



Building Services (Registration) Amendment Regulations 2017

The Building Services (Registration) Amendment Regulations 2017 (Amendment Regulations) were published in the Government Gazette on Friday 31 March 2017 to come into operation on Saturday 1 April 2017. The Amendment Regulations can be accessed on the State Law Publisher's website www.slp.wa.gov.au.

The Amendment Regulations amend the Building Services (Registration) Regulations 2011 (Registration Regulations) to clarify the power of the Department of Mines, Industry Regulation and Safety – Building Commission Division (Building Commission) to prosecute unregistered builders carrying out a prescribed building service for which registration is required, in circumstances where the builder has not obtained a building permit.

The key Amendment Regulations are outlined below:

Regulation 4 of the Amendment Regulations amends regulation 3 of the Registration Regulations by defining the following terms:

- **owner-builder** means a person who has owner-builder approval under the Building Services (Registration) Act 2011; and
- **principal builder** means the person who enters into the contract with the owner to carry out builder work¹ or arrange for it to be carried out for another person – the owner. That is, the principal builder is responsible for coordinating the building work. The definition clarifies that the principal builder does not include a sub-contractor engaged by the principal builder to carry out the work, or a person who carries out or undertakes to carry out, builder work for an owner-builder.

Regulation 5 amends regulation 4 (which sets out various prescribed building services), by replacing paragraph (a) with a new provision that defines the prescribed building service as “builder work as a principal builder”. Prosecutions of unregistered builders under the previous wording, which referred to “the person named as builder on a building permit”, were problematic in cases where no building permit was obtained. By cutting the previous nexus between a building permit and registration of builders, the new wording clarifies the power to prosecute unregistered builders, even though no building permit may have been obtained.

Regulation 6 amends regulation 5, which prescribes the circumstances in which a person is entitled to carry out builder work in respect to painter work, by replacing regulation 4(a) with a new provision that defines the prescribed building service as “builder work as a principal builder”. This change is needed to ensure consistency with new regulation 4(a).

¹ Builder work is defined in regulation 13(1) of the Registration Regulations as building work which:

- requires a building permit; and
- is worth \$20,000 or more; and
- is in an area mentioned in Schedule 3 of the Registration Regulations; and
- is not a type of building work excluded in paragraphs (d) – (m) of regulation 13(1).

Regulation 7 amends regulation 13, which defines builder work, by replacing regulation 13(2) with provisions which aggregate the value of building work which might be done under several different contracts but is for the same building. This precludes a builder from asserting that they do not meet the requirement in regulation 13(1)(b) to be registered when the value of building work carried out in relation to the same building is \$20,000 or more.

Regulation 8 amends regulation 15, which prescribes the type of builder work which specified building service contractors are entitled to carry out, by:

- deleting “builder work as the person named as the builder on the building permit”. This reference has been problematic as it may make it difficult to prosecute an unregistered builder who does not take out a building permit; and
- inserting a reference to “builder work as a principal builder”. This puts beyond doubt the original intent that a builder who contracts to carry out, or arrange the carrying out, of builder work for another person must be registered.

Regulation 9 amends regulation 21, which prescribes requirements about the display of signs by specified building contractors, by:

- deleting “builder work as the person named as the builder on the building permit”. This reference has been problematic as it may make it difficult to prosecute an unregistered builder who does not take out a building permit; and
- inserting a reference to “builder work as a principal builder”. This puts beyond doubt the original intent that a builder who contracts to carry out, or arrange the carrying out, of builder work for another person must be registered.

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