

***Building Services (Registration) Amendment
Regulations 2012***

&

***Building Services (Complaint Resolution and
Administration) Amendment Regulations 2011***

“Explanatory Guide to the Building Surveying Amendments”.

DECEMBER 2011

Explanatory Notes

1. Introduction

This is the explanatory notes to Draft 1 of the *Building Services (Registration) Amendment Regulations 2012*. These amendments aim to amend the *Building Services (Registration) Regulations 2011* made under the *Building Services (Registration) Act 2011* (the Registration Act) to bring in a system of registration and control of building surveyors in this state.

These explanatory notes also deal with changes proposed by Draft 1 of the *Building Services (Complaint Resolution and Administration) Amendment Regulations 2011*. These changes are to ensure that complaints about building surveyors can be dealt with by the Building Commission under the *Building Services (Complaint Resolution and Administration) Act 2011*.

The changes also facilitate the implementation of the building services levy when Parts 2 to 16 of the *Building Act 2011* come into operation, which is scheduled to occur on 2 April 2012.

The registration of building surveyors is necessary to support the commencement of the *Building Act 2011*. It is proposed that these amendments will come into operation on 12 March 2012 to provide some time for the Building Commission to issue registration certificates to building surveyors before the *Building Act 2011* commences operation.

2. *Building Services (Registration) Amendment Regulations 2011*

Amendment 1: Citation

Titles the regulations as the *Building Services (Registration) Amendment Regulations 2012* (the Amendments).

Amendment 2: Commencement

This draft currently provides that the Amendments commence on the day that the *Building Act 2011* Part 14 comes into operation. This will be changed in subsequent drafts to provide for their commencement on 12 March 2012.

Amendment 3: Regulations amended

Advises that the Amendments amend the *Building Services (Registration) Regulations 2011* (the Regulations).

Amendment 4: Regulation 3 amended

This amendment inserts terms relevant to the registration of building surveyors.

Amendment 5: Regulation 4 amended

This amendment inserts the following as prescribed building services, for which registration is required:

- building surveying work level 1, as the person issuing a compliance certificate; and
- building surveying work level 2, as the person issuing a compliance certificate.

Amendment 6: Regulation 6 amended

This regulation lists the classes of practitioners and contractors in which building surveyors may be registered. Also inserted as a class of practitioner is “building surveying practitioner technician” (“technicians”). Technicians are not prescribed as a class of contractor and therefore must work under the supervision of a level 1 or level 2 building surveyor.

Amendment 7: Regulation 8 amended

Section 67 of the Registration Act provides for the Minister to appoint two members from each “occupational group” to the Building Services Board. An occupational group under the Registration Act means classes of registered building service provider prescribed by the Regulations.

This amendment effectively makes building surveyors an occupational group so that the Minister can appoint two building surveyors to the Building Services Board.

Amendment 8: Part 3A inserted

This amendment inserts a new Part 3A relating to the registration of building surveyors. Part 3A comprises 11 new regulations (from Regulation 28A to Regulation 28K). The effect of these new regulations is as follows:

Regulation 28A Terms used

New Regulation 28A defines “**building surveying work**” by reference to the *Building Services (Complaint Resolution and Administration) Regulations 2011* as:

- (a) the examination of plans and specifications for buildings and incidental structures to assess the safety, accessibility and energy efficiency of a building or incidental structure that is built in accordance with the plans and specifications; and
- (b) the examination of a building or incidental structure to assess the safety, accessibility and energy efficiency of the building or incidental structure.

“**Building surveying work level 1**” is defined as building surveying work in respect of any building or incidental structure. There is no size restriction.

“**Building surveying work level 2**” is defined as:

Building surveying work in respect of a building or incidental structure —

- (a) with a floor area up to 2 000 m²; and
- (b) not more than 3 storeys in height.

The scope of work that a **building surveying practitioner technician** may carry out is not defined in these regulations. This is dealt with in the draft *Building Regulations 2011* and says:

A building or incidental structure —

- (a) with a floor area not exceeding 500 m²; and
- (b) not higher than 2 storeys

Regulation 28B Prescribed titles: building surveying practitioners and building surveying contractors

This new regulation includes a table of the titles that only registered building surveyors, whether individuals, partnerships or companies, may use.

In the Table under Part 1 – General, the title “Registered Building Surveyor” may be used by all classes of registered building surveyor, whether they be a Level 1, Level 2 or a technician, and whether the contractor is an individual, partnership or company. For example, registered building surveying practitioners level 2 who continue to work for local government may use the title “Registered Building Surveyor”

The remainder of the Table lists other titles that different classes of registered building surveyor only may use. For example, in Part 2 of the Table, building surveying practitioners level 1 may use the title “Registered Building Surveying Practitioner”.

Regulation 28C Building surveying contractors: building services prescribed

This new regulation links the type of building surveying work that each class of building surveying contractor is able to carry out, as required by section 11 (a) of the Act. For example, building surveying work level 1 may only be carried out by building surveying contractor level 1 that are individuals, partnerships or companies.

Regulation 28D Qualifications and experience: building surveying practitioners

This new regulation sets out the qualifications and experience required under section 17(1)(b) of the Registration Act for registration as a building surveying practitioner level 1, level 2 or technician. These qualifications reflect the qualifications/experience set out in the *Local Government (Building Surveyors) Regulations 2008* and align with the transition to national qualifications by 1 July 2013.

Regulation 28E Financial requirements: building surveying contractors

This new regulation requires applicants to have not been insolvent and if they have been insolvent, to demonstrate that they have the capacity to meet debts as and when they fall due.

Regulation 28F Insurance requirements: building surveying contractors

This new regulation requires building surveying contractors to have professional indemnity insurance with a minimum level of indemnity of —

- \$1 million for any one claim; and
- \$2 million in aggregate during any one period of insurance.

Regulation 28G Prescribed requirements: building surveying contractors

This technical regulation ensures applications for registration as a contractor are made in the appropriate class of contractor registration.

Regulation 28H Supervisor for building surveying contractors: eligible person

This regulation, in effect, ensures that the nominated supervisor of a building surveying contractor must be a “building surveying practitioner” in the equivalent class.

Note that because a building surveying practitioner may also be a building surveying contractor (individual), it follows that a nominated supervisor for a contractor may (if s/he chooses) also be registered as both a building surveying practitioner and a building surveying contractor.

Regulation 28I Condition on registration: building surveying contractor

This new regulation requires the work of building surveying practitioner technicians to be supervised by building surveying practitioners level 1 or 2.

Please note the error in this regulation referring to “class 1” and “class 2” should be references to “level 1” and “level 2”. This will be corrected in subsequent drafts.

Regulation 28J Display of certificate of registration

This new regulation requires building surveying contractors to display at their business premises their contractors’ certificate of registration and the certificate of registration as a practitioner of their nominated supervisor. Where a building surveying contractor carries out business from their residential address, and if no part of the residence is used for meeting with clients or prospective clients, then there is no requirement to display certificates.

Regulation 28K Display of signs

This new regulation requires building surveying contractors to display a sign that can be read by persons entering into the premises that displays the following information:

- the registered name of the contractor;
- the trading name of the contractor if the trading name is different to the registered name;
- the class of registration of the contractor;
- the contractor’s registration number; and
- the name and registration number of at least one nominated supervisor for the contractor.

Where a building surveying contractor carries out business from their residential address, and if no part of the residence is used for meeting with clients or prospective clients, then they are not required to display a sign.

Amendment 9: Part 4 Division 3 inserted

This amendment inserts a new Part 4 Division 3 relating to the transitional arrangements to apply in relation to the change from the accreditation system that applied under the *Local Government (Building Surveyors) Regulations 2008* to the registration system that applies under the Registration Act.

Part 4 Division 3 comprises five new regulations (from Regulation 47 to 51). The effect of these new regulations is as follows:

Regulation 47 Terms used

This new regulation currently provides that the “commencement day” for these regulations to be the day when section 112 comes into operation – that is, when the *Building Act 2011* Parts 2 to 16 come into operation and the *Local Government (Building Surveyors) Regulations 2008* are repealed. Please note that a transitional regulation is proposed for subsequent drafts that will alter the meaning of “commencement day” to mean the day when the regulations are gazetted, which is scheduled to occur on 12 March 2012.

The *Local Government (Building Surveyors) Regulations 2008* will be repealed on 2 April 2012 when the *Building Act 2011* Parts 2 to 16 is scheduled to come into operation. This is necessary until the *Building Act 2011* comes into full operation to preserve the link between the requirement for building surveyors engaged by local governments as referred to in section 373A of the *Local Government (Miscellaneous Provisions) Act 1960* with the accreditation requirements under the *Local Government (Building Surveyors) Regulations 2008*.

Regulation 48 Continuation of registration

New Regulation 48 supports the commencement of section 139 of the Registration Act, which automatically registers building surveyors accredited under the *Local Government (Building Surveyors) Regulations 2008*, as building surveying practitioners in the appropriate class.

Regulation 49 Registration fees for continuing registration

This new regulation will be removed in subsequent drafts as it was included in this draft on the assumption that these regulations would commence on 1 January 2012, which was subsequently postponed to 2 April 2012. At the time of drafting, any person automatically registered as a building surveying practitioner upon the commencement of section 139 of the Registration Act, would have been required to renew their registration on the next occurrence of 1 February under the provisions of section 139; a period of only 1 month. This transitional regulation was designed to overcome that situation but now is no longer required.

Regulation 50 Cancellation of certificate

This transfers to the Building Services Board the power of the Building Surveyors Qualifications Committee under Regulation 23 of the *Local Government (Building Surveyors) Regulations 2008* to cancel a certificate of qualification issued to a person who obtained the certificate by fraud or misrepresentation.

Regulation 51 Membership of Board — experience as a building surveyor

This regulation ensures that the Minister is able to appoint persons who were accredited as building surveyors under the *Local Government (Building Surveyors) Regulations 2008* to the Building Services Board. This includes, for example, retired building surveyors.

Amendment 10: Schedule 1 amended

This amendment inserts a schedule of fees relating to the registration of building surveying practitioners and contractors. Building surveyors will have an option of registering for one, two or three years.

3. Building Services (Complaint Resolution and Administration) Amendment Regulations 2011

Amendment 1: Citation

Titles the regulations as the *Building Services (Complaint Resolution and Administration) Amendment Regulations 2011* (the CRA Amendment Regulations).

Amendment 2: Commencement

This draft currently provides that the CRA Amendment Regulations commence on the day that the *Building Act 2011* Part 14 comes into operation.

Amendment 3: Regulations amended

Advises that the CRA Amendment Regulations amend the *Building Services (Complaint Resolution and Administration) Regulations 2011* (the CRA Regulations).

Amendment 4: Regulation 4A inserted

Inserts a definition of *building surveying work*, which means:

- (a) the examination of plans and specifications for buildings and incidental structures to assess the safety, accessibility and energy efficiency of a building or incidental structure that is built in accordance with the plans and specifications; and
- (b) the examination of a building or incidental structure to assess the safety, accessibility and energy efficiency of the building or incidental structure.

Amendment 5: Part 3 Division 1 deleted

Repeals Part 3 Division 1 of the CRA Regulations (i.e. Regulation 11 of the CRA Regulations) which imposes the current \$41.50 building services levy imposed under the *Local Government (Miscellaneous Provisions) Act 1960* section 374.

Amendment 6: Regulation 26 inserted

Inserts new Regulation 26 which clarifies that the current building services levy of \$41.50 is payable by persons who apply for a building licence but which is not processed by a local government before the commencement of the *Building Act 2011* Parts 2 to 16.