



Queensland

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

**Regulatory Impact Statement for SL 2006 No. 239**

made under the

*Queensland Building Services Authority Act 1991*

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## **1 Title**

Queensland Building Services Authority Regulation Amendments — Insurance premiums and Termite Management — physical licence technical requirements

## **2 The proposed regulation**

The Queensland Building Services Authority (BSA) proposes to introduce new home warranty insurance cover for Queensland consumers and home owners by increasing the maximum entitlement from \$200,000 to \$400,000 and introducing a more equitable and fair premium system. The proposed regulation will ensure that BSA maintains the best home warranty insurance scheme in Australia by providing the most comprehensive cover and cost effective premium structure.

The BSA also proposes to amend the technical qualifications for a Termite management—physical licence to include an additional competency. This amendment ensures that the requirements for this licence are consistent with the current licensing framework under the *Queensland Building Services Authority Regulation 2003* (the regulation) which aligns technical requirements with the Australian Qualifications Framework. The proposed regulation also seeks to improve standards and quality of work performed by the holders of such licences.

This Regulatory Impact Statement explains the need for the proposals and associated benefits and costs.

## **Introduction**

### **Purpose of Regulatory Impact Statement**

Under the *Statutory Instruments Act 1992*, if a proposed regulation is likely to impose appreciable costs on the community or part of the community, a regulatory impact statement (RIS) must be prepared before the regulation is made.

A RIS is designed to determine whether or not a proposed regulation is the most efficient and effective way of achieving desired policy objectives. It does this by providing a mechanism by which the Government's policy deliberations are clearly documented and subject to public scrutiny.

The purpose of this document is to explain the need for the proposed subordinate legislation and to present an evaluation undertaken of the likely costs and benefits that would flow from its adoption in comparison with other options explored.

All members of the community are invited to comment on the information presented in this RIS.

### **Public access to submissions**

If your submission contains information that you do not wish to be disclosed to others, please mark it "Confidential". Respondents wishing to make confidential submissions should be aware of the *Freedom of Information Act 1992*. Under the Freedom of Information Act, the BSA must, on application, grant access to documents in the possession of the BSA unless an exempt provision applies. For example, if a submission contains information about a person's personal affairs and it is in the public interest to protect that person's privacy, the "personal" information in that submission will not be accessible under the Freedom of Information Act.

## **Consideration of issues raised in the Regulatory Impact Statement**

After the public comment period closes, the Government will consider issues raised in submissions.

## **Further enquiries**

Further enquiries can be made by calling the BSA on (07) 3836 0183.

## **Background**

The *Queensland Building Services Authority Act 1991* (the Act) establishes the BSA as a body corporate consisting of the Queensland Building Services Board (the Board), the General Manager and the organisational unit under the control of the General Manager.

The objectives of the Act are to—

- (a) regulate the building industry—
  - (i) to ensure the maintenance of proper standards in the industry;
  - (ii) to achieve a reasonable balance between the interests of building contractors and consumers;
- (b) provide remedies for defective building work;
- (c) provide support, education and advice for those who undertake building work and consumers.

To achieve these objectives, the BSA is responsible for:

- Administration of a licensing system for builders, trade contractors and building work supervisors and a permit system for owner-builders;
- Provision of a dispute resolution service for consumers of building work;
- Administration of a statutory home warranty insurance scheme (the Scheme); and

- Provision of information and advice to improve consumers' and contractors' awareness and understanding of their respective roles, rights and responsibilities and BSA's role and services.

This RIS outlines two proposals to amend the Regulation. The objectives of these proposals are as follows:

- To ensure that the BSA continues to provide Queensland consumers and home owners with a financially viable home warranty insurance scheme into the future which provides the most comprehensive cover and cost effective premium structure; and
- To ensure consistency with the Australian Qualifications Framework and the maintenance of proper standards of building work carried out within the scope of work authorised under a Termite management — physical licence.

To achieve these policy objectives a number of options have been considered. The costs and benefits to stakeholders that would flow from each option are outlined in detail in the RIS.

The recommended options are to amend the Regulation to introduce:

- A premium structure based on risk up to a contract value of \$400,000 with a commensurate increase in cover; and
- An additional competency as a technical requirement for a Termite management — physical licence.

The benefits of the recommended options outweigh the costs which would flow from their adoption and are considered reasonable and appropriate for achieving the policy objectives of the proposed legislation.

## **(1) Insurance proposal**

### **Background — statutory home warranty insurance**

Under the Act, the BSA is the sole provider of 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 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 was introduced in 1991 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.

Queensland offers the best home warranty scheme in Australia. It was reported in an article in Choice Magazine in 2004 that Queensland licensees and consumers enjoy the cheapest premiums, best coverage and easiest access to insure new construction and renovations. A particular benefit of the Queensland scheme which was identified is the BSA's integrated model with strong regulatory control and first resort home warranty insurance.

The Scheme's effectiveness as a consumer protection mechanism was affirmed with at least 99% of consumers being fully compensated in 2003/2004 and 2004/2005.

In all other jurisdictions, except the Northern Territory, home warranty insurance is provided by private insurers. Interstate schemes have been in crisis in recent years. This has given rise to a number of Government and industry reviews and inquiries. Many interstate builders complain they cannot obtain insurance or if they do it is insufficient to support their business turnover. Interstate schemes have also been criticised for not providing sufficient protection for honest consumers, builders and insurers or offer quick and inexpensive remedies if things go wrong. For example, Victoria has recently announced a review of builders warranty insurance following the release of a Victorian Competition and Efficiency Commission report calling for an examination.

There are a number of key differences between Queensland's home warranty insurance scheme and interstate schemes, including:

- Queensland is the only jurisdiction that provides first resort insurance cover. Other jurisdictions provide insurance of a last resort nature, only covering non completion or defects in the event of death, disappearance and insolvency.
- Queensland offers no-excess cover, whereas the excesses in other jurisdictions range from \$200 to \$1000.
- Queensland provides no-fault subsidence cover, where the contractor has complied with certain obligations. In other jurisdictions, subsidence is not specifically covered but is included in protection provided for defective work or negligence where the contractor has died, disappeared or become insolvent.
- In all jurisdictions, except Queensland, cover is not provided for uninsured consumers.
- In Queensland cover is provided for consumers where a contract was entered into with a licensed builder who neglected to pay the premium or in the event of fraudulent mis-statement by a person representing themselves as a licensed builder.
- Currently, in Queensland premiums are capped based on a contract value of \$200,000.
- Maximum insurance cover is currently \$200,000 in Queensland. The table below specifies the maximum cover provided in other jurisdictions.

	<b>NSW</b>	<b>Victoria</b>	<b>ACT</b>	<b>SA</b>	<b>Tasmania</b>	<b>WA</b>
<b>Amount of cover</b>	\$200,000	\$200,000	\$85,000	\$80,000	\$200,000	\$100,000

*Note: The Northern Territory sets no ceiling on cover (however it should be noted that under the Northern Territory Scheme benefits are limited to remedying non compliance with the Building Code of Australia). In NSW and Victoria the maximum insurance payout for non-completion claims is 20 per cent of the contract value.*

### **Scheme funding**

The BSA is established under the Act as a self-funding statutory body. The BSA does not receive budget funding from or pay amounts into the Government's Consolidated Fund.

The Act requires the BSA to administer two discrete and separate funds — a general statutory fund and an insurance fund. The insurance fund supports the operations of the Scheme, including the costs of paying out claims and the costs of administering the Scheme. The insurance fund consists principally of premiums paid by contractors who are performing residential construction work. The insurance fund does not operate for profit.

To ensure a solid financial framework for its insurance operations, the BSA adopts the Australian Prudential Regulatory Authority (APRA) standards for general insurance. The BSA uses APRA's 75% probability requirement for calculating the Scheme's future claims provisions and maintains its free reserves in excess of the required \$5M.

The Act provides for the Scheme's insurance premium to be set by regulation. Currently, under the 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 Regulation also specifies how the premium is to be calculated for different types of residential construction work. The minimum premium prescribed under the 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). In addition to funding the BSA's insurance operations, the administration premium component plays an important role in risk management. The administration component is used to ensure the Scheme has sufficient future claims reserves to meet any actuarially calculated increase in the BSA's share of claims provision where the calculated loss ratio for a given year exceeds 100%. Loss ratios compare the accumulated claims to written premium in respect of each policy year taking into account interest earnings on the premium pool.

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.

## **The need for the proposed Regulation**

The residential building and renovation sector in Queensland has performed strongly over recent years. In April 2006 alone, the BSA's data shows that more than \$619M worth of work on 5,281 new construction projects was insured. This reflects the buoyant construction sector in Queensland.

The Queensland economy is growing much more strongly than most other state economies, boosted by higher incomes, continuing consumer confidence and a healthy rate of business investment. It is predicted that the state will continue to thrive throughout 2006. Forecasts are for at least a 12% increase in building activity in the current financial year.

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.

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.



An increase in the Scheme's underwriting premium pool of up to a maximum of 30% is likely to be required under reinsurance requirements in 2006/2007 given significant increases in building costs and rectification costs and higher than previously projected loss ratios for the Scheme. A target average loss ratio for the Scheme of 70% may be also required for reinsurance. The Scheme's Actuary has advised, assuming no further deterioration in the factors affecting claims and assumptions underlying the current loss ratios, to achieve a target loss ratio of 70%, an increase of up to a maximum of 30% in the Scheme's underwriting premium would be required. The Actuary recommends that the underwriting premium pool should increase annually by no less than 5% in the following years in order to ensure the ongoing viability of the Scheme. The Actuary states that it is not realistic to assume the natural inflationary increases in insured values will alone produce the required upward movement in premium income to the Scheme.

No increase is required, however, to the administration component of the premium pool in 2006/2007 above an increase in line with the movement in the Consumer Price Index.

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.

## **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.

## **Policy objectives**

The primary objectives of the proposed legislation are to ensure that the BSA continues to provide Queensland consumers and home owners with a financially viable home warranty insurance scheme into the future which provides the most comprehensive cover and cost effective premium structure.

## **Legislative intent**

The policy objectives will be achieved by amending:

- (i) Schedule 1A of the Regulation to approve a new version of the Board's Insurance Policy Conditions (Edition 7) which increases the maximum benefit payable by the Scheme to a consumer to \$400,000 comprised of cover as follows:
  - Non-completion (including defects) up to \$200,000; and
  - Defects after completion (including subsidence) up to \$200,000; and
- (ii) the insurance premium provisions in Part 5 of the Regulation to:
  - introduce a premium structure based on risk; and
  - increase the maximum premium payable to be based on a contract value of \$400,000.

It is considered that these proposals are the most reasonable and appropriate options to achieve the policy objectives. Further, it is considered that the benefits of these proposals outweigh the costs imposed on stakeholders arising from their adoption.

## **Consistency with authorising law**

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 proposed legislation 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 proposed legislation is also consistent with section 26A of the Act which requires the BSA to manage the insurance fund in accordance with actuarially-sustainable principles

## **Consistency with other legislation**

The proposed legislation is consistent with the objectives of other Queensland and Commonwealth legislation.

## **Options and alternatives**

Consideration has been given to a number of options for achieving the desired policy objectives of the proposed regulation relating to insurance. These options are outlined below:

Option 1: Retain the current insurance premium structure and increase insurance premiums from \$7.25 to \$8.85 per \$1,000.

Option 2: Introduce a new premium structure based on risk and charge proportionate premiums up to a contract value maximum of \$400,000 with a commensurate increase in cover.

The options involve changes, proposed to be effective from 1 October 2006, to the current overall premium rate which is used to fund both the underwriting premium pool and the administration premium pool.

Option 2 is the preferred approach as it provides more benefits to consumers and industry and is considered to be the most efficient and effective way of achieving the desired policy objectives. Option 2 is consistent with the recommendations made by the Scheme's Actuary and thereby allows the BSA to manage the Scheme in accordance with actuarially sustainable principles as required under section 26A of the Act.

## **Cost/benefit assessment**

### **Option 1: Retain the current premium structure and increase premiums**

This option involves amending the Scheme's insurance premiums prescribed in Part 5 of the Regulation to increase premiums as follows:

- Increase the premium rate per \$1,000 contract value to \$8.85 per \$1,000 in 2006/2007; and
- Increase the maximum premium payable under the Scheme to \$1770 (based on the current \$200,000 contract value cap).

Under this option, there would be no changes made to the cover provided to consumers under the Scheme. This means that the maximum benefit payable to insured consumers under the Scheme's Insurance Policy Conditions would continue to be capped at \$200,000.

### **Costs of option 1**

#### Costs to the BSA

This option will provide an increase in the Scheme's underwriting premium pool up to the maximum which may be required under reinsurance requirements. However, it does not address the Actuary's

recommendations to ensure the long term financial viability of the Scheme through aligning premiums more closely with risk and lifting the current \$200,000 contract value cap on premiums. This prevents the BSA from managing the Scheme's insurance fund in accordance with actuarially sustainable principles as required under section 26A of the Act.

Some costs would be incurred by the BSA under this option associated with administrative costs of implementing (including publications and advice provided to businesses and the community) the proposed amendments. However, such costs would be minimal.

#### Costs to business and the community

This option is unlikely to ensure Queensland consumers are provided with appropriate protection given the average cost of new construction is likely to exceed the maximum entitlement under an insurance policy of \$200,000.

While premiums are paid under the Scheme for residential construction work by building contractors, these costs are normally passed on directly to consumers under the building contract. The following table outlines the premiums which would be payable for selected contract values under option 1:

<b>Contract value</b>	<b>Current Premium</b>	<b>Option (1)</b>
\$20K (minimum premium)	\$145	\$177
\$50K	\$362.50	\$442.50
\$100K	\$725	\$885
\$150K	\$1087.50	\$1327.50
\$200K	\$1450	\$1770

Retention of the current premium structure under this option involves a linear pricing mechanism (i.e. the same premium rate across all contract values) and caps premiums at a contract value of \$200,000. This is inequitable as it does not accurately reflect the risk profile of different groups of policies.

## **Benefits of option 1**

### Benefits to the BSA

The main benefit under this option is that it would provide an increase in the Scheme's underwriting premium pool up to the maximum which is likely to be required under reinsurance requirements in 2006/2007. However, as the Scheme is not run for profit, this option does not provide any financial benefit to the BSA.

### Benefits to business and the community

Consumer protection is not eroded under this option.

Under this option, retaining the current maximum contract value cap of \$200,000 with the maximum limit of \$200,000 on entitlements under the Scheme aligns the cost of insurance and the benefits provided.

## **Summary of impacts - Option 1**

The costs of Option 1 are considered to significantly outweigh the benefits to stakeholders. In particular, Option 1 does not implement recommendations made by the Scheme's Actuary to ensure the continuing and long term financial viability of the Scheme and would not ensure that the Scheme maintains appropriate protection for Queensland consumers.

## **Recommended option**

### **Option 2: Introduce a step premium structure and charge proportionate premiums up to a contract value of \$400,000 with a commensurate increase in Scheme cover.**

This option involves approval of a new Insurance Policy Conditions under Schedule 1A of the Regulation and amending the Scheme's insurance premiums prescribed in Part 5 of the Regulation as follows:

- The maximum benefit payable by the Scheme to consumers is increased from \$200,000 to \$400,000 comprised of cover as follows:

- Defects after completion (including subsidence) — \$200,000; and
- Non-completion (including defects and subsidence/settlement) — \$200,000.
- For contracts up to a value of \$100,000, increase the current premium rate to approximately \$8.05 per \$1000 in 2006/2007.
- For contracts above \$100,000 up to \$200,000, increase the current premium rate to approximately \$8.15 per \$1000 in 2006/2007.
- For contracts above \$200,000 in 2006/2007:
  - increase the premium rate to approximately \$8.25 per \$1000 for the first \$200,000 of the contract value; and
  - charge a lesser premium rate of \$6.45 per \$1000 for that part of the contract value above \$200,000 up to \$400,000.
- The maximum premium payable is capped based on a contract value of \$400,000.

## **Costs of option 2**

### Costs to the BSA

The proposed change in cover under this option involves minimal risk to the Scheme. It is estimated that the maximum additional cost to the Scheme arising from the additional cover (based on the current average cost of subsidence claims) is \$1.8M per annum.

Some costs would be incurred by the BSA under this option associated with administrative costs of implementing (including publications and advice provided to businesses and the community) the proposed amendments. However, such costs would be minimal.

### Costs to business and the community

Under option 2 the premiums payable for selected contract values would be as outlined in the following table:

<b>Contract value</b>	<b>Current Premium</b>	<b>Option (2)</b>
\$20K (Minimum premium)	\$145	\$161
\$50K	\$362.50	\$402.50
\$100K	\$725	\$805
\$150K	\$1087.50	\$1222.50
\$200K	\$1450	\$1630
\$250K	N/A	\$1972.50
\$300K	N/A	\$2295
\$400K	N/A	\$2940

These costs would, however, be offset by the new policy cover proposed which would double the maximum entitlement currently available (from \$200,000 to \$400,000) for all consumers irrespective of their contract value. For example, consumers insured for residential construction work under a contract valued at \$100,000 would only pay \$805.00 in premiums but their maximum entitlement under the new insurance policy would be \$400,000 (i.e. an additional \$200,000 cover).

## **Benefits of option 2**

### Benefits to the BSA

The main benefit of this option is that it would provide the BSA with an increase in the Scheme's underwriting premium pool up to the maximum which is likely to be required under reinsurance requirements in 2006/2007. However, as the Scheme is not run for profit, this option does not provide any financial benefit to the BSA.

Option 2 would also enable the BSA to manage the insurance fund to meet recommendations made by the Scheme's Actuary to provide for long term financial viability in accordance with section 26A of the Act.

### Benefits to business and the community

Under option 2, all consumers would receive an increase in the maximum benefit from \$200,000 to \$400,000 under the Scheme. This option would ensure Queensland consumers are provided with appropriate consumer protection given the average cost of new construction is likely to exceed the maximum entitlement of \$200,000. 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. The level of cover to be provided to consumers under this proposal is significantly above interstate home warranty insurance schemes and ensures that Queensland consumers are provided with the best coverage in Australia into the future.

The additional cover provided would allow 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 introduction of step premiums and an increase to the current maximum premium (i.e. the current \$200,000 contract value cap on premiums) would establish a more equitable insurance scheme and more accurately reflect the risk profile of different groups of policies.

## **Summary of impacts — Option 2**

The principal reasons supporting Option 2 as the recommended option are as follows:

- This option, unlike option 1 and interstate schemes, ensures that the Queensland scheme 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 more equity and efficiency in the Scheme by ensuring premiums are more closely aligned with risk through introduction of a step premium structure and increasing the current cap on premiums to be based on a contract value of \$400,000.

The benefits to all stakeholders associated with implementation of Option 2 are considered to outweigh the costs involved. In particular, under Option 2 the proposed increases in premiums are matched by significantly increased benefits for consumers under the new policy cover by increasing the maximum entitlement from \$200,000 to \$400,000.

## **Fundamental legislative principles**

The *Legislative Standards Act 1992* requires that legislation has sufficient regard to rights and liberties of individuals and the institutions of

Parliament. The proposed legislation is consistent with the fundamental legislative principles.

## **Conclusion**

Option 2, which provides for introduction of a step premium structure and proportionate premiums up to \$400,000 with an increase in the maximum benefit to \$400,000, is the preferred option for ensuring that the BSA continues to provide Queensland consumers and home owners with a financially viable home warranty insurance scheme into the future. The Scheme will provide the most comprehensive cover and cost effective premium structure in Australia.

It is considered that the recommended option is the most reasonable and appropriate means of achieving the policy objectives of the proposed legislation. The major groups impacted by the proposed legislation are the BSA, businesses operating in the building and construction industry and consumers. However, the benefits to all stakeholders associated with implementation of Option 2 are considered to significantly outweigh the costs involved. In particular, the proposed increases in premiums under Option 2 are matched by significantly increased benefits for consumers under the new policy cover by increasing the maximum entitlement from \$200,000 to \$400,000.

The proposed legislation is not retrospective and is anticipated to commence on 1 October 2006.

## **(2) Licensing proposal**

### **Background — licences for termite management — physical class building work**

The Act also establishes a licensing system for individuals and companies who contract to carry out and supervise building work. “Building work” is defined broadly in the Act and includes:

- the erection or construction of a building;

- the renovation, alteration, extension, improvement or repair of a building;
- the provision of lighting, heating, ventilation, air-conditioning, water supply, sewerage or drainage in connection with a building;
- any site work (including the construction of retaining structures) related to work of a kind referred to above;
- the preparation of plans or specifications for the performance of building work;
- contract administration carried out by a person in relation to the construction of a building designed by the person;
- the installation, maintenance, or certification of the installation or maintenance, of a fire protection system for a commercial or residential building;
- carrying out site testing and classification in the preparation for the erection or construction of a building on the site;
- carrying out a completed building inspection; and
- the inspection or investigation of a building, and the provision of advice or a report, for the following —
  - termite management systems for the building;
  - termite infestation in the building.

“Building work”, however, does not include work of a kind excluded by regulation from the ambit of this definition. Section 5 of the Regulation specifies work which is excluded from the definition of building work.

The Act provides that licences must be divided into classes by regulation. Currently, there are 57 licence classes prescribed in the Regulation. Applicants are entitled to a contractor’s licence if they meet the criteria specified in section 31 of the Act. For a contractor’s licence, the criteria are technical qualifications, experience requirements, managerial qualifications and financial requirements as prescribed under the Regulation for the relevant licence class. For a company, the company’s nominee must hold a contractor’s licence or a supervisor’s licence of the relevant class. Schedule 2 of the Regulation also specifies the scope of building work that may be performed under each licence class.

Following a two-year review, on 1 September 2003 the 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. The AQF was developed under instruction from the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA). MCEETYA has established an AQF Advisory Board to promote and monitor national implementation of the AQF.

Under the 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.

## **The need for the proposed Regulation**

At the time the 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.

## **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 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.

## **Policy objectives**

The primary objectives of the proposed legislation are to ensure the technical qualifications required for a *Termite management — physical licence* are consistent with the Australian Qualifications Framework and improve standards and the quality of work performed by persons who hold such licences.

## **Legislative intent**

The policy objectives will be achieved by amending the technical qualifications in Part 53 (*Termite management — physical licence*) of the Regulation to include an additional requirement for successful completion of Install Physical Termite Barriers PRMPM42A in the Certificate III in Asset Maintenance (Pest Management — Technical) PRM30204 course.

It is considered that these proposals are the most reasonable and appropriate options to achieve the policy objectives. Further, it is considered that the benefits of these proposals outweigh the costs imposed on stakeholders arising from their adoption.

## **Consistency with authorising law**

The policy objectives of the Act are to -

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

The proposed legislation is consistent with the policy objectives of the authorising law in that it seeks to ensure the maintenance of proper standards in the building industry.

## **Consistency with other legislation**

The proposed legislation is consistent with the objectives of other Queensland and Commonwealth legislation.

## **Options and alternatives**

Option 1: Maintain the existing technical qualifications for a Termite management - physical licence.

Option 2: Amend the technical requirements for a *Termite management — physical licence* to include successful completion of the competency Install Physical Termite Barriers PRMPM42A in the Certificate III in Asset Maintenance (Pest Management — Technical) PRM30204 course.

Option 2 is the preferred approach. Option 1 has been eliminated in favour of option 2 as this option is considered to be the most reasonable and appropriate means of achieving the policy objectives. Option 2 is consistent with the current licensing framework under the legislation which aligns the technical requirements for licences with the Australian Qualifications Framework and would improve skill requirements for future holders of a *Termite management — physical licence*. It is envisaged that this would in turn result in an increase in the standard of the relevant class of building work in Queensland.

## Cost/benefit assessment

### Option 1: No change to the status quo

This option would involve making no changes to the existing technical qualifications to obtain a Termite management — physical licence.

### Costs of option 1

#### Costs to the BSA

There would be no additional costs with maintaining the status quo. However, maintaining the current licensing requirements for this licence class would be inconsistent with the current licensing framework under the Regulation which aligns technical requirements, where possible, with the Australian Qualifications Framework.

Further, a potential cost of retaining the status quo under option 1 is that it may result in a lesser standard of work carried out under a *Termite management — physical licence*. This may impose costs on the BSA through an increase in complaints about defective work carried out by holders of this licence.

#### Costs to business and the community

A lesser standard of work carried out by holder of a *Termite management — physical licence* would impact on consumers and businesses by costs associated with the performance of defective work and the need to have it rectified. For businesses, this may also result in an increase in civil and professional indemnity claims for defective work.

### Benefits of option 1

#### Benefits to the BSA, business and the community

The Regulation currently prescribes the technical requirements for this licence class. However, there are no perceived additional benefits of maintaining the status quo in terms of aligning the technical requirements for licensing with the Australian Qualifications Framework or the maintenance of proper standards in the building and construction industry in Queensland.

## Summary of Impacts — Option 1

The long term costs associated with retaining the status quo under option 1 are considered to outweigh any short term benefits.

## Option 2: Amend the technical requirements for a *Termite Management — physical licence*

This option would involve amending, commencing on 1 October 2006, the technical qualification for a *Termite management — physical licence* to include an additional requirement for successful completion of the competency Install Physical Termite Barriers PRMPM42A in the Certificate III in Asset Maintenance (Pest Management — Technical) PRM30204 course.

## Costs of option 2

### Costs to the BSA

Some additional costs to the BSA may be incurred from option 2 through increased administration of the licensing regime in terms of assessment of applications for this licence class. However, these costs would be negligible.

### Costs to business

The following table outlines the number of applications received and finalised each year for a *Termite management — physical licence* since 2003 (as at 25 May 2006)

Year Received	Total Number of Applications Received	Year Finalised	Number of Applications Finalised	Outcome	Number of Applications Approved/ Rejected
2002	26	2002	26	Approved	25
				Rejected	1
2003	35	2003	31	Approved	31
		2004	4	Approved	3
				Rejected	1



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Year Received	Total Number of Applications Received	Year Finalised	Number of Applications Finalised	Outcome	Number of Applications Approved/ Rejected
2004	52	2004	46	Approved Rejected	45 1
		2005	6	Approved Rejected	5 1
2005	62	2005	51	Approved Rejected	49 2
		2006	11	Approved Rejected	9 2
2006	18	2006	18	Approved Rejected	17 1

Based on information received by the BSA, the costs to businesses (on average approximately 40 individual and company applicants per annum) to obtain competency in Install Physical Termite Barriers PRMPM42A would be between \$50 and \$450 depending on how and where the applicant is assessed. The maximum amount of time which it could take to complete the course is 30 hours. However, only new applicants for a *Termite management — physical licence* would be subject to these costs. The proposed amendment to technical requirements would not affect licensees currently holding a *Termite management — physical licence*.

The industry training sector has advised the BSA that there are no issues as to the availability of the competency.

#### Costs to the community

The costs experienced by industry from undertaking the additional competency for this licence may be passed indirectly on to the community by building contractors. However, any additional cost increases are expected to be minimal.

## **Benefits of Option 2**

### Benefits to the BSA

The following table outlines the number of disputes received by the BSA over the last three years in relation to licensees with a class of Termite management licence.

*Total complaints received by the BSA against termite licence classes*

<b>Year</b>	<b>Physical licence</b>	<b>Chemical licence</b>	<b>Total</b>
1/1/03 to 31/12/04	8	51	59
1/1/04 to 31/12/05	6	37	43
1/1/05 to 31/12/05	6	45	51

Imposition of the new technical competency for this licence class is likely to result in improved standards of building work by a holder of a *Termite management — physical licence*. This is likely to benefit the BSA through a resultant reduction in the number of complaints and disputes (thereby reducing the operational costs of the BSA) about work performed by this class of licensees.

The imposition of the new and additional competency as a requirement for this licence class is consistent with the existing policy objectives of the licensing framework under the Regulation to align technical requirements for licences with the Australian Qualifications Framework.

### Benefits to business

Holders of a contractor's or supervisor's licence for the *Termite management — physical licence* class would benefit through improved skills. The proposed competency covers the skills and knowledge required to install physical termite barriers, including barriers that combine physical and chemical characteristics. The unit applies to the application of physical termite barriers in both pre and post construction and can be applied to domestic, commercial and industrial construction. The new competency unit would give licensees for this class a broader range of skills and knowledge in all areas affecting their work as well as the installation of a broad range of physical termite management materials or systems.

Successful completion of the competency requires the ability to assess the techniques and methods of construction and the techniques required to

prevent termites gaining concealed access to the completed construction. It also requires a thorough understanding of client requirements and the application of company information in order to perform the task, including the selection of appropriate equipment, material and methods for performing the task safely and efficiently.

A flow-on benefit for the building and construction industry and the insurance industry of improved competency and standards of work performed by these licensees may be reduction of civil liability claims and professional indemnity insurance claims for defective work.

### Benefits to the community

Amending the technical requirements to include successful completion of the new competency unit would benefit consumers through improved standards of building work performed by contractors carrying out work within this licence class. This would be of particular benefit for consumers who engage licensee to perform inspections/investigations and prepare reports about the use of a particular material or system designed for the prevention of termite infestation given such work is not covered by the statutory home warranty insurance scheme.

### **Summary of impacts - Option 2**

The benefits of option 2 significantly outweigh the costs associated with its implementation. On this basis, option 2 is considered to be the most efficient option for achieving the desired policy objectives.

### **Fundamental legislative principles**

The *Legislative Standards Act 1992* requires that legislation has sufficient regard to rights and liberties of individuals and the institutions of Parliament. The proposed legislation is consistent with the fundamental legislative principles.

### **Conclusion**

It is recommended that option 2 be adopted which provides for the technical requirements for a *Termite management — physical licence* in the Regulation to be amended to include an additional competency.

It is considered that the recommended option is the most reasonable and appropriate means of achieving the policy objectives of the proposed legislation.

The major groups impacted by the proposed legislation are the BSA, businesses operating in the building and construction industry and consumers. However, the benefits of this option are considered to significantly outweigh the minimal costs involved. This option ensures that the requirements for this licence are consistent with the current licensing framework under the legislation which aligns the technical requirements for licences with the Australian Qualifications Framework.

The proposed legislation is not retrospective and is anticipated to commence on 1 October 2006.

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#### ENDNOTES

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