

# Pre-Purchase Timber Pest Inspections

Conveyancing solicitors, the timber pest management industry and homebuyers now have a Standard by which to judge professional timber pest inspections - **Australian Standard AS 4349.3 Inspection of buildings - Timber pest inspections.**

With damage to property associated with timber pests in Australia estimated at over \$100 million per annum (*Federal Department of Primary Industry and Energy's National Registration Authority*) it is clear that this is a significant area of concern for homebuyers.

More than one in every five homes is attacked by termites during their lifetime (*State Forests*), and this number is believed to be increasing to one in every three homes (*Solutions Research Group*). In fact termites cause more damage to homes than fire. Consequently the provision of a timber pest report prior to the purchase of a property is very important for homebuyers.

Yet pre-purchase timber pest reports remain one of the most problematical areas for Consumer Affairs Departments, with many home buyers lodging complaints. Many of these complaints proceed to action through either the Consumer Affairs Tribunal or the Courts.

There has also been an increasing trend for homeowners to take action against the solicitor who arranged the inspection on their behalf. This is a consequence of the agent's alleged failure in their Duty of Care in the selection of the pest inspector, or in the interpretation of the report.

## **A benchmark is provided**

This new Standard provides a clear benchmark that can be used to determine just what is expected and feasible in such reports. It will prove a vital tool for protecting the interests of professionals. Solicitors who wish to ensure they fulfil their legal Duty of Care will need to ensure that any reports they commission comply with this Standard.

As knowledge of the Standard becomes more widespread, and it is being

publicised widely, one can expect homebuyers to become more aware of the implications. Thus, if a homeowner moves into a property, and finds a termite problem, it is quite possible that they make take action against their solicitor; if it transpires that the report did not meet the requirements of the Standard, or the inspector selected did not hold qualifications in accord with those recommended in the Standard!

Great care is required by solicitors who engage or recommend a timber pest inspector since the wording for all insurance policies available to timber pest inspectors requires compliance with relevant Australian Standards. If a report doesn't comply with Standard; the insurer may refuse to pay in the event of a claim. This might then leave successful litigants with the problem of seeking payment from a firm that may not have any assets to cover the bill. This could further encourage action to be commenced against the solicitor; or encourage consumers to take joint actions against both the inspector and the solicitor.

## **Competent Inspections**

The most controversial area of the Standard has been the determination of minimum competency standards for inspectors. Solicitors should look to timber pest inspectors who hold proof of such qualifications.

The University of Newcastle are offering a program whereby timber pest managers are professionally assessed as complying with the requirements of both AS 4349.3 and the National Pest Control Competency Standards (Established by the Australian National Training Authority (ANTA).) Inspectors who are assessed as competent receive a Certificate from The University accrediting them as meeting the skill competencies required by AS 4349.3; as well as confirming their competency under the National Competency program. Solicitors might choose to look for such proof of compliance as this will ensure they will fulfil their Duty of Care.

Inspectors should also carry, in the words of the Standard, "adequate insurance, including public risk and professional indemnity". Proof of appropriate cover should be provided. In today's litigious environment I would suggest that the minimum cover that should be carried would be \$5 million of public risk and \$500,000 of professional indemnity. If an inspector cannot show proof of such cover you should seek the services of another firm.

FAI are the major insurer offering the above cover to professional pest inspectors. They operate a system whereby an inspector has to attach Professional Services Certificate to each and every report issued. This provides confirmation that appropriate insurance protection for that report and the report format has been approved by the insurer.

## **What the Standard Covers**

The scope of the standard details that inspectors must report upon any evidence of timber pests, the severity of damage, the susceptibility of the property to infestation, what remedial and protective measures are required and if there is a need for further investigation.

A number of terms are now clearly defined. The more important of these are the definitions for 'Active' - presence of live timber pests at the time of inspection and 'Inactive' - absence of live timber pests at the time of inspection. This may seem very basic but it is the core of many arguments in litigation. Sometimes a

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pest manager may find damage but no active termites; the homeowner moves in a few months later and finds live termites. Who was right? A clear definition of inactive is therefore essential.

The property is defined as including the allotment, improvements and all timber structures such as buildings, patios, landscaping, retaining walls, fences and bridges. This means that garden areas, trees, etc must be inspected (within the property boundaries up to a maximum distance of 50m). In properties with a large number of trees this may result in an increased cost for the report.

Structural damage is defined as being significant impairment to the integrity of serviceability of any structural timber in service within the structure.

Timber pests are defined as subterranean and dampwood termites, borers of seasoned timber and wood decay fungi. Solicitors would be wise NOT to request an inspection for termites only. You risk being judged negligent if you commission or recommend a 'termite only' report for the purchaser, and fungal decay or borer damage is later located.

## The Report

The inspection report should cover the following areas and to be provided in writing. Reports of less than four or five pages are unlikely to meet the requirements of the Standard!

- First name and address details, Inspector's name and date of Inspection
- Client details
- Description of the property
- Areas not inspected
- Genus of termites found and, if practicable, the species and its potential to cause damage
- Presence of other timber pests & recommendations
- Evidence of inactive infestation
- Evidence of treatment
- Location of damaged timbers and general description of the severity
- whether further inspections are required
- Recommended control measures
- Inaccessible areas
- Conducive areas
- The recommended frequency of future inspections
- Any limitations and conditions to the report.

## Vendor Supplied Reports

There has been a recent trend towards vendor supplied reports. One must always remember that the vendor has different interests to the purchaser. There have certainly been documented cases where a vendor has commissioned a report, covered up the timber pest evidence that was revealed and then commissioned a further report to provide a 'clean' result. A prudent purchaser should always arrange their own report regardless of the presence of a vendor supplied report.

*Steven G Broadbent*

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- Perusal and comment on legislation.
- Perusal and comment on Court rules/procedure.
- Disseminate information of import to the profession.
- Assist legal practitioners with information in relation to admission, employment and practice in the Northern Territory.
- Assist articled clerks/practitioners to secure positions.
- Assist firms to secure suitable employees.
- Advise practitioners on requirements to establish a legal practice.
- Membership of the Law Council of Australia and other relevant organisations.
- Recommend members suitable for positions on the Admission Board.
- Liaise with Master of the Supreme Court on random audits.
- Liaise with Registrar of the Supreme Court on applications for admission.
- Liaise with Chief Justice on appointments of Queen's Counsel.
- Arrange Martin Kriewaldt Memorial Address.
- Establish prize portfolio for law students/graduates.
- Administration of the Law Society Public Purposes Trust.
- Administration of the Northern Territory Council of Law Reporting.
- Promote the services provided by the profession through the First Interview Scheme.

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