



Building Amendment Regulations 2017

The Building Amendment Regulations 2017 (the Amendment Regulations) were published in the *Government Gazette* on Tuesday 7 February 2017 to come into operation on Wednesday 8 February 2017. The Amendment Regulations can be accessed on the State Law Publisher website www.slp.wa.gov.au.

The Amendment Regulations amend the Building Regulations 2012 (Building Regulations) to introduce a transitional process for making streamlined applications under section 39 of the *Building Act 2011* (the Act) for seeking a declaration from the Building Commissioner for the non-application or modification of a bush fire building standard.

Under the transitional bush fire application process, which will apply until 1 May 2019, the existing requirements for two statements by building surveyors about the proposed waiver or modification will be replaced by a requirement to provide a single statement by an accredited person. In addition, an amendment will allow the Building Commissioner to waive, reduce or refund the \$2,123 fee for any applications made under section 39. It is proposed that the fee for a transitional bush fire application will initially be \$100.

The key Amendment Regulations are outlined below.

Regulation 3 provides that the Amendment Regulations amend the Building Regulations 2012.

Regulation 4 amends regulation 11 to allow the Building Commissioner to reduce, waive or refund all or part of the fee set out in Schedule 2, Division 3. This is the \$2,123 fee for an application under section 39 of the Act seeking a declaration by the Building Commissioner waiving or modifying a building standard in relation to a particular building.

Regulation 5 inserts the following new definitions in regulation 31:

- **accredited person** – this person will have successfully completed an accreditation in bush fire planning approved by the Building Commissioner. For the purpose of a transitional bush fire application, the Building Commissioner has approved a person who is accredited as a “Level 3 Bushfire Planning Practitioner – Performance” granted in accordance with the *Guidelines for Organisations Seeking to Become Accrediting Bodies in Western Australia* (published by the Department of Planning). Currently, only the Fire Protection Association of Australia is recognised as an accrediting body under those Guidelines.
- **transitional bush fire application** – defines the type of application made under section 39 of the Act to which these transitional provisions apply. It will only apply to applications relating to a bush fire performance requirement for a Class 1a building or an associated Class 10a building or deck that is located less than six metres from a Class 1a building. These transitional bush fire applications may only be made before 1 May 2019.

Regulation 6 amends regulation 32(1) to limit its requirements to applications other than a transitional bush fire application.

Regulation 7 creates new regulation 32A, to set out the requirements for the statements which must accompany a transitional bush fire application:

- New sub regulation (1) requires that the following statements accompany a transitional bush fire application:
 - (a) a statement by an accredited person indicating:
 - (i) the Bushfire Attack Level (BAL) for the building site for the building or incidental structure determined in accordance with *Australian Standard 3959 – Construction of buildings in bushfire-prone areas*. The building site is that part of the lot on which the building or incidental structure stands or is to be constructed;
 - (ii) each risk to people, property or the environment that the bush fire performance requirement, if applied, prevents or minimises. This reflects the requirement in existing regulation 32(1)(a)(i); and
 - (iii) if, and the extent to which, a risk to people, property or the environment would be increased if the bush fire performance requirement did not apply, or was modified in the way proposed by the applicant. This reflects the requirement in existing regulation 32(1)(a)(iii);
 - (b) a statement by the applicant indicating the reasons for their opinion that making the declaration
 - (i) is in the public interest; or
 - (ii) is consistent with the purpose of a written law or a Commonwealth law specified in the applicant's statement.

The purpose of these statements is to assist the Building Commissioner to determine whether to make a declaration that the bush fire building standard does not apply or applies in a modified way.

- Subregulation (2) allows the Building Commissioner to require the applicant to provide other documents or information the Building Commissioner might need to determine the application.
- Subregulation (3) gives the Building Commissioner a discretion about what information the Building Commissioner may take into account when determining an application.

Disclaimer

The information contained in this bulletin is provided as general information only and should not be relied upon as legal advice or as an accurate statement of the relevant legislation provisions. If you are uncertain as to your legal obligations you should obtain independent legal advice.

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