

# A New Building Act for Western Australia



This brochure has been produced to provide the building industry and other interested parties with a summary of the *Discussion Draft - A New Building Act for Western Australia*.

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Department of Housing and Works  
Government of Western Australia

Office of Policy and Planning

# Message from the Minister

I am delighted to present this overview of a proposal for a new *Building Act* that proposes significant and wide-ranging changes to the building regulatory environment, improves regulations governing our building industry, and brings us into line with national reforms and National Competition Policy requirements.

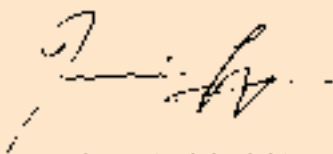


The building industry represents a significant input into the State's economy. Building industry participants are increasingly lobbying for a more modern and more nationally consistent approach to building control. Efficiency of building regulation is vital to ensure an efficient industry.

In preparing a new *Building Act* for Western Australia the Government's primary concern is to ensure that key building and construction industry stakeholders play an integral role in its development.

Your comments are valuable to identify and address pertinent issues and to refine the drafting of the new legislation.

Stakeholders from the building industry, State and local government, industry associations and members of the community are invited to read this brochure, view the entire Discussion Draft on the Department of Housing and Works website at [www.dhw.wa.gov.au/buildingactwa](http://www.dhw.wa.gov.au/buildingactwa), and submit your comments.



HON FRANCIS LOGAN MLA  
MINISTER FOR HOUSING AND WORKS

## A New Building Act for Western Australia – What is it?

The *Discussion Draft - A New Building Act for Western Australia* outlines a comprehensive proposal for a building regulatory framework that is in line with national reforms. Western Australia is working toward a holistic building regulatory environment that ensures compliance with national building standards and maximum protection for the community.

The new legislation will take into consideration National Competition Policy reform requirements by adopting the Building Code of Australia as the primary building standard, introducing competition into the building certification process, and providing a registration system for appropriately qualified building surveyors and certifiers.

The objective of developing new building legislation for Western Australia is to provide an efficient and effective system for:

- Defining buildings and other structures to be controlled under the Act
- Prescribing design, construction and maintenance standards
- Handling building applications
- Certifying compliance with the relevant building standards
- Issuing building and occupancy approvals
- Registering practitioners
- Clarifying liability
- Compliance and enforcement of building standards

The Discussion Draft sets out these proposals in detail and invites public comment. Subject to comments received, legislation will be progressed in 2006.

# The Building Act Proposal

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## THE BUILDING ACT PROPOSAL

The proposal for a new *Building Act* links the process of building to policy principles of competition, competency, responsibility and community safety. It accords with the recent Productivity Commission report on building regulation<sup>1</sup>, and accommodates the recent changes in law from joint and several to proportionate liability.

### 1. THE PROPOSED BUILDING ACT FRAMEWORK

The proposed model reflects the current trend of the Building Code of Australia toward a more performance based code and the emerging reality that no one profession or practitioner will have the necessary expertise to undertake the complete design, construction and certification of complex buildings. It presents as a comprehensive system able to effectively manage the certification of the most complex performance or alternative solutions. When applied in practice, simple buildings with less complex solutions (which in reality comprise the bulk of approvals) will be managed by streamlining the framework into simpler steps.

#### Roles

The framework envisages the following roles.

##### Local Government Authorities

The Western Australian Government has indicated its position is to maintain local authority involvement in issuing building licences. In the proposed model the primary function of the local authority is to oversee the building approval process in its locality to ensure public safety and health and a continuing high level of standard over the life of buildings.

##### Licence Issuing Authorities

A Licence Issuing Authority is responsible for issuing building and occupancy approvals, and for enforcement and auditing, in its area of jurisdiction.

Licence Issuing Authorities will be:

- The State of Western Australia
- Local Governments
- Special Authorities (for specialist building types, or buildings in regions broader than a single local authority).

##### Building Surveyors

A Licence Issuing Authority may only issue a building or occupancy approval when it has been advised by a suitably qualified building surveyor that the requirements for issuing the approval have been met.

##### Registered Certifiers

Registered certifiers are appropriately qualified building practitioners (building surveyors, architects, engineers, builders, etc) competent to certify that one or more specified aspects of design or construction complies with the relevant standards or codes, including the Building Code of Australia.

##### Building Owner

A building owner is responsible for ensuring that a proposed building meets all statutory requirements, that evidence of compliance is provided to the Licence Issuing Authority, and that the building is maintained and used in accordance with a *certificate of occupancy*. A building owner may engage suitably qualified consultants and contractors to manage these responsibilities.

#### Building Approval Process

The framework incorporates the following key components within the approval process.

##### Certificate of Design Liability

A *building licence* application will include a certificate signed by the person or persons accepting legal responsibility for the soundness of the design. The person taking responsibility need not be registered. In a regime of proportionate liability it clarifies legal liability for the design work, making it easier to identify persons responsible for later building defects.

##### Certificate of Design Compliance

An appropriately registered person or persons must certify that the proposed design complies with the relevant standards and codes, including the Building Code of Australia, and issue a *certificate of design compliance*. Multiple certificates may apply for complex designs, relating to discrete aspects of the design.

<sup>1</sup> Productivity Commission Research Report: Reform of Building Regulation, 17 November 2004

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## Building Approval

A building owner seeking approval for a proposed or unauthorised building may seek *building approval* prior to seeking a *building licence* or *certificate of occupancy*. *Building approval* confirms that a proposed or existing building meets all appropriate statutory requirements, including Building Code of Australia compliance, and that the submitted detailed design conforms to those approvals. *Building approval* can be sought prior to going out to tender for the construction phase of the project, where necessary.

## Certificate of Construction Liability

An application for a *building licence* will include a certificate signed by the person or persons accepting legal responsibility for the soundness of the construction. In a regime of proportionate liability it clarifies legal liability for the construction work, making it easier to identify persons responsible for later building defects.

## Issue of Building Licence

A *building licence* will be issued as a permit to commence construction. A *building licence* will only be issued where *building approval* has been granted, a builder has been nominated and has signed a *certificate of construction liability*, and will be issued to the building owner. A Licence Issuing Authority must issue a *building licence* within 14 days of lodgement of an application. If not, it must provide reasons for refusal.

A *building licence* may be issued for whole or part of a building, allowing construction to commence in stages where necessary. The *building licence* will set out the inspections required during the construction phase to confirm compliance with the *building approval*.

## Certificate of Construction Compliance

Certification of construction compliance is required for all buildings to confirm the building has been constructed in accordance with the *building approval* and *building licence*, in the interests of public health and safety. The responsible *builder* named on the *building licence* must certify that the construction complies with the *building approval* and relevant minimum standards and issue a *certificate of construction compliance* on completion of the work.

The Licence Issuing Authority may still require independent inspection of key aspects of construction but this will not overturn the builder's fundamental responsibility for the quality of construction and the rectification of defects, or for constructing in accordance with the *building approval* and *building licence* and in compliance with the relevant minimum building standards.

## Certificate of Construction Inspection

The level and independence of inspections during construction will be determined on a risk-based approach by the relevant Licence Issuing Authority. Where inspections are required during construction, certificates will be issued by an appropriately registered person/s to confirm an inspection has been carried out.

Each *certificate of construction inspection* will confirm the relevant aspect of the building as constructed complies with the *building approval* and relevant minimum standards. Multiple certificates may apply for complex construction, relating to discrete aspects of the construction.

## Preliminary Approval to Occupy

A preliminary approval may be issued where the owner wants to occupy all or part of a building before all the obligations in the *building licence* have been fulfilled, where such conditions do not affect the safety and health of occupants. The preliminary approval will outline the timeframe for meeting the outstanding conditions.

## Certificate of Occupancy

A *certificate of occupancy* will be issued on completion of construction as a permit to occupy the building. All buildings requiring a *building licence*, both domestic and commercial, will require a *certificate of occupancy* before being occupied. Occupancy approval will be issued to the building owner.

The *certificate of occupancy* confirms that the required construction certification is in place, including any requisite inspections, and that the building is fit for occupation. It confirms the building's classification and approved use and sets out any essential maintenance or operational requirements over the life of the building.

## Maintenance Of Regulated Usage And Services

A Licence Issuing Authority must periodically review or audit compliance with the building usage and, if any, the essential maintenance set out in the *certificate of occupancy*. Where required, each building owner will report at the times set out in the *certificate of occupancy* to the Licence Issuing Authority.

For the majority of domestic structures there will be no essential maintenance and formal auditing will not be required.

## Approval Of Unauthorised Building Works

There will be provisions for retrospectively approving building works executed without a *building licence*, at the discretion of the relevant Licence Issuing Authority. The owner of unauthorised building work will be provided with the opportunity to obtain a *building approval* so that the building may remain and a *certificate of occupancy* issued. A higher fee will apply for approval of unauthorised works.

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## 2. INDUSTRY PRACTICES

The framework also proposes some changes in current industry practices.

### Broad Professional Registration

A primary reason for having registration systems is to provide a basis for the setting and controlling of standards and eligibility to work in a particular industry. This provides a form of surety and protection for the public. The Western Australian Government believes there are solid grounds for broad registration of building industry professions in order to:

- Protect the public by ensuring proper safety and other standards are met;
- Deal with the asymmetry in knowledge between professionals and consumers in technical matters;
- Increase the standards and sustainability of the built environment;
- Ensure appropriate design for classes of commercial and public buildings; and to
- Support standards and certification in areas other than building.

This will ultimately provide an enhanced quality built environment and a vibrant and competitive building and construction industry in Western Australia.

### Regulation of the Design Process

At present there is no regulation or restriction of the design process. Any person may submit detailed drawings to a local authority for a *building licence*, and it is up to the local authority building surveyor to be satisfied that the design complies with the Building Code of Australia and any other approvals that may be required.

The proposed *Building Act* framework does not restrict the practice of design. Owners may seek *building approval* from a Licence Issuing Authority by the lodgement of documents prepared by any person. However, regulations could provide for certain classes of building to have a *certificate of design liability* from an appropriately registered designer responsible for the design of one or more aspects of the building.

### A Basis for Regulating Compliance Certification

The Building Code of Australia classifies buildings into ten classes and recognises seven broad aspects of building performance. These can be combined to give a matrix of building competencies as the basis for a registration methodology. In theory it would be possible to register practitioners in each aspect for each class, giving a total of 70 classifications. In practice, building practitioners are competent over many of these detailed classifications and administrative simplicity requires much broader classifications. A better grouping may be domestic, multi-residential, commercial, public, and outbuildings, as shown in the diagram below.

The seven design aspects recognised in the Building Code of Australia divide reasonably naturally into existing disciplines, for the purpose of certifying performance/alternative solution compliance with the Building Code. It is therefore possible to register members of building disciplines in various tiers against classes or groups of classes of buildings. A Licence Issuing Authority would then be entitled to rely on a compliance certificate from an appropriately registered member of the appropriate discipline for the relevant design or construction aspect.

Class	General Provisions	Structure	Fire Resistance	Access & Egress	Services & Equipment	Health & Amenity	Ancillary Provisions
1			DOMESTIC RESIDENTIAL				
2			MULTI RESIDENTIAL				
3							
4							
5			COMMERCIAL				
6							
7							
8			PUBLIC BUILDINGS				
9			NON-HABITABLE OUTBUILDINGS				
10							
Discipline (See note below)	Architecture	Structural Engineering	← Building Surveying → Structural/ Mechanical/ Fire Service Engineering		Mechanical/ Electrical Engineering	Architecture Health Officer	Architecture

Note: This is an approximate division along discipline lines, reflecting performance solutions in commercial buildings. Architecture can include Architects and Building Designers. Engineers can also include specialist designers such as plumbing etc.

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## 3. ADMINISTRATIVE FRAMEWORKS

The proposal for a new *Building Act* includes discussion on the overarching framework of the Government's administration of building regulations. This includes discussion on the consumer and community protection roles of building regulation, the desirability and structure of registration regimes for industry practitioners, and the presentation of possible administrative structures to manage the regulatory regime.

## 4. SUMMARY OF PROPOSED REFORMS

Reforms to the current building regulatory environment proposed in the Discussion Draft are:

- Whole of State coverage;
- Covering all buildings, including those owned by the Crown;
- A clearer definition of what constitutes a building;
- Licence Issuing Authorities (local authorities, State government, or special authorities) will manage risk, audit processes and issue building licences and occupancy approvals;
- Contestability among suitably qualified professionals in certifying compliance with the Building Code of Australia;
- Separate and streamlined processes for assessing designs for compliance and issuing building licences, including introduction of a simple notification process for some minor structures;
- Building approval to require evidence of all necessary approvals and not just Code compliance;
- Risk based approach to assessment of licence and inspection requirements;
- Requirements for obtaining compliance certification for all buildings prior to occupancy;
- Process for assessment and approval of building works carried out without a building licence;
- A nationally agreed accreditation framework for building surveyors qualified to assess applications for building licences; and
- Registration requirements for a range of industry practitioners.

### Why do we need new building legislation?

A new *Building Act* will provide a contemporary framework for building regulation in Western Australia. The new legislation will be modern and easy to read, aiming to establish a building control system that results in efficient, effective and quality outcomes for all involved in the building process.

### A chance to have your say

The *Discussion Draft - A New Building Act for Western Australia* has been released to provide an opportunity for building industry stakeholders and interested community members to provide comments and feedback so that a wide range of perspectives can be considered to help guide the development of the new legislation.

This brochure outlines the major elements of the proposal.

The full Discussion Draft is available at [www.dhw.wa.gov.au/buildingactwa](http://www.dhw.wa.gov.au/buildingactwa)

**To provide feedback on the *Discussion Draft – A New Building Act for Western Australia*, visit [www.dhw.wa.gov.au/buildingactwa](http://www.dhw.wa.gov.au/buildingactwa)**