

Queensland



Explanatory Notes for SL 2003 No. 173

Queensland Building Services Authority Act 1991

QUEENSLAND BUILDING SERVICES AUTHORITY REGULATION 2003

GENERAL OUTLINE

Short Title

Queensland Building Services Authority Regulation 2003.

Authorising Law

Section 116(1) of the *Queensland Building Services Authority Act 1991* (the Act) provides that the Governor in Council may make regulations under the Act. Section 116(2) provides that without limiting subsection (1), a regulation may:

- (a) set fees payable under this Act and the matters for which the fees are payable;
- (b) provide for the refunding of fees in stated circumstances; and
- (c) impose a penalty of not more than 20 penalty units for a contravention of a provision of the regulation.

The proposed *Queensland Building Services Authority Regulation 2003* (the Regulation) prescribes matters as required under the Act, mainly for the purposes of licensing and home warranty insurance under the Queensland Building Services Authority Statutory Insurance Scheme. The Regulation is intended to replace the *Queensland Building Services Authority Regulation 1992*, which expires 1 September 2003.

Objectives of the Legislation

The objects of the *Queensland Building Services Authority Act 1991* (section 3) are to regulate the building industry to ensure the maintenance of proper standards in the industry and to achieve a reasonable balance between the interests of building contractors and consumers; to provide remedies for defective building work; and to provide support, education and advice for those who undertake building work and consumers.

The Regulation will assist in the achievement of these objectives through the introduction of a revised licence class framework, which has a reduced number of restricted licence classes available and aligns the technical requirements for licensing more closely with the Australian Qualifications Framework. In addition, the Regulation clarifies the definition of “building work” for the purposes of the Act by specifically excluding certain work.

Section 68(1) of the Act provides that a building contractor must, before commencing residential construction work pay to the Authority the appropriate insurance premium for the work. In accordance with Schedule 2 of the Act, the Regulation classifies the building work that is to be residential construction work.

Transitional provisions ensure that the Regulation will not disadvantage current licensees.

Fees and charges will remain the same as provided for under the *Queensland Building Services Authority Regulation 1992*.

Consistency with authorising law

The Regulation is consistent with the authorising law and is not inconsistent with the policy objectives of other legislation in Queensland.

Estimated costs of implementing the legislation

The Queensland Building Services Authority (the Authority) is an independent statutory authority. As required by the Act, the Authority maintains both a General Statutory Fund and a Statutory Insurance Fund. The General Statutory Fund meets all operational costs except those related to the Statutory Insurance Scheme, which are met by the Statutory Insurance Fund.

As the Authority would continue to be self-funded, the costs to Government under the Regulation would not be increased.

A chief source of revenue for the General Statutory Fund is licensing fees. The deregulation of insulation work and interior design will result in the future loss of both new application fees and licence renewal fees for these licence classes. However a significant proportion of the persons who currently hold these licence classes hold other licence classes as well and are likely to continue to be licensed.

In addition, requiring only those who contract directly with builders or the public to be licensed, as provided for under the *Queensland Building Services Authority and Other Legislation Amendment Act 2003*, could result in less new applications for licensing. However it is predicted that those who currently hold licences will retain them and that in future, fully qualified practitioners will choose to become licensed and so leave their options open to contract directly with the public and builders should they choose to do so.

It is considered that any loss of income from licence fees under the proposed new licence class framework is likely to be balanced over time by improved clarity of licensing requirements and scopes of work, leading to less administrative and compliance costs.

Consistency with fundamental legislative principles

The Regulation has sufficient regard to the rights and liberties of individuals and the institution of Parliament and is not inconsistent with the fundamental legislative principles provided for under the *Legislative Standards Act 1992*.

Consultation

Industry

In April 2001, in response to calls from the Queensland building and construction industry for a review of the licence class framework, the Queensland Building Services Board (the Board) appointed a Licence Class Review Working Party (the Working Party) comprised of representatives of builders, trade contractors, private and public registered training organizations, Construction Training Queensland (the building and construction industry training advisory body) and unions. The objectives of the review were to reduce the number of licence classes, particularly restricted licence classes and where practical, align technical requirements for licensing with the Australian Qualifications Framework. The objectives

of the review included clarifying the approved scopes of work for licensees and reducing the sectors of the industry regulated by the Queensland Building Services Authority.

Industry stakeholder groups were advised of the licence class review and written submissions invited and considered. Following consultation, which included surveys, the circulation of discussion papers and meetings with stakeholder representatives, the Working Party furnished its report making 21 recommendations, which were subsequently endorsed by the Board and the Minister. The report was provided to all industry stakeholder groups and licensees upon request.

Further extensive consultation was then carried out by the Authority with each of the industry sectors involved in relation to the specific licence classes relevant to their sector and other issues of broader industry interest. The proposed new licence class framework was then endorsed by the Working Party and the Board and approval given for the development of a regulatory impact statement (RIS).

In April 2003, the RIS was advertised for public comment in *The Courier Mail* and all major regional newspapers. The RIS was also available from the Authority's Internet site.

Government

The Business Regulation Reform Unit, Department of Statement Development, was extensively consulted about the RIS prior to its release and advised that the RIS met statutory requirements.

All relevant government agencies were kept informed of the licence class review and each received a copy of the regulatory impact statement for comment prior to its public release in April 2003.

The Office of Queensland Parliamentary Counsel drafted the proposed Regulation.

Results of Consultation

Generally government and industry sectors supported the objectives of the licence class review and the recommendations of the working party.

There were nine responses received to the RIS. These responses were analysed and the issues raised were considered. Five of the responses opposed the threshold for unregulated waterproofing work remaining at

\$1 100 and proposed that the threshold should be reduced to zero thereby requiring anyone who carries out waterproofing work to be licensed. However while there is a strong argument for licensing those who contract for waterproofing work, imposing a zero threshold for the regulation of the work would mean that unlicensed handymen would be unable to carry out minor repairs involving waterproofing. This would pose additional costs to consumers, particularly those in remote and regional areas where there may be a shortage of licensed practitioners. Further, it was not considered that minor waterproofing work poses a significant risk to consumers

Other submissions included a proposal to introduce of a new restricted licence class and zero threshold for glass repairs and a proposal to introduce of a new restricted builder licence class for the refrigeration, air conditioning and mechanical services sector to allow for the coordination of trades. These submissions have not been acted upon due to lack of evidence to support the proposals.

An important issue which was addressed as part of the licence class review process was the need for some licence classes to be able to coordinate other trades. Currently only licensees with the licence classes of General and House Building are legally able to contract a range of trade contractors. Trade contractors are only entitled to contract others to carry out work within the approved scope of work for their own particular class of licence. Many licensees from the Shopfitting, Structural Landscaping, Kitchen, Bathroom and Laundry Installation and Swimming Pool Construction sectors need to be able to engage other trade contractors, such as plumbers, tilers, etc.

Recognising this need, the licence class review working party proposed new classes of restricted builder licences for these sectors to allow them to coordinate other trades. While some current licensees will qualify for a restricted builder's licence based on their experience, future applicants for a restricted builder's licence will be required to successfully complete training taken from the qualification course undertaken by builders.

Some other sectors suggested that all trade contractors should be entitled to coordinate a range of trades. However in the interests of maintaining standards in the industry, it is considered critical that trade contractors work strictly within the approved scope of work for their licence class and that restricted builder licences should be limited to those sectors where the nature of work demands coordination of trades.

Government agencies consulted either had no comment to make about the RIS or expressed general support.

NOTES ON PROVISIONS

Part 1 – Preliminary

Clause 1 provides for the short title of the Regulation.

Clause 2 sets out the commencement date of the Regulation.

Part 2 – Interpretation

Division 1 – General

Clause 3 provides for a dictionary in schedule 3 of the Regulation to define particular words used in the Regulation.

Clause 4 provides that if lowest storey of a building is used mainly as a car park, it is not counted as a storey.

Clause 5 defines the work, which is not building work for the purposes of the Act. This includes work relating to farm buildings. The clause also excludes from the definition of building work, work which is within the scope of work of some licence classes but which falls below the threshold of \$1 100 and is not carried out as part of a contract for building work, the value of which exceeds \$1 100. This \$1 100 threshold for unregulated work does not apply to work for which an occupational licensing is required such as plumbing or pest controlling, nor does it apply to building design or fire protection.

Clause 6 defines “licensed builder”. Unlike a “licensed trade contractor”, a “licensed builder” is authorised by the scope of work for the licence class to coordinate a range of work carried out by trade contractors.

Clause 7 provides the basis upon which a building is to be classified as a farm building for the purposes of the Act.

Clause 8 defines “incidental work of another class” for those licence classes that include within the approved scope of work, incidental work of another class. It provides that a licensee may carry out, or engage another person to carry out, incidental building work, with a total value of not more than \$1 100 that is within a scope of work other than the scope of work of the licensee’s licence. However when the work is required to be carried out by a licensee with a relevant occupational or fire protection licence, the licensee is not permitted to carry out such incidental work personally unless they hold the appropriate occupational or fire protection licence. The clause also clarifies that a licensee may personally carry out incidental

work and may also engage a person who holds the appropriate occupational or other licence to carry out such incidental work.

Division 2 – Residential construction work

Clause 9 provides the definitions for Division 2.

Clause 10 provides that both “primary building work” and “associated building work” are classified as “residential construction work”.

Clause 11 defines “primary building work”. The clause includes examples of building work that are not classified as “primary building work” but may be classified as “associated work”. These examples include fencing, painting and landscaping.

Clause 12 defines building work that may be classified as “associated building work”. The clause also provides that certain work specified in clause 5 (Work that is not building work) is building work for the purposes of defining associated work (e.g. electrical work under the *Electrical Safety Act 2002*).

Clause 13 identifies building work that is not classified as “residential construction work” and therefore not insurable under the Statutory Insurance Scheme.

Part 3 – Licences

Clause 14 provides for licences to be divided into the various classes specified in schedule 2. It also provides that there are two grades of licence, namely a contractor or supervisor licence, for any class of licence.

Clause 15 provides that the qualifications and experience requirements for licensing are as stated in schedule 2. The clause also provides that with the exception of certain licence classes (occupational or fire protection licence classes) a combination of qualifications that the Authority is satisfied is at least the equivalent of the required competency for the licence class, is a qualification for the class.

Clause 16 provides that the qualifications for a supervisor’s licence are those stated in schedule 2 for the relevant class of licence.

Clause 17 provides that an application for a licence must be made to the Authority and be accompanied by prescribed documentary evidence and the annual fee specified in schedule 1. Under the clause, applicants for a

company licence must, upon request of the Authority, attend an interview to answer questions and provide information or further evidence that is reasonably required about the application. The Authority may reject an application if the applicant without reasonable excuse, fails to attend an interview with an officer of the Authority as requested. The clause also makes provision for the waiving of a fee by the Authority if it is satisfied that the company's main object is to conduct training for persons to undertake building work.

Clause 18 provides that the Authority may provide a licensee with a renewal notice and the date by which the annual licence fee must be paid. The clause further provides when the information in relation to financial requirements for licence must be given to the Authority. The clause also makes provision for the waiving of a license fee for renewal if the licensee is a company and the Authority is satisfied the company's main object is to conduct training for persons to undertake building work.

Clause 19 provides for a partial refund of the annual licence fee if a licensee surrenders the licence before the expiry date or dies during the licence period. The clause also gives the formula for working out the refund.

Part 4 – Owner-builder permits

Clause 20 defines work, which may be carried out under a permit, as domestic building work that is not related to a multiple dwelling. The clause clarifies that an owner-builder permit does not allow the holder to personally carry out fire work unless the work is valued at less than \$1 100 or work for which an occupational licence is required. The permit does allow the holder to engage an appropriately licensed person to carry out such fire work where the value exceeds \$1 100 or work for which an occupational licence is required.

Clause 21 provides for the information to be contained in an application for an owner-builder permit. Pursuant to the clause, the Authority, before granting an owner-builder permit may require reasonable evidence of an applicant's identity and ownership of the land on which the relevant work is to be carried out. The clause further provides that an applicant (or at least one of the applicants if there are multiple applicants) for an owner-builder permit to carry out building work valued over \$11 000 must have completed a required course conducted by or for a registered training organization. Also, if an applicant for an owner-builder permit is a

company, at least one director of the company must have completed a required course conducted by, or for a registered training organization.

Clause 22 provides that the notice given to a prospective purchaser of land under section 47(1) of the Act must state that building work detailed in the notice has been carried out under an owner-builder permit and contain a warning that the work is not covered by insurance under the *Queensland Building Services Authority Act 1991*. Under the clause, the notice must be given in duplicate and one copy of the notice must be returned to the vendor with the purchaser's signature on it before the purchaser signs the contract.

Part 5 – Statutory Insurance Scheme

Clause 23 provides for the payment of insurance premiums under section 68(1) of the Act and for the amount of the premium to be paid based on the contract price or the notional contract price for the relevant residential construction work. The minimum and maximum premiums are prescribed as \$128 and \$1 280 respectively. A premium is not required to be paid by a person carrying out residential construction work as a subcontractor.

Clause 24 provides that the premium for a single detached dwelling must be calculated for the contract price for the work or if the work is not carried out under contract, on the value of the work.

Clause 25 provides how the premium for one or more multiple dwellings must be calculated. If the work is to be carried out under a contract and a notional price for the work applies, for each residential unit, the premium must be based on the notional price of the work for the relevant unit. If the work is to be carried out under a contract and a notional price for the work does not apply, the premium must be based on the contract price for the work. If the work is not carried out under contract, the premium must be based on the value of the work for the unit.

Clause 26 provides that a notional price applies for proposed residential construction work for a residential unit in a multiple dwelling:

- (a) if all the work consists of construction of a multiple dwelling or work carried out on more than one residential unit of a multiple dwelling or
- (b) if the work under the contract consists of residential construction work and other building work.

The clause also provides the formula for how the notional price is to be calculated.

Clause 27 requires the Authority to provide the owner of land, or a prospective purchaser of land, upon written application accompanied by the prescribed fee, a statement identifying whether there is a policy of insurance in force under the Act in relation to building work on the land.

Part 6 – General

Clause 28 prescribes the requirements for a sign under section 52 of the Act.

Clause 29 provides for section 54(c) of the Act, that the information to be included in an advertisement must be in a clearly legible form if it is in writing and must be no less audible and clear than other spoken material if it is spoken.

Clause 30 prescribes the details to be contained in a notice required by section 55 of the Act, to be provided by the director or an officer of a company licensee, when the company either ceases to have a nominee or changes its nominee. Under the clause, the notice must contain the name of the director or officer of the company authorised to give the notice and be signed by that person.

Section 31 requires an advertisement under section 54(1)(c) of the Act in relation to a business carried on by a licensed contractor in partnership with an unlicensed person must include the licensed contractor's name and licence number. The clause also requires that the information if written, must be in an easily legible and reasonable prominent form and if spoken must be no less audible or clear than other spoken material contained in the advertisement.

Clause 32 prescribes the warning that a contract is a construction management trade contract under section 67V of the Act. The clause also provides that the warning must on the first page of the contract and in bold type of at least 12-point font size.

Clause 33 specifies the particulars that are to be recorded in the register of licensees pursuant to section 39(2)(d) of the Act. Under the clause, the register must contain the residential address of the director, secretary or nominee, if they have no other business address.

Clause 34 prescribes for the purposes of section 25(4) of the Act the total amount that must be transferred to the Insurance Fund from the General Fund by the Authority.

Clause 35 provides that the fees prescribed in schedule 1 are the prescribed fees for the purposes listed in the schedule.

Part 7 – Repeal and Transitional Provisions

Division 1 – Repeal

Clause 36 repeals the *Queensland Building Services Authority Regulation 1992* and other amending Regulations.

Division 2 – Transitional Provisions

Clause 37 provides the definitions for Division 2

Clause 38 provides that if the context permits, a reference to the repealed Regulation may be taken as a reference to this Regulation.

Clause 39 applies to construction management trade contracts entered into during the transition period ending on 30 June 2004 and provides that the warning on the contract is taken to be in the form prescribed by regulation if it is substantially to the same effect as the warning in section 32, whether or not it is on the first page of the contract or in bold type of at least 12 point font size.

Clause 40 applies to licences that are subject to conditions or endorsements prior to the commencement of the Regulation. Under the clause the licence is subject to the same restrictions, conditions or endorsements whether or not, under the division, the licensee is taken to be a licensee for a licence of a difference class.

Clause 41 applies to persons who have one of the licences listed in the clause before the commencement of the proposed regulation. Pursuant to the clause, upon commencement of the Regulation, the persons are taken to be licensees for a licence in the corresponding licence class listed in column 2 of the table.

Clause 42 applies to persons who, before the commencement of the Regulation held a licence of a class mentioned in column 1 of the table provided in the section. The clause provides that the persons may continue to hold the licence class listed in column 1 and are taken to hold the licence

under the Act for not more than two years. It also provides that if the persons continue to hold the licence class, the provisions of schedule 2 of the repealed Regulation in relation to that licence class are taken to continue to apply to the licence.

The clause further provides that if they meet any experience or qualification requirement listed in column 3 of the table, the licensees mentioned in column 1 may elect to become licensees for a corresponding licence class mentioned in column 2. However if the licensee does not elect to become a licensee for a licence listed in column 3 of the table, they will be taken to hold another licence class, that is, for a house building licence – a builder (low rise) licence, for a shopfitting licence – a shopfitting (trade) licence; or for a structural landscaping licence – a structural landscaping (trade) licence. The licensee may elect to hold these other licence classes at any time within two years from commencement.

Clause 43 applies to licensees who before the commencement held certain “continuing” licences. It provides that the licensee may continue to hold the licence and that while the licensee holds the licence the provisions of schedule 2 of the repealed Regulation continue to apply to it.

Clause 44 applies to licensees who hold a housebuilding licence and carry professional indemnity insurance for at least \$1 000 000 for completed building inspections and provides that the licensee may be granted a completed residential building inspection licence if they apply to the Authority within 6 months after the commencement.

Clause 45 applies to a person enrolled in the Course Certificate IV in Building CNBUI012 before 1 March 2003 and provides that the person will be taken to have a qualification for a Builder-Low Rise licence if they have completed the specified modules of the course.

Schedule 1 – Fees

Schedule 1 prescribes the fees and charges required under the Act and Regulation.

Schedule 2 – Classes of Licences and Licence Requirements

Schedule 2 prescribes licence classes and the requirements for licensing for the particular classes.

Each licence class has an approved scope of work, technical and managerial qualification requirements, experience and financial requirements.

The approved scope of work details the nature of work, which may be carried out under the licence class.

Technical and managerial qualification requirements provide a range of qualifications by which a person may qualify for a licence.

Experience requirements allow for consideration of a range of experience relevant to the approved scope of work for the class.

Financial requirements are a matter of Board policy.

Schedule 3 – Dictionary

Under section 3 of the Regulation, schedule 3 defines particular words used in the Regulation.

ENDNOTES

1. Laid before the Legislative Assembly on . . .
2. The administering agency is the Department of Housing.