



Building Amendment Regulations (No. 3) 2017

The **Building Amendment Regulations (No. 3) 2017 (the Amendment Regulations)** were published in the **Government Gazette on 22 December 2017**. The Amendment Regulations can be accessed www.legislation.wa.gov.au.

The key Amendment Regulations are outlined below:

Regulation 2 provides that specified regulations come into operation one month after they are published in the Government Gazette (taking effect on 23 January 2018). This is intended to:

- give the real estate industry and other key stakeholders sufficient advance notice of the new smoke alarm exemption in the case of intended demolition; and
- give the local government districts of Laverton, Menzies and Wiluna the opportunity to inform constituents about the date of the removal of the building permit exemptions for areas within those districts.

The other regulations come into operation on the day after gazettal.

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

Regulation 4 amends regulation 53(2)(b) to increase the existing \$57.45 maximum fee for inspection of a barrier to a private swimming pool to \$58.45. The new amount represents a Consumer Price Index (CPI) increase of 1.75 per cent, approved by the Department of Treasury. The increase to this fee was inadvertently omitted from CPI increases to other fees prescribed in the Building Regulations that came into effect on 1 July 2017.

Regulation 5 amends regulation 55 by creating the following new definitions:

- *Declaration of intended demolition* – this is a statutory declaration made by the person to whom the ownership of the dwelling is to be transferred (i.e. the new owner) declaring that the person intends to demolish the dwelling within six months, beginning on the transfer day (being the day on which ownership is transferred). A statutory declaration is a written statement that the maker signs and declares to be true before an authorised witness. If the maker intentionally makes a false statement in a statutory declaration they can be charged with a criminal offence.
- *Transfer day* – means the day on which the ownership of a dwelling is transferred.

Regulation 6 amends regulation 56 to create a defence for a prior owner against a charge of an offence under regulation 56(1) of not installing smoke alarms prior to transfer of the ownership of a dwelling if the prior owner can prove that the new owner gave them a declaration of intended demolition for the dwelling before the transfer day.

Regulation 7 amends regulation 57 to:

- create a new definition in new regulation 57(1A) of *post-transfer period*. This is the period of time during which the new owner must install smoke alarms, if necessary, in the circumstances where the prior owner did not install smoke alarms in the dwelling prior to

the transfer of ownership. The length of the period depends on whether or not the new owner gave the prior owner a declaration of intended demolition:

- a. if the new owner gave such a declaration, the period is six months beginning on the transfer day; or
- b. if the new owner did not give such a declaration, the period is 12 months beginning on the transfer day. This 12 month period for new owners was carried over from the previous Building Regulations 1989.

NB: Despite the above requirement for new owners during the post-transfer period, regulations 58 and 59 of the Building Regulations 2012 continue to require any owner (including a new owner) to install smoke alarms prior to the rent or hire of the dwelling to a third party;

- amend regulation 57(2) to make clear that the right of the new owner to recover the cost of installing smoke alarms from the prior owner only applies if the new owner did not give the prior owner a declaration of intended demolition; and
- insert new regulation 57(3) to create a defence for a new owner against a charge of an offence under regulation 57(1) of not installing smoke alarms during the post-transfer period if the new owner (the accused person) can prove that the dwelling was demolished within the post-transfer period.

Regulation 8 makes a consequential amendment to regulation 60(2), necessary due to the changes to regulation 56 outlined above.

Regulation 9 amends clause 1 of Schedule 4 (which lists exemptions from the requirement to obtain a building permit for specific types of buildings in specified areas of Western Australia) to:

- delete the item for Broomehill and insert an item for Broomehill-Tambellup. This updates Schedule 4 to reflect the amalgamation of the local government districts of Broomehill and Tambellup that occurred on 1 July 2008. This amendment carries over the requirements of Schedule 4 that applied to the then local government district of Broomehill and to the then local government district of Tambellup prior to the amalgamation of the local governments;
- amend the item for Laverton by deleting the existing words in column 3 “Whole district other than townsites”. This means that a building permit is now required for building work for Class 1 to Class 9 buildings in the whole district of Laverton (instead of the previous requirement where a building permit was only required if these types of buildings were located in a townsite);
- amend the item for Menzies by deleting the existing words in column 3 “Whole district other than townsites”. This means that a building permit is now required for building work for Class 1 to Class 9 buildings in the whole district of Menzies (instead of the previous requirement where a building permit was only required if these types of buildings were located in a townsite);
- replace the reference in Column 1 to “Narrogin Shire” with “Narrogin”. This reflects the 2016 amalgamation of the Shire of Narrogin with the Town of Narrogin. The previous exemption from the requirement to obtain a building permit for building work for a Class 10 building or incidental structure in areas zoned for farming purposes by a local

planning scheme is unaffected by the change in name of the local government district;

- amend the item for Wiluna by deleting the existing words in column 3 “Whole district other than townsites”. This means that a building permit is now required for building work for Class 1 to Class 9 buildings in the whole district of Wiluna (instead of the previous requirement where a building permit was only required if these types of buildings were located in a townsite).

Regulation 10 amends Schedule 5 (which lists specified areas of the State in which the requirement under Part 8, Division 2 for existing private swimming pools applies) to:

- insert references to the whole local government districts of Gingin and Chapman Valley. Gingin and Chapman Valley were not previously listed in Schedule 5. As such, the last entry in Schedule 5 for “All other districts” applied to these local governments. This entry meant that Part 8, Division 2 only applied in the townsites, and areas outside the townsites were exempted. At the request of the Gingin and Chapman Valley Councils, Schedule 5 is now amended to require Part 8, Division 2 to be applied to the whole districts of the Gingin and Chapman Valley shires;
- delete the item referring to Narrogin (Town). This updates Schedule 5 to reflect the 2016 amalgamation of the Shire of Narrogin with the Town of Narrogin (the new entity retained the designation of Shire). As previously drafted, Part 8, Division 2 only applied in all townsites of the Town of Narrogin and what was previously the Shire of Narrogin. This amendment simply carries over the previous requirement that Part 8, Division 2 only applies in all townsites of the new Shire of Narrogin.

Regulation 11 makes a consequential amendment to Schedule 6 as a result of the changes to regulation 56 outlined above.

Regulation 12 corrects minor typographical errors in a number of regulations listed in the table. The correction replaces “an performance” with “a performance”.

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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