

| <b>The Industry Association of Building and Property Inspectors in WA Inc – Inspect WA</b> |   |
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| <b>Position Paper 05.2021</b><br><b>Title: Pre Purchase Building Inspection Annexure</b>   |   |
| Subject  | Pre-Purchase Building Inspection Annexure   |
| Association Position   | Refer Public Release  |
| Date Preparation Commenced   | 2020  |
| Date Provisional Approval by Committee for Release to Members for Comment                  | April 2021  |
| Final Approval by Committee and Release to Members   | May 2021  |
| Why was the Paper Released   | To provide members clienst with an alternative to the REIWA Annexure  |
| Key References   | Australian Standard AS 4349.1, As 4349.2 AS 4391.3  |
| Key Issues for Consideration   | <ul style="list-style-type: none"> <li>• Inequities of the current AS 4349.1 Appendix A inspections</li> <li>• Legislation differences between States in Australia in regard to “Cooling Off Periods”</li> <li>• Buyer ignorance in relation to BAS 4349.1 inspections</li> <li>• Issues with REIWA Annexure <ul style="list-style-type: none"> <li>○ Delays in inspections to post finance</li> <li>○ Limits of AS 4349.1</li> <li>○ Limited time frames for remediation of Major Structural Defects</li> </ul> </li> <li>• Increased Buyer risks</li> </ul> |
| IMPORTANT NOTE TO MEMBERS  | <ul style="list-style-type: none"> <li>• Members should ensure that the client engagement documentation incorporates the difference between the scope of the inspection required under this annexure as opposed to the standard REIWA Annexure.</li> </ul>  |
| Additional Observations  |   |
| Disclaimer   | This document is not intended to be Legal Advice. The document is only intended for Members of. The Industry Association of Building and Property Inspectors in WA. Where appropriate, readers of the document should seek their own independently legal advice   |

Signed Chairman

The Industry Association of Building and Property Inspectors in WA – Inspect WA

## Public Release – Position Paper 05.2021

**The Industry Association of Building and Property Inspectors in WA Inc – Inspect WA is pleased to release of its Position Paper on Pre-Purchase Building Inspection and its Supporting Annexure.**

### 1. Background

There were a number of issues that contributed to the release of this Position Paper:

1. The Association is concerned that Pre-Purchase Building Inspections conducted in strict accordance with AS 4349.1 Appendix A are being promoted as an adequate due diligence assessment of a building property to support the purchase of that property. The reality is the Scope of an AS 4349.1 Appendix A building inspections is extremely limited and excludes some key attributes of a property which may be critical to a Buyers due diligence assessment.
2. The Association is concerned that property buyers are entering into property purchase contracts without a full and frank understanding of the limitations of Structural Pre-Purchase Building Inspections conducted under AS 4349.1 Appendix A.
3. The Association is concerned about the number of Property Buyers who are prevented from undertaking a full building inspection from being undertaken, citing the contractual limitations of Pre-Purchase Structural Inspections.
4. AS 4349.1 Appendix A substantially limits the scope of the inspection. The ramifications for buyers are substantial:
  - a. The items to be inspected within the scope of the inspection are limited to a visual inspection of structural items only
    - i. In a standard double brick building or similar in WA the visual inspection is thus limited to
      1. Retaining walls directly related to the foundations of the building
      2. The concrete slab
      3. Load bearing walls
      4. The roof frame
    - ii. In a standard building on stumps in WA the visual inspection is thus limited to
      1. Retaining walls directly related to the foundations of the building
      2. The sub floor structure
      3. Load bearing walls
      4. The roof frame
  - b. Given the inspection is a visual inspection it is not unusual that substantial components of the identified structural elements of a residential inspection cannot be inspected. For example:
    - i. Often there is limited or no access to the sub floor area to inspect the sub floor frame on suspended floor properties. Manholes are often sealed, not accessible or do not provide sufficient OH&S approved crawl space.

- ii. Often floor coverings or furniture prevent access to sub floor manholes and or the actual slab.
    - iii. Often there are no manholes into roof spaces or the manhole entrances are covered by plumbing, electrical conduit or air conditioning ducting preventing access.
    - iv. Roof spaces often have limited crawl space and visibility due to the construction style, pitch of the roof, air conditioning ducting, insulation, skylights and similar.
    - v. There are height restrictions which can impact access to multi level buildings
  - c. The most significant and detrimental position is that pre purchase building inspections undertaken in strict accordance of AS4349.1 should not make any comment or observation on a substantial range of critical non-structural building elements (which may include major non-structural defects) which would otherwise be considered important considerations in standard due diligence inspections. For example, under AS 4394.1 Appendix A Inspection which the REIWA Annexure stipulates, the following items must be excluded and not commented on:
    - i. Roof covers and roof plumbing, despite examples where the roof covers need to be replaced or have substantial defects
    - ii. Collapsing ceilings
    - iii. Moisture ingress from external sources including but not limited to:
      - 1. Rising damp, lateral damp
      - 2. Moisture from adjacent pools
    - iv. Issues with balustrades, stairs, windows, doors, fences, minor structures, tiling and similar.
    - v. Structures beyond a “Residential building”.
  - d. It is important to note that while AS 4349.1 Appendix A inspections are utilised in almost every other State in Australia where statutory “cooling off” periods also exist on residential property purchase contracts which enable property buyers to withdraw from Real Estate Purchase contracts. This important concession is not applicable in WA for WA residential property buyers. As a result, WA residential property buyers need to place greater reliance on their Pre-Purchase Building Inspections and Associated Offer to Purchase Contracts.
2. Australian Standard AS 4349.1 sets out professional standards for pre purchase building inspections. The standard covers a myriad of situations. Essentially the Standard talks to the requirements associated with a client engaging a building inspection to conduct a pre purchase building inspection and the minimum obligations. In essence the scope of the pre purchase building inspection can be determined and agreed between the client and the Inspector. **Importantly, under Australian Standard AS 4349.1 Pre-Purchase Building inspections do not have to be limited to Appended A Inspections.**
  3. The Association acknowledges the motivations in a Seller wanting to limit the Pre-Purchase inspections AS 4349.1 Appendix A inspections given the limited scope of the inspection, and hence re reduced likelihood a Building Inspection will identify issues that the Seller may otherwise have to remediate.
  4. The Association acknowledges that a Pre Purchase Building Inspection with a scope broader than AS 4349.1 Appendix 1 scope may reduce the attractiveness of a Buyers Purchase Offer on a property, especially in a very active property market. . However, the Association believes that restricting the Buyers ability to undertake an equitable due diligence inspection of the property potentially and disproportionately increases the Buyers risks.

## **2. The Association's position is:**

1. Unless full and frank disclosure is provided to property buyers in relation to Building Inspections conducted under the requirements of AS 43493.1 Appendix A, the Association believes Pre-Purchase Building inspections conducted within the limitations of AS 43493.1 Appendix A are not an appropriate due diligence inspection for property buyers.
5. Where a residential property buyer has been provided with a full and frank disclosure of the limitations of AS 43493.1 Appendix A pre purchase building inspections and accepts the associated limitations, then these inspections may be appropriate. This will be dependent on the level of technical and commercial understanding of the buyer.
6. The Association recommends against property buyers relying on AS 43493.1 Appendix A building inspections to provide themselves with an equitable due diligence building inspection on residential properties that they are considering purchasing.

## **3. Alternative Pre Purchase Building Inspection Annexure for Property Buyers**

There are a range of valid options for property buyers to consider.

The Association has developed an Alternative Pre-Purchase Building Inspection Annexure (Refer Attached).

The Association believes that the Alternative Annexure and associated Building Inspection has the potential to represent a more equitable position for property Buyers.

This document is not intended to be Legal Advice. The document is only intended for use by Members of The Industry Association of Building and Property Inspectors in WA and their clients.

**Where appropriate, readers of the document must seek their own independently legal advice.**

Signed Chairman

The Industry Association of Building and Property Inspectors in WA – Inspect WA

13 June 2021

# AUSTRALIAN STANDARD PRE- PURCHASE BUILDING INSPECTION ANNEXURE 2021

ANNEXURE

This annexure forms part of the Contract for the sale of Land or Strata Title for the Property at:

To enable the Buyer to complete a reasonable Pre-Purchase Due Diligence analysis on the above property the buyer may at their expense obtain an independent building inspection report from a Building Inspector on the above property by 4.00 pm on: (Complete A\* of B\*)

A\*) Within 7 business days for metropolitan properties and 14 days for regional properties of the Buyer receiving written acceptance of this contract, **OR**

B\*) the above property by 4.00 pm on  /  /  ("Date")

1. The Seller agrees to use their best endeavours to provide full access to the property to the Sellers Building Inspector. If the Seller fails to permit the Building Inspector to attend the property at the time requested by the Building Inspector, then the time for the inspection to be carried out above shall be extended by the period of any delay in obtaining access.
2. The scope of the inspection is in accordance with AS 4349.1 The specific terms of the inspection are to be agreed between the Buyer and their Building Inspector but exclude all forms of invasive or destructive inspections.
3. Where the Building Inspection report identifies issues inconsistent with the Sellers representations or otherwise discloses that the state of the Property is not to the Buyer's reasonable satisfaction, the Buyer can terminate the Contract at any time within seven (7) days of the Date. The Buyers is under no obligation to provide the Building Inspection report to the Seller.
4. The Buyer may, but is not obliged to, provide the Seller with a copy of the Building Inspection report, and the parties may negotiate for work to be completed by the Seller to rectify any issues in the Building Inspection report, or vary the purchase price in light of the contents of the Building Inspection report. In the event that the parties do not reach agreement, the Buyer remains entitled to terminate the Contract.
5. Where the Buyer does not terminate the Contract then this Annexure ceases to apply, and the Contract continues unaffected by this Annexure.
6. In this Annexure:
  - A) "Building Inspector" means a person who is trained to conduct Building Inspections and is a WA Registered Builder, WA Registered Building Surveyor, or a practicing WA Structural Engineer.
  - B) "Metropolitan" means within 100 kilometres pf Perth GPO
  - C) "Regional" means all areas in WA which are not metropolitan
  - D) "Full Access means access to all rooms, sheds, out buildings and structures to the described land. All manholes including those to roof spaces and sub floor areas must be opened by the Seller prior to the Building Inspectors arrival. Main Electrical Boards or Sub Boards and Solar Panels Inverters must be able to be turned off to enable access to the roof space.
  - E) "Termination Notice" means a notice substantially in the form attached to this Annexure.

| Buyer Signature | Buyer Signature | Seller Signature | Seller Signature |
|-----------------|-----------------|------------------|------------------|
|                 |                 |                  |                  |
| Buyer Signature | Buyer Signature | Seller Signature | Seller Signature |
|                 |                 |                  |                  |

# Notice of Contract Termination

(For Use in conjunction with the Inspect WA Pre Purchase Building Inspection Annexure - Form 20 2021. Terms defined in that Annexure have the same meaning in this Notice)

|   |                        |                        |                        |
|---|------------------------|------------------------|------------------------|
| <b>Sellers Name</b>   |                        |                        |                        |
| <b>Sellers Agent or Sellers Representative Name</b>   |                        |                        |                        |
| <b>Insert Email Address or Address where Notice will be Served.</b><br><small>Email is only acceptable when Seller consents to Notices being Sent via email Within Offer to Purchase Contract</small> |                        |                        |                        |
| <b>This Termination Notice is served as per clause 4 of the Inspect WA Pre Purchase Building Inspection Annexure incorporated into the Contract of Sale for the Property located at:</b>              |                        |                        |                        |
|   |                        |                        |                        |
| <b>Insert property address above</b>  |                        |                        |                        |
| <b>This Notice is only effective when it contains the signatures of the Buyers below.</b>   |                        |                        |                        |
| <b>Buyer Signature</b>  | <b>Buyer Signature</b> | <b>Buyer Signature</b> | <b>Buyer Signature</b> |
|   |                        |                        |                        |
| <b>Buyers Name</b>  | <b>Buyers Name</b>     | <b>Buyers Name</b>     | <b>Buyers Name</b>     |
|   |                        |                        |                        |