

**BUILDING REGULATIONS 2012 – EXPLANATORY GUIDE**

Current as at 1 October 2015

<b>GLOSSARY</b>	
<b>Act</b>	the <i>Building Act 2011</i>
<b>Building Code</b>	the Building Code of Australia which is volumes 1 and 2, as amended from time to time, of the National Construction Code series published by, or on behalf of, the Australian Building Codes Board
<b>CP Act</b>	the <i>Criminal Procedure Act 2004</i>
<b>DFES</b>	the Department of Fire and Emergency Services
<b>FES Commissioner</b>	the Fire and Emergency Services Commissioner
<b>LAA</b>	the <i>Land Administration Act 1997</i>
<b>LG Act</b>	the <i>Local Government Act 1995</i>
<b>LG(MP) Act</b>	the <i>Local Government (Miscellaneous Provisions) Act 1960</i>
<b>Registration Act</b>	the <i>Building Services (Registration) Act 2011</i>
<b>Registration Regulations</b>	the <i>Building Services (Registration) Regulations 2011</i>
<b>Regulations</b>	the <i>Building Regulations 2012</i>
<b>Repealed Regulations</b>	the <i>Building Regulations 1989</i> , which were repealed on 2 April 2012
<b>Strata Act</b>	the <i>Strata Titles Act 1985</i>
<b>Strata Regulations</b>	the <i>Strata Title General Regulations 1996</i>

Reg.	Title	Head of power - Act section	Explanatory Notes
<b>Part 1 Preliminary and general matters</b>			
3	Terms used	N/A	Defines terms used in the Regulations – self-explanatory.
4	Approval of manner and form of things.	16(a), 19(2), 25(1), 33(2)(a), 34(2)(a), 39(8), 54(1)(a), 56(1), 57(1), 61(1), 65(2)(a), 85(1)(a), 85(1)(i), 110(2), 128(2).	<p>Enables the Building Commissioner to approve the manner and form of a suite of standard forms set out in the Table to the regulation. These will be available to download from the Building Commission website.</p> <p>If the approved form is not used, or a form is not used in the approved manner, the relevant application, certificate, permit, building order or register may be invalid.</p>
5A	Authorised persons	3	<p>Provides that for the purposes of the definition of <b>authorised person</b> in section 3 of the Act, an <b>authorised person</b> includes a person with appropriate experience or qualifications authorised by a local government for the purposes of section 93(2)(d) of the Act, whether the person was authorised before or after this regulation came into effect.</p> <p>This enables organisations such as the Royal Life Saving Society to enter into new 4 year inspection contracts with local governments which may extend beyond 2 April 2017 (<i>see also regulation 54</i>).</p>
5	Building surveyors	3	Prescribes the classes of registered building service practitioner (these classes are prescribed in the Registration Regulations regulation 6(1)(ba), (bb) and (bc)) who may sign compliance certificates (certificate of building compliance, certificate of construction compliance or certificate of design compliance) and prescribes the type of building or incidental structure in relation to which each class of practitioner may sign certificates.
6	Classification of buildings and incidental structures	3	Clarifies that <b>classification</b> of a building or incidental structure in s. 3 is the same as under the Building Code.
7-9			<i>Regulations 7 (Building standards in relation to construction), 8 (Building standards in relation to demolition) and 9 (Compliance with building standards – CodeMark certificates) were deleted on 19 December 2012. The relevant provisions from these deleted regulations are replicated and amended in new Division 1 (Applicable building standards) inserted on 19 December 2012. This Division consolidates all provisions about applicable building standards in the Regulations.</i>

Reg.	Title	Head of power - Act section	Explanatory Notes
10	Owners of land	5(1)	<p>Subregulation (1) prescribes certain interests in land for the purposes of defining <b>owner</b> in relation to freehold land. The interest prescribed in paragraph (c) gives a prospective owner who has signed a contract to purchase the land but may not yet be named on the certificate of title to be taken to be the owner.</p> <p>Subregulation (2A) ensures that <b>owner</b> for the purposes of applying under section 51(2) of the Act for an occupancy permit or section 51(3) of the Act for a building approval certificate in relation to unauthorised work, means the registered proprietor of the land, the State if it is the registered proprietor and an executor of freehold land. This ensures that if a person has entered into a contract to purchase property on which there is unauthorised work, that purchaser is not required to be named as the owner on any application made under section 51(2) or (3).</p> <p>Subregulation (2) defines “a prescribed person” for the purposes of paragraph (a) of the definition of owner in relation to Crown land in section 5(1) of the Act. Explanation of subregulation (2) is available in Industry Bulletin 56, which includes a link to further information on the practical implications of the subregulation (2) in the <a href="#">Guide to the new definition of owner in relation to Crown land</a>.</p> <p>Subregulation (3) was deleted on 1 October 2015.</p>
11A	Restriction on circumstance where person treated as owner	5(2)	Inserts a new regulation 11A to clarify that “owner” on an application means either the freeholder (registered proprietor of the land), or a leaseholder with capacity to do building works, or a person with a contract to purchase, but not more than one of these. This will remove some confusion about who is the “owner” on an application.
11	Fees	Various sections – refer <i>Schedule 2</i>	Provides that fees listed in Schedule 2 are payable.
12	Building records to be kept	130	Prescribes the documents that a permit authority must keep in relation to applications for building, demolition and occupancy permits and building approval certificates.
13	Inspection, copies of building records	131	Subregulation (1) defines <b>adjacent site</b> for the purposes of this regulation – self-explanatory. Subregulation (2) defines classes of <b>interested person</b> who a permit authority may, on application, allow to inspect and obtain a copy of a building record. It is not necessary to prescribe other classes of interested persons who are given such powers under their own relevant legislation.
14	Provision of information to	132	Prescribes the information which a permit authority must give the Building Commissioner in an annual report.

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	Building Commissioner		
15A	Provision of information to FES Commissioner	149	<p>Subregulation (1) requires a building surveyor to notify the FES Commissioner within 10 days of receiving advice about plans and specifications under regulation 18B(1) about any part of the FES Commissioner's advice not incorporated into the plans and specifications and the reasons for not incorporating that advice.</p> <p>Subregulation (2) requires a permit authority to give the FES Commissioner a copy of occupancy permits granted for complex commercial buildings i.e. buildings in respect of which plans and specifications were provided to the FES Commissioner under regulation 18B(1).</p> <p>Subregulation (3) requires a permit authority to give the FES Commissioner a copy of any form of modification of an occupancy permit referred to in subregulation (2).</p>
<b>Part 3 – Building and demolition permits</b>			
15	Uncertified applications	14(2)	Prescribes Class 1a and Class 10 buildings and incidental structures as those in relation to which a person may, by way of an uncertified application, apply for a building permit. This means that certified applications must be made for all other classes of buildings and incidental structures.
16	Application for building and demolition permits	16	<p>Subregulation (1) prescribes the information about a building or incidental structure which an application for a building or demolition permit must provide under section 16(d).</p> <p>Subregulation (2) prescribes the information about the builder or demolition contractor which an application for a building or demolition permit respectively must provide under section 16(d).</p> <p>Subregulation (3) prescribes the following things which must accompany an application for a building or demolition permit respectively under section 16(m):</p> <ul style="list-style-type: none"> <li>(a) in relation to building or demolition work, evidence of consent or a court order in relation to any encroachment or adverse affect on other land;</li> <li>(b) in relation to a certified building permit application, each authority, if relevant, obtained under r. 18(2). Note that while consents under r.18(2)(e) in relation water mains or sewers must be obtained prior to making an application, penalties only apply under the legislation prescribed under that regulation if the work is commenced prior to the consent (if relevant) being obtained;</li> <li>(c) in relation to an application which is in respect of a Class 1 or 10 building or incidental structure, details of each alternative solution to a building standard that is proposed to be used in the building work. "details" may be provided via a list of each alternative solution or by each alternative solution being shown on the plans and specifications. The reason for this requirement is that there have been consistent problems in the past with plans and specifications for a residential dwelling (and any</li> </ul>

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			<p>supporting documentation) not showing each alternative solution that is proposed to be used in the building work. This has caused compliance issues later on the building process. This requirement applies to both certified and uncertified applications.</p> <p>(d) in relation to a demolition permit evidence of:</p> <ul style="list-style-type: none"> <li>(i) any relevant planning approval obtained under r. 19(1);</li> <li>(ii) any relevant notification given under r. 19(2);</li> </ul>
17	Further information	18(3) and (4)	<p>Subregulation (1) provides that for the purposes of section 18(3) of the Act, a requirement for further information given by a permit authority to an application under section 18(1) of the Act must:</p> <ul style="list-style-type: none"> <li>(a) be given in writing (under the <i>Electronic Transactions Act 2011</i> this includes an email); and</li> <li>(b) identify that it is a requirement under section 18(1) of the Act; and</li> <li>(c) specify the time (not more than 21 days) within which the applicant must provide the information requested and when that time period starts; and</li> <li>(d) specify the consequences under section 18(2) of the Act of not complying within the specified time i.e. the permit authority may refuse the application; and</li> <li>(e) specify any information that the applicant must verify in a statutory declaration; and</li> <li>(f) state the period within which the permit authority must decide the application i.e. the balance of the period mentioned in section 23(1) or (2) of the Act.</li> </ul> <p>Unless a request is made in this manner, the provisions of section 18(1) and (2) of the Act do not apply.</p> <p><i>Previous regulation 17 was replaced on 19 December 2012. Most of its provisions were carried over into regulation 18A.</i></p> <p>Subregulation (2) provides that for the purposes of section 18(4), a requirement under section 18(1) cannot be made more than once in relation to an application.</p>

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18A	Certificate of design compliance - contents	19(5)	<p>Paragraph (a) requires the certificate of design compliance to identify the edition of the Building Code applied by the building surveyor under regulation 31A(2)(a) of (b) [this may be the edition of the Building Code current at the time of the building permit application or the edition of the Building Code in effect 12 months before the building permit application is made].</p> <p>Paragraph (b) carries over provisions from previous regulation 17(a) to require a statement about any declaration made under 39 of the Act.</p> <p>Paragraph (c) carries over provisions from previous regulation 17(b) to require a statement about any alternative solution applied.</p> <p>Paragraph (d)(i) carries over provisions from previous regulation 17(e)(ii) to require the certificate for a prescribed Class 2 to Class 9 building to detail any advice given by the FES Commissioner about the plans and specifications that is required under regulation 18B(1).</p> <p>Paragraph (d)(ii) carries over provisions from previous regulation 17(e)(ii) to require the certificate to detail any notification given by the building surveyor to the FES Commissioner under regulation 15A(1).</p>
18B	Certificate of design compliance – preliminary action	19(6)	<p>Subregulation (1) carries over and amends provisions from previous regulation 17(e)(i) to require the building surveyor, at least 15 business days before signing a certificate of design compliance for a Class 2 to 9 building, to give the FES Commissioner plans and specifications to allow the FES Commissioner to assess compliance with its operational requirements. The building surveyor is required to do this under the head of power in section 19(6) of the Act (the previous head of power under section 19(5) of the Act only enabled the regulations to require the building surveyor to make a statement in the certificate about having referred the plans to the DFES, formerly FESA).</p> <p><i>Sub regulations (2), (3) and (4) limit to certain commercial buildings the requirement under regulation 18B(1). This provision was requested by both the DFES and the building industry. It addresses a problem experienced upon commencement of the operation of the Act and Regulations whereby the FES Commissioner (formerly FESA) was receiving a large number of submissions of plans and specifications for Class 2 - 9 buildings for assessment, many of which involved minor building work for which the FES Commissioner did not generally provide any advice or</i></p>

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			<p><i>response. This was having an impact on the workload of the relevant DFES personnel whose job is to assess the submissions the FES Commissioner receives. This, in turn, was slowing down the overall process for granting building approvals under the Act.</i></p> <p>Subregulation (2) exempts from the requirement in subregulation (1) any certificate for a stand-alone single storey Class 5, 6, 7, or 8 building with a total floor area of 500 m<sup>2</sup> or less, for which no alternative solution relating to a Building Code fire safety performance requirement is proposed.</p> <p>Subregulation (3) exempts from the requirement in subregulation (1) any certificate for the renovation, alteration, improvement or repair of a Class 2 to 9 building for which no alternative solution relating to a Building Code fire safety performance requirement is proposed.</p> <p>Subregulation (4) exempts from the requirement in subregulation (1) any certificate for a stage of building work to a Class 2 to 9 building for which the following provisions of the Building Code Volume 1 do not apply: Section C re fire resistance; Section E Part E1 concerning fighting equipment; Section E Part E2 concerning smoke hazard management.</p>
18C	Certificate of design compliance – things to accompany	149	<p>Subregulation(1) provides that attaching a copy of advice given by the FES Commissioner to a certificate of design compliance complies with regulation 18A(d)(i).</p> <p>Subregulation (2) provides that attaching a copy of a notification given by the building surveyor to the FES Commissioner complies with regulation 18A(d)(ii).</p>
18	Grant of building permit	20(1)(b)	<p>Subregulation (1) exempts building work that is not <b>builder work</b>, as defined in the Registration Regulations regulation 13(1), from the requirement that the person named as the builder on a building permit application must be either a registered building contractor or approved owner-builder. This effectively carries over previous exemption arrangements under the Registration Act section 3 and the Registration Regulations regulation 4(a).</p>

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		20(1)(n)	Subregulation (2) prescribes the authorities (approvals required under other legislation) listed in paragraphs (a) – (c) which, <b>if relevant</b> , must be obtained prior to the grant of a building permit relating to a <u>certified</u> application. This effectively allows an <u>uncertified</u> application for a building permit to be lodged without first obtaining such authorities, so for uncertified applications the local government will determine R-Code compliance in parallel with the assessment of compliance with the building standards and the signing of a certificate of design compliance.
		20(1)(r)	Subregulation (3) prescribes the notifications (including notifications required under other legislation) listed in paragraphs (a) and (b) which must be given prior to the grant of a building permit.
		20(1)(s)	Subregulation (4) requires that, prior to the grant of a building permit, the applicant must, if the application is in respect of a Class 2 to 9 building which is not exempted under regulation 18B(2), (3) or (4), deposit with the FES Commissioner the plans and specifications specified in the applicable certificate of design compliance.
19	Grant of demolition permit	21(1)(j)	Subregulation (1) prescribes the authority (planning approval) which <b>if relevant</b> must be obtained prior to the grant of a demolition permit.
		21(1)(n)	Subregulation (2) prescribes the notifications (including notifications required under other legislation) listed in paragraphs (a), (b) and (c) which must be given prior to the grant of a demolition permit.
		21(1)(o)	Subregulation (3) requires that, prior to the grant of a demolition permit, the applicant must have provided evidence to the local government that termite treatment has been carried out. This reflects the fact that local governments do not normally issue termite treatment certificates, and instead usually require a certificate from a reputable pest control contractor.
20	Time for deciding application for building or demolition permit	23(1)(a)(i)	<p>Prescribes 25 business days or a longer period agreed in writing between the applicant the permit authority as the period within which a permit authority must decide an uncertified application for a building permit. This period excludes the time taken to obtain planning approval where it is required. This means permit authorities will not need to use the process under section 18 of the Act for requesting further information that resets the processing clock in order to preserve their position when awaiting planning approval.</p> <p>Note: The <i>Interpretation Act 1984</i> section 61 (<i>Time, computation of</i>); 75 (<i>Service of documents by post</i>); 76 (<i>Service of documents generally</i>), respectively clarify how the time for doing things (e.g. deciding an application for a building or demolition permit) is to be calculated, and when and how documents (e.g. a permit application) are taken to have been served or delivered (e.g. by the applicant on the permit authority).</p> <p>Note: <b>business day</b> is defined in regulation 3 to mean a day other than a Saturday, a Sunday or a public holiday. The <i>Interpretation Act 1984</i> section 5 defines <b>public holiday</b> as follows:</p>



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			<p><b>“public holiday</b>, in relation to an area, means a day that is appointed or declared a public holiday for that area by or under the Public and Bank Holidays Act 1972”.</p> <p><i>Note: The period starts on the day after the application is lodged with the permit authority.</i></p>
		23(2)(a)(i)	Prescribes 10 business days or a longer period agreed in writing between the applicant the permit authority as the period within which a permit authority must decide a certified application for a building permit or a demolition permit.
21	Form and content of building permit	25(3)(e)	Prescribes the information about the builder that a building permit is to include.
22	Form and content of demolition permit	25(4)(c)	Prescribes the information about the demolition contractor that a demolition permit is to include.
23	Application to extend time during which permit has effect	32	Subregulation (1) defines <b>expiry day</b> .
		32(3)(a)	Subregulation (2) prescribes how an application for an extension of a building or a demolition permit must be made and what it must contain.
		32(3)(a)	Subregulation (3) prescribes the circumstances under which a permit authority may refuse to accept an application for an extension.
		32(3)(c)	Subregulation (4) provides that if an application for an extension has been made before the expiry day, the building or demolition permit continues to have effect until a decision is made or the applicant withdraws the application, except for any period during which the permit may be suspended.
		32(3)(c)	Subregulation (5) provides that if an application for an extension is accepted after the expiry day, the building or demolition permit continues to have effect until a decision is made or the applicant withdraws the application, except for any period during which the permit may be suspended.

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24	Extension of time during which permit has effect	32(3)(c)	<p>Subregulation (1) sets out in paragraphs (a) and (b) the grounds for extending the period during which a building or demolition permit has effect.</p> <p>Subregulation (2) allows the permit authority to impose conditions on the building or demolition permit when extending the duration of the permit.</p>
25	Review of decision to refuse to extend time during which permit has effect	32(3)(g)	Enables a person who applies for an extension of a building or demolition permit to apply to the State Administrative Tribunal for a review of any decision to refuse to accept an application after the expiry day, refuse to extend the duration of the permit, or to impose a condition when extending the duration of the permit.
26	Approval of new responsible person	35(c)	<p>Subregulation (1) provides that the building owner may apply to the permit authority for approval of a new responsible person if either section 35(a) of the Act (notice of cessation given by the responsible person [builder or demolition contractor] applies or section 35(b) of the Act (the responsible person's registration, approval or authority under the Registration Act or any other written law, that entitles the person to be named as builder or demolition contractor on the permit, ceases to have effect) applies.</p> <p>Subregulation (2) requires that the new responsible person's details be provided and that the new responsible person signs the application.</p> <p>Subregulation (3) requires the permit authority to approve a new responsible person if satisfied that the new person meets specified Act requirements.</p> <p>Subregulation (4) requires the permit authority to amend the responsible person's details on the permit if it approves the application.</p>
27	Required inspection and tests: Class 2 to Class 9 buildings	36(2)(a)	<p>Subregulation (1) prescribes the mandatory tests which must <b>if relevant</b> be conducted in relation to Class 2 - 9 buildings – these are tests of each system referred to in column 1 of the Table in Schedule 3. As these tests are mandatory, the certificate of design compliance does not need to list them; it is the responsibility of the builder to determine who should carry out these tests and to arrange for the tests to be done.</p> <p>Subregulation (2) indicates when the test of each system is to occur – this is set out in column 2 of the Table in Schedule 3.</p>
28	Required inspection: enclosure of private swimming pool	36(2)(a)	Prescribes the mandatory inspection required to be conducted for an enclosure of a private swimming pool by reference to the requirements in regulation 50. This is to be conducted at completion of the building work for the enclosure.

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29	Inspection certificates	36(2)(h) & (j)	<p>Subregulation (1) sets out what an inspection certificate must include.</p> <p>Subregulation (2) requires a person who completes an inspection to provide the inspection certificate to the builder as soon as possible.</p>
30	Transitional provisions	203	<p>Subregulation (1) provides a transitional arrangement whereby an application for a building licence which was made but not decided by the local government before commencement day and taken to be a building permit application under section 178(4), must be dealt with by the permit authority as if it were an uncertified building permit application. This means the permit authority is required to comply with the requirement in section 17 of the Act and provide a certification service by arranging for a certificate of design compliance at no extra cost. This provides certainty about how such applications should be transitioned from the old system to the new.</p> <p>Subregulation (2) provides a further transitional arrangement whereby an application mentioned in subregulation (1) must be decided by the permit authority within the timeframe referred to in section 23(1) of the Act for an uncertified application starting on commencement day – so the application must be decided within 25 business days of commencement (as per regulation 20(1)). This makes clear how long a permit authority has to decide such an application and will ensure the permit authority has ample time to make sure that the new building permit application requirements have been met, including the provision of a certificate of design compliance by the authority. Permit authorities must act reasonably in relation to such transitional applications; any decision of a permit authority to refuse to grant a building permit, including such transitional applications, may be reviewed on application by the State Administrative Tribunal.</p>
<b>Part 4 – Building standards</b>			
<b>Division 1 – Applicable building standards</b>			

Reg.	Title	Head of power - Act section	Explanatory Notes
<b>Subdivision 1 – Building standards in relation to construction</b>			
31A	Applicable building standards generally	3, 19(3), 37(1)	<p>Subregulation (1) provides that the provisions in subregulation (2) are the primary <b>applicable building standards</b> for building permit applications, except as provided otherwise under regulations 31B, 31C and 31D.</p> <p>Subregulation (2) effectively carries over and amends part of the provisions in deleted regulation 7(1) by prescribing as the primary <b>applicable building standards</b> for building permit applications:</p> <ul style="list-style-type: none"> <li>• the current edition of the Building Code in effect at the time the building permit application is made; or</li> <li>• the edition of the Building Code in effect 12 months before the time the building permit application is made.</li> </ul> <p>This addresses several problems experienced under the regulations since 2 April 2012. The first problem was that a transitional arrangement under regulation 6(2) of the Repealed Regulations could not be carried over into the Regulations. The building industry was disadvantaged by this because an application for a building permit may not be lodged until many months after a building contract is entered into. However the builder is effectively locked into the building standards and associated building costs in effect when the contract is entered into and the associated costs for these earlier building standards, which may not be the building standards current when the application is lodged. An additional problem was that a building surveyor may sign a certificate of design compliance in say, January 2012 however the applicant may not lodge the application until say, July 2012, when the building standards have changed. As the certificate of design compliance has no expiry date, it was not clear how long it is valid and when it may be used for the purposes of section 16(e) and (h) of the Act. These problems have been addressed by enabling the Regulations to prescribe multiple applicable building standards under paragraphs (a) and (b) of subregulation (2) and to link the applicable building standard to the date that the building permit application is lodged.</p>
31B	Applicable building standards for alterations etc. before 1 May 2014	3, 19(3), 37(1)	Regulation 31B carries over from previous regulations the transitional provisions of deleted regulation 7(3) to provide that, until 1 May 2015 (previously 1 May 2014), the 5 star energy efficiency standards in the Building Code may be used instead of the 6 star standards in relation to renovations or improvements of residential dwellings. This extension is to enable the building industry to use and get familiar with the new protocol for developing appropriate 6 star energy efficiency alternative solutions for alterations and additions.
31C	Applicable building standards for private swimming pools	3, 19(3), 37(1)	<p>Regulation 31C carries over from previous regulations the transitional provisions of deleted 7(4) to provide that the applicable building standards for constructing a private swimming pool are:</p> <p>(a) the Building Code provisions which apply to private swimming pools, except for the performance requirements</p>

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			<p>mentioned in regulation 31C(2)(a); and</p> <p>(b) the requirements for private swimming pool enclosures in regulation 50.</p>
31D	Applicable building standards for relocated buildings and incidental structures	3, 19(3), 37(1) & (2)	<p><i>Regulation 31D carries over, amends and consolidates the provisions of deleted regulations 7(5) and 46 to prescribe the applicable building standards for building work on relocated buildings or incidental structures.</i></p> <p>Subregulation (1) provides that the applicable building standards for a relocated building, once relocated, are those set out in regulation 31D(2). These standards apply regardless of whether or not a building permit is required.</p> <p>Subregulation (2) provides that the applicable building standards are those in regulation 31A(2) (the Building Code) except to the extent that regulations 31D(3), (4) and (5) provide otherwise.</p> <p>Subregulation 3) provides that the building standards are those that relate to the health and safety performance requirements listed in the Table to Regulation 31D(3) in the edition of the Building Code current at the time, or 12 months before, the application for the most recent building permit is made (a previous application(s) for a building permit would have been made when the existing building which is to be relocated was first constructed).</p> <p>Subregulation (4) clarifies that the building standards that relate to the energy efficiency performance requirements listed in the Table to Regulation 31D(4) are those in the edition of the Building Code current at the time of, or 12 months before (whichever was applied by the building surveyor), the application for the first building permit was made.</p> <p><i>This clarifies the original intent that the building must only comply with the energy efficiency requirements which were appropriate to the building in its original geographic location, and the effects of the original nearby permanent features such as topography, structures and buildings, etc., as opposed to being required to comply with these requirements appropriate to its new location once relocated. For buildings such as transportable accommodations on mining and construction sites it would be too onerous a requirement to require them to be retrofitted every time they are moved in order to comply with energy efficiency provisions.</i></p> <p>Subregulation (5) carries over the provisions of deleted regulation 46(b) to provide that the applicable building standards for an existing building or incidental structure which is relocated are, to the extent that there is no relevant building standard referred to in regulation 31A(2), other relevant building standards that applied to the existing building or incidental structure at the time that it was (first) constructed.</p> <p><i>Regulation 31D generally ensures that occupying or using such relocated buildings or incidental structures will not adversely affect the safety and health of its occupants or other users; and that the building or incidental structure in its current state is otherwise suitable to be used in the way proposed.</i></p>

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31E	Applicable building standards for building work done without a permit	3, 37(2)	Regulation 31E provides that the applicable building standards for work done without a building permit are the Building Code requirements current as at the time construction of the building or incidental structure commenced.
31F	Applicable building standards for replacement occupancy permit for permanent change of building's use, classification or for occupancy permit or building approval certificate for registration of strata scheme, plan of re-subdivision	3, 57(3), 49(a) and (b)* and 50(1)(a) and (b) and 50(2)(a) and (b)	<p>Regulation 31F provides that the applicable building standards for applications in respect of all kinds of buildings for a replacement occupancy permit for permanent change of building's use, classification or for an occupancy permit or a building approval certificate for the registration of a strata scheme, or a plan of re-subdivision, are the primary applicable building standards set out in regulation 31A(2)(a) or (b) which the building surveyor applied in the certificate of design compliance but in the absence of such certificate:</p> <p>(a) the building licence or approval granted under the written law at the time of construction; or</p> <p>(b) each technical requirement applicable at the time of construction.</p>
31G	Applicable building standards for occupancy permit for unauthorised work to building, or for building approval certificate for unauthorised work to building or incidental structure	3, 57(3) and 51(2) and (3)	Regulation 31G provides that the applicable building standards for an application for an occupancy permit in respect of a building with unauthorised building work, or for a replacement occupancy permit for a permanent change of a building's classification, or for a building approval certificate in respect of a building or incidental structure with unauthorised work, are those set out in the edition of the Building Code current at the time the application for the occupancy permit or the building approval certificate is lodged.
31H	Applicable building standards for modification of occupancy permit for additional use of building on temporary basis, for occupancy permit	3, 57(4)(b), 48 and 52(1) and (2)	<p>Regulation 31H provides that the applicable building standards for an application for modification of an occupancy permit for additional use of a building on a temporary basis, or for an occupancy permit for building with an existing authorisation or for a building approval certificate for building or incidental structure with an existing authorisation are the primary applicable building standards set out in regulation 31A(2)(a) or (b) which the building surveyor applied in the certificate of design compliance but in the absence of such certificate:</p> <p>(a) the building licence or approval granted under the written law at the time of construction; or</p>

Reg.	Title	Head of power - Act section	Explanatory Notes
	for building with existing authorisation or for building approval for building or incidental structure with existing authorisation		(b) each technical requirement applicable at the time of construction.
<b>Subdivision 2 – Building standards in relation to demolition</b>			
31I	Applicable building standards in relation to demolition work	3, 38	<p>Subregulation (1) provides that the applicable building standards in relation to demolition work are those set out in subregulation (2).</p> <p>Subregulation (2) carries over and amends the provisions of deleted regulation 8 to prescribe the applicable building standards for demolition work and amends previous wording to require the <i>disconnection</i> by the provider of the service of electrical, gas, telephone or water services no later than the day on which the demolition work is completed. This allows the demolition contractor access, by arrangement with the relevant service provider, to such services as necessary during demolition.</p> <p>These standards operate in parallel with the <i>Occupational Safety and Health Regulations 1996</i>, which require compliance with AS 2601, which sets Australian Standards for the demolition of structures, and the <i>Health (Treatment of Sewage and Disposal of Effluent and Liquid Waster) Regulations 1974</i>, regulation 21 of which regulates emptying and removal of septic tanks and soak wells etc.</p>
<b>Division 2 – Demonstrating compliance with building standards</b>			
31J	Applicable building standards in relation to demolition work	149	Regulation 31J carries over the provisions of deleted regulation 9 to define <b>CodeMark certificate</b> and acknowledge that it demonstrates compliance with specified Building Code provisions in relation to a particular building product.
<b>Division 3 – Non-application, modification, of building standards</b>			

Reg.	Title	Head of power - Act section	Explanatory Notes
31	Term used: application	39(8)(b)	Defines for the purposes of this Part that <b>application</b> means an application for a declaration by the Building Commissioner that a building standard does not apply or is modified.
32	Statements to accompany application	39(8)(b)	Subregulation (1) requires an application for a declaration to contain the statements listed under paragraphs (a), (b) and (c). The information provided is necessary to enable the Building Commissioner to assess the application and decide whether a declaration should be made. For the purposes of paragraph (b), the Building Commissioner will approve a list of independent building surveyors from which the applicant may obtain (at their own cost) the required statement.  Subregulation (2) defines “independent building surveyor” to have a similar meaning as in the section 4(1) of the Act.
33	Decisions on applications	39(9)(a)	Subregulation (1) defines <b>decision</b> – self-explanatory.  Subregulation (2) requires the Building Commissioner to:  (a) record the grounds and reasons for the decision; and  (b) no later than 5 days after making the decision, give the applicant written notification of the decision, the grounds and reasons for it and the applicant’s right of review.
34	Revoking or amending declarations	39(9)(b)	Prescribes the grounds under which the Building Commissioner may revoke or amend a declaration made under section 39.
<b>Part 5 - Occupancy permits and building approval certificates</b>			
35	Display of occupancy permit details	42(a)	Prescribes what information about an occupancy permit must be displayed and how it is to be displayed.
36A	Further information	55(3) and (4)	Subregulation (1) provides that for the purposes of section 55(3) of the Act a requirement under section 55(1) of the Act for further information in relation to an application for an occupancy permit or a building approval certificate must:  (a) be given in writing (under the <i>Electronic Transactions Act 2011</i> this includes an email); and  (b) identify that it is a requirement under section 55(1) of the Act; and



Reg.	Title	Head of power - Act section	Explanatory Notes
			<p>(c) specify the time (not more than 21 days) within which the applicant must provide the information requested and when that time period starts; and</p> <p>(d) specify the consequences under section 55(2) of the Act of not complying within the specified time i.e. the permit authority may refuse the application; and</p> <p>(e) specify any information that the applicant must verify in a statutory declaration.</p> <p>Unless a request is made in this manner, the provisions of section 55(1) and 59(1) do not apply.</p> <p>Subregulation (2) provides that for the purposes of section 55(4) a requirement under section 55(1) cannot be made more than once in relation to an application.</p>
36	Certificate of building compliance	57(2)(c)	Subregulation (1) prescribes the authorities (approvals or consents required under other legislation) listed in paragraphs (a) – (d) with which, <b>if relevant</b> , the building or incidental structure must comply.
		57(2)(d)	Subregulation (2) prescribes things which a certificate of building compliance must contain.
37	Grant of occupancy permit or building approval certificate	58(1)(j)	Prescribes the authorities which <b>if relevant</b> must be obtained if the application needs to be accompanied by a certificate of design compliance. The authorities are the same as those listed in regulation 36(1).
38	Time for granting occupancy permit or building approval certificate	59(1)(a)(i)	Prescribes 10 business days as the period within which a permit authority must decide an application for an occupancy permit, modification of an occupancy permit or a building approval certificate.
39	Occupancy permit and building approval certificates	61(2)(g)	<p>Subregulation (1) defines <b>licensed surveyor</b>.</p> <p>Subregulation (2) requires an occupancy permit, a form of modification or building approval certificate under section 50(1) or (2) of the Act to detail any encroachments in a survey plan prepared by a licensed surveyor. This ensures that when a person lodges a strata plan for registration under the Strata Act section 5B(2)(a) or wishes to re-subdivide a lot in a strata scheme under the Strata Act under the circumstances outlined in sections 50(1) and (2), the occupancy permit or building approval certificate required under the Strata Act section 8A(f) will include the</p>

Reg.	Title	Head of power - Act section	Explanatory Notes
			survey plan.
40	Extension of period of duration of time limited occupancy permit or building approval certificate	65	Subregulation (1) defines <b>application</b> and <b>expiry day</b> for the purposes of this regulation.
		65(4)	Subregulation (2) prescribes the circumstances under which a permit authority may refuse to accept an application for an extension.
		65(4)	Subregulation (4) provides that if an application for an extension has been made and not determined before the expiry day, the permit or certificate continues to have effect until: <ul style="list-style-type: none"> <li>a) a decision is made;</li> <li>b) the applicant withdraws the application;</li> <li>c) a notice of completion has been given; or</li> <li>d) 30 days has elapsed since the expiry of the building permit for the building.</li> </ul>
		65(4)	Subregulation (4) provides that if an application for an extension is accepted after the expiry day, the building or demolition permit continues to have effect until: <ul style="list-style-type: none"> <li>a) a decision is made,</li> <li>b) the applicant withdraws the application;</li> <li>c) a notice of completion has been given; or</li> <li>d) 30 days has elapsed since the expiry of the building permit for the building.</li> </ul>
		65(7)	Subregulation (5) provides that if the permit authority refuses to extend the period of extends it for a shorter period than requested, the permit authority must record the decision and grounds for it and within 5 business days notify the applicant and advise of their right of review to the State Administrative Tribunal.
<b>Part 6 – Circumstances in which building, demolition or occupancy permits not required</b>			
41	Building work for which building	9(1)(b)	Subregulation (1) prescribes the kinds of building work for which a building permit is not required:

Reg.	Title	Head of power - Act section	Explanatory Notes
	permit is not required		<p>a) exempts building work for a Class 10 building or incidental structure in the districts listed in column 1 of the Table in Schedule 4 clause 1 in the area of that district listed in column 2.</p> <p>b) exempts building work for a Class other than a Class 10 building or incidental structure in the districts listed in column 3 of Schedule 4 clause 1 in the area of that district listed in column 3.</p> <p>Subregulation (2) defines <b>Table</b>.</p> <p>Subregulation (3) exempts the kinds of building work listed in the Table in Schedule 4 clause 2.</p> <p>Subregulation (4) prohibits a builder from allowing temporary offices, sheds or sanitary facilities to remain after completion of building work. Penalty: \$5 000.</p>
42	Demolition work for which demolition permit not required	10(c)	<p>Prescribes the kinds of demolition work for which a demolition permit is not required:</p> <p>a) self-explanatory;</p> <p>b) exempts circumstances relating to demolition work commenced before commencement day by an agent of the Crown for which a demolition licence was not required.</p>
43	Building for which occupancy permit not required	41(2)	<p>Regulation 43 carries over from previous regulation 43 certain exemptions for buildings for which an occupancy permit is not required and adds others. The exemptions now include:</p> <p>(a) a Class 1 or Class 10 building (carried over from previous regulation 43(a));</p> <p>(b) a building mentioned in regulation 41(1)(a) or (b) i.e. a building for which a building permit is not required under clause 1 of Schedule 4 (it is considered that if a building permit is not required for a building in the locations mentioned in this Schedule, it is not appropriate for an occupancy permit to be required in those locations either); or</p> <p>(c) a temporary office, shed or sanitary facility used by a builder in connection with building work carried out on the land on which the office, shed or sanitary facility is, or is proposed to be, located (being temporary, it is not considered an occupancy permit should be required for such buildings); or</p> <p>(d) a building owned or occupied by, or under the control or management of the Crown in right of the State or a</p>

Reg.	Title	Head of power - Act section	Explanatory Notes
			<p>department, agency or instrumentality of the Crown in right of the State in relation to which —</p> <ul style="list-style-type: none"> <li>• the building work commenced/s before 31 December 2012; and</li> <li>• the building work had/s an estimated value of less than \$100 000 (It is necessary to exempt such Crown buildings which were previously exempted from the requirement for a building permit under item 12, clause 2 Schedule 4 of the Regulations; or</li> </ul> <p>(e) a building owned or occupied by, or under the control or management of the Crown in right of the State or a department, agency or instrumentality of the Crown in right of the State in relation to which —</p> <ul style="list-style-type: none"> <li>• building work commences before 30 June 2017; and</li> <li>• the building work has an estimated value of less than \$50 000 (this exempts such Crown buildings which are now exempted under item 12, clause 2 Schedule 4 or the Regulations from the requirement to obtain a building permit); or</li> </ul> <p>(f) exempts buildings relating to building work commenced before commencement day by an agent of the Crown (an occupancy permit was not required for Crown buildings prior to commencement of the Act on 2 April 2012.).</p>
<b>Part 7 – Work affecting other land</b>			
44A	Terms used		Amendment Regulation 9 creates new regulation 44A to define terms used in Part 7 ( <i>Work affecting other land</i> ) of the Regulations. These terms are <b>architectural feature</b> , <b>public place</b> (a reserve or mall reserve as defined in section 3(1) of the LAA and <b>road</b> as defined in section 3(1) of the LAA.
44	Owner of land for purposes of Part 6 of Act	3	Defines <b>owner</b> , in relation to freehold land, for the purposes of Part 6 of the Act in relation to work affecting other land, to mean only a person whose name is registered as a proprietor of the land and the State. This is to intended to preclude delays which may have arisen if not only the proprietor but also a person who holds a prescribed interest in the land were required to give any consent mentioned in this Part.
45A	Minor encroachments	76(1)(c)	Regulation 45A defines minor encroachments for which the consent of the adjoining owner is not required under section 76(1)(c) of the Act. These encroachments must be on Crown land i.e. a road or public place. This cuts red tape by effectively removing the requirement to obtain the consent of the Minister for Lands for a thing which is

Reg.	Title	Head of power - Act section	Explanatory Notes
			prescribed as a minor encroachment.
45B	Circumstances prescribed for purposes of section 76(1)(e)	76(1)(e)	New regulation 45B prescribes circumstances under section 76(1)(e) of the Act in which the consent of the adjoining owner for an encroachment of a specified awning, verandah or thing attached to it is not required. This exemption is dependent on the awning, verandah or thing attached to it being constructed in accordance with either planning requirements or any relevant local law.
45	Content of notice about effect on other land	85(1)(b)	Subregulation (1) prescribes the information which a notice in respect of a notifiable event must include.
		85(1)(j)	Subregulation (2) prescribes the documents which must accompany such a notice.
<b>Part 8 – Existing buildings</b>			
<b>Division 1 – General</b>			
46	<i>Deleted</i>		<i>Regulation 46 (Building standards to apply to relocated buildings and incidental structures) was deleted on 19 December 2012. As the provisions of regulation 46 were carried over and consolidated into new regulation 31D, which prescribes the applicable building standards for relocated buildings and incidental structures, its provision were no longer necessary.</i>
47	Notification of change of classification of certain buildings and incidental structures	93(2)(b)	<p>Subregulation (1) provides that an owner of an existing building or incidental structure must, before changing on a permanent basis, the classification of the building or incidental structure from:</p> <ul style="list-style-type: none"> <li>• Classes 2 to 10 to Class 1 (all classes except residential to bedroom); or</li> <li>• Class 1a to Class 1b (residential dwelling to bed &amp; breakfast),</li> </ul> <p>give written notification of the change to the relevant permit authority at least 10 business days before the change.  <i>Note: A building permit may not be required for the change, as no building work may be needed. Penalty: \$5 000. This partly carries over the provisions from regulation 22(3) of the Repealed Regulations.</i></p> <p>Subregulation (2) provides that the notice must include evidence that the building or incidental structure will comply with the building standards applicable to the new Class.</p>
<b>Division 2A - Maintenance</b>			

Reg.	Title	Head of power - Act section	Explanatory Notes
48A	Maintenance of buildings	93	Regulation 48A replaces the effect of the Maintenance provisions of the Building Code (section I) which were deleted on 1 May 2014. This deletion reflected the fact that the other Australian jurisdictions impose statutory requirements for the maintenance of existing buildings to ensure that occupants are protected throughout the life the building from illness, injury or loss of amenity. These maintenance requirements, which apply to commercial buildings only, replicate the Performance Requirements which have been deleted from the Building Code.
<b>Division 2 – Private swimming pools</b>			
48	Terms used	46(2) & (3), 93	Defines terms used in this Division in relation to requests for existing private swimming pools – self-explanatory.
49.	Application of this Division	93	Provides that requirements in this Division apply to existing private swimming pools located in areas in local government districts specified in Schedule 5 to the Regulations. This carries over the provisions of regulation 2A(2) of the Repealed Regulations.
50	Enclosure of private swimming pool	93	<p>Subregulation (1) requires existing private swimming pools and their immediate surrounds to be enclosed. As with all the requirements in this Division of the Regulations. The existing penalty of \$5 000 is carried over from regulation 38B(1) of the Repealed Regulations.</p> <p>Subregulation (2) This requirement clarifies what is included in the immediate surrounds.</p> <p>Subregulation (3) sets out the technical standard for the external doors and windows in any building other than a Class 10a building within the enclosure.</p> <p>Subregulation (4) sets out the technical requirements for enclosures.</p> <p>Subregulation (5) sets out the technical requirements for a boundary fence which is part of the pool enclosure. This carries over the provisions in regulation 38B of the Repealed Regulations.</p>
51	Approvals by permit authority	93	Allows a permit authority to approve alternative requirements for pool enclosures and sets out the circumstances in which problems of a structural nature may for grounds to exempt compliance with the requirements. This carries over the provisions in regulation 38C of the Repealed Regulations.
52	Concessions for pre- November 2001 private swimming pools	93	Applies certain concessions regarding pool enclosures in relation to private swimming pools installed before 2 November 2001 or installed after that date in accordance with plans and specifications submitted for approval before that date. This carries over the provisions in regulation 38D of the Repealed Regulations.
53	Inspections of pool enclosures	93	Provides that the local government may fix the charge to be imposed on each owner of land on which there is a private swimming pool and that the charge shall not exceed the estimated average cost (over the 4 year inspection

Reg.	Title	Head of power - Act section	Explanatory Notes
			regime) of carrying out (all) inspections (of all swimming pools in the district) in the particular financial year. Also sets the \$55 maximum charge. This carries over the provisions in the LG(MP) Act section 245A(8) and in regulation 38F of the Repealed Regulations.
54A	Temporary pool enclosures	93	Requires a builder who removes a pool enclosure in the course of building work to erect a temporary enclosure until the permanent enclosure is replaced.
54	Transitional provisions – persons authorised to carry out inspections of private swimming pools	93(2)(d) 203	<p>Regulation 54 provides that for the purposes of section 93(2)(d) of the Act, a person who was authorised under section 245A of the repealed provisions immediately before repeal day continues to be taken to be an authorised person in relation to the inspection of private swimming pool enclosures for the period commencing on repeal day (as defined in regulation 54(1)) and ending on the day that is 5 years after that day.</p> <p><i>This enables the transitional regulation 54 to continue, until 2 April 2017, to provide an interim arrangement under which Royal Life Saving Society employees and any other persons authorised in accordance with amended regulation 54 may carry out inspections to ensure compliance with private swimming pool barrier requirements (see also regulation 4).</i></p>
<b>Division 3 – Smoke alarms</b>			
55	Terms used	93	<p>Subregulation (1) defines terms used in this Division – self explanatory.</p> <p>Subregulation (2) specifies how a smoke alarm is to be permanently connected to mains power.</p> <p>Subregulation (3) specifies for the purposes of this Division how an owner transfers ownership of a dwelling.</p>
56	Requirement to have smoke alarms or similar prior to transfer of dwelling	93	Requires owners of dwellings to have smoke alarms or similar installed at the time ownership of a dwelling is transferred. This carries over the provisions in repealed Repealed Regulations regulation 38J.
57	New owner must install smoke alarms or similar, and right to recover costs	93	<p>Subregulation (1) requires the new owner of a dwelling in relation to which the prior owner did not install a smoke alarm or similar, to do so within 12 months of transfer of ownership.</p> <p>Subregulation (2) enables a new owner to recover the cost of such installation from the prior owner. This carries over the provisions in repealed Repealed Regulations regulation 38K.</p>
58	Requirement to have smoke alarms	93	Requires owners of dwellings to have smoke alarms or similar installed at the time the dwelling is rented under a residential tenancy agreement. This carries over the provisions in repealed Repealed Regulations regulation 38L.

Reg.	Title	Head of power - Act section	Explanatory Notes
	or similar prior to tenancy		
59	Requirement to have smoke alarms or similar prior to hire of dwelling	93	Requires owners of dwellings to have smoke alarms or similar installed at the time the dwelling is made available for hire. This carries over the provisions in repealed Repealed Regulations regulation 38M.
60	Requirements for smoke alarms	93	Subregulation (1) defines <b>relevant day</b> . Subregulation (2) sets out the technical requirements for smoke alarms installed as required at time of transfer, rental or hire of the dwelling. Subregulation (3) sets out the requirements for dwellings with 2 or more smoke alarms. This carries over the provisions in repealed Repealed Regulations regulation 38N. Subregulation (4) exempts existing dwellings subject to transfer of ownership, lease or hire from the requirement in the Building Code (as from 1 May 2014) to interconnect more than one smoke alarm. This transitional provision means that the interconnection requirement will not apply to existing buildings, for which interconnection may cause technical or structural problems.
61	Local government approval of battery powered smoke alarms	93	Subregulations (1) & (2) enable the local government to approve battery powered smoke alarms instead of mains powered ones in certain circumstances. Subregulation (3) carries over the existing maximum \$170 fee which a local government may charge for an application for such approval. This carries over the provisions in repealed Repealed Regulations regulation 38O.
62	Requirement to maintain certain smoke alarms	93	Subregulations (1) & (2) set out the maintenance requirements on the lessor* of a dwelling who rents or hires the dwelling. This carries over the provisions in the Repealed Regulations regulation 38P.  *lessor as defined in section 3 of the <i>Residential Tenancies Act 1987</i> .
<b>Part 9 — Transitional provisions relating to <i>Local Government (Miscellaneous Provisions) Act 1960</i></b>			



Reg.	Title	Head of power - Act section	Explanatory Notes
63	Notice to be given before commencing building or demolition work	203	Retains the effect of the substantial provisions of the LG (MP) Act section 375.
64	No materials to be deposited on streets without licence	203	Retains the effect of the substantial provisions of the LG (MP) Act section 377. "CEO" of a local government is the terminology used in the LG Act, which is why it is used here rather than "the building surveyor" which will no longer be a statutory position.
65	Hoardings erected and materials deposited otherwise than as permitted by licence may be removed	203	Retains the effect of the substantial provisions of the LG (MP) Act section 378(1). The Act section 182 has transitional provisions about the sale of materials under the LG (MP) Act section 378(2) so the provisions of section 378(2) to (5) of that Act cannot be carried over.
66	Damage done to footpaths, drains etc. to be made good	203	Retains the effect of the substantial provisions of the LG (MP) Act section 379.
67	While building is in progress footpath to be Covered	203	Retains the effect of the substantial provisions of the LG (MP) Act section 380.
68	Expiry of Part	203	The provisions in this Part retain, for a transitional period, certain provisions from the LG (MP) Act which will be deleted by the Act. This transitional period is needed to enable suitable replacement provisions to be made as local laws under the LG Act.
<b>Part 10 – Infringement notices</b>			

Reg.	Title	Head of power - Act section	Explanatory Notes
69	Prescribed offences and modified penalties	93(2)(d) <i>Act</i> 5(3) <i>CP Act</i>	Subregulation (1) prescribes the offences set out in Schedule 6 as offences for which infringement notices may be issued.  Subregulation (2) prescribes the modified penalties corresponding to the offences set out in Schedule 6.
70	Approved officers and authorised officers	93(2)(d) <i>Act</i> 5(3) <i>CP Act</i>	Subregulation (1) enables a local government permit authority to appoint as an <u>approved</u> officer for the purposes of section 6(a) (appointment of officers to deal with infringement notices) of the CP Act, a person appointed under the LG Act and authorised to extend the period within which a modified penalty may be paid and to withdraw an infringement notice.  Subregulation (2) enables a local government permit authority to appoint as an <u>authorised</u> officer for the purposes of section 6(b) (appointment of officers to deal with infringement notices) of the CP Act a person appointed under the LG Act and authorised to give an infringement notice.  Subregulation (3) requires a local government permit authority to issue every authorised officer a certificate of their appointment and the authorised person must produce that certificate on request to a person affected by the authorised officer's duties.
71	Forms		Prescribes the forms in Schedule 7 for the purposes of Part 2 of the CP Act.
<b>Schedule 1 – Estimated value of building work</b>			
1	Terms used		Clause (1) defines terms used in this Schedule.
2	Estimated value of building work	149(2) r. 3	Subclause (1) of clause (2) sets out the method for calculating the estimated value of building work for the purposes of calculating application fees for various permits and certificates. This replicates the provisions of the <i>Building and Construction Industry Training Fund and Levy Collection Act 1990</i> Schedule 2 and substantially carries over the provisions from the Repealed Regulations regulation 24.  Subclause (2) of clause (2) sets out the method for calculating the estimated value of building work to be used for amended applications where a building permit is already in effect. This formula is to be used to calculate a modified building permit application fee. This may apply, for example, where variations need to be made to plans and specifications which have already been specified in a certificate of design compliance in a building permit application previously submitted. As a building permit application fee has already been paid, the permit authority will not need to re-check all the documents previously submitted, so a modified fee applies.
3	Estimated value of unauthorised building work	149(2) r. 3	Clause (3) sets out the method for calculating the estimated value of unauthorised building work. This substantially carries over the provisions from regulation 24A of the Repealed Regulations.
<b>Schedule 2 – Fees</b>			
<b>Division 1 – Applications for building permits, demolition permits</b>			

Reg.	Title	Head of power - Act section	Explanatory Notes
Item 1	Certified application for a building permit	16(1), 149(2) r. 11	<p>The methodology for calculating fees is changed, although for some applications the fee outcome is retained. Previous fees were calculated taking into account the effect of the Goods and Services Tax (GST); for instance previous fees as XX% of 10/11 of the estimated value of construction (but not less than \$85). The 10/11 methodology recognised the extra cost of building imposed by the GST.</p> <p>By contrast, under item 1(a), the new fee for a certified application for a building permit for Class 1 or Class 10 building or incidental structure of 0.19% is approximately 60% of the current fee derived from 60% of (0.35% x 10/11). This recognises that a building surveyor (paid for by the applicant) is involved at the design stage and the permit authority is not required to have the plans assessed by the local government's building surveyor against the requirements of the building code. These buildings currently make up the majority of applications for most local governments and command greater attention by local governments in relation to complaint and compliance matters.</p> <p>The new fee under Item 1(b) for a certified application for a building permit for Class 2 - 9 building or incidental structure of 0.09% is derived from 50% of (0.2% x 10/11). For certified applications for Class 2-9 buildings (typically commercial, industrial, public or multi-residential buildings) the proposed fee is approximately 50% of the current fee<sup>1</sup>. This recognises that assessment of compliance with the building code for Class 2-9 buildings constitutes a significantly greater portion of the costs associated with their building approval. In other words a certified application requires significantly less input from the permit authority and that most Class 2-9 buildings are subject to a separate development approval by the local government.</p>
Item 2	Uncertified application for a building permit	16(l), 149(2) r. 11	<p>The previous fee was 0.35% of 10/11 of the estimated value of the proposed construction as determined by the local government but not less than \$85. The actual rate is 0.3182% of the estimated value of the proposed construction inclusive of GST.</p> <p>The new fee is 0.32% of the estimated value of the proposed construction as determined by the permit authority but not less than \$90.</p>
Item 3	Application for a demolition permit	16(1), 149(2) r. 11	<p>Paragraph (a) sets a flat \$90 fee for an application for demolition of a Class 1 or Class 10 (residential ) building or incidental structure. Although the flat fee has been increased from \$50 to \$90 to reflect CPI increases since the fee was last increased, there is no longer a fee per storey for residences of two storeys or more.</p> <p>Paragraph (b) sets a fee of \$90 cost per floor an application for demolition of a Class 2-9 building. By setting a fee per storey, this takes into account the greater complexity and risk associated with demolition of larger Class 2-9 (commercial) buildings.</p>

<sup>1</sup> The previous fee was 0.2% of 10/11 of the estimated value of construction but not less than \$85.

Reg.	Title	Head of power - Act section	Explanatory Notes
Item 4	Application to extend the time during which a building or demolition permit has effect	32(3)(f), 149(2) r. 11	This is a new fee for a new service provided by permit authorities. This reflects the minimum fee for building and demolition permit applications, and acknowledges the minimum administrative costs of processing and considering such applications.
<b>Division 2 – Application for occupancy permits, building approval certificates</b>			
Items 1, 2, 3, 4, 8 & 9	Applications for various types of occupancy permits and building approval certificates	46, 47, 48, 49, 52(1), 52(2), 149(2) r. 11	These are new fees for new services provided by permit authorities. By reflecting the minimum fee for building and demolition permit applications, these fees acknowledge the administrative costs of processing and considering such applications. As buildings which are the subject of such applications are already authorised, the local government/permit authority would previously have collected a building licence/permit application fee.
Item 5	Application for occupancy permit or building approval certificate for registration of strata scheme, plan of re-subdivision	50(1) & (2), 149(2) r. 11	<p>This new fee is for a new service provided by permit authorities. The methodology reflects that used in Item 2(a) of Schedule 1 of the Strata Regulations, made under the Strata Act section 5B(2). This methodology is relevant because the Act section 174(2) amended section 5B(2) by replacing the previous requirement with a requirement to provide an occupancy permit or building approval certificate for registration of strata scheme, or plan of re-subdivision. Item 5 of Division 2, Schedule 2 of the Regulations sets the fee for an application for this permit or certificate.</p> <p>However, while the Strata Regulations provide that for a fee calculated as “20 cents per square metre of the floor space of the building or \$100.00 which ever is greater”, the Regulations provide for a fee calculated as “\$10 per strata unit but not less than \$100”. The reason being that there is much disputation over the issue under the Strata Regulations of what aspects of a strata unit’s floor space should be used in the calculation. Therefore, in order to provide certainty, the Regulations refer to \$10 per start unit, which would equate, for a strata unit of 50 square metres floor space, to something less than 20 cents per square metre or a strata unit’s floor space (the average strata unit usually being having more than 50 square metres of floor space), with a minimum fee of \$100.</p>
Item 6	Application for an occupancy permit	51(2), 149(2) r. 11	The 0.18% is derived from 50% of the previous fee for the issue of a building approval certificate for a building other than Class 1 or 10 (0.4 x 10/11).

Reg.	Title	Head of power - Act section	Explanatory Notes
	for a building in respect of which unauthorised work has been done		<i>(Refer Repealed Regulations reg. 24A Table)</i>
Item 7	Application for a building approval certificate for a building in respect of which unauthorised work has been done	51(3), 149(2) r. 11	0.38% is derived from 60% of the previous fee for the issue of a building approval certificate for a Class 1 or 10 building (0.7% x 10/11). <i>(Refer Repealed Regulations reg. 24A Table)</i>  This enables retrospective approval of unauthorised work after the building is completed. This may be used by a new owner of a building which was built without a building permit. It does not however remove the permit authority's powers to prosecute an owner who unlawfully builds without a building permit.
Item 8	Application to replace an occupancy permit for an existing building	52(1), 149(2) r. 11	This is a new fee for a new service provided by permit authorities. By reflecting the minimum fee for building and demolition permit applications, the fee acknowledges the minimum administrative costs of processing and considering such applications.
Item 9	Application for a building approval certificate for an existing building where unauthorised work has not been done	52(2), 149(2) r. 11	This is a new fee for a new service provided by permit authorities. By reflecting the minimum fee for building and demolition permit applications, the fee acknowledges the minimum administrative costs of processing and considering such applications.
Item 10	Application to extend the time during which an occupancy permit or building approval certificate has effect	65(3)(a) 149(2) r. 11	This is a new fee for a new service provided by permit authorities. By reflecting the minimum fee for building and demolition permit applications, the fee acknowledges the minimum administrative costs of processing and considering such applications.
<b>Division 3 – Other applications</b>			

Reg.	Title	Head of power - Act section	Explanatory Notes
Item 1	Application as defined in regulation 31 (for each building standard in respect of which a declaration is sought)	39, 149(2) r. 11	<p>The \$2 000 fee is to cover the costs involved in the following:</p> <ul style="list-style-type: none"> <li>• Processing application including checking for correct paperwork, application filled in correctly, liaising with applicant if further info required and arranging for file to be created.</li> <li>• Processing application fee.</li> <li>• Using specialist advice, reviewing and researching application, liaising with applicant (if required) Government bodies and other stakeholders, preparing draft report for Building Commissioner, including reasons for the decision.</li> <li>• Building Commissioner reviewing draft report and making final decision</li> </ul>
<b>Schedule 3 – Inspections or tests of systems</b>			
Cl. 1	Term used: EP	36(2)(a) r. 27	Defines the term EP as used in this Schedule.
	Table	36(2)(a) r. 27	Column 1 of the Table lists the systems referred to in regulation 27(1) to be tested. These are mandatory tests which must be arranged by the builder. The builder will need to determine which mandatory test is <b>relevant</b> to the particular building i.e. a test will only apply if the building has the particular system prescribed. The builder will also decide who is an appropriately qualified and experienced person to conduct the test. The tests will not need to be listed in the certificate of design compliance. Column 2 of the Table sets out the time at which the test of the corresponding system in Column 1 is to be conducted.
<b>Schedule 4 – Building work that does not require building permit</b>			
<b>Clause 1 Areas where building permit not required for certain work</b>			
	Table	66(1) r. 43	<p>Column 2 of the Table sets out the areas of local government districts where building work for Class 10 buildings or incidental structures does not require a building permit. This carries over the existing exemption arrangements under regulation 2A(1) and Schedule 2 of the Repealed Regulations.</p> <p>Column 3 of the Table sets out the areas of local government districts where building work for buildings other than Class 10 buildings does not require a building permit. This carries over the existing exemption arrangements under regulation 2A(3) and Schedule 2 of the Repealed Regulations.</p>
<b>Clause 2 – Kinds of building work for which a building permit is not required</b>			
	Table	66(1) r. 43	The Table sets out the types of building work that do not require a building permit. Detailing these specific kinds of building work provides greater certainty and consistency than was previously provided about what type of building work did not require a building licence.
<b>Schedule 5 – Areas of State where Part 8 Division 2 applies</b>			

Reg.	Title	Head of power - Act section	Explanatory Notes
	Table		The Table sets out areas of the State where the private swimming pool (enclosure) requirements in Part 8 Division 2 of these regulations apply. This carries over existing provisions in column 3 of Schedule 2 of the Repealed Regulations.
<b>Schedule 6 - Prescribed offences and modified penalties</b>			
	Table	93(2)(d) <i>Act 2011</i> 5(3) <i>CP Act</i> <i>Reg. 69(1) and (2)</i>	Schedule 6 carries over modified penalties from regulation 38Q and 38H of the Repealed Regulations to prescribe the modified penalties for offences of the following requirements: <ul style="list-style-type: none"> <li>• Regulation 50(1) Requirement to enclose a private swimming pool - \$750.</li> <li>• Regulation 56 Requirement to have smoke alarms or similar installed prior to transfer of dwelling - \$1000.</li> <li>• Regulation 58 Requirement to have smoke alarms or similar installed prior to tenancy - \$1000.</li> <li>• Regulation 59 Requirement to have smoke alarms or similar prior to hire of dwelling – \$1000.</li> </ul>
<b>Schedule 7 - Forms</b>			
	Form 1 - Infringement Notice	93(2)(d) <i>Act</i> 5(3) <i>CP Act</i> <i>Reg. 71</i>	Prescribes an Infringement Notice (Form 1). This is a standard form prescribed for Infringement Notices.
	Form 2 – Withdrawal of Infringement Notice	93(2)(d) <i>Act</i> 5(3) <i>CP Act</i> <i>Reg. 71</i>	Prescribes a Withdrawal of Infringement Notice (Form 2). This is a standard form prescribed for Withdrawal of Infringement Notices.