

### **BUILDING SERVICES AUTHORITY LICENSEES—CHANGES TO GOVERNING LEGISLATION**

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### **INTRODUCTION**

In December 2007, a number of notable changes were made to the *Queensland Building Services Authority Act 1991* (the 'Act'). Principally, the amendments were made to address the Building Services Authority's ('BSA') view that an unnecessarily high proportion of defects reported were linked to an inherent lack of supervision on building sites. Other changes to the Act included:

- more extensive powers provided to the BSA regarding Directions to Rectify; and
- the provision of new Compliance Powers to the BSA.

### **SITE SUPERVISORS**

In response to the perceived need for further supervision on Queensland building sites the Act now provides for a third grade of supervisor licence for each of the categories of licences presently issued by the BSA. The new grade, site supervisor, is a restricted licence directed toward the supervision of onsite building works at the site level; specifically, it should be noted that site supervisors are unable to either act as nominees or contractors for building work.

The BSA's expectation is that each building site should have at least one licensed supervisor appointed to it so that adequate supervision is maintained. Critically, a primary test of whether the requirement for adequate supervision has been adhered to on site will be whether the subject building work is free of defects, complies with the Building Code of Australia, and the plans and specifications for the job are all compliant with relevant Australian Standards.

Further, the Act specifies that the licensed contractor and the company nominee should ensure that a person appropriately

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qualified in one of the categories of licence should 'personally supervise' the building works. Similarly, a licensed contractor attracts the same obligations when carrying out building works on behalf of a principal.

To qualify as a site supervisor, an applicant must demonstrate to the BSA their completion of an appropriate technical qualification for the relevant category and grade of licence.

However, until 19 December 2008 a transitional arrangement will allow appropriately experienced people to obtain the site supervision licence without an applicant having to acquire formal qualifications that will become necessary after that date. To take advantage of those arrangements, an applicant needs to provide a declaration from their employer (represented by the applicant's Nominee Supervisor) verifying that:

- the applicant has carried out building work as an officer or employee of the contractor for a period of no less than 12 months;
- the contractor has had an opportunity to assess the skills of the applicant during the period; and
- the contractor is satisfied that the applicant has the skills to carry out the duties of a site supervisor for the class of licence applied for.

### **DIRECTIONS TO RECTIFY**

The amendments to the Act have also resulted in the BSA being provided with more powers in relation to enforcing the terms of directions to rectify ('direction'). Receipt by a licensee of a direction will automatically result in an increase in their next annual licence fee by \$75 (with a maximum of 10 such increases per year).

In some circumstances the BSA is now able to issue a direction to developers. This measure is designed to encourage developers to be more conscious and responsible for their instructions to building contractors with respect to the use of materials or the manner of carrying out the subject development.

### **COMPLIANCE POWERS**

The Act, as amended, now provides the BSA with new powers regarding compliance issues including:

- fines for companies that do not have a nominee for more than 28 days;
- the ability to cancel a licence if the licensee has failed to pay BSA infringement notices; and
- holders of BSA licences are required to keep construction related records for a minimum of seven years (i.e. contracts— and contract-related documentation, plans, specifications).

### **CONCLUSION**

Amendments to the *Building Services Authority Act 1991* (Qld) have codified a third tier of supervisor licence. The site supervisor, who will be limited to the supervision of on-site building works. Prior to 19 December 2008 applicants will be able to obtain a site supervision licence without the need to demonstrate possession of formal qualifications (subject to satisfaction of other criteria). Industry participants should also be aware of the BSA's increased powers regarding directions to rectify as well as the new raft of compliance powers.

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