WARRANTIES AND GUARANTEES IN LAW

Consumer laws protecting owners in respect of work done by builders is set out under several pieces of legislation. The three main pieces of legislation that apply to building work are the Building Act, the Consumer Guarantees Act and the Fair Trading Act.

The Building Act 2004 sets out warranties that are implied in every contract. This means that you cannot contract out of those warranties. The Consumer Guarantees Act 1993 sets out similar guarantees that are implied in all building contracts. The Fair Trading Act 1986 similarly ensures a fair deal for consumers and businesses by prohibiting certain behaviours.

A summary of the warranties and guarantees provided by the various pieces of legislation is set out below.

**Building Act 2004**

Section 362I of the Building Act 2004 sets out the following implied warranties for building work in relation to household units where a builder can be held liable for at least 6 years and possibly up to 10 years from the relevant action that fails:

- That the building work will be carried out in a proper and competent manner; and in accordance with the plans and specifications set out in the contracts; and in accordance with the relevant building consent.

- That all materials to be supplied for use in the building work will be suitable for the purpose for which they will be used; and unless otherwise stated in the contract, will be new.

- That the building work will be carried out in accordance with, and will comply with all laws and legal requirements, including, without limitation, the Building Act and its regulations.

- That the building work will be carried out with reasonable care and skill; and be completed by the date (or within the period) specified in the contract or, if no date or period is specified, within a reasonable time.

- That the household unit, if it is to be occupied on completion of building work, will be suitable for occupation on completion of that building work.

- If the contract states the particular purpose for which the building work is required, or the result that the owner wishes the building work to achieve, so as to show that the owner relies on the skill and judgment of the other party to the contract, that the building work and any materials used in carrying out the building work will be
reasonably fit for that purpose; or be of such a nature and quality that they might reasonably be expected to achieve that result.

**Consumer Guarantees Act 1993**

The Consumer Guarantees Act requires builders to meet certain quality guarantees when they provide services to owners as a consumer.

Any service that you provide (ie building work), must meet the following four guarantees. That the service will be:

- carried out with reasonable skill and care;
- reasonably fit for any particular purpose that you have told the client about;
- carried out within a reasonable time if you have not agreed the time for completing the work; and
- charged for at a reasonable price if you have not agreed a price for the work.

If the services you provide do not meet any of these four guarantees, the owner will be able to seek a remedy from you. Remedies that a consumer may be able to claim include:

- a right to repair;
- a right to cancel the contract or pay less than the agreed price; and
- the right to claim compensation for damage caused to the property by the building work.

Note that you will not be responsible for any failure to meet a guarantee because of an event outside of your control, such as a delay caused by the weather.

Goods such as appliances and fixtures provided as part of the building work will also be covered by guarantees under the Consumers Guarantees Act. Any goods must be:

- of an acceptable quality;
- be reasonably fit for a particular purpose that the consumer makes known;
- match any description given by you to the owner;
- match, in quality, any sample or demonstration model shown by you to the owner;
- be able to be legally sold;
- be a reasonable price if no price has been previously agreed;
- arrive on time and in acceptable condition;
- have spare parts and repair facilities available for a reasonable time after the goods are supplied; and
the terms of any manufacturers expressed guarantee must be met.

**Fair Trading Act 1986**

The Fair Trading Act ensures a fair deal for consumers, by making it illegal for businesses to mislead consumers, by giving them false information, or use unfair trading practices.

The Fair Trading Act also promotes product safety and ensures consumers receive information they need when they buy goods and services.

The Fair Trading Act requires certain information to be provided by businesses when selling a consumer an extended warranty for any product. At the time the consumer purchases the extended warranty, the business must provide a written agreement that is easy to understand, free of complicated language or legal jargon, and contains certain information. A consumer also has the right to cancel an extended warranty agreement within 5 working days after receiving a copy of the agreement. On cancellation, the business must immediately repay the value of the extended warranty with no deductions and no questions asked.