



Queensland

# Queensland Building Services Authority Amendment Regulation (No. 3) 2006

## Explanatory Notes for SL 2006 No. 239

made under the

*Queensland Building Services Authority Act 1991*

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## Objectives of legislation

The Regulation seeks to ensure that Queensland maintains the best home warranty insurance scheme in Australia by providing the most comprehensive cover and cost effective and equitable premium structure.

It also ensures that the technical qualifications for a *Termite management — physical licence* are consistent with the current licensing framework which aligns qualifications with the Australian Qualifications Framework and seeks to improve standards and quality of work performed by the holders of such licences.

## Reasons for the regulation

### Insurance amendments

Under Part 5 of the Queensland Building Services Authority Act 1991 (the Act), the Queensland Building Services Authority (BSA) administers a statutory home warranty insurance scheme (the Scheme) which protects consumers for:

- loss suffered in the event of the contractor failing to complete a contract for residential construction work; and

- the cost of rectifying defects in residential construction work, including the rectification of damage caused by subsidence or settlement.

The maximum amount payable under the terms and conditions of the Scheme's insurance policy (the Queensland Building Services Board's *Insurance Policy Conditions Edition 6*) is currently \$200,000. The term of the insurance cover is generally for 6.5 years.

The maximum benefit provided by the Scheme has been regularly reviewed since the Act commenced to ensure appropriate protection for consumers. The maximum entitlement was last increased on 1 October 1999 to \$200,000 consistent with interstate home warranty entitlements and given an increase in the average cost to construct a residential dwelling in Queensland. Prior to this date, the maximum entitlement provided under a policy of insurance was \$100,000.

The residential building and renovation sector in Queensland has performed strongly over recent years. In June 2006 alone, the BSA's data shows that more than \$4.91M worth of work on 8,395 new construction projects was insured. This reflects the buoyant construction sector in Queensland. However, this strength in the residential building market has put significant pressure not only on material and labour costs but also on the Scheme.

While currently, the Scheme's data indicates that the average cost of new construction in Queensland is below \$200,000, it is expected that increased building costs will mean that in the next two to three years the average cost of new construction will exceed this amount.

The Act provides for the Scheme's insurance premium to be set by regulation. Currently, under the *Queensland Building Services Authority Regulation 2003* (QBSA Regulation), the insurance premium is \$7.25 for each \$1,000 of the contract price, or notional contract price, for residential construction work or the value of the work. The QBSA Regulation also specifies how the premium is to be calculated for different types of residential construction work. The minimum premium prescribed under the QBSA Regulation is \$145 (based on a contract value for work of \$20,000) and the maximum premium is \$1,450 (based on a contract value of \$200,000).

The insurance premium is split into two funding components for the Scheme. One component is used to fund underwriting which meets claims

expenses (the underwriting premium pool). The other is used to fund the administration of the Scheme (the administration premium pool).

Under section 26A of the Act, the BSA must manage the Scheme in accordance with actuarially sustainable principles. The Scheme's Actuary reported that as at 31 December 2005, the financial position of the insurance fund for the Scheme is sound. The Actuary noted, however, that despite adjustments to premiums, loss ratios for the Scheme have shown slippage over the past four underwriting years. This slippage in loss ratios has resulted from increases in both the frequency and cost of claims. Average claim costs for defective work under the Scheme have increased by around 8% per annum over the last 4 years due to rising building costs.

In the last two years, premium rates for the Scheme were last adjusted on 1 August 2004 to meet increased GST and claim costs and on 1 July 2005 in line with the movement in the Consumer Price Index. In that time building costs for housing have risen by approximately 8.9% (May 2004/May 2006 — Source: *Cordell Construction Data*). The Australia Bureau of Statistics Producer Price Index (Output of the General Construction Industry) shows that there has been approximately a 12% increase for residential building construction between June 2004 and March 2006. The building costs index maintained by the Queensland Department of Public Works indicates that construction costs have increased by approximately 18% since 1 July 2004.

To ensure the Scheme's continued long-term viability, the Actuary has also recommended premiums be structured to more effectively relate to construction value and risk and that it is essential the premium threshold be lifted above the current \$200,000 contract value.

To diversify risk, a percentage of the Scheme's insurance liabilities is reinsured. The BSA retains a proportion of risk as a sign of good faith. For the risk held, reinsurers are paid a percentage of the underwriting component of the insurance premium equivalent to the percentage of risk held. On 1 July 2006, the BSA entered into new reinsurance agreements for the Scheme on the basis of the introduction of a step premium structure with proportionate premiums charged up to a contract value of \$400,000 and an increase in maximum entitlements to \$400,000. The new agreements require increases to the Scheme's underwriting component of the premium in 2006–2007 and 2007–2008.

On 25 August 2006 the Queensland Building Services Board made a new policy entitled *Insurance Policy Conditions Edition 7*. This new Policy amends the previous Board Policy entitled *Insurance Policy Conditions Edition 6* to implement an increase in maximum entitlements to \$400,000.

### Licensing amendments

Following a two-year review, on 1 September 2003 the QBSA Regulation implemented a new licensing framework which reduced the number of licence classes and linked technical qualifications to training outcomes in accordance with the Australian Qualifications Framework. The Australian Qualifications Framework (AQF) is a unified system of national qualifications in schools, vocational education and training and the higher education sector.

Under the QBSA Regulation, the current technical requirement for a *Termite management — physical licence* (Part 53, Schedule 2 of the Regulation) is certification by the manufacturer of a product or system to be used by the licensee that the licensee has satisfactorily completed a course about the installation of the product or system. Under this class of licence, a licensee is authorised to:

- (a) Install a particular material or system designed for the prevention of termite infestation in accordance with the manufacturer's specification or any other applicable standard; and
- (b) Inspect and investigate a completed building and give advice or a report about the use of the particular material or system for the building.

At the time the QBSA Regulation was introduced there were no state or national competencies accredited for physical termite management systems. Since then industry has developed a competency (Install Physical Termite Barriers PRMPM42A) which has been accredited as part of the Certificate III in Asset Maintenance (Pest Management — Technical) PRM30204 course.

## **Achievement of the policy objectives**

The objectives of the Regulation will be achieved by amending the QBSA Regulation to:

- introduce a step premium structure for the statutory home warranty insurance scheme established under Part 5 of the Act;
- approve the Queensland Building Services Board's *Insurance Policy Conditions: Edition 7*; and

- include an additional competency in the technical qualifications for a *Termite management — physical licence*.

## **Authorising law**

The Regulation is made pursuant to section 116 of the Act which provides a head of power for making regulations under the Act.

Section 68 of the Act provides that a building contractor must, before commencing residential construction work, pay to the BSA the appropriate insurance premium for the work in accordance with the regulations. Further, section 69(2) provides that a policy of insurance comes into force in the terms stated in the board's policies for the purpose if a consumer enters into a contract for the performance of residential construction work and certain other conditions are met.

Under section 9A of the Act, to have effect, a policy of the Board must be approved by regulation and published in the gazette.

Part 5 of the Regulation prescribes the insurance premium for the Act. The current edition of the Board's Insurance Policy Conditions (Edition 6) is approved under Schedule 1A of the Regulation.

Section 31(1) and section 32 of the Act provides for the qualifications and experience in relation to a contractor's licence and supervisor's licence of a relevant class to be prescribed by regulation. Schedule 2 of the Regulation prescribes the licence classes, the scope of building work that may be performed under each licence class and the relevant experience and technical requirements necessary to hold the licence.

## **Consistency with authorising law**

The Regulation is consistent with the Act. The policy objectives of the Act are —

- (a) to regulate the building industry;
  - (i) to ensure the maintenance of proper standards in the industry; and
  - (ii) to achieve a reasonable balance between the interests of building contractors and consumers;

- (b) to provide remedies for defective building work; and
- (c) to provide support, education and advice for those who undertake building work and consumers.

The Regulation is consistent with the policy objectives of the authorising law in that it seeks to ensure the provision of remedies for defective work for the protection of consumers under the Scheme. The Regulation is also consistent with section 26A of the Act which requires the BSA to manage the insurance fund in accordance with actuarially-sustainable principles.

Further, the Regulation is consistent with the authorising law in that it seeks to ensure the maintenance of proper standards in the building industry.

## **Costs of implementation**

The BSA is an independent statutory authority. The Act requires that the BSA 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 BSA would continue to be self-funded, there will be no costs to Government under the Regulation. Some additional administrative costs will be incurred by the BSA in implementing the Regulation, however such costs will be minimal.

## **Fundamental legislative principles**

The Regulation is consistent with fundamental legislative principles.

## **Consultation**

The proposed amendments in the Regulation were canvassed in a Regulatory Impact Statement (RIS) pursuant to the Statutory Instruments Act 1992. The RIS was released for public consultation on 30 June 2006 with a closing date for submissions of 31 July 2006.

Two submissions were received on the RIS from major industry associations.

One submission supported the options recommended in the RIS.

The second submission recommended that the following options should be considered for returning the Scheme to a financially viable long-term position:

- Moving from a first resort to last resort system, including analysing the contribution of the current no-fault subsidence policy and non-completion claims on the loss ratio problems;
- Introducing a cap on non-completion claims based on the value of the contract;
- Reviewing claims handling arrangements including dispute resolution processes and the tendering of work; and
- Separating the BSA's insurance functions into a separate authority under the direction of an independent board with insurance expertise.

The Government has considered these options as part of its obligation to complete the National Competition Policy Review of the Act. An Inter-Departmental Steering Committee was established to examine these and other issues and engaged the assistance of an independent consultant in undertaking this task. The Committee recommended against the adoption of these options on the basis that they were not consistent with the objectives of the Act and the detriment to consumer protection would outweigh any benefits.

The second submission also questioned the appropriateness of doubling the maximum claim cover under the Scheme. The additional cover provided allows consumers to make a defective work or subsidence claim up to \$200,000 where they have already made a claim for non-completion up to \$200,000.

The benefit of this option is that it ensures Queensland continues to offer the most comprehensive home warranty insurance scheme in Australia into the future with a higher level of coverage up to a maximum entitlement of \$400,000. This option provides Queensland consumers with appropriate consumer protection given the average cost of new construction is likely to exceed the current maximum entitlement of \$200,000 in the next two to three years given rising building costs. Further, the cost of insurance and

benefits are aligned given the maximum benefit is \$400,000 and the premium is capped based on a contract of \$400,000.

## **Notes on provisions**

### **Clause 1 Short title**

Clause 1 provides for the short title of the subordinate legislation.

### **Clause 2 Regulation amended**

Clause 2 provides that the Regulation amends the QBSA Regulation.

### **Clause 3 Amendment of section 23 (Insurance premium for residential construction work - Act, s68)**

Clause 3 omits section 23(2) and inserts a new premium for residential construction work for the purposes of section 68 of the Act. The new premium is —

- (a) if the residential construction price of the work is less than \$100000 — \$7.60 per \$1000, or part of \$1000;
- (b) if the residential construction price of the work is \$100000 or more but less than \$200000 — \$7.70 for each \$1000, or part of \$1000;
- (c) if the residential construction price of the work is \$200000 or more —
  - (i) \$1560; and
  - (ii) \$6 for each \$1000, or part of \$1000 of the residential construction price that is more than \$200000.

Clause 3 amends section 23(3) to provide that the minimum premium is \$152 and the maximum premium is \$2760. The minimum premium is based on a residential construction price of \$20000 and the maximum premium is based on a residential construction price of \$400000.

A definition of residential construction price is included in this clause. The definition provides that residential construction price means the contract



price, notional price for, or value of, the work, on which the premium is to be calculated under section 24 or 25 of the Regulation.

#### **Clause 4 Amendment of sch 1A (Board's policies approved under section 9A of the Act)**

Clause 4 amends schedule 1A to correct a number of drafting anomalies and to approve the *Insurance Policy Conditions Edition 7* made by the Board.

#### **Clause 5 Amendment of sch 2 (Classes of licence and licence requirements)**

Clause 5 amends the technical qualification for a *Termite management — physical licence* in Part 52 of schedule 2 to include an additional requirement. Following commencement, applicants for this licence will need to meet both of the following qualifications:

- (a) certification by the manufacturer of a product or system to be used by a licensee that the licensee has satisfactorily completed a course about the installation of the product or system; and
- (b) successful completion of the competency Install Physical Termite Barriers PRMPM42A from certificate III in Asset Maintenance (Pest Management — Technical) Course PRM30204.

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#### ENDNOTES

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