

**BUILDING SERVICES CORPORATION (KIT HOMES)
AMENDMENT ACT 1990 No. 33**

NEW SOUTH WALES



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**BUILDING SERVICES CORPORATION (KIT HOMES)
AMENDMENT ACT 1990 No. 33**

NEW SOUTH WALES



Act No. 33, 1990

An Act to amend the Building Services Corporation Act 1989 so as to impose certain requirements on the suppliers of kit homes, and for other purposes. [Assented to 22 June 1990]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Building Services Corporation (Kit Homes) Amendment Act 1990.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Building Services Corporation Act 1989 No. 147

3. The Building Services Corporation Act 1989 is amended as set out in Schedule 1.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

(1) Section 3 (**Definitions**):

(a) In section 3 (1), insert in alphabetical order the following definitions:

"kit home" means a set of building components which, when offered for sale, is represented as sufficient for the construction of a dwelling according to a plan or instructions furnished by the supplier of the set to the purchaser in connection with the sale.

- . It includes a set of building components which, when offered for sale, is represented as sufficient for the construction of a garage, carport or other structure prescribed by the regulations.
- . It does not include a set of components for the construction of an unregistrable movable dwelling within the meaning of Ordinance No. 71 (the Caravan Parks and Movable Dwellings Ordinance) made under the Local Government Act 1919.
- . It does not include a set of components for the construction of a dwelling, structure or improvement prescribed by the regulations;

SCHEDULE 1 - AMENDMENTS - *continued*

"**rectification order**" means an order under section 59;

"**supply**" means supply for consideration, but does not include supply for the purposes of resale.

(b) After section 3 (1), insert:

(1A) When an additional structure or improvement is declared, by a regulation made for the purposes of the definition of "dwelling" in subsection (1), to form part of a dwelling, any particular structure or improvement included in the declaration is to be regarded as a dwelling for the purposes of this Act, whether or not there exists any dwelling of which it could be taken to form part.

(2) Section 8:

Omit the section, insert instead:

Maximum deposits

8. (1) A person must not:

(a) demand or receive a payment on account before work is commenced under a contract to do residential building work; or

(b) enter into a contract under which the person is entitled to demand or receive a payment on account before residential building work is commenced,

if the amount of the payment is prohibited by this section.

Maximum penalty: 20 penalty units.

(2) The amount of the payment is prohibited if:

(a) the contract price is more than \$20,000 and the payment is more than 5% of the contract price (or, where another percentage is prescribed by the regulations in respect of a particular kind of work, the percentage so prescribed); or

(b) the contract price is \$20,000 or less and the payment is more than 10% of the contract price (or, where another percentage is prescribed by the regulations in respect of a particular kind of work, the percentage so prescribed).

SCHEDULE 1 - AMENDMENTS - *continued*

(3) The regulations may make provision concerning how a contract price is to be determined for the purposes of this section.

(3) Part 2A:

After section 16, insert:

PART 2A - REGULATION OF SUPPLY OF KIT HOMES

Unlicensed contracting or supplying

16A. A person must not contract to supply, or supply, a kit home except as or on behalf of an individual, partnership or corporation that is the holder of a licence authorising its holder to contract to supply a kit home of that kind.

Maximum penalty: 100 penalty units.

Promotion by or for unlicensed person

16B. (1) An individual, a member of a partnership, an officer of a corporation or a corporation must not represent that the individual, partnership or corporation is prepared to supply a kit home if the individual, partnership or corporation is not the holder of a licence authorising its holder to contract to supply a kit home of that kind.

Maximum penalty: 100 penalty units.

(2) A person must not represent that an individual, partnership or corporation is prepared to supply a kit home if the person knows that the individual, partnership or corporation is not the holder of a licence authorising its holder to contract to supply a kit home of that kind.

Maximum penalty: 100 penalty units.

Contracts to be in writing

16C. A contract under which the holder of a licence:

- (a) undertakes to supply, in person or by others, a kit home; or

SCHEDULE 1 - AMENDMENTS - *continued*

(b) varies any such undertaking previously made, is not enforceable against the other party to the contract unless the contract is in writing signed by or on behalf of each of the parties to it and sufficiently describes the kit home the subject of the contract.

Licensee to be identified in contract

16D. (1) When entering into a contract to supply a kit home, the holder of a licence must:

- (a) do so under the holder's name shown on the licence; and
- (b) specify in the contract the number of the licence.

Maximum penalty: 10 penalty units.

(2) When entering into such a contract, the licensee must not include in the contract the name of any person other than the holder as, or so it may reasonably be mistaken to be, the name of the contractor.

Maximum penalty: 10 penalty units.

(3) This section does not prevent the holder of a licence with a business name registered under the Business Names Act 1962 from also referring in such a contract to the business name.

Maximum deposits

16E. (1) A person must not:

- (a) demand or receive a payment on account before delivery of part of the kit home is made under a contract to supply a kit home; or
- (b) enter into a contract under which the person is entitled to demand or receive a payment on account before delivery of part of the kit home is made,

SCHEDULE 1 - AMENDMENTS - *continued*

if the amount of the payment is prohibited by this section.

Maximum penalty: 20 penalty units.

(2) The amount of the payment is prohibited if:

- (a) the contract price is more than \$20,000 and the payment is more than 5% of the contract price (or, where another percentage is prescribed by the regulations in respect of a particular kind of kit home, the percentage so prescribed); or
- (b) the contract price is \$20,000 or less and the payment is more than 10% of the contract price (or, where another percentage is prescribed by the regulations in respect of a particular kind of kit home, the percentage so prescribed).

(3) The regulations may make provision concerning how a contract price is to be determined for the purposes of this section.

Exhibition homes

16F. (1) In this section, "**exhibition home**" means a dwelling made available for inspection to persons who are invited, expressly or impliedly, to enter into a contract for the supply of a kit home designed to enable the construction of a similar dwelling.

(2) A person who makes an exhibition home available for inspection or who advertises that an exhibition home is so available is guilty of an offence if, at any time it is available for inspection, there is not prominently displayed at the home:

- (a) a copy of the plans and specifications relating to its construction; and
- (b) if the person is aware that persons are to be invited to enter into contracts of the kind referred to in subsection (1) by use of a standard form of contract, a copy of that form of contract.

Maximum penalty: 20 penalty units.

SCHEDULE 1 - AMENDMENTS - *continued*

(3) If:

- (a) a contract is entered into with the holder of a licence for the supply of a kit home designed to enable the construction of a dwelling that is similar to an exhibition home; and
- (b) the holder knows that it was entered into after the other party to the contract had inspected the home; and
- (c) the contract in any way identifies the kit home to be supplied under the contract by reference to the home,

the contract is to be taken to contain a provision that the kit home so supplied will conform to the same plans and quality of materials as the exhibition home, except to the extent (if any) that the contract and its accompanying plans provide for any departure from them.

Effects on contract if contravention

16G. (1) A person who enters into a contract in contravention of section 16A (unlicensed contract or supply) or who is unable to enforce a contract because of section 16C (contracts to be in writing):

- (a) is not entitled to damages or to enforce any other remedy in respect of a breach of the contract committed by any other party to the contract; but
- (b) is liable for damages and subject to any other remedy in respect of a breach of the contract committed by the person.

(2) This section does not affect the liability of any such person for an offence against a provision made by or under this or any other Act.

Application of this Part

16H. (1) This Part does not affect any right or remedy that a person (other than the person who contracts to supply the kit home) may have apart from this Act.

SCHEDULE 1 - AMENDMENTS - *continued*

- (2) This Part does not apply to:
- (a) a contract entered into, before the commencement of this Part, for the supply of a kit home; or
 - (b) the supply of a kit home pursuant to such a contract.
- (4) Part 2B, heading:
Omit the heading to Division 3 of Part 2, insert instead:
- PART 2B - REPRESENTATIONS CONCERNING LICENCES OR CERTIFICATES**
- (5) Section 17 (**Misrepresentations about licences or certificates**):
At the end of section 17 (1) (b), insert:
- ; or
- (c) is the holder of a licence authorising its holder to contract to supply a kit home, or a kit home of a particular kind, knowing that the individual, partnership or corporation is not the holder of an appropriate licence.
- (6) Section 19 (**Applications for licences**):
Omit section 19 (1), insert instead:
- (1) An individual, a partnership or a corporation may apply to the Corporation for a licence authorising its holder to contract to do such one or more of the following things as may be specified in the application:
- (a) to do residential building work;
 - (b) to do specialist work;
 - (c) to supply kit homes for construction by a person other than the holder of the licence.
- (7) Section 20 (**Issue of licences**):
Omit section 20 (4) (a), insert instead:
- (a) the Corporation has reason to doubt that the applicant will have sufficient financial resources to complete the work which the licence will authorise the applicant to contract to do, or to supply the kit

SCHEDULE 1 - AMENDMENTS - *continued*

homes which the licence will authorise the applicant to contract to supply, as the case may be; and

- (8) Section 21 (**Authority conferred by licences**):
- (a) From section 21 (1), omit "as is", insert instead "or to supply such kinds of kit homes, as may be".
 - (b) After section 21 (1), insert:
 - (1A) A licence that authorises its holder to contract to do residential building work authorises the holder to supply such building components as are necessary for any such work done by the holder.
- (9) Section 22 (**Automatic cancellation of licences**):
- At the end of the section, insert:
- (2) Subsection (1) (a) applies only in respect of a licence that authorises its holder to contract to carry out residential building work or specialist work.
- (10) Section 23 (**Warning notices**):
- (a) In section 23 (1), after "work" where lastly occurring, insert "or the supply of kit homes".
 - (b) Section 23 (2) (a), (b):

Omit the paragraphs, insert instead:

 - (a) who continues to accept payments on account despite having inadequate financial resources; or
 - (b) who has a recent history of unreasonable delays in completing work or in supplying kit homes, or of inadequately supervised work or of defective work.
- (11) Section 47 (**Production of authority**):
- After section 47 (b), insert:
- (b1) any person with whom the holder has contracted for the supply of a kit home or to whom the holder has made a statement indicating that the holder is willing or prepared to supply a kit home or to enter into a contract to supply a kit home; or

SCHEDULE 1 - AMENDMENTS - *continued*

(12) Section 49 (**Definitions**):

In section 49 (1), insert in alphabetical order the following definitions:

"defective kit home" means a kit home:

- (a) the materials used in the components of which are of a standard or quality inferior to the standard or quality represented by the supplier in the contract under which they are supplied; or
- (b) from which some of the components, represented in the contract to be included, are missing; or
- (c) the components of which cannot be assembled in the manner indicated in the plan or instructions furnished in connection with the supply; or
- (d) the components of which, if assembled according to the plan or instructions furnished in connection with the supply, would constitute a dwelling that does not satisfy the requirements of an Act or Ordinance relating to dwellings;

"failure to deliver", in relation to a kit home, means a failure, without reasonable cause, to deliver the kit home within the time specified in the relevant contract or within a reasonable time afterwards;

"purchaser" of a kit home includes any person to whom it was agreed the kit home was to be delivered by the supplier;

(13) Section 50 (**Application of Part to former holders etc.**):

From section 50 (2), omit ", completion or repair".

(14) Section 51 (**Improper conduct: generally**):

- (a) In section 51 (1), after "licence" where firstly occurring, insert "who is authorised by the licence to contract to do residential building work or specialist work".

SCHEDULE 1 - AMENDMENTS - *continued*

(b) In section 51 (1) (b), after "licence", insert "or certificate".

(c) After section 51 (1), insert:

(1A) The holder of a licence who is authorised by the licence to contract to supply kit homes is guilty of improper conduct if the holder:

(a) commits an offence against this Act or the regulations, whether or not an information has been laid for the offence; or

(b) without reasonable cause, breaches a contract to supply any kit home that the licence authorises the holder to contract to supply.

(d) From section 51 (2) (d), omit ", completion or repair".

(e) Omit section 51 (2) (e), insert instead:

(e) commits fraud or makes any misrepresentation in connection with any contract authorised by the licence or any contract for the sale of any dwelling, structure or work that has resulted from, or been affected by, any work done under the authority of the licence; or

(15) Section 52:

Omit the section, insert instead:

Improper conduct: assisting others

52. The holder of a licence, or of a supervisor or registration certificate, is guilty of improper conduct if the holder aids or abets, or is knowingly concerned in any way in, the doing of any thing by another person in connection with residential building work or specialist work or the supply of kit homes, if the thing done:

(a) constitutes improper conduct on the part of the person who did it; or

(b) would constitute such conduct if the person who did it was authorised, by a licence or certificate, to contract to do, or to do, the work concerned or (where the thing was done in connection with the

SCHEDULE 1 - AMENDMENTS - *continued*

supply of any kit homes) to supply kit homes of the kind concerned.

(16) Section 55 (**Complaints about holders of licences or certificates**):

(a) After section 55 (1) (d), insert:

(d1) that the holder does not have the managerial capacity to carry on the business of supplying kit homes of the kind which the licence authorises the holder to contract to supply, having regard to the volume or kind of kit homes the supply of which the holder has undertaken; or

(b) After section 55 (1) (e), insert:

(e1) that the holder does not have sufficient financial resources to enable the holder to carry on the business of supplying kit homes which the licence authorises the holder to contract to supply, having regard to the volume or kind of kit homes the supply of which the holder has undertaken; or

(17) Section 58:

Omit the section, insert instead:

Object of Corporation with respect to complaints

58. (1) When it receives a complaint, the Corporation is to attempt to bring about the resolution of any dispute giving rise to the complaint.

(2) In particular:

(a) if complaints involve residential building work or specialist work, the Corporation is to attempt to have defective work rectified, incomplete work completed or damaged structures or work repaired; and

(b) if complaints involve kit homes, the Corporation is to attempt to have kit homes delivered without delay and to have any defective kit homes rectified.

SCHEDULE 1 - AMENDMENTS - *continued*

(18) Section 59 (**Rectification orders**):

(a) After section 59 (1), insert:

(1A) If, as a result of a complaint to or an investigation by the Corporation concerning the holder of a licence, the Corporation believes:

(a) that any kit home is defective; or

(b) that there has been a failure to deliver a kit home, the Corporation may, by a written order served on the holder, require the holder to remedy or supply the defect, or to deliver the kit home concerned.

(b) Omit section 59 (2), insert instead:

(2) Any such order:

(a) is to require compliance with the order by a specified date; and

(b) may be made subject to compliance by an affected party or a purchaser with such conditions as are specified in the order.

(19) Section 60:

Omit the section, insert instead:

Effect of order

60. (1) The making of a rectification order does not affect the exercise by the Corporation of any of its functions under this Act, except as provided by subsection (2).

(2) The Corporation is not to serve a show cause notice on the holder of a licence on whom a rectification order has been served unless the time for compliance with the order has expired.

(3) If the Corporation does serve a show cause notice after that time has expired, it is required, in dealing with the holder, to take into consideration:

(a) whether, and to what extent, the order has been complied with; and

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) whether the holder has been prevented from complying with the order because of the failure of any affected party or purchaser to comply with any conditions specified in the order or for some other reason beyond the holder's control.
- (20) Section 61 (**Deposit of money as security**):
- (a) From section 61 (1), omit "that contract", insert instead "the relevant contract".
- (b) After section 61 (1), insert:
- (1A) Conditions in an order to rectify a defect in a kit home, or to deliver a kit home, may require the purchaser concerned to pay money to the Corporation for the purpose of its being applied by the Corporation towards the cost of the kit home supplied or to be supplied to the purchaser under the relevant contract by the holder of the licence concerned.
- (c) In section 61 (3), after "affected person", insert "or purchaser (as the case requires)".
- (21) Section 62 (**Investigation by Corporation**):
- In section 62 (a), after "work" where lastly occurring, insert ", or any kit home".
- (22) Section 63 (**Service of show cause notice**):
- In section 63 (2) (b), after "purchasers", insert "(including kit home purchasers)".
- (23) Section 77 (**When determination becomes effective**):
- From section 77 (2), omit "authority", insert instead "licence, certificate or permit".
- (24) Section 90 (**Application of Part**):
- Omit section 90 (1), insert instead:
- (1) This Part:
- (a) in so far as it applies to residential building work, applies only to such work to the extent that it is done or to be done under a contract entered into on or after 21 March 1990 (the date of commencement

SCHEDULE 1 - AMENDMENTS - *continued*

of this section) or, if the work is not contracted, to the extent that it is commenced on or after that date; and

- (b) in so far as it applies to kit homes, applies only to kit homes supplied or to be supplied under a contract entered into on or after the date of commencement of Schedule 1 (24) to the Building Services Corporation (Kit Homes) Amendment Act 1990 or supplied, otherwise than under a contract, on or after that date.

(25) Section 92 (**When comprehensive protection applies**):

After section 92 (2), insert:

(3) BSC comprehensive protection applies in respect of the supply of a kit home if:

- (a) the holder of an appropriate licence contracted to supply or supplied the kit home; and
- (b) the contract price or (if there is no contract) the reasonable market price of supplying the kit home is in excess of \$1,000 (or, if the regulations prescribe a higher amount, the higher amount),

and in such other circumstances (if any) as may be prescribed by the regulations.

(26) Section 94 (**Payment of insurance premiums**):

After section 94 (1) (b), insert:

; or

- (c) the holder contracts to supply a kit home to which BSC comprehensive protection applies (whether or not the kit home is to be supplied personally by the holder); or
- (d) otherwise than under a contract, the holder supplies a kit home (of the kind that the licence authorises the holder to supply) to which BSC comprehensive protection applies.

SCHEDULE 1 - AMENDMENTS - *continued*

(27) Section 95:

Omit the section, insert instead:

Notice to insured

95. A holder of a licence who contracts or commences to do any residential building work referred to in section 94 (1) (a) or (b), or who contracts to supply or supplies a kit home referred to in section 94 (1) (c) or (d), must serve on the person for whom the work is to be done or to whom the kit home is to be supplied a notice in the form approved by the Corporation (describing the effect of BSC comprehensive protection):

- (a) within 30 days after so contracting to do the work or supply the kit home; or
- (b) where the work is commenced or the kit home supplied otherwise than under a contract, within 30 days after so commencing the work or supplying the kit home; or
- (c) if a contract for sale of the land on which the work was so commenced is entered into within 6 years of the holder's so commencing to do the work, within 30 days after entering into the contract of sale.

Maximum penalty: 10 penalty units.

(28) Section 98 (**Recovery of amounts paid under schemes**):

Omit section 98 (2), insert instead:

(2) If any such amount is paid because of defective materials or design work, the Corporation is subrogated to the rights of any contractor concerned against the manufacturers or suppliers of the material or the designers of the defective design, but the Corporation may by written instrument waive, wholly or partly, its right of subrogation in a particular case.

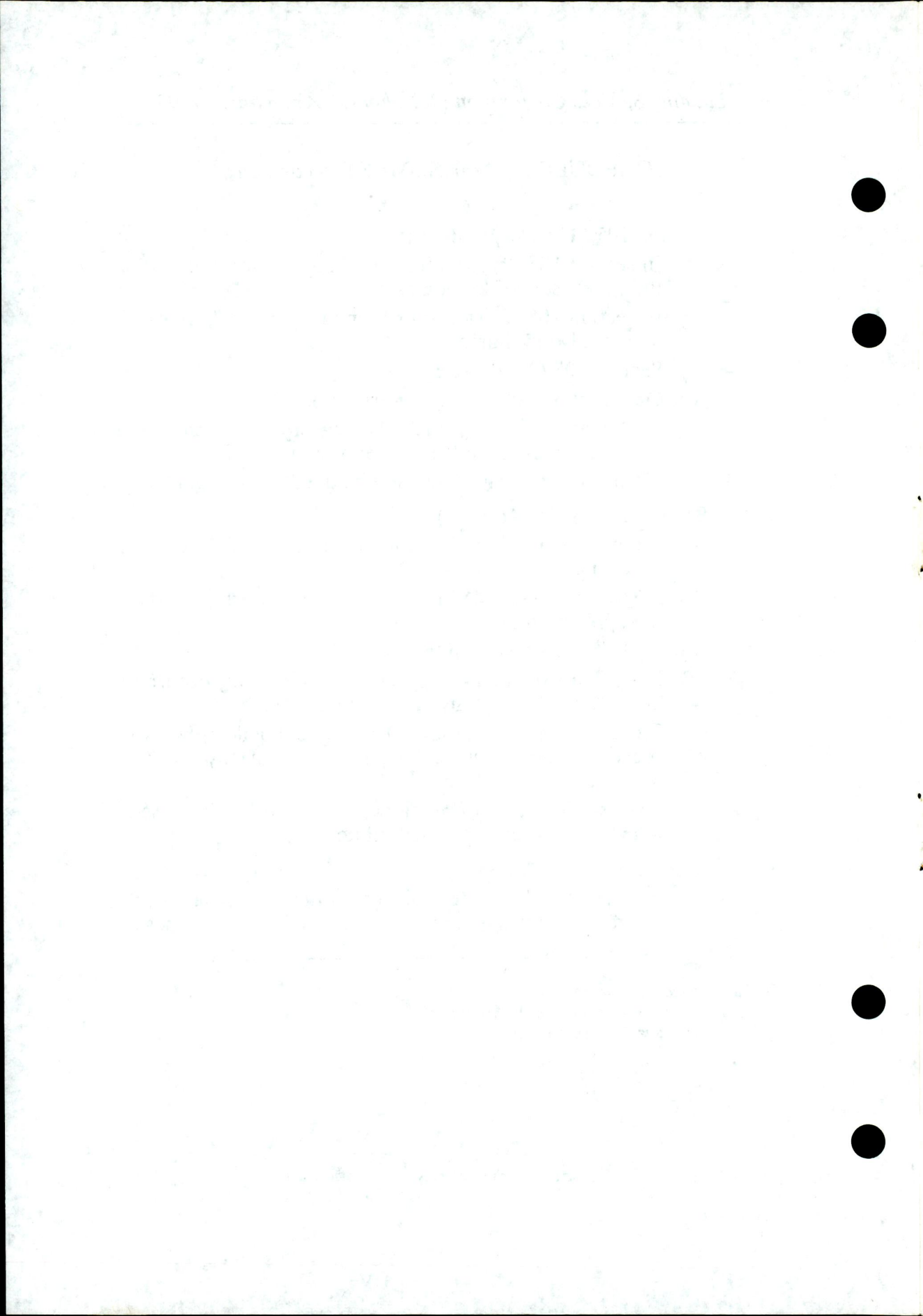
(29) Section 101 (**Discretionary payments**):

From section 101 (1), omit ", or contracted to be done", insert instead "or contracted to be done, or that a kit home was supplied or contracted to be supplied,".

SCHEDULE 1 - AMENDMENTS - *continued*

- (30) Section 105 (**The Corporation**):
- (a) In section 105 (2) (a), after "dwellings", insert "(including the purchasers of kit homes)".
 - (b) In section 105 (3) (a), after "conduct", insert ", or which may involve kit homes".
 - (c) Section 105 (3) (d), (e):
 - Omit section 105 (3) (d), insert instead:
 - (d) insure under this Act the delivery of kit homes and their freedom from defects; and
 - (e) give general advice and guidance to the public.
- (31) Section 114 (**Trust Account**):
- (a) From section 114, omit ", completion or repair" wherever occurring.
 - (b) In section 114 (1) (b) (ii), after "specialist work", insert "or to supply kit homes".
- (32) Section 131 (**Certificate evidence**):
- (a) In section 131 (a), after "specified" where lastly occurring, insert "or to supply any kit home so specified".
 - (b) From section 131 (i), omit "of residential building work so specified", insert instead "under this Act of any specified matter".
 - (c) From section 131 (i), omit "any building work so specified", insert instead "any specified matter".
- (33) Section 140 (**Regulations**):
- In section 140 (2) (c) and (d), after "specialist work" wherever occurring, insert "or the supply of kit homes".

[*Minister's second reading speech made in -
Legislative Assembly on 9 May 1990
Legislative Council on 4 June 1990*]



FIRST PRINT

**BUILDING SERVICES CORPORATION (KIT HOMES)
AMENDMENT BILL 1990**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Building Services Corporation Act 1989 so as to provide certain safeguards for purchasers of kit homes.

The amendments will:

- (a) require suppliers of kit homes to be licensed; and
- (b) limit the amount of the deposit a person may demand or receive before delivering part of a kit home.

Amendments to the insurance provisions of the Principal Act will provide comprehensive insurance cover to purchasers of kit homes which are priced at more than \$1,000 and are supplied by a licensed supplier.

The Bill also contains other amendments of a minor character.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day or days.

Clause 3 is a formal provision that gives effect to the Schedule of amendments.

SCHEDULE 1 - AMENDMENTS

Meaning of "kit home", "rectification order" and "supply"

Schedule 1 (1) (a) inserts definitions of these terms. "Kit home", as defined, specifically excludes an unregistrable movable dwelling and such other dwellings, structures or improvements as the regulations may prescribe. "Supply" is limited to supply for consideration (otherwise than for purposes of resale).

Structures and improvements to which the Principal Act applies

Schedule 1 (1) (b) amends section 3 to make it clear that the provisions of the Principal Act that mention dwellings apply to any "additional" structure (such as, a garage or carport) declared by the regulations to form part of a dwelling for the purposes of the Act, even if there does not exist a dwelling to which that structure might be regarded as being additional.

Maximum deposits in relation to residential building work

At present, section 8 limits the maximum payment on account that a person may demand or receive before the commencement of residential building work to 5% of the contract price where that price exceeds \$20,000, and 10% of the contract price where that price is \$20,000 or less.

Schedule 1 (2) substitutes that section so as to provide for a different maximum percentage in respect of a particular kind of work, if the regulations prescribe a different percentage.

Regulation of supply of kit homes

Schedule 1 (3) inserts a new Part 2A. Its provisions are to the following effect:

Proposed section 16A prohibits a person from contracting to supply, or supplying, a kit home otherwise than as or on behalf of a party which is the holder of an appropriate licence issued by the Building Services Corporation.

Proposed section 16B prohibits a party which is not the holder of a licence from representing that it is prepared to supply a kit home. The section also prohibits a person from representing that a party is prepared to supply a kit home if the person knows that that party is not the holder of a licence.

Proposed section 16C provides that contracts relating to the supply of kit homes (and variations of such contracts) are not enforceable unless they are in writing, have been signed by or on behalf of the parties to them and sufficiently describe the kit homes concerned.

Proposed section 16D obliges the holder of a licence who enters into a contract to supply a kit home to do so under the name shown on the licence and to specify the licence number in the contract. No other name may be shown in the contract as the name of the contractor or in such a way that it may reasonably be mistaken for that of the contractor. (A licence holder with a registered business name, however, may also refer to that business name in the contract.)

Proposed section 16E limits the amount of the deposit a supplier may accept before part of a kit home is supplied, in the same way as section 8 of the Principal Act limits such deposits in relation to residential building work. However, as with the proposed substitution of section 8, the regulations may prescribe different percentages in respect of particular kinds of kit homes.

Proposed section 16F deals with exhibition homes and the supply of kit homes designed to enable the construction of dwellings similar to those exhibited. It requires that a copy of the relevant plans and specifications be prominently displayed at an exhibition home. If any proposed contracts to supply the appropriate kit home are to be in a standard form, a copy of that form of contract must also be displayed. The contract is, in any case, to be taken to provide that the kit home will conform

Building Services Corporation (Kit Homes) Amendment 1990

to the same plans and qualities of materials as the exhibition home, unless the contract and its accompanying plans specifically provide otherwise.

Proposed section 16G is concerned with contravention of certain sections of the Act relating to contracts. It provides that a party that enters into a contract in contravention of section 16A (which deals with unlicensed contracts or supply), or that is unable to enforce a contract because it does not comply with section 16C (which requires the contract to be in writing etc.), is not entitled to damages or to enforce any other remedy in respect of a breach of the contract committed by any other party to it, but is liable for damages and is subject to any other remedy in respect of a breach committed by that party.

Proposed section 16H provides that rights that a person may have other than under the Act are not affected by the proposed Part, and that the proposed Part does not apply to contracts made before its commencement (or subsequently applied under such a contract).

Licences

At present, sections 17 and 18 (which deal respectively with misrepresentations about licences or certificates and representations generally) are contained in Division 3 of Part 2 of the Principal Act, a Part regulating residential building work and specialist work.

Schedule 1 (4) converts Division 3 of Part 2 into Part 2B so as to apply the provisions of sections 17 and 18 both to Part 2 and to the new Part 2A, which regulates the supply of kit homes.

Schedule 1 (5) amends section 17 so as to prohibit misrepresentation as to the holding of licences concerning kit homes.

Schedule 1 (6) amends section 19 to enable application to be made for a licence authorising its holder to contract to do residential building work or specialist work or to supply kit homes (for construction by another party) or any combination of those things.

Schedule 1 (7) amends section 20 so as to empower the Corporation to reject an application for a licence concerning kit homes on the grounds of doubt as to the applicant's financial resources to undertake the supply of kit homes envisaged if the applicant does not satisfy that doubt by means of an acceptable financial guarantee or otherwise.

Schedule 1 (8) (a) amends section 21 so as to extend the authority conferred by a licence (where so specified in the licence) to cover the holder's contracting to supply kit homes.

Schedule 1 (8) (b) amends section 21 to make it clear that a licence authorising its holder to contract to do residential building work also authorises the holder to supply the building components necessary for that work.

Schedule 1 (9) amends section 22 to specify that the requirement of that section that a supervisor for a licence be nominated within a set period (on pain of cancellation of the licence) applies only if the licence authorises its holder to carry out residential building work or specialist work.

Building Services Corporation (Kit Homes) Amendment 1990

The amendments made by Schedule 1 (10) and (11) bring the supply of kit homes within the scope of the existing provisions of the Principal Act in relation to warning notices and the production of authorities, respectively.

Dispute resolution and discipline

Part 4 of the Principal Act (sections 49 - 83) deals with dispute resolution and discipline.

Schedule 1 (12) inserts definitions of "defective kit home" and (in relation to a kit home) "failure to deliver" and "purchaser" into section 49, the definition section of the Part. A defective kit home is one which is incomplete, incapable of assembly (or capable of assembly only in a manner which would result in a dwelling that does not satisfy the requirements of an Act or Ordinance relating to dwellings) or comprised of materials inferior to those represented in the contract of sale.

The amendments made by Schedule 1 (14) (a), (c) and (e) and (15)-(22) adapt the existing provisions of the Principal Act so as to render the suppliers of kit homes subject to the provisions relating to conduct, complaints, rectification, investigations and disputes. The existing provisions of the Principal Act regarding hearings, suspension, return of cancelled, suspended or varied licences and certificates, enforcement of cash penalties and payments of costs apply to suppliers of kit homes without the necessity for any amendment.

Insurance

Schedule 1 (24) amends section 90 to specify that the provisions of the Principal Act concerning insurance apply to matters concerning the supply of kit homes only in those cases where the contract to supply the kit home was entered into (or where, in the absence of a contract, the actual supply took place) after the date of the commencement of the amendment.

Schedule 1 (25)-(27) and (29) amend the Principal Act to bring matters concerning the supply of kit homes within the scope of the existing provisions relating to comprehensive insurance protection, the payment of insurance premiums, notices to be served on the insured and discretionary payments.

Consequential amendments

Schedule 1 (30), (31) and (32) make consequential amendments to the sections of the Principal Act dealing with the objects of the Corporation and its Trust Account, and to certificate evidence provided by the Corporation.

Schedule 1 (33) amends the regulation-making powers contained in section 140 to cover matters relating to the supply of kit homes.

Minor amendments

Schedule 1 (14) (b) and (28) make minor amendments.

The proposed amendment to section 51 provides that conduct described in section 51 (1) (b), (c) and (d) will be improper conduct for the purposes of disciplinary action under the Act if it is engaged in by holders of supervisor or registration certificates.

The proposed substitution of section 98 (2) ensures that, although the Building Services Corporation is subrogated to the rights of any building contractor against the manufacturers or suppliers of defective material or the designers of a defective

Building Services Corporation (Kit Homes) Amendment 1990

design that gives rise to a payment under BSC Insurance, that right of subrogation may be waived, wholly or in part, by the Corporation.

The expression "penalty unit", used throughout the Bill, has its basis in section 56 of the Interpretation Act 1987. At present, 1 penalty unit is equivalent to \$100.

FIRST PRINT

**BUILDING SERVICES CORPORATION (KIT HOMES)
AMENDMENT BILL 1990**

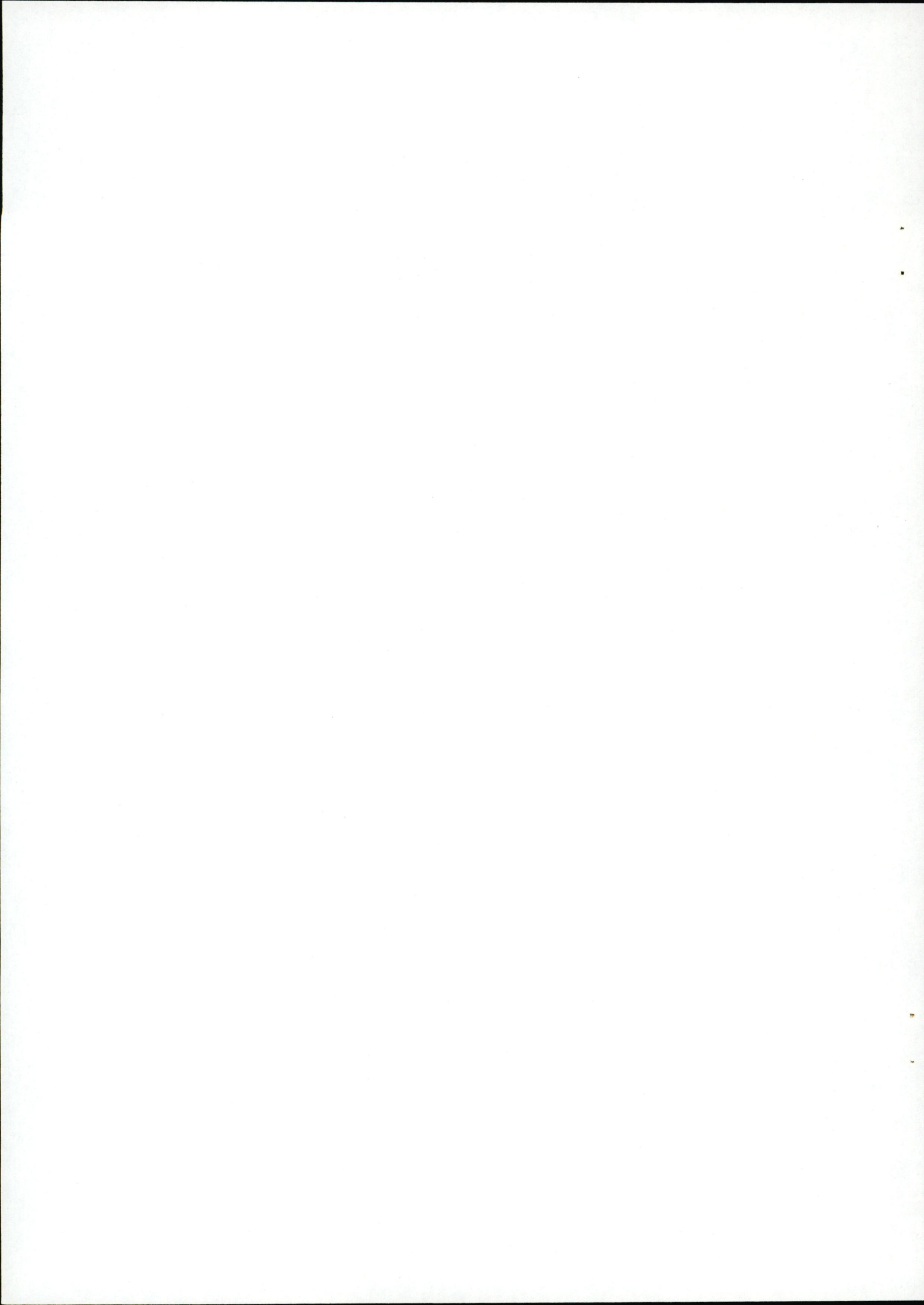
NEW SOUTH WALES



TABLE OF PROVISIONS

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SCHEDULE 1 - AMENDMENTS



**BUILDING SERVICES CORPORATION (KIT HOMES)
AMENDMENT BILL 1990**

NEW SOUTH WALES



No. , 1990

A BILL FOR

An Act to amend the Building Services Corporation Act 1989 so as to impose certain requirements on the suppliers of kit homes, and for other purposes.

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Building Services Corporation (Kit Homes) Amendment Act 1990.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Building Services Corporation Act 1989 No. 147

3. The Building Services Corporation Act 1989 is amended as set out in Schedule 1.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

(1) Section 3 (**Definitions**):

(a) In section 3 (1), insert in alphabetical order the following definitions:

"kit home" means a set of building components which, when offered for sale, is represented as sufficient for the construction of a dwelling according to a plan or instructions furnished by the supplier of the set to the purchaser in connection with the sale.

- . It includes a set of building components which, when offered for sale, is represented as sufficient for the construction of a garage, carport or other structure prescribed by the regulations.
- . It does not include a set of components for the construction of an unregistrable movable dwelling within the meaning of Ordinance No. 71 (the Caravan Parks and Movable Dwellings Ordinance) made under the Local Government Act 1919.
- . It does not include a set of components for the construction of a dwelling, structure or improvement prescribed by the regulations;

SCHEDULE 1 - AMENDMENTS - *continued*

"**rectification order**" means an order under section 59;

"**supply**" means supply for consideration, but does not include supply for the purposes of resale.

(b) After section 3 (1), insert:

(1A) When an additional structure or improvement is declared, by a regulation made for the purposes of the definition of "dwelling" in subsection (1), to form part of a dwelling, any particular structure or improvement included in the declaration is to be regarded as a dwelling for the purposes of this Act, whether or not there exists any dwelling of which it could be taken to form part.

(2) Section 8:

Omit the section, insert instead:

Maximum deposits

8. (1) A person must not:

- (a) demand or receive a payment on account before work is commenced under a contract to do residential building work; or
- (b) enter into a contract under which the person is entitled to demand or receive a payment on account before residential building work is commenced,

if the amount of the payment is prohibited by this section.

Maximum penalty: 20 penalty units.

(2) The amount of the payment is prohibited if:

- (a) the contract price is more than \$20,000 and the payment is more than 5% of the contract price (or, where another percentage is prescribed by the regulations in respect of a particular kind of work, the percentage so prescribed); or
- (b) the contract price is \$20,000 or less and the payment is more than 10% of the contract price (or, where another percentage is prescribed by the regulations in respect of a particular kind of work, the percentage so prescribed).

SCHEDULE 1 - AMENDMENTS - *continued*

(3) The regulations may make provision concerning how a contract price is to be determined for the purposes of this section.

(3) Part 2A:

After section 16, insert:

PART 2A - REGULATION OF SUPPLY OF KIT HOMES

Unlicensed contracting or supplying

16A. A person must not contract to supply, or supply, a kit home except as or on behalf of an individual, partnership or corporation that is the holder of a licence authorising its holder to contract to supply a kit home of that kind.

Maximum penalty: 100 penalty units.

Promotion by or for unlicensed person

16B. (1) An individual, a member of a partnership, an officer of a corporation or a corporation must not represent that the individual, partnership or corporation is prepared to supply a kit home if the individual, partnership or corporation is not the holder of a licence authorising its holder to contract to supply a kit home of that kind.

Maximum penalty: 100 penalty units.

(2) A person must not represent that an individual, partnership or corporation is prepared to supply a kit home if the person knows that the individual, partnership or corporation is not the holder of a licence authorising its holder to contract to supply a kit home of that kind.

Maximum penalty: 100 penalty units.

Contracts to be in writing

16C. A contract under which the holder of a licence:

- (a) undertakes to supply, in person or by others, a kit home; or

SCHEDULE 1 - AMENDMENTS - *continued*

(b) varies any such undertaking previously made, is not enforceable against the other party to the contract unless the contract is in writing signed by or on behalf of each of the parties to it and sufficiently describes the kit home the subject of the contract.

Licensee to be identified in contract

16D. (1) When entering into a contract to supply a kit home, the holder of a licence must:

- (a) do so under the holder's name shown on the licence; and
- (b) specify in the contract the number of the licence.

Maximum penalty: 10 penalty units.

(2) When entering into such a contract, the licensee must not include in the contract the name of any person other than the holder as, or so it may reasonably be mistaken to be, the name of the contractor.

Maximum penalty: 10 penalty units.

(3) This section does not prevent the holder of a licence with a business name registered under the Business Names Act 1962 from also referring in such a contract to the business name.

Maximum deposits

16E. (1) A person must not:

- (a) demand or receive a payment on account before delivery of part of the kit home is made under a contract to supply a kit home; or
- (b) enter into a contract under which the person is entitled to demand or receive a payment on account before delivery of part of the kit home is made,

SCHEDULE 1 - AMENDMENTS - *continued*

if the amount of the payment is prohibited by this section.

Maximum penalty: 20 penalty units.

(2) The amount of the payment is prohibited if:

- (a) the contract price is more than \$20,000 and the payment is more than 5% of the contract price (or, where another percentage is prescribed by the regulations in respect of a particular kind of kit home, the percentage so prescribed); or
- (b) the contract price is \$20,000 or less and the payment is more than 10% of the contract price (or, where another percentage is prescribed by the regulations in respect of a particular kind of kit home, the percentage so prescribed).

(3) The regulations may make provision concerning how a contract price is to be determined for the purposes of this section.

Exhibition homes

16F. (1) In this section, "**exhibition home**" means a dwelling made available for inspection to persons who are invited, expressly or impliedly, to enter into a contract for the supply of a kit home designed to enable the construction of a similar dwelling.

(2) A person who makes an exhibition home available for inspection or who advertises that an exhibition home is so available is guilty of an offence if, at any time it is available for inspection, there is not prominently displayed at the home:

- (a) a copy of the plans and specifications relating to its construction; and
- (b) if the person is aware that persons are to be invited to enter into contracts of the kind referred to in subsection (1) by use of a standard form of contract, a copy of that form of contract.

Maximum penalty: 20 penalty units.

SCHEDULE 1 - AMENDMENTS - *continued*

(3) If:

- (a) a contract is entered into with the holder of a licence for the supply of a kit home designed to enable the construction of a dwelling that is similar to an exhibition home; and
- (b) the holder knows that it was entered into after the other party to the contract had inspected the home; and
- (c) the contract in any way identifies the kit home to be supplied under the contract by reference to the home,

the contract is to be taken to contain a provision that the kit home so supplied will conform to the same plans and quality of materials as the exhibition home, except to the extent (if any) that the contract and its accompanying plans provide for any departure from them.

Effects on contract if contravention

16G. (1) A person who enters into a contract in contravention of section 16A (unlicensed contract or supply) or who is unable to enforce a contract because of section 16C (contracts to be in writing):

- (a) is not entitled to damages or to enforce any other remedy in respect of a breach of the contract committed by any other party to the contract; but
- (b) is liable for damages and subject to any other remedy in respect of a breach of the contract committed by the person.

(2) This section does not affect the liability of any such person for an offence against a provision made by or under this or any other Act.

Application of this Part

16H. (1) This Part does not affect any right or remedy that a person (other than the person who contracts to supply the kit home) may have apart from this Act.

SCHEDULE 1 - AMENDMENTS - *continued*

- (2) This Part does not apply to:
- (a) a contract entered into, before the commencement of this Part, for the supply of a kit home; or
 - (b) the supply of a kit home pursuant to such a contract.
- (4) Part 2B, heading:
Omit the heading to Division 3 of Part 2, insert instead:
- PART 2B - REPRESENTATIONS CONCERNING
LICENCES OR CERTIFICATES**
- (5) Section 17 (**Misrepresentations about licences or certificates**):
At the end of section 17 (1) (b), insert:
- ; or
- (c) is the holder of a licence authorising its holder to contract to supply a kit home, or a kit home of a particular kind, knowing that the individual, partnership or corporation is not the holder of an appropriate licence.
- (6) Section 19 (**Applications for licences**):
Omit section 19 (1), insert instead:
- (1) An individual, a partnership or a corporation may apply to the Corporation for a licence authorising its holder to contract to do such one or more of the following things as may be specified in the application:
- (a) to do residential building work;
 - (b) to do specialist work;
 - (c) to supply kit homes for construction by a person other than the holder of the licence.
- (7) Section 20 (**Issue of licences**):
Omit section 20 (4) (a), insert instead:
- (a) the Corporation has reason to doubt that the applicant will have sufficient financial resources to complete the work which the licence will authorise the applicant to contract to do, or to supply the kit

SCHEDULE 1 - AMENDMENTS - *continued*

homes which the licence will authorise the applicant to contract to supply, as the case may be; and

- (8) Section 21 (**Authority conferred by licences**):
- (a) From section 21 (1), omit "as is", insert instead "or to supply such kinds of kit homes, as may be".
 - (b) After section 21 (1), insert:
 - (1A) A licence that authorises its holder to contract to do residential building work authorises the holder to supply such building components as are necessary for any such work done by the holder.
- (9) Section 22 (**Automatic cancellation of licences**):
- At the end of the section, insert:
- (2) Subsection (1) (a) applies only in respect of a licence that authorises its holder to contract to carry out residential building work or specialist work.
- (10) Section 23 (**Warning notices**):
- (a) In section 23 (1), after "work" where lastly occurring, insert "or the supply of kit homes".
 - (b) Section 23 (2) (a), (b):

Omit the paragraphs, insert instead:

 - (a) who continues to accept payments on account despite having inadequate financial resources; or
 - (b) who has a recent history of unreasonable delays in completing work or in supplying kit homes, or of inadequately supervised work or of defective work.
- (11) Section 47 (**Production of authority**):
- After section 47 (b), insert:
- (b1) any person with whom the holder has contracted for the supply of a kit home or to whom the holder has made a statement indicating that the holder is willing or prepared to supply a kit home or to enter into a contract to supply a kit home; or

SCHEDULE 1 - AMENDMENTS - *continued*

(12) Section 49 (**Definitions**):

In section 49 (1), insert in alphabetical order the following definitions:

"defective kit home" means a kit home:

- (a) the materials used in the components of which are of a standard or quality inferior to the standard or quality represented by the supplier in the contract under which they are supplied; or
- (b) from which some of the components, represented in the contract to be included, are missing; or
- (c) the components of which cannot be assembled in the manner indicated in the plan or instructions furnished in connection with the supply; or
- (d) the components of which, if assembled according to the plan or instructions furnished in connection with the supply, would constitute a dwelling that does not satisfy the requirements of an Act or Ordinance relating to dwellings;

"failure to deliver", in relation to a kit home, means a failure, without reasonable cause, to deliver the kit home within the time specified in the relevant contract or within a reasonable time afterwards;

"purchaser" of a kit home includes any person to whom it was agreed the kit home was to be delivered by the supplier;

(13) Section 50 (**Application of Part to former holders etc.**):

From section 50 (2), omit ", completion or repair".

(14) Section 51 (**Improper conduct: generally**):

- (a) In section 51 (1), after "licence" where firstly occurring, insert "who is authorised by the licence to contract to do residential building work or specialist work".

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) In section 51 (1) (b), after "licence", insert "or certificate".
 - (c) After section 51 (1), insert:
 - (1A) The holder of a licence who is authorised by the licence to contract to supply kit homes is guilty of improper conduct if the holder:
 - (a) commits an offence against this Act or the regulations, whether or not an information has been laid for the offence; or
 - (b) without reasonable cause, breaches a contract to supply any kit home that the licence authorises the holder to contract to supply.
 - (d) From section 51 (2) (d), omit ", completion or repair".
 - (e) Omit section 51 (2) (e), insert instead:
 - (e) commits fraud or makes any misrepresentation in connection with any contract authorised by the licence or any contract for the sale of any dwelling, structure or work that has resulted from, or been affected by, any work done under the authority of the licence; or
- (15) Section 52:
- Omit the section, insert instead:

Improper conduct: assisting others

52. The holder of a licence, or of a supervisor or registration certificate, is guilty of improper conduct if the holder aids or abets, or is knowingly concerned in any way in, the doing of any thing by another person in connection with residential building work or specialist work or the supply of kit homes, if the thing done:

- (a) constitutes improper conduct on the part of the person who did it; or
- (b) would constitute such conduct if the person who did it was authorised, by a licence or certificate, to contract to do, or to do, the work concerned or (where the thing was done in connection with the

SCHEDULE 1 - AMENDMENTS - *continued*

supply of any kit homes) to supply kit homes of the kind concerned.

(16) Section 55 (**Complaints about holders of licences or certificates**):

(a) After section 55 (1) (d), insert:

(d1) that the holder does not have the managerial capacity to carry on the business of supplying kit homes of the kind which the licence authorises the holder to contract to supply, having regard to the volume or kind of kit homes the supply of which the holder has undertaken; or

(b) After section 55 (1) (e), insert:

(e1) that the holder does not have sufficient financial resources to enable the holder to carry on the business of supplying kit homes which the licence authorises the holder to contract to supply, having regard to the volume or kind of kit homes the supply of which the holder has undertaken; or

(17) Section 58:

Omit the section, insert instead:

Object of Corporation with respect to complaints

58. (1) When it receives a complaint, the Corporation is to attempt to bring about the resolution of any dispute giving rise to the complaint.

(2) In particular:

(a) if complaints involve residential building work or specialist work, the Corporation is to attempt to have defective work rectified, incomplete work completed or damaged structures or work repaired; and

(b) if complaints involve kit homes, the Corporation is to attempt to have kit homes delivered without delay and to have any defective kit homes rectified.

SCHEDULE 1 - AMENDMENTS - *continued*

- (18) Section 59 (**Rectification orders**):
- (a) After section 59 (1), insert:
- (1A) If, as a result of a complaint to or an investigation by the Corporation concerning the holder of a licence, the Corporation believes:
- (a) that any kit home is defective; or
- (b) that there has been a failure to deliver a kit home, the Corporation may, by a written order served on the holder, require the holder to remedy or supply the defect, or to deliver the kit home concerned.
- (b) Omit section 59 (2), insert instead:
- (2) Any such order:
- (a) is to require compliance with the order by a specified date; and
- (b) may be made subject to compliance by an affected party or a purchaser with such conditions as are specified in the order.
- (19) Section 60:
- Omit the section, insert instead:
- Effect of order**
60. (1) The making of a rectification order does not affect the exercise by the Corporation of any of its functions under this Act, except as provided by subsection (2).
- (2) The Corporation is not to serve a show cause notice on the holder of a licence on whom a rectification order has been served unless the time for compliance with the order has expired.
- (3) If the Corporation does serve a show cause notice after that time has expired, it is required, in dealing with the holder, to take into consideration:
- (a) whether, and to what extent, the order has been complied with; and

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) whether the holder has been prevented from complying with the order because of the failure of any affected party or purchaser to comply with any conditions specified in the order or for some other reason beyond the holder's control.
- (20) Section 61 (**Deposit of money as security**):
 - (a) From section 61 (1), omit "that contract", insert instead "the relevant contract".
 - (b) After section 61 (1), insert:
 - (1A) Conditions in an order to rectify a defect in a kit home, or to deliver a kit home, may require the purchaser concerned to pay money to the Corporation for the purpose of its being applied by the Corporation towards the cost of the kit home supplied or to be supplied to the purchaser under the relevant contract by the holder of the licence concerned.
 - (c) In section 61 (3), after "affected person", insert "or purchaser (as the case requires)".
- (21) Section 62 (**Investigation by Corporation**):
 - In section 62 (a), after "work" where lastly occurring, insert ", or any kit home".
- (22) Section 63 (**Service of show cause notice**):
 - In section 63 (2) (b), after "purchasers", insert "(including kit home purchasers)".
- (23) Section 77 (**When determination becomes effective**):
 - From section 77 (2), omit "authority", insert instead "licence, certificate or permit".
- (24) Section 90 (**Application of Part**):
 - Omit section 90 (1), insert instead:
 - (1) This Part:
 - (a) in so far as it applies to residential building work, applies only to such work to the extent that it is done or to be done under a contract entered into on or after 21 March 1990 (the date of commencement

SCHEDULE 1 - AMENDMENTS - *continued*

of this section) or, if the work is not contracted, to the extent that it is commenced on or after that date; and

- (b) in so far as it applies to kit homes, applies only to kit homes supplied or to be supplied under a contract entered into on or after the date of commencement of Schedule 1 (24) to the Building Services Corporation (Kit Homes) Amendment Act 1990 or supplied, otherwise than under a contract, on or after that date.

(25) Section 92 (**When comprehensive protection applies**):

After section 92 (2), insert:

(3) BSC comprehensive protection applies in respect of the supply of a kit home if:

- (a) the holder of an appropriate licence contracted to supply or supplied the kit home; and
- (b) the contract price or (if there is no contract) the reasonable market price of supplying the kit home is in excess of \$1,000 (or, if the regulations prescribe a higher amount, the higher amount),

and in such other circumstances (if any) as may be prescribed by the regulations.

(26) Section 94 (**Payment of insurance premiums**):

After section 94 (1) (b), insert:

; or

- (c) the holder contracts to supply a kit home to which BSC comprehensive protection applies (whether or not the kit home is to be supplied personally by the holder); or
- (d) otherwise than under a contract, the holder supplies a kit home (of the kind that the licence authorises the holder to supply) to which BSC comprehensive protection applies.

SCHEDULE 1 - AMENDMENTS - *continued*

(27) Section 95:

Omit the section, insert instead:

Notice to insured

95. A holder of a licence who contracts or commences to do any residential building work referred to in section 94 (1) (a) or (b), or who contracts to supply or supplies a kit home referred to in section 94 (1) (c) or (d), must serve on the person for whom the work is to be done or to whom the kit home is to be supplied a notice in the form approved by the Corporation (describing the effect of BSC comprehensive protection):

- (a) within 30 days after so contracting to do the work or supply the kit home; or
- (b) where the work is commenced or the kit home supplied otherwise than under a contract, within 30 days after so commencing the work or supplying the kit home; or
- (c) if a contract for sale of the land on which the work was so commenced is entered into within 6 years of the holder's so commencing to do the work, within 30 days after entering into the contract of sale.

Maximum penalty: 10 penalty units.

(28) Section 98 (**Recovery of amounts paid under schemes**):

Omit section 98 (2), insert instead:

(2) If any such amount is paid because of defective materials or design work, the Corporation is subrogated to the rights of any contractor concerned against the manufacturers or suppliers of the material or the designers of the defective design, but the Corporation may by written instrument waive, wholly or partly, its right of subrogation in a particular case.

(29) Section 101 (**Discretionary payments**):

From section 101 (1), omit ", or contracted to be done", insert instead "or contracted to be done, or that a kit home was supplied or contracted to be supplied,".

SCHEDULE 1 - AMENDMENTS - *continued*

- (30) Section 105 (**The Corporation**):
- (a) In section 105 (2) (a), after "dwellings", insert "(including the purchasers of kit homes)".
 - (b) In section 105 (3) (a), after "conduct", insert ", or which may involve kit homes".
 - (c) Section 105 (3) (d), (e):
Omit section 105 (3) (d), insert instead:
 - (d) insure under this Act the delivery of kit homes and their freedom from defects; and
 - (e) give general advice and guidance to the public.
- (31) Section 114 (**Trust Account**):
- (a) From section 114, omit ", completion or repair" wherever occurring.
 - (b) In section 114 (1) (b) (ii), after "specialist work", insert "or to supply kit homes".
- (32) Section 131 (**Certificate evidence**):
- (a) In section 131 (a), after "specified" where lastly occurring, insert "or to supply any kit home so specified".
 - (b) From section 131 (i), omit "of residential building work so specified", insert instead "under this Act of any specified matter".
 - (c) From section 131 (i), omit "any building work so specified", insert instead "any specified matter".
- (33) Section 140 (**Regulations**):
- In section 140 (2) (c) and (d), after "specialist work" wherever occurring, insert "or the supply of kit homes".
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