

**INQUIRY INTO INQUIRY INTO THE OPERATIONS OF
THE HOME BUILDING SERVICE**

Organisation: Queensland Building Services Authority
Name: Mr Ian Jennings
Position: General Manager
Date received: 16/11/2007



BUILDING SERVICES AUTHORITY

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9 November 2007

The Hon Robyn Parker MLC
Chair - General Purpose Standing Committee No. 2
Parliament House
Macquarie Street
Sydney
NSW 2000

Dear Ms Parker

INQUIRY INTO THE OPERATIONS OF THE HOME BUILDING SERVICE

I refer to your letter of 5 October 2007 in which you note the submission previously provided to you by the Building Services Authority, and invite the Building Services Authority to make a supplementary submission regarding any developments since November 2006 that are relevant to the terms of reference and which were not covered in our original submission.

Please find attached a supplementary submission which details the following:

- The legislative amendments recently passed by the Queensland Parliament;
- Updates to figures and data relevant to licensing, dispute resolution, work standards and the home warranty scheme.

I have also attached current copies of the following:

- Financial requirements for licensing; and
- Insurance premium table.

I trust the above will be of some assistance to you, and look forward to hearing from you should you require further clarification in relation to any of the issues noted in this supplementary submission.

Yours faithfully

Ian Jennings
General Manager

**QUEENSLAND
BUILDING
INDUSTRY
REGULATORY
MODEL**

(supplementary submission)

November 2007

1. INTRODUCTION

In October 2006, the Queensland Building Services Authority (BSA) provided a submission to the inquiry into the operations of the Home Building Service of the Office of Fair Trading.

The BSA stands by the data previously submitted, but notes that, in the intervening year, some changes have occurred. Therefore the following updated data is provided to supplement the submission previously provided.

2. LEGISLATIVE AMENDMENTS

Since the BSA was formed, it has developed an ability to respond to a changing industry and the needs of consumers. An example of this ability to adapt to changing circumstances, is evident in the recent amendments to the *Queensland Building Services Authority Act 1991* (QBSA Act). The BSA has, for the past 3 years, researched and worked on the drafting of these amendments, which were passed by Parliament on 16 October 2007, and received Royal assent on 25 October 2007. The amendments include the following:

Fire protection occupational licensing

The amendments create a fire protection occupational licensing regime, which is to be administered by the BSA. This initiative implements an outstanding recommendation of the *Building Fire Safety in Queensland Budget Accommodation Report 2000* following the Palace Backpackers Hostel fire in Childers. This new licensing regime will provide that any officer or employee of a licensed contractor who personally carries out fire protection work must have a fire protection occupational licence, contractor's licence or other statutory authorisation to undertake the work.

Supervision of building work

Under the QBSA Act persons who wish to be a nominee supervisor for a licensed company or a site supervisor for building work must be licensed.

Research by the BSA indicates that 61% of seriously defective work is as a direct result of inadequate on-site supervision. A major contributor to this problem is the absence of licensed supervisors in the market place to carry out on-site supervision.

The legislation has been amended to allow the creation of a two-tiered licensing system for supervisors, which recognises that the skills and qualifications for supervisors who are nominee supervisors for companies, are higher than those for site supervisors.

Under the new licensing system, the current licensing requirements will be retained for nominee supervisors, whereas for site supervisors, licensing requirements will be linked directly to those technical requirements specifically necessary to adequately supervise on-site building work.

It is envisaged that the new system will encourage more persons to become site supervisors and also provide a career pathway into the industry for persons to progress from site supervisor through to nominee supervisor and eventually a licensed contractor.

Licensing fee differential

The amendments include a licensing fee differential to provide an incentive for licensees to perform adequate work. This amendment arises from a recommendation made in an independent consultant's report with respect to outstanding National Competition Policy issues relating to the QBSA Act. The amendment will increase the annual licence fee by the value of one penalty unit (\$75) for each direction to rectify defective work issued by the BSA to a licensee. The maximum amount per year that may be added to the licence fee is 10 penalty units (ie \$750).

Demerit point offences

Similar to driver's licences, QBSA licensees who commit specified offences have demerit points added to their licence. If a licensee accumulates more than 30 demerit points over 3 years the licence is cancelled.

Demerit point offences have been expanded to include a failure to pay the BSA insurance premium, failure to rectify defective work in accordance with a BSA direction, failure to have an appropriately licensed nominee, and failure to comply with requirements relating to contracts.

Penalties

Maximum penalties for offences against the most important provisions of the Act, have been increased to bring them in line with the *Fair Trading Act 1989* and comparable interstate legislation. The maximum penalty under the BSA Act is now 250 penalty units (which is equivalent to an amount of \$18,750 for an individual, or \$93,750 for a corporation). This penalty applies to offences such as unlicensed contracting or failing to rectify defects in accordance with a direction issued by the BSA.

Owner-builders

The amendments alter the owner-builder permit provisions in the QBSA Act to minimise permit holders carrying out defective building work, clarify ambiguities in the existing provisions and generally improve the administrative framework for the permit system.

Enforcement of fines and unpaid judgment debts

The amendments also allow the BSA to suspend, cancel or refuse to issue or renew a licence if the person has not paid a fine for an offence under the QBSA Act or the DBCA

Action by the BSA to refuse to renew a fine defaulter's licence will not be possible until all relevant appeal processes have expired under the *State Penalties Enforcement Act 1999*.

The amendments also allow the BSA to refuse to issue a contractor or nominee supervisor licence where an applicant has an unpaid judgment debt for an amount the BSA may recover under section 71 of the QBSA Act

Public licensee register

Matters on the public licensee register have been expanded to include any suspension or cancellation of a licensee's licence, including the circumstances that led to the cancellation or suspension.

Construction managers

Construction management contracts are a common form of construction contract where the building contractor contracts with an owner to carry out building work services to manage, supervise and coordinate trade contractors.

The amendments state that all construction managers must hold an appropriate licence, are responsible for supervision of the work, may be directed to rectify defective or incomplete work; and are responsible for paying the BSA insurance premium.

Developers

The amendments authorise the BSA to direct a developer where they have intentionally entered into an agreement with a building contractor to carry out work in a way or use materials likely to result in defective building work. The intent of the amendment is to make developers more accountable in such circumstances.

A potential loophole has also been removed, which could have allowed developers to claim on the Statutory Insurance Scheme for defective building work carried out as part of their development. The Statutory Insurance Scheme is intended to provide protection for home owners. It is not, and nor was it ever intended to cover business risks associated with commercial and property development projects

3. LICENSING

Minimum Financial Monitoring Requirements

Licensees are divided into the following financial categories based on their annual turnover (note: these figures are the amended figures which apply since 1 July 2006):

Categories	Allowable Annual Turnover
SC1	\$0 - \$100,000
SC2	\$100,000 - \$300,000
1	\$300,000 - \$600,000
2	\$600,000 - \$3 Million
3	\$3 Million - \$12 Million
4	\$12 Million - \$30 Million
5	\$30 Million - \$60 Million
6	\$60 Million - \$120 Million
7	\$120 Million - \$240 Million
8	\$240 Million and above

Financial monitoring occurs at the time of applying for a licence, at licence renewal and through audits conducted by BSA. The monitoring principally involves a review of the Net Tangible Assets, and the liquidity of the licensee to ensure the company is financially sound and operating within its Allowable Annual Turnover.

The extent of monitoring is directly related to the turnover of the licensee. For example, licensees in categories SC1 and SC2 are able to self-certify their financial position by way of a statutory declaration whereas licensees in categories 4 – 8 must have their accounts independently confirmed by an auditor (see page 10 of Attachment A relating to Financial Requirements for Licensing).

The minimum financial monitoring requirements require the completion of the following forms, examples of which are contained in Attachment A:

- For Categories 1 – 3: the independent review report (form 1 version 4)
- For Categories 4 – 8: the audit report (form 2 version 4)

Licensees with an annual allowable turnover of \$300,000 or more are also required at licence renewal to satisfy the following two tests (see page 44 of Attachment A):

- Satisfy the Net Tangible Asset test
- Satisfy the BSA of their liquidity/current ratio.

These ratios provide a snap shot of the licensee's current assets over current liabilities at a particular point in time.

The legislation requires that a contractor meets the financial requirements for licensing at all times while the licence is current. Thus, contractors are required to meet the liquidity ratio at all times.

Since the previous submission, the levels of Annual Allowable Turnover and Net Tangible Assets have been reviewed in accordance with Attachment A.

4. DISPUTE RESOLUTION

When BSA commenced operation in July 1992, the level of dispute notifications for the previous year was 1,893. Since that time there have been significant increases in the levels of notification in every year to a record 5,610 disputes in 2003/04. This has tapered off to 4,590 in 2006/07.

Updated figures in relation to complaints received against contract notifications are as follows:

	Contract notifications	Complaints received
06/07	93 166	4 590
05/06	85 023	5 021
04/05	82 065	5 094
03/04	88 582	5 610
02/03	72 779	5 347
01/02	62 506	4 827
00/01	45 582	5 752

5. WORK STANDARDS

Recurring defects

Recurring defects continue to pose major problems within the industry. BSA's research is focussing on preventing poor building practices from occurring at the earliest stage in the building process. The most frequently occurring defects (updated to 2006/07 data) are reflected in the table below:

1. internal plasterboard installation
2. ceramic floor tile and adhesive failure
3. waterproofing shower recesses
4. concrete driveways, paths and landscaping
5. roof flashing and drainage
6. external paint application
7. timber window and door installation
8. aluminium window and door installation
9. steel sheet roof cover
10. internal paint application

In order to provide licensees with details of new standards and regulations, the BSA has been running Supershow presentations throughout the State. At these Supershows the BSA not only provides details of the new standards and regulations, but also provides demonstrations of best practice methods and ways of avoiding pitfalls. The presentations also address the Top Ten Defects (as per the list above) and provide options as to how to avoid making the mistakes that may lead to defective building work.

Supervision

Licensed contractors have a statutory obligation to ensure adequate supervision by appropriately licensed persons of all building work carried out under their licence. Under the QBSA Act, a person may be licensed to supervise, but not carry out, some or all classes of building work. Given the requirement for building work to be personally supervised, supervisor's licences are only issued to individuals, not companies. A nominee is an officer or employee of a licensed company nominated to have responsibility for the supervision of work carried out under the company's licence.

The supervision responsibilities of licensed contractors and nominees are much broader than those of other licensed supervisors engaged by the contractor. They include ensuring that adequate systems of supervision are in place and that the number of licensed supervisors engaged in on-site supervision is adequate. However the technical requirements for licensing do not recognise the different responsibilities of nominees and other supervisors and apply a 'one size fits all' approach.

The BSA, in consultation with wider industry has identified that there is a substantive shortage of licensed supervisors in Queensland to carry out on-site supervision. Research conducted by the BSA indicates that lack of on-site supervision is significantly impacting on the quality of building work in the State, and often leads to seriously defective building work.

The QBSA Act amendments implement a two-tiered licensing system for supervisors. For nominee supervisors, the current licensing requirements would be retained. For non-nominee supervisors, licensing requirements would be reduced to reflect the narrower range of technical skills necessary to supervise building work. The amendment is expected to substantially widen the pool of persons who may undertake on-site supervision in the State.

6. HOME WARRANTY INSURANCE SCHEME

Home Warranty Scheme

Queensland currently offers the most comprehensive warranty insurance scheme of any State. It is a system that is highly focussed on customer service. The insurance cover has been extended (from 29 September 2006) to now provide a \$400,000 maximum cover without a payable excess.

The BSA's Home Warranty Scheme covers consumers for loss under a contract for residential construction work in the event that the building contractor fails to complete the contract or fails to rectify defective work. The extent of the current cover is:

- \$200,000 for non-completion, defects and subsidence that occur prior to practical completion;
- \$200,000 for defects and subsidence claims that occur after practical completion;
- The maximum total cover available is \$400,000.
- These amounts include a maximum of \$5,000 for alternative accommodation, removal and storage costs.

In 2006/07 BSA processed 93 166 policies with gross premium receipts of \$64M, a substantial increase over the years since 2002/03 as indicated in the table below:

	Policies written	Gross premiums received (\$M)
06/07	93 166	64
05/06	85 023	48
04/05	82 065	43.1
03/04	88 582	42.5
02/03	72 779	33.7

Increasing levels of high activity reflect the demand for housing by a rapidly growing Queensland population

Premium Structure

The current premium structure is set out in the attached Insurance Premium Table. These are the premiums current from 1 July 2007.