:

27

28 subsection (1) or (2A)

29

1 (3) In section 67(3) delete “subsection (1)” and insert:

2

3 subsection (1), (2A)

4

5 **15. Section 75 amended**

6 In section 75 insert in alphabetical order:

7

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

10

11 **16. Part 6 Division 2 heading replaced**

12 Delete the heading to Part 6 Division 2 and insert:

13

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

16

17 **17. Section 76 amended**

18 Delete section 76(1) and insert:

19

20 (1) A person responsible for work must ensure that no part
21 of a building or an incidental structure is placed beyond
22 the boundaries of the works land —

23 (a) unless each owner of the land into, onto, or
24 over which the encroaching part is placed
25 consents to the encroaching part being so
26 placed and the encroaching part is placed in
27 accordance with the consent; or

28 (b) unless the encroaching part is placed in
29 accordance with an order under
30 section 86(2)(a); or

- 28

1 **19. Section 78 amended**

2 Delete section 78(1) and insert:

3

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

20 Penalty: a fine of \$25 000.

21

22 Note: The heading to amended section 78 is to read:

23 **No protection structure in or on other land without consent, court**
24 **order or other authority**

25 **20. Section 79 amended**

26 Delete section 79(1) and insert:

27

- 28 (1) A person responsible for work must ensure that the
29 work does not affect the structural, waterproofing, or
30 noise insulation capacity of a party wall, a substantial
31 dividing fence, or a boundary retaining wall that

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- 1 protects land beyond the boundaries of the works
2 land —
- 3 (a) unless each owner of the land that shares the
4 party wall or the dividing fence, or that is
5 protected by the boundary retaining wall,
6 consents to the work being done, and the work
7 is done in accordance with the consent; or
- 8 (b) unless the work is done in accordance with an
9 order under section 86(2)(d); or
- 10 (c) unless the work is required as a matter of
11 urgency to prevent imminent collapse of, or
12 damage to, the wall or fence; or
- 13 (d) except in prescribed circumstances.

14 Penalty: a fine of \$25 000.

16 Note: The heading to amended section 79 is to read:

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

19 **21. Section 80 amended**

20 Delete section 80(1) and insert:

- 21
- 22 (1) A person responsible for work must ensure that no
23 fence, gate or other barrier to land on or beyond the
24 boundaries of the works land is removed —
- 25 (a) unless each owner of the land that shares, or on
26 which is located, the fence, gate or other barrier
27 consents to the removal; or
- 28 (b) unless the removal is in accordance with an
29 order under section 86(2)(g); or
- 30 (c) unless the removal is required as a matter of
31 urgency to prevent imminent collapse of, or
32 damage to, any land including a building or
33 structure on the land; or

- 1 (d) unless each of the following applies —
2 (i) the removal is required for the
3 construction of a close wall;
4 (ii) a building permit for the close wall is in
5 effect;
6 (iii) the person responsible for the work has
7 given at least 7 business days' notice of
8 the proposed removal to —
9 (I) each owner of the land
10 mentioned in paragraph (a);
11 and
12 (II) at least one adult occupier of
13 the land, if the land is not
14 occupied by any of its owners;
15 or
16 (e) unless the land that shares, or on which is
17 located, the fence, gate or other barrier is
18 vacant land, or any building on that land is
19 vacant; or
20 (f) except in prescribed circumstances.

21 Penalty: a fine of \$10 000.

- 22 (2A) In subsection (1)(d) —
23 **close wall** means a wall, fence, post or column,
24 whether free-standing or attached to, or forming part
25 of, a building or structure, that is so close to a boundary
26 of the land on which the wall or fence is located that it
27 is not reasonably practicable to build a separate
28 dividing fence along the boundary.
29

30 Note: The heading to amended section 80 is to read:

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

s. 22

1 **22. Section 81 amended**

2 (1) Delete section 81(2) and insert:

3

4 (2) A person responsible for work must ensure that in
5 doing the work or conducting a survey in relation to
6 that work a person does not go onto other land —

7 (a) unless the access is consented to by an owner or
8 adult occupier of the land and the access is in
9 accordance with the consent; or

10 (b) unless the access is in accordance with an order
11 under section 86(2)(e) or (f); or

12 (c) unless as a matter of urgency it is necessary to
13 go onto the land to prevent imminent collapse
14 of, or damage to, any land including a building
15 or structure on the land; or

16 (d) unless the other land is vacant land, or any
17 building on that land is vacant; or

18 (e) except in prescribed circumstances.

19 Penalty: a fine of \$10 000.

20

21 (2) After section 81(7) insert:

22

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

28

29 Note: The heading to amended section 81 is to read:

30 **No access to other land without consent or court order, and**
31 **notification, or other authority**

1 **23. Section 86 amended**

2 Delete section 86(1) and insert:

3

4 (1) A person responsible for work who gives a notice to
5 each owner of the affected land may, in accordance
6 with subsection (2A), apply to the Magistrates Court
7 for an order under subsection (2).

8 (2A) An application may be made —

- 9 (a) if the consent sought in the notice is refused,
10 any time after the refusal is given; or
11 (b) if the consent sought in the notice is neither
12 refused nor given and no request for further
13 information is made within the 28 day period
14 after the notice is given, after that period has
15 expired; or
16 (c) if the person responsible provides further
17 information in response to the request of a
18 person given the notice, 14 days after the
19 further information is given.
20

21 **24. Section 88 amended**

22 In section 88(1) in the definition of *close wall* delete “wall or
23 fence —” and insert:

24

25 wall, fence, post or column —
26

27 **25. Section 120 amended**

28 Delete section 120(b) and insert:

29

- 30 (b) to not declare that a building standard is
31 modified; or
32

1 **26. Section 127 amended**

2 (1) Delete section 127(3), (4) and (5) and insert:

3

4 (3) A delegation of a local government's powers or duties
5 may be only to a local government employee.

6 (4) The delegation must be in writing executed by or on
7 behalf of the delegator.

8 (5) Except as provided for in subsection (6A), a person to
9 whom a power or duty is delegated under this section
10 cannot delegate that power or duty.

11 (6A) The CEO of a local government may delegate to any
12 other local government employee a power or duty of
13 the local government that has been delegated to the
14 CEO under this section but in the case of such a power
15 or duty —

16 (a) the CEO's power under this subsection to
17 delegate the exercise of that power or the
18 discharge of that duty; and

19 (b) the exercise of that power or the discharge of
20 that duty by the CEO's delegate,

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

24

25 (2) Delete section 127(7) and insert:

26

27 (7) Nothing in this section limits the ability of the
28 delegator to perform a function through an officer or
29 agent.

30 (8) In subsections (3) and (6A) —

31 **CEO** means chief executive officer;

1 **local government employee**, in relation to a local
2 government, means a person employed by the local
3 government under the *Local Government Act 1995*
4 section 5.36.
5

6 **27. Section 140 amended**

7 After section 140(4) insert:
8

- 9 (5) In the absence of evidence to the contrary, proof is not
10 required in any proceedings under this Act that what
11 purports to be an approved form is the approved form
12 that it purports to be.
13

14 Note: The heading to amended section 140 is to read:

15 **Proof of permits, certificates, building orders, declarations,**
16 **obtained records, approved forms**

17 **28. Section 145A inserted**

18 After section 144 insert:
19

20 **145A. Local government functions**

- 21 (1) A local government that is a permit authority, when
22 referring an uncertified application under section 17(1),
23 is not limited to referring the uncertified application to
24 a building surveyor who is employed by the local
25 government.
- 26 (2) A local government may issue a certificate that
27 complies with section 19, 56 or 57 and that is signed by
28 a building surveyor who is employed by the local
29 government, whether or not —
- 30 (a) the building or incidental structure that is the
31 subject of the application is, or is proposed to
32 be, located in the local government's district; or

s. 29

- 1 (b) the applicant is an owner or occupier of land in
2 the local government's district.
- 3 (3) Nothing in this section affects the operation of —
- 4 (a) section 20(1)(d) or 58(1)(b); or
- 5 (b) the *Local Government Act 1995* section 3.18,
6 3.19 or 3.68 or any other relevant provision of
7 that Act.
- 8

9 **29. Section 182A inserted**

10 After section 181 insert:

11

12 **182A. Occupancy permits for certain buildings and**
13 **validation**

- 14 (1) In this section —
- 15 ***OP application (transitional)*** means an application
16 mentioned in section 46 for an occupancy permit for a
17 completed building in respect of which —
- 18 (a) a building permit applies because of the
19 operation of section 178(2) or (4); and
- 20 (b) a certificate of classification of a kind
21 mentioned in section 181(2) or (3) has not been
22 issued.
- 23 (2) Sections 54(2) and (4)(a) and (d) and 56(2) do not
24 apply to an OP application (transitional).
- 25 (3) On an OP application (transitional) —
- 26 (a) section 58(1)(b) is to be read as follows:
- 27
- 28 (b) the building in its current state is suitable
29 to be used in the way proposed in the
30 application; and
- 31

(b) section 58(1)(c) does not apply.

30. Part 16 Division 2 inserted

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

amending Act means the *Building Amendment Act 2012*.

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

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- 1 **206. Requests for further information (occupancy**
2 **permits and building approval certificates)**
- 3 (1) In this section —
- 4 *commencement day* means the day on which
- 5 section 32 of the amending Act comes into operation.
- 6 (2) A requirement under section 55(1) in respect of an
- 7 application made before commencement day must be
- 8 dealt with on and after commencement day as if
- 9 section 55(3) had not been inserted by section 32 of the
- 10 amending Act.
- 11 **207. Time for deciding application for building or**
12 **demolition permit**
- 13 (1) In this section —
- 14 *commencement day* means the day on which section 8
- 15 of the amending Act comes into operation.
- 16 (2) On and after commencement day, section 23(1) applies
- 17 in respect of an uncertified application made before
- 18 commencement day as if section 23(1)(b) had not been
- 19 amended by section 8 of the amending Act.
- 20 (3) On and after commencement day, section 23(2) applies
- 21 in respect of a certified application made before
- 22 commencement day as if section 23(2)(b) had not been
- 23 amended by section 8 of the amending Act.
- 24 **208. Validation of building permits naming, and**
25 **compliance certificates issued by, public authorities**
- 26 (1) In this section —
- 27 *public authority* means a public authority as defined in
- 28 the Registration Act.
- 29 (2) An application for a building permit that, before the
- 30 commencement of section 7(1) of the amending Act,
- 31 named and was signed by a public authority as the

1 person proposing to be named as the builder on the
2 building permit is, and is taken always to have been, as
3 valid and effective as it would have been if
4 section 20(1)(b)(iia) were in effect at the time of the
5 naming and signing.

6 (3) A building permit that, before the commencement of
7 section 7(1) of the amending Act, named a public
8 authority as the builder is, and is taken always to have
9 been, as valid and effective as it would have been if
10 section 20(1)(b)(iia) were in effect at the time of the
11 naming.

12 (4) A certificate issued or purported to be issued under
13 section 19 by a public authority before the
14 commencement of sections 7(2) and 28 of the
15 amending Act is, and is taken always to have been, as
16 valid and effective as it would have been if
17 sections 20(1)(e)(iia) and 145A were in effect at the
18 time of the issue or purported issue.

19 (5) A certificate issued or purported to be issued under
20 section 56 or 57 by a public authority before the
21 commencement of sections 13 and 28 of the amending
22 Act is, and is taken always to have been, as valid and
23 effective as it would have been if sections 58(1)(c)(iia)
24 and 145A were in effect at the time of the issue or
25 purported issue.

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

28 (1) In this section —
29 *commencement day*, in relation to a provision in Part 4
30 of the amending Act, means the day on which that
31 provision comes into operation;
32 *provisions of this Act* includes regulations made under
33 this Act.

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- 1 (2) The regulations may contain provisions that are
2 necessary or convenient for dealing with matters
3 concerning the transition from the provisions of this
4 Act applying before the commencement day of a
5 provision in Part 4 of the amending Act to the
6 provisions of this Act applying on and after that
7 commencement day.
8

Part 3 — Amendments about further information

31. Section 18 amended

After section 18(2) insert:

- (3) A requirement under subsection (1) must be given in the prescribed manner.
- (4) The regulations may provide for how many separate requirements under subsection (1) may be made in relation to an application.
- (5) A requirement under subsection (1) may be in respect of a document or information required by the building surveyor to whom the permit authority has referred an uncertified application.

32. Section 55 amended

After section 55(2) insert:

- (3) A requirement under subsection (1) must be given in the prescribed manner.
- (4) The regulations may provide for how many separate requirements under subsection (1) may be made in relation to an application.

1 **Part 4 — Amendments about applicable**
2 **building standards**

3 **33. Section 3 amended**

4 In section 3 insert in alphabetical order:

5
6 *applicable building standard*, in a provision, means a
7 building standard that is prescribed as an applicable
8 building standard for the purposes of the provision in
9 respect of a kind of building, incidental structure,
10 building or demolition work or application to which the
11 provision relates;

12
13 **34. Section 19 amended**

14 In section 19(3) delete “building standard that applies to the
15 building or incidental structure.” and insert:

16
17 applicable standard.
18

19 **35. Section 21 amended**

20 Delete section 21(1)(c) and insert:

21
22 (c) that the demolition work will comply with each
23 applicable building standard; and
24

25 **36. Section 37 amended**

26 (1) In section 37(1) delete “ensure that the building or incidental
27 structure to which the permit applies complies, when completed,

1 with each building standard that applies to the building or
2 incidental structure.” and insert:

3
4 ensure, on completion of the building or incidental structure to
5 which the permit applies, that the building or incidental
6 structure complies with each applicable building standard.
7

- 8 (2) In section 37(2) delete “ensure that the building or incidental
9 structure complies, when completed, with each building
10 standard that applies to the building or incidental structure.” and
11 insert:
12

13 ensure, on completion of the building or incidental structure,
14 that the building or incidental structure complies with each
15 applicable building standard.
16

17 **37. Section 38 amended**

18 In section 38(1) and (2) delete “building standard that applies to
19 the demolition work.” and insert:
20

21 applicable building standard.
22

23 **38. Section 57 amended**

- 24 (1) Delete section 57(3) and insert:
25

- 26 (3) A certificate of building compliance that accompanies
27 an application other than an application mentioned in
28 section 48 or 52(1) or (2) must state that the building or
29 incidental structure substantially complies with each
30 applicable building standard.
31

s. 38

1 (2) Delete section 57(4)(b) and insert:
2

3 (b) the building or incidental structure substantially
4 complies with each applicable building
5 standard or other prescribed requirement in
6 relation to the technical aspects of the
7 construction of the building or structure.
8

=====