

Public Release – Position Paper 19.2020

The Industry Association of Building and Property Inspectors in WA Inc – Inspect WA is pleased to announce the release of its Position Paper on Residential Pre Purchase Structural Building Inspections. Are they an adequate Due Diligence Report?

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 Structural Building Inspections are being erroneously promoted as an adequate due diligence assessment of a residential property to support the purchase of residential properties.
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.
3. The Association is concerned about the growing number of Property Agents who prevent a full building inspection from being undertaken, citing the contractual limitations of Pre Purchase Structural Inspections. Despite the buyer not being provided with adequate disclosure of the limitations of the REIWA Clause relating to AS 4349.1 Appendix A inspections.
4. 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.
5. In essence the scope of the pre purchase building inspection can be determined and agreed between the client and the Inspector.
6. AS 4349.1 Appendix A substantially limits the scope of the inspection. The ramifications for buyers are substantial:
 1. 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 home 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 double brick home 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

2. 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.
 3. 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 Inspections 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.
 4. It is important to note that while AS 4349.1 Appendix A inspections may be utilised in almost every other State in Australia where statutory “cooling off” periods also exist which would 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.
2. The Association acknowledges the inherent conflicts of interest where a Listing Agent, who primarily represents the Seller, drafts an Offer to Purchase Contract on behalf of the Buyer, recommends a pre purchase building inspection clause. The current AS 4349.1 Appendix A reliant clause is extremely narrow, as demonstrated above, and hence represents a sound position for the Seller and potentially the Agent whose commission is reliant on a successful sale. In this process, there is nobody specifically assisting the Buyer to protect their interest.

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 residential property buyers.
3. 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.
4. The description that major non-structural defects, i.e. the items excluded AS 43493.1 Appendix A, as minor maintenance issues, is inherently incorrect given some of these defects can cost between \$10,000 and sometimes beyond \$50,000 to resolve.
5. The Association recommends against residential 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 Options for Property Buyers

There are a range of valid options for property buyers to consider. These may include:

1. The Association recommends buyers consider having a building inspection undertaken on a property prior to making a formal offer to purchase.
 - a. Advantages
 - i. The buyer can determine the scope of the inspection with their building inspector without limitation
 - b. Disadvantage
 - i. The property may be sold prior to the buyer receiving their building inspection report and being able to lodge an offer to purchase. Hence, the investment in the building inspection may be lost.
 - ii. The seller has to make the property available for inspection with no guarantee that an offer to purchase will eventuate.
2. The Association recommends buyers consider making an offer to purchase with a subject to clause along the lines of:

"This offer is subject to the buyer obtaining a building inspection to their satisfaction within 7 business days of the acceptance of this offer.

 - a. Advantages
 - i. A price for the purchase of the property is agreed and a time frame for the building inspection is set
 - ii. The buyer can determine the scope of the inspection with their building inspector without limitation
 - iii. There is no confusion with the outcome. The buyer accepts or rejects the building inspection. The transaction proceeds or does not proceed based on the buyers acceptance or rejection of the building inspection.
 - iv. The time for determination is relatively short and equitable

- b. Disadvantage
 - i. There are minimal disadvantages noting that most transactions are subject to finance with an outcome period of 20 plus business days.

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 should seek their own independently legal advice.

Signed Chairman

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

14 August 2020