



Building Commission

Number: 2009/003

Info@buildingcommission.wa.gov.au

Date: August 2009

New Laws - Smoke Alarms in Existing Homes

New regulations under the *Local Government (Miscellaneous Provisions) Act 1960* that take effect on 1st October 2009 require mains powered smoke alarms to be fitted to homes that are subject to sale, lease or hire. The requirements are as follows:

Homes for Sale

From 1st October 2009, vendors must ensure that hard-wired smoke alarms are installed by an electrical contractor prior to the transfer of the property to the new owner. In circumstances where the vendor fails to do so, the new owner must fit the alarms and may recover the costs in court.

Rental Properties

Landlords must ensure that hard-wired smoke alarms are installed prior to the commencement of a new lease and also ensure that the smoke alarms are maintained and in working order. Dwellings being made available for hire must also have hard-wired smoke alarms installed. All rental properties must be fitted with hard-wired smoke alarms before 1st October 2011.

Alternative Solution

The new regulations allow for an approved alternative building solution, such as battery powered smoke alarms, where mains powered smoke alarms may not be installed.

Local Government Involvement

FESA recently issued an information bulletin to local authorities outlining the requirements of the new regulations and the involvement, responsibility and authority of local government.

The new regulations amend the *Building Regulations 1989* and were published in the Government Gazette on 31st July 2009. A copy of the gazetted regulations is attached.



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Whilst the regulations are largely self regulating, local governments should consider:

- Setting and administering a fee and processes for approving battery powered smoke alarms under regulation 38O.
- Drafting a rectification notice as per regulation 38P(6).
- Authorising an appropriate person in accordance with regulation 38P(9).
- Preparing an infringement notice as per regulation 38(Q).

Public enquiries may be directed to www.fesa.wa.gov.au or to FESA's Community Engagement Directorate on telephone 9323 9818.

Queries from local government officers regarding the administration of the regulations should be directed to Ms Helen Bareham, Building Commission on telephone 9488 2726 or email helen.bareham@commerce.wa.gov.au.

Peter Gow
EXECUTIVE DIRECTOR
BUILDING COMMISSION



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— PART 1 —

CONSUMER AND EMPLOYMENT PROTECTION

CE301*

Local Government (Miscellaneous Provisions) Act 1960

Building Amendment Regulations 2009

Made by the Governor in Executive Council under the *Local Government (Miscellaneous Provisions) Act 1960* section 248 and the *Local Government Act 1995* section 9.60.

1. Citation

These regulations are the *Building Amendment Regulations 2009*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette* (**gazettal day**);
- (b) the rest of the regulations —
 - (i) if gazettal day is before 1 October 2009 — on 1 October 2009; or
 - (ii) if gazettal day is, or is after, 1 October 2009 — on the day after gazettal day.

3. Regulations amended

These regulations amend the *Building Regulations 1989*.

4. Regulation 38H amended

In regulation 38H(1) delete “section 9.16(1) of the Act.” and insert —

the *Local Government Act 1995* section 9.16(1).

5. **Part 10A inserted**

After regulation 38H insert:

Part 10A — Smoke alarms in certain buildings

38I. Terms used

- (1) In this Part, unless the contrary intention appears —
approved alternative building solution means a building solution that was approved in accordance with the Building Code by the local government of the district in which the dwelling is located on the basis that the solution met the performance requirement in the Building Code relating to fire detection and early warning (other than the requirements relating to evacuation lighting);

dwelling means —

- (a) a class 1 building; or
- (b) a unit in a class 2 building; or
- (c) a class 4 dwelling;

electrician has the meaning given in the *Electricity (Licensing) Regulations 1991* regulation 3(1);

owner, of a dwelling, means a person who holds an interest in land that entitles the person to the ownership of the dwelling;

residential tenancy agreement means a residential tenancy agreement to which the *Residential Tenancies Act 1987* applies;

unit, in the definition of ***dwelling***, means a room or suite of rooms, and any associated parts of the building, constituting a single dwelling for the exclusive occupation of the occupant;

10 year life battery means a battery that is capable of powering a smoke alarm for at least 10 years without the alarm indicating the battery power is low.

- (2) For the purposes of this Part, a smoke alarm —
- (a) is connected to the mains power supply if it is electrically connected to a permanent supply of electricity to the dwelling; and
 - (b) is permanently connected if an electrician would ordinarily be required to connect or disconnect the alarm.
- (3) For the purposes of this Part, an owner of a dwelling transfers the ownership of it if —
- (a) the owner executes an instrument of transfer or conveyance of the interest in land that entitles the owner to the ownership of the dwelling; and

- (b) the person to whom the interest is to be transferred or conveyed obtains possession of the dwelling under or in anticipation of the transfer or conveyance.
- (4) For the purposes of the definition of *dwelling*, the class of a building or a part of a building is its class according to —
- (a) its certificate of classification under regulation 20; or
 - (b) if there is no certificate of classification for the building or part — the Building Code.

38J. Requirement to have smoke alarms or similar prior to transfer of a dwelling

If an owner of a dwelling transfers the ownership of it, the owner must, to the extent practicable, ensure that at the time of the transfer —

- (a) the dwelling has smoke alarms installed so that the dwelling and the alarms comply with the requirements of regulation 38N(1); or
- (b) if an approved alternative building solution applies in relation to the dwelling — the solution is in effect.

Penalty: a fine of \$5 000.

38K. New owner must install smoke alarms or similar, and right to recover costs

- (1) If an owner of a dwelling (the *prior owner*) transfers the ownership of it and fails to comply with regulation 38J, the person to whom the ownership is transferred (the *new owner*) must, within 12 months of the ownership being transferred, ensure that —
- (a) the dwelling has smoke alarms installed so that the dwelling and the alarms comply with the requirements of regulation 38N(1); or
 - (b) if an approved alternative building solution applies in relation to the dwelling — the solution is in effect.

Penalty: a fine of \$5 000.

- (2) The new owner may recover, in a court of competent jurisdiction, the reasonable costs of complying with subregulation (1) as a debt due from the prior owner.

38L. Requirement to have smoke alarms or similar prior to tenancy

- (1) If an owner of a dwelling lets the dwelling under a residential tenancy agreement, the owner must, to the

extent practicable, ensure that, within 14 days after the day on which a person is entitled to enter into occupation of the dwelling under the agreement —

- (a) the dwelling has smoke alarms installed so that the dwelling and the alarms comply with the requirements of regulation 38N(1); or
- (b) if an approved alternative building solution applies in relation to the dwelling — the solution is in effect.

Penalty: a fine of \$5 000.

- (2) Subregulation (1) does not apply in relation to residential tenancy agreements entered into with at least one person who was already in occupation of the dwelling as a tenant.
- (3) The owner of a dwelling rented under a residential tenancy agreement, or made available for such rent, must, to the extent practicable, ensure that —
 - (a) the dwelling has smoke alarms installed so that the dwelling and the alarms comply with the requirements of regulation 38N(3); or
 - (b) if an approved alternative building solution applies in relation to the dwelling — the solution is in effect.

Penalty: a fine of \$5 000.

- (4) Subregulation (3) does not have effect before 1 October 2011, and subregulations (1) and (2) cease to have effect on that day.

38M. Requirement to have smoke alarms or similar prior to hire of a dwelling

- (1) The owner of a dwelling must not make the dwelling available for hire unless —
 - (a) the dwelling has smoke alarms installed so that the dwelling and the alarms comply with the requirements of regulation 38N(3); or
 - (b) if an approved alternative building solution applies in relation to the dwelling — the solution is in effect.

Penalty: a fine of \$5 000.

- (2) Subregulation (1) does not have effect before 1 October 2011.

38N. Requirements for smoke alarms

- (1) The requirements for the purposes of regulation 38J(a), 38K(1)(a) and 38L(1)(a) are that —
 - (a) the dwelling meets the requirements of the deemed-to-satisfy provisions about smoke alarms or smoke hazard management (other

- than the provisions about evacuation lighting) of the Building Code applicable at the time of installation of the alarms; and
- (b) each smoke alarm necessary to meet those requirements was installed less than 10 years before the transfer day; and
 - (c) each smoke alarm referred to in paragraph (b) is in working order; and
 - (d) if a smoke alarm referred to in paragraph (b) was, at the time of its installation, required to be connected to the mains power supply to meet those requirements —
 - (i) the alarm is permanently connected to the mains power supply; or
 - (ii) if the alarm is to be installed at a location in the dwelling where there is no hidden space in which to run the necessary electrical wiring and there is no appropriate alternative location — the alarm has a 10 year life battery that cannot be removed; or
 - (iii) if, in relation to the alarm, the use of a battery powered smoke alarm has been approved under regulation 38O — the alarm has a 10 year life battery that cannot be removed.
- (2) For the purposes of subregulation (1)(a), if the dwelling has 2 or more smoke alarms installed and they were not all installed at the same time, the provisions of the Building Code applicable to the dwelling and the alarms are the provisions applicable at the time that the last alarm necessary to meet the requirements referred to in subregulation (1)(a) and (b) was installed.
- (3) The requirements for the purposes of regulation 38L(3)(a) and 38M(1)(a) are that —
- (a) the dwelling meets the requirements of the deemed-to-satisfy provisions about smoke alarms or smoke hazard management (other than the provisions about evacuation lighting) of the Building Code applicable at the time of installation of the alarms; and
 - (b) each smoke alarm referred to in paragraph (a) is in working order; and
 - (c) if a smoke alarm referred to in paragraph (a) was, at the time of its installation, required to be connected to the mains power supply to meet those requirements —
 - (i) the alarm is permanently connected to the mains power supply; or

- (ii) if the alarm is to be installed at a location in the dwelling where there is no hidden space in which to run the necessary electrical wiring and there is no appropriate alternative location — the alarm has a 10 year life battery that cannot be removed; or
 - (iii) if, in relation to the alarm, the use of a battery powered smoke alarm has been approved under regulation 38O — the alarm has a 10 year life battery that cannot be removed.
- (4) For the purposes of subregulation (3), if the dwelling has 2 or more smoke alarms installed and they were not all installed at the same time, the provisions of the Building Code applicable to the dwelling and the alarms are the provisions applicable at the time that the last alarm necessary to meet the requirements referred to in subregulation (3)(a) was installed.
- (5) In subregulation (1)(b) —
transfer day means the day on which —
 - (a) the owner transfers the ownership of the dwelling; or
 - (b) a person is entitled to enter into occupation of the dwelling under a residential tenancy agreement.

38O. Local government approval of battery powered smoke alarms

- (1) The local government of the district in which a dwelling is located may approve of the use, in the dwelling or a part of the dwelling, of a battery powered smoke alarm (rather than one that is connected to the mains power supply) if satisfied that, at the time of giving the approval, installing a smoke alarm connected to the mains power supply would involve —
 - (a) a sufficient problem of a structural nature; or
 - (b) a sufficient problem of any other nature, the cause of which is not within the control of the owner.
- (2) The local government may give its approval in relation to an alarm that was installed before the approval is to be given.
- (3) An application for approval must be made in the manner and form approved by the local government, and must include or be accompanied by —
 - (a) the plans and information required by the local government; and

- (b) the fee set by the local government, which cannot exceed \$170.
- (4) The local government is to be taken to have refused approval if it has not made a decision whether to give approval within 35 days after the later of —
 - (a) the day on which the person made the application for approval; or
 - (b) the day on which the person complied with a, or the latest, request by the local government for further plans or information.

38P. Requirement to maintain certain smoke alarms

- (1) This regulation applies to an owner of a dwelling —
 - (a) who is also an owner, in relation to the dwelling, within the meaning given in the *Residential Tenancies Act 1987* section 3; or
 - (b) who makes the dwelling available for hire.
- (2) The owner must, to the extent practicable —
 - (a) ensure that each alarm installed in the dwelling is in working order; and
 - (b) if an alarm was, at the time of its installation, required to be connected to the mains power supply, ensure that the alarm —
 - (i) is permanently connected to the mains power supply; or
 - (ii) if the alarm is to be installed at a location in the dwelling where there is no hidden space in which to run the necessary electrical wiring and there is no appropriate alternative location — the alarm has a 10 year life battery that cannot be removed; or
 - (iii) if, in relation to the alarm, the use of a battery powered smoke alarm has been approved under regulation 38O — has a 10 year life battery that cannot be removed;and
 - (c) ensure that each alarm installed in the dwelling —
 - (i) has not reached its expiry date if one is provided on the alarm; or
 - (ii) is not more than 10 years old if no expiry date is provided on the alarm.

- (3) An authorised person may inspect a dwelling referred to in subregulation (1) to determine whether the owner is complying with subregulation (2).
- (4) If the authorised person is satisfied that the owner has failed to comply with subregulation (2), he or she may give the owner a rectification notice.
- (5) A decision to give a rectification notice is a decision to which the *Local Government Act 1995* Part 9 Division 1 applies and the owner is an affected person for the purposes of that Division.
- (6) A rectification notice must —
 - (a) be in the approved form; and
 - (b) specify the failure to comply; and
 - (c) specify the time within which the failure to comply must be rectified; and
 - (d) set out the effect of subregulation (5).
- (7) A rectification notice may set out what the owner must do to rectify the failure to comply.
- (8) A person given a rectification notice must comply with it.
Penalty: a fine of \$5 000.
- (9) A local government may authorise a person with appropriate experience and qualifications to be an authorised person for the purposes of this regulation.

38Q. Infringement notices

- (1) The offences of failing to comply with regulation 38J, 38L(1) or (3), 38M(1) or 38P(8) are prescribed for the purposes of the *Local Government Act 1995* section 9.16(1).
- (2) The modified penalty that is to be specified in an infringement notice given in relation to an alleged offence under one of those provisions is —
 - (a) for an alleged offence under regulation 38P(8) — \$1 000;
 - (b) in any other case — \$750.

By Command of the Governor,

PETER F. CONRAN, Clerk of the Executive Council.