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Smoke Alarms In All Domestic Dwellings under the Fire and Rescue Service Amendment Bill 2006 (Qld)

The Queensland Fire and Rescue Service reports that nearly 80% of deaths from fires in Queensland homes are in dwellings without smoke alarms and around 50% of deaths occur between midnight and 8 am while people are asleep. However, only 72% of Queensland homes have a smoke alarm installed that is in working order.

Under the Building Code of Australia, it is compulsory to have hard-wired smoke alarms installed in Queensland residential homes built or significantly renovated after 1 July 1997.

However, the **Fire and Rescue Service Amendment Bill 2006 *(Qld)***, *introduced into the Queensland Legislative Assembly on 21 March 2006, will mandate that from 1 July 2007, all homes (including pre-1997 homes) must have installed in them at least one 9 volt battery powered smoke alarm.*

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EXECUTIVE SUMMARY

The Queensland Fire and Rescue Service (QFRS) reports that nearly 80% of deaths from fires in Queensland homes are in dwellings without smoke alarms and around 50% of deaths occur between midnight and 8 am while people are asleep. However, **only 72% of Queensland homes** have a smoke alarm installed that is in working order.

Under the **Building Code of Australia**, it is compulsory to have hard-wired smoke alarms installed in Queensland residential homes built or significantly renovated (more than 50%) after 1 July 1997. Smoke alarms must comply with Australian Standard (AS) 3786 and be connected to the mains power where it is connected to the building. Smoke alarms are required to be installed on or near the ceiling on any storey between any area containing bedrooms and the rest of the home (such as in a hallway). For a storey not containing bedrooms, they must be installed on the ceiling in the most likely evacuation route. These requirements do not apply to older dwellings that have not been significantly renovated: **page 1**.

However, the **Fire and Rescue Service Amendment Bill 2006 (Qld)** (the Bill), introduced on 21 March 2006, will make it compulsory for all homes (including pre-1997 homes) to have installed in them at least one 9 volt battery powered smoke alarm. The laws will apply from 1 July 2007: **pages 2-3**.

There are two types of smoke alarms which offer a different level of sensitivity to fire – **ionisation** and **photoelectric**. Both are covered by AS 3786-1993 (as subsequently amended). There are also two choices of smoke alarms – the 240 volt (**hard-wired**) smoke alarms with a battery backup in case of power failure or the **9 volt battery operated** smoke alarms: **pages 3-5**.

The Queensland Department of Emergency Services (DES) *Annual Report 2004-2005* records that 72% of Queensland homes had operational smoke alarms installed during the reporting period, falling slightly short of the target of 73-80% and showing no significant increase from the 71.9% figure in 2001-2002. The DES considered that new impetus may be needed from educational and legislative initiatives: **pages 5-8**.

In Queensland, the **current laws** governing the installation of smoke alarms are found in the ***Standard Building Regulation 1993*** **(Qld)**, s 8 of which picks up the Building Code of Australia. All residential homes built or significantly renovated since 1 July 1997 are required to have hard-wired smoke alarms installed in them. During 2004-2005, the Queensland Government established a legislative **review**, marked by the release of the *Review of Fire Safety Arrangements in Queensland Discussion Paper* in December 2004 and followed by public consultation up to February 2005. One of the outcomes was an announcement by the Government that new smoke alarm laws would be introduced in the near future: **pages 8-10**.

Clause 37 of the **Bill** inserts a proposed new **Part 9A**, **Division 5A** into the ***Fire and Rescue Service Act 1990*** **(Qld)** to deal with the compulsory installation and

ongoing maintenance of smoke alarms in domestic dwellings. The proposed new measures will also cover rental properties and transfers of residential land. The proposed new laws are discussed on **pages 10-13**.

Smoke alarms are compulsory in **Victoria**, **New South Wales** (from May 2006) and **South Australia** for all dwellings, not just those constructed since 1997 or which have undergone major renovation work. The legislation in these jurisdictions is briefly outlined on **pages 13-18**.

1 BACKGROUND

During 2004-2005, the Queensland Fire and Rescue Service (QFRS) responded to more than 17,000 fires.[1] Smoke alarms provide a means of giving occupants of a building early warning of a fire. This is particularly important during the night when people are sleeping – a time when senses are diminished and the smoke may overcome the sleeping person, causing unconsciousness. The alarm is designed to activate at an early stage of the development of the fire before there is much heat and smoke involved so that occupants can escape from the building. Once a fire takes hold it can be difficult to evacuate quickly. However, only around 72% of Queensland homes have a smoke alarm installed that is in working order.

The QFRS reports that nearly 80% of deaths from fires in Queensland homes are in dwellings without smoke alarms and around 50% of deaths occur between midnight and 8 am while people are asleep.[2]

Under the Building Code of Australia (BCA), it has been compulsory to have hard-wired smoke alarms installed in Queensland residential homes built or significantly renovated (more than 50%) after 1 July 1997. The requirements apply to Class 1a and 1b buildings (defined in the Glossary). Smoke alarms must comply with Australian Standard (AS) 3786. The alarms must be installed on or near the ceiling on any storey between any area containing bedrooms and the rest of the home (such as in a hallway). For a storey not containing bedrooms, they must be installed on the ceiling in the most likely evacuation route. Thus, new/substantially renovated two-storey homes should have at least one alarm on each level. They should not be installed in 'dead air' spaces (such as at the apex of a cathedral ceiling) where smoke may not reach the alarm.

The BCA has been adopted into building regulations of all Australian states and territories. In Queensland, the current laws governing the installation of smoke alarms are found in s 8 of the *Standard Building Regulation 1993* (Qld). The requirement for a smoke alarm does not currently apply to older homes that have not had major renovations. Thus, many homes built before July 1997 do not have smoke alarms installed in them.

However, the **Fire and Rescue Service Amendment Bill 2006 (Qld)** (the Bill), introduced into the Queensland Legislative Assembly on 21 March 2006, will make it compulsory that all homes (including pre-1997 homes) have installed in

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1 Queensland Department of Emergency Services, *Annual Report 2004-2005*, p 8.

2 QFRS, 'New smoke alarm laws – your questions answered', *Fact Sheet*, http://www.fire.qld.gov.au/pdf/New%20Smoke%20Alarm%20Legislation%20Q&A.pdf.

them, at the very least, a 9 volt battery-powered smoke alarm. The laws will apply from 1 July 2007. This is a minimum requirement and should provide a reasonable level of protection if the batteries are replaced regularly and the alarm is tested and cleaned in accordance with the manufacturer's instructions.[3] The laws will apply to Class 1a buildings (detached houses, row houses, townhouses, terrace houses or villa units) and sole occupancy units in Class 2 buildings.[4] The 9 volt battery must have at least one year of life and be changed each year. The appropriate location of smoke alarms in the dwelling will mirror the current BCA requirements for post-1997 homes, as described above. Basically, the laws will mean one alarm for each level of the home situated outside bedrooms.[5] These type of alarms cost around $10-$20.

Obligations will also be imposed on vendors of residential property and upon landlords and tenants of rental properties.

As the 9 volt battery powered alarm is a minimum requirement, many homeowners may wish to install a higher quality alarm that provides greater protection. An alternative is a long-life 9 volt lithium battery that can be renewable or non-renewable that lasts the life of the alarm – up to 10 years. The big advantage for a homeowner is that it does not have to be replaced every year. Another option is a mains power supplied alarm with a rechargeable battery backup (i.e. a hard-wired smoke alarm) which must be installed by a licensed electrician. The hard-wired alarm provides the greatest level of reliability because it is powered from the mains electricity supply but has a battery backup in case of a power blackout or failure.[6]

The Minister for Emergency Services, the Hon Pat Purcell MP, is hopeful that the new requirements will help to address the 16 deaths and 145 injuries that are estimated to occur each year in Queensland house fires.[7]

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3 Hon PD Purcell MP, Minister for Emergency Services, Fire and Rescue Service Amendment Bill 2006 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, pp 1369-1371, p 1369.

4 The Glossary at the end of this Research Brief provides more detail of the classifications of buildings under the BCA.

5 QFRS, 'Installing and positioning smoke alarms', *Fact Sheet*, http://www.fire.qld.gov.au/communitysafety/smokealarms/installation.asp;

6 QFRS, 'How to choose between brands', *Fact Sheet* http://www.fire.qld.gov.au/communitysafety/smokealarms/choosing.asp; 'New smoke alarm laws – The facts', *Fact Sheet*, http://www.fire.qld.gov.au/pdf/New%20Smoke%20Alarm%20Legislation%20Fact%20Sheet.pdf.

7 Hon PD Purcell MP, Minister for Emergency Services, 'Smoke Alarms – Ministerial Statement', *Queensland Parliamentary Debates*, 22 November 2005, p 4033.

This Research Brief will not discuss smoke alarm requirements in budget accommodation buildings but the background to the measures applying to such premises was discussed in the Queensland Parliamentary Library Research Brief, *Fire Safety and Budget Accommodation: The Building and Other Legislation Amendment Bill 2001 (Qld)*.[8] The Bill currently before Parliament also strengthens some fire safety laws regarding budget accommodation buildings.

As will be seen, one of the difficulties that no legislation can overcome, is the lethargy, carelessness, or ignorance of householders. As one officer from the QFRS has said, his crew has found smoke alarms sitting on top of the fridge waiting for new batteries to be put in or alarms which had had the batteries removed from them because they were making the 'low-battery' warning noise and it had become annoying.[9]

2 Types and Choices of Smoke Alarms

There are two types of smoke alarms which offer a different level of sensitivity to fire – ionisation and photoelectric. Both are covered by Australian Standard AS 3786-1993 (as subsequently amended).[10]

Ionisation smoke alarms are very sensitive and should detect particles of combustion that are not capable of being seen, as minute as .01 micron. An example is a particle of combustion from cooking toast. Due to their sensitivity, these alarms are not suitable for using in kitchens, small flats or units. They should not be placed near heaters as they can detect steam as well as smoke. These alarms are best used in bedrooms and hallways. They are cheaper than other types of alarms and ideal for detecting fast flaming fires where there is little smoke. A disadvantage is that they contain radioactive material.[11] Ionisation smoke alarms are the most commonly used type of alarms in Australia.

Photoelectric smoke alarms detect visible particles of combustion from .3 micron – they 'see' the smoke. The alarm responds to smouldering fires and dense smoke. As these alarms are not as sensitive as ionisation alarms and operate on particles that are visible, such as smoke, they can be used in and around kitchens, in small

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8 At http://www.parliament.qld.gov.au/ConcordDocs/RBR/RBR0201ND.PDF.

9 'Save your life: buy a smoke alarm', *ABC Wide Bay Queensland*, 23 November 2005, downloaded 17 March 2006.

10 Throughout this Brief, where AS 3786 – 1993 is used it is intended to refer to that standard as amended from time to time.

11 QFRS, 'How to Choose Between Brands'.

flats and units, and near heaters. These alarms do not contain radioactive material. Among the disadvantages are that these alarms are prone to being activated by dust and insects and they are more expensive.[12]

Both types of smoke alarms should, ideally, be hard-wired (i.e. connected to mains power with a battery back up). Only a licensed electrical contractor must do this.

The QFRS recommends that the alarm purchased carries the Standards Australia mark or bears a Scientific Services Laboratory (SSL) label. The SSL tests smoke alarms to ensure compliance with the Australian Standard 3786.

As briefly mentioned earlier, there are two choices of smoke alarms –

- 240 volt (hard-wired) smoke alarms connected to the electrical system of the home with a battery backup in case of power failure. The advantages of this choice include greater reliability; the ability to interconnect models which sound alarms in all connected units; and a hush button (on some models) to silence a false alarm. It can also come with a long-life lithium battery that is built-in and tamper proof. The main drawback is its cost and the requirement that it be installed by a licensed electrician;

- 9 volt smoke alarms operated only by a battery which are easily installed. Many models have some similar features to the hard-wired models and some can be interconnected but the battery must be tested and replaced regularly. An alternative is a long-life 9 volt lithium battery that can be renewable or non-renewable that lasts the life of the alarm – up to 10 years.

There are presently no Australian Standards regarding smoke alarms for hearing impaired or blind people. However, special types of smoke alarms are available for persons who are hearing impaired. Some have a flashing strobe light and/or a vibrating pad that can be placed under a pillow and are activated when the alarm sounds. University research and testing is underway on developing a type of voice alarm that may be more effective in waking up children and people who may not be awoken easily by the normal smoke alarm, such as those with high frequency hearing loss.[13]

Interconnectable models can also be obtained which sound alarms in all connected units. The alarms are usually connected by a wire which transfers a signal from one alarm to the others in the chain. When one alarm is triggered, all the others in

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12 QFRS, 'How to Choose Between Brands'.

13 Victoria University, 'Voice smoke alarms more likely to wake up children: VU research reveals', *Media Release*, 3 October 2003, http://www.vu.edu.au/home/media_releases.

the home will sound alarms at the same time. Some literature suggests that smoke alarms should ideally be interconnected.[14]

A heat detector can be used in places, such as kitchens, where a smoke alarm would often be set off as a 'false alarm'. A rate-of-rise heat detector will be triggered if the temperature goes above a certain point or the temperature rises very quickly.

3 SMOKE ALARM USE

NRMA Insurance has found that there are more than 10,000 house fires every year in Australia. The frequency of homes damaged by fires that start in and around the home is about nine times greater than bushfires. The most common causes are cooking, smoking, electrical faults, and wiring or appliances. About 33% of fires begin in the kitchen. The NRMA advises that smoke alarms should be installed outside each bedroom and living area and tested weekly. It noted that 11% of Australian households had stated that they have not installed a smoke alarm.[15]

The Queensland Department of Emergency Services (DES) *Annual Report 2004-2005* records that 72% of Queensland homes had operational smoke alarms installed during the reporting period, falling slightly short of the target of 73-80% and showing no significant increase from the 71.9% figure in 2001-2002.[16] In response to there being no real increase in the uptake of smoke alarms, the DES considered that new impetus may be needed from educational and legislative initiatives.[17]

In a 2001 study, the Australian Bureau of Statistics (ABS) found that, during the five years from October 1996 and October 2001, the proportion of Queensland homes with smoke alarms increased from 39% to 69%, with most uptake being by

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[14] Australian Greenhouse Office, Ministerial Council on Energy, Smoke Alarms, *Standby Product Profile*, March 2004, p 4 (forming part of 'Australia's Standby Power Strategy 2002-2012 – Money Isn't All You're Saving', *Final Report*).

[15] NRMA Insurance, 'Safe as Houses: Risk and Reality Around the Home', December 2005, pp 13-14.

[16] Queensland Department of Emergency Services (DES), *Annual Report 2004-2005*, pp 8-9, http://www.emergency.qld.gov.au/publications/annreport/2004_05/.

[17] DES, *Annual Report 2004-2005*, p 78.

households with young children and elderly householders (74% and 73%, respectively).[18]

The Productivity Commission's *Report on Government Services 2006* found that the rate of accidental residential structure fires (e.g. fires inside a building) per 100,000 households was just over 100 in 2004-2005. For Queensland during 2004-2005, there were around 60 residential structure fires per 100,000 households, lower than most other jurisdictions over that period.[19] The Report also considered the level of safe fire practices in the community as an output indicator of Governments' objective to reduce the impact of fires on the Australian community and manage the risk of fires. It was stated that, with other factors held constant, the more households with a fire safety or prevention measure in place (such as smoke alarms or fire sprinklers), the less likely it was for a fire to occur or for it to cause considerable damage.[20]

A measure of the extent of community preparedness for fire is gauged by the proportion of residential structures with smoke alarms. Nationally consistent and complete data is not currently available but data from 2001-2002 can be sourced, albeit with some comparative limitations, from jurisdictional collections.[21] Five jurisdictions, including Queensland, carried out surveys in 2004-2005 of total households that had an operational smoke alarm or a smoke detector installed. Queensland data was collected by the Office of Economic and Statistical Research as part of the November 2004 Queensland Household Survey and the figure produced was an estimate for the whole Queensland population. The Survey found that, in 2004-2005, around 72% of households had an operational smoke alarm

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18 ABS, Safety in the Home, Queensland, 'Home smoke alarms increase by three quarters in Queensland', April 2002, Cat.4387.3. In this context, it could be noted that the BCA smoke alarm requirements applied to new or significantly renovated homes from 1 July 1997.

19 Productivity Commission, *Report on Government Services 2006*, Emergency Management, p 8.17, http://www.pc.gov.au/gsp/reports/rogs/2006/emergencymanagement/index.html, stating that the measure may not be entirely comparable across jurisdictions.

20 *Report on Government Services 2006*, p 8.20. The difficulty is that the level of safe fire practices indicator does not take into account the degree to which the practices contribute to fire prevention and mitigation. The indicator is to be developed by the Australian Bureau of Statistics (ABS) and reported in the near future.

21 *Report on Government Services 2006*, p 8.20

installed.[22] Victoria appeared to have the best uptake of the five jurisdictions surveyed, with around 95% of households having smoke alarms.[23]

Two related *British Medical Journal* studies suggest that legislation may not itself suffice in encouraging the installation and maintenance of smoke alarms and that governments may have their work cut out in educating householders in their proper use.

The first investigation was a 2002 randomised control study[24] that sought to identify which type of smoke alarm was most likely to remain operational in local authority inner city housing estates involving over 2000 households. One of five types of smoke alarms was installed in each home (ionisation sensor with a zinc battery; ionisation sensor with a zinc battery and pause button; ionisation sensor with a lithium battery and pause button; optical sensor with a lithium battery; or optical sensor with a zinc battery). The main outcome to measure was the percentage of homes with any working smoke alarm after 15 months and the percentage actually still working after that time. It was found that 54.4% of all households and 45.9% of households occupied by smokers had a working alarm after 15 months. Nearly half the alarms installed were not working. The most common reasons for non-function were missing batteries, missing alarm and disconnected battery. Ionisation smoke alarms with long life lithium batteries were more likely to be working. It was concluded that the type of alarm and power source were important determinants of whether a household had a working smoke alarm.[25]

The second *British Medical Journal* study sought to measure the effect of giving out free smoke alarms to poor urban households on the rate of fire and fire related injury two years after distribution. Free alarms were given out to rental households in a deprived multi-ethnic, urban community of inner London. Those households tended to include elderly persons or children. The alarms, fittings and educational brochures were freely distributed and alarms were installed on request. It was found that distributing free alarms did not reduce fire related injuries, admissions to

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22 The Queensland Household Survey was commissioned by the Queensland DES and is not available publicly. The figures provided here are as quoted in the *Report on Government Services 2006*.

23 *Report on Government Services 2006*, p 8.21.

24 Where participants are allocated randomly to two or more groups in order to minimise bias and other distorting factors so that the effects of a type of intervention on one group can be measured as against outcomes for other groups where intervention has not occurred.

25 D Rowland et al, 'Prevalence of working smoke alarms in local authority inner city housing', *British Medical Journal*, vol 325, 2002, pp 998-1001.

hospital and deaths. Few alarms had been installed or maintained. Thus, it was concluded that giving out free smoke alarms may be a waste of resources and of little benefit unless installation and maintenance is assured.[26]

Research by the QFRS suggests that most smoke alarms in Queensland homes are battery operated. In 97% of fatal fires, smoke alarms were either not fitted or not working. In the latter case, this was mainly due to the batteries being flat or having been removed.[27]

The Queensland DES has teamed up with the QFRS to develop the Safehome program. This program is designed to assist householders to conduct a safety and fire awareness inspection of their home and is offered free of charge by the QFRS. A local fire fighter is invited by a householder to come to the home to seek out fire and safety hazards in and around it. Once identified, the householder can then take necessary action to eliminate the problem. It is reported that Safehome has contributed to over 80% of homes having smoke alarms installed and 39% having a fire evacuation plan.[28]

The QFRS has information on its website about different types of smoke alarms and associated information to assist homeowners.[29]

4 REVIEW OF FIRE SAFETY LEGISLATION

In Queensland, the current laws governing the installation of smoke alarms are found in the *Standard Building Regulation 1993* (Qld), s 8 of which picks up the Building Code of Australia that requires all residential homes built or significantly renovated (more than 50%) since 1 July 1997 to have hard-wired smoke alarms installed in them. Those alarms must meet the requirements of Australian Standard 3786.

During 2004-2005, the Queensland Government established a legislative review to implement a recommendation of the Childers Taskforce Report which states that such a review should be undertaken. This was marked by the release of the *Review*

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26 C DiGuiseppi et al, 'Incidence of fires and related injuries after giving out free smoke alarms: cluster randomised controlled trial', *British Medical Journal*, vol 325, 2002, pp 995-997.

27 'New laws on smoke alarms', *News Bulletin*, Quartile Research, http://nb.quartileresearch.com.au, downloaded 17 March 2006.

28 DES, *Annual Report 2004-2005*, p 36.

29 At http://www.fire.qld.gov.au/communitysafety/smokealarms/default.asp and http://www.fire.qld.gov.au/default.asp.

of Fire Safety Arrangements in Queensland Discussion Paper (no longer available on DES/QFRS websites) in December 2004, followed by public consultation up to February 2005. The main issues that were addressed in the *Discussion Paper* include –

- increasing the percentage of smoke alarms in Queensland households to more than the current 72%;
- dealing with serious overcrowding issues in public assembly buildings such as licensed clubs;
- reducing unwanted alarm activations, thereby reducing the risks and costs associated with such activations;
- clarifying and expanding the obligation for all buildings to have fire and evacuation plans;
- ensuring the maintenance of performance solutions used to gain building approval under the BCA; and
- creating an independent review process where assessable building work is required by the QFRS to address safety issues.[30]

After an extensive review, the Minister for Emergency Services, the Hon Pat Purcell MP, announced that, from 1 July 2007, all homes and units in Queensland will be required to have smoke alarms installed. This will mean that all homes, even those built before 1997, must have a battery powered smoke alarm as a minimum requirement.[31]

In a statement in November 2005, the Queensland Premier and the Minister for Emergency Services said that amendments would also be made to the *Fire and Rescue Service Act 1990* to restrict overcrowding in nightclubs and address the problem of false alarms being activated in buildings. Mr Purcell indicated that extending the smoke alarm laws to apply to all homes and units could save $70 million to the community over the next 20 years.[32]

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30 DES, *Annual Report 2004-2005*, p 48.

31 Queensland Department of Housing, 'Smoke Alarm Legislation Detailed in State Parliament', *Smart Housing Update*, January 2006.

32 Hon Peter Beattie MP, Premier & Treasurer, 'All Queensland Homes to Have Smoke Alarms', *Media Statement*, 21 November 2005.

The DES believes that by extending alarm coverage to the 286,000 homes that do not have alarms at present, there is potential to save 106 lives over the next 20 years.[33]

5 THE FIRE AND RESCUE SERVICE AMENDMENT BILL 2006

The Fire and Rescue Service Amendment Bill 2006 (Qld) (the Bill) was introduced into the Queensland Legislative Assembly by the Hon PD Purcell MP, Minister for Emergency Services, on 21 April 2006.

In addition to introducing laws requiring smoke alarms to be installed in all domestic dwellings whenever constructed, the Bill also seeks to address fire safety in other buildings and to improve other aspects of the fire safety regulatory framework. While this Research Brief considers only those new provisions dealing with installation and maintenance of smoke alarms in domestic dwellings, the other measures introduced by the Bill are, in brief –

- new powers for the Commissioner of the QFRS to require occupiers of identified 'at risk' licensed premises to establish and implement a safe limit on the number of people who may be in the premises at any one time. This seeks to address dangers of overcrowding in places such as nightclubs that can impact on safe evacuation in the event of fire or other emergency: **proposed new Part 9A**, **Division 3A**;

- new provisions imposing an obligation on occupiers of buildings with an automatic alarm system that is monitored by the QFRS to ensure that the alarm system does not signal an unacceptable number of 'false' alarms. 'False' alarms may be due to circumstances such as the alarm system not being suitable for the type of building or due to the activities of the occupier: **proposed new s 104DA**;

- new provisions inserted **throughout** the Act which seek to improve other fire safety regulatory aspects. These measures include higher penalties in cases where a breach of fire safety obligations results in death, injury or significant property damage (such as obligations for occupiers of certain buildings to maintain adequate means of escape from buildings and maintain prescribed fire safety installations and maintain automatic alarm systems and update fire safety management plans); an update to the prevention and investigation powers of QFRS officers, including powers of entry and collection of evidence; and provision for a right of objection to a requisition notice issued under s 69

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33 QFRS, 'New smoke alarm laws – your questions answered'.

requiring a reduction of fire risk, which objection can be taken to a panel established under the Act.[34]

5.1 NEW SMOKE ALARM LAWS FOR DOMESTIC DWELLINGS

Clause 37 of the Bill inserts a **proposed new Part 9A**, **Division 5A** into the *Fire and Rescue Service Act 1990* to deal with the installation and ongoing maintenance of smoke alarms in domestic dwellings. A 'domestic dwelling' is a Class 1a building (detached houses, row houses, townhouses, terrace houses or villa units) and a sole occupancy unit in a Class 2 building, as defined in the BCA[35]: **proposed new s 104RA**. The smoke alarms provisions commence on 1 July 2007.

Proposed new s 104RB will require owners of domestic dwellings to install smoke alarms in **all** dwellings, including those built before July 1997. This must be done by 1 July 2007. The alarm must comply with AS 3786-1993 and be installed in accordance with the BCA specification relevant to the particular type of dwelling. It is acceptable for an owner of a sole occupancy unit to install a heat alarm or an alarm acknowledgment facility in accordance with the relevant BCA specification. Also, if it is impractical for the owner to place a smoke alarm in the location required under this section, it is permissible for it to be placed at a location that will provide a warning to occupants.[36] A maximum fine of $375 applies for failure to comply by 1 July 2007.[37]

Pursuant to **proposed new s 104RH**, a person must not remove a smoke alarm or a battery or do anything to reduce the alarm's effectiveness apart from replacing the alarm or the battery or placing the alarm in a more appropriate location. A fine of up to $375 applies for a breach of this provision.

Proposed new ss 104RC-104RG apply to tenancies. An agent, other than a tenant, may act on the owner's behalf to undertake the smoke alarms obligations under the new laws.[38] A lessor (which bears the same meaning as under the

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[34] Please consult the Bill and the accompanying *Explanatory Notes* regarding further amendments.

[35] See the Glossary at the end of the Research Brief.

[36] The example given in the notes to the proposed provision is of a smoke alarm that keeps being triggered by steam from the bathroom – it could be moved to another location provided it will still be effective in giving warning.

[37] One 'penalty unit' is $75: see s 5 of the *Penalties and Sentences Act 1992* (Qld).

[38] **Proposed new s 104RJ**.

Residential Tenancies Act 1994 (Qld) but does not include a tenant who sub-lets a dwelling) must replace a smoke alarm in a domestic dwelling before it reaches the end of its service life. AS 3876 provides that the recommended service life of a smoke alarm is at least 10 years under normal conditions of use. If it has reached the end of its service life before it is replaced, it must be replaced immediately. A fine of up to $375 will apply for failing to install and replace an alarm.

The lessor is required to test the smoke alarm within 30 days before the start of a tenancy and during the tenancy, the tenant[39] must test the alarm at least once every 12 months. Again a $375 maximum fine applies for non-compliance. If an alarm can be tested by pressing a button or other device, then it must be tested by pressing that button or other device to ascertain whether the alarm is working. For alarms that are tested in other ways, these are to be tested by the lessor in accordance with the manufacturer's instructions and by the tenant as specified in the information statement that is given to the tenant at the start of the tenancy under s 43 of the *Residential Tenancies Act 1994* (Qld).[40]

Batteries in smoke alarms that are spent or that the lessor is aware are almost spent must be replaced by the lessor within 30 days before the start of a tenancy. During the tenancy, the tenant has this responsibility. In accordance with the Australian Standard, the alarm should emit a warning sound that the battery is almost spent. In addition, the lessor must clean the smoke alarms within 30 days before the start of a tenancy, in accordance with the manufacturer's instructions and the tenant must do so at least every 12 months in accordance with the information statement. The penalty for not complying is a fine of up to $375.

If a smoke alarms has failed, or is about to fail, the tenant must warn the lessor as soon as practicable or is liable to a fine of up to $375.

The *Explanatory Notes* (p 32) point out that while the definition of 'tenant' excludes short term holiday tenants for the purposes of the testing, battery replacement and cleaning requirements of the Bill, these obligations still apply to the lessor.

Proposed new ss 104RK-104RL apply to transfers of residential land. On and after 1 July 2007, the vendor must, on or before the date of possession, give the buyer of the land written notice of whether smoke alarms complying with the new requirements have been installed, otherwise a fine of up to $375 may be incurred.

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[39] A 'tenant' means a person who has a right to occupy under the *Residential Tenancies Act 1994* and includes a subtenant of the tenant. The definition excludes short term holiday tenants.

[40] The 'information statement' under s 43 of the *Residential Tenancies Act 1994* is a form containing information setting out matters such as the duties and entitlements of the lessor and tenant. This information will now include tenants' smoke alarm obligations.

To ensure compliance and full coverage of the new requirements, a vendor has 90 days after the date of possession to give the chief executive a written notice containing the information set out in s 104RL, including whether smoke alarms have been installed and whether the buyer has been given written notice about this.

Alternatively, a property transfer information form (Form 24) can be lodged, together with an application for registration, with the Queensland Land Registry stating that smoke alarms are installed and are operational. Again, the penalty for non-compliance is a fine of up to $375. The *Explanatory Notes* (p 34) state that administrative arrangements will be in place before 1 July 2007 to include the smoke alarm information in the Form 24.

The QFRS will be regularly auditing the forms lodged.[41]

The State Government has already installed hard-wired smoke alarms in all public housing.[42]

The minimum requirement will be a 9 volt battery operated alarm with a battery that lasts for 12 months and which must be replaced each year. As noted earlier, there are more reliable types of smoke alarms on the market, these being –

- 240 volt hard-wired smoke alarms with a battery backup; or
- 9 volt long-life lithium alarms that have a 10 year life span.

A smoke alarm must be installed on or near the ceiling on any storey between bedrooms and the rest of the house or unit (such as in a hallway) and if the storey has no bedrooms, then on the most likely evacuation route from that storey. This is only a minimum requirement and QFRS advises that installation of additional alarms be considered. For example, the installation of an alarm in a bedroom may be appropriate if the bedroom door is kept closed during the night. Children's bedrooms should have a smoke alarm which is connected to the parent's bedroom because children sleep more soundly than adults and may not wake in time.[43]

6 OTHER JURISDICTIONS

Smoke alarms are compulsory in Victoria, New South Wales and South Australia for all dwellings, not just those constructed since 1997 or which have undergone major renovation work. The proposed Queensland laws are similar to those

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41 QFRS, 'New smoke alarm laws – your questions answered'.

42 QFRS, 'New smoke alarm laws – your questions answered'.

43 QFRS, 'How to Choose Between Brands'.

operating in NSW and Victoria, allowing householders to install an alarm that complies with the Australian Standard.

The Western Australian Government is considering amendments to legislation to require mandatory installation of smoke alarms in all dwellings in Western Australia, apart from the existing BCA requirements for all new or substantially renovated dwellings to have smoke alarms installed. The proposed amendments would cover vendors of properties by requiring the installation of a hard-wired smoke alarm prior to transfer as well as landlords who would need to install a hard-wired smoke alarm in rental properties.[44]

6.1 NEW SOUTH WALES

Smoke alarms that are either battery operated or hard-wired became compulsory in all New South Wales homes from 1 May 2006. The legislative move came in the wake of a number of fires which killed 12 people in NSW in just two weeks during June 2005. This included a fire claiming the lives of four children in Wyong that created national headlines.[45] The NSW Fire Brigades Commissioner is reported to have said that fire officers believe that the house did not have smoke alarms.[46]

Under the ***Building Legislation Amendment (Smoke Alarms) Act 2005* (NSW)**, all homes must have either battery operated or hard-wired smoke alarms installed in them. The Act amends the *Environmental Planning and Assessment Act 1979* (NSW) by inserting a new s 146A to provide that Regulations may make provision for, or with respect to, the installation of one or more smoke alarms in buildings in which people sleep; the maintenance of those smoke alarms; and prohibiting people from removing or interfering with their operation. It goes on to state that the Regulations may do any one of a number of, but are not limited to, things that are then set out. Those things include the types of buildings required to comply; the types of alarms to be installed and where they should be placed; and the type of ongoing maintenance of the alarms. A 'building' is defined to include a manufactured home, a moveable dwelling or associated structure, and includes a building erected before the commencement of the provision.

On 10 March 2006, the NSW Government gazetted the *Environmental Planning and Assessment Amendment (Smoke Alarms) Regulation 2006* (NSW) that requires the installation of smoke alarms in buildings in which people sleep. The obligation

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44 Western Australian Local Government Association, 'Mandatory smoke alarms installation', *InfoPage*, 11 July 2005, http://www.walga.asn.au.

45 Daniel Murphy, 'Push to install smoke alarms', *Sydney Morning Herald*, 14 June 2005, p 1.

46 Peter Jean, 'NSW wants compulsory alarms', *Sunday Mail Online*, 14 June 2005.

will not arise until 6 months after the commencement of the laws on 1 May 2006 and a person will not commit an offence for non-compliance during that time unless the failure continues after that 6 month period. The main features are –

- nothing further need be done if the building already has operational smoke alarms or detection and alarm systems that comply with existing laws or if a person has already installed the compliant alarms in their home. An existing functioning alarm installed in a class 1a or class 2 building, relocatable home or class 4 part of a building will comply with the new laws until the alarm is removed or ceases to function;

- the type of smoke alarm to be installed depends upon the type of building. Private dwellings (class 1a, class 2, class 4 parts of buildings, and relocatable homes) must have an alarm that complies with AS 3786 either hard-wired to the mains electricity with a battery backup, or powered by a battery. Shared accommodation buildings (defined below) must have alarms also meeting AS 3786 that are either hard-wired with a battery backup, or powered by a non-removable 10 year long-life battery permanently connected to the alarm;

- a heat alarm can be used in lieu of a smoke alarm in areas such as a kitchen, where a smoke alarm would be inappropriately activated;

- the location of the smoke alarms in a building and the number required will depend upon the building classification, size and layout but, generally speaking, they must be placed in an area that enables them to detect smoke before it reaches the sleeping occupants.

The smoke alarm laws also apply to certain shared accommodation buildings, if they do not already have alarm or detection systems in place. The shared accommodation buildings covered are boarding houses; hostels; backpacker accommodation; bed and breakfasts; guest houses; residential parts of hotels, motels, schools, health care buildings and detention centres; certain accommodation for the aged, children and persons with disabilities; and nursing homes and hospitals.

Changes will also be made to Part 2 of the *Conveyancing (Sale of Land) Regulation 2005* to require vendors of buildings where smoke alarms are compulsory to disclose in the contract of sale whether or not a smoke alarm is fitted.

The *Residential Tenancies Act 1987* (NSW) has been amended to state that it is a condition of every residential tenancy agreement (including those in force immediately before the commencement of the provision) that the landlord must install smoke alarms on the rental property and that landlords and tenants must not remove nor interfere with the operation of the smoke alarms without reasonable excuse: s 29A. A landlord, their agent, or a person authorised by the landlord is permitted to enter the residential premises to install a smoke alarm provided that

the tenant has been given at least 2 days notice of that intention to enter: s 24(1)(c)(cl). Thus, the landlord is responsible for supplying and installing the smoke alarms and batteries while the tenant is responsible for the maintenance of the smoke alarms, including testing and cleaning.

If a person does not comply with the laws, they face a penalty of up to $550. However, the Government hopes that it can encourage compliance with the new laws through public education rather than enforcement by regulatory authorities.[47]

When introducing the laws into the NSW Legislative Council, the Minister for Emergency Services,[48] the Hon Tony Kelly MP, noted that there has been a BCA requirement since the mid-1990s for all new homes and those undergoing major renovations to have smoke alarms and that such alarms have also been installed in all 130,000 public housing homes since 1996. This has resulted in the percentage of homes with smoke alarms rising from 28% in the early 1990s to around 73% in 2004. However, the Minister stated that the Government wished to see 100% of dwellings fitted with smoke alarms.[49] The Minister quoted NSW Fire Brigade statistics which showed that in the decade to 1999-2000, almost 59% of deaths occurred at times when people were usually sleeping and that the elderly were disproportionately represented in these figures with people aged over 65 accounting for 25% of the deaths.[50] The legislation was strongly supported by the Opposition and other minor parties.[51]

6.2 VICTORIA

Since 1 February 1999, it has been compulsory for new residential properties in Victoria, including homes, units, flats and townhouses, to have smoke alarms

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47 NSW Department of Planning, 'New smoke alarm requirements for exiting buildings from 1 May 2006, *Advisory Note*, March 2006, http://www.planning.nsw.gov.au/smokealarms/pdf/smoke_alarms_advisory_note.pdf.

48 Also the Minister for Rural Affairs, Local Government, Lands and Minister Assisting the Minister for Natural Resources.

49 Hon T Kelly MP, Minister for Emergency Services, Building Legislation Amendment (Smoke Alarms) Bill 2005 (NSW), Second Reading Speech, *NSW Legislative Council Hansard*, 29 June 2005, p 17374, http://www.parliament.nsw.gov.au/prod/parlment/hansart.nsf/V3Key/LC20050623008.

50 Hon T Kelly MP, Second Reading Speech.

51 See, for example, the Hon C Lynn MP (Opposition), Building Legislation Amendment (Smoke Alarms) Bill 2005 (NSW), Second Reading Debate, *NSW Legislative Council Hansard*, 29 June 2005, p 17374.

complying with AS 3786-1993. The measures were introduced under amendments to the *Building Regulations 1994* (Vic) in 1999 (which have since been superseded by the ***Building (Interim) Regulations 2005* (Vic)**).

New residential properties must have hard-wired alarms with a 9 volt battery backup. Existing Class 1, Class 2 or Class 3 residential buildings or Class 4 part of a building[52] constructed, or for which a building approval or building permit was granted, before 1 August 1997 must now also have smoke alarms with a 9 volt battery installed in appropriate locations (determined by a Building Commission Practice Note of May 2005) on or near the ceiling of every storey of the dwelling or sole occupancy unit: *Building (Interim) Regulations*, r 707. The owner must comply with the regulation or will be guilty of an offence. However, the foregoing requirement does not apply to a Class 1b or 3 building that complies with r 709.

Regulation 709 applies to Class 9a buildings that are residential care buildings and Class 1b or Class 3 buildings constructed, or for which building approvals or building permits were granted, before 1 August 1997. These buildings must have hard-wired smoke alarms complying with AS 3786-1993 installed in appropriate locations (determined by a Building Commission Practice Note of May 2005) on or near the ceiling of every storey of the building; or have a smoke detection system complying with AS 1670-2004 installed. The owner must comply with the regulation by 14 June 2006 or within 30 days of the sale of the building, whichever is earlier. The onus is on the owner of the building to comply or an offence will be committed.

Under r 710, Class 3 shared accommodation buildings must have an automatic fire sprinkler system complying with AS 2118.1-1999 or AS 2118.4-1995 installed by 14 June 2008 or within six months of the sale of the building, whichever is earlier. The types of buildings to which the law may apply are backpacker hostels, hotels, lodging houses, guest houses, and boarding houses. Failure by the owner to comply will be an offence. However, the regulation applies only to those buildings constructed, or for which a building permit was issued, before 1 July 2003. Buildings constructed after 1 July 2003 must already have such a sprinkler system. Some exemptions will apply.

6.3 SOUTH AUSTRALIA

Regulation 76B of the ***Development Regulations 1993* (SA)** requires owners of Class 1(1a and 1b) and Class 2 buildings, whenever constructed, to install one or more smoke alarms complying with AS 3786-1993 in each dwelling that is, or

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[52] See Glossary for an explanation of the classes of buildings under the BCA. A Class 4 dwelling is basically a dwelling in a building that is used for purposes such as for an office or a shop etc.

forms part of, a building in locations that will provide reasonable warning to occupants of bedrooms so that they may safely evacuate in the event of fire. If a building is sold, then, within six months from the day of transfer, each dwelling must have a smoke alarm or smoke alarms that are hard-wired or powered by 10 year life non-replaceable, non-removable batteries. The owner can be fined up to $750 for not complying with the Regulation.

The Regulation also applies to landlords who own residential properties such as detached houses; row houses; town houses; villa units; sole occupancy units and some boarding houses, guest houses and hostels.

While local government has the responsibility to monitor safety of buildings in the local government area, it has not been seen as appropriate for council officers to enter private homes to check whether smoke alarms have been installed. However, if a complaint is received from a tenant that the landlord will not comply with the requirement for smoke alarms, the local government should investigate the matter and take enforcement action, if necessary.[53]

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53 South Australian Department of Transport and Urban Planning, *Technical Advisory Notice – Development Regulations 1993*, March 2005, p 3, http://dataserver.planning.sa.gov.au/publications/1058p.pdf.

GLOSSARY

AS	Australian Standards
BCA	Building Code of Australia.
Class 1a building	a single dwelling – either a detached house or one or more attached dwellings separated by a fire resistant wall and which are not located above or below any other dwelling other than a private garage. Includes a row house, terrace house, townhouse or villa unit. May also include residential units in retirement villages and some types of holiday accommodation.
Class 1b building	a residential dwelling such as boarding houses, guest houses, hostels, with a total floor area not exceeding 300 square metres where the total number of people residing in the dwelling at any one time is not normally more than 12 persons. The dwelling must not be located above or below any other dwelling other than a private garage.
Class 2 building	a residential building containing two or more sole occupancy units, each being a separate dwelling. Each separate dwelling must have a kitchen sink and food preparation facilities; a bath or shower; and a toilet and wash basin. Clothes washing and drying facilities must be provided onsite.
Class 3 building	a residential building, other than a Class 1 or Class 2 building, which is a place of long term or transient living for a number of unrelated persons (e.g. a motel, hotel, boarding house, guest house, backpackers' accommodation).
DES	Queensland Department of Emergency Services.
QFRS	Queensland Fire and Rescue Service within the Queensland Department of Emergency Services.

APPENDIX A – MINISTERIAL MEDIA STATEMENTS

Hon. Peter Beattie, Premier & Treasurer

Monday, November 21, 2005

All Queensland Homes To Have Smoke Alarms

The Beattie Government announced today that all homes and units throughout Queensland will be fitted with smoke alarms by 1 July 2007.

Premier Peter Beattie and Minister for Emergency Services Pat Purcell said amendments to the Fire and Rescue Service Act 1990 would also restrict overcrowding in nightclubs and address the number of false alarms in buildings with automated alarm systems.

Mr Beattie said the decision followed an extensive review of building fire safety in Queensland.

"The risk of a fire death in homes without a smoke alarm is up to three times higher than homes with alarms," he said.

"Each year we have approximately 1,100 house fires in Queensland and tragically on average 16 deaths and 145 injuries.

"Queensland Fire and Rescue Service figures show 78.1% of all home fire deaths have occurred in homes without smoke alarms.

"Working smoke alarms offer the best warning against fire and under the Building Code of Australia all homes built after 1997 are required to have mains-wired smoke alarms installed.

"However, there is currently no legal requirement for most pre-1997 houses and units to have smoke alarms installed.

"We will change the legislation so that from July 1, 2007 all homes built before 1997 will have to have at least one one-year battery powered smoke alarm.

"These types of smoke alarms can cost as little as $10 and by taking this simple action it could help save lives, home and property."

Mr Purcell said every year there were house fires in Queensland because someone left the Christmas lights on, someone forgot cooking on the stove or kids left a candle burning in the bedroom.

"What most people don't realise is how little time there is to evacuate," he said.

"Without working smoke alarms, you or your kids may not wake up to the fact that the house is on fire."

Mr Purcell said 19.2% of Queensland homes currently do not have smoke alarms installed, and another 8.8% of homes have alarms installed that are not working, usually because the battery is dead or missing.

"By extending the alarm coverage to all homes and units, the fire service estimates we will save $70 million in community costs over the next 20 years," he said.

"Changes are designed to improve fire safety throughout the State and the legislation will also impact on about 300 to 600 licensed premises throughout Queensland.

"The Queensland Fire and Rescue Service will be working with operators to assess and set maximum occupancy numbers in their premises so that club patrons are offered greater protection in the case of a fire.

"We will also improve public and employee safety in commercial buildings by reducing the number of emergency attendances by the Queensland Fire and Rescue Service to unwanted alarms and clarifying the requirements for evacuation plans."

Further details on the introduction of smoke alarms are available from the Department of Emergency Services on 1300 369 003.

21 November 2005

Media Contacts: Premier's office - 3224 4500 Minister's office - Justin Coomber 3247 8194 or 0407 130 287.

Hon. Pat Purcell, Minister for Emergency Services

Friday, April 21, 2006

Government moves to boost fire safety

The Minister for Emergency Services, Pat Purcell, today tabled legislation in Parliament that will save lives and help keep Queenslanders safe from fire.

The Fire and Rescue Service Amendment Bill 2006 will make it compulsory for owners of residential houses and units to install smoke alarms in all existing, pre-1997 homes. [Homes built after 1 July 1997 are required to have hard-wired smoke alarms].

The bill will also reduce overcrowding in licensed premises, especially nightclubs, and reduce unwanted call-outs to buildings with automatic alarm systems.

Mr Purcell said the legislation was introduced after considerable consultation with stakeholders.

“Smoke alarms are very important domestic safety devices.

“The risk of death from fire in a home is up to three times higher in homes without smoke alarms when compared to homes with smoke alarms.

“In Queensland, 78.1 per cent of all home fire deaths occur in homes without smoke alarms. In Queensland since June 2004, 15 people have died in house fires in homes that either did not have smoke alarms or had smoke alarms that did not work usually because batteries were removed or dead.

“I am pleased to report that this legislation will help to address this problem.

“This legislation is in line with the Beattie Government’s commitment to creating an even safer Queensland community.”

Media contact: Daniel Landon 3247 8992, 0437 837 976.

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