

1993—No. 64

**BUILDING SERVICES CORPORATION ACT 1989—
REGULATION**

(Relating to deposits paid in connection with house-and-land
package contracts)

NEW SOUTH WALES



[Published in Gazette No. 19 of 26 February 1993]

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.

ROBERT WEBSTER,
Minister for Planning and Minister for Housing.

Commencement

1. This Regulation commences on 1 March 1993.

Amendments

2. The Building Services Corporation Regulation 1990 is amended:
 - (a) by inserting in clause 3 (1), in alphabetical order, the following definitions:

“house-and-land contract” means a contract under which the vendor agrees:

 - (a) to sell a parcel of land to the purchaser; and
 - (b) to arrange for the construction or completion by a specified person other than the vendor (being the holder of an appropriate licence) of a single dwelling on the land.

“insolvent” means:

 - (a) in relation to an individual, that the individual is bankrupt or has entered into a deed of assignment, a

deed of arrangement or a compromise under Part X of the Bankruptcy Act 1966 of the Commonwealth; or

- (b) in relation to a company, that an order to wind up the company, or a special resolution by the company, has been made under Chapter 5 of the Corporations Law or a compromise or arrangement has been approved under that Chapter;
- (b) by omitting clause 36 and by inserting instead the following clause:

Special protection for pre-contract and other deposits

36. (1) BSC special protection applies in respect of a deposit paid by a person to the holder of an appropriate licence in anticipation of them entering into a contract for the construction of a single dwelling, if:

- (a) the holder is or becomes insolvent; and
- (b) the amount is not refunded; and
- (c) BSC comprehensive protection does not apply.

(2) BSC special protection also applies in respect of a deposit paid by a person to a vendor of land in respect of a house-and-land contract entered into between them, if

- (a) the vendor is or becomes insolvent; and
- (b) the amount is not refunded; and
- (c) BSC comprehensive protection does not apply.

- (c) by inserting in clause 1 (1) of Form 5 in Schedule 1, in alphabetical order, the following definitions:

“house-and-land contract” means a contract under which the vendor agrees:

- (a) to sell a parcel of land to the purchaser; and
- (b) to arrange for the construction or completion by a specified person other than the vendor (being the holder of an appropriate licence) of a single dwelling on the land.

“insolvent” means:

- (a) in relation to an individual, that the individual is bankrupt or has entered into a deed of assignment, a deed of arrangement or a compromise under Part X of the Bankruptcy Act 1966 of the Commonwealth; or

- (b) in relation to a company, that an order to wind up the company, or a special resolution by the company, has been made under Chapter 5 of the Corporations Law or a compromise or arrangement has been approved under that Chapter;
- (d) by omitting from clause 2 (b) of Form 5 in Schedule 1 the word “and”;
- (e) by inserting after clause 2 (c) of Form 5 in Schedule 1 the following word and paragraph:
 - ; and
 - (d) deposits paid on or after 1 March 1993 under a house-and-land contract.
- (f) by omitting clause 3 (c)–(e) of Form 5 in Schedule 1 and by inserting instead the following paragraphs:
 - (c) deposits paid by a person to the holder of an appropriate licence in anticipation of them entering into a contract for the construction of a single dwelling, where the holder is or becomes insolvent before the contract is entered into; and
 - (d) deposits paid by a person to a vendor under a house-and-land contract, where the vendor is or becomes insolvent; 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 BSC comprehensive protection), where the holder of the licence is or becomes insolvent.
- (g) by omitting from clause 5 (1) (f) of Form 5 in Schedule 1 the matter “clause 3 (c) or (d); and” and by inserting instead the matter “clause 3 (c);”;
- (h) by inserting after clause 5 (1) (f) of Form 5 in Schedule 1 the following paragraph:
 - (f1) the deposit paid by the beneficiary in circumstances described in clause 3 (d);
- (i) by inserting in clause 6 (1) of Form 5 in Schedule 1 after the matter “clause 5 (1) (f)” the matter “or (f1)”;
- (j) by inserting after clause 6 (2) of Form 5 in Schedule 1 the following subclause:
 - (3) The liability of the Corporation with regard to a claim under clause 5 (1) (f1) is \$2,000.

(k) by omitting clause 7 (1) (c) of Form 5 in Schedule 1 and by inserting instead the following paragraph:

(c) for loss relating to the heads of claim in clause 5 (1) (f) and (f1)—within 12 months after the date of the payment of the deposit referred to in clause 3 (c) or (d);

EXPLANATORY NOTE

The purpose of this Regulation is to amend the Building Services Corporation Regulation 1990 so as to provide for an indemnification under the BSC Special Insurance Scheme of the loss of any deposit paid by a claimant to a vendor of land under a “house-and-land package” contract

The insurance cover will apply only if:

- (a) the contract includes the construction or completion of a single dwelling by the (nominated) holder of a builder’s licence (who or which is not the vendor) on the land to be sold; and
- (b) the vendor is or becomes insolvent (as defined); and
- (c) the deposit is not refunded to the person who paid it; and
- (d) BSC comprehensive protection does not apply (as it would if the contract had been entered into with a vendor who or which is a licensed builder).

The maximum amount for which the Building Services Corporation is liable in respect of a claim relating to any such deposit is \$2,000. Any such claim must be made within 12 months after the date the deposit was paid as must a claim relating to a pre-contract deposit paid to a licensed builder.

This Regulation is made under the Building Services Corporation Act 1989, including sections 91 and 93.