

**BUILDING SERVICES CORPORATION (AMENDMENT)  
BILL 1994**

I move that this Bill be now read a second time.

Mr. President.

For over 22 years in this State we have had a system of regulation in the home building industry, with the primary aim of protecting consumers of residential building services. The basic elements of the system have included licensing those who operate in the industry and providing a form of indemnity insurance for consumers when those licensed operators fail to deliver a product which is complete and free from defects. Sanctions are included in this system to penalise unlicensed operators and to discourage consumers from dealing with unlicensed operators. It may seem like a relatively easy task to make such a system work. After all, the requirements appear simple and there are many other examples of Government and industry regulatory systems which have similar features.

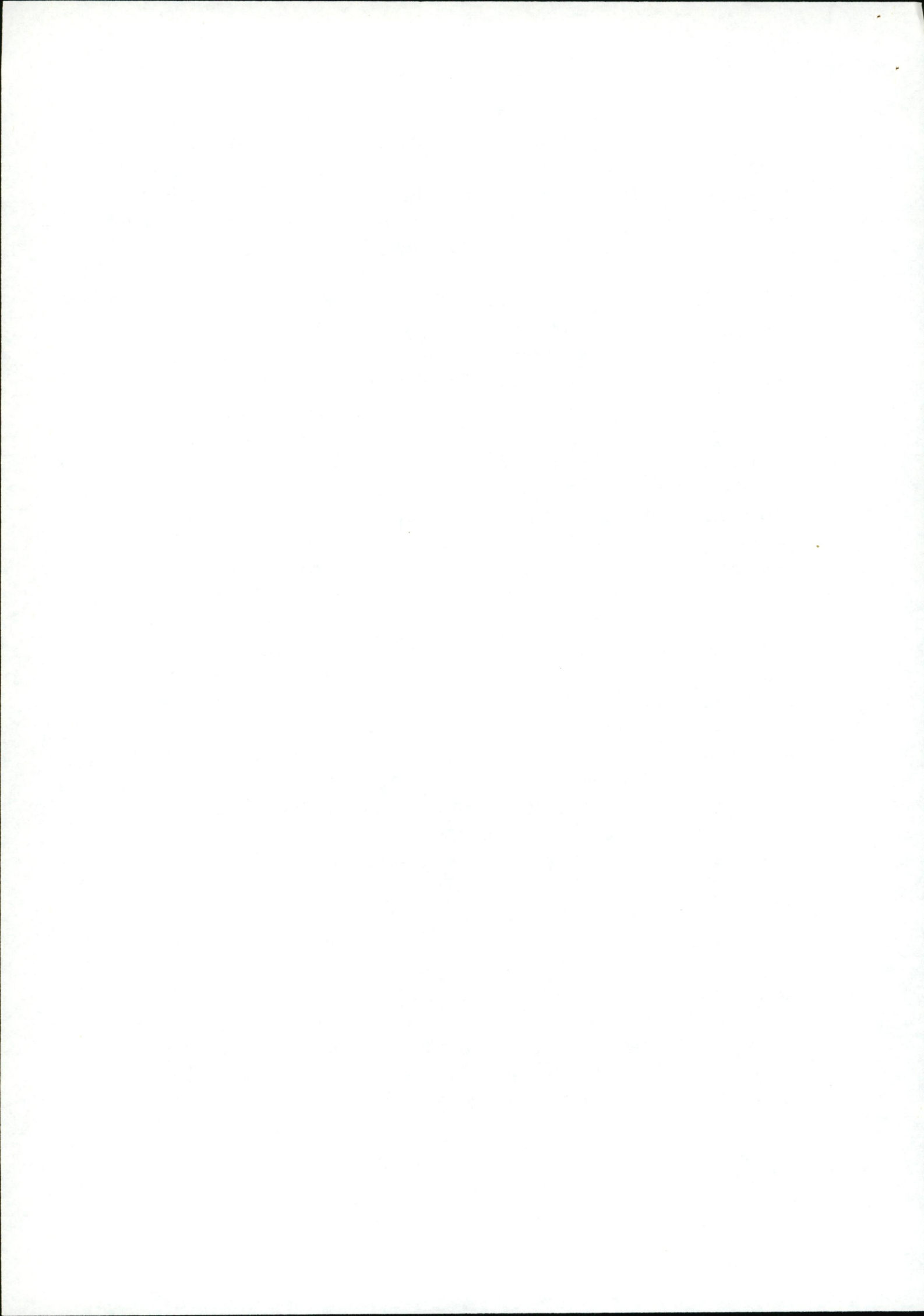
I acknowledge that the vast majority of builders and contractors do the right thing and thus never have been, and probably never will be, the subject of a complaint to the Building Services Corporation, or its predecessor the Builders Licensing Board. To this extent the system has worked. But as honourable members will be only too aware, there are many consumers whose experience with the home building industry has left them with the conclusion that their builder or contractor did not know or did not care what he was doing or had insufficient commitment to the task of completing the contract in a good and workmanlike



manner. There are too many operators still licensed by the BSC who fail to build to an acceptable standard of workmanship or who fail to properly manage their businesses, with the result that consumers are left high and dry when their contractor goes broke. These matters are the targets of the Government's concerns.

Regulation of the home building industry came into existence with the establishment of the Builders Licensing Board in 1971. Before that, the industry had been almost completely unregulated. Much of the impetus for Government regulation in fact came from the building industry. The Master Builders Association had been seeking regulation since 1908. It had argued that fewer building and contracting firms becoming insolvent would mean that sub-contractors and suppliers would be more likely to be paid, and paid on time. They also believed that problems associated with under-capitalisation, inefficient management of companies and the proliferation of unqualified entrepreneurs could all be addressed through licensing. As a result of these overtures from industry and the unfortunate experience of quite a number of consumers, a Parliamentary Select Committee of Inquiry into the building industry was held in 1969. This inquiry had quite a deal to say about what it called the predators who worked in the industry and the raw deal which many consumers had received at the hands of the industry. It recommended setting standards for those working in the industry and licensing those who met the standards.

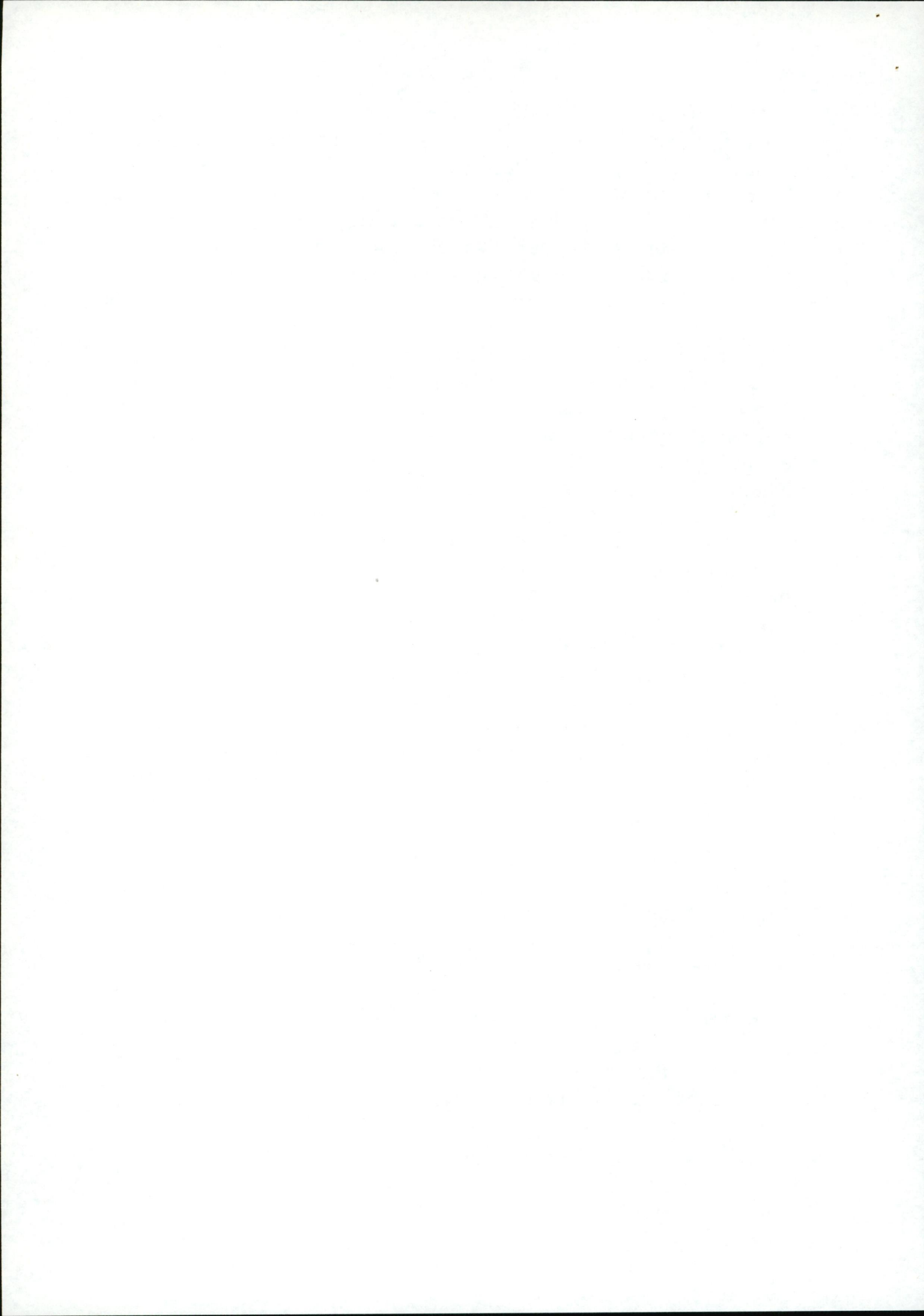
The Builders Licensing Board was created to be the vehicle for implementing this system. So a course was set which has persisted to this day. Consumer protection would be achieved through industry regulation. Regulation would weed out the incompetent and the predators. Standards of work would improve, fewer builders would go broke and, it must follow, the public will benefit. Some 15 years later, a second parliamentary inquiry was held, this time into the



operations of the Builders Licensing Board. This inquiry observed that community expectations had undergone considerable change in the years since the Builders Licensing Board was established. The public were more aware of their rights as consumers, they were better educated on consumer issues and were demanding a greater level of responsiveness and effectiveness from government organisations.

The 1986 inquiry concluded that the Builders Licensing Board had not changed with the times. The inquiry had shown that the Board "is not providing the services required by the public and has been slow to recognise changing community attitudes and needs". So the Builders Licensing Board was abolished in 1987 and, in its place, the Building Services Corporation was created. Further reforms were introduced in 1990 with the passage of the Building Services Corporation Act. This legislation was described as the second and final stage of the legislative reforms previously begun with the establishment of the corporation in 1987. The then Minister's second reading speech described the legislation as establishing a one stop shop licensing system for the building industry, enhancing insurance protection, particularly for purchasers of owner-built houses, and addressing the many home building problems that occupied centre stage during the 1988 building boom.

The Building Services Corporation itself came under criticism some two years later with the publication of the report of the Royal Commission into the Productivity in the Building Industry. The royal commissioner, Roger Gyles, expressed concern in his 1992 report that, given its primary role as a consumer protection body, the corporation disproportionately represented the interests of the supply side of the industry and had not adequately addressed the needs of consumers. Concern was also voiced about the surplus funds generated by the corporation and



the high level of funding for education activities, little of which was seen to provide for consumer education. The royal commission received various complaints about the operations of the BSC. This, coupled with evidence of maladministration of funding by the BSC to the Master Builders Association group apprenticeship schemes led Commissioner Gyles to find that an external review of the Building Services Corporation was warranted.

The Government responded by appointing Dr. Peter Dodd as a commissioner to head up an inquiry into the BSC. Dr. Dodd was appointed to inquire specifically into the way in which the residential building industry in New South Wales was regulated and administered. The inquiry was given the task of investigating and providing recommendations to the Government on consumer protection in the home building and related services industries. Commissioner Dodd reported to the Government in February 1993 and the report was released as a public document shortly thereafter. One of the principal findings of the Dodd inquiry was that the one-stop-shop approach adopted by the BSC is fundamentally flawed. He concluded that the BSC has put itself in a position of conflict by taking on too many roles-licensing, dispute resolution, discipline, consumer protection, insurance provider and funder of education and training. To quote from Dodd:

The majority of consumers who wrote to me believe that the BSC is biased towards builders; equally, most builders who wrote to me believe that the BSC is biased towards consumers. The frustration of consumers and builders who are dissatisfied with the outcome of a dispute is often redirected to the BSC. The system is becoming more and more unworkable.

Dodd recommended that the key functions of industry regulation and consumer advice, dispute resolution and insurance, be separated. In respect of licensing, Dodd

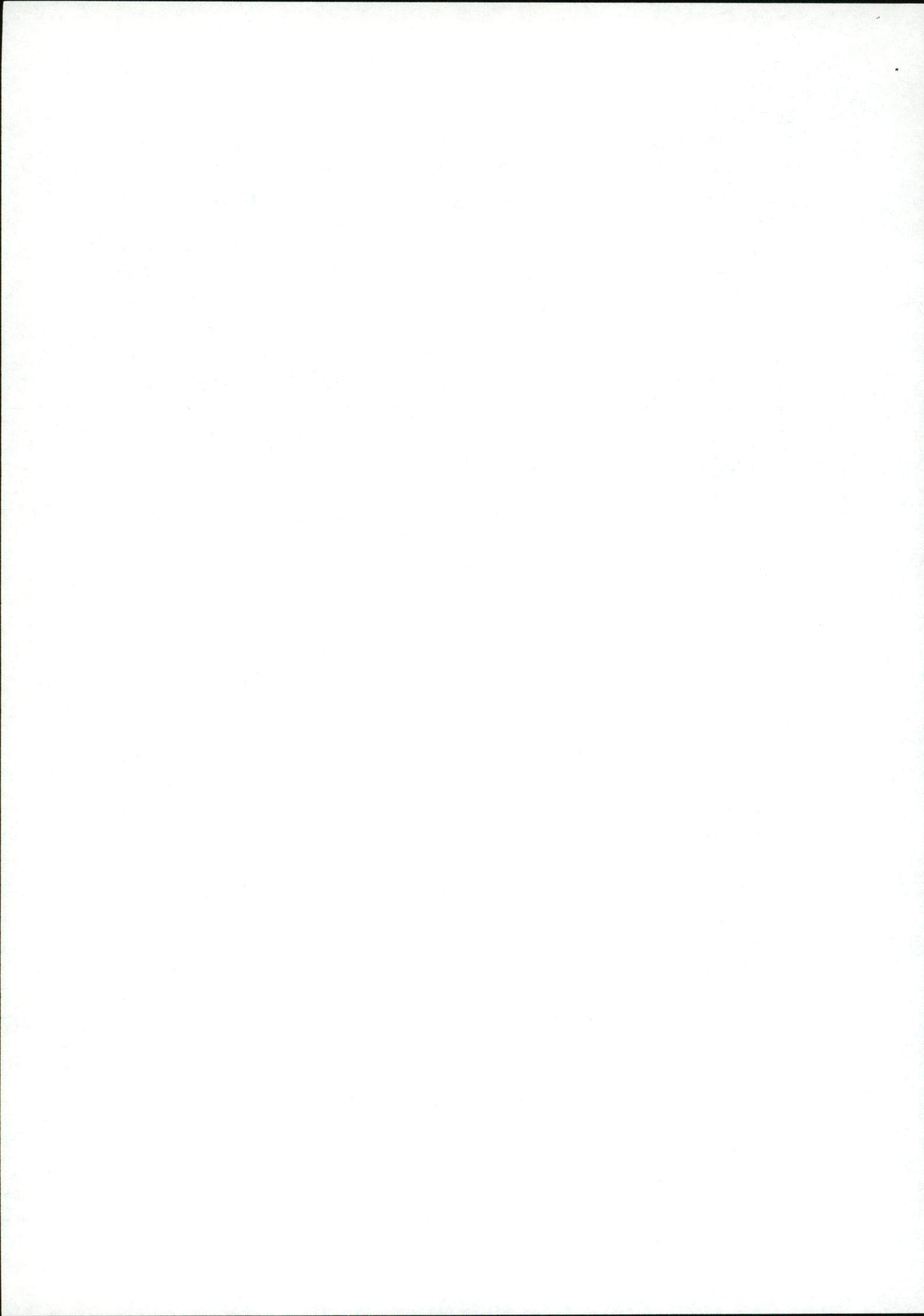




concluded that its existence is not a guarantee of quality. Most complaints against builders are against licensed builders. The current gold licensing system was found to be misleading in that it suggests better than average quality work by contractors when this is not necessarily the case. Dodd also concluded that the present structure of the licensing system is also prone to industry capture by creating barriers to entry. Licensing was recommended for replacement by a registration scheme which would be supported by a compulsory indemnity insurance scheme. With its emphasis on less regulation by Government, the Dodd inquiry saw no reason for the Building Services Corporation to continue its monopoly of the insurance market for the residential building industry.

Dodd considered that insurance for residential building work should be reviewed and privatised. He considered that the lack of price competition and innovation is not in the best interests of consumers or the citizens of New South Wales, and the links with licensing and dispute resolution means that the BSC is in a position to apply unfair leverage of builders and consumers, a position which would not be available to private insurers. The BSC has been a major funder of education and training in the residential building industry. Dodd confirmed the earlier view of Commissioner Gyles that the bulk of this money has been directed to the supply side of the industry with only a small proportion being devoted directly to consumer education and training. Dodd also found that funding for education and training provided by the BSC needed to be better managed and, if it continued, needed to be linked to overall State labour markets and training needs. Dodd supported the corporation's development of a plain English residential building contract. The contract was seen to hold the key to alleviating many of the disputes which currently occur.

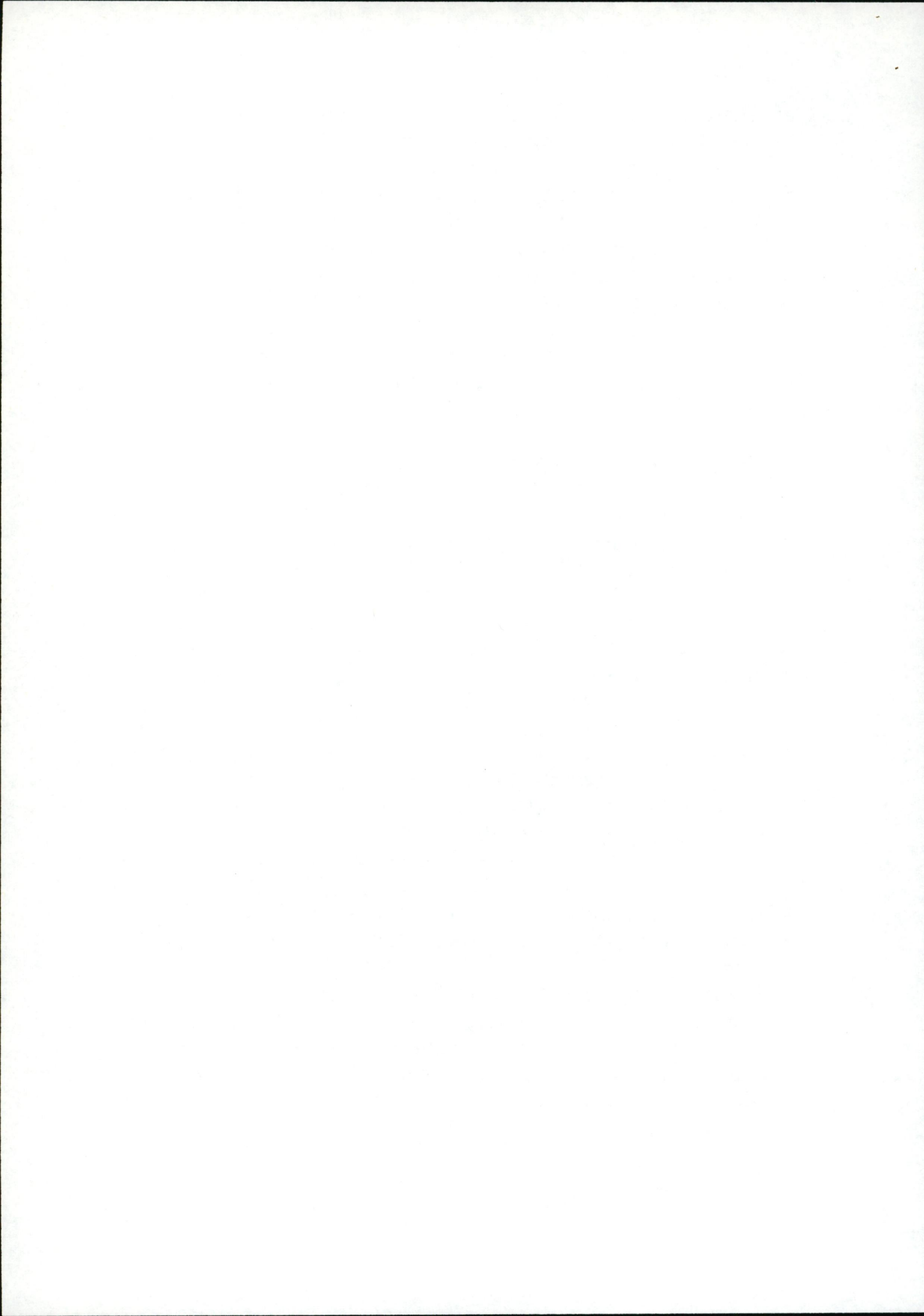
On the issue of consumer protection and support, Dodd saw that the effort being made needed to be overhauled. He



challenged the continuation of a strategy which focused primarily on achieving protection for consumers through industry regulation and education. I will touch briefly on a number of other important issues taken up by Dodd. He was critical of the large surplus funds accumulated by the BSC as was, to a much lesser extent, the 1986 inquiry of the Builders Licensing Board. Dodd took up the issue of the role of local government and called for a system of mandatory inspections at critical stages of residential building work. Dodd also believed that the board of the corporation should be restructured, with its membership reconstituted as an advisory council.

After receiving the report the then Minister set up a small task force to consider public reaction to it. The following organisations were invited to comment on the report: Australian Consumers Association, the Trade Practices Commission, the Building Action Review Group, the Labor Council of NSW, Mr. John Mant, the Master Builders Association of New South Wales, the Housing Industry Association, the Master Plumbers & Mechanical Contractors Association of New South Wales, the Electrical Contractors Association of New South Wales, the senior referee of the Building Disputes Tribunal, the chairman of the Commercial Tribunal, the Local Government and Shires Association, the Department of Local Government and Co-operatives and the Attorney General's Department. The task force included representatives of the Premier's Department, the Department of Industrial Relations, Employment, Training and Further Education, the Department of Housing, the Office of the Minister for Housing, a representative, Minister for Consumer Affairs, the Cabinet Office and the Treasury.

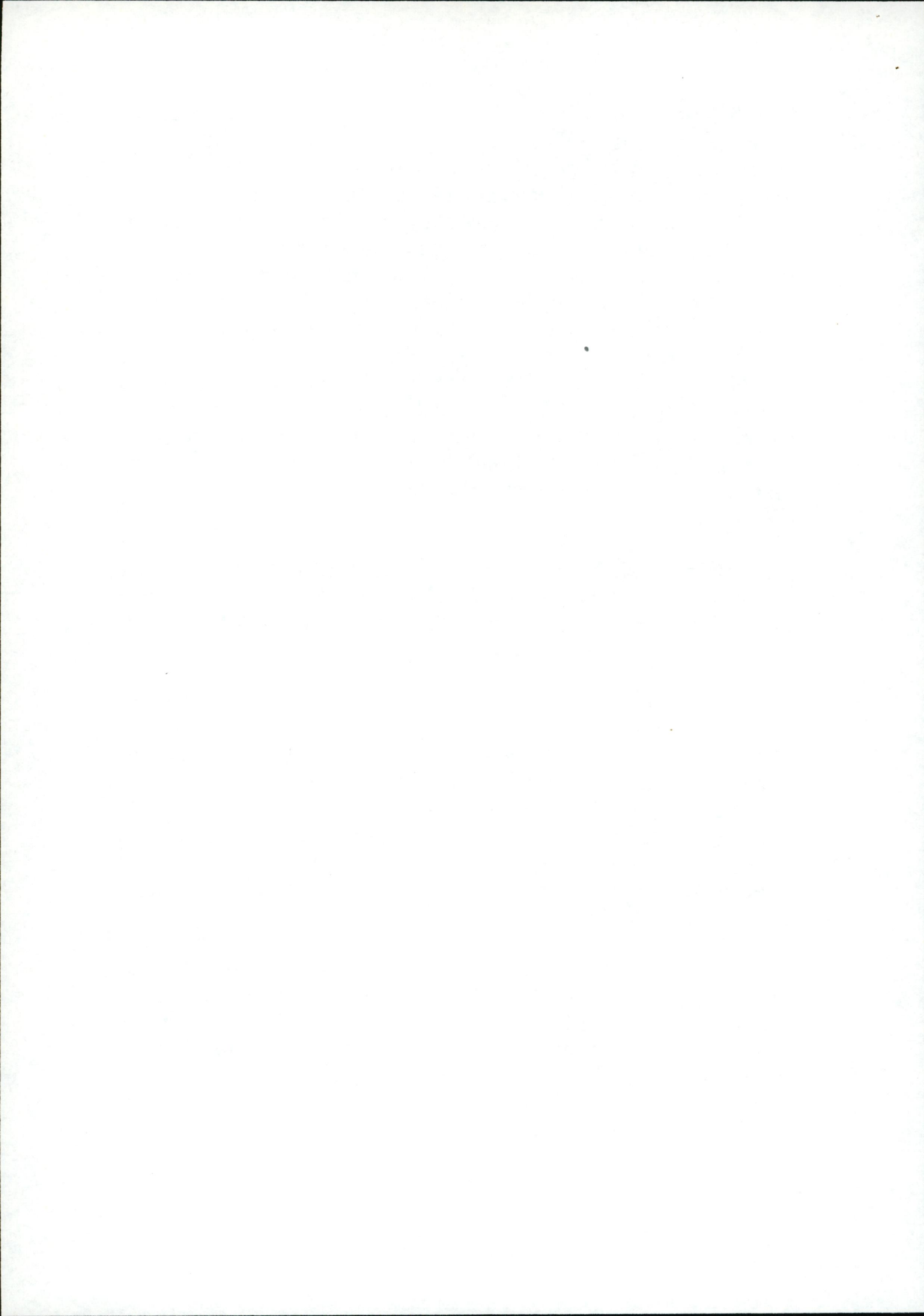
The task force reported that, whilst there was widespread agreement about the problems described by Dr. Dodd, there were quite divergent views about some of the solutions he proposed. The task force recommended to the Minister that further research and consultation be undertaken into the



feasibility and implications of the Dodd report recommendations. This research and consultation has been under way since late last year and is to continue in two important respects- licensing and insurance, on which I will have something more to say shortly. In the meantime, a number of important changes have been put in place in response to the criticisms of Dodd and Gyles. For the information of honourable members I would like to touch on a few of these changes. The BSC has been separated from the Department of Housing, established as a "stand alone" organisation, and has been transferred from the ministerial responsibility of the Minister for Housing to the Minister for Consumer Affairs. These actions were taken as the first steps in breaking away from the past, and to make it clear that the primary business of the BSC is protecting the consumer.

The plain English home building contract was launched on 15 December 1993. This document marks a turning point in the approach to consumer support and education from now on. It is also a first for achieving a major consumer initiative without the need for further regulation. The building industry, consumers and Government combined to get this initiative in place. It is a clear demonstration of what is possible through a co-operative approach to common problems. I think, as the past has shown, further regulation and Government control is not necessarily the answer. A different approach must be found which engenders commitment by the supply side to service and quality on the one hand, and which establishes a vastly better informed consumer on the other.

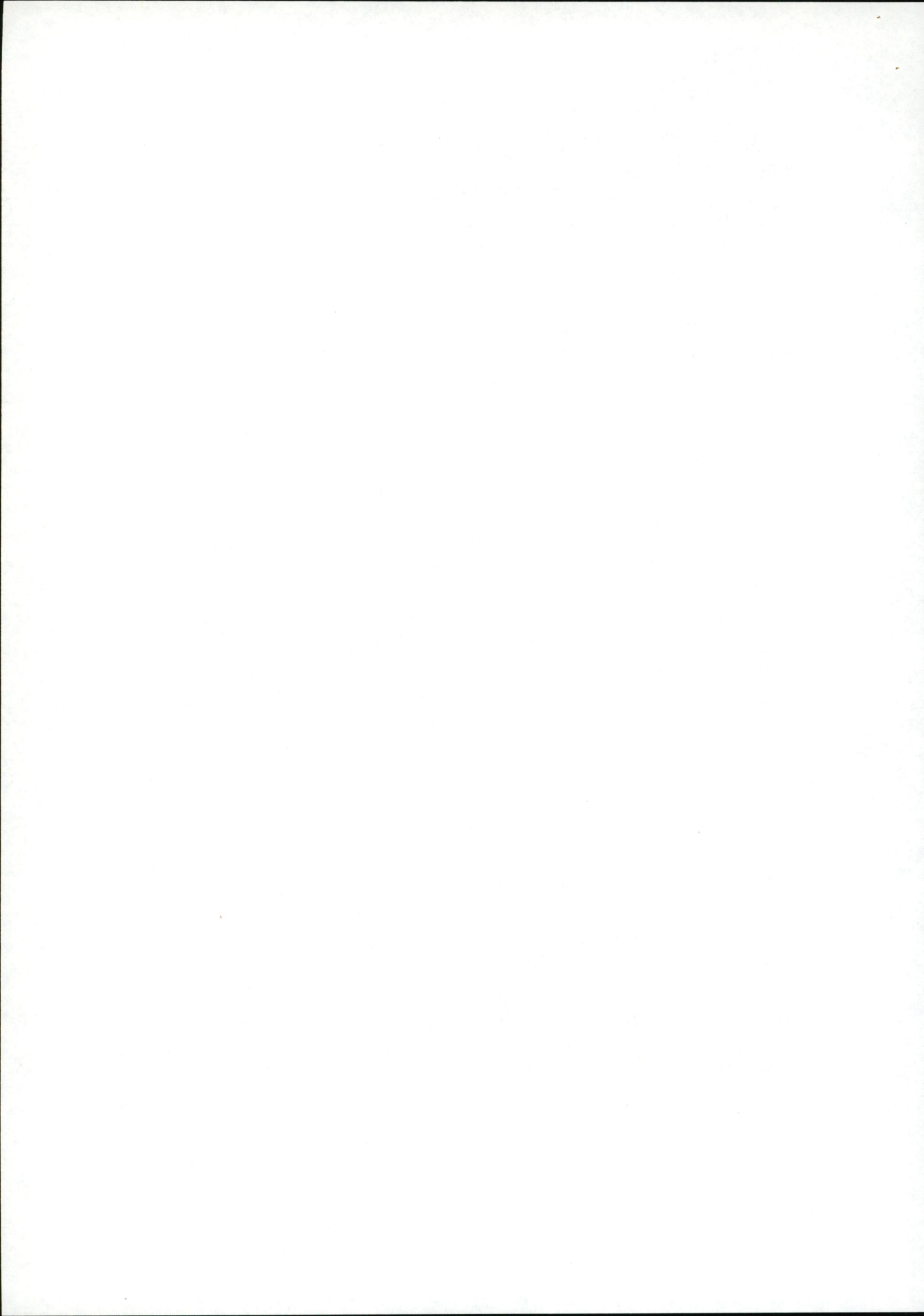
Although I am pleased with the initial response of consumers and builders towards the contract, I have arranged for the BSC to furnish me with a comprehensive report on its first six months of operation. A great deal of work has been done to refocus the consumer education and advice roles of the BSC. This is an area which came in for



particular criticism by Dodd and Gyles. With the cooperation of various consumer groups and individuals, the BSC has developed a consumer strategy - a five point plan to guide the enhancement of this area over the next two to three years. The consumer strategy is being supported by a substantial increase in funding from the BSC for consumer advice and education.

A thorough review has been carried out of the Corporation's funding of industry education and research. Over 80 per cent of the \$20 million spent on these activities during the past six years has been expended on some form of pre-vocational training. Whilst the Government maintains its strong commitment to training, this is properly the responsibility of my colleague, the Minister for Industrial Relations and Employment. The BSC funds have provided many advantages to industry and to those who participated in the training, but the strategy has failed to address the continuing education needs of the industry. In other words, very little has been spent in support of the corporation's objective of maintaining standards in the industry. The process of deciding the allocation of grant funds has also failed to be competitive, thus giving no guarantee that the best projects have received funding.

Following this review, a whole new education and research program has been put in place, addressing both industry and consumer education needs. Particular emphasis has been given to issues of quality and best practice as a way of lifting industry performance and delivering a better product to consumers. Public advertisements calling for expressions of interest in the program closed on 29 April and over 60 applications were received. These are now being assessed. Further preliminary examination of the recommendations of the Dodd inquiry in respect of licensing and the privatisation of insurance have unearthed many complex issues to consider. In relation to BSC insurance, very few people in responding to the Dodd report, raised

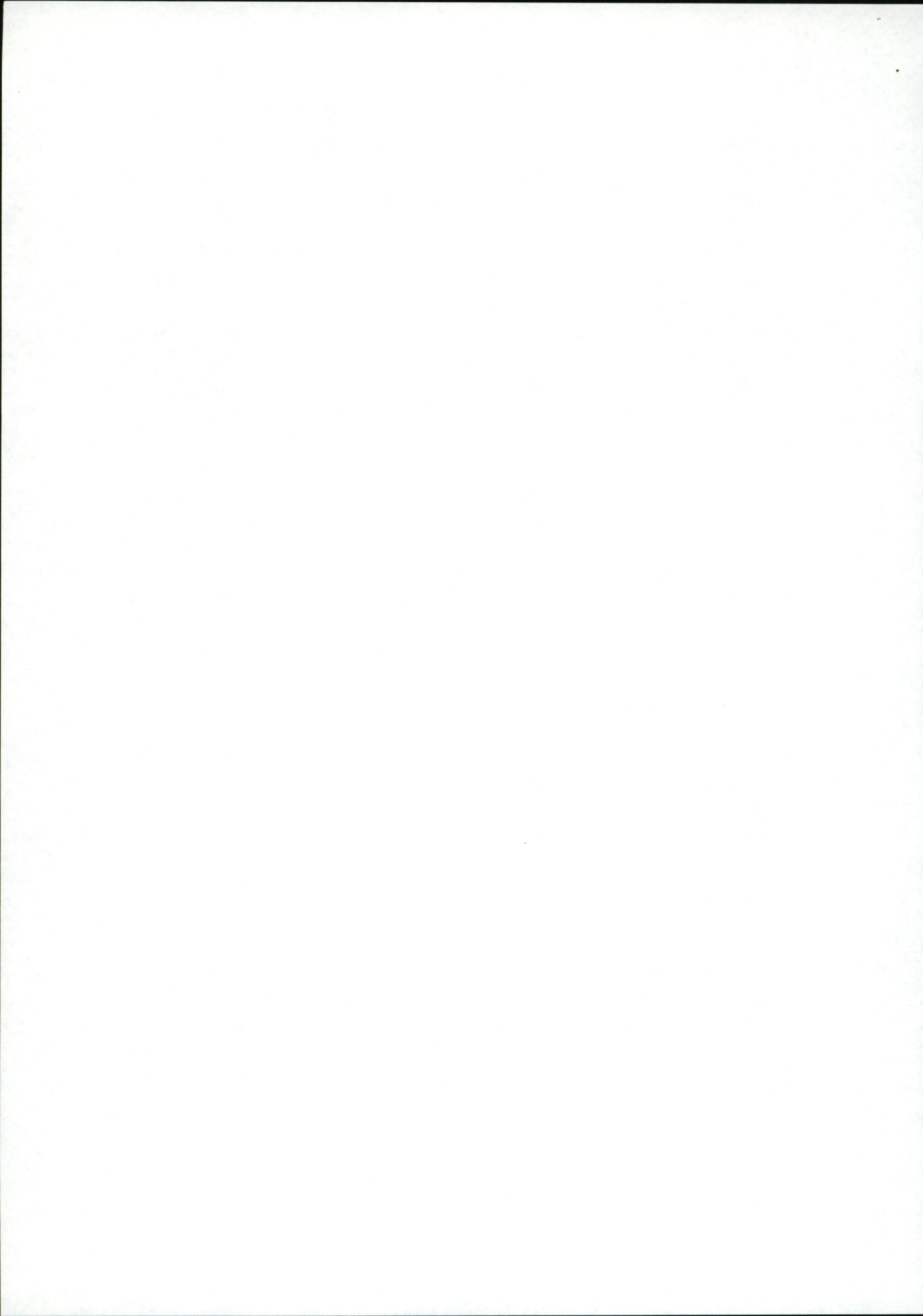




strong objections to the private sector taking over this role, provided consumers and the industry were treated fairly by any new arrangements. A task force was set up to investigate the issues and the feasibility of such a scheme.

An interim report of the task force has developed a set of principles and an indicative scheme of insurance. Options have been discussed with a number of private insurers to assess the feasibility of proceeding to a further stage. I have considered the task force interim report and have instructed that the study proceed to the next stage. I expect the task force will complete its work later this year and I will then be in a position to recommend what changes should be adopted in respect of home building insurance. I accept the findings of the Dodd inquiry that insurance should be separate from the dispute resolution functions of the BSC. It is now a question of how this can best be achieved and the timing of such a change. In the meantime, it will be necessary for the BSC to continue to manage the existing scheme. The way in which this is intended to be done during the transitional phase will, as far as possible, keep the business of running insurance separate from the other business of the BSC.

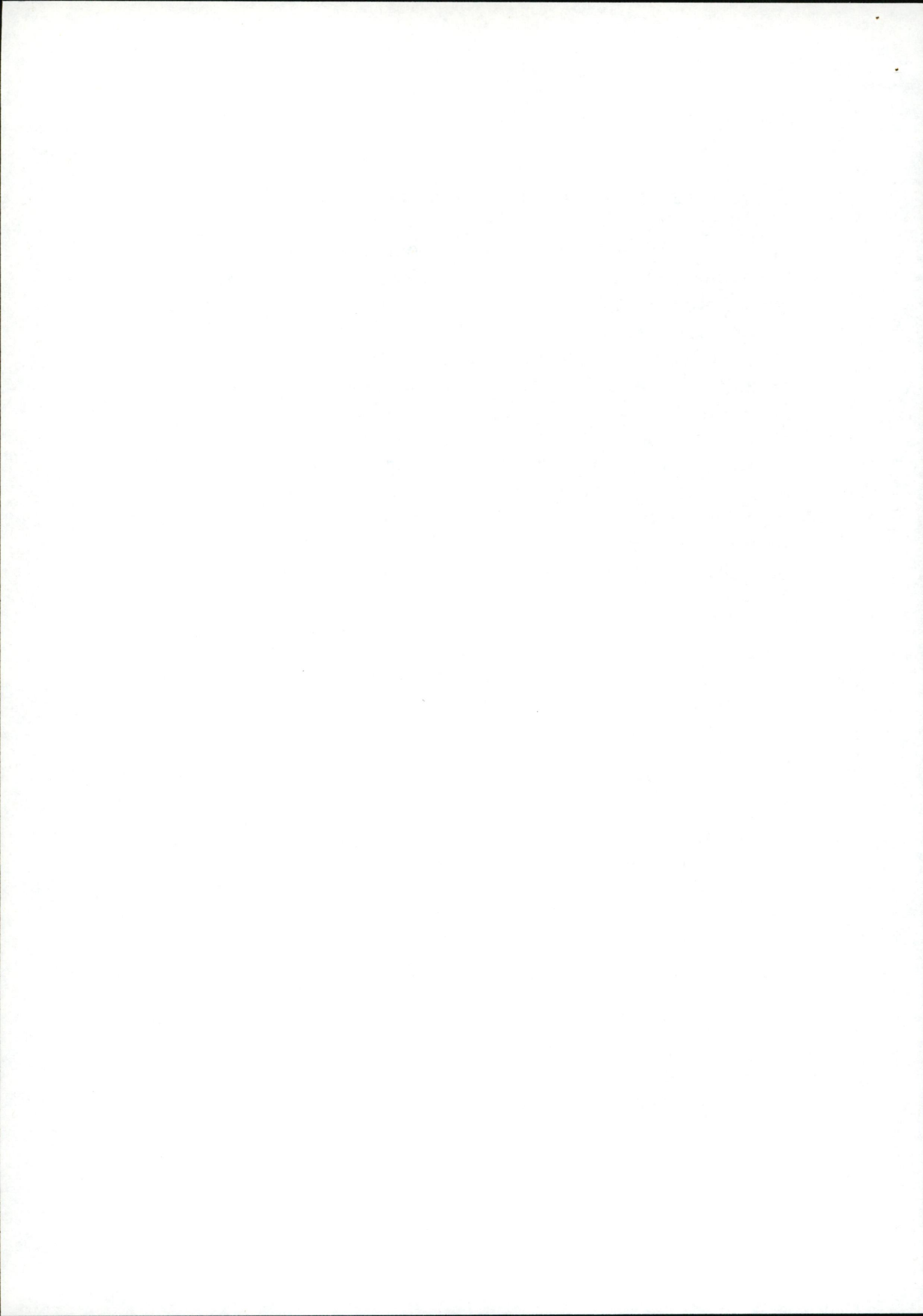
Very few people have agreed with Dodd's proposals for the abolition of licensing and its replacement with a scheme of registration, supported by compulsory insurance. Industry overwhelmingly supports retention of a licensing scheme, but agrees that the concept of a gold licence has been heavily debased by the poor performance of some licence holders over the four years since such a scheme was adopted. I understand that it was originally introduced as a measure to encourage persons working in the industry to obtain a licence. The way it has been promoted has definitely given the impression that it represents superior quality work. As Dodd pointed out, this is not the case. Consumer groups, whilst critical of the licensing system, are



not anxious to see it abolished. It is better than nothing seems to be the view.

There are many misunderstandings about the place of licensing and what it is meant to achieve. The hybrid form of license issued by the BSC, combining both occupational licensing and business licensing, has added to the confusion in people's minds about its role. For 22 years New South Wales has had a scheme of consumer protection which has been driven by licensing. In many other administrations around the world protection of the home building consumer is achieved by other means and licensing/registration is only a secondary feature of these schemes. It is not possible overnight to simply abandon licensing as we know it in this State. One of the pre-requisites for fundamental changes in licensing appears to be the existence of a successful private sector insurance scheme. To further investigate the reform of licensing, I am establishing a licensing review task force. The task force will consult extensively with industry and consumer groups. Its immediate task will be, first, to identify ways of improving the current system in the short term and second, to examine the options for more fundamental reform of licensing under a privately managed home building insurance scheme.

Many changes and improvements have been implemented in the BSC over the past six months. An all out effort is being made to clear up arrears of work, particularly in the investigation and resolution of complaints. It is not unfair to say that many of the corporations management systems and practices were in need of updating and considerable effort has been made over the past few months to bring the organisation into line with modern business practices. The proposed reforms seek to address the problems of the one-stop-shop approach identified by Dr Dodd. The transfer of the BSC insurance to the private sector is a key element in unravelling the conflicts generated by the one-stop-shop approach. As I have indicated earlier, work on proposals to

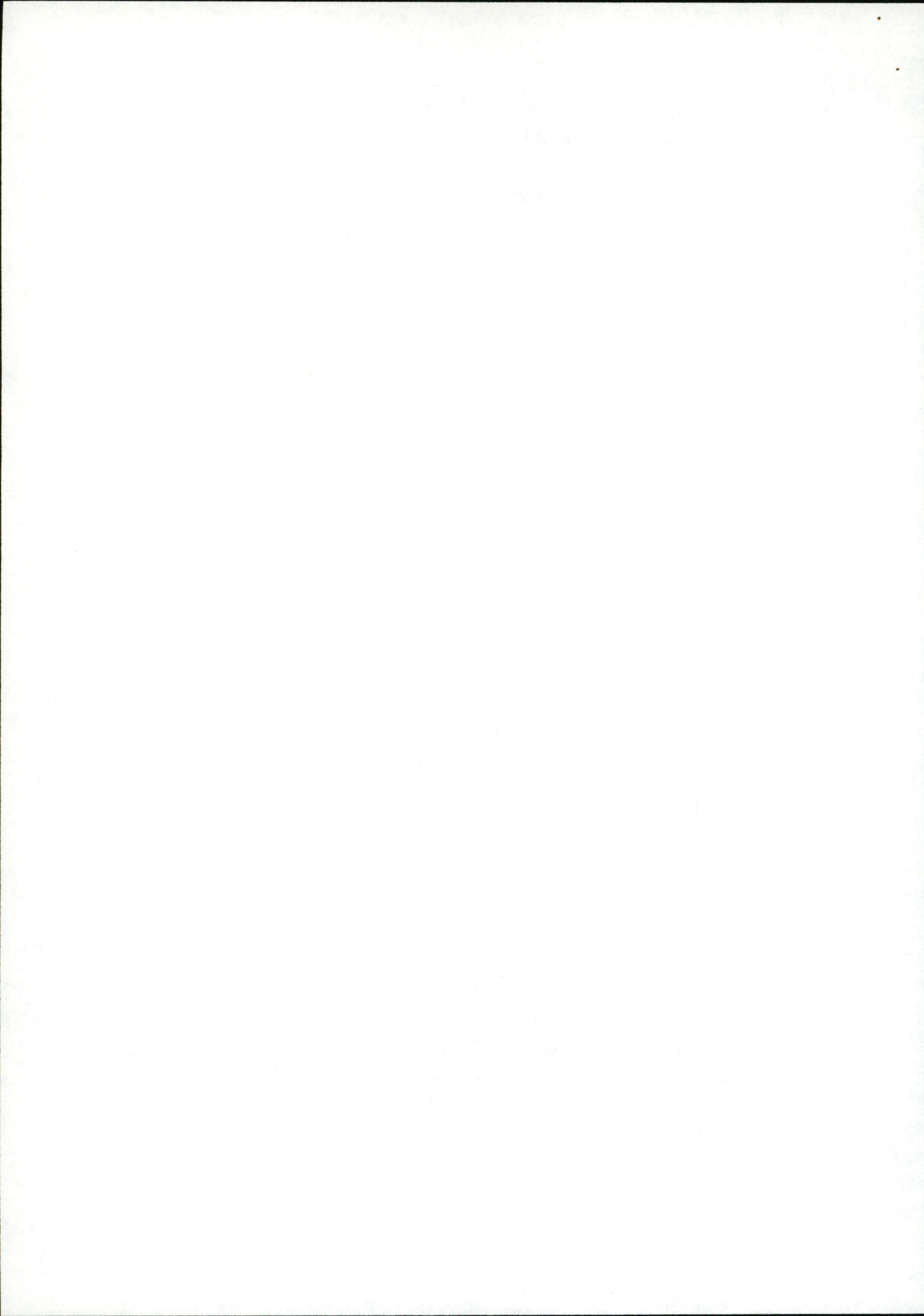


privatise the insurance is proceeding and it is intended that these proposals be ready for consideration next year.

The bill introduced today covers the remaining significant areas of reform, namely, dispute resolution, disciplinary hearings, the corporation structure and the Building Dispute Tribunal referees. I will turn first to the provisions relating to dispute resolution. As honourable members may be aware, the system for resolving disputes in the residential building industry has proven to be unsatisfactory from the view of the consumer, the builder and the BSC. The objectives of the proposed changes are to facilitate early intervention by the BSC in disputes; to emphasise mediation as the optional first and preferred means of resolving disputes; and to transfer from the BSC to the Building Disputes Tribunal authority to issue rectification orders. The earlier an attempt is made to resolve a dispute between two parties, the better the prospects for its resolution.

The present system of dispute resolution does not facilitate effective early intervention by the BSC. By the time the BSC can act on complaints the relationship between the parties, more often than not, has reached virtual breaking point and the prospect for a negotiated outcome agreeable to both parties is very slim indeed. Under the present system, the consumer must have informed the builder in writing of a complaint and must give the builder 30 days to rectify the problem. Unless health and safety are at risk, the BSC cannot act on a complaint until the 30-day period has expired.

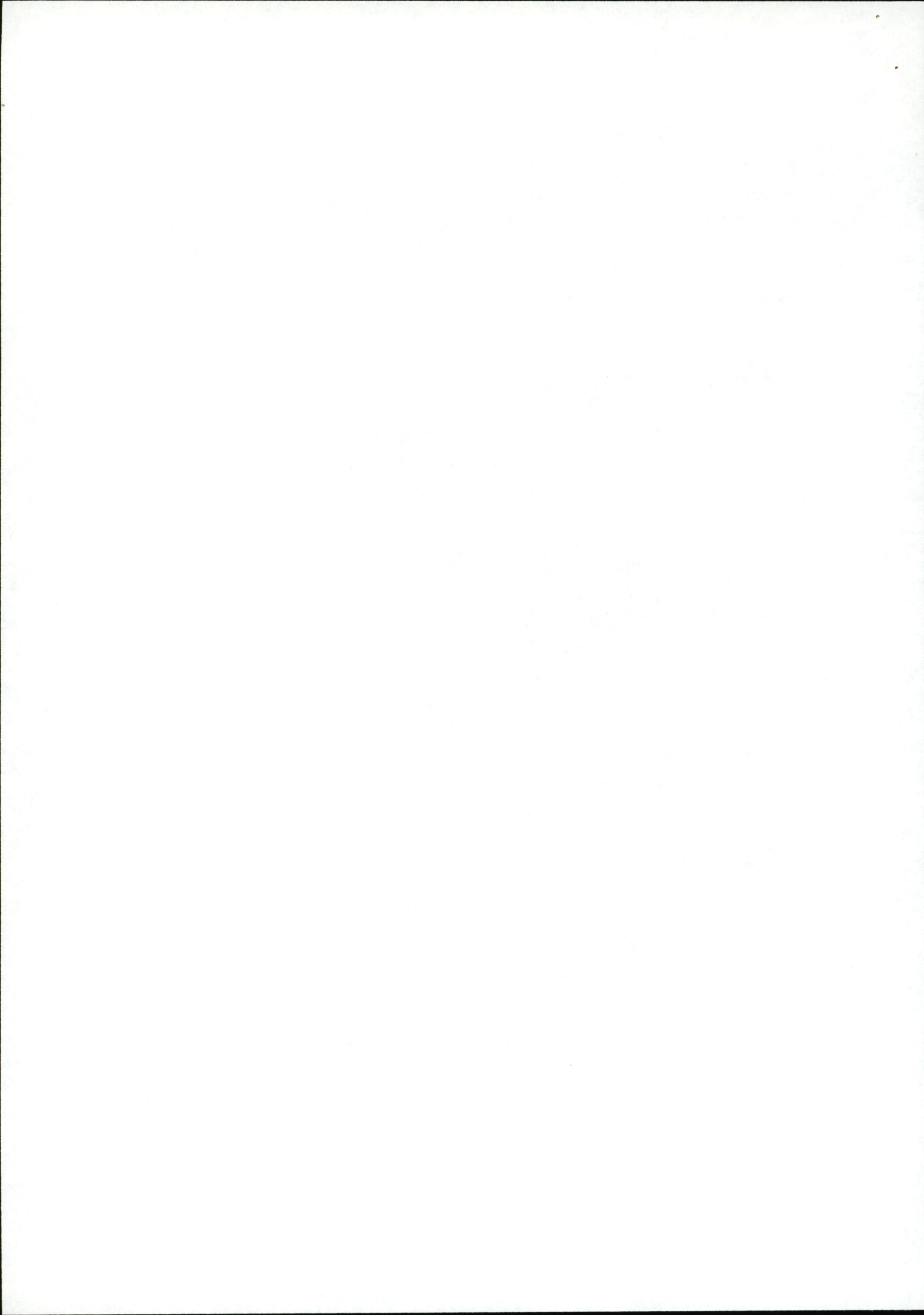
When the 30-day notification period was first introduced its objective was to encourage the consumer and the builder to resolve their dispute without resorting to formal intervention by the BSC. This objective has not been met. Regrettably, the 30-day notification period has been used as a stalling tactic by many builders, refusing to act on



complaints by the consumers unless ordered to do so by the BSC. From the builder's point of view this may seem like good business practice: why fix something that may not require fixing? From the consumers' point of view, the 30-day period is a frustrating delay, particularly as they would have been living with the problem for a lot longer than the 30 days. Add to that the time required by the BSC to help resolve the complaint and honourable members will see that the dispute resolution system falls far short of consumer expectations to have their complaints resolved speedily.

The Building Services Corporation (Amendment) Bill therefore seeks to abolish the requirement for consumers to wait 30 days and so allow the BSC to act on formal complaints from consumers as soon as they are lodged with the BSC. Consumers will advise their builder or contractor in writing setting out the key details of the complaint; at the same time, they can lodge a notification of complaint against the builder with the BSC. The BSC will then proceed to assist the parties to resolve their dispute through mediation or other dispute resolution options that are available to the parties, depending on their choice and circumstances. Mediation, of course, will not be appropriate in some circumstances, for example, where the builder is insolvent or cannot be located. In these circumstances the consumer may proceed to lodge an insurance claim.

Honourable members will be aware of the increasing emphasis being given to alternative dispute resolution methods over the past few years. The BSC approach to dispute resolution from now on which emphasises mediation rather than litigation, is in line with this general shift in emphasis. The new dispute resolution system will offer incentives to disputing parties to resolve their disputes through mediation. The mediation service will be provided at no charge to the parties and there will be no penalty for not completing mediation successfully. I am





confident that many will avail themselves of the opportunity to resolve their disputes through early mediation and in doing so avoid the high costs associated with building litigation. The BSC will provide high technical advisory services to support owners and builders in the mediation process.

Under the present system the BSC has the authority to issue rectification orders to the builder or contractor who fails to act on a complaint of a consumer. The builder must comply with the rectification order or face disciplinary action by the BSC and cannot have the rectification order reviewed, as is the case in the Queensland system. Rectification orders are at times necessary to finalise a dispute, but their direct link with disciplinary action, Dodd correctly pointed out, places the BSC in the position of conflicting roles. The bill proposes to eliminate this direct conflict between dispute resolution and disciplinary action by transferring to the Building Disputes Tribunal the authority to issue rectification orders. Where, following the investigation of the complaint lodged by a consumer, the BSC considers that any residential building work or specialist work is defective or incomplete, it may apply to the BDT for an order requiring the contractor to rectify or complete the work.

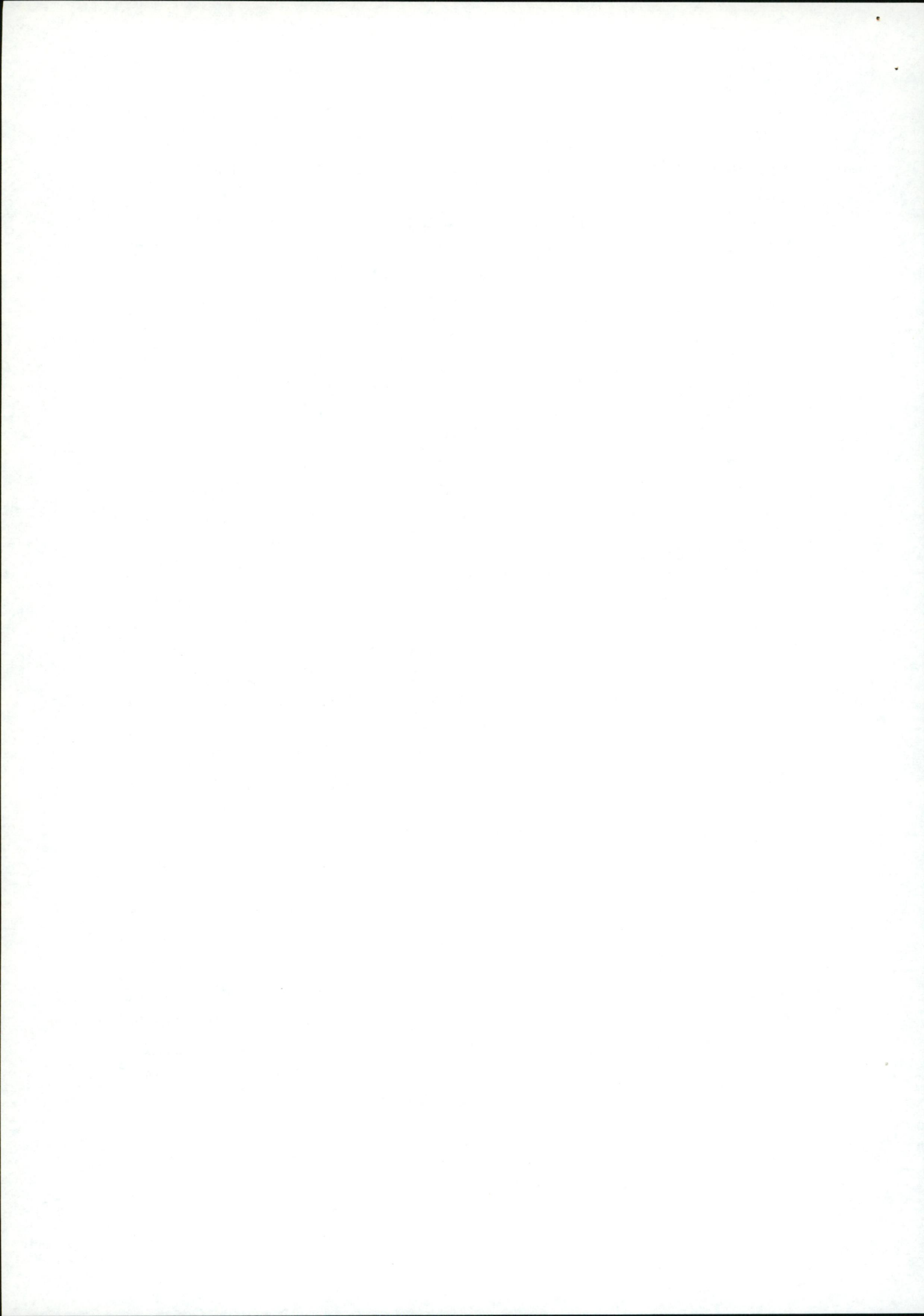
An application for the issue of a rectification order will be heard by a building disputes referee in a similar manner to a building claim. Following consideration of the evidence, the BDT will be able to add to, vary or omit any of the items of work to be rectified or completed. However, the order need not specify the manner in which the work is to be done. A rectification order by the BDT may be conditional on a home owner or complainant complying with certain conditions, for example, allowing the builder reasonable access to perform the work. Rectification orders will not be subject to the \$25,000 monetary jurisdiction of the BDT and will not be enforceable under the Consumer Claims



Tribunals Act. However, failure to comply with the order without reasonable cause will remain a ground upon which disciplinary action may be taken against the contractor.

In addition to or instead of making a rectification order, the BDT may make other orders under the Consumer Claims Tribunal Act as if the complainant and the contractor were parties to a building claim. Such orders, whether monetary or work orders, will be subject to the \$25,000 jurisdictional limit and will be enforceable in the courts. Where a work order is not complied with, the complainant may return to the BDT to have the work order converted to a monetary order, which can then be enforced through the Courts. The second area of reform addressed by the legislation is disciplinary hearings against licence holders. Disciplinary hearings under the existing system are conducted by members of the Building Services Corporation, assisted by associate members. Whilst it is appropriate for the BSC as the licensing body to initiate disciplinary action against those who fail to comply with the Building Services Corporation Act, it is not appropriate for the BSC to conduct the disciplinary hearings. I believe that the members and associate members of the corporation have endeavoured to conduct disciplinary hearings with impartiality. However, as Dodd has so clearly pointed out, disciplinary hearings will always be criticised as being biased if conducted by the BSC.

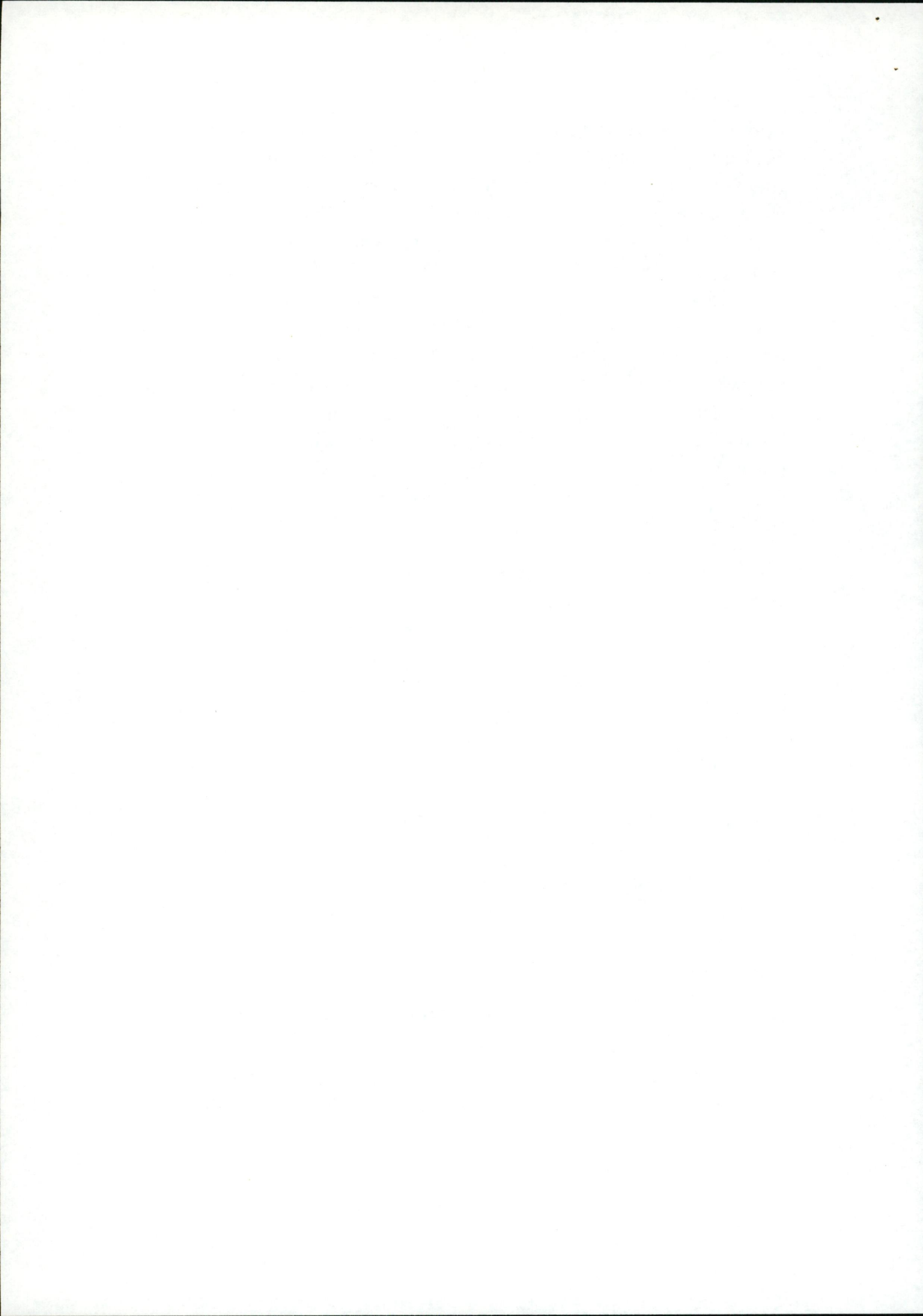
The bill will see disciplinary hearings transferred to the Commercial Tribunal so that they are conducted on neutral grounds. The BSC will still be responsible for initiating disciplinary action. Disciplinary action will not be contingent upon the contractor's refusal to comply with a rectification order. As was recommended by Dodd, the BSC will take into account the overall performance of the licence holder. As disciplinary action is primarily concerned with protecting the public, disciplinary action should focus on the retention or non-retention of a licence, not on disciplining licence holders for one-off instances of failure.



Following the investigation of a complaint or information received concerning the improper conduct of a contractor or the contractor's fitness to hold a licence, the BSC may prepare and lodge a notice to show cause with the Commercial Tribunal. The notice to show cause will be served on the contractor and the hearing will be conducted before the Commercial Tribunal. The licence holder will be entitled to be legally represented and may call witnesses. The BSC will be a party to the proceedings and will present evidence in relation to the grounds contained in the notice to show cause. The decision of the Commercial Tribunal will be final and appeals may be lodged with the Supreme Court, but only on a point of law. I hope that the residential building industry will welcome these proposals, as disciplinary action will be focused on the important question of fitness to hold a licence and disciplinary hearings will be conducted before a neutral third party.

The third area of reform addressed by the bill is the structure of the Building Services Corporation. The current board structure represents various sectional interests and the relationship between the board and the general manager is a confused one. The bill provides for the establishment of a Home Building Advisory Council which will serve as a peak body to advise me on a range of issues in the residential building industry. Membership of the Council will be drawn from industry groups, consumer groups, individuals in the community who have expertise or interest in consumer issues or the residential building industry and a member appointed by the Minister after consultation with the Local Government Association of New South Wales and the Shires Association of New South Wales. The Council will operate independently of the BSC and will have its own administrative structure to support its operations.

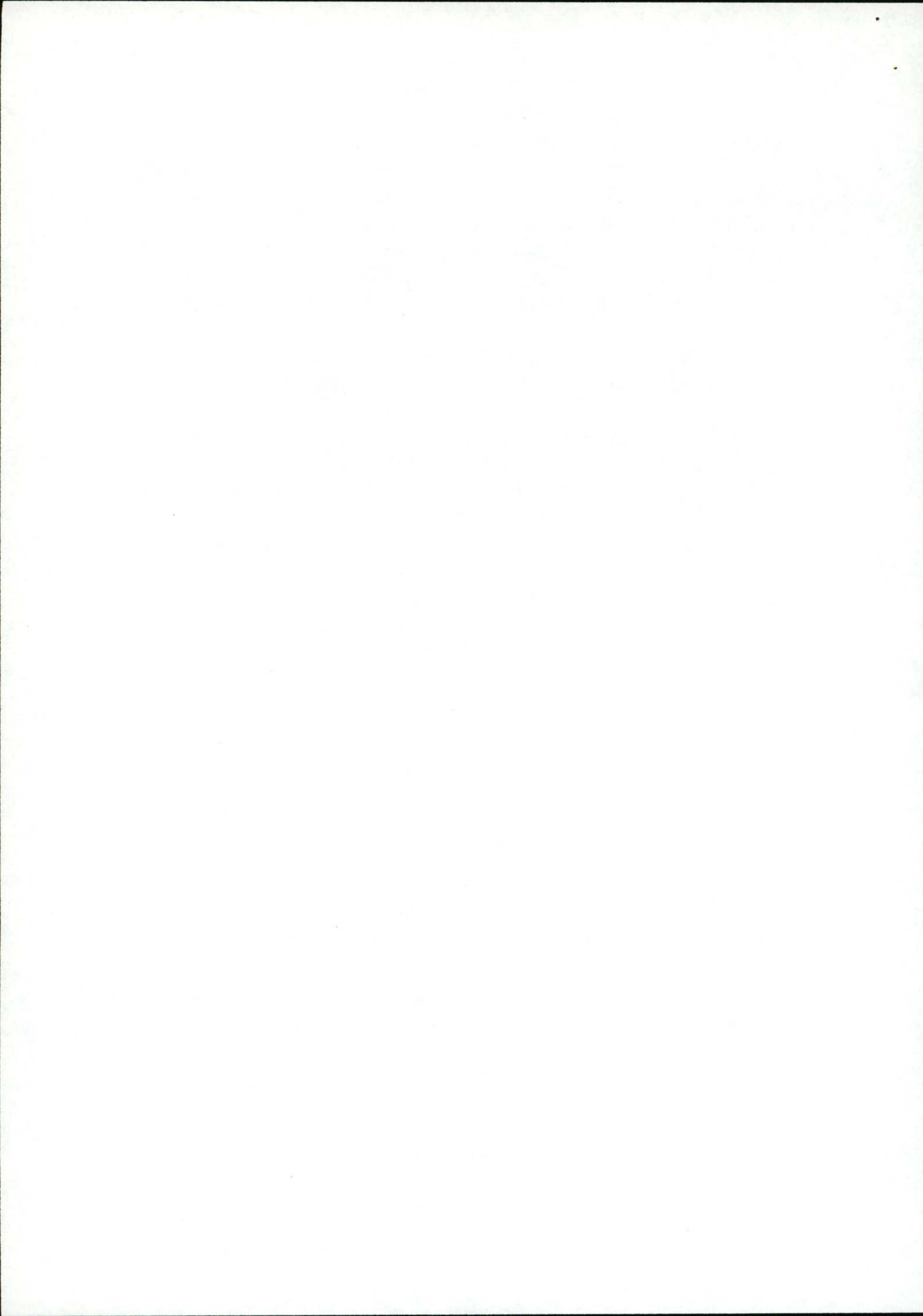
This independence and the broad representation on the Council will ensure that it has the capability to provide me with high quality, independent advice and keep me well informed of the views of those in the residential building



industry. The current board membership will be dismantled and replaced by a home building advisory council when their current terms of office expire on 30 June 1994. The transfer of disciplinary hearings to the Commercial Tribunal also means that the BSC associates structure will no longer be required. The valuable role played by associates on special qualifications committees will continue, following a review of the committee structure.

The bill also provides for the Chief Executive Officer of the Building Services Corporation to constitute the corporation and be accountable to me as the Minister for Consumer Affairs. The general manager, as CEO, will be responsible for managing the business of the corporation, which is in line with Dodd's recommendation to overcome the current confused lines of responsibility and roles of the corporation and the general manager. The arrangements set out in the bill will result in a more efficient and effective organisation with clear lines of responsibility between the Building Services Corporation, the home building advisory council and the Minister for Consumer Affairs.

Let me now turn to the issue of longstanding disputed insurance claims. Consumers with claims under the pre March 1990 insurance scheme have a right of appeal against decisions made by the BSC in respect of their claims, but this appeal must proceed by way of arbitration. Honourable members would be aware that arbitration as a means of resolving home building disputes has been severely criticised on many fronts. Dodd was critical of arbitration, as was the Trade Practices Commission in its report *"Home Building - Consumer Problems and Solutions"* released on 20 December 1993. In Queensland, arbitration in the home building industry has been abolished. The bill proposes to give consumers with long standing disputed insurance claims the right to take the matter on appeal to the Commercial Tribunal. This right is presently enjoyed by consumers who are covered by the current BSC insurance

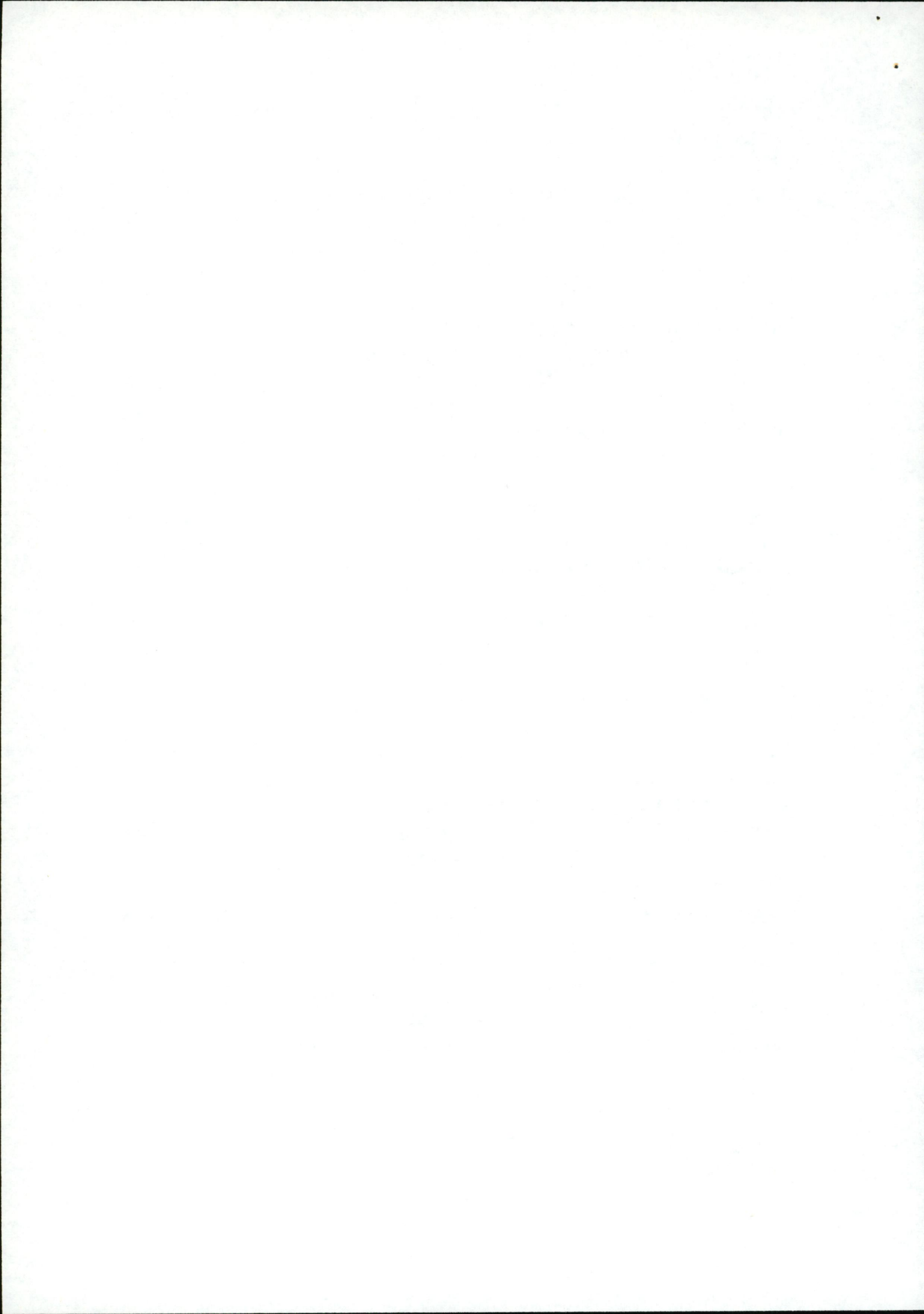




scheme. The bill is consistent with the recommendations of Dr Dodd in this regard.

Appeals to the Commercial Tribunal will be in place of arbitration. To ensure that all claimants are treated equally the bill will allow those claimants who have commenced arbitration to discontinue arbitration without penalty. Claimants will not be required to pay the costs of the BSC, but will, however, be responsible for their own costs up to that time. Claimants with longstanding disputed insurance claims have undoubtedly incurred costs or losses as a result of litigation or through trying to get the defects rectified. We have an obligation to assist these claimants so that they can indeed take their cases to the Commercial Tribunal. The bill will allow the Building Services Corporation to pay solicitor-client costs where the claimant's appeal is upheld. The Building Services Corporation will not, however, be entitled to seek costs from claimants should their appeal be dismissed. Some consumers have been disadvantaged by delays within the BSC to settle their disputed insurance claims. The bill will allow the Commercial Tribunal to direct the BSC to pay interest on awards where it finds that delay in settlement is attributable to the corporation.

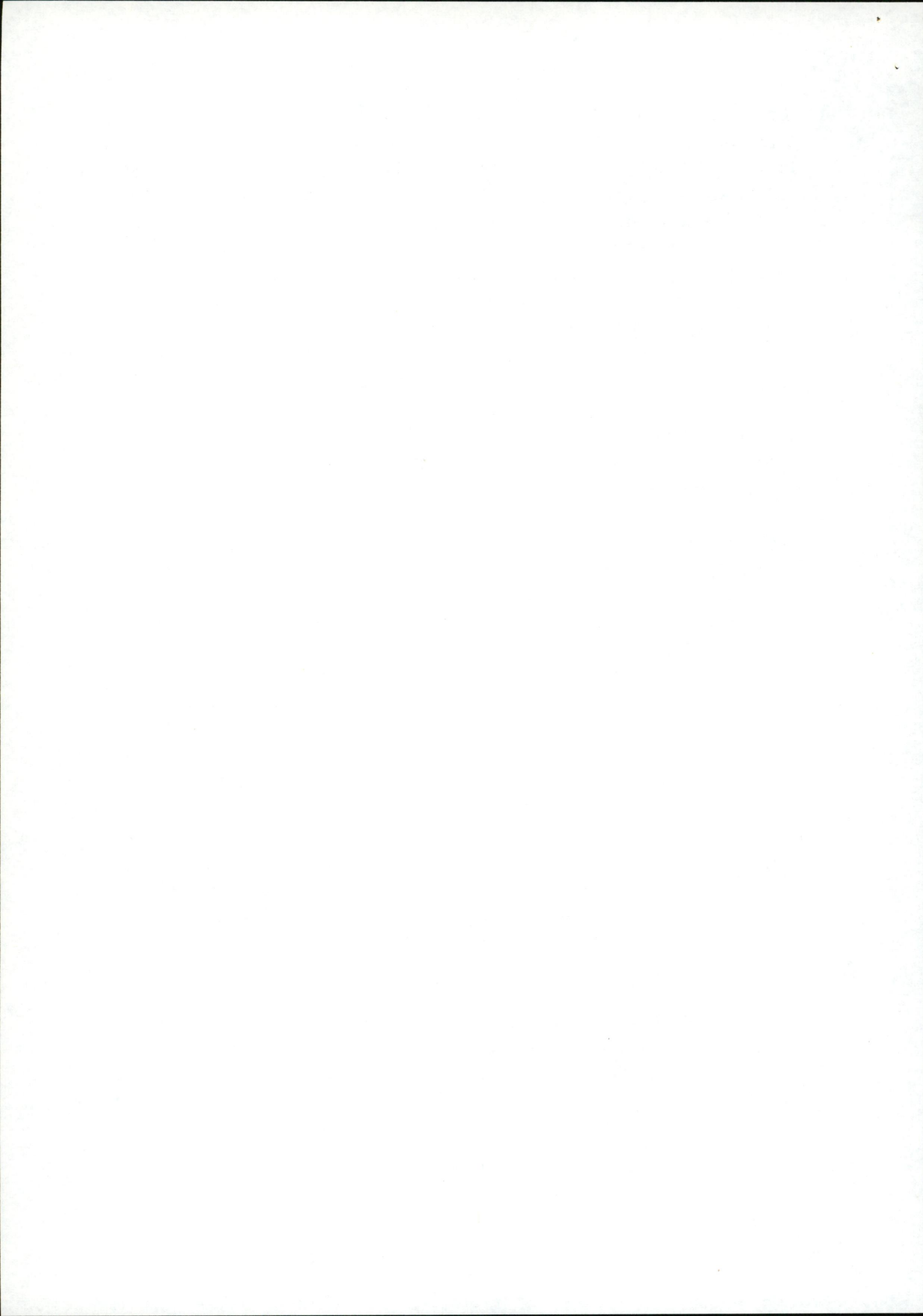
All of these measures will greatly assist aggrieved consumers and will bring finality to these disputes which have remained unresolved for so much longer than is desirable. The availability of the new course of action open to disputants will be widely advertised and it is proposed to provide a period of 12 months within which time such persons may seek a re-assessment of their claims and a right of appeal will then lie to the Commercial Tribunal against the decision of the corporation. The authority to issue rectification orders will be transferred to the Building Disputes Tribunal. This brings me to the proposed amendments to the Consumer Claims Tribunals Act.



The Department of Consumer Affairs has reported to me its findings on reviewing the Building Disputes Tribunal. Whilst the tribunal is generally operating satisfactorily, the process of selecting and recruiting referees and the qualifications of referees have led to criticism of the tribunal as being biased in favour of the building industry. It is essential that consumers and builders alike have confidence in the new dispute resolution procedures and with this in mind the amendments to the Consumer Claims Tribunals Act are sought. The intention of the amendments is, first, to leave the question of qualifications of referees completely open and second, to eliminate the statutory requirements of the Minister for Consumer Affairs to consult with any person or organisation prior to recommending appointments to the Governor.

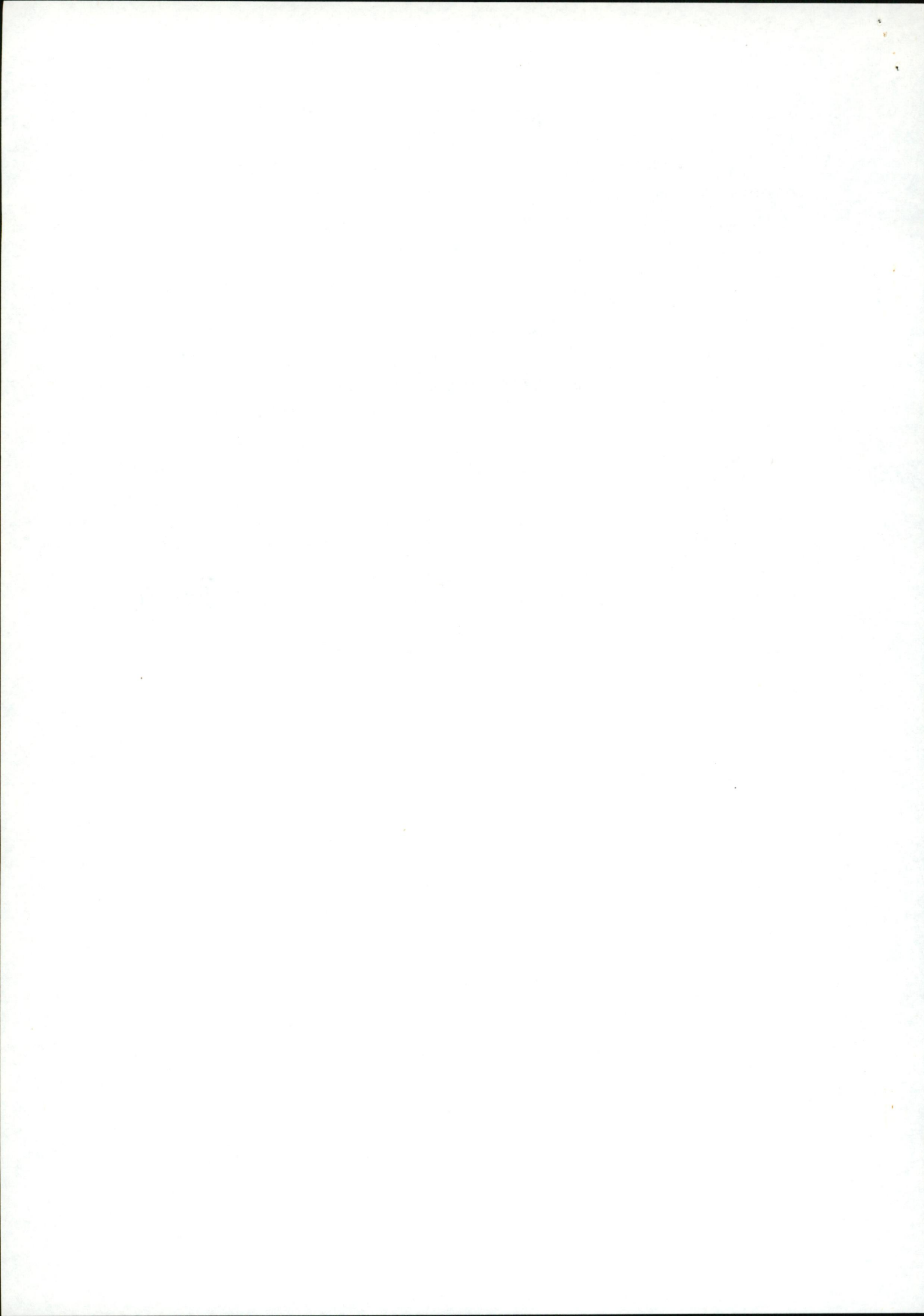
These amendments will bring selection and appointment procedures in line with those used for Consumer Claims Tribunal referees. The bill therefore seeks to remove the requirement for BDT referees to have extensive experience in the building industry. This requirement has been interpreted narrowly and has effectively prevented the appointment of referees who have experience in a variety of related fields. Appointments to the BDT should be drawn from a more diverse field than is the case at present. I must assure honourable members that, in selecting referees for appointment to the BDT I will have regard to their level of experience, knowledge and understanding of the residential building industry, but I will not be bound to appoint only people who have those qualifications. I would also wish to avoid making appointments which could lead the tribunal away from its largely non-legalistic approach to the conduct of hearings.

That concludes my comments on the provisions of the bill. I will take this opportunity to make a few final remarks about consumer protection in the home building industry. Many different approaches have been taken throughout the



world and indeed throughout Australia to the issue of how to protect consumers of residential building services. Many of these systems do not rely on government intervention; others rely partly on the government in providing the legislative framework or a part of the service and others, such as New South Wales, are almost wholly dependent on government intervention. If we were commencing afresh in New South Wales, it is unlikely that we would choose today the approach which was decided in 1971. But having had such a system for more than 20 years it is difficult, as honourable members will realise, to totally recast what we have now in favour of a new completely untried system.

The approach being taken by the Government to the reform of consumer protection in the New South Wales home building industry recognises both the need to address some very critical issues immediately, particularly dispute resolution and consumer education, and the need to work through carefully a more fundamental change, particularly reforms to licensing and the privatisation of insurance. This approach will also ensure the greatest level of consultation with the all interested parties, I commend the bill to the House.



FIRST PRINT

**BUILDING SERVICES CORPORATION (AMENDMENT)  
BILL 1994**

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 in connection with the powers and structure of the Building Services Corporation ("BSC"). The Bill also amends the Consumer Claims Tribunals Act 1987.

**Complaints—Schedule 1**

The Bill removes the requirement that a complaint cannot be lodged with the BSC unless the complainant has given the builder 30 days' notice. (See Schedule 1 (3), and Schedule 1 (5), proposed clause 21.)

**Rectification orders—Schedule 1**

The Bill transfers the responsibility for making rectification orders from the BSC to a Building Disputes Tribunal (under the Consumer Claims Tribunals Act 1987). Rectification orders will be made on the application of the BSC. (See in particular Schedule 1 (4) and (10).)

**Building dispute referees—Schedule 1**

The Bill removes the specific requirements of section 4A of the Consumer Claims Tribunals Act 1987 relating to the qualifications of a building dispute referee and consultation before a referee is nominated as a building dispute referee, in line with the initial appointment of referees under the Act. (See Schedule 1 (6) and (11) (b).)

**Discipline—Schedule 2**

The Bill transfers the responsibility for hearing and determining show cause actions from the BSC to the Commercial Tribunal. Show cause notices will continue to be issued by the BSC.

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*Building Services Corporation (Amendment) 1994*

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**Insurance—Schedule 3**

The Bill deals with disputes arising under house purchasers' agreements under the repealed Builders Licensing Act 1971. These agreements were deemed to be entered into by house purchasers and the BSC, and existing agreements were continued in force by savings and transitional provisions contained in the Building Services Corporation Act 1989.

Disputes about decisions of the BSC under an agreement will be able to be made the subject of an appeal to the Commercial Tribunal, instead of being the subject of arbitration as provided under the agreement. Existing arbitrations will be able to be terminated, and BSC decisions already made can be re-opened. The Commercial Tribunal will be able to award interest on amounts ordered to be paid.

**Structure of the BSC—Schedule 4**

The Bill reconstitutes the BSC, and removes the existing arrangements regarding members and associate members. It will be managed exclusively by the General Manager, and will continue to be subject to ministerial control.

**Home Building Advisory Council—Schedule 5**

The Bill establishes the Home Building Advisory Council, whose function is to advise the Minister on consumer-related issues relating to the home building industry. The Advisory Council will consist of 10 members. The members will be the Chairperson of the Advisory Council, the General Manager of the BSC, four persons appointed after advertisement and having experience in the building industry, and four persons appointed after consultation with peak industry and consumer groups.

**Miscellaneous—Schedule 6**

The Bill makes the following miscellaneous amendments.

Provision is made for payment to the Consolidated Fund from the General Account of the BSC of amounts to meet expenditure in connection with the Commercial Tribunal Act 1984 and the Consumer Claims Tribunals Act 1987 (Schedule 6 (1)).

The power to make regulations of a savings and transitional nature is extended to amendments made by the proposed Act (Schedule 6 (2)).

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the proposed Act to commence on a proclaimed day or days.

**Clauses 3 and 4** are formal provisions giving effect to the Schedules of amendments.

The Schedules contain the amendments described above.

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FIRST PRINT

**BUILDING SERVICES CORPORATION (AMENDMENT)  
BILL 1994**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Building Services Corporation Act 1989 No. 147
4. Amendment of Consumer Claims Tribunals Act 1987 No. 206

**SCHEDULE 1—AMENDMENTS RELATING TO COMPLAINTS,  
RECTIFICATION ORDERS AND ASSOCIATED MATTERS**

Part 1—Amendment of Building Services Corporation Act 1989

Part 2—Amendment of Consumer Claims Tribunals Act 1987

**SCHEDULE 2—AMENDMENTS RELATING TO DISCIPLINE**

**SCHEDULE 3—AMENDMENTS RELATING TO INSURANCE**

**SCHEDULE 4—AMENDMENTS RELATING TO BUILDING SERVICES  
CORPORATION**

**SCHEDULE 5—AMENDMENTS RELATING TO HOME BUILDING  
ADVISORY COUNCIL**

**SCHEDULE 6—MISCELLANEOUS AMENDMENTS**

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**BUILDING SERVICES CORPORATION (AMENDMENT)  
BILL 1994**

NEW SOUTH WALES



No.           , 1994

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**A BILL FOR**

An Act to amend the Building Services Corporation Act 1989 in relation to complaints, rectification orders, discipline and insurance under that Act; to reconstitute the Building Services Corporation and to establish a Home Building Advisory Council; to make consequential amendments to the Consumer Claims Tribunals Act 1987; and for other purposes.

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*Building Services Corporation (Amendment) 1994*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Building Services Corporation (Amendment) Act 1994.

**5 Commencement**

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

**Amendment of Building Services Corporation Act 1989 No. 147**

10 3. The Building Services Corporation Act 1989 is amended as set out in Part 1 of Schedule 1 and in Schedules 2–6.

**Amendment of Consumer Claims Tribunals Act 1987 No. 206**

4. The Consumer Claims Tribunals Act 1987 is amended as set out in Part 2 of Schedule 1.

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15 **SCHEDULE 1—AMENDMENTS RELATING TO  
COMPLAINTS, RECTIFICATION ORDERS AND  
ASSOCIATED MATTERS**

**Part 1—Amendment of Building Services Corporation Act 1989**

(Sec. 3)

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

20 In the definition of “rectification order” in section 3 (1), omit “under”, insert instead “referred to in”.

(2) Section 49 (**Definitions**):

25 From the definition of “affected party” in section 49 (1), omit “Corporation”, insert instead “building disputes tribunal”.

(3) Section 57 (**Holder of licence to be notified of proposed complaint**):

- 30 (a) Omit section 57 (1) (b), and the word “and” preceding it.  
(b) From section 57 (2), omit “those requirements”, insert instead “that requirement”.

*Building Services Corporation (Amendment) 1994*

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**SCHEDULE 1—AMENDMENTS RELATING TO COMPLAINTS,  
RECTIFICATION ORDERS AND ASSOCIATED MATTERS—  
*continued***

- (4) Section 59 (**Rectification orders**):
- (a) From section 59 (1), omit “the Corporation may, by a written order served on the holder, require”, insert instead “the Corporation may apply to the registrar of consumer claims tribunals for an order to be made requiring”. 5
- (b) From section 59 (1A), omit “the Corporation may, by a written order served on the holder, require”, insert instead “the Corporation may apply to the registrar of consumer claims tribunals for an order to be made requiring”. 10
- (c) After section 59 (1A), insert:
- (1B) Any such application is to be made and dealt with under the Consumer Claims Tribunals Act 1987, and any such orders may be made under that Act. 15
- (5) Schedule 4 (**Savings and transitional provisions**):
- Insert in numerical order:
- Proposed complaints**
21. The omission of the requirement in section 57 (1) (b) extends to a case where the holder of a licence was informed of the matters in a complaint within 30 days before the commencement of Schedule 1 (3) (a) to the amending Act. 20
- Rectification orders**
22. A rectification order made by the Corporation before the commencement of Schedule 1 (4) to the amending Act is taken to be a rectification order made by a building disputes tribunal. 25
- Part 2—Amendment of Consumer Claims Tribunals Act 1987**
- (Sec. 4) 30
- (6) Section 4A (**Nomination of building dispute referees**):
- Omit section 4A (3) and (4).

*Building Services Corporation (Amendment) 1994*

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SCHEDULE 1—AMENDMENTS RELATING TO COMPLAINTS,  
RECTIFICATION ORDERS AND ASSOCIATED MATTERS—  
*continued*

- (7) Part 3A, heading:  
5 Omit the heading, insert instead:
- PART 3A—BUILDING CLAIMS AND  
RECTIFICATION ORDERS**
- (8) Section 12A (**Definitions**):  
Insert in alphabetical order:  
10 “**rectification order**” means an order referred to in  
section 59 of the BSC Act.
- (9) Section 12D (**Tribunal to be known as building disputes  
tribunal**):  
15 After “claim”, insert “or an application for a rectification  
order”.
- (10) Section 12K:  
After section 12J, insert:  
**Rectification orders**  
20 12K. (1) A tribunal has jurisdiction to make a rectification  
order on application made as referred to in the BSC Act by  
the BSC to the registrar.  
(2) The tribunal may add to, vary or omit any of the items  
of work to be rectified or completed as applied for by the  
BSC. The tribunal may decide not to make a rectification  
25 order.  
(3) A rectification order need not specify the manner in  
which or method by which work is to be rectified or  
completed.  
(4) The tribunal may make a rectification order conditional  
30 on the complainant complying with conditions specified in  
the order.  
(5) A rectification order is not subject to any limits of the  
kinds referred to in section 32.  
(6) A rectification order is not enforceable under Division  
35 4 of Part 4.

*Building Services Corporation (Amendment) 1994*

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SCHEDULE 1—AMENDMENTS RELATING TO COMPLAINTS,  
RECTIFICATION ORDERS AND ASSOCIATED MATTERS—  
*continued*

- (7) In addition to or instead of making a rectification order, the tribunal may make any orders that it could make under section 12I or 30, as if the complainant and respondent in relation to the application for the order were a consumer and a respondent in a building claim. Such orders are subject to section 32 and are enforceable under Division 4 of Part 4. 5
- (8) An order may not be made under subsection (7) unless the tribunal is satisfied that the complainant has had an opportunity to give evidence orally or in writing and to present appropriate arguments. 10
- (9) The regulations may make provision for or with respect to the manner of making, hearing, determining and otherwise dealing with applications for rectification orders and for the procedure to be adopted with respect to rectification orders after they have been made. 15
- (10) Subject to this section and the provisions of any such regulations, the procedures relating to rectification orders and applications for such orders is generally to conform to the requirements of this Act regarding consumer claims and orders made in relation to consumer claims. 20
- (11) In this section, “**complainant**”, in relation to an application for a rectification order, means the person who made a complaint to the BSC in connection with the work to which the rectification order relates. 25
- (11) Schedule 3 (**Savings and transitional provisions**):
- (a) At the end of clause 1A (1), insert “Building Services Corporation (Amendment) Act 1994, but only as regards the amendments made to this Act.”. 30
- (b) After clause 13, insert:
- PART 4—BUILDING SERVICES CORPORATION  
(AMENDMENT) ACT 1994**
- Meaning of “amending Act”** 35
14. In this Part, “**amending Act**” means the Building Services Corporation (Amendment) Act 1994.

*Building Services Corporation (Amendment) 1994*

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**SCHEDULE 1—AMENDMENTS RELATING TO COMPLAINTS,  
RECTIFICATION ORDERS AND ASSOCIATED MATTERS—  
*continued***

**Building dispute referees**

- 5           15. The amendment made by the amending Act to section 4A does not affect any person's nomination as a building dispute referee made before the commencement of the amendment.

**SCHEDULE 2—AMENDMENTS RELATING TO DISCIPLINE**

10 (Sec. 3)

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

In section 51 (3), omit "Corporation", insert instead "Commercial Tribunal".

(2) Section 53 (**Improper conduct: nominated supervisors**):

15           From section 53 (3), omit "Corporation", insert instead "Commercial Tribunal".

(3) Section 54 (**Improper conduct: members of partnerships or officers of corporations**):

20           From section 54 (3), omit "Corporation", insert instead "Commercial Tribunal".

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

After section 55 (2), insert:

25           (3) A complaint may be made under this section about the holder of a licence or certificate even though one or more complaints previously received by the Corporation and involving the holder have been resolved.

(5) Section 64:

Omit the section, insert instead:

30           **Content of show cause notice**

64. A show cause notice must state the grounds on which the respondent is required to show cause.



*Building Services Corporation (Amendment) 1994*

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SCHEDULE 2—AMENDMENTS RELATING TO DISCIPLINE—  
*continued*

- (6) Sections 65–73:  
Omit the sections, insert instead:
- Definition** 5
65. In this Division:  
“**hearing**” means the hearing of a show cause action by the Commercial Tribunal.
- Jurisdiction of Commercial Tribunal**
66. The Commercial Tribunal has jurisdiction to hear and determine show cause actions. 10
- (7) Section 74 (**Determination after hearing**):  
Omit “Corporation” where firstly occurring, insert instead “Commercial Tribunal”.
- (8) Section 75 (**Double jeopardy**): 15  
Omit “Corporation”, insert instead “Commercial Tribunal”.
- (9) Section 76:  
Omit the section, insert instead:
- Costs of hearing**
76. The power of the Commercial Tribunal to award costs under the Commercial Tribunal Act 1984 extends to empowering it to award costs in, or in relation to, a hearing. 20
- (10) Section 77 (**When determination becomes effective**):
- (a) Omit section 77 (1), insert instead:
- (1) A determination of the Commercial Tribunal following a hearing, other than a determination to take no further action, has no effect until notice of the determination is served on the respondent, or a later time allowed by the Commercial Tribunal. 25
- (b) From section 77 (2), omit “Corporation” where firstly occurring, insert instead “Commercial Tribunal”. 30
- (11) Section 78 (**Return of cancelled, suspended or varied licence or certificate**):  
From section 78 (1), omit “or Part 5” wherever occurring.

*Building Services Corporation (Amendment) 1994*

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SCHEDULE 2—AMENDMENTS RELATING TO DISCIPLINE—  
*continued*

- (12) Section 79 (**Re-assessment of penalty**):  
Omit the section.
- 5 (13) Section 80 (**Enforcement of cash penalties and payment of costs**):  
In section 80 (1), omit “Corporation” where firstly occurring, insert instead “Commercial Tribunal”.
- (14) Section 82 (**Void determinations**):  
10 In section 82, omit “Corporation” wherever occurring, insert instead “Commercial Tribunal”.
- (15) Schedule 4 (**Savings and transitional provisions**):  
Insert in numerical order:
- Show cause actions**
- 15 23. (1) A show cause action pending at the commencement of Schedule 2 (6) to the amending Act is to be heard and determined by the Commercial Tribunal.
- (2) Any hearing being held before the Corporation (or a member or committee of the Corporation) immediately before that commencement in relation to a show cause action is terminated. The fact that a hearing was being held, or that it is terminated by this clause, does not affect the power of the Commercial Tribunal to hear and determine the show cause action.
- 20
- Determinations and orders**
- 25 24. (1) Subject to this clause, a determination or order made by the Corporation under Division 4 of Part 4 is taken to be a determination made by the Commercial Tribunal.
- (2) This clause does not affect the right of appeal given by section 85 (c), and for that purpose the determination or order appealed against continues as a determination or order of the Corporation.
- 30
- (3) If a hearing has been completed but a determination has not been made by the Corporation as at the commencement of Schedule 2 (6) to the amending Act, the Corporation may make a determination as if the amending Act had not been enacted.
- 35

*Building Services Corporation (Amendment) 1994*

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**SCHEDULE 2—AMENDMENTS RELATING TO DISCIPLINE—**  
*continued*

(4) Sections 76, 77, 79 and 82 apply in relation to a determination made by the Corporation as if the amending Act had not been enacted. 5

**SCHEDULE 3—AMENDMENTS RELATING TO INSURANCE**

(Sec. 3)

(1) Section 85 (**Right of appeal**):

At the end of section 85, insert:

; or 10

(e) by a person who is deemed to have entered into a house purchaser's agreement under the Builders Licensing Act 1971 and who is aggrieved by any decision of the Corporation, relating to the agreement, in connection with building work to which the agreement relates. 15

(2) Schedule 4 (**Savings and transitional provisions**):

(a) At the end of clause 15, insert:

(2) This clause has effect subject to clauses 25–29.

(b) Insert in numerical order: 20

**Existing disputes under old insurance agreements, where arbitration proceedings are pending**

25. (1) This clause applies where:

(a) a dispute relates to a house purchaser's agreement under the Builders Licensing Act 1971; and 25

(b) the dispute occurred before the commencement of this clause in connection with building work to which the agreement relates (whether the dispute arose before, on or after 21 March 1990) and the dispute remains unresolved at that commencement; and 30

(c) arbitration proceedings relating to the dispute are pending at that commencement.

(2) Section 85 (e) extends to provide the claimant under the agreement with a right of appeal to the Commercial Tribunal in relation to the dispute. 35

*Building Services Corporation (Amendment) 1994*

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SCHEDULE 3—AMENDMENTS RELATING TO INSURANCE—  
*continued*

5 (3) Such an appeal may be lodged with the registrar of the Commercial Tribunal within 30 days after the commencement of this clause. This subclause has effect despite section 86 (1).

(4) Where arbitration proceedings are pending under the agreement at the commencement of this clause:

10 (a) the Corporation must immediately notify the claimant of the right of appeal; and

(b) lodging of an appeal has the effect of terminating the arbitration proceedings; and

15 (c) the arbitration proceedings are, on termination, taken to have failed, but the claimant is not liable to pay any costs of the Corporation in the arbitration proceedings.

**Existing disputes under old insurance agreements, where arbitration proceedings are not pending**

26. (1) This clause applies where:

20 (a) a dispute relates to a house purchaser's agreement under the Builders Licensing Act 1971; and

(b) the dispute occurred before the commencement of this clause in connection with building work to which the agreement relates (whether the dispute arose before, on or after 21 March 1990) and the dispute remains  
25 unresolved at that commencement; and

(c) arbitration proceedings relating to the dispute are not pending at that commencement.

(2) The claimant under the agreement may, within 12 months after the commencement of this clause, request the Corporation to re-assess the claim.  
30

(3) Section 85 (e) extends to provide the claimant under the agreement with a right of appeal to the Commercial Tribunal in relation to the determination of the Corporation on the request for re-assessment.

35 (4) Any provisions of the agreement relating to arbitration do not apply to any dispute arising out of the request for re-assessment.

*Building Services Corporation (Amendment) 1994*

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SCHEDULE 3—AMENDMENTS RELATING TO INSURANCE—  
*continued*

**New disputes under old insurance agreements**

27. (1) This clause applies where:

- (a) a dispute relates to a house purchaser's agreement under the Builders Licensing Act 1971; and 5
- (b) the dispute occurs after the commencement of this clause in connection with building work to which the agreement relates.

(2) Section 85 (e) operates to provide the claimant under the agreement with a right of appeal to the Commercial Tribunal in relation to the dispute. 10

(3) Any provisions of the agreement relating to arbitration do not apply to the dispute.

**Interest**

28. (1) The Commercial Tribunal may order that interest is payable on any amount ordered by the Tribunal to be paid by the Corporation to a claimant referred to in clause 25 or 26, if the Tribunal is satisfied that delay in finalising the matter was attributable to the Corporation. 15 20

(2) Interest is payable on such amount or amounts, in respect of such period or periods and at such rate or rates as the Commercial Tribunal thinks appropriate.

**Costs**

29. (1) Costs cannot be awarded in favour of the Corporation if an appeal referred to in clause 25 or 26 is dismissed. 25

(2) The Corporation is to pay the appellant's costs on a solicitor-client basis, as determined by the Commercial Tribunal, if such an appeal is successful. If the appeal is successful as to some but not all matters, those costs are payable by the Corporation only to the extent that the Commercial Tribunal determines. 30

*Building Services Corporation (Amendment) 1994*

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**SCHEDULE 4—AMENDMENTS RELATING TO BUILDING SERVICES CORPORATION**

(Sec. 3)

- 5 (1) Section 104 (**Definitions**):  
Omit the section.
- (2) Section 107 (**Membership of the Corporation**):  
Omit the section.
- (3) Section 108 (**Associate members**):  
Omit the section.
- 10 (4) Section 109:  
Omit the section, insert instead:  
**Management of affairs of the Corporation**  
109. (1) The affairs of the Corporation are to be managed by the General Manager.  
15 (2) Any act, matter or thing done in the name of, or on behalf of, the Corporation by the General Manager, or with the authority of the General Manager, is taken to have been done by the Corporation.
- (5) Section 110:  
20 Omit the section, insert instead:  
**Functions of General Manager**  
110. The General Manager has such functions as are conferred or imposed on the General Manager by or under this or any other Act.
- 25 (6) Section 112 (**Committees**):  
Omit section 112 (2).
- (7) Section 122 (**Delegation**):  
(a) Omit section 122 (2) and (3).  
(b) At the end of section 122, insert:  
30 (4) Nothing in this section limits section 109.

*Building Services Corporation (Amendment) 1994*

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SCHEDULE 4—AMENDMENTS RELATING TO BUILDING  
SERVICES CORPORATION—*continued*

- (8) Section 130 (**Proof of certain matters not required**):  
Omit paragraphs (a)–(d).
- (9) Section 144: 5  
After section 143, insert:  
**Limitation of liability**  
144. A matter or thing done by the Corporation, the General Manager or any other person acting under the direction of the Corporation or the General Manager does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the General Manager or a person so acting personally to any action, liability, claim or demand. 10
- (10) Schedule 1 (**Provisions relating to the members and associate members of the Corporation**): 15  
Omit the Schedule.
- (11) Schedule 2 (**Provisions relating to the procedure of the Corporation**):  
Omit the Schedule. 20
- (12) Schedule 4 (**Savings and transitional provisions**):  
Insert in numerical order:  
**Members and associate members of Corporation**  
30. (1) A person who, immediately before the commencement of Schedule 4 (2) to the amending Act held office as a member or associate member of the Corporation ceases to hold that office on that commencement. 25  
(2) The person is not entitled to any compensation or remuneration because of the loss of that office.  
**Continuation of legal entity** 30  
31. Nothing in the amending Act affects the continuity of the Corporation as continued by clause 4.

**SCHEDULE 5—AMENDMENTS RELATING TO HOME  
BUILDING ADVISORY COUNCIL**

(Sec. 3)

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

5 In section 3 (1), insert in alphabetical order:

**“Advisory Council”** means the Home Building Advisory Council established by this Act;

## (2) Part 7A:

After Part 7, insert:

10 **PART 7A—THE HOME BUILDING ADVISORY  
COUNCIL****Establishment of Advisory Council**

115A. (1) There is established by this Act a council called the Home Building Advisory Council.

15 (2) The Advisory Council is independent of the Corporation.

20 (3) The Advisory Council is to be funded and resourced by the Corporation. The level of funding and resourcing is dependent on the amounts appropriated or available for the purpose, and on directions given by the Minister.

**Membership and procedure of Advisory Council**

115B. (1) The Advisory Council is to consist of 10 members.

25 (2) The members of the Advisory Council are:

(a) a Chairperson appointed by the Minister; and  
(b) 4 members appointed by the Minister after advertisement and having in the opinion of the Minister expertise in the building industry (which may include technical, consumer or academic expertise);  
and

30

(c) 4 members appointed by the Minister after consultation with such peak industry and consumer groups as the Minister considers appropriate; and

(d) the General Manager.

35 (3) Schedule 2A has effect with respect to the members and procedure of the Advisory Council.



*Building Services Corporation (Amendment) 1994*

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**SCHEDULE 5—AMENDMENTS RELATING TO HOME  
BUILDING ADVISORY COUNCIL—*continued***

**Functions of Advisory Council**

115C. The functions of the Advisory Council are to advise the Minister on such consumer-related issues relating to the home building industry as it thinks fit or as are referred to it by the Minister. 5

**Committees**

115D. (1) The Advisory Council may establish committees to assist it in connection with the exercise of any of its functions. 10

(2) It does not matter that any or all of the members of a committee are not members of the Advisory Council, but the appointment of a person who is not a member of the Advisory Council cannot be made without the prior approval of the Minister. 15

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Advisory Council or (subject to any determination of the Advisory Council) by the committee. 20

(3) Section 140 (**Regulations**):

At the end of section 140 (2), insert:

(1) the procedure for the calling and holding of meetings of the Advisory Council. 25

(4) Schedule 2A:

Before Schedule 3, insert:

**SCHEDULE 2A—MEMBERSHIP AND PROCEDURE  
OF ADVISORY COUNCIL**

(Sec. 115B) 30

**Definitions**

1. In this Schedule:

“**appointed member**” means a member of the Advisory Council, other than the General Manager;

“**Chairperson**” means the Chairperson of the Advisory Council; 35

“**member**” means a member of the Advisory Council.

*Building Services Corporation (Amendment) 1994*

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SCHEDULE 5—AMENDMENTS RELATING TO HOME  
BUILDING ADVISORY COUNCIL—*continued*

**Acting members**

5           2. (1) The Minister may, from time to time, appoint a person to act in the office of an appointed member during the illness or absence of the member. The person, while so acting, has and may exercise all the functions of the appointed member and is taken to be an appointed member.

10           (2) The Minister may remove any person from any office to which the person was appointed under this clause.

            (3) For the purposes of this clause, a vacancy in the office of an appointed member is taken to be an absence from office of the member.

**Terms of office**

15           3. Subject to this Schedule, an appointed member holds office for such period not exceeding 5 years as may be specified in the instrument of appointment of the appointed member, but is eligible (if otherwise qualified) for re-appointment.

20           **Allowances**

            4. A member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

**Vacancy in office of appointed member**

25           5. (1) The office of an appointed member becomes vacant if the member:

- 30           (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by letter addressed to the Minister; or
- (d) is removed by the Minister from office under this clause; or
- 35           (e) is absent from 3 consecutive meetings of the Advisory Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings; or

*Building Services Corporation (Amendment) 1994*

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**SCHEDULE 5—AMENDMENTS RELATING TO HOME  
BUILDING ADVISORY COUNCIL—*continued***

- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or 5
- (g) becomes a mentally incapacitated person; or
- (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable. 10
- (2) The Minister may remove an appointed member from office at any time. 15
- Filling of vacancy in office of appointed member**
6. If the office of an appointed member becomes vacant, a person is, subject to this Act, required to be appointed to fill the vacancy.
- Disclosure of pecuniary interests** 20
7. (1) A member:
- (a) who has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Advisory Council; and
- (b) whose interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter, 25
- must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Advisory Council. 30
- (2) A disclosure by a member at a meeting of the Advisory Council that the member:
- (a) is a member, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or 35
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

*Building Services Corporation (Amendment) 1994*

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**SCHEDULE 5—AMENDMENTS RELATING TO HOME  
BUILDING ADVISORY COUNCIL—*continued***

5 is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this clause.

10 (3) Particulars of any disclosure made under this clause must be recorded by the members in a book to be kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the members.

**Effect of certain other Acts**

15 8. (1) The Public Sector Management Act 1988 does not apply to or in respect of the appointment of an appointed member. An appointed member is not, as an appointed member, subject to that Act.

(2) If by or under any Act provision is made:

20 (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

(b) prohibiting the person from engaging in employment outside the duties of that office,

25 the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

(3) The office of appointed member is for the purposes of any Act taken not to be an office or place of profit under the Crown.

30 **Limitation of liability**

35 9. A matter or thing done by the Advisory Council, a member of the Advisory Council or any person acting under the direction of the Advisory Council or the Chairperson does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

*Building Services Corporation (Amendment) 1994*

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**SCHEDULE 5—AMENDMENTS RELATING TO HOME  
BUILDING ADVISORY COUNCIL—*continued***

**General procedure**

10. The procedure for the calling of meetings of the Advisory Council and the conduct of business at those meetings of the Advisory Council is, subject to this Act and the regulations, to be determined by the Advisory Council. 5

**Quorum**

11. The quorum for a meeting of the Advisory Council is a majority of its members for the time being. 10

**Presiding member**

12. (1) The Chairperson or, in the absence of the Chairperson (including a person appointed under clause 2 to act in the office of the Chairperson), another member elected to chair the meeting by the members present is to preside at a meeting of the Advisory Council. 15

(2) The member presiding at any meeting of the Advisory Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**Voting** 20

13. A decision supported by a majority of the votes cast at a meeting of the Advisory Council at which a quorum is present is the decision of the Advisory Council.

(5) Schedule 4 (**Savings and transitional provisions**):  
Insert in numerical order: 25

**First meeting of Advisory Council**

32. The first meeting of the Advisory Council is to be called in such manner as the Minister determines.

**SCHEDULE 6—MISCELLANEOUS AMENDMENTS**

(Sec. 3) 30

(1) Section 113 (**General Account**):

After section 113 (2) (a1), insert:

(a2) to the Treasurer for payment into the Consolidated Fund—such amounts as the Treasurer certifies, after consulting the Minister, to be paid by the Corporation in connection with the administration of the 35

*Building Services Corporation (Amendment) 1994*

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SCHEDULE 6—MISCELLANEOUS AMENDMENTS—*continued*

Commercial Tribunal Act 1984 and the Consumer Claims Tribunals Act 1987; and

(2) Schedule 4 (**Savings and transitional provisions**):

5 (a) Before clause 1, insert:

**Part 1—General**

(b) At the end of clause 2 (1), insert “Building Services Corporation (Amendment) Act 1994, except as regards amendments made to the Consumer Claims Tribunals Act 1987.”.

10

(c) Before clause 3, insert:

**Part 2—Provisions consequent on enactment of this Act**

(d) After clause 19, insert:

**Part 3—Provisions consequent on enactment of Building Services Corporation (Amendment) Act 1994**

15

**Definition**

20. In this Part:

“**amending Act**” means the Building Services Corporation (Amendment) Act 1994.

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SECOND PRINT

**BUILDING SERVICES CORPORATION (AMENDMENT)  
BILL 1994**

NEW SOUTH WALES



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**SCHEDULE 6—MISCELLANEOUS AMENDMENTS**

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*This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

*Legislative Assembly*

*Clerk of the Legislative Assembly.*

NEW SOUTH WALES



Act No.           , 1994

An Act to amend the Building Services Corporation Act 1989 in relation to complaints, rectification orders, discipline and insurance under that Act; to reconstitute the Building Services Corporation and to establish a Home Building Advisory Council; to make consequential amendments to the Consumer Claims Tribunals Act 1987; and for other purposes.

*Building Services Corporation (Amendment) 1994*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Building Services Corporation (Amendment) Act 1994.

5 **Commencement**

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

**Amendment of Building Services Corporation Act 1989 No. 147**

10 3. The Building Services Corporation Act 1989 is amended as set out in Part 1 of Schedule 1 and in Schedules 2–6.

**Amendment of Consumer Claims Tribunals Act 1987 No. 206**

4. The Consumer Claims Tribunals Act 1987 is amended as set out in Part 2 of Schedule 1.

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**SCHEDULE 1—AMENDMENTS RELATING TO  
COMPLAINTS, RECTIFICATION ORDERS AND  
ASSOCIATED MATTERS**

**Part 1—Amendment of Building Services Corporation Act 1989**

(Sec. 3)

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

20 In the definition of “rectification order” in section 3 (1), omit “under”, insert instead “referred to in”.

(2) Section 49 (**Definitions**):

25 From the definition of “affected party” in section 49 (1), omit “Corporation”, insert instead “building disputes tribunal”.

(3) Section 57 (**Holder of licence to be notified of proposed complaint**):

30 (a) Omit section 57 (1) (b), and the word “and” preceding it.  
(b) From section 57 (2), omit “those requirements”, insert instead “that requirement”.

*Building Services Corporation (Amendment) 1994*

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SCHEDULE 1—AMENDMENTS RELATING TO COMPLAINTS,  
RECTIFICATION ORDERS AND ASSOCIATED MATTERS—  
*continued*

- (4) Section 59 (**Rectification orders**):
- (a) From section 59 (1), omit “the Corporation may, by a written order served on the holder, require”, insert instead “the Corporation may apply to the registrar of consumer claims tribunals for an order to be made requiring”.
- (b) From section 59 (1A), omit “the Corporation may, by a written order served on the holder, require”, insert instead “the Corporation may apply to the registrar of consumer claims tribunals for an order to be made requiring”.
- (c) After section 59 (1A), insert:
- (1B) Any such application is to be made and dealt with under the Consumer Claims Tribunals Act 1987, and any such orders may be made under that Act.
- (5) Schedule 4 (**Savings and transitional provisions**):
- Insert in numerical order:
- Proposed complaints**
21. The omission of the requirement in section 57 (1) (b) extends to a case where the holder of a licence was informed of the matters in a complaint within 30 days before the commencement of Schedule 1 (3) (a) to the amending Act.
- Rectification orders**
22. A rectification order made by the Corporation before the commencement of Schedule 1 (4) to the amending Act is taken to be a rectification order made by a building disputes tribunal.
- Part 2—Amendment of Consumer Claims Tribunals Act 1987**
- (Sec. 4)
- (6) Section 4A (**Nomination of building dispute referees**):
- Omit section 4A (3) and (4).

*Building Services Corporation (Amendment) 1994*

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SCHEDULE 1—AMENDMENTS RELATING TO COMPLAINTS,  
RECTIFICATION ORDERS AND ASSOCIATED MATTERS—  
*continued*

(7) Part 3A, heading:

5 Omit the heading, insert instead:

**PART 3A—BUILDING CLAIMS AND  
RECTIFICATION ORDERS**

(8) Section 12A (Definitions):

Insert in alphabetical order:

10 “**rectification order**” means an order referred to in  
section 59 of the BSC Act.

(9) Section 12D (Tribunal to be known as building disputes  
tribunal):

15 After “claim”, insert “or an application for a rectification  
order”.

(10) Section 12K:

After section 12J, insert:

**Rectification orders**

20 12K. (1) A tribunal has jurisdiction to make a rectification  
order on application made as referred to in the BSC Act by  
the BSC to the registrar.

25 (2) The tribunal may add to, vary or omit any of the items  
of work to be rectified or completed as applied for by the  
BSC. The tribunal may decide not to make a rectification  
order.

(3) A rectification order need not specify the manner in  
which or method by which work is to be rectified or  
completed.

30 (4) The tribunal may make a rectification order conditional  
on the complainant complying with conditions specified in  
the order.

(5) A rectification order is not subject to any limits of the  
kinds referred to in section 32.

35 (6) A rectification order is not enforceable under Division  
4 of Part 4.

*Building Services Corporation (Amendment) 1994*

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SCHEDULE 1—AMENDMENTS RELATING TO COMPLAINTS,  
RECTIFICATION ORDERS AND ASSOCIATED MATTERS—  
*continued*

- (7) In addition to or instead of making a rectification order, the tribunal may make any orders that it could make under section 12I or 30, as if the complainant and respondent in relation to the application for the order were a consumer and a respondent in a building claim. Such orders are subject to section 32 and are enforceable under Division 4 of Part 4. 5
- (8) An order may not be made under subsection (7) unless the tribunal is satisfied that the complainant has had an opportunity to give evidence orally or in writing and to present appropriate arguments. 10
- (9) The regulations may make provision for or with respect to the manner of making, hearing, determining and otherwise dealing with applications for rectification orders and for the procedure to be adopted with respect to rectification orders after they have been made. 15
- (10) Subject to this section and the provisions of any such regulations, the procedures relating to rectification orders and applications for such orders is generally to conform to the requirements of this Act regarding consumer claims and orders made in relation to consumer claims. 20
- (11) In this section, “**complainant**”, in relation to an application for a rectification order, means the person who made a complaint to the BSC in connection with the work to which the rectification order relates. 25
- (11) Schedule 3 (**Savings and transitional provisions**):
- (a) At the end of clause 1A (1), insert “Building Services Corporation (Amendment) Act 1994, but only as regards the amendments made to this Act.”. 30
- (b) After clause 13, insert:
- PART 4—BUILDING SERVICES CORPORATION  
(AMENDMENT) ACT 1994**
- Meaning of “amending Act”** 35
14. In this Part, “**amending Act**” means the Building Services Corporation (Amendment) Act 1994.

*Building Services Corporation (Amendment) 1994*

SCHEDULE 1—AMENDMENTS RELATING TO COMPLAINTS,  
RECTIFICATION ORDERS AND ASSOCIATED MATTERS—  
*continued*

**Building dispute referees**

- 5                   15. The amendment made by the amending Act to section 4A does not affect any person's nomination as a building dispute referee made before the commencement of the amendment.

SCHEDULE 2—AMENDMENTS RELATING TO DISCIPLINE

10 (Sec. 3)

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

In section 51 (3), omit "Corporation", insert instead "Commercial Tribunal".

(2) Section 53 (**Improper conduct: nominated supervisors**):

15 From section 53 (3), omit "Corporation", insert instead "Commercial Tribunal".

(3) Section 54 (**Improper conduct: members of partnerships or officers of corporations**):

20 From section 54 (3), omit "Corporation", insert instead "Commercial Tribunal".

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

After section 55 (2), insert:

25                   (3) A complaint may be made under this section about the holder of a licence or certificate even though one or more complaints previously received by the Corporation and involving the holder have been resolved.

## (5) Section 64:

Omit the section, insert instead:

30                   **Content of show cause notice**

64. A show cause notice must state the grounds on which the respondent is required to show cause.

*Building Services Corporation (Amendment) 1994*

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SCHEDULE 2—AMENDMENTS RELATING TO DISCIPLINE—  
*continued*

- (6) Sections 65–73:  
Omit the sections, insert instead:
- Definition** 5
65. In this Division:  
“**hearing**” means the hearing of a show cause action by the Commercial Tribunal.
- Jurisdiction of Commercial Tribunal**
66. The Commercial Tribunal has jurisdiction to hear and determine show cause actions. 10
- (7) Section 74 (**Determination after hearing**):  
Omit “Corporation” where firstly occurring, insert instead “Commercial Tribunal”.
- (8) Section 75 (**Double jeopardy**): 15  
Omit “Corporation”, insert instead “Commercial Tribunal”.
- (9) Section 76:  
Omit the section, insert instead:
- Costs of hearing**
76. The power of the Commercial Tribunal to award costs under the Commercial Tribunal Act 1984 extends to empowering it to award costs in, or in relation to, a hearing. 20
- (10) Section 77 (**When determination becomes effective**):
- (a) Omit section 77 (1), insert instead: 25
- (1) A determination of the Commercial Tribunal following a hearing, other than a determination to take no further action, has no effect until notice of the determination is served on the respondent, or a later time allowed by the Commercial Tribunal.
- (b) From section 77 (2), omit “Corporation” where firstly occurring, insert instead “Commercial Tribunal”. 30
- (11) Section 78 (**Return of cancelled, suspended or varied licence or certificate**):  
From section 78 (1), omit “or Part 5” wherever occurring.

*Building Services Corporation (Amendment) 1994*

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SCHEDULE 2—AMENDMENTS RELATING TO DISCIPLINE—  
*continued*

- (12) Section 79 (**Re-assessment of penalty**):

Omit the section.

- 5 (13) Section 80 (**Enforcement of cash penalties and payment of costs**):

In section 80 (1), omit “Corporation” where firstly occurring, insert instead “Commercial Tribunal”.

- (14) Section 82 (**Void determinations**):

10 In section 82, omit “Corporation” wherever occurring, insert instead “Commercial Tribunal”.

- (15) Schedule 4 (**Savings and transitional provisions**):

Insert in numerical order:

**Show cause actions**

15 23. (1) A show cause action pending at the commencement of Schedule 2 (6) to the amending Act is to be heard and determined by the Commercial Tribunal.

20 (2) Any hearing being held before the Corporation (or a member or committee of the Corporation) immediately before that commencement in relation to a show cause action is terminated. The fact that a hearing was being held, or that it is terminated by this clause, does not affect the power of the Commercial Tribunal to hear and determine the show cause action.

25 **Determinations and orders**

24. (1) Subject to this clause, a determination or order made by the Corporation under Division 4 of Part 4 is taken to be a determination made by the Commercial Tribunal.

30 (2) This clause does not affect the right of appeal given by section 85 (c), and for that purpose the determination or order appealed against continues as a determination or order of the Corporation.

35 (3) If a hearing has been completed but a determination has not been made by the Corporation as at the commencement of Schedule 2 (6) to the amending Act, the Corporation may make a determination as if the amending Act had not been enacted.



*Building Services Corporation (Amendment) 1994*

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**SCHEDULE 2—AMENDMENTS RELATING TO DISCIPLINE—**  
*continued*

(4) Sections 76, 77, 79 and 82 apply in relation to a determination made by the Corporation as if the amending Act had not been enacted.

5

**SCHEDULE 3—AMENDMENTS RELATING TO INSURANCE**

(Sec. 3)

(1) Section 85 (**Right of appeal**):

At the end of section 85, insert:

; or

10

(e) by a person who is deemed to have entered into a house purchaser's agreement under the Builders Licensing Act 1971 and who is aggrieved by any decision of the Corporation, relating to the agreement, in connection with building work to which the agreement relates.

15

(2) Schedule 4 (**Savings and transitional provisions**):

(a) At the end of clause 15, insert:

(2) This clause has effect subject to clauses 25–29.

(b) Insert in numerical order:

20

**Existing disputes under old insurance agreements, where arbitration proceedings are pending**

25. (1) This clause applies where:

(a) a dispute relates to a house purchaser's agreement under the Builders Licensing Act 1971; and

25

(b) the dispute occurred before the commencement of this clause in connection with building work to which the agreement relates (whether the dispute arose before, on or after 21 March 1990) and the dispute remains unresolved at that commencement; and

30

(c) arbitration proceedings relating to the dispute are pending at that commencement.

(2) Section 85 (e) extends to provide the claimant under the agreement with a right of appeal to the Commercial Tribunal in relation to the dispute.

35

*Building Services Corporation (Amendment) 1994*

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SCHEDULE 3—AMENDMENTS RELATING TO INSURANCE—  
*continued*

5 (3) Such an appeal may be lodged with the registrar of the Commercial Tribunal within 30 days after the commencement of this clause. This subclause has effect despite section 86 (1).

(4) Where arbitration proceedings are pending under the agreement at the commencement of this clause:

10 (a) the Corporation must immediately notify the claimant of the right of appeal; and

(b) lodging of an appeal has the effect of terminating the arbitration proceedings; and

15 (c) the arbitration proceedings are, on termination, taken to have failed, but the claimant is not liable to pay any costs of the Corporation in the arbitration proceedings.

**Existing disputes under old insurance agreements, where arbitration proceedings are not pending**

20 26. (1) This clause applies where:

(a) a dispute relates to a house purchaser's agreement under the Builders Licensing Act 1971; and

25 (b) the dispute occurred before the commencement of this clause in connection with building work to which the agreement relates (whether the dispute arose before, on or after 21 March 1990) and the dispute remains unresolved at that commencement; and

(c) arbitration proceedings relating to the dispute are not pending at that commencement.

30 (2) The claimant under the agreement may, within 12 months after the commencement of this clause, request the Corporation to re-assess the claim.

(3) Section 85 (e) extends to provide the claimant under the agreement with a right of appeal to the Commercial Tribunal in relation to the determination of the Corporation on the request for re-assessment.

35 (4) Any provisions of the agreement relating to arbitration do not apply to any dispute arising out of the request for re-assessment.

*Building Services Corporation (Amendment) 1994*

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SCHEDULE 3—AMENDMENTS RELATING TO INSURANCE—  
*continued*

**New disputes under old insurance agreements**

27. (1) This clause applies where:

- (a) a dispute relates to a house purchaser's agreement under the Builders Licensing Act 1971; and 5
- (b) the dispute occurs after the commencement of this clause in connection with building work to which the agreement relates.

(2) Section 85 (e) operates to provide the claimant under the agreement with a right of appeal to the Commercial Tribunal in relation to the dispute. 10

(3) Any provisions of the agreement relating to arbitration do not apply to the dispute.

**Interest** 15

28. (1) The Commercial Tribunal may order that interest is payable on any amount ordered by the Tribunal to be paid by the Corporation to a claimant referred to in clause 25 or 26, if the Tribunal is satisfied that delay in finalising the matter was attributable to the Corporation. 20

(2) Interest is payable on such amount or amounts, in respect of such period or periods and at such rate or rates as the Commercial Tribunal thinks appropriate.

**Costs**

29. (1) Costs cannot be awarded in favour of the Corporation if an appeal referred to in clause 25 or 26 is dismissed. 25

(2) The Corporation is to pay the appellant's costs on a solicitor-client basis, as determined by the Commercial Tribunal, if such an appeal is successful. If the appeal is successful as to some but not all matters, those costs are payable by the Corporation only to the extent that the Commercial Tribunal determines. 30

*Building Services Corporation (Amendment) 1994*

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**SCHEDULE 4—AMENDMENTS RELATING TO BUILDING SERVICES CORPORATION**

(Sec. 3)

(1) Section 104 (**Definitions**):

5 Omit the section.

(2) Section 107 (**Membership of the Corporation**):

Omit the section.

(3) Section 108 (**Associate members**):

Omit the section.

10 (4) Section 109:

Omit the section, insert instead:

**Management of affairs of the Corporation**

109. (1) The affairs of the Corporation are to be managed by the General Manager.

15 (2) Any act, matter or thing done in the name of, or on behalf of, the Corporation by the General Manager, or with the authority of the General Manager, is taken to have been done by the Corporation.

(5) Section 110:

20 Omit the section, insert instead:

**Functions of General Manager**

110. The General Manager has such functions as are conferred or imposed on the General Manager by or under this or any other Act.

25 (6) Section 112 (**Committees**):

Omit section 112 (2).

(7) Section 122 (**Delegation**):

(a) Omit section 122 (2) and (3).

(b) At the end of section 122, insert:

30 (4) Nothing in this section limits section 109.

*Building Services Corporation (Amendment) 1994*

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SCHEDULE 4—AMENDMENTS RELATING TO BUILDING  
SERVICES CORPORATION—*continued*

- (8) Section 130 (**Proof of certain matters not required**):  
Omit paragraphs (a)–(d).
- (9) Section 144: 5  
After section 143, insert:  
**Limitation of liability**  
144. A matter or thing done by the Corporation, the General Manager or any other person acting under the direction of the Corporation or the General Manager does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the General Manager or a person so acting personally to any action, liability, claim or demand. 10
- (10) Schedule 1 (**Provisions relating to the members and associate members of the Corporation**): 15  
Omit the Schedule.
- (11) Schedule 2 (**Provisions relating to the procedure of the Corporation**):  
Omit the Schedule. 20
- (12) Schedule 4 (**Savings and transitional provisions**):  
Insert in numerical order:  
**Members and associate members of Corporation**  
30. (1) A person who, immediately before the commencement of Schedule 4 (2) to the amending Act held office as a member or associate member of the Corporation ceases to hold that office on that commencement. 25  
(2) The person is not entitled to any compensation or remuneration because of the loss of that office.  
**Continuation of legal entity** 30  
31. Nothing in the amending Act affects the continuity of the Corporation as continued by clause 4.

**SCHEDULE 5—AMENDMENTS RELATING TO HOME  
BUILDING ADVISORY COUNCIL**

(Sec. 3)

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

In section 3 (1), insert in alphabetical order:

**“Advisory Council”** means the Home Building Advisory Council established by this Act;

## (2) Part 7A:

After Part 7, insert:

**PART 7A—THE HOME BUILDING ADVISORY  
COUNCIL**

**Establishment of Advisory Council**

115A. (1) There is established by this Act a council called the Home Building Advisory Council.

(2) The Advisory Council is independent of the Corporation.

(3) The Advisory Council is to be funded and resourced by the Corporation. The level of funding and resourcing is dependent on the amounts appropriated or available for the purpose, and on directions given by the Minister.

**Membership and procedure of Advisory Council**

115B. (1) The Advisory Council is to consist of 11 members.

(2) The members of the Advisory Council are:

- (a) a Chairperson appointed by the Minister; and
- (b) 2 members appointed by the Minister after advertisement and having in the opinion of the Minister expertise in the building industry (which may include technical, consumer or academic expertise); and
- (c) 6 members appointed by the Minister after consultation with such peak industry and consumer groups as the Minister considers appropriate; and
- (d) 1 member appointed by the Minister after consultation with the Local Government Association of New South Wales and the Shires Association of New South Wales; and

*Building Services Corporation (Amendment) 1994***SCHEDULE 5—AMENDMENTS RELATING TO HOME  
BUILDING ADVISORY COUNCIL—*continued***

(e) the General Manager.

(3) Schedule 2A has effect with respect to the members and procedure of the Advisory Council. 5

**Functions of Advisory Council**

115C. The functions of the Advisory Council are to advise the Minister on such consumer-related issues relating to the home building industry as it thinks fit or as are referred to it by the Minister. 10

**Committees**

115D. (1) The Advisory Council may establish committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter that any or all of the members of a committee are not members of the Advisory Council, but the appointment of a person who is not a member of the Advisory Council cannot be made without the prior approval of the Minister. 15

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Advisory Council or (subject to any determination of the Advisory Council) by the committee. 20

(3) Section 140 (**Regulations**): 25

At the end of section 140 (2), insert:

(1) the procedure for the calling and holding of meetings of the Advisory Council.

(4) Schedule 2A:

Before Schedule 3, insert: 30

**SCHEDULE 2A—MEMBERSHIP AND PROCEDURE  
OF ADVISORY COUNCIL**

(Sec. 115B)

**Definitions**

1. In this Schedule: 35

“**appointed member**” means a member of the Advisory Council, other than the General Manager;

*Building Services Corporation (Amendment) 1994*

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SCHEDULE 5—AMENDMENTS RELATING TO HOME  
BUILDING ADVISORY COUNCIL—*continued*

“**Chairperson**” means the Chairperson of the Advisory Council;

5 “**member**” means a member of the Advisory Council.

**Acting members**

10 2. (1) The Minister may, from time to time, appoint a person to act in the office of an appointed member during the illness or absence of the member. The person, while so acting, has and may exercise all the functions of the appointed member and is taken to be an appointed member.

(2) The Minister may remove any person from any office to which the person was appointed under this clause.

15 (3) For the purposes of this clause, a vacancy in the office of an appointed member is taken to be an absence from office of the member.

**Terms of office**

20 3. Subject to this Schedule, an appointed member holds office for such period not exceeding 5 years as may be specified in the instrument of appointment of the appointed member, but is eligible (if otherwise qualified) for re-appointment.

**Allowances**

25 4. A member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

**Vacancy in office of appointed member**

30 5. (1) The office of an appointed member becomes vacant if the member:

- 35 (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by letter addressed to the Minister; or
- (d) is removed by the Minister from office under this clause; or
- (e) is absent from 3 consecutive meetings of the Advisory Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless,



*Building Services Corporation (Amendment) 1994*

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SCHEDULE 5—AMENDMENTS RELATING TO HOME  
BUILDING ADVISORY COUNCIL—*continued*

before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings; or

5

(f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

10

(g) becomes a mentally incapacitated person; or

(h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.

15

(2) The Minister may remove an appointed member from office at any time.

**Filling of vacancy in office of appointed member**

6. If the office of an appointed member becomes vacant, a person is, subject to this Act, required to be appointed to fill the vacancy.

20

**Disclosure of pecuniary interests**

7. (1) A member:

(a) who has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Advisory Council; and

25

(b) whose interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

30

must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Advisory Council.

(2) A disclosure by a member at a meeting of the Advisory Council that the member:

35

(a) is a member, or is in the employment, of a specified company or other body; or

(b) is a partner, or is in the employment, of a specified person; or

*Building Services Corporation (Amendment) 1994*

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SCHEDULE 5—AMENDMENTS RELATING TO HOME  
BUILDING ADVISORY COUNCIL—*continued*

(c) has some other specified interest relating to a specified company or other body or to a specified person,

5 is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this clause.

10 (3) Particulars of any disclosure made under this clause must be recorded by the members in a book to be kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the members.

**Effect of certain other Acts**

15 8. (1) The Public Sector Management Act 1988 does not apply to or in respect of the appointment of an appointed member. An appointed member is not, as an appointed member, subject to that Act.

(2) If by or under any Act provision is made:

20 (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

(b) prohibiting the person from engaging in employment outside the duties of that office,

25 the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

30 (3) The office of appointed member is for the purposes of any Act taken not to be an office or place of profit under the Crown.

**Limitation of liability**

35 9. A matter or thing done by the Advisory Council, a member of the Advisory Council or any person acting under the direction of the Advisory Council or the Chairperson does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

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**SCHEDULE 5—AMENDMENTS RELATING TO HOME  
BUILDING ADVISORY COUNCIL—*continued***

**General procedure**

10. The procedure for the calling of meetings of the Advisory Council and the conduct of business at those meetings of the Advisory Council is, subject to this Act and the regulations, to be determined by the Advisory Council. 5

**Quorum**

11. The quorum for a meeting of the Advisory Council is a majority of its members for the time being. 10

**Presiding member**

12. (1) The Chairperson or, in the absence of the Chairperson (including a person appointed under clause 2 to act in the office of the Chairperson), another member elected to chair the meeting by the members present is to preside at a meeting of the Advisory Council. 15

(2) The member presiding at any meeting of the Advisory Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**Voting** 20

13. A decision supported by a majority of the votes cast at a meeting of the Advisory Council at which a quorum is present is the decision of the Advisory Council.

(5) Schedule 4 (**Savings and transitional provisions**):  
Insert in numerical order: 25

**First meeting of Advisory Council**

32. The first meeting of the Advisory Council is to be called in such manner as the Minister determines.

**SCHEDULE 6—MISCELLANEOUS AMENDMENTS**

(Sec. 3) 30

(1) Section 113 (**General Account**):

After section 113 (2) (a1), insert:

(a2) to the Treasurer for payment into the Consolidated Fund—such amounts as the Treasurer certifies, after consulting the Minister, to be paid by the Corporation in connection with the administration of the 35

*Building Services Corporation (Amendment) 1994*

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SCHEDULE 6—MISCELLANEOUS AMENDMENTS—*continued*

Commercial Tribunal Act 1984 and the Consumer  
Claims Tribunals Act 1987; and

(2) Schedule 4 (**Savings and transitional provisions**):

5 (a) Before clause 1, insert:

**Part 1—General**

10 (b) At the end of clause 2 (1), insert “Building Services  
Corporation (Amendment) Act 1994, except as regards  
amendments made to the Consumer Claims Tribunals Act  
1987.”.

(c) Before clause 3, insert:

**Part 2—Provisions consequent on enactment of this Act**

(d) After clause 19, insert:

15 **Part 3—Provisions consequent on enactment of Building  
Services Corporation (Amendment) Act 1994**

**Definition**

20. In this Part:

“**amending Act**” means the Building Services  
Corporation (Amendment) Act 1994.

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