

1990 - No. 801

**BUILDING SERVICES CORPORATION ACT 1989 -  
REGULATION**

(Relating mainly to kit homes and to the BSC Insurance Schemes)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Building Services Corporation Act 1989, has been pleased to make the Regulation set forth hereunder.

JOE SCHIPP  
Minister for Housing.

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**Commencement**

1. This Regulation commences on 4 February 1991.

**Amendments to Part 3 (Exemptions Relating to the Regulation of Residential Building Work and Specialist Work) and Part 4 (Licences and Certificates) in relation to kit homes**

2. The Building Services Corporation Regulation 1990 is amended:
  - (a) by omitting from the heading to Part 3 the words "**AND SPECIALIST WORK**" and by inserting instead the words "**, SPECIALIST WORK AND THE SUPPLY OF KIT HOMES**";

- (b) by inserting after Division 2 of Part 3 the following Division:

**Division 3 - Supply of kit homes**

**Exemptions relating to the supply of kit homes**

15A. A person is exempt from all requirements of the Act which relate to the supply of kit homes if the kit home the person contracts to supply or supplies consists of:

- (a) a set of building components which the purchaser states in writing at the time of purchase is purchased for erection outside New South Wales; or
  - (b) a set of building components the contract price for which is \$1,000 or less; or
  - (c) a set of building components for the construction of a structure or improvement declared in clause 4 (a)-(d), (f), (g) or (i)-(n) to form part of a dwelling, unless that set of building components is supplied (under a contract) together with the set of building components for the construction of the dwelling in conjunction with which the structure or improvement is to be used.
- (c) by inserting in clause 16 (1) (b) after the words "to contract to do" the words ", or to supply the kit homes which the licence will authorise the applicant to contract to supply, as the case requires".

**Amendments to Part 6 (BSC Insurance) in relation to kit homes**

3. The Building Services Corporation Regulation 1990 is further amended:

- (a) by omitting from clause 37 (1) (b) the word "higher." and by inserting instead the words "higher; or";
- (b) by inserting after paragraph (b) of the definition of "cost" in clause 37 (1) the following paragraph
  - (c) the supply of a kit home supplied by the holder of an appropriate licence means the contract price or (if there is no contract) the reasonable market price of supplying the kit home.
- (c) by omitting from clause 37 (3) (b) the word "work." and by inserting instead the words "work; or";

- (d) by inserting after clause 37 (3) (b) the following paragraph
  - (c) for the supply of a kit home (whether supplied under a contract or otherwise) - the amount specified in Column 2 of Schedule 4 opposite the range of costs specified in Column 1 of that Schedule that includes the cost of the supply.
- (e) by omitting clause 38 (1) and (2) and by inserting instead the following subclauses:
  - (1) For the purposes of section 101 of the Act, the prescribed circumstances are the following:
    - (a) the contractor doing the work or supplying the kit home held a licence that did not authorise the holder to do the work concerned or to supply the kit home concerned, but the claimant under BSC Insurance had a reasonable and honest belief, based on the work or the kind of kit home described in the licence, that it did so authorise the holder; or
    - (b) the contractor doing the work concerned or supplying the kit home concerned held a licence that had been cancelled under the Act, the licence was still in the holder's possession, it was apparently still in force and the claimant did not know that it was cancelled; or
    - (c) the contractor under a contract to do the work concerned or to supply the kit home concerned was a partnership or a corporation which was not the holder of an appropriate licence, but the work was done or the kit home was supplied by the holder of an appropriate licence who was a member of the partnership or a director of the corporation.
  - (2) If the Corporation is satisfied that there are special circumstances which warrant its doing so, it may, in its absolute discretion, pay to a claimant who is a beneficiary under BSC comprehensive protection or BSC special protection (as the case may be), an amount not exceeding the claimant's assessed loss in having incomplete work completed or defective work or a defective kit home rectified, or another kit home of the appropriate kind delivered by another licensed supplier, even though:

- (a) the incomplete work is not completed; or
- (b) the defective work or kit home is not rectified; or
- (c) the other kit home is not delivered.

**Amendments to Part 7 (General) in relation to kit homes**

4. The Building Services Corporation Regulation 1990 is further amended:

- (a) by inserting in clause 40 (a) (ii) after the word "do" the words "or the kind of kit home the licence authorises the holder to contract to supply (as may be appropriate)";
- (b) by inserting in clause 40 (a) (v) after the word "do" the words ", or the kind of kit home the licence authorises the holder to contract to supply (as may be appropriate),";
- (c) by inserting in clause 45 after the words "specialist work" the words ", or supplying or contracting to supply a kit home";
- (d) by omitting from clause 45 (a) (i), (b) (i) and (c) (i) the words "such work" wherever occurring and by inserting instead the words "the work or kit homes to which the licence applies".

**Amendments to Form 4 (BSC Comprehensive Insurance Scheme) in Schedule 1 in relation to kit homes**

5. The Building Services Corporation Regulation 1990 is further amended:

- (a) by inserting in clause 1 (1) of Form 4 in Schedule 1 in alphabetical order the following definitions:
  - "defective kit home"** has the same meaning as it has in Part 4 of the Act;
  - "design-and-supply contract"** means a contract to supply a kit home under which:
    - (a) the holder of the licence supplying the kit home or the holder's agent provides the design; and
    - (b) the proprietor relies on the contractor's skill and knowledge (even though the proprietor may employ a qualified person to check the design);
- (b) by omitting clause 1 (2) of Form 4 in Schedule 1 and by inserting instead the following subclause:

- (2) For the purposes of this Scheme:
  - (a) a licence or permit is appropriate in relation to work only if it authorises its holder to contract to do, or it authorises its holder to do, the work; and
  - (b) a licence is appropriate in relation to the supply of a kit home only if it authorises its holder to contract to supply, or to supply, a kit home of that kind.
- (c) by omitting from clause 2 (b) of Form 4 in Schedule 1 the matter "1990." and by inserting instead the matter "1990; and";
- (d) by inserting after clause 2 (b) of Form 4 in Schedule 1 the following paragraph
  - (c) kit homes supplied or to be supplied under a contract entered into on or after 16 November 1990 or supplied (otherwise than under a contract) on or after that date.
- (e) by omitting from clause 3 (1) (c) of Form 4 in Schedule 1 the word "done." and by inserting instead the words "done; and";
- (f) by inserting after clause 3 (1) (c) of Form 4 in Schedule 1 the following paragraph
  - (d) the supply of a kit home of any kind, the cost of which exceeds \$1,000, by the holder of an appropriate licence.
- (g) by inserting in clause 4 (1) of Form 4 in Schedule 1 after the word "beneficiaries" the words "in respect of residential building work";
- (h) by inserting after clause 4 of Form 4 in Schedule 1 the following clause:

**Beneficiaries in respect of kit homes**

4A. Beneficiaries in respect of kit homes are any persons to whom kit homes are supplied or contracted to be supplied, not being persons who, at the time of contract or supply, stated in writing that the kit homes concerned were to be erected outside New South Wales.

- (i) by inserting in clause 5 (1) of Form 4 in Schedule 1 after the word "beneficiary" where firstly occurring the words "in respect of residential building work";
- (j) by inserting after clause 5 of Form 4 in Schedule 1 the following clause:

**Losses indemnified under the Scheme in respect of kit homes**

5A. (1) Subject to the maximum payment provisions (clause 6), the method of assessing claim benefits (clause 8) and the exclusions specified in this Scheme (clause 9), the Corporation will indemnify the following losses reasonably incurred by a beneficiary in respect of kit homes:

- (a) the deposit paid by the beneficiary under a contract for the supply only of a kit home, where no part of the kit home has been delivered; or
- (b) the difference between the total payment made by the beneficiary under a contract for the supply of a kit home and the reasonable market cost of:
  - (i) the components supplied; or
  - (ii) the cost of supply by another contractor of components necessary to provide another kit home of the kind to be supplied under the contract; or
- (c) costs of rectifying a defective kit home, including costs due to:
  - (i) faulty design used by the contractor in a design-and-supply contract; or
  - (ii) faulty design provided by the beneficiary when the design fault should have been obvious to a reasonably competent holder of an appropriate licence.

(2) Claims may be made under one only of the heads of claim in subclause (1) (a) or (b) and each applies only when the contract to supply a kit home is rescinded or determined, otherwise than by the fault of the beneficiary, before all components of the set of components that constitute the kit home have been supplied.

(3) For the purposes of subclause (1) (b), the reasonable market price of the components supplied or to be supplied is that cost assessed at the time the contract was rescinded or determined.

- (k) by inserting in clause 6 (1) of Form 4 in Schedule 1 after the matter "clause 5 (1)" the matter "or 5A (1)";

- (1) by omitting clause 6 (2) (a) and (b) from Form 4 in Schedule 1 and by inserting instead the following paragraphs:
  - (a) under a head of claim in clause 5 (1) (a) or (b) or 5A (1) (a) or (b) (i) - the maximum amount of deposit it is lawful to receive under a contract in accordance with section 8 or section 16E of the Act, but in any event not more than \$10,000; or
  - (b) under a head of claim in clause 5 (1) (c) or 5A (1) (b) (ii) - \$20,000; or
  - (c) under the head of claim in clause 5A (1) (c) - \$60,000.
- (m) by inserting in clause 7 (1) of Form 4 in Schedule 1 after the matter "clause 5" the matter "or 5A";
- (n) by inserting in clause 7 (1) (a) of Form 4 in Schedule 1 after the word "incomplete" the words "residential building";
- (o) by omitting from clause 7 (1) (c) of Form 4 in Schedule 1 the word "work." and by inserting instead the words "work; or";
- (p) by inserting after clause 7 (1) (c) of Form 4 in Schedule 1 the following paragraphs:
  - (d) for loss in relation to failure to deliver a kit home or to the supply of part only of a kit home - within 12 months after:
    - (i) the date provided in the contract for delivery of the kit home; or
    - (ii) the last date on which a part of the kit home was delivered,whichever is the later, but in any case not later than 7 years after the contract date; or
  - (e) for loss in relation to heads of claim in clause 5A (1) (b) or (c) incurred in having another kit home of the appropriate kind supplied by another licensed supplier or in rectifying a defective kit home - within 6 months after the beneficiary first becomes aware of the defect, but not later than 3 years after:
    - (i) the date provided in the contract for delivery of the kit home; or
    - (ii) the last date on which part of the defective kit home was delivered,

whichever is the later, but in any case not later than 7 years after the contract date.

- (q) by omitting clause 7 (3) from Form 4 in Schedule 1 and by inserting instead the following subclause:

(3) If the Corporation exercises its discretion under subclause (2), it may assess the indemnity for the cost of:

(a) completing incomplete work or rectifying defective work; or

(b) supplying part of a kit home, the supplying of another kit home of the appropriate kind by another licensed supplier, or rectifying a defective kit home,

on the basis of the reasonable market costs prevailing at the latest time the notification would have been required to be made in the absence of that discretion.

- (r) by omitting clause 8 of Form 4 in Schedule 1 and by inserting instead the following clause:

**Assessment of claims**

8. (1) In assessing claims, the Corporation may set off the following amounts against its liabilities listed in clause 5 or 5A:

(a) the beneficiary's outstanding liability under the contract;

(b) the value of any items or materials in the possession or under the control of the beneficiary, the property in which has passed to the beneficiary under the contract and which are not subject to any outstanding liability of the beneficiary,

(c) any amount received by the beneficiary under a settlement with the contractor, an arbitration award or an award by a Building Disputes Tribunal referee or Consumer Claims Tribunal or under the judgment of any Court relating to the head or heads of claim;

(d) the amount of the beneficiary's entitlement under legislation compensating for mining or other subsidence relating to the head or heads of claim;

(e) the amount of the beneficiary's entitlement under any other insurance policy, contract performance guarantee or the like relating to the head or heads of claim;



(f) an amount representing that part of the loss, if any, attributable to the beneficiary's contributory negligence.

(2) The Corporation may decline to pay claims where:

- (a) the work the subject of the claim was rectified or completed, or the kit home the subject of the claim was remedied or delivered, by a person other than the original contractor without the Corporation's written approval; or
- (b) without the Corporation's written approval, the beneficiary refuses to allow the contractor to rectify defective work or to remedy a defective kit home or to deliver a kit home; or
- (c) an earlier claim by a beneficiary in respect of the same residential building work or the same supply of a kit home has been settled and accepted by the beneficiary.

(3) For the purposes of a claim under clause 5 (1) (c) or 5A (1) (b) (ii), the Corporation may assess the cost of completing the work or supplying the kit home as the reasonable cost of completion or supply, as the case may be, reduced (where the reasonable cost of doing the work or supplying the kit home under the rescinded or determined contract exceeded the contract price) by the difference between that cost and that price.

(4) A beneficiary:

- (a) who claims under clause 5 (1) (c) and who elects to complete insured building work using plans or specifications (or both) which are different from those used under the rescinded or determined contract; or
- (b) who claims under clause 5A (1) (b) (ii) and who elects to have another kit home supplied, which kit home uses components, plans, specifications or instructions (or any combination of these) which are different from those used in the kit home which was to have been supplied under the rescinded or determined contract,

is not entitled to a payment under that clause of an amount greater than that which would have been assessed as payable if the work had been done or the kit home had been supplied as provided by the original contract.

(5) For the purposes of a claim under clause 5 (1) (d) or (e) in relation to the losses incurred in rectifying defects or repairing damage to common elements in a partly residential and partly non-residential building, the Corporation's liability, in respect of the rectification or repair of structural elements in the non-residential part which supports or gives access to the residential part, is limited to:

- (a) where the building is subject to a strata scheme or leasehold strata scheme, within the meaning of the Strata Titles Act 1973 or the Strata Titles (Leasehold) Act 1986, the proportion of the loss equal to the proportion of the total of the unit entitlements of the residential part of the building to the aggregate unit entitlements; and
  - (b) where the building is not subject to a scheme referred to in paragraph (a), the proportion of the loss equal to the proportion of the total floor area of the residential part of the building to the total floor area of the building.
- (6) The indemnity for the cost:
- (a) of completing incomplete work or of rectifying defective work; or
  - (b) of having another kit home of the appropriate kind supplied by another licensed supplier or of rectifying a defective kit home,

in relation to a claim lodged more than 6 months after the Corporation has notified a beneficiary that it was unable to resolve a complaint about that work or about that kit home will be assessed on the reasonable market costs prevailing at the end of that 6 months.

(7) When assessing a claim for the cost of rectifying defective work or a defective kit home, the Corporation may have regard to the reasonableness and cost of various methods of rectification in view of the practical effect that the defective work or defective kit home has on the beneficiary or the beneficiary's household and to any other relevant circumstances in deciding:

- (a) the most appropriate method of rectification in all the circumstances; and

- (b) whether rectification is warranted.
- (s) by inserting in clause 9 (d) of Form 4 in Schedule 1 after the word "work" the words "or contracted to supply or supplied the kit home";
- (t) by inserting in clause 9 (h) of Form 4 in Schedule 1 after the words "insured building work" the words "or in a kit home";
- (u) by inserting in clause 9 (h) of Form 4 in Schedule 1 after the word "dwelling" the words "or a kit home";
- (v) by inserting in clause 9 (j) of Form 4 in Schedule 1 after the word "work" where firstly occurring the words "or kit home components";
- (w) by inserting in clause 9 (j) of Form 4 in Schedule 1 after the word "manner" the words ", or the kit home components manufactured,";
- (x) by omitting clause 9 (1) of Form 4 in Schedule 1 and by inserting instead the following paragraph
  - (1) cost of alternative accommodation, when:
    - (i) work is not completed within a reasonable time, or during rectification work; or
    - (ii) a kit home is not supplied or rectified within a reasonable time; or
- (y) by omitting clause 10 of Form 4 in Schedule 1 and by inserting instead the following clause:

**Finalisation of liability**

10. Despite clause 7 (2), the Corporation has no further liability under this Scheme more than 10 years after:

- (a) the commencement of the residential building work in relation to which the Scheme applies, for any reason attributable to that work; or
- (b) the date of the contract for the supply of a kit home in relation to which the Scheme applies, for any reason attributable to that kit home.

**Amendments to Form 5 (BSC Special Insurance Scheme) in Schedule 1**

6. The Building Services Corporation Regulation 1990 is further amended:

- (a) by inserting in clause 1 (1) of Form 5 in Schedule 1 in alphabetical order the following definition:

**"sub-contractor"** means a contractor who, at the time insured building work was carried out, held an appropriate licence as a sole trader, had no employees (other than one or more apprentices) and had entered into a contract (with the holder of an appropriate licence) to carry out the insured building work (or to assist the holder of an appropriate licence to carry out the insured building work) where that licence holder is not related (within the meaning of the Companies (New South Wales) Code) to the contractor;
- (b) by omitting from clause 3 (c) of Form 5 in Schedule 1 the word "holder." and by inserting instead the words "holder; and";
- (c) by inserting after clause 3 (c) of Form 5 in Schedule 1 the following paragraphs:
  - (d) deposits paid to the holder of an appropriate licence in connection with an offer to construct a single dwelling, where that licence holder becomes bankrupt or is in the process of being wound up and the period of the offer has expired before a building contract is entered into with that holder and the beneficiary has made a genuine attempt to comply with the terms of the offer; and
  - (e) payment of a debt (to the extent that it exceeds \$200) due to a sub-contractor from the holder of an appropriate licence for the carrying out of insured building work (whether or not that insured building work is covered by the Comprehensive Insurance Scheme) and the licence holder becomes bankrupt or is wound up or in the process of being wound up.
- (d) by omitting from clause 4 (1) (c) of Form 5 in Schedule 1 the matter "3 (c)." and by inserting instead the matter "3 (c) or (d); and";
- (e) by inserting after clause 4 (1) (c) of Form 5 in Schedule 1 the following paragraph:
  - (d) the sub-contractor who carried out, or assisted in carrying out, the insured building work and who proves an unpaid debt in excess of \$200 due from the holder of an appropriate licence who or which contracted to carry out the insured building work

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- (f) by omitting from clause 5 (1) (f) of Form 5 in Schedule 1 the matter "3 (c)." and by inserting instead the matter "3 (c) or (d); and";
- (g) by inserting after clause 5 (1) (f) of Form 5 in Schedule 1 the following paragraph
  - (g) the value of an unpaid debt (to the extent that it exceeds \$200), due from the holder of an appropriate licence to the sub-contractor who carried out or assisted in carrying out the insured building work (whether or not that insured building work is covered by the Comprehensive Insurance Scheme) and the licence holder becomes bankrupt or is wound up or in the process of being wound up.
- (h) by inserting in clause 6 (2) of Form 5 in Schedule 1 after the matter "clause 5 (1) (f)" the matter "or (g)";
- (i) by omitting from clause 7 (1) (c) of Form 5 in Schedule 1 the matter "3 (c)." and by inserting instead the matter "3 (c) or (d); and";
- (j) by inserting after clause 7 (1) (c) of Form 5 in Schedule 1 the following paragraph
  - (d) for loss relating to a head of claim in clause 5 (1) (g) - within 3 months after the date the insured building work was carried out.
- (k) by inserting in clause 9 (a) of Form 5 in Schedule 1 after the matter "\$100" the words "except where the claim is a claim under clause 5 (1) (g)";
- (l) by inserting in Schedule 2 after the words "Building contractor" (appearing under the heading **Contractor Licence**) the words "or supplier of kit homes".

### **Other amendments**

7. The Building Services Corporation Regulation 1990 is further amended:

- (a) by omitting clause 13 (1) (a) and by inserting instead the following paragraph:
  - (a) premises which the holder owns or a dwelling in which he or she resides; or

- (b) by inserting in clause 24 (4) after the words "contractor's authority" wherever occurring the words "or endorsed certificate of registration";
- (c) by inserting in clause 26 (2) (a) after the words "contractor's authority" the words "or endorsed certificate of registration";
- (d) by omitting from clause 26 (2) (b) the word "Victoria." and by inserting instead the words "Victoria; or";
- (e) by inserting after clause 26 (2) (b) the following paragraph:
  - (c) for the grant, renewal or restoration of a registration certificate authorising the holder to do plumbing work or gasfitting work, or both, made by the holder of a certificate of registration issued by that Board, but only if the holder's principal place of residence is in Victoria.

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#### EXPLANATORY NOTE

The object of this Regulation is to amend the Building Services Corporation Regulation 1990 to provide regulations necessary for the commencement of the Building Services Corporation (Kit Homes) Amendment Act 1990 and to provide for other minor matters necessary for administration of the Building Services Corporation Act 1989.

#### Exemption of suppliers of certain kit homes

The effect of the amendments to Parts 3 and 4 of the Regulation (clause 2) is to exempt the suppliers of certain kit homes from the requirements of the Act relating to the supply of kit homes. The suppliers exempted include:

- (a) those supplying kit homes for a contract price of \$1,000 or less;
- (b) those supplying kits for the construction of items other than dwellings or detached garages, carports, workshops, sheds or other outbuildings; and
- (c) those supplying kits to persons who state in writing at the time of purchase that the structure is to be erected outside New South Wales.

#### Licences and advertisements

Clause 4 amends Part 7 of the Regulation so as to prescribe the particulars concerning suppliers of kit homes which must be included in the register of licences etc. required by section 120 of the Principal Act and to specify the details which must be included in any advertisement concerning the supply of kit homes.

#### BSC Comprehensive Insurance

The BSC Comprehensive Insurance Scheme has been extended (by the amending Act) to cover the supply of kit homes. Clause 3 prescribes the amount of the premium

to be paid in respect of that supply, and further prescribes the circumstances in which the Corporation may make discretionary payments (under the Scheme) in that regard. Persons to whom kit homes costing more than \$1,000 are supplied (or contracted to be supplied) automatically obtain the protection of the Scheme as a consequence of clause 5.

**BSC Special Insurance**

Clause 6 amends the BSC Special Insurance Scheme so as to provide a measure of protection to certain sub-contractors who prove an unpaid debt in excess of \$200 where bankruptcy or liquidation proceedings have been commenced against the principal contractor.

**Other**

Minor amendments to facilitate the administration of the Principal Act are contained in clause 7.

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