

First print



New South Wales

Building Services Corporation Legislation Amendment Bill 1996

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to amend the *Building Services Corporation Act 1989*, the *Consumer Claims Tribunals Act 1987* and the *Contracts Review Act 1980* to require builders, developers and owner-builders to insure residential work privately, to remove the Building Services Corporation's (the BSC) functions relating to building disputes, to confer additional power in building matters on the Commercial Tribunal and building disputes tribunals, and to establish statutory warranties for residential building work and minimum requirements for building contracts. The Bill also dissolves the Building Services Corporation, confers its functions on the Director-General of the Department of Fair Trading and the Fair Trading Administration Corporation and renames the *Building Services Corporation Act 1989* as the *Home Building Act 1989*. The Bill also consequentially amends various other Acts.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day or days to be proclaimed.

Clause 3 is a formal provision that gives effect to Schedules 1–5, which amend the *Building Services Corporation Act 1989*.

Clause 4 is a formal provision that gives effect to Schedule 6, which amends the *Consumer Claims Tribunals Act 1987*.

Clause 5 is a formal provision that gives effect to Schedule 7, which contains amendments to the *Contracts Review Act 1980* and other Acts.

Schedule 1 Amendments to BSC Act relating to work and contracts

Schedule 1 [1] inserts definitions of *business day*, *contract price*, *owner-builder* and *statutory warranty*. These definitions are used in new provisions relating to contracts, warranties and insurance.

Schedule 1 [2] specifies the circumstances in which the proposed amendments apply to developers.

Schedule 1 [3] inserts new sections establishing requirements for contracts for residential building work or specialist work.

Proposed section 6 applies the requirements to that work but excludes them in certain emergency situations.

Proposed section 7 requires the contracts to be written, to contain the parties' names and licence details, the plans and specifications, the contract price (if known) and applicable statutory warranties and to comply with any requirements of the regulations.

Proposed section 7A makes it an offence to contract to do such work unless the contract requirements in proposed section 7 are complied with (maximum penalty 20 penalty units).

Proposed section 7B requires the licence holder to give the other party a signed copy of the contract not more than 5 clear business days after entering into the contract (maximum penalty 20 penalty units).

Proposed section 7C makes void clauses in contracts or other agreements that require mandatory arbitration of disputes.

Proposed section 7D specifies the circumstances in which a licence holder or other person has a caveatable interest in the land by virtue of the contract.

Schedule 1 [4] inserts proposed section 10 which provides that a contract that does not have a sufficient description of the work or is not in writing is not enforceable by a licence holder who is party to it. It also removes the right of a licence holder who enters such a contract, or a person who contracts to do work under a contract that contravenes other contractual requirements, to claim damages or to take action in respect of a breach of contract. The person will still be liable for breaches of the contract.

Schedule 1 [5] inserts new sections establishing requirements for contracts for supplying kit homes.

Proposed section 16C applies the requirements to that supply.

Proposed section 16D requires the contracts to be written, to contain the parties' names and licence details, the plans and specifications and the contract price (if known) and to comply with any requirements of the regulations.

Proposed section 16DA makes it an offence to contract to supply a kit home unless the contract requirements in proposed section 16D are complied with (maximum penalty 20 penalty units).

Proposed section 16DB requires the licence holder to give the other party a signed copy of the contract not more than 5 clear business days after entering into the contract (maximum penalty 20 penalty units).

Proposed section 16DC makes void clauses in contracts that require mandatory arbitration of disputes.

Proposed section 16DD specifies the circumstances in which a licence holder or other person has a caveatable interest in the land by virtue of the contract.

Schedule 1 [6] inserts proposed section 16G which provides that a contract that does not have a sufficient description of the kit home to be supplied or is not in writing is not enforceable by a licence holder who is party to it. It also removes the right of a licence holder who enters such a contract, or a person who contracts to supply a kit home under a contract that contravenes other contractual requirements, to claim damages or to take action in respect of a breach of contract. The person will still be liable for breaches of the contract.

Schedule 1 [7] inserts proposed Part 2C (Statutory warranties).

Proposed section 18A applies the Part to residential building work done or to be done under a contract made on or after the commencement of the section.

Proposed section 18B sets out the warranties by a licence holder, or a person required to hold a licence, in a contract to do residential building work. The warranties are:

- that the work will be performed in a proper and workmanlike manner and in accordance with the plans and specifications in the contract
- that the materials supplied by the builder will be good and suitable for the purpose, and new unless otherwise stated in the contract
- that the work will comply with the law
- that the work will be done with due diligence and within time
- that the work will result in a dwelling that is reasonably fit for occupation as a dwelling
- that the work and materials will be reasonably fit for the specified purpose or result if the purpose is made known.

Proposed section 18C extends the statutory warranties to immediate successors in title to owner-builders, developers and licence holders when they sell land on which residential building work has been done.

Proposed section 18D extends the statutory warranties to successors in title unless a predecessor in title has enforced the warranty in the same respect.

Proposed section 18E permits proceedings for a breach of statutory warranty to be commenced for up to 7 years after completion of the work or, if the work is not completed, the completion date or the date of the contract (if there is no completion date).

Proposed section 18F provides a defence to a breach of statutory warranty if the defendant shows that the relevant deficiencies arose from the instructions of the person for whom the work was done after contrary written advice by the defendant or person who did the work.

Proposed section 18G prohibits contracting out of statutory warranties.

Schedule 2 Amendments to BSC Act relating to licensing

Schedule 2 [1] omits the financial grounds on which the BSC could previously reject an application for a licence or renewal of a licence.

Schedule 2 [2] omits provisions that automatically cancelled a licence on financial grounds.

Schedule 2 [3] omits references to warnings about financial matters from the examples of the kinds of warnings that may be given by the BSC about licence holders.

Schedule 2 [4] makes an amendment consequential on the amendment made by Schedule 2 [1].

Schedule 2 [5] makes an amendment consequential on the amendment made by Schedule 2 [6].

Schedule 2 [6] removes the power to require financial information from applicants for licences.

Schedule 3 Amendments to BSC Act relating to disputes

Schedule 3 [1] makes an amendment consequential on the repeal of provisions relating to rectification orders.

Schedule 3 [2] amends definitions contained in Part 4 as a consequence of the amendment made by Schedule 3 [10].

Schedule 3 [3] makes an amendment consequential on the repeal of provisions relating to rectification orders.

Schedule 3 [4]–[6] revise the definition of *improper conduct* (for which action can be taken against a licence holder's licence) to include breaches of statutory warranties and make other consequential amendments as a result of the repeal of the provisions relating to rectification orders and other amendments.

Schedule 3 [7] revises the definition of *improper conduct* (for which action can be taken against a supervisor's licence) to include breaches of statutory warranties.

Schedule 3 [8] revises the grounds on which complaints can be made against licence holders. The new grounds include grounds related to breaches of statutory warranties but do not include matters related to the financial circumstances of licence holders.

Schedule 3 [9] makes an amendment consequential on the amendment made by Schedule 3 [10].

Schedule 3 [10] inserts new provisions relating to complaints. As a consequence of the introduction of new private insurance arrangements, there will no longer be rectification orders as to work. The Director-General of the Department of Fair Trading (the *Director-General*) will be able to advise the parties and to take action to bring them to a settlement. However, the function lost will, by virtue of the transitional provisions inserted by Schedule 5, continue in relation to existing work and contracts.

Proposed section 58 enables the Director-General to determine whether to take action about a complaint and to advise the parties and attempt to bring them to a settlement.

Proposed section 59 protects an insurer who makes a complaint from liability for loss caused by the complaint.

Schedule 3 [11] makes an amendment consequential on the amendment made by Schedule 3 [10].

Schedule 3 [12] makes an amendment consequential on the amendment made by Schedule 3 [15].

Schedule 3 [13] inserts definitions of *authority*, *building claim* and *building disputes tribunal*.

Schedule 3 [14] removes the right to appeal to the Commercial Tribunal against a decision on an insurance claim in the existing scheme (the transitional provisions will continue the right for those currently insured under that scheme).

Schedule 3 [15] inserts proposed sections 89A–89D which confer jurisdiction on the Commercial Tribunal relating to certain building claims.

Proposed section 89A confers on the Tribunal jurisdiction over building claims outside the monetary jurisdiction of building disputes tribunals under the *Consumer Claims Tribunals Act 1987*. These will include disputes relating to insurance claims under private insurance required under the proposed Part 6.

Proposed section 89B gives the Tribunal power to take any action that a building disputes tribunal may take in deciding a building claim.

Proposed section 89C sets out a procedure for deciding which court is to decide an issue in a building claim where proceedings are taken in the Tribunal and another court.

Proposed section 89D confers on the Tribunal jurisdiction under the *Contracts Review Act 1980* to make orders about unjust contracts for certain residential building work or specialist work or about provisions in such contracts. Under that Act the Tribunal may re-open contracts and take other action in relation to contracts.

Schedule 4 Amendments to BSC Act relating to insurance

Schedule 4 [1] provides that a licence is automatically cancelled if the holder is convicted more than once in any period of 12 months of an offence under proposed Part 6. A licence will also be automatically cancelled if the holder fails to maintain insurance as required under the BSC Act.

Schedule 4 [2] makes it clear that the failure of a licence holder to obtain insurance in relation to residential building work or the supply of a kit home is a sufficient ground for suspension of the licence by the District Court.

Schedule 4 [3] inserts proposed Part 6.

Proposed section 90 contains definitions for the purposes of the proposed Part.

Proposed section 91 applies the proposed Part to residential building work done or to be done and kit homes supplied or to be supplied under contracts made on or after the commencement of the proposed section.

Proposed section 92 makes it an offence for a person to contract to do residential building work unless a contract of insurance is in force (maximum penalty 100 penalty units). It is also an offence to contract to do such work without attaching a certificate of insurance to the contract (maximum penalty 100 penalty units). The offences will not apply if the contract price, or the value of the labour and materials, is not more than \$5,000.

Proposed section 93 makes it an offence for a person to contract to supply, or supply, a kit home unless a contract of insurance is in force (maximum penalty 100 penalty units). It is also an offence to contract to supply a kit home without attaching a certificate of insurance to the contract (maximum penalty 100 penalty units). The offences will not apply if the contract price, or the value of the labour and building components, is not more than \$5,000.

Proposed section 94 removes the right of a person who enters into a contract without complying with proposed section 92 or 93 to enforce the contract or to recover money in respect of work done under the contract under any other right of action (including a quantum meruit action).

Proposed section 95 makes it an offence for an owner-builder to contract to sell land on which the owner-builder is to do or has done owner-builder work unless a contract of insurance is in force (maximum penalty 100 penalty units). It is also an offence to contract to sell the land without attaching a certificate of insurance to the contract (maximum penalty 100 penalty units). The offences will not apply if the sale occurs more than 7 years after the work is completed or the value of the work is not more than \$5,000. The contract for the sale will be voidable at the purchaser's option if the owner-builder does not obtain the insurance.

Proposed section 96 makes it an offence for a person who does residential building work otherwise than under a contract or a developer to do residential building work unless a contract of insurance is in force (maximum penalty 100 penalty units). It is also an offence to sell the land without attaching a

certificate of insurance to the contract (maximum penalty 100 penalty units). The offences will not apply if the sale occurs more than 7 years after the work is completed or the value of the work is not more than \$5,000 or to owner-builders and other persons who do their own work.

Proposed section 97 enables the Director-General to exempt a person from the insurance requirements of proposed section 95 or 96 in exceptional circumstances or circumstances of hardship.

Proposed section 98 makes it clear that an employee of an owner-builder, a developer, a licence holder or other person required to be insured is not required to obtain insurance.

Proposed section 99 sets out the matters an insurance contract for residential building work by a licence holder must insure. They include the risk of loss from non-completion of the work because of the insolvency, death or absence of the contractor and the risk of loss arising from breach of statutory warranty.

Proposed section 100 sets out the matters an insurance contract for the supply of a kit home must insure. They include the risk of loss from non-supply because the supplier dies or is insolvent or cannot be found and the risk of loss from the use of unsuitable materials and components or faulty design of the kit home.

Proposed section 101 sets out the matters an insurance contract for residential building work by an owner-builder, a developer or a person who does work otherwise than under a contract must insure. This will be the risk of loss arising from breach of statutory warranty.

Proposed section 102 sets out the general requirements for insurance contracts. The contract must be of a kind approved by the Minister, be provided by an insurer approved by the Minister, provide cover of not less than \$200,000 and must comply with the requirements of the regulations. An excess of \$500 is permitted.

Proposed section 103 enables regulations to be made establishing requirements for professional indemnity insurance and other similar forms of insurance. Matters about which regulations may be made include the provision of automatic run-off cover and the duration of cover.

Proposed section 103A enables the Minister to approve a kind of insurance or an insurer subject to conditions and to revoke or vary an approval.

Proposed section 103B requires an insurance contract to provide cover for non-completion for not less than 12 months after work ceases or a kit home is supplied. Cover for other risks must be provided for not less than 7 years after completion.

Proposed section 103C enables the Governor to make regulations about insurance requirements.

Proposed section 103D makes a provision of an agreement that purports to restrict or remove the rights of a person under the proposed Part void.

Proposed section 103E exempts the New South Wales Land and Housing Corporation from the proposed Part.

Schedule 4 [4] makes a consequential amendment.

Schedule 5 Other amendments to BSC Act

Schedule 5 [2] renames the Act the *Home Building Act 1989*.

Schedule 5 [1], [3]–[21], [24]–[42] and [44] amend the Act as a result of the abolition of the Building Services Corporation. The functions of the Corporation and its General Manager are to be exercised by the Director-General.

Schedule 5 [22] inserts proposed sections 105–113.

Proposed section 105 defines *assets* and *liabilities*.

Proposed section 106 confers functions on the Director-General related to the objectives of the Act. These were formerly exercised by the Building Services Corporation.

Proposed section 107 constitutes the Fair Trading Administration Corporation (the *Administration Corporation*).

Proposed section 108 provides that the Administration Corporation's affairs are to be managed and controlled by the Minister.

Proposed section 109 sets out the Administration Corporation's functions, including the carrying on of business related to assets held by it.

Proposed section 110 transfers the assets, rights and liabilities of the Building Services Corporation to the Administration Corporation.

Proposed section 111 provides for the keeping and use of the Administration Corporation's seal.

Proposed section 112 establishes the Home Building Trust Account.

Proposed section 113 establishes the Fair Trading Administration Corporation General Account.

Schedule 5 [23] establishes the Home Building Education and Research Fund.

Schedule 5 [43] enables savings and transitional regulations to be made as a result of the proposed Act.

Schedule 5 [45] inserts proposed Part 4 of Schedule 4. The proposed Part contains savings and transitional provisions consequent on the enactment of the proposed Act. These provisions include:

- (a) the continued application of the current contracts provisions to existing contracts, and
- (b) the continued application of financial provisions relating to licences in the case of current licence applications, and
- (c) the continued application to previous conduct, subsequent conduct relating to existing work and contracts, and existing disputes of current provisions related to disputes settling, complaints, disciplinary action, jurisdiction of building disputes tribunals and the Commercial Tribunal and appeals, and
- (d) the continued operation of statutory insurance schemes, but only in relation to work currently insured, or currently required to be insured under those schemes, and
- (e) matters resulting from the dissolution of the Building Services Corporation, the transfer of its assets and the subsequent renaming of the Act.

Schedule 6 Amendment of Consumer Claims Tribunals Act 1987

Schedule 6 [1] and [2] make amendments consequential on the amendment made by Schedule 6 [3].

Schedule 6 [3] provides that the time limit for jurisdiction in a building claim related to a contract of insurance is 10 years or less after completion of the residential building work.

Schedule 6 [4]–[6] and [13] make amendments consequential on the dissolution of the Building Services Corporation.

Schedule 6 [7] makes an amendment consequential on the repeal of provisions relating to rectification orders.

Schedule 6 [8] inserts definitions of *residential building work* and *specialist work* for the purposes of Part 3A.

Schedule 6 [9] makes it clear that a claim or appeal against a decision under a contract of insurance required to be entered into under the *Building Services Corporation Act 1989* (to be renamed the *Home Building Act 1989*) may be dealt with by a building disputes tribunal.

Schedule 6 [10] makes an amendment consequential on the repeal of provisions relating to rectification orders.

Schedule 6 [11] and [12] remove provisions as to the referral of building claims to the BSC for dispute resolution.

Schedule 6 [14] confers jurisdiction on building disputes tribunals to require payment of money for application towards payment for building work the subject of a claim.

Schedule 6 [15] confers additional powers on building disputes tribunals in claims relating to building insurance.

Schedule 6 [16] confers jurisdiction under the *Contracts Review Act 1980* on building disputes tribunals in relation to contracts for residential building work or specialist work. A tribunal may adjust contractual provisions and rights under this jurisdiction.

Schedule 6 [17] enables regulations to be made about procedure when the jurisdiction conferred by Schedule 6 [16] is exercised.

Schedule 7 Amendment of other Acts

Contracts Review Act 1980 No 16

The Schedule amends the definition of *Court* to include the Commercial Tribunal and building disputes tribunals under the *Consumer Claims Tribunals Act 1987* when those bodies are exercising their jurisdiction under the *Home Building Act 1989*.

Local Government Act 1993 No 30

The Schedule removes the requirement for proof of insurance under the *Building Services Corporation Act 1989* before a council can release approved plans and specifications for building work and replaces it with a requirement for proof of the insurance required under proposed Part 6 of that Act (as renamed).

Strata Titles Act 1973 No 68

The Schedule makes an amendment consequential on the repeal of provisions relating to rectification orders.

Strata Titles (Leasehold) Act 1986 No 219

The Schedule makes an amendment consequential on the repeal of provisions relating to rectification orders.

In addition, the following Acts are amended to replace or remove references to the Building Services Corporation and to replace references to the *Building Services Corporation Act 1989*:

Dangerous Goods Act 1975 No 68

First State Superannuation Act 1992 No 100

Gas Act 1986 No 213

Home Purchase Assistance Authority Act 1993 No 15

Hunter Water Board (Corporatisation) Act 1991 No 53

Land Tax Management Act 1956 No 26

Liquefied Petroleum Gas Act 1961 No 3

Public Authorities Superannuation Act 1985 No 41

Public Finance and Audit Act 1983 No 152

Search Warrants Act 1985 No 37

State Authorities Non-contributory Superannuation Act 1987 No 212

State Authorities Superannuation Act 1987 No 211

Superannuation Act 1916 No 28

Water Board (Corporatisation) Act 1994 No 88

Water Supply Authorities Act 1987 No 140

First print



New South Wales

Building Services Corporation Legislation Amendment Bill 1996

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Building Services Corporation Act 1989 No 147	2
4 Amendment of Consumer Claims Tribunals Act 1987 No 206	2
5 Amendment of other Acts	2

Schedules

1 Amendments to BSC Act relating to work and contracts	3
2 Amendments to BSC Act relating to licensing	13
3 Amendments to BSC Act relating to disputes	15
4 Amendments to BSC Act relating to insurance	23
5 Other amendments to BSC Act	33

Building Services Corporation Legislation Amendment Bill 1996

Contents

	Page
6 Amendment of Consumer Claims Tribunals Act 1987	51
7 Amendment of other Acts	55



New South Wales

Building Services Corporation Legislation Amendment Bill 1996

No. , 1996

A Bill for

An Act to amend the *Building Services Corporation Act 1989* and various other Acts with respect to insurance for residential building work and kit homes, remedies for building disputes, licensing requirements and requirements for contracts for residential building work and specialist work and the supply of kit homes; to dissolve the Building Services Corporation; to change the name of the Act; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Building Services Corporation Legislation Amendment Act 1996*.

2 Commencement

5

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

3 Amendment of Building Services Corporation Act 1989 No 147

The *Building Services Corporation Act 1989* is amended as set out in Schedules 1–5.

10

4 Amendment of Consumer Claims Tribunals Act 1987 No 206

The *Consumer Claims Tribunals Act 1987* is amended as set out in Schedule 6.

5 Amendment of other Acts

The Acts specified in Schedule 7 are amended as set out in that Schedule.

15

Schedule 1 Amendments to BSC Act relating to work and contracts

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1): 5

business day means a day that is not a Saturday or a Sunday or not a day that is wholly or partly observed as a public holiday throughout New South Wales.

contract price means the total amount payable under a contract to do work or to supply a kit home and includes: 10

(a) the amount that the person contracting to do the work or to supply a kit home is to receive and retain under the contract, and

(b) the amount that the person is to receive under the contract for payment to any other person, and 15

(c) the amount any third person is to receive (or it is reasonably estimated will receive) directly from the person for whom the work is done or to whom the kit home is supplied in relation to the work done, or the kit home supplied, under the contract: 20

(i) for conveying to the building site or connecting or installing services such as gas, electricity, telephone, water and sewerage, or

(ii) for the issue of development or building consents. 25

owner-builder means a person who does owner-builder work (within the meaning of Part 6) and who is issued an owner-builder permit for that work.

statutory warranty means a warranty established by Part 2C. 30

[2] Section 3A

Insert after section 3:

3A Application of provisions to developers

- (1) For the purposes of this Act, an individual, a partnership or a corporation on whose behalf residential building work is done in the circumstances set out in subsection (2) is a developer who does the work. 5
- (2) The circumstances are:
 - (a) the residential building work is done in connection with an existing or proposed dwelling in a building or residential development where 4 or more of the existing or proposed dwellings are or will be owned by the individual, partnership or corporation, or 10
 - (b) the residential building work is done in connection with an existing or proposed retirement village or accommodation specially designed for the disabled where all of the residential units are or will be owned by the individual, partnership or corporation. 15 20
- (3) A company that owns a building under a company title scheme is not a developer for the purposes of this Act.

[3] Sections 6–7D

Omit sections 6 and 7. Insert instead:

6 Application of requirements for contracts

25

- (1) Sections 7–7D apply to a contract under which the holder of a licence undertakes:
 - (a) to do, in person, or by others, any residential building work or any specialist work, or
 - (b) to vary any such undertaking to do residential building work or any specialist work or the way in which any such work is to be done. 30

-
- (2) However, sections 7, 7A and 7B do not apply to a contract to do residential building work or specialist work in such circumstances that:
- (a) if the work were not to be done promptly, there is likely to be a hazard to the health or safety of any person or to the public or to be damage to property, and 5
 - (b) the work could not be done promptly if the requirements of sections 7, 7A and 7B were to be complied with before commencing the work. 10
- (3) Section 7 (2) (f) and (5) do not apply to a contract referred to in subsection (1) (b).

7 Form of contracts

- (1) A contract must be in writing and be dated and signed by or on behalf of each of the parties to it. 15
- (2) A contract must contain:
- (a) the names of the parties, including the name of the holder of the licence shown on the licence, and
 - (b) the number of the licence, and
 - (c) a sufficient description of the work to which the contract relates, and 20
 - (d) any plans and specifications for the work, and
 - (e) the contract price if known, and
 - (f) any statutory warranties applicable to the work.
- (3) The contract must comply with any requirements of the regulations. 25
- (4) If the contract price is known, it must be stated in a prominent position on the first page of the contract.
- (5) If the contract price is not known or may be varied under the contract, the contract must contain a warning to that effect and an explanation of the effect of the provision allowing variation of the price. The warning and explanation must be placed next to the price if the price is known. 30

- (6) A contract must not include in the contract the name of any person other than the holder of a licence as, or so it may reasonably be mistaken to be, the holder's name.
- (7) This section does not prevent the holder of a licence with a business name registered under the *Business Names Act 1962* from also referring in such a contract to the business name. 5

7A Offence

A person must not contract to do work under a contract unless the requirements of section 7 in relation to the contract are complied with. 10

Maximum penalty: 20 penalty units.

7B Copy of contract

A holder of a licence must, not later than 5 clear business days after entering into a contract, give the other party to the contract a signed copy of the contract in the form in which it was made. 15

Maximum penalty: 20 penalty units.

7C Arbitration clause prohibited

A provision in a contract or other agreement that requires a dispute under the contract to be referred to arbitration is void. 20

7D Extent of caveatable interest in land under contract

- (1) The holder of a licence who is a party to a contract under which the contract price is less than \$500,000 does not have a caveatable interest for the purposes of the *Real Property Act 1900* in any land on which the contract work is, or is to be, carried out. 25

-
- (2) The holder of a licence who is a party to a contract and in whose favour a judgment or order of a court or tribunal has been made against another party to the contract has a caveatable interest for the purposes of the *Real Property Act 1900* in the land on which the contract work is, or is to be, carried out if the land is subject to that Act. 5

[4] Section 10

Omit the section. Insert instead:

10 Enforceability of contracts and other rights 10

- (1) A contract to which the requirements of section 7 apply that is not in writing or that does not have a sufficient description of the work to which it relates is not enforceable by the holder of the licence against any other party to the contract. 15
- (2) Subsection (1) does not apply to a contract entered into in the circumstances described in section 6 (2).
- (3) A person who contracts to do work in contravention of this Division or who contracts to do work under a contract that does not comply with this Division: 20
- (a) is not entitled to damages or to enforce any other remedy in respect of a breach of the contract committed by any other party to the contract, but
- (b) is liable for damages and subject to any other remedy in respect of a breach of the contract committed by the person. 25
- (4) This section does not affect the liability of the person for an offence against a provision of or made under this or any other Act.

[5] Sections 16C–16DD

Omit sections 16C and 16D. Insert instead:

16C Application of requirements for contracts

- (1) Sections 16D–16DD apply to a contract under which the holder of a licence undertakes: 5
 - (a) to supply, in person, or by others, a kit home, or
 - (b) to vary any such undertaking previously made.
- (2) Section 16D (5) does not apply to a contract referred to in subsection (1) (b).

16D Form of contracts for kit homes 10

- (1) A contract must be in writing and be dated and signed by or on behalf of each of the parties to it.
- (2) A contract must contain:
 - (a) the names of the parties, including the name of the holder of the licence shown on the licence, and 15
 - (b) the number of the licence, and
 - (c) a sufficient description of the kit home to which the contract relates, and
 - (d) any plans and specifications for the kit home, and
 - (e) the contract price if known. 20
- (3) The contract must comply with any requirements of the regulations.
- (4) If the contract price is known, it must be stated in a prominent position on the first page of the contract.
- (5) If the contract price is not known or may be varied under the contract, the contract must contain a warning to that effect and an explanation of the effect of the provision allowing variation of the price. The warning and explanation must be placed next to the price if the price is known. 25 30

-
- (6) A contract must not include in the contract the name of any person other than the holder of a licence as, or so it may reasonably be mistaken to be, the holder's name.
- (7) This section does not prevent the holder of a licence with a business name registered under the *Business Names Act 1962* from also referring in such a contract to the business name. 5

16DA Offence

A person must not contract to supply a kit home under a contract unless the requirements of section 16D in relation to the contract are complied with. 10

Maximum penalty: 20 penalty units.

16DB Copy of contract

A holder of a licence must, not later than 5 clear business days after entering into a contract, give the other party to the contract a signed copy of the contract in the form in which it was made. 15

Maximum penalty: 20 penalty units.

16DC Arbitration clause prohibited

A provision in a contract or other agreement that requires a dispute under the contract to be referred to arbitration is void. 20

16DD Extent of caveatable interest in land under contract

- (1) The holder of a licence who is a party to a contract under which the contract price is less than \$500,000 does not have a caveatable interest for the purposes of the *Real Property Act 1900* in any land on which the contract work is, or is to be, carried out. 25
- (2) The holder of a licence who is a party to a contract and in whose favour a judgment or order of a court or tribunal has been made against another party to the contract has a caveatable interest for the purposes of the *Real Property Act 1900* in the land on which the contract work is, or is to be, carried out if the land is subject to that Act. 30
- 35

[6] Section 16G

Omit the section. Insert instead:

16G Enforceability of contracts

- (1) A contract to which the requirements of section 16D apply that is not in writing or that does not have a sufficient description of the kit home to which it relates is not enforceable by the holder of the licence against any other party to the contract. 5
- (2) A person who contracts to supply a kit home in contravention of this Part or contracts to supply a kit home under a contract that does not comply with this Part: 10
 - (a) is not entitled to damages or to enforce any other remedy in respect of a breach of the contract committed by any other party to the contract, but 15
 - (b) is liable for damages and subject to any other remedy in respect of a breach of the contract committed by the person.
- (3) This section does not affect the liability of the person for an offence against a provision of or made under this or any other Act. 20

[7] Part 2C

Insert after Part 2B:

Part 2C Statutory warranties

18A Time from when Part applies 25

This Part applies to residential building work only to the extent that it is done or to be done under a contract made on or after the commencement of this section.

18B Warranties as to residential building work

The following warranties by the holder of a licence, or a person required to hold a licence before entering into a contract, are implied in every contract to do residential building work:

- (a) a warranty that the work will be performed in a proper and workmanlike manner and in accordance with the plans and specifications set out in the contract, 5
- (b) a warranty that all materials supplied by the holder or person will be good and suitable for the purpose for which they are used and that, unless otherwise stated in the contract, those materials will be new, 10
- (c) a warranty that the work will be done in accordance with, and will comply with, this or any other law, 15
- (d) a warranty that the work will be done with due diligence and within the time stipulated in the contract, or if no time is stipulated, within a reasonable time, 20
- (e) a warranty that, if the work consists of the construction of a dwelling, the making of alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling, the work will result, to the extent of the work conducted, in a dwelling that is reasonably fit for occupation as a dwelling, 25
- (f) a warranty that the work and any materials used in doing the work will be reasonably fit for the specified purpose or result, if the person for whom the work is done expressly makes known to the holder of the licence or person required to hold a licence, or another person with express or apparent authority to enter into or vary contractual arrangements on behalf of the holder or person, the particular purpose for which the work is required or the result that the owner desires the work to achieve, so as to show that the owner relies on the holder's or person's skill and judgment. 30 35 40

18C Warranties as to work by others

A person who is the immediate successor in title to an owner-builder, a holder of a licence, a former holder or a developer who has done residential building work on land is entitled to the benefit of the statutory warranties as if the owner-builder, holder, former holder or developer were required to hold a licence and had done the work under a contract with that successor in title to do the work. 5

18D Extension of statutory warranties 10

A person who is a successor in title to a person entitled to the benefit of a statutory warranty under this Act is entitled to the same rights as the person's predecessor in title in respect of the statutory warranty, except for work and materials in respect of which the person's predecessor has enforced the warranty. 15

18E Duration of warranties

Proceedings for a breach of a statutory warranty must be commenced within 7 years after:

- (a) the completion of the work to which it relates, or 20
- (b) if the work is not completed:
 - (i) the date for completion of the work specified or determined in accordance with the contract, or
 - (ii) if there is no such date, the date of the contract. 25

18F Defence

In proceedings for a breach of a statutory warranty, it is a defence for the defendant to prove that the deficiencies of which the plaintiff complains arise from instructions given by the person for whom the work was done contrary to the advice in writing of the defendant or person who did the work. 30

18G Warranties may not be excluded

A provision of an agreement or other instrument that purports to restrict or remove the rights of a person in respect of any statutory warranty is void. 35

Schedule 2 Amendments to BSC Act relating to licensing

(Section 3)

[1] Section 20 Issue of licences

Omit section 20 (4).

5

[2] Section 22 Automatic cancellation of licences

Omit section 22 (1). Insert instead:

(1) A licence is taken to be cancelled if:

(a) 30 days (or such longer period as has been agreed on between the licensee and the Director-General) expire during which there has not been a nominated supervisor for the licence, or

10

(b) the licensee is a partnership and (without the prior approval of the Director-General given for the purposes of this section) there is any change in its membership (other than because of death).

15

[3] Section 23 Warning notices

Omit section 23 (2). Insert instead:

(2) For example, a warning may relate to the risks involved in dealing with a person who has a recent history of unreasonable delays in completing work or in supplying kit homes, or of inadequately supervised work or of defective work, or of failing to insure work in accordance with this Act.

20

[4] Section 40 Renewal or restoration of authorities

25

Omit section 40 (2) (d).

Building Services Corporation Legislation Amendment Bill 1996

Schedule 2 Amendments to BSC Act relating to licensing

[5] Section 127 Power to obtain information

Omit "certificate, or" from paragraph (d) of the definition of *relevant information* in section 127 (1).
Insert instead "certificate."

[6] Section 127 (1) (e), definition of "relevant information"

5

Omit paragraph (e).

Schedule 3 Amendments to BSC Act relating to disputes

(Section 3)

[1] Section 3 Definitions

Omit the definition of *rectification order* from section 3 (1). 5

[2] Section 49

Omit the section. Insert instead:

49 Definitions

In this Part:

purchaser of a kit home includes any person to whom it was agreed the kit home was to be delivered by the holder of a licence. 10

show cause notice means a notice served under section 63.

[3] Section 50 Application of Part to former holders and others 15

Omit “, or a rectification order is served,” from section 50 (2).

[4] Section 51 Improper conduct: generally

Omit section 51 (1). Insert instead:

(1) A holder of a licence who is authorised by the licence to contract to do residential building work or specialist work, or a holder of a supervisor or registration certificate, is guilty of improper conduct if the holder: 20

(a) commits an offence against this Act or the regulations, whether or not an information has been laid for the offence, or 25

- (b) in the course of doing any work that the licence or certificate authorises the holder to do, fails to comply with the requirements applicable to the work made by or under this or any other Act in respect of the work, or 5
- (c) breaches a statutory warranty, or
- (d) in the case of specialist work, does the work otherwise than in a good and workmanlike manner or knowingly uses faulty or unsuitable materials in the course of doing the work. 10

[5] Section 51 (2) (b) and (d)

Omit the paragraphs.

[6] Section 51 (2) (c)

Insert "or the Commercial Tribunal" after "referee".

[7] Section 53 Improper conduct: nominated supervisors 15

Omit section 53 (1). Insert instead:

- (1) The holder of an endorsed licence or a supervisor certificate who has control over the carrying out of residential building work or specialist work of any kind is guilty of improper conduct if: 20
 - (a) the requirements applicable to the work made by or under this Act or any other Act are not complied with, or
 - (b) a breach of a statutory warranty occurs in the course of doing that work, or 25
 - (c) in the case of specialist work, the work is done otherwise than in a good and workmanlike manner or faulty or unsuitable materials are used in the course of doing the work.

[8] Section 55 Complaints about holders of licences or certificates

Omit section 55 (1). Insert instead:

- (1) A complaint may be made to the Director-General by any person about the holder of a licence:
 - (a) that the holder is not entitled to be the holder of the licence, or 5
 - (b) that the holder is not fit to hold the licence, or
 - (c) that the holder is guilty of improper conduct, or
 - (d) that there is not a sufficient number of nominated supervisors to ensure: 10
 - (i) that the statutory warranties for residential building work are complied with, or
 - (ii) that specialist work is done in a good and workmanlike manner and that good and suitable materials are used in doing the work, or 15
 - (iii) that the requirements applicable to the work made by or under this or any other Act in respect of residential building work or specialist work are complied with, or 20
 - (e) if the holder is a partnership—that any of the members of the partnership, or any of the officers of a corporation that is a member of the partnership, is not a fit and proper person to be a member of the partnership or an officer of the corporation or has been guilty of improper conduct, or 25
 - (f) if the holder is a corporation—that any of the officers of the corporation is not a fit and proper person to be an officer of the corporation or has been guilty of improper conduct. 30

[9] Section 56 Limitation on certain complaints

Omit the section.

[10] Division 3 Dealing with complaints

Omit sections 58–61. Insert instead:

58 Role of Director-General with respect to complaints

- (1) When the Director-General receives a complaint, the Director-General is to determine whether to take action under this Act about the complaint. 5
- (2) Before determining whether to take action, the Director-General may advise the parties and may take action to bring the parties to a settlement of any matters related to the complaint. 10

59 Protection if complaint lodged

An insurer under a contract of insurance entered into for the purposes of Part 6 who makes a complaint in relation to a builder insured under such a contract is not liable in any way for any loss, damage or injury suffered by the insured or any other person because the complaint is made. 15

[11] Section 63 Service of show cause notice

Omit “to the satisfaction of the Corporation” from section 63 (2) (a). 20

[12] Part 5, heading

Omit the heading.

Insert instead “**Part 5 Appeals and applications to Commercial Tribunal**”.

[13] Section 84

Omit the section. Insert instead:

84 Definitions

In this Part:

authority means:

5

- (a) a licence (whether or not an endorsed licence), or
- (b) a supervisor or registration certificate, or
- (c) an owner-builder permit, or
- (d) a permit under the regulations.

building claim means a building claim within the meaning of Part 3A of the *Consumer Claims Tribunals Act 1987*.

10

building disputes tribunal means a consumer claims tribunal which hears and determines a building claim.

[14] Section 85 Right of appeal

15

Omit section 85 (d).

[15] Sections 89A–89D

Insert after section 89:

89A Jurisdiction relating to building disputes

- (1) The Commercial Tribunal has jurisdiction in relation to a building claim if the claim is or would be, because of section 32 of the *Consumer Claims Tribunals Act 1987*, outside the jurisdiction of a building disputes tribunal. 20
- (2) An application may be made to the Commercial Tribunal in relation to any such building claim by any person entitled to make such a claim under the *Consumer Claims Tribunals Act 1987*. 25

89B Decision on building claims

Without limiting any other action it may take, the Commercial Tribunal, in deciding a building claim, may take any action that a building disputes tribunal may take, including any action it may take under section 12I, 29, 30 or 31 under the *Consumer Claims Tribunals Act 1987*. 5

89C Actions in other courts

(1) In this section:

court means a court, tribunal, board or other person or body who or which: 10

- (a) is empowered by or under any other Act, or
- (b) by agreement between or the consent of 2 or more persons, has authority,

to decide or resolve, whether through arbitration or conciliation or any other means, any issue that is in dispute, but does not include: 15

- (c) a court, tribunal, board or other person or body who or which, in relation to a particular matter, is empowered by law to impose a penalty, admonition or other sanction for a contravention of a law or for misconduct or breach of discipline proved to have been committed in connection with that matter but is not empowered to award or order compensation or damages in respect of that matter, or 20

- (d) a court, tribunal, board or other person or body who or which is prescribed by the regulations for the purposes of this definition. 25

(2) A court has no jurisdiction to hear or determine an issue arising under a building claim if the claim has been lodged with the Commercial Tribunal and at the time the claim was lodged no issue arising under the claim was the subject of a dispute in proceedings pending before a court. 30
35

-
- (3) However, subsection (2) does not affect the jurisdiction of the court, and the court may continue or resume dealing with the issue, if:
- (a) the claim, or the part of the claim, relating to the issue, is withdrawn or dismissed for want of jurisdiction, or 5
 - (b) a court of record has, on a judicial review, quashed or declared invalid an order, determination or ruling of the Commercial Tribunal made in respect of the claim on the ground that the Tribunal had no jurisdiction to hear or determine the issue. 10
- (4) The Commercial Tribunal ceases to have jurisdiction in relation to a building claim if the Tribunal becomes aware that at the time the building claim was lodged with the Tribunal an issue arising under the claim was the subject of a dispute in proceedings pending before a court. 15
- (5) However, subsection (4) does not affect the jurisdiction of the Commercial Tribunal, and the Tribunal may continue or resume dealing with the building claim, if: 20
- (a) the proceedings, or the part of the proceedings, relating to the issue, are or is withdrawn or dismissed by the court, or by another court on appeal in those proceedings, for want of jurisdiction or without deciding the issue on its merits, or 25
 - (b) a court of record has, on a judicial review, quashed or declared invalid those proceedings or that part of those proceedings, or any order, judgment or decision made in those proceedings in relation to the issue, on the ground that the first-mentioned court had no jurisdiction to hear or determine the issue. 30
- (6) For the purposes of this section, an issue arises under a building claim made to the Commercial Tribunal only if the existence of the issue is shown in the claim. 35
-

89D Jurisdiction relating to unjust contracts

- (1) The Commercial Tribunal has the same jurisdiction as the Supreme Court, and may exercise all the powers and authority of the Supreme Court, in proceedings in which relief under the *Contracts Review Act 1980* is sought in relation to a contract for residential building work or specialist work, if the amount or value of the consideration that has passed or would, if the contract were fully executed, pass from one contracting party to another exceeds the amount for which jurisdiction is conferred on a building disputes tribunal under the *Consumer Claims Tribunals Act 1987*. 5 10
- (2) This section does not authorise the Commercial Tribunal to exercise the powers conferred by section 10 of the *Contracts Review Act 1980*. 15
- (3) This section does not affect any jurisdiction of the Supreme Court under the *Contracts Review Act 1980* in relation to contracts for residential building work or specialist work.

Schedule 4 Amendments to BSC Act relating to insurance

(Section 3)

[1] Section 22 Automatic cancellation of licences

Insert after section 22 (1):

5

(1A) A licence authorising its holder to carry out residential building work or specialist work or to contract to supply a kit home is taken to have been cancelled if the licensee is convicted more than once in any period of 12 months of an offence under Part 6 (whether or not the offences are of the same or a different kind).

10

(1B) A licence authorising its holder to carry out residential building work or specialist work or to contract to supply a kit home is taken to have been cancelled if the licensee fails to maintain professional indemnity insurance or a similar form of insurance taken out by the licensee for the period required under Part 6.

15

[2] Section 83 Suspension by District Court

Insert after section 83 (5):

(6) Without limiting subsection (1), it is a sufficient reason if the holder of a licence has contravened section 92 or 93.

20

[3] Part 6, sections 90–103E

Omit Part 6. Insert instead:

Part 6 Insurance

90 Definitions

25

In this Part:

contractor means a person required by section 92 to enter into a contract of insurance.

insolvent means:

- (a) in relation to an individual, that the individual is insolvent under administration (within the meaning of the *Corporations Law*), or
- (b) in relation to a corporation, that the corporation is an externally-administered body corporate (within the meaning of the *Corporations Law*). 5

owner-builder work means owner-builder work within the meaning of Division 3 of Part 3 that involves:

- (a) the construction of a dwelling, or 10
- (b) the alteration of, or additions to, a dwelling, or
- (c) the construction of an inground swimming pool.

supplier means a supplier of a kit home required by section 93 to enter into a contract of insurance.

91 When Part applies 15

- (1) This Part, as amended by the *Building Services Corporation Legislation Amendment Act 1996*, applies to residential building work or owner-builder work only to the extent that it is done or is to be done or has been done under a contract made on or after the date of commencement of this section or, if it is done otherwise than under a contract, only to the extent that it is commenced on or after that commencement. 20
- (2) This Part, as amended by the *Building Services Corporation Legislation Amendment Act 1996*, applies to kit homes supplied or to be supplied under a contract made on or after the date of commencement of this section. 25

92 Contract work must be insured

- (1) A person must not contract to do any residential building work unless a contract of insurance that complies with this Act is in force in relation to the proposed work. 30

Maximum penalty: 100 penalty units.

-
- (2) A person must not contract to do any residential building work unless a certificate of insurance evidencing the contract of insurance, in a form prescribed by the regulations, is attached to the contract.

Maximum penalty: 100 penalty units.

5

- (3) This section does not apply if the contract price does not exceed \$5,000 or (if the contract price is not known) the reasonable market cost of the labour and materials involved does not exceed \$5,000.

- (4) If the same parties enter into two or more contracts to carry out work in stages, the contract price for the purposes of subsection (3) is taken to be the sum of the contract prices under each of the contracts.

10

- (5) The regulations may prescribe another amount for the purposes of subsection (3) and an amount so prescribed is to apply in the place of the amount referred to in that subsection.

15

93 Supply of kit home must be insured

- (1) A person must not contract to supply, or supply, a kit home unless a contract of insurance that complies with this Act is in force in relation to the supply or proposed supply.

20

Maximum penalty: 100 penalty units.

- (2) A person must not contract to supply a kit home unless a certificate of insurance evidencing the contract of insurance, in a form prescribed by the regulations, is attached to the contract.

25

Maximum penalty: 100 penalty units.

- (3) This section does not apply to the supply of a kit home if the contract price does not exceed \$5,000 or (if the contract price is not known) the reasonable market cost of the labour and building components involved does not exceed \$5,000.

30

- (4) The regulations may prescribe another amount for the purposes of subsection (3) and an amount so prescribed is to apply in the place of the amount referred to in that subsection.

94 Effects on contract of contravention

5

- (1) A person who enters into a contract in contravention of section 92 (1) or 93 (1):
- (a) is not entitled to damages or to enforce any other remedy in respect of a breach of the contract committed by any other party to the contract or to recover money in respect of work done under the contract under any other right of action (including a quantum meruit action), but 10
- (b) is liable for damages and subject to any other remedy in respect of a breach of the contract committed by the person. 15
- (2) This section does not affect the liability of any such person for an offence against a provision made by or under this or any other Act.

95 Owner-builder insurance

20

- (1) An owner-builder must not enter into a contract for the sale of land on which owner-builder work is to be or has been done by or on behalf of the owner-builder unless a contract of insurance that complies with this Act is in force in relation to the work or proposed work. 25
- Maximum penalty: 100 penalty units.
- (2) An owner-builder must not enter into a contract for the sale of land on which owner-builder work is to be or has been done by or on behalf of the owner-builder unless a certificate of insurance evidencing the contract of insurance, in a form prescribed by the regulations, is attached to the contract. 30

Maximum penalty: 100 penalty units.

-
- (3) This section does not apply:
- (a) to a sale of the land more than 7 years after the completion of the work, or
 - (b) if the reasonable market cost of the labour and materials involved did not exceed \$5,000, or 5
 - (c) to a person exempted from the operation of this section under section 97.
- (4) If an owner-builder contravenes subsection (1) in respect of a contract, the contract is voidable at the option of the purchaser before the completion of the contract. 10
- (5) The regulations may prescribe another amount for the purposes of subsection (3) (b) and an amount so prescribed is to apply in the place of the amount referred to in that subsection.

96 Insurance by developers and other persons 15

- (1) A person who does residential building work otherwise than under a contract, or a developer who does residential building work, must not do the residential building work unless a contract of insurance that complies with this Act is in force in relation to that work. 20

Maximum penalty: 100 penalty units.

- (2) A person who does residential building work otherwise than under a contract, or a developer who does residential building work, must not enter into a contract for the sale of land on which the residential building work has been done, or is to be done, unless a certificate of insurance evidencing the contract of insurance, in a form prescribed by the regulations, is attached to the contract. 25

Maximum penalty: 100 penalty units. 30

- (3) This section does not apply:
- (a) to an owner-builder, or

- (b) to a person who does owner-builder work within the meaning of Division 3 of Part 3 that does not involve:
 - (i) the construction of a dwelling, or
 - (ii) the alteration of, or additions to, a dwelling, or 5
 - (iii) the construction of an inground swimming pool, or
- (c) to an individual who is exempted by the regulations from the requirements of section 12, or 10
- (d) to a sale of the land more than 7 years after the completion of the work, or
- (e) if the contract price of the work did or does not exceed \$5,000 or (if there is no contract price) the reasonable market cost of the labour and materials involved did or does not exceed \$5,000, or 15
- (f) to a person exempted from the operation of this section under section 97.
- (4) The regulations may prescribe another amount for the purposes of subsection (3) (e) and an amount so prescribed is to apply in the place of the amount referred to in that subsection. 20

97 Exemptions from insurance requirements

- (1) A person may apply to the Director-General to be exempted from the requirement to obtain insurance under section 95 or 96 in a particular case. 25
- (2) The Director-General may, by notice in writing, exempt the person from the operation of section 95 or 96, either unconditionally or subject to conditions, if satisfied that: 30
 - (a) there are exceptional circumstances, or
 - (b) full compliance is impossible or would cause undue hardship.

98 Employees and others not required to insure

Nothing in this Part:

- (a) requires a person who carries out work for a person required by this Part to obtain insurance in respect of that work to obtain insurance, or 5
- (b) makes the first-mentioned person liable for an offence for failing to do so.

99 Requirements for insurance for residential building work

A contract of insurance in relation to residential building work required by section 92 must insure: 10

- (a) a person on whose behalf the work is being done against the risk of loss resulting from non-completion of the work because of the insolvency or death of the contractor or because of the fact that, after due search and inquiry, the contractor cannot be found, and 15
- (b) a person on whose behalf the work is being done and the person's successors in title against the risk of loss arising from a breach of a statutory warranty in respect of the work. 20

100 Requirements for insurance for kit homes

A contract of insurance in relation to a kit home required by section 93 must insure:

- (a) a person to whom the kit home is supplied against the risk of loss resulting from non-supply of the kit home because of the insolvency or death of the supplier or because of the fact that, after due search and inquiry, the supplier cannot be found, and 25
- (b) a person to whom the kit home is supplied and the person's successors in title against the risk of loss in the following events: 30
 - (i) the materials and components used in the kit home were not good and suitable for the purpose for which they were used, 35
 - (ii) the design of the kit home was faulty.

101 Requirements for insurance by owner-builders, developers and others

A contract of insurance in relation to owner-builder work or residential building work required by section 95 or 96 must insure a purchaser of the land on which the work is done and the purchaser's successors in title against the risk of loss arising from a breach of a statutory warranty in respect of the work. 5

102 General requirements for insurance

- (1) This section applies to all contracts of insurance required to be entered into by or under this Part. 10
- (2) The insurance must be of a kind approved by the Minister and be provided by an insurer approved by the Minister.
- (3) The contract of insurance must provide for cover of not less than \$200,000, or such other amount as may be prescribed by the regulations, in relation to each dwelling to which the insurance relates. 15
- (4) Any limitations on liability under the contract of insurance must comply with any requirements of the regulations. 20
- (5) The contract of insurance must comply with any other requirements of the regulations.
- (6) A contract of insurance may provide that the insurer is not liable for such amount (not exceeding \$500) of each claim as is specified in the contract. 25

103 Requirements for professional indemnity and other insurance

- (1) The regulations may set out requirements for professional indemnity insurance and other similar forms of insurance entered into for the purposes of this Part. The requirements are in addition to those made under section 102. 30

-
- (2) Without limiting subsection (1), regulations may be made for or with respect to:
- (a) conditions of contracts of insurance relating to automatic run-off cover, and
 - (b) conditions of contracts of insurance requiring renewal of contracts of insurance for a period sufficient to provide cover of a duration required by or under this Act, and 5
 - (c) the period for which a contract of insurance must provide cover. 10

103A Approval of insurance and insurers

- (1) The Minister may approve a kind of insurance, or an insurer, for the purposes of this Part. An approval may be unconditional or subject to conditions.
- (2) The Minister may, by written notice to the insurer concerned, revoke or vary an approval. 15

103B Period of cover

- (1) A contract of insurance must provide insurance cover for loss arising from non-completion of the work for a period of not less than 12 months after the failure to commence, or cessation of, the work the subject of the cover. 20
- (2) A contract of insurance must provide insurance cover for other loss insured in accordance with this Act for a period of not less than 7 years after the completion of the work or the supply of the kit home, or the end of the contract relating to the work or supply, whichever is the later. 25
- (3) This section is subject to any limits set out in the regulations as to the period within which a claim must be made. 30
- (4) This section is subject to any provisions in regulations made for the purposes of section 103 relating to professional indemnity insurance.

103C Regulations

- (1) The Governor may make regulations for or with respect to requirements for insurance required to be entered into under this Part.
- (2) Without limiting subsection (1), regulations may be made for or with respect to the following:
 - (a) limitations on liability,
 - (b) beneficiaries under the contract of insurance,
 - (c) losses indemnified,
 - (d) the period within which a claim must be made, 10
 - (e) subrogation,
 - (f) when an insurance claim is taken to have been refused,
 - (g) the manner of determining the maximum amount of insurance cover, 15
 - (h) when work is complete,
 - (i) the making of appeals against decisions of insurers, including the time within which appeals may be made.

103D Part may not be excluded 20

A provision of a contract or another agreement that purports to restrict or remove the rights of a person under this Part is void.

103E Exemption

This Part does not apply to residential building work done by or on behalf of, or to sales of land by, the New South Wales Land and Housing Corporation. 25

[4] Section 131 Certificate evidence

Omit section 131 (i).

Schedule 5 Other amendments to BSC Act

(Section 3)

[1] Long title

Omit “to constitute the Building Services Corporation and define its functions;”.

5

[2] Section 1

Omit the section. Insert instead:

1 Name of Act

This Act is the *Home Building Act 1989*.

[3] Section 3 Definitions

10

Insert in alphabetical order:

Administration Corporation means the Fair Trading Administration Corporation constituted under Part 7.

[4] Section 3 (1), definition of “Corporation”

Omit the definition.

15

[5] Section 3 (1)

Insert in alphabetical order:

Director-General means the Director-General of the Department of Fair Trading.

[6] Section 3 (1), definition of “General Manager”

20

Omit the definition.

- [7] **Section 3 (1), definition of "nominated supervisor"**
Omit "with the Corporation" from paragraph (b).
- [8] **Section 3 (1), definition of "registration certificate"**
Omit "with the Corporation".
- [9] **Sections 19, 20, 21 (2), 23 (3) and (4), 24 (except where thirdly occurring), 25 (except where secondly occurring), 26, 27 (3), 30, 31, 32 (2), 34 (1) (a), 35, 36 (1), 38, 39, 40 (except 40 (4) (a)), 41, 43, 44 (2) and (3), 47 (c), 55 (2) and (3), 57, 62, 63 (1), (2) and (3), 77 (2), 80 (2), 83 (3), 85, 86 (2) (except where thirdly occurring), 87, 88, 116 (1), 117, 118, 119, 120 (1), 123, 124 (1), 126 (1), 127 (1) and (2), 131 (f), 139 (2) and 140 (2) (i)** 5
10
Omit "Corporation" wherever occurring.
Insert instead "Director-General".
- [10] **Sections 20 (3), 25 (3), 31 (2), 38 (1), 40 (3) (where firstly occurring), 44 (1) (where firstly occurring), 62, 63 (1) (where firstly occurring), 118** 15
Omit "it" wherever occurring.
Insert instead "the Director-General".
- [11] **Section 23 Warning notices**
Omit "General Manager" wherever occurring. 20
Insert instead "Director-General".
- [12] **Sections 24 (2) and 25 (1) (a)**
Omit "with the Corporation" wherever occurring.
- [13] **Sections 34 (1) (b), 40 (4) (a), 44 (1) (a) and (b), 78 (1), 86 (2) (a), 120 (2), 131 (where firstly occurring)** 25
Omit "Corporation" wherever occurring.
Insert instead "Department of Fair Trading".

[14] Section 44 Return of cancelled or varied authority

Omit "Corporation" from section 44 (1) where firstly occurring.
Insert instead "Director-General".

[15] Section 45 Surrender of authority

Omit "the Corporation".
Insert instead "an office of the Department of Fair Trading".

5

[16] Section 74 Determination after hearing

Omit "Corporation" from section 74 (c).
Insert instead "Administration Corporation".

[17] Section 80 Enforcement of cash penalties and payment of costs

10

Omit "Corporation" from section 80 (1) wherever occurring.
Insert instead "Administration Corporation".

[18] Section 80 (3)

Omit "Corporation's". Insert instead "Director-General's".

[19] Section 86 Time limits

15

Omit "its decision" from section 86 (2).
Insert instead "the decision".

[20] Section 99 Proof of certain small amounts

Omit "General Manager". Insert instead "Director-General".

[21] Part 7, heading

Omit the heading. Insert instead:

**Part 7 Fair Trading Administration Corporation and
additional powers of Director-General**

[22] Sections 105–114

5

Omit the sections. Insert instead:

105 Definitions

In this Part:

assets means any legal or equitable estate or interest
(whether present or future and whether vested or
contingent) in real or personal property of any
description (including money), and includes securities,
chooses in action and documents. 10

BSC means the Building Services Corporation
constituted under this Act as in force immediately before
the commencement of section 110, as substituted by the
*Building Services Corporation Legislation Amendment
Act 1996*. 15

building disputes tribunal has the same meaning as it
has in Part 5. 20

liabilities includes all liabilities, debts and obligations
(whether present or future and whether vested or
contingent).

106 Functions of Director-General under Act

The Director-General has the following functions: 25

- (a) to promote and protect the interests of owners and
purchasers of dwellings (including the purchasers
of kit homes) and users of water supplies,
sewerage systems, gas, electricity, refrigeration
and air conditioning, 30

-
- (b) to set, assess and maintain standards of competence of persons doing residential building work or specialist work,
 - (c) to complement the work of industry organisations, public authorities and educational institutions in promoting standards, 5
 - (d) to give general advice and guidance to the public,
 - (e) to monitor the operation of insurance provided for the purposes of this Act.
 - 107 Constitution of Administration Corporation 10**
 - (1) There is constituted by this Act a body corporate with the corporate name of the Fair Trading Administration Corporation.
 - (2) The Administration Corporation is, for the purposes of any Act, a statutory body representing the Crown. 15
 - 108 Minister to manage and control affairs of Administration Corporation**
 - (1) The affairs of the Administration Corporation are to be managed and controlled by the Minister.
 - (2) Any act, matter or thing done in the name of, or on behalf of, the Administration Corporation by the Minister or the Director-General is taken to have been done by the Administration Corporation. 20
 - 109 Functions of Administration Corporation**
 - (1) The Administration Corporation has the functions conferred or imposed on the Administration Corporation by or under this or any other Act or law. 25
 - (2) The functions of the Administration Corporation include the following:
 - (a) to hold on behalf of the State, retain, transfer and dispose of assets, rights and liabilities transferred to it under this Act, 30
-

-
- (b) to acquire, exchange, lease, dispose of and otherwise deal with property,
 - (c) to develop and manage land transferred to it under this Act or otherwise acquired by it,
 - (d) to carry on any activity or business that relates to the assets, rights and liabilities transferred to it or that is incidental or ancillary to the assets, rights and liabilities transferred to it, 5
 - (e) any other function conferred or imposed on it by or under this or any other Act. 10
 - (3) The Administration Corporation may do all such things as are supplemental or incidental to the exercise of its functions.
- 110 Transfer of assets, rights and liabilities to Administration Corporation on dissolution of BSC 15**
- (1) The remaining assets, rights and liabilities of the BSC are transferred to the Administration Corporation.
 - (2) The remaining assets, rights and liabilities of the BSC are the assets, rights and liabilities of the BSC immediately before the repeal of the provisions of this Act establishing the BSC by the *Building Services Corporation Legislation Amendment Act 1996*, other than any such assets, rights or liabilities as are transferred to a person or persons on behalf of the State by an order made under subsection (3) on or before that dissolution. 20 25
 - (3) The Minister may direct, by order in writing, that such assets, rights and liabilities of the BSC as are specified or referred to in the order be transferred to such person or persons on behalf of the State as is specified in the order. 30
 - (4) The Minister may, in an order under subsection (3), specify the consideration on which a transfer is made and the value or values at which the assets, rights or liabilities are transferred.
 - (5) Clauses 43–45 of Schedule 4 apply to a transfer under subsection (1) and an order under subsection (3). 35

111 Seal of Administration Corporation

The seal of the Administration Corporation is to be kept by the Minister and may be affixed to a document only:

- (a) in the presence of the Minister or a person authorised in that behalf by the Minister, 5
- (b) with an attestation by the signature of the Minister or that person of the fact of the affixing of the seal.

112 Trust Account

- (1) The Administration Corporation is required to maintain with any one or more of a bank, building society or credit union in New South Wales a Home Building Trust Account (the *Trust Account*) which is to consist of amounts held in the Building Services Corporation Trust Account which was maintained under this Act immediately before the commencement of this section. 10 15
- (2) After the commencement of this section, the following amounts are to be paid into the Trust Account:
 - (a) amounts received as a consequence of rectification orders under this Act,
 - (b) amounts paid to the Administration Corporation by order of a building disputes tribunal or the Commercial Tribunal to be applied towards payment for work done or materials supplied, 20
 - (c) amounts voluntarily paid to the Administration Corporation in furtherance of the resolution of disputes concerning contracts to do residential building work or specialist work or to supply kit homes. 25
- (3) Payments from the Trust Account may be made for the following purposes only: 30
 - (a) to pay for work carried out pursuant to a rectification order or as a consequence of the resolution of a dispute or in accordance with subsection (4),

-
- (b) to repay a person who has paid money to the Corporation pursuant to a direction in a rectification order, as a consequence of the resolution of a dispute or in accordance with an order of a building disputes tribunal or the Commercial Tribunal, together with interest accrued on the money, but only to the extent that the money is not applied by the Corporation for a purpose referred to in paragraph (a),

5
 - (c) to invest money in the Trust Account by way of deposit with any one or more bank, building society or credit union in New South Wales.

10
 - (4) Any money paid to the Administration Corporation by order of a building disputes tribunal or the Commercial Tribunal to be applied towards payment for work done or materials supplied may be applied by the Corporation, at such time or times and to such extent as the Tribunal concerned directs, for that purpose.

15

113 General Account

- (1) The Administration Corporation must maintain an account called the Fair Trading Administration Corporation General Account.

20
- (2) There is payable into the Account all money received by the Administration Corporation, except amounts required to be paid into the Trust Account under section 112.

25
- (3) There is payable from the Account all payments required to meet the expenditure incurred in relation to the functions of the Administration Corporation.

[23] Section 115 Education and Research Fund

- Omit section 115 (1)–(3). Insert instead: 30
- (1) The Director-General is to cause to be maintained in the accounting records of the Department of Fair Trading a Home Building Education and Research Fund (the “Education and Research Fund”).

-
- (2) The Education and Research Fund is to consist of the amounts held in the Education and Research Fund under this Act immediately before the commencement of this subsection and such amounts as the Minister approves being applied for the purpose of making payments under this section. 5
- (3) The Director-General may make payments from the Education and Research Fund towards:
- (a) assisting education or research relating to consumer related issues in the building industry, and 10
 - (b) encouraging, by subsidy or otherwise, apprenticeship in the building industry and trades subject to licensing under this Act, and
 - (c) assisting education or research relating to the building industry and trades subject to licensing under this Act, and 15
 - (d) assisting any public purpose connected with the building industry and trades subject to licensing under this Act. 20
- [24] Section 115A Establishment of Advisory Council**
Omit section 115A (2) and (3).
- [25] Section 115B Membership and procedure of Advisory Council**
Omit "General Manager" from section 115B (2) (e).
Insert instead "Director-General". 25
- [26] Section 115C Functions of Advisory Council**
Insert " , including the provision of funding for education and research," after "industry".
- [27] Section 119 Liability for report**
Omit "Corporation's" from section 119 (b). 30
Insert instead "Department of Fair Trading's".
-

[28] Section 121 Disclosure of information

Omit "or any other Act conferring or imposing functions on the Corporation" from section 121 (1).

[29] Section 121 (1)

Omit "or any such other Act" wherever occurring. 5

[30] Section 122

Omit the section. Insert instead:

122 Delegation

The Director-General may delegate to a person any of the Director-General's functions under this Act. 10

[31] Section 123 Service of notices or other documents

Omit section 123 (3).

[32] Section 125

Omit the section. Insert instead:

125 Recovery of charges, fees or money 15

Any charge, fee or money due to the Administration Corporation may be recovered by the Corporation as a debt in a court of competent jurisdiction.

[33] Section 128 Obstruction of officers and others

Omit section 128 (1) (a). Insert instead: 20

- (a) hinder or obstruct any officer of the Department of Fair Trading so as to interfere with the exercise of the officer's functions under this Act, or

[34] Section 129 Authentication of certain documents

Omit the section.

[35] Section 130 Proof of certain matters not required

Omit the section.

[36] Section 131 Certificate evidence

5

Omit section 131 (j).

[37] Section 135 Proceedings for certain offences under other Acts

Omit "in the name of the Corporation by the General Manager or".
Insert instead "by".

[38] Section 138 Supreme Court injunction

10

Omit "General Manager of the Corporation" from section 138 (1).
Insert instead "Director-General".

[39] Section 144 Limitation of liability

Omit "Corporation, the General Manager".
Insert instead "Director-General".

15

[40] Section 144

Omit "Corporation or the General Manager".
Insert instead "Director-General".

[41] Section 144

Omit "General Manager" where thirdly occurring.
Insert instead "Director-General".

20

[42] Schedule 2A Membership and procedure of Advisory Council

Omit "General Manager" from clause 1.
Insert instead "Director-General".

[43] Schedule 4 Savings and transitional provisions

Insert at the end of clause 2 (1):

Building Services Corporation Legislation Amendment Act 1996

[44] Schedule 4, clause 19A

5

Omit "the Corporation" from clause 19A (2) where thirdly occurring.

Insert instead "the Director-General".

[45] Schedule 4, Part 4

Insert after Part 3:

10

Part 4 Provisions consequent on enactment of Building Services Corporation Legislation Amendment Act 1996

33 Definitions

In this Part:

15

amending Act means the *Building Services Corporation Legislation Amendment Act 1996*.

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action, and documents. 20

Corporation means the Building Services Corporation as constituted under the *Building Services Corporation Act 1989* immediately before the commencement of Schedule 5 [22] to the amending Act. 25

liabilities includes all liabilities, debts and obligations (whether present or future and whether vested or contingent).

State tax means application or registration fees, stamp duty or any other tax, duty, fee or charge imposed by any Act or law of the State. 30

34 Operation of requirements for contracts

Except as provided by this Part, the provisions of Division 1 of Part 2 and Part 2A, as amended by the amending Act, apply to contracts made on or after the commencement of those amendments, whether or not they relate to work commenced before that commencement.

5

35 Rejection of applications on financial grounds

(1) Section 20, as amended by the amending Act, does not apply to an application for a licence or for renewal of a licence made but not determined before the commencement of the amendment.

10

(2) Section 40, as amended by the amending Act, does not apply to an application for renewal or restoration of an authority made but not determined before the commencement of the amendment.

15

36 Disputes

(1) Part 4, as in force immediately before the commencement of this clause, continues to apply in relation to:

20

(a) conduct that occurred before the commencement, and

(b) conduct that occurs after that commencement, if the conduct concerns work commenced before the commencement or relates to a contract entered into before that commencement, and

25

(c) disputes arising before or after that commencement in relation to work done before that commencement or under a contract entered into before that commencement.

30

- (2) A complaint may be made or a show cause notice issued under Part 4, as in force immediately before that commencement in relation to conduct, work or a contract referred to in subclause (1), and the complaint or notice may be dealt with under that Part as so in force. 5
- (3) The Director-General and the Commercial Tribunal have, in relation to any such complaint or show cause notice and resulting show cause action, the same functions under this Act as the Corporation and the Tribunal had before that commencement, including functions as to rectification orders and determinations. 10

37 Jurisdiction of Commercial Tribunal

- (1) Part 5, as in force immediately before the commencement of this clause, continues to apply in relation to: 15
 - (a) decisions made before that commencement, and
 - (b) decisions made after that commencement in relation to claims under BSC insurance or by virtue of clause 36.
- (2) Section 89A does not apply to building claims arising out of work done, or contracts entered into, before the commencement of that section. 20
- (3) Section 89D applies only to a contract for residential building work or specialist work entered into after the commencement of that section. 25
- (4) In this clause:

BSC insurance means a scheme prescribed for the purposes of Part 6 of this Act, as in force immediately before the commencement of Schedule 4 [3] to the amending Act. 30

38 Jurisdiction of consumer claims tribunals

- (1) The *Consumer Claims Tribunals Act 1987*, as in force immediately before the commencement of this clause, continues to apply in relation to matters arising out of any residential building work or specialist work done, or a contract entered into, before that commencement. 5
- (2) The *Consumer Claims Tribunals Act 1987*, as amended by the amending Act, does not apply to a building claim arising out of work done, or contracts entered into, before that commencement (whether or not the claim arose before or after that commencement). 10
- (3) Section 12K of the *Consumer Claims Tribunals Act 1987* applies only to a contract for residential building work or specialist work entered into after the commencement of that section. 15

39 Former insurance schemes

- (1) Part 6, as in force immediately before the commencement of Schedule 4 [3] to the amending Act, and any other provisions of this Act or the regulations relating to insurance under this Act as so in force, applies to work insured, or existing work required to be insured, under that Part before that commencement, in the same way that those provisions applied immediately before that commencement. 20
- (2) The Administration Corporation has the functions of the Corporation in relation to the provisions and the insurance referred to in subclause (1). 25

40 Councils' functions relating to insurance

- Section 102 of the *Local Government Act 1993*, as in force immediately before the commencement of this clause, continues to apply in relation to any approval for the doing of any residential building work given before that commencement or referred to in clause 39 (1). 30

41 References to Act

On and from the commencement of Schedule 5 [22] to the amending Act, a reference in any Act (other than this Act) or in any instrument made under any Act or in any other instrument of any kind to the *Building Services Corporation Act 1989* is to be read as a reference to the *Home Building Act 1989*. 5

42 References to Building Services Corporation

On and from the commencement of Schedule 5 [22] to the amending Act, a reference in any Act (other than this Act) or in any instrument made under any Act or in any other instrument of any kind to the Building Services Corporation is to be read as a reference to the Director-General. 10

43 Vesting of assets 15

- (1) This clause applies to the transfer of assets, rights or liabilities of the Corporation to the Administration Corporation or to another person under section 110.
- (2) The following provisions have effect (subject to any order directing the transfer): 20
 - (a) the assets concerned vest in the transferee by force of this clause and without the need for any conveyance, transfer, assignment or assurance,
 - (b) the rights and liabilities concerned become by force of this clause the rights and liabilities of the transferee, 25
 - (c) all proceedings relating to that part of the assets, rights or liabilities commenced before the transfer by or against the Corporation and pending immediately before the transfer are taken to be proceedings pending by or against the transferee, 30

-
- (d) anything done or omitted to be done in relation to that part of the assets, rights or liabilities before the transfer by, to or in respect of the Corporation is (to the extent that it has any force or effect) taken to have been done or omitted to be done by, to or in respect of the transferee, 5
- (e) a reference in any other Act, in any instrument, made under any Act or in any document of any kind to the Corporation is (to the extent that it relates to that part of the assets, rights or liabilities but subject to the regulations) to be read as, or as including, a reference to the transferee. 10
- (3) The operation of this clause is not to be regarded:
- (a) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or 15
- (b) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability. 20
- (4) The operation of this section is not to be regarded as an event of default under any contract or other instrument.
- (5) No attornment to the transferee by a lessee from the Corporation is required. 25
- (6) No compensation is payable to any person in connection with a transfer except, in the case of a transfer by order under section 110 (3), to the extent (if any) to which the order giving rise to the transfer so provides. 30

44 Date of vesting

A transfer by order under section 110 (3) takes effect on the date specified in the order by which it is effected.

45 State tax

State tax is not chargeable in respect of:

- (a) the transfer of assets, rights and liabilities under Part 7, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or registration of an interest in land). 5

46 Existing licences

A licence, certificate of registration or permit issued by the Corporation and in force immediately before the commencement of this clause is taken to have been issued by the Director-General under this Act. 10

47 Payment of money generally

- (1) Nothing in this Act, the amending Act, or any order made under section 110 (3), prevents the payment to the Consolidated Fund of any revenue or income arising out of: 15
 - (a) the exercise of the Corporation's functions, or
 - (b) the exercise by the Director-General or any other person of those functions, or any other functions, after the commencement of Schedule 5 [22] to the amending Act. 20
- (2) Subclause (1) does not apply to money held by the Administration Corporation and not subject to an order under section 110 (3). 25

Schedule 6 Amendment of Consumer Claims Tribunals Act 1987

(Section 4)

[1] Section 10 Jurisdiction

Omit "subsection (3)" from section 10 (2).
Insert instead "subsections (3), (3A)".

5

[2] Section 10 (3)

Insert "(not being a claim referred to in subsection (3A))" after
"consumer claim" where firstly occurring.

[3] Section 10 (3A)

10

Insert after section 10 (3):

(3A) A tribunal does not have jurisdiction in respect of a
building claim (within the meaning of Part 3A) arising
out of a contract of insurance required to be entered into
under the *Home Building Act 1989* if the date on which
the residential building work the subject of the claim was
completed was more than 10 years before the date on
which the claim was lodged in accordance with
section 13.

15

[4] Section 12A Definitions

20

Omit the definitions of *BSC* and *BSC Act*.

[5] Section 12A

Insert in alphabetical order:

Director-General means the Director-General of the
Department of Fair Trading.

25

[6] Sections 12A, 12B (2), 12H (1)

Omit "BSC Act" wherever occurring.
Insert instead "*Home Building Act 1989*".

[7] Section 12A

Omit the definition of *rectification order*.

5

[8] Section 12A

Insert in alphabetical order:

residential building work has the same meaning as it has
in the *Home Building Act 1989*.

specialist work has the same meaning as it has in the 10
Home Building Act 1989.

[9] Section 12A

Insert at the end of the section:

- (2) Without limiting the definition of *building claim*, a
building claim includes an appeal against a decision of 15
an insurer under a contract of insurance required to be
entered into under the *Home Building Act 1989*.

[10] Section 12D Tribunal to be known as building disputes tribunal

Omit "an application for a rectification order".
Insert instead "exercises the jurisdiction conferred by section 12K". 20

[11] Section 12F Preliminary referral of building claim to BSC

Omit the section.

[12] Section 12G Referral of claim to BSC during hearing

Omit the section.

[13] Section 12H Director-General not prevented from taking action when claim pending

Omit "BSC" wherever occurring. Insert instead "Director-General".

5

[14] Section 12I Power to make additional orders

Insert after section 12I (1) (f):

- (g) an order that requires a claimant to pay money to the Fair Trading Administration Corporation, established under the *Home Building Act 1989*, for the purpose of its being applied towards the cost of work done for, and material supplied to, the claimant in providing building goods and services.

10

[15] Section 12I (1A)

Insert after section 12I (1):

15

- (1A) Without limiting a building disputes tribunal's powers under section 30 in such a case, in determining a building claim referred to in section 12A (2) a tribunal may confirm the decision appealed against or substitute for that decision any decision the insurer could have made.

20

[16] Section 12K

Omit the section. Insert instead:

12K Jurisdiction relating to unjust building contracts

- (1) A building disputes tribunal has the same jurisdiction as the Supreme Court, and may exercise all the powers and authority of the Supreme Court, in proceedings in which relief under the *Contracts Review Act 1980* is sought in relation to a contract for residential building work or specialist work.

25

30

Building Services Corporation Legislation Amendment Bill 1996

Schedule 6 Amendment of Consumer Claims Tribunals Act 1987

- (2) This section does not authorise a building disputes tribunal to exercise the powers conferred by section 10 of the *Contracts Review Act 1980*.
- (3) This section does not affect any jurisdiction of the Supreme Court under the *Contracts Review Act 1980* in relation to contracts for residential building work or specialist work. 5
- (4) A building disputes tribunal has no jurisdiction under this section if the amount or value of the consideration that has passed or would, if the contract were fully executed, pass from one contracting party to another exceeds the amount prescribed for the purposes of this section. 10

[17] Section 48 Regulations

Insert "or proceedings under section 12K" after "claims" in section 48 (1) (b). 15

Schedule 7 Amendment of other Acts

(Section 5)

7.1 Contracts Review Act 1980 No 16

Section 4 Definitions

Insert at the end of the definition of *Court* in section 4 (1): 5

or

- (d) in accordance with section 12K of the *Consumer Claims Tribunals Act 1987*, and without affecting the jurisdictional limitations referred to in that section, a building disputes tribunal within the meaning of Part 3A of that Act, or 10
- (e) in accordance with section 89D of the *Home Building Act 1989*, and without affecting the jurisdictional limitations referred to in that section, the Commercial Tribunal. 15

7.2 Dangerous Goods Act 1975 No 68

Section 41 Regulations

Omit "*Building Services Corporation Act 1989*" from section 41 (3A).

Insert instead "*Home Building Act 1989*". 20

7.3 First State Superannuation Act 1992 No 100

Schedule 1 Employees

Omit "Building Services Corporation" from Part 1.

7.4 Gas Act 1986 No 213

Section 139 Regulations

Omit "*Building Services Corporation Act 1989*" from section 139 (6) (a).

Insert instead "*Home Building Act 1989*".

5

7.5 Home Purchase Assistance Authority Act 1993 No 15

Section 17 Minister may direct transfer of assets etc to Authority

Omit section 17 (1) (b).

7.6 Hunter Water Board (Corporatisation) Act 1991 No 53

10

Section 69 Work for water supply, sewerage or drainage

Omit "*Building Services Corporation Act 1989*" wherever occurring in section 69 (1).

Insert instead "*Home Building Act 1989*".

7.7 Land Tax Management Act 1956 No 26

15

Section 10B Taxation of land owned by certain authorities

Omit section 10B (1) (b).

7.8 Liquefied Petroleum Gas Act 1961 No 3

Section 5 Penalties

Omit "*Building Services Corporation Act 1989*" from section 5 (2) (a).

20

Insert instead "*Home Building Act 1989*".

7.9 Local Government Act 1993 No 30

[1] Section 102

Omit the section. Insert instead:

102 Insurance for residential building work

- | | | |
|-----|--|----|
| (1) | This section applies if the council approves (whether or not subject to conditions) of the doing of any residential building work (within the meaning of the <i>Home Building Act 1989</i>) other than work by an owner-builder. | 5 |
| (2) | The council must not forward or deliver to the applicant or any other person a copy of the plans and specifications submitted to it with the application unless: | 10 |
| (a) | it is satisfied that the builder or other person who is to do the residential building work has complied with the applicable requirements of Part 6 of the <i>Home Building Act 1989</i> , and | 15 |
| (b) | it has endorsed on the copy that it is so satisfied. | |
| (3) | Even though the council has approved of the doing of any such work, the approval has no effect unless the council has so endorsed a copy of the plans and specifications and forwarded or delivered the copy to the applicant after that approval was given. | 20 |
| (4) | If the builder or person who is to do the residential building work is not known when the work is approved by the council, subsections (2) and (3) do not apply and subsection (5) applies instead. | 25 |
| (5) | The council must grant the approval subject to a condition that the builder or person who does the residential building work complies with the applicable requirements of Part 6 of the <i>Home Building Act 1989</i> . | |

102A Evidence of insurance-related matters

- (1) A statement purporting to be signed by an owner of land and declaring that:
- (a) the owner intends to do building work on the land, and 5
 - (b) the reasonable market cost of the labour and materials involved in the work is not high enough for the owner to need an owner-builder permit to do the work,
- is, for the purpose of the council's making an endorsement, sufficient evidence of the matter referred to in subsection (1) (b). 10
- (2) A certificate purporting to be issued by an approved insurer under Part 6 of the *Home Building Act 1989* to the effect that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purpose of the council's making an endorsement, sufficient evidence that the person has complied with the requirements of that Part. 15

[2] Section 124 What orders may be given, in what circumstances and to whom? 20

Omit "*Building Services Corporation Act 1989*" from the Table.
Insert instead "*Home Building Act 1989*".

[3] Section 634 Water, sewerage and stormwater drainage offences

Omit "*Building Services Corporation Act 1989*" from section 634 (1) wherever occurring. 25
Insert instead "*Home Building Act 1989*".

[4] Section 742 Dispute resolution

Omit "the Building Services Corporation" from section 742 (7).

7.10 Public Authorities Superannuation Act 1985 No 41

Schedule 3 Employers

Omit "The Building Services Corporation." from Part 2.

7.11 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory Bodies

5

Omit "Building Services Corporation.".

7.12 Search Warrants Act 1985 No 37

Section 10 Definitions

Omit "*Building Services Corporation Act 1989*" from the definition of *search warrant*.

10

Insert instead "*Home Building Act 1989*".

7.13 State Authorities Non-contributory Superannuation Act 1987 No 212

Schedule 1 Employers

Omit "Building Services Corporation" from Part 1.

15

7.14 State Authorities Superannuation Act 1987 No 211

Schedule 1 Employers

Omit "Building Services Corporation" from Part 1.

7.15 Strata Titles Act 1973 No 68

Section 148 Structural defects—proceedings as agent

Omit “, under the *Building Services Corporation Act 1989* or otherwise,” from section 148 (1).

7.16 Strata Titles (Leasehold) Act 1986 No 219 (1973 Act, section 148) 5

Section 186 Structural defects—proceedings as agent

Omit “, under the *Building Services Corporation Act 1989* or otherwise,” from section 186 (1).

7.17 Superannuation Act 1916 No 28 10

Schedule 3 List of employers

Omit “Building Services Corporation” from Part 1.

7.18 Water Board (Corporatisation) Act 1994 No 88

Section 99 Work for water supply, sewerage or stormwater drainage 15

Omit “*Building Services Corporation Act 1989*” from section 99 (1) wherever occurring.

Insert instead “*Home Building Act 1989*”.

7.19 Water Supply Authorities Act 1987 No 140

Section 48 Work done by unqualified person

Omit "*Building Services Corporation Act 1989*" wherever occurring.

Insert instead "*Home Building Act 1989*".

5



New South Wales

Building Services Corporation Legislation Amendment Bill 1996

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Building Services Corporation Act 1989 No 147	2
4 Amendment of Consumer Claims Tribunals Act 1987 No 206	2
5 Amendment of other Acts	2

Schedules

1 Amendments to BSC Act relating to work and contracts	3
2 Amendments to BSC Act relating to licensing	13
3 Amendments to BSC Act relating to disputes	15
4 Amendments to BSC Act relating to insurance	23
5 Other amendments to BSC Act	33

Building Services Corporation Legislation Amendment Bill 1996

Contents

	Page
6 Amendment of Consumer Claims Tribunals Act 1987	51
7 Amendment of other Acts	55

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.

*Clerk of the Legislative Assembly.
Legislative Assembly*



New South Wales

Building Services Corporation Legislation Amendment Bill 1996

Act No , 1996

An Act to amend the *Building Services Corporation Act 1989* and various other Acts with respect to insurance for residential building work and kit homes, remedies for building disputes, licensing requirements and requirements for contracts for residential building work and specialist work and the supply of kit homes; to dissolve the Building Services Corporation; to change the name of the Act; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Building Services Corporation Legislation Amendment Act 1996*.

2 Commencement

5

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

3 Amendment of Building Services Corporation Act 1989 No 147

The *Building Services Corporation Act 1989* is amended as set out in Schedules 1–5.

10

4 Amendment of Consumer Claims Tribunals Act 1987 No 206

The *Consumer Claims Tribunals Act 1987* is amended as set out in Schedule 6.

5 Amendment of other Acts

The Acts specified in Schedule 7 are amended as set out in that Schedule.

15

Schedule 1 Amendments to BSC Act relating to work and contracts

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1): 5

business day means a day that is not a Saturday or a Sunday or not a day that is wholly or partly observed as a public holiday throughout New South Wales.

contract price means the total amount payable under a contract to do work or to supply a kit home and includes: 10

(a) the amount that the person contracting to do the work or to supply a kit home is to receive and retain under the contract, and

(b) the amount that the person is to receive under the contract for payment to any other person, and 15

(c) the amount any third person is to receive (or it is reasonably estimated will receive) directly from the person for whom the work is done or to whom the kit home is supplied in relation to the work done, or the kit home supplied, under the contract: 20

(i) for conveying to the building site or connecting or installing services such as gas, electricity, telephone, water and sewerage, or

(ii) for the issue of development or building consents. 25

owner-builder means a person who does owner-builder work (within the meaning of Part 6) and who is issued an owner-builder permit for that work.

statutory warranty means a warranty established by Part 2C. 30

[2] Section 3A

Insert after section 3:

3A Application of provisions to developers

- (1) For the purposes of this Act, an individual, a partnership or a corporation on whose behalf residential building work is done in the circumstances set out in subsection (2) is a developer who does the work. 5
- (2) The circumstances are:
 - (a) the residential building work is done in connection with an existing or proposed dwelling in a building or residential development where 4 or more of the existing or proposed dwellings are or will be owned by the individual, partnership or corporation, or 10
 - (b) the residential building work is done in connection with an existing or proposed retirement village or accommodation specially designed for the disabled where all of the residential units are or will be owned by the individual, partnership or corporation. 15
20
- (3) A company that owns a building under a company title scheme is not a developer for the purposes of this Act.

[3] Sections 6–7D

Omit sections 6 and 7. Insert instead:

6 Application of requirements for contracts 25

- (1) Sections 7–7D apply to a contract under which the holder of a licence undertakes:
 - (a) to do, in person, or by others, any residential building work or any specialist work, or
 - (b) to vary any such undertaking to do residential building work or any specialist work or the way in which any such work is to be done. 30

-
- (2) However, sections 7, 7A and 7B do not apply to a contract to do residential building work or specialist work in such circumstances that:
- (a) if the work were not to be done promptly, there is likely to be a hazard to the health or safety of any person or to the public or to be damage to property, and 5
 - (b) the work could not be done promptly if the requirements of sections 7, 7A and 7B were to be complied with before commencing the work. 10
- (3) Section 7 (2) (f) and (5) do not apply to a contract referred to in subsection (1) (b).

7 Form of contracts

- (1) A contract must be in writing and be dated and signed by or on behalf of each of the parties to it. 15
- (2) A contract must contain:
 - (a) the names of the parties, including the name of the holder of the licence shown on the licence, and
 - (b) the number of the licence, and
 - (c) a sufficient description of the work to which the contract relates, and 20
 - (d) any plans and specifications for the work, and
 - (e) the contract price if known, and
 - (f) any statutory warranties applicable to the work.
- (3) The contract must comply with any requirements of the regulations. 25
- (4) If the contract price is known, it must be stated in a prominent position on the first page of the contract.
- (5) If the contract price is not known or may be varied under the contract, the contract must contain a warning to that effect and an explanation of the effect of the provision allowing variation of the price. The warning and explanation must be placed next to the price if the price is known. 30

Building Services Corporation Legislation Amendment Bill 1996

Schedule 1 Amendments to BSC Act relating to work and contracts

- (6) A contract must not include in the contract the name of any person other than the holder of a licence as, or so it may reasonably be mistaken to be, the holder's name.
- (7) This section does not prevent the holder of a licence with a business name registered under the *Business Names Act 1962* from also referring in such a contract to the business name. 5

7A Offence

A person must not contract to do work under a contract unless the requirements of section 7 in relation to the contract are complied with. 10

Maximum penalty: 20 penalty units.

7B Copy of contract

A holder of a licence must, not later than 5 clear business days after entering into a contract, give the other party to the contract a signed copy of the contract in the form in which it was made. 15

Maximum penalty: 20 penalty units.

7C Arbitration clause prohibited

A provision in a contract or other agreement that requires a dispute under the contract to be referred to arbitration is void. 20

7D Extent of caveatable interest in land under contract

The holder of a licence who is a party to a contract and in whose favour a judgment or order of a court or tribunal has been made against another party to the contract has a caveatable interest for the purposes of the *Real Property Act 1900* in the land on which the contract work is, or is to be, carried out if the land is subject to that Act. 25
30

[4] Section 10

Omit the section. Insert instead:

10 Enforceability of contracts and other rights

- (1) A contract to which the requirements of section 7 apply that is not in writing or that does not have a sufficient description of the work to which it relates is not enforceable by the holder of the licence against any other party to the contract. 5
- (2) Subsection (1) does not apply to a contract entered into in the circumstances described in section 6 (2). 10
- (3) A person who contracts to do work in contravention of this Division or who contracts to do work under a contract that does not comply with this Division:
 - (a) is not entitled to damages or to enforce any other remedy in respect of a breach of the contract committed by any other party to the contract, but 15
 - (b) is liable for damages and subject to any other remedy in respect of a breach of the contract committed by the person.
- (4) This section does not affect the liability of the person for an offence against a provision of or made under this or any other Act. 20

[5] Sections 16C–16DD

Omit sections 16C and 16D. Insert instead:

16C Application of requirements for contracts 25

- (1) Sections 16D–16DD apply to a contract under which the holder of a licence undertakes:
 - (a) to supply, in person, or by others, a kit home, or
 - (b) to vary any such undertaking previously made.
- (2) Section 16D (5) does not apply to a contract referred to in subsection (1) (b). 30

16D Form of contracts for kit homes

- (1) A contract must be in writing and be dated and signed by or on behalf of each of the parties to it.
- (2) A contract must contain:
 - (a) the names of the parties, including the name of the holder of the licence shown on the licence, and 5
 - (b) the number of the licence, and
 - (c) a sufficient description of the kit home to which the contract relates, and
 - (d) any plans and specifications for the kit home, and 10
 - (e) the contract price if known.
- (3) The contract must comply with any requirements of the regulations.
- (4) If the contract price is known, it must be stated in a prominent position on the first page of the contract. 15
- (5) If the contract price is not known or may be varied under the contract, the contract must contain a warning to that effect and an explanation of the effect of the provision allowing variation of the price. The warning and explanation must be placed next to the price if the price is known. 20
- (6) A contract must not include in the contract the name of any person other than the holder of a licence as, or so it may reasonably be mistaken to be, the holder's name.
- (7) This section does not prevent the holder of a licence with a business name registered under the *Business Names Act 1962* from also referring in such a contract to the business name. 25

16DA Offence

A person must not contract to supply a kit home under a contract unless the requirements of section 16D in relation to the contract are complied with. 30

Maximum penalty: 20 penalty units.

16DB Copy of contract

A holder of a licence must, not later than 5 clear business days after entering into a contract, give the other party to the contract a signed copy of the contract in the form in which it was made.

5

Maximum penalty: 20 penalty units.

16DC Arbitration clause prohibited

A provision in a contract or other agreement that requires a dispute under the contract to be referred to arbitration is void.

10

16DD Extent of caveatable interest in land under contract

The holder of a licence who is a party to a contract and in whose favour a judgment or order of a court or tribunal has been made against another party to the contract has a caveatable interest for the purposes of the *Real Property Act 1900* in the land on which the contract work is, or is to be, carried out if the land is subject to that Act.

15

[6] Section 16G

Omit the section. Insert instead:

20

16G Enforceability of contracts

(1) A contract to which the requirements of section 16D apply that is not in writing or that does not have a sufficient description of the kit home to which it relates is not enforceable by the holder of the licence against any other party to the contract.

25

(2) A person who contracts to supply a kit home in contravention of this Part or contracts to supply a kit home under a contract that does not comply with this Part:

30

Building Services Corporation Legislation Amendment Bill 1996

Schedule 1 Amendments to BSC Act relating to work and contracts

- (a) is not entitled to damages or to enforce any other remedy in respect of a breach of the contract committed by any other party to the contract, but
- (b) is liable for damages and subject to any other remedy in respect of a breach of the contract committed by the person. 5
- (3) This section does not affect the liability of the person for an offence against a provision of or made under this or any other Act.

[7] Part 2C 10

Insert after Part 2B:

Part 2C Statutory warranties

18A Time from when Part applies

This Part applies to residential building work only to the extent that it is done or to be done under a contract made on or after the commencement of this section. 15

18B Warranties as to residential building work

The following warranties by the holder of a licence, or a person required to hold a licence before entering into a contract, are implied in every contract to do residential building work: 20

- (a) a warranty that the work will be performed in a proper and workmanlike manner and in accordance with the plans and specifications set out in the contract, 25
- (b) a warranty that all materials supplied by the holder or person will be good and suitable for the purpose for which they are used and that, unless otherwise stated in the contract, those materials will be new,

-
- | | | |
|-----|---|----------------|
| (c) | a warranty that the work will be done in accordance with, and will comply with, this or any other law, | |
| (d) | a warranty that the work will be done with due diligence and within the time stipulated in the contract, or if no time is stipulated, within a reasonable time, | 5 |
| (e) | a warranty that, if the work consists of the construction of a dwelling, the making of alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling, the work will result, to the extent of the work conducted, in a dwelling that is reasonably fit for occupation as a dwelling, | 10 |
| (f) | a warranty that the work and any materials used in doing the work will be reasonably fit for the specified purpose or result, if the person for whom the work is done expressly makes known to the holder of the licence or person required to hold a licence, or another person with express or apparent authority to enter into or vary contractual arrangements on behalf of the holder or person, the particular purpose for which the work is required or the result that the owner desires the work to achieve, so as to show that the owner relies on the holder's or person's skill and judgment. | 15
20
25 |

18C Warranties as to work by others

A person who is the immediate successor in title to an owner-builder, a holder of a licence, a former holder or a developer who has done residential building work on land is entitled to the benefit of the statutory warranties as if the owner-builder, holder, former holder or developer were required to hold a licence and had done the work under a contract with that successor in title to do the work.

30
35

18D Extension of statutory warranties

A person who is a successor in title to a person entitled to the benefit of a statutory warranty under this Act is entitled to the same rights as the person's predecessor in title in respect of the statutory warranty, except for work and materials in respect of which the person's predecessor has enforced the warranty. 5

18E Duration of warranties

Proceedings for a breach of a statutory warranty must be commenced within 7 years after: 10

- (a) the completion of the work to which it relates, or
- (b) if the work is not completed:
 - (i) the date for completion of the work specified or determined in accordance with the contract, or 15
 - (ii) if there is no such date, the date of the contract.

18F Defence

In proceedings for a breach of a statutory warranty, it is a defence for the defendant to prove that the deficiencies of which the plaintiff complains arise from instructions given by the person for whom the work was done contrary to the advice in writing of the defendant or person who did the work. 20

18G Warranties may not be excluded 25

A provision of an agreement or other instrument that purports to restrict or remove the rights of a person in respect of any statutory warranty is void.

Schedule 2 Amendments to BSC Act relating to licensing

(Section 3)

[1] Section 20 Issue of licences

Omit section 20 (4).

5

[2] Section 22 Automatic cancellation of licences

Omit section 22 (1). Insert instead:

(1) A licence is taken to be cancelled if:

- (a) 30 days (or such longer period as has been agreed
on between the licensee and the Director-General)
expire during which there has not been a
nominated supervisor for the licence, or 10
- (b) the licensee is a partnership and (without the prior
approval of the Director-General given for the
purposes of this section) there is any change in its
membership (other than because of death). 15

[3] Section 23 Warning notices

Omit section 23 (2). Insert instead:

- (2) For example, a warning may relate to the risks involved
in dealing with a person who has a recent history of
unreasonable delays in completing work or in supplying
kit homes, or of inadequately supervised work or of
defective work, or of failing to insure work in
accordance with this Act. 20

[4] Section 40 Renewal or restoration of authorities

25

Omit section 40 (2) (d).

Building Services Corporation Legislation Amendment Bill 1996

Schedule 2 Amendments to BSC Act relating to licensing

[5] Section 127 Power to obtain information

Omit "certificate, or" from paragraph (d) of the definition of *relevant information* in section 127 (1).
Insert instead "certificate."

[6] Section 127 (1) (e), definition of "relevant information"

5

Omit paragraph (e).

Schedule 3 Amendments to BSC Act relating to disputes

(Section 3)

[1] Section 3 Definitions

Omit the definition of *rectification order* from section 3 (1). 5

[2] Section 49

Omit the section. Insert instead:

49 Definitions

In this Part:

purchaser of a kit home includes any person to whom it was agreed the kit home was to be delivered by the holder of a licence. 10

show cause notice means a notice served under section 63.

[3] Section 50 Application of Part to former holders and others 15

Omit “, or a rectification order is served,” from section 50 (2).

[4] Section 51 Improper conduct: generally

Omit section 51 (1). Insert instead:

- (1) A holder of a licence who is authorised by the licence to contract to do residential building work or specialist work, or a holder of a supervisor or registration certificate, is guilty of improper conduct if the holder: 20
- (a) commits an offence against this Act or the regulations, whether or not an information has been laid for the offence, or 25

Building Services Corporation Legislation Amendment Bill 1996

Schedule 3 Amendments to BSC Act relating to disputes

- (b) in the course of doing any work that the licence or certificate authorises the holder to do, fails to comply with the requirements applicable to the work made by or under this or any other Act in respect of the work, or 5
 - (c) breaches a statutory warranty, or
 - (d) in the case of specialist work, does the work otherwise than in a good and workmanlike manner or knowingly uses faulty or unsuitable materials in the course of doing the work. 10
- [5] **Section 51 (2) (b) and (d)**
Omit the paragraphs.
- [6] **Section 51 (2) (c)**
Insert "or the Commercial Tribunal" after "referee".
- [7] **Section 53 Improper conduct: nominated supervisors** 15
Omit section 53 (1). Insert instead:
 - (1) The holder of an endorsed licence or a supervisor certificate who has control over the carrying out of residential building work or specialist work of any kind is guilty of improper conduct if: 20
 - (a) the requirements applicable to the work made by or under this Act or any other Act are not complied with, or
 - (b) a breach of a statutory warranty occurs in the course of doing that work, or 25
 - (c) in the case of specialist work, the work is done otherwise than in a good and workmanlike manner or faulty or unsuitable materials are used in the course of doing the work.

[8] Section 55 Complaints about holders of licences or certificates

Omit section 55 (1). Insert instead:

- (1) A complaint may be made to the Director-General by any person about the holder of a licence:
 - (a) that the holder is not entitled to be the holder of the licence, or 5
 - (b) that the holder is not fit to hold the licence, or
 - (c) that the holder is guilty of improper conduct, or
 - (d) that there is not a sufficient number of nominated supervisors to ensure: 10
 - (i) that the statutory warranties for residential building work are complied with, or
 - (ii) that specialist work is done in a good and workmanlike manner and that good and suitable materials are used in doing the work, or 15
 - (iii) that the requirements applicable to the work made by or under this or any other Act in respect of residential building work or specialist work are complied with, or 20
 - (e) if the holder is a partnership—that any of the members of the partnership, or any of the officers of a corporation that is a member of the partnership, is not a fit and proper person to be a member of the partnership or an officer of the corporation or has been guilty of improper conduct, or 25
 - (f) if the holder is a corporation—that any of the officers of the corporation is not a fit and proper person to be an officer of the corporation or has been guilty of improper conduct. 30

[9] Section 56 Limitation on certain complaints

Omit the section.

[10] Division 3 Dealing with complaints

Omit sections 58–61. Insert instead:

58 Role of Director-General with respect to complaints

- (1) When the Director-General receives a complaint, the Director-General is to determine whether to take action under this Act about the complaint. 5
- (2) Before determining whether to take action, the Director-General may advise the parties and may take action to bring the parties to a settlement of any matters related to the complaint. 10

59 Protection if complaint lodged

An insurer under a contract of insurance entered into for the purposes of Part 6 who makes a complaint in relation to a builder insured under such a contract is not liable in any way for any loss, damage or injury suffered by the insured or any other person because the complaint is made. 15

[11] Section 63 Service of show cause notice

Omit “to the satisfaction of the Corporation” from section 63 (2) (a). 20

[12] Part 5, heading

Omit the heading.

Insert instead “**Part 5 Appeals and applications to Commercial Tribunal**”.

[13] Section 84

Omit the section. Insert instead:

84 Definitions

In this Part:

authority means:

5

- (a) a licence (whether or not an endorsed licence), or
- (b) a supervisor or registration certificate, or
- (c) an owner-builder permit, or
- (d) a permit under the regulations.

building claim means a building claim within the meaning of Part 3A of the *Consumer Claims Tribunals Act 1987*.

10

building disputes tribunal means a consumer claims tribunal which hears and determines a building claim.

[14] Section 85 Right of appeal

15

Omit section 85 (d).

[15] Sections 89A–89D

Insert after section 89:

89A Jurisdiction relating to building disputes

- (1) The Commercial Tribunal has jurisdiction in relation to a building claim if the claim is or would be, because of section 32 of the *Consumer Claims Tribunals Act 1987*, outside the jurisdiction of a building disputes tribunal. 20
- (2) An application may be made to the Commercial Tribunal in relation to any such building claim by any person entitled to make such a claim under the *Consumer Claims Tribunals Act 1987*. 25

89B Decision on building claims

Without limiting any other action it may take, the Commercial Tribunal, in deciding a building claim, may take any action that a building disputes tribunal may take, including any action it may take under section 12I, 29, 30 or 31 under the *Consumer Claims Tribunals Act 1987*. 5

89C Actions in other courts

(1) In this section:

court means a court, tribunal, board or other person or body who or which: 10

- (a) is empowered by or under any other Act, or
- (b) by agreement between or the consent of 2 or more persons, has authority,

to decide or resolve, whether through arbitration or conciliation or any other means, any issue that is in dispute, but does not include: 15

- (c) a court, tribunal, board or other person or body who or which, in relation to a particular matter, is empowered by law to impose a penalty, admonition or other sanction for a contravention of a law or for misconduct or breach of discipline proved to have been committed in connection with that matter but is not empowered to award or order compensation or damages in respect of that matter, or 20 25

- (d) a court, tribunal, board or other person or body who or which is prescribed by the regulations for the purposes of this definition.

(2) A court has no jurisdiction to hear or determine an issue arising under a building claim if the claim has been lodged with the Commercial Tribunal and at the time the claim was lodged no issue arising under the claim was the subject of a dispute in proceedings pending before a court. 30 35

-
- (3) However, subsection (2) does not affect the jurisdiction of the court, and the court may continue or resume dealing with the issue, if:
- (a) the claim, or the part of the claim, relating to the issue, is withdrawn or dismissed for want of jurisdiction, or 5
 - (b) a court of record has, on a judicial review, quashed or declared invalid an order, determination or ruling of the Commercial Tribunal made in respect of the claim on the ground that the Tribunal had no jurisdiction to hear or determine the issue. 10
- (4) The Commercial Tribunal ceases to have jurisdiction in relation to a building claim if the Tribunal becomes aware that at the time the building claim was lodged with the Tribunal an issue arising under the claim was the subject of a dispute in proceedings pending before a court. 15
- (5) However, subsection (4) does not affect the jurisdiction of the Commercial Tribunal, and the Tribunal may continue or resume dealing with the building claim, if: 20
- (a) the proceedings, or the part of the proceedings, relating to the issue, are or is withdrawn or dismissed by the court, or by another court on appeal in those proceedings, for want of jurisdiction or without deciding the issue on its merits, or 25
 - (b) a court of record has, on a judicial review, quashed or declared invalid those proceedings or that part of those proceedings, or any order, judgment or decision made in those proceedings in relation to the issue, on the ground that the first-mentioned court had no jurisdiction to hear or determine the issue. 30
- (6) For the purposes of this section, an issue arises under a building claim made to the Commercial Tribunal only if the existence of the issue is shown in the claim. 35

89D Jurisdiction relating to unjust contracts

- (1) The Commercial Tribunal has the same jurisdiction as the Supreme Court, and may exercise all the powers and authority of the Supreme Court, in proceedings in which relief under the *Contracts Review Act 1980* is sought in relation to a contract for residential building work or specialist work, if the amount or value of the consideration that has passed or would, if the contract were fully executed, pass from one contracting party to another exceeds the amount for which jurisdiction is conferred on a building disputes tribunal under the *Consumer Claims Tribunals Act 1987*. 5 10
- (2) This section does not authorise the Commercial Tribunal to exercise the powers conferred by section 10 of the *Contracts Review Act 1980*. 15
- (3) This section does not affect any jurisdiction of the Supreme Court under the *Contracts Review Act 1980* in relation to contracts for residential building work or specialist work.

Schedule 4 Amendments to BSC Act relating to insurance

(Section 3)

[1] Section 22 Automatic cancellation of licences

Insert after section 22 (1): 5

(1A) A licence authorising its holder to carry out residential building work or specialist work or to contract to supply a kit home is taken to have been cancelled if the licensee is convicted more than once in any period of 12 months of an offence under Part 6 (whether or not the offences are of the same or a different kind). 10

(1B) A licence authorising its holder to carry out residential building work or specialist work or to contract to supply a kit home is taken to have been cancelled if the licensee fails to maintain professional indemnity insurance or a similar form of insurance taken out by the licensee for the period required under Part 6. 15

[2] Section 83 Suspension by District Court

Insert after section 83 (5):

(6) Without limiting subsection (1), it is a sufficient reason if the holder of a licence has contravened section 92 or 93. 20

[3] Part 6, sections 90–103E

Omit Part 6. Insert instead:

Part 6 Insurance

90 Definitions 25

In this Part:

contractor means a person required by section 92 to enter into a contract of insurance.

Building Services Corporation Legislation Amendment Bill 1996

Schedule 4 Amendments to BSC Act relating to insurance

insolvent means:

- (a) in relation to an individual, that the individual is insolvent under administration (within the meaning of the *Corporations Law*), or
- (b) in relation to a corporation, that the corporation is an externally-administered body corporate (within the meaning of the *Corporations Law*). 5

owner-builder work means owner-builder work within the meaning of Division 3 of Part 3 that involves:

- (a) the construction of a dwelling, or 10
- (b) the alteration of, or additions to, a dwelling, or
- (c) the construction of an inground swimming pool.

supplier means a supplier of a kit home required by section 93 to enter into a contract of insurance.

91 When Part applies 15

- (1) This Part, as amended by the *Building Services Corporation Legislation Amendment Act 1996*, applies to residential building work or owner-builder work only to the extent that it is done or is to be done or has been done under a contract made on or after the date of commencement of this section or, if it is done otherwise than under a contract, only to the extent that it is commenced on or after that commencement. 20
- (2) This Part, as amended by the *Building Services Corporation Legislation Amendment Act 1996*, applies to kit homes supplied or to be supplied under a contract made on or after the date of commencement of this section. 25

92 Contract work must be insured

- (1) A person must not contract to do any residential building work unless a contract of insurance that complies with this Act is in force in relation to the proposed work. 30

Maximum penalty: 100 penalty units.

-
- (2) A person must not contract to do any residential building work unless a certificate of insurance evidencing the contract of insurance, in a form prescribed by the regulations, is attached to the contract.
- Maximum penalty: 100 penalty units. 5
- (3) This section does not apply if the contract price does not exceed \$5,000 or (if the contract price is not known) the reasonable market cost of the labour and materials involved does not exceed \$5,000.
- (4) If the same parties enter into two or more contracts to carry out work in stages, the contract price for the purposes of subsection (3) is taken to be the sum of the contract prices under each of the contracts. 10
- (5) The regulations may prescribe another amount for the purposes of subsection (3) and an amount so prescribed is to apply in the place of the amount referred to in that subsection. 15

93 Supply of kit home must be insured

- (1) A person must not contract to supply, or supply, a kit home unless a contract of insurance that complies with this Act is in force in relation to the supply or proposed supply. 20
- Maximum penalty: 100 penalty units.
- (2) A person must not contract to supply a kit home unless a certificate of insurance evidencing the contract of insurance, in a form prescribed by the regulations, is attached to the contract. 25
- Maximum penalty: 100 penalty units.
- (3) This section does not apply to the supply of a kit home if the contract price does not exceed \$5,000 or (if the contract price is not known) the reasonable market cost of the labour and building components involved does not exceed \$5,000. 30

- (4) The regulations may prescribe another amount for the purposes of subsection (3) and an amount so prescribed is to apply in the place of the amount referred to in that subsection.

94 Effects on contract of contravention

5

- (1) A person who enters into a contract in contravention of section 92 (1) or 93 (1):
- (a) is not entitled to damages or to enforce any other remedy in respect of a breach of the contract committed by any other party to the contract or to recover money in respect of work done under the contract under any other right of action (including a quantum meruit action), but 10
- (b) is liable for damages and subject to any other remedy in respect of a breach of the contract committed by the person. 15
- (2) This section does not affect the liability of any such person for an offence against a provision made by or under this or any other Act.

95 Owner-builder insurance

20

- (1) An owner-builder must not enter into a contract for the sale of land on which owner-builder work is to be or has been done by or on behalf of the owner-builder unless a contract of insurance that complies with this Act is in force in relation to the work or proposed work. 25
- Maximum penalty: 100 penalty units.
- (2) An owner-builder must not enter into a contract for the sale of land on which owner-builder work is to be or has been done by or on behalf of the owner-builder unless a certificate of insurance evidencing the contract of insurance, in a form prescribed by the regulations, is attached to the contract. 30
- Maximum penalty: 100 penalty units.

-
- (3) This section does not apply:
- (a) to a sale of the land more than 7 years after the completion of the work, or
 - (b) if the reasonable market cost of the labour and materials involved did not exceed \$5,000, or 5
 - (c) to a person exempted from the operation of this section under section 97.
- (4) If an owner-builder contravenes subsection (1) in respect of a contract, the contract is voidable at the option of the purchaser before the completion of the contract. 10
- (5) The regulations may prescribe another amount for the purposes of subsection (3) (b) and an amount so prescribed is to apply in the place of the amount referred to in that subsection.

96 Insurance by developers and other persons 15

- (1) A person who does residential building work otherwise than under a contract, or a developer who does residential building work, must not do the residential building work unless a contract of insurance that complies with this Act is in force in relation to that work. 20

Maximum penalty: 100 penalty units.

- (2) A person who does residential building work otherwise than under a contract, or a developer who does residential building work, must not enter into a contract for the sale of land on which the residential building work has been done, or is to be done, unless a certificate of insurance evidencing the contract of insurance, in a form prescribed by the regulations, is attached to the contract. 25

Maximum penalty: 100 penalty units. 30

- (3) This section does not apply:
- (a) to an owner-builder, or

Schedule 4 Amendments to BSC Act relating to insurance

- (b) to a person who does owner-builder work within the meaning of Division 3 of Part 3 that does not involve:
 - (i) the construction of a dwelling, or
 - (ii) the alteration of, or additions to, a dwelling, or
 - (iii) the construction of an inground swimming pool, or
- (c) to an individual who is exempted by the regulations from the requirements of section 12, or
- (d) to a sale of the land more than 7 years after the completion of the work, or
- (e) if the contract price of the work did or does not exceed \$5,000 or (if there is no contract price) the reasonable market cost of the labour and materials involved did or does not exceed \$5,000, or
- (f) to a person exempted from the operation of this section under section 97.
- (4) The regulations may prescribe another amount for the purposes of subsection (3) (e) and an amount so prescribed is to apply in the place of the amount referred to in that subsection.

97 Exemptions from insurance requirements

- (1) A person may apply to the Director-General to be exempted from the requirement to obtain insurance under section 95 or 96 in a particular case.
- (2) The Director-General may, by notice in writing, exempt the person from the operation of section 95 or 96, either unconditionally or subject to conditions, if satisfied that:
 - (a) there are exceptional circumstances, or
 - (b) full compliance is impossible or would cause undue hardship.

98 Employees and others not required to insure

Nothing in this Part:

- (a) requires a person who carries out work for a person required by this Part to obtain insurance in respect of that work to obtain insurance, or 5
- (b) makes the first-mentioned person liable for an offence for failing to do so.

99 Requirements for insurance for residential building work

A contract of insurance in relation to residential building work required by section 92 must insure: 10

- (a) a person on whose behalf the work is being done against the risk of loss resulting from non-completion of the work because of the insolvency or death of the contractor or because of the fact that, after due search and inquiry, the contractor cannot be found, and 15
- (b) a person on whose behalf the work is being done and the person's successors in title against the risk of loss arising from a breach of a statutory warranty in respect of the work. 20

100 Requirements for insurance for kit homes

A contract of insurance in relation to a kit home required by section 93 must insure:

- (a) a person to whom the kit home is supplied against the risk of loss resulting from non-supply of the kit home because of the insolvency or death of the supplier or because of the fact that, after due search and inquiry, the supplier cannot be found, and 25
- (b) a person to whom the kit home is supplied and the person's successors in title against the risk of loss in the following events: 30
 - (i) the materials and components used in the kit home were not good and suitable for the purpose for which they were used, 35
 - (ii) the design of the kit home was faulty.

101 Requirements for insurance by owner-builders, developers and others

A contract of insurance in relation to owner-builder work or residential building work required by section 95 or 96 must insure a purchaser of the land on which the work is done and the purchaser's successors in title against the risk of loss arising from a breach of a statutory warranty in respect of the work. 5

102 General requirements for insurance

- (1) This section applies to all contracts of insurance required to be entered into by or under this Part. 10
- (2) The insurance must be of a kind approved by the Minister and be provided by an insurer approved by the Minister.
- (3) The contract of insurance must provide for cover of not less than \$200,000, or such other amount as may be prescribed by the regulations, in relation to each dwelling to which the insurance relates. 15
- (4) Any limitations on liability under the contract of insurance must comply with any requirements of the regulations. 20
- (5) The contract of insurance must comply with any other requirements of the regulations.
- (6) A contract of insurance may provide that the insurer is not liable for such amount (not exceeding \$500) of each claim as is specified in the contract. 25

103 Requirements for professional indemnity and other insurance

- (1) The regulations may set out requirements for professional indemnity insurance and other similar forms of insurance entered into for the purposes of this Part. The requirements are in addition to those made under section 102. 30

-
- (2) Without limiting subsection (1), regulations may be made for or with respect to:
- (a) conditions of contracts of insurance relating to automatic run-off cover, and
 - (b) conditions of contracts of insurance requiring renewal of contracts of insurance for a period sufficient to provide cover of a duration required by or under this Act, and 5
 - (c) the period for which a contract of insurance must provide cover. 10

103A Approval of insurance and insurers

- (1) The Minister may approve a kind of insurance, or an insurer, for the purposes of this Part. An approval may be unconditional or subject to conditions.
- (2) The Minister may, by written notice to the insurer concerned, revoke or vary an approval. 15

103B Period of cover

- (1) A contract of insurance must provide insurance cover for loss arising from non-completion of the work for a period of not less than 12 months after the failure to commence, or cessation of, the work the subject of the cover. 20
- (2) A contract of insurance must provide insurance cover for other loss insured in accordance with this Act for a period of not less than 7 years after the completion of the work or the supply of the kit home, or the end of the contract relating to the work or supply, whichever is the later. 25
- (3) This section is subject to any limits set out in the regulations as to the period within which a claim must be made. 30
- (4) This section is subject to any provisions in regulations made for the purposes of section 103 relating to professional indemnity insurance.

103C Regulations

- (1) The Governor may make regulations for or with respect to requirements for insurance required to be entered into under this Part.
- (2) Without limiting subsection (1), regulations may be made for or with respect to the following:
 - (a) limitations on liability,
 - (b) beneficiaries under the contract of insurance,
 - (c) losses indemnified,
 - (d) the period within which a claim must be made,
 - (e) subrogation,
 - (f) when an insurance claim is taken to have been refused,
 - (g) the manner of determining the maximum amount of insurance cover,
 - (h) when work is complete,
 - (i) the making of appeals against decisions of insurers, including the time within which appeals may be made.

103D Part may not be excluded

A provision of a contract or another agreement that purports to restrict or remove the rights of a person under this Part is void.

103E Exemption

This Part does not apply to residential building work done by or on behalf of, or to sales of land by, the New South Wales Land and Housing Corporation.

[4] Section 131 Certificate evidence

Omit section 131 (i).

Schedule 5 Other amendments to BSC Act

(Section 3)

[1] Long title

Omit “to constitute the Building Services Corporation and define its functions;”.

5

[2] Section 1

Omit the section. Insert instead:

1 Name of Act

This Act is the *Home Building Act 1989*.

[3] Section 3 Definitions

10

Insert in alphabetical order:

Administration Corporation means the Fair Trading Administration Corporation constituted under Part 7.

[4] Section 3 (1), definition of “Corporation”

Omit the definition.

15

[5] Section 3 (1)

Insert in alphabetical order:

Director-General means the Director-General of the Department of Fair Trading.

[6] Section 3 (1), definition of “General Manager”

20

Omit the definition.

- [7] **Section 3 (1), definition of "nominated supervisor"**
Omit "with the Corporation" from paragraph (b).
- [8] **Section 3 (1), definition of "registration certificate"**
Omit "with the Corporation".
- [9] **Sections 19, 20, 21 (2), 23 (3) and (4), 24 (except where thirdly occurring), 25 (except where secondly occurring), 26, 27 (3), 30, 31, 32 (2), 34 (1) (a), 35, 36 (1), 38, 39, 40 (except 40 (4) (a)), 41, 43, 44 (2) and (3), 47 (c), 55 (2) and (3), 57, 62, 63 (1), (2) and (3), 77 (2), 80 (2), 83 (3), 85, 86 (2) (except where thirdly occurring), 87, 88, 116 (1), 117, 118, 119, 120 (1), 123, 124 (1), 126 (1), 127 (1) and (2), 131 (f), 139 (2) and 140 (2) (i)** 5
10
Omit "Corporation" wherever occurring.
Insert instead "Director-General".
- [10] **Sections 20 (3), 25 (3), 31 (2), 38 (1), 40 (3) (where firstly occurring), 44 (1) (where firstly occurring), 62, 63 (1) (where firstly occurring), 118** 15
Omit "it" wherever occurring.
Insert instead "the Director-General".
- [11] **Section 23 Warning notices**
Omit "General Manager" wherever occurring. 20
Insert instead "Director-General".
- [12] **Sections 24 (2) and 25 (1) (a)**
Omit "with the Corporation" wherever occurring.
- [13] **Sections 34 (1) (b), 40 (4) (a), 44 (1) (a) and (b), 78 (1), 86 (2) (a), 120 (2), 131 (where firstly occurring)** 25
Omit "Corporation" wherever occurring.
Insert instead "Department of Fair Trading".

[14] Section 44 Return of cancelled or varied authority

Omit "Corporation" from section 44 (1) where firstly occurring.
Insert instead "Director-General".

[15] Section 45 Surrender of authority

Omit "the Corporation". 5
Insert instead "an office of the Department of Fair Trading".

[16] Section 74 Determination after hearing

Omit "Corporation" from section 74 (c).
Insert instead "Administration Corporation".

[17] Section 80 Enforcement of cash penalties and payment of costs 10

Omit "Corporation" from section 80 (1) wherever occurring.
Insert instead "Administration Corporation".

[18] Section 80 (3)

Omit "Corporation's". Insert instead "Director-General's".

[19] Section 86 Time limits 15

Omit "its decision" from section 86 (2).
Insert instead "the decision".

[20] Section 99 Proof of certain small amounts

Omit "General Manager". Insert instead "Director-General".

[21] Part 7, heading

Omit the heading. Insert instead:

**Part 7 Fair Trading Administration Corporation and
additional powers of Director-General**

[22] Sections 105–114

5

Omit the sections. Insert instead:

105 Definitions

In this Part:

assets means any legal or equitable estate or interest
(whether present or future and whether vested or
contingent) in real or personal property of any
description (including money), and includes securities,
choses in action and documents. 10

BSC means the Building Services Corporation
constituted under this Act as in force immediately before
the commencement of section 110, as substituted by the
*Building Services Corporation Legislation Amendment
Act 1996*. 15

building disputes tribunal has the same meaning as it
has in Part 5. 20

liabilities includes all liabilities, debts and obligations
(whether present or future and whether vested or
contingent).

106 Functions of Director-General under Act

The Director-General has the following functions: 25

- (a) to promote and protect the interests of owners and
purchasers of dwellings (including the purchasers
of kit homes) and users of water supplies,
sewerage systems, gas, electricity, refrigeration
and air conditioning, 30

-
- (b) to set, assess and maintain standards of competence of persons doing residential building work or specialist work,
 - (c) to complement the work of industry organisations, public authorities and educational institutions in promoting standards, 5
 - (d) to give general advice and guidance to the public,
 - (e) to monitor the operation of insurance provided for the purposes of this Act.

 - 107 Constitution of Administration Corporation** 10
 - (1) There is constituted by this Act a body corporate with the corporate name of the Fair Trading Administration Corporation.
 - (2) The Administration Corporation is, for the purposes of any Act, a statutory body representing the Crown. 15

 - 108 Minister to manage and control affairs of Administration Corporation**
 - (1) The affairs of the Administration Corporation are to be managed and controlled by the Minister.
 - (2) Any act, matter or thing done in the name of, or on behalf of, the Administration Corporation by the Minister or the Director-General is taken to have been done by the Administration Corporation. 20

 - 109 Functions of Administration Corporation**
 - (1) The Administration Corporation has the functions conferred or imposed on the Administration Corporation by or under this or any other Act or law. 25
 - (2) The functions of the Administration Corporation include the following:
 - (a) to hold on behalf of the State, retain, transfer and dispose of assets, rights and liabilities transferred to it under this Act, 30
-

Building Services Corporation Legislation Amendment Bill 1996

Schedule 5 Other amendments to BSC Act

- (b) to acquire, exchange, lease, dispose of and otherwise deal with property,
 - (c) to develop and manage land transferred to it under this Act or otherwise acquired by it,
 - (d) to carry on any activity or business that relates to the assets, rights and liabilities transferred to it or that is incidental or ancillary to the assets, rights and liabilities transferred to it, 5
 - (e) any other function conferred or imposed on it by or under this or any other Act. 10
 - (3) The Administration Corporation may do all such things as are supplemental or incidental to the exercise of its functions.
- 110 Transfer of assets, rights and liabilities to Administration Corporation on dissolution of BSC 15**
- (1) The remaining assets, rights and liabilities of the BSC are transferred to the Administration Corporation.
 - (2) The remaining assets, rights and liabilities of the BSC are the assets, rights and liabilities of the BSC immediately before the repeal of the provisions of this Act establishing the BSC by the *Building Services Corporation Legislation Amendment Act 1996*, other than any such assets, rights or liabilities as are transferred to a person or persons on behalf of the State by an order made under subsection (3) on or before that dissolution. 20 25
 - (3) The Minister may direct, by order in writing, that such assets, rights and liabilities of the BSC as are specified or referred to in the order be transferred to such person or persons on behalf of the State as is specified in the order. 30
 - (4) The Minister may, in an order under subsection (3), specify the consideration on which a transfer is made and the value or values at which the assets, rights or liabilities are transferred.
 - (5) Clauses 43–45 of Schedule 4 apply to a transfer under subsection (1) and an order under subsection (3). 35

111 Seal of Administration Corporation

The seal of the Administration Corporation is to be kept by the Minister and may be affixed to a document only:

- (a) in the presence of the Minister or a person authorised in that behalf by the Minister, 5
- (b) with an attestation by the signature of the Minister or that person of the fact of the affixing of the seal.

112 Trust Account

- (1) The Administration Corporation is required to maintain with any one or more of a bank, building society or credit union in New South Wales a Home Building Trust Account (the *Trust Account*) which is to consist of amounts held in the Building Services Corporation Trust Account which was maintained under this Act immediately before the commencement of this section. 10 15
- (2) After the commencement of this section, the following amounts are to be paid into the Trust Account:
 - (a) amounts received as a consequence of rectification orders under this Act,
 - (b) amounts paid to the Administration Corporation by order of a building disputes tribunal or the Commercial Tribunal to be applied towards payment for work done or materials supplied, 20
 - (c) amounts voluntarily paid to the Administration Corporation in furtherance of the resolution of disputes concerning contracts to do residential building work or specialist work or to supply kit homes. 25
- (3) Payments from the Trust Account may be made for the following purposes only: 30
 - (a) to pay for work carried out pursuant to a rectification order or as a consequence of the resolution of a dispute or in accordance with subsection (4),

- (b) to repay a person who has paid money to the Corporation pursuant to a direction in a rectification order, as a consequence of the resolution of a dispute or in accordance with an order of a building disputes tribunal or the Commercial Tribunal, together with interest accrued on the money, but only to the extent that the money is not applied by the Corporation for a purpose referred to in paragraph (a), 5
 - (c) to invest money in the Trust Account by way of deposit with any one or more bank, building society or credit union in New South Wales. 10
- (4) Any money paid to the Administration Corporation by order of a building disputes tribunal or the Commercial Tribunal to be applied towards payment for work done or materials supplied may be applied by the Corporation, at such time or times and to such extent as the Tribunal concerned directs, for that purpose. 15

113 General Account

- (1) The Administration Corporation must maintain an account called the Fair Trading Administration Corporation General Account. 20
- (2) There is payable into the Account all money received by the Administration Corporation, except amounts required to be paid into the Trust Account under section 112. 25
- (3) There is payable from the Account all payments required to meet the expenditure incurred in relation to the functions of the Administration Corporation.

[23] Section 115 Education and Research Fund

Omit section 115 (1)–(3). Insert instead: 30

- (1) The Director-General is to cause to be maintained in the accounting records of the Department of Fair Trading a Home Building Education and Research Fund (the "Education and Research Fund").

-
- (2) The Education and Research Fund is to consist of the amounts held in the Education and Research Fund under this Act immediately before the commencement of this subsection and such amounts as the Minister approves being applied for the purpose of making payments under this section. 5
- (3) The Director-General may make payments from the Education and Research Fund towards:
- (a) assisting education or research relating to consumer related issues in the building industry, and 10
- (b) encouraging, by subsidy or otherwise, apprenticeship in the building industry and trades subject to licensing under this Act, and
- (c) assisting education or research relating to the building industry and trades subject to licensing under this Act, and 15
- (d) assisting any public purpose connected with the building industry and trades subject to licensing under this Act. 20
- [24] Section 115A Establishment of Advisory Council**
- Omit section 115A (2) and (3).
- [25] Section 115B Membership and procedure of Advisory Council**
- Omit "General Manager" from section 115B (2) (e).
Insert instead "Director-General". 25
- [26] Section 115C Functions of Advisory Council**
- Insert ", including the provision of funding for education and research," after "industry".
- [27] Section 119 Liability for report**
- Omit "Corporation's" from section 119 (b). 30
Insert instead "Department of Fair Trading's".
-

[28] Section 121 Disclosure of information

Omit "or any other Act conferring or imposing functions on the Corporation" from section 121 (1).

[29] Section 121 (1)

Omit "or any such other Act" wherever occurring.

5

[30] Section 122

Omit the section. Insert instead:

122 Delegation

The Director-General may delegate to a person any of the Director-General's functions under this Act.

10

[31] Section 123 Service of notices or other documents

Omit section 123 (3).

[32] Section 125

Omit the section. Insert instead:

125 Recovery of charges, fees or money

15

Any charge, fee or money due to the Administration Corporation may be recovered by the Corporation as a debt in a court of competent jurisdiction.

[33] Section 128 Obstruction of officers and others

Omit section 128 (1) (a). Insert instead:

20

- (a) hinder or obstruct any officer of the Department of Fair Trading so as to interfere with the exercise of the officer's functions under this Act, or

[34] Section 129 Authentication of certain documents

Omit the section.

[35] Section 130 Proof of certain matters not required

Omit the section.

[36] Section 131 Certificate evidence

5

Omit section 131 (j).

[37] Section 135 Proceedings for certain offences under other Acts

Omit "in the name of the Corporation by the General Manager or".
Insert instead "by".

[38] Section 138 Supreme Court injunction

10

Omit "General Manager of the Corporation" from section 138 (1).
Insert instead "Director-General".

[39] Section 144 Limitation of liability

Omit "Corporation, the General Manager".
Insert instead "Director-General".

15

[40] Section 144

Omit "Corporation or the General Manager".
Insert instead "Director-General".

[41] Section 144

Omit "General Manager" where thirdly occurring.
Insert instead "Director-General".

20

[42] Schedule 2A Membership and procedure of Advisory Council

Omit "General Manager" from clause 1.
Insert instead "Director-General".

[43] Schedule 4 Savings and transitional provisions

Insert at the end of clause 2 (1):

Building Services Corporation Legislation Amendment Act 1996

[44] Schedule 4, clause 19A

5

Omit "the Corporation" from clause 19A (2) where thirdly occurring.

Insert instead "the Director-General".

[45] Schedule 4, Part 4

Insert after Part 3:

10

Part 4 Provisions consequent on enactment of Building Services Corporation Legislation Amendment Act 1996

33 Definitions

In this Part:

15

amending Act means the *Building Services Corporation Legislation Amendment Act 1996*.

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action, and documents.

20

Corporation means the Building Services Corporation as constituted under the *Building Services Corporation Act 1989* immediately before the commencement of Schedule 5 [22] to the amending Act.

25

liabilities includes all liabilities, debts and obligations (whether present or future and whether vested or contingent).

State tax means application or registration fees, stamp duty or any other tax, duty, fee or charge imposed by any Act or law of the State.

30

34 Operation of requirements for contracts

Except as provided by this Part, the provisions of Division 1 of Part 2 and Part 2A, as amended by the amending Act, apply to contracts made on or after the commencement of those amendments, whether or not they relate to work commenced before that commencement. 5

35 Rejection of applications on financial grounds

- (1) Section 20, as amended by the amending Act, does not apply to an application for a licence or for renewal of a licence made but not determined before the commencement of the amendment. 10
- (2) Section 40, as amended by the amending Act, does not apply to an application for renewal or restoration of an authority made but not determined before the commencement of the amendment. 15

36 Disputes

- (1) Part 4, as in force immediately before the commencement of this clause, continues to apply in relation to: 20
 - (a) conduct that occurred before the commencement, and
 - (b) conduct that occurs after that commencement, if the conduct concerns work commenced before the commencement or relates to a contract entered into before that commencement, and 25
 - (c) disputes arising before or after that commencement in relation to work done before that commencement or under a contract entered into before that commencement. 30

- (2) A complaint may be made or a show cause notice issued under Part 4, as in force immediately before that commencement in relation to conduct, work or a contract referred to in subclause (1), and the complaint or notice may be dealt with under that Part as so in force. 5
- (3) The Director-General and the Commercial Tribunal have, in relation to any such complaint or show cause notice and resulting show cause action, the same functions under this Act as the Corporation and the Tribunal had before that commencement, including functions as to rectification orders and determinations. 10

37 Jurisdiction of Commercial Tribunal

- (1) Part 5, as in force immediately before the commencement of this clause, continues to apply in relation to: 15
 - (a) decisions made before that commencement, and
 - (b) decisions made after that commencement in relation to claims under BSC insurance or by virtue of clause 36.
- (2) Section 89A does not apply to building claims arising out of work done, or contracts entered into, before the commencement of that section. 20
- (3) Section 89D applies only to a contract for residential building work or specialist work entered into after the commencement of that section. 25
- (4) In this clause:

BSC insurance means a scheme prescribed for the purposes of Part 6 of this Act, as in force immediately before the commencement of Schedule 4 [3] to the amending Act. 30

38 Jurisdiction of consumer claims tribunals

- (1) The *Consumer Claims Tribunals Act 1987*, as in force immediately before the commencement of this clause, continues to apply in relation to matters arising out of any residential building work or specialist work done, or a contract entered into, before that commencement. 5
- (2) The *Consumer Claims Tribunals Act 1987*, as amended by the amending Act, does not apply to a building claim arising out of work done, or contracts entered into, before that commencement (whether or not the claim arose before or after that commencement). 10
- (3) Section 12K of the *Consumer Claims Tribunals Act 1987* applies only to a contract for residential building work or specialist work entered into after the commencement of that section. 15

39 Former insurance schemes

- (1) Part 6, as in force immediately before the commencement of Schedule 4 [3] to the amending Act, and any other provisions of this Act or the regulations relating to insurance under this Act as so in force, applies to work insured, or existing work required to be insured, under that Part before that commencement, in the same way that those provisions applied immediately before that commencement. 20
- (2) The Administration Corporation has the functions of the Corporation in relation to the provisions and the insurance referred to in subclause (1). 25

40 Councils' functions relating to insurance

- Section 102 of the *Local Government Act 1993*, as in force immediately before the commencement of this clause, continues to apply in relation to any approval for the doing of any residential building work given before that commencement or referred to in clause 39 (1). 30

41 References to Act

On and from the commencement of Schedule 5 [22] to the amending Act, a reference in any Act (other than this Act) or in any instrument made under any Act or in any other instrument of any kind to the *Building Services Corporation Act 1989* is to be read as a reference to the *Home Building Act 1989*. 5

42 References to Building Services Corporation

On and from the commencement of Schedule 5 [22] to the amending Act, a reference in any Act (other than this Act) or in any instrument made under any Act or in any other instrument of any kind to the Building Services Corporation is to be read as a reference to the Director-General. 10

43 Vesting of assets 15

- (1) This clause applies to the transfer of assets, rights or liabilities of the Corporation to the Administration Corporation or to another person under section 110.
- (2) The following provisions have effect (subject to any order directing the transfer): 20
 - (a) the assets concerned vest in the transferee by force of this clause and without the need for any conveyance, transfer, assignment or assurance,
 - (b) the rights and liabilities concerned become by force of this clause the rights and liabilities of the transferee, 25
 - (c) all proceedings relating to that part of the assets, rights or liabilities commenced before the transfer by or against the Corporation and pending immediately before the transfer are taken to be proceedings pending by or against the transferee, 30

-
- (d) anything done or omitted to be done in relation to that part of the assets, rights or liabilities before the transfer by, to or in respect of the Corporation is (to the extent that it has any force or effect) taken to have been done or omitted to be done by, to or in respect of the transferee, 5
- (e) a reference in any other Act, in any instrument, made under any Act or in any document of any kind to the Corporation is (to the extent that it relates to that part of the assets, rights or liabilities but subject to the regulations) to be read as, or as including, a reference to the transferee. 10
- (3) The operation of this clause is not to be regarded:
- (a) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or 15
- (b) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability. 20
- (4) The operation of this section is not to be regarded as an event of default under any contract or other instrument.
- (5) No attornment to the transferee by a lessee from the Corporation is required. 25
- (6) No compensation is payable to any person in connection with a transfer except, in the case of a transfer by order under section 110 (3), to the extent (if any) to which the order giving rise to the transfer so provides. 30

44 Date of vesting

A transfer by order under section 110 (3) takes effect on the date specified in the order by which it is effected.

45 State tax

State tax is not chargeable in respect of:

- (a) the transfer of assets, rights and liabilities under Part 7, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or registration of an interest in land). 5

46 Existing licences

A licence, certificate of registration or permit issued by the Corporation and in force immediately before the commencement of this clause is taken to have been issued by the Director-General under this Act. 10

47 Payment of money generally

- (1) Nothing in this Act, the amending Act, or any order made under section 110 (3), prevents the payment to the Consolidated Fund of any revenue or income arising out of: 15
 - (a) the exercise of the Corporation's functions, or
 - (b) the exercise by the Director-General or any other person of those functions, or any other functions, after the commencement of Schedule 5 [22] to the amending Act. 20
- (2) Subclause (1) does not apply to money held by the Administration Corporation and not subject to an order under section 110 (3). 25

Schedule 6 Amendment of Consumer Claims Tribunals Act 1987

(Section 4)

[1] Section 10 Jurisdiction

Omit "subsection (3)" from section 10 (2).
Insert instead "subsections (3), (3A)".

5

[2] Section 10 (3)

Insert "(not being a claim referred to in subsection (3A))" after
"consumer claim" where firstly occurring.

[3] Section 10 (3A)

10

Insert after section 10 (3):

(3A) A tribunal does not have jurisdiction in respect of a
building claim (within the meaning of Part 3A) arising
out of a contract of insurance required to be entered into
under the *Home Building Act 1989* if the date on which
the residential building work the subject of the claim was
completed was more than 10 years before the date on
which the claim was lodged in accordance with
section 13.

15

[4] Section 12A Definitions

20

Omit the definitions of *BSC* and *BSC Act*.

[5] Section 12A

Insert in alphabetical order:

Director-General means the Director-General of the
Department of Fair Trading.

25

[6] Sections 12A, 12B (2), 12H (1)

Omit "BSC Act" wherever occurring.
Insert instead "*Home Building Act 1989*".

[7] Section 12A

Omit the definition of *rectification order*.

5

[8] Section 12A

Insert in alphabetical order:

residential building work has the same meaning as it has
in the *Home Building Act 1989*.

specialist work has the same meaning as it has in the 10
Home Building Act 1989.

[9] Section 12A

Insert at the end of the section:

- (2) Without limiting the definition of *building claim*, a
building claim includes an appeal against a decision of 15
an insurer under a contract of insurance required to be
entered into under the *Home Building Act 1989*.

[10] Section 12D Tribunal to be known as building disputes tribunal

Omit "an application for a rectification order".

Insert instead "exercises the jurisdiction conferred by section 12K". 20

[11] Section 12F Preliminary referral of building claim to BSC

Omit the section.

[12] Section 12G Referral of claim to BSC during hearing

Omit the section.

[13] Section 12H Director-General not prevented from taking action when claim pending

Omit "BSC" wherever occurring. Insert instead "Director-General". 5

[14] Section 12I Power to make additional orders

Insert after section 12I (1) (f):

- (g) an order that requires a claimant to pay money to the Fair Trading Administration Corporation, established under the *Home Building Act 1989*, for the purpose of its being applied towards the cost of work done for, and material supplied to, the claimant in providing building goods and services. 10

[15] Section 12I (1A)

Insert after section 12I (1): 15

- (1A) Without limiting a building disputes tribunal's powers under section 30 in such a case, in determining a building claim referred to in section 12A (2) a tribunal may confirm the decision appealed against or substitute for that decision any decision the insurer could have made. 20

[16] Section 12K

Omit the section. Insert instead:

12K Jurisdiction relating to unjust building contracts

- (1) A building disputes tribunal has the same jurisdiction as the Supreme Court, and may exercise all the powers and authority of the Supreme Court, in proceedings in which relief under the *Contracts Review Act 1980* is sought in relation to a contract for residential building work or specialist work. 25
30

Building Services Corporation Legislation Amendment Bill 1996

Schedule 6 Amendment of Consumer Claims Tribunals Act 1987

- (2) This section does not authorise a building disputes tribunal to exercise the powers conferred by section 10 of the *Contracts Review Act 1980*.
- (3) This section does not affect any jurisdiction of the Supreme Court under the *Contracts Review Act 1980* in relation to contracts for residential building work or specialist work. 5
- (4) A building disputes tribunal has no jurisdiction under this section if the amount or value of the consideration that has passed or would, if the contract were fully executed, pass from one contracting party to another exceeds the amount prescribed for the purposes of this section. 10

[17] Section 48 Regulations

Insert "or proceedings under section 12K" after "claims" in section 48 (1) (b). 15

Schedule 7 Amendment of other Acts

(Section 5)

7.1 Contracts Review Act 1980 No 16

Section 4 Definitions

Insert at the end of the definition of *Court* in section 4 (1): 5

or

(d) in accordance with section 12K of the *Consumer Claims Tribunals Act 1987*, and without affecting the jurisdictional limitations referred to in that section, a building disputes tribunal within the meaning of Part 3A of that Act, or 10

(e) in accordance with section 89D of the *Home Building Act 1989*, and without affecting the jurisdictional limitations referred to in that section, the Commercial Tribunal. 15

7.2 Dangerous Goods Act 1975 No 68

Section 41 Regulations

Omit "*Building Services Corporation Act 1989*" from section 41 (3A).

Insert instead "*Home Building Act 1989*". 20

7.3 First State Superannuation Act 1992 No 100

Schedule 1 Employees

Omit "Building Services Corporation" from Part 1.

7.4 Gas Act 1986 No 213

Section 139 Regulations

Omit "*Building Services Corporation Act 1989*" from section 139 (6) (a).

Insert instead "*Home Building Act 1989*".

5

7.5 Home Purchase Assistance Authority Act 1993 No 15

Section 17 Minister may direct transfer of assets etc to Authority

Omit section 17 (1) (b).

7.6 Hunter Water Board (Corporatisation) Act 1991 No 53

10

Section 69 Work for water supply, sewerage or drainage

Omit "*Building Services Corporation Act 1989*" wherever occurring in section 69 (1).

Insert instead "*Home Building Act 1989*".

7.7 Land Tax Management Act 1956 No 26

15

Section 10B Taxation of land owned by certain authorities

Omit section 10B (1) (b).

7.8 Liquefied Petroleum Gas Act 1961 No 3

Section 5 Penalties

Omit "*Building Services Corporation Act 1989*" from section 5 (2) (a).

20

Insert instead "*Home Building Act 1989*".

7.9 Local Government Act 1993 No 30

[1] Section 102

Omit the section. Insert instead:

102 Insurance for residential building work

- (1) This section applies if the council approves (whether or not subject to conditions) of the doing of any residential building work (within the meaning of the *Home Building Act 1989*) other than work by an owner-builder. 5
- (2) The council must not forward or deliver to the applicant or any other person a copy of the plans and specifications submitted to it with the application unless: 10
 - (a) it is satisfied that the builder or other person who is to do the residential building work has complied with the applicable requirements of Part 6 of the *Home Building Act 1989*, and 15
 - (b) it has endorsed on the copy that it is so satisfied.
- (3) Even though the council has approved of the doing of any such work, the approval has no effect unless the council has so endorsed a copy of the plans and specifications and forwarded or delivered the copy to the applicant after that approval was given. 20
- (4) If the builder or person who is to do the residential building work is not known when the work is approved by the council, subsections (2) and (3) do not apply and subsection (5) applies instead. 25
- (5) The council must grant the approval subject to a condition that the builder or person who does the residential building work complies with the applicable requirements of Part 6 of the *Home Building Act 1989*.

102A Evidence of insurance-related matters

- (1) A statement purporting to be signed by an owner of land and declaring that:
 - (a) the owner intends to do building work on the land, and 5
 - (b) the reasonable market cost of the labour and materials involved in the work is not high enough for the owner to need an owner-builder permit to do the work,

is, for the purpose of the council's making an endorsement, sufficient evidence of the matter referred to in subsection (1) (b). 10
- (2) A certificate purporting to be issued by an approved insurer under Part 6 of the *Home Building Act 1989* to the effect that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purpose of the council's making an endorsement, sufficient evidence that the person has complied with the requirements of that Part. 15

[2] Section 124 What orders may be given, in what circumstances and to whom? 20

Omit "*Building Services Corporation Act 1989*" from the Table.
Insert instead "*Home Building Act 1989*".

[3] Section 634 Water, sewerage and stormwater drainage offences

Omit "*Building Services Corporation Act 1989*" from section 634 (1) wherever occurring. 25
Insert instead "*Home Building Act 1989*".

[4] Section 742 Dispute resolution

Omit "the Building Services Corporation" from section 742 (7).

7.10 Public Authorities Superannuation Act 1985 No 41

Schedule 3 Employers

Omit "The Building Services Corporation." from Part 2.

7.11 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory Bodies

5

Omit "Building Services Corporation.".

7.12 Search Warrants Act 1985 No 37

Section 10 Definitions

Omit "*Building Services Corporation Act 1989*" from the definition of *search warrant*.

10

Insert instead "*Home Building Act 1989*".

7.13 State Authorities Non-contributory Superannuation Act 1987 No 212

Schedule 1 Employers

Omit "Building Services Corporation" from Part 1.

15

7.14 State Authorities Superannuation Act 1987 No 211

Schedule 1 Employers

Omit "Building Services Corporation" from Part 1.

7.15 Strata Titles Act 1973 No 68

Section 148 Structural defects—proceedings as agent

Omit “, under the *Building Services Corporation Act 1989* or otherwise,” from section 148 (1).

7.16 Strata Titles (Leasehold) Act 1986 No 219 (1973 Act, section 148) 5

Section 186 Structural defects—proceedings as agent

Omit “, under the *Building Services Corporation Act 1989* or otherwise,” from section 186 (1).

7.17 Superannuation Act 1916 No 28 10

Schedule 3 List of employers

Omit “Building Services Corporation” from Part 1.

7.18 Water Board (Corporatisation) Act 1994 No 88

Section 99 Work for water supply, sewerage or stormwater drainage

15

Omit “*Building Services Corporation Act 1989*” from section 99 (1) wherever occurring.

Insert instead “*Home Building Act 1989*”.

7.19 Water Supply Authorities Act 1987 No 140

Section 48 Work done by unqualified person

Omit "*Building Services Corporation Act 1989*" wherever occurring.

Insert instead "*Home Building Act 1989*".

5



New South Wales

Building Services Corporation Legislation Amendment Act 1996 No 122

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Building Services Corporation Act 1989 No 147	2
4 Amendment of Consumer Claims Tribunals Act 1987 No 206	2
5 Amendment of other Acts	2

Schedules

1 Amendments to BSC Act relating to work and contracts	3
2 Amendments to BSC Act relating to licensing	13
3 Amendments to BSC Act relating to disputes	15
4 Amendments to BSC Act relating to insurance	23
5 Other amendments to BSC Act	33

Building Services Corporation Legislation Amendment Act 1996 No 122

Contents

	Page
6 Amendment of Consumer Claims Tribunals Act 1987	51
7 Amendment of other Acts	55



New South Wales

Building Services Corporation Legislation Amendment Act 1996 No 122

Act No 122, 1996

An Act to amend the *Building Services Corporation Act 1989* and various other Acts with respect to insurance for residential building work and kit homes, remedies for building disputes, licensing requirements and requirements for contracts for residential building work and specialist work and the supply of kit homes; to dissolve the Building Services Corporation; to change the name of the Act; and for other purposes. [Assented to 3 December 1996]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Building Services Corporation Legislation Amendment Act 1996*.

2 Commencement

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

3 Amendment of Building Services Corporation Act 1989 No 147

The *Building Services Corporation Act 1989* is amended as set out in Schedules 1–5.

4 Amendment of Consumer Claims Tribunals Act 1987 No 206

The *Consumer Claims Tribunals Act 1987* is amended as set out in Schedule 6.

5 Amendment of other Acts

The Acts specified in Schedule 7 are amended as set out in that Schedule.

Schedule 1 Amendments to BSC Act relating to work and contracts

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

business day means a day that is not a Saturday or a Sunday or not a day that is wholly or partly observed as a public holiday throughout New South Wales.

contract price means the total amount payable under a contract to do work or to supply a kit home and includes:

- (a) the amount that the person contracting to do the work or to supply a kit home is to receive and retain under the contract, and
- (b) the amount that the person is to receive under the contract for payment to any other person, and
- (c) the amount any third person is to receive (or it is reasonably estimated will receive) directly from the person for whom the work is done or to whom the kit home is supplied in relation to the work done, or the kit home supplied, under the contract:
 - (i) for conveying to the building site or connecting or installing services such as gas, electricity, telephone, water and sewerage, or
 - (ii) for the issue of development or building consents.

owner-builder means a person who does owner-builder work (within the meaning of Part 6) and who is issued an owner-builder permit for that work.

statutory warranty means a warranty established by Part 2C.

[2] Section 3A

Insert after section 3:

3A Application of provisions to developers

- (1) For the purposes of this Act, an individual, a partnership or a corporation on whose behalf residential building work is done in the circumstances set out in subsection (2) is a developer who does the work.
- (2) The circumstances are:
 - (a) the residential building work is done in connection with an existing or proposed dwelling in a building or residential development where 4 or more of the existing or proposed dwellings are or will be owned by the individual, partnership or corporation, or
 - (b) the residential building work is done in connection with an existing or proposed retirement village or accommodation specially designed for the disabled where all of the residential units are or will be owned by the individual, partnership or corporation.
- (3) A company that owns a building under a company title scheme is not a developer for the purposes of this Act.

[3] Sections 6–7D

Omit sections 6 and 7. Insert instead:

6 Application of requirements for contracts

- (1) Sections 7–7D apply to a contract under which the holder of a licence undertakes:
 - (a) to do, in person, or by others, any residential building work or any specialist work, or
 - (b) to vary any such undertaking to do residential building work or any specialist work or the way in which any such work is to be done.

-
- (2) However, sections 7, 7A and 7B do not apply to a contract to do residential building work or specialist work in such circumstances that:
 - (a) if the work were not to be done promptly, there is likely to be a hazard to the health or safety of any person or to the public or to be damage to property, and
 - (b) the work could not be done promptly if the requirements of sections 7, 7A and 7B were to be complied with before commencing the work.
 - (3) Section 7 (2) (f) and (5) do not apply to a contract referred to in subsection (1) (b).

7 Form of contracts

- (1) A contract must be in writing and be dated and signed by or on behalf of each of the parties to it.
- (2) A contract must contain:
 - (a) the names of the parties, including the name of the holder of the licence shown on the licence, and
 - (b) the number of the licence, and
 - (c) a sufficient description of the work to which the contract relates, and
 - (d) any plans and specifications for the work, and
 - (e) the contract price if known, and
 - (f) any statutory warranties applicable to the work.
- (3) The contract must comply with any requirements of the regulations.
- (4) If the contract price is known, it must be stated in a prominent position on the first page of the contract.
- (5) If the contract price is not known or may be varied under the contract, the contract must contain a warning to that effect and an explanation of the effect of the provision allowing variation of the price. The warning and explanation must be placed next to the price if the price is known.

- (6) A contract must not include in the contract the name of any person other than the holder of a licence as, or so it may reasonably be mistaken to be, the holder's name.
- (7) This section does not prevent the holder of a licence with a business name registered under the *Business Names Act 1962* from also referring in such a contract to the business name.

7A Offence

A person must not contract to do work under a contract unless the requirements of section 7 in relation to the contract are complied with.

Maximum penalty: 20 penalty units.

7B Copy of contract

A holder of a licence must, not later than 5 clear business days after entering into a contract, give the other party to the contract a signed copy of the contract in the form in which it was made.

Maximum penalty: 20 penalty units.

7C Arbitration clause prohibited

A provision in a contract or other agreement that requires a dispute under the contract to be referred to arbitration is void.

7D Extent of caveatable interest in land under contract

The holder of a licence who is a party to a contract and in whose favour a judgment or order of a court or tribunal has been made against another party to the contract has a caveatable interest for the purposes of the *Real Property Act 1900* in the land on which the contract work is, or is to be, carried out if the land is subject to that Act.

[4] Section 10

Omit the section. Insert instead:

10 Enforceability of contracts and other rights

- (1) A contract to which the requirements of section 7 apply that is not in writing or that does not have a sufficient description of the work to which it relates is not enforceable by the holder of the licence against any other party to the contract.
- (2) Subsection (1) does not apply to a contract entered into in the circumstances described in section 6 (2).
- (3) A person who contracts to do work in contravention of this Division or who contracts to do work under a contract that does not comply with this Division:
 - (a) is not entitled to damages or to enforce any other remedy in respect of a breach of the contract committed by any other party to the contract, but
 - (b) is liable for damages and subject to any other remedy in respect of a breach of the contract committed by the person.
- (4) This section does not affect the liability of the person for an offence against a provision of or made under this or any other Act.

[5] Sections 16C–16DD

Omit sections 16C and 16D. Insert instead:

16C Application of requirements for contracts

- (1) Sections 16D–16DD apply to a contract under which the holder of a licence undertakes:
 - (a) to supply, in person, or by others, a kit home, or
 - (b) to vary any such undertaking previously made.
- (2) Section 16D (5) does not apply to a contract referred to in subsection (1) (b).

16D Form of contracts for kit homes

- (1) A contract must be in writing and be dated and signed by or on behalf of each of the parties to it.
- (2) A contract must contain:
 - (a) the names of the parties, including the name of the holder of the licence shown on the licence, and
 - (b) the number of the licence, and
 - (c) a sufficient description of the kit home to which the contract relates, and
 - (d) any plans and specifications for the kit home, and
 - (e) the contract price if known.
- (3) The contract must comply with any requirements of the regulations.
- (4) If the contract price is known, it must be stated in a prominent position on the first page of the contract.
- (5) If the contract price is not known or may be varied under the contract, the contract must contain a warning to that effect and an explanation of the effect of the provision allowing variation of the price. The warning and explanation must be placed next to the price if the price is known.
- (6) A contract must not include in the contract the name of any person other than the holder of a licence as, or so it may reasonably be mistaken to be, the holder's name.
- (7) This section does not prevent the holder of a licence with a business name registered under the *Business Names Act 1962* from also referring in such a contract to the business name.

16DA Offence

A person must not contract to supply a kit home under a contract unless the requirements of section 16D in relation to the contract are complied with.

Maximum penalty: 20 penalty units.

16DB Copy of contract

A holder of a licence must, not later than 5 clear business days after entering into a contract, give the other party to the contract a signed copy of the contract in the form in which it was made.

Maximum penalty: 20 penalty units.

16DC Arbitration clause prohibited

A provision in a contract or other agreement that requires a dispute under the contract to be referred to arbitration is void.

16DD Extent of caveatable interest in land under contract

The holder of a licence who is a party to a contract and in whose favour a judgment or order of a court or tribunal has been made against another party to the contract has a caveatable interest for the purposes of the *Real Property Act 1900* in the land on which the contract work is, or is to be, carried out if the land is subject to that Act.

[6] Section 16G

Omit the section. Insert instead:

16G Enforceability of contracts

- (1) A contract to which the requirements of section 16D apply that is not in writing or that does not have a sufficient description of the kit home to which it relates is not enforceable by the holder of the licence against any other party to the contract.
- (2) A person who contracts to supply a kit home in contravention of this Part or contracts to supply a kit home under a contract that does not comply with this Part:

- (a) is not entitled to damages or to enforce any other remedy in respect of a breach of the contract committed by any other party to the contract, but
 - (b) is liable for damages and subject to any other remedy in respect of a breach of the contract committed by the person.
- (3) This section does not affect the liability of the person for an offence against a provision of or made under this or any other Act.

[7] Part 2C

Insert after Part 2B:

Part 2C Statutory warranties

18A Time from when Part applies

This Part applies to residential building work only to the extent that it is done or to be done under a contract made on or after the commencement of this section.

18B Warranties as to residential building work

The following warranties by the holder of a licence, or a person required to hold a licence before entering into a contract, are implied in every contract to do residential building work:

- (a) a warranty that the work will be performed in a proper and workmanlike manner and in accordance with the plans and specifications set out in the contract,
- (b) a warranty that all materials supplied by the holder or person will be good and suitable for the purpose for which they are used and that, unless otherwise stated in the contract, those materials will be new,

-
- (c) a warranty that the work will be done in accordance with, and will comply with, this or any other law,
 - (d) a warranty that the work will be done with due diligence and within the time stipulated in the contract, or if no time is stipulated, within a reasonable time,
 - (e) a warranty that, if the work consists of the construction of a dwelling, the making of alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling, the work will result, to the extent of the work conducted, in a dwelling that is reasonably fit for occupation as a dwelling,
 - (f) a warranty that the work and any materials used in doing the work will be reasonably fit for the specified purpose or result, if the person for whom the work is done expressly makes known to the holder of the licence or person required to hold a licence, or another person with express or apparent authority to enter into or vary contractual arrangements on behalf of the holder or person, the particular purpose for which the work is required or the result that the owner desires the work to achieve, so as to show that the owner relies on the holder's or person's skill and judgment.

18C Warranties as to work by others

A person who is the immediate successor in title to an owner-builder, a holder of a licence, a former holder or a developer who has done residential building work on land is entitled to the benefit of the statutory warranties as if the owner-builder, holder, former holder or developer were required to hold a licence and had done the work under a contract with that successor in title to do the work.

18D Extension of statutory warranties

A person who is a successor in title to a person entitled to the benefit of a statutory warranty under this Act is entitled to the same rights as the person's predecessor in title in respect of the statutory warranty, except for work and materials in respect of which the person's predecessor has enforced the warranty.

18E Duration of warranties

Proceedings for a breach of a statutory warranty must be commenced within 7 years after:

- (a) the completion of the work to which it relates, or
- (b) if the work is not completed:
 - (i) the date for completion of the work specified or determined in accordance with the contract, or
 - (ii) if there is no such date, the date of the contract.

18F Defence

In proceedings for a breach of a statutory warranty, it is a defence for the defendant to prove that the deficiencies of which the plaintiff complains arise from instructions given by the person for whom the work was done contrary to the advice in writing of the defendant or person who did the work.

18G Warranties may not be excluded

A provision of an agreement or other instrument that purports to restrict or remove the rights of a person in respect of any statutory warranty is void.

Schedule 2 Amendments to BSC Act relating to licensing

(Section 3)

[1] Section 20 Issue of licences

Omit section 20 (4).

[2] Section 22 Automatic cancellation of licences

Omit section 22 (1). Insert instead:

- (1) A licence is taken to be cancelled if:
 - (a) 30 days (or such longer period as has been agreed on between the licensee and the Director-General) expire during which there has not been a nominated supervisor for the licence, or
 - (b) the licensee is a partnership and (without the prior approval of the Director-General given for the purposes of this section) there is any change in its membership (other than because of death).

[3] Section 23 Warning notices

Omit section 23 (2). Insert instead:

- (2) For example, a warning may relate to the risks involved in dealing with a person who has a recent history of unreasonable delays in completing work or in supplying kit homes, or of inadequately supervised work or of defective work, or of failing to insure work in accordance with this Act.

[4] Section 40 Renewal or restoration of authorities

Omit section 40 (2) (d).

[5] Section 127 Power to obtain information

Omit “certificate, or” from paragraph (d) of the definition of *relevant information* in section 127 (1).

Insert instead “certificate.”.

[6] Section 127 (1) (e), definition of “relevant information”

Omit paragraph (e).

Schedule 3 Amendments to BSC Act relating to disputes

(Section 3)

[1] Section 3 Definitions

Omit the definition of *rectification order* from section 3 (1).

[2] Section 49

Omit the section. Insert instead:

49 Definitions

In this Part:

purchaser of a kit home includes any person to whom it was agreed the kit home was to be delivered by the holder of a licence.

show cause notice means a notice served under section 63.

[3] Section 50 Application of Part to former holders and others

Omit “, or a rectification order is served,” from section 50 (2).

[4] Section 51 Improper conduct: generally

Omit section 51 (1). Insert instead:

- (1) A holder of a licence who is authorised by the licence to contract to do residential building work or specialist work, or a holder of a supervisor or registration certificate, is guilty of improper conduct if the holder:
 - (a) commits an offence against this Act or the regulations, whether or not an information has been laid for the offence, or

- (b) in the course of doing any work that the licence or certificate authorises the holder to do, fails to comply with the requirements applicable to the work made by or under this or any other Act in respect of the work, or
- (c) breaches a statutory warranty, or
- (d) in the case of specialist work, does the work otherwise than in a good and workmanlike manner or knowingly uses faulty or unsuitable materials in the course of doing the work.

[5] Section 51 (2) (b) and (d)

Omit the paragraphs.

[6] Section 51 (2) (c)

Insert "or the Commercial Tribunal" after "referee".

[7] Section 53 Improper conduct: nominated supervisors

Omit section 53 (1). Insert instead:

- (1) The holder of an endorsed licence or a supervisor certificate who has control over the carrying out of residential building work or specialist work of any kind is guilty of improper conduct if:
 - (a) the requirements applicable to the work made by or under this Act or any other Act are not complied with, or
 - (b) a breach of a statutory warranty occurs in the course of doing that work, or
 - (c) in the case of specialist work, the work is done otherwise than in a good and workmanlike manner or faulty or unsuitable materials are used in the course of doing the work.

[8] Section 55 Complaints about holders of licences or certificates

Omit section 55 (1). Insert instead:

- (1) A complaint may be made to the Director-General by any person about the holder of a licence:
 - (a) that the holder is not entitled to be the holder of the licence, or
 - (b) that the holder is not fit to hold the licence, or
 - (c) that the holder is guilty of improper conduct, or
 - (d) that there is not a sufficient number of nominated supervisors to ensure:
 - (i) that the statutory warranties for residential building work are complied with, or
 - (ii) that specialist work is done in a good and workmanlike manner and that good and suitable materials are used in doing the work, or
 - (iii) that the requirements applicable to the work made by or under this or any other Act in respect of residential building work or specialist work are complied with, or
 - (e) if the holder is a partnership—that any of the members of the partnership, or any of the officers of a corporation that is a member of the partnership, is not a fit and proper person to be a member of the partnership or an officer of the corporation or has been guilty of improper conduct, or
 - (f) if the holder is a corporation—that any of the officers of the corporation is not a fit and proper person to be an officer of the corporation or has been guilty of improper conduct.

[9] Section 56 Limitation on certain complaints

Omit the section.

[10] Division 3 Dealing with complaints

Omit sections 58–61. Insert instead:

58 Role of Director-General with respect to complaints

- (1) When the Director-General receives a complaint, the Director-General is to determine whether to take action under this Act about the complaint.
- (2) Before determining whether to take action, the Director-General may advise the parties and may take action to bring the parties to a settlement of any matters related to the complaint.

59 Protection if complaint lodged

An insurer under a contract of insurance entered into for the purposes of Part 6 who makes a complaint in relation to a builder insured under such a contract is not liable in any way for any loss, damage or injury suffered by the insured or any other person because the complaint is made.

[11] Section 63 Service of show cause notice

Omit “to the satisfaction of the Corporation” from section 63 (2) (a).

[12] Part 5, heading

Omit the heading.

Insert instead “**Part 5 Appeals and applications to Commercial Tribunal**”.

[13] Section 84

Omit the section. Insert instead:

84 Definitions

In this Part:

authority means:

- (a) a licence (whether or not an endorsed licence), or
- (b) a supervisor or registration certificate, or
- (c) an owner-builder permit, or
- (d) a permit under the regulations.

building claim means a building claim within the meaning of Part 3A of the *Consumer Claims Tribunals Act 1987*.

building disputes tribunal means a consumer claims tribunal which hears and determines a building claim.

[14] Section 85 Right of appeal

Omit section 85 (d).

[15] Sections 89A–89D

Insert after section 89:

89A Jurisdiction relating to building disputes

- (1) The Commercial Tribunal has jurisdiction in relation to a building claim if the claim is or would be, because of section 32 of the *Consumer Claims Tribunals Act 1987*, outside the jurisdiction of a building disputes tribunal.
- (2) An application may be made to the Commercial Tribunal in relation to any such building claim by any person entitled to make such a claim under the *Consumer Claims Tribunals Act 1987*.

89B Decision on building claims

Without limiting any other action it may take, the Commercial Tribunal, in deciding a building claim, may take any action that a building disputes tribunal may take, including any action it may take under section 12I, 29, 30 or 31 under the *Consumer Claims Tribunals Act 1987*.

89C Actions in other courts

- (1) In this section:

court means a court, tribunal, board or other person or body who or which:

- (a) is empowered by or under any other Act, or
- (b) by agreement between or the consent of 2 or more persons, has authority,

to decide or resolve, whether through arbitration or conciliation or any other means, any issue that is in dispute, but does not include:

- (c) a court, tribunal, board or other person or body who or which, in relation to a particular matter, is empowered by law to impose a penalty, admonition or other sanction for a contravention of a law or for misconduct or breach of discipline proved to have been committed in connection with that matter but is not empowered to award or order compensation or damages in respect of that matter, or
 - (d) a court, tribunal, board or other person or body who or which is prescribed by the regulations for the purposes of this definition.
- (2) A court has no jurisdiction to hear or determine an issue arising under a building claim if the claim has been lodged with the Commercial Tribunal and at the time the claim was lodged no issue arising under the claim was the subject of a dispute in proceedings pending before a court.

-
- (3) However, subsection (2) does not affect the jurisdiction of the court, and the court may continue or resume dealing with the issue, if:
- (a) the claim, or the part of the claim, relating to the issue, is withdrawn or dismissed for want of jurisdiction, or
 - (b) a court of record has, on a judicial review, quashed or declared invalid an order, determination or ruling of the Commercial Tribunal made in respect of the claim on the ground that the Tribunal had no jurisdiction to hear or determine the issue.
- (4) The Commercial Tribunal ceases to have jurisdiction in relation to a building claim if the Tribunal becomes aware that at the time the building claim was lodged with the Tribunal an issue arising under the claim was the subject of a dispute in proceedings pending before a court.
- (5) However, subsection (4) does not affect the jurisdiction of the Commercial Tribunal, and the Tribunal may continue or resume dealing with the building claim, if:
- (a) the proceedings, or the part of the proceedings, relating to the issue, are or is withdrawn or dismissed by the court, or by another court on appeal in those proceedings, for want of jurisdiction or without deciding the issue on its merits, or
 - (b) a court of record has, on a judicial review, quashed or declared invalid those proceedings or that part of those proceedings, or any order, judgment or decision made in those proceedings in relation to the issue, on the ground that the first-mentioned court had no jurisdiction to hear or determine the issue.
- (6) For the purposes of this section, an issue arises under a building claim made to the Commercial Tribunal only if the existence of the issue is shown in the claim.
-

89D Jurisdiction relating to unjust contracts

- (1) The Commercial Tribunal has the same jurisdiction as the Supreme Court, and may exercise all the powers and authority of the Supreme Court, in proceedings in which relief under the *Contracts Review Act 1980* is sought in relation to a contract for residential building work or specialist work, if the amount or value of the consideration that has passed or would, if the contract were fully executed, pass from one contracting party to another exceeds the amount for which jurisdiction is conferred on a building disputes tribunal under the *Consumer Claims Tribunals Act 1987*.
- (2) This section does not authorise the Commercial Tribunal to exercise the powers conferred by section 10 of the *Contracts Review Act 1980*.
- (3) This section does not affect any jurisdiction of the Supreme Court under the *Contracts Review Act 1980* in relation to contracts for residential building work or specialist work.

Schedule 4 Amendments to BSC Act relating to insurance

(Section 3)

[1] Section 22 Automatic cancellation of licences

Insert after section 22 (1):

- (1A) A licence authorising its holder to carry out residential building work or specialist work or to contract to supply a kit home is taken to have been cancelled if the licensee is convicted more than once in any period of 12 months of an offence under Part 6 (whether or not the offences are of the same or a different kind).
- (1B) A licence authorising its holder to carry out residential building work or specialist work or to contract to supply a kit home is taken to have been cancelled if the licensee fails to maintain professional indemnity insurance or a similar form of insurance taken out by the licensee for the period required under Part 6.

[2] Section 83 Suspension by District Court

Insert after section 83 (5):

- (6) Without limiting subsection (1), it is a sufficient reason if the holder of a licence has contravened section 92 or 93.

[3] Part 6, sections 90–103E

Omit Part 6. Insert instead:

Part 6 Insurance

90 Definitions

In this Part:

contractor means a person required by section 92 to enter into a contract of insurance.

insolvent means:

- (a) in relation to an individual, that the individual is insolvent under administration (within the meaning of the *Corporations Law*), or
- (b) in relation to a corporation, that the corporation is an externally-administered body corporate (within the meaning of the *Corporations Law*).

owner-builder work means owner-builder work within the meaning of Division 3 of Part 3 that involves:

- (a) the construction of a dwelling, or
- (b) the alteration of, or additions to, a dwelling, or
- (c) the construction of an inground swimming pool.

supplier means a supplier of a kit home required by section 93 to enter into a contract of insurance.

91 When Part applies

- (1) This Part, as amended by the *Building Services Corporation Legislation Amendment Act 1996*, applies to residential building work or owner-builder work only to the extent that it is done or is to be done or has been done under a contract made on or after the date of commencement of this section or, if it is done otherwise than under a contract, only to the extent that it is commenced on or after that commencement.
- (2) This Part, as amended by the *Building Services Corporation Legislation Amendment Act 1996*, applies to kit homes supplied or to be supplied under a contract made on or after the date of commencement of this section.

92 Contract work must be insured

- (1) A person must not contract to do any residential building work unless a contract of insurance that complies with this Act is in force in relation to the proposed work.

Maximum penalty: 100 penalty units.

-
- (2) A person must not contract to do any residential building work unless a certificate of insurance evidencing the contract of insurance, in a form prescribed by the regulations, is attached to the contract.

Maximum penalty: 100 penalty units.

- (3) This section does not apply if the contract price does not exceed \$5,000 or (if the contract price is not known) the reasonable market cost of the labour and materials involved does not exceed \$5,000.
- (4) If the same parties enter into two or more contracts to carry out work in stages, the contract price for the purposes of subsection (3) is taken to be the sum of the contract prices under each of the contracts.
- (5) The regulations may prescribe another amount for the purposes of subsection (3) and an amount so prescribed is to apply in the place of the amount referred to in that subsection.

93 Supply of kit home must be insured

- (1) A person must not contract to supply, or supply, a kit home unless a contract of insurance that complies with this Act is in force in relation to the supply or proposed supply.

Maximum penalty: 100 penalty units.

- (2) A person must not contract to supply a kit home unless a certificate of insurance evidencing the contract of insurance, in a form prescribed by the regulations, is attached to the contract.

Maximum penalty: 100 penalty units.

- (3) This section does not apply to the supply of a kit home if the contract price does not exceed \$5,000 or (if the contract price is not known) the reasonable market cost of the labour and building components involved does not exceed \$5,000.

- (4) The regulations may prescribe another amount for the purposes of subsection (3) and an amount so prescribed is to apply in the place of the amount referred to in that subsection.

94 Effects on contract of contravention

- (1) A person who enters into a contract in contravention of section 92 (1) or 93 (1):
 - (a) is not entitled to damages or to enforce any other remedy in respect of a breach of the contract committed by any other party to the contract or to recover money in respect of work done under the contract under any other right of action (including a quantum meruit action), but
 - (b) is liable for damages and subject to any other remedy in respect of a breach of the contract committed by the person.
- (2) This section does not affect the liability of any such person for an offence against a provision made by or under this or any other Act.

95 Owner-builder insurance

- (1) An owner-builder must not enter into a contract for the sale of land on which owner-builder work is to be or has been done by or on behalf of the owner-builder unless a contract of insurance that complies with this Act is in force in relation to the work or proposed work.

Maximum penalty: 100 penalty units.

- (2) An owner-builder must not enter into a contract for the sale of land on which owner-builder work is to be or has been done by or on behalf of the owner-builder unless a certificate of insurance evidencing the contract of insurance, in a form prescribed by the regulations, is attached to the contract.

Maximum penalty: 100 penalty units.

-
- (3) This section does not apply:
- (a) to a sale of the land more than 7 years after the completion of the work, or
 - (b) if the reasonable market cost of the labour and materials involved did not exceed \$5,000, or
 - (c) to a person exempted from the operation of this section under section 97.
- (4) If an owner-builder contravenes subsection (1) in respect of a contract, the contract is voidable at the option of the purchaser before the completion of the contract.
- (5) The regulations may prescribe another amount for the purposes of subsection (3) (b) and an amount so prescribed is to apply in the place of the amount referred to in that subsection.

96 Insurance by developers and other persons

- (1) A person who does residential building work otherwise than under a contract, or a developer who does residential building work, must not do the residential building work unless a contract of insurance that complies with this Act is in force in relation to that work.

Maximum penalty: 100 penalty units.

- (2) A person who does residential building work otherwise than under a contract, or a developer who does residential building work, must not enter into a contract for the sale of land on which the residential building work has been done, or is to be done, unless a certificate of insurance evidencing the contract of insurance, in a form prescribed by the regulations, is attached to the contract.

Maximum penalty: 100 penalty units.

- (3) This section does not apply:
- (a) to an owner-builder, or

- (b) to a person who does owner-builder work within the meaning of Division 3 of Part 3 that does not involve:
 - (i) the construction of a dwelling, or
 - (ii) the alteration of, or additions to, a dwelling, or
 - (iii) the construction of an inground swimming pool, or
 - (c) to an individual who is exempted by the regulations from the requirements of section 12, or
 - (d) to a sale of the land more than 7 years after the completion of the work, or
 - (e) if the contract price of the work did or does not exceed \$5,000 or (if there is no contract price) the reasonable market cost of the labour and materials involved did or does not exceed \$5,000, or
 - (f) to a person exempted from the operation of this section under section 97.
- (4) The regulations may prescribe another amount for the purposes of subsection (3) (e) and an amount so prescribed is to apply in the place of the amount referred to in that subsection.

97 Exemptions from insurance requirements

- (1) A person may apply to the Director-General to be exempted from the requirement to obtain insurance under section 95 or 96 in a particular case.
- (2) The Director-General may, by notice in writing, exempt the person from the operation of section 95 or 96, either unconditionally or subject to conditions, if satisfied that:
 - (a) there are exceptional circumstances, or
 - (b) full compliance is impossible or would cause undue hardship.

98 Employees and others not required to insure

Nothing in this Part:

- (a) requires a person who carries out work for a person required by this Part to obtain insurance in respect of that work to obtain insurance, or
- (b) makes the first-mentioned person liable for an offence for failing to do so.

99 Requirements for insurance for residential building work

A contract of insurance in relation to residential building work required by section 92 must insure:

- (a) a person on whose behalf the work is being done against the risk of loss resulting from non-completion of the work because of the insolvency or death of the contractor or because of the fact that, after due search and inquiry, the contractor cannot be found, and
- (b) a person on whose behalf the work is being done and the person's successors in title against the risk of loss arising from a breach of a statutory warranty in respect of the work.

100 Requirements for insurance for kit homes

A contract of insurance in relation to a kit home required by section 93 must insure:

- (a) a person to whom the kit home is supplied against the risk of loss resulting from non-supply of the kit home because of the insolvency or death of the supplier or because of the fact that, after due search and inquiry, the supplier cannot be found, and
- (b) a person to whom the kit home is supplied and the person's successors in title against the risk of loss in the following events:
 - (i) the materials and components used in the kit home were not good and suitable for the purpose for which they were used,
 - (ii) the design of the kit home was faulty.

101 Requirements for insurance by owner-builders, developers and others

A contract of insurance in relation to owner-builder work or residential building work required by section 95 or 96 must insure a purchaser of the land on which the work is done and the purchaser's successors in title against the risk of loss arising from a breach of a statutory warranty in respect of the work.

102 General requirements for insurance

- (1) This section applies to all contracts of insurance required to be entered into by or under this Part.
- (2) The insurance must be of a kind approved by the Minister and be provided by an insurer approved by the Minister.
- (3) The contract of insurance must provide for cover of not less than \$200,000, or such other amount as may be prescribed by the regulations, in relation to each dwelling to which the insurance relates.
- (4) Any limitations on liability under the contract of insurance must comply with any requirements of the regulations.
- (5) The contract of insurance must comply with any other requirements of the regulations.
- (6) A contract of insurance may provide that the insurer is not liable for such amount (not exceeding \$500) of each claim as is specified in the contract.

103 Requirements for professional indemnity and other insurance

- (1) The regulations may set out requirements for professional indemnity insurance and other similar forms of insurance entered into for the purposes of this Part. The requirements are in addition to those made under section 102.

-
- (2) Without limiting subsection (1), regulations may be made for or with respect to:
 - (a) conditions of contracts of insurance relating to automatic run-off cover, and
 - (b) conditions of contracts of insurance requiring renewal of contracts of insurance for a period sufficient to provide cover of a duration required by or under this Act, and
 - (c) the period for which a contract of insurance must provide cover.

103A Approval of insurance and insurers

- (1) The Minister may approve a kind of insurance, or an insurer, for the purposes of this Part. An approval may be unconditional or subject to conditions.
- (2) The Minister may, by written notice to the insurer concerned, revoke or vary an approval.

103B Period of cover

- (1) A contract of insurance must provide insurance cover for loss arising from non-completion of the work for a period of not less than 12 months after the failure to commence, or cessation of, the work the subject of the cover.
- (2) A contract of insurance must provide insurance cover for other loss insured in accordance with this Act for a period of not less than 7 years after the completion of the work or the supply of the kit home, or the end of the contract relating to the work or supply, whichever is the later.
- (3) This section is subject to any limits set out in the regulations as to the period within which a claim must be made.
- (4) This section is subject to any provisions in regulations made for the purposes of section 103 relating to professional indemnity insurance.

103C Regulations

- (1) The Governor may make regulations for or with respect to requirements for insurance required to be entered into under this Part.
- (2) Without limiting subsection (1), regulations may be made for or with respect to the following:
 - (a) limitations on liability,
 - (b) beneficiaries under the contract of insurance,
 - (c) losses indemnified,
 - (d) the period within which a claim must be made,
 - (e) subrogation,
 - (f) when an insurance claim is taken to have been refused,
 - (g) the manner of determining the maximum amount of insurance cover,
 - (h) when work is complete,
 - (i) the making of appeals against decisions of insurers, including the time within which appeals may be made.

103D Part may not be excluded

A provision of a contract or another agreement that purports to restrict or remove the rights of a person under this Part is void.

103E Exemption

This Part does not apply to residential building work done by or on behalf of, or to sales of land by, the New South Wales Land and Housing Corporation.

[4] Section 131 Certificate evidence

Omit section 131 (i).

Schedule 5 Other amendments to BSC Act

(Section 3)

[1] Long title

Omit “to constitute the Building Services Corporation and define its functions;”.

[2] Section 1

Omit the section. Insert instead:

1 Name of Act

This Act is the *Home Building Act 1989*.

[3] Section 3 Definitions

Insert in alphabetical order:

Administration Corporation means the Fair Trading Administration Corporation constituted under Part 7.

[4] Section 3 (1), definition of “Corporation”

Omit the definition.

[5] Section 3 (1)

Insert in alphabetical order:

Director-General means the Director-General of the Department of Fair Trading.

[6] Section 3 (1), definition of “General Manager”

Omit the definition.

[7] Section 3 (1), definition of “nominated supervisor”

Omit “with the Corporation” from paragraph (b).

[8] Section 3 (1), definition of “registration certificate”

Omit “with the Corporation”.

[9] Sections 19, 20, 21 (2), 23 (3) and (4), 24 (except where thirdly occurring), 25 (except where secondly occurring), 26, 27 (3), 30, 31, 32 (2), 34 (1) (a), 35, 36 (1), 38, 39, 40 (except 40 (4) (a)), 41, 43, 44 (2) and (3), 47 (c), 55 (2) and (3), 57, 62, 63 (1), (2) and (3), 77 (2), 80 (2), 83 (3), 85, 86 (2) (except where thirdly occurring), 87, 88, 116 (1), 117, 118, 119, 120 (1), 123, 124 (1), 126 (1), 127 (1) and (2), 131 (f), 139 (2) and 140 (2) (i)

Omit “Corporation” wherever occurring.

Insert instead “Director-General”.

[10] Sections 20 (3), 25 (3), 31 (2), 38 (1), 40 (3) (where firstly occurring), 44 (1) (where firstly occurring), 62, 63 (1) (where firstly occurring), 118

Omit “it” wherever occurring.

Insert instead “the Director-General”.

[11] Section 23 Warning notices

Omit “General Manager” wherever occurring.

Insert instead “Director-General”.

[12] Sections 24 (2) and 25 (1) (a)

Omit “with the Corporation” wherever occurring.

[13] Sections 34 (1) (b), 40 (4) (a), 44 (1) (a) and (b), 78 (1), 86 (2) (a), 120 (2), 131 (where firstly occurring)

Omit “Corporation” wherever occurring.

Insert instead “Department of Fair Trading”.

[14] Section 44 Return of cancelled or varied authority

Omit "Corporation" from section 44 (1) where firstly occurring.
Insert instead "Director-General".

[15] Section 45 Surrender of authority

Omit "the Corporation".
Insert instead "an office of the Department of Fair Trading".

[16] Section 74 Determination after hearing

Omit "Corporation" from section 74 (c).
Insert instead "Administration Corporation".

[17] Section 80 Enforcement of cash penalties and payment of costs

Omit "Corporation" from section 80 (1) wherever occurring.
Insert instead "Administration Corporation".

[18] Section 80 (3)

Omit "Corporation's". Insert instead "Director-General's".

[19] Section 86 Time limits

Omit "its decision" from section 86 (2).
Insert instead "the decision".

[20] Section 99 Proof of certain small amounts

Omit "General Manager". Insert instead "Director-General".

[21] Part 7, heading

Omit the heading. Insert instead:

**Part 7 Fair Trading Administration Corporation and
additional powers of Director-General**

[22] Sections 105–114

Omit the sections. Insert instead:

105 Definitions

In this Part:

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

BSC means the Building Services Corporation constituted under this Act as in force immediately before the commencement of section 110, as substituted by the *Building Services Corporation Legislation Amendment Act 1996*.

building disputes tribunal has the same meaning as it has in Part 5.

liabilities includes all liabilities, debts and obligations (whether present or future and whether vested or contingent).

106 Functions of Director-General under Act

The Director-General has the following functions:

- (a) to promote and protect the interests of owners and purchasers of dwellings (including the purchasers of kit homes) and users of water supplies, sewerage systems, gas, electricity, refrigeration and air conditioning,

-
- (b) to set, assess and maintain standards of competence of persons doing residential building work or specialist work,
 - (c) to complement the work of industry organisations, public authorities and educational institutions in promoting standards,
 - (d) to give general advice and guidance to the public,
 - (e) to monitor the operation of insurance provided for the purposes of this Act.

107 Constitution of Administration Corporation

- (1) There is constituted by this Act a body corporate with the corporate name of the Fair Trading Administration Corporation.
- (2) The Administration Corporation is, for the purposes of any Act, a statutory body representing the Crown.

108 Minister to manage and control affairs of Administration Corporation

- (1) The affairs of the Administration Corporation are to be managed and controlled by the Minister.
- (2) Any act, matter or thing done in the name of, or on behalf of, the Administration Corporation by the Minister or the Director-General is taken to have been done by the Administration Corporation.

109 Functions of Administration Corporation

- (1) The Administration Corporation has the functions conferred or imposed on the Administration Corporation by or under this or any other Act or law.
- (2) The functions of the Administration Corporation include the following:
 - (a) to hold on behalf of the State, retain, transfer and dispose of assets, rights and liabilities transferred to it under this Act,

- (b) to acquire, exchange, lease, dispose of and otherwise deal with property,
 - (c) to develop and manage land transferred to it under this Act or otherwise acquired by it,
 - (d) to carry on any activity or business that relates to the assets, rights and liabilities transferred to it or that is incidental or ancillary to the assets, rights and liabilities transferred to it,
 - (e) any other function conferred or imposed on it by or under this or any other Act.
- (3) The Administration Corporation may do all such things as are supplemental or incidental to the exercise of its functions.

110 Transfer of assets, rights and liabilities to Administration Corporation on dissolution of BSC

- (1) The remaining assets, rights and liabilities of the BSC are transferred to the Administration Corporation.
- (2) The remaining assets, rights and liabilities of the BSC are the assets, rights and liabilities of the BSC immediately before the repeal of the provisions of this Act establishing the BSC by the *Building Services Corporation Legislation Amendment Act 1996*, other than any such assets, rights or liabilities as are transferred to a person or persons on behalf of the State by an order made under subsection (3) on or before that dissolution.
- (3) The Minister may direct, by order in writing, that such assets, rights and liabilities of the BSC as are specified or referred to in the order be transferred to such person or persons on behalf of the State as is specified in the order.
- (4) The Minister may, in an order under subsection (3), specify the consideration on which a transfer is made and the value or values at which the assets, rights or liabilities are transferred.
- (5) Clauses 43–45 of Schedule 4 apply to a transfer under subsection (1) and an order under subsection (3).

111 Seal of Administration Corporation

The seal of the Administration Corporation is to be kept by the Minister and may be affixed to a document only:

- (a) in the presence of the Minister or a person authorised in that behalf by the Minister,
- (b) with an attestation by the signature of the Minister or that person of the fact of the affixing of the seal.

112 Trust Account

- (1) The Administration Corporation is required to maintain with any one or more of a bank, building society or credit union in New South Wales a Home Building Trust Account (the *Trust Account*) which is to consist of amounts held in the Building Services Corporation Trust Account which was maintained under this Act immediately before the commencement of this section.
- (2) After the commencement of this section, the following amounts are to be paid into the Trust Account:
 - (a) amounts received as a consequence of rectification orders under this Act,
 - (b) amounts paid to the Administration Corporation by order of a building disputes tribunal or the Commercial Tribunal to be applied towards payment for work done or materials supplied,
 - (c) amounts voluntarily paid to the Administration Corporation in furtherance of the resolution of disputes concerning contracts to do residential building work or specialist work or to supply kit homes.
- (3) Payments from the Trust Account may be made for the following purposes only:
 - (a) to pay for work carried out pursuant to a rectification order or as a consequence of the resolution of a dispute or in accordance with subsection (4),

- (b) to repay a person who has paid money to the Corporation pursuant to a direction in a rectification order, as a consequence of the resolution of a dispute or in accordance with an order of a building disputes tribunal or the Commercial Tribunal, together with interest accrued on the money, but only to the extent that the money is not applied by the Corporation for a purpose referred to in paragraph (a),
 - (c) to invest money in the Trust Account by way of deposit with any one or more bank, building society or credit union in New South Wales.
- (4) Any money paid to the Administration Corporation by order of a building disputes tribunal or the Commercial Tribunal to be applied towards payment for work done or materials supplied may be applied by the Corporation, at such time or times and to such extent as the Tribunal concerned directs, for that purpose.

113 General Account

- (1) The Administration Corporation must maintain an account called the Fair Trading Administration Corporation General Account.
- (2) There is payable into the Account all money received by the Administration Corporation, except amounts required to be paid into the Trust Account under section 112.
- (3) There is payable from the Account all payments required to meet the expenditure incurred in relation to the functions of the Administration Corporation.

[23] Section 115 Education and Research Fund

Omit section 115 (1)–(3). Insert instead:

- (1) The Director-General is to cause to be maintained in the accounting records of the Department of Fair Trading a Home Building Education and Research Fund (the “Education and Research Fund”).

-
- (2) The Education and Research Fund is to consist of the amounts held in the Education and Research Fund under this Act immediately before the commencement of this subsection and such amounts as the Minister approves being applied for the purpose of making payments under this section.
- (3) The Director-General may make payments from the Education and Research Fund towards:
- (a) assisting education or research relating to consumer related issues in the building industry, and
 - (b) encouraging, by subsidy or otherwise, apprenticeship in the building industry and trades subject to licensing under this Act, and
 - (c) assisting education or research relating to the building industry and trades subject to licensing under this Act, and
 - (d) assisting any public purpose connected with the building industry and trades subject to licensing under this Act.

[24] Section 115A Establishment of Advisory Council

Omit section 115A (2) and (3).

[25] Section 115B Membership and procedure of Advisory Council

Omit "General Manager" from section 115B (2) (e).
Insert instead "Director-General".

[26] Section 115C Functions of Advisory Council

Insert ", including the provision of funding for education and research," after "industry".

[27] Section 119 Liability for report

Omit "Corporation's" from section 119 (b).
Insert instead "Department of Fair Trading's".

[28] Section 121 Disclosure of information

Omit “or any other Act conferring or imposing functions on the Corporation” from section 121 (1).

[29] Section 121 (1)

Omit “or any such other Act” wherever occurring.

[30] Section 122

Omit the section. Insert instead:

122 Delegation

The Director-General may delegate to a person any of the Director-General’s functions under this Act.

[31] Section 123 Service of notices or other documents

Omit section 123 (3).

[32] Section 125

Omit the section. Insert instead:

125 Recovery of charges, fees or money

Any charge, fee or money due to the Administration Corporation may be recovered by the Corporation as a debt in a court of competent jurisdiction.

[33] Section 128 Obstruction of officers and others

Omit section 128 (1) (a). Insert instead:

- (a) hinder or obstruct any officer of the Department of Fair Trading so as to interfere with the exercise of the officer’s functions under this Act, or

[34] Section 129 Authentication of certain documents

Omit the section.

[35] Section 130 Proof of certain matters not required

Omit the section.

[36] Section 131 Certificate evidence

Omit section 131 (j).

[37] Section 135 Proceedings for certain offences under other Acts

Omit "in the name of the Corporation by the General Manager or".
Insert instead "by".

[38] Section 138 Supreme Court injunction

Omit "General Manager of the Corporation" from section 138 (1).
Insert instead "Director-General".

[39] Section 144 Limitation of liability

Omit "Corporation, the General Manager".
Insert instead "Director-General".

[40] Section 144

Omit "Corporation or the General Manager".
Insert instead "Director-General".

[41] Section 144

Omit "General Manager" where thirdly occurring.
Insert instead "Director-General".

[42] Schedule 2A Membership and procedure of Advisory Council

Omit "General Manager" from clause 1.
Insert instead "Director-General".

[43] Schedule 4 Savings and transitional provisions

Insert at the end of clause 2 (1):

*Building Services Corporation Legislation Amendment
Act 1996*

[44] Schedule 4, clause 19A

Omit "the Corporation" from clause 19A (2) where thirdly occurring.

Insert instead "the Director-General".

[45] Schedule 4, Part 4

Insert after Part 3:

**Part 4 Provisions consequent on enactment of
Building Services Corporation Legislation
Amendment Act 1996**

33 Definitions

In this Part:

amending Act means the *Building Services Corporation Legislation Amendment Act 1996*.

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action, and documents.

Corporation means the Building Services Corporation as constituted under the *Building Services Corporation Act 1989* immediately before the commencement of Schedule 5 [22] to the amending Act.

liabilities includes all liabilities, debts and obligations (whether present or future and whether vested or contingent).

State tax means application or registration fees, stamp duty or any other tax, duty, fee or charge imposed by any Act or law of the State.

34 Operation of requirements for contracts

Except as provided by this Part, the provisions of Division 1 of Part 2 and Part 2A, as amended by the amending Act, apply to contracts made on or after the commencement of those amendments, whether or not they relate to work commenced before that commencement.

35 Rejection of applications on financial grounds

- (1) Section 20, as amended by the amending Act, does not apply to an application for a licence or for renewal of a licence made but not determined before the commencement of the amendment.
- (2) Section 40, as amended by the amending Act, does not apply to an application for renewal or restoration of an authority made but not determined before the commencement of the amendment.

36 Disputes

- (1) Part 4, as in force immediately before the commencement of this clause, continues to apply in relation to:
 - (a) conduct that occurred before the commencement, and
 - (b) conduct that occurs after that commencement, if the conduct concerns work commenced before the commencement or relates to a contract entered into before that commencement, and
 - (c) disputes arising before or after that commencement in relation to work done before that commencement or under a contract entered into before that commencement.

- (2) A complaint may be made or a show cause notice issued under Part 4, as in force immediately before that commencement in relation to conduct, work or a contract referred to in subclause (1), and the complaint or notice may be dealt with under that Part as so in force.
- (3) The Director-General and the Commercial Tribunal have, in relation to any such complaint or show cause notice and resulting show cause action, the same functions under this Act as the Corporation and the Tribunal had before that commencement, including functions as to rectification orders and determinations.

37 Jurisdiction of Commercial Tribunal

- (1) Part 5, as in force immediately before the commencement of this clause, continues to apply in relation to:
 - (a) decisions made before that commencement, and
 - (b) decisions made after that commencement in relation to claims under BSC insurance or by virtue of clause 36.
- (2) Section 89A does not apply to building claims arising out of work done, or contracts entered into, before the commencement of that section.
- (3) Section 89D applies only to a contract for residential building work or specialist work entered into after the commencement of that section.
- (4) In this clause:

BSC insurance means a scheme prescribed for the purposes of Part 6 of this Act, as in force immediately before the commencement of Schedule 4 [3] to the amending Act.

38 Jurisdiction of consumer claims tribunals

- (1) The *Consumer Claims Tribunals Act 1987*, as in force immediately before the commencement of this clause, continues to apply in relation to matters arising out of any residential building work or specialist work done, or a contract entered into, before that commencement.
- (2) The *Consumer Claims Tribunals Act 1987*, as amended by the amending Act, does not apply to a building claim arising out of work done, or contracts entered into, before that commencement (whether or not the claim arose before or after that commencement).
- (3) Section 12K of the *Consumer Claims Tribunals Act 1987* applies only to a contract for residential building work or specialist work entered into after the commencement of that section.

39 Former insurance schemes

- (1) Part 6, as in force immediately before the commencement of Schedule 4 [3] to the amending Act, and any other provisions of this Act or the regulations relating to insurance under this Act as so in force, applies to work insured, or existing work required to be insured, under that Part before that commencement, in the same way that those provisions applied immediately before that commencement.
- (2) The Administration Corporation has the functions of the Corporation in relation to the provisions and the insurance referred to in subclause (1).

40 Councils' functions relating to insurance

Section 102 of the *Local Government Act 1993*, as in force immediately before the commencement of this clause, continues to apply in relation to any approval for the doing of any residential building work given before that commencement or referred to in clause 39 (1).

41 References to Act

On and from the commencement of Schedule 5 [22] to the amending Act, a reference in any Act (other than this Act) or in any instrument made under any Act or in any other instrument of any kind to the *Building Services Corporation Act 1989* is to be read as a reference to the *Home Building Act 1989*.

42 References to Building Services Corporation

On and from the commencement of Schedule 5 [22] to the amending Act, a reference in any Act (other than this Act) or in any instrument made under any Act or in any other instrument of any kind to the Building Services Corporation is to be read as a reference to the Director-General.

43 Vesting of assets

- (1) This clause applies to the transfer of assets, rights or liabilities of the Corporation to the Administration Corporation or to another person under section 110.
- (2) The following provisions have effect (subject to any order directing the transfer):
 - (a) the assets concerned vest in the transferee by force of this clause and without the need for any conveyance, transfer, assignment or assurance,
 - (b) the rights and liabilities concerned become by force of this clause the rights and liabilities of the transferee,
 - (c) all proceedings relating to that part of the assets, rights or liabilities commenced before the transfer by or against the Corporation and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,

-
- (d) anything done or omitted to be done in relation to that part of the assets, rights or liabilities before the transfer by, to or in respect of the Corporation is (to the extent that it has any force or effect) taken to have been done or omitted to be done by, to or in respect of the transferee,
 - (e) a reference in any other Act, in any instrument, made under any Act or in any document of any kind to the Corporation is (to the extent that it relates to that part of the assets, rights or liabilities but subject to the regulations) to be read as, or as including, a reference to the transferee.
 - (3) The operation of this clause is not to be regarded:
 - (a) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
 - (b) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
 - (4) The operation of this section is not to be regarded as an event of default under any contract or other instrument.
 - (5) No attornment to the transferee by a lessee from the Corporation is required.
 - (6) No compensation is payable to any person in connection with a transfer except, in the case of a transfer by order under section 110 (3), to the extent (if any) to which the order giving rise to the transfer so provides.

44 Date of vesting

A transfer by order under section 110 (3) takes effect on the date specified in the order by which it is effected.

45 State tax

State tax is not chargeable in respect of:

- (a) the transfer of assets, rights and liabilities under Part 7, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or registration of an interest in land).

46 Existing licences

A licence, certificate of registration or permit issued by the Corporation and in force immediately before the commencement of this clause is taken to have been issued by the Director-General under this Act.

47 Payment of money generally

- (1) Nothing in this Act, the amending Act, or any order made under section 110 (3), prevents the payment to the Consolidated Fund of any revenue or income arising out of:
 - (a) the exercise of the Corporation's functions, or
 - (b) the exercise by the Director-General or any other person of those functions, or any other functions, after the commencement of Schedule 5 [22] to the amending Act.
- (2) Subclause (1) does not apply to money held by the Administration Corporation and not subject to an order under section 110 (3).

Schedule 6 Amendment of Consumer Claims Tribunals Act 1987

(Section 4)

[1] Section 10 Jurisdiction

Omit “subsection (3)” from section 10 (2).

Insert instead “subsections (3), (3A)”.

[2] Section 10 (3)

Insert “(not being a claim referred to in subsection (3A))” after “consumer claim” where firstly occurring.

[3] Section 10 (3A)

Insert after section 10 (3):

- (3A) A tribunal does not have jurisdiction in respect of a building claim (within the meaning of Part 3A) arising out of a contract of insurance required to be entered into under the *Home Building Act 1989* if the date on which the residential building work the subject of the claim was completed was more than 10 years before the date on which the claim was lodged in accordance with section 13.

[4] Section 12A Definitions

Omit the definitions of *BSC* and *BSC Act*.

[5] Section 12A

Insert in alphabetical order:

Director-General means the Director-General of the Department of Fair Trading.

[6] Sections 12A, 12B (2), 12H (1)

Omit "BSC Act" wherever occurring.
Insert instead "*Home Building Act 1989*".

[7] Section 12A

Omit the definition of *rectification order*.

[8] Section 12A

Insert in alphabetical order:

residential building work has the same meaning as it has
in the *Home Building Act 1989*.

specialist work has the same meaning as it has in the
Home Building Act 1989.

[9] Section 12A

Insert at the end of the section:

- (2) Without limiting the definition of *building claim*, a
building claim includes an appeal against a decision of
an insurer under a contract of insurance required to be
entered into under the *Home Building Act 1989*.

[10] Section 12D Tribunal to be known as building disputes tribunal

Omit "an application for a rectification order".
Insert instead "exercises the jurisdiction conferred by section 12K".

[11] Section 12F Preliminary referral of building claim to BSC

Omit the section.

[12] Section 12G Referral of claim to BSC during hearing

Omit the section.

[13] Section 12H Director-General not prevented from taking action when claim pending

Omit "BSC" wherever occurring. Insert instead "Director-General".

[14] Section 12I Power to make additional orders

Insert after section 12I (1) (f):

- (g) an order that requires a claimant to pay money to the Fair Trading Administration Corporation, established under the *Home Building Act 1989*, for the purpose of its being applied towards the cost of work done for, and material supplied to, the claimant in providing building goods and services.

[15] Section 12I (1A)

Insert after section 12I (1):

- (1A) Without limiting a building disputes tribunal's powers under section 30 in such a case, in determining a building claim referred to in section 12A (2) a tribunal may confirm the decision appealed against or substitute for that decision any decision the insurer could have made.

[16] Section 12K

Omit the section. Insert instead:

12K Jurisdiction relating to unjust building contracts

- (1) A building disputes tribunal has the same jurisdiction as the Supreme Court, and may exercise all the powers and authority of the Supreme Court, in proceedings in which relief under the *Contracts Review Act 1980* is sought in relation to a contract for residential building work or specialist work.

- (2) This section does not authorise a building disputes tribunal to exercise the powers conferred by section 10 of the *Contracts Review Act 1980*.
- (3) This section does not affect any jurisdiction of the Supreme Court under the *Contracts Review Act 1980* in relation to contracts for residential building work or specialist work.
- (4) A building disputes tribunal has no jurisdiction under this section if the amount or value of the consideration that has passed or would, if the contract were fully executed, pass from one contracting party to another exceeds the amount prescribed for the purposes of this section.

[17] Section 48 Regulations

Insert “or proceedings under section 12K” after “claims” in section 48 (1) (b).

Schedule 7 Amendment of other Acts

(Section 5)

7.1 Contracts Review Act 1980 No 16

Section 4 Definitions

Insert at the end of the definition of *Court* in section 4 (1):

or

- (d) in accordance with section 12K of the *Consumer Claims Tribunals Act 1987*, and without affecting the jurisdictional limitations referred to in that section, a building disputes tribunal within the meaning of Part 3A of that Act, or
- (e) in accordance with section 89D of the *Home Building Act 1989*, and without affecting the jurisdictional limitations referred to in that section, the Commercial Tribunal.

7.2 Dangerous Goods Act 1975 No 68

Section 41 Regulations

Omit "*Building Services Corporation Act 1989*" from section 41 (3A).

Insert instead "*Home Building Act 1989*".

7.3 First State Superannuation Act 1992 No 100

Schedule 1 Employees

Omit "Building Services Corporation" from Part 1.

7.4 Gas Act 1986 No 213

Section 139 Regulations

Omit "*Building Services Corporation Act 1989*" from section 139 (6) (a).

Insert instead "*Home Building Act 1989*".

7.5 Home Purchase Assistance Authority Act 1993 No 15

Section 17 Minister may direct transfer of assets etc to Authority

Omit section 17 (1) (b).

7.6 Hunter Water Board (Corporatisation) Act 1991 No 53

Section 69 Work for water supply, sewerage or drainage

Omit "*Building Services Corporation Act 1989*" wherever occurring in section 69 (1).

Insert instead "*Home Building Act 1989*".

7.7 Land Tax Management Act 1956 No 26

Section 10B Taxation of land owned by certain authorities

Omit section 10B (1) (b).

7.8 Liquefied Petroleum Gas Act 1961 No 3

Section 5 Penalties

Omit "*Building Services Corporation Act 1989*" from section 5 (2) (a).

Insert instead "*Home Building Act 1989*".

7.9 Local Government Act 1993 No 30

[1] Section 102

Omit the section. Insert instead:

102 Insurance for residential building work

- (1) This section applies if the council approves (whether or not subject to conditions) of the doing of any residential building work (within the meaning of the *Home Building Act 1989*) other than work by an owner-builder.
- (2) The council must not forward or deliver to the applicant or any other person a copy of the plans and specifications submitted to it with the application unless:
 - (a) it is satisfied that the builder or other person who is to do the residential building work has complied with the applicable requirements of Part 6 of the *Home Building Act 1989*, and
 - (b) it has endorsed on the copy that it is so satisfied.
- (3) Even though the council has approved of the doing of any such work, the approval has no effect unless the council has so endorsed a copy of the plans and specifications and forwarded or delivered the copy to the applicant after that approval was given.
- (4) If the builder or person who is to do the residential building work is not known when the work is approved by the council, subsections (2) and (3) do not apply and subsection (5) applies instead.
- (5) The council must grant the approval subject to a condition that the builder or person who does the residential building work complies with the applicable requirements of Part 6 of the *Home Building Act 1989*.

102A Evidence of insurance-related matters

- (1) A statement purporting to be signed by an owner of land and declaring that:
 - (a) the owner intends to do building work on the land, and
 - (b) the reasonable market cost of the labour and materials involved in the work is not high enough for the owner to need an owner-builder permit to do the work,

is, for the purpose of the council's making an endorsement, sufficient evidence of the matter referred to in subsection (1) (b).

- (2) A certificate purporting to be issued by an approved insurer under Part 6 of the *Home Building Act 1989* to the effect that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purpose of the council's making an endorsement, sufficient evidence that the person has complied with the requirements of that Part.

[2] Section 124 What orders may be given, in what circumstances and to whom?

Omit "*Building Services Corporation Act 1989*" from the Table.
Insert instead "*Home Building Act 1989*".

[3] Section 634 Water, sewerage and stormwater drainage offences

Omit "*Building Services Corporation Act 1989*" from section 634 (1) wherever occurring.
Insert instead "*Home Building Act 1989*".

[4] Section 742 Dispute resolution

Omit "the Building Services Corporation" from section 742 (7).

7.10 Public Authorities Superannuation Act 1985 No 41

Schedule 3 Employers

Omit "The Building Services Corporation." from Part 2.

7.11 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory Bodies

Omit "Building Services Corporation."

7.12 Search Warrants Act 1985 No 37

Section 10 Definitions

Omit "*Building Services Corporation Act 1989*" from the definition of *search warrant*.

Insert instead "*Home Building Act 1989*".

7.13 State Authorities Non-contributory Superannuation Act 1987 No 212

Schedule 1 Employers

Omit "Building Services Corporation" from Part 1.

7.14 State Authorities Superannuation Act 1987 No 211

Schedule 1 Employers

Omit "Building Services Corporation" from Part 1.

7.15 Strata Titles Act 1973 No 68

Section 148 Structural defects—proceedings as agent

Omit “, under the *Building Services Corporation Act 1989* or otherwise,” from section 148 (1).

7.16 Strata Titles (Leasehold) Act 1986 No 219 (1973 Act, section 148)

Section 186 Structural defects—proceedings as agent

Omit “, under the *Building Services Corporation Act 1989* or otherwise,” from section 186 (1).

7.17 Superannuation Act 1916 No 28

Schedule 3 List of employers

Omit “Building Services Corporation” from Part 1.

7.18 Water Board (Corporatisation) Act 1994 No 88

Section 99 Work for water supply, sewerage or stormwater drainage

Omit “*Building Services Corporation Act 1989*” from section 99 (1) wherever occurring.

Insert instead “*Home Building Act 1989*”.

7.19 Water Supply Authorities Act 1987 No 140

Section 48 Work done by unqualified person

Omit "*Building Services Corporation Act 1989*" wherever occurring.

Insert instead "*Home Building Act 1989*".

[Minister's second reading speech made in—
Legislative Assembly on 30 October 1996
Legislative Council on 27 November 1996]

